June 5, 2003

To: Dr. Hans Radtke, Chairman  
Pacific Fishery Management Council  

From: The Pacific Cetacean Take Reduction Team  

Re: June 18th Consideration of the Highly Migratory Species Management Plan

The Pacific Cetacean Take Reduction Team (TRT) was convened by NMFS in 1997 to address incidental takes in the drift gillnet fishery and has been meeting annually. At our annual meeting on 4-5 June 2003, the TRT learned that the California/Oregon shark/swordfish drift gillnet fishery and its measures to protect turtles, could be negatively impacted by actions related to the California pelagic long line fishery. In the Pacific, loggerhead and leatherback sea turtles have declined dramatically in recent years. The drift gillnet fishery has undertaken and been subjected to numerous measures to reduce incidental mortality of marine mammals and turtles. Recent time/area closures have been imposed on this fishery to further reduce already low levels of takes of turtles. These have included closure of some of the primary fishing areas for this fishery. Takes of both loggerhead and leatherback turtles for the last three years (2000-2002) in this fishery have consisted of only a single observed take out of 1,143 observed sets.

The rate of turtle takes in the longline fishery in the central and eastern Pacific has been dramatically higher than in the drift gillnet fishery. The California-based longline fishery has not been subjected to the types of measures to reduce turtle take as have been imposed in the drift gillnet and Hawaii longline fishery. The forthcoming Highly Migratory Species Fishery Management Plan includes both the California drift gillnet fishery and the longline fishery. These would therefore be evaluated jointly by NMFS for the impacts they pose to threatened and endangered sea turtles.

Current regulations significantly constrain the number of allowed takes of sea turtles. Introduction of the California longline fishery would greatly disadvantage the drift gillnet fleet, since any take allowed would be shared between the fleets. Therefore, the TRT recommends that if the Council decides to authorize the California longline fishery, then the introduction should be contingent on that fleet’s ability to dramatically reduce its incidental takes so that there would be no impact to the drift gillnet fishery or sea turtle conservation. Furthermore, the TRT recommends that if NMFS authorizes additional overall takes of turtles, they should be allocated to the drift gillnet fishery, which has low rates of turtle takes and is operating under extreme restrictions, prior to allowing turtle takes in another fishery with higher rates of take.

Finally, the TRT recommends that NMFS and the PFMC re-consider time/area closures for leatherback turtles as soon as additional data becomes available to expeditiously identify the time and areas that could be re-opened without impact to sea turtles.

Thank you for consideration of our comments.
cc. Rodney R. McInnis, NMFS Southwest Region  
Enclosures: Members of the Pacific Cetacean Take Reduction Team

Members of the Pacific Cetacean Take Reduction Team

In February, 1996, the National Marine Fisheries Service (NMFS), in accordance with the provisions of the Marine Mammal Protection Act, convened a Take Reduction Team with representatives from diverse stakeholder groups to develop a Take Reduction Plan to reduce the incidental taking of marine mammals in the California/Oregon thresher shark and swordfish drift gillnet fishery. The TRT reached a consensus on a take reduction plan on June 27, 1996. The proposed plan and implementing regulations were adopted by NMFS in October, 1997. Each year thereafter, the TRT members have re-convened to evaluate the efficacy of the measures imposed and to consider other measures and strategies that may be appropriate. The plan continues to achieve progress in reducing marine mammal take in the fishery.

Members of the TRT include:

Cathy Campbell  
Southwest Regional Office  
National Marine Fisheries Service

Patricia Lawson  
Office of Protected Species  
National Marine Fisheries Service

Hannah Bernard  
Maui Ocean Center

Marydele Donnelly  
The Ocean Conservancy

Tim Eichenberg  
Oceania

John Calambokidis  
Cascadia Research

Steve Crooke  
California Department of Fish and Game

Dave Hanson  
Pacific States Marine Fisheries Commission

Doyle Hanan, PhD.

Jim Harvey  
Moss Landing Marine Laboratories

Ronald Troutman  
Fisherman
Tony West
Fisherman (F.I.S.H.)

Donald Krebs
Fisherman

Chuck Janisse
F.I.S.H.

Dale Sweetnam
California Department of Fish and Game
A. TRT LETTER

B. ENDANGERED SPECIES ACT, AS I UNDERSTAND IT.

C. NEW FISHING METHODS
   
   1. FISH NEWS
   
   2. AQUATIC RELEASE CONSERVATION

D. HAWAII LONGLINE FISHERY BIOP’S: THE REAL STORY
To TRT Members,

I have had time to think about the letter the TRT wrote up about the California Long Line and California Drift Net Fisheries on the Turtle Takes as one fishery that would be evaluated jointly by NMFS. What that means to me is when the BI-Op comes there would be only one opinion and that would not be good for Fisheries management. Plain - because there are different issues on these two fisheries.

So my feelings on this are to keep the two fisheries separate and that we have our allowable take and the long liners have theirs. End of story.

As a TRT member and fisherman my job is just to tell you what is happening in our fishery and answer those questions concerning those in this Fishery and nothing else. I'm not here to make policies to other Fisheries. Such as the California Long Line Fishery and placing ultimatum's. So therefore, I do not want the letter in its current form to be forwarded to the PFMC.

I recommend that the letter read as follows:

The Pacific Cetacean Take Reduction Team was convened by NFMS in 1997 to address incidental takes in the gillnet fishery and has been meeting annually. At our annual meeting on June 4-5 2003, the Take Reduction Team learned that the California/Oregon shark/swordfish drift gillnet fishery and its measures to protect turtles, could be negatively impacted by actions related to the California pelagic long line fishery. In the Pacific, loggerhead and leatherback sea turtles have declined dramatically in recent years. The drift gillnet fishery has undertaken and been subject to numerous measures to reduce incidental mortality of marine mammals and turtles. Recent time/area closures have been imposed on this fishery to further reduce the already low levels of takes of turtles. These have included closure of some of the primary fishing areas for this fishery. Takes of both loggerhead and leatherback turtles for the last three years (2000-2002) in this fishery have consisted of only a single observed take out of 1,143 observed sets.

The forthcoming Fishery Management Plan includes both the California drift gillnet fishery and the long line fishery. These would therefore be evaluated jointly by NMFS for the impacts they pose to threatened and endangered sea turtles.

Current regulations significantly constrain the number of allowed takes of sea turtles. Therefore, the TRT recommends that if the council decides to authorize another Fishery, the council should separate the two fisheries and have two separate BI-Ops on the fisheries.

Finally, the TRT recommends that NMFS and the PFMC re-consider time/area closures for leatherback turtles as soon as additional data become available to expeditiously identify the time and areas which could be re-opened without impact to sea turtles.

The last paragraph is worded from Marydele's email.

I am sorry to add more confusion to the confusion but I feel very strongly that Fishermen should stick together and work for a common goal, which is to Stay Fishing.

- Donald Krebs
Endangered Species Act

The Endangered Species Act requires a scientific determination that any federal action interacting with a listed species will not "jeopardize the continued existence" of that species. This scientific analysis is required by law to be documented in a "Biological Opinion". If the Biological Opinion determines that "jeopardy" exists, the ESA requires the implementation of "reasonable and prudent alternatives" to mitigate the "jeopardy".

The prohibition against swordfish style longline fishing now in place for the Hawaii longline fishery is the "reasonable and prudent alternative" developed by NMFS to mitigate a "jeopardy" determination documented in the 2001 Biological Opinion for that fishery.

The Council is being asked to apply this prohibition to the California based longline fishery without the underlying scientific analysis and determination that a Biological Opinion is by law required to provide.

NMFS asserts that because there are observed takes of sea turtles in the California longline fishery, the Council should assume that such takes rise to the level of "jeopardy" and take an action that would essentially shut down a fishery.

The issue is not whether the California longline fishery interacts with sea turtles, the issue is whether or not such interaction rises to the level of "jeopardizing the continued existence" of these animals. The Council is not authorized by law to conduct the legally required Biological Opinion to make this legally required determination--NMFS is.

NMFS is asking the Council to relieve it of its legal obligations to document in a Biological Opinion the scientific justification for enacting regulations that will foster the economic collapse of a small American and American Vietnamese fishing community. If the Council takes this bait, and votes to adopt Alternative 2 without modification as its preferred, NMFS escapes responsibility for documenting the legally required scientific basis for such a drastic outcome, and escapes responsibility for being the management body that will take the heat for creating the economic devastation that will result.

Stay with alternative 3.
National – Study Shows How Adjustments in Gear, Fishing Practice Can Reduce Sea Turtle Bycatch In Longline Fishery

Continuing efforts to aid the recovery of sea turtle populations, a team of NOAA scientists and U.S. fishermen is developing effective ways to minimize the potential for harming or catching them in pelagic longline fisheries. Fishing gear specialists working at the Pascagoula, Miss., laboratory of NOAA Fisheries have completed the first two years of a three-year research program in cooperation with the Bluewater Fishermen’s Association.

To date, the research – which tested five potential bycatch reduction techniques during 687 research sets on the Grand Banks in the Western North Atlantic – has indicated that longline fishermen can avoid unintentional catches of loggerhead sea turtles by reducing the time their hooks are in the water during daylight hours.

Even more impressive was the sea turtle bycatch reduction achieved by using circle hooks instead of the J hook historically used in the fishery, and by using mackerel for bait rather than squid, the primary bait used in the fishery.

“This program is a fine example of a cooperative effort between federal and state research organizations and private industry to solve a complex environmental problem. The positive results will ensure a healthy and richly diverse marine ecosystem,” said Bill Hogarth, director of NOAA Fisheries. “The development of effective measures to minimize sea turtle bycatch will help ensure successful turtle conservation efforts and allow valuable commercial fisheries to continue to operate.” For more information about this study, read the press release online.
AQUATIC RELEASE CONSERVATION

The ARC De-hooker, dehooking device, deep throat dehooker and hook removal device safely and instantly removes hooks from the body, lip, mouth and throat of fish, sea turtles, marine mammals and sea birds without touching or removing the catch from the water, which ensures the released catch the maximum probability of survival consistent with National Standard 9 of the Magnuson-Stevens Act, Marine Mammal Protection Act, Sustainable Fisheries Act and the Endangered Species Act Biological Opinion.

The NOAA/Laforce Line Cutter safely and quickly removes (cuts) all line and gear from entangled sea turtles, marine mammals and sea birds that must be left in the water. Co-designed and Co-developed in cooperation with NOAA/MSLABS/Laforce/Harvesting Team/ARC.

The NOAA/Epperly Biopsy Pole safely takes aseptic biopsy samples from fish, sea turtles, and marine mammals. Co-designed and co-developed in cooperation with NOAA/SEFSC/Epperly/ARC.

Mission Statement

The world's fisheries populations are showing signs of drastic declines due to over fishing and improper handling/release skills and tools. Bycatch and discards have become a central concern for Congress, fishery managers, academia, conservation organizations, environmental groups, the recreational and commercial fisheries, and the public.

In the United States, catch and release fishing has been very popular for many years. The U.S. recreational angler and commercial fishermen are some of the most sophisticated and conservation minded anglers and fishermen in the world. The success of catch and release and ultimately fisheries conservation will be determined by how discards and bycatch are handled and safely disentangled and released. Proper release tools such as a de-hooker, dehooking device, deep throat dehooker, hook removal device, and line cutter have become an essential part of the U.S. angler's and fishermen's tackle.

For catch and release fishing and bycatch conservation to be effective, it will be necessary for fishing tackle manufacturers and gear technologists to cooperate with and continue to educate anglers and fishermen on proper catch and release techniques and on the correct dehooking device and line cutter to use. Aquatic Release Conservation, Inc. (ARC) has researched and developed proper catch and release techniques for over a decade. ARC introduced the Original de-hooker, dehooking device, deep
throat dehooker, and hook removal device as the most effective and efficient manner of safe release, that instantly removes hooks from the body, lip, and throat of fish, turtles, marine mammals, and sea birds without touching or removing them from the water.

This type of safe catch and release and bycatch conservation will ensure the released catch the maximum probability of survival, consistent with National Standard No. 9 of the Magnuson-Stevens Act, the Marine Mammal Protection Act, the Sustainable Fisheries Act, and the Endangered Species Act Biological Opinion. Fishing tackle manufacturers and gear technologists have a duty to help conserve our natural fishery resources and become good stewards of the environment.

In cooperation with NOAA, SEFSC, MSLABS, Harvesting Team, and BWFA, ARC has Co-designed and Co-developed the NOAA/Laforce Line Cutter, NOAA/Epperly Biopsy Pole and has improved it's original hook removal devices. ARC supports proper catch and release fishing and bycatch conservation and continues to be a good fisheries conservation partner by introducing and continuing to educate Fishers and Anglers on proper release and disentanglement techniques and tools with the Original dehooker, deep throat dehooker, hook removal device, and NOAA/Laforce Line Cutter. Fisheries conservation is everyone's responsibility!

ARC Profile

For the last decade Aquatic Release Conservation has researched and developed safe and efficient catch and release techniques and tools such as the ARC dehooking device, hook removal device and the deep throat dehooker in an effort to reduce post release mortality of bycatch and discards in the National and International, Commercial and Recreational Industry. ARC is working in cooperation with NOAA, SEFSC, MSLABS, Harvesting Team, BWFA, and others to Co-design and Co-develop the highest quality and most effective and efficient release tools available for the future of our fisheries.

CUSTOMER SATISFACTION-FEATURE ENDORSEMENT

Russell Nelson, Ph.D. - HMS AP

"After recently watching Rodney Smith effortlessly release drum and sea trout using one of your De-hookers, I was very anxious to try it myself. I had the opportunity this past weekend and was pleased to find that using the De-hooker was every bit as easy as it had appeared. The device is phenomenal. We released over a dozen undersize grouper, some triggerfish, and several king mackerel in seconds without ever having to bring one aboard the boat. The lack of handling and the short time needed to dislodge the hooks - several of which were deep in the throat -
reduced stress on the fish dramatically. Your tool seems to me to be the single most effective conservation device offered to the angling public in my lifetime...Your tool can let even the novice angler successfully release fish with the absolute minimum of harm. I will be a strong advocate of the De-hooker from now on, and intend to spread the word. Thanks for your great contribution to fisheries conservation.

Contact Information:

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U.S. PATENT NO. 4,914,853 U.S. DESIGN PATENT NO. 382,628

February 1, 2003: Aquatic Release Conservation mourns the loss of our space heroes in the recent Space Shuttle disaster. Our hearts and our minds go out to all the families and friends of the astronauts and NASA.

September 11, 2001: Aquatic Release Conservation joins in with ALL Americans and their Allies to morn the ones that needlessly lost their lives in the cowardly attack on our country and innocent civilians on 9/11/01. We will never forget their sacrifice and the sacrifice of their families and friends. We will never forget all the Heroes that emerged that day and the days to follow. We will never forget the price it costs to keep our country FREE. WE WILL NEVER FORGET 911 !!!
HI LONGLINE FISHERY BIOP’S: THE REAL STORY

1. **1998 Biological Opinion** issued November 3.

   **Scope of action:** continued operation of HI longline fishery. Annual permit and effort averages for the period 1994-1997 were:
   
   - Permits issued: 164
   - Active vessels: 110
   - Total hooks set: 13.9 million

   **Method of analysis** (p.33): TURTSIM (Skillman & Kleiber) a computer program using a regression tree analysis method to simulate the dynamics of sea turtle populations.

   **Conclusion:** continued operation of the HI longline fishery for 1998-2001 is not likely to jeopardize loggerhead, leatherback, olive ridley, green, or hawksbill sea turtles. TURTSIM analysis found that there was almost no discernable change in simulated population trajectories if the effects of the fishery were removed from the simulation, or if the effects were increased five-fold.

   **Allowable annual incidental take:**
   
   - Loggerhead: 498 takes / 103 mortalities
   - Olive Ridley: 168 takes / 46 mortalities
   - Leatherback: 244 takes / 19 mortalities
   - Green: 52 takes / 15 mortalities
   - Hawksbill: 2 takes / 1 mortality

2. **CMC sues NMFS** on February 24, 1999

   **Complaint:** CMC challenges no jeopardy opinion of 1998 BiOp as well as violation of NEPA.

   **Judgement:** on October 8, 1999, summary judgment upheld no jeopardy BiOp, and ruled that NEPA was violated. Court ordered NMFS to do an EIS.

3. **2001 Biological Opinion** issued March 29

   **Reason for reinitiation:** NMFS determines that there is a .66 probability that mortalities of olive ridleys have been exceeded. In doing the BiOp analysis NMFS abandons TURTSIM in favor of a qualitative analysis that theorized that: (1) because populations are in apparent decline, turtles must not be replacing themselves; (2) additional mortality will reduce the number of turtles and, therefore will reduce the species ability to reproduce, and (3) reducing the species ability to reproduce will appreciably diminish the populations ability to survive and recover.
Scope of action: management alternative 1, the no action alternative, contained in the DEIS issued on December 8, 2000. I have not found any explanation for why the scope of action was not consistent with DEIS alternative 7, the preferred action, which would require longline fishermen to use line shooters or weighted branch lines in order to keep the deepest part of the mainline between any two floats greater than 100 meters.

Conclusion: HI longline fishery likely to jeopardize green, leatherback, and loggerhead sea turtles. Did not find jeopardy for olive ridley.

RPA: Prohibits swordfish style fishing north of the equator.

Allowable annual incidental take:
- Green: 14 (52) takes / 9 (15) mortalities
- Leatherback: 26 (244) takes / 14 (19) mortalities
- Loggerhead: 5 (498) takes / 2 (103) mortalities
- Olive Ridley: 67 (168) takes / 59 (46) mortalities

4. **HLA sues NMFS in April, 2001:**

Complaint: HLA challenges jeopardy opinion and claims its procedural rights as an "applicant" had been violated.

Magistrate’s report and recommendation: On April 25, 2002, the magistrate found that HLA was an “applicant” and was not accorded its procedural rights by NMFS during preparation of the 2001 BiOp. However, since NMFS had given notice on December 12, 2001 that it was reinitiating consultation on the HI longline fishery, the magistrate found that the substantive challenge was moot, but recommended that NMFS treat HLA as an “applicant” during preparation of the new BiOp.

District Court’s Judgment: On September 24, 2002 the judge adopted the magistrate’s report in part. The judge set aside the 2001 BiOp on procedural grounds, but stayed the order until November 15, 2002 to give NMFS time to complete the new BiOp and include HLA as an “applicant” in the process.


Scope of action: HI longline fishery as it exists under regulations implemented on June 12, 2001. Regulations prohibit swordfish style fishing north of the equator including:
- Targeting swordfish
- Float line length more than 20 meters
- No lightsticks may be possessed aboard
- No fewer than 15 branch lines may be set between any two floats
- Deepest point of mainline between any two floats is greater than 100 meters.
Conclusion: no jeopardy for any sea turtle species.

Allowable annual incidental take: figures in [ ] are 2001, in ( ) are 1998
- Green: 8 [14](52) takes / 7 [9](15) mortalities
- Leatherback: 8 [26](244) takes / 3 [14](19) mortalities
- Loggerhead: 14 [5](498) takes / 8 [2](103) mortalities
- Olive Ridley: 26 [67](168) takes / 24 [59](46) mortalities


7. HLA vs. NMFS, motion for summary judgment dated April 16, 2003:

Substantive Claims:
- In response to HLA’s initial challenge that NMFS abandoned the “best available science” when they disregarded the TURTSIM modeling that produced a no jeopardy finding in the 1998 BiOp in favor of a qualitative approach that produced a jeopardy finding in the 2001 BiOp, NMFS commissioned Dr. Chaloupka to develop stochastic simulation models to more fully analyze sea turtle population dynamics. NMFS expected the modeling results to support the 2001 jeopardy finding.

NMFS initiated consultation on December 12, 2001, and began writing a new draft BiOp before the modeling results had been compiled. A draft of the new BiOp, based on a scope of action consistent with the 2001 BiOp, was internally circulated in early April, 2002. This draft concluded that the HI fishery jeopardized sea turtles. It stated that NMFS used stochastic simulation models to conduct its jeopardy analysis and included place markers for discussion of Dr. Chaloupka’s model results.

In late April, NMFS scientists announced that preliminary applications of the Chaloupka model to Pacific stock of loggerhead sea turtles indicated that the overall impact of the HI longline fishery, whether it was absent or operating to such a degree as to take every loggerhead turtle in the area (a 100X multiplier), was virtually identical and minuscule. NMFS scientists concluded that the longline fishery would have to be increased five-fold or more to have a detectable impact on the long-term population reference point for loggerheads and leatherbacks.

In the final 2002 BiOp, NMFS explained it’s decision not to use Dr. Chaloupka’s modeling results stating that comprehensive models like the one developed by Dr. Chaloupka require detailed information on the biology and ecology of sea turtles and the environmental relationships that... is not available for sea turtles in the Pacific Ocean. Using this kind
of model under those circumstances would give the appearance of numerical precision without the reality of it.

Instead, NMFS narrowed the scope of the action. The 2002 BiOp was based on the 2001 BiOp’s RPA generated regulations, and concluded no jeopardy. Essentially, NMFS abandoned Dr. Chaloupka’s science based analysis in favor of the qualitative approach used to find jeopardy in the 2001 BiOp. Because the court had invalidated the 2001 BiOp on procedural grounds, NMFS redefined the scope of 2002 BiOp in an effort to validate the invalidated 2001 BiOp’s RPA without demonstrating a scientific basis for that RPA. The 2002 BiOp continues to implement the substantive conclusions of 2001 BiOp which has been vacated by court order.

- 2002 BiOp did not take into account transferred effects (lost production from HI fishery will be replaced by imports from international longline fisheries where incidental take of sea turtles in greater). In the FEIS, NMFS summarized cumulative effects of 2001 RPA on sea turtle populations as “adverse and significant.”