



MARINE MAMMAL COMMISSION

17 February 2010

Ms. Lisa Van Atta
Assistant Regional Administrator
Protected Resources Division
Pacific Islands Regional Office
National Marine Fisheries Service
1601 Kapiolani Boulevard, Suite 1110
Honolulu, HI 96814

Dear Ms. Van Atta:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's 19 January 2009 *Federal Register* notice (75 Fed. Reg. 2853) of the formation and meeting of the False Killer Whale Take Reduction Team. The notice requests comments on whether to include the non-strategic Hawaii insular and Palmyra Atoll stocks within the team's scope.

RECOMMENDATIONS

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

- include the Hawaii insular and Palmyra Atoll stocks within the scope of the False Killer Whale Take Reduction Team;
- either include the Hawaii shortline and kaka fisheries within the scope of the False Killer Whale Take Reduction Team or work with the state of Hawaii to (1) consider mechanisms to determine the characteristics and rates of interaction of shortline and kaka fisheries with false killer whales and (2) identify and implement measures to avoid such interactions;
- use the team to review the available information on the American Samoa stock of false killer whales and the associated longline fishery and develop a research agenda to guide the Service's investigation of interactions between them; and
- retain the option of adapting the team's scope and membership to address potential incidental false killer whale takes by the American Samoa longline fishery when the available information is sufficient for that purpose.

Although the Service is not requesting comments on the fisheries included within the scope of the False Killer Whale Take Reduction Team, the Marine Mammal Commission also recommends that the National Marine Fisheries Service include the Hawaii shortline and kaka fisheries within the team's scope.

RATIONALE

The Marine Mammal Protection Act (section 118(f)(1)) directs the National Marine Fisheries Service, acting on behalf of the Secretary of Commerce, to develop and implement take reduction

plans to assist in the recovery or prevent the depletion of strategic marine mammal stocks that interact with category I and II fisheries. The Act also allows the Service to develop such plans to address interactions between non-strategic stocks and category I fisheries.

The Hawaii pelagic stock of false killer whales was designated as strategic because mortality of these whales in the Hawaii-based deep-set longline fishery, a category I fishery, exceeds the stock's potential biological removal level. The best available information is not sufficient to determine whether the Hawaii insular and Palmyra Atoll stocks also meet this criterion. Nonetheless, circumstantial evidence described in a 4 February 2010 letter (copy enclosed) from the Commission to the National Marine Fisheries Service suggests that fishery interactions have contributed to the poor status of the Hawaii insular stock, and the Service has documented fishery interactions involving the Palmyra stock. Furthermore, interactions between these stocks and longline fisheries may well increase in the near future because of an apparent increase in the rate of false killer whale depredation on longline catch. Even if that is not the case, including these stocks seems prudent because of the recent allowance for fishing (from October to January) in waters occupied by the insular stock and the mounting evidence of interactions (Baird 2009) based on dorsal fin disfigurements similar to those documented by Baird and Gorgone (2005).

In addition, the Service may designate a marine mammal stock as strategic if it is declining and likely to be listed under the Endangered Species Act in the foreseeable future. The Service is reviewing the status of the Hawaii insular stock to determine if such listing is warranted. The Commission's 4 February 2010 letter supports listing based on the stock's discreteness, significance, and conservation status. If the Service were to list the Hawaii insular stock, then it clearly would warrant protection from factors that are known or thought to be contributing to its poor status or preventing its recovery. Because fishery interactions are among those factors, inclusion of the Hawaii insular stock from the beginning of this take reduction effort makes sense both because of the added protection that should result and the greater efficiency of the take reduction effort.

For all these reasons, the Marine Mammal Commission recommends that the National Marine Fisheries Service include the Hawaii insular and Palmyra Atoll stocks within the scope of the False Killer Whale Take Reduction Team.

With regard to risks posed to the Hawaii insular stock, the team's scope does not include the shortline and kaka fisheries managed by the state of Hawaii. The shortline fishery is classified as category II based on the gear used, areas fished, target species, and anecdotal and unconfirmed reports of marine mammal interactions. In its comment letter on the proposed listing of the Hawaii insular stock, the Commission recommended that the Service include these fisheries within the scope of the False Killer Whale Take Reduction Team because of the high likelihood of interactions and the risk that these interactions could accelerate the stock's decline. The Marine Mammal Commission again recommends that the National Marine Fisheries Service include the Hawaii shortline and kaka fisheries within the scope of the False Killer Whale Take Reduction Team. If the Service does not believe it has the authority to do so because the fisheries are managed by the state of Hawaii, then the Marine Mammal Commission recommends that the National Marine Fisheries Service work with the state of Hawaii to (1) consider mechanisms to determine the characteristics

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and rates of interaction of shortline and kaka fisheries with false killer whales and (2) identify and implement measures to avoid such interactions.

Finally, the Service has not included the American Samoa stock of false killer whales within the scope of this take reduction team. The Service only recently recognized this stock and lacks information about its abundance, potential biological removal level, and interactions with fisheries. However, the Service has acknowledged unpublished data indicating that the rate of mortality and serious injury within the American Samoan Exclusive Economic Zone may exceed the stock's potential biological removal level. Clearly, management efforts for this stock would benefit by more research and fisheries observation. The convening of the False Killer Whale Take Reduction Team brings together experts on false killer whale ecology and the fisheries that may interact with the American Samoa stock. This team offers the Service a valuable opportunity to identify and prioritize the information needed to address interactions between the American Samoa stock and the longline fishery that may take them. The Marine Mammal Commission therefore recommends that the National Marine Fisheries Service use the team to review the available information on the American Samoa stock of false killer whales and the associated longline fishery and develop a research agenda to guide the Service's investigation of interactions between them. The research may not yield results in time for inclusion in the Service's initial False Killer Whale Take Reduction Plan, but the information should be valuable over time as the Service seeks to fulfill its management responsibilities in the waters off American Samoa. To that end, the Marine Mammal Commission also recommends that the National Marine Fisheries Service retain the option of adapting the team's scope and membership to address potential incidental false killer whale takes by the American Samoa longline fishery when the available information is sufficient for that purpose.

I hope these recommendations and rationale are helpful. Please contact me if you have questions.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Enclosure

Cc: Rebecca Lent, Ph.D.

Literature Cited

- Baird, R. W. 2009. A review of false killer whales in Hawaiian waters: biology, status, and risk factors. Report prepared for the Marine Mammal Commission under Purchase Order E40475499.
- Baird, R. W., and A. M. Gorgone. 2005. False killer whale dorsal fin disfigurements as a possible indicator of long-line fishery interactions in Hawaiian waters. *Pacific Science* 59:593–601.