

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

25 January 2005

William Robinson, Regional Administrator
Pacific Islands Regional Office
National Marine Fisheries Service
1601 Kapiolani Blvd., Suite 1110
Honolulu, HI 96814

Dear Mr. Robinson:

The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals held their annual meeting 26-28 October 2004 in Hawaii to review issues related to the conservation of marine mammals, with a special focus on Hawaii and the Pacific islands area. We were pleased that you and several of your staff members from the Pacific Islands Regional Office (PIRO) were able to participate in our discussions. You collectively provided much valuable information and useful insight into the issues that we jointly face.

On the basis of the discussions during our meeting and other information reviewed by us, the Commission and Committee commend PIRO on the many positive measures that it has taken to conserve living marine resources in the Pacific region. We recognize and commend the major efforts that PIRO staff have made to work cooperatively with their resource management counterparts in other federal and state agencies. In particular, we note PIRO's efforts to develop a cooperative agreement on managing monk seals with the State of Hawaii Department of Land and Natural Resources pursuant to provisions of section 6 of the Endangered Species Act (ESA). We also commend PIRO's efforts to develop a cooperative stranding network in the main Hawaiian Islands, and the work that has been done to produce a revised version of the Hawaiian Monk Seal Recovery Plan.

We offer the following recommendations on additional steps that we think PIRO should take to further conservation of marine mammals and their ecosystems in the Pacific islands region.

- **The Marine Mammal Commission recommends that PIRO conduct Marine Mammal Protection Act (MMPA) and ESA reviews of all activities in Hawaii and elsewhere in the Pacific Islands Region that pose potential impacts to, and could involve take of, marine mammals. In particular, we recommend that PIRO conduct an ESA section 7 consultation on the potential effects of high-speed ferries on listed marine mammals, particularly humpback whales and monk seals.**

Presenters at the annual meeting described several projects that exist or are being planned that have the potential to harm marine mammals. Two important examples include 1) offshore mariculture pens for tuna and other species that are planned for the Kona coast and which pose several threats for marine mammals, and 2) high-speed inter-island ferry service. As we understand

it, PIRO has not consulted on either of these activities under section 7 of the ESA, and no incidental or other taking authorizations have been sought under MMPA provisions. It is unclear to us why consultation has not occurred and authorizations have not been requested, and we recommend to PIRO that all activities such as these should be carefully evaluated and properly dealt with under the relevant statutes.

With specific regard to the Hawaii Superferry project, the potential for injury of and disturbance to humpback whales and other species is clear. High-speed ferry operations in Hawaii and elsewhere pose a risk of collisions with marine mammals and sea turtles, potential disturbance from noise produced by boats and machinery, and other threats such as oil spills. If the operation of these ferries, or any interdependent or interrelated activities, require federal action, authorization, or funding, the Commission believes that the federal action agency has an obligation to conduct appropriate environmental analyses under the National Environmental Policy Act and a section 7 consultation under the ESA because a "may affect" situation is obvious. This documentation and consultation should be done as soon as possible to attempt to resolve potential conflicts before they arise. Such reviews would provide a mechanism for identifying potential adverse effects and mitigation measures to prevent them.

- **The Marine Mammal Commission recommends that PIRO and the Pacific Islands Fisheries Science Center (PIFSC) develop a plan for research on and management of Pacific Islands Region cetaceans that will provide information on stock structure, abundance, and fishery-related mortality levels as required to assess fishery/marine mammal interactions under the MMPA.**

The NMFS, particularly the Southwest Fisheries Science Center (SWFSC), has conducted and contracted for some cetacean research that has focused on the Exclusive Economic Zone (EEZ) around the Hawaiian Islands. Little is known about the abundance, distribution, and stock structure of cetaceans in other parts of the vast Pacific islands region. The PIFSC is just now beginning to develop cetacean research capabilities. The PIRO has ongoing observer programs that have provided some information on levels of incidental take of protected species in domestic fisheries. Cetaceans in the EEZ may be part of larger Pacific populations, and those populations may experience takes in both domestic and international fisheries. Also, there may be discrete subpopulations of some species within the EEZ that are subject to local anthropogenic impacts.

Developing an effective program for research and management of cetaceans in the Pacific islands region involves considerable logistical difficulties, as well as other challenges. To properly identify research and management goals, and strategies for achieving those goals, PIRO and PIFSC should work collaboratively with experienced cetacean biologists at the SWFSC and elsewhere within NMFS. In addition, PIRO and PIFSC will need to hire personnel with appropriate expertise, or develop that expertise through collaborative projects with the SWFSC or others. We note that some needs may be addressed, at least in part, through development of island-based research and management efforts in coordination with other agencies such as the U.S. Navy and Coast Guard. For example, the Navy may be able to provide logistical assistance for research in the Marianas or at

Guam. Such opportunities for collaboration should be fully evaluated in the process of developing the overall plan. The Marine Mammal Commission would be happy to help with this difficult issue in any way it can.

- **The Marine Mammal Commission recommends that NMFS and PIRO provide support and resources for development and coordination of stranding responses for all marine mammals within the main Hawaiian Islands, as well as other islands in the region.**

The logistical difficulties facing a stranding network in the Pacific islands region are daunting, where the shoreline is dispersed over thousands of miles of the central Pacific Ocean, and among many islands, atolls, and archipelagoes some of which are uninhabited or very sparsely populated. However, development of an effective stranding response network is feasible within the more populated and accessible main Hawaiian Islands. Personnel from PIRO, PIFSC, the Hawaiian Islands Humpback Whale National Marine Sanctuary, State of Hawaii agencies, and the volunteer Hawaiian Islands Stranding Response Group (HISRG) have all collaborated informally in responses to entanglements and strandings. Currently, the HISRG responds to the majority of strandings for which a response is made. The HISRG, however, is based on Oahu, and its ability to respond effectively to strandings on other islands is limited by funds, personnel, and logistics.

At the Commission's annual meeting, representatives from PIRO indicated that a formal stranding network is being developed with a plan to have a coordinator on each of the main Hawaiian Islands. Also, NMFS has established a toll-free hotline that allows members of the public to report strandings in the main Hawaiian Islands. The Commission endorses these efforts and recommends that the stranding network be further developed in consultation with all of the collaborators identified above. We note that an effective stranding network will require sufficient PIRO personnel to respond to stranding events or to coordinate the activities of response personnel from other agencies or volunteer groups, as well as funds for travel, supplies, etc. NMFS should provide the resources necessary to implement an effective stranding network in the main Hawaiian Islands, and to the extent possible on other islands as well.

- **The Marine Mammal Commission recommends that PIRO convene a take reduction team for false killer whales in the Pacific Islands region to develop a broad range of options for reducing take levels.**

The Hawaiian longline fisheries were recently elevated to Category I under the MMPA, based in part on the bycatch of false killer whales in the fisheries which exceeded the calculated potential biological removal level for the Hawaiian stock by almost 400 percent. The Commission supports NMFS' decision to reclassify these fisheries and recommends that NMFS develop and implement a take reduction plan for the Hawaiian stock of false killer whales as required by section 118 of the MMPA. The Commission believes that a take reduction team is the best mechanism to bring relevant stakeholders together to discuss and evaluate the various options and impacts, and we recommend that PIRO convene such a team.

We were informed at our meeting that the Service has convened a take reduction team to reduce cetacean mortality associated with Atlantic longline fisheries. Service representatives suggested that the agency was deferring creation of a Hawaiian take reduction team in hopes that the Atlantic team could develop mitigation options that would apply in both locations. The Commission notes that well executed take reduction teams provide a regional forum for local fishermen, agency staff, and environmental groups to work together to reach solutions, so a take reduction team offers both tangible and intangible benefits locally. Furthermore, the Commission questions whether methods and gear used in the two locations are sufficiently similar to permit common mitigation measures. Therefore, the Commission reiterates its recommendation that a take reduction team be formed to address false killer whale bycatch specifically in the Pacific islands area.

- **The Marine Mammal Commission recommends that the PIRO develop a network and standardized protocols for responding to and documenting monk seal haul-outs on each of the main Hawaiian Islands.**

Participants in the October 2002 Workshop on the Management of Monk Seals on Beaches in the Main Hawaiian Islands identified a number of steps needed to facilitate and standardize actions taken to protect monk seals hauling out on beaches in the main Hawaiian Islands. Among other things, the workshop report recommended the development of a training program and manuals for explaining the role of volunteers and others in responding to monk seal haul out events, establishing a formal mechanism for people involved in monk seal protection to share information on their efforts and needs, and the establishment of monk seal response networks on each of the main Hawaiian Islands. To help organize and expand main Hawaiian Island monk seal haul out response efforts, the Marine Mammal Commission transferred \$40,000.00 to PIRO in Fiscal Year 2004. To date it appears that little has been done to follow up on the above recommendations, and to the best of our knowledge PIRO has yet to use the funding provided by the Commission to help address these needs. The PIRO needs to increase its efforts to organize monk seal haul out response and reporting networks in the main Hawaiian Islands. We also request that PIRO report to the Commission on how they have expended the funding that we provided to them for this effort.

- **The Marine Mammal Commission recommends that PIRO, PIFSC, the Fish and Wildlife Service, and State of Hawaii agencies cooperate to address the growing problem of loss of suitable haulout and pupping habitat for monk seals in the NWHI.**

In the NWHI, monk seals rest, give birth, and care for their young on many reefs and islands, some of which are very small and barely above sea level. At the Commission's annual meeting, monk seal researchers pointed out that many of these islands are experiencing considerable erosion, particularly of the sandy beaches preferred by seals. In at least one case, an area that had previously been heavily used for pupping has virtually disappeared. Maintaining suitable habitat for monk seals may be critically important for recovery of the species. The Commission recognizes that these habitats are extremely vulnerable to erosion from wave action and potential rises in sea level, and finding ways to prevent or mitigate such losses may be difficult. Nonetheless, we are encouraging all involved agencies to give attention to this issue, and to consider ways to protect, and

if possible restore and enhance, island habitats used by monk seals in the NWHI.

- **The Marine Mammal Commission recommends that NMFS and PIRO work with the State of Hawaii and the Commission to convene a workshop to address the increasing impacts of swim-with-the-wild-dolphin operations in Hawaii.**

At its annual meeting, the Commission heard from NMFS managers, enforcement personnel, and scientists, as well as independent researchers, tour operators, and other stakeholders concerning human-dolphin interactions in Hawaii. The Commission, its Committee of Scientific Advisors, and invited guests also visited one of the areas north of Kailua-Kona frequented by tour operators focused on spinner dolphins to get a better understanding of the types of interactions that are occurring. While there, we observed activities that many people aboard considered intentional pursuit and harassment of dolphins.

In addition to considering increased enforcement as a means of addressing the problems presented by human-dolphin interactions in Hawaii, the Commission and participants at the Commission's meeting considered possible alternative solutions. In fact, the Commission believes, as did many of the meeting participants, that other alternatives may be preferable to relying almost entirely on rigorous enforcement of the MMPA's taking prohibition. Toward this end, the Commission recommends that NMFS convene a meeting of federal, state, and local government agencies, researchers, tour operators, and other stakeholders to develop a comprehensive approach to the problem that looks at when, where, and how such activities may be conducted without adversely affecting the dolphins. The Commission would welcome the opportunity to help organize and participate in such a meeting or workshop.

Among other things, the workshop should consider the desirability of establishing protected areas where dolphins can rest undisturbed by humans. Other alternatives should also be considered such as temporal and/or spatial access restrictions, limits on the number of vessels allowed in an area, and access restricted to tour operators that adopt and comply with specified, responsible wildlife-viewing practices. Most importantly, the workshop should consider what regulatory mechanisms are available to provide protection for dolphins, such as MMPA taking prohibitions, State of Hawaii laws and regulations, and the National Marine Sanctuaries Act.

- **The Marine Mammal Commission recommends that PIRO work with the State of Hawaii to develop a program to certify qualifying dolphin-watch operators as "responsible" wildlife viewing companies.**

The NMFS has adopted guidelines that describe proper ways to watch and interact with marine mammals and sea turtles in Hawaii. The guidelines call for people to stay at least 50 yards away from dolphins, not feed them, and operate vessels carefully when near the animals. The State of Hawaii has used those guidelines when developing concessionaire contracts for kayaking operations at some state parks. Tour operators who spoke at the Commission's meeting recommended the development of a certification program for tour guides that would encourage

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voluntary compliance with the wildlife watching guidelines, and the State expressed an interest in working cooperatively to develop solutions to problems caused by human activities in spinner dolphin resting areas. The Commission believes that such a tour guide certification program would be an important component of the education and outreach programs needed to resolve problems with spinner dolphin harassment, and that PIRO should work with the state and others to develop such a program.

We hope that these recommendations and comments are helpful to you. Additional specific recommendations relating to these and other topics discussed at our annual meeting are being communicated directly to appropriate administrators and directors. Copies of those letters are enclosed for your information. I would like to contact your office to arrange a time in the near future to discuss these recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cottingham", with a long horizontal flourish extending to the right.

David Cottingham
Executive Director

Enclosures