

ENVIRONMENTAL ASSESSMENT
of the
HARBOR PORPOISE
TAKE REDUCTION PLAN
and
IMPLEMENTING REGULATIONS

National Marine Fisheries Service
August 2000

1. INTRODUCTION

[Section 1.0, Introduction, from the Environmental Assessment prepared on November 24, 1998, is herein incorporated by reference.]

2. PURPOSE AND NEED

Section 118(f) of the Marine Mammal Protection Act (MMPA) requires the National Marine Fisheries Service (NMFS) to develop and implement take reduction plans designed to assist in the recovery or prevent the depletion of strategic marine mammal stocks that interact with certain fisheries. NMFS convened two teams to address bycatch of the Gulf of Maine/Bay of Fundy stock of harbor porpoise (*Phocoena phocoena*) incidental to commercial fisheries in the Gulf of Maine and Mid-Atlantic regions, respectively. The Gulf of Maine Harbor Porpoise Take Reduction Team (GOMTRT) was convened in 1996 to address incidental takes of harbor porpoise in the Northeast multispecies sink gillnet fishery. The Mid-Atlantic Take Reduction Team (MATRT) was convened in 1997 to address incidental takes of harbor porpoise in the Mid-Atlantic coastal gillnet fishery. The outcome of the two teams' deliberations was combined into one plan, the Harbor Porpoise Take Reduction Plan (HPTRP), published December 2, 1998. (63 FR 66464). NMFS prepared an Environmental Assessment and Regulatory Flexibility Analysis for the final rule implementing the HPTRP on November 24, 1998.

Among other measures, the HPTRP final rule exempted waters in the majority of the large bays and sounds of the Mid-Atlantic area from the requirements of the HPTRP, with the exception of Delaware Bay. At their meeting on January 13-14, 2000, the MATRT concluded that harbor porpoise stranding and observer data did not justify imposing HPTRP gear restrictions on the fishers in Delaware Bay and recommended by consensus that the line defining the exempted waters of Delaware Bay be moved seaward. This Environmental Assessment examines this recommended change to the list of exempted waters of the HPTRP. The proposed action would increase the exempted waters area of Delaware Bay and relieve fisheries that operate inside the Delaware Bay from the HPTRP gear restrictions. This proposed action is not expected to result in additional harbor porpoise bycatch.

2.1 STATUS OF HARBOR PORPOISE

[Section 2.1, the Need to Reduce Bycatch of Harbor Porpoise, including a discussion of the status of harbor porpoise, from the Environmental Assessment published on November 24, 1998, is herein incorporated by reference.]

The abundance estimate of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, 54,300 harbor porpoise, remains as cited in the original Environmental Assessment. According to the 1999 Stock Assessment Report, the annual fishery mortality estimate (1,850 animals) remains above the Potential Biological Removal (PBR) level of 483 animals (Waring et al., 1999), and therefore this stock of harbor porpoise is a strategic stock. The 1999 Stock Assessment Report bycatch estimate for the Northeast multispecies sink gillnet fishery is based on observer data

from 1993-1997, and the bycatch estimate for the Mid-Atlantic coastal gillnet fishery is based on observer data from 1995-1997. These estimates therefore do not reflect changes in fishing mortality since implementation of the HPTRP.

The following new information has been released will be incorporated into a future version of the SAR. The total fishery related mortality estimate for the Gulf of Maine/Bay of Fundy stock of harbor porpoise during 1999 is 342 animals, where 323 animals were taken in the Northeast and Mid-Atlantic gillnet fisheries. The other 19 animals were stranded with evidence of gillnet fishery interactions during times and places where no harbor porpoises were observed taken in a gillnet fishery (NMFS, May 31, 2000). The bycatch estimate of 342 animals is less than the PBR of 483 animals. Abundance estimates based on 1999 survey for the Gulf of Maine/Bay of Fundy stock of harbor porpoise is 89,700 animals (Palka, 2000a). This information will be utilized to generate a revised PBR which is anticipated to be approximately twice the current value of 483.

3. BACKGROUND

[Section 3.0, Background, from the Environmental Assessment published on November 24, 1998, including a description of the fisheries, and a summary of Mid-Atlantic coastal gillnet fishing practices, is herein incorporated by reference.].

The following background section is limited to the specific proposed action.

Pursuant to Section 118 of the MMPA, NMFS convened the MATRT on February 25, 1997 to address the interactions between harbor porpoise, coastal bottlenose dolphins, and the Mid-Atlantic coastal gillnet fisheries. This followed the actions in 1996 of the GOMTRT, which developed a Take Reduction Plan to reduce the incidental take of harbor porpoise in the Northeast multispecies sink gillnet fishery. The proposed rule to implement the GOMTRP was published on August 13, 1997 (62 FR 43302).

The MATRT met five times before delivering a draft report to NMFS on August 25, 1997. The MATRT agreed to delay the development of a Take Reduction Plan for bottlenose dolphin until more information was collected on stock abundance, stock identification, and incidental mortality levels. Therefore, the MATRT's plan only included measures to address fishery interactions with harbor porpoise. Although the team did not reach consensus on a draft Take Reduction Plan, the team's report incorporated both consensus and non-consensus recommendations for regulatory and non-regulatory harbor porpoise bycatch reduction measures. The MATRT report and the proposed rule to implement the GOMTRP were combined into a single comprehensive Harbor Porpoise Take Reduction Plan (HPTRP). The proposed rule implementing the HPTRP was published on September 11, 1998 (63 FR 48670). The final rule implementing the HPTRP was published on December 2, 1998 (63 FR 66464) and went into effect on January 1, 1999.

In their August 1997 report to NMFS, the MATRT recommended measures specific to the two predominant coastal gillnet fisheries: dogfish and monkfish. These measures focused on gear characteristics such as floatline length, twine size, net tie downs, and a net cap (maximum

number of nets/vessel). The HPTRP includes specific time/area gear requirements and definitions of large mesh gillnet and small mesh gillnet used in the Mid-Atlantic. The HPTRP also identifies exempted waters that are not subject to gear restrictions.

Public comments on the HPTRP proposed rule stated that small mesh fishermen in the Mid-Atlantic were not adequately involved in the MATRT process, and therefore any regulations affecting this sector of the fishery should be open to further public comment. NMFS disagreed with the position that the small mesh fishermen did not have an opportunity to be represented in the MATRT because industry representatives and state fishery management agencies participated in the process. However, NMFS did recognize that many fishermen using small mesh gear in nearshore fisheries, while involved at the start of the MATRT process, did not participate once the MATRT agreed to focus its efforts on the subfisheries with the majority of the documented harbor porpoise take (i.e., dogfish and monkfish fisheries).

The MATRT draft report recommended fisheries-specific measures directed towards the dogfish and monkfish subfisheries. NMFS modified those recommendations from a fisheries-specific to a gear-specific approach to address gear types which had high harbor porpoise bycatch. This approach was also considered more enforceable. The gear-specific approach identified mesh size categories that represented the dogfish fishery (small mesh) and the monkfish fishery (large mesh). The justification for the gear-specific restrictions was that the regulatory measures should be based on the gear characteristics most closely related to harbor porpoise bycatch regardless of which subfishery employs the gear.

The MATRT met most recently on January 13-14, 2000 and developed several consensus recommendations. The consensus recommendation analyzed in this EA is a change to the list of exempted waters. This change will move the Delaware Bay line approximately 25 miles seaward from its current location. The purpose and need for these actions is described in more detail in Section 2, Purpose and Need, and in Section 4.1, Proposed Action, of this document.

4. PROPOSED ACTION AND ALTERNATIVES

[Section 4.0, Alternatives, Including the Proposed Action, and Environmental Consequences, from the Environmental Assessment prepared on November 24, 1998, is herein incorporated by reference. The alternatives in the Environmental Assessment address the HPTRP and Alternative Actions to the HPTRP.]

The following discussion of the proposed action and alternatives is limited to the MATRT's consensus recommendation to include Delaware Bay in the list of exempted waters, with one slight modification to the proposed action, and the no action alternative.

4.1 ALTERNATIVE 1: PROPOSED ACTION

The proposed action would revise requirements of the Mid-Atlantic component of the HPTRP contained in the December 2, 1998, final rule.

The MATRT recommended by consensus that NMFS change the list of exempted waters to include more of Delaware Bay. Currently, the HPTRP designates exempted waters in Delaware Bay as waters landward of a line from Nantuxent Point, New Jersey to Port Mahon, Delaware. The MATRT recommended adjusting the Delaware Bay line approximately 25 miles seaward to a line extending from Cape May Canal, New Jersey to the Lewes Ferry Terminal (Cape Henlopen), Delaware. For ease of reference, NMFS is proposing to slightly modify the MATRT's recommendation to follow the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972) from Cape May, New Jersey, to Cape Henlopen, Delaware.

4.1.1 Environmental Consequences of the Proposed Action

Impacts of the Proposed Action on Harbor Porpoise

Currently, the HPTRP designates exempted waters in Delaware Bay as waters landward of a line from Nantuxent Point, New Jersey to Port Mahon, Delaware. The MATRT recommended adjusting the Delaware Bay line approximately 25 miles seaward to a line extending from Cape May Canal, New Jersey to the Lewes Ferry Terminal (Cape Henlopen), Delaware. For ease of reference, NMFS is proposing to slightly modify the MATRT's recommendation to follow the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972) from Cape May, New Jersey, to Cape Henlopen, Delaware. This is a slight deviation from the MATRT's recommendation, however the COLREGS is a well known and widely published line of demarcation. The actual difference between the COLREGS line and the MATRT recommended line is a seaward shift of approximately one nautical mile.

To evaluate the impact of the MATRT's recommendation, NMFS analyzed sea sampling and stranding data for harbor porpoise in the Delaware Bay, defined as all the marine and tidal waters landward of the 72 COLREGS line, between 1992-1999. Detailed stranding and observer data prior to 1992 is not available for analysis.

Sea sampling observer data from inside the Delaware Bay for 1995 (23 observed hauls) and 1999 (12 observed hauls) were analyzed. During these 35 observed hauls no harbor porpoise interactions occurred. There has been 1 documented take of a harbor porpoise in a shad gillnet as explained in the Environmental Assessment prepared on November 24, 1998. Additional information was provided by a letter dated March 3, 2000 from the New Jersey Division of Fish and Wildlife, which stated that during 11 years of netting and tagging shad and striped bass in Delaware Bay there were no harbor porpoise interactions or sightings.

Stranding data from 1992-1999 revealed a total of 21 stranded harbor porpoise, with 17 stranded on the Delaware side of Delaware Bay and four stranded on the New Jersey side of Delaware Bay. The four New Jersey strandings exhibited no evidence of fishery interactions, although the animals were either emaciated or the cause of death could not be determined. Six of the 17 Delaware strandings displayed evidence of fishery interactions. The majority of the strandings occurred in the Lewes and Broadkill Beach areas near the mouth of Delaware Bay, suggesting

that the strandings may have occurred as a result of interaction with dogfish and monkfish fishing activities outside of Delaware Bay, with the animals stranding inside of the Bay after drifting with prevailing ocean currents or tides.

Impacts of the Proposed Action on Threatened and Endangered Species

There are no expected adverse impacts on other threatened and endangered species in the area affected by the proposed changes to the plan. An Endangered Species Act consultation was completed November 12, 1998 which concluded that the action, the HPTRP, was not likely to adversely affect endangered whales or threatened or endangered sea turtles under NMFS jurisdiction or adversely modify their critical habitat. The proposed change to the plan will not result in an increase in fishing effort or patterns but rather will allow fisheries inside Delaware Bay to continue utilizing traditional gear types (twine diameter).

Impacts of the Proposed Action on Other Marine Organisms

There are no expected negative impacts on other marine organisms in the area affected by the proposed changes to the plan that have not already been analyzed in the Environmental Assessment prepared for the HPTRP, considering that the changes will not result in an increase in effort but rather a change to the gear utilized by the existing fisherman.

This proposed change may benefit shad and striped bass populations in Delaware Bay. The HPTRP gear regulations currently requires fishers using small mesh gillnet (defined as gillnet constructed with a mesh size of greater than 5 inches to less than 7 inches) to meet other gear specifications. This requirements may cause shad fishermen who operate within Delaware Bay to switch to gillnet constructed with a mesh size of less than 5 inches to avoid being subject to the HPTRP regulations. According to state fisheries management/MATRTRT members from the Delaware and New Jersey, a switch to a smaller mesh size could cause these fishers to target juvenile striped bass and male shad, as opposed to the desired female roe shad. The proposed change to exempt Delaware Bay would avoid the unintentional impacts on male shad and sub-legal size striped bass.

4.1.2 Economic Impacts of the Proposed Action

The economic impacts of the proposed change is expected to be positive because it is lifting regulations on fishers operating in Delaware Bay. State fisheries management personnel report that many of the gillnet fisheries operating in Delaware Bay that would benefit from the proposed change are conducted on vessels less than 50 feet in length. These fisheries are typically seasonal, operate from local wharfs, and are not participants in federally managed fisheries. All of the gillnet vessels analyzed in the Final Regulatory Flexibility Analysis (RFA) prepared on November 24, 1998 qualified as small entities based on a threshold of \$3 million in gross annual sales. The RFA estimated that 176 vessels would be impacted by the regulations, either through area closures or gear modifications.

New Jersey estimates that 28 fisherman qualified for the 2000 fishing year limited entry directed shad fishery inside Delaware Bay, and some of these fishers may be using small gillnet that is currently regulated by the HPTRP. In 1998, Delaware issued 115 commercial gillnet permits in 1998 and it is reasonable to expect that some of these permit holders operate inside Delaware Bay for some portion of the year and use gear subject to the HPTRP. This Proposed Action would reduce the regulatory burden on those fishers operating in Delaware Bay and using gillnet regulated by the HPTRP.

4.1.3 Summary

The proposed action is expected to result in no increase in harbor porpoise bycatch over the current HPTRP based on the results of the analysis of observer and stranding data presented here. Therefore, NMFS proposes to amend the Mid-Atlantic component of the HPTRP to redefine the exempted waters area to include all marine and tidal waters in Delaware Bay landward of the 72 COLREGS line extending from Cape May, New Jersey to Cape Henlopen, Delaware.

4.2 ALTERNATIVE 2: STATUS QUO, OR NO ACTION ALTERNATIVE

The status quo alternative to the proposed action is to maintain the current HPTRP final rule. The effects of this alternative were fully analyzed in the Final Environmental Assessment prepared for the HPTRP. [Section 4.1, Proposed Action - The Harbor Porpoise Take Reduction Plan from the Environmental Assessment prepared on November 24, 1998, is herein incorporated by reference.]

5. AFFECTED ENVIRONMENT

[Section 6, Affected Environment, from the Environmental Assessment prepared on November 24, 1998, is herein incorporated by reference.]

6. FINDING OF NO SIGNIFICANT IMPACT

This Environmental Assessment considers the environmental consequences of two alternatives to a proposed change to the HPTRP. The Proposed Action would amend the Mid-Atlantic component of the HPTRP to redefine the exempted waters area of the HPTRP to include all marine and tidal waters landward of the 72 COLREGS line extending from Cape May, New Jersey to Cape Henlopen, Delaware (Delaware Bay). The Proposed Action was recommended by consensus of the MATRT at a meeting on January 13-14, 2000.

NMFS analysis of the consensus recommendation to exempt Delaware Bay from the HPTRP involved evaluation of sea sampling observer and stranding data for harbor porpoise in all the marine and tidal waters landward of the 72 COLREGS line in Delaware Bay between 1992-1999. NMFS does not anticipate any increase in harbor porpoise bycatch associated with the proposed change in the location of the Delaware Bay line. Therefore, NMFS concurs with the MATRT

consensus recommendations and proposes to implement the Proposed Action.

There are no expected adverse impacts on other threatened and endangered species or other marine organisms in the area affected by the Proposed Action, as discussed in the Environmental Consequences section of this document, that have not already been analyzed in the Environmental Assessment prepared for the HPTRP (November 24, 1998) and the ESA consultation completed on November 12, 1998.

The Proposed Action is expected to provide regulatory and economic relief to fishers using gillnet gear and operating in Delaware Bay by exempting them from the regulatory requirements of the HPTRP.

For these reasons, and those described in more detail in the Environmental Assessment prepared for the HPTRP on November 24, 1998, the ESA consultation dated November 12, 1998 and this Environmental Assessment, I have determined that amending the Mid-Atlantic component of the HPTRP as described in the Proposed Action will not significantly affect the quality of the human environment. Therefore, preparation of an Environmental Impact Statement is not required by Section 10292) of the National Environmental Policy Act or its implementing regulations.

Penelope D. Dalton
Assistant Administrator for Fisheries

Date

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