



**Western
Pacific
Regional
Fishery
Management
Council**

October 30, 2020

Dr. Shannon Bettridge
Chief
Marine Mammal and Sea Turtle Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Re: Proposed Rule on the Guidelines for Safely Deterring Marine Mammals

Dear Shannon:

The Western Pacific Regional Fishery Management Council (Council) appreciates the opportunity to provide comments to the National Marine Fisheries Service (NMFS) on the proposed rule on guidelines for deterring marine mammals¹. Section 101(a)(4) of the Marine Mammal Protection Act (MMPA) provides an important common-sense exemption to the marine mammal take moratorium under the MMPA in which fishermen are allowed to employ deterrent methods to prevent damage to gear or catch if such actions do not result in the mortality or serious injury of a marine mammal. The Council supports the development of guidelines to implement the deterrence provisions under section 101(a)(4) and offers the following comments.

In the Western Pacific, interactions with marine mammals that may necessitate deterrence techniques include odontocetes depredating on bait or catch and Hawaiian monk seals approaching spear fishermen to steal catch. While the extent of these incidences is unknown, interactions with marine mammals are likely to be rare events.

The proposed guidelines provide extensive details on how each deterrent type may be used for mysticetes, odontocetes, and pinnipeds. While these details may be necessary to ensure deterrent methods are deployed safely for the marine mammals, they are likely to be cumbersome for individual fishermen to follow. We therefore request NMFS to develop an area-based and fishery-specific compliance guide focusing on deterrents based on the most plausible types of interactions. For example, small-boat troll fishermen in Hawaii may encounter both ESA-listed and non-ESA-listed odontocetes as well as the ESA-listed Hawaiian monk seals, whereas small-boat troll fishermen in Guam, CNMI and American Samoa are only likely to

¹ See 85 Fed. Reg. 53763 (August 31, 2020)

encounter non-ESA-listed odontocetes. The compliance guide should also note any distance in feet, rather than in meters. Making these guidelines accessible and understandable to users will be critical for compliance, and would further ensure that deterrence methods are used in a manner that is safe for marine mammals.

Additionally, we request NMFS to conduct outreach with the fishing community to disseminate information on the deterrence guidelines as well as to work with the fishing community to evaluate the effectiveness of the approved deterrence methods. This may be accomplished through publication of the aforementioned compliance guides in local fishing magazines and dedicated workshops for fishermen to describe the types of approved deterrence methods and provide demonstrations. Information on the deterrence guidelines should also be incorporated into ongoing or planned outreach efforts for Hawaiian monk seals and insular false killer whales. Proactive engagement with the community to test and evaluate deterrence methods would provide another avenue for outreach.

In our comments responding to the 2014 notice of intent to develop the guidelines, the Council specifically requested that NMFS evaluate the use of the blunt end of fishing gear or equipment such as a spear gun to deter Hawaiian monk seals from approaching to steal fish. While the proposed rule lists “butt of a spear gun” as one of the manual-blunt deterrent evaluated, the proposed guideline is silent on whether the blunt end of a spear gun can be used to deter Hawaiian monk seals. We therefore request NMFS to clarify this aspect in the final rule, and if allowed, to explicitly list this deterrent method in the guidelines for Hawaiian monk seals. For spearfishermen, their spear gun may be the only tool at their disposal when approached by a Hawaiian monk seal, and clear guidance should be provided on how a spear gun may be used to deter the animal.

Lastly, paintballs are not likely to be a practical deterrent for any vessel-based interactions with Hawaiian monk seals. The guidelines require that a paintball “strike the posterior end of an animal’s body, taking care to avoid the animal’s head”, but fishermen are likely to only see the head of the animal rather than the posterior end if encountering a monk seal around a vessel.

Thank you for considering the Council’s comments on this matter. Please contact the Council’s protected species coordinator Asuka Ishizaki (asuka.ishizaki@noaa.gov) if you would like to discuss these comments in further detail.

Sincerely,



Kitty M. Simonds
Executive Director

Cc: Sam Rauch, Deputy Assistant Administrator for Regulatory Programs
Michael Tosatto, Regional Administrator, Pacific Islands Regional Office