



MARINE MAMMAL COMMISSION

15 October 2010

Ms. Malia Chow
Management Plan Review Coordinator
Hawaiian Islands Humpback Whale National Marine Sanctuary
National Ocean Service
6600 Kalanianaʻole Highway, Suite 301
Honolulu, HI 96825

Dear Ms. Chow:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Office of National Marine Sanctuaries' 14 July 2010 *Federal Register* notice (75 Fed. Reg. 40759) announcing its intent to review the management plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary. The Marine Mammal Commission commends the Office for initiating this process and offers the following recommendations and comments.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the Office of National Marine Sanctuaries develop a new management plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary that expands its purpose and scope from one currently focused on conservation of a single species (i.e., humpback whales) to one with an ecosystem perspective. Specifically, the Commission recommends that the Office of National Marine Sanctuaries modify the new sanctuary management plan to—

- expand its scope to include protecting, conserving, and where possible restoring significant biological components and marine habitats occurring between the shoreline and a seaward boundary generally defined by either the 200-m or 100-fathom bathymetric contour (whichever is judged easier for seafarers using the sanctuary to identify) around all eight main Hawaiian Islands;
- adopt a new name for the sanctuary, such as the Main Hawaiian Islands National Marine Sanctuary, and new vision and mission statements that encompasses an ecosystem-based management approach to protect, conserve, and restore marine life, marine habitat, and ecosystem health using management strategies that balance conflicting or competing uses while complementing existing management programs and measures;
- include a clear statement of intent to develop and implement all sanctuary management actions in close consultation with related programs carried out by federal and state agencies and Native Hawaiian organizations with shared responsibilities for conserving living marine resources in the sanctuary boundaries;
- include provisions for establishing an interagency coordinating committee chaired by the Sanctuary's co-superintendents (from the Office of National Marine Sanctuaries and the Hawaii Department of Land and Natural Resources) and having representatives from the National Marine Fisheries Service, the Coast Guard, the Navy, the Western Pacific Regional

Fishery Management Council, key offices of state government, and the Native Hawaiian community;

- following consultation with the National Marine Fisheries Service, direct particular attention to the need for (1) protecting and promoting the reoccupation of the main Hawaiian Islands by Hawaiian monk seals, (2) reducing risks to humpback whales from entanglement in fishing gear and collisions with vessels, (3) minimizing harassment of spinner dolphins by tourboats, private dolphin-watching vessels, swimmers, and divers, (4) monitoring and assisting with the recovery of the insular stock of false killer whales, and (5) responding to stranded or distressed marine mammals; and
- reserve authority to regulate future activities and development including, but not necessarily limited to, vessel traffic, commercial and recreational fishing, sources of acoustic impact that could injure or kill marine life, and installation of structures whose presence or operation could adversely affect features or resources that the sanctuary is established to protect, including marine mammals.

RATIONALE

The Commission offers the following rationale for its recommendations.

The Sanctuary's Management Scope, Vision, and Goals

The Hawaiian Islands Humpback Whale National Marine Sanctuary was established in 1992 to protect humpback whales and their calving and nursing habitat in waters surrounding the main Hawaiian Islands. Its boundaries include waters from the shoreline out to the 100-fathom (183-m) isobath around the island of Lanai and parts of five other islands (Kauai, Oahu, Molokai, Maui, and Hawaii). The principal sanctuary actions taken to protect humpback whales and their habitat have involved efforts to disentangle whales, support research, and educate the public. The actions taken by the sanctuary over the years have been well placed and have created circumstances allowing growth of Hawaii's humpback whale population since the sanctuary's designation.

Presentations and publications prepared by the sanctuary to solicit comments on the sanctuary's future have discussed the possibility of expanding the sanctuary's management scope. A broader scope might include Hawaiian monk seals, other whales and dolphins, sea turtles, corals, significant habitats, and/or submerged cultural resources. These resources currently face a variety of threats that responsible agencies and parties have not been able to address fully. Broadening the sanctuary's scope to an ecosystem level could increase protection for these resources, is consistent with the purposes and policies of the National Marine Sanctuaries Act, and is entirely consistent with the Administration's new national ocean policy.

Therefore, the Marine Mammal Commission recommends that, in revising the management plan for this sanctuary, the Office of National Marine Sanctuaries expand its scope to include protecting, conserving, and where possible restoring significant biological components and marine habitats occurring between the shoreline and a seaward boundary generally defined by either the

200-m or 100-fathom bathymetric contour (whichever is judged easier for seafarers using the sanctuary to identify) around all of the eight main Hawaiian Islands. In some areas, boundaries might include deeper waters so as to protect representative habitats or species assemblages such as deep-water coral beds. In other areas, a shallower depth contour might be warranted to exclude areas zoned, used, or otherwise set aside for particular purposes, such as commercial harbors or areas used by Native Hawaiians (e.g., nearshore waters off Niihau).

To reflect the broader scope recommended here, the Marine Mammal Commission also recommends that the Office of National Marine Sanctuaries take such steps as needed to rename the sanctuary (e.g., the Main Hawaiian Islands National Marine Sanctuary) and create new vision and mission statements that encompass an ecosystem-based management approach to protect, conserve, and restore marine life, marine habitat, and ecosystem health using management strategies that balance conflicting or competing uses while complementing existing management programs and measures. For example, the Office may wish to consider statements reading something like the following:

Vision: To protect, conserve, and, where appropriate and possible, restore the marine life, marine habitat, ecological health, and significant historical relics of the ocean ecosystem that endow the main Hawaiian Islands with a bounty of intrinsic, cultural, economic, recreational, educational, and scientific values.

Mission: Manage the sanctuary in a sustainable manner that respects and balances the needs and rights of all who now enjoy, use, and rely on the sanctuary's benefits; that recognizes and promotes the essential role of partnerships and shared responsibilities of Native Hawaiians, the public, private organizations, and governmental entities with vested interests in their perpetuation; and that preserves undiminished rights and opportunities for all future generations to benefit from and enjoy its blessings.

Specific sanctuary goals might include something such as the following:

- Restore, maintain, and conserve species of endangered, threatened, depleted, and protected wildlife and the biological communities on which they depend
- Restore, maintain, and conserve the ecological health of biological communities and marine habitats
- Promote public awareness, understanding, and support for marine life, marine ecosystems, and related conservation measures
- Where appropriate and possible, involve the public, volunteers, and sanctuary user groups in sanctuary management actions
- Support Native Hawaiian practices consistent with sustainable, long-term protection of marine life and biological communities
- Conduct a seamless management program that coordinates with, complements, and fills gaps in existing federal, state, Native Hawaiian, and private marine conservation programs and initiatives

- Support research and monitoring studies to assess the status of marine species, ecosystem health, and historical relics within the sanctuary and to guide management actions

Interagency Cooperation and Coordination

Currently, virtually all living marine resources within nearshore waters of Hawaii are subject to management authority and conservation measures by various federal, state, local, and Native Hawaiian agencies and organizations. Despite their efforts, significant conservation issues remain unresolved. For example, coral reefs in many areas are dying or being degraded; populations of fish important for commercial and recreational use are being depleted by overfishing; recovery of endangered and threatened species is being impeded by entanglement in fishing gear, collisions with boats, disturbance by vessel traffic and beach-users, ingestion of and entanglement in marine debris, and exposure to diseases introduced by feral and domestic animals; and the integrity of marine habitats is being threatened by various forms of development and use such as the installation of aquaculture facilities, offshore wind farms, and coastal development projects. Often the effectiveness of existing programs to address such issues is limited by staff and funding constraints to conduct research, pursue public outreach, and implement regulatory and enforcement measures. Recognizing the national and international significance of Hawaii's nearshore marine ecosystem, its many endemic species, and its unique position as the world's most remote and isolated tropical reef system, a sanctuary program with an enhanced scope could contribute added resources toward shared conservation objectives.

To be successful, sanctuary managers must ensure that their actions complement and supplement ongoing programs through close partnerships and coordination with other entities. Of particular importance in this regard will be partnerships with the Pacific Islands Regional Office and the Pacific Islands Fisheries Science Center of the National Marine Fisheries Service, the Hawaii Department of Land and Natural Resources, the District Office of the U.S. Coast Guard, and the Native Hawaiian community. The managers of the humpback whale sanctuary have demonstrated the ability to form effective partnerships with those agencies and groups. The new management plan must emphasize the importance of such partnerships and of conducting all sanctuary management actions using a cooperative, coordinated approach.

Accordingly, the Marine Mammal Commission recommends that the Office of National Marine Sanctuaries revise the new sanctuary management plan to include a clear statement of intent to develop and implement all sanctuary management actions in close consultation with related programs carried out by federal, state, local, and Native Hawaiian agencies and organizations with shared responsibilities for conserving living marine resources within the sanctuary boundaries. To that end, the Marine Mammal Commission also recommends that the Office of National Marine Sanctuaries revise the plan to include provisions for establishing an interagency coordinating committee chaired by the Sanctuary's co-superintendents (from the Office of National Marine Sanctuaries and the Hawaii Department of Land and Natural Resources) and including representatives from the National Marine Fisheries Service, the Coast Guard, the Navy, the Western Pacific Regional Fishery Management Council, key offices of state government, and the Native

Hawaiian community. Such a committee could meet regularly (perhaps quarterly) to review ongoing and planned research and management activities within their respective agencies that bear on the conservation of marine life within sanctuary boundaries and identify or refine agency roles and partnerships for carrying out management initiatives.

Management Activities

The Commission's understanding is that the sanctuary management plan calls for developing a series of action plans to identify those activities that will form the core of sanctuary work over the next 5 to 10 years, or prior to the next management plan review. To reflect the broad management scope recommended here, the Commission believes that it would be appropriate to include separate action plans for major species groups, such as marine mammals, sea turtles, seabirds, and corals, as well as action plans for overarching initiatives relating to multiple species or species groups. Action plans for species groups could then identify strategies and measures to help conserve species of special management concern, while overarching topics, such as assisting with responses to stranded or distressed marine mammals or sea turtles, developing broad public outreach and education activities, and promoting and maintaining cooperation among key agency and group partners, also might be addressed under separate action plans. With regard to marine mammals, the Marine Mammal Commission recommends that the Office of National Marine Sanctuaries consult with the National Marine Fisheries Service and, based on that consultation, revise the management plan to direct particular attention to the need for (1) protecting and promoting the reoccupation of the main Hawaiian Islands by Hawaiian monk seals, (2) reducing risks to humpback whales from entanglement in fishing gear and collisions with vessels, (3) minimizing harassment of spinner dolphins by tour boats, private vessels used for dolphin-watching, swimmers, and divers, (4) monitoring and assisting with the recovery of the insular stock of false killer whales, and (5) responding to stranded or distressed marine mammals. For the individual marine mammal species of concern, the Commission suggests that marine sanctuary staff consult with the National Marine Fisheries Service on proposed efforts to assist with or assume a lead role in the following research and management areas.

Hawaiian monk seals: Develop new programs to (a) fund or support studies to assess and monitor population trends, prey preferences and foraging habitats, and/or at-sea habitat-use patterns; (b) carry out public outreach and education programs targeting grade school children, recreational fishermen, swimmers and divers, beach-goers, and tourists; (c) coordinate volunteer networks on one or more islands to respond to seals that haul out on crowded beaches and need protection from disturbance by people; and (d) respond to distressed seals, such as abandoned pups, or seals that are sick, injured, hooked, or entangled in fishing nets or debris.

Humpback whales: Continue ongoing sanctuary programs to (a) support research on the status of the population, (b) disentangle whales caught in fishing gear, (c) promote international collaboration on protecting whales in different portions of their range; and (d) implement public outreach and education programs on whales and measures to minimize impacts associated with whale watching and vessel traffic. In addition, the sanctuary should develop regulations limiting

vessel speeds in specific areas where collision risks with whales, particularly cow-calf pairs, are greatest.

Spinner dolphins: Develop new programs to (a) fund or support research and monitoring studies to assess the abundance and trends of spinner dolphin populations and the impact of dolphin-watching tour vessels, private boats, and divers on spinner dolphin habitat-use patterns, (b) conduct public outreach and education programs on spinner dolphins and needed protection measures, (c) develop a mandatory permit program with rules of conduct for guided dolphin-watching tour operators, and (d) if ongoing studies demonstrate that closing areas of bays is a useful approach for reducing sources of disturbance for resting dolphins, develop regulations to establish safe, undisturbed spinner dolphin resting areas.

False killer whales: Monitoring the distribution, abundance, and trend of the Hawaii insular population of false killer whales and interactions between members of that population and near-shore fisheries, such as the shoreline and kaka line fisheries.

The Commission also believes that new regulations are needed to limit vessel speeds, both to protect whales and to ensure human safety. Such limits are justified by the significant increase in vessel/whale collisions and the fact that this is one of the world's largest concentrations of breeding and calving humpback whales. Speed restrictions may not be necessary throughout the sanctuary but could be focused on areas where collision risks are greatest and affect the most vulnerable whales. Mothers and calves are most vulnerable to vessel collisions because they spend greater amounts of time at or close to the surface. Mothers and calves also are arguably the most crucial component of the population, given their essential role in reproduction and population growth. Available information suggests that mother-calf pairs occur most often relatively close to shore in areas protected from wind and wave action (Smultea 1994, Ersts and Rosenbaum 2003). Nearshore areas also have higher collision risks due to higher levels of vessel traffic. For those reasons, speed regulations would be most appropriate in waters within two or three miles of shore or the 100-fathom contour, whichever is closest, along much of the southern coast of Maui and the northwestern coast of the island of Hawaii.

With regard to spinner dolphins, the Commission understands that the National Marine Fisheries Service is proceeding with a study to determine the effects of no-entry areas in certain coastal bays of Hawaii on spinner dolphin habitat-use patterns and abundance. If the results conclude that closing portions of bays to vessel traffic and swimmers is useful for preventing harassment or improving spinner dolphin survivorship or reproduction rates, then the sanctuary may be able to play a role in protecting them under a new management plan. For example, the sanctuary could consider permanent closure of areas deemed important for spinner dolphins or approach limits for boats, divers, and swimmers.

Finally, the sanctuary may be able to play an important role in addressing certain activities that have a clear potential for adversely affecting marine species and biological communities in waters surrounding the main Hawaiian Islands. For example, commercial and recreational fishing

can incidentally take protected species, vessel traffic can kill, injure, or disturb individual animals, powerful sonar devices may injure or kill marine mammals and other marine species, and the installation of facilities or structures such as aquaculture pens or waste outfalls can preempt or modify habitat for marine life or introduce sources of pollution or disturbance to marine life. In many cases, the need or justification for regulatory measures may not be immediately apparent or may arise only after some future development proposal is made. In other cases, a need may be apparent, but further study is required to determine the most effective measures. For such activities where specific regulatory provisions may be needed in the foreseeable future but cannot be identified or developed as part of the ongoing management plan review, sanctuary managers should have authority to implement regulations as new information develops.

The Commission's understanding is that sanctuary management policies require that all activities that may be subject to sanctuary regulation under an adopted plan, including those for which no regulatory action may be contemplated or planned at the time a revised management plan is adopted, must be identified in a "sanctuary designation document" developed as part of the sanctuary management plan. Recognizing that sanctuary management plans may remain in effect for five or more years, the Commission believes that the management plan and associated sanctuary designation document for this sanctuary should preserve an ability to adopt timely regulatory measures for activities that reasonably could be anticipated to pose a significant risk to sanctuary resources. In this regard, the Marine Mammal Commission recommends that the Office of National Marine Sanctuaries revise the management plan and associated designation document to reserve authority to regulate future activities and development including, but not necessarily limited to, vessel traffic, commercial and recreational fishing, sources of acoustic impact that could injure or kill marine life, and installation of structures whose presence or operation could adversely affect features or resources that the sanctuary is established to protect, including marine mammals.

I hope these recommendations and comments are helpful. Please contact me if you have any questions about them.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Literature Cited

- Ersts, P.J., and H.C. Rosenbaum. 2003. Habitat preference reflects social organization for humpback whales (*Megaptera novaeangliae*) on a wintering ground. *Journal of Zoology (London)* 260:377–345.
- Smultea, M.A. 1994. Segregation by humpback whale (*Megaptera novaeangliae*) cows with a calf in coastal habitat near the island of Hawaii. *Canadian Journal of Zoology* 72:805–811.