

RIGHT WHALE NEWS

*An independent forum for right whale conservation and recovery,
published four times a year.*

Volume 22 Number 1

February 2014

SEUS Mid-Season Report: Wild Weather and Few Whales

Whales and weather! The perfect combination! Ephemeral and unpredictable. Polar vortices and few whales. At mid-season on the southeastern U.S. wintering and calving grounds, only about 50 right whales have been reported—far fewer than the 200+ right whales reported in the 2010 season. Likewise, to date, only 10 mother-calf pairs have been reported. This low number is similar to the 2012 season, and less than the recent average of 22.

Of the 10 mother-calf pairs to date, two are noteworthy. (Well, actually for this recovering population, all are noteworthy—but here are two.) First-time mother, #3546, a nine-year-old, was sighted with her calf on 14 February. (So far, she is the only first-time mother on the calving ground this season.) The calf was subsequently darted by the Georgia Department of Natural Resources (GDNR) team on 22 February. (Will additional mother-calf pairs, and particularly, first-time mothers, be sighted this season?) And next, six-time mother, #1301, *Half Note*, a 31-year-old, was sighted with a calf on 20 January (image and further story below).

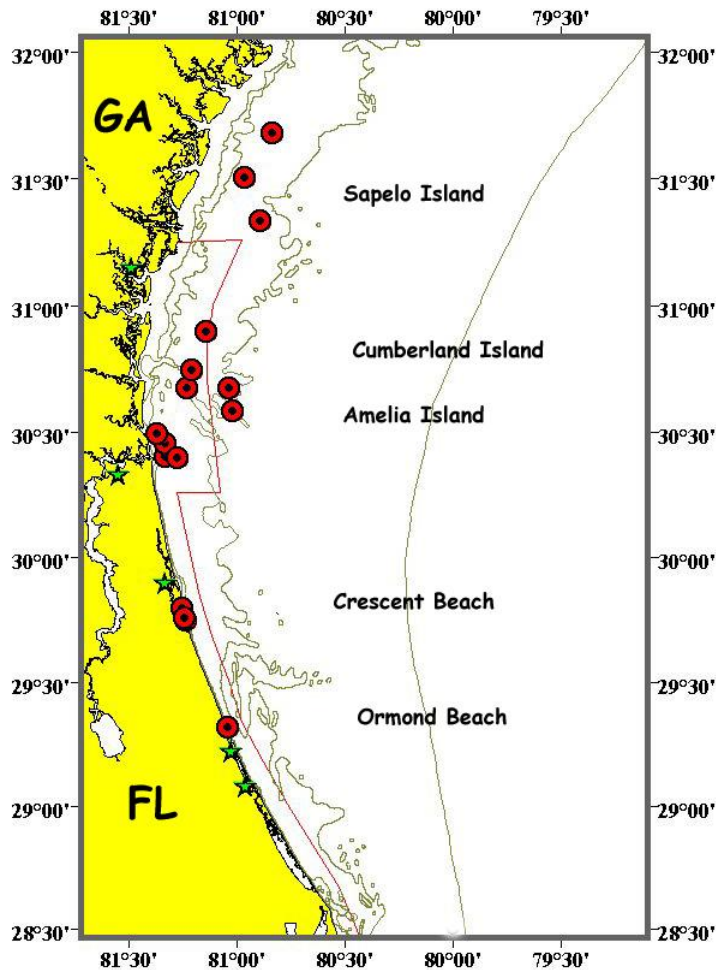


Female # 1301 and calf. This female has lost at least three previous calves. This calf, first sighted on 20 January 2014, appears thin, but all are hopeful that it will grow healthy and survive. (Image FWC, NOAA/NMFS permit # 15488)

The history of #1301 illustrates one aspect of the reproductive reality for this population. According to Philip Hamilton, New England Aquarium, *Half Note* (#1301) was born to the

whale *Fermata* in 1983 and gave birth to her first calf at the age of six in 1989. She has only been able to raise that calf and her next calf (born in 2003) to weaning age; but only the 2003 calf, *Neptune*, is believed to be alive today. Her next three calves (born in 2006, 2008, and 2012) were all lost on the calving ground (evidenced by the mother subsequently seen without her calf); and her 2012 calf appeared very thin at its last sighting. Likewise, her 2014 calf also appears quite thin and there is concern for its survival.

As has been done in past issues, a sightings distribution plot centered on the reference date of 1 February 2014 gives a representative view of the season.



Right whale sightings for a two-week period (26 January through 4 February) during the SEUS mid-season, centered around 1 February 2014, provide a general impression of the numbers and distribution for the season. The few whales that were present (sightings n=16) are concentrated in a “core” area around Amelia and Cumberland islands. There were few sightings to the south of St. Augustine. Weather and survey effort are factors in this plot. The collaborative sightings data were contributed by the Florida Fish and Wildlife Conservation Commission, Georgia Department of Natural Resources, Sea to Shore Alliance, and the Marineland Right Whale Project. (The green stars are geographic locations, not labeled here.)

Few human impacts have been reported. The 2013 calf of #3294 has wounds on the peduncle and flukes and has been sighted on several occasions. And, a 4-year-old male, #4057, was sighted entangled on 16 February and subsequently disentangled off Georgia on 17 February. More than 100 yards of line were cut away, but some remained. A video of the disentanglement is available at: www.youtube.com/watch?v=x8nQDW02RFE.

Lastly, there have been about two dozen reports of humpback whales from Sapelo Island, Georgia, to Fort Lauderdale, Florida. Four of these have been photographically labelled to date (photos/videos are not always available or adequate for matching). Researchers at FWC believe that this number of reports is not unusual for this time and location.

Ship-Strike Rule Final

On 9 December 2013, the “Final Rule to Remove the Sunset Provision of the Final Rule Implementing Vessel Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales” was posted (*Federal Register*: 78 FR 73726). With this action, the National Marine Fisheries Service (NMFS) eliminated the expiration date (or “sunset clause”) in the regulations requiring vessel speed restrictions. The rule went into effect on 6 December 2013. All other aspects of the rule remain in place until circumstances warrant further changes to the rule.

During the comment period for the 6 June 2013 proposed rule, NMFS received a total of 145,879 comments. Of the comments received, 73,560 were in the form of a petition signed by members of an organization; 71,126 were from individual members of four organizations who co-signed a form letter; and 659 submissions contained individual comments from members of one of those organizations. The remainder of the comments (483) were submitted directly to the comment web site by individuals. Of these, 21 came from ports and pilot association representatives, 11 from environmental organizations (other than the ones noted above), 7 from industry associations, 6 from state or federal agencies or their affiliates, 3 from commercial whale-watch or ferry companies, 2 from public aquariums, and 1 from a commercial fishing association.

A total of 145,840 commenters expressed general support for the rule, 2 indicated the rule should expire in December 2013 (as originally written in October 2008), and several expressed preference for the rule expiring with perhaps a new sunset clause. Of those providing specific comments, 33 favored removal of the sunset clause, 16 favored a new but unspecified termination date, 14 favored a termination date of ≤ 5 years, 59 suggested modifications to enhance the effectiveness of a future rule; and 4 provided data or analyses that addressed specific aspects of the existing rule.

In the Conclusions and Next Steps section of the FR Notice, NMFS agreed that the rule should be periodically reviewed to assess its value in reducing the threat of vessel collisions with right whales, that specific elements be reviewed to ensure that objectives are met and that the rule is cost-effective and not unduly burdensome to the regulated community. As part of its requirements under Executive Order (EO) 13563, NOAA will conduct periodic reviews of the rule’s costs and benefits. NMFS will synthesize, review, and report within the next five years on

studies and new information. The report will include recommendations to ensure the conservation value of the rule and that its requirements do not unduly burden affected entities. Public comment on the report will be sought. The posting describes that NMFS expects to continue its ongoing right whale and vessel monitoring studies and make modifications to, or phase out if appropriate, the vessel speed restrictions.

For further information, see: www.nmfs.noaa.gov/pr/shipstrike.

Petition Submitted: Exempt Entrance Channels and Pilot Boarding Areas From Vessel Speed Restrictions ?

During the public comment period for the proposed final ship-strike rule, some commenters expressed concern about compromised safety that might arise from the 10-knot limit in some circumstances. In particular, the American Pilots' Association in a 31 July 2013 letter indicated that navigation is compromised in specific areas and suggested that NMFS "exclude federally-maintained dredged channels and pilot boarding areas (and immediately adjacent waters) for ports from New York to Jacksonville." The area addressed was said to be an approximate aggregate area of 15 square miles.

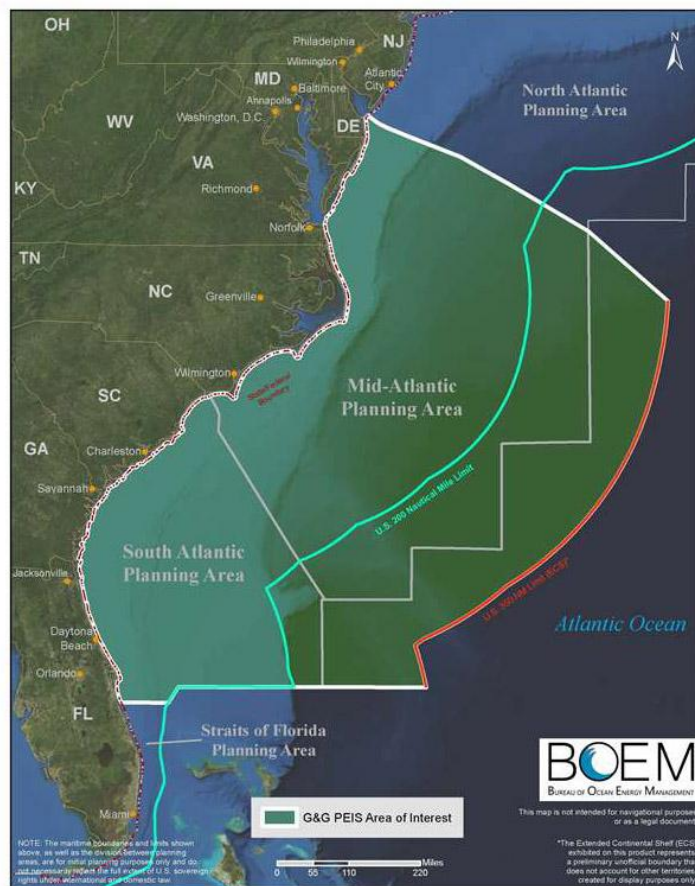
Subsequently, NMFS elected to treat the request as a petition for rulemaking under the Administrative Procedures Act (neither required nor NMFS' normal practice). A notice of Receipt of a Petition for Rulemaking was published in the *Federal Register* on 30 January 2014. The public comment period ended on 3 March 2014. A total of 88 comments were submitted. These can be viewed at the Federal Rulemaking Portal: www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0013.

In a phone interview on 26 February 2014, Clay Diamond, Deputy Director of the American Pilots' Association, clarified that the proposal on the table is not for an exemption to the ship-speed management rule, but rather, if approved, the petition would cause NMFS to initiate formal rulemaking, and undertake a notice and comment period prior to judging whether an exemption will be made. The website for the pilots' association is: www.americanpilots.org.

Seismic Testing

Seismic testing has been proposed off the Atlantic coast. The tests are being considered from Delaware to Florida's Cape Canaveral, although the interest is highest off North Carolina, South Carolina, and Virginia. Walter Cruickshank, deputy director of the Bureau of Ocean Energy Management (BOEM) described that the tests will provide updated and improved information about the oil and natural gas resources in the nation's mid- and south Atlantic.

A draft Atlantic Geological and Geophysical (G & G) Activities Programmatic Environmental Impact Statement (PEIS) was issued in March 2012. The comment period has closed and the Final EIS was published on 27 February 2014 (www.boem.gov/Atlantic-G-G-PEIS/).



The Atlantic OCS G&G Programmatic EIS Area of Interest

The *New York Times* (28 February 2014) reported that actual drilling of test wells could not begin until a White House ban on production in the Atlantic expires in 2017, and even then, only after the government agrees to lease ocean tracts to oil companies. Recall that the petroleum industry sunk 51 test wells off the East Coast back in the late 1970s and early 1980s—none of them successful enough to begin production. Recently, however, in 2011, The Interior Department said that 3.3 billion barrels of recoverable oil and 312 trillion cubic feet of natural gas could lie in the exploration area. President Obama committed in 2010 to allowing oil and gas surveys along the same stretch of the Atlantic, and the government had planned to lease tracts off the Virginia coast for exploration in 2011. But those plans collapsed after the Deepwater Horizon oil rig disaster in April 2010, and the government later banned activity in the area until 2017.

As background, BOEM is a bureau in the United States Department of the Interior that manages the offshore energy resources of the Outer Continental Shelf (OCS). BOEM manages approximately 1.7 billion acres containing about 8,000 active leases of this federally owned offshore area. The almost 36 million leased OCS acres generally account for about 7 percent of America’s domestic natural gas production and about 24 percent of America’s domestic oil production.

The OCS Lands Act authorizes the Secretary of the Interior to grant mineral leases and to prescribe regulations governing oil and natural gas activities on OCS lands. The Act mandates that the OCS be made available for expeditious and orderly development, subject to environmental safeguards, while maintaining competition for the OCS resources. Federal ownership begins three nautical miles off most coastal states—the exceptions are Texas and the Gulf coast of Florida where the OCS starts at about nine nautical miles. Federal jurisdiction generally ends around 200 nautical miles from the coastline.

Revenues from OCS leases consist of bonuses, royalties, and rentals and are collected by the Office of Natural Resource Revenue (ONRR). These revenues are shared with coastal states, as directed by statute, and the remaining funds are deposited in the U.S. Treasury.

The stated mission of BOEM includes protecting the human, marine, and coastal environments through advanced science and technology research. The leasing and operations activities on the OCS are guided and subject to the requirements of some 30 federal laws administered by numerous federal departments and agencies. In addition to the OCS Lands Act, other laws that may apply to OCS exploration, development, and production include, but are not limited to, the:

- National Environmental Policy Act
- Endangered Species Act
- Coastal Zone Management Act
- Federal Water Pollution Control Act
- Ports and Water Safety Act
- Marine Mammal Protection Act
- Clean Air Act
- National Historic Preservation Act
- Oil Pollution Act
- Federal Oil and Gas Royalty Management Act

Further information is available at:

www.boem.gov/oil-and-gas-energy-program/GOMR/GandG

The programmatic EIS, including mitigation measures, was released on 27 February 2014 and is posted at: www.boem.gov/Atlantic-G-G-PEIS/

U.S. Navy Stewards of the Sea: Funded Research Reports

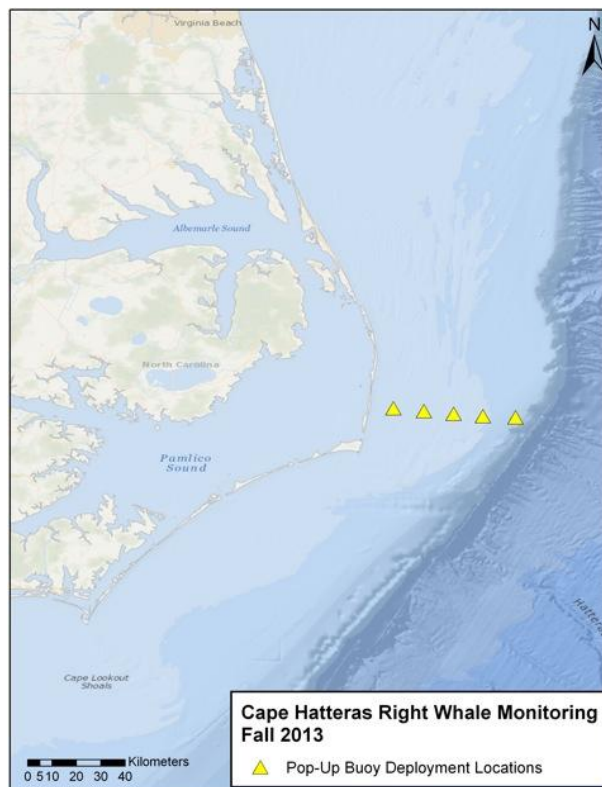
The U.S. Navy conducts a wide variety of training and testing activities in operating areas around the world. Under the terms of the Letters of Authorization and Incidental Harrassment Authorizations issued by NMFS, the Navy is mandated to conduct monitoring projects to avoid, mitigate, and better understand potential impacts of their activities on protected marine species.

Project profiles for the current U.S. Navy's Marine Species Monitoring Program (Atlantic Fleet Training and Testing Center, Norfolk, Virginia) are posted at: www.navymarinespeciesmonitoring.us/reading-room/project-profiles.

Summaries of two projects of interest to readers of *Right Whale News* follow:

Passive acoustic monitoring for right whales off Cape Hatteras

A new passive acoustic monitoring project is aimed at detecting right whales migrating past Cape Hatteras during their seasonal movements to and from calving and wintering grounds in Florida. It is a collaborative project with partners at Duke University, the Northeast Fisheries Science Center, and Cornell's Bioacoustics research program. Five marine autonomous recording units, or "pop-up" buoys, were deployed (fall 2013 and spring 2014) across the continental shelf off Cape Hatteras, extending out to the shelf break. These instruments will collect acoustic recordings for 4-5 months. After retrieval, data will be extracted and analyzed for right whale calls, and perhaps those of other species.



Location of acoustic recording units off Cape Hatteras. The spring deployment of buoys was delayed by weather but took place on 23 February 2014.

Tagging and tracking of right whales in Florida waters

Field work commenced in February 2014 on a project to assess movement patterns of right whales in coastal waters off Florida. The objectives include determining the rates of travel of individual whales, dive depths, and rates of sound production. This is a collaborative project with Duke and Syracuse universities. The methods include short-term (~ 24 hr) non-invasive suction-

cup multi-sensor (including acoustic recording) tags incorporating Fastloc GPS. Two field seasons (2014 and 2015) are anticipated.

Project blogs:

parkslab-blog-syr.edu

blogs.nicholas.duke.edu/guest/tagging-north-atlantic-right-whales-off-the-southeast-us

Navy's Living Marine Resources News: First Issue

The first issue of *LMR News*, Winter 2014, the new quarterly newsletter of the Navy's Living Marine Resources Program, has been posted at www.lmr.navy.mil. Bob Gisiner, Program Manager, describes that the Navy partitions its resources across the considerable body of marine mammal research, conservation, and management activities.

The partitioning is as follows: The Office of Naval Research (ONR) handles basic research which is driven largely by the expert community's interests and capabilities. The Navy's information or technology needs are a consideration, but the main driver is exploring the realm of the possible. LMR, on the other hand, handles applied research which includes research that has already shown during the basic research phase that it could be put to broader use. LMR decisions are driven not only by what scientific experts are showing is possible, but also by whether the Navy would have a need for the anticipated end product. It is LMR's job to turn basic research from an academic exercise into something that a non-expert user, the "consumer" can operate and interpret. Programs like the NAVFAC LANT Fleet program (see preceding article) are funded mainly by operation and maintenance funding lines, and, as such, should be low risk and already have turned into something like a commercial product or very near it.

For a topic like marine mammal acoustics, the issues and technical capabilities are fairly new, so the boundaries get blurred a bit. However, there are good reasons for managing the technical risks and uncertainties about application potential in this way, so the Navy strives to coordinate efforts to put projects in the most appropriate program. When in doubt, the potential proposer should simply ask. Gisiner states, "We are taxpayer funded and here to help the interested researcher, conservationist, whalewatcher figure out if and where their interests intersect with those of ONR, LMR and the Navy in general."

The Black Sea Bass Trap/Pot Fishery in the Southeast: Increased Effort Proposed

Contributed by Sharon Young, Humane Society of the United States

In 2013, the South Atlantic Fishery Management Council (SAFMC) recommended—and the National Marine Fisheries Service (NMFS) adopted—a dramatic increase in the Annual Catch Limits (ACL) for black sea bass in the Southeast from North Carolina through Florida. Prior to the increase in the ACL, the trap/pot fishery for black sea bass had exhausted its annual quota well before November, when right whales begin moving through the area in greatest numbers. The lack of effort at a high-use time prevented entanglement risk from the vertical lines used by the trap/pot fishery. When rulemaking to increase the ACL was finalized in September of 2013, NMFS stated that it was necessary to impose a prohibition on fishing for black sea bass with trap/pot gear between November 1 and April 30 of each year in order to protect right whales. [78 FR 58249, September 23, 2013]. This prohibition was consistent with the NMFS proposed amendment to the Atlantic Large Whale Take Reduction Plan (ALWTRP), which seeks to reduce vertical lines in the water and thus reduce the risk of entanglement.

Despite this, in December 2013, three months after declaring that a blanket prohibition on trap/pot fishing was necessary to protect right whales, NMFS' Office of Sustainable Fisheries requested scoping comments on preliminary proposals by the SAMFC to either eliminate or significantly modify the prohibition, and again allow trap/pot fishing for black sea bass during this risk-prone season. The NMFS comment period closed on 3 January 2014. Subsequently the SAFMC has itself requested comments on how best to modify or eliminate the seasonal prohibition on trap/pot fishing. That comment period closed on 3 February 2014. Conservation groups have written comments in opposition to lifting the prohibition.

The Snapper Grouper Committee of the SAFMC will be meeting on 4 March to “receive an overview of scoping comments for Regulatory Amendment 16 pertaining to the removal of the Black Sea Bass pot closure, modify the document, choose preferred alternatives and provide guidance to staff.” The Council’s timeline indicates that they intend to recommend to NMFS by December 2014 that the agency amend the seasonal closure and once again allow increased fishing effort (and vertical lines) in this key habitat for right whales at a high-use time. The conservation group members of the ALWTRT will continue to oppose weakening protections for right whales as this process plays out. The steps being taken by the Council can be tracked on the SAFMC website (<http://www.safmc.net/>)

Marine Mammal Commission’s Annual Meeting 6-8 May 2014

The Marine Mammal Commission will hold its 2014 Annual Meeting in Washington, D.C., 6-8 May 2014. While the agenda has not been set, the Commission plans to use the opportunity to focus on national-level marine mammal issues, with its federal partners as well as with some of its key constituents: NGOs, ocean-related industries, and others. The first two days will be

held at a venue in downtown Washington and the third day will be held on Capitol Hill at the Capitol Visitor's Center. Updates will be posted on the Commission's website (www.mmc.gov) as information becomes available on the location, agenda, and other details.

In this 2014 meeting, the Commission is likely to focus on big picture—overarching policy issues involving the many agencies and stakeholders in the capital who are engaged in marine mammal topics. There will be the opportunity to highlight marine mammal topics in a venue where the leadership of the relevant agencies, legislative offices, and stakeholder groups can weigh in on some of the “big picture” issues and consider potential solutions. There may also be an opportunity for dialogue with representatives—at both the leadership and staff levels—from federal agencies and stakeholders, as well as from Capitol Hill.

In particular, this year’s meeting will focus on the “outcome-oriented” objectives in the Commission's Strategic Plan, which has been posted on the website. Further, Executive Director, Rebecca Lent, describes that the Commission is open to suggestions for items to include on its meeting agenda, and will post the draft agenda for the 2014 meeting in the near future.

On a related matter, the report resulting from the Commission’s 2013 national-level review of marine mammal needs and priorities (see *Right Whale News*, June 2013) is being finalized and will be posted shortly before the Annual Meeting.

Right Whale News: New Mail List

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<http://eepurl.com/JvmKf>

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GARFO: Northeast Regional Office Name Change

NOAA Fisheries has changed the name of the Northeast Regional Office to the Greater Atlantic Regional Fisheries Office (GARFO). This was done at the direction of Congress to better reflect

the broad extent of the region, which spans from Maine to North Carolina and includes the Great Lakes. The new Assistant Regional Administrator for Stakeholder Engagement, Kevin Chu, is based in Maryland and oversees GARFO's communications and fishing industry outreach teams. The website remains: www.nero.noaa.gov.

People and Changes

Eileen Sobeck has been named assistant administrator for NOAA Fisheries. She assumed her position on 27 January, replacing Samuel Rauch who served as the assistant administrator since 2012. Mr. Rauch will return to his previous position as deputy assistant administrator for Regulatory Programs.

As assistant administrator, Sobeck will oversee the management and conservation of recreational and commercial fisheries, and the protection of marine mammals, other marine protected species, and coastal fisheries habitat within the U.S exclusive economic zone. NOAA Fisheries employs 4,800 people in five regional offices, 6 science centers, and 12 laboratories in 15 states and U.S. territories.

Early in her career, Sobeck worked in the NOAA Office of General Counsel from 1979 to 1984. She next served at the U.S. Department of Justice, Environment, and Natural Resources Division from 1984 to 2009. She recently served as acting assistant secretary of the Department of the Interior's Office of Insular Affairs and deputy assistant secretary for Fish and Wildlife and Parks at the Department of the Interior since 2009. Ms. Sobeck has a law degree from Stanford.

Calendar

4 May 2014. Right Whale Festival. New England Aquarium. Boston, Massachusetts. Details will be posted (Right Whale Research on Facebook, or the blog, rightwhales.neaq.org), or by contacting Kara Mahoney-Robinson at kmrobinson@neaq.org as the date draws near.

10-11 June 2014. Meeting of SEUS Right Whale Forum and Implementation Team. Details and location will be provided in mailings to the group, or from Chairperson Leslie Ward at leslie.ward@fwc.state.fl.us.

5-6 November 2014. North Atlantic Right Whale Consortium Annual Conference, New Bedford Whaling Museum, New Bedford, Massachusetts.

Scientific Literature and Reports

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Right Whale News

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