

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

4 August 2008

Ms. T. Aulani Wilhelm
Monument Superintendent (NOAA)
6600 Kalanianaʻole Highway, Room 300
Honolulu, HI 96825

Dear Ms. Wilhelm:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the proposed rule and regulations published jointly by the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service in the 7 July 2008 *Federal Register*. The proposed regulations would establish a new mandatory ship reporting system and alter the configuration of the “Areas To Be Avoided” in the Papahānaumokuākea Marine National Monument. We offer the following recommendation and comments.

RECOMMENDATIONS

The Marine Mammal Commission finds the proposed rule to be appropriate and useful for improving protection of marine mammals and other wildlife in the Northwestern Hawaiian Islands, and we support its adoption, with one addition. The Marine Mammal Commission recommends that the National Oceanic and Atmospheric Administration and the Fish and Wildlife Service—

- modify section 404.4 of the proposed regulations to (a) ensure that all vessels in the reporting area or Monument immediately report any emergencies, (b) clarify that emergencies include any accidents, pollution incidents, or losses of cargo that could pose a risk to natural and cultural resources, and (c) identify the types of information to be reported in cases of emergencies;
- adopt the proposed rule, as modified by our suggestion, and proceed to establish the new mandatory ship reporting system and the revised boundaries of the Areas To Be Avoided in the Papahānaumokuākea Marine National Monument, and
- design the mandatory ship reporting system to include a brief return message describing why special precautions are needed in the area, the Areas To Be Avoided, other relevant protection measures, and other appropriate information (e.g., permit requirements for any activity other than uninterrupted travel through the Monument waters).

RATIONALE

The changes in the proposed rule (i.e., establishing the ship reporting zone and modifying the boundaries of the Areas To Be Avoided) would fulfill obligations made by the United States Government when the International Maritime Organization approved designation of the waters around the Northwestern Hawaiian Islands as a “Particularly Sensitive Sea Area” in April 2007. The *Federal Register* notice states that “requiring vessels to notify NOAA upon entering the reporting area will help make the operators of these vessels aware that they are traveling through a fragile area with potential navigational hazards such as extensive coral reefs and many shallow areas of the

Monument.” The mandatory ship reporting system would require all U.S. vessels and all foreign vessels greater than 300 gross tons that are entering or leaving a U.S. port to contact a shore station when they enter or leave an area within 10 miles of the Papahānaumokuākea Marine National Monument. Contact would be made by e-mail through a satellite communications system operated by the Coast Guard and NOAA. Upon entering the area, vessel operators would be required to identify the ship by name and provide contact information, route and speed, planned course through the reporting area, categories of hazardous cargo on board, and certain other information. Upon exiting the area, operators would have to report any pollution incidents or loss of goods that occurred while transiting the Monument, the reporting area, or the U.S. Exclusive Economic Zone. The notice also states that vessel operators would be required to report when “experiencing any emergency while crossing through the reporting area.” The reporting system boundaries would be added to regional navigation charts. Vessels that are not subject to the International Maritime Organization’s mandatory reporting provisions would be encouraged to comply voluntarily.

With one exception, the Commission concurs with these reporting requirements. In the Commission’s opinion, the proposed regulations are not sufficiently clear as to when and which ships would be required to report a pollution event or the loss of goods that might pose a risk to Monument resources. The preamble to the proposed rule states that “all U.S. vessels, all foreign flag vessels 300 gross tons or greater that are going to or coming from a U.S. port or place, and all foreign flag vessels of any size coming from a U.S. port or place and experiencing an emergency while crossing through the reporting area” would be required to participate in the reporting system. The only reference to emergency reporting, however, is in section 404 (c) (3), which appears to apply only to ships other than U.S. vessels and vessels 300 gross tons or greater that are entering or departing a U.S. port or place. In addition, that section does not specify that reports of emergencies must be sent as soon as the incident is detected, whether a pollution event or loss of goods is considered an “emergency,” or precisely what information must be reported in an emergency or pollution event. Prompt reporting of such events would enhance the probability of a successful response. Therefore, the Marine Mammal Commission recommends that NOAA and the Fish and Wildlife Service modify section 404.4 of the proposed regulations to (a) ensure that all vessels in the reporting area or Monument immediately report any emergencies, (b) clarify that emergencies include any accidents, pollution incidents, or losses of cargo that could pose a risk to natural and cultural resources, and (c) identify the types of information to be reported in cases of emergencies.

Under regulations pertaining to the Areas To Be Avoided, ships of certain classes would be obliged to take voluntary measures to avoid transiting through certain designated waters because of navigation hazards and heightened risks to certain resources. Here, again, the purpose is to reduce the possibility that vessels would run aground on shallow reefs or otherwise cause harm to corals and other biota that make up the Monument’s sensitive biological ecosystem. The provisions of this rule are appropriate, and the Marine Mammal Commission recommends that NOAA and the Fish and Wildlife Service adopt the proposed rule, as modified by our suggestion, and proceed to establish the new mandatory ship reporting system and the revised boundaries of the Areas To Be Avoided in the Papahānaumokuākea Marine National Monument.

Ms. T. Aulani Wilhelm
4 August 2008
Page 3

Although not mentioned in the *Federal Register* notice, we understand that ships reporting under the mandatory system may be sent a return confirmation message that provides information relevant to special precautions needed in the area. For example, vessel operators contacting mandatory ship reporting systems on the U.S. East Coast are sent return messages that include recent right whale sighting locations, advice on speed and routing to avoid collisions with whales, and sources of additional information on relevant regulations and navigation precautions. Such messages are helpful in ensuring that vessel operators are informed about the need for such protective measures. Sending an informative return message also could further resource protection goals for the Monument. Therefore, the Marine Mammal Commission recommends that NOAA and the Fish and Wildlife Service design the mandatory ship reporting system to include a brief return message describing why special precautions are needed in the area, the Areas To Be Avoided, other relevant protection measures, and other appropriate information (e.g., permit requirements for any activity other than uninterrupted travel through the Monument waters).

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

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director