



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD281]

Scoping for a Marine Mammal Take Reduction Team to Address Incidental Mortality and Serious Injury of Humpback Whale Stocks in the Pacific

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of scoping for a Marine Mammal Take Reduction Team; request for comment

SUMMARY: NMFS is establishing a Take Reduction Team (TRT or Team) to address the incidental mortality and serious injury (M/SI) of humpback whales that would, at a minimum, consider Federal sablefish pot fishery interactions with the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whales, and may also be expanded to consider other fisheries in the Pacific Ocean. The TRT will develop a Take Reduction Plan (TRP or Plan) as required under the Marine Mammal Protection Act (MMPA). NMFS requests public comments on information relevant to establishing the TRT as well as interest from stakeholders who wish to be considered for TRT membership.

DATES: Comments must be received by *[insert date 60 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this notice, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-

0104 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Mail: Assistant Regional Administrator for Protected Resources, NMFS West Coast Region, 501 W Ocean Blvd, Suite 4200, Long Beach, CA.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Lawson, West Coast Region, 206-526-4740, dan.lawson@noaa.gov; Kristy Long, Office of Protected Resources, 206-526-4792, kristy.long@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 118 of the MMPA requires commercial fisheries to reduce incidental M/SI of marine mammals to insignificant levels approaching a zero mortality and serious injury rate (16 U.S.C. 1387). Section 118(c) of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental M/SI of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the List of Fisheries (LOF) determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, including a take reduction plan. A Category I fishery

has frequent incidental M/SI of marine mammals, a Category II fishery has occasional incidental M/SI of marine mammals, and a Category III fishery has a remote likelihood of or no known incidental M/SI of marine mammals.

Section 118(f)(1) of the MMPA requires NMFS to develop and implement TRPs designed to assist in the recovery or prevent the depletion of each strategic stock that interacts with Category I and II fisheries (16 U.S.C. 1387(f)(1)). The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the Potential Biological Removal (PBR) level; (2) which is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA or as a depleted species under the MMPA (16 U.S.C. 1362(19)). PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (16 U.S.C. 1362(20)).

MMPA section 118(f)(6)(C) requires that members of TRTs have expertise regarding the conservation or biology of the marine mammal species that the TRP will address, or the fishing practices that result in the incidental M/SI of such species. As outlined in the statute “[m]embers shall include representatives of Federal agencies, each coastal State which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations or Indian tribal organizations, and others as the Secretary deems appropriate” ((16 U.S.C. 1387(f)(6)(C)). The MMPA further specifies that TRTs “shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user and non-user interests” (Id.).

As required under section 118 (f)(7) and section 118(f)(8), of the MMPA, a TRT shall develop a draft TRP by consensus, and shall submit this draft TRP to NMFS not later than 6 or 11 months after the date of the establishment of the TRT depending on the level of M/SI compared to a stock's PBR. Pursuant to the MMPA, NMFS convenes TRTs to develop recommendations that achieve a short-term goal of reducing incidental M/SI of marine mammals covered by the Plan to a rate below each stock's PBR within 6 months of implementation. The long-term goal of a Plan is to “reduce, within 5 years of its implementation, the incidental M/SI of marine mammals from commercial fishing operations to insignificant levels, approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.”

On July 26, 2023, the United States District Court for the Northern District of California adopted a Stipulated Settlement Agreement (Agreement) between NMFS and the Center for Biological Diversity to resolve claims in the matter of *Center of Biological Diversity v. Raimondo* (3:22-cv-00117-JD). Under the Agreement, NMFS expressed its intent to issue a scoping notice by November 1, 2023 seeking information relevant to establishing a TRT under Section 118 of the MMPA that would, at a minimum, consider the Category II Federal sablefish pot fishery, and may also be expanded to consider other fisheries in the Pacific Ocean that interact with relevant humpback whale stocks. As part of this agreement, NMFS committed to issue a notice establishing a TRT by October 31, 2025, and to convene the first TRT meeting by November 30, 2025.

In the 2022 Pacific and Alaska Stock Assessment Reports (SARs), stock structures for humpback whales in the Pacific Ocean were revised. The three existing North Pacific humpback whale stocks (Central North Pacific, Western North Pacific and CA/OR/WA) were replaced by five stocks to better align with the 2016 listing of humpback whale distinct population segments under the ESA (81 FR 62260, September

8, 2016). The new humpback whale stock are: (1) Western North Pacific, (2) Hawai'i, (3) Mexico-North Pacific, (4) Central America/Southern Mexico-CA/OR/WA and (5) Mainland Mexico-CA/OR/WA (Young *et al.*, 2023, Carretta *et al.*, 2023). All of these stocks are considered “strategic” under the MMPA, with the exception of the Hawai'i stock, because these stocks include humpback whales from ESA-listed populations and/or total annual human-caused M/SI currently exceeds the stock's PBR as described in the most recent SARs.

In the 2022 SAR, NMFS describes the M/SI associated with U.S. commercial fisheries that is known or estimated to occur for each stock. For the Central America/Southern Mexico-CA/OR/WA stock, the mean annual M/SI in U.S. commercial fisheries is 8.1, which is more than double this stock's PBR of 3.5 per year. As detailed in the SAR, numerous State and Federal fisheries contribute to this total, including the Federal sablefish pot fishery with an estimated M/SI of 0.66 from the limited entry and open-access sablefish pot sectors combined. In contrast, for the Mainland Mexico-CA/OR/WA stock, which overlaps in distribution with the Central America/Southern Mexico-CA/OR/WA stock to a large degree off the U.S. West Coast and exposure to U.S. commercial fisheries, the mean annual M/SI across the same subset of U.S. commercial fisheries is 11.4, which is about 27 percent of this stock's PBR of 43 per year. Given that the M/SI of the Central America/Southern Mexico-CA/OR/WA humpback whale stock exceeds the stock's PBR, and that the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks are vulnerable to the same U.S. commercial fisheries, including the Federal sablefish pot fishery, these humpback whale stocks would be subject to this TRT.

The 2023 LOF was finalized prior to the release of the final 2022 SAR (88 FR 16899, March 21, 2023). Classification of U.S. commercial fisheries on the 2023 (current) LOF is based on the level of incidental M/SI for the previously designated

CA/OR/WA stock of humpback whales. Currently, there are eight U.S. commercial fisheries identified as Category II fisheries due to incidental M/SI of the CA/OR/WA stock, with seven of those identified as pot or trap fisheries, including the Federal sablefish pot fishery. In the 2024 LOF, NMFS (88 FR 62748; September 13, 2023) has proposed to classify U.S. commercial fisheries based on the revised stock structure for humpback whales. The 2024 LOF does not propose to reclassify any additional U.S. West Coast commercial fisheries as Category I or II fisheries based on updated information and the revised humpback whale stock structure, although NMFS has proposed to elevate the California Dungeness crab pot fishery to Category I due to the M/SI of the Central America/Southern Mexico-CA/OR/WA stock of humpback whales. The Federal sablefish pot fishery would continue to be classified as Category II for both the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whales in the proposed 2024 LOF.

Public Comments Solicited

Prior to convening this TRT by October 31, 2025, NMFS is seeking public input on the scope of the TRT as well as other relevant information that will support planning for the TRT. Specifically, NMFS is seeking input on whether other Category I or II fisheries, beyond the Federal sablefish pot gear fishery, that incidentally kill or seriously injure the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks of humpback whales, should be addressed by the TRT.

Additional information relevant to establishing this TRT includes information about the factors associated with risks of humpback whale or other large whale entanglements in U.S. commercial fisheries in the Pacific Ocean. This information could include available scientific or commercial data about the conduct of these fisheries, along with biological and ecological influences, and any other factors that affect the nature of interactions between large whales and U.S. commercial fishing gear.

Finally, NMFS is seeking to identify interested stakeholders who may wish to serve as TRT members. A seat on a Team is provided to ensure the interests of a constituency, organization, or expertise – and not a specific individual – are adequately represented. The intention is to be inclusive and ensure all those with a stake are represented at the table (either directly or through others on the Team). The stakeholders to be represented and interests to be included on the Team are determined on a case-by-case basis, depending on the scope of a given Team. In addition to the statutory criteria for Team membership noted above, NMFS also identifies candidate individuals who can ably represent the different interests. NMFS recruits candidate Team members based on the following:

- Ability to bring first-hand knowledge and perspective to bear on the relevant fisheries and/or marine mammal species;
- Ability to balance a regional perspective with localized knowledge;
- Willingness to express fundamental interests (as opposed to fixed positions) and to clearly convey the interests of one or more important stakeholder groups;
- Ability to work collaboratively, seeking to integrate the interests of a broad range of constituencies;
- Ability to access and use an effective communication network to reach members of their constituency not attending Team meetings;
- Availability and willingness to travel and participate in meetings;
- Proven track record of engaging in constructive dialogues on controversial resource management issues;
- Extent to which candidates' participation on other teams fosters or hinders deliberations; and,
- Ability to represent multiple factions of a constituency (*e.g.*, multiple sectors of a fishery or a wide array of particular fishery).

NMFS will conduct an independent process to identify and assess potential candidates for TRT membership prior to issuing a notice establishing the TRT.

References

Carretta, J.W., E.M. Oleson, K.A. Forney, M.M. Muto, D.W. Weller, A.R. Lang, J.

Baker, B. Hanson, A.J. Orr, J. Barlow, J.E. Moore, and R.L. Brownell. 2023. U.S. Pacific Marine Mammal Stock Assessments: 2022. U.S. Department of Commerce. NOAA Technical Memorandum NMFS-SWFSC-684. 409 p.

Young, N.C, M.M. Muto, V.T. Helker, B.J. Delean, N.C. Young, J.C. Freed R.P. Angliss, N.A. Friday, P.L. Boveng, J.M. Breiwick, B.M. Brost, M.F. Cameron, P.J. Clapham, J.L. Crance, S.P. Dahle, M.E. Dahlheim, B.S. Fadely, M.C. Ferguson, L.W. Fritz, K.T. Goetz, R.C. Hobbs, Y.V. Ivashchenko, A.S. Kennedy, J.M. London, S.A. Mizroch, R.R. Ream, E.L. Richmond, K.E.W. Sheldon, K.L. Sweeney, R.G. Towell, P.R. Wade, J.M. Waite, and Alexandre N. Zerbini. 2023. Alaska Marine Mammal Stock Assessments 2022. U.S. Department of Commerce. NOAA Technical Memorandum NMFS-AFSC-474. 316 p.

Dated: September 25, 2023.

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