



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

SEP - 6 2012

Ms. Jacqueline Odell
Executive Director
Northeast Seafood Coalition
4 Parker Street
Gloucester, Massachusetts 01930

Dear Jackie:

Thank you for your letter to Samuel Rauch proposing a modification to the regulations implementing the Harbor Porpoise Take Reduction Plan (Plan). Specifically, you requested that NOAA's National Marine Fisheries Service (NMFS) provide a one-year modification to the October through November Coastal Gulf of Maine Closure Area. Your analysis suggested that an alternative closure period of February 15 through March 31 would reduce harbor porpoise bycatch while also reducing the economic impact of the closure on fishermen.

As I told you when we met on August 21, I sympathize with the groundfish industry's economic plight as we navigate through these challenging times in fisheries management. Given my strong feelings regarding this issue, I asked Sam to allow me to investigate your request further and to respond to this issue on his behalf. To that end, I directed my staff to evaluate the new harbor porpoise abundance and bycatch information, economic data, and additional analyses, provided in your letter, to see if by reducing harbor porpoise takes we could justify amending the current regulations implementing the consensus Plan.

Unfortunately, after carefully evaluating the potential effects of the alternative closure, we found a negligible conservation gain for harbor porpoises and little economic benefit for the fishermen that would be affected by the closure. Additionally, we believe that unintended consequences of the delayed closure could jeopardize future management actions in groundfish and other fisheries.

During our August meeting, I also discussed with you the history of the consequence closure area strategy as a consensus recommendation from the Harbor Porpoise Take Reduction Team (Team), designed to lower harbor porpoise bycatch in the fishery by increasing the incentive to comply with pinger requirements. Data show that non-compliance tracks with harbor porpoise bycatch fairly consistently. When non-compliance is high, harbor porpoise bycatch is elevated. Pingers were originally proposed, developed, and field tested by fishermen, and most know that pingers can work as an alternative to closures. The consequence closure area strategy gave gillnetters control of their own fate. Fishermen on the Team accepted this as a challenge they could meet. Environmentalists on the Team accepted it instead of the immediate closure of a smaller area. Unfortunately, during the past two years, fishermen in the Gulf of Maine did not fully respond to the compliance challenge. As the agency official responsible for receiving and implementing the consensus Plan, developed by the Team, I believe that without compelling evidence of improved harbor porpoise conservation or economic relief, we must hold fishermen to the commitment they made to comply with the pinger requirements. Therefore, after



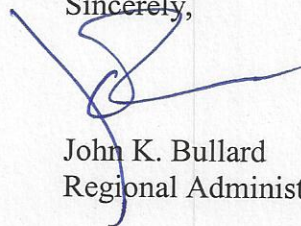
thoroughly investigating options, I regret to inform you that I cannot support your proposed revision to the Coastal Gulf of Maine Closure Area at this time.

I appreciate your comments, and your interest in access to information that will allow your sector members to track harbor porpoise takes more closely. To this end, we are exploring ways to provide near real-time access to harbor porpoise bycatch data. The MMPA requires all vessels to report marine mammal bycatch within 48 hours through the Marine Mammal Authorization Program. We can share these report forms with you, or you can ask your sector members to share the information from their logbooks. We are also working with our observer program staff to see if observer data can be made available by querying the Sector Information Management Model (SIMM).

During the upcoming weeks, we will continue to assess and make available the most up-to-date harbor porpoise abundance, bycatch, fishing effort, and compliance information in preparation for the upcoming Team meeting planned for this October. Additionally, we intend to discuss with the Team the information you have provided to us in your letter regarding harbor porpoise bycatch occurring within the areas associated with the Coastal Gulf of Maine Closure Area. The Team will also evaluate harbor porpoise bycatch occurring not only within the areas associated with the consequence closure strategy, but also bycatch occurring within other managed and unmanaged areas throughout the species' range. The recent harbor porpoise stock assessment suggests that the population has declined, indicating that adjustments to the Plan to further reduce bycatch are likely warranted. It is imperative that the Team has the full suite of information and analyses available to them during the meeting to ensure that discussions and deliberations are fully informed and appropriate management recommendations can be developed. Including your analyses will help ensure that the Team has a broad view of the data, the management alternatives, and the effects of those alternatives on fishermen and other stakeholders as they move forward to determine whether alternative or additional measures may be needed to reduce harbor porpoise mortalities to below the allowed potential biological removal rate.

I value our partnership with you and appreciate your continued attention to harbor porpoise bycatch reduction issues. I look forward to meeting with you and the entire Team in the fall as you collaborate to achieve the goals and objectives of the MMPA and Plan.

Sincerely,

A handwritten signature in blue ink, appearing to be "John K. Bullard", written over the typed name.

John K. Bullard
Regional Administrator

Cc: D. Gouveia

Attachment

Attachment: Northeast Regional Office Protected Resources Division evaluation of conservation and economic benefits of the Northeast Seafood Coalition proposal to modify the Harbor Porpoise Take Reduction Plan (Plan) Regulations

Proposal: The Northeast Seafood Coalition proposed a one-year modification to the October through November Coastal Gulf of Maine Closure Area to an alternative closure period of February 15 through March 31.

The Coalition provided an analysis of Northeast Fisheries Observer Program data on observed harbor porpoise takes within the areas subject to the Coastal Gulf of Maine Consequence Closure Area from September 2008 through February 2012. They determined that more harbor porpoise takes were observed in the months of February and March over this time period (37 takes) than during the months of October and November (24 takes), the months during which the Coastal Gulf of Maine Closure Area will be in effect. They recommended shifting the fall closure into the early spring to both reduce harbor porpoise catch and alleviate the economic effects of a closure.

NMFS Review of the conservation effects of this proposal:

We examined the observer data on a take-by-take basis and found that the Coalition counted several takes that would be mitigated under current requirements:

- Three harbor porpoise takes were observed during the month of March in the Massachusetts Bay Management Area. This area is closed to all gillnet fishing during the month of March. Therefore, these hauls were illegal and are not representative of normal bycatch that occurs in this area during this time.
- The September 2008 through February 2012 time period encompassed by the Coalition's analysis included three years (2008, 2009, and 2010) during which there were no pinger requirements in the Stellwagen Bank Management Area in February and March. Because this was an area with known high take rates, the Harbor Porpoise Take Reduction Team (Team) recommended pingers be required within that Management Area. As a result, pinger requirements were implemented beginning in November 2010. Given the effectiveness of pingers when used properly, we believe that the nine observed harbor porpoise takes in the spring of 2009 would not have occurred under the current expanded pinger requirements.
- Subtracting these 12 observed harbor porpoise takes that would not have occurred on a gillnet vessel fishing legally under the current regulations brings the February and March total takes down to 25, which is not significantly different than the 24 observed takes during October and November.

NMFS review of the economic effects of this proposal:

Given the recent economic forecast for this fishery, we believe that an economic disaster could possibly be used to justify a one year modification to the regulations implementing the consensus Plan. An economic analysis conducted by Dr. Joshua Weirsma titled, "Economic Impacts of the Potential Harbor Porpoise Consequence Closure" was submitted in support of the Coalition's

proposal to shift the closure from October/November to February 15/March 31. We generally agree with Dr. Weirsma's assessments concerning the amount of revenue involved during the closure period, and the number of vessels and sectors that will be affected by the closure. However, his assumption that all of the revenues previously obtained during the closure period are irrevocable is difficult to support. Particularly under the catch share program, the landings that produce these revenues are likely to be displaced to other areas, seasons, or vessels. The most likely outcome would be that landings would shift to other months in response to the closure. To allow for this opportunity, the closure was announced at the beginning of the fishing year rather than immediately before implementation. An analysis of the Days Absent by month for affected gillnet vessels reveals that fishing effort does not appear to be fully maximized during the remaining open months. In addition, affected sectors can lease their shares to accrue some revenues even if they choose to not fish in other months.

Therefore, our overall analysis of the economic impacts differs significantly from Dr. Weirsma's. Instead of irrevocable losses, we feel that the displaced revenues due to the closure likely shifted from the October/November closure period into the summer (facilitated by the April announcement), or will shift the effort into December and next spring. While pollock landings in recent years have been highest in December, we realize that catch rates for pollock and other target species may be lower in the spring. For gillnetters that choose to shift their effort into spring months to make up for the fall closure, it will likely take more time to catch the same amount of fish, and there will be an increase in operating costs. As an alternative, gillnetters that planned to catch their allocations in October and November may choose to lease a larger share of their quota, or fish in other areas during closure months. Given the suite of alternatives available, we believe that total revenue losses under the October/November closure are much lower than those estimated by Dr. Weirsma.

Also, without a compelling case in terms of harbor porpoises saved or economic benefit, and without input from the Team, an amendment to the strategy by NMFS would likely spark legal and political action by other organizations. As a result, the integrity and effectiveness of the take reduction team process may be compromised

Unintended consequences:

Modifying the October and November closure could have unintended consequences, impacting various fisheries that catch harbor porpoises because these closures were expected to offset takes in those fisheries (e.g., groundfish, monkfish, dogfish, and skate).

Additionally, given the broad area of impact (Maine through North Carolina), and associated large number of stakeholders that are affected by the Take Reduction Plan, we believe that continued collaboration is required before the regulations implementing the Plan are revised. Our strong partnership with the Team, which includes the Coalition and other sector members and managers, is a critical tool in managing harbor porpoise bycatch without unintended consequences to any stakeholders. Adopting the proposal of one group of stakeholders to change regulations that implement a consensus Plan could jeopardize upcoming Team efforts to develop options to reduce harbor porpoise captures through amendments that are balanced and appropriate.

Summary of NMFS analysis:

Our analyses do not show substantial conservation or economic benefits under the Coalition's proposed change in the closure season. We believe that modifying the closures could have unintended consequences that may delay upcoming groundfish actions, as well as management actions in other gillnet fisheries. We also believe that making these changes could undermine the Take Reduction Team process and make it difficult for us to move forward with new measures to reduce harbor porpoise takes below the threshold allowed by the Marine Mammal Protection Act.