

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

27 February 2003

Ms. Mary Colligan
Assistant Regional Administrator
for Protected Resources
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan:

On 19 November 2002 the National Marine Fisheries Service published a *Federal Register* notice (67 FR 69708-69710) announcing it had received a petition from the Ocean Conservancy to expand the existing critical habitat boundaries established for northern right whales off the northeastern and southeastern United States. The notice advised that the Service has found that the petition presents substantial scientific information indicating that the action may be warranted and requested comments and information. The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the request and offers the following comments.

In 1994 the Service designated three areas as critical habitat for northern right whales: a strip of coastal waters that serves as the species calving grounds along the Georgia and northeastern Florida coasts, and two feeding areas off Massachusetts — one in Cape Cod Bay and the other in the Great South Channel. The petitioned action calls for extending the seaward boundary farther off shore and expanding the two areas off Massachusetts to enlarge and combine them into a single critical habitat area. The requested action is based on right whale sighting data collected since the initial designation.

Surveys since 1994 demonstrate that some waters adjacent to and seaward of the southeastern critical habitat are used by right whales as frequently as waters within the designated critical habitat. In fact, sighting data showing the importance of areas seaward of the existing critical habitat were used by the Service to establish the region's mandatory ship reporting area, which includes areas seaward of the southeastern right whale critical habitat. Those data also have been used by the Navy to establish the area in which its right whale protection guidance applies, which also extends seaward of the critical habitat.

PHONE: (301) 504-0087
FAX: (301) 504-0099

New sighting data show that some waters around and between the two feeding areas off Massachusetts have sighting densities that, in some years, are as great or greater than some areas within those two designated critical habitats. These data were used by the Service to establish a northeastern mandatory ship reporting system boundary that encompasses both critical habitats and the waters between them in a manner similar to the boundaries described in the petitioned action.

In our view these recent survey data demonstrate that the critical habitat boundaries should be expanded and that absent a detailed review of recent sighting data, the boundaries described in the petitioned action seem a reasonable option. In addition, the actions by the Service to establish mandatory ship reporting areas that include the critical habitat and adjacent waters also demonstrate that special management considerations apply to waters adjacent to the existing critical habitats. The Marine Mammal Commission therefore recommends that the Service review available data and, based on that review, that it expand the current critical habitat areas as warranted.

At this time, the Commission is unable to comment on the merits of the specific boundaries described in the petition. A decision on the most appropriate boundaries will require an assessment of all right whale sighting data, particularly that gathered since the initial designation. When the Service first considered designating critical habitat for this species in 1990, the Commission noted the need for such an assessment and contracted for a report to summarize relevant data, including the number of individual animals identified in each area on a year-by-year basis, year-to-year seasonal variations in the number and geographic distribution of sightings, and human activities potentially affecting right whales in those areas. That report¹ was provided to the Service early in 1991 and was used as the basis for evaluating and justifying the critical habitat boundaries that were designated by the Service in 1994.

We believe a similar report is now needed to update the 1991 analysis. Most of the relevant right whale sighting data collected since in these areas has been through right whale surveys conducted or supported in part by the National Marine Fisheries Service. The Marine Mammal Commission therefore recommends that the Service prepare or contract for a report similar to the one prepared for the Commission in 1991 that assesses right whale sighting data and human activities in and around the three existing right whale critical habitat areas that can be used to identify and evaluate the most appropriate critical habitat boundaries. The Marine Mammal Commission recommends that this analysis be undertaken


¹Kraus, S.D. and R.D. Kenney. 1991. Information on right whales (*Eubalaena glacialis*) in three proposed critical habitats in United States waters off the western North Atlantic Ocean. NTIS PB91-194431. National Technical Information Service. Springfield, Virginia. 65 p.

Mary Colligan
27 February 2003
Page 3

on an expedited basis so as not to delay action necessary to implement appropriate modifications to the designated boundaries. If at all possible, the analysis of sighting data should be corrected for effort so as to avoid bias in favor of areas that have been surveyed more frequently than others.

I hope these comments and recommendations are helpful. If you or your staff have questions, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cottingham", with a long, sweeping horizontal stroke extending to the right.

David Cottingham
Executive Director