



**NOAA  
FISHERIES**

**Office of Protected  
Resources**

# **Proposed Revision to the North Atlantic Right Whale (*Eubalaena glacialis*) Critical Habitat**

**David Gouveia  
Greater Atlantic Regional Fisheries Office**

**May 6, 2015**



**NOAA**  
**FISHERIES**

Office of Protected  
Resources

# Background

- **Right whales listed as Endangered in 1973.**
  - At that time, no requirement in the ESA to designate critical habitat concurrent with the listing of the species.
- **Amendments to the ESA in 1978 required that:**
  - critical habitat be established for listed species within a required time frame, and
  - provided discretion to designate critical habitat for species listed prior to 1978.
- **Critical habitat for right whales was designated in June 1994.**



## **NOAA FISHERIES**

**Office of Protected  
Resources**

# Background

- **The 1994 critical habitat 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.
- **These areas were determined to provide critical feeding, nursery, and calving habitat for right whales**
- **The proposed action will replace the existing right whale critical habitat that was designated in 1994 with two new, expanded areas.**



**NOAA**  
**FISHERIES**

Office of Protected  
Resources

# Background

- **We denied a petition to revise right whale critical habitat in 2003.**
  - But committed to collecting and analyzing new information for future considerations of critical habitat expansions.
- **In 2008, we listed North Atlantic and North Pacific right whales as separate species under the ESA.**
  - This triggered the need to revise critical habitat for North Atlantic Right whales
- **In 2009, we received another petition to revise right whale critical habitat.**
  - In response, we stated our intent to revise critical habitat through a rule under development
- **This action follows from the listing of the new species and our response to the 2009 petition to revise existing critical habitat.**



**NOAA**  
**FISHERIES**

Office of Protected  
Resources

# Proposed Rule

- **Critical habitat is defined as specific areas:**
  - Specific areas within the geographical area occupied by the species at the time of listing, that contain physical or biological features essential to conservation of the species, and which may require special management considerations or protection; and
  - Specific areas outside the geographical area occupied by the species if the agency determines that the area itself is essential for conservation of the species.
- **We have identified essential features of right whale foraging and calving habitat that may require special management considerations or protection.**
- **We are unable to identify essential features that are associated with migration and breeding habitat.**



# Proposed Rule

## Physical or Biological Features



**NOAA**  
**FISHERIES**

**Office of Protected  
Resources**

### Northeast (Unit 1)

- The essential features of right whale foraging habitat are those physical and biological features that support the persistence and aggregation of the copepod *Calanus finmarchicus*, the preferred prey of right whales.
  - Physical oceanographic conditions and structures of the Gulf of Maine and Georges Bank region that combine to distribute and aggregate copepods for right whale foraging, namely prevailing currents and circulation patterns, bathymetric features (basins, banks, and channels), oceanic fronts, density gradients, and temperature regimes;
  - Low flow velocities in Jordan, Wilkinson, and Georges Basin that allow diapausing copepods to aggregate passively below the convective layer so that the copepods are retained in the basins;
  - Late stage copepods in dense aggregations in the Gulf of Maine and Georges Bank region; and
  - Diapausing copepods in aggregations in the Gulf of Maine and Georges Bank region



**NOAA**  
**FISHERIES**

Office of Protected  
Resources

# Proposed Rule

## Physical or Biological Features

### Southeast (Unit 2)

- The essential features of right whale calving habitat include a combination of physical oceanographic features including:
  - calm sea surface conditions;
  - specific sea surface temperatures (7°C to 17°C); and
  - water depths of 6 to 28 meters.

**The proposed critical habitat designation would result in a significant expansion of critical habitat.**

- From 4,536 square nautical miles (1994 designation) to a total of 29,945 square nautical miles



**NOAA**  
**FISHERIES**

**Office of Protected  
Resources**

**1994 Right Whale Critical Habitat areas:**

Great South Channel RWCH: 2,440 nm<sup>2</sup>  
(3,231 mi<sup>2</sup>)

Cape Cod Bay RWCH: 485 nm<sup>2</sup> (642 mi<sup>2</sup>)

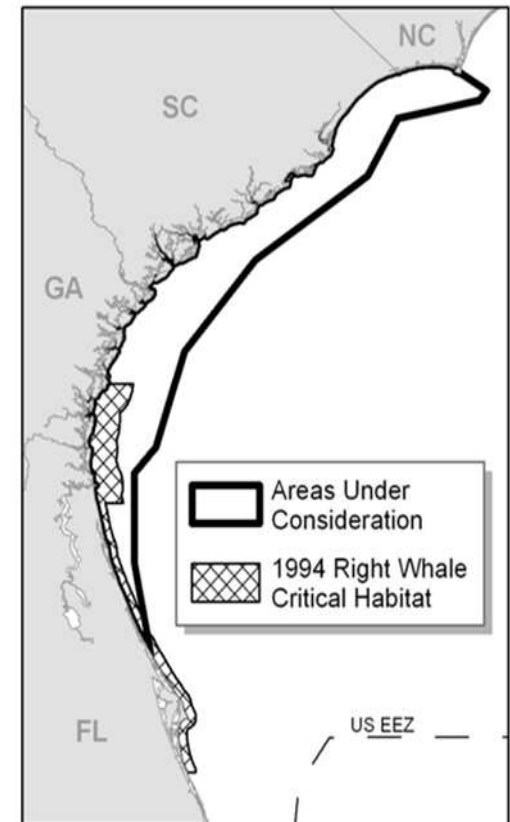
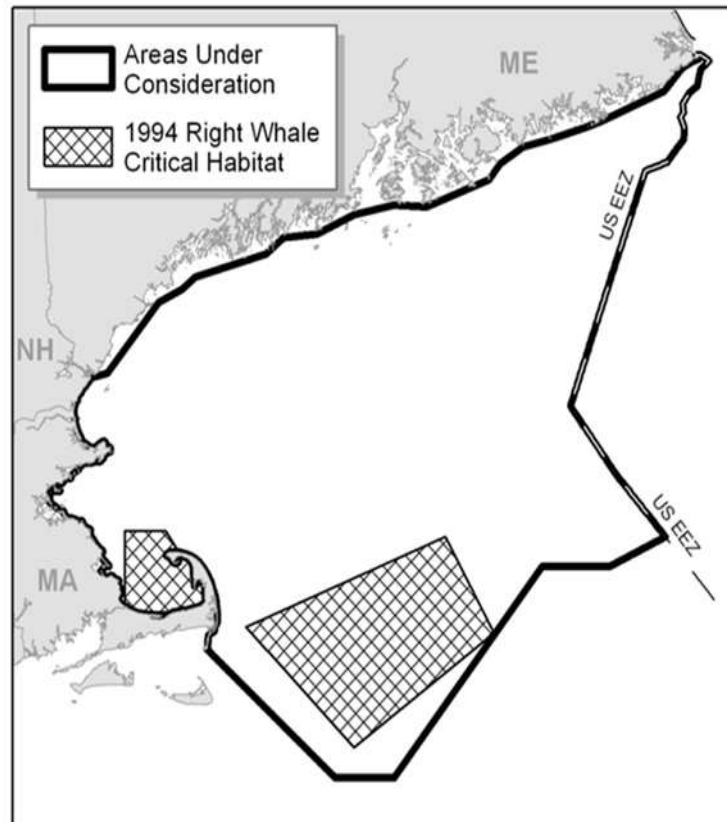
Coastal GA & FL RWCH: 1,611 nm<sup>2</sup> (2,134 mi<sup>2</sup>)

**Areas Under Consideration (AUC):**

Northeast AUC: 21,334 nm<sup>2</sup> (28,253 mi<sup>2</sup>)

Southeast AUC: 8,611 nm<sup>2</sup> (11,404 mi<sup>2</sup>)

# Proposed Rule







# Proposed Rule

## May Require Special Management



**NOAA**  
**FISHERIES**

### **Current activities that may affect the essential features:**

- Water quality/National Pollution Discharge Elimination System permitting and regulatory activities (Unit 1);
- Oil spill response (Unit 1);
- Maintenance dredging & disposal or dredging (Unit 2);
- Marine construction permitting (Unit 2); and
- LNG construction and operation (Unit 1).

### **Future activities that may affect the essential features:**

- Oil and gas exploration development activities (Unit 1);
- Offshore alternative energy development activities (Unit 2);
- Directed copepod fisheries (Unit 1); and
- Marine aquaculture (Unit 2).



**NOAA  
FISHERIES**

**Office of Protected  
Resources**

# Proposed Rule

## Impacts Analysis

**We contacted the Departments of the Navy, Air Force, Army, and Homeland Security, and the U.S. Coast Guard requesting information related to the potential national security impacts of the proposed critical habitat designation.**

- Based on a review of the information provided and on our review of the activities conducted by these entities associated with national security within the proposed critical habitat we determined that:
  - Their activities have no potential adverse effects to the proposed essential features and will not require consultation to prevent adverse effects to critical habitat.
  - Based on information available at this time, we do not anticipate there will be national security impacts associated with the proposed critical habitat for the North Atlantic right whale.



## **NOAA FISHERIES**

Office of Protected  
Resources

# Proposed Rule

## Impacts Analysis

- **We concluded that commercial fishing activities are not expected to affect the essential features of right whale foraging habitat with the exception of a potential directed copepod fishery (which is not anticipated at this time).**
- **Therefore:**
  - There will be no change to current gear restrictions (in effect under the Atlantic Large Whale Take Reduction Plan) as a result of this action.
  - If the existing critical habitat area is expanded as proposed, the areas in which gear requirements currently apply will not automatically expand



**NOAA**  
**FISHERIES**

Office of Protected  
Resources

# Proposed Rule

## Impacts Analysis

- **We considered the economic, national security, and other relevant impacts**
- **Impacts of critical habitat designation result primarily from application of section 7 consultation requirements of the ESA.**
  - If a proposed action with a federal nexus “may affect” the essential features of critical habitat, that project may need to be modified to avoid such effects.
- **The ESA allows, but does not require, us to consider excluding a particular area from a designation.**
  - Based on our analysis of the potential impacts of the proposed critical habitat, we are not proposing to exclude all or any part of these areas.

# Questions?