

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON NATIONAL MARINE FISHERIES SERVICE REPORT

The Highly Migratory Species Management Team (HMSMT) discussed the recent decision by the California Coastal Commission (Commission) to unanimously reject the shallow-set longline exempted fishing permit (EFP) application as inconsistent with the California Coastal Zone Management Act. The HMSMT strongly disagrees with the Commission's decision based on the testimony presented at the August 10, 2007, Commission hearing by NMFS staff, the EFP applicant Pete Dupuy, and other supportive testimony. The HMSMT is concerned over the precedent that this decision might set and recommends that the Council send a letter to the Commission requesting that the factual basis and analytical criteria used to reach their final decision be explained in writing to the Council.

The HMSMT also recommends that the Council request a full briefing from the appropriate DOC and/or NOAA legal counsel on the ramifications that may stem from this decision and the potential next course of action. These ramifications include increased Commission scrutiny on present and future Council and/or NMFS fishery management actions. The HMSMT recommends that the Council also request an explanation of the role that NOAA's National Ocean Service played in the review and decision making process for this action. In particular, the Service's decision granting the Commission permission to undertake a full review of this action even though the proposed action area (40-200 nautical miles offshore) is well outside the Commission's state waters jurisdiction (0-3 nm).

After reviewing the pertinent correspondence and discussions related to the Commission's review, it was apparent to the HMSMT that the facts and merits of the EFP application and associated draft Environmental Assessment document were not appropriately considered nor summarized in the final Commission staff report. As a result, the HMSMT believes that the Commission's staff report was flawed, including a number of serious factual errors, and that a full reconsideration of the EFP application by the Commission, based strictly on the merits and impacts of the proposed action, should be granted. The HMSMT recommends that the Council convey this desire in writing to the Commission at their earliest convenience.

The HMSMT was briefed by NMFS staff on pre-hearing meetings that took place between NMFS scientists and managers and Commission staff to provide a comprehensive and well-documented response to a lengthy list of Commission staff questions relating to the proposed action. Based on review of the documented response, the HMSMT believes that the NMFS staff addressed all of the technical and scientific concerns raised. The HMSMT concluded that the final decision by the Commission was based largely on speculation and discounted the scientific and technical merits and precautionary and conservative measures built into the proposed action. The HMSMT believes that the Commission inappropriately expanded the scope of the proposed action to include considerations of global longlining and protected species impacts and the hypothetical full-scale development and expansion of a West Coast based shallow-set longline fishery within and beyond the U.S. EEZ. That was neither the intent nor the scope of the proposed action that was before the Commission for review.

Even after being fully briefed by NMFS scientists and fisheries managers, the Commission staff continually provided erroneous and misleading information upon which the final decision was likely based. For example, the Commission staff report stated that the level of take of protected species was not adequately established in the proposed action and therefore the EFP would pose a real risk to endangered species. The facts state otherwise. The exposure analysis provided in the environmental assessment (EA) detailed why marine mammal and other protected species interactions would not be reasonably expected to occur under the proposed action based on the best available information. Scientifically-based caps on protected species were included as part of the proposed action thereby establishing exactly what the risks would be.

Further indicative of the misinformation that the Commission staff propagated, a letter was sent to the NOS's Office of Ocean and Coastal Resource Management¹ stating that short-fin pilot whales have been observed entangled in the Hawaii shallow-set longline fishery using identical gear that would be used under the proposed action. The facts state otherwise. Since the Hawaii shallow-set longline fishery switched to circle hooks and mackerel bait beginning mid-season in 2004, there have been no recorded takes of short-fin pilot whales based on 100 percent observer coverage. (Takes have occurred only in the deep-set component of the longline fishery.) The Commission staff report goes on to state that given that short-fin pilot whales are found in same area as would be fished under the EFP, and that they are routinely taken, a high potential for the EFP to take short-fin pilot whales exists. The Commission's assertion that entanglements of short-fin pilot whales are very likely is an erroneous conclusion based on an erroneous assumption.

The Commission staff's report states that the potential biological removal of short-finned pilot whales is 0.98. This is not true and has been addressed in NMFS's response to the Commission staff's request for further information.

The Commission staff report references the 2004 Biological Opinion for the U.S. West Coast HMS Fishery Management Plan and the jeopardy finding for loggerheads due to anticipated takes in the shallow-set longline fishery. The report also mentions that the closure of the shallow-set longline fishery was necessary to conserve leatherbacks. This is misleading. The opinion determined that the then proposed HMS shallow-set longline fishing outside of the U.S. West Coast would jeopardize loggerhead sea turtles, but found no jeopardy to leatherbacks, even with old style gear (i.e., J hooks and squid bait with the associated higher turtle interaction rates). The Commission report fails to mention the 2004 Biological Opinion written for the Hawaii-based shallow-set longline fishery, which found no jeopardy to any sea turtle species for that fishery using gear techniques and methods identical to those in the proposed EFP.

In numerous statements the Commission staff has given the impression that the Pacific Leatherback Conservation Area is a permanent sea turtle marine protected area for all commercial fishery gear types. The facts state otherwise. The Conservation Area was put in place following a Section 7 consultation done in 2000 on the then California and Oregon Drift gillnet fishery. The time and area closure was considered necessary to avoid jeopardizing

¹ July 13, 2007 Letter from Peter Douglas, Executive Director of the California Coastal Commission to David Kennedy, Peter Dupuy, and Rodney McInnis

endangered leatherbacks and applies only to drift gillnet gear. This again highlights the fact that the Commission inappropriately expanded the scope of the proposed action and did not base its final decision on the scientific and technical merits of the proposed action before them. These merits included, among other things, 100 percent observer coverage, limited effort, and very conservative protected species take caps.

PFMC
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