Dated: December 20, 2006.

Stephen L. Johnson,

Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 061212327–6327–01; I.D. 120706A]

RIN 0648–XB57

Endangered And Threatened Species; Proposed Endangered Status for North Pacific Right Whale

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a status review of the northern right whale under the Endangered Species Act (ESA). We initiated this review in response to a petition submitted by the Center for Biological Diversity, dated August 16, 2005, to list the North Pacific right whale as a separate endangered species. Based on the findings from the status review and consideration of the factors affecting this species, we have concluded that right whales in the northern hemisphere exist as two species: the North Pacific right whale (*Eubalaena japonica*) and the North Atlantic right whale (*E. glacialis*). We have also determined that each of these species is in danger of extinction throughout its range. To reflect this taxonomic revision, we are designating each separately as an endangered species. This rule proposes to list the North Pacific right whale as an endangered species; a proposed rule to list the North Atlantic right whale isissued separately. We also intend to designate critical habitat for the North Pacific right whale. A proposed rule for designation of critical habitat will follow this action. We are soliciting public comment on this proposed listing determination.

DATES: Comments on this proposed rule must be received by close of business on February 26, 2007. Requests for public hearings must be made in writing by February 12, 2007.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by:

- E-mail: *ESA-NRW-status@noaa.gov*. Include in the subject line the following document identifier: North Pacific Right Whale PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.
- Mail: P. O Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, Alaska.
- Fax: (907) 586–7012.

The proposed rule and other materials relating to this proposal can be found on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, telephone (907) 271–5006, fax (907) 271–3030; Kaja Brix, NMFS,(907)586–7235, fax (907) 586–7012; or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Petition

On August 16, 2005, we received a petition from the Center for Biological Diversity (CBD) to list the North Pacific right whale as a separate endangered species under the ESA. A copy of the petition may be viewed at our Alaska Region website (see **ADDRESSES**). CBD requested that we list the North Pacific right whale as a new endangered species based, in part, on recent scientific information that establishes a new taxonomic classification for right whale species. On January 26, 2006, we issued our finding that the petition presented substantial information indicating that the petitioned action may be warranted (71 FR 4344), and we requested information regarding the taxonomy and status of the North Pacific right whale, its habitat, biology, movements and distribution, threats to the species, or other pertinent information. This proposed rule summarizes the information gathered and the analyses conducted in a status review of right whales in the North Pacific Ocean and in the North Atlantic Ocean and constitutes our 12-month determination on CBD's petition.

Status Review

The review of the status of right whales in the North Atlantic and North Pacific Oceans describes the population structure and examines the extent to which phylogenetic uniqueness exists between right whales found in the North Atlantic and North Pacific. The review also examines the biological status and threats to the right whales and their habitat.

Biology of Right Whales in the North Pacific Ocean

Right whales are large baleen whales that grow to lengths and weights exceeding 18 meters and 100 tons (90.7 metric tons), respectively. They are filter feeders whose prey consists exclusively of zooplankton. Right whales attain sexual maturity at an average age of 8–10 years, and females produce a single calf at intervals of 3–5 years (Kraus *et al.*, 2001). Their life expectancy is unclear, but is known to reach 70 years in some cases (Hamilton *et al.*, 1998; Kenney, 2002).

Right whales are generally migratory, with at least a portion of the population movingbetween summer feeding grounds in temperate or high latitudes and winter calving areas in warmer waters (Kraus *et al.*, 1986; Clapham *et al.*, 2004). In the North Pacific, individuals have been observed feeding in the Gulf of Alaska, the Bering Sea, and the Sea of Okhotsk. Although a general northward movement is evident in spring and summer, it is unclear whether the entire population undertakes a predictable seasonal migration, and the location of calving grounds remains completely unknown (Scarff, 1986; Scarff, 1991; Brownell *et al.*, 2001; Clapham *et al.*,2004; Shelden *et al.*, 2005).

Historically, right whales occurred across the entire North Pacific Ocean from the western coast of North America to the Russian Far East (Scarff, 1986; Brownell *et al.*, 2001, Clapham *et al.*, 2004, Shelden *et al.*, 2005). Sightings in the 20th century were from as far south as central Baja California, Mexico, and the Yellow Sea, and as far north as the Bering Sea and the Okhotsk Sea (Goddard and Rugh, 1998; Brownell *et al.*, 2001). Right whales are frequently found in coastal or shelf waters. Such sightings, however, may be partially a function of survey effort, and thus may not reflect current or historical distribution. Sighting records also indicate that right whales occur far offshore, and movements over abyssal depths are known (Scarff, 1986; Mate *et al.* 1997). Clapham *et al.* (2004) plotted 20th century records together with data summarized from 19th century whaling catches. These plots show that right whales had an extensive offshore distribution in the 19th century, and were common in areas where few or no

right whales occur today. Sightings diminished and occurred further south in autumn, and very few animals were recorded anywhere in winter. Whalers never reported winter calving areas in the North Pacific, and calving locations remain unknown (Scarff, 1986; Clapham *et al.*, 2004). Overall, these analyses confirmed that the size and range of the right whale population is now considerably diminished in the North Pacific relative to the situation during the peak period of whaling for this species in the 19th century.

Little is known regarding the migratory behavior of right whales in the North Pacific. Historical sighting and catch records provide the only information on possible migration patterns for North Pacific right whales (Omura, 1958; Omura *et al.*, 1969; Scarff, 1986). During 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. Fall and spring distribution was the most widely dispersed, 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. The current distribution patterns and migration routes of these whales are not known.

In the North Pacific, whaling for right whales began in the Gulf of Alaska (known to whalers as the ''Northwest Ground'') in 1835 (Webb, 1988). Right whales were extensively hunted in the western North Pacific in the latter half of the 19th century, and by 1900 were scarce throughout their range. Right whales were protected worldwide in 1935 through a League ofNations agreement. However, because neither Japan nor the USSR signed this agreement, both nations asserted authority to continue hunting right whales until 1949 when the newly-created International Whaling Commission endorsed the ban. Despite this ban, a total of 23 right whales were legally killed in the North Pacific by Japan and the USSR under Article VIII of theInternational Convention for the Regulation of Whaling (1946), which permits the taking of whales for scientific research purposes. However, it is now known that the USSR illegally caught many right whales in the North Pacific (Doroshenko, 2000; Brownell *et al.*, 2001). In the eastern North Pacific, 372 right whales were killed by the Soviets between 1963 and 1967; of these, 251 were taken in the Gulf of Alaska south of Kodiak, and 121 in the southeastern Bering Sea. These takes devastated a population that, while undoubtedly small, may have been undergoing a slow recovery (Brownell *et al.*, 2001).

As a result of this historic and recent hunting, right whales today are among the most endangered of all whales worldwide. In the western North Pacific (the Sea of Okhotsk and adjacent areas), current abundance is unknown but is probably in the low to mid-hundreds (Brownell *et al.*, 2001). There is no estimate of abundance for the eastern North Pacific (Bering Sea, Aleutian Islands, and Gulf of Alaska), but sightings are rare. Most biologists believe the current population is unlikely to exceed a hundred individuals, and is probably much smaller. Prior to the illegal Soviet catches of the 1960s, on average, 25 whales were observed each year in the eastern North Pacific (Brownell *et al.*, 2001); in contrast, the total number of records in the 35 years from 1965 to 1999 was only 82, or an average of 2.3 whales per annum.

The current population size of right whales in the North Pacific is likely fewer than 1,000 animals. Exploitation by commercial whaling reduced the North Pacific right whales nearly to the point of extinction by the beginning of the 20th century. There are insufficient data to estimate the pre-exploitation size of this or any other species of right whale. Based upon catch levels, it is reasonable to assume there were in excess of 10,000 animals in the North Pacific. Based upon the number of animals taken illegally by Soviets during the 1960s, there were at least 372 right whales alive at that time. That estimate would not include right whales found in the western North Pacific. There are no reliable estimates of current abundance or trends for this species. Rice (1974) indicated only a few individuals remained in the eastern North Pacific management unit (i.e., within U.S. waters), and that the population was essentially extinct. Despite high levels of survey effort in the region, most notably from Japanese sighting surveys (Miyashita and Kato, 1998), right whale sightings in the eastern North Pacific have been rare and geographically scattered (Perry *et al.*, 1999).

Recent sightings of right whales in the eastern Bering Sea during the summer (Goddard and Rugh, 1998; Tynan, 1998, 1999; Moore *et al.*, 2000; LeDuc *et al.*, 2001; Tynan *et al.*, 2001; Wade *et al.*, 2006) represent the first reliable observations of aggregations of right whales in the eastern North Pacific since the 1960s. Although a few calves have recently been documented in the eastern North Pacific (Goddard and Rugh, 1998; LeDuc, 2004; Wade *et al.*, 2006), these were the first such sightings in over a century (Brownell *et al.*, 2001). These recent sightings, the first of which occurred in 1996, and other surveys (directed specifically at right whales or otherwise) have detected small numbers of right whales in the southeastern Bering Sea, including an aggregation estimated at 24 animals in the summer of 2004. Photo-identification and genetic data have identified 17 individuals from the Bering Sea, and the high inter-annual resighting rate further reinforces the idea that this population is small. Right whales have also been sighted in the northern Gulf of Alaska, including sightings in 2005 and 2006. However, the overall number of right whales using habitats in the North Pacific other than the Bering Sea is not known.

Prior to the onset of commercial whaling in 1835, right whales were widely distributed across the North Pacific (Scarff, 1986; Clapham *et al.*, 2004; Shelden *et al.*, 2005). However, no reason exists to suspect that the right whales that remain alive today inhabit a substantially different range than right whales alive during the time of the Soviet catches; indeed, given the longevity of this species, it is likely that some of the individuals who survived that whaling episode remain extant. Both the southeastern Bering Sea and the western Gulf of Alaska (shelf and slope waters south of Kodiak) have been the focus of many sightings (as well as the illegal Soviet catches) in recent decades. In general, the majority of northern right whale sightings (historically and in recent times) in the Northeast Pacific have occurred from about 40°N to 60°N latitude (lat.). There are historical records from north of 60°N. lat., but these are rare and are likely to have been misidentified bowhead whales. Right whales have on rare occasions been recorded off California and Mexico, as well as off Hawaii. However, as noted by Brownell et al. (2001), there is no evidence that either Hawaii or the west coast of North America from Washington State to Baja California were ever important habitats for right whales. Given the amount of whaling effort as well as the human population density in these regions, it is highly unlikely that substantial concentrations of right whales would have passed unnoticed. Furthermore, no archaeological evidence exists from the U.S. west coast suggesting that right whales were the target of local native hunts. Consequently, the few records

from this region areconsidered to represent vagrants. We have determined the range of the North Pacific right whale extends over a broad area of the North Pacific Ocean as depicted in Figure 1.

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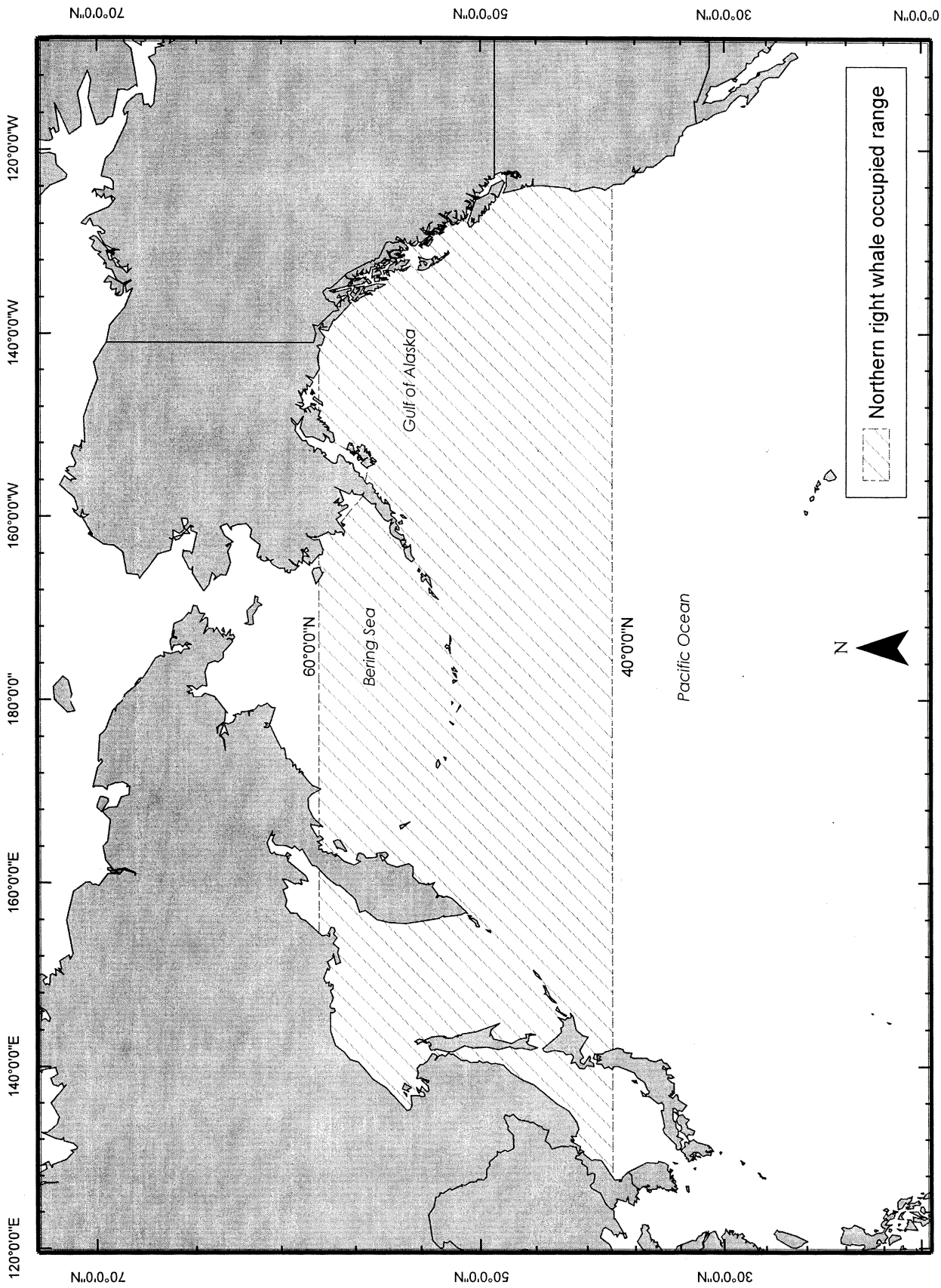

Figure 1. Occupied range of Northern right whales in the North Pacific at time of listing under the Endangered Species Act.

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Listing Determinations Under the ESA

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to becomeendangered in the foreseeable future throughout all or a significant portion of its range (sections 3(6) and 3(20), respectively). The statute requires us to determine whether any species is endangered or threatened because of any one of the following five factors: (1) the present or threatened destruction, modification or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) theinadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A)-(E)). We are to make this determination based solely on the best available scientific information after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species. The focus of our evaluation of the ESA section 4(a)(1) factors is to evaluate whether and to what extent a given factor represents a threat to the future survival of the species. The focus of our consideration of protective efforts is to evaluate whether and to what extent they address the identified threats and so ameliorate a species' risk of extinction. The steps we follow in implementing this statutory scheme are to: (1) delineate the species under consideration; (2)review the status of the species; (3) consider the ESA section 4 (a)(1) factors to identify threats facing the species; (4) assess whether certain protective efforts mitigate these threats; and (5) predict the species' future persistence.

Review of ''Species'' Delineation

Since 1974, NMFS has maintained the right whale listing as originally listed by the United States Fish and Wildlife Service (USFWS) under the Endangered Species Conservation Act of 1969, the precursor to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; the ESA)(35 FR 18319, December 2, 1970)—*Eubalaena* spp., i.e., all the species within the genus *Eubalaena*. The USFWS maintains the official lists of threatened and endangered species and isrequired to add species to the official lists when NMFS or USFWS determines species under itsjurisdiction should be listed. The USFWS has changed the nomenclature for right whales severaltimes over the years in various iterations of the list of threatened and endangered wildlife. NMFS also changed the nomenclature for a period of time after one of the USFWS changes, butlater reverted back to the original Eubalaena spp. listing. The changes may have been made as a reflection of the discussion in the scientific literature over the appropriate taxonomic status of right whales. At no point did the USFWS ever propose delisting any of the species that were included in the original listing of *Eubalaena* spp. Regardless of the changes to the list, NMFS maintains that right whale species were listed as *Eubalaena* spp., which reflects the predominant view that existed in 1974: that right whale species are distinct from bowhead whales (*Balaena mysticetus*), they belong in the genus *Eubalaena*, and the genus *Eubalaena* contains at least twospecies: *E. glacialis* in the northern hemisphere and *E. australis* in the southern hemisphere.

Recent investigations of right whale genetics confirm the distinction between *E. glacialis* and *E. australis* at the species level and suggest that the North Pacific form of *E. glacialis* should be recognized as a separate species and named *E. japonica*, distinct from the other two species. NMFS is proposing to adopt this view and, in a separate rulemaking, to modify its listing to add *E. japonica* to the current listing *Eubalaena*spp. (which includes *E. glacialis* and *E. australis*).

Taxonomy of Right Whales

All whales belong to the mammalian order Cetacea, which is divided into two suborders: Odontoceti (toothed whales) and Mysticeti (baleen whales). The Mysticeti are further dividedinto four families: the Eschrichtidae, a monotypic family (i.e., containing only one species), the gray whale; Neobalaenidae, another monotypic family containing only the pygmy right whale;Balaenidae, which contains two genera: *Balaena*(bowhead whales) and *Eubalaena* (right whales); and Balaenopteridae, which contains all of the other baleen whales.

Balaena is the genus name for the bowhead whale (*Balaena mysticetus*), recognized byLinnaeus in 1758. *Eubalaena* is the genus name for right whales, first proposed by Gray in 1864. The first right whale to be named was what we today call the North Atlantic right whale or Nord-Kaper (Balaena glacialis, Muller, 1776), from North Cape, Norway. The second right whale to be named was what we today call the North Pacific right whale (*Balaena japonica*, Lacepede,1818), from Japan. And the third right whale to be named was what we today call the Southern right whale (*Balaena australis*, Desmoulins, 1822), from Algoa Bay, Cape of Good Hope, South Africa. In the 1970s when all baleen whales were being considered for listing as endangered under the Endangered Species Conservation Act of 1969, authors disagreed on the taxonomic status of right whales. One view was that they belonged in the genus Balaena along with bowhead whales and that the genus contains two species: Baleana mysticetus and Baleana glacialis (Rice, 1977). The subspecific composition of B. glacialis was unclear. The other view was that right whales were distinct from bowhead whales at the genus level and that right whales should be identified as Eubalaena (Schevill, 1986). This later view is currently the prevailing view, and it is the view embraced by USFWS and NMFS.

There were also two views about the species composition of *Eubalaena*. One view was that there was only one species *Eubalaena glacialis* containing several subspecies (*E. glacialis glacialis* (North Atlantic), *E. glacialis sieboldii* (North Pacific), and E. glacialis australis (Southern oceans)) (Tomilin, 1957). Hershkovitz (1966) also describes these three subspecies,except that he refers to North Pacific right whales as E. glacialis japonica. The other view was that Eubalaena comprised two species *E. glacialis* and *E. australis* (Omura, 1958; Omura *et al.*,1969). This is the view represented by the designation of *Eubalaena* spp. in the original listing by USFWS in 1970 and by NMFS in its first listing in 1974. Generally accepted taxonomic nomenclature recognized the term ''spp.'' as an abbreviation for multiple species within a genus.

The two-species view is summarized by Perry *et al.*'s (1999) summary of morphological (Muller, 1954) and genetic data (Schaeff et al., 1991), both of which recognized distinct species in the northern and southern hemispheres. Cummings (1985) used E. australis for all right whales below the equator (southern right whales). The International Whaling Commission also recognizes the presence of two distinct species, E. glacialis and E. australis, in the schedule appended to the Convention in which species under purview of the Commission are listed.

Conclusion

Although the listing of right whales has changed from the original nomenclature of *Eubalaena* spp., there is no indication in the record that USFWS ever intended to delist any of the species contained in the original listing of the entire genus. Since the

original 1970 listing wasdescribed as ''Eubalaena spp.'', the logical interpretation is that at least two species of right whalewere listed, the northern right whale (*E. glacialis*) and the southern right whale (*E. australis*), since ''spp.'' refers to more than one species, not ''subspecies.'' Even if three separate species had been recognized in 1970, southern right whale (*E. australis*) would have been one of them. Eachplausible scenario results in the right whale in the Southern Hemisphere being recognized as a separate species. Since NMFS has maintained its listing as ''Right whales, Eubalaena spp.'', and USFWS has never proposed delisting any of the species included in the original listing, we conclude that both *E. glacialis* and *E. australis* were listed in 1970, carried forward to the list created pursuant to the ESA, and determined to be endangered in our listing in 1974.

Right Whale Species Currently Being Considered for Listing

Genetic data now provide unequivocal support to distinguish three right whale lineages as separate phylogenetic species: (1) the North Atlantic right whale (*Eubalaena glacialis*), ranging in the North Atlantic Ocean; (2) the North Pacific right whale (*Eubalaena japonica*), ranging in the North Pacific Ocean, and (3) the southern right whale (*Eubalaena australis*), historically ranging throughout the southern hemisphere's Oceans (Rosenbaum *et al.*, 2000). Based on evidence from recent genetic studies (Gaines *et al.*, 2005), we conclude that the current taxonomic classification of right whales in the northern hemisphere should be revised consistent with the generally accepted analyses by Rosenbaum *et al.* (2000). We have determined that listing right whales in the North Atlantic and the North Pacific as two separate species is warranted in light of the compelling evidence provided by recent scientific studies on right whale taxonomy and classification. In accordance with the applicable statutory definitions and requirements, the North Atlantic right whale (*E. glacialis*) and the North Pacific right whale (*E. japonica*) are being considered for listing as separate species under the ESA.

Refining the taxonomy of these endangered cetaceans is critical to the recovery planning and conservation of these species. The separate listings of these two species in the northern hemisphere will allow for consistent scientific practice and management policies in recovering these species.

Status of the Three Right Whale Species

The determination that right whales in the North Atlantic and North Pacific Oceans are two separate species requires us to consider these species separately for the purposes of listingunder the ESA. We will consider the status of the North Pacific right whale (*E. japonica*) in this proposed rule and that of the North Atlantic right whale (*E. glacialis*) in a separate proposed rule in today's issue of the **Federal Register**. At the final rule stage, we will address both species in the same rule so that any changes become effective together. The southern right whale, *E. australis*, will remain listed as endangered, though we intend to conduct a 5-year review of its status in the near future. In the following discussion of the status of the North Pacific right whale, E. japonica, we provide the rationale for today's proposal to list this species as a separate endangered species. The other proposed rule in today's issue of the **Federal Register** provides the rationale for this proposal to list the North Atlantic right whale, *E. glacialis*, as a separate endangered species. We also identify the southern right whale, *E. australis* (one of two species that was listed in 1970 and is still listed) in the regulatory language as a separate endangered species and remove *Eubalaena* spp. from the list.

Status of the North Pacific Right Whale (*Eubalaena japonica*)

Abundance and Trends

The basic life history parameters and census data, including population abundance, growth rate, age structure, breeding ages, and distribution, remain undetermined for North Pacificright whale. To date, the largest number of North Pacific right whale individuals identified in the eastern Bering Sea is 23 (based on genetic sampling), while abundance in the western NorthPacific appears to number fewer than 1,000 individuals (with a minimum estimate near 400). Abundance estimates and other vital rate indices in both the eastern and western North Pacificare not well established. Where such estimates exist, they have very wide confidence limits.

Life History Characteristics

Although there are no data for the North Pacific, studies of other right whale populations suggest calving intervals of 3–6 years, lifespans of up to 70 years, and growth rates that are likely dependent on feeding success (Reynolds *et al.*, 2002; Kenney, 2002). Long-lived organisms have limited abilities to respond to chronic increases in juvenile mortality and even lesser abilities to respond to increased mortality through commercial harvest of juveniles and adults (Congdon *et al.*, 1993). Life history characteristics such as low reproductive rates, delayed sexual maturity, and reliance on high juvenile survivorship make long-lived species such as whales particularly vulnerable to overexploitation. This likely explains the paucity of sightings in the North Pacific following the illegal kills by Soviet whalers in the 1960s. The effects of past commercial and illegal harvests persist. These removals remain an obstacle to the recovery of the North Pacific right whale, despite the cessation of such whaling.

Distorted Age, Size or Structure of the Population, and Reduced Reproductive Success

To date, photogrammetric data in the Bering Sea have been collected primarily for adult animals (LeDuc *et al.*, 2001). Of the 12 whales for which lengths were determined (range: 14.7-17.6m), none were smaller than the smallest length estimate for sexually mature right whales (13–16m: Kenney, 2002). Length measurements for two whales observed off California suggestat least one of these whales was not yet sexually mature (12.6m: Carretta et al., 1994). The presence of two calves during the 2004 season in the Bering Sea (Wade *et al.*, 2006) is encouraging. However, to date, there is no evidence of reproductive success (i.e., young reared to independence) in the eastern North Pacific. No data are available for the western North Pacific.

Genetic Diversity

The Allee effect has been defined as the impact of reduced social interactions and loss of mating opportunities in a small population. Marine mammal populations with an effective population size of a few dozen individuals are usually sufficiently large to avoid most of the deleterious consequences of inbreeding (Lande, 1991). Theoretically, during a rapid decline in population size, nearly all (i.e., >95 percent) of the diversity in a population is maintained in an effective population of 10 individuals, and more than 99 percent of the diversity in a population is maintained in an effective population of 50 individuals (Ralls et al., 1983). However, it has been suggested that if the number of reproductive animals is fewer than 50, the potential for impacts associated with inbreeding depression increases substantially (IUCN, 2003). In 2002, the ratio of right whale females to males biopsied in the Bering Sea was 1:9. In

2004, biopsy results indicated a ratio of 7:16. Excluding the two male calves from the sample and assumingall other whales were adults, a 1:2 ratio of females to males can be estimated, with a possible effective abundance of 21. Although there is some evidence of mating success among NorthPacific right whales, the extent of reproductive success has not been quantified.

Habitat Specificity or Site Fidelity

Other large whale populations such as humpback whales (*Megaptera novaeangliae*) appear to use common breeding grounds with a ''maternally directed site-fidelity to specific feeding grounds'' (Baker et al., 1990, 1994; Palsb ll et al., 1995, 1997; Larsen et al., 1996). Genetic sampling revealed similar patterns in western North Atlantic right whales (*E. glacialis*), indicating this population probably occupies a single breeding area but segregates into distinct,maternally-linked subpopulations during migration to isolated nursery areas (Schaeff et al., 1993). There is some suggestion of site fidelity among right whales found in the Bering Sea. Ofthe whales observed between 1997 and 2004, at least five were photographed and five were biopsied over multiple years. It is possible that similar site fidelity is occurring in the westernNorth Pacific. It is not known where these animals overwinter, nor if they share a common wintering area. This is a critical gap in understanding dynamics of right whales in the NorthPacific Ocean.

Summary of Factors Affecting the North Pacific Right Whale

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. We must determine, through the regulatory process, if a species isendangered or threatened because of any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease orpredation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence. A discussion of these considerations follows:

The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

One potential source of habitat degradation for baleen whales is spilled oil. Data on the effects of oil pollution on cetaceans are inconclusive (Geraci, 1990; Loughlin, 1994). However, general concerns with regard to oil pollution, some of which are direct impacts on the whales rather than habitat impacts, are ingestion of contaminated prey, potential irritation of skin and eyes, inhalation of toxic fumes, and abandonment of polluted feeding habitat (Geraci and St. Aubin, 1980; Geraci, 1990). Although there is currently no oil exploration or production underway in known right whale habitat in offshore areas of the Bering Sea or Gulf of Alaska, and limited activity elsewhere in the species' range, the possibility remains that there will be lease sales in these areas in the future. Furthermore, large amounts of oil are transported by ship alongthe western North American coast through areas that have been used by right whales in the past, and where they have been occasionally seen recently (Brownell et al., 2001).

The Minerals Management Service (MMS) has proposed an Outer Continental Shelf (OCS) leasing for conducting lease sales for the North Aleutian Basin (in the southeast Bering Sea) in 2010 and 2012. This planning area is presently under a moratorium from OCS leasing by Presidential Executive Order. It is unknown whether the moratorium may be lifted or to what extent these activities may disturb or otherwise affect right whales. In addition to oil and gas exploration and development, undersea exploration and development of mineral deposits may affect the habitat of the North Pacific right whale. Development of oil fields off the Sakhalin Islands is also occurring within habitat of the western North Pacific population of the North Pacific right whale. The effect on habitat of shipping or oil and gas development is unclear.

Right whale life history characteristics make them very slow to adapt to rapid changes in their habitat (Reynolds *et al.*., 2002). They are also feeding specialists that require exceptionally high densities of their prey (Baumgartner and Mate, 2003; Baumgartner *et al.*, 2003). Zooplankton abundance and density in the Bering Sea has been shown to be highly variable, affected by climate, weather, and ocean processes and in particular ice extent (Napp and Hunt, 2001; Baier and Napp, 2003). The largest concentrations of copepods occurred in years with the greatest southern extent of sea ice (Baier and Napp, 2003). It is possible that changes in ice extent, density, and persistence may alter the dynamics of the Bering Sea shelf zooplankton community and in turn affect the foraging behavior and success of right whales. No data are available for the western North Pacific.

Chemical contaminants are an additional potential source of habitat degradation for right whales. The direct impact of chemical contaminants on right whales is uncertain. O'Shea andBrownell (1994) conclude that there is currently no evidence for significant contaminant-related problems in baleen whales. Although additional research is needed, existing data on mysticetes indicate that the lower trophic levels at which these animals feed should result in smaller contaminant burdens than would be expected in many odontocetes, which typically show burdens that differ from those of baleen whales by an order of magnitude (O'Shea and Brownell, 1994). However, the manner in which pollutants negatively impact animals is complex and difficult to study, particularly in taxa (such as large whales) for which many of the key variables and pathways are unknown (Aguilar, 1987; O'Shea and Brownell, 1994). The trans-generational accumulation of contaminants (Colborn and Smolen, 1996) is perhaps a more likely source for concern, but this remains unstudied in right whales or any other cetacean.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

North Pacific right whales were heavily exploited by commercial whalers during the 19th and 20th centuries. The IWC estimates 15,451 right whales were taken in the North Pacificbetween 1840 and 1909 (Brownell et al., 1986). There were 741 recorded catches of right whales in the North Pacific in the 20th century (411 in the eastern unit and 330 in the western unit)(Brownell et al., 2001). According to Estes (1979) and Congdon et al. (1993), long-lived organisms have limited abilities to respond to chronic increases in juvenile mortality and evenless ability to respond to increased mortality through commercial hunting of juveniles and adults. Life history characteristics such as low reproductive rates, delayed sexual maturity, and reliance on high juvenile survivorship make long-lived species such as whales particularly vulnerable to overexploitation. Commercial whaling very likely reduced the genetic variability of the North Pacific right whale. The small, remnant populations that survived commercial whaling likely lost genetic variability because of genetic drift and inbreeding, further confounding conservation and recovery efforts.

Currently, the IWC has assigned ''Protected Stock'' status to all stocks of right whales (IWC, 1995). The catch quota for these whales is therefore set at zero for all signatory nations at the IWC. The Soviet Union killed right whales illegally for commercial purposes in the OkhotskSea/Kuril Islands (reported as ''hundreds'' by Yablokov (1994), although this is known to include bowhead whales). Furthermore, the Soviets killed 372 right whales in the eastern North Pacific(notably in the Bering Sea and Gulf of Alaska) in the 1960s (Doroshenko, 2000). These catches presumably occurred primarily during summer.

Right whales were historically hunted by native peoples along the Northwest Pacific coast and in the Aleutian Islands, although the level of such take was probably insignificant. We haveno information on aboriginal harvests for the western North Pacific. However, given the current status of this species, the North Pacific right whale could not tolerate even a very low level of commercial or aboriginal hunt. While no hunting currently occurs on North Pacific right whales, the impact from historical commercial harvest persists and likely presents a threat to the recovery of the species throughout all of its range. These removals are the primary causative factor for thedecline of the North Pacific right whale, and the North Pacific right whale is in danger of extinction throughout its range because of historical and more recent whaling.

There are no known recreational or educational uses of North Pacific right whales. However, if a right whale were to be seen in a highly accessible area, such as near the coast ofCalifornia, there could be a large response from whale watching operations trying to observe the whale.

Scientific studies of right whales may involve close approaches to the animals for the purpose of photographs, genetic sampling, or tagging. These activities are controlled by permitsin both U.S. and Canadian waters, and potential negative impact on the animals is considered in the permitting process. While the potential for disturbance or harassment exists for scientificresearch, the overall impact from this activity on North Pacific right whales is likely minimal, and the information gained in this research may play a critical role in helping manage and recover the species.

Disease or Predation

Disease and predation are not believed to be factors causing the North Pacific right whale to be in danger of extinction. Very little is known about disease in, or predation on, NorthPacific right whales. There have been no recorded epizootics in baleen whales. Reeves et al. (2001) presented the results of a workshop on right whale reproduction, which considered fivepossible factors including disease as explanations for the decline in North Atlantic right whales. The information reviewed and summarized, along with associated caveats at this NMFSworkshop, are likely applicable to other balaenids (Reeves et al., 2001).

The only four known cases of mass mortalities of baleen whales involved humpback whales (*Megaptera novaeangliae*) in the Northeast United States in 1987–1988, 2003, 2005, and 2006. Geraci et al. (1989) provide strong evidence that, in the former case, these deaths resulted from consumption of mackerel whose livers contained high levels of saxitoxin, a naturally occurring red-tide toxin originating with dinoflagellate (*Alexandrium* spp). It has been suggested that red tide phenomena are related to increased freshwater runoff from coastal development, leading some observers to suggest that such events may become more common among marine mammals as coastal development increases. There is currently no evidence linking red tide toxins to deaths or chronic health problems in North Pacific right whales.

It is not known whether right whales suffer from stress-induced bacterial infections similar to those observed in captive cetaceans (Buck et al., 1987). Studies of bowhead whaleskilled in the Alaskan native hunt have provided information on bacterial, mycotic, and viral infections, but not on the level to which they contribute to mortality and morbidity (Philo et al.,1993). Skin lesions, found on all the hunted bowhead whales, were not malignant or contagious. However, potentially pathogenic microorganisms inhabit these lesions and may contribute toepidermal necrosis and the spread of disease (Shotts et al., 1990). Exposure of these roughened areas of skin to environmental contaminants, such as petroleum products, could have significant effects (Albert, 1981; Shotts et al., 1990); however, Bratton et al.(1993) concluded that such encounters were not likely to be hazardous. The occurrence of skin lesions on North Atlantic right whales has been documented in recent years (Marx et al., 1999; Pettis et al., 2004). The origins and significance of these lesions are unknown, and further research is required to determine whether they represent a topical or systemic health problem for the affected animals.The system developed by Pettis et al. (2004) to assess health and body condition of North Atlantic right whales is currently being applied to photographs of North Pacific right whales.

Predation of right whales by killer whales and large shark species is likely to occur, but the level is not documented, and no attacks have been observed. North Atlantic right whalesbearing scars from killer whale, *Orcinus orca*, attacks have been photographed (Kraus, 1990), but the number of whales killed by this predator is unknown (Perry et al., 1999). More recently, Mehta (2004) concluded that scars recorded on the flukes and bodies of North Atlantic right whales are more consistent with harassment by some smaller cetacean, possibly pilot whales, *Globicephala* spp., and do not originate from killer whales.

Of 195 bowhead whales examined during the Alaskan subsistence hunt (1976–92), 8 had been wounded by killer whales (George et al., 1994). Seven of the eight bowhead whales were greater than 13 m in length, suggesting either that scars are accumulated over time, or young animals do not survive a killer whale attack. Hunters on St. Lawrence Island reported two small (<9 m) bowhead whales found dead as a result of killer whale attacks (George et al., 1994). Bowhead whales are pagophilic (''ice-loving''), unlike right whales, and ice-covered waters mayprovide some protection from killer whale attacks. The frequency of attacks is unknown, and killer whale distribution in the North Pacific has not been well documented (George et al., 1994).

The Inadequacy of Existing Regulatory Mechanisms

Right whales are protected under both U.S. and Canadian law, and internationally by the IWC. At present, there is no information to indicate that existing regulatory mechanisms areinadequate, resulting in activities having adverse effects on North Pacific right whales. If additional studies reveal that significant impacts are occurring, it may be necessary to enhanceexisting laws or promulgate new regulations to reduce or eliminate these threats.

Other Natural or Manmade Factors Affecting its Continued Existence

Vessel Collisions–The role vessel interactions play in the mortality of North Pacific rightwhales is not known. In the North Atlantic, ship collisions and fishing gear entanglements are the most common direct known causes of mortality in North Atlantic right whales (Kraus, 1990;Knowlton and Kraus, 1998; Gillespie and Leaper, 2001), but little is

known of the nature or extent of this problem in the North Pacific, and no collisions have been recorded. The areawhere right whales have been seen in recent surveys is not in a major vessel traffic lane. However, the proximity of the other known right whale habitats to shipping lanes (e.g., UnimakPass) suggests that collisions with vessels may represent a threat to North Pacific right whales. Because of the rarity of right whales, the impact to the species from even low levels ofinteraction could be significant.

Fisheries Interactions–The eastern Bering Sea supports extensive fisheries, and, therefore, fishery interactions with right whales are possible. Types of gear that most frequently entangle North Atlantic right whales include pots and gillnets. Gillnet fisheries in the eastern Bering Sea occur in nearshore waters (state waters) not associated and generally not overlapping with known North Pacific right whale distribution. Pot fisheries occur in offshore waters, thoughthey are often prosecuted during seasons when right whales are not known to be present (i.e., winter).

Entanglements of North Pacific right whales in fishing gear appear to be uncommon; though this may be due to the very low numbers of whales influencing the probability of encounter. Perry et al. (1999) reported two fishery-related mortalities due to entanglement in fishing gear from Russian waters (Kornev, 1994; NMFS, 1991). On review of the original records in the Platforms of Opportunity Program database, one of the encounters was actually a sighting and not an entanglement. Therefore, only one case of entanglement is known from the western North Pacific (Brownell et al., 2001), though the occurrence of right whales near pot fisheries in the Bering Sea creates a potential for interactions and, as with vessel collisions, the direct impact from even low levels of interaction could be significant.

Several cases of entanglements of bowhead whales have been recorded during the Alaska Native subsistence hunt (Philo et al., 1992). These reports included three bowheads killed in thehunt with scars attributed to rope entanglements, one bowhead found dead entangled in ropes similar to those used with fishing gear in the Bering Sea, and one bowhead with ropes on it thatwere attributed to rigging from a commercial offshore fishing pot, most likely a crab pot. There have been two other recent reports of bowheads with gear attached or marks that likely werefrom crab gear (J. C. George, North Slope Borough, Barrow, AK, pers. comm.). Aerial photographs in at least two cases have shown ropes trailing from the mouths of bowheads (NMFS, NMML, unpublished data). A similar review of photographs of North Pacific right whales is planned.

Injuries and entanglements that are not initially lethal may result in a gradual weakening of entangled individuals, making them more vulnerable to some other direct cause of mortality(Kenney and Kraus, 1993). Entanglement-related stress may decrease an individual's reproductive success or reduce its life span, which may in turn depress population growth. Studies of scarring rates have been conducted in the North Atlantic to determine the frequency of right whale entanglements with fishing gear (Kraus, 1990; Hamilton et al., 1998b). Studies of scarring rates among North Pacific right whales would be difficult due to the extreme rarity of this species, but may provide significant insight into the extent of this problem in the North Pacific Ocean.

Noise–Noise pollution may also have an impact on critical behaviors of marine mammals (e.g., foraging, mating, nursing), although the effect is unclear. Richardson et al. (1995) provides a review of the impacts of noise on marine mammals. It is unclear whether activities, such as oil exploration and development and shipping, adversely affect critical behaviors such as reproductive success, population productivity, and feeding activity. Some observations suggest that marine mammals can habituate to high levels of sound (Geraci and St. Aubin, 1980). However, playback experiments on gray and bowhead whales indicate these whales actively avoid very loud sources of noise (Malme et al., 1983).

While certain species of large whales have shown behavioral changes in response to anthropogenic noise in the marine environment, there have been few studies of the effects ofanthropogenic noise on right whales specifically. In right whales, the level of sensitivity to noise disturbance and vessel activity appears related to the behavior and activity in which they are engaged at the time (Watkins, 1986; Mayo, Watkins, and Kraus pers. comm., as cited in NMFS, 1991; Kraus and Mayo, unpubl. data as cited in NMFS, 1991). In particular, feeding or courting right whales may be relatively unresponsive to loud sounds and, therefore, slow to react to approaching vessels or even oblivious to them. In general, the impact of noise from shipping or industrial activities on the communication, behavior, and distribution of right whales remains unknown.

Conservation Efforts

When considering the listing of a species, section 4 (b)(1)(A) of the ESA requires consideration of efforts by any State, foreign nation, or political subdivision of a State or foreignnation to protect such species. Such efforts would include measures by Native tribes and organizations, local governments, and private organizations. Also, Federal, tribal, state, andforeign recovery actions (16 U.S.C. 1533(f)), Federal consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538) constitute conservation measures. On March 28, 2003, we and USFWS (the Services) published the final policy for evaluating conservation efforts (PECE)(68 FR 15100). The PECE provides guidance on evaluating current protectiveefforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The PECE establishes two basic criteria for evaluating current conservation efforts: (1) the certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. The PECE provides specific factors under these two basic criteria that direct the analysis of adequacy and efficacy ofexisting conservation efforts.

North Pacific right whales benefit from protections afforded by the MMPA and the ESA (by virtue of their current inclusion as part of the endangered northern right whale). Also, theMarine Conservation Alliance, with support from NMFS, has developed an outreach program and informational brochures to be distributed throughout the commercial fishing industry to alertfishermen to the presence of right whales, and to take proactive measures to avoid interaction. This Alliance is also coordinating with commercial shipping interests to extend this network sothat it might reach the commercial cargo vessels that transit the North Pacific. The effectiveness of such voluntary measures has not been determined.

The Canadian Department of Fisheries and Oceans has prepared a draft National Recovery Strategy for the North Pacific right whale (*E. japonica*) in Canadian waters in thePacific Ocean. At this time the document has not been finalized.

Except for the IWC hunting ban noted above, we are not aware of any other

conservation efforts undertaken by foreign nations specifically to protect North Pacific right whales. We support the conservation efforts currently in effect; however, these efforts lack certainty of implementation and effectiveness. In developing our final listing determination, we will consider the best available information concerning these conservation efforts and any other protective efforts for which we have information.

Proposed Listing Determination

We have reviewed the status of the North Pacific right whale, considered the factors set forth in section 4 (a)(1) of the ESA, and taken into account any conservation efforts to protect the species. We conclude that the North Pacific right whale should be listed as an endangered species under the ESA because it is in danger of extinction throughout all of its range because of:(1) overutilization for commercial, recreational, scientific or educational purposes; and (2) other natural and manmade factors affecting its continued existence (see above for a description of these section 4 (a)(1) factors). This endangered determination is also supported by the fact that the factors confounding recovery have not been thoroughly identified and may continue to persist until more is known, and corrective actions can be taken.

We also conclude that, at present, no protective or conservation measures are in place that substantially mitigate the factors affecting the future viability of this species. Based on the best available information, we propose to list the North Pacific right whale under the ESA as an endangered species.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction.

Sections 7(a)(2) and (4) of the ESA require Federal agencies to consult with us to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or to destroy or adversely modify critical habitat or proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Examples of Federal actions that may affect the North Pacific right whale include oil and gas development, seismic exploration, emerging chemical contaminant practices, vessel operations, and fishery management practices.

Sections 10(a)(1)(A) and (B) of the ESA authorize us to grant exceptions to the ESA's Section 9 ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets North Pacific right whales. Under section 10(a)(1)(B), the Secretary may permit takings otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

NMFS Policies on Endangered and Threatened Fish and Wildlife

On July 1, 1994, we and FWS published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA (59 FR 34272).

Role of Peer Review

The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, we will solicit the expert opinions of three qualified specialists, concurrent with the public comment period. Independent specialists will be selected from the academic and scientific community, Federal and state agencies, and the private sector.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

The intent of this policy is to increase public awareness of the effect of our ESA listing on proposed and ongoing activities within the species' range. We will identify, to the extent known at the time of the final rule, specific activities that will be considered likely to result in violation of section 9, as well as activities that will not be considered likely to result in violation. Activities that we believe could result in violation of section 9 prohibitions against ''take'' of the North Atlantic right whale include, but are not limited to, the following: (1) Operating vessels in a manner that results in ship strikes or disrupts foraging, resting, or care for young; (2) fishing practices that can result in entanglement when lines, nets, or other gear are placed in the water column; (4) discharging or dumping toxic chemicals or other pollutants into areas used by North Pacific right whales; (5) scientific research activities; (6) Land/water use or fishing practices that result in reduced availability of prey species during periods when North Pacific right whales are present.

We believe, based on the best available information, the following actions will not result in a violation of Section 9: (1) federally funded or approved projects for which ESA section 7 consultation has been completed, and that are conducted in accordance with any terms and conditions we provide in an incidental take statement accompanying a biological opinion; and (2) takes of North Pacific right whales that have been authorized by NMFS pursuant to section 10 of the ESA.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that we might or might not consider as constituting a take of North Pacific right whales.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the final listing of a species under the ESA. Critical habitat has previously been designated for the Northern right whale in the North Pacific Ocean (71 FR 38277; July 6, 2006). The designation of the North Pacific right whale as a new species under the ESA necessitates the designation of critical habitat, replacing that previously designated. We intend to propose designation of critical habitat for the North Pacific right whale in a separate rulemaking.

Public Comments

To ensure that final action resulting from this proposed rule will be as accurate and effective as possible and be based upon the best available scientific and commercial information, we solicit comment from the public, other governmental agencies, the scientific community, industry, and any other interested parties. 50 CFR 424.16(c)(3) requires the Secretary of Commerce to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species under the ESA. Requests for public hearing must be made in writing (see **DATES** and **ADDRESSES**). Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a

constructive dialogue concerning this proposed rule. We encourage the public's involvement in such ESA matters.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing to the best scientific and commercial data available. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F 2d 825 (6th Cir.1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act. (see also NOAA Administrative Order 216–6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E. O. 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed listing determination. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in each state in which the North Pacific right whale is believed to occur, who will be invited to comment.

Government-to-Government Relationship With Tribes E.O. 13175

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E. O. 13175 - Consultation and Coordination with Indian Tribal Governments- outlines the responsibilities of the Federal Government in matters affecting tribal interests.

We have determined the proposed listing of the North Pacific right whale would not have tribal implications, nor affect any tribal governments or issues. The North Pacific right whale is not hunted by Alaskan Natives for traditional use or subsistence purposes.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 20, 2006.

Samuel D. Rauch III.,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend 50 CFR part 224 as follows:

PART 224 ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. Revise § 224.101(b) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(b) *Marine mammals.* Blue whale (*Balaenoptera musculus*); Bowhead whale (*Balaena mysticetus*); Caribbean monk seal (*Monachus tropicalis*); Chinese river dolphin (*Lipotes vexillifer*); Cochito (*Phocoena sinus*); Fin or finback whale (*Balaenoptera physalus*); Hawaiian monk seal (*Monachus schauinslandi*); Humpback whale (*Megaptera novaeangliae*); Indus River dolphin (*Platanista minor*); Mediterranean monk seal (*Monachus monachus*); North Pacific right whale (*Eubalaena japonica*); Saimaa seal (*Phoca hispida saimensis*); Sei whale (*Balaenoptera borealis*); Sperm whale (*Physeter catodon*); Western North Pacific (Korean) gray whale (*Eschrichtius robustus*); Steller sea lion, western population, (Eumetopias jubatus), which consists of Stellar sea lions from breeding colonies located west of 144° W. longitude.

* * * * *

[FR Doc. 06–9908 Filed 12–26–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 061212328–6328–01; I.D. 120706B]

RIN 0648–XB58

Endangered And Threatened Species; Proposed Endangered Status for North Atlantic Right Whales

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, have completed a comprehensive status review of right whales in the northern hemisphere under the Endangered Species Act (ESA). Based on the findings from the status review, we have concluded these right whales exist as two species, the North Atlantic right whale (*Eubalaena glacialis*) and the North Pacific right whale (*E. japonicus*). We have also determined that each of these species is in danger of extinction throughout its range. To reflect this taxonomic revision, we are issuing two proposed rules to designate each separately as an endangered species. This proposed rule is to list the North Atlantic right whale; a proposed rule to list the North Pacific right whale is issued separately. We are soliciting public comment on this proposed listing determination.

DATES: Comments on this proposed rule must be received by close of business on February 26, 2007. Requests for public hearings must be made in writing by February 12, 2007.

ADDRESSES: Send comments to Mark Minton on the North Atlantic right whale. Comments may be submitted by:

• E-mail: *NARW.ProposedRule@noaa.gov*. Include in the subject line the following