on the following ratings: 0 = Unsatisfactory, 1 = Poor, 2 = Fair, 3 = Good, 4 = Excellent, 5 = Outstanding, N/A = Not Applicable.

The contractor may be evaluated based on the following performance categories: Quality, Cost Control, Timeliness of Performance, Business Relations, Compliance with Labor Standards, Compliance with Safety Standards, and Meeting Small Disadvantaged Business Subcontracting Requirements.

(a) * * *

(2) Evaluate contractor performance and assign a rating for quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories (including a narrative for each rating);

* * * * *

(b) * * *

(2) Assign a rating for the business relations and meeting small disadvantaged business subcontracting requirements performance categories (including a narrative for each rating).

* * * * *

(4) Provide any additional information concerning the quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories if deemed appropriate for the evaluation or future evaluations (if any), and provide any information regarding subcontracts, key personnel, and customer satisfaction; and

* * * * *

Dated: January 24, 2002.

John Oliver,

Acting Director, Office of Acquisition Management.

[FR Doc. 02–4068 Filed 2–19–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 020124019–2019–01, I.D. 030601D]

Endangered and Threatened Species; Determination on a Petition to Revise Critical Habitat for Northern Right Whales in the Pacific

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Response to petition; final determination.

SUMMARY: On October 13, 2000, NMFS received a petition dated October 4, 2000, requesting that NMFS revise the present critical habitat designation for the northern right whale under the Endangered Species Act (ESA) by designating a new area within the eastern Bering Sea as critical habitat for right whales in the North Pacific. NMFS has determined that the petition is not warranted at this time. NMFS recognizes that the revision of critical habitat may be prudent, but finds that the extent of critical habitat cannot be determined at this time because the essential biological requirements of the population in the North Pacific Ocean are not sufficiently understood. NMFS will continue to analyze issues raised by the petition following the completion of planned 2002 right whale surveys and research.

ADDRESSES: Comments and requests for copies of this determination should be addressed to the Division Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bradley Smith, Alaska Regional Office, NMFS, Anchorage, AK, (907) 271–5006; Michael Payne, Alaska Regional Office, NMFS, Juneau, AK, (907) 586–7236; or Caroline Good, Marine Mammal Division, Office of Protected Resources, NMFS, Silver Spring, MD, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Right whales in the North Pacific are one of three populations of endangered right whales worldwide. The other populations occur in the North Atlantic and the Southern Hemisphere. The southern right whale is recognized as a separate species but the North Atlantic and North Pacific stocks have heretofore been described as a single species. Recent genetic studies, however, provide conclusive evidence supporting separate species status for these populations, one in the North Atlantic and another in the North Pacific. The International Whaling Commission's (IWC) Scientific Committee formally recognized a three species classification for right whales at its 2000 meeting in Adelaide, Australia. NMFS has reviewed and concurs with the taxonomic changes suggested by the IWC and is working to have the right whale populations listed as distinct species under the Endangered Species Act.

Status of the North Pacific Right Whale

Exploitation: Right whales in the North Pacific historically occurred across the Pacific Ocean north of 35 degrees North latitude, with concentrations in the Gulf of Alaska, eastern Aleutian Islands, southcentral Bering Sea, Sea of Okhotsk, and the Sea of Japan. They were heavily exploited by commercial whaling in the western North Pacific in the 18th and 19th centuries from the Sea of Japan into the Okhotsk Sea, and along the east side of the Kamchatka peninsula. Considerable offshore hunting also occurred eastward of the Kurile Islands as far as 170 degrees East longitude. Right whales were harvested in the eastern North Pacific from the southeastern Bering Sea to, and throughout, the Gulf of Alaska in the 19th and 20th centuries. In the mid 1900s illegal whaling by the Soviets is believed to have decimated the remaining population of right whales in the eastern North Pacific (Doroshenko 2000). Practically all right whaling in the northern hemisphere occurred during summer months.

Abundance and Trends: Data are insufficient to estimate the pre-exploitation size of this population of right whales. However, based upon catch levels, right whale abundance likely exceeded 10,000 animals in the North Pacific. This stock was severely depleted due to commercial and illegal whaling and remains so today. No reliable population estimate presently exists for this stock. Rice (1974) stated that only a few hundred individuals remained in the North Pacific stock and that for all practical purposes this stock was extinct because no sightings of a cow with a calf have been confirmed since 1900. This number has remained in the literature as the maximum number estimated for this stock although fewer than several hundred are believed to remain in the eastern North Pacific. Ferrero *et al.* (2000) indicated that only 14 individual animals were photographed from 1998 though 2000 with 2 re-sightings. This paucity of sightings and re-sightings, despite considerable survey effort, suggests that the population is indeed very small, perhaps in the tens of animals.

Recent Sightings: Prior to 1996 right whale sightings were so rare in the eastern North Pacific that single sightings have resulted in scientific publications (e.g. Carretta *et al.* 1994; Rowlett *et al.* 1994). The paucity of sightings of right whales in the eastern North Pacific was apparent despite high levels of survey effort in the region, notably from Japanese sighting surveys (Miyashita *et al.* 1995). Recent summer sightings of right whales in the eastern Bering Sea (Goddard and Rugh 1998; Tynan 1998, 1999; Tynan *et al.* 2001; Moore *et al.* 2000; LeDuc *et al.* 2001) represent the first reliable observations

of associated groups in the eastern Bering Sea since the 1960s.

Several right whales have been seen each year from NMFS survey platforms since 1996 (NMFS 2000; LeDuc *et al.* 2001). A group of 3–4 right whales was seen on July 30, 1996, in western Bristol Bay, AK (Goddard and Rugh 1998). This group may have included a juvenile animal. In July 1997, a group of 4–5 individuals was encountered in Bristol Bay, followed by a second sighting of 4–5 whales the following morning in approximately the same location and considered to be the same whales (Tynan 1999). Five, six and 13 whales respectively were again found in the same general region of the southeastern Bering Sea in July 1998, July 1999, and July 2000 (LeDuc *et al.* 2001). Genetic samples taken from 6 whales in 1997 (3 individuals) and 1999 (4 individuals with one re-capature) indicated they were all males (LeDuc *et al.* 2001). Of all whales photographed, three each from 1998 and 1999, and seven from 2000 were adequate for individual identification. Among these, the only resightings were a single whale seen in all three years (LeDuc *et al.* 2001) and one whale seen in 1998 and 1999. Additionally, two right whales were observed during a vessel-based survey in the central Bering Sea in July 1999. Eight right whales were seen in July 2000; six were previously unobserved individuals, one was a re-sight and one could not be reliably identified.

Seasonal Movements and Habitat Use: Historical whaling records provide the only information on possible migration patterns and habitat for North Pacific right whales. During the summer whales were found in the Gulf of Alaska, along both coasts of the Kamchatka Peninsula, the Kuril Islands, the Aleutian Islands, the southeastern Bering Sea, and in the Okhotsk Sea. The whales were the most widely dispersed in fall and spring with whales occurring in mid-ocean waters and extending from the Sea of Japan to the eastern Bering Sea. In winter, right whales were found in the Ryukyu Islands (south of Kyushu, Japan), the Bonin Islands, the Yellow Sea, and the Sea of Japan. Current distribution patterns and migration routes of these whales are not known. Historical concentrations of sightings in the Bering Sea together with the recent sightings indicate that this region remains an important summer habitat for eastern North Pacific right whales (Tynan *et al.* 2001). Little is known, however, regarding the current migration patterns of the eastern North Pacific population.

Breeding and Calving: The location of calving grounds for this stock is unknown. Breeding and calving of North Pacific right whales were assumed to have occurred during winter, outside Alaskan waters. Recent observations of courtship behavior do not necessarily indicate this area is used for breeding.

Prey: Right whales in the North Pacific probably feed almost exclusively on calanoid copepods, a type of zooplankton. High concentrations of copepods have been recorded in zooplankton samples collected in 1997 and 1999 near right whales in the North Pacific. Based on historical information, foraging observations, and current information on the foraging distribution of North Atlantic right whales, it is likely that the area where right whales have been observed in the eastern Bering Sea is used for foraging.

Distribution of Feeding Observations Relative to Recent Oceanographic Changes in the Eastern Bering Sea: The Bering Sea has undergone large changes in recent years, attributed in part to climatic change which has resulted in a general warming pattern since the mid 1970s. Unusual blooms of zooplankton have been noted here. Copepod concentrations in the middle shelf domain of the eastern Bering Sea in 1997 were the highest recorded since the early 1980s (Napp and Hunt 2001). A sustained phytoplankton bloom occurred in the southeastern Bering Sea (Napp and Hunt 2001) in 1997. Both of these features persisted at least through 2000. This increased concentration of zooplankton may have attracted feeding right whales to this area. However, the petitioner notes that the presence of these whales in subsequent years, when phytoplankton blooms were not evident, suggests these waters provide productive foraging habitat under varying oceanic conditions. Tynan *et al.* (2001) suggested that right whales in the Bering Sea may have shifted their foraging ground (from the shelf break and deeper waters) in response to the increased densities of prey in the middle shelf.

Status of North Pacific Right Whales Under the Endangered Species Act

Right whales in U.S. waters were listed as endangered under the Endangered Species Conservation Act, the precursor to the ESA, on June 2, 1970 (35 FR 8495; codified at 50 CFR Section 17.11). The species was subsequently listed as endangered under the ESA in 1973, and as depleted under the Marine Mammal Protection Act in the same year. NMFS has the lead responsibility for the recovery program for this species.

NMFS published a Final Recovery Plan for Northern Right Whales (Recovery Plan) in 1991. The 1991 Recovery Plan recommended that a separate plan be prepared for the North Pacific stock ''when population numbers are available'' and further stated that the plan should identify habitats essential or important to survival and recovery. A draft Recovery Plan for the North Pacific population of right whales (NMFS, unpublished) is being prepared and much of the scientific information in this **Federal Register** notice comes from information in the draft Recovery Plan.

NMFS designated critical habitat for northern right whales on June 3, 1994 (59 FR 28793; codified at 50 CFR 226.203). NMFS designated 3 areas in the North Atlantic Ocean off the eastern United States: two feeding and nursery areas in waters off the northeastern United States, and a winter calving and nursery area in waters off the southeastern United States. Not enough information was available to consider critical habitat designation for any other stock of northern right whale including that in the North Pacific at the time of the 1994 designation. The western North Atlantic population was considered the population that stood to benefit most from recovery actions (NMFS 1991).

Response to the Comments Received on the Petition

Section 4(b)(3)(D)(i) of the ESA requires that NMFS, to the maximum extent practicable after receiving a petition to revise existing critical habitat, make a finding as to whether the petition presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted and publish the finding in the **Federal Register**. If the finding is that substantial scientific information is presented, NMFS is required, within 12 months of the date the petition was received, to make a determination on how to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

On June 1, 2001 (66 FR 29773), NMFS published a notice finding the subject petition contained substantial scientific information indicating that revision of critical habitat for the right whale may be warranted and inviting interested persons to submit comments and information concerning revision. NMFS received over 1,000 letters on the petition during the comment period. The comments are addressed in the following paragraphs.

Comment 1: NMFS received many letters from the public stating that the petitioned area meets the definition of critical habitat because the area is used annually by right whales as an important feeding and courtship area.

Response: Recent NMFS surveys have documented right whales in a relatively small area of the southeastern Bering Sea within the area petitioned as critical habitat (LeDuc *et al.* 2001). Feeding behavior and possible courtship behavior have been observed. While repeated sightings of right whales during NMFS surveys have occurred within the southeastern Bering Sea, NMFS does not find that these observations allow for any extrapolation into the broader area recommended by the petitioner. Rather, the discreteness of the area where right whales have been observed suggests that the entire region is not a biologically homogeneous habitat and, therefore, an assumption cannot be made that right whales would occur throughout a larger area.

The Bering Sea has undergone profound ecological changes over the past decades. These changes have likely resulted in subsequent changes in species composition and distribution among the zooplankton which comprise the primary prey of right whales. Plankton blooms in the eastern Bering Sea have been observed since 1996 and may be the principle reason that right whales have concentrated in this area in recent years. Therefore, the current sighting aggregations may be the result of conditions that have been present for only a few years. Data are very limited on this subject, but the current sighting distribution data do not support the assertion that the entire area proposed by the petitioner as critical habitat contains the physical and biological features essential to the conservation of right whales.

Comment 2: Many commenters indicated that a revision to critical habitat is appropriate because critical habitat would protect right whales from major sources of mortality such as ship strikes and entanglement in fishing gear.

Response: Mortality due to ship strikes and fishing gear entanglement are the two known human-related causes of mortality in the North Atlantic right whale population and are believed to be slowing the recovery of North Atlantic right whales. The commenters, however, assumed that human activities which affect right whales off the eastern United States are the same as those currently affecting right whales in the eastern Bering Sea. The petitioners made similar assumptions.

The distribution of right whales off the eastern United States is congruent with several major shipping ports including the ports of Boston, New York and Jacksonville, among others. Furthermore the areas designated as critical habitat all have major shipping channels running through them.

The likelihood of a vessel striking a right whale in these areas sometime throughout the year, or throughout the lifetime of a whale, is extremely high and this is reflected in the mortality data from recent years. The whales are exposed to a high level of vessel traffic because major shipping channels overlap with calving and foraging grounds.

Conditions in the eastern Bering Sea differ from the East Coast. There are no major ports and no dredged shipping lanes in the area. The major shipping channel runs from Unimak Pass westward below the Pribilof Islands. This is south of the petitioned area and the area where right whales have been sighted in recent years. However, the lack of shipping lanes within the petitioned area does not mean that the whales are free from the risk of ship strike in the surrounding area. Right whales may cross through the Unimak pass shipping lane as they migrate in and out of the Bering Sea. No incident of a ship striking a whale in the eastern Bering Sea has been recorded. The only vessels that routinely operate within the petitioned area are fishing vessels which have no history of striking right whales in the Pacific Ocean.

Many commenters and the petitioner also made similar comments with regard to the likelihood of entanglement in the eastern Bering Sea. Again, most right whales in the North Atlantic have scarring from having been entangled in or come into contact with gillnets or lobster gear. The sighting data in the eastern Bering Sea do not indicate that these whales have similar scarring patterns. No gillnets are used within the petitioned area since they are prohibited by law beyond State waters in Alaska. The principal fisheries in the eastern Bering Sea are the pelagic trawl and crab fisheries. Many of the larger fishing vessels in the eastern Bering Sea are required to have observers, and these observers have never reported an entanglement of a right whale in fishing gear in the eastern Bering Sea. The petitioners refer to an entangled right whale off Kamchatka, Russia; however, NMFS has no information on the circumstances or the gear type that was involved in that entanglement.

Comment 3: Several commenters called for the development of a recovery plan for this species.

Response: NMFS is currently preparing a Recovery Plan for the North Pacific right whale. That plan will present the current status of the species, and provide guidelines for management and research actions necessary to conserve and recover the North Pacific right whale. A draft plan is expected to be available for public comment in 2002.

Comment 4: Several commenters urged NMFS to evaluate and possibly revise the current designated critical habitat for the North Atlantic right whale.

Response: NMFS appreciates the comment to review the current critical habitat designation for the right whale in the North Atlantic. Regulations at 50 CFR 424.12(g) provide for revisions to existing critical habitat designations as new data become available. This recommendation, however, falls outside of the scope of the petitioned action under consideration at this time. NMFS may consider this request following review of existing information under a separate action but it will not be considered as part of this action.

Comment 5: One commenter stated that if additional sightings of right whales are made outside the proposed critical habitat, the boundaries should be altered accordingly.

Response: NMFS cannot concur that any future sightings of right whales would automatically require further revision of the proposed critical habitat. This is inconsistent with the ESA, as critical habitat must meet the definition within that act, as well as being prudent and determinable. The presence of an animal in a given area does not necessarily support designation or revision. NMFS will, however, review any future sightings in light of the ESA criteria to determine if a revision or designation of critical habitat is warranted.

Comment 6: Two commenters stated that recent sightings of right whales in the southeastern Bering Sea allow for the delineation of an area essential to the species which was not known at the time the 1991 Right Whale Recovery Plan was written.

Response: NMFS agrees that designation of critical habitat may be a necessary component of any effort to conserve and recover this species. The ESA contains language that directs NMFS to identify and designate critical habitat, and to revise that designation when necessary. However, NMFS does not believe that a revision of critical habitat is possible at this time based upon existing information identified in the petition.

Comment 7: Several commenters encouraged NMFS to conduct more research, increase funding for this effort, and work toward defining the extent of habitat used by this species.

Response: NMFS agrees that continued research is necessary to fully describe the biology of this species and to identify important and critical habitats. NMFS anticipates that the recent survey effort will continue at similar levels, and that the scope of future investigation may include tagging studies, genetic analyses, photo-identification, long-term acoustic recordings through the use of autonomous bottom-founded hydrophones, and distributional surveys in the Bering Sea outside of the area surveyed during recent efforts.

Comment 8: One commenter urged NMFS to develop regulations for protecting right whales in the North Pacific.

Response: NMFS can consider rule-making independent of a critical habitat designation should such a regulation be required or deemed necessary. However, there is no need for a regulation at this time because there are no activities known to have an adverse effect on right whales in this area.

Comment 9: One commenter stated that the criteria for critical habitat have not been met and that designation is not warranted. The commenter argued that the paucity of sightings and the level of information presently available to describe the biological needs of this species confound any assessment of the petitioned area's importance to the conservation of the right whale.

Response: NMFS agrees that the level of knowledge regarding the biology and habitat needs of the North Pacific right whale are not sufficiently understood to determine whether the physical and biological factors that are essential to the conservation of this species are found throughout the petitioned area. Recent sightings in the southeastern Bering Sea have involved only a relatively small number of whales; however, these individuals may comprise a significant percentage of the remaining population (which may number only in the tens of animals). The presence of these animals within a relatively small region of the Bering Sea over several years strongly suggests that an area considerably smaller than the petitioned area may contain physical features which result in prey aggregations in densities sufficient to be considered essential for the conservation of the North Pacific right whale. However, the extent and persistence of such prey aggregations are unknown at this time. NMFS recognizes that further research is needed to refine the habitat value of the sightings area and the larger continental shelf province.

Comment 10: One commenter disputed the petition's arguments regarding the presence or significance of threats due to ship strikes, entanglement, and habitat degradation.

Response: In addition to collisions with vessels and entanglements, the petition states that dredging, disturbance due to oil and gas development, and industrial noise also pose threats to right whales in this area. (Potential threats posed by shipping and fishing activities are addressed in the response to comment 2.) No dredging occurs in this area and outer continental shelf lease sale activity (for oil and gas development) has not occurred and will not be considered again during the 5–year period from 2002 through 2007. Finally, NMFS completed a comprehensive consultation under section 7 of the ESA in November 2000 on the effects of the groundfish fisheries in the Gulf of Alaska and the Bering Sea on species listed under the ESA (NMFS 2001). Neither cumulative nor action-specific threats were identified in that opinion that would adversely affect the likelihood of survival or recovery for any of the large whale species occurring in this area.

Therefore, NMFS is in general agreement with the commenter's conclusions that the potential threats identified in the petition do not occur presently within the petitioned area at levels that require special management or protective measures. If necessary, protective measures could be enacted through formal or informal consultation under section 7 of the ESA or through regulation independent of critical habitat designation. However, as understanding of North Pacific right whales increases (and if human activity in the area changes) special management considerations may be necessary to protect areas essential to the whale's survival.

Comment 11: One commenter also presented several recommendations for future research on the biology of the North Pacific right whale and the habitat value of the Bering Sea.

Response: NMFS appreciates the recommendations for continued research and for outreach programs to alert fishermen to the significance of right whales in the Bering Sea. Several of these measures have already been incorporated into our research efforts, and others may be considered as the North Pacific Right Whale Recovery Plan is finalized.

Determination on the Petition

The natural history information presented in the petition is largely factual and represents a thorough review of existing data. NMFS, however, disagrees with most of the conclusions and statements made by the petitioners based on that review.

The petition largely bases its recommendations for critical habitat revision on the following points: (1) the Right Whale Recovery Plan calls for the protection of habitat essential to the survival and recovery of this stock; (2) revision would benefit the stock, as it would provide an added layer of protection against harm; and (3)the revision is prudent and determinable as defined under 50 CFR 424.12. Further, in the Executive Summary, the petitioners state that ''the [right whale] recovery team recommended that once areas essential to the conservation of Pacific right whales were identified, those areas should be designated as critical habitat and protected to the full extent of the law.''

NMFS concurs with the first two of these statements, but disagrees that the revision is determinable at this time. Section 3(5)(A)(i) of the ESA defines critical habitat as specific areas (I) ''essential to the conservation of the species'' and (II) ''which may require special management considerations or protection''.

With regard to section 3(5)(A)(i)(I) most of the information on the distribution and abundance of this species comes from historical whaling records and survey sightings since 1996. NMFS has a paucity of information upon which to determine whether the extent of the area petitioned contains ''physical or biological features essential to the conservation of the species.'' Based upon the repeated observations of right whales within a relatively small area of the southeastern Bering Sea, NMFS could perhaps conclude that physical features exist within this area that have resulted in biological features (concentrations of prey) that are essential to the successful foraging of the few right whales that have been sighted in recent years. No data exist, however, to indicate from the sighting distribution or known biology that these features (i.e., prey densities sufficient to lead to right whale aggregations) are found throughout the remainder of the area identified in the petition to designate critical habitat. In fact, the sighting distribution suggests that the essential features attracting right whales are not distributed throughout the petitioned area, and may be unique to

specific locations in the eastern Bering Sea.

The most reasonable conclusion is that a much smaller area than that petitioned may contain physical and biological features that are essential to the conservation of the species, but information is insufficient to extrapolate that conclusion to the entire area petitioned. The lack of a more widespread distribution of these sightings within the petitioned area (or more specifically, the definite clustering of these whales at the same locations since 1996), indicates that the area of sightings is different with regard to successful foraging than the remainder of the area that was identified in the petition.

Another pertinent issue is whether these physical and biological features are permanent or ephemeral. It is not known, based on the literature, whether the zooplankton densities present since 1996 occurred in that location in previous years and, therefore, whether right whale aggregations likewise occurred. Given current population levels, right whales are challenging to detect under almost any circumstances. Nonetheless, right whales have been seen in this area since 1996, and the lack of sightings from any source (there have been numerous vessel surveys in this area since the 1970s that included seabird and marine mammal observers) prior to the mid–1990s would support a conclusion that the whales have recently moved into this area.

If right whales have recently moved into this area, it is possible that the present conditions, which provide sufficient prey densities for foraging, are ephemeral. It would be neither prudent nor beneficial to the species to specify an area as critical habitat only to have the whales aggregate in other unprotected areas in the future. Thus, while the locations where essential features can be found are reasonably well known for the North Atlantic population, such locations and the fidelity of right whales to those locations have not been well established for North Pacific right whales.

With regard to the requirements of section 3(5)(A)(i)(II), NMFS has reviewed all the activities that are present, or may be present, in the petitioned area in the foreseeable future and cannot conclude that the area may require special management considerations. Potential threats from fishing activity, shipping, and oil and gas development do not appear to present any immediate threat to right whales.

Gillnets and lobster gear are the principal gear types implicated in entanglements on the eastern seaboard. Gillnets are not used to fish outside of State of Alaska waters, and are not fished during the period when whales are known to be present in the petitioned area. Therefore, they are unlikely to pose a threat in the petitioned area. Pot gear used in the Bering Sea crab fishery is different from the lobster pot gear that has entangled whales on the East coast. Lobster pots are connected using small-diameter, floating polypropylene line that has a track record of entangling right whales. Bering sea crab gear is different. The pots are much larger, requiring heavier line, and the gear generally does not contain the ''entangling'' features of lobster gear.

Dredging is not an issue in the eastern Bering Sea. Vessel traffic is not a significant issue in the eastern Bering Sea or the petitioned area. Most large vessels move south of the Pribilof Islands. Finally, lease sales for oil and gas exploration are not scheduled for the 2002–2007 period.

NMFS has stated that the primary benefit of specifying critical habitat is notification to Federal agencies that a certain area is crucial to a listed species, allowing agencies to plan projects while considering the listed species and its needs. The principal activity in this petitioned region is a Federally-managed groundfish fishery. NMFS completed a comprehensive consultation under section 7 of the ESA in November 2000 on the effects of the groundfish fisheries in the Gulf of Alaska and the Bering Sea on species listed under the ESA. There were neither cumulative nor action-specific threats identified in that opinion that would adversely affect the likelihood of survival or recovery for any of the large whales in this area.

Until such time that more information becomes available on the occurrence and distribution of this species, NMFS' conclusion is that no special management considerations apply to the entire area being petitioned for critical habitat designation at this time. However, NMFS does recognize that this situation can change. Potential critical habitat may not require special management measures now, but may require special management sometime in the future.

The question then remains whether those features essential to the conservation of the species exist throughout the petitioned area and whether they are ''determinable''.

Regulations at 50 CFR 424.12(a)(2) state that a designation of critical habitat is not determinable when one or both of the following situations exist:

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

NMFS believes that all required analyses of impacts could be performed. However, NMFS lacks sufficient knowledge of the species' needs to identify critical habitat. Regulations at 50 CFR 424.12 indicate that physical and biological features essential for the conservation of the species include feeding sites. The regulations further state that each critical habitat will be defined by specific limits using reference points and lines as found on standard maps of the area. Ephemeral reference points cannot be used in defining critical habitat.

The area petitioned for critical habitat revision is recognized as a region of the Bering Sea where right whales occurred historically. Also, small, but significant, groups of right whales have been observed in a relatively small area of the southeastern Bering Sea since 1996, and feeding and possible courtship behaviors have been observed. However, the area of the sightings cannot be compared with the area petitioned for revision, or the remainder of the range of the North Pacific right whale, without more comprehensive survey data. Nor could an assessment that this area is essential to the species' conservation be supported.

Given the available information, NMFS concludes that: (1) the information does not indicate that physical or biological features that are essential to the conservation of the species exist throughout the petitioned area; and (2) a much smaller area than the petitioned area may contain such essential features, but the geographic boundaries within which such essential features exist are presently indeterminable. Therefore, at this time NMFS cannot conclude that the petitioned area or any specific region within the petitioned area constitutes critical habitat. The scientific information necessary to make critical habitat ''determinable'' for the eastern Bering Sea stock of right whales is not currently available. Based on the best available information, NMFS has determined that the petitioned action is not warranted at this time.

How Does NMFS Intend to Proceed?

Section 4(b)(3)(D)(ii) of the ESA requires that NMFS, within 12 months of the date the petition was received, make a determination on how to proceed with the requested revision and

promptly publish notification of such intention in the **Federal Register**. NMFS made that determination in a previous paragraph of this notice, however, the agency will continue to analyze the issues raised in the petition in the following manner.

NMFS will continue with planned research activities during 2002 and evaluate any new information to better define the boundaries of an area that may be considered critical. In addition, NMFS will, through the ESA section 7 consultation process, continue to evaluate whether the area may require special management considerations.

To further define an area that might be essential to this population NMFS intends to:

(1) Conduct an extensive vessel-based survey in the eastern Bering Sea during July-August 2002 using experienced observers trained in the use of ''Big Eye'' (5X) binoculars. Additionally, passive acoustic techniques (moored-buoys) will be used to detect whales. If right whales continue to be sighted in the relatively limited area identified by prior sightings then the boundaries of what might be considered essential will be revisited. It is probable that the summer foraging season will be the only season for which NMFS can obtain further information on this population during the next 12 month period.

(2) If feasible, attempt to satellite-tag North Pacific right whales to determine movement patterns and distribution, at least during late summer and fall. NMFS anticipates that the whales are not going to remain in one spot as the foraging season ends and fall-winter movements occur. However, whether the population remains in the petitioned area or moves south off the shelf is not known.

(3) Re-examine all genetic information to determine whether the eastern Bering Sea stock and Sea of Okhotsk stock of North Pacific right whales can be differentiated genetically. However, it should be re-emphasized that these stocks are currently considered one species under the ESA and treated as such. There are so few samples available for such an analysis that it is doubtful that NMFS will be able to determine any further similarities or dissimilarities between the two stocks even if they exist.

(4) Conduct an economic analysis (as required by the ESA) on any critical habitat area that may be proposed by NMFS.

(5) Continue to examine historical and newly acquired data to determine whether any area, not just the petitioned area, should be proposed as critical habitat for North Pacific right whales.

All references are available upon request (See **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531, *et seq.*

Dated: February 13, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–4087 Filed 2–19–02; 8:45 am]

BILLING CODE 3510–22–S