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

**Public Hearing**  
**December 3, 2019**

# Why are we having a public hearing?

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

## Submit comments:

- ✓ Written: submit a comment card tonight
- ✓ Oral: sign-up to speak tonight
- ✓ Mail: See ADDRESSES section of the proposed rule
- ✓ Electronic: comment online during the comment period  
([www.regulations.gov](http://www.regulations.gov) - HW docket# NOAA-NMFS-2019-0066)



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# 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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For More Information....

[www.fisheries.noaa.gov](http://www.fisheries.noaa.gov)

The image shows a screenshot of the NOAA Fisheries website. At the top left is the NOAA Fisheries logo. To its right is a search bar with the text "Search NOAA Fisheries" and a magnifying glass icon. Below the search bar is a horizontal navigation menu with the following items: "Find a Species", "Fishing & Seafood", "Protecting Marine Life", "Environment", "Regions", "Resources", "Services", and "About Us". The "Resources" menu item is circled in red. A red arrow points from the "Resources" menu to a dropdown menu that is open. The dropdown menu has a title "Resources >" and lists the following items: "Rules & Regulations", "Permits", "Publications", "Laws & Policies", "Science & Data", and "Outreach & Education". The "Rules & Regulations" item is circled in red. A red arrow points from the "Rules & Regulations" item to the "Find a Species" menu item. The "Find a Species" menu item is also circled in yellow. A yellow arrow points from the "Find a Species" menu item to the "Find A Species" heading on the page. The heading "Find A Species" is partially visible. Below the heading is a paragraph of text: "Find facts about the species we manage. Learn more about their biology and population status, the threats they face, and how we are conserving and studying each species." Below the text are three circular images showing marine life: a shark, a whale, and a fish.

# 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



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# Humpback Whales



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# Why are we proposing critical habitat now?

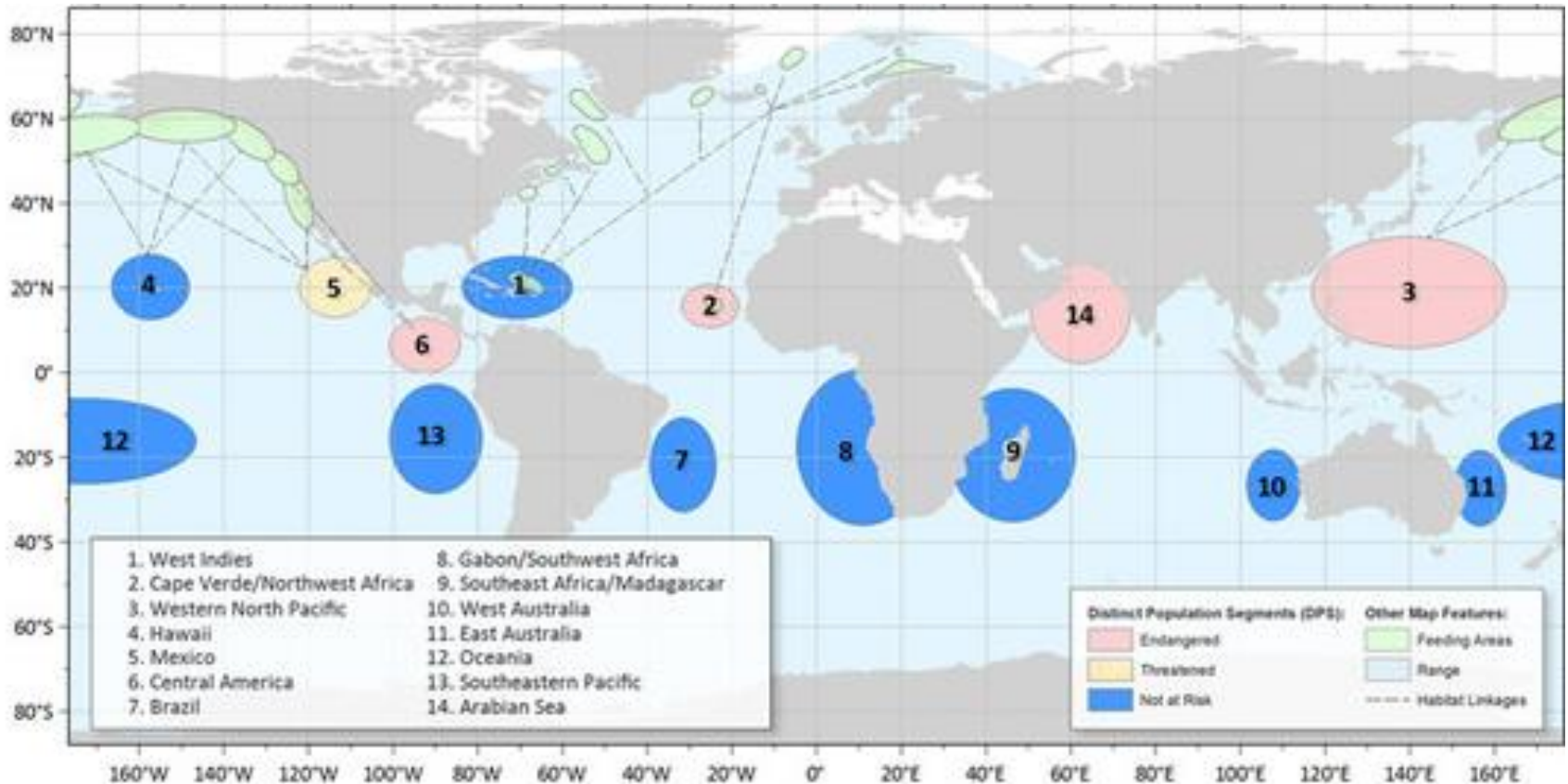
- Humpback whale listing was revised in 2016
  - Identified 14 distinct population segments (DPSs)
  - Nine DPSs did not warrant listing
  - Four DPSs listed as Endangered; one DPS listed as Threatened
  - **Note:** DPSs are included in the definition of “species” under the ESA
- Critical habitat must 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



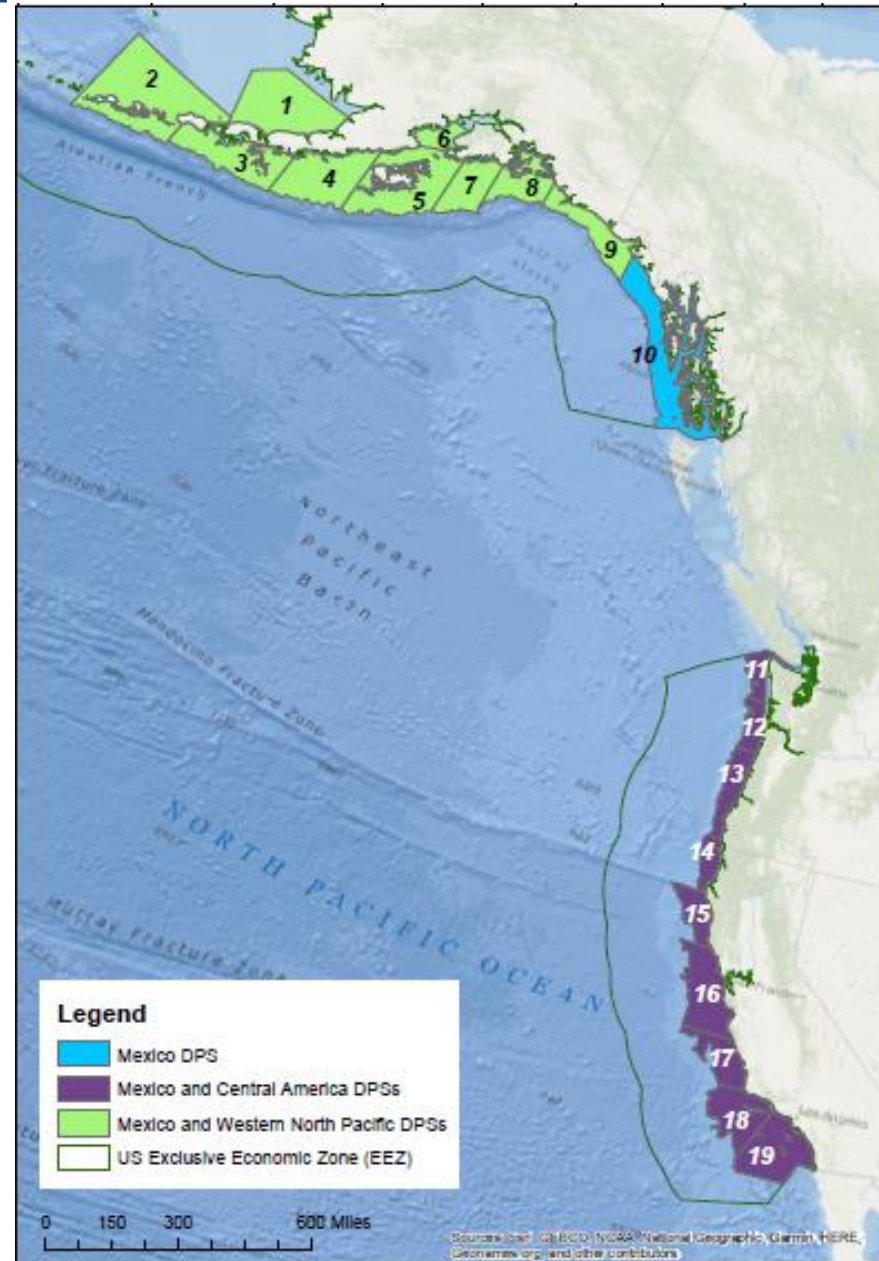
# How did we develop the proposed rule?

## 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)*

# How did we develop the proposed rule?

## Step 7: 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??

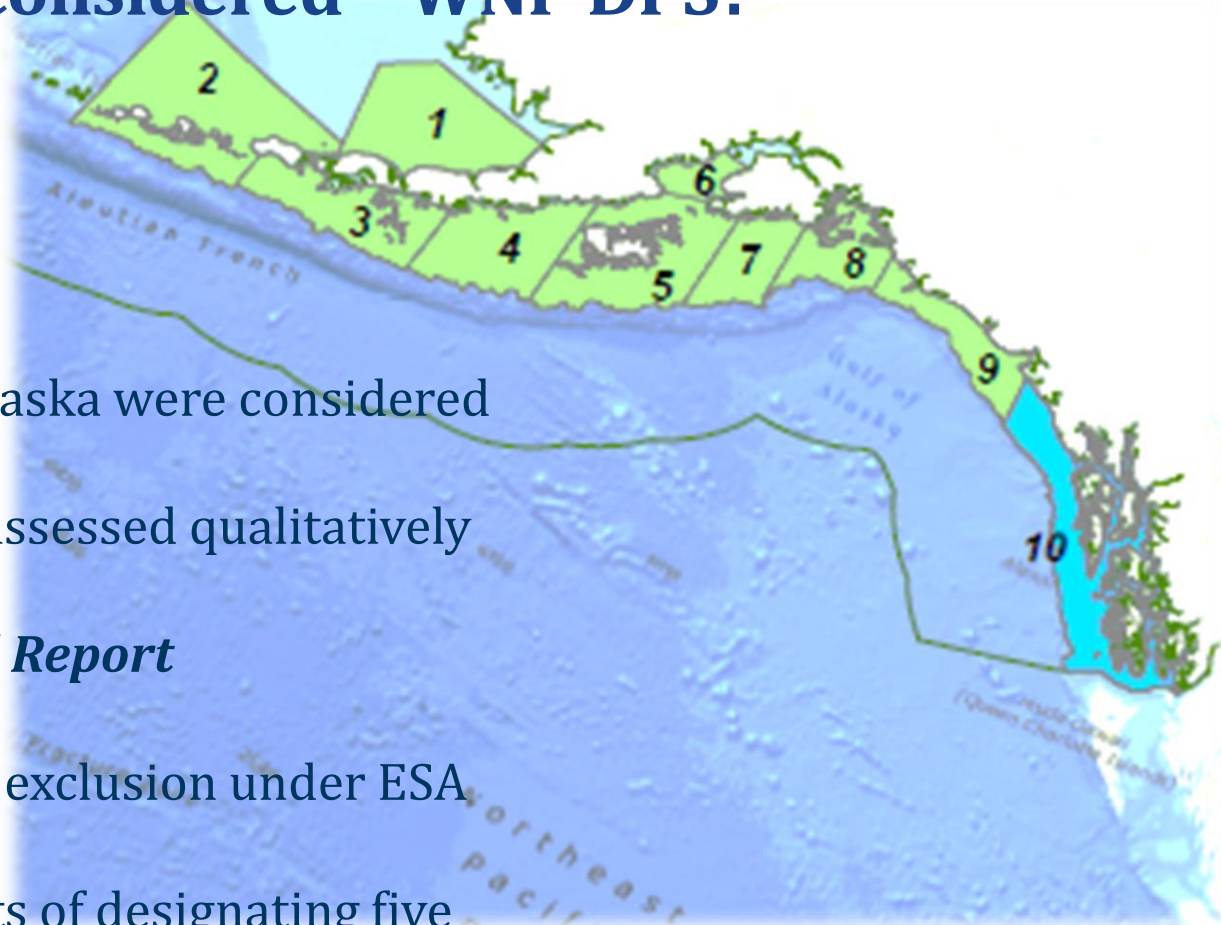
## Step 8: Considered impacts under section 4(b)(2) of the ESA

### 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)*

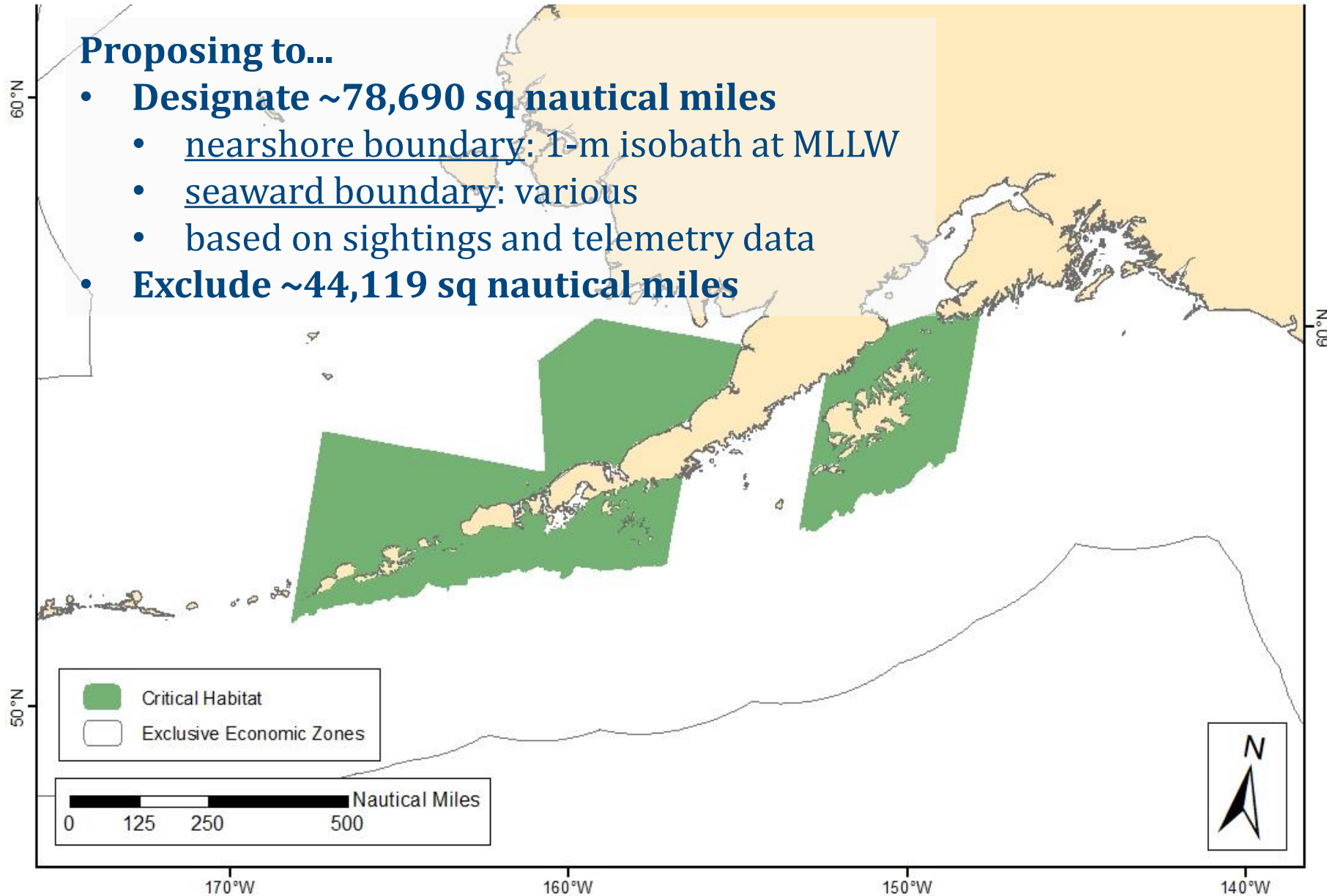


# What areas were considered – WNP DPS?



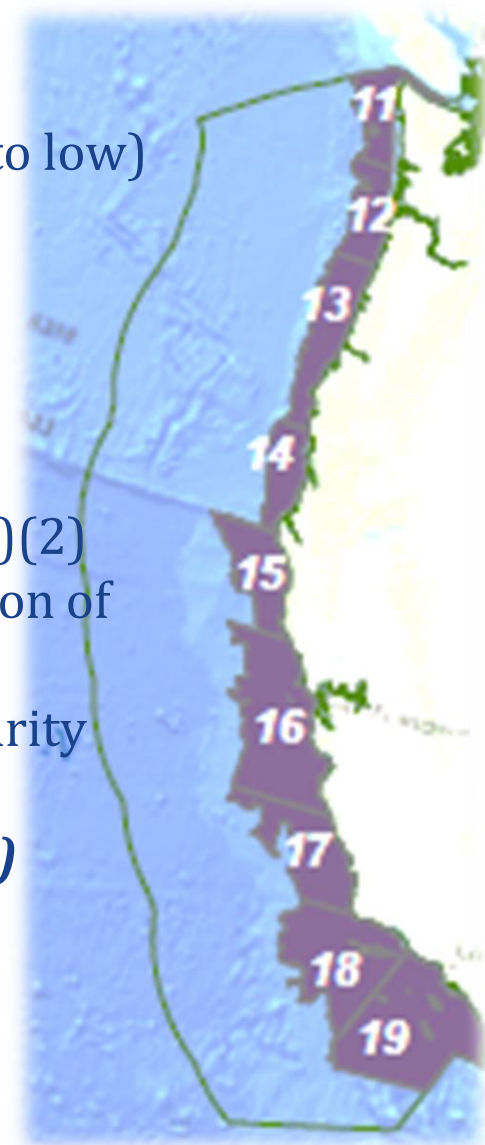
- Nine specific areas in Alaska were considered (units 1-9)
  - Conservation value assessed qualitatively (very high to low)
  - See *Draft Biological Report*
- Five areas proposed for exclusion under ESA section 4(b)(2)
  - Conservation benefits of designating five particular areas outweighed by estimated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

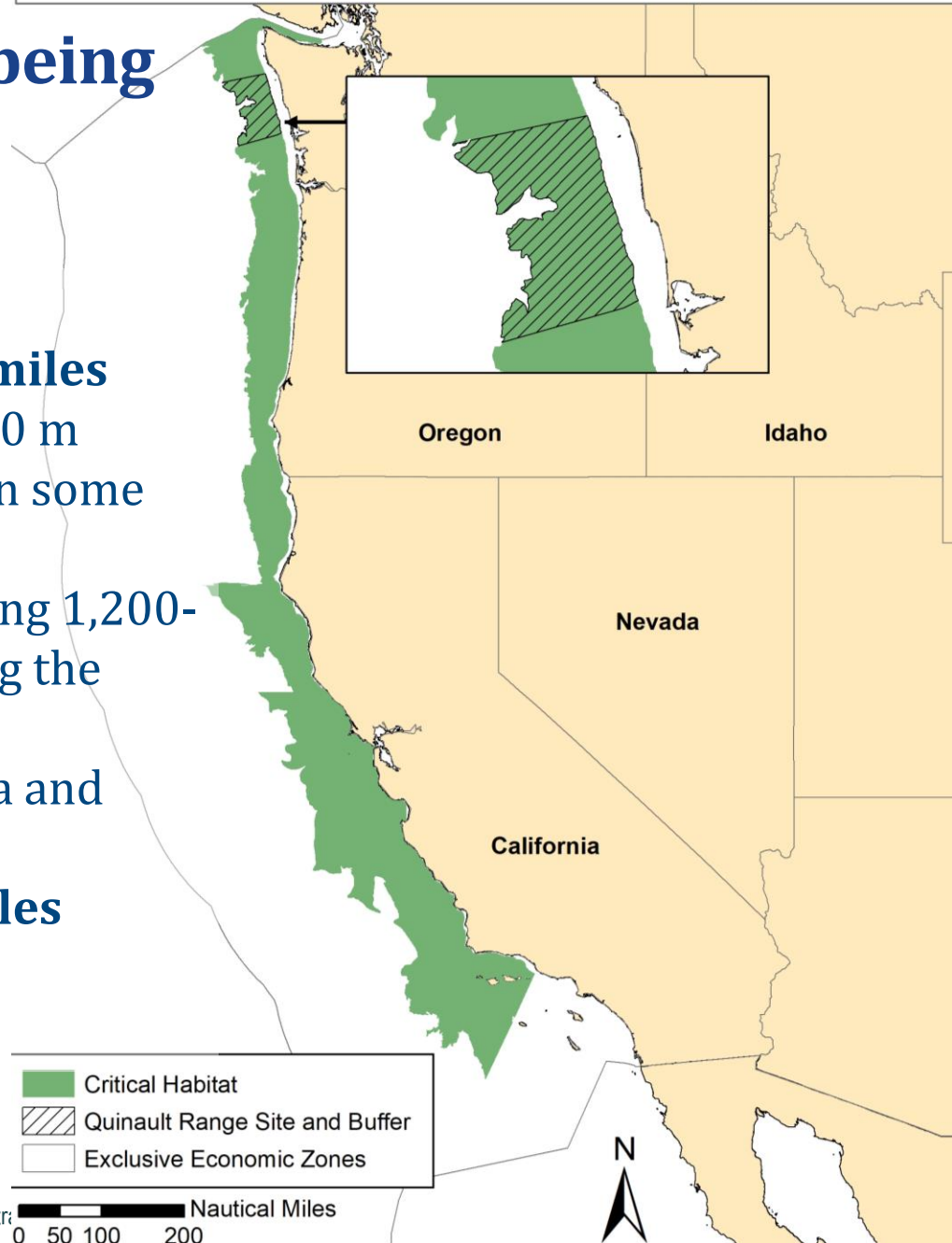
- Nine specific areas were considered (units 11- 19)
  - Conservation value assessed qualitatively (very high to low)
  - See *Draft Biological Report*
- INRMPs: three areas, located in units 18 & 19;  
ineligible for designation
- Two areas proposed for exclusion under ESA section 4(b)(2)
  - Area off 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**

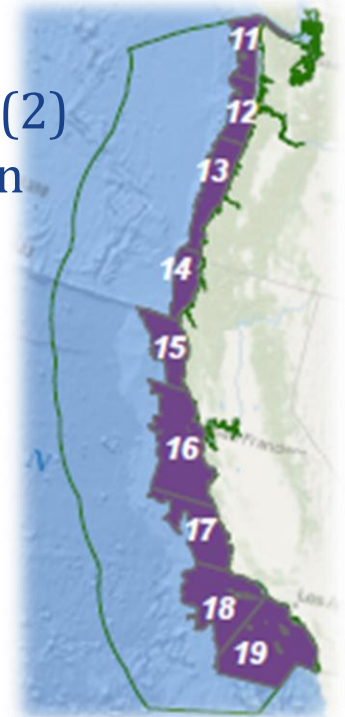
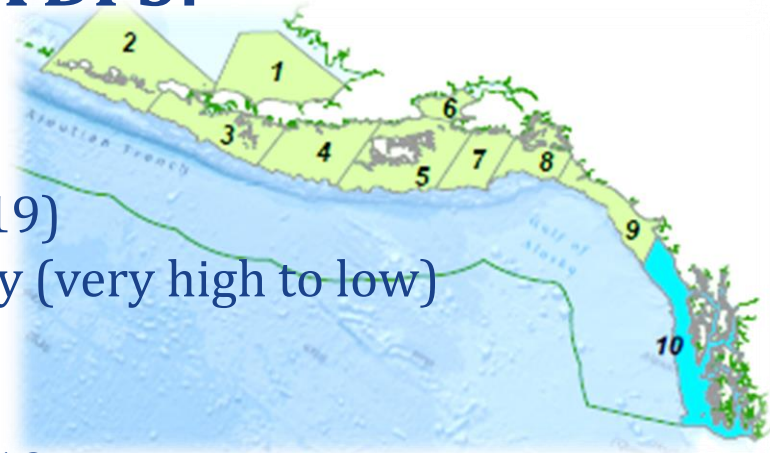


# What areas were considered– MX DPS?

- 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

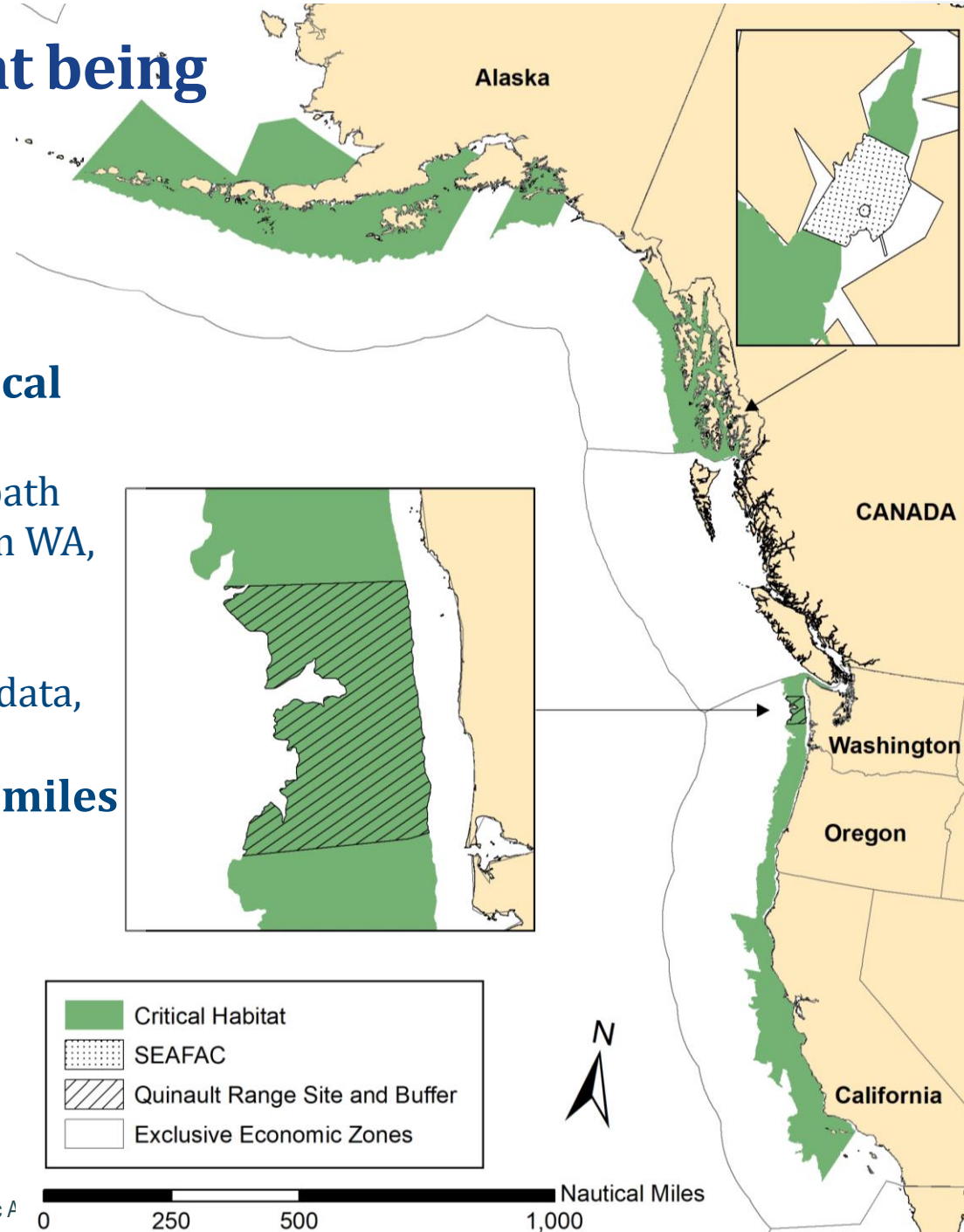
- Five areas are proposed for exclusion under ESA section 4(b)(2)
  - Two areas in Gulf of AK and one off Southern CA - based on consideration of estimated economic impacts
  - One area in Southeast AK and one off WA – based on consideration of national security impacts
  - See *Draft Economic Analysis & 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 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





# Oral Comments...

- 1) State your name
- 2) Indicate your affiliation (*optional*)
- 3) State your comments clearly (**3 min. time limit**)



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