

MARINE MAMMAL COMMISSION  
4340 East-West Highway, Room 700  
Bethesda, MD 20814-4447

29 October 2008

Mr. Mark Helvey  
Assistant Regional Administrator for Sustainable Fisheries  
Southwest Regional Office  
National Marine Fisheries Service  
501 West Ocean Boulevard, Suite 4200  
Long Beach CA 90802-4213

Dear Mr. Helvey:

On 29 September 2008 the National Marine Fisheries Service published a notice (73 Fed. Reg. 56555) requesting comments on a draft environmental assessment for managing the deep-set longline fishery. The fishery is for pelagic tuna in the eastern Pacific Ocean outside the U.S. Exclusive Economic Zone. The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the draft assessment and offers the following recommendations and comments.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- retain all existing management measures for this fishery, especially including 100 percent observer coverage;
- add measures to its preferred alternative to limit entry to the fishery to ensure that bycatch levels remain below thresholds set by the Marine Mammal Protection Act; to that end, allow no more than one new vessel to enter the fishery per year, up to a total of five new vessels, with any such additions contingent upon fishery observer data confirming that take levels do not exceed the potential biological removal (PBR) level for any marine mammal stocks;
- expand the draft assessment to include all relevant, available information on the California/Oregon/Washington stock of short-finned pilot whales and the fisheries that might take them;
- expand its preferred alternative to prohibit West Coast vessels from fishing west of 140°W longitude to prevent any additional incidental take from the Hawaiian stocks of false killer whales; and
- expand the assessment to summarize available information on longline vessels that actually fish in the eastern Pacific Ocean, their numbers, where they fish, their incidental catch rates, and the protected species taken (including marine mammals).

## RATIONALE

The Commission offers the following rationale for its recommendations.

### Preferred Alternative

The Service's preferred alternative is to continue the current management program (i.e., the "no action" alternative). The current management program includes numerous measures to limit taking of protected species, including the requirement for 100 percent observer coverage for the fishery to verify catch and bycatch totals. The Marine Mammal Commission believes all of these measures are appropriate and thus recommends that the National Marine Fisheries Service retain all existing management measures for this fishery, including 100 percent observer coverage. Maintaining this level of observer coverage is important to ensure that takes do not exceed the PBR level for any affected marine mammal stock.

The Commission also believes that the Service should reconsider the need for regulations limiting entry to this fishery. The Service suggests that the use of limited entry is not appropriate for small fisheries and that it expects a maximum of five new vessels (for a total of six) for this fishery. However, the need to limit entry to a fishery should not be based on the number of vessels per se but rather on their potential to have an adverse impact. In this case, the addition of even a single vessel could cause a catch in excess of estimated PBR levels for some stocks. For example, the Service's 2007 stock assessment reports indicate that the current minimum population size for the California/Oregon/Washington short-finned pilot whale stock is 123 whales, with a PBR level of 0.98 whale per year. The stock's PBR would be exceeded if a single whale were killed or seriously injured. If any expansion of this fishery is to be considered, the Service should ensure that the risk of incidental catch of short-finned pilot whales does not increase. For that reason, the Marine Mammal Commission recommends that the National Marine Fisheries Service add measures to its preferred alternative to limit entry to the fishery to ensure that bycatch levels remain below thresholds set by the Marine Mammal Protection Act. To that end, the Marine Mammal Commission recommends that no more than one new vessel be allowed to enter the fishery per year, with any such additions contingent upon fishery observer data confirming that take levels do not exceed the PBR level for any marine mammal stock.

### Short-finned Pilot Whales

The draft environmental assessment provides an incomplete review of information on the status and incidental take of short-finned pilot whales. The assessment notes that—

- short-finned pilot whales were once common off southern California, but their abundance in that area declined sharply in the early 1980s coincident with a strong El Nino event;
- short-finned pilot whales off the U.S. West Coast may be part of an eastern tropical Pacific population that uses waters off Mexico and other areas farther south and may number in the thousands;
- observer data for the deep-set longline fishery off Hawaii indicates that short-finned pilot whales are taken incidentally at a rate of 0.25 whale per 1,000 sets, and applying this rate to the total number of sets in the eastern Pacific fishery (400) results in a very low probability of take, even over a three-year period; and

- 17 U.S. longline vessels are currently authorized to fish in the eastern Pacific Ocean, 12 of which are based in Hawaii.

The assessment does not, but should, include other important and available information. As noted previously in this letter, the assessment does not indicate that the current minimum population level for the California/Oregon/Washington short-finned pilot whale stock is 123 whales with a calculated PBR of 0.98 whale per year. It also does not mention that this stock has been subject to incidental take in other fisheries or that it is considered a strategic stock under the Marine Mammal Protection Act. It does not include information from the stock assessment report that indicates distinct morphological differences between pilot whales off the U.S. West Coast and those in the eastern tropical Pacific Ocean<sup>1</sup>. Such differences could indicate that pilot whales make up multiple stocks in the eastern Pacific Ocean and that the reported 2001 abundance estimate includes animals from a separate stock.

This section also should note that Hawaii-based vessels are not prohibited from fishing in the eastern Pacific. It should describe the extent to which they do so, whether the estimate of 400 sets accounts for that effort, and the number of sets that could occur if all vessels based in Hawaii and on the West Coast fished in the eastern Pacific. In addition, this section should note that short-finned pilot whales are frequently taken incidentally by pelagic longline vessels off the Atlantic coast, and rates of take similar to those observed in the Atlantic could quickly exceed thresholds set under the Marine Mammal Protection Act and therefore trigger the need for a take reduction team.

All of this information is relevant and important for informed assessment and decision-making regarding the potential impacts of the deep-set longline fishery on short-finned pilot whales. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service expand the draft assessment to include all relevant and available information on the California/Oregon/Washington stock of short-finned pilot whales and the fisheries that may take them.

### False Killer Whales

The assessment notes that false killer whales in Hawaii are taken in the Hawaii-based deep-set longline fishery at levels exceeding PBR. It also states that the proposed fishery will not occur within the Exclusive Economic Zone off Hawaii and, therefore, this species would not be affected.

However, false killer whales may be taken in areas outside of the U.S. Exclusive Economic Zone around Hawaii, including areas where West Coast vessels might fish. In this regard, we find no provisions that would prevent West Coast vessels from moving into Hawaiian waters where they could add to incidental take levels in that area. In addition, it should be noted that recent

---

<sup>1</sup> Poosini, J.M. 1981. A comparison of *Globicephala macrorhyncha* (Gray 1846) with the pilot whale of the North Pacific Ocean: An analysis of the skull of the broad-rostrum pilot whale of the genus *Globicephala*. Dissertation Abstracts International Vol. 41, No. 08, February 1981, p. 2928-B.

Mr. Mark Helvey  
29 October 2008  
Page 4

information suggests that there are at least two stocks of false killer whales in Hawaii<sup>2</sup>. Thus, the assessment should be revised to note that there appear to be at least two stocks of killer whales in Hawaiian waters and to either (1) indicate that, although West Coast longline vessels are not expected to fish in areas where they would take false killer whales from Hawaiian stocks, nothing prevents them from doing so, or (2) identify the provisions that prevent West Coast vessels from fishing in those areas. To provide perspective, the assessment should note that vessels based in Asia and Hawaii are known to travel long distances to fish in the eastern Pacific Ocean. As that is the case, vessels based on the West Coast might reasonably be expected to travel west of 140° W. longitude to expand their fishing opportunities. Given the apparent lack of geographic restrictions on West Coast fishing vessels and the demonstrated history of longline vessels moving unannounced to new fishing grounds, the Marine Mammal Commission recommends that the National Marine Fisheries Service expand its preferred management alternative to prohibit West Coast vessels from fishing west of 140°W longitude to prevent any additional incidental take from the Hawaiian stocks of false killer whales.

#### International Longline Fishing

The assessment indicates that 1,292 large longline vessels from 15 different countries, including 17 U.S. vessels, are authorized to target tuna and tuna-like species in the eastern Pacific Ocean. However, the assessment provides little information on these vessels and the risks they pose to marine mammal stocks and other protected species. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service expand the assessment to summarize available information on longline vessels that actually fish in the eastern Pacific Ocean, their numbers, where they fish, their incidental catch rates, and the protected species taken (including marine mammals).

Please contact me if you have questions regarding the above recommendations and comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Ragen" followed by a flourish and the letters "for".

Timothy J. Ragen, Ph.D.  
Executive Director

---

<sup>2</sup> Chivers, S.J., R.W. Baird, D.J. McSweeney, D.L. Webster, N.M. Hedrick, and J.C. Salinas. 2007. Genetic variation and evidence for population structure in eastern North Pacific false killer whales (*Pseudorca crassidens*). Canadian Journal of Zoology 85:783–794. See also Baird, R.W., A.M. Gorgone, D.J. McSweeney, D.L. Webster, D.R. Salden, M.H. Deakos, A.D. Ligon, G.S. Schorr, J. Barlow, and S.D. Mahaffy. 2008. False killer whales (*Pseudorca crassidens*) around the main Hawaiian Islands: long-term site fidelity, inter-island movements, and association patterns. Marine Mammal Science 24:591–612.