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Susan Pultz, Chief
Conservation Planning and Rulemaking Branch
Protected Resources Division, National Marine Fisheries Service
Pacific Islands Regional Office
1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818

Dear Susan,

I am writing to provide comments on the proposed rule for the protection of spinner dolphins in Hawaiian waters. While I applaud the National Marine Fisheries Service for proposing action to protect spinner dolphins in Hawai‘i, I think the current proposed regulations will have unintended negative consequences for other species of cetaceans that will outweigh the benefit they provide for spinner dolphins, and thus the proposed rule needs serious reconsideration. In particular, a single species (spinner dolphin-only) rule will most likely result in a large-scale shift in dolphin watching and dolphin swim-with activities to other species of odontocetes in Hawaiian waters, increasing Level B harassment, and potentially detrimentally impacting their populations. Thus approach regulations or swim-with prohibitions in the final rule should be revised to include other species of cetaceans in Hawaiian waters for which approach regulations do not currently exist (i.e., all those except humpback whales), and the regulations should apply for all federal waters in Hawai‘i. I outline these concerns in more detail below.

I have been working with dolphins and other toothed whales, including spinner dolphins, in Hawaiian waters since 1999. My comments are based on what we have learned about the presence of multiple resident species of dolphins and other toothed whales in Hawai‘i, their relatively small population sizes, their diel behavioral patterns, and observations of human interactions with these species and how they have changed over time since 1999. Eleven of the 18 species of odontocetes in Hawaiian waters (including spinner dolphins) have island-associated resident populations (see[1] and references cited within). Like spinner dolphins, four of these species (short-finned pilot whales, pygmy killer whales, melon-headed whales, pantropical spotted dolphins) are much more active at night than during the day, and spend much of daylight hours resting near the surface, or engage in slow travel or social behavior during the day[1].

[1]Baird, R.W. 2016. The lives of Hawai‘i’s dolphins and whales: natural history and conservation. University of Hawai‘i Press, Honolulu.

Several of the other 10 resident species (e.g., dwarf sperm whales, pygmy killer whales, Cuvier's beaked whales), as well as non-resident species such as striped dolphins, Fraser's dolphins, Risso's dolphins and sperm whales, are easily disturbed by human activities (e.g., approaches by vessels or swimmers)[1]. While human interactions with spinner dolphins have received the most attention over the 18 years that I have been working in Hawai'i, human interactions with all 10 other resident species also occur. I have witnessed vessel interactions, in particular vessel-based approaches with tourist vessels, with all 10 of these other resident species, and have personally witnessed swimmer interactions with other species, particularly short-finned pilot whales, false killer whales from the endangered main Hawaiian Islands population, and sperm whales.

As I have noted previously[1], after the Advanced Notice of Proposed Rulemaking was published in 2005, some tour vessels off Kona began searching offshore and were regularly encountering pilot whales and other species. In recent years, the number of tour vessels searching offshore for species other than spinner dolphins has slowly but steadily increased, and vessels putting individuals in the water with other species has similarly increased. Through observations during our research, through social media, and personal communications with individuals involved with swim-with activities, I know of cases just in the last six months where individuals have swum with, or attempted to swim with, at least 10 species of odontocetes off of Hawai'i Island. Under the proposed rule, neither vessels nor swimmers will be able to deliberately approach spinner dolphins closer than 50 yards, and my understanding is that advertising swimming with spinner dolphins will be prohibited. It is ironic however, that a company could simply switch their advertising to swimming with any other species of dolphin or whale (other than humpback whales, which have a similar prohibition), and such advertising would be perfectly legal. If the proposed single-species rule is implemented, the relatively low level of swimming with other species of whales and dolphins in Hawai'i that is occurring today will most likely increase dramatically, increasing both Level B harassment and having the potential to impact populations. Unlike spinner dolphins, estimates of abundance for most of these other species are not available, and the logistics of studying potential impacts of an increase in vessel or swim-with interactions are much more problematic and expensive. Thus being able to understand or monitor impacts of displaced vessel and swim-with interactions with other species is unlikely to occur. One additional consideration is that, by comparison, there is greater risk to individuals swimming with some of these other species than there is with spinner dolphins, both from the animals themselves (e.g., short-finned pilot whales[1]) or from associated oceanic whitetip sharks. Thus the displacement of swim-with interactions to other species of cetaceans in Hawaiian waters will result in an increased risk of injury to the individuals involved in the interactions.

While there is less spatial predictability of these other species, making it harder for an individual tour vessel to find any particular species on a short tour, operators currently work together in many areas to share information on the presence of spinner dolphins, and such sharing of information in offshore waters will increase the likelihood of vessels finding other species to approach and potentially swim with.

While it is true that monitoring and enforcement in offshore waters of whatever rules are decided upon will be difficult, a prohibition on advertising of swim-with interactions for all species will greatly reduce the demand for such activities, thus there should be a reduction in such activities even with limited enforcement. In addition, it would increase the likelihood that, if such activities did continue on commercial tour vessels, that reporting of the activities by the

passengers themselves, or posting of video or photos on social media, would result in the continuation of such activities becoming public knowledge, and thus potentially enforcement action. Combined, this suggests that such a prohibition would greatly reduce swim-with activities with all species of whales and dolphins in Hawaiian waters even in the absence of on-the-water enforcement in offshore waters.

For these reasons, any approach regulations and swim-with prohibitions in the final rule should be expanded to include other species of whales and dolphins in Hawaiian waters including all federal waters.

Best regards,

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