

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

25 January 2005

Richard W. Spinrad, Ph.D.
Assistant Administrator for Oceans and Coasts
National Ocean Service
National Oceanic and Atmospheric Administration
1305 East-West Highway
Silver Spring, MD 20910

Dear Dr. Spinrad:

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 staff members from the National Ocean Service (NOS), particularly the National Marine Sanctuaries Program (NMSP), were able to participate in our discussions. They 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 NOS on the many positive measures that it has taken to conserve living marine resources in the Pacific region. We particularly commend the major efforts that the NOS/NMSP staff have made to work cooperatively with their resource management counterparts in other federal and state agencies. Also, we commend all participants in the range-wide population study of humpback whales in the Pacific Ocean, particularly the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS).

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

- **The Marine Mammal Commission recommends that the National Oceanic and Atmospheric Administration (NOAA), the Fish and Wildlife Service, and the State of Hawaii conclude a Memorandum of Agreement (MOA) to coordinate their management efforts in the Northwestern Hawaiian Islands (NWHI).**

Within the NWHI there are a number of adjacent and sometimes overlapping conservation units and legal jurisdictions including the NWHI Coral Reef Ecosystem Reserve and a potential NWHI national marine sanctuary; the U.S. Exclusive Economic Zone; critical habitat and a protected resource zone established by the National Marine Fisheries Service (NMFS) to protect monk seals; the Hawaiian Islands and Midway Atoll National Wildlife Refuges; and the State of

Hawaii's Kure Island Wildlife Refuge and a proposed marine refuge for all state waters around emergent lands in the NWHI. The need for strong cooperation on managing marine resources in this region is obvious, and development of a MOA to formalize cooperation was mandated by President Clinton in Executive Order 13178. In 2001 regional offices of NOAA's NMSP and NMFS, the Fish and Wildlife Service, and the State of Hawaii, began drafting such a MOA with the purpose of promoting the long-term conservation and protection of coral reefs and the related marine ecosystem in the region through cooperative interagency actions. A draft MOA was completed early in 2003, but it has not yet been approved. Given current management needs and ongoing efforts to develop an ecosystem-based approach for management of the NWHI, approval and implementation of this agreement should be a high agency priority. NOAA/NOS should act expeditiously to complete its review of the draft MOA, resolve any concerns it may have with the Fish and Wildlife Service and the State, and finalize and implement the agreement.

- **The Marine Mammal Commission recommends that, as part of development of the proposal for a NWHI national marine sanctuary NOAA/NOS work with the Western Pacific Fishery Management Council (WPFMC) to develop draft fishery management regulations that are consistent with the Executive Orders establishing the NWHI Coral Reef Ecosystem Reserve.**

Executive Orders establishing the NWHI Coral Reef Ecosystem Reserve specifically mandate management of the reserve to protect the region's marine resources following a science-based and precautionary management approach. They also establish specific management measures that limit commercial fishing and direct that efforts to consider designation of the area as a national marine sanctuary "supplement or complement" the provisions of the Executive Orders. In its 9 August 2004 letter to Admiral Lautenbacher, the Commission recommended that NOAA's sanctuary proposal adopt fishery management measures that would protect endangered Hawaiian monk seals and the NWHI ecosystem.

The National Marine Sanctuaries Act (NMSA) requires that regional fishery management councils be given an opportunity to draft fishing regulations that meet the stated goals and objectives of any proposed sanctuary. The NMSP worked with the Reserve's Advisory Council (RAC) to develop draft goals and objectives. On 20 September 2004 the Director of the NMSP sent a guidance package to the WPFMC for its use in developing fishery management rules for the proposed NWHI sanctuary, which included a modified version of the goals and objectives recommended by the RAC. During the Commission's annual meeting, a representative of the RAC expressed concern that the changes made by NOS had seriously weakened their recommended goals concerning management of fisheries. Also, a WPFMC representative stated that the Council was considering a new alternative not set forth in the NMSP guidance document, and that procedures under the Magnuson-Stevens Fishery Conservation and Management Act for developing fishing regulations would require a substantially longer time frame than the 120 days provided in the NMSA. The Commission is concerned that the WPFMC is working on this issue in ways that are inconsistent with the Executive Orders, the NMSA, and the needs for protection of resources in the NWHI. We therefore recommend that NOS pay close attention to this issue and work with the

WPFMC to ensure that any fishery management alternative developed for the proposed sanctuary be consistent with the Executive Orders, provide comprehensive, strong, and lasting protection for the NWHI ecosystem, and protect the prey resources of Hawaiian monk seals.

- **The Marine Mammal Commission recommends that the National Ocean Service (NOS) and the State of Hawaii expand the scope of the HIIHWNMS to include other important components of the ecosystem, including Hawaiian monk seals, other marine mammals, and sea turtles.**

The Hawaiian Islands National Marine Sanctuary Act established the HIIHWNMS and called for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary. In keeping with this goal, the Commission has previously recommended that the Sanctuary's responsibilities be expanded to include other important components of the ecosystem encompassed by its boundaries, including the Hawaiian monk seal, other marine mammal species, and sea turtles. At our annual meeting, we were told that the Sanctuary has defined a process that they will use to identify additional resources appropriate for inclusion. We encourage NOS and the State of Hawaii to move forward with that process so that monk seals and other significant resources can achieve formal inclusion and receive the benefits of HIIHWNMS stewardship.

- **The Marine Mammal Commission recommends that the HIIHWNMS, PIRO, PIFSC, and the State of Hawaii develop a coordinated network for responding to strandings and entanglement of humpback whales and other marine mammals.**

The primary responsibility for developing and operating a stranding network in the Pacific islands region rests with the NMFS Pacific Islands Regional Office (PIRO). However, in the past, personnel from the HIIHWNMS, PIRO, the Pacific Islands Fishery Science Center (PIFSC), State of Hawaii agencies, and the volunteer Hawaiian Islands Stranding Response Group have all collaborated informally in responses to entanglements and strandings. Staff from the HIIHWNMS have particular expertise in large whale disentanglement.

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. The Commission endorses this effort and has recommended that the network be further developed in consultation with all of the collaborators identified above. We encourage NOS and particularly the HIIHWNMS to work closely with PIRO and others in the development and operation of the Pacific islands stranding network.

- **The Marine Mammal Commission recommends that NOS develop a process to determine what regulations are needed to ensure that future activities, such as recently proposed mariculture projects and high-speed ferry operations, do not adversely affect HIIHWNMS resources.**

The HIIHWNMS was designated primarily to protect humpback whales and their habitat within the sanctuary and, as part of that goal, to ensure that activities occurring within the sanctuary were consistent with that purpose. There are many activities that may occur or be proposed within Sanctuary waters that could have major impacts on humpback whales and other marine resources. Two important examples include offshore mariculture pens for tuna and other species that are planned for the Kona coast, and the Hawaii Superferry project which will provide high-speed inter-island ferry service.

Mariculture operations may result in 1) entanglement of humpback whales and other species in nets or other structures used to retain fish or exclude predators, 2) modification of local productivity and associated changes in species assemblages as a result of localized fertilization, and 3) transmission of disease from mariculture fish to animals in the surrounding environment. With regard to the Hawaii Superferry project, the potential for injury of, and disturbance to, humpback whales and other species is obvious. High-speed ferry operations in Hawaii 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. In September 2003, NOS sponsored a workshop that focused specifically on the risk of ship strikes to humpback whales in Hawaii. One of the recommendations resulting from that workshop was to assess the potential for ship strikes and develop strategies to prevent them.

Activities such as these may result in both lethal and sublethal takings of marine mammals and could require consultation under section 7 of the Endangered Species Act, and/or incidental or other taking authorizations under Marine Mammal Protection Act provisions. The Commission has written to NMFS/PIRO and recommended that all activities such as these be carefully evaluated and properly dealt with under the relevant statutes. Also, these projects should be carefully reviewed by NOS to identify potential adverse effects on Sanctuary resources and ensure that appropriate mitigation measures are implemented. The Commission encourages NOS to develop a process for determining which proposed activities are appropriate within the Sanctuary in view of the need to protect humpback whales and other vital components of the sanctuary ecosystem, and to take steps to regulate those activities that are not appropriate.

- **The Commission recommends that full funding be provided for completion of the SPLASH (Structure of Populations, Levels of Abundance and Status of Humpbacks) program.**

The Commission is very impressed by preliminary results of the interagency and international effort to conduct a range-wide population study of humpback whales in the Pacific Ocean. The results of this research will be invaluable for future management of the species, and the collaboration among researchers provides a model for future studies of other transboundary marine mammal species. Essential funding and other support for this project has been provided by both NOS and the HIIHWNMS, and the Commission recommends that all collaborators continue to fully support the SPLASH program for its final year of field work and for the subsequent analysis of data and publication of results.

Richard W. Spinrad, Ph.D.
25 January 2005
Page 5

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. Commission Chairman John Reynolds and I look forward to meeting with you and your staff to discuss these recommendations on 4 February.

Sincerely,

A handwritten signature in black ink that reads "David Cottingham". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David Cottingham
Executive Director

Enclosures