

## MEMORANDUM

TO: Advisory Committee on Acoustic Impacts on Marine Mammals  
FROM: David Cottingham, Marine Mammal Commission  
DATE: 29 September 2005  
RE: Advisory Committee wrap-up

Our meeting last week, like many of its predecessors, exposed a variety of opinions and perspectives regarding issues about which people have intense feelings. With the heat of the meeting behind us, I want to provide a clear statement regarding the Commission's understanding of how we will bring the Advisory Committee process to a close. If you have concerns about this summary, please contact me directly.

Before I reiterate guidelines and timetables below, I want to reinforce a couple of more general points. First, the Commission appreciates all the time and energy that people have invested in this process. We share everyone's frustration that the anticipated consensus document could not be achieved. Second, I hope that everyone will take a moment to refer to the Commission's own comments on the 5 August draft to understand the Commission's perspectives on the substantive work of the group. Finally, the Commission notes that, in the face of all the frustration during the process, some good things were likely to have been ignored to a large extent, including the fact that some excellent science has been done or is underway at present in the United States and elsewhere to help clarify effects of sound—and thereby to assist with useful management alternatives. The inability of the Committee to reach consensus should not negate the fact that good people and agencies and groups currently are working hard to improve the situation. There is a lot more to be done, in the Commission's view, to clarify and, as needed, mitigate effects on marine mammals at the individual and population levels.

### ***Process and Ground Rules***

At our sixth plenary meeting in September 2005, the Advisory Committee discussed the 5 August 2005 draft report. After extensive deliberations, the Committee agreed unanimously to discontinue efforts to reach agreement on a single consensus report to the Commission (the intent had been for the Commission to forward a consensus-based Advisory Committee report to Congress). The August 5 draft report was not adopted by the Committee but remains available, on request, to the public as a non-consensus draft. The Committee further agreed to implement the proposal of the Marine Mammal Commission to complete the Advisory Committee process as follows:

**Step 1.** The Commission, with assistance from the facilitators, will prepare a summary of the Advisory Committee process, explaining that we brought together people with diverse interests to engage in dialogue and develop recommendations that could be endorsed by all stakeholders on how best to proceed to address potential effects of noise on marine mammals. This summary will note that Committee members remained divided on most key issues even after extensive deliberation, but it will not include any substantive statements about the issues or why we did not reach consensus. Committee members will be given an opportunity to comment on a draft of the summary, which the Commission and facilitators will revise accordingly. This summary will be negotiated by phone and/or e-mail, and draft text may be drawn from parts of the existing Introduction section of the 5 August draft report. Together with the statements described in Step 2, this will constitute the Advisory Committee report to the Commission.

**Step 2.** Members of the Committee will have an opportunity to provide to the Commission individual, caucus, or cross-caucus (non-consensus) statements that express their perspectives on the issues that the group discussed in response to the Advisory Committee’s charter. The full Committee discussed rules governing the preparation of these statements (e.g., page limits, range of topics, deadline for receipt) during the September plenary meeting; these ground rules are summarized below. The non-consensus statements are to be submitted to the Commission by 18 November 2005 and will be forwarded, without change, to Congress as part of the Commission’s report. Together with the process summary described in Step 1, these statements will constitute the Advisory Committee’s report to the Commission. Ground rules include the following:

- Development of individual, caucus, and cross-caucus statements should begin as soon as possible.
- Maximum length will be 30 pages total per statement.
- The Commission and facilitators will not participate in the development of these statements; development is the responsibility of the author(s).
- Statements should refrain from characterizing the views and positions of other Committee members.
- Statements should be consistent with the agreed Advisory Committee Operating Procedures and responsive to the charge set forth in the Advisory Committee’s charter.
- Final statements are due to the Marine Mammal Commission no later than COB Friday, 18 November 2005.

The Commission further notes that we are opposed to the pursuit of “majority” and “minority” reports as such. If multiple members of the Committee agree upon particular findings or recommendations, we encourage them to state that in the non-consensus statements to be attached to the Commission’s proposal as described above. However, we feel that use of the terms “majority” and “minority” in these statements is unnecessary and counter to the spirit with which the Advisory Committee process was undertaken.

**Step 3.** The Commission will prepare a report to Congress in response to its charge. Our report to Congress will append all individual/caucus statements that comply with the above ground rules and are received by the deadline (Step 2), as well as the summary of the process described in Step 1 above.

**Step 4.** The Committee members will receive the Commission’s submitted report (with the Advisory Committee’s report—Step 1 summary and Step 2 statements— appended) upon its transmittal to Congress. Committee members retain the option, if they wish, of submitting their own separate reports to Congress. These reports do not need to abide by the constraints noted above. Any such reports will not be part of the Commission’s process and will be independent of the Advisory Committee’s report to the Commission and the Commission’s report to Congress.

### ***Suggested Topics***

The Commission has offered some suggestions for topics to be discussed in the individual, caucus, or cross-caucus statements. These are repeated below.

- A. Respond to the Advisory Committee's charter, which instructed the group to:
- 1) Review and evaluate available information on the impacts of human-generated sound on marine mammals, marine mammal populations, and other components of the marine environment,
  - 2) Identify areas of general scientific agreement and areas of uncertainty or disagreement related to such impacts,
  - 3) Identify research needs and make recommendations concerning priorities for research in critical areas to resolve uncertainties or disagreements, and
  - 4) Recommend management actions and strategies to help avoid and mitigate possible adverse effects of anthropogenic sounds on marine mammals and other components of the marine environment.
- B. Respond to the topics presented in the Commission's 9 September 2005 memo, which were identified as potentially meriting discussion in the proposed individual, caucus, and cross-caucus statements:
- Key areas of scientific agreement and uncertainty/disagreement regarding the impacts of human-generated sound on marine mammals and the ecosystems on which they depend, including views on:
    - The degree of current scientific uncertainty
    - The extent of the problem
    - The relative significance of anthropogenic sound among other threats to marine mammals and
    - Useful sources of information (e.g., NRC reports).
  - Identification and prioritization of research in critical areas to resolve uncertainties or disagreements and improve management/mitigation.
  - Discussion of key issues related to research, including views on:
    - Animal welfare or ethics considerations for directed marine mammal research, such as CEEs and ABR experiments
    - Research permitting/authorization concerns and
    - Research funding concerns.
  - Recommended management actions and strategies to help avoid or mitigate possible adverse effects of anthropogenic sounds on marine mammals and other components of the marine environment, including discussion of:
    - Assessment of the effectiveness of current management and mitigation approaches (e.g., permitting and authorization)
    - The relative importance of mitigation versus research efforts
    - Views on cost effectiveness, practicality/practicability, burden of proof, and balancing other interests
    - Approaches to management in the face of scientific uncertainty (e.g., views on precautionary approaches) and
    - Views on international/multilateral approaches and cooperation.
- C. Respond to the areas of disagreement identified by the Commission during the final plenary meeting:
- Extent of the problem
    - The significance of the threat
    - Relative importance of sound vs. other threats

- Impact on populations
- Degree of scientific uncertainty and use of extrapolation
- How to characterize acoustic energy – sound vs. noise
- Relationship between stranding and sound
  - Level of relationship: cause/effect, correlated, associated
  - Number of relevant stranding or mortality events
  - Range of species involved: beaked whales, other
  - Range of sound sources involved: sonar, airguns, shipping, other
  - Mechanisms of injury: auditory, behavioral, non-auditory
- Effectiveness of current management/mitigation
  - Identification of best practices
  - Cost effectiveness and practicality/practicability
  - Assignment of burden of proof: sound producers vs. regulators
  - Precautionary approach—addressing the uncertainty
  - International or multilateral approach
- Priorities and conduct of research
  - Determination of priority research areas
  - Relative importance of research and mitigation efforts
  - Diversification and distribution of research funding
  - Permitting and authorization for research
  - Animal welfare aspects of research – CEE, ABR
  - Safeguards against bias in research

### ***Federal Advisory Committee Act Compliance***

There has been some confusion over the status of the Committee's work with respect to the Federal Advisory Committee Act (FACA). The Commission and other federal agencies have consulted with a FACA expert at the General Services Administration for additional clarification. The Advisory Committee's current charter is valid until November 17, 2005. Our current deadline for submission of statements is November 18, meaning that the Commission will have to renew the charter unless the deadline is shifted to an earlier date. It has also come to our attention that some Advisory Committee members, particularly federal agency representatives, may ask for an extension to the deadline to complete agency clearance processes. The Commission encourages all members to provide their statements by November 17. At this point, the Commission does not plan to extend the deadline for receipt of statements.

We do not intend to hold any additional public, plenary meetings of the Advisory Committee. Development of the process summary described in Step 1 above will occur by means of e-mail and final approval will be done in a telephone "meeting" of the Committee. This is consistent with the requirements of FACA. Furthermore, continuing discussions among members of the Advisory Committee to develop multi-party (non-consensus) statements are not subject to the public meeting requirements of FACA.