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Overview of Humpback Whale ESA Consultation & Next Steps

April 2021 Virtual Presentation to the
Pacific Fishery Management Council

WCR Sustainable Fisheries Division

Overview

- Summary of biological opinion
- Discussion of how to advance terms and conditions



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Background

- 2012 Biological Opinion – groundfish fishery likely to adversely affect, but not likely to jeopardize humpback whales.
- NMFS reinitiated because two criteria were met:
 - (1) a change in the species listing
 - Global humpback whale population to Distinct Population Segments (DPS)
 - (2) an exceedance of the incidental take amount
 - Council’s Groundfish Endangered Species Workgroup Report– April 2019



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Process Used in this Consultation

Step 1 – Endangered Species Workgroup

Step 2 - Council reviewed Workgroup report

Step 3 - NMFS worked on draft analysis for Biological Opinion

Step 4 - Council feedback on draft proposed action and potential conservation measures

Step 5 - NMFS finalized the Opinion

Post Consultation Action – discussion and development of terms and conditions



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Proposed Action

- Proposed Action - Continued operation of the Pacific Coast groundfish fishery
- Tribal and non-tribal groundfish fisheries
- Commercial and recreational groundfish fisheries
- State fisheries are not themselves part of the proposed action
- Evaluates Mexico DPS (threatened) and the Central America DPS (endangered), as well as proposed critical habitat



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Critical Habitat

- Evaluated proposed critical habitat to save time and decrease likelihood of future reinitiation
- Prey is the only physical and biological feature
- Pacific sardine, northern anchovy, and Pacific herring are prey species caught as bycatch
- Fishery has limited impact on humpback whale prey availability



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Analytical Approach

- Projecting potential future bycatch using historical observer data/bycatch estimates specific to each sector
- Opportunistic entanglement reports used to groundtruth anticipated impacts from estimates
 - A number of whale entanglement records cannot be identified to specific fisheries
 - Possible some entanglements with unidentified origins are from groundfish gear
 - Compared estimates to potential contribution of groundfish gear to opportunistic record



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Analytical Approach – cont'd

- Entanglement risk at DPS level - Examining fishing effort distribution (observer and landings data) to determine fishery overlap with relative distributions of DPSs
- Anticipate effects: Looking at one-year and five-year time periods
 - Provides industry coverage in a high bycatch year while monitoring impacts to humpback whales over the long term



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Trawl Interactions

- Two dead humpbacks captured on EM video during whiting fishery in July 2020
- Bycatch of a whale in trawl gear is a very unlikely event, occurring extremely rarely at the scale of all U.S. trawl fisheries
- BiOp concluded the whiting fishery interactions were not takes; risk of future interactions incorporated as part of Environmental Baseline.



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Incidental Take Statement

- Proposed action is not likely to jeopardize the continued existence of either the Mexico DPS or the Central America DPS of humpback whales
- Mexico DPS
 - Annual upper estimated amount = no more than 3
 - 5-year running average limit = no more than 1.44
- Central America DPS
 - Annual upper estimated amount = no more than 2
 - 5-year running average limit = no more than 0.90



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Reasonable and Prudent Measures

“Reasonable and prudent measures” are nondiscretionary measures that are necessary or appropriate to minimize the impact of the amount or extent of incidental take (50 CFR 402.02).

(1) NMFS shall monitor the PCGF to ensure compliance with the regulatory and conservation measures included in the proposed action and the identified amount or extent of incidental take, including collection and evaluation of data on the capture, injury, and mortality of humpback whales.



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Term & Condition 1

(1) NMFS SFD, in cooperation with the PFMC and NMFS PRD as necessary, shall investigate the **methods and feasibility associated with implementing additional pot gear marking regulations** for the PCGF. The feasibility study shall consider whether additional gear marking would increase NMFS' ability to attribute humpback whale entanglements to specific fisheries and assist in identifying potential modifications to the pot gear regulations that could reduce incidental take of humpback whales. The feasibility study shall be completed by **March 2023** and the findings given consideration by the PFMC for potential changes to the pot gear marking regulations by **March 2024**. Completion dates may be revised by mutual agreement by NMFS SFD, PFMC, and NMFS PRD. The following methods shall be evaluated, as well as any other potential methods identified by NMFS SFD, the PFMC, or NMFS PRD as part of the investigation process:

- a. Line marking - as an example, proposed Washington Department of Fish and Wildlife Dungeness crab regulations (October 2, 2019).
- b. Additional markings on buoys/surface gear – as an example, California Department of Fish and Wildlife Commercial Trap Gear marking regulations.



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Term & Condition 2 & 3

(2) NMFS SFD, in cooperation with the PFMC and NMFS PRD, shall review the Terms of Reference for the Groundfish Endangered Species Workgroup. NMFS SFD, PRD, and the PFMC will review the priority of needs associated with incidental humpback whale bycatch in the PCGF and provide any recommendations to the Workgroup. The review shall be completed by March 2021, or some other mutually agreeable date.

(3) NMFS SFD, in coordination with the NWFSC WCGOP, shall ensure observer coverage in the PCGF's fixed gear fishery maintains the capability to provide scientifically defensible humpback whale bycatch estimates across all sectors to confirm that the take exemption for the proposed action is not exceeded. When feasible, NMFS SFD should consider observer deployment options to reduce uncertainty in humpback whale bycatch estimates and increase the understanding of the fishery dynamics in the fixed gear fishery.



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Term & Condition 4

(4) NMFS SFD, in cooperation with the PFMC and NMFS PRD as necessary, shall **review and consider measures for maximizing the utility and benefit of EM with respect to gathering information from any future bycatch events of humpback whales**. NMFS SFD shall complete this review and make a report of the findings available to PFMC and NMFS PRD by **March 2023**. Completion dates may be revised by mutual agreement by NMFS SFD, PFMC, and NMFS PRD. Factors that could be considered include, but are not limited to, the following:

- a. Placement of EM technology.
- b. Review protocols, including the amount of review and extent of analysis to be provided.
- c. Options for supplemental documentation and data collection.



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Conservation Recommendations

- Tools to reduce overlap of fishery with whales
- Tools to reduce severity of entanglements
- Fixed gear logbook
- Assess potential future humpback interactions with trawl gear



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**Humpback whale - *Megaptera novaeangliae* – breaching.
(NOAA Photo Library)**



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