

## **False Killer Whale Stakeholder Assessment Report**

### **BACKGROUND:**

NOAA's National Marine Fisheries Service (NMFS) intends to convene a False Killer Whale Take Reduction Team (referred to as Team or TRT) in February 2010 to address bycatch of false killer whales in Hawaii longline fishing gear.

To help NMFS prepare for the Team's deliberations, CONCUR, Inc., an environmental dispute resolution firm specializing in marine policy and water resource issues, conducted confidential interviews with nearly two dozen individuals to help clarify key interests at stake, better understand issues to be resolved, anticipate potential areas of agreement and disagreement, and explore key meeting preparation needs.

CONCUR worked closely with NMFS to identify candidate interviewees who collectively represent the breadth of perspectives likely to be included on the Team. Interviewees included conservation advocates, fishermen, fisheries representatives, state and federal agencies, gear specialists and researchers. A list of those interviewed is attached (*Attachment 1*), as is the protocol used to guide the interviews (*Attachment 2*).

Below is a brief report summarizing the interviews. This summary is not intended to be exhaustive nor reflect all comments raised during the interviews. Rather, it is intended to put forward the primary themes and issues raised in discussion with potential TRT members.

### **KEY FINDINGS:**

#### **1. Support for Take Reduction Process**

Interviews suggest both interest and multiple incentives among parties to engage productively in the Take Reduction process, with several important factors underpinning stakeholder willingness to participate in the deliberations.

Most importantly, both conservationists and fishery interests share a common and critical goal: reducing interactions with false killer whales. Unlike other fisheries, depredation by false killer whales provides an economic incentive for longline fishermen to reduce interactions. Said one interviewee involved in the fishery: "It's not in the fishery's interest to fight this. Depredation isn't good for us. It costs us lots of money." Additionally, fishing interests in particular see the Take Reduction process as an opportunity to brainstorm research and data collection strategies that can strengthen and build greater credibility in current data and future projections regarding false killer whale abundance estimates, stock structure, and bycatch rates.

Interviewees cited other reasons for supporting the Take Reduction process.

- Several of those likely to be involved in the Team have, in general, productive professional relationships, and interviewees acknowledge the collective skills and insights of those likely

to be involved in the deliberations. “There are really smart people on all sides of this issue,” one conservation advocate said.

- Parties are committed to putting in the time necessary to invent and refine creative solutions, and many bring solid experience in consensus-seeking deliberations and see the Take Reduction process as a productive way forward. Said one fisherman: “We have a serious problem. We’re willing to help.”
- Finally, all parties recognize that NMFS will need to move forward with some type of proposed actions to decrease takes of false killer whales. Better, many of those interviewed said, for the Team to hammer out a mutually acceptable compromise approach with all impacted interests around the table than have NMFS staff craft a proposed rule without strong Team input.

## 2. Recognition of Challenges Ahead

While there is broad support for the Take Reduction process, interviewees’ optimism is tempered significantly by the serious challenges facing the Team.

Most critically, all interviewees acknowledge that productive deliberations will be tough given the many data limitations and gaps. These uncertainties encompass a wide range of data including population estimates; stock splits and stock boundaries; false killer whale distribution, range, communication and feeding behavior (possibly including “learned behavior”); and bycatch level and post-hooking survival rates. Moreover, because of the many uncertainties and the small population size, even a limited level of take has a large impact on the stock’s sustainability. Additionally, interviewees offer mixed assessments and confidence in the data collection and analyses underlying the need for convening a team. Fisheries interests, in particular, are skeptical of the low population abundance and stock split figures and suggest false killer whales are far more plentiful than NMFS estimates. “The science is so weak,” said one interviewee. “The whole thing is based on assumptions that are very likely not true.” Others voice a lack of confidence that sufficient funding will be made available to undertake the necessary research.

Just as importantly, pretty much everyone interviewed agreed that there is no “silver bullet” to address the underlying issues, and the six-month timeframe for the negotiation makes it tough to invent and assess creative options. Said one interviewee, mirroring the views of others: “We don’t have a quick answer or a lot of time.” As well, even if the Team’s efforts are successful, several of those interviewed cite the challenges in documenting and tracking progress in a small population size with few takes and limited observer coverage. Finally (and importantly), some interviewees question the motives of others likely to be around the table, with some fisheries representatives concerned that some environmental interests simply want to get “all lines out of the water” and some conservation advocates concerned that some fishing interests are reluctant to acknowledge or address the underlying problem and just “want to play defense.” Among some, trust in some parties’ commitment to negotiate in good faith is low.

Still, on balance, participants largely agreed that a Take Reduction Team is a productive and necessary path forward, and they expressed a commitment to work hard and negotiate in good faith. As one researcher interviewed put it: “Regardless of how difficult it is during the process, in the end, the region will be much better off. The process is a crucible in which solutions are tested and resolved.” Moreover, there is a general recognition that the Team needs to move forward with NMFS current abundance and bycatch estimates in the near-term and then use the Take Reduction process to develop improved estimates for future assessments. “Knowing more about the animals is not something we’re going to solve overnight,” said one fishery representative. “But...we can add research into the mix of practical management actions.”

### **3. Focused Scope Important But Don’t Lose Sight of Bigger Picture**

Interviews suggest several critical shared perspectives among stakeholders. For one, interviewees agreed that the Team must address takes of pelagic false killer whale stock in the deep-set longline fishery. Additionally, in nearly all interviews, stakeholders emphasized the challenge of trying to reach consensus within the required six-month window, and they voiced concern that broadening the scope too much runs the risk of diverting needed focus and diminishing the likelihood of success. “We want to get the best bang for the buck, but we really want to get success,” said one researcher.

Still, beyond this shared view, parties offered divergent views on the possible Team scope. Among the perspectives voiced:

- Many of those interviewed – including both conservation advocates and some fishery interests – suggested that the Team’s scope be broad enough to encompass both the shallow set longline fishery and insular stock as stock boundaries are unclear and anecdotal evidence suggests increased encounters with shallow set fishery. “It’s better to have more information and scope,” said one individual, “and then narrow down if necessary later on.” Others questioned the need for a broader scope, contending that there is no solid evidence to-date of false killer whale serious injury or mortality in the shallow set fishery – a fishery, they note, with 100% observer coverage. Said one interviewee: “I don’t think there is enough significant interaction to warrant inclusion.” These individuals also suggested that there is insufficient data to suggest that the insular stock is below PBR.
- Several interviewees felt it was essential to include the shortline fishery given anecdotal evidence of takes, overlap with the insular stock, and the need to address potential takes in all waters within the Hawaii EEZ. “It’s time to tackle this issue head on,” said one person. Others acknowledged the potential importance and impact of the shortline fishery, but suggested the small size of the fishery, the lack of observer coverage, and the limited data made it impractical to include at this time and would only divert the Team’s attention from the more pressing and better defined problems. Virtually all those interviewed, however, agreed that better data are needed to assess the potential impact of the shortline fishery on false killer whales, and they expressed interest in using the Take Reduction process to press for improved information.

- Some interviewees voiced strong support for Team deliberations to consider and account for takes occurring by foreign fleets on the high seas outside the U.S. EEZ. Similarly, several of those interviewed expressed the view that, ideally, the scope should be broadened to include commercial charters and recreational fishermen, as these were also seen as a possible source of takes. These individuals suggested it was essential to address these additional possible sources of takes so as not to unfairly target and saddle the Hawaii-based longline fleet.
- A handful of those interviewed suggested broadening the scope to cover other marine mammals and/or other geographic areas (humpback whales, pilot whales, American Samoa and Palmyra were mentioned by several of those interviewed), as the techniques to be discussed will likely have potential benefits for other stock and areas. However, the vast majority of interviewees did not see a need for such a broadening of scope.

#### 4. No Quick Fixes But Some Initial Ideas

Virtually all those interviewed agreed that there is no quick fix to the issues to be tackled by the Take Reduction Team. This is particularly true, a number of interviewees said, as the false killer whales appear to be adapting their behavior in a way that is increasing depredation. (As one person said: “The boat engines seem to be sounding increasingly like a dinner bell to the false killer whales.”)

Still, interviewees offered possible ideas for the Team to consider when reducing interactions, bycatch or both. Among the possible strategies and approaches mentioned include the following:

- Understanding false killer whale acoustics – how whales locate fishing activity, line, and fish – and then devising effective physical and acoustic deterrents.
- Adjusting fishing tactics – from line length, soak time and depth to time of day, hook type and dyed bait – to identify successful mechanisms for eliminating interactions and/or hookings.
- Increasing real-time, GPS-supported communication among the fleet to alert fishing boats regarding the presence of false killer whales.
- Exploring potential trade-offs between scaling back deep sets within the Hawaii EEZ and negotiating more favorable allocation of big eye tuna caught outside the EEZ.
- Adapting methods used successfully elsewhere to the Hawaii longline fishery. “Let’s not reinvent the wheel,” said one person interviewed.

Time, seasonal, and area closures also were mentioned in most interviews. Fishing interests strongly encouraged the Team to avoid closures, suggesting such reductions in effort are economically tough on fishermen and likely to prove unsuccessful, as they would simply displace fishing effort. Conservation advocates acknowledge the economic hardship caused by closures, but say reductions in effort may need to be in the mix if other approaches prove to be ineffective.

## **5. All Interests Need to Be Represented at the Table**

Interviewees voiced broad agreement on the need to include a diverse set of interests on the Team and generally endorsed the proposed mix of representatives put forward by NMFS – fishermen and fisheries interests, conservation advocates, researchers, gear specialists, and state/federal representatives.

All those interviewed underscored the absolute imperative of including active fishermen at the table, as their participation is seen as essential in: (1) providing practical input on how the fishery works; (2) brainstorming creative strategies for minimizing encounters and takes; and (3) generating awareness and buy-in among all fishermen for whatever package of actions eventually are put forward. Said one fisherman, echoing the views of nearly all those interviewed: “Fishermen need to be part of the process. They have lots of first-hand knowledge to share.” Most of those interviewed strongly encouraged NMFS to include a large delegation of fishermen to ensure adequate representation at all meetings. There were also suggestions by some to include fishery representatives, as possible, who bring an understanding of both the fishery and biology.

Interviewees also discussed the ethnic nature of the fishery – the fleet is dominated by Vietnamese-American, Korean-American, and Caucasian groupings – but those most familiar with the fishery suggested that its interests could be adequately represented by any mix of fishermen at the table since the different ethnic groups do not have distinctly different fishing methods that would affect “take” rates, nor are they said to have distinctly different ideas for reducing take. As one interviewee put it: “There are no fault lines with the fishery over false killer whales.” Still, to ensure adequate input and subsequent buy-in, most of those interviewed strongly encouraged NMFS to seat representatives from all three ethnic groups on the Team or at least ensure there are adequate liaisons in the mix to foster ongoing outreach efforts. (The use of liaisons was also seen as an effective strategy for overcoming language barriers with many of the Vietnamese- and Korean-American captains).

Finally, many of those interviewed expressed a willingness to serve on the Team, though several of those contacted said they did not have adequate time to ensure participation in all meetings.

## **6. Information Key to Fostering Effective Deliberations**

Acknowledging the limitations of existing data, nearly all of those interviewed called on NMFS to both bring the best available information to the negotiating table from the outset and use the Team’s deliberations to identify concrete strategies for improving future data. Additionally, interviewees emphasized the need for comprehensive upfront briefings to ensure all parties have a common understanding of the underlying issues. They also underscored the importance of transparency, with interviewees from various viewpoints calling for data to be presented in a manner that distinguishes interpretation and inference from underlying objective information.

Participants offered the following specific recommendations regarding information needed to support the Team’s deliberations:

- **Clear breakdown of basic data.** Many interviewees asked that the Team be provided clear data that lay out the following: fishing effort, take and gear type by time of year and location; stock size, location and range; historical stock assessments; false killer whale biology; serious injury and mortality assessments; etc. As well, it is important, they said, that these data be provided in clear maps that facilitate Team understanding. Others stressed the importance of having both recent and past data to assess trends.
- **Make observer data available.** A number of interviewees representing diverse interests emphasized the importance of making observer data available, suggesting the Team could mine the data to discern possible trends, refine abundance estimates and identify strategies for avoiding take. “We need to tap into observer records for this fishery,” said one interviewee. Along those lines, another interviewee emphasized the importance of using the data to better understand the nature of interactions (depth, gear type, nature of injury, if any to false killer whales, etc.).
- **Take stock of lessons learned.** Several individuals requested that NMFS early-on brief participants on lessons learned from other longline fisheries that have addressed marine mammal bycatch. These briefings are seen as an efficient way to identify possible actions and avoid unproductive techniques. Specifically, several participants strongly recommended that the Team look at the approaches adopted by the East Coast longline fisheries as a result of the Pelagic Longline Take Reduction Team deliberations. Others suggested looking at strategies adopted by the Japanese longline fleet, though these interviewees acknowledged that these data would likely be difficult to get due to its proprietary nature.
- **Review other related materials.** Interviewees cited other materials that may prove relevant and help inform the Team’s deliberations. Specific information sources cited included the following:
  - April 2009 TEC report regarding depredation in the Hawaii longline fishery
  - Vancouver Aquarium depredation workshops
  - Pre-1999 data on shallow set
  - Reports from the WPFMC’s Marine Mammal Advisory Committee
  - Relevant data and research on false killer whale acoustics
  - Data on foreign fleet impacts on stock (perhaps to be found in sea turtle work already completed)
  - Briefings on the norms of Hawaii’s longline fleet (stewardship, self-policing, etc.)

## 7. Process Recommendations

Given the non-trivial challenges facing the False Killer Whale Take Reduction Team – little data, no easy solutions, tight deadline – participants stressed the need to put in place a process that can foster well informed, respectful and productive deliberations. Specific recommendations centered on the following:

- ***Build and maintain mutual respect.*** A number of those interviewed emphasized the importance of engaging in discussions in a way that respects the positions of others around the table and strives to be open-minded when discussing possible ways forward. As one fisherman said: “It’s very important for Team members to have an open-minded approach to possible solutions and come to the Team with the goal of finding solutions.”
- ***Early opportunity to state underlying needs and interests.*** Several interviewees suggested it would be important early on to provide an opportunity for Team members to articulate their underlying interests and aspirations. This, they said, is essential if Team members are to understand each other’s perspectives and attempt to craft solutions that integrate each other’s interests.
- ***Strong neutral facilitation.*** Participants strongly recommended NMFS use outside facilitators to ensure the Team’s deliberations stay focused and all perspectives are heard in a balanced manner without any individuals or interests dominating the conversation. “Facilitation is crucial to the success of the group,” said one conservation advocate. “Mediators are critical in the ability of the group to feel safe.”
- ***Ample opportunity for informal caucusing and brainstorming.*** Given the challenges facing the group, several of those interviewed suggested that the meetings be structured in a manner that allows for within and across-group caucusing and brainstorming – both during meetings and in the more informal conversations that take place before and after the formal sessions.
- ***Mobilize the best available information.*** All those interviewed said it was vital for the Team’s talks to be informed by the best available information, with parties presenting data in a way that distinguishes assumptions and inferences from objective data. As well, they urged NMFS to provide real-time data-mining and analysis – including the use of data not now made available publicly – to support the group’s efforts to find solutions able to be broadly supported. As one interviewee said: “We need an ‘aha’ moment that comes from data-mining or a technological breakthrough.” To that end, several interviewees also emphasized the importance of active Science Center involvement.
- ***Active NMFS participation.*** Several of those interviewed suggested that strong participation by NMFS is essential, as its leadership and insistence on success will be pivotal in pressing Team members to move towards consensus solutions. In particular, several participants asked that NMFS be represented at the table by a strong leader able to press the group forward.
- ***Encourage active fishermen involvement.*** Virtually all those interviewed underscored the importance of fostering active engagement by those fishermen named to the Team. This is particularly important, several interviewees said, as fishermen are often seen as reluctant to fold in their views in public settings.
- ***Other.*** Interviewees offered several other process recommendations, including the following:

- Need for ground rules that articulate clear expectations regarding collaboration both at the table and away from the formal negotiations;
- Provide upfront guidelines that address issues regarding the use of data and data confidentiality;
- Start meeting with Hawaiian prayer;
- Create opportunities for participants to share meals and spend informal time together;
- Make sure people understand each other; facilitator should repeat key themes and comments;
- Ensure appropriate resources are on-hand to support the Team's deliberations; and,
- Take steps early to make sure participants understand the mechanics of the fishery; make use of diagrams, direct briefings from fishermen, etc.

### **NEXT STEPS:**

CONCUR believes the stakeholder interview findings offer important guidance for preparing for and managing the False Killer Whale Take Reduction Team process. To that end, CONCUR will work with NMFS so that, to the extent possible, the comments and recommendations offered are addressed at the first meeting and in the design and execution of the overall FKWTRT process.

## **ATTACHMENT 1**

### **List of Interviewees**

To help NMFS prepare for the Team's deliberations, CONCUR, Inc., an environmental dispute resolution firm specializing in marine policy and water resource issues, conducted confidential interviews with approximately two dozen individuals to help clarify key interests at stake, better understand issues to be resolved, anticipate potential areas of agreement and disagreement, and explore key meeting preparation needs.

CONCUR worked closely with NMFS to identify candidate interviewees who collectively represent the breadth of perspectives likely to be included on the Team. Interviewees included conservation advocates, fishermen, fisheries representatives, state and federal agencies, gear specialists and researchers.

Below is a listing of those interviewed as part of this effort. Most interviews covered all topics noted in Appendix 1; a few interviews were more streamlined and covered only some of the topics.

William Aila, Hui Malama I Kohola  
Robin Baird, Cascadia Research Collective  
Hannah Bernard, Hawaii Wildlife Fund  
Steven Beverly, Secretariat of the Pacific Community  
Frank Crivello, Fisherman  
Brendan Cummings, Center for Biological Diversity  
Paul Dalzell, Western Pacific Fishery Management Council  
Roger Dang, Pacific Fishing & Supply, Inc., Hawaii Longline Association Board of Directors  
Clint Funderburg, Fisherman  
John Hall, Fisherman  
Jongil Paik, Fisherman, Hawaii Longline Association Board of Directors  
Kris Lynch and David Laist, Marine Mammal Commission  
John LaGrange, Fisherman  
Sean Martin, Hawaii Longline Association Board of Directors  
Anthony Nguyen, Fisherman  
David Nichols, Hawaii Department of Land and Natural Resources  
Tory O'Connell, Coastal Marine Research  
Jerry Ray, Fisherman  
Andy Read and David Johnston, Duke University  
Ryan Steen and Jeffrey Leppo, Stoel Rives LLP  
Aaron Thode, Scripps Institution of Oceanography  
Christine Tran, Longline boat owner  
Sharon Young, Humane Society of the US

## ATTACHMENT 2

### Stakeholder Interview Instrument

*The questions below were used to guide interviews with individuals and entities interested in the False Killer Whale Take Reduction Team process. The questions below were used as a guide only; each interview was unique and focused on different aspects to varying levels of detail.*

1. **Background:** Please tell us about your professional background and current position/responsibilities.
2. **Interests:** What are your organization's interests in this TRT and the development of a Take Reduction Plan to manage the incidental take of false killer whales?
3. **Challenges and keys to success/Learning from past efforts:** In your view, what are the key challenges or barriers facing the project, and what are the keys to success? If you were involved in past TRTs (or similar types of deliberations), in your view, what worked well in these efforts, and what could have been done better?
4. **Key issues (getting below PBR):** The immediate goal of this take reduction plan is to reduce, within six months of its implementation, the incidental serious injury or mortality of marine mammals from commercial fishing to levels less than PBR. Given this aim, what are your/your organizations aspirations? What's a realistic way to move in that direction?
5. **Team Scope:** NMFS has yet to determine the scope of the Team, but is considering several commercial fisheries and marine mammal stocks including: 1) both the Insular and Pelagic Stock of false killer whales in Hawaii; 2) the deep-set and shallow-set components of the Hawaii-based longline fishery; and 3) the Hawaii State shortline fishery. NMFS will determine the exact scope before formally convening the Team in 2010. In the meantime, do you have any thoughts on either narrowing or broadening the scope?
6. **Process design and preparation needs:**
  - *Information needs.* What specific information would be helpful to support these deliberations? Please recommend specific documents, data sets or presenters.
  - *Ground Rules.* When facilitating collaborative groups, we develop draft ground rules to cover areas such as "Participation," "Representation," "Information Sharing," and "Media Conduct." Would you like to suggest any ground rules to help members work together effectively?
  - *Potential Members.* NMFS's current thinking is that the TRT will include representatives of the following: 3-4 fishermen/industry reps; 3-4 NGOs; 2-3 marine mammal biologists; 1-2 fishery/gear specialists; 1 state resource management rep; 1 regional fishery management council rep; 1 Marine Mammal Commission rep; and 1-2 NMFS reps. Final composition of the TRT will be determined by the NMFS Assistant Administrator. NMFS scientists and experts will also be on hand to support the Team's deliberations. Are you interested in serving on the Team? Do you have suggestions on others who might contribute to the Team?
6. **Other comments/questions/advice:** Do you have any other questions, comments or advice for us? You are welcome to send us any additional thoughts by email ([bennett@concurinc.net](mailto:bennett@concurinc.net) and [scott@concurinc.net](mailto:scott@concurinc.net))