

RIGHT WHALE NEWS

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Right Whale Speed Restriction Rule Held Up at OMB

In June 2006, the National Marine Fisheries Service (NMFS) issued a Proposed Rule to slow vessels to ten knots when approaching east coast ports where right whales are expected to be present. The NMFS completed the draft final rule and submitted it on February 20 to the Office of Management and Budget (OMB) for interagency review, economic analysis and political vetting. Six months later, OMB has still not approved the rule and some members of Congress are upset about the delay.

“It is our understanding that the draft final rule is still at OMB and may be undergoing substantive revisions that are not supported by the best available science” six House members wrote in a letter to President Bush on August 6. In an August 10 letter to the President, Senators John Kerry, Olympia Snowe and Edward Kennedy called on the Administration to take immediate action to finalize a ship strike reduction rule.

The White House Council of Economic Advisors (CEA) is also reviewing the causes of right whale deaths and the need for and costs of speed restrictions.

Advocacy groups, including the Public Employees for Environmental Responsibility, a national organization of employees in natural resource agencies, have accused the White House of holding up a rule that would hurt industry.

The World Shipping Council argued against the rule in comments filed in October and again in a May 3 letter to OMB. The May 3 letter complained that military vessels and vessels under 20 meters in length, which are both exempt in the Proposed Rule, are a substantially greater threat than container ships. The Council also argued that “there is virtually no evidence to indicate a correlation between vessel speed and the severity of injury in the event of a collision.”

Amy Knowlton of the New England Aquarium rebutted the Council’s findings in a July 20 letter to the CEA and OMB: “In summary, for all four points that the World Shipping Council has highlighted as their main concerns, they have consistently misinterpreted data in order to strengthen their argument to exclude liner shipping from this proposed rule...I would hope that OMB and CEA recognize the fact that WSC has purposefully highlighted only certain elements of the data to benefit their agenda without any appropriate review of the science and statistics....the science is more than adequate to support this proposed rule...Time is of the essence for the recovery of North Atlantic right whales and to prolong this process indefinitely will simply lead to more needless vessel/whale strikes in a population struggling to survive.”

The afore-mentioned letter from Senators Kerry Snowe and Kennedy concludes: “We call on the administration to take immediate action to finalize a ship strike reduction rule that will slow ships to protect right whales based on the best available scientific evidence. We also ask that the Administration brief our staff on the expected timeline for implementation, as well as the Administration’s plans for the enforcement and monitoring of the new provisions.”

GAO Report: Atlantic Large Whale Take Reduction Plan Needs Improved Economic Analysis and Evaluation Strategies

Over a year ago, Senator Olympia Snowe (R-ME) asked the U.S. Government Accountability Office (GAO) to review the changes that the National Marine Fisheries Service was proposing to make to the Atlantic Large Whale Take Reduction Plan. Specifically, she asked GAO to (1) describe the scientific basis for the proposed changes to the plan and the extent to which uncertainties exist regarding how effectively they will protect large whales; (2) describe how NMFS plans to address implementation issues, particularly in the rocky bottom areas of the North Atlantic coast; (3) evaluate the extent to which NMFS fully assessed costs to the fishing industry and the economic impacts on fishing communities; and (4) evaluate the extent to which NMFS has developed strategies for fully assessing the effectiveness of and industry compliance with the proposed changes.

GAO submitted its response to Senator Snowe’s requests in July (see Scientific Literature and Reports, page 9, for citation and availability), including the following specific points: (1) GAO found that while NMFS used scientific data on whale entanglements, scarification and sightings as support for its proposed changes, uncertainties remain regarding how many fewer serious injuries and mortalities will occur as a result of the requirement to use sinking groundline; (2) GAO found that NMFS had not resolved implementation issues associated with using sinking groundline, particularly off the coast of Maine; (3) GAO found that NMFS’s economic assessment of the costs of the proposed gear modifications did not reflect the significant uncertainties associated with the assessment. Lacking verifiable data for some key cost variables, NMFS used estimates and assumptions to produce a single estimate of compliance costs, about \$14 million annually – more than \$12.8 million of which would be incurred by the lobster industry; and (4) GAO found that NMFS does not have strategies for fully evaluating the effectiveness of the new requirements, nor does the agency have a strategy to monitor the level of industry compliance. In summary, GAO recommended that NMFS revise its economic analysis to present a range of possible costs, expand its proposed gear-marking requirements and develop a strategy to assess industry compliance.

NMFS has submitted comments on GAO’s draft report. They did not agree to revise the economic analysis or to expand gear marking requirements, but they did agree to develop a strategy to assess industry compliance.

Jerry Fraser, editor and publisher of the *National Fisherman*, wrote in a July 26 editorial, “In other words, NMFS doesn’t know if its plan will work, how to tell if it’s working, or how much it will cost. In even fewer words, the agency hasn’t done its job.”

Final Rules for Whale-safe Fishing Gear Will Be Issued by October 1

In response to a lawsuit filed by the Humane Society of the United States and the Ocean Conservancy, the NMFS has agreed to issue new rules to protect right whales, humpback whales and fin whales by October 1 of this year. The rules will apply to all gillnet and pot trap fisheries along the east coast.

The lawsuit was filed in U.S. District of Columbia District Court February 12 (see *Right Whale News* 14(2):5), alleging that NMFS was violating the Marine Mammal Protection Act by failing to protect the three species of whales from entanglement in commercial fishing gear. The environmental groups agreed to a settlement because a legal battle would have lasted beyond October 1.

The Maine Lobstermen’s Association, which had “intervenor status” in the lawsuit, participated in the settlement discussions. They feared that the judge could have imposed new regulations from the bench. Patrice McCarron, executive director of the Association has also expressed concerns about the quick timetable for the new rule, saying that rushing the rule will hamper the ability of NMFS to find a rule that will work for all parties. Mary Colligan, Assistant Regional Administrator for NMFS’s Northeast Region responded that “we wouldn’t have agreed to the deadline if we felt we could not meet it responsibly.”

Final EIS Issued on Revised Atlantic Large Whale Take Reduction Plan

The Atlantic Large Whale Take Reduction Plan (ALWTRP) Final Environmental Impact Statement (FEIS) has been filed with the Environmental Protection Agency (EPA), and the Notice of Availability for the FEIS was published in the *Federal Register* August 17. The public comment period began then and remains open through September 17.

The ALWTRP FEIS analyzes the impacts of the proposed amendments to the regulations implementing the ALWTRP on the human environment. The FEIS, as well as an FEIS summary document, are available from Marcia Hobbs (Marcia.Hobbs@noaa.gov or 978-291-9300 ext.6505) and are on the ALWTRP website:

<http://www.nero.noaa.gov/whaletrp/> - click on “Information on the ALWTRP FEIS/final rule” under “What’s New,” or go directly to

<http://www.nero.noaa.gov/nero/hotnews/whalesfr/>.

Following the completion of the public comment period on the FEIS, NMFS will consider the comments received and prepare a Record of Decision (ROD) that will include the decision, the alternatives considered, and the factors considered in the decision. The final rule, which will discuss how modifications to the ALWTRP will be implemented, is expected to be published soon after the ROD. As required by a settlement agreement in a recent lawsuit against NMFS (see previous article), NMFS will file the final rule with the *Federal Register* on or before October 1, with publication a few days later.

Final Rule Issued for Southeast Gillnet Fishing

On June 25, the National Marine Fisheries Service published a final rule in the *Federal Register* (72 FR 34632) implementing permanent restrictions on gillnet fishing in the Southeast U.S. during the right whale calving season. In the final rule, NMFS expands the Southeast U.S. Restricted Area to include waters within 35 nautical miles of the South Carolina coast (south of the Little River Inlet at the SC/NC border); divides the Southeast U.S. Restricted Area at 29° N. latitude into Southeast U.S. Restricted Areas North and South; and modifies regulations pertaining to gillnetting within the Southeast U.S. Restricted Area. Specifically, the rule prohibits gillnet fishing within the Southeast U.S. Restricted Area during annual restricted periods associated with the right whale calving season (November 15 - April 15). Limited exemptions to the fishing prohibitions are provided for gillnet fishing for sharks and for Spanish mackerel south of 29°00' N lat. Gillnet possession is prohibited in the Southeast U.S. Restricted Area North, although an exemption to the possession prohibition is provided for transiting through the area if gear is stowed in accordance with the rule.

The final rule is based on the proposed rule and public comments received on the proposed rule. The action implements the Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations at 50 CFR 229.32(g) and is necessary to protect North Atlantic right whales from further serious injury or mortality in the Southeast U.S. Restricted Area from entanglement in gillnet gear. The final rule was made effective as of July 24, 2007. A copy of the final rule is available under "What's New" on the ALWTRP web page (<http://www.nero.nmfs.gov/whaletrp/>)

Catch Seized from Fishing Vessel Without Whale-safe Gear

In July, agents from the National Oceanic and Atmospheric Administration seized the catch of a fishing vessel for not carrying the required whale-safety weak links. The estimated value of the catch was \$30,000.

The fishing vessel had been operating in a Seasonal Area Management zone on the northern George's Bank. In this zone, as part of the Atlantic Large Whale Take

Reduction Plan, weak links with specific breaking strengths are required on fixed fishing gear including the gillnet gear the fishing vessel was using.

The NMFS and the U.S. Coast Guard are investigating whether the vessel also violated the Marine Mammal Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act.

Register Now for the North Atlantic Right Whale Consortium Meeting

Mark your calendars!! The Annual Meeting of the North Atlantic Right Whale Consortium will be held November 7 and 8, 2007, at the New Bedford Whaling Museum in New Bedford, Massachusetts.

Early registration (\$75) will run from now until October 19, after which registration fees increase (\$125). Registration will close November 2.

You may register for the meeting online at www.rightwhaleweb.org. Additionally, an official registration form can be found at the end of this issue of *Right Whale News*. When filling out the registration form, please be sure to include updated affiliation, address, and email information.

This is also an official call for presentations. If you would like to present at the meeting, you must submit an abstract for review by September 15. Abstracts should be submitted via the Consortium website. Presenters will be notified no later than September 30.

For those working with or in contact with agencies that send representatives to the Annual Consortium meeting but who may not receive *Right Whale News* or may not be on the consortium member list, please have those agencies contact Consortium Secretary Heather Pettis at hpettis@neaq.org with contact information.

Additional information regarding hotel, parking, agenda, etc. will be posted to the Consortium website: www.rightwhaleweb.org

Status Report on Right Whale Research Permits

A moratorium on issuance of new permits and major amendments to existing ones has been in effect for more than two years, while the National Marine Fisheries Service (NMFS) considered National Environmental Policy Act (NEPA) compliance for research activities involving right whales. The agency subsequently initiated a programmatic approach to right whale research (*Right Whale News* 12(3) – August 2005; *RWN* 13(2)- May 2006; *RWN* 14(1)- February 2007). On August 17, Michael Payne, Chief of the Permits Division provided an update:

“A draft Programmatic Environmental Impact Statement (DEIS) for the Issuance of Section 10(a)(1)(A) Permits for Scientific Research on Northern Right Whales has been completed and is winding its way through internal NMFS review. The document will be forwarded to NMFS science centers conducting research on right whales for their comments and edits before it begins formal NOAA clearance or public review. The science center's reviews and incorporation of their comments will take 30-60 days at least. Once comments are received from the science centers and incorporated into the document, the DEIS will begin formal clearance including NOAA legal review and NMFS clearance. The clearance of the Programmatic DEIS will also coincide with a formal request by the Permits Division, Protected Resources, NMFS, to the Endangered Species Division, Protected Resources, NMFS, to conduct formal consultation under section 7(a) of the Endangered Species Act. It is likely that the entire process will be completed and the DEIS released for public comment in December 2007. A Final Programmatic EIS will not be completed until 2008.

“This process has taken longer than anticipated and I realize that there are several research applications that are in limbo awaiting completion of this process. The Permits Division will be looking at those applications during the week of August 20 to determine if there is a better way to proceed on those applications. Some investigators are working under other researchers' permits which I consider a short-term fix but unsatisfactory in the bigger picture. The Permits Division will be getting back to those researchers whose permit/amendment has been held up by this process to determine where the research is at this point and the best way to proceed.”

More Wayward Whales

Conventional wisdom says that North Atlantic right whales are not found off the southeast coast of the United States during the summer. Presumably, they are all up north, off the New England and southern Canadian coasts and possibly elsewhere. Not this year. For the first time on record, a right whale cow/calf pair were photographed 15 miles east of Mayport, Florida, on July 17. This represents the first sighting of right whales in the southeast for the months June, July and August. (A rare September sighting was of a fatally-wounded pregnant female.)

According to Amy Knowlton of the New England Aquarium, the photographs were taken during a fishing tournament off Mayport; they were clear enough to confirm that the animals were right whales but not good enough for individual identification.

The NMFS urged mariners to use extreme caution, maintain a sharp lookout and take prompt action to avoid the whales. They also recommended slowing vessels to less than 12 knots.

Canadian Whale Institute Launches Bilingual Right Whale Website

The Canadian Whale Institute has initiated a web site that focuses on right whales in Canada. Contents include whale facts, research, stewardship, emergency, links and references. The web site is bilingual, French and English: www.rightwhale.ca or www.baleinenoire.ca or www.baleinefranche.ca.

The stewardship section contains information on conservation areas, recovery plan, Bay of Fundy shipping lanes, whale rescue, code of ethics for whale watch tour operators, code of ethics for fishermen and U.S. stewardship measures. Links take you to emergency networks, nonprofit organizations, academic institutions, government and international agencies, museums, corporations and whale news (the latter includes a link to *Right Whale News*).

Funding support for the website comes from the Government of Canada Habitat Stewardship Program for Species at Risk, the Canadian Whale Institute and the New England Aquarium.

The Canadian Whale Institute, whose mission is to facilitate and support research, conservation and stewardship of whales with a focus on the North Atlantic right whale, also has a new web site: www.canadianwhales.org

Roz Rolland wins *Popular Science Magazine's* “The Worst Jobs in Science – Number 10” Award

Popular Science magazine produces an annual list of the ten worst jobs in science, in which they “salute the men and women who do what no salary can adequately reward.” This year’s number 10 winner goes to Roz Rolland, senior researcher at the New England Aquarium, for “scooping up whale dung then digging through it for clues.”

Dr. Rolland pioneered whale-feces research in 1999. She trained sniffer dogs to detect whale droppings from as far as a mile away. Collecting samples in special nets, she and her colleagues are able to test for pregnancy, measure hormones and biotoxins, and examine genetics. She can even tell animals apart by analyzing their feces. A summary of much of her research appears in *The Urban Whale: North Atlantic Right Whales at the Crossroads*, a book she co-edited with Scott Kraus (see review in *Right Whale News* 14 (1): 7).

Updated: *A Prudent Mariner's Guide to Right Whale Protection*

The NMFS and U.S. Coast Guard have produced an updated version of *A Prudent Mariner's Guide to Right Whale Protection*, a computer-based, interactive guide and

training resource for shipboard operations as they relate to avoiding ship-strikes of North Atlantic right whales.

This interactive CD program provides key educational and support information intended for shipboard operations in areas where North Atlantic right whales may be present. Focused on operations along the Atlantic Coast of North America, the program delivers crew training information about right whales, including an introduction to right whales; recommended navigational actions when operating in right whale habitat; a guide to reporting sightings of dead or injured right whales; an informative video presentation, and a short follow-up quiz.

Additionally, the program includes guidelines for compliance with the Mandatory Ship Reporting Systems, including an innovative, interactive report-generation program.

Produced by NMFS (NOAA Fisheries) and the U.S. Coast Guard, with input from the shipping industry, non-governmental organizations, and Florida and Georgia state resource management agencies, this program provides a comprehensive collection of right whale information delivered in a compact and user-friendly format. The program features a sidebar menu that allows access to specific sections of the presentation, and the CD itself includes additional information in a separate “Media” folder, such as video clips, information about the current Mandatory Ship Reporting areas, and diagrams of the recently implemented, recommended traffic lanes in right whale high-use areas.

This CD is intended to be used as part of a shipboard right whale protection management program, which includes training, planning, sighting collection and vessel operations.

Changes

The Southeastern U.S. Implementation Team for the Recovery of the North Atlantic Right Whale (**SEIT**) has changed the date of its fall meeting to October 25. (See Calendar of Events on page 8 for details.) **Robert Gisiner** has departed his long-held position with the Office of Naval Research’s Marine Mammal Program and is now the Scientific Program Director at the Marine Mammal Commission. **George R. Sedberry** is the new Superintendent of the Gray’s Reef National Marine Sanctuary off Georgia. Previously, he was Assistant Director and Senior Marine Scientist at the Marine Resources Research Institute of the South Carolina Department of Natural Resources. The Sanctuary has adopted **new rules** to better protect Gray’s Reef including: (1) no anchoring except in an emergency and (2) fishing is allowed only by rod and reel, handline, or spearfishing without powerheads.

Scientific Literature and Reports

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Atlantic Large Whale Take Reduction Plan. GAO-07-881. 58 pp. A Report to the Ranking Member, Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard, Committee on Commerce, Science and Transportation, U.S. Senate. The report is available from: www.gao.gov/cgi-bin/getrpt?GAO-07-881

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Calendar of Events

► **Note date change - September 15:** Deadline for submitting abstracts for the annual meeting of the North Atlantic Right Whale Consortium meeting (see Nov. 7-8, below). Presenters will be notified later than Sept. 30.

September 17: Deadline for comments on the Final EIS on the revised Atlantic Large Whale Take Reduction Plan. See page 3 for details.

October 19: Early registration deadline for the annual meeting of the North Atlantic Right Whale Consortium (see Nov. 7-8, below). A registration form may be found at the end of this issue of *Right Whale News*.

► **Note date change - October 25:** Fall meeting of the Southeastern United States Implementation Team for the Recovery of the North Atlantic Right Whale (SEIT). Environmental Education Center, Guana Tolomato Matanzas National Estuarine Research Reserve, Ponta Vedra, Florida. For information, contact SEIT co-chair Leslie Ward at Leslie.Ward@MyFWC.com

November 2: Registration deadline for the annual meeting of the North Atlantic Right Whale Consortium (see Nov. 7-8, below).

November 7 - 8: Annual meeting of the North Atlantic Right Whale Consortium, New Bedford Whaling Museum, New Bedford, Massachusetts. For further information, see article on page 5 or contact Heather Pettis, Consortium Secretary, at hpettis@neaq.org

November 29 - December 3: 17th Biennial Conference on the Biology of Marine Mammals, Cape Town, South Africa. Sponsored by the Society for Marine Mammalogy. For more information, visit the Society's web site: <http://www.marinemammalogy.org/>

Right Whale News

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To subscribe to *Right Whale News* or to submit news, articles or commentary for publication, please contact the editor, Hans Neuhauser, at the Georgia Environmental Policy Institute, 380 Meigs Street, Athens, Georgia 30601 USA. Telephone 706-546-7507. Fax 706-613-7775. E-mail: hansneuhauser@bellsouth.net

North Atlantic Right Whale Consortium
Annual Meeting
New Bedford Whaling Museum, New Bedford, MA USA
November 7 – 8 2007

REGISTRATION FORM

(Complete one Registration Form for EACH Attendee)

Contact Information

Last Name: _____

First Name: _____

First name to appear on badge: _____

Title: _____

Agency/Organization: _____

Phone: _____ Fax: _____

Email: _____

Mailing Address: _____

City: _____ State/Province: _____

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Mail or email registration to

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If paying by check or money order: Make payable to New England Aquarium

Registration with credit card payment is available at www.rightwhaleweb.org

If you have additional questions please email Heather Pettis (hpettis@neaq.org) or call (617.226.2144)

Registration Refund Policy: \$25 cancellation fee before November 2, 2007. No refund on or after November 2, 2007.

Registration Fees:

Registration includes scientific program, breakfast, sit-down lunches, coffee breaks, and opening night reception. All fees are in US dollars.

Early (received by October 19, 2007)	
Late (received after October 19, 2007)	

Payment

All fees must be paid in advance and accompany this form.

Credit Card Payment: _____ Visa; _____ Mastercard; _____ American Express

Account # _____

Exp. Date: _____

Print name as it appears on card:

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