



North Pacific Fishery Management Council

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DRAFT LETTER

Dr. Lisa Manning
Office of Protected Resources, Endangered Species Division
National Marine Fisheries Service
1315 East West Highway (SSMC3)
Silver Spring, MD 20910

Dear Dr. Manning:

On behalf of the North Pacific Fishery Management Council (Council), I wish to express our thanks for the opportunity to comment on the Proposed Rule to designate critical habitat for the Central America, Mexico, and Western North Pacific distinct population segments of humpback whales. The Council was established by the Magnuson-Stevens Fishery Conservation and Management Act to manage commercial fisheries in the Gulf of Alaska, Bering Sea and Aleutian Islands, and Arctic Ocean off Alaska.

Commercial fisheries in Alaska provide significant benefits to the Nation. Alaska's commercial fishing and seafood industry annually generates about \$5.6 billion in economic activity, \$2.1 billion in labor income, 2.8 billion pounds of product worth \$4.7 billion, and 58,700 full- and part-time jobs in Alaska.¹ Nationally, the Alaska seafood industry creates over 100,000 FTE job, \$5.6 billion in annual labor income and \$13.9 billion in U.S. economic output. Fisheries from the Gulf of Alaska, Aleutian Islands, and the Bering Sea provide over 60% of the U.S. domestic seafood harvest. The Council has long been recognized as a leader in sustainable fishery management. Our ecosystem-based approach to fishery management ensures that fisheries in the Gulf of Alaska, Aleutian Islands, and Bering Sea will continue to supply the Nation and the world with the highest quality wild Alaskan seafood, provide jobs for thousands of Americans, and protect the fishery dependent communities and subsistence way of life that is important in many Alaskan communities.

Under the Council's watch, these benefits to the Nation have been provided while the North Pacific population of humpback whales has consistently grown such that the Central North Pacific (Hawaii) distinct population segment (DPS) has been removed from the U.S. list of endangered species, and the Western North Pacific, Mexico, and Central American DPSs continue to show recovery.²

The Council understands that critical habitat (CH) for these endangered and threatened stocks must be identified, and appreciates the opportunity to provide these comments and suggestions to ensure that identified CH is appropriate and effective in ensuring the conservation and recovery of humpback whales. However, the lack of consultation with the Council prior to publication of the rule has heightened our concerns about the designation process and potential impacts of the designation on fisheries off Alaska. Upon learning of the proposed rule publication and ultimately the extension of the comment period, we have requested an in-person consultation with NMFS PR staff at our January 2020 meeting.

The Council has identified several major issues with the proposed rule, including the species that are considered prey within the definition, the relatively large amount of habitat area designated as critical for the species, the potential impacts on fisheries, and the increased costs of future consultations. These concerns are expressed with the understanding that humpback whale populations are increasing under the status quo, without identification of CH, and without additional regulations on fisheries.

¹ The Economic Value of Alaska's Seafood Industry, McDowell Group, January 2020.

² Muto, M.M. et al. 2019. Alaska Marine Mammal Stock Assessments, 2018. NOAA Tech Memo NNFS-AFSC-393

The Council agrees with the Review Team that prey is the only Essential Feature for which sufficient data exist to evaluate habitat. However, the Proposed Rule is vague on the species and life stages that fall under the definition of prey species. This prey feature was specifically defined as “*Prey species, primarily euphausiids and small pelagic schooling fishes of sufficient quality, abundance, and accessibility within humpback whale feeding areas to support feeding and population growth.*” The Proposed Rule identified small pelagic fishes as northern anchovy, Pacific herring, Pacific sardine, and capelin. The Proposed Rule noted that in addition to targeting euphausiids, humpback whales also consume multiple fish species occurring in the Aleutian Islands region, including capelin, Atka mackerel, and walleye pollock. Similarly, juvenile pollock were identified as being prey for humpback whales in the Gulf of Alaska. Although these species are not defined as prey species in the Proposed Rule, we are concerned that NMFS may subsequently interpret the definition to include these species. We strongly recommend that the final rule and supporting analysis clearly define the species and life stages that are considered critical prey, and this will be absolutely necessary for any future ESA Section 7 consultations with respect to potential impacts of fisheries.

The Council is concerned about the expansive geographic area being designated as CH. The Review Team relied on the biologically important areas (BIAs) previously identified as feeding grounds for humpback whales – which makes sense when food has been deemed the only essential feature. Where available, humpback whale sightings data were mapped and overlaid with the BIAs to inform selection of (and expand) boundaries between specific areas. Yet whale sightings do not necessarily indicate whale feeding, and the Review Team noted that humpback whales and their prey occur in all units along the coast of Alaska. We suggest that CH focus on those areas designated as biologically important areas for feeding.

Should the agency insist on expanding the CH beyond the boundaries of the BIAs, the Council would suggest that the outer limits for all units other than unit 1 be drawn along the 1,000 m isobath. As proposed, the outer limits of unit 2 (Aleutian Islands Area) and unit 10 (Southeastern Alaska) are drawn along the 2,000 m isobath, while the outer limits of other units (other than unit 1, Bristol Bay which is entirely shelf habitat) are drawn along the 1,000 m isobath. Given the coastal nature of humpback whale prey species, and our understanding of normal dive depths, the 2,000 m isobath appears to be excessive.

The Council is also concerned about the potential impacts on the fishing industry and the lack of evaluation of those potential impacts and costs. The Review Team concluded that prey, as the essential feature, may require special management considerations or protections as a result of ecosystem shifts driven by climate change, commercial fisheries, and pollution. The Council believes that no additional conservation measures are necessary for Council-managed fisheries to avoid adverse modification of the proposed humpback whale CH. However, our experience with ESA-listed Steller sea lions suggests that data can be interpreted in different ways, and may depend on who is preparing the biological opinion or undertaking a consultation. Additionally, once lines are drawn on the ocean relative to CH boundaries, subsequent regulatory changes can be applied to all CH areas regardless of the regulatory costs to the fishing industry, impact on coastal communities, and relative need for or value of conservation measures.

Lastly, the Council is concerned about the process and added costs of future consultations, and the role of the Council in the consultation. The Council notes that previous consultations regarding commercial fishing in the Federal waters off of Alaska have included humpback whales because all populations were previously listed as endangered. Once CH is designated, all future humpback whale consultations will take additional Council staff resources to evaluate activities in CH, and the potential impacts on prey features. The Council requests that any additional Section 7 consultations following designation of CH be conducted in accordance with NOAA Fisheries Policy 01-117, which suggests opportunities for collaboration with the fishery management councils, given our joint stewardship and management responsibilities.

Please consider the Council's comments on the proposed rule as the determination of CH is finalized. We look forward to working with NOAA Fisheries on this issue.

Sincerely,

Simon Kinneen, Chair

cc:

Mr. Chris Oliver, Administrator NOAA Fisheries