False Killer Whale Take Reduction Team Meeting
July 27-29, 2011
Honolulu, Hawaii

KEY OUTCOMES MEMORANDUM

I. OVERVIEW

The National Marine Fisheries Service (NMFS) held a meeting of the False Killer Whale Take Reduction Team on July 27-29, 2011, in Honolulu, Hawaii. The meeting focused on the following objectives:

- Provide updates on recent False Killer Whale Take Reduction Team (FKWTRT) related activities, including stock status and recent interactions
- Review and discuss the False Killer Whale Take Reduction Plan (FKWTRP) Proposed Rule, including both regulatory and non-regulatory components
- Discuss possible approaches for evaluating the effectiveness of the Take Reduction Plan
- Identify emerging issues related to other fisheries (American Samoa longline, Hawaii State fisheries) and consider implications for future Team deliberations
- Outline next steps, including potential joint recommendations and work teams

This meeting summary is presented in five main sections: Overview, Participants, Meeting Materials, Key Outcomes, and Next Steps. The Key Outcomes section is further segmented into the following:

- ***Welcome, Introduction and FKWTRP-Related Updates.*** This section provides a brief overview of meeting purpose, agenda, ground rules and a series of FKWTRP-related updates and briefings.
- ***Proposed Rule.*** This section provides a synthesis of the Team's discussions regarding the Agency's Proposed Rule. Key findings and any recommendations or actions agreed to by the Team are called out in this section.
- ***Evaluating TRP Effectiveness.*** This section summarizes key themes drawn from the Team's initial discussions of possible strategies for evaluating TRP effectiveness.
- ***Other Fisheries.*** This section provides a distillation of Team member views regarding implications for the FKWTRP of other fisheries, specifically the American Samoa longline fishery and State of Hawaii short line and kaka line fisheries.

A copy of the agenda and all other meeting-related materials are available on the Team website at http://www.nmfs.noaa.gov/pr/interactions/fkwtrt/.

II. PARTICIPANTS

The meeting was attended by 16 of 19 Team members or their alternates. Participants included the following: Robin Baird, Frank Crivello (for Clint Funderburg), Brendan Cummings, Paul Dalzell, Roger Dang, Eric Gilman (for Steve Beverly), John Hall, John LaGrange (for Jerry

Ray), Kristy Long, Kris Lynch, Paul Nachtigall, Tory O'Connell, Francis Oishi (replacing David Nichols), Ryan Steen, Lisa Van Atta (for Lance Smith) and Sharon Young. Hannah Bernard and Andy Read were unable to attend. William Aila is in a new position and no longer able to serve on the team.

Nancy Young, with the NMFS Pacific Islands Regional Office (PIRO), and Erin Oleson and Karin Forney, with the NMFS Pacific Islands and Southwest Fisheries Science Centers, respectively, also joined in Team their discussions. Scott McCreary and Bennett Brooks from CONCUR, an environmental dispute resolution firm specializing in marine resource and water issues, served as the neutral facilitators. As well, about 25 people, including staff from NMFS, NOAA Office of General Counsel, NOAA Office of Law Enforcement, the U.S. Coast Guard, and members of the public, attended all or part of the meeting and provided input and guidance, as appropriate.

III. MEETING MATERIALS

Meeting materials were provided to support the group's discussions. As possible, meeting materials were sent out ahead of time. However, some documents and nearly all presentation materials were distributed as handouts. All materials are available on the web at http://www.nmfs.noaa.gov/pr/interactions/fkwtrt/).

IV. KEY OUTCOMES

Below is a summary of the main topics and issues discussed. This summary is not intended to be a meeting transcript. Rather, it provides an overview of the main topics covered, the primary points and options raised in the discussions, and areas of full or emerging consensus.

A. Welcome, Introductions and Updates

L. Van Atta welcomed Team members, emphasizing both the importance of the Team's continued work and the Agency's effort in the Proposed Rule to adhere as closely as possible to the Team's Draft Take Reduction Plan developed with full consensus in July 2010. L. Van Atta's opening remarks were followed by CONCUR's review of meeting purpose, agenda and updated ground rules. Team members did not propose any changes to either the agenda or ground rules. (A copy of the revised Ground Rules is available on the team website.)

The meeting then focused on a series of updates related to the FKWTRP. These included the following:

- ***False Killer Whale Stock Status and Interactions.*** K. Forney and E. Oleson provided a series of updates on false killer whale stock status and interactions with the HI-based deep- and shallow-set longline fisheries. Presentation highlights included the following:

    - No recent shifts or meaningful trends have been documented related to false killer whale interactions and serious injury determinations since the Team's meeting a year ago.

- Proposed national guidelines on serious injury determinations are moving towards implementation but are not expected to have a significant impact on the characterization of false killer whale interactions, as most changes to the guidelines are centered on injuries to large cetaceans. Moreover, the guidelines related to small cetaceans are drawn largely from the protocols currently used within the Pacific Islands region.

- E. Oleson presented a number of preliminary results from the HICEAS II survey in keeping with NMFS's commitment to be as transparent and forthcoming as possible with emerging data. These points included the following: (1) noting a greater number of false killer whale sightings compared to the 2002 survey; (2) underscoring the need to account for vessel attraction, methodological changes, and other factors in assessing survey results; (3) noting the emphasis on passive acoustics in the HICEAS II survey; and (4) sharing preliminary indications of an island-associated haplotype within the Papahanaumokuakea National Marine Monument. Results from the HICEAS II survey are currently being analyzed. An initial abundance estimate based on visual sightings data will be reported in the 2012 Draft Stock Assessment Report (SAR)[1]. Because of the large volume and post-processing time requirements, acoustic data will be incorporated at a later stage. Future revisions will also take into account vessel attraction.

Team member comments focused primarily on clarifying questions. Their comments did, however, include a handful of substantive remarks, including the following:

- Strong interest among Team members to find strategies to hasten the use of draft stock assessment reports (SARs) to inform PBR calculations for the FKWTRP – regardless of the impact on PBR (i.e., increasing or decreasing PBR). Similarly, there was interest in releasing Pacific Island region SARs in advance of other regions if information can be made available sooner.

- Some Team members voiced continued concerns over NMFS's use of nine-year-old abundance data (rather than a new estimate using HICEAS II data) as the basis for take reduction measures and said it does not constitute best available science.

- ***Research-Related Updates.*** E. Oleson provided an update on research-related activities, emphasizing in particular efforts undertaken through the NMFS Bycatch Reduction Engineering Program (BREP) to better understand false killer whale acoustics. As well, K. Forney informed the Team that work done in support of its deliberations last year are captured in a paper entitled, *"What's the catch? Patterns of cetacean bycatch and depredation in Hawaii-based pelagic longline fisheries."*

- ***Weak Hook Study.*** Chris Boggs with the NMFS Pacific Islands Fisheries Science Center (PIFSC) provided an overview of the weak hook study undertaken in fall 2011. (C. Boggs was filling in for study principle investigators David Kerstetter and Keith

[1] The Final 2012 SAR is expected to be published in 2013.

Bigelow, neither of whom was able to attend the meeting.) Bogg's presentation emphasized the study's key findings – most notably, that there was no appreciable difference in the target catch rate between the control and experimental gear – but he also underscored the authors' observations regarding seasonality impacts (the fact that the research was undertaken from October-December when the average size of bigeye tuna is smaller). Team members posed several clarifying questions. The Team's more in-depth discussion of this topic is summarized under the Proposed Rule section of this meeting summary.

- ***Team Member Recruitment/New Membership Needs.*** N. Young provided an update on Team membership and recruitment, noting the following: (1) the need to identify a new local conservationist representative to replace William Aila, who is now the chairman of Hawaii's Department of Natural and Land Resources; (2) the inclusion of F. Oishi to replace David Nichols, who now works for NMFS; (3) the need to identify new alternates for S. Young and B. Cummings; and (4) the intention to formally recognize those alternates who have been acting as primaries (L. Van Atta, E. Gilman and J. LaGrange).

- ***Captain/Owner Training.*** N. Young provided an update on efforts to revise the content of NMFS' existing captain/owner training (Protected Species Workshops) to incorporate Team recommendations related to marine mammal identification and handling. Team members had no comments.

- ***Proposed ESA Listing for Insular Stock.*** N. Young provided an update regarding the status of the proposed ESA listing for the Hawaiian insular false killer whale. Again, other than one clarifying question, there were no Team comments on this update item.

As well, CONCUR provided a summary of its "Lessons Learned Report" based on its interviews with Team members conducted following consensus adoption of the Draft TRP in July 2010. Team members did not have any specific comments on the report. CONCUR's report is available on the Team website cited above.

B. Proposed Rule

The bulk of the meeting was spent reviewing and discussing the Proposed Rule drafted by NMFS. Discussions occurred in both plenary and within and across-interest group caucuses over the course of the three-day meeting.

NMFS opened up the discussion by underscoring the Agency's commitment to implementing the consensus agreement struck by the Team in July 2010, but noting that some concepts proved difficult to translate into regulation in a way that is consistent with the MMPA. N. Young walked the Team through all aspects of the Proposed Rule, highlighting any divergences from the Draft TRP and providing the underlying rationale.

While there was support for many aspects of the Proposed Rule, several Team members expressed frustration that Agency-proposed changes from the draft TRP undermine the careful consensus crafted one year earlier. (In fact, fishing industry members noted on several occasions

during the meeting that they were not prepared to renegotiate aspects of the draft TRP given the delicate and interwoven aspects of that agreement.)

Team deliberations centered on a handful of particularly challenging topics. Below is a summary of the key discussion themes.

1. Interest in Refining Southern Exclusion Zone implementation parameters

Team members voiced significant concerns with the Agency's Proposed Rule as it relates to the Southern Exclusion Zone (SEZ). While some aspects of the SEZ closely mirrored the draft TRP, certain changes were seen by Team members as highly problematic and requiring revision prior to finalizing the regulations. Concerns cited by Team members focused on two specific aspects of the SEZ language: (1) the trigger for closing the SEZ in consecutive years following an initial closure; and, (2) the criteria for reopening the SEZ once a closure has been triggered. Below is a brief discussion of each of these two issues.

- ***Trigger for closing the SEZ.*** Team members representing a range of interests took exception to language in the Proposed Rule that ties closures of the SEZ in the consecutive years following exceedance of the trigger to a single additional observed mortality or serious injury. In particular, Team members noted that the proposed approach ignores the Team's interest in having an option of a flexible trigger tied to PBR. The approach outlined in the Proposed Rule, they said, would eliminate any potential to adjust the trigger (either up or down) based on a newly calculated PBR – a key aspect of the agreement struck in the draft TRP, as all parties wanted an approach that could take into account the results from the recent HICEAS II survey and ensure the Plan does not trigger actions premised on data that has been superceded (or has since been updated). Team members pressed NMFS to reconsider the change. NMFS staff emphasized their willingness to consider such a change in a Final Rule and encouraged Team members to submit these views, and any suggestions for an alternate SEZ trigger calculation or mechanism, during the public comment period.

- ***Criteria for reopening the SEZ.*** Team members strongly recommended that NMFS reconsider its proposed criteria for reopening the SEZ to more closely mirror the language in the draft TRP that provides certainty in reopening if any of the stipulated criteria are met. As currently drafted, the Proposed Rule gives NMFS discretion as to whether or not to reopen the SEZ and it does not incorporate any of the reopening criteria developed by the Team. Such discretion is needed, NMFS said, to account for scenarios not considered in the draft TRP reopening criteria, such as the potential for high levels of takes elsewhere in the EEZ after the SEZ is closed. Team members noted that the industry would not have agreed to an SEZ closure without the assurance of the symmetrical reopening provision, and they suggested that the consensus view is not sustainable without certainty in reopening. Moreover, they said, the reopening criteria are both objective and intentionally rigorous (for example, no mortalities or serious injuries in the EEZ in the subsequent two-year period following SEZ closure); as one Team member put it, if the criteria are being met, it suggests there is a meaningful reduction in interactions.

More broadly, the Team discussion explored the identification of a pair of triggers for closing or re-opening the SEZ that would meet the MMPA's take reduction requirements, but provide the flexibility and incentives intended in the Team's proposed approach.

NMFS initiated the discussion by providing a detailed rationale for its proposed approach to the SEZ, presenting various scenarios (see Appendix of the Draft EA/RIR/IRFA for more details) that underscored the challenges in meeting the MMPA's take reduction requirements with even very low levels of M&SI in consecutive years. This was followed by a series of suggestions from Team members for altering the approach to calculating triggers. Discussions on this point yielded a variety of strategies for assessing a Plan's ability to meet PBR. These included: testing different approaches using M&SI estimates that more closely mirror recent trends; modeling different scenarios using higher PBRs (to account for many Team members' expectation that the latest HICEAS II survey will result in the calculation of a higher PBR); designing a floating trigger that takes into account both the current PBR and total extrapolated M&SI within the EEZ (trigger equals current PBR minus the total extrapolated takes up to the most recent four years). The spreadsheet created to model this last scenario is available on the Team website ("Alternative SEZ Trigger Calculations.xls"). The various approaches helped amplify certain considerations, but the discussion did not identify a single approach that appeared to satisfy all participants.

Beyond the issues highlighted above, the discussion sparked several other significant issues important to consider relative to the SEZ.

- Team members struggled with NMFS's review of its rationale for low triggers in consecutive years following an SEZ closure. In explaining its rationale, NMFS highlighted the inverse relationship between closing and re-opening triggers – the more "generous[2]" the closing trigger (e.g., one that allows the extrapolated single-year M&SI estimate to exceed the 5-year PBR), the stricter the re-opening trigger needs to be in later years to ensure the five-year average stays below PBR – and staff walked the Team through a series of scenarios that underscored the point. Moreover, NMFS reminded the Team that the SEZ is intended as a backstop if the rest of the Plan is not working and, as such, it must be fairly rigorous to ensure that the fishery does not exceed PBR. While some Team members appreciated the challenge, many said the approach put forward by NMFS ignores the essence of the agreement struck in the draft TRP: creating a balanced package that encourages improvement by industry, yet allows for some ramp-up in execution and reconvening of the Team in the event of an unsustainable level of M&SI. One Team member also noted that NMFS's scenarios do not take account of the impact of likely future changes to the fishery if the annual bigeye tuna quote is reached before the end of the calendar year.

[2] At least one Team member noted that the first SEZ trigger included in the Proposed Rule is not actually "generous" as it is based on nine-year-old abundance data that many believe is almost certainly low. Similarly, several Team members questioned whether it is appropriate and fair to base a trigger for closure on a PBR that has become outdated.

- Team members encouraged NMFS to use an updated PBR as quickly as possible in calculating triggers for the SEZ, even if that means applying data from a draft SAR. Such an approach, they said, is consistent with parties' interest in using best available science and would help eliminate scenarios where triggers and closures are inconsistent with what is likely to become a new PBR. (Another option discussed would be to give the Agency discretion in setting the trigger based on its expectation of not-yet-finalized change in PBR.) Several Team members emphasized that this approach would need to be followed consistently and regardless of whether PBR is expected to be raised or lowered based on the latest data.

- Several Team members recommended that the Final Rule more rigorously account for M&SI inside the EEZ (after the SEZ was closed) in setting initial and subsequent year triggers related to the SEZ. This issue, they said, was not fully incorporated in the Team's draft TRP (though one Team member noted that it was the intent of the agreement).

- Team members discussed briefly whether a closing of the SEZ would constitute a significant management action and, therefore, warrant the calculation of a new multi-year average M&SI that included only years following the SEZ closure.[3] Such an approach, several participants said, could provide a strategy for working past the stringent back-end trigger. Others, however, suggested that such an approach could result in an unsustainable level of M&SI if undertaken over multiple years, because takes prior to each fishery change would be ignored, even if they exceeded PBR.

- Many Team members underscored the importance of maintaining a two-trigger approach; in other words, the SEZ triggers should not be structured in a manner that results in the SEZ being permanently closed after the first trigger is met. This two-trigger approach, they said, is intended ensure the fishery has sufficient time after an SEZ closure to demonstrate that other TRP measures such as gear modifications are working.

2. Varying views on NMFS's weak hook requirement

Team members had differing views on the Agency's proposed weak hook (4.0-mm wire diameter) requirement in the Proposed Rule, with the key distinction being the extent to which participants felt the weak hook experiment conducted by NMFS PIFSC and others in fall 2010 sufficiently addressed industry concerns regarding the possibility of decreased target catch. Some Team members expressed strong concerns that the weak hook experiment, due to the seasonality issues cited in the report, does not yet justify shifting the fleet to a 4.0-mm hook. Moreover, they pointed to the significantly higher rate of straightened weak hooks compared to control hooks as evidence that the weak hooks may not be of sufficient strength to retain the largest and most valuable fish. (The large number of straightened hooks also creates the troubling "perception of loss" regardless of the actual results, several Team members said, and underpins industry resistance to weaker hooks.) Finally, they noted that a shift to a 4.5-mm hook

[3] K. Forney noted that averaging takes over five years is not a "requirement" and that the Hawaii fishery is one fishery for which the five-year approach need not necessarily be used because it has such a high level of observer coverage.

in itself would yield important conservation benefits since the use of 4.5-mm hooks is not nearly as widespread as the Team had understood during its earlier deliberations[4]. Others on the Team suggested there was sufficient evidence within the report itself – for example, a higher catch rate of the largest bigeye tuna on weak hooks as compared to control hooks – to offset any practical impact of seasonal variations in fish size. Moreover, given their view of the weak hook requirement as one of the few concrete actions likely to minimize serious injuries to false killer whales, these Team members were reluctant to relax the stringency of this proposed action without more compelling evidence of a negative effect on the fishery. Finally, although the study did indicate weak hooks straightened at a higher rate, some Team members noted that the catch rate suggests the weaker hooks are likely more efficient at retaining bait and hooking target species – thereby negating the impact of the straightened hooks. They also noted that the overall rate of straightened hooks was low.

The discussion generated several other important considerations related to the weak hook requirement:

- Several fishermen on the Team suggested that target catch value was a more important indicator than number or size of fish in assessing the impact of a possible switch over to weak hooks. They recommended that any future study track the value of individual fish through the auction.

- Team members discussed the pros and cons of a weak hook requirement that would focus more on performance standards (e.g., straightening at 300 pounds) rather than mandating precise hook specifications (wire diameter, hook size, etc.). Some Team members were attracted to this approach (offers flexibility to fishermen, doesn't lock the fleet into working with particular hook suppliers), but others voiced concern that it would be difficult to implement (tough to enforce, might require a certification process for approved hooks). Such a change may also result in significant implementation delays as it may require re-proposing the hook requirements. Team members recommended NMFS look at the proposed weak hook regulations in the Gulf of Mexico to see how they are crafted and how they balanced the concerns cited above.

- A number of Team members suggested that NMFS and the Team could better understand the impact of weak hooks on catch rates of the largest bigeye tuna by further analyzing the data already in-hand.

- There was strong interest among some Team members in repeating the weak hook experiment during the time of year when the fleet catches the largest-sized bigeye tuna (April-June and August) to determine whether the results of the study still hold. Such a follow-on experiment should also look at the value of landed fish in addition to size and numbers caught. It was noted that although there are larger fish caught at that time of year, landings are lower, so the sample size in a follow-

[4] At the July 2011 meeting, Team member Roger Dang provided the following information on hook-type sales for his company's 69 deep-set longline customers: 64 use 16/0 hooks with a 4.73 or 4.97-mm wire diameter; 4 use J-hooks with a 5.0-mm wire diameter; and only 1 uses 15/0 hooks with a 4.47-mm wire diameter.

on experiment (i.e., number of sets) would need to be much greater to have the same statistical power. It was unclear whether there was either funding or resources available to carry out such an experiment in a timeframe that meshes with rule implementation.

- Several Team members voiced concern with the proposed requirement to use only 14/0 to 16/0 circle hooks, suggesting that requiring a maximum size of 16/0 unduly limited fishermen's flexibility and was not warranted. (NMFS participants noted that the 16/0 upper limit for hook size was drawn directly from the Draft TRP prepared by the Team.) Others wanted to better understand the relationship between smaller hook size and (1) impacts on marine mammals and other species (sea turtles, sharks and sea birds); and (2) the potential for increased mouth hookings, and recommended NMFS review past studies to assess these potential impacts. Most broadly, the Team encouraged NMFS to more carefully vet this issue prior to issuing a Final Rule.

- In the event NMFS proceeds with a weak hook requirement of some form, some Team members suggested the Agency should strongly consider deferring implementation to allow adequate preparation time for suppliers and manufacturers. It was also suggested that NMFS should not require hooks in dimensions that are not currently manufactured.

The Team did not develop a consensus recommendation related to either the SEZ or weak hook issue. However, Team members agreed to continue informal deliberations among themselves to explore the potential and value of submitting consolidated public comments on the Proposed Rule. Members further agreed to convene a teleconference in late September to take stock of progress towards a unified set of comments.

3. Areas of Apparent Agreement

In its deliberations, Team members identified a number of recommended changes to the Proposed Rule that appear to reflect shared views among many Team members. Given the current stage of the active rule development process (the proposed rule is now open to individual public comments), items summarized below were not subjected to straw voting to test for agreement. Accordingly, this list was not formally confirmed as a consensus document by the Team. Rather, it is summarized here – as requested by Team members – to reflect participants' deliberations and inform any future ad-hoc efforts undertaken by Team members to develop coordinated comments to the Proposed Rule.

Specific recommendations related to the Proposed Rule that appeared to garner broad support among many Team members are as follows:

- Incorporate an outline of PIRO's proposed expedited serious injury (SI) determination process into the preamble of the Final Rule. The purpose of this change would be to make explicit the region's commitment to an expedited review process, recognizing concurrent development of a new national policy for reviewing SI determinations.

- Note within the Final Rule (perhaps within the preamble) "Other Recommendations" put forward by the Team in Section 8.4.1 of its Draft TRP. The intent is for the Agency to cite these recommendations (related to kaka line, shortline, foreign and other fisheries) within the Final Rule even if they are beyond the purview of the TRT.

- Once the Take Reduction Plan is completed, publish the document as a technical memorandum so it is a stand-alone document capable of being cited (i.e., the TRP is not only within the final rule published in the Federal Register).

- Revise language in the Proposed Rule [Section VI, 665.813(k)(1)] that currently allows for "or equivalent" as it relates to weak hooks to say something instead such as "equivalent or same dimension." The intent is to make explicit that gear must meet the specific dimensions specified, even if it is characterized with different specifications.

- Clarify Proposed Rule text explaining the rationale for minimum monofilament diameter (Page 42087) to make clear whether the intent of the rule is to minimize the potential for extensive trailing line, retained hooks in FKW mouth or both. As currently drafted, the rationale is unclear.

- Make distinct the differing rationales and regulatory history for the Northern Exclusion Zone and the Main Hawaiian Island Longline Fishing Prohibited Area so that, if at some point in future, a change is made to one zone or the other, the distinction between the two zones is retained. Team members recommended this distinction be made in the preamble of the Final Rule.

- Consider language in the Final Rule that confirms NMFS intent to put the captain/owner training regulations on-line as quickly as possible.

4. Other Comments

The Team's deliberations on the Proposed Rules generated a handful of other comments important to capture in this meeting summary. They included the following:

- One Team member commented that the NMFS' characterization of the economic impacts of the SEZ does not fully consider all potential impacts. Further, the Team member noted that the Initial Regulatory Flexibility Analysis's discussion of per-vessel costs of the proposed measures does not examine the percentage of each vessel's profit that those costs represent. For many smaller boats, this Team member said, the estimated $23,000 to $62,000 loss associated with the proposed measures exceeds total per-boat profit. This is particularly important for smaller boats unable to transit to fishing areas located farther offshore.

- Team members discussed NMFS' rationale for not proposing the recommended change in observer coverage from 20% to 25% in the deep-set longline fishery. NMFS noted that a reallocation of observer coverage (maintaining a minimum 15% quarterly

systematic coverage and making up the remaining 5% through "day sampling," rather than allowing systematic coverage to drop as low as 10% in some quarters) would increase the precision of the bycatch estimates, which in turn may increase PBR. However, Team members emphasized that it would still not meet the Team's intent of reducing the extrapolation factor for observed takes (i.e., at 20% coverage, one observed mortality or serious injury extrapolates to 5 animals, whereas at 25% coverage, one observed mortality or serious injury extrapolates to 4 animals).

C. Evaluating TRP Effectiveness

Team members engaged in an initial discussion on concrete strategies for assessing TRP effectiveness as the plan moves towards implementation. The intent is for the Team to work with NMFS to develop a comprehensive Strategy for evaluating the Plan's effectiveness.

In introducing the topic, K. Long underscored the requirements of the MMPA, as well as guidance included in a Government Accountability Office report on the Marine Mammal Take Reduction Program. She encouraged Team members to focus on measures that track effectiveness in meeting the short-term and longer-term take reduction goals of the MMPA, as well as suggesting other performance measures that are important to the Team for assessing progress toward meeting the goals and identifying possible shortcomings. Representatives from the U.S. Coast Guard and the NOAA Office of Law Enforcement also provided input on their role in Plan implementation, emphasizing their focus (enforcement, not effectiveness), the types of data they track (violations) and implementation considerations (ability to enforce, preference for dockside versus at-sea enforcement, etc.)

Team deliberations on the topic were somewhat limited, given the uncertainty regarding measures to be included in a Final Rule. However, the Team did generate a number of specific evaluative measures to consider in future discussions. For one, Team members recommended that the Agency review the evaluative measures included in the draft TRP, as well as consider measures included in other TRPs. Additionally, participants recommended the following candidate metrics:

- Compare the ratio of depredation to takes, as a way to assess early-on the effectiveness of the various measures;
- Track increases or decreases in the percentage of interactions with M&SI compared to non-serious injuries, as a way to gauge effectiveness of gear modifications and trainings;
- Compare violations related to the FKWTRP relative to other fisheries regulations to get a relative sense of compliance rates;
- Gauge fishing industry health (i.e., changes in number of boats fishing; value and size of target catch) to ensure conservation goals aren't occurring simply due to industry contraction or effort-shifting;
- Assess unintended consequences of Plan measures (such as impacts to sea birds, sharks and sea turtles, effort shift within or outside of the EEZ, increases in tuna imports from largely unregulated foreign fleets and their potential for increased marine mammal interactions and bycatch, etc.), as well as impacts of unrelated actions (fishery management plans, gear changes, etc.) that could affect TRP effectiveness; and,

- Track implementation progress, from Final Rule adoption and TRP regulations issues to actual implementation.

The discussion also generated a handful of other comments and observations by Team members. Most notably, Team members recommended that evaluation measures be streamlined so as not to derail other work (i.e., research) needed to support effective TRP implementation. They also recommended that any eventual Strategy be (1) preceded by an aggressive outreach effort to industry, and (2) clear on what entities are responsible for monitoring TRP effectiveness. One Team member suggested NMFS retain a statistical modeler to help implement any Strategy.

Team members agreed to establish a work team to continue deliberations on this topic in the coming year. Participants are to include S. Young, R. Steen, R. Baird and K. Lynch.

D. Other Fisheries and Implications for the FKWTRP

Team members engaged in a focused discussion on other fisheries to consider any near- or longer-term implications for the FKWTRP. Specifically, the Team discussed both State of Hawaii fisheries and the American Samoa longline fishery. Key points are summarized below.

- **State of Hawaii Fisheries.** Consistent with discussions in 2010, the Team spent part of the meeting discussing State of Hawaii fisheries and considering implications for the FKWTRP and its current scope.

  F. Oishi, representing Hawaii's Department of Land and Natural Resources, Division of Aquatic Resources, provided Team members with a brief summary of current State fisheries. As of the first six months of 2011, he said, the state's commercial fisheries reports showed 19 commercial marine licensees indicating preferred use of kaka line gear, and no licensees indicating preferred use of shortline gear. (Fishermen are able to fish with mixed gear, he noted, so there may be shortline fishing but reported as mixed gear.) He also summarized the wide range of species caught with both types of gear and noted, in response to a question from a Team member, that there are no current caps on entry. P. Dalzell noted that there are currently three serious shortline operators; these operators employ mixed gears, and the bulk of the effort is focused on Cross Seamount, which is outside state waters. P. Dalzell also noted the Western Central Regional Pacific Fishery Management Council currently has no plans to manage the shortline fishery or other non-longline pelagic fisheries in federal waters.

  Team deliberations centered primarily on identifying additional information needs and thinking through the ramifications of the state's current reporting requirements. The conversations generated the following primary themes:

  - Team members identified a wide range of information needs that will help the Team better assess the implications of state fisheries for false killer whales and the associated TRP. Specific information needs cited include the following: more fine-grained data on gear type; fleet size (how many and where they operate); shifts in fishing patterns; and target catch by sector (including longline, shortline,

kaka line, charter and recreational); changes in scarification rates in the insular stock (as a proxy for interactions). Some of this information would likely need to come from the state's commercial fishing databases. F. Oishi said he is open to working with the Team and NMFS, but also noted that it is not possible at this time – due to budgetary and other constraints – to make definitive commitments for the state regarding more comprehensive data gathering.

- Concerns that longline fishermen – particularly those with smaller boats – might opt to convert to shortline gear if and when a Southern Exclusion Zone is activated due to false killer whale takes. Such an effort shift, several Team members said, could result in the unintended consequence of increased false killer whale takes in a fishery (shortline) with few reporting requirements and no observer coverage. Moreover, several Team members said, these boats could then continue to fish in longline prohibited areas and without any of the required management measures for longline vessels. These Team members strongly suggested NMFS consider expanding the scope of the Team (i.e., by adding a shortline fisherman to the Team) and the Plan to account for this potential.

- Interest in ensuring that gear fixes proven successful in the TRP are transferred to other fisheries, potentially including the shortline and/or kaka line fisheries, to minimize M&SI.

- Recognition that most recreational and charter boats hold commercial licenses (in order to sell at least some portion of their catch) and, accordingly, NMFS may have legal standing to regulate and collect additional data on these fisheries. NMFS legal counsel was urged to explore this issue further.

- A strong suggestion from industry participants that M&SI from fisheries not covered by the TRP (eg., the Hawaii shortline and kaka line fisheries) should not count against any trigger set for the Southern Exclusion Zone. (K. Long noted that any M&SI take in the EEZ, regardless of fishery, would count against PBR, though not necessarily the SEZ trigger.)

- **American Samoa Longline Fishery.** Michael Marsik with NMFS's Pacific Islands Regional Observer Program gave a presentation on recent interactions with false killer whales and other cetaceans in the American Samoa longline fishery (3 observed interactions in 2008 under 6.4% observer coverage; 2 in 2010 under 25% observer coverage, and 7 thus far in 2011 under 37.9% observer coverage), as well as a summary of depredation rates compared with the Hawaii longline fleet (roughly double the Hawaii rate in most recent years). He also noted that the average size of longline vessels in the American Samoa fishery has increased in recent years. (The presentation is available on the Team website.)

  Following a series of clarifying questions, Team member discussions focused on the extent to which U.S. flagged vessels in the American Samoa fleet are now fishing and interacting with false killer whales in the Cook Islands (i.e., a foreign EEZ). Team

members sought to better understand (1) how these vessels are treated in management plans and (2) how NMFS incorporates takes in the Cook Islands' EEZ into its bycatch estimates. As well, several participants strongly recommended that NMFS assess enforcement needs and identify any gaps due to vessel "flagging" issues. NMFS was further encouraged to take a closer look at this issue and identify any gaps and considerations for the Team to consider at future meetings. There was also interest in getting data on false killer whale stock genetics in these areas of the South Pacific.

Most broadly, some Team members encouraged NMFS to consider expanding the TRP scope to encompass State of Hawaii fisheries and American Samoa longline fisheries. (One Team member noted his opposition to such an approach, suggesting instead that fisheries should not be added without evidence of interactions with false killer whales.) NMFS explained that any decision to expand the scope of the TRP would potentially involve a separate process from the current rulemaking, and could require additional public input and the appointment of new Team members representing commercial fisheries and gear types affected by such an expansion. Specifically, they recommended NMFS undertake an assessment of the risk these fisheries pose to false killer whales, and then engage the Team in a discussion of the results and implications. L. Van Atta reiterated the Agency's willingness to look more carefully at these issues and consider Team guidance related to scope. The Team further agreed to establish a Work Team to continue deliberations related to these fisheries. Work Team members are to include: T. O'Connell, P. Dalzell, B. Cummings and R. Steen. F. Oishi is to explore further his potential to participate.

V. NEXT STEPS

Team deliberations over the course of the three-day meeting identified a number of next steps. Below is a summary of these follow-on tasks.

A. Commenting on the Proposed Rule

Team members agreed to continue informal deliberations to explore the potential and value of submitting consolidated comments on the proposed rule. Members further agreed to convene a teleconference in late September to take stock of progress towards and interest in a unified set of comments. CONCUR is to work with Team members to schedule the follow-on call. CONCUR is also to distribute as soon as possible a summary of the suggested revisions to the proposed rule (referred to in this summary as the "Areas of Apparent Agreement") discussed and broadly agreed to by the Team[5].

At the same time, NMFS reminded Team members and the public to submit individual comments on the Proposed Rule to NMFS at *www.regulations.gov* by the October 17, 2011, deadline. The exact timing of the Final Rule is not known at this time, NMFS staff said, as it is somewhat dependent on the extent and nature of comments received. However, NMFS noted that – based on the experience with other rulemakings – it typically takes about one-year from the end of comment period to develop and publish a final rule. Team members asked that NMFS

[5] This document was distributed to the Team by CONCUR on August 8.

conduct a Team teleconference when the Final Rule is published to (1) highlight any changes between the Proposed and Final Rules; and (2) explain the rationale for any revisions.

B. Interim Work Teams

Team members identified two topics that merit Work Teams to further Team concepts and input. Below is a quick synopsis of Work Team focus, timing and participants. All Work Teams are expected to meet via teleconference.

- **Work Team on Evaluating Effectiveness.** This Work Team is to outline recommendations related to measures for evaluating Plan effectiveness for later consideration by the full Team. The Work Team is not expected to meet until after the comment period on the proposed rule has closed and there is greater clarity on the elements to be included in the Final Rule. Participants are to include: S. Young, R. Steen, R. Baird and K. Lynch.

- **Work Team on Other Fisheries.** A Work Team is to be convened to consider more closely the potential need to expand TRP scope to incorporate other fisheries. The Work Team is not expected to meet before early 2012, as its work will need to be informed by assessments to be conducted by NMFS. Work Team members are to include: T. O'Connell, P. Dalzell, B. Cummings and R. Steen. F. Oishi is to determine his possible participation at a later date.

C. Full Team Meeting Schedule

Team members briefly discussed the timing of the next full Team meeting. No meeting date was set, but participants asked that NMFS consider the following when setting the next meeting date:

- Identify a meeting time that maintains constructive pressure on the Agency to make progress on the Final Rule and implementation, but ensures the Team has substantive issues to discuss when it's brought together.

- Consider the following topics when setting the agenda for the next in-person meeting: (1) status of TRP implementation; (2) measures to evaluate TRP effectiveness; and (3) possible revisions to plan scope (i.e., other fisheries)

L. Van Atta underscored the value of in-person meetings, but also noted that the timing of the next meeting will be impacted by available budgets. Team members asked that NMFS poll participants before setting the next date.

D. Presentation Materials on Web

N. Young is to post all meeting presentation materials on the Team's web site[6]. This is to include the spreadsheet on the Southern Exclusion Zone developed at the meeting by K. Forney and E. Oleson. The URL is: *http://www.nmfs.noaa.gov/pr/interactions/fkwtrt/*.

E. Outreach Needs.

NMFS and HLA will both take steps to notify industry of the Proposed Rule and comment period. Additionally, R. Steen recommended that NMFS consider co-hosting a meeting for fishermen with HLA after the Final Rule has been published but before the regulations become effective to help ensure industry is aware of both the regulatory and voluntary measures.

F. Key Outcomes Memorandum

CONCUR is to prepare and distribute for Team comment a Key Outcomes Memorandum summarizing key points, areas of emerging consensus and next steps based on the Team's deliberations. The summary is not intended to be a meeting transcript; rather, it is intended to highlight key points only. A draft is to be distributed to Team participants for a red-flag review.

Questions or comments regarding this summary should be directed to Bennett Brooks (212-678-0078 or *bennett@concurinc.net*) or Scott McCreary (510-649-8008 or *scott@concurinc.net*).

[6] Documents and presentations have been posted to the website, and the Team was notified of their availability on August 8.