

that observers be carried on California vessels, if requested by the State. The state recently adopted a network of reserves around the Channel Islands, which will provide protection for important bocaccio habitat. In addition, the Council has adopted a plan that, when implemented, will reduce the size of the nearshore fishery and is considering a number of options for significantly restricting or eliminating the spot prawn trawl fishery for 2003. Further, a rockfish closure intended to protect cowcod in a large area off southern California will also provide substantial protection for bocaccio.

With this combination of Federal and state management measures, the Council estimates that the bycatch of bocaccio (meaning the total harvest of bocaccio) in 2003 will be 10.3 mt. The Council plans to closely monitor harvest throughout 2003 and would implement additional mid-year management measures if necessary to ensure that the 20-mt harvest level is not exceeded. In order to evaluate the harvest levels of bocaccio in 2003, the Council will consider the results of the trawl bycatch model, information from the NMFS Marine Recreational Fisheries Statistical Survey (MRFSS), and logbook and other data. Modifications being made in the MRFSS program are also expected to result in faster availability of higher quality data in recreational catches of bocaccio. In addition, in early 2003, the initial results from the NMFS Groundfish Observer Program will be available for NMFS and Council review. The observer program has monitored both the limited entry and open access components of the commercial groundfish fishery since August 2001. Preliminary results of the observer program will be available early in 2003 and will be used to further refine the Hastie bycatch model (Hastie 2001).

NMFS has prepared emergency regulations to implement the Federal management measures discussed above. These emergency regulations will be in effect by January 1, 2003, and will remain effective for 60 days. Concurrently, NMFS will be issuing a proposed rule to implement these measures for the remainder of 2003 and soliciting public comment on these measures.

#### Future Harvest Levels

The Council's current rebuilding policy is based on the 2000 rebuilding analysis which indicated that it will take 170 years to rebuild the bocaccio stock, with the recently adopted catch rate (which is 20 mt for 2003). According to the National Standard Guidelines (Guidelines), NMFS'

regulations that implement the Magnuson-Stevens Act, the maximum length of time to rebuild an overfished species is the time to rebuild in the absence of fishing, plus one generation time. For bocaccio, the maximum time to rebuild is 106 years. Therefore, the Council must adopt a rebuilding plan that will have at least a 50-percent probability of rebuilding bocaccio within 106 years. Given the current abundance of bocaccio, and their natural tendency for rare, large recruitment events, analyses indicate that, even in the absence of fishing, the southern stock of bocaccio would not have a 50-percent probability of recovering within 106 years. Since the Guidelines do not address the unique situation in which rebuilding a species in the maximum time allowed is not possible, NMFS reviewed the Magnuson-Stevens Act and has determined that the Council's recommended level of bocaccio harvest (20 mt) meets its standards for rebuilding overfished stocks. Although the Council has not yet adopted a revised rebuilding plan for bocaccio, NMFS expects that the rebuilding plan will maintain the catch rate adopted for 2003, since this would be necessary in order to meet the rebuilding requirements under the MSA given bocaccio's current status.

#### Determination

After reviewing the best scientific and commercial information available and considering the expected effects of conservation measures, NMFS has determined that listing the southern DPS of bocaccio is not warranted at this time. While NMFS recognizes that the southern stock of bocaccio has severely declined over the past several decades, NMFS believes that the catch rate of 0.5 percent (20 mt in 2003) recently adopted by the Council will prevent bocaccio from becoming endangered within the foreseeable future. NMFS will retain bocaccio on the Candidate Species list and closely monitor the status of the bocaccio population and future Council measures. If necessary, NMFS will re-evaluate its decision regarding whether the southern stock of bocaccio warrants listing under the ESA, including evaluating whether emergency listing is warranted and whether an additional status review is necessary. Reasons for a re-evaluation include, but are not limited to: (1) if future Council decisions allow for increased exploitation rate; or (2) if future data or analysis indicate that conservation efforts are inadequate.

#### References

A list of references is available upon request (see ADDRESSES).

#### Authority

The authority for this section is the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 13, 2002.

#### Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 021108270-2270-01; I.D. 102802C]

RIN 0648-AQ53

#### Endangered and Threatened Species; Finding for a Petition To Revise Critical Habitat for Northern Right Whales

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

**ACTION:** Notice of 90-day finding.

**SUMMARY:** NMFS announces the receipt of a petition to revise critical habitat for the endangered western North Atlantic right whales, *Eubalaena glacialis*, (right whales). NMFS finds that the petition presents substantial scientific information indicating that this action may be warranted and is soliciting public comment and information on the petition. NMFS will determine how to proceed with the petitioned action within 12 months after receiving the petition.

**DATES:** Comments on this action must be postmarked or transmitted by facsimile by January 21, 2003. Comments transmitted via e-mail or the Internet will not be accepted.

**ADDRESSES:** Comments concerning this action may be submitted to Mary Colligan, Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Mary Colligan, Northeast Region, telephone 978-281-9116, fax 978-281-9394; Kathy Wang, Southeast Region, telephone 727-570-5312, fax 727-570-

5517; or Patricia Lawson, telephone 301-713-2322, fax 301-713-0376.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 11, 2002, NMFS received a petition dated July 9, 2002, from The Ocean Conservancy requesting that NMFS revise and expand the current critical habitat designation for right whales. The petitioner requested that NMFS expand the existing Southeast critical habitat designation to the following coordinates: 31° 30' N to 29 40' N from the shoreline out to 30 nautical miles (55.6 km<sup>2</sup>); 29° 4' N to 28 °00' N from the shoreline out to 10 nautical miles (18.5 km<sup>2</sup>). The petitioned area would add approximately 2,700 nm<sup>2</sup> (5,003.6 km<sup>2</sup>) to the current critical habitat coverage. The petitioner also requested that NMFS expand and combine both the existing Northeast critical habitat designations (Cape Cod Bay and Great South Channel) into one critical habitat area bounded by the following coordinates: 41° 41.2'N/69° 58.2' W; 41° 00.0' N/69° 05.0' W; 41° 00.0' N/68° 13.0' W; 42° 12.0' N/68° 13.0' W; 42° 12.0' N/70° 30.0' W; 41° 46.8' N/70° 30.0' W; and on the southwest corner by the shoreline of Cape Cod, MA.

Section 4(b)(3)(D) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1533(b)(3)(D)), requires that NMFS make a finding on whether a petition to revise a designation of critical habitat presents substantial scientific information to demonstrate that the petitioned action may be warranted. NMFS' ESA implementing regulations at 50 CFR 424.14 define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In making this finding, NMFS must consider the information that is presented by the petitioner and any new unassessed information on habitat that was added to NMFS' file regarding the species after critical habitat was designated but before NMFS received the petition to revise it. To the maximum extent practicable, this finding is to be made within 90 days of the petition, and the finding is to be published promptly in the **Federal Register**. Within 12 months after receiving a petition that NMFS has found to present substantial information indicating that the revision may be warranted, NMFS must determine how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

Critical habitat is defined in section 3(5)(A) of the ESA as (i) the specific

areas within the geographic area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation is defined in section 3 of the ESA as "... the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary."

In determining what areas are critical habitat, NMFS must consider the physical and biological features that are essential to the conservation of the species and that may require special management considerations. Physical and biological features essential to the conservation of the species include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Special management considerations or protections mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of the listed species (50 CFR 424.02(j)).

Section 4(b)(2) of the ESA requires NMFS to take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. NMFS may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

The right whale was listed as endangered under the Endangered Species Conservation Act, the precursor to the ESA, on June 2, 1970 (35 FR 8495; codified at 50 CFR 17.11). NMFS was petitioned by the Right Whale Recovery Team to designate critical habitat for right whales on May 18, 1990. A document was published in the **Federal Register** on July 12, 1990 (55 FR 28670), requesting information and comments on the petition. The proposed rule was published on May 19, 1993 (58 FR

29186), and the final rule was published on June 3, 1994, (59 FR 28793; codified at 50 CFR 226.203). The designation identified habitat with features essential to the conservation of the species, such as foraging, calving, and nursing. Specifically, this designation includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida.

In general, the petitioner stated that since the 1994 designation of right whale critical habitat, knowledge regarding distribution and mortality of the North Atlantic right whale has increased substantially, indicating that critical habitat boundaries need to be revised and expanded to provide proper protection for right whales.

Specifically, the petitioner stated that 10 years of new data regarding right whale distribution and causes of mortality along the east coast of the United States show that the current critical habitat designation is not sufficient to protect right whales from further anthropogenic mortality. The petitioner stated that the proposed critical habitat expansion contains several features essential to the conservation of the right whale in the western North Atlantic and proposed that these features require specific protection or management considerations to ensure the survival and recovery of the species. The petitioner stated that the areas proposed for expanded critical habitat experience high levels of human disturbance in the form of shipping activities, fisheries, military activities, dredging operations, increased pollution, and general habitat disturbance. The essential features associated with the proposed critical habitat cited by the petitioner include the following: space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of species.

The petitioner acknowledged that some areas in the northeastern U.S. have already received special management attention in the form of fishing regulations, but maintains that essential right whale habitat along the eastern seaboard lacks protection from ship strikes. In addition, the petitioner noted that when several habitats, each satisfying the requirements for

designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat. The petitioner stated that the continued high mortality of North Atlantic right whales from ship strikes indicates the immediate need for management actions to reduce ship strikes and maintains that accurately designated critical habitat boundaries will facilitate the management process. In addition, the petitioner stated that since the time critical habitat was originally designated in the southeastern U.S., extensive and

expansive survey efforts have shown that right whales occur further offshore than originally known. The petitioner contended that the importance of this area as the only known calving ground for right whales warrants the revision of critical habitat to protect the animals within this region.

#### **Petition Finding**

NMFS has reviewed the petition and other available information. On the basis of that information, NMFS finds that the petition presents substantial scientific information indicating that the

requested action may be warranted. Within 1 year of the receipt of the petition, NMFS will determine how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: November 13, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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