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Proposed Critical Habitat Designation For Southern Resident Killer Whales Under the Endangered Species Act

Public Hearings
November 2019

Why are we having a public hearing?

- Public comment period is open on a proposed rule to revise critical habitat for Southern Resident killer whales - *closes December 18, 2019*

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

docket# NOAA-NMFS-2014-0041



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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?

Southern Resident Killer Whale proposed rule

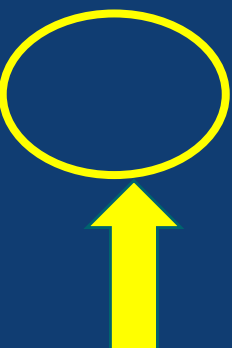
- Why are we proposing critical habitat now?
- How did we develop the proposed rule?
- Where is critical habitat being proposed?
- What kind of information is being solicited?



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For More Information....

www.fisheries.noaa.gov



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

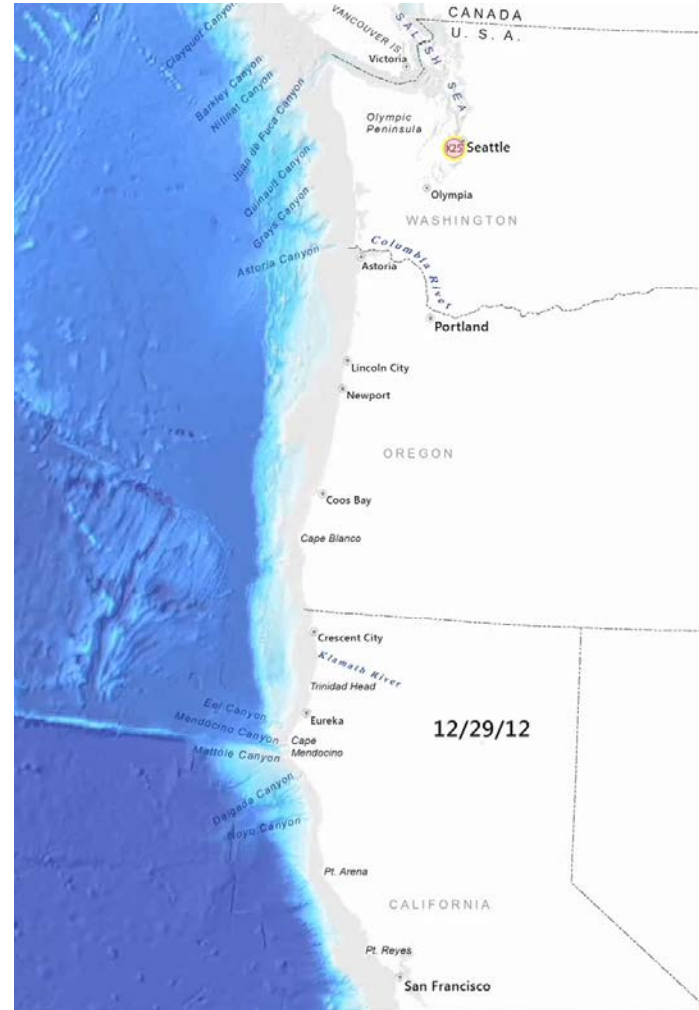


Southern Resident Killer Whales



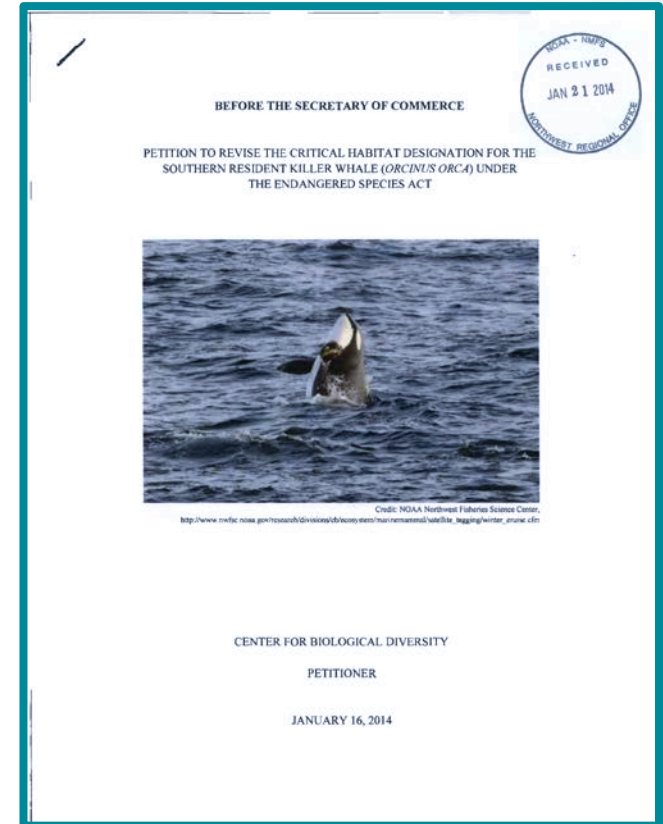
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Why are we proposing to revise critical habitat now?



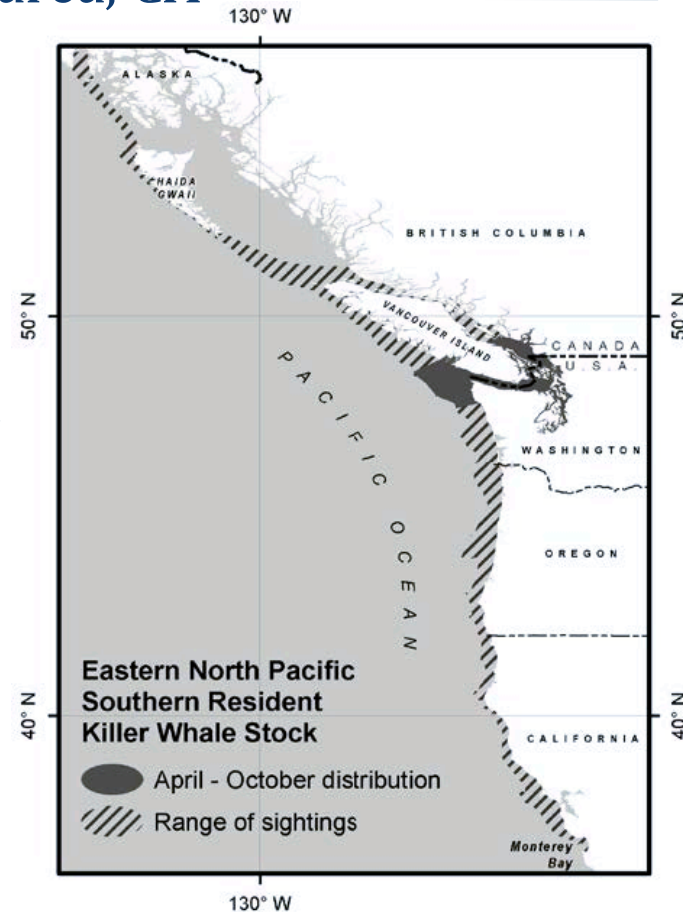
Why are we proposing to revise critical habitat now?

- Petition to revise critical habitat and consider coastal waters from Cape Flattery, WA to Point Reyes, CA
- NMFS 90-day and 12-month findings and proposed rule



How did we develop the proposed rule?

1. Determine geographical area occupied
 - Chatham Strait, AK to Monterey Bay area, CA
2. Identify physical or biological habitat features essential to conservation that may require special management
 - Water quality to support growth and development;
 - Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction and development, as well as overall population growth; and
 - Passage conditions to allow for migration, resting, and foraging.



How did we develop the proposed rule?

3. Delineate specific areas within the geographical area occupied by the species on which are found the physical or biological features

How did we develop the proposed rule?

5. Determine whether any unoccupied areas are essential for conservation
 - No unoccupied areas

6. Identify whether any area may be precluded from designation because the area is subject to an INRMP that we have determined provides a benefit to the species.
 - No overlap between critical habitat and military areas covered by INRMPs; no areas precluded



How did we develop the proposed rule?

7. ESA section 4(b)(2) analysis: consider the economic, national security, or any other impacts of designating critical habitat and determine whether to exercise our discretion to exclude any particular areas.



How did we develop the proposed rule?

ESA section 4(b)(2) analysis: **Economic impacts**

- Assessed “incremental impacts” of designation
- Considered administrative costs and costs associated with conservation efforts or project modifications
- Evaluated 12 categories of activities funded, authorized, or carried out by Federal agencies
 - Activities occur within or upstream of critical habitat areas, and could potentially affect essential features within critical habitat
 - Examples: Federally-managed fisheries; Navy testing and training activities



How did we develop the proposed rule?

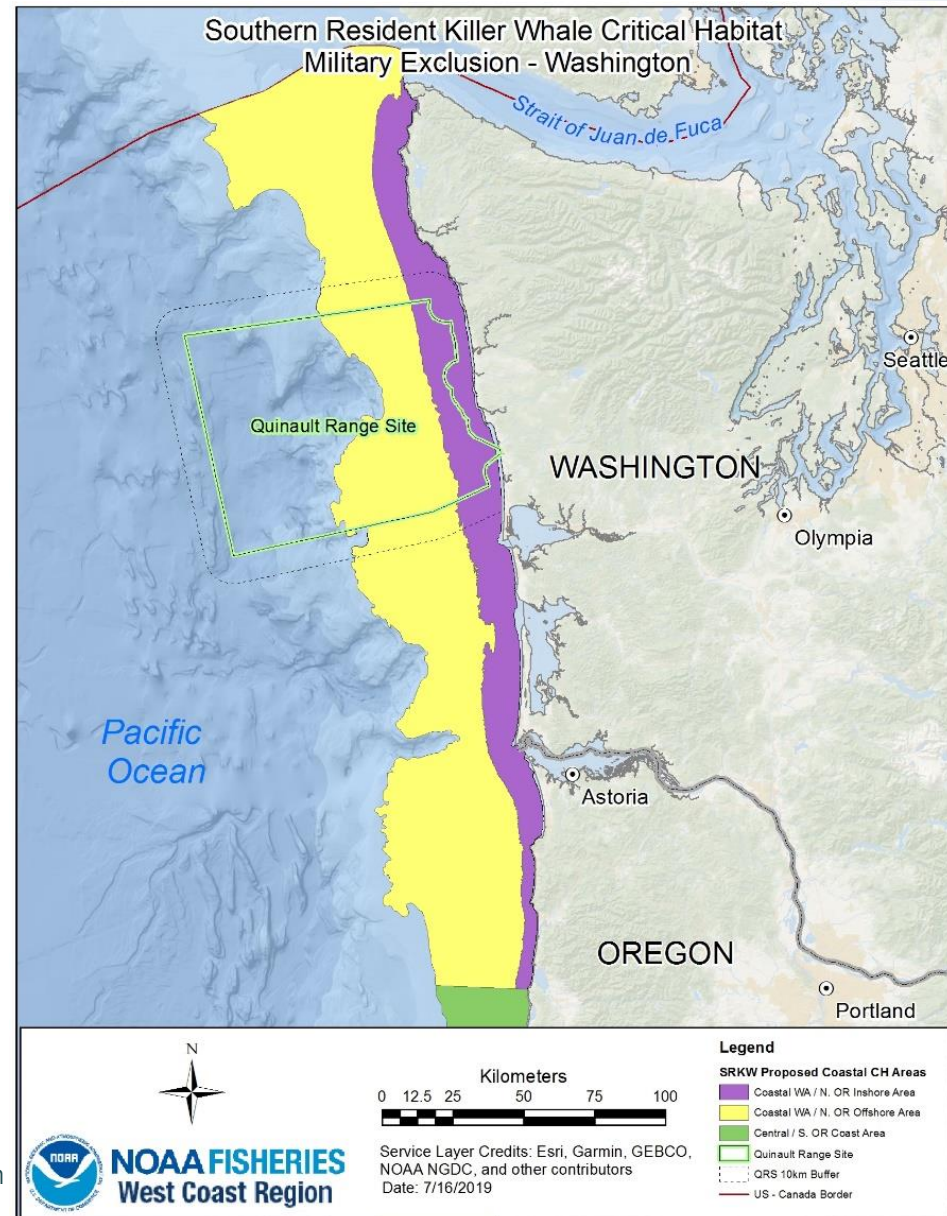
ESA section 4(b)(2) analysis: **Economic impacts**

- No project modifications anticipated; admin costs only
 - NMFS regularly consults to consider potential for jeopardy to the whales, their listed prey, and other listed species with overlapping ranges, and consider potential for adverse modification to critical habitat of other listed species
 - Expect that baseline conservation recommendations would involve measures that would avoid adverse modification of Southern Resident killer whales' critical habitat
- Total annualized impacts \$68,000
- Benefits of excluding any particular area due to economic cost do not outweigh benefits of designation
- No proposed exclusions based on economic impact



How did we develop the proposed rule?

- ESA section 4(b)(2) analysis:
National security impacts
 - Navy requested exclusion of Quinault Range Site and 10-km buffer around it off the coast of Washington due to national security impacts to Navy's military readiness activities
 - NMFS concluded the benefit to national security of excluding the area outweighs the benefit of designation and exclusion would not result in extinction of the species
 - Propose to exclude 1,688 mi²



How did we develop the proposed rule?

- **ESA Section 4(b)(2) analysis: Impacts to tribal sovereignty and self-governance**
 - No overlap with “Indian lands” but some tribes have usual and accustomed fishing areas that overlap critical habitat areas, or tribes might otherwise be affected
 - Solicited info from 17 tribes; based on responses, we expect minimal impacts to tribes, but NMFS will continue to coordinate and consult with potentially affected tribes



Where is critical habitat being proposed?

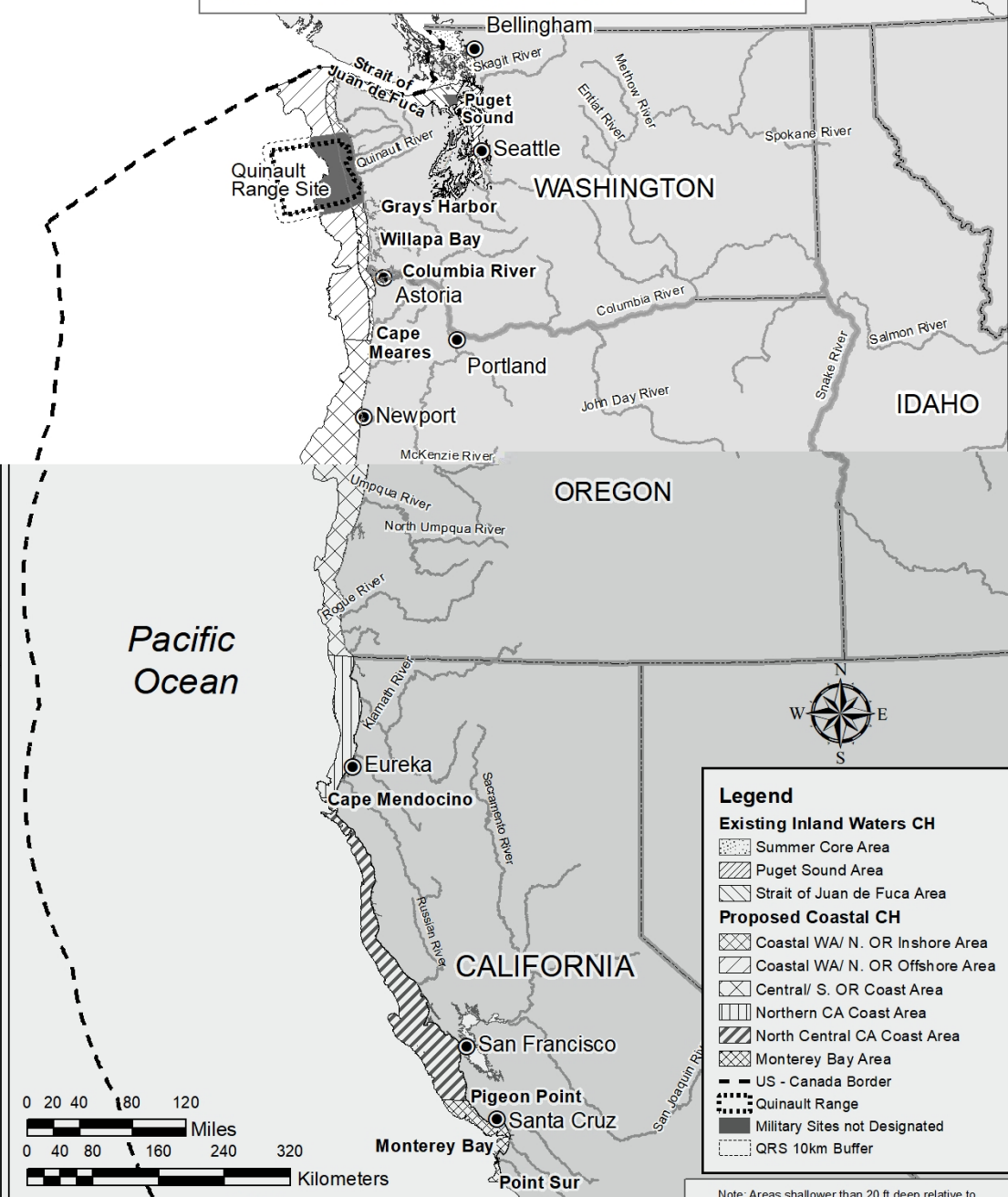
Area	Boundaries
1 - Coastal Washington/Northern Oregon Inshore Area	U.S. ocean waters west of line connecting Cape Flattery, Tatoosh Island, and Bonilla Point, from U.S. border south to Cape Meares, OR between 6.1-m and 50-m isobaths
2 - Coastal Washington/Northern Oregon Offshore Area	U.S. ocean waters west of line connecting Cape Flattery, Tatoosh Island, and Bonilla Point, from U.S. border south to Cape Meares, OR between 50-m and 200-m isobaths
3 - Central/Southern Oregon Coast Area	Cape Meares, OR to OR/CA border between 6.1-m and 200-m isobaths
4 - Northern California Coast Area	OR/CA border to Cape Mendocino, CA between 6.1-m and 200-m isobaths
5 - North Central California Coast Area	Cape Mendocino, CA to Pigeon Point, CA between 6.1-m and 200-m isobaths
6 - Monterey Bay Area	Pigeon Point, CA to Point Sur, CA between 6.1-m and 200-m isobaths

- Excludes Navy's Quinault Range Site and 10-km buffer
- Does not include waters shallower than 20 ft deep



Existing and Proposed Critical Habitat for Southern Resident Killer Whales - Overview

CANADA

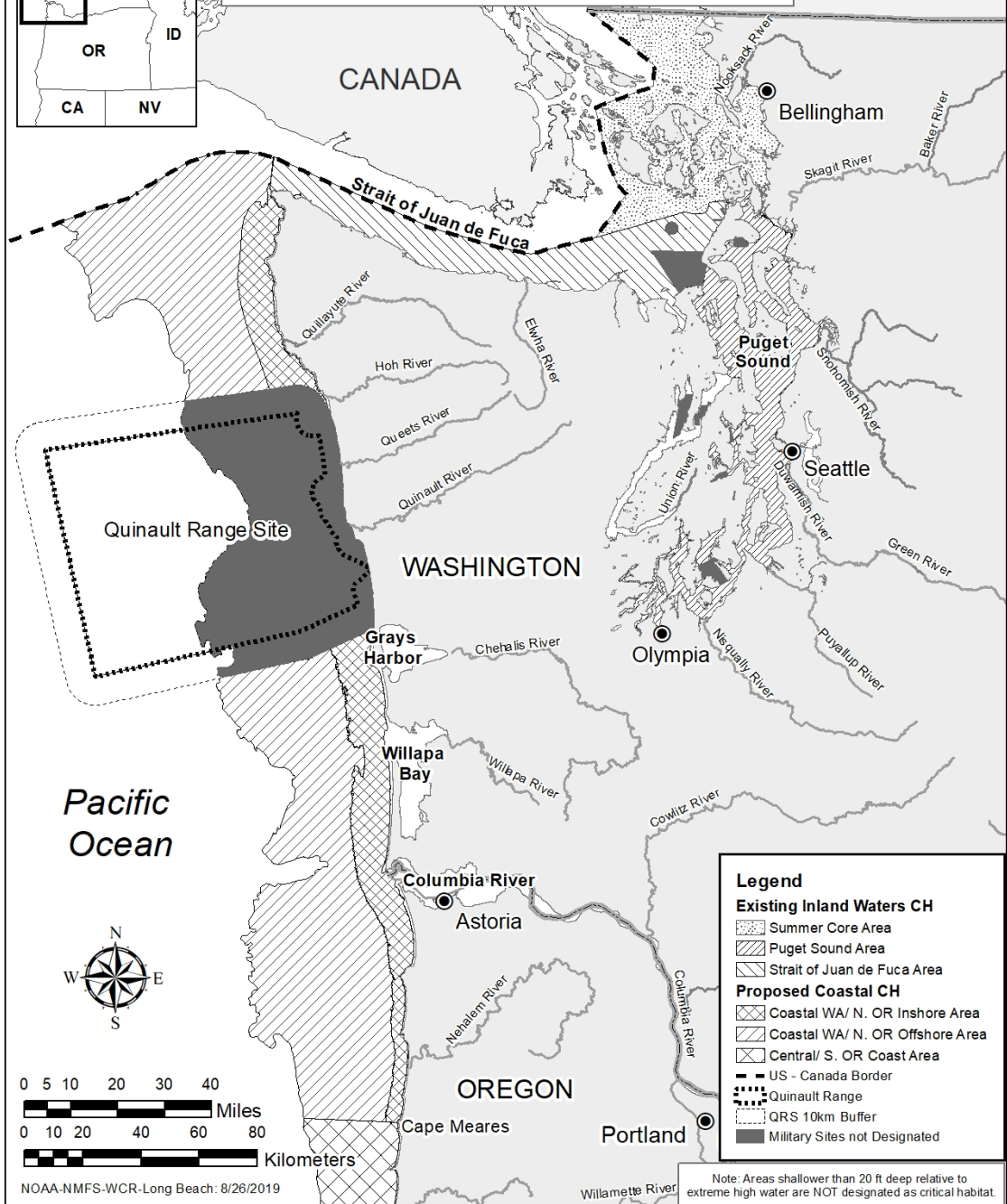
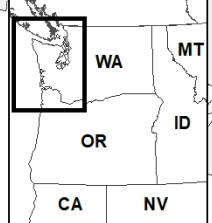


NOAA-NMFS-WCR-Log Beach: 8/21/2019

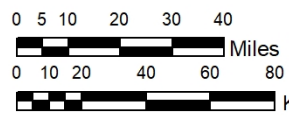
Note: Areas shallower than 20 ft deep relative to extreme high water are NOT designated as critical habitat.



Existing and Proposed Critical Habitat for Southern Resident Killer Whales - Detail



Pacific Ocean



NOAA-NMFS-WCR-Long Beach: 8/26/2019

Legend

Existing Inland Waters CH

- Summer Core Area
- Puget Sound Area
- Strait of Juan de Fuca Area

Proposed Coastal CH

- Coastal WA/ N. OR Inshore Area
- Coastal WA/ N. OR Offshore Area
- Central/ S. OR Coast Area

Other Features

- US - Canada Border
- Quinault Range
- QRS 10km Buffer
- Military Sites not Designated

Note: Areas shallower than 20 ft deep relative to extreme high water are NOT designated as critical habitat.



What kind of information is being solicited?

- Distribution and habitat use of SRKW in coastal waters
- Physical or biological features
- Boundaries of the areas
- Benefits or impacts of designating
- Economic data needing to be updated
- Additional areas to consider for exclusion

