



# NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

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## Action Memo

File #: REP 16-036, Version: 1

Dan Hull, Chairman  
Chris Oliver, Executive Director

SUBJECT:  
Protected Species Report

STAFF CONTACT: Steve MacLean

ACTION REQUIRED:  
Receive Protected Species Report; action as necessary.

### BACKGROUND:

#### Humpback whale ESA listing revision

On September 8, 2016 NMFS published a [final rule](https://www.gpo.gov/fdsys/pkg/FR-2016-09-08/pdf/2016-21276.pdf) <<https://www.gpo.gov/fdsys/pkg/FR-2016-09-08/pdf/2016-21276.pdf>> to revise the population structure and ESA listing status of humpback whales. NMFS identified 14 Distinct Population Segments (DPS) of humpback whales and revised the ESA listings to reflect those new DPS. Population segments that reside in the North Pacific, including Alaskan waters, are:

1. Western North Pacific - Listed as Endangered
2. Hawaii - Not listed
3. Mexico - Listed as Threatened

All three populations feed in waters off Alaska, and are broadly mixed while in Alaska. The Western North Pacific DPS migrates to waters near Japan in winter, the Hawaii DPS migrates to waters near Hawaii in winter, and the Mexico stock migrates to Mexican waters in winter.

It is not expected that the change in listing for the Western North Pacific, Hawaii, or Mexico stocks will require new Section 7 consultation for the commercial fisheries in Alaska. The 2010 consultation was based on the updated abundance data primarily used in the evaluation of the listing status of humpbacks in the North Pacific, and remains valid. The Incidental Take Statement (ITS) currently allows the take of 9 humpback whales in a three-year period before consultation is reinitiated. The ITS may be revised to reflect the distribution of takes allowed from each stock before reconsultation is required.

Under the previous listing, no critical habitat (CH) was identified for humpback whales, globally. In the proposed rule (80 FR 22304; April 20, 2015) NMFS requested information on the identification of specific areas that meet the definition of CH for the Western North Pacific, Hawaii, and Mexico DPSs of humpback whale. After review of the comments and best available scientific information, NMFS concluded in the final rule that CH is not determinable at this time due to insufficient data to perform the required analysis and to understand the biological needs of the species. NMFS will propose CH for the Western North Pacific, Hawaii, and Mexico DPSs of humpback whale in a separate rulemaking if they determine that it is prudent to do so.

#### CA Drift Gillnet and CA/OR/WA Pot Fishery 60-Day Notice

On September 12, 2016 the Center for Biological Diversity (CBD) and Turtle Island Restoration Network (TIRN) filed notice of a 60-day notice of intent to sue the NMFS over violations of sections 7 and 9 of the ESA for actions and inactions related to the management and regulation of the California drift gillnet fishery and the

CA/OR/WA sablefish pot fishery. The notice claims that authorization of those fisheries without a valid permit to take ESA-listed humpback and sperm whales violates the agency's duties under the ESA, and that the MMPA permit that authorized those fisheries expired on September 4, 2016 making the continuing operation of those fisheries unlawful. The notice requested that NMFS authorize an emergency regulation requiring a NMFS-certified observer on board all fishing trips, immediate shutdown of the fishery in the event of an interaction with a humpback whale until NMFS has completed consultation, or closure of the fishery by September 30, 2016.

#### Northern Fur Seal summer movements

The northern fur seal population on the Pribilof Islands has been experiencing an unexplained decline since the mid-1970s. One major obstacle to understanding the potential causes of the decline is temporally and spatially aligning studies of fur seal foraging behavior with concurrent measures of prey availability. In 2016, NOAA Office of Research and NOAA Fisheries teamed with Saildrone Inc. to use two autonomous, wind and solar powered research vessels (saildrones) to examine fur seal foraging behavior in relation to prey availability. Dr. Carey Kuhn at the National Marine Mammal Laboratory (NMML) has provided updates on thirty adult female northern fur seals that were captured on St. Paul Island and equipped with satellite tags to record movement and other data. Data from the satellite tags are collected simultaneously with data collected from the saildrones to measure walleye pollock abundance in the Bering Sea. This provides the first data on fur seal prey abundance and fur seal movement and feeding behavior collected at the same time, and in the same place. An example of the data is shown below, where the gold grid shows the saildrone tracks and the colored lines show the movements of individual northern fur seals. Updates are available via email from Steve MacLean.

