

right whales had not been analyzed in a comprehensive manner for the purposes of conservation and systematics until recent genetic studies. The generally accepted analyses by Rosenbaum *et al.* (2000) conclude that the right whale should be regarded as three separate species as follows:

1. The North Atlantic right whale (*Eubalaena glacialis*), historically ranging in the North Atlantic Ocean from latitudes 60° N to 20° N;
2. The North Pacific right whale (*Eubalaena japonica*), historically ranging in the North Pacific Ocean from latitudes 70° N to 20° N; and
3. The southern right whale (*Eubalaena australis*), historically ranging throughout the southern hemisphere's oceans.

Previous genetic studies concluded there was sufficient haplotypic divergence between North Atlantic and South Atlantic right whales to indicate that the northern and southern populations have not interbred for approximately 3–12.5 million years (Malik *et al.*, 2000; Schaeff *et al.*, 1997). Through an analysis of mitochondrial DNA control region sequences isolated from skin tissue biopsy, stranded animals, and historical whaling samples, Rosenbaum *et al.* (2000) supported these conclusions and, in addition, demonstrated a relatively strong historical separation of North Atlantic, North Pacific, and Southern Ocean right whale lineages (*i.e.*, no haplotypes were shared among these three populations). Their findings led to the conclusion that these populations are three distinct evolutionary entities. In addition, the probability of future interbreeding among the three lineages is extremely low considering current distribution. The International Whaling Commission's Scientific Committee formally recognized the three-species classification for right whales at its 2000 meeting in Adelaide, Australia (IWC 2000).

Conservation measures, recovery planning, and Federal consultations have been treated distinctly for each of these species. For over a decade, the treatment of these species as discrete entities has been well-established in agency science and management. Draft recovery plans are currently in review for both North Atlantic and North Pacific right whales, designated in these plans as *Eubalaena glacialis* and *Eubalaena japonica*. Issues of critical habitat have been addressed separately for both species under U.S. management authority.

Refining the taxonomy of these endangered cetaceans is critical to the recovery planning and conservation of

these species. Genetic data now provide unequivocal support to distinguish three right whale lineages as separate phylogenetic species. The revised designation of these populations allows for consistent scientific practice and management policies in recovering these populations.

The following NMFS documents will be affected by this technical revision:

1. MMPA Stock Assessment Reports for Alaska currently refer to stocks of right whales in the North Pacific as "Northern Right Whale, *Eubalaena glacialis*". This will be changed in all future Stock Assessment Reports to read "North Pacific Right Whale, *Eubalaena japonica*".

2. All Biological Opinions prepared under section 7 of the ESA will now consider the North Pacific, North Atlantic and southern right whales as separate species for the purposes of establishing baseline information and conducting consultations on Federal actions with the potential to affect the taxa.

3. The "Final Recovery Plan for the Northern Right Whale, *Eubalaena glacialis*" (NMFS, 1991) has been divided, in the process of updating the plan, into two separate draft recovery plans: "Updated Recovery Plan for the North Atlantic right whale, *Eubalaena glacialis*" and "Updated Recovery Plan for the North Pacific right whale, *Eubalaena japonica*." These will become final as separate recovery plans.

These changes result in technical revisions to provisions related to right whales in 50 CFR parts 17, 222, and 226. However, all right whales will remain listed as endangered under the Endangered Species Act and subject to the same protections as existed prior to these changes.

Classification

The Assistant Administrator for Fisheries, NMFS (AA) finds that good cause exists to waive the requirement for prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B). Such procedures would be unnecessary, as the taxonomic changes made in this rule are technical and reflect actions already taken in the scientific community. This rule does not change the listing status of right whales under the ESA; therefore, it does not increase the scope of the regulated community nor add any new requirements.

This action is not subject to review under Executive Order 12866. In addition, because a general notice of proposed rulemaking is not required under 5 U.S.C. 553, or any other law, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Although this final rule simply makes taxonomic changes relative to a listing determination that NMFS has already made under the ESA and does not change the listing status of right whales under the ESA, NOAA has concluded that ESA listing determinations are exempt from requirements of the National Environmental Policy Act. Therefore, these taxonomic changes relative to a listing determination are also exempt from these requirements. (See NOAA Administrative Order 216–6.)

This final rule does not contain policies with federalism implications under Executive Order 13132.

Literature Cited

- Best, P.B., J.L. Bannister, R.L. Brownell Jr., and G.P. Donovan (Eds). 2001. Right Whales: Worldwide Status. The Journal of Cetacean Research and Management, Special Issue 2. International Whaling Commission, Cambridge, UK. 309 pp.
- Cummings, W.C. 1985. Right Whales: *Eubalaena glacialis* (Muller, 1776) and *Eubalaena australis* (Desmoulins, 1822). In: Ridgway, S.H. and R.J. Harrison, Eds. Handbook of Marine Mammals, Vol. 3. The Sirenia and Baleen Whales. Academic Press, London. 362 pp.
- Hall, R.E. and K.E. Kelson. 1959. The Mammals of North America. The Ronald Press Company, New York. 546 pp.
- Jefferson, T.A., S. Leatherwood, and M.A. Webber. 1993. Marine Mammals of the World. United Nations Environment Programme, Food and Agriculture Organization of the United Nations, Rome. 320 pp.
- Klinowska, M. 1991. Dolphins, Porpoises and Whales of the World. The IUCN Red Data Book. IUCN, Gland, Switzerland and Cambridge, U.K. 429 pp.
- IWC. 2000. Report of the Scientific Review Committee. 52nd Annual Meeting, Adelaide, Australia.
- Lacepede. 1818. Mem. Mus. Hist. Nat. Paris 4:409, 473.
- Malik, S; Brown, MW; Kraus, SD; White, BN. 2000. Analysis of mitochondrial DNA diversity within and between North and South Atlantic right whales. Marine Mammal Science, Vol. 16, no. 3, pp. 545–558.
- Muller. 1776. B[alaena] glacialis. Zool. Danicae prodr., 7 pp.
- Muller, J. 1954. Observations of the orbital regions of the skull of the Mysticoceti. Zoologische Mededelingen, 32, 239–290.
- National Marine Fisheries Service. 1991. Final recovery plan for the Northern right whale *Eubalaena*