



MARINE MAMMAL COMMISSION

27 August 2014

Mr. Jon Kurland
Assistant Regional Administrator for Protected Resources
Alaska Region, National Marine Fisheries Service
Attention: Ellen Sebastian
P.O. Box 21668
Juneau, AK 99802-1668

Dear Mr. Kurland:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) *Federal Register* notice (79 Fed. Reg. 36281) requesting comments on a petition to designate the central North Pacific humpback whale as a discrete population segment (DPS) under the Endangered Species Act (the ESA) and to remove that population from the Act's list of endangered and threatened species. The Commission offers the following comments and recommendations.

Background

Currently, the humpback whale is listed as endangered throughout its entire range under the ESA. On 10 April 2013 the Hawaii Fishermen's Alliance submitted a petition requesting that NMFS designate humpback whales in the North Pacific Ocean as a DPS under the ESA and remove it from the list of endangered and threatened species. In response, NMFS noted that it was initiating a review of North Pacific humpback whales, requested information on the species in that region, and advised that its review would be incorporated into an ongoing review of the species worldwide, which it had begun in 2009. Results of neither the North Pacific-wide nor the worldwide review have been released. On 26 February 2014 the State of Alaska submitted a petition requesting that the central North Pacific population of humpback whales be designated as a DPS and that it be removed from the list of endangered and threatened species under the ESA. The current notice requests information on the central North Pacific population of humpback whales.

As a related matter, on 1 July 2014 the Fish and Wildlife Service and NMFS announced a new policy for guiding listing decisions (79 Fed. Reg. 37578). That policy calls for listing a species (the definition of which includes a DPS of a vertebrate species) as endangered or threatened throughout all portions of its range if the agency determines that it merits listing as endangered or threatened in any "significant portion" of its range. The new policy defines a "significant" portion of a species (or population's) range as any portion whose contribution to the viability of the listed species (or population) throughout its entire range is so important that, without that portion, it would be in danger of either extinction in the case of a listed endangered species or of becoming endangered in the foreseeable future in the case of a listed threatened species.

Comments and recommendations

The Commission has not funded or helped organize any recent studies related to humpback whales and has no new information to offer with respect to the list of research subjects identified in the *Federal Register* notice. As a general matter, the Commission concurs with NMFS's finding that the action requested in the petition may be warranted and supports efforts to proceed with a review of relevant information bearing on the merits of a possible change in listing status. The Commission is concerned, however, about proceeding with a review focused specifically on the central North Pacific humpback whale population. As indicated in the notice, NMFS initiated a review of humpback whales worldwide in 2009. The Commission believes that the information on humpback whales compiled for that review (Fleming and Jackson 2011) provides compelling justification for recognizing separate humpback whale DPSs within different ocean basins and that some of them may warrant consideration for classification as threatened or even removal from the list of endangered and threatened species.

During the past decade NMFS budgets for marine mammal work have been effectively level-funded, while the costs of research and management actions have steadily increased, leaving many important research and management needs unmet. As a result, NMFS should make every effort to improve the cost efficiency of its marine mammal work. In this regard, the Commission believes it would be more cost-effective to proceed with a review of humpback whales worldwide rather than reviewing the listing status of putative DPSs separately in response to possible additional petitions as they are received. That is, the Commission believes that considerable staff time and money could be saved by considering the requested action as part of a broader review of a globally listed species that identifies and delineates DPSs and evaluates their status both collectively and individually. The Commission also believes that when information indicates that the status of one or more DPSs has improved so substantially that classification as threatened or removal from the list of endangered and threatened species may be warranted—as appears to be the case with humpback whales in some areas in addition to the central North Pacific—steps to review those DPSs should proceed in a careful but expeditious fashion. The Commission therefore recommends that NMFS integrate its review of the petitioned action for the central North Pacific humpback whale population into a broader review of the species' status that evaluates the merits of continuing to list the species range wide or as separate DPSs. Consistent with the new policy for assessing listings based on the significant portions of a species' range criterion, the Commission believes that NMFS should first determine whether humpback whales as a species are endangered or threatened throughout a significant portion of their range. If so, then continuing to list the species range wide as single entity would appear to be in order. If not, then NMFS should assess whether any separate DPS warrants a change in its listing status. Any population for which there is insufficient information concerning whether it constitutes a DPS or warrants down-listing or delisting should remain listed as endangered under the current listing.

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Thank you for considering the Commission's comments. If you or your staff has questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial 'R' and a distinct 'L'.

Rebecca J. Lent, Ph.D.
Executive Director

Reference

Fleming A, and J. Jackson. 2011. Global review of humpback whales (*Megaptera novaeangliae*). NOAA-TM-NMFS-SWFSC-474. National Marine Fisheries Service, Southwest Fisheries Science Center, La Jolla, California. 206 pages.