

Rec'd 10/9/2019



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Stephen Giesbrecht
Borough Manager
P.O. Box 329
Petersburg, AK 99833

Dear Mr. Giesbrecht:

We, NOAA's National Marine Fisheries Service (NMFS), recently published a proposed rule to designate critical habitat for the Mexico, Central America, and Western North Pacific distinct population segments (DPSs) of humpback whales (*Megaptera novaeangliae*) under the Endangered Species Act of 1973 (ESA). We are notifying you because some of these whales occur in state waters adjacent to your county, and we would like to invite comments from you on our proposed rule.

On September 8, 2016, we published a final rule that revised the listing of humpback whales under the ESA. In that rule we removed the range-wide listing of the taxonomic species, listed four DPSs as endangered, and listed one DPS as threatened (81 FR 62260). The listing of multiple DPSs of humpback whales under the ESA triggered the requirement to designate critical habitat, to the maximum extent prudent and determinable, for those DPSs of humpback whales that occur in areas under U.S. jurisdiction – specifically, the Mexico, Central America, and Western North Pacific DPSs. Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat is designated at the time of listing (16 U.S.C. 1533(a)(3)(A)). In the final rule to list the five DPSs of humpback whales, we concluded that critical habitat was not yet determinable and thereby extended by one year the statutory deadline for designating critical habitat (16 U.S.C. 1533(b)(6)(C)(ii)).

The proposed critical habitats for the three DPSs of humpback whales are within coastal waters off Alaska, Washington, Oregon, and California. All areas included in the proposed designation serve as humpback whale feeding habitat and contain prey species essential to the conservation of the whales. Once critical habitat is designated through a final rule, Federal agencies would be required to comply with section 7 of the ESA to ensure that any actions they authorize, fund, or carry out will not result in the destruction or adverse modification of the critical habitat. While non-Federal entities that receive Federal funds, authorizations, or permits from a Federal agency may be indirectly affected by the designation of critical habitat, the legally binding duty to avoid the destruction or adverse modification of critical habitat rests squarely on the Federal agency.



For a detailed description of the proposed critical habitat, please refer to the enclosed proposed rule and associated maps. Electronic copies of the proposed rule and supporting documents may also be found on the NMFS website at <https://www.fisheries.noaa.gov/species/humpback-whale> (under Regulatory Actions) and at www.regulations.gov (search on: NOAA-NMFS-2019-0066). We invite written comments on the proposed rule and supporting reports prior to the end of the comment period (see ADDRESSES section of the enclosed *Federal Register* notice).

I appreciate your attention to this important rulemaking and to humpback whale conservation.

Sincerely,



Angela Somma
Chief, Endangered Species Division
Office of Protected Resources

Enclosure