

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

12 November 2004

Mr. P. Michael Payne  
Marine Mammal Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors, has reviewed and offers the following comments on the draft revised Recovery Plan for North Atlantic Right Whales prepared by the National Marine Fisheries Service.

As noted in the Commission's letter of 6 September 2001 commenting on the previous draft of this plan, the document is a great improvement on the initial plan. It provides a well developed background section on right whale biology, ecology, and conservation measures to date, presents a thoughtful step down outline of research and management actions that would contribute information or provide measures needed by this species. The current draft also addresses many, but not all of our earlier comments. With regard to the unaddressed points, we are most concerned about the plan's failure to note that past efforts to reduce entanglement and ship collision-related right whale deaths have had no demonstrable effect on recovery and that there therefore remains a pressing need to develop and implement more effective protection measures. While we appreciate and support all the steps that the Service and others have been taken to date to protect right whales, the fact is that they have not successfully reduced entanglement and ship collision rates, and the immediate need is therefore to develop and adopt new, more effective, measures.

As now written, the draft plan conveys the impression that what is most needed is monitoring the effectiveness of existing measures and taking further steps as may become necessary and possible. We do not believe this is an appropriate message for one of the nation's most endangered species and one whose response to recovery actions over the past 15 years has been nil. Although the Service is now embarked on a lengthy process of developing major new management initiatives for both entanglement and ship collision risks, this plan mentions neither the need for nor the existence of those major initiatives. As discussed in the attached specific comments, the Marine Mammal Commission recommends that the Service revise the draft plan to clarify that past management measures have not significantly reduced human-related right whale deaths and injuries, and to underscore the urgent need for developing and implementing substantially improved measures as quickly as possible.

The revised plan also includes a set of four conditions that must be met to consider reclassifying right whales from endangered to threatened. These downlisting criteria differ from

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those in the previous draft. One of the conditions (i.e., a determination that the species' population structure "is indicative of a biologically significant increasing population") is confusing and vague. We believe it should be rewritten to clarify what the standard means and the biological data that would be used to determine if and when the criterion is met. A second criterion (i.e., the population has increased at an average rate of at least 2 percent for 20 years) appears to set an inappropriately low standard for reclassification. Assuming a current population size of 300 North Atlantic right whales, this criterion could allow downlisting when the population numbers about 450 whales, which is less than 5 percent of its estimated pre-exploitation abundance. We believe that population level would still be too low for considering a downlisting. The Marine Mammal Commission recommends that the Service re-examine and revise these two criteria to provide clearer and more appropriate standards.

If you or your staff have questions, regarding these recommendations or the attached comments, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cottingham". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Cottingham  
Executive Director

Attachment

Marine Mammal Commission Comments on the  
Draft Revised “Recovery Plan for the North Atlantic Right Whale (*Eubalaena glacialis*)”  
Prepared by the National Marine Fisheries Service  
and Circulated for Comment in September 2004

Page v, Executive Summary, First Paragraph: This paragraph notes that the current abundance estimate for North Atlantic right whales is 300 whales and it is uncertain whether the population is currently stable, increasing, or declining. To underscore the critical status of the species, we suggest expanding this paragraph to note that, while past population estimates were based on more limited information and may have been less accurate, the best estimate of population size in 1991 when the first recovery plan was adopted was 350 animals. A comparison of these estimates with much better data indicates there has been no apparent sign of recovery over the past 15 years and the species most likely is even rarer and more endangered than previously thought.

Page v, Executive Summary, Fourth Paragraph: This paragraph indicates that development of demographic recovery criteria must be completed quickly. Elsewhere the plan notes that downlisting could not be considered for at least 20 years. While we agree demographic criteria need to be developed, we do not agree that it is a top priority that ranks with the same urgency as implementing improved protection measures. We suggest this need be listed as a second or third priority.

Page v, Executive Summary, Recovery Criteria: The plan’s recovery criteria require, in part, that downlisting be considered only when (1) the population structure “is indicative of a biologically significant increasing population,” and (2) the population has increased for 20 years at an average rate of 2% per year. With regard to the first criterion, we agree that the population structure should be comparable to that of a normal whale population to consider downlisting; however, population structure (i.e., the relative abundance of different age/sex groups) is not a useful measure for determining biological significance. It is unclear precisely what the plan means by this. With regard to the second criterion, we believe the identified rate of increase (2 percent) for 20 years is too low. Many recovering large whale populations are increasing at 4 percent or more per year and a 2 percent annual rate of increase for a small population could indicate a population still under considerable stress. In addition, this criterion could be met by a population that could still be slightly less than 450 whales. In our opinion, this is far too low to allow consideration for downlisting. The Marine Mammal Commission recommends that these criteria be re-examined and revised to provide a higher downlisting standard (see also below comments regarding pages III A 1 to III A 2).

Page vii, Estimated Cost Table: The caption of this table is repeated.

Page IA-1, First Paragraph: We suggest deleting the beginning of the third sentence which states that “although precise estimates of abundance are not available,” the population appears to number approximately 300 whales. While the exact number of right whales is not known, virtually every whale has been photo-identified and this number is likely very close to the actual number. In general, more is known about North Atlantic right whale population parameters than almost any other cetacean.

Page IE-1, Last Paragraph: The first sentence of this paragraph states that human activities account for one third of all known right whale mortalities. Because many of the documented carcasses were

not examined in detail, the words “at least” should be inserted between the words “account for” and “one-third of all known mortalities” in this sentence.

Page IH-2 to IH-3, Northeastern U.S. Implementation Team: The first paragraph of this section states that this Northeastern Team was established “to implement recovery tasks for both North Atlantic right whales and the humpback whale.” The National Marine Fisheries Service has narrowed the focus of this team to activities related to ship collisions and vested responsibility for entanglement related mortality under a take reduction team. The revised scope of this team’s activities should be described.

Pages IH-4 to IH-5, Atlantic Large Whale Take Reduction Team and Plan: This section should note that, to date, the team has been unable to develop a take reduction plan to reduce the take of right whales in fishing gear to required levels and that the plan as adopted by the Service must now be strengthened. In this regard, the recovery plan should describe recent recommendations of the take reduction team and ongoing efforts to revise the take reduction plan

Page IH-6, Efforts to Disentangle Whales: The last paragraph of this section discusses the success of disentanglement efforts. It states that numerous whales have been disentangled but two attempts were unsuccessful and the whales likely died. The discussion gives the impression disentanglement efforts are far more effective than they are. This section should note that disentanglement efforts are successful in only a small percentage of cases, that it has not been possible to disentangle most entangled right whales, and that long term entanglements are a source of serious injuries.

Pages IH-6 to IH-10, Efforts to Reduce Mortality or Disturbance from Ship Activities: This section should be expanded to note that efforts to date have not reduced to ship collision-related deaths and that steps must be taken to strengthen such measures. In this regard the plan should describe ongoing efforts to develop and implement the NOAA “Ship Strike Reduction Strategy,” which calls for new speed and routing measures along the U.S. East Coast. It also should note the recent Canadian action to re-route the Bay of Fundy shipping channel and the need for cooperative actions with the Canadian Government.

Page IH-7, Last Paragraph: This section states that right whale sighting reports in the southeastern United States are broadcast to mariners by various means and that these messages are accompanied by a request “to proceed at minimum safe operational speeds.” To our knowledge the advisories do not recommend that vessels proceed at “minimum safe operational speeds.” While we believe specific speed advice such as this should be included in these messages, it is our understanding the messages either advise using “reduced” speed – which is too vague to be useful – or refer mariners to *Coast Pilots* that recommend using “reduced” speed. The accuracy of the reported advice used should be checked and changed if the referenced messages do not advise using “minimum safe operational speeds.”

Page II, Recovery Strategy: This section provides the introduction to the plan’s updated recovery strategy. The first paragraph notes that highest priority needs address actions to reduce entanglements and ship strikes and states that “the effectiveness of these protection measures for both shipping and fishing gear entanglement needs to be monitored.” The discussion fails to underscore the need to modify and improve measures that have been tried to date and which have

not successfully reduced either vessel or entanglement-related injuries and deaths. To reflect the purpose and challenge of this plan, we believe it needs to be expanded to note that management measures must be more than monitored; they must be strengthened and improved. In recognition of these needs, the Service is developing major revisions pertaining to both vessel collisions and entanglements. Accordingly, this section should be revised to underscore the urgency of developing measures to reduce ship strikes and entanglements that are more effective than those implemented under the previous plan and that development and implementation of those measures is the focus of this plan.

Pages IIIA-1 to IIIA-3, Reclassification to Threatened: This section identifies four conditions that must be met to consider reclassifying North Atlantic right whales as threatened. The Marine Mammal Commission concurs with the last two (i.e., the five listing criteria set forth under the Endangered Species Act must be met and the population must have no more than a one percent probability of extinction on 100 years). However we believe the first two conditions should be modified.

The first criterion states that the population structure of right whales needs to be “indicative of a biologically significant increasing population.” The meaning of this statement is unclear. As biological significance is not directly related to population structure, it is not clear whether the intent is to establish a criteria focused on biological significance or population structure. If the intent is to focus on the latter, it should be rewritten to read something like the following:

“The population structure of right whales is indicative of a demographically normal (or healthy) whale population that will continue to increase for the foreseeable future.”

If the purpose of this criterion is to provide a measure of biological significance, it should be rewritten to reflect other more useful indicators of the species importance as a component of regional ecosystem.

The second condition requires that “the population has increased for a period of 20 years at an average rate of increase of 2% or more.” In our opinion this sets an unacceptably low standard for downlisting marine mammals. Assuming a current population size of 300 whales, a population increasing at 2 percent for 20 years would still be less than 450 whales, which is less than 5 percent if its estimated pre-exploitation population size (i.e., perhaps 10,000). Moreover, some recovering large whale populations are increasing at rates at least twice the 2 percent standard in this criterion. The Marine Mammal Commission therefore recommends that the National Marine Fisheries Service reexamine this criterion and increase amount of time and/or the minimal growth rate that must be met to satisfy this condition.

With regard to the last criterion (i.e., determining that the population has no more than a one percent chance of extinction in 100 years), certain research must be undertaken to develop population parameters necessary to run related population models and developing such parameters is a top priority in the recovery plan. As noted above, under criterion 2 in this section, downlisting action likely would not be considered for at least 20 years. Accordingly, we see no sense of urgency relative to developing parameters for this model and the Marine Mammal Commission recommends

that such studies be assigned a lower priority ranking in lieu of attention to implementing more effective protection measures.

Pages IVB-1-IVB-12, Reduce Collisions with Ships: This section should be revised to reflect the steps necessary to implement the new NOAA “Ship Strike Reduction Strategy.” For example, it should note the need for developing new speed and routing regulations for waters off east coast ports, port access route studies, the preparation of supporting documents such as an environmental impact statement, and the development of a cooperative agreement with Canada. In addition, we note that there currently is no requirement for vessel operators to report collisions with right whales. Such reports are vital for improving information on conditions causing ship collisions with whales and how to avoid them. Therefore, the Marine Mammal Commission recommends that this section of the plan be expanded to include a new task for developing requirements for reporting vessel collisions with large whales.

Page IVB-8, Task 1.1.25: This task calls for studies to develop acoustic devices capable of detecting whales in ship channels to help alert vessel operators of actions needed to avoid collisions. We believe passive acoustic technologies to detect whale vocalizations could be particularly useful in this to trigger and perhaps suspend management measures such as speed or routing in areas where right whales occur seasonally. This would help ensure that economic costs to vessel operators are limited to periods when such protection needs are most important. To help assess its potential value, the Marine Mammal Commission recommends that a related task be added here or elsewhere in the plan to identify the need for tagging studies or other studies to determine the frequency that whales of different ages and sexes vocalize in different parts of their range.

Pages IVB12-19, Reduce injury and mortality caused by fisheries and fishing equipment: This section should be expanded to reflect the steps necessary to develop and implement the ongoing revision of the Atlantic Large Whale Take Reduction Plan.