

management and environmental assessment and prediction. The SAB is forming an external panel to provide general priorities for ocean exploration, including geographic areas of interest as well as subject matter topics; advice concerning emerging ocean exploration-relevant technologies; and to conduct periodic reviews of the program for the purpose of assessing program accomplishments and providing guidance and perspective for the program's future. Nominations to the panel are being solicited. The intent is to select from the nominees; however, the SAB retains the prerogative to name people to the working group that were not nominated if it deems it is necessary to achieve the desired balance. Once selected, the SAB will post the review panel members' names at <http://www.sab.noaa.gov>.

DATES: Nominations must be received by June 23, 2005.

ADDRESSES: Nominations should be submitted electronically to noaa.sab.exploration@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart: 301-713-9121, ext. 159.

SUPPLEMENTARY INFORMATION: The Ocean Exploration Advisory Working Group will consist of approximately nine individuals from academia, government, industry, and other ocean-related institutions. This group will provide its findings and results to the Science Advisory Board, which will deliberate on the input before forwarding it to NOAA. NOAA is seeking individuals that have national and international reputations; and degrees, or professional qualifications, in: Physical, chemical, or biological oceanography, social sciences, or ocean engineering, technology, and/or operations. They should be familiar with NOAA's organization and Strategic Plan and have scientific credentials and/or relevant experience that will enable them to provide expert advice concerning the Ocean Exploration Program's roles within the context of NOAA's ocean missions and policies. They should be familiar with the organization and management of complex, interdisciplinary science programs. Members will be appointed for three-year terms, renewable once, and serve at the discretion of the Secretary. Initial appointments will include one-third each four- and five-year terms. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy, and shall be renewable twice if the unexpired term is less than one year.

The Terms of Reference for the review is posted at: <http://www.sab.noaa.gov/>

Working%20Groups/Working%20Groups.htm.

Nominations:

Anyone is eligible to nominate and self-nominations will be accepted. Nominations should provide: (1) The nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise; and (3) a short description of their qualifications relative to the kinds of advice being solicited. Inclusion of a resume is desirable.

Dated: May 26, 2005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Atmospheric Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

I.D. 033105B

Endangered and Threatened Wildlife; Recovery Plans for Listed Marine Mammals

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the final revision of the recovery plan for the western North Atlantic right whale, *Eubalaena glacialis*, as required by the Endangered Species Act of 1973 (ESA).

ADDRESSES: The final plan is provided on NMFS' Protected Resources internet website at www.nmfs.noaa.gov/pr/PR3/recovery.html. Also, requests for a copy of the recovery plan may be submitted to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gregory Silber, Ph.D., Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301-713-2322; Fax: 301-427-2522.

SUPPLEMENTARY INFORMATION:

Background

Congress passed the ESA (16 U.S.C. 1531 *et seq.*) to protect species of plants and animals in danger of extinction. NMFS and the U.S. Fish and Wildlife Service (FWS) share responsibility for

the administration of the ESA. NMFS is responsible for most endangered and threatened marine mammal species, including the Northern right whale (*Eubalaena glacialis*). Listed endangered and threatened species under NMFS jurisdiction are identified in 50 CFR 222.23(a) and 50 CFR 227.4, respectively. The List of Endangered and Threatened Wildlife, which contains species under the jurisdiction of both agencies, is provided in 50 CFR 17.11(h). The North Atlantic right whale (originally the Northern right whale) is listed as endangered.

Section 4(f)(1) of the ESA requires that recovery plans be developed and implemented for the conservation and survival of endangered and threatened species, unless such plans would not promote the conservation of the species. A plan was prepared at the request of the Assistant Administrator for Fisheries to promote the recovery of North Atlantic right whales.

Comments and Responses

NMFS published a notice of availability of, and request for comments on, the draft revised recovery plan for the North Atlantic right whale in the **Federal Register** on August 31, 2004 (69 FR 53040). We received comments from eight individuals and organizations, and approximately 5500 form letters during the 60-day comment period.

NMFS received a number of suggestions regarding editorial and formatting changes. Generally, the suggestions regarding editorial and formatting changes were accepted and the plan has been modified accordingly. NMFS also received approximately 5500 form letters via e-mail encouraging the implementation of a strengthened recovery plan. The agency appreciates these comments and is moving as swiftly as possible to implement this plan.

Most of the other comments requested an update of, or modification to, the introductory sections of the plan on North Atlantic right whale distribution and abundance, and human impacts. Commenters also provided comments on the reclassification criteria, listing/recovery factors and the implementation schedule, and the recovery narrative. These comments are addressed in the following sections of this notice of availability.

Comments on the Reclassification Criteria

Several comments were received on the reclassification criteria. The text on the reclassification criteria from the 2004 draft recovery plan follows:

North Atlantic right whales may be considered for reclassifying to threatened when all of the following have been met:

I. The population structure of right whales (including, but not limited to, such parameters as abundance, growth rate, age structure, gender ratios) is indicative of a biologically significant increasing population;

II. The population has increased for a period of 20 years at an average rate of increase of 2% per year or more;

III. All five listing factors are addressed; and

IV. Given current and projected conditions, the population has no more than a 1-percent chance of quasi-extinction in 100 years.

Criteria for *delisting* North Atlantic right whales are not included in the recovery plan. Decades of population growth are required before the population could attain a level such that delisting could be contemplated. Conditions related to delisting are now too distant and hypothetical to realistically develop specific criteria. Such criteria will be included in a future revision of the recovery plan before the population is at a level when delisting becomes a reasonable decision.

Comment 1: One commenter suggested that the first criterion was confusing and vague and that the population structure should be made comparable to that of a "normal" whale population to consider reclassification. The commenter suggested rewriting this criterion to clarify what the standards mean, and to specify the biological data that would be used to determine if, and when, the criterion is met.

Response: In the final plan, NMFS has revised the first criterion to clarify that this criterion addresses the population ecology and demography of right whales, not their population structure. This criterion is designed to make certain that the population ecology of northern North Atlantic right whales has all of the attributes of a population that is growing; however, NMFS acknowledges that we cannot currently assign specific values to each of the relevant variables. To meet this criterion, the vital rates of northern right whales (e.g., age-specific survival and reproduction, and lifetime reproductive success) will have to be identified, those vital rates will need to be related to the population's growth rate, and the range of those vital rates that would be necessary for the population to grow will have to be determined.

Comment 2: One commenter remarked that the second reclassification criterion sets an unacceptably low standard for

reclassification. A two percent annual rate of increase for a small population such as right whales could indicate a population still under considerable stress. The commenter recommended that NMFS reexamine this criterion and increase the amount of time and/or the minimal growth rate that must be met to satisfy this condition.

Response: In the final plan, NMFS has revised the time period (to 35 years) over which the right whale population must increase at a rate of at least 2 percent per year to allow the population to double before this criterion is met. Because this criterion is designed to work in concert with the other three criteria, all four criteria would have to be met before we could propose to reclassify northern right whales from endangered to threatened. NMFS interprets the criterion "all five listing factors are addressed" to mean that the human and natural phenomena that currently combine to endanger right whales should no longer impair the species' recovery from endangerment. To reclassify the species, the population would have to sustain a positive growth rate and the known threats to the population would no longer be acting on the population. NMFS has revised the criteria to make this relationship clearer.

Comment 3: One commenter suggested, with regard to the fourth reclassification criterion, that research be undertaken to develop population parameters necessary to run related population models and developing such parameters be listed as being top priority in the plan. However, the same commenter also recommended, that studies to develop model parameters be assigned a lower priority ranking in lieu of implementing more effective protection measures given that reclassification would not be considered for at least 20 years.

Response: NMFS agrees that research will need to be undertaken to identify the population variables for right whales necessary to run existing population models for the species or to develop new population models. To meet the first of the four reclassification criteria, research will have to identify the vital rates of northern right whales, relate those vital rates to the population's growth rate, and determine the range of those vital rates that would be necessary for the population to grow. These are the same variables that would be necessary to run most population models. NMFS understands this concern but disagrees that it is necessary to assign a lower priority to studies to develop model parameters than for implementing effective

protection measures for northern right whales because the individuals who are developing the existing population models for northern right whales are different from the individuals who are taking management actions to protect right whales. Thus far, work on population models for right whales has not occurred at the expense of management actions to protect the species. In fact, the population models that have been developed for right whales have helped focus management actions to protect the species. NMFS expects that work on population models will continue to develop concurrent with management action.

Comment 4: Several comments were received on the Listing/Recovery Factors. One commenter recommended modifying the term "regulatory mechanisms" in Listing/Recovery Factor D to read "regulatory mechanisms, non-regulatory programs, and other means". Another commenter requested clarification of the term "biologically insignificant" in Listing/Recovery Factor E and how it will be used. The commenter recommended that PBR be described to explain what "biologically insignificant" is at present.

Response: Section 3(a)(1) of the ESA, as amended, identifies five factors for listing species as threatened or endangered. Section (3)(a)(1)(D) of the ESA identifies the fourth factor as "the inadequacy of existing regulatory mechanisms." The listing/recovery factors cited in the plan use the terminology of the statute and thus cannot be changed. To clarify the meaning of the phrase "result in a level of mortality considered to be biologically insignificant," NMFS has replaced this term with "result in mortality levels that do not limit the population's growth rate." Although the commenter recommended using the term "potential biological removal" (PBR) to clarify the term "biologically insignificant," PBR is a term from the Marine Mammal Protection Act of 1972, as amended. Because this recovery plan is prepared to comply with section 4 of the ESA, we chose not to transfer terminology from another statute.

Comments on the Implementation Schedule

Comment 5: One commenter recommended that the Implementation Schedule include a more comprehensive list of non-governmental organizations, research organizations, universities, and State agencies that contribute to right whale recovery. The commenter suggested that if these organizations cannot be listed in the Implementation Schedule, then they

should be acknowledged in the section's introductory text. Alternatively, the commenter recommended that the title of the column be changed to read "Agencies Involved" if only government entities are listed.

Response: It would be difficult to list all organizations, academic institutions, and other entities involved in right whale-related activities. An attempt to create an exhaustive list may overlook some group. The plan therefore identifies government agencies or government-convened organizations with relevant actions or interests.

Comment 6: One commenter expressed concern that listing an agency as involved in a recovery action commits that agency to provide resources outside the legal authority or environmental compliance obligations of that agency. The commenter also noted that this implies an expectation for those agencies to serve as the primary funding sources or data manager for such actions.

Response: The draft Recovery Plan already contained a disclaimer about agency responsibility under the plan; nonetheless, in response to this comment, the disclaimer in the plan (page iii) has been revised to read: "Recovery plans delineate reasonable actions, which the best available science indicates are required to recover and/or protect, listed species. The National Marine Fisheries Service, sometimes with the assistance of recovery teams, contractors, State agencies, and others, publishes these plans. Recovery plans do not necessarily represent the views or the official positions or approval of any individuals or agencies involved in the plan formulation, other than the National Marine Fisheries Service. They represent the official position of the National Marine Fisheries Service only after the Assistant Administrator for Fisheries, NOAA (AA), has signed them. Recovery plans are guidance and planning documents only; identification of an action to be implemented by any public or private party does not create a legal obligation beyond existing legal requirements. Nothing in this plan should be construed as a commitment or requirement that any Federal agency obligate or pay funds in any one fiscal year in excess of appropriations made by Congress for that fiscal year in contravention of the Anti-Deficiency Act, 31 U.S.C. 1341, or any other law or regulation. Approved recovery plans are subject to modification as dictated by new findings, changes in species status, and the completion of recovery actions."

Comment 7: One commenter recommended that NMFS combine

activities in the Implementation Schedule with similar objectives, where applicable, to save costs for implementing the recovery plan. For example, the commenter noted that objective 1.1.29 - Consider conducting studies of whale behavior relative to various types of "alerting" sounds that may warn sleeping, feeding, or courting whales to the presence of oncoming ships, and assess the desirability of deploying such devices in an environment already heavily polluted by noise - and objective 3.3.4 - Conduct studies to assess the direct and indirect effects of anthropogenic noise on the distribution, behavior, and productivity of right whales - might overlap for some portions of the work required for each objective.

Response: NMFS believes that these objectives do not necessarily overlap since they represent different conditions i.e. objective 1.1.29 refers to introduced detection and deterrent methods that are currently being considered, or will be considered in the future, specifically to minimize ship strikes. Objective 3.3.4, on the other hand, involves studying the effects of existing marine anthropogenic noise, such as from ships or from marine exercises, and their effects on whale behavior. Combining these tasks would dilute the objectives of the respective studies.

Comments on Priorities of Action Items in the Implementation Schedule

NMFS received a number of comments with regard to shifting the priority indication of tasks in the implementation schedule. Priorities in the implementation schedule are assigned as follows:

Priority 1: An action that must be taken to prevent extinction or to prevent the species from declining irreversibly.

Priority 2: An action that must be taken to prevent a significant decline in population numbers or habitat quality, or to prevent other significant negative impacts short of extinction.

Priority 3: All other actions necessary to provide for full recovery of the species.

Comment 8: One commenter suggested changing objective 1.1.5 - Assess the effectiveness and efficiency of the survey programs in attaining the primary goal of reducing ship strikes - from a priority 2 to a priority 1, as without this assessment there is the possibility of repetition and duplicate efforts, which is not the best use of limited resources.

Response: NMFS believes that this action, although an important one, does not meet the criterion of essential to prevent extinction or to prevent the

species from declining irreversibly in the context of a recovery plan. Further, this aspect, among others, will be covered under the Ship Strike Reduction Strategy.

Comment 9: Two commenters suggested changing objective 1.1.13 - Conduct risk assessment analyses of various ship routing or speed options to assess best set of vessel traffic management options by area - to priority 1 as this would place more emphasis on this objective and encourage the shipping industry participation and increase buy-in for the Ship Strike Reduction Strategy. One commenter observed that two previous items were priority 1 and it would seem that without a risk assessment of the various options (this item) the previous items couldn't be accomplished.

Response: NMFS does not believe that this action is essential to recovery of the species in the context of a recovery plan. Further, this aspect, among others, will be covered under the Ship Strike Reduction Strategy.

Comment 10: Two commenters suggested that objective 1.1.14 - Assess the potential economic impact of vessel management options - be a priority 1 action due to the crucial nature of effectively communicating the ship strike reduction strategy to corporate and agency management.

Response: NMFS believes that public and private decisionmakers are capable of understanding the legal and biological basis of the recovery plan, and that the type of economic analyses contemplated, while informative for related planning purposes, are not essential to recovery of the species in the context of a recovery plan. Further, this aspect, among others, will be covered under the Ship Strike Reduction Strategy.

Comment 11: One commenter suggested changing objective 1.1.18 - Establish and/or maintain regionally-based liaison positions to work directly with the shipping industry - from priority 2 to 1, as the Jacksonville-based NMFS Shipping Liaison has been an invaluable asset to the open communications between the shipping industry, mariner community, and NMFS and should continue to be funded.

Response: NMFS believes that, while an important function, this action is not essential to prevent extinction or to prevent the species from declining irreversibly.

Comment 12: One commenter recommended changing objective 1.1.33 - Establish or use existing GIS to: (a) conduct analysis of right whale occurrence and distribution; (b) prepare

predictive models of occurrence; (c) determine right whale and ship traffic overlap; (d) analyze patterns of strandings, whale/vessel interactions, and "near-miss incidents"; and (e) assess ways to minimize ship/whale interactions - from priority 2 to 1 due to the large scale of coverage this action includes and the direct implications on the management decision-making process.

Response: Although Geographic Information System (GIS) analysis is a valuable tool, NMFS does not believe that this objective is a priority 1 action (essential to prevent extinction or to prevent the species from declining irreversibly) in the context of a general recovery plan.

Comment 13: One commenter suggested that objective 1.2.9 - Expand fisheries observer programs - should be a priority 3 rather than a 2. Expanding the observer program, particularly for the trap/pot fisheries, is an expensive program with limited utility.

Response: NMFS concurs with this comment and the necessary changes have been made.

Comment 14: One commenter recommended objective 3.3.10 - Minimize identified adverse effects from oil, gas, and hard mineral exploration and development - be elevated from a priority 3 to 2, and emphasized the importance of identifying the adverse effects on the species prior to conducting studies to minimize the adverse effects.

Response: NMFS agrees with this comment and has changed the plan accordingly.

Comment 15: One commenter recommended changing objective 3.3.12 - Assess and update existing contingency plans for oil and chemical spills in waters in which right whales occur - from priority 3 to 2. In order to have a usable, productive final plan, NMFS should place an increased priority to further stress the importance of an oil and chemical spill contingency plan relating to right whales in the Southeast U.S.

Response: NMFS has incorporated this change into the plan.

Comment 16: One commenter recommended that objective 3.3.15 - Continue and expand education/public awareness programs - be made a priority 2 or 3, rather than a 1, as this type of activity is not necessary to avert extinction.

Response: NMFS concurs with this comment and the necessary changes have been made.

Comment 17: One commenter observed that some lower priority actions appear to receive more funding

than higher priority actions. For example, 1.1.14 - Assess the potential economic impact of vessel management options - (priority 3) appears to be funded at \$85,000 over the first three fiscal years; whereas, 1.1.12 - Assess the utility and feasibility of speed restrictions in right whale habitat - (priority 1) appears to be funded at \$15,000 for the second fiscal year. It was recommended that explanations for these fiscal differences be articulated in an explanatory narrative for the implementation schedule.

Response: NMFS has provided estimates of cost to complete or execute the task based on best available information and given existing knowledge of agency resources. NMFS points out that the plan (page V-1) states "Estimates are based on information available at this time; the amount needed to actually complete the task may change as specific actions are pursued." Priority levels alone do not determine the amount of funding available for a given task. In addition, the plan provides estimates of overall cost, not commitments to funding levels.

Comment 18: One commenter stated that the Executive Summary, fourth paragraph, indicates that development of demographic recovery criteria must be completed quickly; whereas elsewhere the plan notes that downlisting could not be considered for at least 20 years. The commenter agreed with the need to develop downlisting criteria but disagreed that this was top priority that ranked with the same urgency as implementing improved protection measures. The commenter recommended that this be listed as a second or third priority action.

Response: To meet the first of the four reclassification criteria, the demographic criteria that will be used to monitor and measure changes in the status and trend of right whales will have to be identified. Further, these demographic measures are necessary to evaluate the effectiveness of any measures that are implemented to protect right whales. For both of these reasons, identifying and developing these demographic variables must remain a top priority for the right whale's recovery.

Comments on Background Information Sections

Comments on Brief Overview

Comment 19: One comment was received on page IA-1 recommending the deletion of the statement: "although precise estimates of abundance are not available" (first paragraph). While the

exact number of right whales is never known, it is believed that most whales have been photo-identified and this represents a total count that is likely very close to the actual population size.

Response: As the commenter notes, the "exact number" is not known at this time. That is the same as saying a "precise estimate" is unavailable. NMFS has chosen to leave the sentence as it appears in the draft.

Comments on Distribution and Habitat Use

Comment 20: One commenter stated on Page IC-2 that many of the citations for right whale sightings and residency times are outdated (e.g., early 1990s). The commenter mentioned that since the late 1990s, survey effort shows different information on peak sighting times and areas used by whales. The commenter recommended that information on right whale movements (e.g., Kingfisher) be updated in the plan, including recent satellite telemetry data on movement patterns.

Response: The literature discussed is being provided as background information and provides a comprehensive review of the scientific literature for an uninitiated reader. Much of the satellite tagging data are not published or readily available. The paper by B.R. Mate, S.L. Nieuwirth, and S.D. Kraus (Journal of Wildlife Management 1997, Volume 61, Number 4: Page 1393-1405) provides a detailed discussion on satellite-monitored movements of northern right whales.

Comment 21: Two commenters recommended changes under 'Western North Atlantic Population' (Page IC-2). One commenter recommended adding: "Most calving takes place off Georgia and Florida, but limited surveys recently conducted along the mid-Atlantic suggest some mother-calf pairs use the area from Cape Fear, NC to SC as a wintering/calving area as well." Another commenter recommended modifying the last sentence of the same paragraph to: "serious risks, such as collision or entanglement, while in transit between such areas."

Response: These changes have been made to the plan.

Comments on Threats

Comment 22: Four comments were received on sections G.1 - Vessel Interactions, and G.2 - Entrapment and Entanglement in Fishing Gear. One commenter suggested that the statement "ship speed was an important factor in the frequency of occurrence of ship strikes" "should be elaborated upon to state that collision at lower speeds (e.g., below 14 knots) were not as often fatal. Two commenters stated that

information on vessel interactions was outdated and recommended that collision data from 2002 to 2004 be included in the final revised plan. Another commenter recommended the most recent stock assessment be used as the source of data on the number and rate of entanglements in fishing gear.

Response: NMFS has included a conclusion from Laist et al. regarding ship strikes at reduced speeds. NMFS has also updated the collision and entanglement information to include data up to 2004.

Comment 23: One commenter expressed concern regarding implementation of the 500-yard (460 m) approach rule in section G.1. Research was cited showing low compliance with the existing speed guidelines. The commenter supported the promulgation of existing whale watching guidelines as regulations to promote better protection of whales, and compliance with these protective management measures.

Response: NMFS directs the commenter to the response to comment 68 on the 500-yard (460 m) approach rule. NMFS and other partner agencies (including NGOs) have continued to provide outreach and educational materials to both commercial and recreational vessel owners and operators to increase awareness of and compliance with the 500-yard (460 m) approach rule. In January 2000 NMFS issued an Advanced Notice of Proposed Rulemaking (ANPR) for North Atlantic Whale Protection (65 FR 270) to reduce threats from vessel interactions. The ANPR specifically states that, "to minimize the detrimental effects of directed vessel interactions with Northern Right Whales, NMFS issued an interim final rule prohibiting the approach of a right whale within 500 yards (460 m) on Feb. 13, 1997. Although this rule provides certain exceptions, it generally prohibits vessels and aircraft from approaching a right whale within 500 yards (460 m), and is believed to provide adequate protection to this species from whale watch vessels." No changes were made to the plan.

Comment 24: One commenter noted that section G.3 - Habitat Degradation does not include a discussion of the potential impact of additional energy development projects on right whales, and recommended some discussion of these projects.

Response: NMFS has added a discussion with regard to potential energy development under section G.3.

Comment 25: Three comments were received on section G.4 - Noise. One commenter recommended adding a statement that digital tag (DTAG) work

was conducted in deep water environments and therefore caution should be used when extending study results to shallow water environs such as in the Southeast U.S. Two commenters stated that approaching right whales to attach DTAGs and then exposing the animals to sound was irreconcilable with the recovery of the species. One commenter expressed concern over harassment and behavioral impacts as well as potential synergistic impacts to the species when tagging is combined with other threats such as food scarcity, entanglement and ship strikes. Commenters felt that the data obtained is not worth the risk to the species.

Response: Some types of research (even those potentially disturbing to right whales) may be needed to help guide management/recovery efforts. NMFS believes that, should some types of data collection be considered harmful, the ESA section 7 consultation process, research permit application, and peer-review processes will reveal this.

Comment 26: Two commenters recommended edits to section G.6 - Underwater Explosive Activities. One commenter suggested that small take is not the proper standard for military readiness activities. Second, the commenter believed that it was inaccurate to state, "[A]ll Navy operations that introduce loud sounds into the marine environment are subject 'The standard in the law is a prohibition on 'take', not a prohibition on 'loud noise', a subjective and potentially confusing term. It was recommended the sentence reading 'In addition, all Navy operations that introduce loud sounds into the marine environment are subject, under the Marine Mammal Protection Act of 1972 (MMPA), to application for and provision of small take letters of authorization from NMFS', be deleted. Another commenter suggested that the text: 'In addition, the Navy operations that introduce loud sounds into the marine environment are subject, under the MMPA, to application for and provision of the small take letters of authorization from NMFS' was no longer the case, as Public Law 108-136 The National Defense Authorization Act of 2004 provides 2 processes for the Department of Defense (DOD) to receive exemptions for Navy actions if they are necessary for military readiness or national security. The commenter expressed concern over exemptions and recommended that NMFS work closely with DOD to address Navy activities in right whale habitat.

Response: NMFS has modified text in section G.6 accordingly.

Comments on Conservation Measures

Comment 27: One commenter stated that rather than listing the average number of right whales killed annually in the lobster fishery in section H.2.1 - List of Fisheries, NMFS should report the percentage of total deaths that this represents.

Response: This is a matter of presentation only, i.e., the actual data are provided. Therefore, NMFS has chosen to leave the language in the section as is.

Comment 28: Several comments were received on section H.2.2.1 - Atlantic Large Whale Take Reduction Team and Plan (ALWTRT and ALWTRP). One comment noted that section H.2.2.1 currently states that an Environmental Impact Statement (EIS) is in preparation, citing a June 2003 FR document. As of November 2004, the EIS was still not published. The commenter requested that the plan be updated to reflect the current situation. Two commenters stated that the recovery plan should describe recent recommendations of the TRT and ongoing efforts to revise the TRP.

Response: At the time of this writing, an EIS is still in preparation. The TRT provides recommendations to NMFS regularly. For latest developments arising from this process, the reader is referred to the website: <http://www.nero.noaa.gov/whaletrp/index.htm>

Comment 29: One comment was received on section H.2.2.2 - Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) and Plan, and the statement that the drift net fishery was closed "based on the [AOCTRT] Team's recommendations and concerns about right whales." As the Team did not recommend closure of the fishery in its plan, the commenter recommended that this be corrected in final Plan.

Response: NMFS has modified text in section H.2.2.2 accordingly.

Comment 30: One commenter recommended changing the text in section H.3 - Efforts to disentangle right whales, to read, "In the Southeast U.S., responders are available to assist and disentanglement equipment caches have been established at key locations."

Response: NMFS agrees and has modified text in section H.3 accordingly.

Comment 31: One commenter noted that the language in section H.3 indicating that numerous whales have been disentangled but two attempts were unsuccessful gave the impression that disentanglement efforts are far more effective than they actually are. This

section should note that: disentanglement efforts are successful in only a small percentage of cases; it has not been possible to disentangle most entangled right whales; and that long-term entanglements are a source of serious injuries.

Response: NMFS has added text to section H.3 based on these comments.

Comment 32: One commenter stated that information on workshops and meetings held since 1998 should be included in section H.4 - Efforts to Reduce Mortality or Disturbance from Ship Activities. This includes the submission of the Russell Report.

Response: A description of all events, reports, and activities on this issue may be too voluminous for this plan. The reader is referred to the website <http://www.nero.noaa.gov/shipstrike/> for reports on the subject.

Comment 33: Three comments were received on section H.4.2 - Aircraft Surveys in the Southeastern U.S. One commenter stated that mariner advisories recommend using "reduced" speed, or refer mariners to *Coast Pilot*, which recommends using "reduced" speed. The commenter requested that NMFS check the accuracy of the reported advice and modify the text accordingly. Two commenters recommended that section H.4.2, be modified to read: "immediately relayed to area mariners for their use in avoiding whales." Also they requested that NMFS specify Southeast U.S. survey lines as being East-West survey lines spaced at 3-nautical mile intervals.

Response: NMFS agrees and has modified text in section H.4.2 accordingly.

Comment 34: Another comment was received on section H.4.2, stating that this discussion should include information on the sightability of whales in the Southeast and the consequent limits of surveys as a means of reducing risk through real-time communications with vessels.

Response: NMFS has modified section H.4.2 of the plan to incorporate this comment.

Comment 35: Two comments were received on section H.4.3 - Aircraft Surveys in the Northeastern U.S. One commenter recommended that information on surveys in Massachusetts be updated to include results obtained since 1999. Another commenter recommended that this section stress the importance of opportunistic sightings, as reports from whale watch boats have played an important role in documenting entanglements in the Northeast.

Response: NMFS has modified section H.4.3 of the plan to incorporate these comments.

Comment 36: Two commenters stated that section H.4.4 - Updating Navigational Publications, needed to be updated. One commenter suggested that some of the information and charts in the draft plan say, "will be revised", which has already been done. Another commenter stated that the information on Coast Pilot is out of date. The commenter pointed out that in 2004, the NMFS Northeast Regional Office in collaboration with the NEIT has developed major revisions and this should be included in the plan.

Response: NMFS views the updating of nautical charts and publications as an ongoing process and has modified text in section H.4.4 of the plan to reflect these comments and to include recent updates.

Comment 37: Two commenters pointed out the draft plan lacked information on the North Atlantic Right Whale Ship Strike Strategy Advanced Notice of Proposed Rulemaking (ANPR). These commenters also suggested addition of information on the actions by the Canadian government in modifying shipping lanes to reduce collisions of ships with whales.

Response: NMFS has modified the plan to include information on the ANPR in section H.4.8. NMFS has also added section H.4.9 to include information on Canadian actions to modify shipping lanes.

Comments on the Recovery Strategy

Comment 38: Two comments were received on Page II, Recovery Strategy, stating that the discussion fails to underscore the need to modify and improve measures that have been tried to date and which have not successfully reduced vessel or entanglement injuries and deaths. The section should also underscore the urgency of developing measures to reduce ship strikes and entanglements that are more effective than those implemented under the previous recovery plan.

Response: NMFS has added the following text to section II, - "Actions taken in the past have not significantly reduced the rate of human-related deaths and serious injury. Therefore, rigorous and urgent action is needed to reduce these threats." This language is consistent with language in the Executive Summary and in section IA.

Comments on the Recovery Program Narrative

Several comments focused on expanding the Recovery Narrative. These are discussed below.

Comment 39: One commenter suggested that the language of objective 1 - Minimize sources of human-caused death, injury, and disturbance should be revised to include "significant reduction" or "elimination" of anthropogenic threats.

Response: NMFS agrees and has revised objective 1 to read, "Significantly reduce" anthropogenic threats.

Comments on Reducing Ship Collisions with Right Whales

Comment 40: A number of comments were received on objective 1.1 - Reduce ship collisions with right whales. One commenter recommended that the general goals be made more specific to the regions in which right whales are resident or migratory. Another commenter similarly stated that the recovery plan needs to describe specific management actions that NMFS is prepared to pursue, or that are underway currently, for each of the three regions of the eastern seaboard where Northern right whales feed, breed, calve and migrate. A third commenter suggested that the section be revised to include the steps necessary to implement the NOAA Ship Strike Reduction Strategy. For example, it should note the need for developing new speed and routing regulations for waters off the East coast ports, port access route studies, the preparation of supporting documents such as an EIS, and the development of a cooperative agreement with Canada.

Response: NMFS has considered including these specific actions in the plan. However, NMFS believes that while these and other steps may have merit, introducing and attempting to implement specific measures in the context of a recovery plan may actually restrict our ability to respond to these threats and new information. The timeframes in which actions to reduce adverse affects from human activities and response to certain events is often shorter than the 5-year revision schedule expected for this plan. Moreover, specific measures are being identified and implemented through other processes. For example, at the time of this writing, NMFS is developing and expects to implement measures identified in a ship strike reduction strategy. A number of the actions identified by commenters, and a host of others, are expected to be implemented through the strategy.

In addition, NMFS identifies, assesses, develops, and implements fishing operation regulations through the Atlantic Large Whale Take Reduction program a dynamic process.

Through this process, which includes such things as consultations of Federal actions under section 7 of the ESA, its fishing gear advisory groups, various workshops, and others means, NMFS has implemented a suite of restrictions, and is in the process of implementing, or is contemplating, others. For example, at the time of this writing, steps are being taken to issue fishing gear regulations under the Atlantic Large Whale Take Reduction Plan; additional steps are expected in the coming months.

NMFS believes that the wording in the plan is sufficiently rigorous without requiring or pre-judging specific actions (e.g., specific types of changes to fishing operations). The plan currently requires identifying steps to reduce the effects of human activities (i.e., entanglements and ship collisions), monitor the program being used, and if not sufficiently rigorous, implement more stringent measures to reduce or eliminate threats.

Comment 41: One commenter suggested that in addition to the proposed measures in objective 1.1.8 - Use acoustic detection technology (e.g., "pop-up" buoys), surveys, and other technologies as available to monitor right whale occurrence and distribution in waters off the mid-Atlantic States - NMFS should also support and pursue the development and implementation of real-time passive acoustic techniques as a means of detecting right whales. It was recommended that NMFS develop and incorporate such progressive technology to strengthen monitoring and enforcement of ship strike management measures and use acoustic detection technology throughout the range of NARW habitat to assist in protection of right whales.

Response: The use of passive acoustic devices and other technologies is either being used, planned, or contemplated. As noted above, to identify as a task or action the use of specific technologies or measures in the plan will pre-judge and therefore, by committing to a certain avenue, may preclude development or use of some more effective technique. Finally, use of passive acoustic devices and other technologies is the subject of funding and studies already underway, and/or considered via the Ship Strike Reduction Strategy.

Comment 42: One commenter stated that objective 1.1.10 - Collect standardized data during aerial surveys on "close calls" between ships and whales - should specify how data could be collected on "close calls."

Response: NMFS has modified objective 1.1.10 to specify data collection methods for "close calls".

Comment 43: One commenter suggested mentioning the need to conduct a Port Access Routing Study and identifying agencies responsible for doing so under objective 1.1.11 - Assess the utility and feasibility of ship routing changes in right whale habitat.

Response: A Port Access Routing Study is being considered as part of a larger ship strike reduction strategy. NMFS views including it in objective 1.1.11 as being overly specific in the context of a recovery plan.

Comment 44: Two commenters stated that in objective 1.1.11, discussing options for altering shipping in the Southeast makes it incorrectly appear that this is the only area of significant concern. This paragraph also suggests one specific option, which is too limiting, and does not consider other options such as speed restrictions. It was recommended that NMFS spend an equal amount of energy to establish ship strike mitigation measures in the Northeast U.S. (NEUS) as in the Southeast U.S. (SEUS). One commenter recommended omitting the statement about altering course near specific ports in the SE, and instead including a general discussion of the advantages of routing and speed restrictions and/or the ANPR as part of the process toward regulating ships throughout the range of right whales. If this is not possible, the commenter recommended that NMFS discuss risk in each area (Northeast, mid-Atlantic, Southeast) and provide examples of options for each of the areas.

Response: Although the SEUS is mentioned in the paragraph, NMFS indicates that management options should be considered in all areas; and, they are being considered in NMFS' Ship Strike Reduction Strategy as indicated in its Advanced Notice of Proposed Rulemaking (ANPR). As stated in the plan, measures for the SEUS were illustrated because of the high level of traffic and aggregation of whales that occur there and the importance of the area as a calving/nursery area. Examples provided for the SEUS are illustrative of measures that could be undertaken in other areas.

Comment 45: Two comments were received on objective 1.1.14 - Assess the potential economic impact of vessel management options. One commenter stated that the phrase "if economic burdens are small", implies that the shipping industry will not agree to changes if economic burdens are not small, but there is no clarification of the term "small". The commenter recommended removing this statement from the plan. One commenter requested that this section include

mention of the economic analyses that were undertaken prior to the drafting of this section.

Response: The plan has been modified to incorporate these comments.

Comment 46: One commenter suggested that objective 1.1.15 - Work with mariners, the shipping industry, and appropriate State and Federal agencies to develop and implement a regionally-based set of measures to reduce the threat of ship strikes - was obsolete since the industry has been involved in all discussions that have resulted in the development of risk reduction measures. The commenter recommended changing language in this section.

Response: NMFS believes that ongoing industry dialogue is important to develop and implement ship strike reduction protection measures. The language has not been changed in the plan.

Comment 47: One commenter noted that there is currently no requirement for vessel operators to report ship collisions with right whales and the commenter recommended that NMFS include a new task for developing requirements for reporting vessel collisions with large whales since such reports were vital for improving information on conditions causing ship collisions with whales and how to avoid them.

Response: NMFS has added objective 1.1.17 to the plan to address this concern. Please note that this addition changes the numbering of subsequent objectives.

Comment 48: One commenter recommended updating objective 1.1.18 - Establish regionally-based liaison positions to work directly, and maintain a dialog, with the shipping industry, discuss feasibility of various management measures, foster industry cooperation, and conduct related activities - since the establishment and filling of some regional shipping liaison positions has already occurred, for example, in the Southeast.

Response: NMFS believes in the importance of the liaison role and, although these positions have been filled, this activity is ongoing. The title of this objective has been modified to reflect the same.

Comment 49: One commenter recommended updating objective 1.1.22 - Continue to implement mandatory ship reporting systems along the East coast of the U.S. - to include information on the new Automated Information System (AIS) that is being required in 2005 for all ships along the eastern seaboard to assist in assuring

national security. The commenter also recommended that this section include a meaningful discussion of compliance with this system and efforts by the USCG to enforce it, given that the mandatory ship reporting system has been in place since 1999.

Response: A discussion of the Automated Information System (AIS) would be out of context in this section, inasmuch as this objective is in regard to the Mandatory Ship Reporting Systems (MSRS). Compliance with, and efforts to improve compliance, already appears in section 1.1.23.

Comment 50: Five comments were received on objective 1.1.26 - Conduct studies of active acoustic (e.g., SONAR) and passive acoustic devices (e.g., "pop-up buoys"), and other underwater acoustic technologies on southern right whales to determine their feasibility and efficiency in detecting submerged whales. One commenter recommended including results of recent experimental work on pop-up buoys to help explain their benefits and limitations. Another commenter requested that an additional task be added to identify the need for tagging studies or other studies to determine the frequency that whales of different ages and sexes vocalize in different parts of their range. A third commenter suggested that passive acoustic detection technologies could be particularly useful in helping avoid collisions, could trigger and perhaps suspend management measures such as speed or routing in areas where right whales occur seasonally, and thereby would help ensure that economic costs to vessel operators are limited to periods when such protection needs are most important. Two commenters believed that SONAR technologies should not be tested through controlled exposure experiments on southern right whales. They recommended that mitigation technologies using sound should be avoided, and that alternative, promising technologies such as automated passive acoustic detection should be used to mitigate vessel strikes with right whales.

Response: The response to comment 41 discusses passive acoustic devices. With regard to comments on tagging studies and SONAR technologies, NMFS believes the task is sufficiently direct as stated and that determining the study design to assess the utility of a particular technology is outside the scope of this document. The reference to southern right whales has been removed.

Comment 51: Four comments were received on objective 1.1.29 - Consider conducting studies of whale behavior relative to various types of "alerting" sounds that may warn sleeping, feeding,

or courting whales to the presence of oncoming ships, and assess the desirability of deploying such devices in an environment already heavily polluted by noise. One commenter recommended updating the section on the need to test whale response to so-called "alerting" devices. The commenter suggests that this section include this updated information and a caution on the utility of these devices. Three commenters objected to the use of acoustic alarms as a management tool. The commenters stated that these were unnecessary and harmful to the right whale leading to greater risk of ship strike. It was recommended that this action be omitted from the recovery plan. Additionally, the commenters were opposed to testing this technology on southern right whales, and highly discouraged this type of substitution in recovery plans.

Response: NMFS recognizes the biological concerns and drawbacks of using such a device; and the need to explore all means to reduce the likelihood of ship strikes. NMFS' corresponding planning objective is to assess the feasibility and desirability (given the biological concerns) of such devices through controlled studies. Therefore, NMFS has modified the task to indicate the studies should be "considered". As noted in response to comment 55 above, the reference to southern right whales has been removed.

Comment 52: One commenter requested that objective 1.1.35 - Using benign techniques, conduct studies of whale responses to ship noise and to ships of various types and speeds be modified to include the statement "Incorporate these findings into comprehensive hydrodynamic studies to assess the potential risk of collision of various ship types and speeds with whales depending on whale responses."

Response: NMFS believes that a recovery plan is not the appropriate vehicle to identify the specifics of study designs for directed research.

Comments on Reducing Injury and Mortality Caused by Fisheries and Fishing Equipment

Comment 53: One comment was received on objective 1.2.4 - Conduct studies of gear modifications that reduce the likelihood of entanglement, mitigate the effects of entanglements, and enhance the possibility of disentanglement - on the statement that acoustic deterrents be investigated. The commenter believes that acoustic deterrents are not an appropriate avenue for research and should be removed from this section. Further, in an October

2004 workshop of gear modification co-sponsored by NMFS and MMC, acoustic deterrents were not mentioned as a risk reduction strategy.

Response: NMFS has chosen to maintain the text as written inasmuch as the task as the task is about "gear modifications that reduce the likelihood of entanglement" and the amplifying text provides examples of studies that "might include" a number of possibilities.

Comment 54: One commenter recommended that objectives 1.2.8 - Continue, expand, and improve procedures for responding to reports of entangled whales - and 1.2.10 - Continue to review, evaluate, and act upon reports from fishermen and fishery observers of fishery interactions with right whales - mention the important role that whale watch boats play as reporters and responders (standing by) for entangled right whales.

Response: Section 1.2.10 is specific to fisheries and fishing observer programs, and section 1.2.8 is intentionally stated broadly to include all reporters of entanglement without singling out one type of participant in particular.

Comment 55: One commenter stated in objective 1.2.9 - Expand fisheries observer programs - that an expanded observer program (in the lobster fishery) is expensive and of little use in quantifying entanglement rates or educating fishermen in disentanglement due to the low catch per unit effort.

Response: NMFS concurs and has removed the specific reference to lobster fisheries in objective 1.2.9.

Comment 56: Two commenters recommended adding a task to investigate methods to encourage groups to stand by entangled whales until disentanglement teams can arrive.

Response: NMFS concurs and has added objective 1.2.15 to the plan to address these comments. Please note that this addition changes the numbering of subsequent objectives.

Comment 57: One commenter requested that objective 1.2.19 - Determine whether measures to reduce entanglement are effective - include the analysis of gear removed from entangled whales as a means of monitoring efficacy of risk reduction measures for right whales. The commenter also recommended that this gear be available to scientists and fishermen and others who wish to inspect it to learn more about the entanglement.

Response: NMFS has added text in objective 1.2.19 to "analyze gear removed and determine the fishing industry component and technique used." To this point, the analyses are done routinely.

Comments on Education and Outreach Programs

Comment 58: One commenter requested the first subtitle under objective 1.3 i.e. Providing Relevant and Timely Information - be changed to "Provide Relevant and Timely Information". The commenter believed that action items should be developed related to getting real time information out to mariners and fishermen and perhaps others.

Response: NMFS has modified the subtitle under objective 1.3 in response to this comment.

Comment 59: One comment was received recommending that objective 1.3.1 - Continue and expand efforts to inform mariners - and objective 1.3.3 - Raise awareness on regulatory requirements - also include education of regulatory requirements in the action description.

Response: NMFS agrees and has modified objectives 1.3.1 and 1.3.3 accordingly.

Comments on Reducing Human Impact to Habitat

Comment 60: One commenter suggested that energy development be added to the list in section 3.3.1 - Conduct studies to determine the direct and indirect effects of activities and impacts associated with coastal development on the distribution, behavior, and productivity of right whales. The commenter also suggested that NMFS mention the recent workshops held by NMFS in 2004 dealing with the impact of shipping noise on whales.

Response: Section 3.3.1 was modified to include oil and gas exploration and development. Information on these workshops can be found at <http://www.shippingnoiseandmarinemammals.com/>.

Comment 61: One commenter recommended adding an objective to conduct ESA section 7 consultations on activities that involve anthropogenic noise that may have an adverse impact on right whales.

Response: NMFS concurs and has added objective 3.3.3 to provide for section 7 consultations on these activities. Please note that this addition changes the numbering of subsequent objectives.

Comment 62: One commenter recommended that objective 3.3.9 - Conduct studies to assess possible adverse effects of oil, gas, and hard mineral exploration and development and other industrial activities - include "other energy-related development". The commenter requested that NMFS

require formal section 7 consultations under ESA for any energy-related development.

Response: NMFS has included a provision to conduct section 7 consultations for Federally authorized or funded industrial activities under this section.

Comment 63: One commenter suggested that objective 3.3.13 - Conduct studies to assess the short- and long-term effects of whale-watching on right whales - contradicts the 500-yard (460 m) approach rule notably with regard to high-speed vessels, and the entire spirit of the ship strike mitigation strategy. The commenter stated that it is not clear in objectives 3.3.13 through 3.3.15, if the intent is to observe right whale behavior when vessels are engaged in whale watching at distances greater than 500 yards (460 m). These actions appear to apply to the whale watching industry in general (both commercial and recreational) and the commenter objected to any whale watching being allowed on right whales until the recovery criteria for delisting have been met irrefutably.

Response: Vessels engaged legally in whale watching activities (or when traveling to/from whale watch locations) have struck whales, including right whales. In some cases, citizens uninformed about the 500-yard (460 m) no approach rule, approach and potentially disturb right whales. This task is aimed at assessing the impact of whale watching activities, both within and outside the 500-yard (460 m) mandatory limit as well as those on other species, to determine if they are having detrimental impacts on the population.

Comment 64: One comment was received stating that NMFS should address commercial whale-watching vessels and the potential threats they pose to right whales and other species due to the nature of their business. The commenter stated that the current voluntary measures are not effective and that the recovery plan should address threats from commercial whale-watching activities.

Response: NMFS has modified objective 3.3.14 to incorporate this comment.

Comment 65: One comment, received on 3.3.15 - Continue and expand education/public awareness programs to ensure that commercial and recreational vessel operators are aware of applicable regulations and guidelines - stated that right whale watching is prohibited by the 500-yard (460 m) no approach rule and so action items are not needed in the recovery plan to address whale watching.

Response: See response to comment 63 above.

Comment 66: One commenter stated that in objective 3.3.15 it was unclear if NMFS meant that the National Park Service should educate the public visiting coastal parks (in that case National Marine Sanctuaries should be included) or if NMFS means that they might assist in designing public education efforts.

Response: NMFS has clarified the language in objective 3.3.15 by adding, "In some areas, the National Park Service and National Marine Sanctuary Program interpretive staff could provide valuable assistance in this regard."

Comment 67: One commenter recommended including the need for an evaluation of the impacts of the large quantity of right whale research that is being conducted to assure that it is accurate, minimally intrusive, non-duplicative and appropriate. The commenter states that NMFS is planning to evaluate these impacts and that an EIS will look at assessing research that is, has been, or may be proposed. The commenter requests that a discussion of this planned effort by NMFS should be part of the recovery plan.

Response: NMFS noted that at the time of this writing, right whale research is being assessed in an EIS. In addition, NMFS has added objective 3.3.16 on the possible negative impacts of whale research. Please note that this addition changes the numbering of subsequent objectives.

Comment 68: One commenter recommended adding an objective to provide for ESA section 7 consultations on Federal activities that have the potential to affect right whales.

Response: NMFS agrees and has added objective 3.3.17. Please note that this addition changes the numbering of subsequent objectives.

Comments on Monitoring Right Whale Occurrence and Habitat Use

Comment 69: Two comments were received on objective 4.4 - Monitor right whale occurrence and habitat use pattern in known high-use areas - requesting that this section state the importance of regular, periodic surveys in the winter through summer offshore of Massachusetts to the North of the Great South Channel where increased sightings of right whales have correlated with increased effort. Additionally, two commenters stated that surveys are needed in the mid-Atlantic in the fall through late winter, where increased effort due to migratory corridors and habitat use. These objectives should be added to this section.

Response: NMFS concurs and has modified the titles of all survey objectives to read "annual" instead of specifying seasonal surveys. NMFS has also added objective 4.4.6 to conduct annual right whale surveys in waters off the U.S. mid-Atlantic States.

Comment 70: Two commenters suggested additional assessment of Cape Fear, North Carolina to South Carolina as possible calving areas.

Response: NMFS agrees and has added objective 4.4.9 to the plan. Please note that this addition changes the numbering of subsequent objectives.

Other Comments on the Recovery Narrative

Comment 71: Few comments were received regarding the Mandatory Ship Reporting System (MSRS). One commenter stated that the current Plan would not ensure enforcement of the MSRS, which is considered the key measure for reducing vessel impact on whale numbers. Another commenter stated that NMFS should ensure that MSRS compliance is high, and that NMFS should take strong enforcement measures to achieve that high level of compliance. In the Step-Down Outline, the action that the Federal Government should "[m]onitor compliance with the mandatory ship reporting system and take steps to improve compliance as necessary" should be changed so that emphasis is placed on action to enforce compliance, rather than just monitoring compliance.

Response: As noted in response to comment 49, the U.S. Coast Guard (using direct communications with mariners and letters of citation) is ensuring compliance with the MSRS.

Comment 72: One comment was received stating that management and monitoring tasks should address large recreational vessels and non-regulatory programs.

Response: The management and monitoring tasks currently address all vessels 65 feet (19.8 m) or longer.

Comment 73: One comment was received regarding the stated population size of right whales used routinely throughout the plan. As of data incorporated through 2003, the number of presumed living animals is 342. This number includes the high number of calves born from 2001–2003, and only half of those have been added to the catalog. Thus, this population number should increase over the next few years as these juveniles are photo-identified and added to the catalog. The commenter suggested that the plan include a discussion of the catalog total and a statement that a re-analysis of population models has not yet been

done with this new spurt of calving to understand whether the population is static, increasing or decreasing, prior to finalizing the recovery plan.

Response: In preparing the plan, NMFS used population numbers contained in annual Stock Assessment Reports, the International Whaling Commission reports, and scientific literature. NMFS notes that not all calves are "recruited" into the population and that calf and juvenile mortality can be relatively high and, further, that regardless of recent birth rates the population still remains alarmingly low. Nonetheless, in response to this and other comments, portions of the text have been updated regarding population numbers.

Comment 74: One commenter recommended that NMFS expedite updates to all Take Reduction Plans once there has been a take in excess of the incidental take statement in the relevant Biological Opinion accompanying an ESA section 7 consultation.

Response: This comment does not pertain to the recovery plan, per se.

Comment 75: One commenter objected to the reference that right whale entanglement is "nearly inevitable." (Pg. IVB–15) Although the commenter acknowledges that NMFS is trying to be realistic that no system is perfect, the commenter recommends that the wording be changed to "may still occasionally occur" so that the plan conveys the caveat without implying that no meaningful solution is possible.

Response: NMFS has changed this passage by striking the sentence that contained the phrase "nearly inevitable".

Comment 76: Two comments were received on gear replacement programs in fisheries. One commenter recommended that NMFS take a more active role in trade-in programs or gear replacement programs to reduce entanglements. Another commenter suggested that NMFS develop financial incentive programs to encourage the use of whale-safe gear and to strengthen the cooperation between competing interests.

Response: NMFS notes that although these comments do not appear to pertain directly to the recovery plan, both types of programs described are underway. No changes to the Plan were made.

Recovery Plan Implementation Teams

Comment 77: One commenter suggested that several actions in the implementation schedule were assigned inappropriately to the Right Whale Recovery Plan Northeast U.S.

Implementation Team (NEIT), specifically actions numbered: 3.1.2, 3.2.1, 3.3.1, 3.3.5, 4.3, 4.6.1, 4.6.2, 4.6.3, 4.6.4, and 5.6.

Response: Actions 4.6.1, 4.6.2, 4.6.3, and 4.6.4 have been modified and currently do not involve the NEIT. NMFS believes that the other actions are ongoing tasks that will be enhanced by NEIT involvement.

Comment 78: Two comments were received on section H.1.1 - Southeastern U.S. Implementation Team (SEIT). One commenter noted that Florida is currently the Chair of the SEIT, and that this position rotates between Florida and Georgia. Another commenter recommended that the following text be inserted: "Additionally, these two agencies (USCG and GDNR) developed and implemented procedures for broadcasting right whale locations over NAVTEX. In 1999, the USCG extended transmission range of NAVTEX to include the entire Southeast U.S. coastal area by installing a NAVTEX transmission tower near Savannah at the request of the SEIT."

Response: NMFS has updated section H.1.1 based on these comments.

Comment 79: Another commenter requested clarification on whether measures implemented in Canada will be assessed under the proposed Conservation Agreement and if the NEIT will be involved.

Response: This approach is under consideration and it is too early to determine how the proposed conservation agreement will be addressed and what it will contain. No changes were made to the Plan.

Comment 80: Five comments were received on section H.1.2 - Northeastern U.S. Implementation Team (NEIT). Two commenters stated that the mandate and membership of the NEIT have changed since the draft plan was revised. One commenter stated that the NEIT was established to implement recovery tasks for both right whales and humpback whales. The focus of this team has since narrowed to activities related to ship collisions and the responsibility for entanglement related mortality has shifted to a take reduction team. The section should be updated with language on the current status and role of the NEIT. One commenter urged NMFS to be more proactive in utilizing and empowering the NEIT to implement the recovery plan. Two commenters recommended that ship strikes be the priority focus of the NEIT's future work. One commenter recommended that the plan specify that the NEIT play a greater role in survey and data collection, especially when data will be for real-

time and retrospective management purposes.

Response: Text has been added, and the section has been updated, to reflect the change in status and role of the NEIT.

Comment 81: One commenter questioned the effectiveness of the SEIT and NEIT, and recommended that NMFS pursue an independent evaluation of the NEIT and SEIT. The commenter felt that this assessment would be helpful in advancing the team process to accomplish more for right whales.

Response: NMFS agrees that these teams can and should be effective. Objective 5.3 indicates that the effectiveness of the teams will be periodically evaluated, and ways to make them more effective will be identified.

Miscellaneous Comments

Comment 82: One commenter requested clarification of whether the terms “adequacy” and “effectiveness” are equivalent. “Effectiveness” is used in objective 1.1.16 - Assess effectiveness of ship strike measures and adjust, as necessary.

Response: The section mentioned by the commenter use the term “effectiveness”. No reference to “adequacy” was found in the section; therefore no changes were made to the plan.

Comment 83: One commenter expressed concern about the plan’s message on right whale recovery that it gives the impression that what is most needed is monitoring the effectiveness of existing measures and taking further steps as may become necessary and possible. NMFS is currently commencing an in-depth process of developing major new management initiatives for both entanglement and ship collision risks. However, the commenter noted that the draft plan does not mention the need for or the existence of these major initiatives.

Response: NMFS believes that the Plan does an adequate job explaining the lack of recovery of right whales, the severity of threats from human activities and the need for aggressive steps to reduce the threats. With regard to this comment, no changes were made to the Plan.

Comment 84: One commenter recommended that NMFS adopt, urgently implement, and rigorously enforce the revised Recovery Plan.

Response: NMFS appreciates this comment and is moving to do so. No changes were made to the Plan.

Comment 85: One commenter expressed support for the ship strike

strategy, and the imposition and enforcement of speed restrictions in areas where right whales are located.

Response: NMFS appreciates this comment although it does not appear to pertain directly to the Plan. The agency is moving as swiftly as possible to reduce the threat of ship strikes.

Comment 86: Two commenters expressed concern that lack of scientific information or certainty as to the effects of human activities on right whales would become an excuse for delaying regulation of such activities. The commenters recognized that science was essential, but that the lack of science should not delay measures to protect the species and its habitat, given the critical status of this species.

Response: NMFS appreciates these comments and recognizes the need to move decisively and without delay to reduce threats and the agency is attempting to do so. At the same time it is committed to using the best scientific data available in defining management measures.

Comment 87: One comment was received on 3.3.10 - Take steps to minimize identified adverse effects from oil, gas, and hard mineral exploration and development - reinforcing that in the Southeast U.S. this is an extremely vital objective due to the presence of mothers and highly vulnerable calves in the coastal waters during winter months. No changes were recommended.

Response: No changes were made to the Plan.

Comment 88: One commenter expressed concern regarding the statement reading “Navy has consulted with NMFS under section 7 of the ESA on the potential effect of some of its operations on protected species” on page IG-4. The commenter noted that the Plan omits that the Navy has refused to consult with NMFS on its operations out of Norfolk, which result in over 3,000 transits per year and dwarf the commercial operations in that area. The commenter stated that the ESA legally mandates section 7 consultations, and that NMFS should contact the Navy about engaging in consultation immediately.

Response: As noted earlier, NMFS inserted objective 3.3.17, which calls for section 7 consultations on all Federal activities.

Comment 89: One comment was received that strongly agreed with action 1.2.1 - Develop and implement strategies to modify fishing operations and gear to reduce the likelihood of entanglement, mitigate the effect of entanglements and enhance the possibility of disentanglement, and

assess the effectiveness of such strategies. The commenter supported the idea that NMFS should pursue and implement universal gear requirements for high-risk fisheries and expand time/area closures and/or restrictions. It was also recommended that NMFS consider fisheries closures where feasible.

Response: No changes were made to the Plan.

Comment 90: One comment expressed concern regarding section 3.2 - Assess the need for modifying critical habitat boundaries. The commenter was concerned that overlap of critical habitat in the Southeast with the Navy’s Jacksonville Operating Area and its implications on potential restrictions to the Navy’s training or operations in open ocean areas. No recommended changes were presented.

Response: No changes were made to the plan, as this comment did not appear to pertain directly to modifications to the Recovery Plan. NMFS notes however, that critical habitat assessments and determinations are underway at the time of this writing. Determinations will be made based on the needs of the endangered population.

Authority

The authority for this action is section 4(f) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: May 25, 2005.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052505B]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; committee meeting.

SUMMARY: The New England Fishery Management Council’s (Council) Herring Oversight Committee along with the Atlantic States Marine Fisheries Commission (ASMFC) will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, June 20, 2005, at 9:30 a.m.