# RIGHT WHALE NEWS

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#### Why the Long Delay?

For more than a year, the U.S. Office of Management and Budget (OMB) has refused to allow the National Marine Fisheries Service to issue a rule that would significantly help to protect right whales from being killed by ships. On April 30, Congressman Henry Waxman (D-CA), Chair of the House Committee on Oversight and Government Reform, released documents that help to explain the delay in issuing this important rule, along with a letter to the White House asking for "an explanation for the long delay in the OMB review of the final rule" and "to release the final rule protecting the right whale without further delay." The documents were provided to Cong. Waxman by the Union of Concerned Scientists.

The Final Rule in question would require ships to reduce speeds to less than ten knots near right whale feeding and calving grounds. In an April 30 letter to Susan Dudley, Administrator of the White House Office of Information and Regulatory Affairs in the OMB, Cong. Waxman wrote: "The North Atlantic right whale is one of the most critically endangered species on Earth, with only about 300 individual whales alive today. Yet for over a year, the Office of Information and Regulatory Affairs has blocked the National Marine Fisheries Service from issuing a rule to protect these whales from being killed by ships. According to documents obtained by the Committee, the rule's delay appears to be due to baseless objections raised by White House officials, including officials in the Office of the Vice President."

The Final Rule was submitted to the Office of Information and Regulatory Affairs on February 20, 2007. Cong. Waxman noted that under Executive Order 12866, OMB had 90 days to review the Final Rule with a possible extension of no more than 30 days. "Yet today, more than a year later," he wrote, "OMB has not completed its review and this rule has not been promulgated." Since the publication of the Advanced Notice of Proposed Rulemaking, at least seven, and possibly eight right whales have been killed by vessel strikes, and at least seven more have been injured.

One of the released documents shows that the White House Council of Economic Advisors questioned "the reliability of analysis in the published literature on which NOAA is basing its position." After the CEA reconstructed the database of collisions with right whales and conducted their own sensitivity analysis, White House officials informed NOAA that they had concluded that "the relationship between [vessel] speed and [whale] injury...may not be as strong of a relationship as is suggested in published papers." NOAA scientists rejected the analysis, stating that it was biased and "unlike any formal sensitivity analysis NMFS biometricians are familiar with."

Another released document shows that "the officials working for the Vice President also raised spurious objections to the science...[contending] that we have no evidence (i.e., hard data) that lowering the speeds of 'large ships' will actually make a difference." Cong. Waxman noted that "NOAA rejected these objections, writing that both a statistical analysis of ship strike records and the peer-reviewed literature justified the final rule."

Cong. Waxman continued, "While I appreciate the value of vigorous scientific debate, I question why White House economic advisors are apparently conducting their own research on right whales and why the Vice President's staff is challenging the conclusions of the government's scientific experts. The appearance is that the White House rejects the conclusions of its own scientists and peer-reviewed scientific studies because it does not like the policy implications of the data. This is not how the review process is supposed to work."

The Union of Concerned Scientists (<u>www.ucsusa.org</u>), which provided the documents to Cong. Waxman, is a non-profit organization whose primary concerns are scientific integrity and political interference with government scientists.

Cong. Waxman's letter and copies of the documents may be read in their entirety at www.oversight.house.gov. Scroll down to April 30, 2008.

## Senate Committee Passes Right Whale Speed Reduction Bill

The Senate Commerce, Science, and Transportation Committee has passed legislation establishing speed limits on ships to reduce the number of deadly collisions between North Atlantic right whales and vessels at sea. Introduced by Senator John Kerry (D-MA) and Senator Olympia Snowe (R-ME), the Ship Strike Reduction Act of 2008 would order the Secretary of Commerce to finalize federal regulations enforcing speed limits on ships, regulations that were first proposed in February 2007 and already delayed for over a year.

Jeffrey Flocken with the International Fund for Animal Welfare applauded the Committee's action, saying: "Speed restrictions are the most effective, viable option for minimizing injuries and mortalities of the right whale from vessel collisions, and the government should not continue to delay implementing measures to save them. While we still have a long way to go before the right whale is fully protected, today's action by the Commerce Committee is an important step in creating solid safeguards for right whales."

## **FY08 Right Whale Spending Plan**

As has been the practice in recent years, the May issue of *Right Whale News* reports the right whale spending plan for the current fiscal year. The report is based on the

Congressional appropriation for Fiscal Year 2008 and is provided with the assistance of Greg Silber and Phil Williams, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, Maryland. All dollar amounts are expressed in thousands.

	NEC	NER	SEC	SER	F/PR	NOAA GC	Total
Total	2,556	2,303	660	1,735	487	182	7,923
							1
Right whale necropsy	0	0	0	0	0		0 1
Disentanglement	0	0 2	0	0	0		0
Right whale gear research	0	0	0	0	0		0
Aerial surveys							
(non-state cooperative funded)	733 <sup>3</sup>	0	0	285	0		1,018
NMFS salaries							
(Full time equivalents and contract)	878	1182	250	337	265		2,912
Take Reduction Team support	0	125	0	0	0		125
State cooperative funding (including	0						
funds for aerial surveys, recovery							
implementation, and enforcement)		596	0	1061	0		1,657
Ship strike reduction	0	0	0	0	202		202
Health assessment	0	0	0	0	0		0
Stranding response	0	20	0	0	0		20
Habitat research	$(80)^4$	0	0	0	0		(80)
Whale detection technologies	0	0	400	0	0		400
Sightings database/Photo-ID catalog	389	0	0	0	0		389
Travel and Misc. Administrative costs	556	380	10	52	20		1,018

#### Table Notes:

- <sup>1</sup> Funds for necropsies have been made available through the Prescott Fund.
- <sup>2</sup> NMFS received \$94 K for the disentanglement program through a congressional earmark.
- <sup>3</sup> Aircraft fees and contract labor for surveys only.

Key: NEC=Northeast Fisheries Science Center; NER=Northeast Regional Office; SEC=Southeast Fisheries Science Center; SER=Southeast Regional Office, F/PR=Protected Species Headquarters in Silver Spring and NOAA GC = NOAA General Counsel.

This summary indicates that total funding for right whales has increased slightly this year (\$90,000 above the FY07 total; see *Right Whale News* 14 (2):13, May 2007, for comparable table for FY07). Of the \$7.9 M received, 74% is retained in-house by NMFS. When state cooperative funding is considered, 95% of the total funds available are directed to federal and state governments, and only 5% of the total funds go to nongovernment investigators and institutions (maintain the right whale catalog and database, respond to strandings). NMFS salaries have decreased slightly from FY07, representing 36.8% of the total budget, down from 39% in FY07. Travel and administrative costs have more than doubled to 12.9% of total budget, up from 6.2% in FY07.

<sup>&</sup>lt;sup>4</sup> Funding from other sources, and not paid for from NOAA right whale funds.

## **Report from the Calving Ground**

Based on reports provided at the Southeast Implementation Team meeting on May 6, during the 2007-2008 calving season, surveys were conducted along the southeast coast from Virginia to Florida. Conducting the surveys were the University of North Carolina-Wilmington, the Wildlife Trust, the Georgia Department of Natural Resources, the New England Aquarium, the Florida Fish and Wildlife Institute, and the Volunteer Sighting Network of the Marineland Right Whale Project/Marine Resources Council. Preliminary data from these surveys indicate that 19 calves were born in southeastern waters this season. At least three of the calves and possibly four died. Necropsies of two were inconclusive but suggested that both died as a result of difficult births. Fifteen of the 19 calves were biopsy sampled. Six of the 19 mothers gave birth to calves for the first time. The youngest of these first-time mothers was five years old; the rest were six to nine years old. One of the cow/calf pairs (mother #1632) was only seen off South Carolina in April. Another cow/calf pair was seen off Savannah on May 4, well past the "normal" calving season. At the more southerly end of the southeast U.S. habitat, the calving season off mid-coast Florida (St. Augustine to Jensen Beach) started December 8 and ended by February 12; in contrast, the 2005 season was later, from January 16 to March 24. Sea surface temperatures may have played a role. As Jim Hain noted in his report, "every day, every season and every whale is different."

Vessel-whale interactions in the southeast were markedly reduced, with 17 incidents reported this season, compared with 32 incidents in 2007 and 20 in 2006. Most of this year's incidents were off the Jacksonville-to-St. Augustine coast. There were 25 close approaches (i.e., within 500-yards of the whale). Of these, 16 (64%) involved recreational vessels, four (16%) involved commercial fishing vessels, three (12%) involved lowflying helicopters or airplanes, one involved a dredge and one, a tug and barge. Communications with military and Coast Guard vessels and with large merchant vessels were successful. (They understood the need to change course and did so). Only 30% of the recreational fishermen understood the 500-yard rule.

The voluntary use of designated shipping lanes for Jacksonville, Fernandina and Brunswick when whales are present (November-April) is "strongly recommended" by the U.S. Coast Guard and NMFS. A comparison of use of the recommended shipping lanes into and out of the Port of Jacksonville during the last two weeks of January 2007 and the last two weeks of January 2008 show that most large vessel operators are getting the message and following it. In 2007, 63.7% of the vessels were within the recommended corridors. In 2008, 77.9% were within the corridors.

A Passive Acoustics Monitoring group has been formed as part of the Southeast U.S. Right Whale Recovery Plan Implementation Team (SEIT) and its members named by the National Marine Fisheries Service's Southeast Regional Office. The "Framework Committee" for the SEIT, which should have recommended membership on the PAM group, has not been formed yet (see *Right Whale News* 14(4):7 for background).

## Stellwagen Bank Draft Management Plan Released

The National Oceanic and Atmospheric Administration has released the Draft Management Plan for the Stellwagen Bank National Marine Sanctuary. The document can be accessed at <a href="http://stellwagen.noaa.gov">http://stellwagen.noaa.gov</a>. If you wish to comment on the plan, please follow the instructions on the website and submit your comments by close of business on August 4, 2008 (postmarked by August 4, if mailing). Additionally on this website, you will find a link to a special edition of the *Banknotes* newsletter, which serves as a 32-page summary of the Draft Management Plan.

## Ocean Noise Will Be Monitored at Stellwagen Bank

An array of buoys equipped with underwater microphones and other sensors will be deployed in the Stellwagen Bank National Marine Sanctuary off the coast of Massachusetts for the next 30 months, recording sounds from whales, fish, ships and other sources around the clock. NOAA marine mammal scientists will analyze the biological sounds to help develop a global monitoring network for ocean noise, an important step in effectively managing marine sanctuary resources and protecting endangered species like the North Atlantic right whale.

"The ocean is a noisy place," said Sofie Van Parijs, marine mammal acoustician at NOAA's Northeast Fisheries Science Center (NEFSC) and a project scientist. "It's full of natural sounds and those from human activities, and there is substantial evidence that the level of man-made noise is rising. Marine mammals and many fishes are highly dependent on sound for communication, navigation, foraging and predator avoidance. We need to understand how these animals, especially endangered and protected species, are impacted by sounds from many sources to be able to better manage and protect these living resources."

An ocean-observing system consisting of ten autonomous recording units will be deployed for periods of three months, each in different parts of the Sanctuary at different times of the year, to monitor low frequency sounds. The passive-acoustic buoys, moored to the ocean floor and fully submerged, continually record ocean sounds around the clock before they pop to the surface on command so the data can be retrieved and batteries refreshed.

The three-year project began in late December with funding from the National Oceanographic Partnership Program and a team of scientists and engineers from NOAA Fisheries, NOAA Sanctuaries, the Bioacoustic Research Program at Cornell University and Marine Acoustics, Inc. Van Parijs and NEFSC colleague Denise Risch, also a marine mammal bioacoustician, will analyze the biological sounds collected during the study, while Sanctuary scientists Leila Hatch, Michael Thompson and Dave Wiley will focus on the anthropogenic or human-produced sounds. Project leader Chris Clark of Cornell University and colleagues provide scientific guidance, hardware and software, and are working with Bill Ellison of Marine Acoustics, Inc. on modeling ocean noise propagation within the sanctuary.

The Gerry E. Studds Stellwagen Bank National Marine Sanctuary is an urban marine sanctuary located in close proximity to Boston and a densely populated coastal zone. The area has commercial fishing fleets, heavy vessel traffic, is frequented by marine mammals like endangered Northern right whales, and forms a critical feeding ground for endangered fin and humpback whales. It is also home to acoustically-sensitive marine animals like commercially important haddock and other fishes, sharks and sea turtles.

Van Parijs says the Sanctuary is a perfect place to build a case study that can provide a benchmark to scientifically evaluate the impacts and interactions between various human-produced sounds and acoustically-sensitive marine animals.

The abundance of endangered whales and human activities in the Sanctuary will help the team address many of the recommendations made by the National Research Council's committee on the potential impacts of ambient noise in the ocean on marine mammals. The committee has cited the importance of sound in the lives of marine mammals, the potential for harm from excessive noise, and the lack of scientific data as to the amounts of noise introduced into the oceans by human activities and its potential impact on marine mammals.

"We need to ground-truth current sampling and analysis techniques and identify gaps that must be addressed prior to implementing a large-scale domestic or international monitoring program," Van Parijs said. "The products of this project will be a suite of tools designed to be transferable for use in other ecological regions or sanctuaries along with an extensive database of sounds. This project is a first step toward a much larger goal of establishing a global passive acoustic monitoring network to measure ambient noise levels in a variety of locations."

The first set of project buoys deployed in December were recently recovered from the northeast corner of the Sanctuary and were redeployed March 7 in the southwest corner, where endangered Northern right whales are congregating. The area is a primary nursing and feeding ground for the whales in the spring.

Ten similar buoys were used successfully in the Sanctuary in 2006 during a one-year pilot project in preparation for this study. This is the first project to record all types of sounds over a long time period in a relatively large area in an effort to characterize the marine acoustic environment and the health of an urbanized, highly productive ecosystem. One potential use of the information: Scientists could track whale migration patterns and ship movements to help prevent collisions, a leading cause of whale mortality.

"Our goals are to map the low-frequency noise budget throughout the Sanctuary, identify and quantify the contributing sources of sounds, and determine whether or not these noises have the potential to impact endangered marine mammals and fishes," said David Wiley, the Sanctuary's research coordinator. "The results from this project will have local, national and international implications."

## Large Whale Take Reduction Plan Outreach Documents Available

NOAA's National Marine Fisheries Service (NMFS) has recently completed an updated Atlantic Large Whale Take Reduction Plan (ALWTRP) Guide which is now available on the ALWTRP website. You can view this guide by going to the ALWTRP website (<a href="http://www.nero.noaa.gov/whaletrp/">http://www.nero.noaa.gov/whaletrp/</a>) and clicking on "The Plan" and then "Guide to the Atlantic Large Whale Take Reduction Plan" (under "About the Plan"). This document is intended as a guide to measures required under the ALWTRP and is not the legal document detailing the regulations. The regulations can also be found under "About the Plan." A brochure entitled "Gear Modification Techniques for Complying with the Atlantic Large Whale Take Reduction Plan (ALWTRP)" (e.g., how to accurately mark lines and surface buoys, create and configure weak links, as well as how to appropriately anchor gillnet gear) and its supplement can be found under "Outreach Supplements to the Plan" at the "The Plan" link. Additionally, NMFS outreach supplements depicting various ALWTRP management areas overlayed onto a nautical chart are available at this same link.

#### **Calvineers Reach Out**

Editor's note: The Calvineers are students enrolled at the Adams School in Castine, Maine. Under the guidance of teacher Bill McWeeny, the Calvineers have developed educational outreach programs based on the life history of a right whale named Calvin. Their efforts helped persuade Senator Susan Collins (R-Maine) to endorse right whale protective measures (see Right Whale News 14(2):8). The students regularly get a standing ovation at the North Atlantic Right Whale Consortium annual meeting. Below is a report on their work this May.

By Meredith Houghton The Calvin Project The.calvin.project@gmail.com

Tuesday, May 6, we went to the Conners Emerson School in Bar Harbor to present. While we were there, we also did the Cell Play game with them. It all went very well, and we think that most of the students enjoyed it. Some of the students learned a lot, and for the rest of the day, they said things like 'Save the Right Whales' and 'Go Calvin!' It was very nice.

Also in Bar Harbor, we visited the College of the Atlantic. While there, we all went to the museum there and saw some art displays created by an artist with thyroid cancer. The museum was great, and we all enjoyed the art display. After that, we went to the Bar Harbor Whale Museum, which is not yet open to the public. We got a very interesting tour, and saw an amazing exhibit on currents and climate change. It was very educational.

Oh, and last week we forgot to mention that we presented in France while we were there! Luckily, our French teacher Madame Morse was there to translate, so all of the students understood what we were trying to say!

## Critical Habitat Designated For Endangered North Pacific Right Whale

The National Marine Fisheries Service has issued a Final Rule designating critical habitat for the North Pacific right whale (*Eubalaena japonica*) off the Alaskan coast. The areas designated are the same as those proposed in the Draft Rule (*Federal Register* 10/29/07): the Gulf of Alaska and the Southeastern Bering Sea. Specific coordinates are provided in the Final Rule. The Final Rule was published in the *Federal Register* on April 8 (Volume 73, number 68, pages 19000-19014).

The publication of the Final Rule designating critical habitat follows another Final Rule designating both the North Pacific right whale and the North Atlantic right whale as separate and endangered species (*Federal Register* March 6, 2008, vol. 73, no. 45, pages 12024-12030).

## **Survey Plane Crash in New Jersey**

On Saturday afternoon, May 17, 2008, a Cessna 337 Skymaster went down in heavy woods short of the runway at Eagles Nest Airport in Eagleswood Township, New Jersey. The pilot, John Ambroult, and an observer, Stephen Claussen were killed. The other two observers, Juan Carlos Salinas and Jackie Brown-Toth were injured. Early reports describe that Ambroult cut short a flight and diverted to the nearest airport. Eyewitnesses described that the plane's engines were faltering on the approach to the runway. The plane and crew were conducting surveys for Geo-Marine, Inc., Plano Texas, in association with potential wind farm development off the New Jersey coast. John Ambroult and Ambroult Aviation were based at the Chatham Municipal Airport, Chatham, Massachusetts, and were involved with right whale surveys in Cape Cod Bay and elsewhere for nearly a decade.

## Changes

Jerry Conway has retired from the Canadian Department of Fisheries and Oceans where he served as Marine Mammal Coordinator for the Scotia Fundy Region. In that position, Jerry was the leading government advocate for the conservation of the North Atlantic right whale. Among his many credentials is serving as co-chair of the Canadian Right Whale Recovery Team. Jerry has now assumed the role of General Manager for the Canadian Whale Institute (CWI). The focus of the CWI is whale research, with the operations being conducted from the newly established office at Wilson's Beach in New Brunswick. He can be reached at conwaycwi@gmail.com

**Leslie Ward**, co-chair of the Southeast U.S. Right Whale Recovery Plan Implementation Team (SEIT), received an award from the NMFS at the May 6 SEIT meeting. The plaque read: "In recognition of Leslie Ward for your steadfast dedication to North Atlantic right whale conservation, including more than ten years of service to the Southeast U.S. Implementation Team for the Recovery of the North Atlantic right whale, and your continued collaboration with NOAA Fisheries Service. May 2008."

**Will Hon,** retired from the University of Georgia Marine Extension Center, died on March 1. Will, an exceptional artist, created the poster-sized anatomical drawings of the right whale that illustrate *The Northern Right Whale – From Whaling to Watching* (1996), a teaching module for grades 6-8 published by the Gray's Reef and Stellwagen Bank National Marine Sanctuaries. Copies of the module and poster are available from either Sanctuary.

## The Gromling Pole for Whale Watchers – Second Generation

Frank Gromling, a volunteer with the Marineland Right Whale Project/Marine Resources Council Volunteer Sighting Network and author of *Frank's Whales* (Ocean Publishing; ISBN 0-9717641-1-5), has developed a second-generation design for a binocular holder for watching right whales. The "Official Right Whale Binocular Holder" evolved out of the need to eliminate the shoulder and neck pain associated with holding up binoculars for long periods of time. Gromling conceived this device during the 2001 Right Whale Survey Project in Flagler County, Florida. In 2002, he revised his initial design, thereby producing two different designs: First Generation and Second Generation. The First Generation design was a simple peg-based that system that takes the weight off your shoulders but you still have to hold onto the binoculars to keep them balanced. Effective, yet simple. The Second Generation design adds a crosspiece that holds the binoculars for you. All you have to do is steady the pole. Much better. Here are the inventor's instructions for how to make it:

Materials Needed: 6' x 3" x 34" board (something light weight) – This is the vertical pole. 34" x 2" board at least 12" long – This is the crosspiece. 3/8" dowel rod at least 18" long – to attach the crosspiece to the vertical pole.

<u>Tools Needed</u>: Power drill; 3/8" drill bit; handsaw; medium & fine sandpaper; pencil; T-square or straight edge; wood glue; vise (optional); and permanent marker (optional).

#### **Construction Directions:**

- 1. With a T-square or straight edge, measure and mark the center of the <u>wide</u> side of the 6' board about 3 inches from one end. Then, measure out from the center point and mark 34" to each side.
- 2. Then, measure down 1.75" and mark the same way again. Continue doing this until you have 10 sets of marks down the center of the wide side of the board.

- 3. (Here's where the optional vise comes in handy.) With your power drill and ¼" drill bit, carefully drill a hole at each set of two marks every 1.75 inches down the board. **Note:** Because you will drill all the way through the board, I suggest you place a second board of any description behind the one you are drilling through. This will make your holes much smoother on the back side.)
- 4. (The vise helps big time here!) Measure 6 inches along the dowel rod and make a mark; then measure along for another 6 inches and mark. With your handsaw, cut the dowel at these points, leaving you an extra piece. (You know what that's for mistakes.).
- 5. Take the 3/4" x 2" x 12" board and cut it into two 6" pieces.
- 6. Measure the center point on one narrow edge and make a mark. Then measure 3/4" to each side of this point and make a mark.
- 7. With your power drill and 3/8" drill bit, drill a hole at these two marks. **DO NOT** drill all the way through the board. **Go only about 1.25" deep**.
- 8. Sand the dowel ends and all edges of the 6" and 6' boards.
- 9. Insert the two 6" dowels into any of the sets of holes you have drilled. If they do not fit correctly, use your power drill and drill bit to make the holes slightly larger. Do the same with the other holes. Re-sand as needed.
- 10. Satisfied that the dowels can fit into the sets of holes, make sure they also fit into the holes in the 6" board. They should stick out the same length. If they do not, use your drill to make one hole slightly deeper until the dowels are the same length.
- 11. Glue the dowels into the 6" board and set it aside. Make sure the dowels are straight and even as the glue dries.
- 12. When the glue has dried, push the two dowels of the small board into holes that fit your eye height. Straighten the small board. You are now ready to place your binoculars on the small board, which serves as a cross bar to support the binoculars without you having to hold them.

Frank Gromling notes, "If you have spent more than one hour building your 'Gromling Pole,' you are doing it wrong! If you added bells and whistles to the design, you need a life! This device was born out of necessity. It was not designed to be a masterpiece of craftsmanship. It was designed simply to be a useful and simple tool. And, did I mention cheap?"

## **Scientific Literature and Reports**

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### Calendar

**August 4**: Deadline for comments on the Draft Management Plan for the Stellwagen Bank National Marine Sanctuary. See article on page 5 for details.

**October 23:** Southeast U.S. Right Whale Recovery Plan Implementation Team (SEIT) meeting, tentatively at the Environmental Education Center, Guana Tolomato Matanzas National Estuarine Research Reserve, Ponta Vedra, Florida. For information, contact SEIT co-chair Leslie Ward at <a href="Leslie-Ward@MyFWC.com">Leslie-Ward@MyFWC.com</a>

**November 5-6:** North Atlantic Right Whale Consortium annual meeting. Confirmed location: New Bedford Whaling Museum, New Bedford, Massachusetts. Detailed information will be provided in the August 2008 issue of *Right Whale News*. For further information, contact Heather Pettis, the Consortium Secretary, at <a href="mailto:hpettis@neaq.org">hpettis@neaq.org</a>

**October 12-16, 2009**: 18<sup>th</sup> Biennial Conference on the Biology of Marine Mammals sponsored by the Society of Marine Mammalogy, to be held in Quebec City, Canada. For details, go to <a href="https://www.marinemammalogy.org">www.marinemammalogy.org</a>

**2011**: 19<sup>th</sup> Biennial Conference on the Biology of Marine Mammals sponsored by the Society of Marine Mammalogy, to be held in Tampa, Florida. For details, go to www.marinemammalogy.org

## Right Whale News

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