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NMFS to review right whale critical habitat; GSSA warns of agenda

GLOUCESTER, MA – In an action that has the potential to affect fishing operations along the entire East Coast, the National Marine Fisheries Service (NMFS) has announced that it intends to review and revise critical habitat designations for North Atlantic right whales.

“Critical habitat” is defined as an area that contains physical or biological features that are essential to the conservation of the species and may require special management.

The last time the agency addressed this subject was in 1994 when it identified three critical habitat areas in US waters: calving grounds off Florida; and feeding grounds in Cape Cod Bay and the Great South Channel, both off Massachusetts.

NMFS agreed to undertake the review and revision in response to a lawsuit filed earlier this year by four environmental groups – The Humane Society of the United States (HSUS), Defenders of Wildlife, the Center for Biological Diversity, and the Whale and Dolphin Conservation Society.

The groups sued in protest of what they said was NMFS’s failure to respond to a petition they filed in August 2009 asking for a significant expansion of critical habitat.

The petitioners argued that current designated areas were inadequate to protect key feeding and birthing areas and reduce the risk of whales being struck by ships and exposed to other dangers.

The environmentalists were pleased with the NMFS announcement.

“Protecting key calving and migration habitat is essential to the continued survival of this species,” said Sarah Uhlemann of the Center for Biological Diversity. “With a population of only 400 animals, every whale – and every square mile of protected habitat – counts.”

NMFS now states in a “right whale facts” background document that there are about “300-400” right whales in the North Atlantic.

In the Oct. 5 press release announcing the review and revision, NMFS said it found that the 2009 petition “includes substantial scientific information indicating that a revision to the areas may be warranted.” The agency further said that it was proceeding with the petition by “working on a rule to propose revisions to the critical habitat designation for this species.”

GSSA warning

The NMFS announcement set off alarm bells for the Garden State Seafood Association (GSSA), which has long felt that there is an environmental and agency agenda to dramatically expand critical habitat and curtail fishing activities in designated areas.

The GSSA has been engaged in a prolonged struggle with NMFS over the agency’s actions to restrict fishing activities following the Jan. 22, 2006 death of a right whale calf off Jacksonville Beach, FL.

Certain that proper procedure was not followed, GSSA filed a Freedom of

Information Act (FOIA) request in April 2006 for correspondence and documents related to the NMFS action.

According to a summary analysis provided to CFN by the association, it took nearly four years for the agency to release the bulk of the material requested. GSSA got more than 2,000 pages but, even then, some 300 pages were withheld and many others were redacted, meaning sections were blacked out.

The information gleaned from the FOIA documents has led the GSSA to conclude, among many other things, that NMFS:

- Engaged in improper communication with the HSUS following the calf death;
- Drafted and finalized an emergency rule without taking time for adequate internal review;
- Took emergency action to temporarily close an area to fishing before the cause of the calf’s death was determined; and
- Moved forward with the closure process despite concerns expressed by Northeast Fisheries Science Center scientists.

Furthermore, GSSA said there was evidence that: the whale had been injured by a shark before any entanglement in fishing gear; that the gillnet mesh marks on the whale were far larger than the legal mesh size used in the whiting fishery, which was shut down as a result of the NMFS action; and that one staff member was so concerned about some of the information generated that he specifically asked not to be called on to testify if the action was challenged in court.

The NMFS finding on the environmentalists’ petition is available online at <www.nero.noaa.gov/ner/regs/com.html>.

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