



MARINE MAMMAL COMMISSION

19 June 2015

Malia Chow, Superintendent
Hawaiian Islands Humpback Whale National Marine Sanctuary
National Oceanic and Atmospheric Administration
Daniel K. Inouye Regional Center
1845 Wasp Boulevard, Building 176
Honolulu, HI 96818

Dear Ms. Chow:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Hawaiian Island Humpback Whale National Marine Sanctuary's (the Sanctuary) Draft Management Plan and Draft Environmental Impact Statement and offers the following comments and recommendations. The Commission supports expansion of the Sanctuary's scope to include an ecosystem-based management focus and believes that this would significantly improve efforts to conserve marine mammals and their habitat in the Main Hawaiian Islands (MHI). The Commission urges that your Office also devote particular attention to promoting the recovery of Hawaiian monk seals.

Background

The Draft Management Plan is the product of a six-year review of the Sanctuary's management program. In part it proposes an expansion of (1) the scope of Sanctuary management, (2) Sanctuary boundaries, and (3) regulatory provisions. The proposed management scope would be expanded from a largely single-species focus on humpback whales to an ecosystem-based management focus that would include all major ecosystem components including marine mammals. According to a newly proposed mission statement for the Sanctuary, management would seek to promote a holistic and adaptable management approach that perpetuates the natural health of the environment, supports sustainable use, fosters local stewardship and community involvement, and perpetuates the cultural heritage of Hawaii. To reflect the new scope, the name of the Sanctuary would be changed to the Hawaiian Island National Marine Sanctuary—Nā Kai 'Ewalu.

Boundaries for the five current Sanctuary segments would be expanded from their current size of 1,370 mi² by adding 218 mi², most of which would comprise a sixth Sanctuary segment including all waters within the 100-fathom bathymetric contour around Niihau and Lehua Rock. Other smaller additions would be made to Sanctuary segments on the north shores of Kauai and Oahu and the southern margins of Penguin Bank. Most waters around Kauai, Oahu, Maui, and Hawaii would not be included in the Sanctuary, and all waters around Kahoolawe would be excluded. Regulatory measures would address the following activities: vessel approaches of less than 100 yards to humpback whales, overflights of less than 1,000 feet above humpback whales, taking or possession of certain marine species, material discharges or disposal, altering submerged lands, use

of explosives, introducing alien species, and removing or damaging historical or cultural resources. Depending on the alternatives, restrictions on these activities would apply to all Sanctuary waters, or only to all or a subset of three special management areas within the Sanctuary. The three special management areas include (1) Penguin Bank, (2) Maui Nui, (i.e., a portion of the shallow waters between Molokai, Maui, and Lanai), and (3) Maunalua Bay (i.e., a bay off southeastern Oahu). To achieve its mission, Sanctuary management also would promote local community stewardship of Hawaii's ocean resources both within and around Sanctuary boundaries, as well as research to improve understanding of the status and interrelationships of those resources.

Boundaries

The proposed boundaries include habitat for many marine mammal species facing various conservation issues. Although the amount and significance of marine mammal habitats contained in Sanctuary boundaries varies greatly by species, the Commission believes the most pressing need with regard to marine mammals in the proposed boundaries is the recovery of Hawaiian monk seals. In this regard, the Draft Management Plan indicates that boundaries for the Sanctuary would be expanded to include all waters within 3 nmi of Niihau and Lehua Rock. This includes some of the most important habitat for Hawaiian monk seals, and with its existing boundaries and other proposed additions, the Sanctuary would include important monk seal habitat off all of MHI except that at Kahoolawe.

The MHI monk seal population currently numbers approximately 150 seals and is increasing. A 2014 survey of Niihau recorded over 60 seals (Lopez et al. 2014), suggesting that perhaps half of all MHI seals currently occur on that island and in waters around it. In general, the Commission believes that the proposed additions to the Sanctuary boundaries, in combination with its current extent, would include an important portion of the monk seal habitat around all of the MHI except Kahoolawe. Indeed, NMFS is currently considering designation of much of this area as critical habitat for Hawaiian monk seals. This should help provide a solid basis for Sanctuary managers to assist with monk seal recovery on all inhabited islands in the MHI. The Commission supports the proposed boundary expansion and recommends that the Sanctuary incorporate all proposed boundary additions to the Hawaiian Islands National Marine Sanctuary.

Management scope

Section 4.2 of the Draft Management Plan notes that Sanctuary management would be expanded from its current focus on conservation of humpback whales to embrace a broader ecosystem-based perspective guided by traditional native Hawaiian principles of resource management. The Commission was one of many commenters that urged a broader ecosystem-based approach in its 15 October 2010 letter (see enclosure) during the scoping phase of the management plan review and is pleased to see that approach is being proposed. The Commission fully supports the Sanctuary's plans in this regard and recommends that the Sanctuary implement the ecosystem-based management approach to protect marine resources in the Sanctuary as proposed and described in the Draft Management Plan. While an ecosystem-based approach embodies a broad perspective able to account for complex interrelationships between physical and biological components of the environment, it also must take into account the need for special attention to ecosystem components that are in poor shape. In this regard, the Commission believes the restoration of a healthy monk seal population is currently the most important priority with regard to

ensuring that the marine mammal components of Hawaii's marine ecosystems are able to properly meet their functional roles in maintaining the health of the Sanctuary ecosystem as envisioned in the Sanctuary's mission statement.

Regulations

Section 5.2.2.2 of the approach regulations describes revised regulations governing vessel approaches to humpback whales that would apply to all designation alternatives. Those proposed regulations are consistent with current regulatory language adopted by the National Marine Fisheries Service (NMFS) establishing a 100-yard approach limit to humpback whales in Hawaii (50 CFR §224/103). The Commission notes, however, that the Sanctuary's website also lists whale-watching guidelines¹ that recommend additional measures prudent vessel operators should follow, including procedures for maneuvering vessels away from whales after whale-watching interludes. The proposed regulations do not contain any provisions for when a vessel finds itself within 100 yards of a whale or for how to safely move away in such instances.

Whale-watching vessel operators who follow approach restrictions and stop beyond 100 yards may still find themselves closer than 100 yards if whales happen to move closer to them after the vessel stops. Accordingly, the Commission believes that whale approach regulations should include operational standards for vessel operators who find themselves closer than 100 yards. In such cases, to minimize chances of disturbing or injuring the whale, the Commission believes that vessel operators should either disengage their engines until the whale moves away or veer away from the whale at a slow speed (e.g., less than 7 mi/hr) without sudden changes in course or speed until they are well beyond 100 yards of the whale (e.g., 0.5 mi) recognizing that other unseen whales may be nearby. Therefore, the Commission recommends that the Sanctuary either (1) consult with NMFS to develop additional provisions for the proposed humpback whale approach regulations that set forth actions vessel operators should take when whales approach closer than 100 yards or (2) if such regulatory language cannot be developed before a decision is made on the proposed regulations, that the Sanctuary's Draft Management Plan and the terms of designation be revised to authorize the modification of approach regulations to include such provisions at a later date.

The revised regulations for approaching humpback whales and a new regulation prohibiting the disturbance of cultural and historical resources would apply Sanctuary-wide, under Alternative 3 (the Preferred Alternative). Other new Sanctuary regulations would apply only in selected "special management areas" within the Sanctuary (i.e., Penguin Bank, Maui Nui, and Maunalua Bay) under Alternative 3. Regulations in those areas would prohibit (1) taking and possessing protected marine species (including marine mammals, sea turtles, and seabirds), (2) discharging or depositing materials other than certain specified exceptions (e.g., fish parts, routine vessel discharges, and engine exhaust), (3) altering the seabed except in certain specified situations (e.g., anchoring, maintaining docks or seawalls, installing navigation aids, maintaining harbors, and conducting state or federally permitted aquaculture projects), (4) possessing or using explosives, and (5) introducing exotic species. All of those prohibitions, however, would be included throughout the Sanctuary under Alternative 4. According to the summary comparison of alternatives provided in Table 40 (pages 221 to 225) Sanctuary-wide application would increase protection for Sanctuary resources while generally causing no more than "minimal inconvenience" to Sanctuary users.

¹ http://hawaiihumpbackwhale.noaa.gov/explore/whale_guidelines.html

In the Commission's view the draft document does not provide an adequate discussion comparing the advantages and disadvantages of Alternatives 3 (the Preferred Alternative) and 4 (Sanctuary-wide application of all considered regulations). In particular, it does not provide a compelling reason or adequate discussion as to why the above measures for special management areas should not be applied Sanctuary-wide given the proposed holistic ecosystem-based management approach. In the case of exotic species, for example, organisms that are introduced and establish themselves outside a special management area could easily spread into those areas. Thus, limiting the restriction for introducing such species only to special management areas does not appear to be an effective management strategy. The Commission recommends that, unless the Draft Management Plan is revised to explain why regulatory measures proposed for special areas should not apply Sanctuary-wide, the Sanctuary adopt Alternative 4 and apply all regulations now proposed only for special management areas (i.e., regulations on taking or possessing protected marine species, discharging materials, altering the seabed, using explosives, and introducing exotic species) throughout the Sanctuary.

Non-regulatory actions and Action Plans

The Draft Management Plan describes 15 Action Plans containing over 250 specific activities to help achieve the Sanctuary's ecosystem-based management goals and objectives. All of those plans and activities are thoughtful, constructive, and well justified. However, they also reflect an ambitious program that will require extensive coordination, prioritization, and funding. To oversee the identified tasks, the Plan indicates that Sanctuary managers will rely on the Sanctuary Advisory Council, formal arrangements for Sanctuary co-management with the state, and collaboration with various Native, volunteer, and educational groups and government agencies. However, mechanisms for coordinating involved groups, particularly federal and state partners retaining authority over programs vital for achieving the Sanctuary's goals, are less clear. Although the Draft Management Plan clearly notes the need for many partnerships and cooperation, it does not seem to include an overarching mechanism for sharing information on ongoing activities, plans, and perspectives and for discussing how Sanctuary efforts and capabilities could be applied most effectively.

To meet this need, the Commission recommends that the Sanctuary expand the Draft Management Plan to include, in either the "Understanding and Managing Species and Habitat" or the "Operational Foundation" Action Plan, provisions for establishing an interagency coordinating committee that would be chaired by the Sanctuary's co-superintendents and include key representatives of other agencies and groups. Participants in such a committee, in addition to the co-chairs, should include, *inter alia*, NMFS, the Fish and Wildlife Service, Coast Guard, Navy, Western Pacific Regional Fishery Management Council, relevant offices of state government, Native Hawaiian community, and University of Hawaii. Such a committee should meet regularly (perhaps twice a year) to review ongoing and planned research and management activities by the various agencies and groups that engage in the conservation of marine life and marine habitats within the Sanctuary and surrounding areas. Such a committee also can serve to identify opportunities for cooperation and partnerships for carrying out relevant research and management initiatives.

The Commission welcomes the opportunity to comment on the Draft Management Plan and Draft Environmental Impact Statement. The Marine Mammal Commission commends the

Ms. Malia Chow
19 June 2015
Page 5

Sanctuary for its efforts to expand the scope of the Sanctuary's management to improve protection of all ecosystem components. If you or your staff has questions, please let me know.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

Enclosure

Reference

Lopez, J., T. Wurth, and C. Littnan. 2015. Report on Hawaiian monk seal survey on Niihau Island, 2014. PIFSC Data Report DR-14-017. National Marine Fisheries Service, Pacific Island Fisheries Science Center, Honolulu, Hawaii. 9 pages.



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.

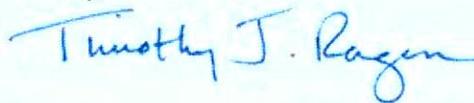
Finally, the sanctuary may be able to play an important role in addressing certain activities that have a clear potential for adversely affecting marine species and biological communities in waters surrounding the main Hawaiian Islands. For example, commercial and recreational fishing

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.