



# MARINE MAMMAL COMMISSION

26 March 2010

Ms. Lisa Van Atta  
Assistant Regional Administrator  
Protected Resources Division, Pacific Islands Region  
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 proposal to authorize for three years the incidental taking of humpback whales from the endangered Central North Pacific stock in the Hawaii-based longline fisheries (75 Fed. Reg. 8305).

## RECOMMENDATIONS

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

- comply with section 101(a)(5)(E) of the Marine Mammal Protection Act and issue the permit to authorize incidental take of individual humpback whales in the Hawaii-based deep-set and shallow-set longline fisheries; and
- reexamine the criteria for authorizing the incidental take permit to determine whether they are still satisfied if the Service's five-year status review of humpback whales identifies a new stock structure.

## RATIONALE

Under certain criteria, section 101(a)(5)(E) of the Marine Mammal Protection Act requires the National Marine Fisheries Service to issue permits to authorize the incidental take in commercial fisheries of marine mammal species or stocks listed as threatened or endangered under the Endangered Species Act. Those criteria are that the incidental take will have a negligible impact on the listed marine mammal stock, an Endangered Species Act recovery plan has been or is being developed, and fishing vessels are in compliance with registration, monitoring, and any applicable take reduction programs.

The Service has reviewed the available information on humpback whale takes in these fisheries and determined that the criteria have been satisfied. The Service has analyzed humpback whale take rates in the Hawaii-based longline fisheries using observer data and other visual reports spanning multiple years. Observations of take are relatively infrequent and, combined with the relatively rapid increase of the Central North Pacific stock (as indicated in the 2009 marine mammal stock assessment report), indicate that the level of take is likely negligible. In addition, an Endangered Species Act recovery plan is in place, vessels are properly registered, and observer

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coverage (at least 20 percent) is sufficiently high to instill confidence in the take estimate. The Service has not prepared a take reduction plan, in part because of insufficient funding but also because the case for convening a team is not compelling. Under these circumstances, the Marine Mammal Commission recommends that the National Marine Fisheries Service comply with section 101(a)(5)(E) and issue the permit to authorize incidental take of individual humpback whales in the Hawaii-based deep-set and shallow-set longline fisheries.

In a related matter, on 12 August 2009 the Service initiated a five-year status review for the humpback whale, which is not yet complete. The Service is compiling and reviewing the best available scientific and commercial data to ensure that the Endangered Species Act listing classification is warranted, and its review includes an evaluation of information related to the conservation status and stock structure of humpback whales in the North Pacific. Therefore, the Marine Mammal Commission recommends that, if the National Marine Fisheries Service's five-year status review of humpback whales identifies a new stock structure and factors that compromise the conservation of those stocks, the Service reexamine the criteria for authorizing the incidental take permit to determine if they are still satisfied.

Please contact me if you have any questions about our recommendations and rationale.

Sincerely,

A handwritten signature in blue ink that reads "Suzanne Montgomery for". The signature is written in a cursive style.

Timothy J. Ragen, Ph.D.  
Executive Director