Changing Tides

August 2007

NOAA FISHERIES SERVICE NORTHEAST REGION
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http://www.nero.noaa.gov/nero/

New England Fishery Management Council Adopts First IFQ Program

The discussions and debates surrounding the development of Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 11) intensified through the winter of 2006 and 2007, culminating in a ten-hour New England Fishery Management Council (Council) finale meeting in June 2007 that could set the course for the general category scallop fishery for the foreseeable future. At that meeting, the Council voted to adopt Amendment 11 and limit future access to the general category fishery, and, for the first time in the Council's history, recommended an individual fishing quota (IFQ) program. In early August, the Council submitted Amendment 11 to NOAA Fisheries Service for review. Once a determination is made that the document is complete, the decision to approve, partially approve, or disapprove Amendment 11 will be made within 95 days.

The general category scallop fishery is currently an open access fishery that allows any vessel to fish for up to 400 pounds of scallops, provided the vessel has been issued a general category or limited access scallop permit. This open access fishery was established in 1994 under Amendment 4 to the Scallop Fishery Management Plan. It was intended for vessels fishing in non-scallop fisheries to catch scallops as incidental catch, and for a small-scale scallop fishery to continue outside of the limited access and effort control programs aimed at the large-scale scallop fishery. At the time, scallop catch rates were poor, and the resource was overfished.

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Mammal Strandings: Marine Mammal Unusual Mortality Events

Sometimes it seems as though you read about mammal strandings every day in the paper. Other times, it seems that not many strandings are occuring. NOAA Fisheries Service is responsible for managing and protecting marine mammals under the Marine Mammal Protection Act. Part of that responsibility is to respond to mammal strandings.

A stranding can be defined as an event in the wild when 1) a marine mammal is found dead on a beach or shore, or floating in U.S. waters, 2) a marine mammal is alive on the beach or shore, but unable to return to the water due to sickness, injury or some other obstacle, or 3) a marine mammal is in the water, but unable to return to its natural habitat without assistance.

When it seems many strandings are occuring, it is often due to an unusual mortality event (UME). A UME is defined under the Marine Mammal Protection Act as "a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response." When an increase in marine mammal mortality rates is documented or strandings occur around an "unusual" circumstance, an Unusual Mortality Event Working Group is consulted. The Working Group, which consists of scientists, veterinarians, pathologists, virologists, and other wildlife biologists from around the world, has seven criteria used to determine if a mortality event is "unusual."

The Working Group reviews all possible information, including historical data and current population trends, and determines whether or not an event is truly unusual within 24 hours of the initial consultation. After the Working Group announces their

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GLOUCESTER MARITIME HERITAGE CENTER

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Food concessions
Raffles

WHEN

Friday, Sept. 21 9am-12pm
Saturday, Sept. 22 10am-5pm
Opening ceremony 10am
Sunday, Sept. 23 10am-4pm
Rain or Shine

WHERE

Gloucester Maritime Heritage Center
23 Harbor Loop
Gloucester, MA 01930
978.281.0470

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*Activities subject to change

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www.gloucestermaritimecenter.org/familyfundays.html

Marine Mammal Unusual Mortality Events Continued...

decision, NOAA Fisheries Service has 24 hours to officially declare the event unusual and appoint an on-site coordinator. If it is deemed unusual, the Working Group will advise NOAA Fisheries Service on what samples to collect or how to conduct the investigation. The Working Group may also assist with the entire investigation. When an event is deemed unusual, money from the Marine Mammal Unusual Mortality Event Fund, which is managed by the National Fish and Wildlife Foundation, becomes available for the investigation.

A stranded humpback whale. Credit: NOAA

Responses to UMEs are coordinated by the NOAA Fisheries Service Regional Offices and the regional stranding networks, as well as other Federal, state and local agencies. With the declaration of a UME, NOAA Fisheries Service is federally mandated to investigate the mortalities in order to document thoroughly all related mortalities, and necropsy carcasses when possible. In recent years, increased efforts to examine carcasses and live stranded animals have improved the knowledge of mortality rates and causes, allowing a better understanding of population threats and stressors. Understanding and investigating marine mammal UMEs is important because they can serve as indicators of overall ocean health, which may also have implications for human health and welfare. In the fall of 2006, two UMEs were designated in the Northeast Region. Currently, both are ongoing.

Humpback Whale UME

In August 2006, there was an increase in humpback whale mortalities in offshore waters near George's Bank. As part of the UME process, current mortality data was compared to historical mortality rates by a UME Working Group. As a result of the Working Group investigation, humpback mortalities in the North Atlantic were declared a UME in October 2006. Circumstances around the reported mortalities in this UME have made thorough examination of many carcasses logistically difficult and in most cases impossible. Most of the reported carcasses are located approximately 50 to 100 miles offshore. A total of thirty-four humpback mortalities have been documented since July 1, 2006 in U.S. Atlantic waters, Canadian waters and the Caribbean. Of those cases, nine carcasses have been necropsied or partially examined. Five of the nine animals examined stranded in 2007. The necropsy findings for those five animals are still under review by scientists. Of the four animals necropsied in 2006, there were no conclusive findings relating the mortalities.

A previously stranded seal is released with a tag that allows NOAA scientists to track its movement in order to monitor its post-release health. Credit: NOAA

Pinniped UME

In the spring and summer of 2006, the Northeast Region Stranding Network reported an increase in adult harbor seal strandings in Maine. Along with an increase in harbor seal strandings, an increase in positive phocine distemper virus was documented in live and dead stranded grey and harbor seals throughout the Northeast Region. Phocine distemper virus (PDV) is a paramyxovirus of the genus morbillivirus that is pathogenic for pinniped species, particularly seals. The virus is similar to canine distemper commonly seen in dogs. Clinical signs include labored breathing, fever and nervous system symptoms. PDV was first identified in 1988 as the cause of death of 18,000 harbor seals (*Phoca vitulina*) and 300 grey seals (*Halichoerus grypus*) along the northern European coast. In 2002, another epidemic of PDV along the North Sea coast in Europe resulted in the deaths of 21,700 seals, estimated to be 51% of the population. Concerns of a similar outbreak on the North Atlantic coast of the U.S. triggered a review of the historical and 2006 stranding data by the UME Working Group. The harbor seal strandings and positive morbillivirus findings were declared a UME in October 2006. NOAA Fisheries Service has consulted with biologists, virologists, and pathologists to develop a Morbillivirus Surveillance Protocol to be adopted by marine mammal stranding responders and rehabilitation facilities throughout the Northeast Region. Efforts are ongoing to document seal strandings and test live and dead seals for the presence of the morbillivirus. The surveillance protocol has been implemented on over 500 animals during the last year. The presence of morbillivirus has been documented in harbor, grey and harp seals as a result of the sampling protocol. Data is currently being analyzed and compared to the U.K. strain of morbillivirus to determine if this is a concern for U.S. seal populations.

To report a marine mammal stranding in waters from Maine to Virginia please contact the NOAA Northeast Region Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at 978-281-9351.

Scallop IFQ Program continued...

The condition of the scallop resource improved through the 1990s, and the resource's health reached peak levels in 2005. Limited access and general category scallop vessels alike enjoyed record landings, hitting all-time highs of about 63 million pounds of scallops in 2005. The value of scallops also remained high, reaching an average of $7.50 per pound in 2005. The productivity and the value of the scallop fishery triggered a pulse of new general category fishing activity.

Over time, the overall participation in the general category fishery has fluctuated, but, in 1999, the number of participants began to increase. In 1994, there were 1,992 general category permits issued. By 2005, that number had increased to 2,950. More indicative of the effort increase was that in 1994 there were 181 general category vessels that landed scallops, while in 2005 there were over 600. The general category fleet not only recognized and took advantage of the health and productivity of the resource, it was also contributing more to the fishing mortality. As an open access fishery, there were no management limits to the effort increase, and fishing mortality from the general category fleet was difficult to predict and account for in developing management measures.

The Council and NOAA Fisheries Service became increasingly concerned about the level of fishing effort and harvest from the general category scallop fleet. In September 2004, to begin to address the concerns, the Council recommended a control date for general category permits. NOAA Fisheries Service established the control date of November 1, 2004. The scallop industry was put on notice that continued access to the general category scallop fishery was not guaranteed and that the November 1, 2004 control date could be used to limit future entry. Nevertheless, the general category fishery peaked in 2005 in both participation and landings. The scallop industry as a whole expressed concern, warning both the Council and NOAA Fisheries Service of a large-scale, coast-wide ramp-up of general category fishing activity. This occurred even with a new requirement implemented in December 2005 to install vessel monitoring systems (VMS) on general category vessels wishing to catch more than 40 pounds of scallops.

In January 2006, the Council began the development of Amendment 11 to evaluate alternatives for a limited access program for general category vessels, allocation of the general category catch, allocation between the current limited access and general category fisheries, and other measures to improve management of the general category scallop fishery. With the rapid increase in general category effort through 2005, the Council set an ambitious schedule to implement Amendment 11 by the start of the 2007 fishing year. Although delays in 2006 pushed possible implementation into 2008, the Council continued to work toward developing measures for the general category fishery that would more effectively control their fishing effort.

Credit: NOAA

Measures to allocate general category catch to each vessel based on the vessels' historical level of landings were included in the set of allocation alternatives. Alternatives to allocate the general category catch to the whole general category fleet were also included (fleetwide total allowable catch, or TAC, alternatives). Initially, the Council was concerned about considering the IFQ alternatives because of stringent new requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act that could have delayed implementation of an IFQ. However, if the Council adopted IFQ alternatives before July 11, 2007, it would be exempt from those new requirements, notably, a requirement that NOAA Fisheries Service conduct a referendum among participants in the scallop fishery to determine if an IFQ would be accepted. The Council therefore determined in January 2007 that it would conduct its final Amendment 11 meeting in June and planned on submitting Amendment 11 in July 2007.

There was considerable debate about IFQ versus fleetwide TAC alternatives in the Council's final discussion of Amendment 11. Many general category vessel owners argued for IFQs to allow them to fish at levels more consistent with their recent historical fishing levels. Others argued that fleetwide TACs would allow newer participants to continue to increase their level of participation in the fishery and would not limit them to lower levels of historical fishing. The Council determined that maintaining a vessel's level of historical fishing through IFQs would be more consistent with their goals and vision for the general category fleet.

The Council completed its work on Amendment 11 and submitted it for NOAA Fisheries Service review in August. If NOAA Fisheries Service approves Amendment 11, implementation is expected in March 2008. The Council and NOAA Fisheries Service are now working together on a new framework, with Council action expected this fall. Among other measures, it would establish the actual levels of scallop fishing that would be allowed under Amendment 11.

Boston Shipping Lanes Moved to Protect Whales

Ship collisions are the greatest known source of human-related mortality to the North Atlantic right whale, one of the world's most endangered large whale species, and are considered to be a significant obstacle to the species' recovery. In order to reduce the risk of ship collisions with whales in the Northeast, a new shipping lane configuration was enacted after extensive collaboration between NOAA, the U.S. Coast Guard (USCG), and the shipping industry.

A shift of the primary shipping channel into and out of Boston Harbor took effect on July 1, 2007. This was the first time in the United States that ship traffic lanes have been moved to reduce the risk of collisions between ships and whales.

NOAA scientists from Stellwagen Bank National Marine Sanctuary (SBNMS) and the Northeast Fisheries Science Center found the inspiration for this action when they looked at over 25 years of whale sighting data collected by NOAA researchers, scientists from the Provincetown Center for Coastal Studies, the Whale Center of New England, the University of Rhode Island, and a host of other New England researchers. The scientists overlaid the data on the shipping lanes into and out of Boston Harbor which run through the SBNMS, and realized that the lanes ran straight through an area of high whale density. They also noted an area of considerably lower whale density just to the north of the existing shipping lanes.

Further investigation revealed that there was an ecological basis for the difference in observed whale density—the substrate under the shipping lanes was composed of a large percentage of sand, which supports the preferred forage species of these whales, while the substrate under the low density area had a much greater percentage of gravel. Since the differences are based on habitat characteristics, the density of whales in these areas represents a stable distribution rather than a transient event. NOAA scientists therefore concluded that there would be significant conservation benefit to right, humpback, and fin whales if the shipping lanes were redirected through the area of lower whale density—up to a 58% reduction in ship strike risk to right whales, and up to an 81% reduction in risk to all large baleen whale species from the thousands of ship transits that occur annually through SBNMS.

Once the potential conservation benefit of this action was recognized, NOAA consulted representatives of the shipping industry and the USCG to determine the most feasible alternative for safely redirecting ship traffic through the SBNMS. After dismissing several initial options, NOAA and the USCG developed a new configuration that provided a high level of ship strike risk reduction while accommodating the concerns of various marine resource users and satisfying the USCG's and mariners' concerns about safety and ease of navigation. The preferred proposal rotated the east-west leg of the Boston Traffic Separation Scheme (TSS) by 12 degrees to the north, and lengthened the north-south lane to account for this adjustment. The lanes themselves were narrowed by one-half mile, to a width of 1.5 miles each. The width of the buffer between outgoing and incoming traffic was not affected. This configuration adds 3.75 nautical miles to the overall distance and an estimated 10 to 22 minutes to each one-way trip. In addition to reducing the risk of collision between ships and whales, it also improves safety by moving large ship traffic further away from areas frequently transited by smaller fishing boats, and by reducing chances of damage to large ships owing to collisions with whales or with other ships while attempting to avoid whales.

The Boston TSS was originally designated in 1973 by the International Maritime Organization (IMO), a specialized agency of the United

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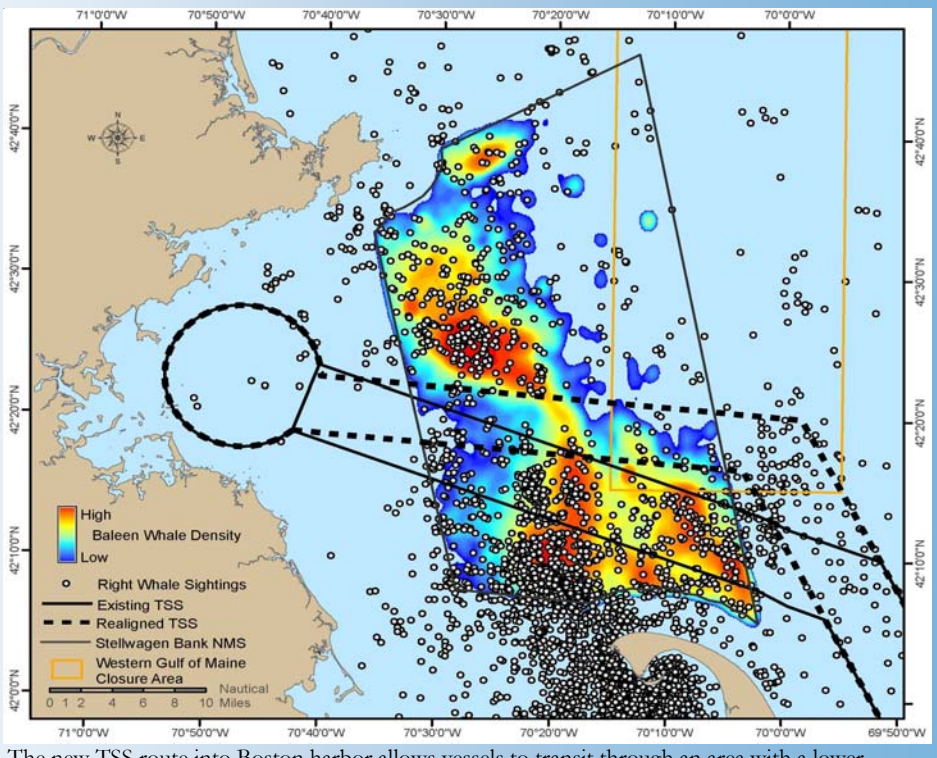

The new TSS route into Boston harbor allows vessels to transit through an area with a lower density of baleen whales. Credit: NOAA's Stellwagen Bank National Marine Sanctuary

TSS Shift Continued...

Nations that develops and maintains a comprehensive regulatory framework for the international shipping community. As such, any changes to the shipping lanes must also be made through the IMO. NOAA and USCG staff worked collaboratively to prepare a proposal which was submitted to the IMO in April 2006 and was subsequently reviewed and approved by the IMO Maritime Safety Committee in December 2006. Since then, NOAA and the USCG have been working to implement the changes domestically by updating NOAA navigational charts with the new TSS and issuing Notices to Mariners to inform the shipping community of the changes.

Although the shift of the Boston TSS was an action several years in the making, the end result is a positive example of the way collaboration between multiple federal agencies and industry can yield mutually agreeable environmental protection measures.

What is S-K Anyway?

"S-K" is an acronym for the Saltonstall-Kennedy Grant Program (S-K Program) that was established by Congress under the Saltonstall-Kennedy Act in 1980. Initially, the S-K Program was intended to stimulate and support commercial and recreational fishing industry efforts to develop fisheries in situations where the industry was unable to underwrite the expenses itself. The objective of the S-K Program has evolved to address the fishing community's needs in optimizing economic benefits within the context of rebuilding and maintaining sustainable fisheries. Also, it assists the fishing community in dealing with the impacts of resource conservation and management measures. Projects that primarily involve business start-up or infrastructure development are not eligible for funding under the S-K Program.

Further information on program priorities and details on how to apply can be found by visting www.grants.gov and searching keyword: Saltonstall-Kennedy.

An announcement for competitive research proposals was last issued in 2002. Twenty-four of sixty proposals submitted by NOAA Fisheries Service Northeast applicants were selected at a Federal funding level of $4.3 million. The projects included Atlantic salmon and marine aquaculture, commercial fishing gear research, optimum utilization of harvested resources, and fisheries socioeconomics.

NOAA Fisheries Service is currently seeking new proposals in the event that S-K Program funding is made available in the 2008 Federal budget. All requests must be submitted by October 1, 2007.

Demonstration Project Paves Way to Manage Dredge Material Use

Tidal wetlands in the Blackwater National Wildlife Refuge (Blackwater) in Dorchester County, Maryland, are disappearing dramatically. The tidal marshes provide critical habitat for a number of birds and mammals and spawning and nursery habitat for anadromous fishes.

What are anadromous fishes?

Anadromous fishes are those that migrate as juveniles from freshwater to saltwater and then return as adults to spawn in freshwater

Such tidal marshes are part of coastal marine environments that support increasing populations and the attendant commercial and recreational activities. Balancing the economic and social uses of such environments while maintaining aquatic functions is a challenge for Federal, state and local agencies like NOAA.

Each year, four million cubic yards of sediment must be dredged to maintain shipping channels leading to Baltimore Harbor. Many ports require similar maintenance dredging which is usually disposed of via open water disposal, upland placement, and island construction (and reconstruction). These disposal methods complicated NOAA's ability to protect and maintain living marine resource habitats. In Baltimore, the Port of Baltimore's maintenance dredging requirements have been coordinated with efforts to restore the once vast brackish marshes of the Blackwater. A demonstration project has been proposed which will use several small sites within the Blackwater to evaluate the feasibility and ecological impacts of introducing shipping channel dredge material to refuge waters for marsh restoration. Depending on the findings of the demonstration, a large scale program would be undertaken to restore 12,000 acres of Blackwater's emergent marshes with shipping channel dredge material.

Several partners including the Maryland Port Administration, the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers, and the U.S. Geological Survey worked with NOAA on this project which is one of the largest restoration projects undertaken in the Chesapeake Bay.

The Blackwater project aims to protect existing functional habitats in the marine ecosystem that would otherwise be impaired by disposal of dredge material and to restore tidal wetlands. Long-term restoration of the Blackwater and other Dorchester County marshes would provide dredge material placement opportunities for an estimated 20 years and beyond, depending on the need to counteract the effects of land subsidence and sea level rise.

On the Legal Front - Updates on Legal Actions

NOAA's Northeast General Counsel Office shares below information on recent lawsuits to keep constituents informed on current activities.

The following updates pertain to litigation involving NOAA Fisheries Service in the Northeast region. NOAA Fisheries Service, the NOAA General Counsel's Office, and legal experts in the Department of Justice (DOJ) are working together to defend the agency against the claims. One or more of these lawsuits may be settled if it is in the interest of NOAA Fisheries Service.

Massachusetts et al v. Gutierrez. In November 2006, the Commonwealth of Massachusetts and the State of New Hampshire jointly filed a complaint in Federal district court in Boston, Massachusetts, against the Department of Commerce, NOAA, and NOAA Fisheries Service. The lawsuit challenges Framework Adjustment (FW) 42 to the Northeast Multispecies Fishery Management Plan (FMP), which establishes new fishing restrictions to ensure that rebuilding plans for certain New England groundfish stocks stay on course. Principally, the plaintiffs have taken issue with how Days-at-Sea are assessed.

Western Sea Fishing Company, Inc. v. Gutierrez, et al. On April 11, 2007, a group of five fishing vessel owners sued the Secretary of Commerce, in Federal district court in Massachusetts, challenging one provision of Amendment 1 to the Atlantic Herring FMP. Amendment 1 establishes a new limited access management program for the herring fishery. The challenged provision (the so-called permit splitting prohibition) prohibits a vessel from qualifying for a new limited access permit if it must rely on the same fishing history of a vessel that has already been used to qualify another vessel for another limited access permit.

Conservation Law Foundation of New England and Center for Biological Diversity v. Dirk Kempthorne and Carlos Gutierrez et al. In December 2006, two environmental groups filed a complaint in Federal district court in Maine against the Departments of Commerce and the Interior regarding the designation of critical habitat for the endangered Gulf of Maine Distinct Population Segment of Atlantic Salmon. The suit was forced by the prospect that the six year statute of limitations would preclude any legal action after December 18, 2006. The plaintiffs are mainly interested in coming up with a reasonable schedule to accomplish the designation. NOAA Fisheries Service is prepared to do that and is working with the plaintiffs through DOJ to come up with a schedule.

Bender v. Gutierrez, et al. In January 2007, the Federal district court in Norfolk, Virginia, upheld two regulations NOAA Fisheries Service issued to protect sea turtles from harm by pound net fishing gear in the Virginia waters of the Chesapeake Bay. In March, the plaintiff appealed the district court's decision. The parties submitted briefs on the issues for the Fourth Circuit Court of Appeals and now await its final ruling.

Oceana v. Gutierrez et al. In January 2007, an environmental group filed a complaint in Federal district court in Washington, D.C., challenging NOAA Fisheries Service's 2006 Biological Opinion on the effects of the Atlantic sea scallop fishery on sea turtles protected under the Endangered Species Act. In June, the parties, including the Defendant-Intervenor Fisheries Survival Fund, agreed to stay the litigation until December 15, 2007.

Humane Society of the United States and The Ocean Conservancy v. Gutierrez. In February 2007, Humane Society of the United States and the Ocean Conservancy filed suit in Federal district court in Washington, D.C. over the timing of a final rule amending the Atlantic Large Whale Take Reduction Plan regulations. The amendments would implement new fishing gear modifications to further reduce the risk of injury or death to whales from fishing gear off the east coast of the United States. NOAA Fisheries Service has stated that it will file a final rule by October 1.

Fisheries Survival Fund v. Gutierrez The Fisheries Survival Fund, an organization representing commercial scallop fishermen, recently filed suit in Federal district court in Washington, D.C. challenging an emergency rule issued in November 2006 by NOAA Fisheries Service. The emergency rule modified a regulation requiring the use of "chain mats" on scallop dredges during certain times of year in order to reduce impacts to sea turtles caused by the Atlantic sea scallop fishery. Chain mats are grids of chains that cover the opening of the scallop dredge, allowing scallops to enter but keeping sea turtles out.

Join NOAA and the Gloucester Maritime Heritage Center for a maritime heritage weekend with activities for all ages - September 21-23.

The event is free and open to the public. For activity descriptions and a complete schedule please visit http://www.gloucestermaritimecenter.org/familyfundays.html. The schedule will be updated as the event approaches so please check it often!

Update on Revisions to the Atlantic Large Whale Take Reduction Plan

Under the Marine Mammal Protection Act (MMPA), NOAA Fisheries Service is required to develop and implement take reduction plans to assist in the recovery or prevent the depletion of strategic marine mammal stocks that interact with Category I and II fisheries (i.e., those with frequent or occasional mortality and serious injury of marine mammals). The Atlantic Large Whale Take Reduction Plan (ALWTRP) was implemented in 1997 to reduce the incidental serious injury and mortality of right, humpback, and fin whales in commercial gillnet and trap/pot fisheries. The measures identified in the ALWTRP were also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be incidentally taken in gillnet and trap/pot fisheries. Since its implementation, the ALWTRP has been modified on several occasions to address the serious injury and mortality of large whales due to entanglement in commercial fishing gear.

In 2005, NOAA Fisheries Service determined that additional modifications to the ALWTRP were warranted to meet the goals of the MMPA and Endangered Species Act (ESA). A Draft Environmental Impact Statement (DEIS), published in February 2005, identified alternatives for amending the plan and analyzed the impacts of the proposed amendments on the human environment (i.e., biological, social, and economic factors). The six alternatives, including a "no action" or status quo alternative, to modify the ALWTRP were described and analyzed in detail in the DEIS. In June 2005, a proposed rule was published in the *Federal Register,* which described how modifications to the ALWTRP would be implemented. Public comments were accepted on both the DEIS and proposed rule. The DEIS, proposed rule and related information can be found at http://www.nero.noaa.gov/whaletrp/.

Status of the Rulemaking

After considering comments received on the DEIS and proposed rule, a preferred alternative was identified in the Final Environmental Impact Statement (FEIS). The Notice of Availability (NOA) for the FEIS has published and the comment period on the FEIS is open through September 17, 2007. Permit holder letters and a summary guide for the FEIS were mailed to all affected permit holders. The NOA, FEIS, permit holder letter, summary guide, and instructions on how to submit comments on the FEIS are available at: http://www.nero.noaa.gov/nero/hotnews/whalesfr/.

As required by a settlement agreement in a recent lawsuit against NOAA Fisheries Service, the agency will file the final rule with the *Federal Register* on or before October 1, 2007, and it will publish a few days later. Details on the final rule will be provided in a future newsletter and updates will be posted on the ALWTRP website: http://www.nero.noaa.gov/whaletrp/. If you have any questions regarding this ALWTRP rulemaking process, please contact Diane Borggaard, ALWTRP Coordinator, at 978-281-9300 x 6503.

Please note that the ALWTRP pertaining to gillnet restrictions in the Southeast U.S. Restricted Area (a revised area off Florida, Georgia and South Carolina) was recently amended. Additional information on these restrictions can be found on the ALWTRP website or by contacting the ALWTRP Coordinator.

Above: Humpback whale feeding. Credit: NOAA
Top Left: Humpback whale diving. Credit: NOAA