

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

17 September 2007

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

Dear Ms. Colligan:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Final Environmental Impact Statement (FEIS) on amendments to the Atlantic Large Whale Take Reduction Plan. The Marine Mammal Commission finds the content of the FEIS to be inconsistent with the regulatory requirement that agencies consider all reasonable options.

## **RECOMMENDATION**

The Marine Mammal Commission recommends that the National Marine Fisheries Service promptly prepare a supplemental environmental impact statement that evaluates the use of time/area fishing closures in known high-use right whale habitats—including all designated critical habitat and seasonal management areas—as a means of reducing the number of right whales that become entangled in fishing gear.

## **RATIONALE**

The Marine Mammal Protection Act requires that take reduction plans identify measures that will reduce a species' mortality and serious injury rate to below their potential biological removal (PBR) level within six months of a plan's implementation. Because of the species' highly endangered status, the National Marine Fisheries Service has determined that the PBR level for the North Atlantic right whale is zero. Despite numerous modifications of the Atlantic Large Whale Take Reduction Plan since it was adopted in 1997, those measures do not appear to have reduced the level of right whale mortality and serious injury from entanglements. Over the past decade, the Marine Mammal Commission has repeatedly recommended that the Service consider closing high-use right whale habitats to all hazardous fishing gear, at least during the times that right whales are known to be present.

Right whales are virtually never observed at the time of their entanglement, and the entangling gear removed from whales rarely provides any indication of where the entanglement occurred. Thus, it is not possible to know precisely where and when entanglements take place.

Nonetheless, the likelihood of entanglements occurring in a particular area must be related to the number of whales there, their period of occupancy, and the amount and characteristics of gear being fished within that area. Accordingly, prohibiting the use of high-risk fishing gear during those times and in those areas should significantly reduce entanglement rates. Time/area closures are important and effective fishery management measures that are commonly used to mitigate problems with fisheries bycatch. The Service, however, has refused to consider expanded use of fishing closures in high-use right whale habitats. The lone exception involves the right whale calving grounds in the southeastern United States where the Service was required, by its own regulations, to adopt closures after a right whale calf was killed in a gillnet early in 2006. Elsewhere, the Service has continued to rely almost entirely on regulations requiring unproven gear modifications that have had no demonstrated beneficial effect.

Notwithstanding brief assertions in the FEIS that the Service considered expanded use of time/area closures, we find no meaningful analysis of such measures, and we see no justifiable reason not to have evaluated them as an alternative. Instead, the FEIS considers only alternatives that require various combinations of gear modifications. With the exception of new requirements for replacing floating groundline with sinking or neutrally buoyant groundline in some areas, gear modifications considered in the FEIS are unlikely to result in any meaningful reduction in entanglement risks. The best available information indicates that more than half of all right whale and humpback whale entanglements are in buoy lines (Johnson et. al. 2005). The FEIS does not describe new gear modifications that will ensure a significant reduction in entanglement in buoy lines. Moreover, the requirement for reducing the use of floating groundline in the preferred option is largely deferred until after 2008, even though the Marine Mammal Protection Act requires that take reduction plans reduce entanglement-related mortality and serious injury to PBR levels within six months of implementation. As a result, the options considered in the FEIS will not achieve the statutorily mandated reduction in takes of right whales, which is zero.

Regulations for preparing environmental impact statements require that action agencies evaluate and compare a range of reasonable alternatives that sharply define the environmental issues with regard to proposed actions. The FEIS does not assess the amount or seasonality of fishing gear in designated critical habitat or the probability of whales encountering fishing gear in those areas. Thus, it also does not meaningfully assess the potential conservation benefit of expanding seasonal fishing closures in high-use right whale habitats. For that reason, we find the FEIS deficient and inconsistent with regulatory requirements for preparing environmental impact statements. To address this important shortcoming, the Marine Mammal Commission recommends that the Service immediately prepare a supplemental environmental impact statement that evaluates the use of time/area fishing closures in known high-use right whale habitats, including all designated critical habitat and seasonal management areas, as a means to reduce the number of right whales that become entangled in fishing gear.

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Please contact me if you or your staff has questions regarding this recommendation.

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director

Johnson, A., G. Salvador, J. Kenney, J. Robbins, S. Kraus, S. Landry, and P. Clapham. 2005.  
Fishing gear involved in entanglements of right whales and humpback whales. *Marine Mammal Science* 21(4):635–645.