



**Western
Pacific
Regional
Fishery
Management
Council**

December 16, 2021

Mr. Kevin Brindock
Deputy Assistant Regional Administrator
Protected Resources Division
Pacific Islands Regional Office
1845 Wasp Boulevard, Building 176
Honolulu, HI 96818

Re: Proposed Rule to Establish Mandatory Time-Area Closures for Spinner Dolphins in the Main Hawaiian Islands under the Marine Mammal Protection Act

Dear Mr. Brindock:

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 to establish mandatory time-area closures of spinner dolphins' essential daytime habitats at five selected sites in the Main Hawaiian Islands (MHI)¹. The Council received a briefing on the proposed rule at its 189th Meeting held December 7-9, 2021, and discussed several considerations related to fishing activities around the proposed closure areas.

The Council requests that NMFS take into account the following considerations in advance of issuing the final rule:

- In general, there are concerns that this time-area closure creates a precedence for closing areas to fishing activity under the Marine Mammal Protection Act when the impacts of concern is due to swim-with dolphin activities rather than impacts from traditional fishing activities that have co-existed with dolphins for decades.
- The proposed closures at Hōnaunau Bay and Ho'okena (Kauhakō Bay) overlap with traditional fishing ko'a (fishing grounds) used by small boat fishermen to troll for ono (wahoo, *A. colandri*) and other pelagic species, which are found along the 40 fathom contour. The closure areas should exclude waters deeper than 35 fathoms to minimize conflicts with the small boat community, or alternatively, exempt fishing vessels from the closures when transiting in compliance with NMFS' 50-yard approach rule exemptions for any vessels that are underway (50 CFR 216.20(c)).

¹ See 86 Fed. Reg. 53844 (September 28, 2021)

- NMFS' 50-yard approach rule was implemented in October 2021 and thus the effectiveness of that rule has yet to be evaluated. NMFS should consider delaying implementation of additional restrictions through time-area closures to conduct sufficient outreach on the approach rule and monitor swim-with dolphin activities to determine whether the approach rule is sufficient to manage human disturbances on spinner dolphins in their daytime resting habitats.
- To successfully implement these rules, on-water enforcement will be required. Therefore, all area closures should be clearly demarcated along straight navigational longitude and latitude lines to allow the community and enforcement ease of deterring boundaries.

Thank you for considering the Council's comments on this matter. Please contact the Council's protected species coordinator Asuka Ishizaki (asuka.ishizaki@wpcouncil.org) 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