

From: Dagul, Reid <reid_dagul@ios.doi.gov>
Subject: Re: [EXTERNAL] Re: Meeting w/ Assistant Secretary Sweeney
To: Chris Oliver - NOAA Federal
Cc: Barry Thom
Sent: April 24, 2019 10:27 AM (UTC-04:00)

Hi Chris,

Thank you for getting back to me so quickly. Barry, I look forward to speaking with you.

Best,
Reid

On Tue, Apr 23, 2019 at 9:47 PM Chris Oliver - NOAA Federal <chris.w.oliver@noaa.gov> wrote:
Good evening Reid -

Thank you for you email. I am copying on this email Barry Thom, Regional Administrator for NMFS West Coast Region, and am referring you to Barry for additional information.

Under the MMPA, I am restricted from speaking about the Makah Indian Tribe's Request for Waiver of Moratorium on Take of Eastern North Pacific Gray Whales. The APA and NOAA Fisheries' regulations applicable to an MMPA waiver set forth a two-step decision-making process. First, the agency must provide public notice of the proceeding and hold an agency hearing in which interested persons may participate. After the hearing, the presiding officer issues a recommended decision, findings, and conclusions, based on the hearing record. The record is then transmitted to the Assistant Administrator for Fisheries to make a final decision. As the Assistant Administrator, I may affirm, modify, or set aside, in whole or in part, the presiding officers' recommendation, findings, and conclusions. Given the bifurcated nature of the required process and to ensure an organized framework for agency decision-making, NOAA designated certain offices and positions to serve as "advocates" and other offices and positions to serve as "decision-makers" for this matter. The advocates are responsible for making a preliminary decision whether to waive the take moratorium for ENP gray whales and, if the decision is positive, drafting proposed regulations and carrying out an agency hearing. The decision-makers are to provide support to the Assistant Administrator in making a final decision based on the presiding officer's recommendations and the hearing record. To ensure fair and impartial decision-making, the NOAA General Counsel implemented certain restrictions on communications between the advocates and the decision-makers and with persons outside the agency.

Barry is on the "advocate" side and I am on the "decision-maker" side. As such, I am unable to speak with you at this time, but Barry may.

Thank you,
Chris

On Tue, Apr 23, 2019 at 3:36 PM Dagul, Reid <reid_dagul@ios.doi.gov> wrote:
Hi Mr. Oliver,

Hope this email finds you well. I am reaching out because Tara Sweeney, Assistant Secretary - Indian Affairs was hoping to set up a time to meet with you. She was hoping to discuss the Makah whaling permit, and get some insight into the situation.

If you could let me know dates and times that would work best for you I would greatly appreciate it!

All the best,
Reid
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Reid Dagul
Special Assistant
Assistant Secretary - Indian Affairs
202-513-0390

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Chris Oliver
Assistant Administrator for Fisheries
National Marine Fisheries Service/NOAA
U.S. Department of Commerce
301-427-8000

--

Reid Dagul
Special Assistant
Assistant Secretary - Indian Affairs
202-513-0390

From: Chris Oliver - NOAA Federal <chris.w.oliver@noaa.gov>
Subject: Re: Academic Interview Request
To: Sabrina Xie
Cc: alesia.read@noaa.gov; Brianne.Szczepanek@noaa.gov; samuel.rauch@noaa.gov; adam.issenberg@noaa.gov
Sent: December 24, 2019 3:47 PM (UTC-05:00)

Ms Xie

Because of the rules of this decision process, I believe that am precluded from discussing it until the process is completed. I am ccing some colleagues to verify that, and to suggest an alternative point of contact.
-chris

Sent from my iPad

On Dec 23, 2019, at 9:19 PM, Sabrina Xie <sx235@cornell.edu> wrote:

Dear Mr. Oliver,

I am Sabrina Xie, a student at Cornell University studying Earth and Atmospheric Science. I am working on a policy brief on the Makah whaling case and I am writing to request an interview with you or someone in your office in relation to the proposed waiver.

I was hoping to speak with someone about how this process is going and where it is likely to go after the hearing, how it differs from other aboriginal subsistence whaling cases, and what impacts the final decision may have on waivers in the future. I understand that you will be making the final decision on whether the waiver is approved after the ALJ makes its recommendation.

I will be in the D.C. area from January 7-14 and would be happy to head to the NOAA Fisheries office or conduct an interview over the phone. I know you are busy, so I would appreciate if you could forward me along to one of your colleagues if you are not available in that time frame.

Thank you for your time and I look forward to your reply!

Sincerely,
Sabrina Xie

From: Eva Rendle <rendle.eva@gmail.com>
Subject: Journalist hoping to speak about Makah MMPA waiver
To: janet.coit@noaa.gov
Sent: July 22, 2021 4:54 PM (UTC-04:00)

Hi Janet,

My name is Eva Rendle, I'm a freelance journalist and filmmaker doing background research about the Makah Tribe's request for a waiver of the Marine Mammal Protection Act. I'm having trouble finding updated information about the status of their request. Are you available for a brief phone call to answer a few questions? Or could you point me in the direction of the right person to talk to about this matter?

All the best,
Eva

—

Eva Rendle (she/her)
925.389.0635
rendle.eva@gmail.com
www.evarendle.com



Joseph Heckwolf - NOAA Federal <joseph.heckwolf@noaa.gov>

Re: Question to the Attorneys

1 message

Joseph Heckwolf - NOAA Federal <joseph.heckwolf@noaa.gov>

Mon, Nov 22, 2021 at 8:34 AM

To: Janet Coit - NOAA Federal <janet.coit@noaa.gov>

Cc: Erik Federman - NOAA Federal <erik.federman@noaa.gov>, Adam Issenberg - NOAA Federal <adam.issenberg@noaa.gov>, Walker Smith - NOAA Federal <walker.smith@noaa.gov>, Rodney Vieira - NOAA Federal <rod.vieira@noaa.gov>, Samuel Rauch - NOAA Federal <samuel.rauch@noaa.gov>

Hi Janet,

Thank you for documenting the conversation and not discussing substantive matters with Sen Cantwell's staff. We will log this contact per the ex parte memo.

Joe Heckwolf

On Fri, Nov 19, 2021 at 6:48 PM Janet Coit - NOAA Federal <janet.coit@noaa.gov> wrote:

Sen. Cantwell's staff asked me about the Makah decision today. I told Nikki that I am in a quasi judicial role and can tell her about process (e.g., I told her we planned to send a letter spelling out the timeline to provide some clarity) but can not talk about substance with anyone ex parte.

She said, "OK, who can I ask this then. How is NMFS conducting government to government consultation with the tribe?" She had recently met with the Makah or their lobbyist, I believe.

I told her that I can't speak to that or other issues with her. Wanted to pass this along. Not sure where it plays into the process.

JC

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Janet Coit
Assistant Administrator, NOAA Fisheries
Acting Assistant Secretary for Oceans and Atmosphere, NOAA
U.S. Department of Commerce
Office: (301) 427-8000
www.fisheries.noaa.gov

From: Laura McCue - NOAA Federal <laura.mccue@noaa.gov>
Subject: 2021 Pacific SRG Recommendations
To: Janet Coit - NOAA Federal; robyn_thorson@fws.gov; Paul_Souza@fws.gov
Cc: Michael Seki - NOAA Federal; Kristen Koch - NOAA Federal; zachary schakner - NOAA Federal; Jim Berkson - NOAA Federal; Shannon Bettridge - NOAA Federal; Carswell, Lilian; John Calambokidis; Scott Baker; Lars Bejder; Rebecca Lewison; David Itano; Doug DeMaster DeMaster; Palacios, Daniel M; Simone Baumann-Pickering; New, Leslie; Tim Tinker; Karin Forney - NOAA Federal
Sent: December 6, 2021 7:33 PM (UTC-05:00)
Attached: PSRG 2021 recommendation letter-2021-FINAL.pdf

On behalf of John Calambokidis, Chair of the Pacific Scientific Review Group, I have attached a letter with recommendations to NMFS and FWS from the March 2021 Pacific SRG Meeting.

Thank you,
Laura McCue
NMFS Liaison to the Pacific SRG

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Laura McCue
Marine Biologist, PIFSC PSD
NOAA Fisheries | U.S. Department of Commerce



NOAA IRC
NMFS/PIFSC/PSD/Laura McCue
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Pacific Scientific Review Group

A Regional Advisory Group for the National Marine Fisheries Service and Fish and Wildlife Service

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6 December 2021

Janet Coit, Assistant Administrator
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Robyn Thorson, Regional Director
U.S. Fish and Wildlife Service
11 NE 11th Avenue Portland, OR 97332

Paul Souza, Regional Director
U.S. Fish and Wildlife Service
2800 Cottage Way, W-2602
Sacramento, CA 95825

Dear Assistant Administrator Coit and Regional Directors Thorson
and Souza:

This letter conveys recommendations from the Pacific Scientific Review Group (PSRG) to the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) based on its virtual meeting on 16-19 March 2021. The meeting focused on science, management, and conservation of marine mammals along the U.S. West Coast and in the central North Pacific. The PSRG gratefully acknowledges NMFS and FWS scientists and managers who prepared stock assessment reports and participated in meeting presentations and discussions. The PSRG especially wishes to thank our NMFS liaisons, Laura McCue and Dr. Karin Forney (whose long time role in this capacity is coming to an end and which we deeply appreciate). Our recommendations are as follows:

The Pacific SRG requests receipt of an overview of the NMFS preparation for the possible

The Pacific SRG is aware that an Administrative Law Judge will likely soon rule on litigation concerning the request by the Makah Tribe for a waiver to resume subsistence hunting for the eastern stock of gray whale.

The Pacific SRG requests an update at its next meeting on NMFS' effort to designate new Biologically Important Areas (BIAs) and its anticipated applications. The original BIAs NOAA developed, while not having any specific regulatory powers, were used far more

extensively than had been anticipated and even became part of some mitigation settlement agreements. Given this, we support NOAA pursuing revising BIAs for all regions using new data and a more formal set of criteria applied more consistently among regions. As best as practical such BIAs should be made as consistent with other spatial protection frameworks, like critical habitat, to make them easier to use.

The Pacific SRG requests an update on findings from newly funded FKW monitoring and management efforts in 2022 and recommends further development of other FKW bycatch mitigation measures. In 2020, PSRG recommended continued attention to reducing the mortality and serious injury (M&SI) from False Killer Whales (FKWs) bycatch in and around the Hawaii EEZ. In June 2020, PSRG was asked to review draft NOAA Tech Memo titled “Abundance, Potential Biological Removal and Bycatch Estimates for Hawaii Pelagic False Killer Whales for 2015-2019,” which concluded that, although the FKW bycatch estimated from 5-year mortality and serious injury determinations (9.8) was less than PBR (16), the total fishery mortality and serious injury for the Hawaii pelagic stock of false killer whales warranted additional management attention in part due to the high M&SI outside of the Hawaii EEZ (28.8). This finding, as well as the limited progress from the TRT, supports the ongoing need for improved FKW bycatch mitigation measures to reduce M&SI risk to FKW both within and outside the Hawaii EEZ. The PSRG also notes the efforts of NMFS and the FKW TRT to reduce FKW interactions with the Hawaii deep-set longline fishery while recognizing the difficulty in reaching consensus on mitigation approaches. PSRG remains concerned that the hook straightening mitigation strategy causes stress to the animal and exposes crew to a dangerous situation with little observed benefit to releasing false killer whales to date. While waiting for results from an ongoing study to examine the impact of weaker hooks, the PSRG recommends development of other strategies to reduce acoustic attraction to vessels, test of technical options to reduce gear fly-back, removal of gear with minimal trailing gear and research to inform the post-release condition of released false killer whales under different scenarios. The PSRG looks forward to an update at the 2022 PSRG meeting on the outcome of interactions to date, results of the weak circle hook study, and a status summary of a new 2021 FKW funding allocation to inform FKW monitoring and management.

The Pacific SRG recommends that the M&SI determination not be made fully automated but involve internal validation and input from the SRG and invited experts, especially

use machine learning to automate the process by which M&SI determinations are made. The SRG welcomed the analysis and its intent to update the existing criteria for defining M&SI and provide greater consistency across M&SI determinations. However, the following concerns were raised; 1) the potential biases in machine learning approaches (e.g., Mehrabi et al. 2019), 2) a mismatch between the binary outcome from the algorithm and the three M&SI categories defined under the MMPA, 3) the potential for individuals to bias determinations if they are aware of the key words most likely to lead to certain outcomes, and 4) using the algorithms’ results to standardize the language used in M&SI reports would then invalidate the continued use of the model to make M&SI determinations.

The Pacific SRG reiterates its recommendations from 2018, 2019 and 2020 for implementing time-area closures of resting bays to protect spinner dolphins. The PSRG also reiterates that a 50-yard no approach rule within spinner dolphin resting bays is almost certainly going to prove ineffective given the significant amount of acoustic disturbance from motorized vessels that will still occur, coupled with the difficulty in enforcing such a rule. These recommendations are consistent with efforts by IUCN Marine Mammal Protected Area Task Force which has designated the main four Hawaii Island spinner dolphin resting bays as “Important Marine Mammal Areas” (IMMAs). IMMAs are characterized

as “discrete portions of habitat, important to marine mammal species, that have the potential to be delineated and managed for conservation” and “consist of areas that may merit place-based protection and/or monitoring”. The recommendation is also in line with Governor Ige’s 30-by-30 Initiative “to effectively manage 30% of Hawaii’s nearshore waters by the year 2030”. The PSRG requests an intersessional meeting with NOAA’s PIRO to learn about their efforts and most recent updates on the spinner dolphin ruling.

The PSRG requests a presentation by Pacific Islands Regional Office (PIRO) during the 2022 PSRG meeting overviewing a synopsis of their science-based management priorities and plans for a) false killer whales, b) monk seals, as well as spinner dolphins and on issues pertaining to aquaculture and marine mammals.

The Pacific SRG recommends that NMFS include survey schedules in its planning for all stocks of marine mammals that occur in waters off the US west coast, where the information required to provide reliable estimates of minimum abundance would be available at an interval of no more than eight years. The Pacific SRG was provided with detailed information regarding the survey schedule for California sea lions, eastern population of Steller sea lions, and cetacean populations along the west coast at our most recent meeting in March 2021. This information was very helpful to the Pacific SRG in understanding NMFS commitment to updating marine mammal stock assessment reports in a timely manner. It was noted that two species, harbor seal and harbor porpoise, are likely to have the highest interaction rate with commercial fisheries in U.S. waters and should therefore be a priority. Also, stocks that have their most recent abundance estimates from 2012 or earlier should also be considered a priority by NMFS for future surveys to determine abundance

The Pacific SRG recommends that NMFS inform the SRG regarding its current strategy

resting habitat in the NWHI. The Pacific SRG was informed that loss of beach habitat at French Frigate Shoals resulted in significant loss of pupping habitat (see background text below from NMFS Hawaiian monk seal website). This has been driven by a combination of factors including climate change and storm-related events. We encourage NMFS to clarify its approaches to responding to this emerging threat, which might include increasing recovery efforts for monk seals in the main Hawaiian Islands (e.g. increasing efforts to address emerging issues such as Toxoplasmosis or disturbance) or performing viability analyses to evaluate the stock-level impacts of breeding habitat loss in the NWHI. It was further noted that the most current management plan was completed in January 2016, based on years 2016-2020, and that none of the key action items in that version of the Plan address concerns related to the impact of habitat loss in the NWHI. At a minimum, the Pacific SRG **recommends** that NMFS commit to updating the Hawaiian monk seal 5-year Action Plan within the next 18 months, and include in the Plan a description of efforts that will be undertaken to address the loss of pupping and resting beaches in the NWHI, including modeling efforts to allow for a comprehensive understanding of the impacts of habitat loss on the population over the next few decades.

The Pacific SRG supports some of the progress NMFS is making on guidelines for non-lethal deterrence methods but also has some concerns about exemptions from the policy and requests an update on how it is working in the next 5 years. We were concerned about some of the limitations the plan operates under including the fact it excludes activities if they are not conducted for the purpose of deterrence. We know NMFS is operating under limitations in this regard but would like to ensure there are not other actions the Pacific SRG can recommend to help deal with those limitations if they end up allowing such a large loophole that it prevents effective implementation of guidelines on some of these activities.

The Pacific SRG recommends NMFS actively foster communication and encourage

take advantage of opportunities to study the impacts of human activities. There is a lack of information on the impacts of many human activities and sometimes the initiation of some of these activities in new areas provides unique opportunities to advance the understanding of the impact of those activities. NMFS is often consulted or issues permits for these activities and can play a positive role requesting that local researchers be informed of new activities and encourage collaborations to take advantage of those opportunities. A recent case in point is a planned large-scale seismic survey planned for 2021 off Oregon and Washington, an area where that has not been conducted for many years.

The Pacific SRG recommends NMFS try to investigate and include in their entanglement reports information on how reporting biases may be playing a role in the trends reported.

From studies on the U.S. East Coast it is known the vast majority of entanglements go unreported and that under-reporting is likely even a bigger issue on the U.S. West Coast. Observed trends in documented entanglements could therefore easily reflect changes in reporting (including factors like COVID) rather than in numbers of entanglements occurring. Given the increased reliance on entanglement reports to track progress and even in decisions on operations of some fisheries it is important to acknowledge and investigate factors that could influence reporting. Examination for changes in the proportion of confirmed versus unconfirmed reports, those assigned or not assigned to a specific fishery, or those contributed by different types of reporting parties could all be used to evaluate whether there have been potential changes in reporting.

The Pacific SRG supports the use of DASBRs to survey elusive cetaceans but recommends that further evaluations are conducted in the use of DASBRs to address duty cycling and investigate how drift patterns may be influenced by oceanographic features.

Drifting acoustic spar buoy recorders (DASBRs) to survey elusive beaked whale species acoustically over broad spatial and temporal scales have been shown to be highly successful in informing management and stock assessments. We are concerned with the approach on two aspects. Duty cycling has been shown to bias estimation of presence, increasingly so with rare occurrence of a species and longer off-effort periods (e.g., Stanistreet et al 2016). We suggest subsampling of existing continuous data to test for this possible caveat. A second concern is related to the question of whether drifters become entrained into dynamic oceanographic features (e.g., eddies and fronts) and hence are not sampling the study area completely at random. This may possibly be addressed through simulations with ocean models.

The PSRG gratefully acknowledges NMFS and FWS scientists and managers for their efforts to prepare present, and discuss marine mammal stock assessment reports.

Sincerely,



John Calambokidis, PSRG Chair

CC:

Kristen Koch, Southwest Fisheries Science Center
Michael Seki, Ph.D., Pacific Islands Fisheries Science Center
Kevin Werner, Ph.D., Northwest Fisheries Science Center
Robert Foy, Ph.D., Alaska Fisheries Science Center
Francisco Werner, Ph.D., NMFS Science Director
Mridula Srinivasan, Ph.D., NMFS Science and Technology
Zachary Schakner, Ph.D., NMFS National SRG Coordinator
Shannon Bettridge, Ph.D., NMFS Office of Protected Resources
Karin Forney, Ph.D., NMFS 2020 Liaison to the Pacific SRG
Laura McCue, NMFS 2021 Liaison to the Pacific SRG
Lilian Carswell, U.S. Fish and Wildlife Service
Steve Henry, U.S. Fish and Wildlife Service
Deanna Lynch, U.S. Fish and Wildlife Service
Brad Thompson, U.S. Fish and Wildlife Service
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Pacific Scientific Review Group

A Regional Advisory Group for the National Marine Fisheries Service and Fish and Wildlife Service

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6 October 2023

Janet Coit, Assistant Administrator
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U.S. Fish and Wildlife Service
11 NE 11th Avenue Portland, OR 97332

Paul Souza, Regional Director
U.S. Fish and Wildlife Service
2800 Cottage Way, W-2602
Sacramento, CA 95825

Dear Assistant Administrator Coit and Regional Directors Morrison
and Souza:

This letter conveys recommendations from the Pacific Scientific Review Group (PSRG) to the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) based on its virtual meeting 7-10 March 2023 and subsequent discussions. First and foremost, the PSRG gratefully acknowledges NMFS and FWS scientists and managers who prepared stock assessment reports and our NMFS liaison, Laura McCue, who participated in meeting presentations and discussions.

We are very appreciative of the responsiveness of NMFS to our previous recommendations and the consideration they were given and the time and care in the responses.

Our recommendations from our most recent 2023 meeting are as follows:

1) The PSRG recommends that NMFS and FWS consider revising the existing GAMMS document to accurately reflect current practices by NMFS in setting the value for Rmax in Stock Assessment Reports and to better inform the public regarding the use of abundance estimates derived from survey data that are over eight years old. We support the current practice of using a species-specific Rmax value in the stock assessment report for the western Pacific stock of humpback whales. We note that the current value of Rmax for this stock is 0.07, even though a stock specific estimate of Rmax is not available. The value of Rmax is one of the three key parameters in estimating the PBR for a stock (along with a minimum estimate of abundance [Nmin] and a recovery factor [Fr]). The following text related to when a default value or a stock-specific value for Rmax should be used is from GAMMS (2016): *“Default values should be used for Rmax in the absence of stock-specific measured values. To be consistent with a risk-averse approach, these default values should be near the lower range of measured or theoretical values (or 0.12 for pinnipeds and sea otters and 0.04 for cetaceans and manatees). Substitution of other values for these defaults should be made with caution, and only when reliable stock-specific information is available on Rmax (e.g., estimates published in peer-reviewed articles or accepted by review groups such as the MMPA Scientific Review Groups or the Scientific Committee of the International Whaling Commission).”* It is likely that this text should be updated, as some cetacean species have been observed to have annual rates of increase that exceed the 0.04 value assigned to cetacean stocks (e.g., humpback whale, beluga whale). Further, it is not clear to the PSRG why a stock-specific value for Rmax is always preferential to a species-specific value. Because the data required to estimate a maximum rate of population increase are substantive, it is not surprising that stock-specific estimates of Rmax are relatively uncommon. In addition, it is the product of Nmin, Rmax, and Fr that is used for establishing a threshold for anthropogenic removals from a given stock (i.e., PBR). Therefore, an adequately precautionary value for PBR can be implemented by the Agencies in managing marine mammal-fishery interactions without being conservative in the assumptions underlying all three of the parameters used to calculate the PBR, i.e., when the best available science indicates species-specific Rmax values that are greater than the default value are appropriate.

In addition, the PSRG has noticed that in the Stock Assessment Reports NMFS no longer lists a PBR as “unavailable”, when reliable estimates of minimum abundance are more than 8 years out of date. For example, based on a summary of SARs for the Pacific Ocean region, we note that only 15 of 45 stocks currently have estimates of Nmin that are less than 8 years out of date. Furthermore, we note that only 3 of the PBRs for these 45 stocks are listed as “unavailable”. It appears NMFS is using the third option in the GAMMS report concerning how to estimate Nmin, when survey estimates are out of date, but with very little rationale to support its use (as is required by the GAMMS report). That is, the scientific evidence for a determination that stock abundance is stable in the absence of abundance estimates over a period of more than 8 years needs to be included in this section of the SAR.

The following options are listed in the most recent GAMMS report:

- Determining a plausible distribution of the population growth rate, r , and using simulations to project the distribution of \hat{N} to years following the survey, incorporating both uncertainties in the original abundance estimate, and in the assumed distribution of r . The selected distribution of r may be relatively uninformed (e.g., uniform across some plausible range) or potentially informed by indicators of trend available following the most recent survey.
- When a sufficient time series of abundance estimates is available, it may be reasonable to estimate the population trend (increasing, decreasing, stable) and the uncertainty in this trend and project the future population accordingly, assuming the past trend has continued to the current year.
- Using the most recent estimate of Nmin if population stability can be justified.
- Tailoring the methods of Wade (1998) to the actual survey frequency (e.g., 10 years) and other circumstances pertaining to estimating human-caused M/SI and PBR parameters for the stock, and identifying the appropriate recovery factor or percentile to use for Nmin rather than 20th.

2) The PSRG recommends that NMFS undertake a simulation analysis along the lines of Wade (1998) to determine an appropriate F_r value when the survey interval is between 8-12 years old. Estimates of minimum abundance older than 12 years should be considered unreliable, listed as “not available” in the Stock Assessment Report, along with the estimate of PBR. The PSRG is very concerned that the current practice when dealing with “older” survey estimates will simply default to option number 3 (i.e., use the most recent estimate of N_{min}). The simulation approach suggested above could therefore be used to evaluate and recommend best practices for extrapolating N_{min} beyond 8 years while properly accounting for uncertainty. For example, even under the assumption of “population stability”, it may be appropriate to account for the increased uncertainty in some way (e.g. proportional reductions in N_{min}). The PSRG also notes that estimates of trends in abundance for a majority of stocks of marine mammals in US waters are not available. In most cases this absence of trend estimates should not be interpreted as population stability, but rather as the reflection of data limitations. Further, where trend information is available, uncertainty is often such that the lower confidence limit of such a projection (for more than 8 years) will likely result in an N_{min} determination that would be considered of no value (i.e., less than 0 animals). Finally, the PSRG believes that it is misleading to the general public to list in the Stock Assessment Reports estimates of minimum abundance that are over 8 years out of date, and certainly 12 years out of date.

3) The PSRG reiterates its recommendation for a more robust analysis of the survey time series (e.g., Bayesian state-space models) into the Pacific Northwest harbor seal stock assessment model. The use of the deterministic logistic growth model in this instance is highly concerning and has significant management implications in that the current approach does not permit the estimation of a declining or non-asymptotic trend. Furthermore, the model fitting methods assume 100% of the variation in survey point estimates around the deterministic logistic function is due to observer error, which is incorrect, and makes it impossible to account for temporal trends or other factors that may be influencing the observed variation in abundance (e.g., variation in prey abundance). Taken together, the associated estimate of K is likely to have greater uncertainty than current estimates, as well as being biased, making it inappropriate to use for management. The requested analysis, a hierarchical state-space model fit using Bayesian or maximum likelihood methods, should not be difficult to implement, and is likely to provide a reasonable fit given the duration of the time series. An additional option would be to use the extensive counts made from land to test for biases in aerial survey counts.

4) The PSRG recommends international coordination on NMFS’ recovery plan for the North Pacific humpback whale DPS, and that the plan be submitted as a document to the IWC SC under the comprehensive assessment for North Pacific humpback whales. Given the cross boundary nature of the stocks being considered, international outreach is imperative. The PSRG urges NMFS to not only engage with the US territories and international scientists for review of the recovery plan, but to incorporate them directly into its development.

5) The PSRG recommends conducting additional sensitivity analysis or mark-recapture (MR) analysis of the CentAm/SMex-CA/OR/WA DIP of Humpback whales. The Bayesian analysis conducted appears to be well thought out and executed, but we have several questions about model structure and parameterization that could be evaluated via robust sensitivity analysis. For example, the uniform prior for sigma parameter (for space use) is likely inappropriate as it is included within the denominator of an exponentiated term and thus the transformed prior will be much more informative than intended – we would suggest applying something like a half-cauchy prior to the inverse of σ^2 (precision), which will thus tend towards a non-spatial model in the absence of information on non-random space use. Evaluation of other model priors can be evaluated using simulations and sensitivity to each evaluated. We would also recommend incorporating all bias correction factors within the Bayesian model itself (i.e., by using priors informed by literature reported values or on simulations), rather than

applying these after the Bayesian model, in order to estimate a simple posterior distribution for abundance.

6) The PSRG reiterates its encouragement to USFWS to move quickly towards coordination between regional USFWS centers to ensure standardized survey methods for sea otters in all regions, including WA and CA. The WA sea otter survey, like the CA sea otter survey, has traditionally been based on a single exhaustive count (census) of the entire range. In other regions, particularly SE Alaska, there is movement towards aerial photograph-based surveys: these new methods allow for optimized sampling of habitats, AI analysis of images to estimate abundance, and include image overlap methods for estimating detection/availability bias and uncertainty. These methods are more efficient than the current observer-based methods, allow for quantification of estimation uncertainty, and will also facilitate a future shift to long-range UAS platforms as this technology becomes more available and affordable. Additionally, the use of model-based estimates of abundance, informed by survey data and potentially other data sources and habitat covariates, can be used to estimate and quantify uncertainty in abundance estimates and trends. We note that model-based estimates have already been developed and published for the CA population, and this approach could be used as an alternative (or additional) basis for reporting status and trends, and would thus allow quantification of uncertainty.

7) The PSRG requests a briefing at its next meeting from NMFS Office of Science and Technology on how ship time requests to support NMFS marine mammal surveys are addressed. The PSRG is concerned that the four Science Centers preparing marine mammal stock assessment reports for marine mammals in the Pacific Ocean region have inadequate lead time to properly budget for and arrange the necessary logistics to support highly technical marine mammal survey cruises (e.g., hire or contract eight or more observers for extended periods, secure the necessary optical and acoustic equipment to carry out the surveys, and provide funding needed to cover travel and per diem costs). The PSRG is concerned that this lack of adequate lead time for survey planning could be a factor contributing to the lack of ship time made available to the marine mammal programs that service the Pacific Islands Science Center, the Northwest Fisheries Science Center, and the Southwest Fisheries Science Center. As possible, the PSRG would like this briefing to include the survey schedule for NOAA vessels or charter vessels in the support of marine mammal research programs in the Pacific Region over the next 3 fiscal years.

8) The Pacific SRG requests presentations at its next meeting from the Northwest Fisheries Science Center and the West Coast Regional Management Office about a) mechanistic links between inbreeding in Southern Resident Killer Whales and a declining population and b) management actions targeting inbreeding. The PSRG is concerned about the results of the effects of inbreeding on the Southern Resident Killer Whale (SRKW) population, specifically that the population growth is seemingly substantially limited by inbreeding, coupled with the documented declining population size of the SRKW population. The PSRG was left wondering about what the mechanistic links are between the ROH-based inbreeding coefficient (FROH) and decreased survival, and if links between FROH and reproduction have been explored? The PSRG suggests that some of the analyses may benefit from inclusion of samples from the NRKW population. While the PSRG acknowledges the importance of analyzing existing data, we are concerned about the lack of plans to engage in field research in the remainder of 2023 focusing on SRKW. This is particularly troublesome given the declining trajectory of the population and that lack of future field work would create gaps in important datasets to inform management.

9) The PSRG recommends that NMFS evaluate the potential biases in the data on whales it considers as having known outcomes for estimating survival of injured or entangled whales. NMFS currently uses a subset of whales injured or entangled which have known outcomes to either assign serious injury rate or in the future whether it should be counted as a mortality or not. However, depending on what it is based on, data on known outcomes may be biased. A known outcome being positive or

negative would be influenced by the likelihood of that known outcome being observed. Re-sightings of whales after entanglement would be more likely to be documented due to extensive photo-ID coverage but documenting death more problematic given many whales sink and never wash up after death. It is important any calculation of the probability of survival take these potential biases into account.

10) The PSRG recommends that estimates of long term average stochastic carrying capacity be compared to estimates using a deterministic population dynamics model for Eastern North Pacific (ENP) gray whales. The PSRG welcomed updates on the integrated population dynamics modeling for this stock. The synthesis of multiple data sources to better understand population dynamics is especially timely in light of the ongoing Unusual Mortality Event. Deterministic population dynamics models formed the basis for an OSP status determination for this stock following the 1999–2000 UME (Punt and Wade 2012). A comparison between stochastic and deterministic model parameterizations, given updated data, would aid in interpreting new estimates of interest to management.

11) The PSRG requests that NMFS provides additional information regarding the protocol and timeline anticipated to finalize a decision regarding the Makah waiver request to take ENP gray whales for subsistence purposes. The PSRG appreciated the update from NMFS West Coast Region staff regarding the status of finalizing the supplementary EIS regarding the Makah waiver request. Given it has been 18 years (2005) since the request was initially made to NOAA by the tribe, the PSRG would like a briefing at its next meeting regarding the status of the draft supplemental EIS, the next steps needed to finalize a decision regarding the waiver request, the scheduled timeline for these steps, and the scheduled timeline for the government’s decision.

12) The PSRG recommends NMFS conduct further research and review of the demographic independence of the ENP gray whale Pacific Coast Feeding Group (PCFG) and provide an update to the PSRG on research underway or planned. This should include methods suitable for identification of internal or external recruitment. This recommendation has been made previously by the PSRG and NMFS has indicated it planned to examine things like maternity and relatedness of new recruits to the PCFG. The PSRG would like to be kept informed on the status and plans of research efforts underway or completed.

13) The PSRG supports NMFS’ use of the data collected from leatherback turtle surveys to obtain estimates of abundance for harbor porpoise, as well as the proposed research to update the estimate of $g(0)$ for harbor porpoise. The difficulty in securing funding for dedicated surveys and the appropriate overlap of spatial area for leatherback turtles and harbor porpoise, make this a good situation in which to leverage the presence of existing surveys to obtain abundance estimates that might not otherwise be possible. The continued development of the novel habitat-based density model, will be beneficial to NMFS, and further improved by the proposed estimation of the updated $g(0)$, which would aid in the construction of a model capable of detecting trends in abundance.

14) The PSRG recommends NMFS continue to support and promote efforts to mark fishing gear in ways that will make it easier to assign observations of entangled animals to specific fisheries. Currently a high proportion of entangled whale documentation cannot be assigned to a fishery due to insufficient indicators of what fishery was involved. A unified multi-state strategy to promote gear marking would assist in assigning entanglements to the correct fishery.

15) The Pacific SRG recommends investigating the cause of a marked difference in abundance estimates of ENP stock of blue whale derived from line-transect surveys, species distribution models, and mark recapture data. Mark recapture data indicate a recovery of this stock while the other two methods point to a stable or declining trajectory. The differences are sufficient to require some sort of explanation or interpretation by NMFS of the relative reliability of the different survey and analytical

methods.

16) The Pacific SRG requests a presentation on considerations and challenges associated with the adoption of species distribution models (SDM) as the primary basis for assessing abundance and trends for many cetacean species. Over the last decade, statistical advances in the use of general additive models (GAM) have allowed for the application of SDM to survey data from many cetacean species in the Pacific (spotted dolphin, rough toothed dolphin, short finned pilot whale, sperm whale, pelagic FKW, etc.). Unlike more traditional “design-based estimates” based on distance-sampling line transect surveys, SDMs incorporate species-habitat relationships, including both fixed and dynamic oceanographic variables, and thus allow for spatiotemporal interpolation of densities that account for these habitat relationships. In many cases, this approach provides more precise abundance estimates than the traditional design-based estimates, and model-based estimates can also be generated for years in which surveys have not taken place, or for non-sampled (or poorly sampled) geographic areas.

While the PSRG appreciates these statistical advances, we are increasingly concerned about the broad application of this approach as the primary basis for assessing abundance and trends. We believe that there are a variety of implicit assumptions underlying the use of SDMs that have received insufficient attention, but which could potentially be leading to biased assessments for some species. Some of the associated pitfalls of GAM-based SDMs have been identified in the literature: for example, the extrapolation of density-habitat relationships to geographic areas that were not sampled during the survey (or interpolation to areas that were poorly sampled) can result in highly uncertain or biased estimates of abundance. Like any model, SDMs are limited by the data collected and the predictor variables considered – adding or removing variables from consideration can lead to dramatically different results. Careful examination of the sensitivity of abundance estimates to extrapolation and model uncertainty should be standard protocol.

Perhaps most concerning are unrecognized assumptions about the inclusion or exclusion of temporal effects in SDMs. Model-based assessments have been used to generate time series of estimates that are being used to assess trends as well as current abundance. Yet in many cases the underlying SDMs do not actually allow for temporal effects other than those associated with dynamics of the underlying environmental variables included in the model. In current SARs, the boilerplate text describing this rationale is as follows:

“Although a ‘year’ covariate was tested during model development, it was not selected as a significant variable. Despite not fully accounting for inter-annual variation in total abundance, the model-based estimates are considered the best available estimate for each survey year.”

An implicit assumption here is that the inclusion of temporal effects in the model – for example a linear or non-linear relationship between abundance and year, or perhaps a random effect for year – should be assessed as for any other habitat variable, using AIC (or P-values, or some other information criterion) to determine whether there is statistical support for inclusion of the effect in the model. Statistically speaking, this seems to reflect an appropriately conservative approach in deciding on which covariates to include in the model; however, for temporal effects, there are two problems with this assumption. First, time is fundamentally different from any other habitat covariate: while we do not know *a priori* whether a given habitat variable is related to abundance, we know with complete certainty that the abundance of ALL species varies with time. A dynamic model that does not allow for variation over time is no longer a dynamic model. The second problem is more philosophical in nature: a statistically conservative approach to incorporation of time effects is not equivalent to a biologically conservative approach. For example, in the case of data poor species with sporadic survey data or few sightings, it is quite possible that a time effect may be evaluated and found to be statistically non-significant. The current approach - not including temporal effects if found to be “non-significant” – results in a time series of abundance estimates that suggest a stable population. However, in this example, it is very possible the population is not actually

stable, but could be increasing or decreasing – in essence, the potential for type-II error (assuming no effect when there actually is one) could be quite high. The detection of a “statistically significant” decline is known to take a long and detailed time series, which is missing for many relevant stocks, and the decline is often not detected until well after the point at which management actions might easily and cost effectively be implemented. In contrast, if a time effect were to be included in the model by default, it could result in the suggestion of a downward trend long before it becomes “significant”, and also (potentially) to greater, but more realistic, uncertainty in annual abundance estimates. We recommend the inclusion of a time covariate in all abundance estimates for pelagic cetaceans to incorporate this additional source of uncertainty.

In short, we are concerned that the policy of “no time effect unless statistically significant” may be resulting in unrealistically precise annual estimates (with the uncertainty associated with temporal trends having been excised from the model) and seems to imply that population stability is the assumed default state. In some instances, there are even apparent increasing trends driven entirely by dynamic environmental variables (e.g. a positive relationship with temperature), which could further contribute to unrealistic or unjustified assessments of population status, particularly given the warming oceanographic conditions due to climate change.

The Pacific SRG believes that many of these concerns could be investigated through a rigorous simulation approach, similar to the simulation approach used to develop PBR calculation guidelines. Generating random data sets with known trends but very sporadic or limited survey data could help determine the most appropriate and biologically conservative approaches to inclusion of temporal effects in SDMs.

17) The PSRG recommends that NMFS manage mortality and serious injury for the pelagic stock of FKW with the following goals:

- 1. Management should focus on both within the Hawaiian Islands EEZ and the area of US fishing operations outside the EEZ.**
- 2. The area to be managed should minimize sources of uncertainty, including**
 - a) Areas of foreign fishing (unknown takes of pelagic FKW)**
 - b) Excessive extrapolation from the spatial distribution model (SDM)**
 - c) “No data” areas, where there is neither survey effort nor US pelagic FKW bycatch, such as the Johnston Atoll EEZ**
- 3. The area to be managed should be consistent and predictable over time. Ideally the boundaries of the area should be determined by data on the known distribution of pelagic FKW, rather than any specific threat (e.g. the distribution of fishing effort)**
- 4. Within the management area, all pelagic FKW bycatch (domestic and foreign) should be accounted for when comparing bycatch to PBR**

Additionally, in considering alternative options for defining a management area for bycatch of pelagic FKW, we recognized the following guiding principles:

1. There should be the reasonable potential to collect pelagic FKW abundance data for the entire management area for the purpose of calculating a PBR.
2. Because there is currently no information on social or population structure within the pelagic FKW stock, we believe a precautionary approach would be to minimize potential for localized depletion (e.g. depletion within the EEZ), until more is known about possible social/genetic structure.

Both of these principles should be prioritized for future research efforts including:

1. Expand the geographic scope of sighting surveys to estimate abundance to now include some of the areas with highest US fishing efforts outside the US EEZ which are not getting covered currently.

2. Initiate efforts with the appropriate international fishery associations to provide for reliable estimates of foreign fleet bycatch in the area outside the EEZ used for PBR calculations.
3. Reevaluate the robustness and uncertainty associated with estimates of abundance in the SDMs. This could be done through the use of simulations, as well as by incorporating data from sighting surveys designed to provide a calibration for the SDM output especially for areas outside the EEZ.
4. Using appropriate methodology (telemetry tagging, genetic samples, photo ID mark recapture, etc.) to improve understanding of potential social and/or genetic structure within the pelagic FKW stock, to determine whether the population is open/well mixed or has internal structure (similar to insular FKW) that could allow localized depletion if bycatch mortality were spatially concentrated.

Considering the above principals, we believe maintaining separate PBR values for the U.S. Hawaiian Islands EEZ and for the larger area outside the EEZ is important, and that a single SAR for pelagic false killer whales include the following:

1. Pelagic FKW abundance, bycatch, and PBR for the portion within the U.S. Hawaiian Islands EEZ
2. Pelagic FKW abundance, bycatch, and PBR for the portion outside* the U.S. Hawaiian Islands EEZ, encompassing the area for which there are existing data on pelagic FKW occurrence, including past records of bycatch by the US fishing fleet.

*We recognize that item #2 above includes areas of foreign fishing operations, for which FKW bycatch data are not currently available but will need to be properly accounted for going forward.

18) The PSRG recommends NMFS reconsider the biases and accuracy of estimates of abundance of bottlenose dolphins in the Mariana Archipelago. Estimates and resulting interpretations presented at the PSRG in March 2023 did not seem to seem to be internally consistent in terms of the abundance, interchange with other areas, and other key parameters. These estimates should not be used in management until biases and assumptions can be better tested and validated.

19) The Pacific SRG reiterates its recommendations from 2018, 2019, 2020, 2021 and 2022 for implementing time-area closures within important resting bays to protect spinner dolphins. The PSRG notes that the time period for public comment on the proposed time-area closure rule (in addition to the recently implemented 50-yard no-approach rule) closed in December 2021, and has concerns on the lack of progress on finalizing a ruling on this matter.

20) The PSRG requests a presentation from the PIFSC regarding further updates to the newly developed methods for the estimation of long-term trends in abundance for the Maine Hawaiian Insular stock of FKW. The PSRG is in support of the proposed approach, but would like to see further simulations aimed at specifically addressing the effects of violating model assumptions: 1) the cluster is the largest source of variation in movement, 2) cluster membership is fixed and known without error and 3) tag inventory adequately defined space use. All of these can be incorporated into the current simulations, and would provide a better picture of the behavior of the approach as it relates to FKW, building even greater confidence in the use of the approach to assess trend.

21) The PSRG requests a briefing from NMFS and USFWS experts regarding the potential for comorbidity among toxoplasmosis exposure and other factors that could lead to the death of a marine mammal (e.g., avoidance behavior around fishing nets or vessels, foraging efficiency, predator avoidance, disease resistance). Our concerns are related to the potential for sub-acute toxoplasmosis infections to affect the behavior of an animal such that its ability to avoid entanglement and ship strikes could be compromised, as could an animal's ability to forage efficiently and avoid predators. This change in behavior could be mediated through changes in social interactions in social species (e.g., spinner dolphin), as well as changes in the behavior of more solitary animals (e.g., monk

seals). More generally, there are several ways that sub-lethal effects of toxoplasma infections could nonetheless have population consequences, and the PSRG would appreciate a summary of the range of chronic effects of toxoplasma exposure being considered (co-morbidities and co-infections, increased risk for other hazards, etc.). Additionally, the PSRG supports continued investigation into the relative frequencies of and exposure to different toxoplasma genotypes in the Hawaiian Islands, as different genotypes could have dramatically different outcomes in terms of infection severity.

22) The Pacific SRG reiterates their support of the use of passive acoustic methodologies to improve on SARs for elusive, yet acoustically identifiable species, but requests an update on methodological improvements. The Pacific SRG commends important progress achieved in implementing acoustic density estimates for rare or elusive species that can be readily identified using acoustic detection methods. We request an update on efforts related to the effect of duty cycle, possibly with a simulation approach and a variety of densities. While this was addressed theoretically in the written response, a demonstration would be useful. An update on ongoing work related to the influence of ocean currents on DASBR drift patterns and the assumption of random distribution is requested. We additionally recommend incorporating uncertainty into estimating distance from track-lines of DASBR drifters.

Sincerely,



John Calambokidis, PSRG Chair

CC:

Kristen Koch, Southwest Fisheries Science Center
Charles Littnan, Pacific Islands Fisheries Science Center
Kevin Werner, Northwest Fisheries Science Center
Robert Foy, Alaska Fisheries Science Center
Jim Berkson, NMFS Science and Technology
Zachary Schakner, NMFS National SRG Coordinator
Shannon Bettridge, Office of Protected Resources
Laura McCue, NMFS, Liaison to the Pacific SRG
Lilian Carswell, U.S. Fish and Wildlife Service
Steve Henry, U.S. Fish and Wildlife Service
Brad Thompson, U.S. Fish and Wildlife Service
Curtis Tanner, U.S. Fish and Wildlife Service
Ryan McReynolds, U.S. Fish and Wildlife Service
Teal Waterstrat, U.S. Fish and Wildlife Service



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

John Calambokidis
Chair, Pacific Scientific Review Group

Dear Mr. Calambokidis:

Thank you for the letter to Janet Coit, Assistant Administrator for Fisheries, transmitting recommendations from the March 2021 meeting of the Pacific Scientific Review Group (SRG).

The SRG has made many valuable recommendations to help guide NOAA Fisheries' marine mammal science and management, which are addressed in the enclosure. We appreciate the service and contributions by members of the Pacific SRG in providing advice and support to NOAA Fisheries in accordance with the Marine Mammal Protection Act. We look forward to our continued partnership to improve the science supporting the conservation of marine mammals.

Sincerely,

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Francisco Werner, Ph.D.
Director of Scientific Programs and Chief Science Advisor

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Date: 2022.03.14 09:35:28 -04'00'

Samuel D. Rauch III
Deputy Assistant Administrator for Regulatory Programs

Enclosure

cc: Janet Coit, Assistant Administrator for Fisheries
Evan Howell, Director, Office of Science and Technology
Kim Damon-Randall, Director, Office of Protected Resources



Pacific SRG's 2021 Recommendations

1. **The Pacific SRG requests receipt of an overview of the NMFS preparation for the possible initiation of Makah subsistence whaling.** The Pacific SRG is aware that an Administrative Law Judge will likely soon rule on litigation concerning the request by the Makah Tribe for a waiver to resume subsistence hunting for the eastern stock of gray whale.

Response: The Makah Tribe's request to resume ceremonial and subsistence whale hunts is still under review by the Agency. At this time, we can only provide an overview of recent and anticipated procedural steps in the process, which is still ongoing.

On September 23, 2021, Administrative Law Judge (ALJ) George Jordan issued a recommended decision regarding NMFS' proposed waiver and regulations under the Marine Mammal Protection Act (MMPA) for the Makah Tribe to take Eastern North Pacific (ENP) gray whales in treaty-based hunts. This recommended decision was a key step in the MMPA waiver review process. The ALJ recommended the NMFS' Assistant Administrator approve the MMPA waiver for the Makah Tribe and allow limited hunting of ENP gray whales under regulations and permits issued by NMFS.

On September 29, 2021, NMFS published a request for public comments on the ALJ's decision and accepted comments through November 13, 2021. [On December 10, 2021, NMFS notified the parties](#) involved in the ALJ hearing of the timeline for next steps. These steps include, but are not limited to: the publication of the Supplemental Draft Environmental Impact Statement (anticipated June 2022); the Final Environmental Impact Statement (anticipated early 2023); the publication of the final waiver decision; and, if the waiver is granted, associated regulations (anticipated early 2023). More details about the process we are following can be found in the flowchart and frequently asked questions document on our [website](#).

2. **The Pacific SRG requests an update at its next meeting on NMFS' effort to designate new Biologically Important Areas (BIAs) and its anticipated applications.** The original BIAs NOAA developed, while not having any specific regulatory powers, were used far more extensively than had been anticipated and even became part of some mitigation settlement agreements. Given this, we support NOAA pursuing revising BIAs for all regions using new data and a more formal set of criteria applied more consistently among regions. As best as practical such BIAs should be made as consistent with other spatial protection frameworks, like critical habitat, to make them easier to use.

Response: As noted, NMFS is updating the BIAs for all regions using the best available information, a new scoring and labeling protocol, and an enhanced structured elicitation and review process to increase consistency across regions. As requested, we will provide an update at the 2022 PSRG meeting.

- 3. The Pacific SRG requests an update on findings from newly funded FKW monitoring and management efforts in 2022 and recommends further development of other FKW bycatch mitigation measures.**

Response: PIFSC and PIRO will present a status update to the PSRG on the projects funded from the FY21 FKW appropriations at the 2022 SRG meeting. PIRO will also present the results of the “weak” hook study that compared catch retention on 4.2 vs 4.5mm hooks. The final report from this study was completed in November 2021 and will also be shared with the PSRG as a background document. PIRO can also present and share a summary of the 2021 FKW interactions in the longline fishery, and outcomes of those interactions.

- 4. The Pacific SRG recommends that the M&SI determination not be made fully automated but involve internal validation and input from the SRG and invited experts, especially given existing concerns detailed below.** The Pacific SRG was presented with a proposal to use machine learning to automate the process by which M&SI determinations are made. The SRG welcomed the analysis and its intent to update the existing criteria for defining M&SI and provide greater consistency across M&SI determinations. However, the following concerns were raised; 1) the potential biases in machine learning approaches (e.g., Mehrabi et al. 2019), 2) a mismatch between the binary outcome from the algorithm and the three M&SI categories defined under the MMPA, 3) the potential for individuals to bias determinations if they are aware of the key words most likely to lead to certain outcomes, and 4) using the algorithms’ results to standardize the language used in M&SI reports would then invalidate the continued use of the model to make M&SI determinations.

Response: NMFS will continue to have the PSRG review serious injury cases annually under the current serious injury protocols. Any validation of the random forest method presented to the three regional SRGs at their 2021 meetings will require publication in a peer-reviewed journal and coordination with SRGs moving forward.

- 5. The Pacific SRG reiterates its recommendations from 2018, 2019 and 2020 for implementing time-area closures of resting bays to protect spinner dolphins. The PSRG also reiterates that a 50-yard no approach rule within spinner dolphin resting bays is almost certainly going to prove ineffective given the significant amount of acoustic disturbance from motorized vessels that will still occur, coupled with the difficulty in enforcing such a rule.** These recommendations are consistent with efforts by IUCN Marine Mammal Protected Area Task Force which has designated the main four Hawaii Island spinner dolphin resting bays as “Important Marine Mammal Areas” (IMMAs). IMMAs are characterized as “discrete portions of habitat, important to marine mammal species, that have the potential to be delineated and managed for conservation” and “consist of areas that may merit place-based protection and/or monitoring”. The recommendation is also in line with Governor Ige’s 30-by-30 Initiative “to effectively manage 30% of Hawaii’s nearshore waters by the year 2030”. The PSRG requests an intersessional meeting with NOAA’s PIRO to learn about their efforts and most recent updates on the spinner dolphin ruling.

Response: On September 28, 2021, NMFS published two rules related to the protection of Hawaiian spinner dolphins. A *final* rule was published prohibiting approaching Hawaiian spinner dolphins within 50 yards. A separate *proposed* rule was also published to establish time-area closures at five sites in the Main Hawaiian Islands. The public comment period on the proposed rule closed December 27, 2021. PIRO will present further details to the PSRG on these two rules at the 2022 PSRG meeting.

- 6. The PSRG requests a presentation by Pacific Islands Regional Office (PIRO) during the 2022 PSRG meeting overviewing a synopsis of their science-based management priorities and plans for a) false killer whales, b) monk seals, as well as spinner dolphins and on issues pertaining to aquaculture and marine mammals.**

Response: PIRO will present to the PSRG at the 2022 meeting on management priorities and plans for the noted species. These presentations will include the publication of a final and proposed rule on protective regulations for Hawaiian spinner dolphins; the final Insular False Killer Whale recovery plan and implementation strategy; projects funded by the FY21 FKW appropriations and FKWTRT related activities; and an update on efforts to address intentional killings of Hawaiian monk seals. Given ongoing consultations and staffing shortages, PIRO will not be able to present on aquaculture and marine mammals at this time.

- 7. The Pacific SRG recommends that NMFS include survey schedules in its planning for all stocks of marine mammals that occur in waters off the US west coast, where the information required to provide reliable estimates of minimum abundance would be available at an interval of no more than eight years.** The Pacific SRG was provided with detailed information regarding the survey schedule for California sea lions, eastern population of Steller sea lions, and cetacean populations along the west coast at our most recent meeting in March 2021. This information was very helpful to the Pacific SRG in understanding NMFS commitment to updating marine mammal stock assessment reports in a timely manner. It was noted that two species, harbor seal and harbor porpoise, are likely to have the highest interaction rate with commercial fisheries in U.S. waters and should therefore be a priority. Also, stocks that have their most recent abundance estimates from 2012 or earlier should also be considered a priority by NMFS for future surveys to determine abundance

Response: NMFS AFSC will present a table of planned surveys for West Coast pinnipeds at the 2022 March PSRG meeting. Our goal is to update all pinniped stock assessments by 2025 and develop a schedule to rotate stocks assessments in an effort to keep them current. However, the ability to meet the schedule will depend on funding.

- 8. The Pacific SRG recommends that NMFS inform the SRG regarding its current strategy for the recovery of Hawaiian monk seals in light of the reduction of available pupping and resting habitat in the NWHI.** The Pacific SRG was informed that loss of beach habitat at French Frigate Shoals resulted in significant loss of pupping habitat (see background text below from NMFS Hawaiian monk seal website). This has been driven by a combination of factors including climate change and storm-related events. We encourage NMFS to clarify its approaches to responding to this emerging threat, which might include increasing recovery efforts for monk seals in the main Hawaiian Islands (e.g. increasing efforts to address

emerging issues such as Toxoplasmosis or disturbance) or performing viability analyses to evaluate the stock-level impacts of breeding habitat loss in the NWHI. It was further noted that the most current management plan was completed in January 2016, based on years 2016-2020, and that none of the key action items in that version of the Plan address concerns related to the impact of habitat loss in the NWHI. At a minimum, the Pacific SRG **recommends** that NMFS commit to updating the Hawaiian monk seal 5-year Action Plan within the next 18 months and include in the Plan a description of efforts that will be undertaken to address the loss of pupping and resting beaches in the NWHI, including modeling efforts to allow for a comprehensive understanding of the impacts of habitat loss on the population over the next few decades.

Response: NMFS is a participant in multiple working groups that seek to address the habitat loss issue at French Frigate Shoals (FFS), including the NOAA Habitat Focus Area and the newly established Papahānaumokuākea Marine National Monument PMNM Monument Management Board (MMB) working group which seeks to provide feedback and/or proposals for the MMB to make decisions regarding FFS. Members of the MMB and Pacific Regional Executive Board agree increased focus and collaboration is needed to better understand, predict, and adapt to climate-related impacts at Lalo/FFS in order to benefit key resources in the public trust. Lalo/FFS is a logical place in the Monument for this enhanced focus as there are near-term needs that would benefit from increased attention (mitigating entrapment hazards, examining impacts of habitat loss, etc.), there is a baseline of work that has been completed to build on, and it is an area of critical importance to the long-term survival of key species in the Monument (monk seals, green sea turtles, and a number of seabirds). To this end, the MMB has formed a MMB Lalo/FFS Working Group composed of members from all four PMNM co-manager agencies (NOAA, USFWS, Hawai'i Department of Land and Natural Resources, and Office of Hawaiian Affairs)). The NOAA Pacific Region Executive Board (PREB) has tasked a small cross-line office working group – the NOAA Core Team – to work in partnership with MMB Lalo/FFS Working Group agency representatives and other experts over the next 12-18 months to discuss specific issues facing this region, prioritize research and conservation needs, and explore potential management options for helping the species and habitats adapt to a changing climate. The Lalo/FFS Working Group, with support from the NOAA Core Team, aims to achieve the following objectives:

- 1) Invigorate on-going efforts among a broad group of stakeholders by reactivating habitat advisory committees (terrestrial, marine, adaptation), and holding a series of collaborative workshops and webinars to gather knowledge and identify innovative solutions;
- 2) Establish the state of current knowledge and identify current knowledge gaps pertaining to keystone species and habitats on Lalo/FFS and Tern Island, including system elements, sensitivities, thresholds, tolerances, and impacts;
- 3) Formulate a more nuanced understanding of the scope and timing of impacts on various natural and cultural resources within Lalo/FFS, both at the individual species and ecosystem-wide levels;
- 4) Identify a range of monitoring and management measures that can be taken to mitigate these impacts so as to optimize the abundance and persistence of key species; and

5) Ultimately develop a “Lalo Resilience Strategy”, a comprehensive and collaborative plan to maintain and enhance the resilience of terrestrial and marine habitats at Lalo/FFS in light of a rapidly changing climate.

The NMFS 5-year (2021–2025) Species in the Spotlight Action Plan for Hawaiian monk seals includes addressing threats facing monk seals in the Northwestern Hawaiian Islands, including issues due to habitat loss resulting from climate change at French Frigate Shoals. In addition, the current Hawaiian Monk Seal Recovery Plan includes efforts to model shoreline evolution under higher sea level scenarios and to devise strategies for active mitigation of hazards. The Hawaiian Monk Seal Recovery Plan is currently in process of revision, and NMFS will continue to include recovery actions addressing the threat of habitat loss in the broader Northwestern Hawaiian Islands.

9. **The Pacific SRG supports some of the progress NMFS is making on guidelines for non lethal deterrence methods but also has some concerns about exemptions from the policy and requests an update on how it is working in the next 5 years.** We were concerned about some of the limitations the plan operates under including the fact it excludes activities if they are not conducted for the purpose of deterrence. We know NMFS is operating under limitations in this regard but would like to ensure there are not other actions the Pacific SRG can recommend to help deal with those limitations if they end up allowing such a large loophole that it prevents effective implementation of guidelines on some of these activities.

Response: A brief update will be provided at the 2022 PSRG meeting, and NMFS can certainly provide annual updates to the PSRG after the deterrence guidelines are implemented. Given the guidelines may not be finalized by the 2022 meeting, we will tentatively plan for 2023.

10. **The Pacific SRG recommends NMFS actively foster communication and encourage collaborations between incidental take authorization applicants and researchers to better take advantage of opportunities to study the impacts of human activities.** There is a lack of information on the impacts of many human activities and sometimes the initiation of some of these activities in new areas provides unique opportunities to advance the understanding of the impact of those activities. NMFS is often consulted or issues permits for these activities and can play a positive role requesting that local researchers be informed of new activities and encourage collaborations to take advantage of those opportunities. A recent case in point is a planned large-scale seismic survey planned for 2021 off Oregon and Washington, an area where that has not been conducted for many years.

Response: NMFS agrees that coordination between MMPA incidental take authorization holders and researchers can provide important opportunities to better understand the impacts of human activities on marine mammals and their habitat. NMFS staff encourage coordination when and where they are aware of those opportunities (e.g., East Coast Offshore Wind developers working with the NEFSC on Passive Acoustic Monitoring plans). As part of the application instructions, NMFS specifically asks for “Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities

relating to reducing such incidental taking and evaluating its effects. You should briefly discuss how you intend to coordinate (if practicable) your activities and/or your monitoring, as well as whether and how you intend to share information with other organizations to minimize incidental take of, and increase knowledge of, marine mammals." However, the staff processing authorization requests are not always aware of the researchers and/or programs with the expertise, capacity, or interest in coordinating on this sort of research. It would be helpful to have regional contacts or lists of contacts that we could refer applicants to to support these sorts of discussions and collaborations. NMFS incidental take program management will reiterate to staff the importance of encouraging these sorts of interactions and would be happy to discuss any mechanisms for supporting them that the PSRG can recommend.

- 11. The Pacific SRG recommends NMFS try to investigate and include in their entanglement reports information on how reporting biases may be playing a role in the trends reported.** From studies on the U.S. East Coast it is known the vast majority of entanglements go unreported and that under-reporting is likely even a bigger issue on the U.S. West Coast. Observed trends in documented entanglements could therefore easily reflect changes in reporting (including factors like COVID) rather than in numbers of entanglements occurring. Given the increased reliance on entanglement reports to track progress and even in decisions on operations of some fisheries it is important to acknowledge and investigate factors that could influence reporting. Examination for changes in the proportion of confirmed versus unconfirmed reports, those assigned or not assigned to a specific fishery, or those contributed by different types of reporting parties could all be used to evaluate whether there have been potential changes in reporting.

Response: NMFS agrees that entanglements are underreported and that quantifying the degree of underreporting is difficult, given the opportunistic nature of case reporting, which, in itself, is a form of biased 'search effort'. There have been gains in 'gear forensics' each year, where the number of entanglement cases that can be assigned to a specific fishery is improving due to better identification of gear, from high resolution photographs, or the collection of the entangling gear, which facilitates lookup of buoy and / or permit tag numbers to confirm fishery involvement. NMFS agrees that examination of the entanglement reporting data at-hand may yield information on trends in reporting by source and entanglement status (confirmed vs. unconfirmed) that further clarify the potential sources of biases. For example, during the last two years (2020 and 2021) there has been an increase in the relative fraction of entanglement reports that are deemed to be unconfirmed (~33%) compared to average rate over the last 20 years (~20%), although these are not unprecedented levels for any given year over the last two decades. In our 2020 West Coast Whale Entanglement Summary, we acknowledged that the COVID-19 pandemic had likely affected observation, reporting, and response capabilities. While reports can sometimes be confirmed even if they are only observed by members of the public (through photos and video collected, or a follow-up interview), confirmation is most likely to be successful when the public can stand-by with the whale until a trained responder can deploy on site; this was certainly reduced as reductions in network operations occurred during the pandemic. Certainly these effects that are likely ongoing, along with other potential biases, could continue to affect our ability to gather and evaluate entanglement report data effectively. When and where we are able to

identify the biases, we will continue to describe them in our entanglement summaries and other documents that are relevant even as we remain limited in our ability to interpret them fully.

- 12. The Pacific SRG supports the use of DASBRs to survey elusive cetaceans but recommends that further evaluations are conducted in the use of DASBRs to address duty cycling and investigate how drift patterns may be influenced by oceanographic features.** Drifting acoustic spar buoy recorders (DASBRs) to survey elusive beaked whale species acoustically over broad spatial and temporal scales have been shown to be highly successful in informing management and stock assessments. We are concerned with the approach on two aspects. Duty cycling has been shown to bias estimation of presence, increasingly so with rare occurrence of a species and longer off-effort periods (e.g., Stanistreet et al 2016). We suggest subsampling of existing continuous data to test for this possible caveat. A second concern is related to the question of whether drifters become entrained into dynamic oceanographic features (e.g., eddies and fronts) and hence are not sampling the study area completely at random. This may possibly be addressed through simulations with ocean models.

Response: We believe that technological advances (increased battery and memory) will now allow for continuous recording under most circumstances, with a minimum of 50% duty cycle going forward (Stanistreet et al. (2016) found 50% duty cycle lead to very low missed detections). Moreover, the metric we use for abundance estimation (percentage of recording periods with echolocation detections) is not affected by duty cycle. Stanistreet et al. (2016) used "daily presence" as their metric, which leads to the duty cycle effect that they found. Regarding the question of non-random sampling, we hope to test this by seeing if the encounter rates at the beginning of deployments (when location is more random) are higher or lower than later in the deployments.

References:

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- Stanistreet, J.E., Nowacek, D.P., Read, A.J., Baumann-Pickering, S., Moors-Murphy, H.B. and Van Parijs, S.M., 2016. Effects of duty-cycled passive acoustic recordings on detecting the presence of beaked whales in the northwest Atlantic. *The Journal of the Acoustical Society of America*, 140(1), pp.EL31-EL3

From: Jeff McFarlane / Jackie Watts <thrivepetfoodmarket@shaw.ca>
Subject: Re: pet food inquiry
To: Kimberly Damon-Randall, NOAA Federal
Sent: March 10, 2022 6:00 PM (UTC-05:00)

Thank you for your response. I understand in these times that resources are limited, and need to be allotted appropriately. I appreciate the fact that most government agencies dealing with important issues like the environment and wildlife resource management are sorely underfunded, and you have to deal with that issue daily.

I truly think that it would be advantageous to the American public to have access to seal meat and seal products in the pet food channel. The health benefits and affordability are something of a game changer in the industry. The fact that opening up this market for the animals that need to be harvested will allow us to preserve the herd's health and long term viability is a ecological side benefit.

I solemnly believe is a win/win situation, and I do think it bears at least some investigation of its merits, and not just an immediate dismissal of the premise, simply because these animals live part of the time in the sea.

You mention that " the MMPA prohibits all imports of marine mammals, with few exceptions, regardless of whether they are threatened or endangered under the Endangered Species Act (ESA ". I see provisions for "accidental take" in construction, oil and gas development and other ocean based pursuits, with the provisions that :

- Have no more than a "[negligible impact](#)" on those marine mammal species or stocks; and
- Not have an "[unmitigable adverse impact](#)" on the availability of the species or stock for subsistence uses.

I understand the reason for these provisions, and we have scientific evidence that the harvest of harp seal will actually have [a beneficial impact on the herd](#). I find it counterintuitive that an oil company can get a permit kill any marine mammal so long that it " Be of small numbers", but a scientifically requested harvest to preserve habitat does not justify consideration for a permit.

With the Canadian seal harvest currently only able to use 10-15% of the quota scientists feel necessary to maintain a healthy and vibrant herd, and thier associated habitat, I fear that these wonderful animals will start to feel that population pressure, and start dying of malnutrition and other associated ways due to habitat demise.

We need an outlet for the animals scientists have requested be harvested, and the US market would be the ideal venue. In return, US pet owners would have access to affordable hypoallergenic foods, and high quality Omega3 oils (which I take myself, it is an amazing product!). I don' remember the last time something ecologically beneficial also had economic and health benefits as well. It is almost too good to believe, and I hope that I am able to convey to you that it is, in fact, true.

Jeff McFarlane

From: "Kimberly Damon-Randall, NOAA Federal" <kimberly.damon-randall@noaa.gov>
To: "Jeff McFarlane, Jackie Watts" <thrivepetfoodmarket@shaw.ca>
Cc: "Catherine Marzin - NOAA Federal" <catherine.marzin@noaa.gov>, "Jennifer Skidmore, NOAA Federal" <jennifer.skidmore@noaa.gov>
Sent: Thursday, March 10, 2022 2:45:34 PM
Subject: Re: pet food inquiry

Dear Mr. McFarlane,

Thank you for your follow-up email. To your point about harp seals not being threatened or endangered, the MMPA prohibits all imports of marine mammals, with few exceptions, regardless of whether they are threatened or endangered under the Endangered Species Act (ESA). The ESA was enacted to recognize species that are in danger of going extinct and to take measures to recover those species. The ESA is a separate law from the MMPA. Incidentally, the population of gray whales at issue in the Makah waiver process that we directed you to, are not listed under the ESA.

You asked about past uses of the waiver process. Before the Makah waiver proceedings, the process had been implemented three times, twice in the 1970s and once in the 1980s. In each of these cases, the agency's issuance of the waiver was successfully challenged in federal court. Finally, the agency's use of the MMPA waiver process is discretionary. NMFS has very limited resources and many other significant priorities. As such, it is very unlikely we would revise our existing priorities

to devote those resources to a pursuit of a waiver in this context.

Kind regards,
Kim

On Tue, Mar 8, 2022 at 2:25 PM Jeff McFarlane / Jackie Watts <thrivepetfoodmarket@shaw.ca> wrote:

Thank you very much for your thoughtful response. I am a very staunch supporter of CITES and global management of endangered species, and have been involved in the pet industry side of that for 40 years. I have been aware of and worked with the most stringent protections of wildlife and their habitats during that time, working with corals, giant clams and reptiles. I have also been involved in the managed harvest of animals that may be on CITES overall, but having regional/seasonal exemptions that allow for local/indigenous communities to benefit from sustainable harvest. These exemptions encourage and assist in local habitat protection, and every one I have been involved with has had a positive outcome for the animals. I truly hope that the logic of this situation will find a similar resolution without threatening the intent of the MMPA.

The Canadian Harp Seal Harvest was not applied for by fishermen, the quotas are not levels requested by fishermen. These are quotas set by government scientists designed to help maintain a healthy herd. Harp seal are not endangered like whales, they do not even carry a threatened designation. The herd has grown from 1.8 million individuals in 1970 to 7.4 million in 2014. The current quota requested by scientists is 400,000 animals, of which fishermen currently take between 10 and 15%. The reason we cannot fulfill the government's quota is not due to an inability to take the animals, but rather having a market for the animals after harvest. We need an outlet to utilize these animals taken, and the use of the animals for pet food, treats and supplements in the United States would allow us to better utilize the full requested harvest numbers, to assure the ongoing health of the herd, and prevent them from destroying their habitat, putting the herd, and all the animals in their habitat, at risk.

To recap, these are not animals that are endangered or threatened. They are, instead, endangering their habitats. We have the resources and can create the infrastructure to make the harvest into a win/win situation.

The current market for hypo-allergenic pet food is under-served and relies heavily on imports of items like wild harvested Australian kangaroo. Kangaroo taken in a very similar situation to Canadian Harp Seal, which have many similarities, with the single discernible difference that kangaroo do not live in the sea. Both are government set quotas, both involve trained and licensed harvest technicians, both are harvested for the betterment of the herd. From a nutritional standpoint, there are many things that make seal a better option for pet foods, and due to the proximity and infrastructure required to bring seal to market, it should be a much more affordable option for pet owners than the outrageously priced kangaroo options.

You mention that the process has been used 4 times since its inception, and refer to the ongoing 2005 application regarding Tribal Whale hunts. I really think that this is as far from an appropriate comparison as we could use as a reference. The Harp Seal harvest is undertaken at the scientific communities request of the government to allow a regulated harvest for the health of the Harp Seal herd, which are overpopulating their habitat to a destructive level to all the inhabitants of the habitat.

Can you share what the other three applications were? Did any include a non-threatened marine mammal, like the Harp Seal? Or were they all like the cited application, for a harvest of an endangered species, like the Gray Whale with a population of only some 20,000 members, where each animal harvested directly affects the herd?

Thank you again for your attention to this matter. I truly hope we can come to a logical and scientific resolution to this issue.

Jeff McFarlane

From: "Kimberly Damon-Randall - NOAA Federal" <kimberly.damon-randall@noaa.gov>
To: "Jeff McFarlane, Jackie Watts" <thrivepetfoodmarket@shaw.ca>
Cc: "Catherine Marzin - NOAA Federal" <catherine.marzin@noaa.gov>, "Jennifer Skidmore, NOAA Federal" <jennifer.skidmore@noaa.gov>
Sent: Tuesday, March 8, 2022 12:14:04 PM
Subject: pet food inquiry

Dear Mr. McFarlane,

Jennifer Skidmore of my staff forwarded your email to me for a response. We appreciate your reaching out regarding the legality of importing marine mammal parts, specifically parts from the Canadian harp seal harvest for use in pet food. Your proposed import is prohibited under the Marine Mammal Protection Act (MMPA). In the United States, marine mammals, including their parts, are protected and regulated under the MMPA. Importing marine mammal parts is prohibited unless

there is an exception under the Act, such as for scientific research.

Your correspondence referenced Section 101(a)(3)(A) of the MMPA. This section is not an application process for a simple permit, but rather allows NMFS to initiate a formal rulemaking process. Depending on the findings of that process, the agency might then enact specific regulations allowing for issuance of permits for activities otherwise prohibited under the Act. This process, which has been used only four times since the MMPA's passage in 1972 (and once by an act of Congress in 2018), involves a public hearing and formal rulemaking presided over by an administrative law judge. If NMFS makes a final decision to issue a waiver and accompanying regulations, the entity seeking the waiver would then need to apply for a permit as provided by those regulations. Additionally, it is important to comply with other federal laws such as the National Environmental Policy Act.

You may find information on what is involved in this process by looking to the one waiver proceeding currently before the agency, which was commenced in 2005 and is still not completed. In this case, the Makah Indian Tribe petitioned for rulemaking under the U.S. Administrative Procedure Act seeking an MMPA waiver to authorize the resumption of treaty-based ceremonial and subsistence hunting of the eastern North Pacific gray whales. NMFS accepted the Tribe's petition based, in part, on the Tribe's treaty right to hunt whales and NMFS's trust responsibility to the Tribe. You can find out more on our dedicated webpage: <https://www.fisheries.noaa.gov/action/formal-rulemaking-proposed-mmpa-waiver-and-hunt-regulations-governing-gray-whale-hunts-makah>

In addition, we are including the web address for the page you were unable to access via the link.
Marine mammal parts - <https://www.fisheries.noaa.gov/national/protected-species-parts>

Thank you again for your inquiry. We hope this information is helpful.
Kim

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From: Michael Milstein - NOAA Federal <michael.milstein@noaa.gov>
Subject: Re: Interview request about Makah whaling timeline
To: Josephine Woolington
Cc: kimberly.damon-randall@noaa.gov
Sent: September 12, 2022 5:05 PM (UTC-04:00)

Hi Josephine, I can help with this.

On Mon, Sep 12, 2022 at 11:52 AM Josephine Woolington <woolington.josephine@gmail.com> wrote:

Dear Ms. Damon-Randall —

My name is Josephine Woolington, and I'm a writer in Portland, Oregon. I'm working on a story about a Makah artist and former tribal chairman for High Country News, a nonprofit magazine that tells stories of the West. The story will profile his art and family history, but it will also discuss the Makah's proposed waiver to whale.

I'm reaching out in hopes that you or someone within NOAA would have time to talk with me about the latest supplemental DEIS and the next steps. I'm wanting to make sure I understand the logistics, what is being proposed in the supplemental DEIS, and when a final decision could be made.

Thank you so much for any help.

Warmly,
Josephine

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Michael Milstein

Public Affairs Officer

[West Coast Region, Northwest Fisheries Science Center, Southwest Fisheries Science Center](#)

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