

RIGHT WHALE NEWS

The Publication of the Southeast United States Right Whale Recovery Plan Implementation Team and the Northeast Large Whale Recovery Plan Implementation Team

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Marine Mammal Commission Criticizes Dynamic Area Management Implementation

Under the provisions of the Marine Mammal Protection Act, the Marine Mammal Commission (MMC) makes an annual report to Congress. In this report, the MMC reviews and makes recommendations on domestic and international actions and policies of all federal agencies with respect to marine mammal protection and conservation. The MMC is an independent agency of the Executive Branch.

The MMC's *Annual Report to Congress 2002* (see Scientific Literature and Reports, p. 9, for availability) devotes more than 17 pages to the North Atlantic right whale. The topics covered include an introduction, mortalities and injuries, entanglement in fishing gear, Section 7 consultations, collisions with ships, the petition to amend critical habitat, the recovery plan and the National Whale Conservation Fund. Three pages are devoted to the North Pacific right whale.

The MMC's report is particularly critical of the National Marine Fisheries Service's (NMFS) implementation of its regulations for dynamic area management, finding it to be "weak and inconsistent" (pages 28-30). The MMC found that "on most occasions when groups of whales were sighted and reported to the Service by reliable sources, the Service delayed decisions on designating temporary management zones or chose not to impose restrictions on fishing gear." The MMC recommended that "for the dynamic area management system to be effective, the Service must find a way to implement a regulation within 48 hours of the time a congregation of whales is first sighted by a reliable observer. Experience with 2002 demonstrated the Service's inability or unwillingness to implement its own regulations expeditiously."

On June 25, 2003, a sighting of eleven right whales east of Cape Cod prompted NMFS to request the voluntary removal of lobster traps and anchored gillnets from the area starting on July 3, eight days after the initial sighting. The members of the Atlantic Large Whale Take Reduction Team, many of whom represent these fishermen and/or have good communication with them, were notified and asked to spread the word of the voluntary measure on July 7, thirteen days after the initial sighting.

Updated Recovery Plan Awaits Agreement On Recovery Criteria

Publication of the long-awaited final *Updated Recovery Plan for the Western North Atlantic Right Whale* continues to be stalled by agency attorneys due to discussions over recovery criteria – the point at which right whales have recovered sufficiently to warrant down-listing from endangered to

threatened. The National Marine Fisheries Service held a workshop in 2001 to develop down-listing criteria. At present, there is discussion over whether the criteria meet the "objective, measurable" standards for criteria required in the Endangered Species Act. Down-listing criteria may not appear to be an important issue for right whales any time soon, for the species is not expected to recover to a point where they should be down-listed during this century. However, the legal issue of developing recovery criteria is currently an agency-wide challenge involving a variety of taxa including both Pacific and Atlantic salmon populations.

NMFS distributed a draft *Updated Recovery Plan* for public comment in July 2001. NMFS received relatively few comments on the substance of the tasks or priorities identified. As a result, the revised draft is not expected to contain large scale changes in implementation strategies relative to the draft that was made available for public comment. Copies of the revised draft may be obtained by contacting Dr. Greg Silber at NMFS: 301-713-2322, ext. 152 or greg.silber@noaa.gov

NMFS Reorganizes Northeast Implementation Team Structure and Functions

After about a year of consultation, discussion and study, the Northeast Regional Office of NMFS has decided to reorganize the Northeast Implementation Team, changing its name, structure and functions. The name is now the Northeast Large Whale Recovery Plan Implementation Team (NEIT), reflecting the intent of NMFS to have the team facilitate the implementation of recovery plans for five species of large whales found in the western North Atlantic: North Atlantic right whales, and humpback, fin, sei and blue whales. The NEIT will continue to place heavy emphasis on the right whale but will also address recovery initiatives for the other species.

The new structure starts with the NEIT, whose members are appointed by the Regional Administrator of NMFS. These individuals can represent a broad spectrum of state and federal government agencies, private non-governmental organizations, research institutions and other interested persons. The number of members is not fixed, allowing for more members or fewer, as needed.

The NEIT members will select a chair, vice chair and secretary to serve as officers for two-year terms. The officers, plus an appointed NMFS liaison and possibly one additional person, will constitute an Executive Committee. The Executive Committee will be charged with oversight of the NEIT's operations, carrying out the work of the team between meetings, and responding to emergencies when a full meeting of the team is not practical.

In addition, the NEIT will have a Technical Committee whose members will provide relevant scientific and technical advice. Members of the Technical Committee do not need to be members of the NEIT. On an annual basis, the Technical Committee will work with the NEIT and NMFS to identify critical needs. As part of this process, the committee will convene Standing Teams as needed.

Currently, there are four Standing Teams. The first three are directly related to right whale recovery: the ship strike team, the fishing gear interaction team and the habitat team. A fourth team will address recovery plan initiatives for humpback, fin, sei and blue whales. Standing Teams may form working groups to address specific issues or topics.

The intent of these and other changes is to increase the value of the implementation team. NMFS sees the changes as being, first, a venue for bringing diverse knowledge to the table and second, a vehicle for information exchange, especially between NMFS and the agencies and organizations represented on the

team and its committees. A productive discussion at the meeting concluded that the roles of the NEIT included serving as a watchdog, assisting in carrying out the Recovery Plan, taking actions supported by a modest budget allocated to the team and making recommendations to all relevant agencies. The meeting discussions also concluded that the NEIT, while a creation of NMFS, is and must be independent of the agency, following the model of the Scientific Review Groups. The NEIT is charged with providing comments both to NMFS and to other agencies or organizations related to recovery efforts for North Atlantic large whales.

NMFS Continues to Work on Strategies for Reducing Ship Strikes

The National Marine Fisheries Service is currently developing strategies to reduce ship strikes of right whales. The strategies are based on those in the Russell Report (see *Right Whale News* 10(2):2) but revised and expanded. It may take years to reach consensus on and to implement some of the controversial strategies. Work on non-controversial measures such as education and outreach components is beginning now. The Southeast Implementation Team and NMFS are already initiating educational programs to reduce ship strikes, such as the proposed Shipboard Notebook on Whale Protection (see *Right Whale News* 10(2):11).

NEIT Considers Mandatory Reporting Of Ships Striking Whales

Most fishermen know that entangling a right whale is a serious matter and that they are required to report the incident to NMFS. Failure to report an entanglement can result in significant penalties. On the other hand, ship operators who strike a whale or observe a struck whale are not required to report the occurrence.

At its June 26 meeting, the NEIT considered developing a recommendation to NMFS to require reporting ship strikes of whales, with a disincentive for not doing so. Failing to report an observed strike would be a violation, and penalties could result. A model for this kind of approach is found in the law requiring the reporting of observed oil spills, regardless of fault. Also discussed, following a "stick and carrot" approach, is the possible incorporation of some "Good Samaritan" provisions and the difficulty of enforcement. The NEIT may use its new organizational structure (for instance, a working group of the ship strike standing team) to examine the strengths and weaknesses of these concepts, and to develop recommendations, first to the NEIT and then to NMFS.

Massachusetts Air National Guard Donates Whale Rescue Boat

The Massachusetts Air National Guard has donated a 36-foot rigid-hull inflatable boat to the Center for Coastal Studies. The center will make the craft its primary whale rescue vessel. The Center for Coastal Studies is a part of the Atlantic Large Whale Disentanglement Network. Its staff responded to 20 verified entanglements in 2002, including eight entangled right whales.

The vessel was originally obtained for the U.S. Coast Guard in 1997 at a cost of \$175,000. The boat did not meet expectations and was transferred to the Air National Guard in 2001. It did not meet their expectations either, so the Guard donated it to the Center for Coastal Studies in April. Peter Borrelli, executive director of the center, said, "This is just a wonderfully generous act... [The boat] is fully equipped and ready to go."

NMFS Requests Comments on ZMRG Definition

On July 9, 2003, NMFS published an advance notice of proposed rulemaking in the Federal Register, and requested comments on defining the Zero Mortality Rate Goal (ZMRG). The agency is considering options for defining the ZMRG, which is the requirement for commercial fisheries to reduce incidental mortality and serious injury of marine mammals to insignificant levels, approaching a zero mortality and serious injury rate, as identified in the Marine Mammal Protection Act.

To evaluate progress toward this goal, NMFS is promulgating regulations to identify what levels of incidental mortality and serious injury would satisfy the goal. Options for such mortality and serious injury levels are described. The agency is soliciting public comments on these options and on other aspects of the ZMRG. Comments must be received by September 8, 2003. Comments should be addressed to: Chief, Marine Mammal Conservation Division, Attn: ZMRG, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be faxed to 301-713-0376. For further information, contact Thomas Eagle, Office of Protected Resources, 301-713-2322, ext. 105 or Tom.Eagle@noaa.gov.

2003 List of Fisheries Is Available

The final List of Fisheries for 2003 is now available on the Atlantic Large Whale Take Reduction Plan (ALWTRP) website under "What's New." Revisions in fishery classifications pertinent to the ALWTRP include:

1. The "Mid-Atlantic Coastal Gillnet Fishery" has been moved from Category II to Category I; and
2. The "Mid-Atlantic Mixed Species Trap/Pot Fishery" and the "U.S. Mid-Atlantic and Southeast U.S. Atlantic Black Sea bass Trap/Pot Fisheries," formerly in Category III, are combined with the "Northeast Trap/Pot Fisheries," currently Category II, and any other trap/pot fishery gear in the Atlantic that is not included in other trap/pot fisheries specifically identified in the List, into the "Atlantic Mixed Species Trap/Pot Fisheries." This newly-defined fishery is classified as Category II. These changes bring the former Category III fisheries into NMFS's Take Reduction Plan process.

NMFS Holds Scoping Meetings on Atlantic Large Whale Take Reduction Plan

The National Marine Fisheries Service has announced its intent to prepare an Environmental Impact Statement (EIS) for the Atlantic Large Whale Take Reduction Plan. The preparation of an EIS that evaluates the impacts of major federal actions on the environment involves a multi-step process. The first of these is the scoping process, which seeks to identify the issues that need to be addressed in the EIS. In preparation for the scoping process, the NMFS has prepared a document, "Issues and Options for Modifications to the Atlantic Large Whale Take Reduction Plan." The document provides background information and a number of issues and options that were discussed at the ALWTRT meeting in April and during subsequent sub-group meetings. (A summary of the April 28-30 meeting of the ALWTRT should be available soon on the team's web site: <http://www.nero.nmfs.gov/whaletrp/>). NMFS will consider these options as well as others as they develop management alternatives. NMFS held six scoping meetings during July in Maine, Massachusetts, New Jersey, North Carolina and Florida. The comment period on the scope of issues to be addressed ended July 30. Additional opportunities for public comment will be provided at several future steps in the EIS process.

Stellwagen Bank Working Group Will Address Whales

The Stellwagen Bank National Marine Sanctuary is currently conducting a management plan review process. The next step in this process is the creation of a number of working groups that will look in depth at the issues that have been identified through the public scoping process and identified as priorities for Sanctuary management. The working groups will start in the fall. Their work plan is available on the Sanctuary's web site: <http://www.sbnms.nos.noaa.gov/> For more information about the working groups or any part of the management plan review process, contact Kate Van Dine at 781-545-8026, ext. 203 or Kate.VanDine@noaa.gov

Grays Reef National Marine Sanctuary Will Release Draft Management Plan in September

The Grays Reef National Marine Sanctuary (GRNMS) is also revising its management plan and expects to release a draft in September. A public comment period following the release will provide an opportunity to recommend appropriate actions in support of right whale recovery.

The GRNMS has a long history of supporting right whale education and outreach, starting with their publication of teaching modules and production of a video, *From Whaling to Watching* and their support of *Right Whale News*. The Sanctuary has excellent outreach relationships with regional science museums and nature centers, and could provide links to small boat operators and others not presently being reached.

IWC Establishes Conservation Committee But Declines to Establish South Pacific Sanctuary

On June 16, after a contentious debate and a 25-20 vote, the International Whaling Commission (IWC) passed "the Berlin Initiative," a resolution to strengthen the IWC's conservation agenda. The vote set up a Conservation Committee that is to bolster efforts to protect whales. The resolution does not specify what issues the committee will address, but the recovery of North Atlantic right whales can be expected to be among them. Issues other than hunting also will likely be addressed, including marine pollution, collisions with ships, fishing gear by-catch, and climate change. The committee is expected to begin work next year.

By a vote of 24-17, the IWC declined a proposal by Australia and New Zealand to establish two whale sanctuaries in the South Pacific. Under IWC rules, the sanctuaries would not have provided protection to whales from nations such as Japan and Norway that want to hunt them. On the bright side, a growing number of nations in the South Pacific including recently the Cook Islands, French Polynesia and Fiji are creating their own sanctuaries where no one can hunt whales.

People

At the NEIT meeting on June 26, the National Marine Fisheries Service honored **Dr. Thomas French** of the Massachusetts Division of Fish and Wildlife for his seven years of service as chair of the Northeast Implementation Team. The Special Appreciation Award, consisting of a plaque with a drawing of a right whale and a laudatory inscription, was presented to Dr. French by Assistant Regional Administrator **Mary Colligan**. The inscription reads: "This plaque is presented in grateful appreciation to your efforts toward the recovery of critically endangered western North Atlantic right whales. Your dedication and commitment are evident by your status as one of a select group of long-standing Northeast Implementation Team members. Your tenure on the Northeast Implementation Team has been distinguished by your substantial contributions such as the strong partnerships you forged between the industry and the National Marine Fisheries Service. On behalf of the National Marine Fisheries Service, I thank you for your dedicated years of service as Chair of the Northeast Implementation Team – May 1996 to February 2003." The plaque was signed by Regional Administrator **Patricia A. Kurkul**. In receiving the award, Dr. French paid tribute to **Joe Pelczarski**, **Sal Testaverde** and **Tom Fetherston** for their support and help during his term of office.

Sarah Mitchell, co-author of the Gray's Reef National Marine Sanctuary's grades 6-8 teaching module, *The Northern Right Whale: From Whaling to Watching* and its companion video of the same name, was recently promoted to NOAA Education Coordinator. She will be working out of the Office of Education and Sustainable Development in the U.S. Department of Commerce building in Washington, DC. She also married **Dana Ross** on August 2, becoming Sarah Ross. Congratulations may be sent to Sarah.Mitchell@noaa.gov

Right Whales Sighted Off Iceland

In June, the Husavik Whale Center reported that observers on a Sea Tours whale-watching vessel operating out of the Snaefellsnes Peninsula sighted right whales about 52 miles off the west coast of Iceland. The sighting occurred as the observers were looking for blue whales – which were also

sighted during the trip. Videotapes were taken of the whales and are currently being examined by Marilyn Marx for possible matches with the New England Aquarium's catalog.

Right whales are rarely seen off Iceland, and these sightings are the first from a commercial whale watching trip. Two other right whales have been reported off Iceland in the last 15 years. They were sighted about 70 and 90 miles southwest of the Reykjanes Peninsula during surveys conducted by the Marine Research Institute of Iceland (Reykjavik). Phil Clapham of the Northeast Fisheries Science Center notes that these whales were identified as #1718 and #2260 in the New England Aquarium catalog. The former was seen off Iceland in 1987 and in only one other place – Roseway Basin off southeast Nova Scotia – in 1989. The latter was seen off Iceland in 1992; it, too, was only seen in one other place – the Great South Channel off Massachusetts in 1998. The last right whale to be killed off Iceland was taken by Norwegian whalers in 1902.

Scott Kraus and a team from the New England Aquarium also sighted one right whale on July 14 at 60° 12.7 N, 34° 49.0 W. The team had departed in early July for a two-week cruise off Greenland and Iceland in search of right whales. The area appears to have been favored by right whales during the era when they were the "right whale to kill." It is a different kind of environment for North Atlantic right whales than the coastal waters of the U.S. and Canada, with waters over a mile deep and little in the way of pollution, ship traffic and fishing gear. Support for the trip is being provided by the Canadian government, the Woods Hole Oceanographic Institution, and NMFS.

Iceland is regarded as the best place in Europe to go whale watching and one of the best places in the world to watch blue whales. Over 60,000 eco-tourists are attracted to the whales each year. Eco-tourism may be affected, however, by Iceland's recent decision to ignore the global whaling moratorium and hunt 250 whales this year.

New Right Whale Research Permits Still On Hold

The NMFS program that permits research on right whales is completing environmental analyses of the effects of research. The analyses were suggested by the Northeast Fisheries Science Center and others and are being prepared to comply with the requirements of the National Environmental Policy Act (NEPA), Section 7 of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). New permits and permit amendments that comply with NEPA, ESA and MMPA will be issued as soon as the analyses are complete. Work under existing permits such as those authorizing disentanglement efforts is continuing.

The situation is exacerbated by a recent court case challenging NMFS's issuance of a permit to conduct acoustic research on whales. The judge rejected the permit because NMFS had failed to adequately comply with NEPA. Following the completion of an Environmental Assessment and a Biological Opinion, a new permit was eventually issued. NMFS is now preparing thorough NEPA analyses prior to the issuance of permits. Due to limited human and financial resources, permit applicants may experience delays, especially if their research is to be conducted on endangered species, or involves uncertain or controversial impacts or results in cumulative adverse impacts. Researchers are encouraged to submit their applications for permits well in advance of their proposed research season.

"Protect Florida Whales" License Plate Will Support Whale Research

The Harbor Branch Oceanographic Institution near Fort Pierce, Florida, has a new funding source: a "Protect Florida Whales" license plate. Proceeds from the sale of the license plate will be used to support Harbor Branch and its efforts to study and protect more than a dozen species of whales found in Florida, including the North Atlantic right whale. Dr. Stephen McCulloch, director of Harbor Branch's Dolphin and Whale Research and Conservation Program, says that they will be looking to support educational and bona-fide scientific research projects that will provide tangible results. They may be able to provide matching money or challenge grants as well. Plans also include the construction of the world's first marine mammal teaching hospital and rehabilitation center. For additional information, see: <http://www.ProtectFloridaWhales.org>

The "Protect Florida Whales" license plate joins several other states' tags that raise funds for right whales. The first was the highly successful Massachusetts tag depicting a right whale and a roseate tern and benefiting the Massachusetts Environmental Trust and its right whale initiatives & including support for the publication of *Right Whale News* (www.MassEnvironmentalTrust.org).

North Atlantic Right Whale Consortium Issues Call for Papers

The Annual Meeting of the North Atlantic Right Whale Consortium will be held November 4 and 5 at the New Bedford Whaling Museum in New Bedford, Massachusetts. Advance registration is required. For more information or to be put on the Consortium e-mail list for meeting updates contact Marilyn Marx at mmarx@neaq.org. To give a presentation at the meeting, submit idea(s) to Marilyn by September 1, 2003.

Consortium Plans to Create Electronic Archive Of Right Whale Studies

The North Atlantic Right Whale Consortium plans to upgrade its web site (www.rightwhaleweb.org) by including an archive of papers and reports that have been written using Consortium data, and papers that don't use Consortium data but pertain to right whales and would be of interest to Consortium members. This archive should help keep all interested parties apprised of ongoing research. Researchers with relevant materials should contact Amy Knowlton, chair, at aknowlton@neaq.org or telephone 617-973-0210.

Scientific Literature and Reports

Johnson, M.A., and P.L. Tyack. 2003. A digital acoustic recording tag for measuring the response of

wild marine mammals to sound. *Journal of Oceanic Engineering*. In press.

Marine Mammal Commission. 2003. Annual Report to Congress 2002. MMC, Bethesda, MD pp. 264. Copies may be obtained from the MMC by calling 301-504-0087.

Parks, S.E. 2003. Response of North Atlantic right whales (*Eubalaena glacialis*) to playback of calls recorded from surface active groups in both the North and South Atlantic. *Marine Mammal Science* 19 (3): 563-580.

Calendar of Events

September 1: Deadline for submitting presentation idea(s) for the North Atlantic Right Whale Consortium meeting. Submit to Marilyn Marx at: mmarx@neaq.org

September 1: Deadline for submitting fishing gear mini-grant proposals to the National Fish and Wildlife Foundation. See *Right Whale News* 10(2):6 for details.

September 8: Deadline for comments on the proposed rule defining the Zero Mortality Rate Goal for incidental catch of marine mammals. See article on page 4 for details.

September (date and location to be determined): Next meeting of the Canadian Right Whale Recovery Implementation Team. For further information, contact team co-chairs Jerry Conway (902-426-6947 or Conwayj@mar.dfo-mpo.gc.ca) or Moe Brown (508-487-3622 or Mbrown@coastalstudies.org).

October (date and location to be determined): Meeting of the Southeast U.S. Right Whale Recovery Plan Implementation Team. For further information, contact SE I-Team chair Jamison Smith at 904-573-4910 (Jamison.Smith@fwc.state.fl.us)

October 21-23: Marine Mammal Commission meeting, Newport, RI. The meeting will include a review of right whale recovery efforts (see lead article). To confirm the location and for further information, contact the MMC at 301-504-0087.

November 4-5: Annual North Atlantic Right Whale Consortium meeting, New Bedford Whaling Museum, New Bedford, Massachusetts. For further information, contact the Consortium secretary, Marilyn Marx at mmarx@neaq.org or 617-973-6584.

November 6: Meeting of the new Technical Committee of the Northeast Large Whale Recovery Plan Implementation Team (NEIT), New Bedford, MA. For further information, contact the NEIT chair, Tom Fetherston, at 401-832-5857 or fetherstontn@npt.NUWC.Navy.mil See article on page 2 describing the new NEIT structure.

November 12: Meeting of the Northeast Large Whale Recovery Plan Implementation Team (NEIT). Location to be determined. For further information, contact the NEIT chair, Tom Fetherston, at 401-832-5857 or fetherstontn@npt.NUWC.Navy.mil

December 14-19: 15th Biennial Conference on the Biology of Marine Mammals, Greensboro, North Carolina. Sponsored by the Society for Marine Mammalogy. For more information, visit the conference web site (<http://ssm2003biennialmarinemammalogy.org/frameset.html>) or the Society's web site (<http://www.marinemammalogy.org/>)

Right Whale News

Right Whale News is a publication of the Southeast U.S. Right Whale Recovery Plan Implementation Team and the Northeast Large Whale Recovery Plan Implementation Team. The editor is Hans Neuhauser. The editorial board consists of Bill Brooks, Moe Brown, Phil Clapham, Jerry Conway, Jim Hain, Scott Kraus, Mike Payne, Sigrid Sanders and Jerry Wallmeyer.

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The **current issue** of *Right Whale News* is available on line at a web site maintained by the Georgia Environmental Policy Institute: www.GEPIInstitute.com An **index** of the first eight years of *Right Whale News* (1994-2001) is available along with current and **back issues** on the Internet, thanks to Marcy Lee of the Gray's Reef National Marine Sanctuary. The web site address is:

<http://www.graysreef.nos.noaa.gov/rightwhalenews.html>

To subscribe to *Right Whale News* or to submit news, articles or commentary for publication, contact the editor, Hans Neuhauser, at the Georgia Environmental Policy Institute, 380 Meigs Street, Athens, GA 30601, USA. Telephone 706-546-7507. Fax 706-613-7775. E-mail: gepi@ix.netcom.com

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