Alaska Oil and Gas Association

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VIA Federal eRulemaking Portal

Endangered Species Division
Office of Protected Resources
National Marine Fisheries Service
1315 East West Highway (SSMC3)
Silver Spring, MD 20910
Attn: Humpback Whale Critical Habitat Proposed Rule

RE: Comments of the Alaska Oil and Gas Association on Proposed Rule to Designate Critical Habitat for the Central America, Mexico, and Western North Pacific Distinct Population Segments of Humpback Whales

To Whom It May Concern:

This letter provides the comments of the Alaska Oil and Gas Association ("AOGA") in response to the National Marine Fisheries Service's ("NMFS") Proposed Rule to Designate Critical Habitat for the Central America, Mexico, and Western North Pacific Distinct Population Segments of Humpback Whales ("Proposed Rule"). *See* 84 Fed. Reg. 54,354 (Oct. 9, 2019). AOGA appreciates NMFS's consideration of the comments set forth below.

AOGA'S INTERESTS

AOGA is a professional trade association whose mission is to foster the long-term viability of the oil and gas industry for the benefit of all Alaskans. AOGA's membership includes 14 companies representing the industry in Alaska that have state and federal interests, both onshore and offshore. AOGA's members have a well-established history of prudent and environmentally responsible oil and gas exploration, development, and production in Alaska.

In the Proposed Rule, NMFS proposes to designate humpback whale critical habitat in areas where one or more of AOGA's members responsibly operate. The designation of critical habitat in these areas will add yet another federal regulatory overlay to permitting processes, which, in turn, will result in significant additional time and expense to AOGA's members.

OVERVIEW

The Endangered Species Act ("ESA") defines critical habitat as: "(i) the 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 (ii) 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." 16 U.S.C. § 1532(5) (emphases added). The Proposed Rule purports to designate only areas "occupied" by the three distinct population segments ("DPSs") at issue.

In certain respects, the Proposed Rule does not adhere to the requirements for the designation of occupied critical habitat. These flaws are summarized as follows and addressed in more detail in the comments below.

1. NMFS has designated critical habitat in multiple geographic areas that are minimally occupied by the listed DPSs and not "essential" to each unique DPS. The reason for this error is that NMFS has used data from the unlisted Hawaii DPS in its identification of the geographic areas that supposedly contain physical and biological features essential to the conservation of the listed DPSs. This error is most acute for the Mexico DPS.

2. The proposed designations (i) are premised upon an overly general and broad definition for humpback whale "prey" and (ii) include areas beyond those areas that have been determined to be biologically important for the three DPSs at issue and for which no actual data demonstrate the presence of prey. As a result, NMFS has proposed to designate areas that are not "specific" and that do not contain features that are "essential" to the conservation of the listed DPSs.

3. As a consequence of these errors, the proposed designations are unlawfully overbroad. To correct these flaws, NMFS should reconsider the proposed designations and, in doing so, should eliminate the use of the non-relevant Hawaii DPS data. It should also use the already established biologically important areas ("BIAs"), and the data reported in the corresponding studies, as the primary bases for the identification of specific areas containing the required "essential" features.

In developing these comments, AOGA has reviewed the following materials (in addition to the Proposed Rule):

> (i) information provided in several source documents used to define the distinct DPSs (Bettridge et al. 2015[1]; Wade et al. 2016[2]; NMFS 2019[3]), as described in the Proposed Rule;
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> (ii) information used by the NMFS-appointed Critical Habitat Review Team ("CHRT"), and supported by NMFS in the Proposed Rule, to determine what biological and physical features are "essential" to the conservation of humpback whales; and
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> (iii) methodologies used by the CHRT to determine those areas within the geographical range of the species on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection as stated in Section 3(5)(A) of the ESA (16 U.S.C. § 1532(5)(A)).

By providing these comments, AOGA seeks to ensure that the final rule fully adheres to the requirements governing the designation of critical habitat and is based upon the best available scientific information. *See* 16 U.S.C. §§ 1532(5), 1533(b)(2). Additionally, AOGA believes the conservation needs of ESA-listed humpback whales can be satisfied without resulting in an inefficient, additional regulatory burden that does little to conserve listed whales while causing considerable economic burden to agencies and organizations in Alaska.

DETAILED COMMENTS

I. The Proposed Designation for the Mexico DPS Is Erroneously Based Upon Data Applicable to the Unlisted Hawaii DPS.

The Proposed Rule does not accurately describe critical habitat for the Mexico DPS because NMFS used a substantial volume of data regarding the unlisted Hawaii DPS when delineating the boundaries of those areas containing features considered "essential" for the Mexico DPS. The Hawaii DPS is significantly more abundant in Alaska than all of the three ESA-listed DPSs combined, which confounds the analyses used by NMFS to define the proposed critical habitat.

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[1] Bettridge, S. et al. (2015). Status review of the humpback whale (*Megaptera novaeangliae*) under the Endangered Species Act. NOAA Tech. Memo. NOAA-TM-NMFS-SWFSC 540. 263 pp.

[2] Wade, P. et al. (2016). Estimates of abundance and migratory destination for North Pacific humpback whales in both summer feeding areas and winter mating and calving areas. Paper SC/66b/IA21 submitted to the Scientific Committee of the International Whaling Commission, June 2016.

[3] NMFS. 2019. Draft Biological Report for the Proposed Designation of Critical Habitat for the Central America, Mexico, and Western North Pacific Distinct Population Segments of Humpback Whales (M*egaptera novaeangliae),* Department of Commerce, National Oceanic and Atmospheric Administration, NMFS. May 2019. 161 pp.

Specifically, NMFS's use of the entire SPLASH[4] photo-ID dataset to identify proposed designated critical habitat resulted in an apparently unintentional but significantly flawed process. At the time of the SPLASH study, and until 2016, humpback whales throughout the North Pacific were considered to be a single endangered population. The most abundant management stock (as defined in the Marine Mammal Protection Act) in the North Pacific and in the SPLASH dataset was the Central North Pacific humpback whale stock (Muto et al. 2018[5], 2019[6]). Following the 2016 taxonomic revision of the species into DPSs, the substantial portion of the Central North Pacific humpback whale stock became the Hawaii DPS, which is not listed under the ESA. *See* 81 Fed. Reg. 62,260 (Sept. 8, 2016). The Hawaii DPS is still the most abundant DPS in the North Pacific (Wade 2017).

By using sighting data from the previous Central North Pacific humpback whale stock to identify those areas which supposedly contain "essential" features for the three presently listed DPSs, the CHRT and NMFS mistakenly premised the proposed designations on data that are mostly relevant to the Hawaii DPS. As a result, NMFS has identified essential physical and biological features and the geographical boundaries of feeding areas in Alaska based primarily on the Hawaii DPS, not the three listed DPSs. The Mexico DPS is most impacted by this error as its foraging range throughout Alaska significantly overlaps with waters dominated by the Hawaii DPS. Although some SPLASH photo-ID and tagging data have informed which locations in Alaska are used by the three ESA-listed DPSs, the substantial volume of sighting data from the Hawaii DPS far outweighs other data, resulting in a significantly flawed proposed designation.

For example, the impact of this flaw is acutely obvious in Southeast Alaska. Humpback whales in Southeast Alaska are almost entirely from the Hawaii DPS (93.9 percent probability). *See* 81 Fed. Reg. 62,259; Wade et al. (2016). A significantly smaller subset of the photo-ID/sighting data from Southeast Alaska are from the Mexico DPS (Wade et al. 2016). But NMFS has proposed to designate critical habitat throughout Southeast Alaska and the Gulf of Alaska for the Mexico DPS based upon the entire SPLASH dataset, which is almost entirely relevant to the Hawaii DPS. This analytical error caused NMFS to designate areas based upon data indicating that most humpback whales in Southeast Alaska are the non-listed Hawaii DPS, not the listed DPSs at issue.

This flaw has resulted in a particularly erroneous designation of critical habitat for the Mexico DPS, which includes substantial areas in which animals from the Mexico DPS have never been observed (and are therefore unoccupied) or minimally occupied but do not contain features essential to this DPS. *See Weyerhaeuser Company v. U.S. Fish & Wildlife Serv.*, 139 S. Ct. 361, 368 (2018) ("'critical habitat' is the subset of 'habitat' that is 'critical' to the conservation of an endangered species"). Accordingly, NMFS must re-analyze and re-delineate the proposed

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[4] Calambokidis et al. 2008. SPLASH: Structure of populations, levels of abundance and status of humpback whales in the North Pacific. Final Report for Contract AB133F-03-RP-00078 by Cascadia Research, Olympia, WA for US Department of Commerce. 57 p.

[5] Muto, M.*, et al*. 2018. Alaska Marine Mammal Stock Assessments, 2017. NOAA Tech. Memo. NMFS-AFSC-378. 382 p.

[6] Muto, M., *et al.* 2019. Alaska Marine Mammal Stock Assessments, 2018. NOAA Tech. Memo. NMFS-AFSC-393. 390 p.

designation based upon data that are only relevant to the three listed DPSs, particularly the Mexico DPS.

II. The Proposed Rule Fails to Designate Only Those "Specific Areas" Containing "Essential" Features.

NMFS is required to designate only those "specific areas . . . on which are found those physical or biological features . . . essential to the conservation of the species." 16 U.S.C. § 1532(5) (emphases added). In the Proposed Rule, NMFS states that it considered prey, migratory corridors or conditions, and sound/soundscape as potential "physical and biological features" and correctly concluded that prey was the only feature that could be identified based on the best available scientific information.[7] NMFS defined this feature 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." 84 Fed. Reg. at 54,361. However, as described below, NMFS's proposed designation is overly broad because (1) "prey" is not defined with the required specificity for each unique DPS and (2) NMFS has not identified the specific areas that are actually "essential" to each unique DPS.

First, although AOGA agrees that humpback whales should have access to adequate prey resources within their feeding areas to meet energetic demands associated with individual survival, we disagree with the blanket definition of "prey" that NMFS has applied to all three DPSs. Each of the DPSs are, as NMFS has legally defined them, "distinct." They occupy different geographic areas and they are exposed to different biological conditions. Consequently, NMFS must perform an assessment of the specific prey features applicable to each of the unique DPSs. Simply identifying areas containing "prey" is insufficiently precise to describe a feature that, by statute, is required to be both "specific" and "essential to the conservation of the species." 16 U.S.C. § 1532(5) (emphases added). By way of illustration, under the reasoning employed in the Proposed Rule, all coastal marine waters within the U.S. EEZ of the North Pacific deep enough to support a whale could easily be designated as "essential" to the conservation of the species.

Second, NMFS should have, but did not, delineate essential feeding areas based upon readily available BIA-related data. BIAs are the product of rigorous scientific analyses of the best available data relevant to certain key biological marine mammal behaviors (*e.g.*, reproduction, feeding, migration). For humpback whales, BIAs have only been identified for feeding areas. Those specific BIAs are based upon thousands of visual sightings, direct observations of feeding humpback whales, stomach content analyses, photo-identification data, and detailed historical information. The BIA boundaries for the U.S. West Coast, in particular, were based on two

[7] The CHRT concluded that a migratory corridor or passage feature could not be identified, either between or within the seasonal habitats occupied by humpback whales within U.S. waters. It also concluded that the best available data do not support a particular sound level or a certain soundscape feature that is essential to the conservation of humpback whales. NMFS concluded that any impacts of sounds are properly assessed as direct effects of an action on the *species* rather than habitat. AOGA agrees with these conclusions, which are well-supported by the best available science, NMFS's previous critical habitat determinations for other marine mammal species, and the law.

considerations: (i) direct observation of feeding or surfacing patterns strongly suggestive of feeding (and in some cases documented with archival tag data) and (ii) presence of concentrations and repeat sightings of animals in multiple years in an area during a time of year where feeding is known to occur (Calambokidis *et al*. 2015; Ferguson *et al.* 2015; NMFS 2019). A BIA is identified in 13 of the 19 specific areas or "Units" proposed by NMFS as critical habitat (six of the proposed Units do not contain a BIA).

The BIAs identify the most critical areas for humpback whales (Calambokidis et al. 2015) in each of the Units in which they are found. However, the geographical area of each BIA represents a small fraction of the total area of the Unit in which it is located. The difference between the area within each BIA (the area most critical for humpback whales) and the total area of the Units being proposed as critical habitat emphasizes the extent to which the critical habitat boundaries being proposed by NMFS are overly broad, far exceeding the area that is "essential to the conservation of the species." Some proposed Units contain no BIA at all. In other proposed Units, the BIA comprises only a small percentage (less than 10% in many cases) of the total area of the Unit.

NMFS asserts that each of the 19 units identified by the CHRT meets the definition of "critical habitat" based on the presence of "prey." However, AOGA disagrees that each of the units meets the ESA definition of critical habitat as specific areas containing those physical or biological features in sufficient quantity and quality to be considered essential to the conservation of each of the listed DPSs. This is especially relevant in those 6 units proposed as critical habitat by NMFS that do not contain a BIA (Units 4, 6, 7, 9, 12 and 19). AOGA maintains that an area cannot logically contain features "essential" to the conservation of a listed species if the area within its boundary has been determined to not be biologically important under a separate, thorough scientific review (Ferguson et al. 2015). Therefore, AOGA believes that these 6 units should not be considered critical habitat for any of the listed humpback whale DPSs as the data simply do not demonstrate that those units contain the requisite "essential features" of critical habitat. Further, their inclusion does little to address the conservation needs of the three ESA-listed humpback whales yet results in additional regulatory and economic burden. Alternatively, there is also a strong basis to exclude these units under Section 4(b)(2).

NMFS primarily bases its expansion of critical habitat beyond the BIAs on the study reported by Becker et al. (2016). However, Becker et al. (2016) simply ran a model based upon oceanographic indices—primarily sea surface temperature ("SST") and surface chlorophyll concentration—to generate estimates of humpback whale density in certain areas. That model did not purport to identify feeding areas, nor did the authors contend that SST and chlorophyll were reliable indicators of prey. *See id*. ("In the future, habitat-based models of cetacean distribution may be improved if modeled ocean data can produce reliable estimates for additional biological variables (e.g., phytoplankton, zooplankton), which are more closely linked to cetacean prey."). In short, the Becker et al. (2016) study merely predicts the presence of individual animals in a given area—it does not measure or identify areas where prey may be

located, much less those areas where there is prey of "sufficient quality, abundance, and accessibility."[8]

In sum, the combined result of defining an essential feature (prey) in the broadest possible manner and defining the geographical boundaries of critical habitat based upon modeling of mere whale presence has resulted in an area being (unlawfully) proposed as critical habitat that nearly encompasses the entire geographic range of each DPS in the U.S. North Pacific. AOGA strongly recommends that, particularly for waters off Alaska, NMFS reconsider its proposed critical habitat delineations using the boundaries of the BIAs as those areas which contain prey as the "feature essential to the survival of the species" and most critical to humpback whale conservation, along with any other data actually showing areas where the prey feature is present.[9] As explained in Section I above, this reconsideration should be performed without the Hawaii DPS data.

III. Recommended Modifications to Proposed Critical Habitat Designations.

Based upon the comments above, AOGA provides the following recommended modifications to the proposed critical habitat designations for the Mexico DPS and the Central American DPS.

A. Mexico DPS

AOGA disagrees with the proposed critical habitat boundaries of the Mexico DPS in Southeast Alaska (Unit 10) and Cook Inlet (Unit 6). As explained below, the geographic boundaries of the proposed critical habitat for this DPS in these areas are overly broad, do not represent the limited occurrence and distribution of whales in these Units, and do not contain prey in sufficient quality and quantity to be considered "essential" to the conservation of this DPS.

Southeast Alaska (Unit 10): Southeast Alaska has been recognized as an important foraging area for humpback whales for decades. However, as explained above, the significance of this area for humpback whales is based on the occurrence of the Hawaii DPS (93.9 percent probability). Although whales from the Mexico DPS occur in Southeast Alaska, it does not appear that this feeding area is targeted by this DPS. Rather, a very low percentage of Mexico DPS whales feeding in British Columbia and coastal Washington that move into Southeast Alaska during the summer have been documented in Southeast Alaska.

[8] The CHRT emphasized that "it is essential that the whales not only have reliable access to prey within their feeding areas, but that prey are of a sufficient density to support feeding and the build-up of energy reserves." Draft Biological Report at 58 (emphasis added).

[9] AOGA does not contend that BIAs automatically equate to "critical habitat." However, where, as here, the BIA studies considered all of the best available scientific information relevant to the determination of the presence of prey, and there is apparently no additional or countervailing data showing the presence of prey in other areas, then the BIA studies represent the best information upon which to determine the location of essential humpback whale feeding habitat. Modeling of potential whale presence is not a reliable predictor of areas containing prey of sufficient density to support feeding.

With a few exceptions, there is a distinct gap in the sighting distribution of the Mexico DPS between Unit 11 (coastal Washington/British Columbia) and Unit 8 (Prince William Sound) based on photo-ID data. As described by Calambokidis et al. (2008), this gap corresponds to a distribution of the Mexico DPS offshore between the Revillagigedo Archipelago breeding grounds to northern feeding areas in central Gulf of Alaska (Prince William Sound and Kodiak Island). The Mexico DPS whales sighted around the Revillagigedo Archipelago had higher match rates to the northern Gulf of Alaska feeding area in particular (44 of 87 matches; Calambokidis et al. 2008). Because the Mexico DPS is largely absent from most of Southeast Alaska, the CHRT considered the probability for this DPS to occur there to be low (NMFS 2019).

The best available data therefore show that Unit 10 provides limited or no conservation benefit for the Mexico DPS. NMFS has made no demonstration that Unit 10 contains areas that are "essential" to the Mexico DPS and, accordingly, Unit 10 should not be included in the designation. Moreover, designating Unit 10 as critical habitat in Southeast Alaska would create a regulatory burden with little conservation value to the Mexico DPS. NMFS, therefore, should alternatively exclude Unit 10 from the designation, just as it has proposed to do for Units 7, 9 and 19.[10]

Cook Inlet (Unit 6): The Cook Inlet Area (Unit 6) should not be designated as critical habitat for the Mexico DPS. In the summer, humpback whales are present and feed outside Cook Inlet in Shelikof Strait, Kodiak Island bays, and the Barren Islands (areas located in Unit 5). Infrequent sightings occur each year in lower Cook Inlet. However, the humpback whales seen outside of, and in, lower Cook Inlet have always been considered part of the Central North Pacific Stock (Allen and Angliss 2013[11], 2014[12], 2015[13]). This stock of whales increased 5.5 - 6.0% each year since the early 1990s (Allen and Angliss 2013) and, as explained above, is considered to be part of the Hawaii DPS.

[10] The "Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." 16 U.S.C. § 1533(b)(2).

[11] Allen, B.M., and R.P. Angliss. 2013. Alaska Marine Mammal Stock Assessments, 2012. NOAA Tech. Memo. NMFS-AFSC-277, 294 p

[12] Allen, B.M., and R.P. Angliss. 2014. Alaska marine mammal stock assessments, 2013. NOAA Tech. Memo. NMFS-AFSC-277, 304 p.

[13] Allen, B. M., and R. P. Angliss. 2015. Alaska marine mammal stock assessments, 2014. NOAA Tech. Memo. NMFS-AFSC-301, 304 pp.

Fewer humpback whales have been observed during monitoring surveys in Lower Cook Inlet in recent years (Kendall et al. 2015[14]; Lomac-McNair et al. 2014[15]) than during the SPLASH surveys. Most sightings during recent surveys are of whales moving along the mouth of Cook Inlet transiting from other foraging areas in the Gulf of Alaska during spring and fall migration patterns. Therefore, although whales do move into Lower Cook Inlet, it is a mischaracterization of the scientific data to assume this area contains features in sufficient quantity to be considered essential to the conservation of this species. In addition, the geographic range of proposed critical habitat within Cook Inlet is one of the six units being considered as critical habitat in the North Pacific that do not contain a BIA. An area cannot logically contain features "essential" to the conservation of a listed species if the area within its boundary has been determined to not be biologically important under a separate, thorough scientific review (Ferguson et al. 2015).

For these reasons, there is no basis to designate Unit 6. The best available data show that it contains no essential features to the Mexico DPS and a previous review (Ferguson et al. 2015) concluded that the area contained no "biologically important" features for humpback whales in general. In addition, designating Cook Inlet as critical habitat would create a regulatory burden with very little conservation value to the listed DPS. Accordingly, even if NMFS decides (contrary to the best available science) that Unit 6 contains a feature essential to the Mexico DPS, it should exclude Unit 6 from the designation pursuant to Section 4(b)(2). *See* footnote 9.

By way of contrast, we highlight NMFS's proposal to exclude Units 4 and 6-10 from the critical habitat designation for the Western North Pacific ("WNP") DPS. The best available data demonstrate that the WNP DPS has not been observed in those areas (its presence can only be inferred) and those areas were rated by the CHRT as having low conservation value to the WNP DPS. NMFS therefore proposes to exclude Units 4 and 6-10 from the WNP DPS critical habitat designation because any benefits are outweighed by the costs of doing so. Although AOGA disagrees that Units 4 and 6-10 qualify initially as critical habitat for the WNP DPS, it agrees that exclusion under Section 4(b)(2) is appropriate. NMFS's approach with the WNP DPS should be employed to refine the critical habitat designation for the Mexico DPS rather than basing that designation on the presence of mostly Hawaii DPS.

B. Central American DPS

AOGA disagrees with the inclusion of Units 12 and 13 in the designation for the Central American DPS. The presence of the whales from this DPS in Unit 12 was inferred from the available data (*e.g.*, not documented through photo-ID matches). Without any actual data connecting the Central American DPS to Unit 12, there is no basis to designate the area as

[14] Kendall, L.S., et al. 2015. SAExploration, 2015 Cook Inlet 3D Seismic Surveys Marine Mammal Monitoring and Mitigation Report. Prepared for NMFS, Permits and Conservation Division, Office of Protected Resources, Silver Spring, Maryland, the NMFS, Alaska Region, Protected Resources Division, Anchorage, Alaska, and U.S. Fish and Wildlife Service, Anchorage, Alaska.

[15] Lomac-MacNair, K., et al. 2014. Draft NMFS 90-Day Report for Marine Mammal Monitoring and Mitigation during Apache's Cook Inlet 2014 Seismic Survey, 2 April – 27 June 2014. Prepared for Apache Alaska Corporation, Anchorage, Alaska. Prepared by Smultea Environmental Sciences (SES), Preston, Washington.

critical habitat. In addition, Unit 12 does not contain a BIA within its boundaries (NMFS 2019). Again, an area cannot logically contain features "essential" to the conservation of a listed species if the area within its boundary has been determined to not be biologically important under a separate, thorough scientific review (Ferguson et al. 2015).

Unit 13 was purposefully delineated to include areas consisting of high densities of fish (Pacific sardine and juvenile salmon) and large, high density patches of krill (NMFS 2019). Within this unit, large, persistent aggregations of krill have been observed inshore of Heceta Bank, off Cape Blanco (Santora *et al.* 2018[16], reported in NMFS 2019). NMFS considers this area as having medium conservation value for this DPS. However, photo-ID data confirm this area as a destination for whales from the Mexican DPS (Calambokidis *et* al. 2008), not the Central American DPS. NMFS simply infers the presence of animals from the Central American DPS from the available data.

The best scientific data strongly indicate that the humpback whale feeding aggregation off Washington/southern British Columbia (Unit 11) and the feeding area off California/southern Oregon (Unit 14) are discrete feeding groups with little interchange between them (Calambokidis et al. 2008). Genetic (mtDNA) studies have confirmed the distinctness of these Washington/British Columbia animals (Baker et al. 2013).[17] The geographical area between these two aggregations includes the Columbia River Area thru Oregon (Units 12 and 13). Both of these units were ranked by the CHRT as having a medium to medium low conservation value. AOGA recognizes that whales from the Central American DPS may travel through all of the western coast units at one time or another including the ones recognized as having medium (M) to medium/low (ML) conservation value (NMFS 2019). However, the lack of interchange of whales in Units 12 and 13 resulting in the medium to medium/low rankings by the CHRT strongly suggest that these units do not contain prey in sufficient quantities to be considered essential for the conservation of the species.

In sum, Units 12 and 13 should not be designated as critical habitat for the Central American DPS because the data do not demonstrate that those units contain the requisite "essential features." Alternatively, there is also a strong basis to exclude these units under Section 4(b)(2).

CONCLUSION

In Alaska, the result of this proposed designation would be additional, time-consuming, and expensive federal processes, with no corresponding conservation benefit to the species. As explained above, NMFS must revisit the proposed designation to ensure that it is based upon only the best available and relevant science and includes only those "specific areas" that are actually "essential" to each specific listed DPS.

[16] Santora, J. *et.al*. 2018. Submarine canyons represent an essential habitat network for krill hotspots in a Large Marine Ecosystem. Scientific Reports 8:7579.

[17] Baker, C. S. et al. 2013. Strong maternal fidelity and natal philopatry shape genetic structure in North Pacific humpback whales. *Marine Ecology Progress Series*, *494*, 291-306.

AOGA appreciates the opportunity to review and provide comments on this proposal. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

KARA MORIARTY
President and CEO