

Testimony of

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**On H.R. 4781
“ Marine Mammal Protection Act Amendments of 2002”**

**Before the
Committee on Resources
Subcommittee on Fisheries, Conservation, Wildlife and Oceans
U.S. House of Representatives
Representative Wayne Gilchrest, Chairman
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Mr. Chairman and Members of the House Subcommittee on Fisheries, Conservation, Wildlife and Oceans, I thank you for the opportunity to appear before you to discuss H.R. 4781, the “Marine Mammal Protection Act Amendments of 2002.”

I am a New Jersey native, fishing gillnets commercially for the past 16 years from the Viking Village Commercial Dock in the Port of Barnegat Light. I own a 40-foot fishing vessel which I use to fish for monkfish, croaker, weakfish, bluefish and bonito. I am an active member of the Garden State Seafood Association (GSSA) and supporter of the Monkfish Defense Fund (MDF).

My home State of New Jersey ranks 4th among the 14 East Coast states in terms of commercial seafood harvest value, estimated at nearly \$91 million. The total annual revenue attributed to New Jersey’s commercial fleet is \$600 million. The Viking Village Dock handles approximately 5,000,000 pounds of seafood products each year, landed from 30 commercial fishing vessels including gillnetters, scallopers, and longliners. These seafood products are valued at nearly \$15 million.

I developed a considerable amount of experience with the MMPA process during the past few years. I currently serve on two East Coast MMPA Take Reduction Teams (TRT’s) for harbor porpoise and bottlenose dolphin. Since the TRT negotiations focus primarily on gillnet interactions with marine mammals, I serve as a representative of all New Jersey gillnet fishermen, working closely with fishermen and State biologists and managers from entire coast.

I am interested in improving the quality of the science and our ability to minimize interactions with marine mammals, to the extent that it is possible. I recently volunteered to participate in a gear research program with the National Marine Fisheries Service (NMFS) using specially designed mesh that may enhance net detection and avoidance by marine mammals.

In addition, I intend to participate in a fishery survey with the MDF, NMFS, Rutgers University (NJ) and the State of Massachusetts to characterize the directed monkfish gillnet fishery and provide a clearer picture of monkfish stock abundance.

Mr. Chairman, my experience with the MMPA and fisheries management process, combined with my

commercial fishing background, allows me to provide this Subcommittee with useful insights on H.R. 4781 and the MMPA reauthorization.

On behalf of commercial fishermen in Barnegat Light, NJ, I provide oral comments and the written testimony that follows with your approval for the record, and ask for your leadership to help resolve some of the Act's more challenging issues.

As an East Coast fishermen, I do not consider it appropriate for me to address certain sections in H.R. 4781, including exportation of native handicrafts (Sec. 4), appropriations (Sec. 5, 207), MMC (Sec. 8, 14), polar bear permits (Sec. 12) and captive release programs (Sec. 13). Therefore, the majority of my comments will focus primarily on Section 6 – "Take Reduction Plans" and related issues.

H.R. 4781

Mr. Chairman, I thank you for taking the initiative to introduce H.R. 4781. The bill starts to address some issues of concern to the commercial fishing industry, including a requirement for other parties to share in the conservation burden; enhanced communication between NMFS' fisheries and protected species managers; promotion of research, education and outreach programs; and assurances that NMFS cannot publish a TRT that is different from the negotiated TRT plan without first consulting the TRT. Though we have additional concerns not addressed in H.R. 4781, each of these current provisions will improve the MMPA process.

Sec. 6. Take Reduction Plans

Consideration of Other Sources of Mortality...

As with fisheries regulations, it is reasonable that all responsible parties share in the conservation burdens and benefits. H.R. 4781 requires that marine mammal mortality resulting from interactions with recreational fishing gear be considered in the TRT process.

There is compelling evidence in the NMFS' observer database, stranding network information, and anecdotal reports that in some areas on the east coast, recreational gear interacts with certain marine mammals stocks. In addition to mortalities resulting from common hook and line gear, there are also indications the recreational use of commercial fishing gear (i.e. gillnets, crab pots) results in marine mammal interaction and mortality events.

Since the Act currently focuses only on commercial fishing interactions, commercial fishermen are accountable for the total mortality reduction required to achieve PBR, even if animals are taken by non-commercial gear. It is very possible that in certain instances, especially with coastal bottlenose dolphins in the Mid- and South Atlantic regions, commercial fishermen are carrying the entire burden for all mortality reductions. Including the impacts of recreational gear on protected species is a positive step forward if all parties are to participate in the conservation process.

It is also important to note here that local media typically do not discern between gear types when reporting stranding information, thereby promoting the public's misperception of who is actually responsible. This provision in H.R. 4781 may help promote increased awareness in reports published by the media.

TRT Participation By Fishery Scientists and Representatives of the RA's...

Currently there is no evidence of internal agency communication between fishery scientists and protected species management units. This is unacceptable because of the close linkage between fishery management

regulations and mammal conservation measures.

H.R. 4781 would require the NMFS have representatives at the TRT that are versed in fishery science and that represent the NMFS Regional Administrator. These requirements will help ensure that new fishery restrictions designed to protect marine mammals are consistent with standing fishery management plans. It should also allow for consideration of the mammal protections provided by fishery plans, reducing instances of excessive restrictions on the commercial fishermen.

A recent example of the need for this provision comes from the bottlenose dolphin TRT process. The recent closure of the directed spiny dogfish fishery provided significant savings to bottlenose dolphins. However, the NMFS and some members of the TRT were not initially receptive to estimating the “credit” for the mortality reductions resulting from the closure of the fishery. Though credit was eventually calculated and accepted by the TRT, it was not without great difficulty. H.R. 4781 will make this process much smoother during the next TRT negotiation.

Promoting Observer, Research, and Education and Outreach Programs...

All efforts to fine tune observer coverage and improve communication regarding marine mammal protection are welcome. Members of the commercial, recreational, and environmental industries, as well as members of the general public must understand this process if it is to be successful.

Observer programs can and should, be focused in areas with higher levels of interactions, research efforts will enhance our understanding of stock size and measure the success of TRT plans, education and outreach programs will generate support and understanding for conservation programs. These are all necessary and welcome components of the TRT process currently in H.R. 4781.

OTHER IMPORTANT MMPA ISSUES

Consider the Benefits of Fishery Management Plans...

Often times, management measures contained in fishery management plans may provide conservation benefits to marine mammals. Time/area closures, gear restrictions, and quota adjustments are just some of the actions that may contribute to protections for marine mammal species. These benefits must be quantified by the agency and included in the TRT process.

As I stated earlier, one of the key elements in the Bottlenose dolphin TRT negotiation was the impact of the closure of the directed spiny dogfish gillnet fishery. It was clear that closing the fishery would result in significantly less mammal-gear interactions. However, it was exceedingly difficult to secure consideration of this major fisheries action in the TRT process.

In a second example, the final Take Reduction Plan for Harbor Porpoise included a gillnet fishery closure off New Jersey during February 15th to March 15th. The Monkfish Fishery Management Plan also contained a spawning closure whereby fishermen were required to take a 20-day continuous block out of the fishery during April 1 and June 30. This combination of management measures effectively resulted in a double closure of 50 days during one of more productive fishing seasons.

Furthermore, under the fishery management plan, monkfish gillnet fishing effort was reduced from unlimited year-round fishing to a mere 40-days per year for each limited entry permitted vessel. This reduction in gillnet fishing effort was immediate and significant. Here again, fishermen were not credited in the Take Reduction Plan with the management measures developed under the federal fishery management

plan for monkfish.

Require Updated Stock Assessment Information...

NMFS should be required to use the most updated, relevant stock assessment information for each TRT. Despite the fact that the Act already contains some assessment provisions and the agency has internal guidelines regarding this requirement, we just went through a bottlenose dolphin process where the TRT was forced to decide on serious fishing restrictions based on an incomplete assessment done nearly 8 years ago, while a more comprehensive updated assessment indicated the dolphin stock could be as much as 4-times larger than previously thought.

The new assessment was judged by staff from the Office of Protected Resources to be too preliminary and therefore, off limits to the TRT. Rather than delay the TRT process for a short period until the new assessment could be made final, the TRT was forced to move forward with fishing restrictions based on the inferior assessment.

We should not be in a position where MMPA deadlines become more critical than using the best information possible. How can the federal government be permitted to use the MMPA to put more restrictions on someone's income when new information suggests the restrictions may not be necessary to achieve PBR?

Balanced Stakeholder Participation on Regional Scientific Review Groups...

On paper, the Act currently allows for a balanced representation of viewpoints on the Regional Scientific Review Group. Unfortunately, this is not the actual case on the East Coast.

There is no representation of the commercial fishing industry on the Atlantic Review Group. In fact, there has been no commercial representation during the entire bottlenose dolphin TRT process. This is critical since commercial fishermen can provide expertise on commercial gear technology and report actual on-the-water observations.

However, the conservation industry has been represented on the SRG throughout the entire process. To make matters worse, the same environmental group that reportedly threatened to sue the Secretary of Commerce for failing to protect bottlenose dolphins is serving on the Scientific Review Group that is charged with giving advice to the bottlenose dolphin TRT!

Clearly, this is an example of poor judgement on the part of the NMFS Office of Protected Resources. While we fishermen do not begrudge anyone serving on the SRG's, we do respectfully request that Congress make certain that we provide for a balanced viewpoint.

Strike the ZMRG Provision...

ZMRG may be the most problematic provision in the current law. The Act requires incidental takes to "be reduced to insignificant levels approaching a zero mortality and serious injury rate." (Sec. 1371(a)(2)). Despite the fact that the ZMRG is not clearly defined in the Act, it is already being used in the TRT process as open justification for increasing restrictions on commercial fishing.

It is no longer sufficient to achieve PBR through the TRT process. Instead, the agency and the conservation industry are using ZMRG to demand increased restrictions on fishermen to achieve some assumed miniscule level of PBR.

This is ironic since we are told PBR is designed to achieve the optimum sustainable population size for marine mammal populations. This is one of the most important goals in the MMPA. If PBR is constructed to allow mammal stocks sufficient protection to achieve OSP, what then, is the scientific justification for ZMRG? Clearly, there is no scientific justification for ZMRG. It appears to us that ZMRG is a philosophical concept rather than a sound wildlife management principle.

Furthermore, if left in the Act, we are concerned ZMRG will be the target of future legal action by more extreme elements within the conservation industry. We are already facing a rapid increase in the number of marine resource-related lawsuits. It is simply a matter of time before ZMRG is brought before the courts in an effort to restrict commercial fishing for little or no biological benefit to marine mammal stocks. Congress should do the right thing and remove ZMRG from the Act. This action will protect the Secretary of Commerce, the integrity of the TRT process, and your fishing communities, while still allowing sufficient protection for mammal stocks.

MMPA REAUTHORIZATION RECOMMENDATIONS

Please accept the following recommendations on H.R. 4781 and the MMPA reauthorization:

(1) Maintain the following provisions in H.R. 4781:

- *Consideration of recreational fishing gear impacts on marine mammals
- *Participation on TRT's by NMFS' fisheries scientists and representatives of the RA
- *Promote observer, research, education and outreach programs
- *Require NMFS to consult with TRT if final plan is different from original TRT plan

(2) Require NMFS to consider the benefits of fishery management actions on marine mammal stocks in the TRT process;

(3) Require NMFS to use the best scientific information in the TRT process, especially in instances where an updated assessment may be fourth coming and the current assessment is of poor quality and outdated;

(4) Require NMFS to ensure that all TRT constituent groups be represented on the Scientific Review Group;

(5) Remove the "ZMRG" provision from the MMPA.

Mr. Chairman, I ask that you kindly accept my written testimony for the record. Thank you for the opportunity to share my concerns and ideas with your Subcommittee.

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