

GROUND FISH ADVISORY SUBPANEL REPORT – HUMPBAC WHALE ENDANGERED SPECIES ACT CONSULTATION

The Groundfish Advisory Subpanel (GAP) received a [presentation](#) from Ms. Keeley Kent, National Marine Fisheries Service (NMFS), West Coast Region (WCR), Sustainable Fisheries Division. The GAP also reviewed the California Department of Fish and Wildlife [Report](#) that provides an update on activities in state-managed fisheries relevant to this agenda item. As noted in the F.2 Situation Summary, the Pacific Fishery Management Council (Council) is tasked with providing guidance on the development of management measures to satisfy the terms and conditions (T&Cs) of the Humpback Whale Endangered Species Act (ESA) Consultation.

Our previous statements on this topic and, more generally, on the Groundfish Endangered Species Workgroup (GESW) items ([Agenda Item D.6.a, Supplemental GAP Report 1, September 2020](#); [Agenda Item I.4.a, Supplemental GAP Report 1, June 2019](#); and [Agenda Item F.5.a Supplemental GAP Report April 2017](#)), sought to highlight the need for improved communication between fishery participants affected by protected species management measures and the state and Federal managers who develop and implement these measures. The NMFS and California Department of Fish and Wildlife (CDFW) reports demonstrate the importance of this communication. For example, in September 2020, NMFS noted the need to “[s]tudy and encourage minimizing the impact of storing sablefish pot/trap gear at-sea” ([Agenda Item D.6.a, NMFS Report 1, September 2020](#)), the GAP reported that “‘storage’ of pot/trap gear at-sea does not occur in the Pacific coast sablefish fishery,” and, in their current report, NMFS has removed this item from the potential management measures. The GAP also highlighted the need for NMFS to consider state and Federal actions that would provide similar information to that proposed for collection by NMFS, for example logbooks, gear marking feasibility, and monitoring data (both observer and Electronic Monitoring (EM)), to minimize duplication of effort. The CDFW Report provides a detailed summary of ongoing efforts at the state level that should be informative in the development of Federal management measures. The GAP appreciates that NMFS heard and responded to our September 2020 report and the GAP thanks CDFW for their ongoing efforts to communicate state level activities.

The GAP continues to stress the importance of early outreach to fishery participants because it is critical to consider fishermen’s knowledge and experience when assessing potential impacts to listed species and in scoping and developing potential mitigation or management measures. The GAP recommends that the GESW include industry representation to provide practical advice into the recommendations and perspectives developed by the GESW. The GESW Terms of Reference (TOR) provides for this inclusion in the committee’s Composition statement, specifically “Other representatives as determined by the Council. Representatives in this category may be short-term appointments (e.g., one meeting) to address specific issues.” In contrast to our recommendation, it has been stated that fishery participants are able to attend GESW meetings and to provide input through public comment. While this is true, having a seat at the table is preferred by the GAP because our experience in other forums, such as groundfish Stock Assessment Review (STAR) Panels, demonstrate that the overall process is improved by direct stakeholder participation.

In acting upon this request, and as portended by the GESW TOR, it will be important to consider the spectrum of fishery participants potentially affected by management measures developed to address protected species interactions for a particular species or group of species. For example, streamer-line measures developed for long line fishery interactions with seabirds applied to a relatively discrete set of fishermen, whereas, measures proposed for humpback whale interactions could potentially apply to a broad spectrum of stakeholders, including open access and limited entry fixed gear, trawl, and “gear switchers.” Therefore, to ensure industry representation and provide the necessary flexibility, **the GAP recommends that a GAP seat be added to the GESW and the GAP chair be given the discretion to appoint a representative to occupy that seat depending upon the necessary industry expertise** (similar to STAR Panels).

Specific to the T&Cs detailed in the NMFS presentation, the GAP provides the following comments:

T&C 1 – The GAP recommends that any investigation about the “methods and feasibility associated with implementing additional pot gear marking regulations” be conducted in consultation with state fishery managers and fishery participants. As noted by the CDFW Report, there are ongoing efforts on this front that should be considered in the Federal action.

T&C 2 – (1) Consistent with the noted TOR review, the GAP recommends that, as detailed above, a GAP representative be added to the GESW and (2) identification of “priority needs” be conducted in consultation with the range of stakeholders that would be affected by any proposed new management measures.

T&C 3 – In their consideration of observer coverage requirements in the fixed gear fishery, the GAP recommends NMFS consider a range of options for collecting the necessary information including logbooks, observers, and EM to ensure uncertainty is reduced through the most cost-effective means.

T&C 4 – Relative to the use of EM to collect data about interactions with humpback whales, the GAP recommends (1) that completion of this effort be synchronized with finalization of the EM rulemaking to ensure consistency between the two actions; and (2) that vessel captains be consulted about any interactions detected through EM data as part of any analysis and that this consultation be conducted early to provide for timely input from those with the most immediate knowledge of the interaction.

Finally, each of the Terms and Conditions will have associated management measures that affect a variety of fishery participants. Therefore, **the GAP recommends the Council schedule a workshop, at the appropriate time, because it would be the most effective setting to facilitate engagement and input about potential new management measures related to humpback whales.**

PFMC
4/09/21