



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE

Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802- 4213

MAY 09 2006

F/SWR2:MH

Mr. Donald K. Hansen  
Chairman  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 200  
Portland, OR 97220-1384

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Dear Mr. Hansen:

On March 29, 2006, I sent a letter to the Pacific Fishery Management Council (Council) explaining my decision to tentatively accept only a portion of the Council's preferred alternative for the proposed exempted fishing permit (EFP) for the drift gillnet (DGN) fishery, adopted at the March meeting. I decided not to accept the proposed mortality or serious injury cap of one fin, one minke, and one gray whale. I based this decision on the impact to the stocks relative to the most recent estimates of potential biological removal (PBR) levels for fin, minke, and gray whales at 15, 5.8, and 442 respectively.<sup>1</sup> The Marine Mammal Protection Act (MMPA) requires that a PBR level be calculated for each marine mammal stock under U.S. jurisdiction. The PBR is an estimate of the total amount of human-caused mortalities (and serious injuries) that each stock can sustain annually while still maintaining or increasing its current population. For most marine mammal stocks, the primary source of anthropogenic mortality and serious injury is fisheries.

I used the PBRs as part of my review of the Council's proposed caps to serious injury or mortality of one fin, one minke, and one gray whale in the proposed DGN EFP. Based upon our best available science, I made a preliminary determination that the caps for these three species were unnecessarily restrictive and recommended that they be removed from the proposed action for the DGN EFP. I did, and still do, support the Council's recommendation that the cap of one serious injury or mortality be implemented for short-finned pilot, humpback, and sperm whales, based upon the relatively low PBRs for each of these stocks.

At the April Council meeting in Sacramento, California, several Council members expressed concern about my preliminary decision. Based on their comments, which the Southwest Regional Office takes very seriously, I instructed my staff to revisit the issue.

<sup>1</sup> Carretta, J. V., K. A. Forney, M. M. Muto, J. Barlow, J. Baker, B. Hanson, M. S. Lowry. 2006. U.S. Pacific marine mammal stock assessments, 2005. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-SWFSC-388.



They examined stock assessment reports to determine whether other limits on the take of fin, minke and gray whales should be imposed on the DGN EFP, particularly in consideration of other fishery and non-fishery threats to these marine mammals. A summary of their review follows.

The fin and minke whales that may interact with the DGN fishery are considered Washington/Oregon/California (WA/OR/CA), including Baja, California, Mexico stocks. That is, the ranges of these stocks appear to be limited primarily to the waters off these states. For the WA/OR/CA stock of fin whales, only the DGN fishery has been identified as a definite source of fishery mortality and there has been one observed take in 15 years. There are likely unquantified mortalities and serious injuries of fin whales in the drift gillnet and longline fishery off Baja, California Mexico and ship strikes (the current average observed mortality from ship strikes is 0.4 fin whales per year). The current PBR for this stock is 15 animals per year. The most recent mean annual takes in U.S. commercial fisheries is one. Fin whales are listed as an endangered species and therefore will be included in the consultation being conducted for this EFP.

For the WA/OR/CA stock of minke whale, the DGN fishery, the Washington Puget Sound salmon gillnet fishery, and California angel shark/halibut fisheries are the only fisheries that have been identified in which minkes may occasionally be taken. The Puget Sound salmon gillnet fishery is not currently observed, although vessels in this fishery are known to co-occur in the minkes' summer feeding areas. There has been low observer coverage on the California angel shark small mesh gillnet fishery in limited years, so NMFS is preparing to place observers on vessels in this fishery for the 2006 season. Other unquantified sources of anthropogenic mortality include ship-strikes and takes in the Mexican drift gillnet/longline fishery. The status of this stock is unknown. The most recent annual estimate of human-caused observed mortalities is zero and the PBR is 5.8 animals per year. The most recent mean annual take in U.S. commercial fisheries is zero. Minke whales are not a listed species.

Gray whales range from the waters off Alaska and Russia to Baja California, Mexico; thus this eastern north Pacific stock is potentially exposed to fisheries across a wide range of North America. This eastern north Pacific stock may interact with fisheries along the entire west coast. Seven fisheries, including the DGN fishery, have either observed or self-reported incidental takes of gray whales. This stock is also subjected to aboriginal harvests of an average of 122 gray whales per year. Limited ship strike mortality has also been observed. The estimated annual level of human-caused mortality is 130.4 although this number does not include the average 6.7 strandings per year (1999-2003).

The eastern Pacific stock of gray whales has been increasing over the past 20 years. There are impacts from Canadian fisheries, and the incidents of take in unobserved fisheries may be underestimated and cannot be quantified. However, these threats do not appear to be affecting the population's ability to increase. The current PBR for this stock is 442 animals per year. The most recent minimum total fishery-related annual

mortality/serious injury is estimated to be 7.4 gray whales<sup>2</sup>. This species was delisted under the ESA in 1994.

The anticipated levels of incidental take for fin, minke, and gray, whales in the DGN fishery is quite low. As noted in the draft Environmental Assessment (EA) prepared for the issuance of the DGN EFP, anticipated levels of take are estimated to be around one fin, one minke, and one gray whale per year. These estimates were based upon the level of observed take of these three species in the entire DGN fishery, one, three and three observed takes, of fin, minke, and gray whales respectively, in over 7,000 observer sets. My staff reviewed the numbers provided in the draft EA and projected that the anticipated incidental take of these three whale species is likely less than one fin whale, one minke whale and one gray whale per year in the entire DGN fishery (including fishing under the proposed EFP). The low expected take is based upon a combination of 15 years of data collected in the DGN fishery observer program and knowledge of the distribution and general life history patterns of these species. This anticipated low rate of take is consistent with the current incidental take statement for fin whales in the 2004 Highly Migratory Species Fishery Management Plan biological opinion, the only species of these three to be listed under the Endangered Species Act (ESA). The anticipated incidental take identified in the 2004 opinion is four fin whales entangled in three years, with an estimated mortality of two fin whales in three years.

I am mindful of the Council's concern over the incidental take of fin, minke, and gray whales. While I believe it is reasonable to predict that levels of take in the DGN EFP will be less than one, I am aware that the incidental take of marine mammals and other species is dependent upon a number of variables, including changes in oceanographic and climatic conditions, areas fished, and methods used. Scientists at the Southwest Fisheries Science Center are examining the relationships between these variables to better predict fishery impacts on protected species. With this in mind, I am modifying my original recommendation for the DGN EFP. I am recommending that if a serious injury or mortality of one fin whale, one minke whale, or one gray whale event occurs, the SWR will immediately initiate a review of the incident. The Take Reduction Team (TRT) for this fishery may also be contacted and consulted for review and recommendations to ensure that the DGN EFP operates consistently with the requirements of the MMPA and ESA.

For each of these stocks, the current status was reviewed along with the total anthropogenic sources of mortalities and serious injuries. My recommendations are based upon the possible relative impact of the DGN EFP and to ensure that the overall annual mortalities and serious injuries in U.S. fisheries remain at a rate below each stock's PBR. As you are well aware, balancing the needs of conserving species while supporting and promoting fisheries is an on-going challenge. I appreciate the Council's sensitivity to these challenges and trust that the Council agrees that these conditions, to

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<sup>2</sup> Angliss, R. P., and R. B. Outlaw. 2005. Alaska marine mammal stock assessments, 2005. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-161, 250 p.

be imposed on the pending DGN EFP, address the concerns expressed at the April 2006 Council meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney R. McInnis". The signature is fluid and cursive, with the first name "Rodney" being the most prominent.

*fox* Rodney R. McInnis  
Regional Administrator

cc: William Fox, SWFSC