

MARINE MAMMAL COMMISSION  
4340 EAST-WEST HIGHWAY, ROOM 905  
BETHESDA, MD 20814

25 January 2005

Peter T. Young, Chairman  
Department of Land and Natural Resources  
State of Hawaii  
1151 Punchbowl Street, Room 130  
Honolulu, HI 96809

Dear Chairman Young:

The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals held their annual meeting 26-28 October 2004 in Hawaii to review issues related to the conservation of marine mammals, with a special focus on Hawaii and the Pacific islands area. We were pleased that you and some of your staff from the State of Hawaii Department of Land and Natural Resources (DLNR) were able to participate in our discussions. You collectively provided much valuable information and useful insight into the issues that we jointly face.

On the basis of the discussions during our meeting and other information reviewed by us, the Commission and Committee commend DLNR on the many positive measures that it has taken to conserve living marine resources in the Hawaiian Islands region. We particularly commend the major efforts that DLNR staff have made to work cooperatively with their resource management counterparts in federal agencies. We congratulate you on the progress that has been made to conclude a cooperative agreement on managing monk seals with the National Marine Fisheries Service (NMFS) pursuant to provisions of section 6 of the Endangered Species Act (ESA). Also, we commend all participants in the range-wide population study of humpback whales in the Pacific Ocean, particularly the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) of which the State of Hawaii is co-manager.

We offer the following recommendations on additional steps that we think the State of Hawaii and DLNR should take to further conservation of marine mammals and their ecosystems in the Pacific islands region.

- **The Marine Mammal Commission recommends that the State of Hawaii, the National Oceanic and Atmospheric Administration (NOAA), and the Fish and Wildlife Service conclude a Memorandum of Agreement (MOA) to coordinate their management efforts in the Northwestern Hawaiian Islands (NWHI).**

Within the NWHI there are a number of adjacent and sometimes overlapping conservation units and legal jurisdictions including the State of Hawaii's Kure Island Wildlife Refuge and a proposed marine refuge for all state waters around emergent lands in the NWHI; the NWHI Coral Reef Ecosystem Reserve and a potential NWHI national marine sanctuary; the U.S. Exclusive Economic Zone; critical habitat and a protected resource zone established by NMFS to protect

monk seals; and the Hawaiian Islands and Midway Atoll National Wildlife Refuges. The need for strong cooperation on managing marine resources in this region is obvious, and development of a MOA to formalize cooperation was mandated by President Clinton in Executive Order 13178. In 2001 regional offices of NOAA's National Marine Sanctuary Program (NMSP) and NMFS, the Fish and Wildlife Service, and the State of Hawaii, began drafting such a MOA with the purpose of promoting the long-term conservation and protection of coral reefs and the related marine ecosystem in the region through cooperative interagency actions. A draft MOA was completed early in 2003, but it has not yet been approved. Given current management needs and ongoing efforts to develop an ecosystem-based approach for management of the NWHI, approval and implementation of this agreement is a very high priority. We have recommended that NOAA and the Fish and Wildlife Service should act expeditiously to complete their review of the draft MOA, resolve what concerns they may have with the other parties, and finalize and implement the agreement. We encourage the State of Hawaii to assist as possible in this effort.

- **The Marine Mammal Commission recommends that the State of Hawaii and the National Ocean Service (NOS) expand the scope of the HIHWNMS to include other important components of the ecosystem, including Hawaiian monk seals, other marine mammals, and sea turtles.**

The Hawaiian Islands National Marine Sanctuary Act established the HIHWNMS and called for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary. In keeping with this goal, the Commission has previously recommended that the Sanctuary's responsibilities be expanded to include other important components of the ecosystem encompassed by its boundaries, including the Hawaiian monk seal, other marine mammal species, and sea turtles. At our annual meeting we were told that the Sanctuary has defined a process that they will use to identify additional resources appropriate for inclusion. We encourage the State of Hawaii and NOS to move forward with that process so that monk seals and other significant resources can achieve formal inclusion and receive the benefits of HIHWNMS stewardship.

- **The Marine Mammal Commission recommends that the HIHWNMS, the State of Hawaii DLNR, PIRO, and PIFSC develop a coordinated network for responding to strandings and entanglement of humpback whales and other marine mammals.**

The primary responsibility for developing and operating a stranding network in the Pacific islands region rests with the NMFS Pacific Islands Regional Office (PIRO). However, in the past, personnel from the HIHWNMS, State of Hawaii agencies, PIRO, the Pacific Islands Fishery Science Center (PIFSC), and the volunteer Hawaiian Islands Stranding Response Group have all collaborated informally in responses to entanglements and strandings.

At the Commission's annual meeting, representatives from PIRO indicated that a formal stranding network is being developed with a plan to have a coordinator on each of the main Hawaiian Islands. The Commission endorses this effort and has recommended that further development of the network be done in consultation with all of the collaborators identified above.

We encourage the State of Hawaii and the HIIHWNMS to work closely with PIRO and others in the development and operation of the Pacific islands stranding network.

- **The Marine Mammal Commission recommends that NMFS provide the State of Hawaii Division of Aquatic Resources with funding for a Kauai monk seal response coordinator.**

With the exception of Niihau, the main Hawaiian Island with the greatest number of monk seal haul-out events is Kauai. Kauai beaches are heavily used by people for recreational purposes, and when seals haul out it has frequently been necessary to post temporary protection zones around them to minimize human disturbance. Far more demanding management situations also occur commonly on Kauai, such as protection of mother-pup pairs hauled out on popular beaches and treatment of seals injured by fishing hooks. Hiring of a full-time monk seal response coordinator on Kauai was identified as a high priority by participants at the October 2002 Workshop on the Management of Monk Seals on Beaches in the Main Hawaiian Islands, sponsored by the Commission, NMFS, and the State of Hawaii. Subsequently, the Commission provided funding to the Hawaii Division of Aquatic Resources to hire a temporary coordinator with the expectation that a permanent coordinator would be hired with funds provided by NMFS. NMFS did provide funding for the position in 2004, but it was filled for only a few months and about eight months of support now remain. As we understand it, the Division plans to request funding for continued support for this position as part of an anticipated grant request under section 6 of the ESA once it concludes a cooperative agreement with NMFS. In the interim we have recommended that NMFS ensure that sufficient funds are available to the Division to have a full-time monk seal response coordinator on duty year-round on Kauai. We appreciate the continued efforts of you and DLNR staff on this issue and encourage you to continue to work with NMFS to ensure that this need is properly covered in the long term.

- **The Marine Mammal Commission recommends that State of Hawaii agencies, PIRO, PIFSC, and the Fish and Wildlife Service cooperate to address the growing problem of loss of suitable haul-out and pupping habitat for monk seals in the NWHI.**

In the NWHI, monk seals rest, give birth, and care for their young on many reefs and islands, some of which are very small and barely above sea level. At the Commission's annual meeting, monk seal researchers pointed out that many of these islands are experiencing considerable erosion, particularly of the sandy beaches preferred by seals. In at least one case an area that had previously been heavily used for pupping has virtually disappeared. Maintaining suitable habitat for monk seals may be critically important for recovery of the species. The Commission recognizes that these habitats are extremely vulnerable to erosion from wave action and potential rises in sea level, and finding ways to prevent or mitigate such losses may be very difficult. Nonetheless, we are encouraging all involved agencies to give attention to this issue, and to consider ways to protect, and if possible restore and enhance, island habitats used by monk seals in the NWHI.

- **The Marine Mammal Commission recommends that the State of Hawaii work with NMFS, PIRO, and the Commission to convene a workshop to address the increasing impacts of swim-with-the-wild-dolphin operations in Hawaii.**

At its annual meeting, the Commission heard from resource managers, enforcement personnel, and scientists, as well as independent researchers, tour operators, and other stakeholders concerning human-dolphin interactions in Hawaii. The Commission, its Committee of Scientific Advisors, and invited guests also visited one of the areas north of Kailua-Kona frequented by tour operators focused on spinner dolphins to get a better understanding of the types of interactions that are occurring. While there, we observed activities that many people aboard considered intentional pursuit and harassment of dolphins.

In addition to considering increased enforcement as a means of addressing the problems presented by human-dolphin interactions in Hawaii, the Commission and participants at the Commission's meeting considered possible alternative solutions. In fact, the Commission believes, as did many of the meeting participants, that other alternatives may be preferable to relying almost entirely on rigorous enforcement of the Marine Mammal Protection Act's (MMPA) taking prohibition. Toward this end, the Commission has recommended that NMFS convene a meeting of federal, state, and local government agencies, researchers, tour operators, and other stakeholders to develop a comprehensive approach to the problem that looks at when, where, and how such activities may be conducted without adversely affecting the dolphins. We have proposed that the State of Hawaii and the Commission should help organize and participate in such a meeting or workshop.

Among other things, the workshop should consider the desirability of establishing protected areas where dolphins can rest undisturbed by humans. Other alternatives should also be considered such as temporal and/or spatial access restrictions, limits on the number of vessels allowed in an area, and access restricted to tour operators that adopt and comply with specified responsible wildlife-viewing practices. Most importantly, the workshop should consider what regulatory mechanisms are available to provide protection for dolphins, such as MMPA taking prohibitions, State of Hawaii laws and regulations, and the National Marine Sanctuaries Act.

- **The Marine Mammal Commission recommends that the State of Hawaii work with PIRO to develop a program to certify qualifying dolphin-watch operators as "responsible" wildlife viewing companies.**

The NMFS has adopted guidelines that describe proper ways to watch and interact with marine mammals and sea turtles in Hawaii. The guidelines call for people to stay at least 50 yards away from dolphins, not feed them, and operate vessels carefully when near the animals. The State of Hawaii has used those guidelines when developing concessionaire contracts for kayaking operations at some state parks. Tour operators who spoke at the Commission's meeting recommended the development of a certification program for tour guides that would encourage voluntary compliance with the wildlife watching guidelines, and the State expressed an interest in

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working cooperatively to develop solutions to problems caused by human activities in spinner dolphin resting areas. The Commission believes that such a tour guide certification program would be an important component of the education and outreach programs needed to resolve problems with spinner dolphin harassment and that the State should work with PIRO and others to develop such a program.

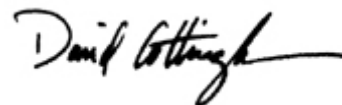
- **The Marine Mammal Commission recommends that NMFS enter into and provide funding for joint enforcement agreements with the State of Hawaii to include Marine Mammal Protection Act and Endangered Species Act authorities.**

At the Commission's annual meeting, NMFS officials reported that a cooperative enforcement agreement between NMFS and the State of Hawaii authorizes state officials to enforce various federal statutes, including the MMPA and the ESA. NMFS representatives reported, however, that funding to the State for cooperative enforcement activities under the MMPA has not been, and in fact cannot be, provided under that statute. The Commission has requested clarification from NMFS as to how they have reached such a conclusion.

The Commission believes that there are provisions of the MMPA that authorize the Secretary of Commerce to designate state officers and employees to enforce the provisions of the Act, and to provide funding to a state to assist in such efforts. We have communicated this to NMFS and have recommended that they take such actions with respect to the State of Hawaii. We recognize that the State has staff that are trained, positioned, and willing to help enforce marine mammal conservation laws, and we encourage you to continue to work with NMFS to develop whatever cooperative arrangements are needed to fully support State enforcement efforts.

We hope that these recommendations and comments are helpful to you. Additional specific recommendations relating to these and other topics discussed at our annual meeting are being communicated directly to appropriate administrators and directors. Copies of those letters are enclosed for your information. I would like to contact your office to arrange a time in the near future to discuss these recommendations with you.

Sincerely,



David Cottingham  
Executive Director

Enclosures