False Killer Whale Take Reduction Team Meeting
Via Teleconference: October 4, 2011

KEY OUTCOMES MEMORANDUM

I. OVERVIEW

The National Marine Fisheries Service (NMFS) held a False Killer Whale Take Reduction Team (FKWTRT) meeting via teleconference on October 4, 2011.

The primary purpose of the 90-minute teleconference was to take stock of the Team's interest in submitting coordinated comments on the False Killer Whale Take Reduction Plan Proposed Rule. Additional objectives included: (1) providing updates on FKWTRT-related activities; (2) considering possible follow-on activities related to the weak hook study; (3) discussing the timing and focus for near-term work groups (one related to fisheries not now included in the TRT's scope; the other, on evaluating TRP effectiveness); and (4) outlining next steps in the work of the team.

A copy of the agenda is available at http://www.nmfs.noaa.gov/pr/interactions/fkwtrt/. It is also included as **Attachment 1**. No other materials were developed for the teleconference.

II. PARTICIPANTS

Thirteen of 19 Team members (or their alternates) participated in the teleconference. Participants included the following: Robin Baird, Hannah Bernard, Brendan Cummings, Paul Dalzell (and alternate Asuka Ishizaki), Roger Dang, John LaGrange (for Jerry Ray), Kristy Long, David Laist (for Kris Lynch), Paul Nachtigall, Francis Oishi, Andy Read, Ryan Steen and Lisa Van Atta (for Lance Smith). John Hall, Steve Beverly (or alternate Eric Gilman), Clint Funderburg (or alternate Frank Crivello), Sharon Young and Tory O'Connell were not able to participate. William Aila is in a new position and neither serves on the team nor has an alternate.

Nancy Young, FKWTRT Coordinator 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 participated, as did Keith Bigelow with the Pacific Islands Fisheries Science Center, and Sarah Courbis and Elia Herman with the Hawaiian Islands Humpback Whale National Marine Sanctuary (as observers with the State of Hawaii). Scott McCreary and Bennett Brooks from CONCUR, an environmental dispute resolution firm specializing in marine resource and water issues, served as neutral facilitators.

III. MEETING MATERIALS

An agenda was provided to support the group's discussions. This and other materials related to the Team are 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 next steps.

A. Welcome, Introductions and Updates

The teleconference began with brief welcoming remarks by L. Van Atta, and a review of the agenda and meeting protocols by CONCUR. Next, NMFS staff provided a series of updates related to the FKWTRT. These included the following:

- ***Recent False Killer Whale Interactions.*** N. Young informed Team members that there was one unconfirmed false killer whale take in the deep-set longline fishery since the Team met in July 2011. The animal, which was hooked in the mouth, was released with 10 meters of trailing branchline, ½ meter of wire leader, and the hook. The take raises the 2011 total to 2 confirmed false killer whales and 1 unconfirmed false killer whale take in the deep-set fishery operating in the EEZ, and 1 false killer whale and 1 blackfish in the shallow-set fishery in the EEZ.

  Additionally, N. Young noted that a blackfish take in the American Samoa fishery has now been confirmed as a false killer whale, raising the total takes to-date in that fishery for 2011 to 3 false killer whales and 1 blackfish.

  These figures do not include takes of other marine mammal species in these fisheries.

- ***Draft Stock Assessment Report.*** E. Oleson informed the Team that the 2011 Draft SAR is now published and includes the following key changes: (1) recognizes the proposed listing for the false killer whale insular stock, and designates the insular stock as "strategic"; (2) updates mean estimated annual take numbers (10.6 for pelagic stock; 0.6 for insular) based on newly adopted prorating strategies for (a) the overlap zone between the insular and pelagic stocks, and (b) unidentified blackfish; and (3) consistent with the approach nationwide, maintains (a slightly revised) quantitative PBR (2.4) for the pelagic stock rather than going to an undetermined PBR. Public comments on the draft SAR can be submitted to the Agency until November 22.

- ***Status of Team Member Replacement.*** N. Young noted that K. Lynch is no longer on the Team as she has left the Marine Mammal Commission. Kris's alternate, David Laist, is currently filling in as her replacement. N. Young also reiterated the Agency's interest in getting candidate nominations for the Hawaii conservation spot to replace William Aila and underscored the invitation to submit names for NMFS consideration.

B. Discussion: FKWTRP Proposed Rule

The bulk of the teleconference focused on a follow-on discussion related to the FKWTRP Proposed Rule. The deliberations focused on three main topics: (1) status of public comments to-date; (2) Team interest in submitting coordinated comments; and (3) possible follow-on activities related to the weak hook study.

- ***Status of Public Comments Received To-Date.*** N. Young noted the Agency has received only two public comments to-date: one on the economic analysis; the second, a statement of general support. Team members were encouraged to submit comments before the October 17, 2011, deadline.

- ***Team Interest In Coordinated Comments.*** As noted earlier, the primary purpose of the teleconference was to take stock of the Team's interest in submitting coordinated comments on the False Killer Whale Take Reduction Plan Proposed Rule.

  Consistent with the tenor of discussion at the July meeting, no Team member proposed that the team try to submit unified comments related to the most significant aspects of the proposed rule: the Southern Exclusion Zone (including calculation of the trigger and re-opening provisions) and the weak hook requirements. Rather, several Team members suggested it will be more appropriate for each individual or entity to submit comments on those and related topics independently, and several Team members reiterated their intention to submit detailed comments.

  The Team then considered the merits of submitting unified comments on those issues identified at the July meeting as "Areas of Apparent Agreement." The discussion yielded the following points:

  - Team members somewhat revised the list of suggested revisions developed at the July 2011 TRT meeting to clarify and/or amplify certain points. These changes are captured in the document now referred to as "Possible Coordinated Comments" (see **Attachment 2)**.

  - While Team members expressed possible interest in submitting such comments – and L. Van Atta confirmed the value of joint comments to the Agency – several participants suggested their first priority is to develop individual comments. Some Team members also said it was premature to agree to joint comments, since some of those recommended revisions may prove to be inconsistent with the individual comments not yet drafted.

  - As a next step related to this discussion, CONCUR is to prepare and distribute an updated version of the list of "Possible Coordinated Comments[1]." Team members will use this updated list as the basis for submitting joint comments if there is sufficient time and interest.

- ***Follow-on Activities Related to the Weak Hook Study.*** Participants discussed the merits of additional analysis of data from the weak hook study conducted in 2010 to better understand the concerns related to fish size. Given limited time and incomplete team participation on the call, no significant new substantive approaches were considered in detail. The Team did, however, discuss a process for taking future steps with the analysis. Team members voiced interest in establishing a balanced work group to help frame questions for K. Bigelow to use to guide any further analysis of the data. Specific

[1] This was list was subsequently distributed to the Team by CONCUR on October 7, 2011.

suggestions included (1) analyzing the distribution of fish sizes/weights caught rather than just the average fish size/weight, (2) looking at data from other studies (e.g., Foster and Bergman (2010) Interim Report: Update on Gulf of Mexico Pelagic Longline Bluefin Tuna Mitigation Research) and (3) articulating specific assumptions to estimate the economic loss associated with straightened hooks. One Team member reiterated his caution that further studies will not address fishermen's concerns that each straightened weak equals lost fish and, therefore, lost revenue. Another Team member noted that there is significant work for the Agency to do to ensure that any final rule on weak hooks is implementable (for example, assessing hook availability and cost).

Based on the conversation, the following participants agreed to participate in a work group on this topic: A. Read, J. LaGrange, P. Nachtigall, K. Bigelow and K. Forney. As well, P. Dalzell agreed to participate if needed, and both Tory O'Connell and John Hall offered to participate following the call. The Work Group is to be convened via teleconference in early December, with an eye towards developing further analysis that can inform the Agency's development of a final rule.

C. Discussion: Future Work Group Focus

Finally, the Team discussed the focus and timing for the two work groups identified during the July in-person meeting: (1) other fisheries (kaka line, shortline and American Samoa longline); and, (2) evaluating Plan effectiveness.

- ***"Other Fisheries" Work Group.*** N. Young noted that the initial focus of the "Other Fisheries" Work Group is expected to center on identifying data needs (what data are available now, what is needed, how can the necessary data be generated), and then turn to considerations related to Team scope. She also noted that the Work Group will need to consider carefully the distinction between the shortline fishery (Category II on the MMPA List of Fisheries) and the kaka line fishery (Category III on the MMPA List of Fisheries). N. Young proposed that the Work Group meet via teleconference initially in early 2011. F. Oishi, D. Laist and R. Baird asked to be added to the Work Group that already includes T. O'Connell, P. Dalzell, B. Cummings and R. Steen.

- ***"Evaluating TRP Effectiveness" Work Group.*** N. Young suggested that the work group on evaluating effectiveness initially focus its discussions on metrics to track the general approaches (both regulatory and non-regulatory) stepped out in the Proposed Rule. Then, once a final rule is published, the Work Group's discussions can more specifically focus on identifying metrics to assess the detailed approaches outlined in any final rule. She proposed that the Work Group start meeting via teleconference in early January. She also emphasized that while the Agency has primary responsibility for drafting the strategy for evaluating TRP effectiveness, Team input is essential. Work Group participants are to include: S. Young, R. Steen, R. Baird and D. Laist (for K. Lynch).

D. Discussion: Full Team Meeting Schedule

The Team briefly discussed the possible timing for the next full Team meeting (either in-person or via teleconference). One Team member strongly suggested that the Agency convene a teleconference once the Final Rule is issued to review its approach and implementation considerations. This suggestion, though, is somewhat contingent on the timing of the final rule. That is, if the final rule is not issued in the near future (i.e., less than a year), another Team member suggested that NMFS may want to consider holding an in-person meeting once the rule is issued to review the rule and address other relevant topics (i.e., Work Group topics, outreach needs).

V. NEXT STEPS

Based on the Team deliberations, participants agreed to the following next steps:

- CONCUR is to prepare and distribute an updated version of "Possible Coordinated Comments" on the Proposed Rule for Team members to consider submitting as unified comments to the Agency. All comments – individual or unified – are to be submitted to *www.regulations.gov* by October 17, 2011. (Again, as noted earlier, this updated list was distributed to the Team on October 7.)

- NMFS is to convene in early December a work group via teleconference to discuss possible follow-on activities related to the weak hook study. CONCUR will vet potential dates for that call in the coming month.

- NMFS is to convene in early 2011 two works groups via teleconference: one on "Other Fisheries," the other on "Evaluating Plan Effectiveness." Again, CONCUR will vet potential dates for those calls in the coming month.

- 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.

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*).

ATTACHMENT 1

FALSE KILLER WHALE TAKE REDUCTION TEAM
TELECONFERENCE MEETING: TUESDAY, OCTOBER 4, 2011
3 P.M. (EST) – NOON (PST) – 11 A.M. (ALASKA) – 9 A.M. (HST)

(Teleconference is slated to last up to two hours. Call-in number is 866-707-4419; passcode, 7512138#)

PROPOSED AGENDA

Welcome and Introductions **10 minutes**

- Teleconference Objectives
- Agenda Review and Teleconference Meeting Protocols
- Participant Self-Introductions

FKWTRT Program Updates **10 minutes**

- Recent FKW Interactions
- Status of Draft 2011 SAR
- Status of Team Member Recruitment
- Other

Discussion: FKWTRP Proposed Rule **Up to 75 minutes**

- Status of Public Comments Received To-Date
- Test for Team Member Interest in Submitting Coordinated Comments
    - Discussion among Team members regarding possible interest and focus of any coordinated comments on proposed rule
    - As needed, identify strategy for developing and confirming comments
- Discuss Possible Follow-On Activities Related to Weak Hook Study
    - Consider possible strategies for better understanding the ramifications of the weak hook study conducted in fall 2010
    - As needed, determine next steps and ongoing Team input needed

Discussion: Work Group Focus/Additional Topics **Up to 15 minutes**

- Discuss Timing and Focus for Work Groups Identified at July 2011 Team Meeting
    - Related to "Other Fisheries" (State of Hawaii/American Samoa)
    - Related to "Comprehensive Strategy to Evaluate TRP Effectiveness"
- Other

Next Steps **10 minutes**

- Follow-up check-ins, if any
- Reminder: Deadline for submitting comments on Proposed Rule
- Work Team meeting schedule
- Future TRT meetings
- Other

Adjourn

ATTACHMENT 2

FALSE KILLER WHALE TAKE REDUCTION TEAM

POSSIBLE COORDINATED COMMENTS TO THE AGENCY FOR CONSIDERATION IN THE REFINEMENT OF THE FALSE KILLER WHALE TAKE REDUCTION PLAN PROPOSED RULE

(Based on July 27-29, 2011 FKWTRT meeting and the October 4 Team teleconference; summarized by CONCUR, Inc.)

The False Killer Whale Take Reduction Team met July 27-29, 2011, in Honolulu, Hawaii, to discuss the False Killer Whale Take Reduction Plan Proposed Rule put forward by the National Marine Fisheries Service. A follow-on teleconference was held October 4, 2011.

Below is a summary of recommended changes to the Proposed Rule that team members are considering submitting to NMFS as coordinated comments. However, two important notes:

- The recommendations should not yet be interpreted as representing full consensus of the entire TRT, as participants are uncertain at this time as to whether the concepts and approaches outlined here will be consistent with the more detailed comments they are likely to submit as individuals and/or through their respective organizations. Also, there were a few team members who did not attend the teleconference. (As appropriate, we have noted Team member reservations and/or qualifications discussed during the October 4 teleconference.)

- The statements below are <u>not intended</u> to be formal rule-making language. Rather, they are put forward as the building blocks for any coordinated comments Team members may wish to prepare for submittal to the Agency for its consideration in its final rule-making process.

Below is a synopsis of the recommended changes Team members are considering putting forward as coordinated comments to the Agency.

1. Incorporate an outline of PIRO's proposed expedited serious injury (SI) determination process into 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.

    - *Commentary from October 4 teleconference: Such an expedited review should not come at the expense of robust participation by the respective range of responsible scientists nor create a short-changed internal review process.*

2. Incorporate verbatim 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, shortline, foreign

and other fisheries) within the Final Rule even if they are beyond the purview of the TRT.

- *Commentary from October 4 teleconference: To the extent the "Other Recommendations" section is incorporated, consider including a footnote or some other language to clarify the distinctions between the shortline and kaka line fisheries' different status on the List of Fisheries and the implications for inclusion in the TRT scope.)*

3. Once the Take Reduction Plan is completed, publish it as a technical memorandum so it is a stand-alone document (such as a NOAA Technical Memorandum). The intent here is that the Take Reduction Plan be a stand-alone document that can be located and cited in the future rather than relying only on the information contained within the Federal Register notices.

    - *Commentary from October 4 teleconference: Minor wording changes only.*

4. Revise regulatory 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.

    - *Commentary from October 4 teleconference: Unclear at this point whether this language will be consistent with the more comprehensive comments to be submitted by HLA related to the weak hook rule.*

5. 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.

    - *Commentary from October 4 teleconference: Make clear that the primary intent of this proposed rule is to ensure that the hook is "the weakest link" in the terminal tackle and, secondarily, to minimize the potential for extensive trailing line and its associated potential to cause serious injury.*

6. Ensure that the respective rationales for the Team's recommended Northern Exclusion Zone and the existing Main Hawaiian Island Longline Fishing Prohibited Area are clearly distinguished in the rule. The intent here is that in the event a change is made to one zone or the other in the future, the distinction between the two zones is retained. Team members recommended this distinction be made in the preamble.

    - *Commentary from October 4 teleconference: Minor wording changes only.*

7. Consider adding language to the Final Rule that confirms NMFS's intent to put the captain/owner training program (Protected Species Workshop) on-line as quickly as possible. The objective here is to create a convenient pathway for the industry to access the training.

- *Commentary from October 4 teleconference: Correct the phrase captain/owner training "regulations" to "program." The intent was not that the online version of the existing training be a regulatory requirement. (Change already made in paragraph above.)*

The Team also discussed numerous other aspects of the Proposed Rule – most importantly, issues related to the weak hook requirement and the Southern Exclusion Zone – but no unified comments were developed.