

UPDATE ON HUMPBACK WHALE ENDANGERED SPECIES ACT CONSULTATION

Under this agenda item, the Pacific Fishery Management Council (Council) is scheduled to receive an update from National Marine Fisheries Service (NMFS) on the status of the ongoing humpback whale (*Megaptera novaengliae*) Endangered Species Act (ESA) consultation. In 2012, NMFS prepared a Biological Opinion (BiOp) on the Continuing Operation of the Pacific Coast groundfish fishery that addressed a number of listed species under the ESA, including humpback whales, that may be subject to take by the Pacific Coast groundfish fishery. The BiOp concluded the Pacific Coast groundfish fishery is likely to adversely affect but not likely to jeopardize the continued existence of humpback whales.

In November 2018, NMFS reinitiated ESA consultation because two criteria for reinitiation were met. The first rationale for reinitiation is due to the revision of the ESA listing for humpback whales from a single global population to fourteen Distinct Population Segments (DPS), each having their own ESA status ([81 FR 62260](#)). Off the Pacific West Coast, three DPS (Mexico, Central America, and Hawaii) are found, with the Mexico DPS listed as threatened and the Central America DPS listed as endangered.

The second rationale for reinitiation, as reported to the Council in the [June 2019 Groundfish ESA Workgroup \(Workgroup\) report](#), is the incidental take amount was exceeded. The incidental take statement for humpback whales is a five year average of one humpback whale injury or mortality per year and up to three humpback whale injuries or mortalities in any single year. There have been two documented takes since 2012, one in the limited entry (LE) fixed gear sablefish pot sector in 2014 and one in the open access (OA) fixed gear sablefish pot fishery in 2016. As noted in the Workgroup report, estimation methodologies used to calculate incidental take showed the LE sector was consistently below the five-year running average threshold, while the OA was consistently above.¹ These results indicated the incidental take amount had been exceeded. The humpback whale section of that report has been excerpted and is provided as Agenda Item D.6, Attachment 1.

In addition to these rationales, critical habitat for the Central America and the Mexico DPS was proposed for specific areas located off the coasts of California, Oregon, Washington, and Alaska in October 2019 ([84 FR 54354](#)). This proposal may have impacts on Pacific West Coast fisheries.

NMFS is considering a suite of new conservation measures that would be in addition to the measures described in the 2012 BiOp. NMFS will update the Council at this meeting regarding the status of the consultation, including the scope and prospective conservation measures (Agenda Item D.6.a, NMFS Report 1).

The Council has the opportunity under this agenda item to advise NMFS as to how the scope and prospective conservation measures of this consultation could affect management of the Pacific Coast groundfish fishery. NMFS will consider Council advice when finalizing the biological opinion.

¹ Methodology described in detail in [Agenda Item I.4.a, NMFS Report 4, June 2019](#).

Council Action:

- 1. Provide Guidance to NMFS on the Scope and Potential Conservation Measures of the Humpback Whale ESA Consultation, as Appropriate.**

Reference Materials:

1. Agenda Item D.6, Attachment 1: Groundfish ESA Workgroup Report: Excerpted Humpback Whale Section.
2. Agenda Item D.6.a, NMFS Report 1: Update on Humpback Whale Endangered Species Act Consultation.
3. If Received, Public Comments are Electronic Only ([see e-portal](#)).

Agenda Order:

- D.6 Update on Humpback Whale Endangered Species Act Consultation Todd Phillips
- a. Reports and Comments of Management Entities and Advisory Bodies
 - b. Public Comment
 - c. **Council Action:** Council Discussion and Guidance, as Appropriate

PFMC
08/21/20