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FISHERIES

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MMPA Take Reduction Planning Overview

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Basics of the MMPA

- Enacted in 1972, amended since
- Prohibits “take” of marine mammals, with limited exceptions
- Protects all marine mammals regardless of status
- Additional protection for ESA-listed species
- Highly protective standard
 - Optimum sustainable population



Fishing and the MMPA

- Assessing and reducing take
 - Section 117
 - Stock assessment reports
 - Scientific Review Groups
 - Section 118
 - Taking of marine mammals incidental to commercial fishing operations
 - Zero mortality rate goal

Potential Biological Removal (PBR)

- Developed because data required to evaluate stock status relative to the optimum sustainable population level is difficult to obtain
- *Definition:* the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population

$$\text{PBR} = N_{\min} * 1/2 R_{\max} * RF$$

N_{min} = minimum population estimate

R_{max} = maximum theoretical or estimated net productivity rate at a small population size

RF = a recovery factor of between 0.1 and 1.

“Strategic” Stocks

Marine mammal stocks are “strategic” if:

- Human-caused mortality/serious injury (M/SI) exceeds PBR,
- The stock is declining and likely to be listed as threatened under the ESA,
- The stock is ESA-listed, or
- The stock is depleted.



Commercial Fishing and the MMPA

- Section 118 - Taking of marine mammals incidental to commercial fishing operations
 - Report injuries/mortalities
 - Register fishermen and authorize incidental take using the annual **MMPA List of Fisheries (LOF)**
 - Monitor incidental take
 - Reduce incidental M/SI thru the Take Reduction Program

****Applies to both Federal and State commercial fisheries****

MMPA Section 118 - List of Fisheries

- The overarching purpose of classifying commercial fisheries on the LOF is to evaluate the risk that a particular fishery poses to marine mammal stocks.
- We define a particular “fishery” based on gear type and fishing practices.



MMPA List of Fisheries – Statutory Framework

- Classify all U.S. commercial fisheries on an annual List of Fisheries according to levels of mortality and serious injury (M/SI) by stock per MMPA sec 118(c)
 - Category I - **Frequent** incidental M/SI of marine mammals
 - Category II - **Occasional** incidental M/SI of marine mammals
 - Category III - **Remote likelihood or no known** incidental M/SI of marine mammals



MMPA List of Fisheries – Regulatory Framework

NMFS refined the statutory definitions for Category I, II, and III in regulations at 50 CFR 229.2 to relate M/SI levels to a given marine mammal stock's potential biological removal (PBR) level

Category I: Annual M/SI of a marine mammal stock in a given fishery is $\geq 50\%$ of that stock's PBR

Category II: Annual M/SI of a stock in a given fishery is $> 1\%$ and $< 50\%$ of that stock's PBR

Category III: Annual M/SI of a marine mammal stock in a given fishery is $\leq 1\%$ of that stock's PBR

MMPA Incidental Take Authorization

MMPA sec. 118 authorizes M/SI incidental to Category I and II fisheries with certain requirements (e.g., registration, reporting).

For Category III fisheries, M/SI is exempt from liability **provided** the fisherman reports within 48 hours per sec. 118(e).

For ESA-listed marine mammals, additional procedures apply under the MMPA; section 118 does not convey any take coverage under ESA for ESA-listed marine mammals.

Authorizing Incidental Take of ESA Marine Mammals

- Section 101(a)(5) allows the Secretary to authorize the take of marine mammals incidental to certain activities, provided that the take will have a “negligible impact” on the stock.
 - 101(a)(5)(E) pertains to mortality and serious injury (M/SI) takes incidental to commercial fishing
 - Category I or II fisheries on the MMPA List of Fisheries
 - Up to 3 years in duration
- Generally, MMPA 101(a)(5)(E) authorization is required for ESA incidental take of marine mammals

MMPA Section 101(a)(5)(E)

NMFS shall allow incidental take of ESA-listed marine mammals in commercial fisheries if NMFS determines, after notice and opportunity for public comment, that:

1. Incidental M/SI from commercial fisheries will have a **negligible impact** on the affected species/stock;
2. A **recovery plan** has been developed or is being developed for such species/stock; and
3. Where required under **MMPA section 118**, a monitoring program has been established, vessels are registered, and a Take Reduction Plan has been developed or is being developed for such species/stock.

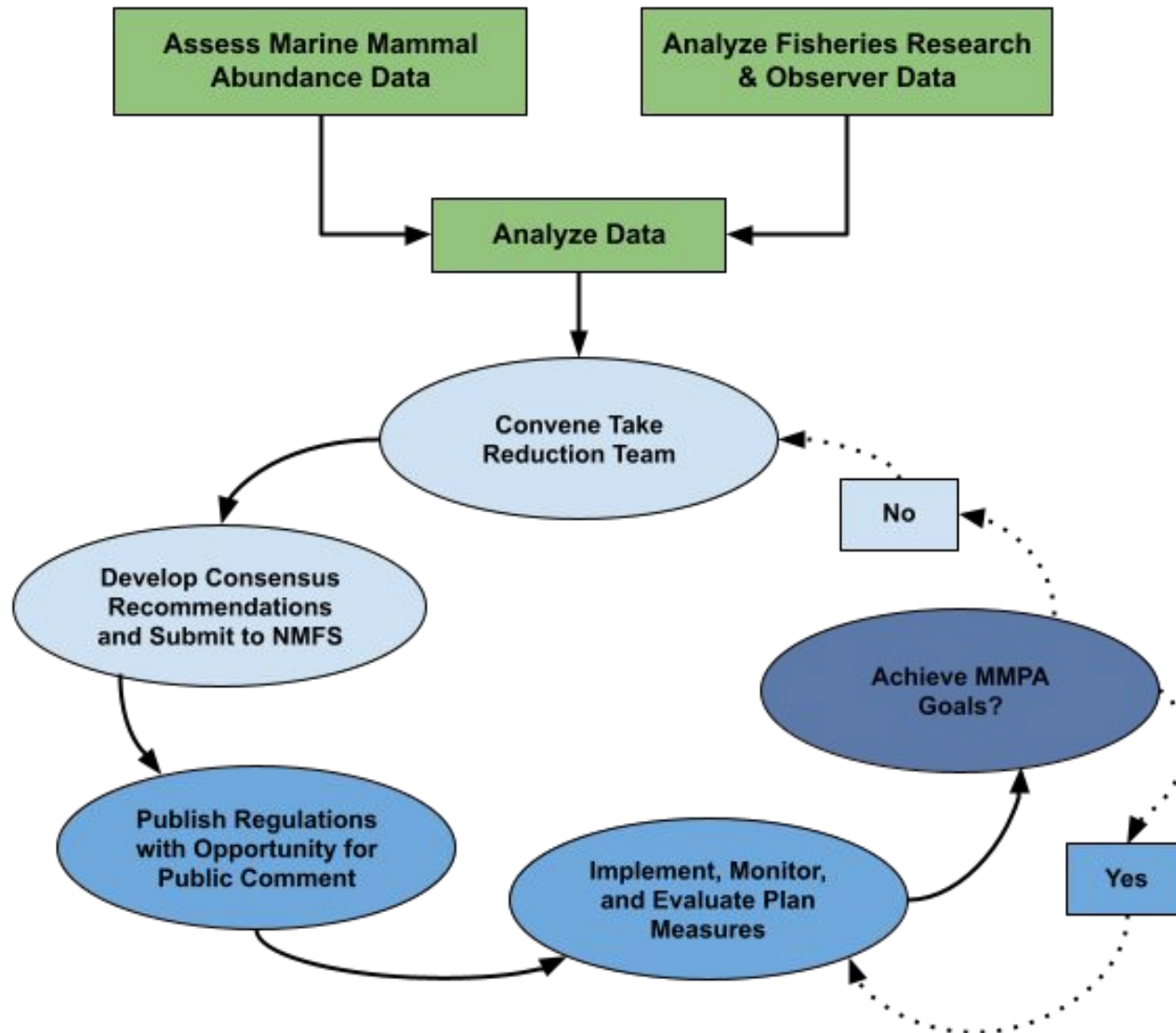
WA/OR/CA Sablefish Pot/Trap Fishery Court Decision

- Judge Donato found that NMFS violated the MMPA and APA by issuing the 2021 MMPA sec. 101(a)(5)(E) permit to the WA/OR/CA sablefish pot fishery.
- NMFS could have lawfully issued the 2021 permit only if it determined that a take reduction plan “has been developed or is being developed” for the humpback whales.
- In a settlement agreement, NMFS committed to establishing a TRT for humpback whales and, at minimum, the Federal sablefish pot fishery by October 31, 2025.

MMPA Section 118 - Take Reduction Program

- Required to develop and implement a take reduction plan for strategic stocks that interact with Category I and II fisheries
 - May also develop plans for non-strategic stocks that interact with Category I fisheries
- Goals:
 - **Short-term** goal (within 6 months): mortality & serious injury < PBR
 - **Long-term** goal (within 5 years): mortality & serious injury < insignificance threshold (i.e., 10% of PBR), considering:
 - Economics of the fishery
 - Availability of existing technology
 - Existing state/regional fishery management plans

Take Reduction Process Overview



Take Reduction Teams

- Stakeholder-based advisory groups
- Equitable balance of user and non-user groups



*“Members **shall** include representatives of...*

- Federal agencies,
- each coastal State which has fisheries which interact with the species or stock,
- appropriate Regional Fishery Management Councils,
- interstate fisheries commissions,
- academic and scientific organizations,
- environmental groups,
- all commercial and recreational fisheries groups and gear types which incidentally take the species or stock,
- Alaska Native organizations or Indian tribal organizations, and
- others as the Secretary deems appropriate.”

TRT Member Selection Criteria

- Ability to bring first-hand knowledge and perspective to bear on the relevant fisheries and/or marine mammal species;
- Ability to balance a regional perspective with localized knowledge;
- Willingness to express fundamental interests (as opposed to fixed positions) and to clearly convey the interests of one or more important stakeholder groups;
- Ability to work collaboratively, seeking to integrate the interests of a broad range of constituencies;
- Ability to access and use an effective communication network to reach members of their constituency not attending Team meetings;
- Availability and willingness to travel and participate in in-person meetings;
- Proven track record of engaging in constructive dialogues on controversial resource management issues;
- Extent to which candidates' participation on other teams fosters or hinders deliberations; and
- Ability to represent multiple factions of a constituency (e.g., multiple sectors of a fishery or a wide array of particular fishery).



Timeline for Developing a Take Reduction Plan

- Rigorous timeline in MMPA:
 - TRT develops draft Plan by **consensus** within 6 months
 - NMFS publishes proposed Plan within 60 days of receipt
 - Up to 90 days of public comment
 - NMFS publishes final Plan within 60 days of close of public comment period
- **If TRT does not reach consensus on recommendations, NMFS must still publish a proposed Plan!**

How do Teams work?

- Usually hold a pre-meeting before the Team is officially established by FRN to discuss:
 - MMPA process and requirements
 - General info on marine mammals included
 - General info on the fishery(ies) included
- With a new team, we hold several meetings (~4) over 6 months - intense!
- Mix of presentations, full team discussions, small groups (both within and cross-caucus)
- Identify all possible options ⇒ package of take reduction measures that achieves MMPA goal

Take Reduction Plans

Plan contents:

- Review of stock assessment information
- Mortality/serious injury estimates
- Regulatory or voluntary measures for bycatch reduction
- Dates for achieving



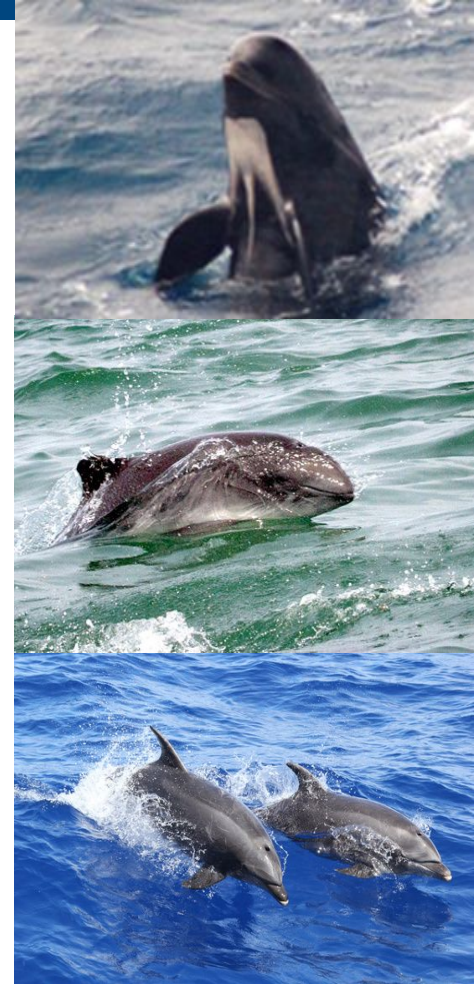
Examples of Regulatory & Voluntary Measures

- Modifications to fishing gear and/or practices (e.g., specific hooks, pingers, weak links, gear marking)
- Fishery-specific limits on mortality and serious injury
- Time/area closures
- Expert skipper's panels and/or educational workshops



Current Teams/Plans

- Currently 6 Take Reduction Plans addressing 32 marine mammal stocks and 22 commercial fisheries:
 - Atlantic Large Whale
 - Bottlenose Dolphin
 - Harbor Porpoise
 - Pacific Offshore Cetacean
 - Pelagic Longline
 - False Killer Whale



Atlantic TRTs – Focus and Status

Atlantic Large Whale

- Fisheries: Trap/pot and gillnet
- Key Measures: Gear modifications, marking requirements, and time/area closures
- Status: Continuing to amend Plan; M/SI > PBR

Bottlenose Dolphin

- Fisheries: Gillnet, long haul seine, stop net; trap/pot; VA pound net
- Key Measures: seasonal gillnet restrictions, gear proximity requirements, and gear length restrictions
- Status: Planning; M/SI > PBR

Harbor Porpoise (Gulf of Maine)

- Fisheries: Northeast sink and Mid-Atlantic gillnet
- Key Measures: Pingers, time/area closures, and gear modifications
- Status: Monitoring and assessing the Plan that was amended in 2013; M/SI < PBR

Pelagic Longline

- Species: Pilot whales and Risso's dolphins
- Key Measures: Handling and release guidelines, mainline length restrictions
- Status: Amendments to the 2009 Plan under development; M/SI > PBR

Pacific TRTs – Focus and Status

Pacific Offshore Cetacean

- Species: Beaked, pilot, pygmy sperm, sperm, and humpback whales
- Fisheries: California drift gillnet
- Key Measures: Minimum set depths, pinger requirements, and educational workshops
- Status: M/SI of **all** stocks < insignificant levels (10% of PBR); disbanding when fishery closes

False Killer Whale

- Species: Hawaii pelagic and insular, and Palmyra Atoll false killer whales
- Fisheries: Hawaii deep-set and shallow-set longline
- Key Measures: Weak circle hooks, time/area closures, and handling/release guidelines
- Status: Amendments to the 2012 Plan under development; M/SI > PBR

West Coast (2025)

- Species: Central American and Mainland Mexico humpback whales, and North Pacific blue whales
- Fisheries: Sablefish pot, CA/OR/WA Dungeness crab pot, CA spot prawn pot
- Status: TRT planning and preparation

Southeast Alaska Harbor Porpoise – Pre-TRT

- Species: SEAK harbor porpoise
- Fisheries: SEAK drift gillnet
- Status: Pre-TRT data collection and analysis

Lessons Learned

- A sufficient amount of information to support TRT deliberations is critical
- Optimal factors for navigating the negotiation process:
 - Broad agreement on the fundamental problem
 - Shared learning - understanding the available data
 - Commitment to the process
 - Team size and composition
 - Neutral, 3rd party facilitation
- Requires substantial coordination within NMFS throughout the process
- We can achieve MMPA goals if we apply lessons learned and design the process for success

Considering Available Data and Analyses

For teams to effectively negotiate and develop recommendations, several key pieces of information are necessary:

- **Minimum population estimates** for determining bycatch reduction targets (i.e., potential biological removal levels).
- **Bycatch estimates** for evaluating how much of a reduction is needed to get below the target.
- **Fishing effort and fishery characterization** information to provide context while brainstorming potential mitigation measures.
- **Bycatch event data** (e.g., geographic area, seasonality, nature of interaction, etc.) to develop effective mitigation measures focused in time and space.

Considering Available Data and Analyses

Additionally, other info is highly desirable, such as:

- marine mammal stock structure
- marine mammal behavior, ecology, life history, acoustic sensitivity, etc.
- risk assessment modeling / decision support tools
- possible mitigation measures and lessons learned from other areas/fisheries
- potential economic impacts of possible mitigation measures

Status of West Coast TRT

- Published FR Notice scoping for the TRT September 29, 2023
 - “seeking information relevant to establishing a take reduction team that would, at a minimum, consider the Federal sablefish pot gear fishery, and may also be expanded to consider other fisheries in the Pacific Ocean that interact with relevant humpback whale stocks.”
 - Received comments from CA, OR, and WA Departments of Fish and Wildlife, Marine Mammal Commission, PFMC, 4 commercial fishing associations, multiple environmental non-governmental organizations (NGOs), and 3 individuals
- Lots of planning and preparation!
 - Assemble and/or generate new data/analyses
 - Hire facilitator, identify and interview stakeholders, select potential TRT members
 - Design process
 - Plan pre-meeting and TRT meetings
 - Hold pre-meeting (TBD, ~ Sept/Oct 2025)
 - Appoint TRT members
- Issue FRN establishing TRT by October 31, 2025 and convene first meeting by **November 30, 2025**

Questions?



<https://www.fisheries.noaa.gov/west-coast/marine-mammal-protection/west-coast-take-reduction-team>