

information provided by the petitioner is insufficient. Therefore, these commenters suggest that NMFS conduct further analysis and research on right whale distribution, including the identification of "high-risk" areas. Specifically, these commenters recommend an analysis of all right whale sightings since 1994 using a Sightings-Per-Unit-Effort analysis, which will provide scientists and managers with a more precise representation of spatial and temporal patterns of right whale habitat use.

*Response:* NMFS agrees that further analysis of the available data is warranted to better understand what areas are most frequented by right whales so that we may better manage the threat of takes. In addition, more analyses of the sightings data and their environmental correlates are necessary to define and designate additional areas as critical habitat. NMFS notes, however, that any revision of critical habitat will reflect habitat features essential to conserving the North Atlantic right whale population.

*Comment 6:* One commenter expressed concern that a revised and expanded critical habitat would unnecessarily restrict military training/operations in additional open ocean areas.

*Response:* As Federal agencies, under section 7 of the ESA, the branches of the U.S. military are required to consult with NMFS (or U.S. Fish and Wildlife Service) to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. NMFS does not agree that it is a forgone conclusion that the revision of critical habitat will restrict military operations along the East Coast. A designation or revision of critical habitat assists Federal agencies in planning future actions, since the designation or revision identifies, in advance, those habitat features that will be given special consideration through section 7 consultations. Therefore, potential conflicts between projects and endangered species can be identified early in the planning process.

*Comment 7:* One commenter expressed opposition to the petitioned revision to critical habitat because he/she believes it is unnecessary and would only lead to more petitions to designate critical habitat until the entire Atlantic Ocean is critical habitat.

*Response:* The public's right to petition NMFS to designate or revise critical habitat is expressly provided for in the ESA, and the agency can neither prohibit the exercise of this right nor

ignore the petitions it receives with respect to such actions. In addition, the regulations at 50 CFR 424.12(g) provide NMFS with the authority to revise existing critical habitat when new data become available. As explained later on in this Notice, NMFS believes that the requested revision of critical habitat, as specified by the petitioner, is not warranted at this time. However, NMFS intends to proceed with the specified activities to determine whether a revision of critical habitat is warranted.

*Comment 8:* One commenter expressed the belief that a revised critical habitat designation would not be an effective mechanism for reducing the levels of right whale mortalities. In light of the commenter's belief that there is no link between the extent of critical habitat boundaries and levels of anthropogenic mortality, this commenter suggests that NMFS take immediate action to require universal gear modifications as the most effective means for enhancing the protection of right whales.

*Response:* The revision of critical habitat would likely not directly address the "take" issue to which this comment refers. The designation of critical habitat, in itself, does not necessarily lead to additional management measures. Under the ESA, the only direct impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and, through the consultation process, requires modifications to those projects that would result in the destruction or adverse modification of the primary constituent elements in designated critical habitat areas. Accordingly, NMFS would address the need for management measures for commercial fishing in critical habitat through the ESAs section 7 consultations on the fisheries regulated by NMFS and the Atlantic Large Whale Take Reduction Plan (ALWTRP). Indirectly, critical habitat designations also help focus Federal, state, and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat, including conservation regulations to restrict private as well as Federal activities. Finally, it is important to note that the recommendation for special gear modifications designed to reduce serious injury to or mortality of right whales is more appropriate within the context of NMFS' Atlantic Large Whale Take Reduction Team (ALWTRT) than in the context of a petition to revise critical habitat.

*Comment 9:* Three commenters expressed opposition to the proposed expansion of critical habitat because it would lead to further regulation of state fisheries while continuing to bypass the shipping industry. In addition, these commenters urged NMFS to implement rules that would specifically protect right whales from ship strikes.

*Response:* First, the designation or revision of critical habitat does not, in itself, restrict non-Federal activities within the area or mandate any specific management or recovery action; as discussed above, a designation of critical habitat triggers an inter-agency consultation requirement designed to ensure that Federal activities avoid destruction or adverse modification of critical habitat. In addition, a critical habitat designation or revision contributes to the conservation of a species by identifying the physical and biological features within those areas that are essential to conservation of the species, thereby alerting both public and private entities to the importance of the area to the species. Second, the regulations found at 50 CFR 224.103(c) are intended to protect right whales from ship strikes by prohibiting vessels from approaching within 500 yards (460 m) of a right whale. Finally, NMFS is currently working toward developing and implementing a ship strike reduction strategy.

*Comment 10:* One commenter expressed opposition to the petitioned expansion of critical habitat because he/she felt that the petitioners have not presented sufficient evidence that expanding critical habitat and implementing regulations to reduce vessel speeds within critical habitat will provide protection for right whales.

*Response:* See response to comment 9. Comments on the Process for Revising Critical Habitat

*Comment 11:* One commenter suggested that NMFS advise the relevant regulated communities (i.e., commercial fisheries and shipping) on the possible effects that the petition and any subsequent critical habitat designation may have on future management measures.

*Response:* NMFS agrees that the relevant regulated communities should be informed about the petition to revise critical habitat, NMFS's responses to the petition, and how the agency intends to proceed with the requested revision. NMFS provided copies of the petition and 90-day notice and finding to team members and interested parties at the recent meeting of the ALWTRT. A presentation was also given at the meeting on critical habitat in general and made specific reference to the