

NATIONAL MARINE FISHERIES SERVICE REPORT
PACIFIC OFFSHORE TAKE REDUCTION TEAM RECOMMENDATIONS AND
IMPLEMENTATION PLAN

Implementation Plan

NMFS has commenced rule writing and supporting processes under the Marine Mammal Protection Act (MMPA) to consider implementation of recommendations from the Pacific Offshore Cetacean Take Reduction Team (POCTRT), which met on February 4-6, 2014 in Long Beach California (Agenda item K.5.b). The Team was convened in 1996 to reduce the bycatch of strategic marine mammal stocks in the California drift gillnet fishery, as required under Section 118 of the MMPA. The recommendations to NMFS address permanent measures needed to reduce the risk of incidental mortality and serious injury to sperm whales during California drift gillnet (DGN) fishing operations. NMFS implemented temporary measures in 2013 under MSA emergency rulemaking authority to reduce the aforementioned risk. The temporary measures expired on January 31, 2014 (Agenda Item K.5.a, Attachment 1). NMFS will conduct all the relevant and mandatory impact analysis as stipulated under the applicable federal statutes to amend the Pacific Offshore Cetacean Take Reduction Plan (Plan) under the MMPA. NMFS will consider the below measures as recommended by the POCTRT (abbreviated from full list of recommendations) while developing the proposed amendments to the Plan:

- i. A year-round closure of the DGN fishery in waters deeper than 1,100 fathoms unless a vessel is carrying an observer (the “Zone,” as defined in the emergency rule)
- ii. A fixed cap (maximum annual limit) of sperm whale serious injury/mortality
 1. If the cap is met/exceeded but the Potential Biological Removal (PBR) level is not exceeded, further DGN fishing in the Zone would be prohibited.
 2. If PBR is exceeded, all DGN fishing would be prohibited for the remainder of the season and the POCTRT would be reconvened. The DGN fishery would remain closed until NMFS promulgates additional regulations based on Team recommendations.
- iii. Require VMS for all permitted DGN vessels
- iv. Require DGN vessel owner/operators to notify the NMFS observer program at least 48 hours in advance of every fishing trip.

Action Plan/Timeline for amending the Pacific Offshore Cetacean Take Reduction Plan through Rulemaking:

1. Proposed Rule prepared, cleared, and published in Federal Register - target date late April/early May
 - a. 30 day Public Comment period commences

2. NMFS prepares an Environmental Assessment under the National Environmental Policy Act
 - a. Draft released for public review and comment concurrent with proposed rule.
3. NMFS evaluates the rule under Section 7 of the Endangered Species Act (ESA) and section 101(a)(5)(E) of the MMPA, including consideration of the existing Biological Opinions and Authorizations, to ensure full compliance with the ESA and MMPA.
4. Final rule published in Federal Register - target date mid/end July (to be effective mid/end August).

POCTRT Consensus Recommendations

Below is a near-final draft of consensus recommendations developed by the Pacific Offshore Cetacean Take Reduction Team at its February 3-5, 2014, meeting. The recommendations outline permanent amendments to the Take Reduction Plan to reduce sperm whale mortality and serious injuries, as well as a number of non-regulatory actions.

The POCTRT is still contemplating a handful of minor language changes to some of the non-regulatory recommended actions, but the substance and focus of the recommendations being provided to you today are not expected to change. NMFS looks forward to discussing these recommendations with you at your upcoming meeting.

**Consensus Recommendations of the
Pacific Offshore Cetacean Take Reduction Team**

(As negotiated and confirmed by the Team at its February 4-6, 2014, meeting)

Implement a year-round closure for CA thresher shark/swordfish drift gillnet ≥ 14 inches (DGN) vessels in an area (the Zone) unless the fishing vessel is carrying a federal observer. The Zone, as defined in the Emergency Rule, covers all areas of the U.S. EEZ seaward of California that are deeper than the 2,012 meters (1,100 fathoms) depth contour; however, the boundary line that defines the Zone closes some areas that are deeper or shallower than the 2,012 meter (1,100 fathoms) depth contour. The Zone's boundary line runs both north and south of Pt. Conception from the Oregon/California border to the Mexico/California border, generally along the 2,012 meter (1,100 fathoms) depth contour, with the exception of an area seaward of the Santa Lucia escarpment, and any canyons or basins shoreward of the main north-south 2,012 meter depth contour.

Implement a fixed, maximum annual limit of sperm whale mortality/serious injury (the cap) that is the largest whole number of mortality/serious injury that is less than PBR. If the cap is met or exceeded, but PBR is not exceeded, then DGN fishing in the Zone is prohibited for the remainder of the calendar year in which the mortality/serious injury occurs. Should mortality/serious injury occur at any time that exceeds PBR, all DGN fishing would be prohibited, and the POCTRT would be reconvened as soon as practicable to develop and recommend strategies for reducing serious injury and mortality to levels below PBR. The fishery would remain closed until NMFS promulgates implementing regulations to reduce mortality/serious injury of sperm whales in the fishery.

Target 100% observer coverage for observable vessels fishing in the Zone. Vessels deemed unobservable are prohibited from fishing in the Zone. The Team recommends that NMFS allow for the option of issuing a "no observer required waiver" to an otherwise observable vessel that wishes to fish in the Zone as long as the level of observer coverage in the Zone is sufficient to ensure that PBR will not be exceeded in the event the cap is reached and the observer coverage is less than 100%. All DGN fishermen are required to notify the NMFS observer program, at least 48 hours in advance of every fishing trip and specify if they intend to fish inside or shoreward of the Zone. Observer coverage at a minimum level of 20% is recommended shoreward of the Zone.

Require the use of VMS for all CA DGN vessels in order to facilitate monitoring and enforcement. Before fishing, DGN fishermen must activate the VMS unit on their vessel and declare to NMFS VMS their intent to fish using DGN gear. This is intended to be consistent with the 2013/2014 season requirements as described in the Emergency Rule.

POCTRT Consensus Recommendations Continued

(As negotiated and confirmed by the Team at its February 4-6, 2014, meeting)

Due to the VMS requirement, the DGN fleet is concerned about the possibility of being in a situation where they have unintentionally violated federal law by an unanticipated drift into the Zone. Therefore, discussions with enforcement regarding this issue should be incorporated into the Skipper Workshop. Additionally, investigate the application of existing technology that senses the operation of a DGN gear reel, which could be incorporated into the VMS feed or otherwise to give enforcement an additional ability to detect whether or not fishing operations are occurring.

To decrease the probability of future takes of sperm whales, NMFS should convene a mandatory Skipper Workshop as soon as practicable so that best practices can be reviewed and shared amongst the DGN fishermen. This and future workshops would allow fishermen to share ideas and strategies to reduce the take of sperm whales. We recommend that skipper workshops include:

1. A discussion and presentation regarding general sperm whale biology and information depicting previous locations of sperm whale takes in the fishery. Given the concentration of sperm whale takes near the continental slope, fishermen may want to avoid setting nets near the slope to reduce that risk.
2. Develop best practices for handling and disentangling sperm whales to reduce the probability that an interaction would result in a serious injury of sperm whales. Incorporate these best practices into training (e.g., skipper workshops) and provide specific disentanglement tools to increase the probability of successful disentanglement and safe release. Distribute these best practices (e.g., placards and associated tools) at skipper workshops.
3. Encourage the fleet to report sightings of large whales to other members of the fleet in as real-time as possible, especially for locations where large congregations might increase the risk of entanglement in those areas. Further encourage the real-time sharing of whale sightings with NOAA.

Observers, to the extent possible or permitted, take photographs and collect skin samples from entangled sperm whales that may allow future identification of that disentangled individual. These data may provide additional information as to the whale's fate, which could affect NMFS' serious injury determination. The POCTRT also recommends that NMFS pursue the possibility of observers satellite-tagging entangled sperm whales before release to help determine the movements and disposition of the animal.

The Team recommends that if a sperm whale is taken and released alive in the DGN fishery, that the injury determination be expedited and the team notified similar to the False Killer Whale Take Reduction Team's recommendation. Additionally, the Team should be notified of any sperm whale mortalities.

POCTRT Consensus Recommendations Continued

(As negotiated and confirmed by the Team at its February 4-6, 2014, meeting)

In addition to the immediate measures identified to address the current status of sperm whale estimated mortality in relation to PBR, the POCTRT believes there are a number of other longer term measures that could help address the broader goal of accurately assessing and reducing marine mammal mortality in the fishery.

The POCTRT recommends the following longer-term actions:

- Even if short-term increases in observer coverage related to sperm whales expire, observer coverage of at least 20% of the fishery should be maintained long term.
- NMFS should conduct a review of the status of sperm whales (whether or not an outside petition to down-list or delist is received) and that this should include the potential recognition of DPS units as appropriate.
- NMFS and the SRGs examine the efficacy of increasing the number of years used in the mortality estimates for a stock, beyond five years, in cases where mortality/serious injury events are very rare and a larger pool of years might improve the precision and accuracy of mortality/serious injury.
- Explore ways to improve abundance estimates and population structure for sperm whales which could include:
 - Continue surveys for abundance and incorporate new surveys as rapidly as possible.
 - Evaluate other approaches for estimating abundance including mark-recapture from photo or genetic identification should adequate sample size become available.
 - Use trend-based Nmin calculations in the SAR that make more complete use of the often-limited data available to assess populations, as has been already used in the fin whale SARs.
 - Examine this population using improved sample sizes for genetics, photo-ID and satellite tagging from CA-WA and surrounding areas as well as use of surveys outside the EEZ in combination with habitat models.
- Examine diving behavior and movements of large aggregations of sperm whales off CA-WA to determine if there are ways in terms of seasonality, daily diving behavior, and movements of sperm whale groups that could inform ways to reduce interaction with sperm whales.
- NMFS consult with CDFW and seek cooperation for the transfer of DGN limited entry permits and other state DGN fishery regulations to federal authority; furthermore, petition the PFMC to initiate an HMS FMP plan amendment incorporating the CA state permits into a federal limited entry fishery.
- Work with the PFMC's HMS Management Team (MT) and Advisory Subpanel (AS) in reviewing the existing suite of CA DGN fishery regulations, and making appropriate changes.

POCTRT Consensus Recommendations Continued

(As negotiated and confirmed by the Team at its February 4-6, 2014, meeting)

- Work with the HMS MT and AS to consider an HMS FMP plan amendment structure that includes a fishery monitoring program that targets 100% observer coverage, including the application of electronic monitoring technology, as an adjunct to human observers, and explores alternative and/or supportive sources of funding to support such a program.
- Evaluate ways in which others outside NOAA could contribute or help support the observer program should funding become a limiting factor.
- Continue to explore ways – and encourage implementation, as appropriate - to monitor the fishery using remote or electronic means (such as cameras or reel monitors), especially the vessels currently deemed unobservable.
- Explore and research options for making gear modifications (e.g., alternative pinger frequencies) to reduce serious injury and/or mortality.
- NMFS reconvene the Team within the next year to take advantage of the current progress and momentum, as well as to respond to new information or events, and to continue the development of long-term strategies for reducing marine mammal mortality. An in-person meeting would best be held from February through April to allow participation by the fishermen. Emergency meetings triggered by new developments or takes can be held remotely (conference calls and web connection) especially in the period June to January.
- NMFS should notify the POCTRT in the event of any change in PBR or ESA listing status for sperm whales so the team can evaluate the need for meeting and revising the Take Reduction Plan.