

activities, fisheries, military activities, dredging operations, increased pollution, and general habitat disturbance. The essential features associated with the petitioned critical habitat according to the petitioner include the following: space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of species.

The petitioner acknowledged that some areas in the northeastern U.S. have already received special management attention in the form of fishing regulations, but maintains that essential right whale habitat along the eastern seaboard lacks protection from ship strikes. In addition, the petitioner noted that when several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

The petitioner stated that the continued high mortality of North Atlantic right whales from ship strikes indicates the immediate need for management actions to reduce ship strikes, maintaining that accurately designated critical habitat boundaries will facilitate the management process. In addition, the petitioner stated that since the time critical habitat was originally designated in the southeastern U.S., extensive and expansive survey efforts have shown that right whales occur further offshore than originally known. The petitioner contended that the importance of this area as the only known calving ground for right whales warrants the revision of critical habitat to protect the animals within this region.

Section 4(b)(3)(D) of the ESA requires that NMFS, to the maximum extent practicable, within 90 days after receiving a petition to revise existing critical habitat, make a finding as to whether the petition presents substantial scientific information indicating that the petitioned action may be warranted and publish the finding in the **Federal Register**. If the finding is that substantial scientific information is presented, NMFS is required, within 12 months of the date the petition was received, to make a determination on how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

On November 19, 2002 (67 FR 69708), NMFS published a notice finding that the subject petition contained substantial scientific information indicating that the requested revision of right whale critical habitat may be warranted and inviting interested persons to submit comments and information concerning revision. NMFS' finding was based on the agency's concurrence with petitioner's statement that extensive and expanded survey efforts in the southeast indicate that right whales occur farther offshore than previously known, and that the draft final recovery plan suggested that data should be analyzed to assess expanding or modifying the critical habitat boundaries.

Response to the Comments Received on the Petition

NMFS received over 2,000 letters and postcards during the comment period. The comments are addressed in the following paragraphs.

Comments in Support of Revising Critical Habitat

Comment 1: Hundreds of people sent form letters and post cards expressing support for the proposed expansion of right whale critical habitat, based on the belief that it will more accurately reflect the distribution and range of the species and provide a mechanism to achieve greater protection. Another commenter suggested that NMFS designate the entire known range of North Atlantic right whales as critical habitat.

Response: Recent NMFS surveys have documented the consistent use of areas outside of the currently designated critical habitats by right whales (Zoodsma et al., 1999; Merrick et al., 2001). However, more analyses of the sightings data and their environmental correlates are necessary to define and designate these areas as critical habitat. Furthermore, the ESA requires that the process for designating critical habitat must focus on the identification of specific habitat features (i.e., primary constituent elements) essential to right whale conservation that may require special management considerations or protection, rather than only on known distribution. If the physical and biological features essential to the conservation of right whales are identified and determined to be distributed outside of current critical habitat boundaries, NMFS will evaluate the addition of areas containing these features to the designated critical habitat, in accordance with the requirements set forth in sections 3(5)(A) and 4(b)(2) of the ESA.

Comment 2: Two commenters recommended that NMFS review the available data and, based on that review, expand the current critical habitat as warranted. In addition, these commenters recommended that NMFS contract or prepare a report similar to the one prepared for the Marine Mammal Commission in 1991, which assesses right whale sighting data and human activities in and around the three existing right whale critical habitat areas. Such a report could be used to identify and evaluate the most appropriate critical habitat boundaries.

Response: NMFS agrees that the available data should be reviewed and, based on that review, NMFS could proceed to revise critical habitat. NMFS intends to proceed with the analyses necessary to evaluate the necessity of revising critical habitat based on the need to protect the habitat features essential to the conservation of right whales. Finally, NMFS will consider the recommendation to solicit a contractor to prepare a report that assesses right whale sighting data and human activities in and around the three existing right whale critical habitat areas.

Comment 3: In addition to supporting the proposed expansion of critical habitat, several commenters suggested that NMFS include other areas shown to be regularly frequented by right whales that are outside of the petitioned area. For example, these commenters specifically suggested including Jeffreys Ledge, Platts Bank, Fippennies Ledge, and Cashes Ledge because of their seasonal use as feeding habitat. Furthermore, these commenters suggested that the Seasonal Area Management (SAM) areas northeast of the Great South Channel should receive equal consideration as critical habitat.

Response: See response to Comment 1.

Comment 4: With respect to the petitioned revision in the Southeast, one commenter expressed support for the need to expand critical habitat beyond the current boundaries because recent surveys have shown regular and significant numbers of right whales in these waters.

Response: See response to Comment 1.

Comments Opposed To Revising Critical Habitat

Comment 5: Several commenters expressed support for federal efforts to protect and recover right whales, including the concept of expanding critical habitat based on the availability of new data, but did not support the petitioned revision because the