

# Courthouse News Service

## Action Closes Fishery if One Whale Is Harmed



By RAMONA YOUNG-GRINDLE

WASHINGTON (CN) - The National Marine Fisheries Service has issued an emergency action that will immediately close the thresher shark/swordfish drift gillnet fishery (DGN) off the coast of California for the remainder of the season if even one sperm whale is killed or seriously injured. In addition, all DGN fishing vessels must carry an NMFS-trained observer within a defined zone in offshore waters deeper than 6,500 feet that are frequented by the whales. Vessel skippers must also install, activate, carry and operate a vessel monitoring system before embarking on a DGN fishing trip, according to the action.

Sperm whales were listed as endangered under the Endangered Species Act (ESA) in 1970, and are also protected under the Marine Mammal Protection Act (MMPA), which lists the species as depleted.

Sperm whales are the largest of the toothed whales, and the males, which are significantly larger than the females, can reach 52 feet long and weigh up to 45 tons. The sperm whale has the largest brain of any animal, although it is not considered exceptional relative to its body size, the agency said in its fact sheet.

The whales can become entangled in the mile-long drift nets as they try to eat the fish caught in the nets during the night.

Both the ESA and the MMPA allow for incidental “take” of protected species under certain circumstances. The term includes injury as well as death. The PBR, or potential biological removal level, represents the maximum number of animals that can be removed from a stock without affecting the sustainability of the population.

Two sperm whales were caught in drift gillnets in the 2010-2011 fishing season; One died and the other was seriously injured, according to the action. The take, recorded by a NMFS-trained observer, exceeded the PBR for the California-Oregon-Washington stock of sperm whales, so no permit for take could then be issued to the fishery.

In September 2012, three environmental groups, the Center for Biological Diversity (CBD), Oceana, and Turtle Island Restoration Network, filed a notice of intent to sue the NMFS due to ESA and MMPA violations in the drift gillnet fishery, according to the agency's 166-page Biological Opinion issued May 2, 2013.

The DGN potentially affects dozens of endangered, threatened or MMPA-protected species, not just sperm whales, the agency noted in the document. The opinion focused on the species most often affected, which included two other whale species in addition to the sperm whale, and four turtle species.

"The fishery kills more whales and other marine mammals than any other fishery along the West Coast and has one of the highest bycatch rates in the country," the CBD's press release stated.

If a sperm whale is seriously injured or killed, the NMFS plans to close the DGN fishery until Jan. 31, 2014, the end of the current fishing season. The emergency action essentially provides short-term measures for the fishery, which is hampered by the lack of a take permit. The "NMFS intends to convene the Team [Pacific Offshore Take Reduction Team] later this year or in early 2014 to develop long-term measures for reducing sperm whale (and other strategic stocks, as appropriate) mortality and serious injury in the fishery," the action noted.

"Oregon and Washington have already banned their fishing vessels from landing swordfish caught by drift gillnets, leaving California as the last remaining state on the West Coast allowing this destructive fishing gear," the CBD said.

The emergency action is effective Sept. 4, 2013 through Jan. 31, 2014, with comments due by Oct. 4, 2013