

**NMFS Hearing on proposed humpback whale CH – 3-minute public comment**  
November 7, 2019

Good afternoon. For the record, my name is Doug Vincent-Lang and I am the Commissioner of the Alaska Department of Fish and Game

Thank you for the opportunity to provide oral comments and for holding hearings in Alaska. We are disappointed you chose to limit the comments of a state fish and game agency, which has trust responsibilities for this species and its habitats, to only 3 minutes.

Alaskans are proud of the rich feeding grounds off our coasts, which support humpback whales from across the Pacific and have helped lead to their impressive recovery. We work hard to manage resources sustainably and ensure opportunities for economic development.

Alaska's approach is successful. It helped lead to the rapid recovery of the Hawaii humpback DPS, whose whales primarily come to Alaska to feed. In contrast, the remaining listed DPSs for which you are proposing critical habitat primarily feed elsewhere.

ADF&G biologists have been reviewing the proposed rule and associated documents. The State of Alaska will be providing detailed comments by the deadline.

We encourage NMFS to extend the comment period an additional 60 days. These are large documents, and unfortunately, we have identified multiple fundamental flaws in your approach that will take time for us to provide constructive feedback.

The cost-benefit analysis of the CH designation is flawed and misleads the public. It was inappropriately weighted toward inclusion of areas as critical habitat.

- The evaluation of economic impacts minimized and missed significant costs.
- In contrast, the conservation benefits were greatly exaggerated, had fundamental errors, and included benefits to other DPSs, including non-listed whales.

NMFS failed to consider how the very large area proposed as CH dilutes the conservation value of designated areas, an issue we raised in multiple letters. Quoting from the regulatory language implementing the ESA:

*Destruction or adverse modification* [of critical habitat] means a direct or indirect alteration that appreciably diminishes the value of critical habitat **as a whole** for the conservation of a listed species.

I repeat – “**as a whole**”. If the whole of critical habitat is 2 square miles, then a loss of a square mile of habitat is large compared to the whole. In contrast, if the whole of critical habitat is 200,000 square miles – which is smaller than your Mexico DPS proposal – then the loss of a single square mile of habitat is negligible.

We are also concerned that large portions of the proposed critical habitat areas in Alaska have little conservation value to humpback whales as a whole, much less to the listed Distinct Population Segments. This is despite published literature documenting known Biologically Important Feeding Areas for humpback whales that should have been used by NMFS to focus the proposed designation.

The fundamental flaws in NMFS’s approach resulted in a proposal with considerable consequences for Alaska that were not analyzed in the available documents.

NMFS is proposing an area the size of California as critical habitat off Alaska for the Mexico DPS. The areas included are peripheral or secondary feeding grounds for less than 25% of the listed DPS, and portions of these areas are not even known humpback feeding grounds.

This approach would place disproportionate regulatory burdens and economic costs on Alaskans. The primary feeding areas for the Mexico DPS are off the coasts of California, Oregon, and Washington, and the primary threat is identified as entanglement in fishing gear off the lower 48 coast. However, most of the proposed critical habitat – about 75% – is off Alaska.

For the Western North Pacific DPS, NMFS is proposing as critical habitat an area the size of Colorado. The proposed area, as for the Mexico DPS, consists of peripheral feeding areas, used by only about 6% of this DPS.

As we have pointed out, designating vast areas as critical habitat provides little to no conservation benefit to listed species. If NMFS proceeds with this proposal, there will be little to no conservation benefit to humpback whales. Establishing regulatory burdens and costs without

conservation benefits just serves to erode support for the ESA.

Finally, consistent with ESA Section 6 and with how ADF&G works with the U.S. Fish and Wildlife Service, NMFS' sister agency, we requested but were denied the opportunity for a partner review of the draft biological report. Had we the opportunity to review the document and work with you, we would have caught many of the analytical mistakes in the document.

Again, thank you for the opportunity to comment.