

understand the need to continue to keep an open dialogue, or possible formal or informal section 7 consultations, with regard to Navy operations and to evaluate ways to mitigate possible environmental impacts of the operations throughout the eastern seaboard.”

Comment 10: Several commenters indicated that voluntary measures (as identified in the 2001 draft Plan) to reduce ship strikes would not be adhered to by the shipping industry, and therefore, should not be considered.

Response: NMFS has modified the Plan by removing the task to implement voluntary ship strike reduction measures. See also response to Comment 1 regarding an advance notice of proposed rulemaking on ship strike reduction measures.

Comment 11: Several commenters indicated that the section of the Plan on compliance and enforcement of various right whale protective regulations needed to be amended and expanded.

Response: Changes have been made to the section on enforcement in the Recovery Program section of the Plan by adding a task to: “Review and assess the implementation and efficacy of the enforcement programs and take steps to improve the enforcement measures if deficiencies are identified.” The level of support of this element has been increased in the implementation plan.

Comment 12: Comments from two people indicated that an assessment of the boundaries of critical habitat in the northeast U.S., as well as those in the southeast U.S., should be made.

Response: The Plan has been revised in the Recovery Program section to address the concerns raised in this comment.

Public Comments Solicited

NMFS solicits written comments on the draft Revised Recovery Plan. All substantive comments received by the data specified above will be considered prior to final approval of the Plan.

Authority

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

Literature Cited

Burgman, M.A., S. Ferson, and H.R. Akcakaya. 1993. *Risk Assessment in Conservation Biology*. Chapman & Hall, University Press, Cambridge. p14.

Ginzburg, L.R., L.B. Slobodkin, K. Johnson, and A.G. Bindman. 1982. Quasiextinction probabilities as a measure of impact on population growth. *Risk Analysis*. 21: 171–81.

National Marine Fisheries Service. 1991. Recovery Plan for the Northern

Right Whale (*Eubalaena glacialis*).

Prepared by the Right Whale Recovery Team for the National Marine Fisheries Service, Silver Spring, Maryland. 86pp.

Dated: August 25, 2004.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040517149–4242–02; I.D. 050304C]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the United States; Essential Fish Habitat; Re-opening Comment Period

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

ACTION: Notice to re-open comment period; receipt of rulemaking petition to protect deep-sea coral and sponge habitat; request for comments.

SUMMARY: The NMFS announced in the *Federal Register* on June 14, 2004, the receipt of a petition for rulemaking under the Administrative Procedure Act. Oceana, a non-governmental organization, petitioned the U.S. Department of Commerce to promulgate a rule to protect deep-sea coral and sponge habitats in the U.S. Exclusive Economic Zone (EEZ). The public comment period for that notice closed August 13, 2004. By this notice, NMFS announces the re-opening of the public comment period on the rulemaking petition to protect deep-sea coral and sponge habitat and to ensure thorough public comment.

DATES: Written comments will be accepted through October 15, 2004.

Comments that were received between August 13, 2004, and August 31, 2004 will also be deemed timely received.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: DSC-EFH@noaa.gov. Include in the subject line of the e-mail comment the following identifier: DSC Petition.

- Mail: Rolland A. Schmitten, Director, Office of Habitat Conservation, NOAA National Marine Fisheries Service, F/HC, 1315 East-West Highway, Silver Spring, MD 20910.

- Fax: (301) 427–2572.

The complete text of Oceana’s petition is available via the internet at the following web address: http://www.nmfs.noaa.gov/habitat/habitatconservation/DSC_petition/Oceana. In addition, copies of this petition may be obtained by contacting NMFS at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Hourigan at 301–713–3459 ext. 122.

SUPPLEMENTARY INFORMATION: On June 14, 2004 (69 FR 32991), NMFS announced the receipt of a rulemaking petition to protect deep-sea coral and sponge habitat and requested comments until August 13, 2004. NMFS received a request to extend the public comment period to allow more time to review of existing science and to address the petition’s requests. NMFS decided to re-open the comment period from August 31, 2004 to October 15, 2004 to allow Fishery Management Councils, Federal agencies, science organizations, and the general public more time to consider the petition’s recommendations to ensure thorough public comment. Comments that were received between August 13, 2004, and August 31, 2004 will also be deemed timely received.

The petition filed by Oceana states that deep-sea coral and sponge habitat are comprised of long-lived, slow-growing organisms that are especially vulnerable to destructive fishing practices, such as the use of bottom-tending mobile fishing gear. The petition cites that without immediate protection, many of these sensitive deep-sea coral and sponge habitats will suffer irreparable harm.

The petition cites specific legal responsibilities of NMFS for essential fish habitat (EFH) and Habitat Areas of Particular Concern (HAPCs) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the EFH guidelines at 50 CFR 600, subparts J and K, and concludes that NMFS must: identify and describe deep-sea coral and sponge habitats as EFH; designate some, if not all, of these habitat types as HAPCs; take appropriate measures to minimize to the extent practicable adverse fishing effects on this EFH; and protect such habitat from other forms of destructive activity. The petition gives a short overview of known deep-sea coral and sponge habitat in regions off the mainland United States, including areas known in the Alaska, Pacific, Northeast and Mid-Atlantic, Southeast, and Gulf of Mexico fishery management regions. The petition asserts that deep-sea coral and sponge habitats satisfy the definition of EFH in the Magnuson-

Stevens Act and concludes that such areas must be identified and described as EFH under the relevant FMPs. In addition, the petition states that deep-sea coral and sponge habitats should be identified as HAPCs because they meet the definition of HAPC and satisfy one or more of the criteria set forth in the EFH guidelines for creating HAPCs. Further, the petition argues that the Magnuson-Stevens Act requires NMFS to protect areas identified as EFH and HAPC and that such protection, as articulated in the petition, is "practicable." Finally, the petition asserts that deep-sea coral and sponge habitats must be protected for its own sake, meaning if the Secretary does not protect such habitats through existing FMPs, the Magnuson-Stevens Act requires the Secretary and the Regional Fishery Management Councils to develop FMPs specifically for the protection of deep-sea corals and sponges.

The petition specifically requests that NMFS immediately initiate rulemaking to protect deep-sea coral and sponge habitats in the U.S. EEZ by taking the following measures:

1. Identify, map, and list all known sponge areas containing high concentrations of deep-sea coral and sponge habitats;
2. Designate all known areas containing high concentrations of deep-sea coral and sponge habitat as both EFH and 'habitat areas of particular concern' (HAPC) and close these HAPC to bottom trawling;
3. Identify all areas not fished within the last three years with bottom-tending mobile fishing gear, and close these areas to bottom trawling;
4. Monitor bycatch to identify areas of deep-sea coral and sponge habitat that are currently fished, establish appropriate limits or caps on bycatch of deep-sea coral and sponge habitat, and immediately close areas to bottom trawling where these limits or caps are reached, until such time as the areas can be mapped, identified as EFH and HAPC, and permanently protected;
5. Establish a program to identify new areas containing high concentrations of deep-sea coral and sponge habitat through bycatch monitoring, surveys, and other methods, designate these newly discovered areas as EFH and HAPC, and close them to bottom trawling;
6. Enhance monitoring infrastructure, including observer coverage, vessel monitoring systems, and electronic logbooks for vessel fishing in areas where they might encounter high concentrations of deep-sea coral and sponge habitat (including encountering HAPC);
7. Increase enforcement and penalties to prevent deliberate destruction of deep-sea coral and sponge habitat and illegal fishing in already closed areas; and
8. Fund and initiate research to identify, protect, and restore damaged deep-sea coral and sponge habitat.

The exact and complete assertions of legal responsibilities under Federal law are contained in the text of Oceana's petition, which is available via the internet at the following NMFS web address: http://www.nmfs.noaa.gov/habitat/habitatconservation/DSC_petition/Oceana. Also, anyone may obtain a copy of this petition by contacting NMFS (see ADDRESSES).

The Assistant Administrator for Fisheries, NOAA has determined that the petition contains enough information to enable NMFS to consider the substance of the petition. NMFS will consider public comments received in determining whether to proceed with the development of the regulations requested by Oceana. Additionally, NMFS, by separate letter, has requested each Regional Fishery Management Council assist in evaluating this petition. Upon determining whether to initiate the requested rulemaking, the Assistant Administrator for Fisheries, NOAA, will publish in the **Federal Register** a notice of the agency's final disposition of the Oceana petition request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 2004.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082404B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)

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

ACTION: Notification of change of final finding of dolphin-safe tuna.

SUMMARY: This Notice announces that on August 9, 2004, the United States District Court for the Northern District of California issued an order which set aside the final finding made on December 31, 2002, by the Assistant Administrator for Fisheries, NMFS, (Assistant Administrator). Under the terms of this Order, the labeling standard for "dolphin-safe" tuna shall be governed by the provisions of the Dolphin Protection Consumer

Information Act. Under that provision, tuna are deemed dolphin safe if "no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and no dolphins were killed or seriously injured during the sets in which the tuna were caught."

DATES: Effective on August 9, 2004.

FOR FURTHER INFORMATION CONTACT:

Jeremy Rusin, Office of Protected Resources, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802-4213; Phone 562-980-3248; Fax 562-980-4027.

SUPPLEMENTARY INFORMATION: The Dolphin Protection Consumer Information Act (DPCIA) (16 U.S.C. 1385), as amended by the International Dolphin Conservation Program Act, requires the Secretary of Commerce (Secretary) to make a finding based on the results of scientific research, information obtained under the International Dolphin Conservation Program, and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the eastern tropical Pacific Ocean (ETP). On December 31, 2002, the Assistant Administrator, on behalf of the Secretary of Commerce, issued a final finding under section (g)(2) of the DPCIA, and published notification in the **Federal Register** on January 15, 2003 (68 FR 2010).

In the final finding, the Assistant Administrator determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. The final finding changed the definition of "dolphin-safe" for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. Based upon the final finding, the definition of dolphin-safe for such tuna is governed by the provisions of section (h)(1) of the DPCIA. Under this definition, "dolphin-safe" means that dolphins can be encircled or chased during the trip in which tuna was harvested, but that no dolphins can be killed or seriously injured in the set in which the tuna was harvested.

On December 31, 2002, Earth Island Institute, eight organizations, and one individual person (Plaintiffs), filed a complaint in the United States District Court for the Northern District of