a monophyletic clade; depending on the study or analysis method, specimens from northern Utah, central Utah, and western Wyoming group with the SRMP (Goebel 1996, 1999, 2000, 2003, 2005). The lack of observed monophyly may be due to poor resolution that additional samples and sequence data might improve (Goebel 1999, 2000). It may also suggest that toads in the SRMP are very closely related to nearby populations due to recent (in geologic time) geographic isolation of the SRMP (Goebel 1999). While the current mitochondrial DNA data suggest the existence of diverging evolutionary lineages in the *Bufo boreas* group, the toads appear to be so closely related that interbreeding would likely produce viable offspring (Goebel 2003).

The close relationships between the SRMP and nearby populations may also be due to the retention of ''old'' haplotypes from lineage sorting (Goebel 1999, 2000). From a phylogenetic viewpoint the entire mitochondrial DNA genome constitutes a single locus inherited as a linked unit (Avise 2000). Therefore, analyses based on the mitochondrial genome could produce patterns that represent the gene's lineage, but not necessarily the true evolutionary direction of the species. For this reason, when analyzing the historical relationships among taxa it is prudent to compare phylogenetic hypotheses from both mitochondrial data and nuclear data (which represent a large number of loci).

Studies of the *Bufo boreas* group using nuclear DNA data have been performed, but the results were affected by small sample sizes from some localities and exclusion of samples due to missing data (Goebel 1999, 2000). When later analyses were performed with additional samples, a nuclear DNA clade containing the SRMP was identified, but it included specimens from western Wyoming localities geographically separated from the SRMP (Goebel 2003).

We believe that additional nuclear (*e.g.* micro satellite) DNA data and supplemental mitochondrial DNA sequence data are necessary to clarify the genetic relationships within and between boreal toad populations, including the SRMP segment and others in the Rocky Mountains. The multi-agency Team also recommends additional studies, on the grounds that genetic distinctions between SRMP toads and nearby toad populations are based on data from too few specimens (Loeffler 2001). After considering the best available information, we cannot conclude that the SRMP differs markedly from other boreal toad populations in genetic characteristics.

In conclusion, we determine that the SRMP, as currently described, does not meet the significance criteria of our DPS policy. As such, the SRMP does not qualify as a distinct population segment. Therefore, it is not a listable entity under the ESA. Based on this determination, we withdraw the SRMP from the candidate list.

We will accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. We will reconsider this determination in the event that new information indicates that the SRMP is significant.

References

A complete list of all references cited herein is available upon request from the Grand Junction, Colorado Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Author

The primary author of this finding is Larry Thompson, Grand Junction, Colorado Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 20, 2005.

Marshall P. Jones, Jr.,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–19488 Filed 9–28–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[I.D. 081605A]

Endangered and Threatened Species; Petition to Initiate Emergency Rulemaking to Prevent the Extinction of the North Atlantic Right Whale; Final Determination

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

ACTION: Notice; response to petition; final determination.

SUMMARY: NMFS received a petition dated May 19, 2005 co-signed by Defenders of Wildlife, International Fund for Animal Welfare, International Wildlife Coalition, National Environmental Trust, Natural Resources Defense Council, Oceana, The Humane Society of the United States, The Ocean Conservancy, and Whale and Dolphin Conservation Society, requesting that NMFS ''promulgate emergency regulations, within sixty days, to slow and/or re-route vessels within right whale habitat, as a means of protecting the species until such time as permanent measures can be enacted. Such emergency regulations should require all ships entering and leaving all major East Coast ports to travel at speeds of 12 knots or less within 25 nautical miles of port entrances during expected right whale high-use periods.'' NMFS has determined that the petition is not warranted at this time.

ADDRESSES: Further information on the North Atlantic Right Whale program can be found on NMFS' internet websites at *www.nmfs.noaa.gov/pr/shipstrike/* and at *www.nero.noaa.gov/shipstrike/*. Comments and requests for copies of this determination should be addressed to the Chief, Marine Mammal and Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: P. Michael Payne; Phone: 301–713–2322; Fax: 301–427–2522.

SUPPLEMENTARY INFORMATION:

Background

The North Atlantic right whale, *Eubalaena glacialis*, is considered one of the most endangered large whale populations in the world. Right whales have been listed as endangered under the Endangered Species Act (ESA) since its passage in 1973 (35 FR 8495, June 2, 1970). Although precise estimates of abundance are not available, it appears that the eastern North Atlantic population is nearly extinct and the western North Atlantic population numbers approximately 300 whales. The status of North Atlantic right whales is a very serious issue for NMFS. While calf production has increased somewhat in recent years, recovery is seriously affected by fatalities and serious injury resulting from human activities, primarily from entanglement in fishing gear and collisions with ships.

NMFS has been working with state and other Federal agencies, concerned citizens and citizen groups, environmental organizations, and the shipping industry to address the ongoing threat of ship strikes to North Atlantic right whales as part of its responsibilities related to right whale recovery. NMFS has established a right whale ship strike reduction program, that includes among other things, aerial

surveys to notify mariners of right whale sighting locations; the operation of Mandatory Ship Reporting systems to provide information to mariners entering right whale habitat; interagency collaboration to address the threat; and consultations under section 7 of the ESA.

NMFS has developed a multi year, wide-ranging Ship Strike Reduction Strategy. The draft Strategy was published as an Advance Notice of Proposed Rulemaking (ANPR) (69 FR 30857, June 1, 2004), and a series of public meetings were held on the ANPR. NMFS is currently analyzing its various measures and alternatives. A Notice of Intent to prepare a Draft Environmental Impact Statement under the National Environment Policy Act has been published (70 FR 36121, June 22, 2005), and this analysis is underway. The draft Strategy and its alternatives identify a set of protective measures that include proposed routing changes and ship speed restrictions along the eastern seaboard.

Final Determination of Petition

NMFS acknowledges the receipt of the petition for emergency rulemaking. As noted above, NMFS is in the process of analyzing a broad draft ship strike reduction strategy that includes potential operational measures such as routing changes and ship speed restrictions along the eastern seaboard. Promulgating a separate 12–knot speed limit, at this time, would curtail full public notice, comment and environmental analysis, duplicate agency efforts and reduce agency resources for a more comprehensive strategy, as well as risk delaying implementation of the draft Strategy. Instead of imposing measures in piecemeal fashion, NMFS continues to believe that putting a comprehensive strategy in place is the best course of long-term action.

NMFS is enhancing its non-regulatory measures to reduce ship strikes and will proceed with analysis and rulemaking to implement specific regulatory measures of the comprehensive ship strike reduction strategy in the coming months.

NMFS will continue to work with other Federal agencies, especially with regard to completing or initiating further consultations under section 7(a) of the ESA. The intent of these informal and formal discussions is to ensure that routine vessel operations, or special activities involving vessels, are not likely to jeopardize the continued existence of right whales or destroy or adversely modify right whale critical habitat.

As part of the draft Strategy, the U.S. Coast Guard (USCG) is conducting Port Access Route Studies (70 FR 8312, February 18, 2005) on two routing changes (one in Cape Cod Bay, and one in right whale critical habitat in waters off Florida and Georgia). The USCG analysis will assess potential navigational problems should the routes be imposed. The USCG is required to provide its recommendations on the proposed routes in a report to Congress by early 2006.

In the meantime, NMFS is also issuing information on right whales, their vulnerability to ship strikes, and advisories to ships to slow to 12 knots or less when transiting areas occupied by right whales on NOAA Weather Radio broadcasts, as well as issuing the same information in revisions to the U.S. Coast Pilots and other mariner navigational aides. Moreover, NMFS has increased efforts to educate mariners on steps they can take to reduce the likelihood of a ship strike.

Authority

The authority for this action is 5 U.S.C. 555(e) and 16 U.S.C. 1531, *et seq.*

Dated: September 22, 2005.

James H. Lecky,

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

[FR Doc. 05–19372 Filed 9–28–05; 8:45 am]

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