



# MARINE MAMMAL COMMISSION

3 August 2009

Mr. William L. Robinson  
Regional Administrator, Pacific Islands Region  
National Marine Fisheries Service  
1601 Kapiolani Boulevard, Suite 1110  
Honolulu, HI 96814-4700

Dear Mr. Robinson:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the notice of proposed rulemaking regarding the Hawaii-based shallow-set longline fishery (74 Fed. Reg. 29158). The Commission offers the following recommendations and comments.

## RECOMMENDATIONS

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

- (1) conduct the research needed to clarify the stock structure of the marine mammal species that may be taken in the Hawaii shallow-set longline fishery, (2) complete the surveys needed to provide up-to-date, reliable estimates of stock abundance, and (3) revise the potential biological removal level of each stock;
- fund observer coverage for all western Pacific fisheries at levels needed to obtain reasonably accurate and precise estimates of marine mammal takes;
- evaluate all observed and documented fisheries-related injuries to humpback whales to determine whether they were serious and consider them as such in the absence of definitive information;
- convene a take reduction team to address false killer whale bycatch in the Hawaii deep-set longline fishery in the Pacific Islands area but also include the Hawaii shallow-set longline fishery and the stocks taken in that fishery under the purview of the team;
- limit the increase in fishing effort to relatively small increments to ensure that the fishery remains ecologically sustainable; and
- maintain 100 percent observer coverage of the shallow-set longline fleet and continue to improve the real-time reporting of marine mammal and sea turtle interactions to ensure that interaction limits are not exceeded.

## RATIONALE

The Hawaii shallow-set longline fishery is a category II fishery under the Marine Mammal Protection Act and interacts with bottlenose dolphins, Bryde's whales, humpback whales, Risso's dolphins, pygmy sperm whales, and sperm whales. With the exception of central North Pacific

humpback whales, the stock structure for these marine mammals is poorly known. In addition, the abundance of most of these stocks and their total fisheries-related mortality also are poorly known. Thus, the Service's basis for managing this fishery and related fisheries (i.e., those that also take individuals from these stocks) falls well short of that envisioned in section 118 of the Marine Mammal Protection Act. To obtain the necessary information on stock status, the Marine Mammal Commission recommends that the Service (1) conduct the research needed to clarify the stock structure of the marine mammal species that may be taken in the Hawaii shallow-set longline fishery, (2) complete the surveys needed to provide up-to-date, reliable estimates of stock abundance, and (3) revise the potential biological removal level of each stock. These efforts should be undertaken prior to any proposed increases in fishing effort. In addition, the Service must improve its assessment of fisheries-related take of these stocks. The full observer coverage of the Hawaii shallow-set longline fishery is clearly an important step toward that end, but suitable coverage also is needed for other western Pacific fisheries. Accordingly, the Marine Mammal Commission recommends that the National Marine Fisheries Service fund observer coverage for all western Pacific fisheries at levels needed to obtain reasonably accurate and precise estimates of marine mammal takes. The Service's report, *Revisions to Guidelines for Assessing Marine Mammal Stocks* (GAMMS II), recommends a coefficient of variation of 0.30 to ensure adequate precision. Assessing the accuracy of abundance estimates will be more difficult but, at the least, it will require studies of each stock's distribution and movements to plan suitable abundance surveys.

In the proposed rule, the Service states that the preferred alternatives "may affect, and are likely to adversely affect, humpback whales...." At the current reduced level of fishing effort, observers have documented two interactions between the shallow-set fishery and humpback whales since 2004, one in 2006 and another in 2008. Both were recorded merely as injuries, with no indication as to whether they were or were not serious. Such information is important for characterizing the fate of the animals and making informed determinations regarding the total effect of fishery interactions on humpback whales. That is, incidental takes of humpback whales in this fishery would appear to have few population-level consequences but must be combined with those from other fisheries to provide a comprehensive understanding of fishery effects on these whales. The Marine Mammal Commission therefore recommends that the Service evaluate all observed and documented fisheries-related injuries to humpback whales to determine whether they were serious and consider them as such in the absence of definitive information. Taking a conservative or precautionary approach in the face of incomplete data is essential to ensure that the whale populations involved are given adequate protection and to provide an incentive for collecting better information in the future.

Following its annual meeting in Hawaii in 2004, the Commission recommended that the Service convene a take reduction team for false killer whales in the Pacific Islands region to develop a broad range of options for reducing take levels. The Hawaii deep-set longline fishery bycatch of false killer whales exceeds the calculated potential biological removal level for the Hawaii stock by 300 percent. Likewise, the Hawaii shallow-set longline fishery takes individuals from a number of other stocks (e.g., Risso's dolphins, bottlenose dolphins, and central North Pacific humpback whales), which is one indicator of the need for take reduction efforts. A well-run take reduction team is the best mechanism to bring relevant stakeholders together to discuss and evaluate the

various options, impacts, and solutions to marine mammal bycatch in commercial fisheries. Therefore, the Marine Mammal Commission reiterates its recommendation that the National Marine Fisheries Service convene a take reduction team to address false killer whale bycatch in the Hawaii deep-set longline fishery in the Pacific Islands area but also include the Hawaii shallow-set longline fishery and the stocks taken in that fishery under the purview of the team. Doing so seems a more efficient use of limited resources than convening separate teams.

Finally, the primary objective of the Marine Mammal Protection Act is to maintain the health and stability of the marine ecosystem. With that in mind, the Commission will take a broad perspective and comment on matters related to the interaction of the subject fishery with sea turtles—specifically, loggerheads and leatherbacks. In many respects, the challenges of managing sea turtle and marine mammal bycatch in fisheries are similar.

The Commission understands that the National Marine Fisheries Service is responsible for promoting optimum sustainable yield from fisheries in accordance with National Standard 1 in the Magnuson-Stevens Fishery Conservation and Management Act. However, that Act defines “optimum” (with respect to yield) based on the maximum sustainable yield as reduced by any relevant economic, social, or ecological factor. Although the existing evidence appears to indicate that the number of interactions with listed sea turtle species has been reduced significantly, in at least one year those interactions were sufficient to close the fishery. Therefore, these takes have an ecological consequence that must be taken into account. The Commission questions whether the proposed increase in fishing effort (more than doubling the current number of sets) is prudent, at least in one large step. Rather, incremental increases (e.g., 10 percent per year) would make more sense to ensure (1) the take of turtles does not exceed acceptable levels and (2) the fishery does not become overcapitalized and then have to be curtailed because of increased levels of take. In addition, fishery managers and participants should not consider the serious injury and mortality take limit to be an acceptable level of taking, or a quota as such, when recovery of these turtle stocks would be best achieved by reducing the number of takes to the lowest possible level. For these reasons, the Marine Mammal Commission recommends that the National Marine Fisheries Service limit the increase in fishing efforts to relatively small increments to ensure the fishery remains ecologically sustainable.

Even with the proposed adjustment for allowable takes of loggerhead turtles, loggerhead and leatherback sea turtles are so depleted that they have a very low tolerance for fishery-related serious injury or death. A reliable means of determining when and if the shallow-set fishery approaches that level of takes appears to be essential for conservation of these species. At present, 100 percent observer coverage is the only reliable means of determining when turtles have been taken. Furthermore, real-time reporting of takes is essential for determining when the take limit has been reached and fishing must be halted. For those reasons, the Marine Mammal Commission recommends that the Service maintain 100 percent observer coverage of the shallow-set longline fleet and continue to improve the real-time reporting of marine mammal and sea turtle interactions to ensure that interaction limits are not exceeded.

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Please contact me if you have any questions regarding the Commission's recommendations and comments.

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