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Proposed Critical Habitat Designation For Humpback Whales Under the Endangered Species Act

January 29, 2020

Seattle, WA

Presentation Outline

Critical Habitat – General Overview

- What is critical habitat?
- What are the requirements for designating critical habitat?
- What is the effect of a critical habitat designation?

Humpback Whale Proposed Critical Habitat

- Why are we proposing critical habitat now?
- How did we develop the proposed rule?
- Where is critical habitat being proposed?
- What kind of information is being solicited?



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What is critical habitat?

Defined in section 3 of the ESA:

- Specific areas within the geographical area **occupied by the species**, at the time it is listed, on which are found those **physical or biological features (I)** essential to the conservation of the species and **(II)** which may require special management considerations or protection; and
- Specific areas **outside the geographical area occupied** by the species at the time it is listed, upon a determination by the Secretary that **such areas are essential for the conservation** of the species.



What are the requirements for designating critical habitat?

- Designations must be based on
 - best scientific data available, and
 - consideration of impacts - economic, national security, and other relevant impacts
- Secretary *may* exclude particular areas **if the benefits of exclusion outweigh the benefits of designation** and **if exclusion will not result in extinction** of the species
- Do not designate:
 - Entire range (unless the Secretary makes a determination)
 - Areas covered by an approved Integrated Natural Resource Management Plan (INRMP) if there is a conservation benefit
 - Areas within foreign countries or outside jurisdiction of the United States



What is the effect of a critical habitat designation?

- Regulatory effect: under section 7 of the ESA, Federal agencies are required to ensure that actions they authorize, fund, or carry out **are not likely to destroy or adversely modify designated critical habitat**
 - This is in addition to the section 7 requirement that Federal agency actions are not likely to **jeopardize the continued existence of listed species**
- Potential non-regulatory benefits: e.g., help managers identify important habitat, stimulate voluntary conservation and research, education/ outreach
- ❖ **Critical habitat DOES NOT:**
 - establish any type of sanctuary, preserve, or closed area
 - affect private activities (e.g., recreational boating) or use of private lands



Humpback Whale Critical Habitat



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Why are we proposing critical habitat now?

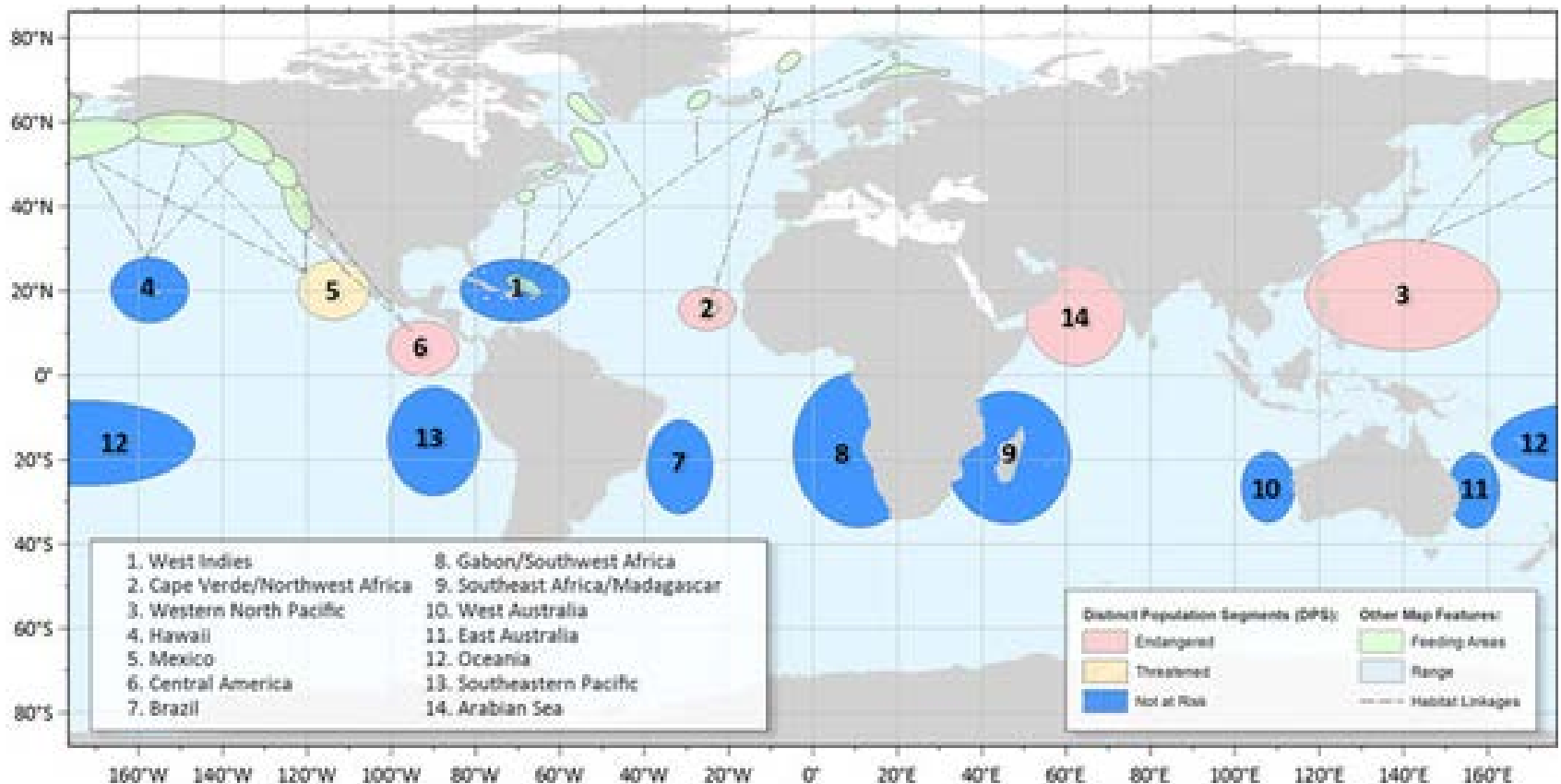
- Humpback whale listing was revised in 2016
 - Identified 14 distinct population segments (DPSs)
 - Nine DPSs did not warrant listing
 - Four DPSs listed as Endangered; one DPS listed as Threatened
 - **Note:** DPSs are included in the definition of “species” under the ESA
- Critical habitat must be designated at the time of listing to the maximum extent prudent and determinable
 - Found “not determinable,” invoked 1-year extension
- Lawsuit; deadline for proposed and final rules established in settlement agreement
 - proposed rule: 9/26/2019; final rule: 9/28/2020



How did we develop the proposed rule?

Step 1: Considered the geographical areas occupied

- Mexico DPS (listed as T)
- Western North Pacific DPS (listed as E)
- Central America DPS (listed as E)



How did we develop the proposed rule?

Step 2: Identified physical and biological features essential to conservation

- Whales migrate to U.S. waters to feed, build energy reserves
 - **Essential feature:** *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.*
 - **“May require special management considerations or protection:”** climate change, direct harvest of prey in commercial fisheries, ocean noise, pollution
- No breeding or migratory habitats proposed for designation
 - Confirmed breeding areas outside U.S. waters
 - No clear migratory routes or pathways have been described



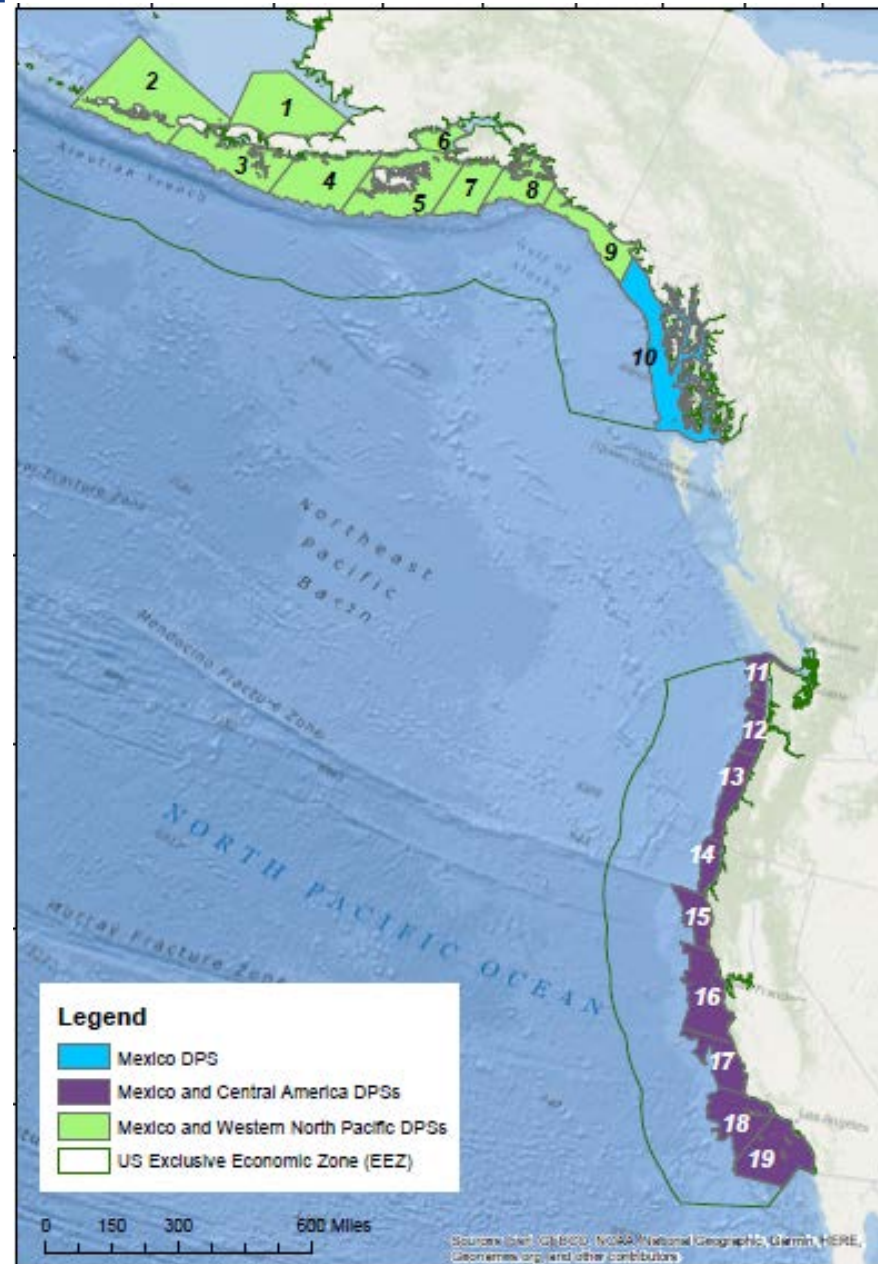
How did we develop the proposed rule?

Step 3: Identified and mapped “specific areas”

Based on:

- sightings data
- photo-ID and genetic data
- satellite tag/ telemetry data
- habitat models
- ecosystem assessments

See *Draft Biological Report*
(NMFS 2019a)



How did we develop the proposed rule?

Step 4: Evaluated INRMPs

- Solicited input from DOD branches and DHS (USCG)
- Received information on multiple INRMPs from Navy:
 - Pacific Beach Annex, WA (upland – no overlap)
 - Naval Base Ventura County, Point Mugu, CA (Unit 18)
 - Naval Outlying Field, San Nicolas Island, CA (Unit 18)
 - Naval Auxiliary Landing Field, San Clemente Island, CA (Unit 19)

See *Draft Section 4(b)(2) Report (NMFS 2019b)*



How did we develop the proposed rule?

Step 5: Evaluated whether any unoccupied areas are essential to the species

- 50 CFR 424.12(b)(2): The Secretary will designate as critical habitat, at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species only upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. **The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species....**
- No “unoccupied” areas proposed for designation



How did we develop the proposed rule?

Step 6: Considered impacts under section 4(b)(2) of the ESA

Economic impacts

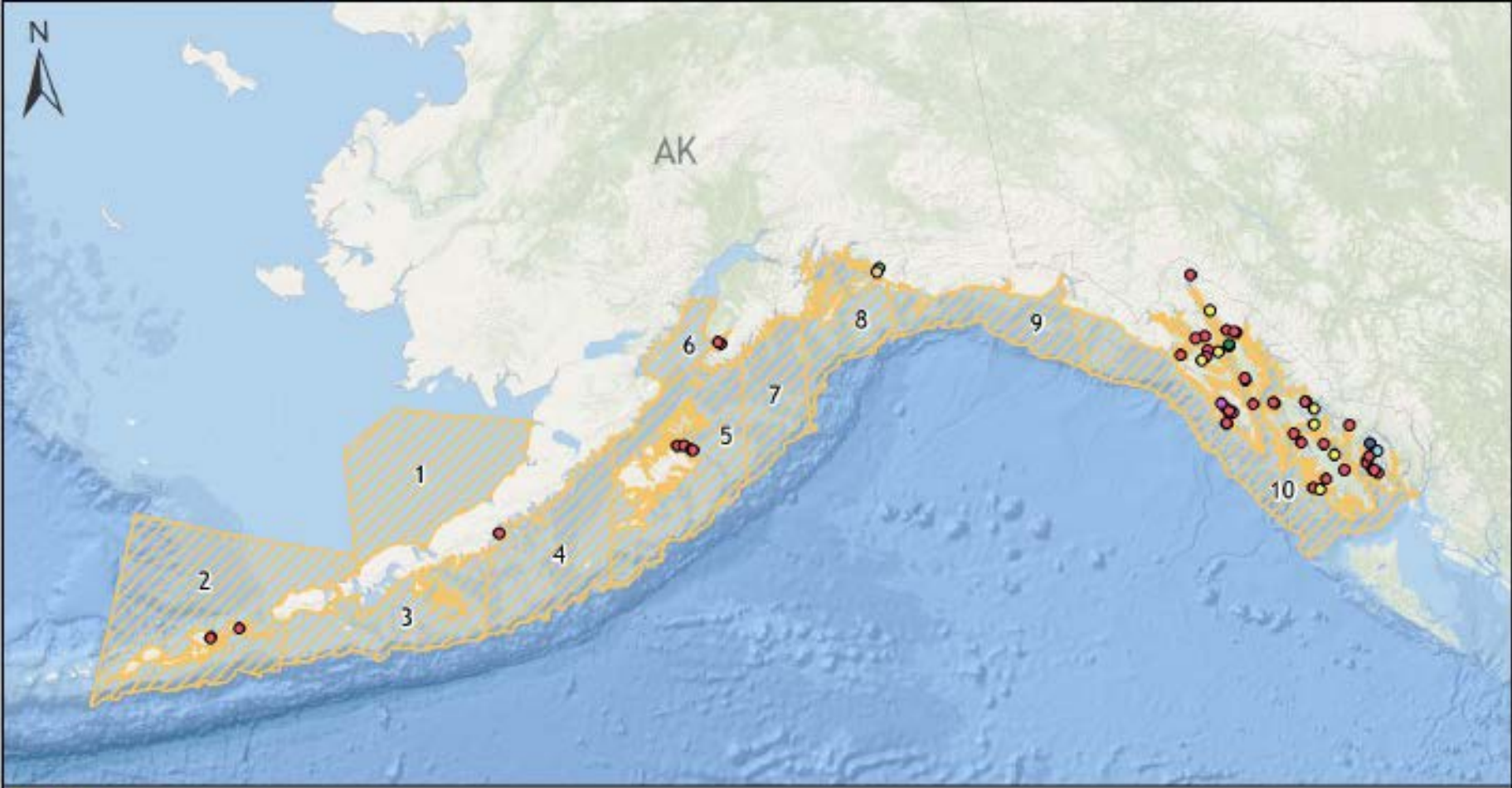
- Assess “incremental impacts” – compare world “with the critical habitat” vs. world “without the critical habitat” (baseline)
- Two types of costs from section 7 consultations:
 - administrative & project modification costs
- 12 major categories of Federal actions evaluated (*e.g.*, Federal fisheries (NMFS), oil and gas exploration and development (BOEM), in-water construction (USACE))

Findings

- No project modifications identified; only administrative costs could be estimated
- Over next 10 years, total estimated annualized costs (*for all areas considered*):
 - WNP DPS: \$15,000- \$18,000
 - CAM DPS: \$47,000- \$48,000
 - MX DPS: \$72,000-\$82,000

See *Draft Economic Analysis (IEc 2019)*

Section 7 Consultations for Humpback Whales in Alaska

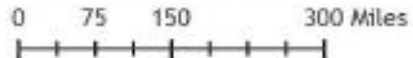


 Critical Habitat Units

Consultations on Humpback Whales by Activity

-  Aquaculture
-  Forest Service Activities
-  In-Water Construction and Dredging and Offshore Mining
-  Inland mining

-  Military
-  Oil and Gas Exploration and Development and Seismic Surveys
-  Planning and Response Activities
-  Power plants
-  Vessel Traffic



How did we develop the proposed rule?

Step 6: Considered impacts under section 4(b)(2) of the ESA

National security impacts

- Gathered input and information from DOD and DHS
- Received requests for exclusions:
 - Southeast Alaska Acoustic Measurement Facility
 - Quinault Range Site (and buffer)
- See *Draft Section 4(b)(2) Report (NMFS 2019b)*



How did we develop the proposed rule??

Step 6: Considered impacts under section 4(b)(2) of the ESA

Other relevant impacts

- Conducted outreach to Federally recognized tribes and Alaska Native corporations
- Held one technical meeting in response to a request
- No requests for exclusions
- See *Draft Section 4(b)(2) Report (NMFS 2019b)*

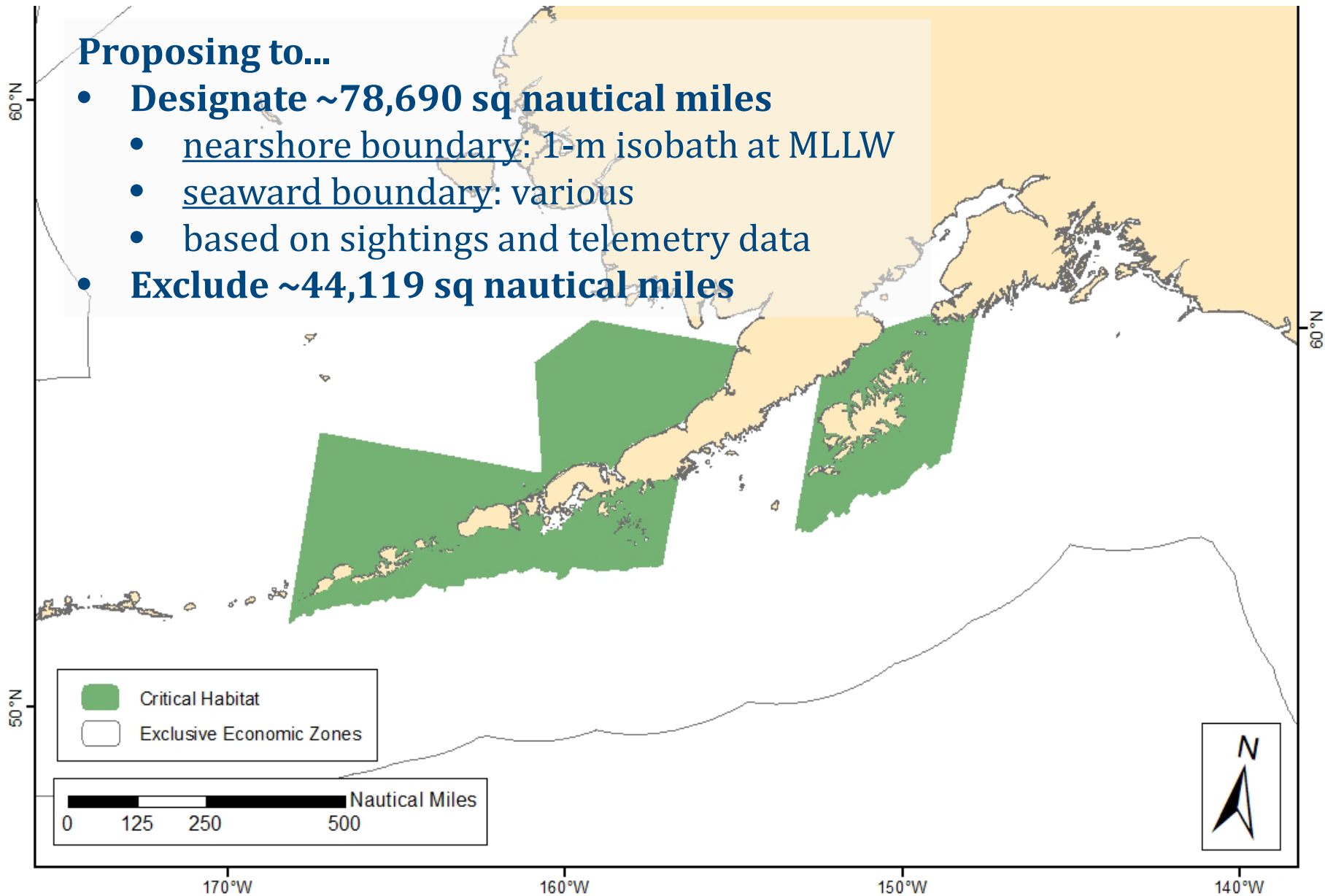


What areas were considered – WNP DPS?



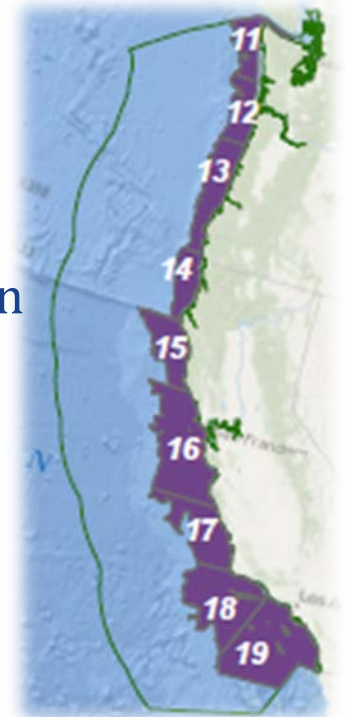
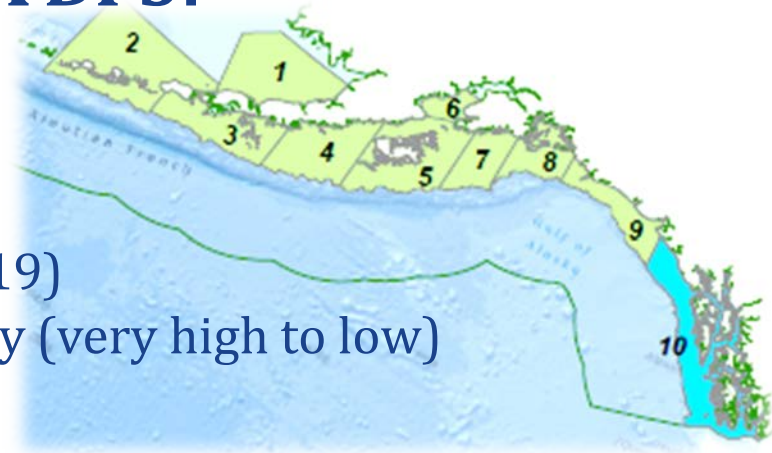
- Nine specific areas in Alaska were considered (units 1-9)
 - Conservation value assessed qualitatively (very high to low)
 - See ***Draft Biological Report***
- Five areas proposed for exclusion under ESA section 4(b)(2)
 - Conservation benefits of designating five particular areas outweighed by estimated economic impacts
 - See ***Draft Economic Analysis*** and ***Draft Section 4(b)(2) Report***

Where is critical habitat being proposed – WNP DPS?



What areas were considered– MX DPS?

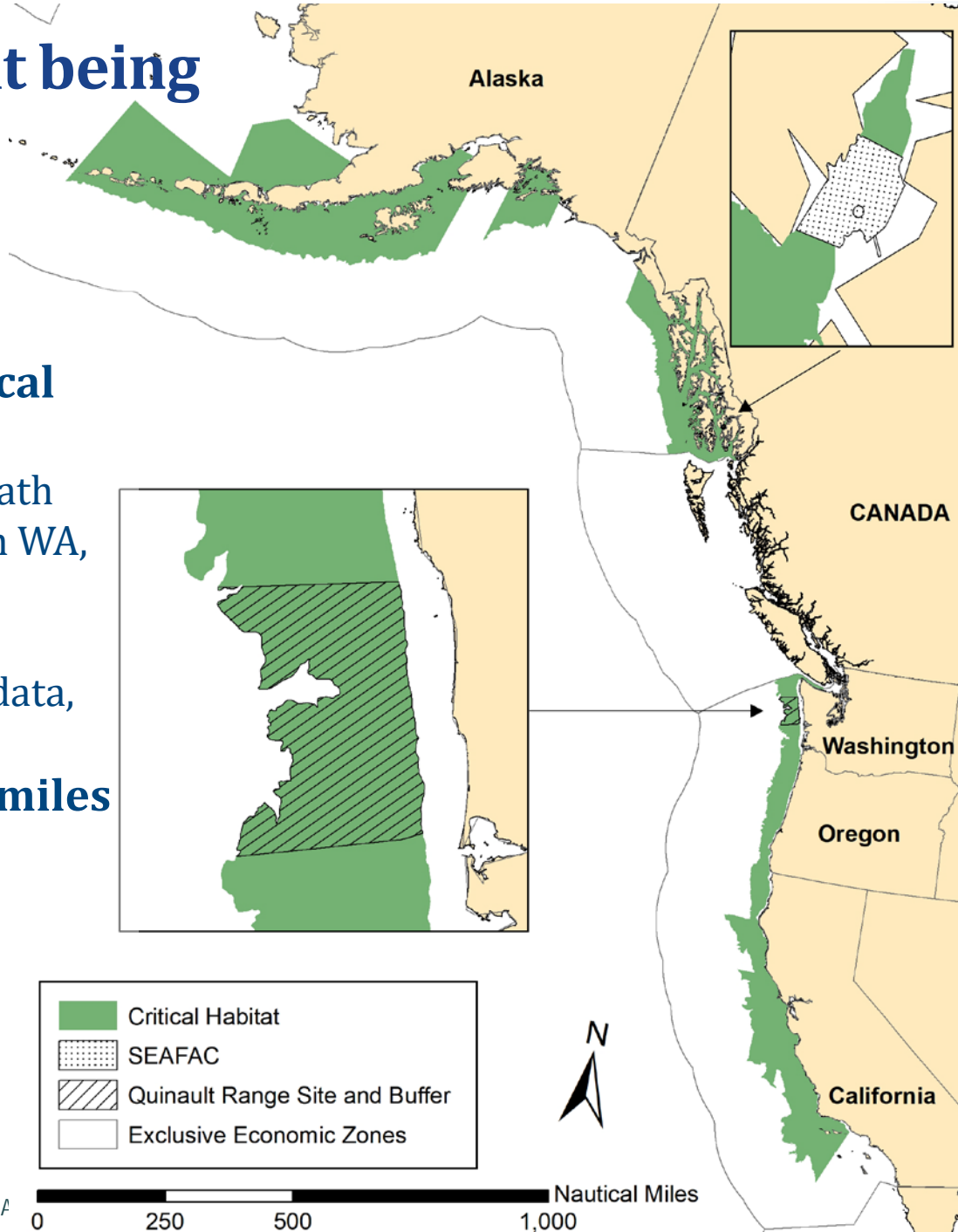
- 19 specific areas were considered (units 1-19)
 - Conservation value assessed qualitatively (very high to low)
 - See *Draft Biological Report*
- INRMPs –three areas, located in units 18 & 19; ineligible for designation
- Five areas are proposed for exclusion under ESA section 4(b)(2)
 - Two areas in Gulf of AK and one off Southern CA - based on consideration of estimated economic impacts
 - One area in Southeast AK and one off WA – based on consideration of national security impacts
 - See *Draft Economic Analysis & Draft Section 4(b)(2) Report*



Where is critical habitat being proposed – MX DPS?

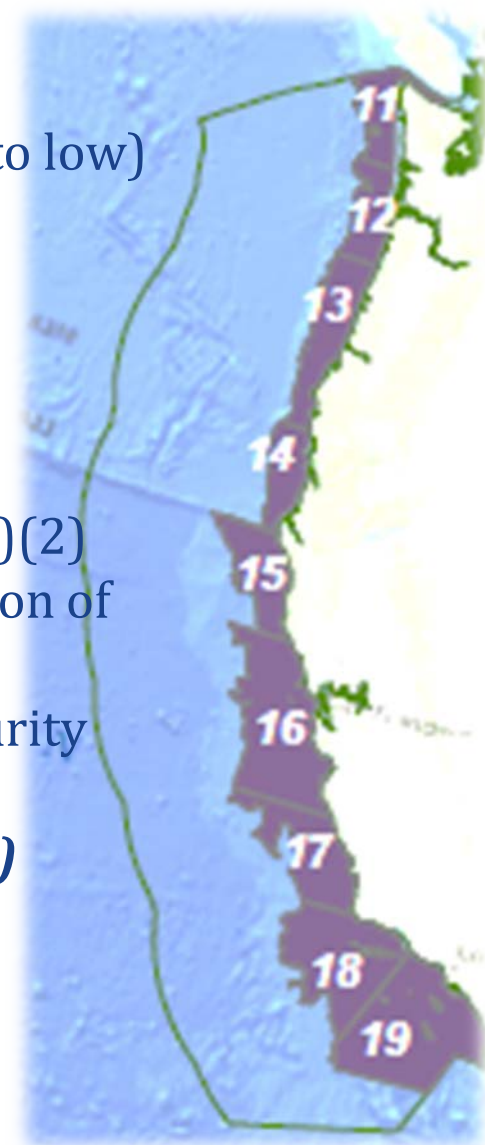
Proposing to...

- designate ~175,812 sq nautical miles
 - nearshore boundary: 1-m isobath (MLLW) in AK; 50-m isobath in WA, OR; 15- 50-m isobath in CA
 - seaward boundary: various
 - Based on sightings, telemetry data, and habitat modeling
- exclude ~32,097 sq nautical miles



What areas were considered – CAM DPS?

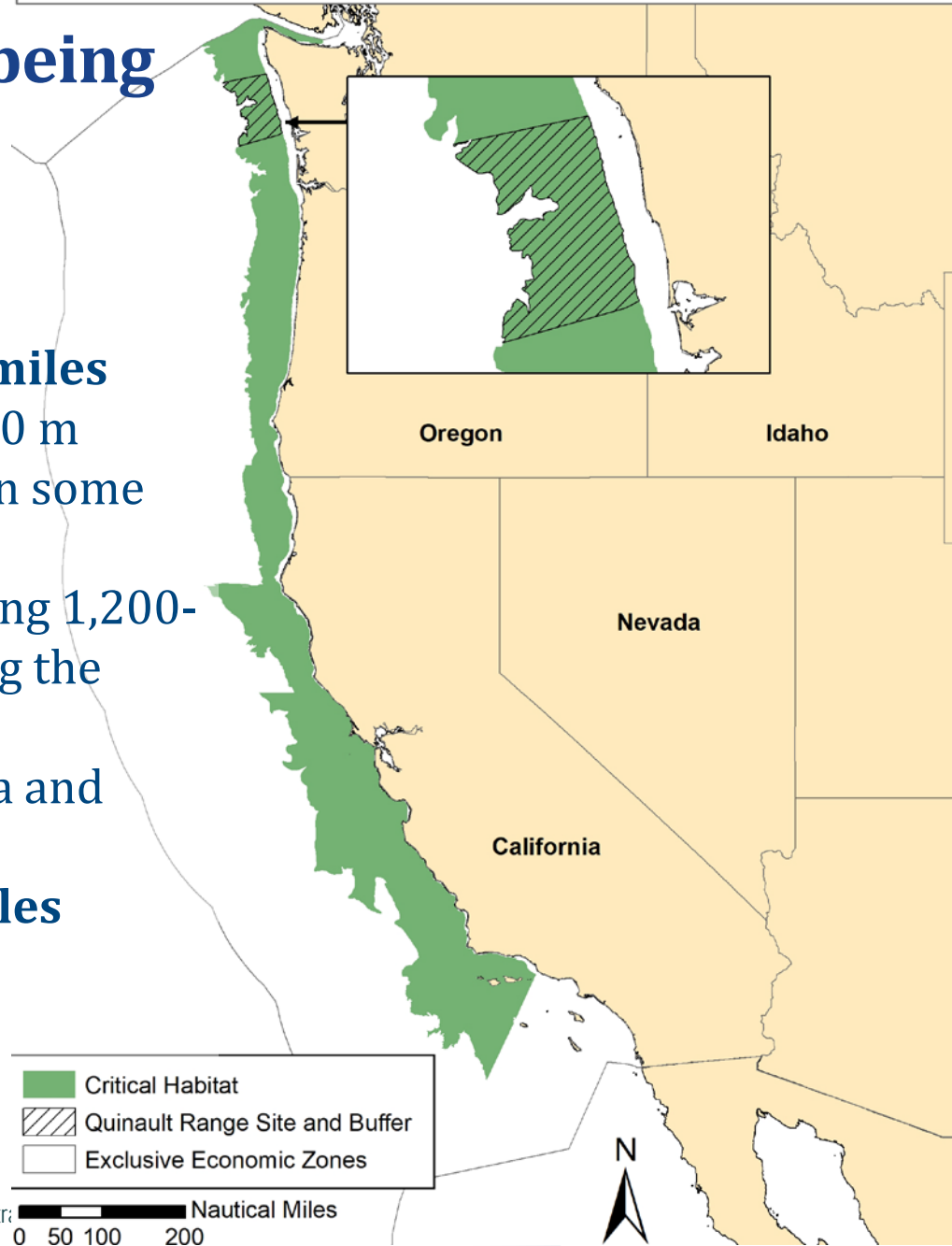
- Nine specific areas were considered (units 11- 19)
 - Conservation value assessed qualitatively (very high to low)
 - See *Draft Biological Report*
- INRMPs: three areas, located in units 18 & 19;
ineligible for designation
- Two areas proposed for exclusion under ESA section 4(b)(2)
 - Area off Southern CA (Unit 19) - based on consideration of estimated economic impacts
 - Area off WA – based on consideration of national security impacts
 - See *Draft Economic Analysis & Draft Section 4(b)(2) Report*



Where is critical habitat being proposed – CAM DPS?

Proposing to...

- **designate ~48,459 sq nautical miles**
 - nearshore boundary: mainly 50 m isobath, 15 m – 30 m isobath in some portions of CA
 - seaward boundary: mostly along 1,200-m isobath, some portions along the 2,000 – 3,700-m isobaths
 - Based mainly on sightings data and habitat modeling
- **exclude ~14,488 sq nautical miles**



What kind of data and information are being solicited?

Additional data and info on....

- Distribution of the whales from each DPS and relative use of specific feeding areas
- Boundaries of the proposed critical habitat areas
- Types of project modifications that may be required of Federal actions
- Current or planned activities in the proposed areas that may be affected by the designation
- Additional impacts of the critical habitat that were not yet considered
- Additional areas to consider for exclusion



Commenting on Proposed Rule

- Public comment period is open on the proposed rule to designate critical habitat for humpback whales - *closes January 31, 2020*

Submit comments:

- ✓ Mail: See ADDRESSES section of the proposed rule
- ✓ Electronic: comment online during the comment period (www.regulations.gov - HW docket# NOAA-NMFS-2019-0066)



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