

STATE OF ALASKA

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January 3, 2006

Kaja Brix
Assistant Regional Administrator
Protected Resources Division
Alaska Region
National Marine Fisheries Service
Attn: Lori Durall
P.O. Box 21668
Juneau, AK 99802

Dear Ms. Brix:

The State of Alaska would like to thank the National Marine Fisheries Service (NMFS) for its recent letter inviting comment on the Proposed Rule to revise critical habitat for the northern right whale (*Eubalaena glacialis*). We have reviewed the document (*Federal Register*, Vol. 70 No. 211, November 2, 2005) and offer the following comments for consideration.

The Proposed Rule identifies two areas in the North Pacific Ocean as critical habitat for the northern right whale population, one in the eastern Bering Sea and another in the Gulf of Alaska south of Kodiak Island. A substantial paucity of information exists on the ecology and biology of right whales, and thus very little is known about the Primary Constituent Elements (PCEs) that are essential to the animal's conservation under the Endangered Species Act (ESA). However, information obtained by examination of harvested whales in the North Pacific and plankton tows near feeding right whales indicates that several species of large copepods and some euphausiids represent the primary prey of the northern right whale. The State of Alaska believes NMFS properly concluded that primary prey availability is the only PCE of northern right whale critical habitat that can be determined with certainty.

The proposed critical habitat areas were based on the assumption that right whales will return to feed where dense concentrations of primary prey consistently occur. Thus, NMFS proposed as critical habitat those areas containing copepod PCEs where relatively recent and persistent sightings of whales have occurred. It is reasonable to assume such areas are likely essential to the conservation of the species, and the State of Alaska supports the designation of the two proposed areas as right whale critical habitat.

The State of Alaska also supports NMFS' finding that fishing activities in the North Pacific do not affect right whale PCEs and pose no threat to the proposed critical habitat. It is clear that commercial fisheries do not target or affect the PCEs for northern right whales and should not be restricted or otherwise altered as a result of the critical habitat designation in the two proposed areas.

The Proposed Rule also contains a request for public comment on several specific issues. The following comments pertain to three of those topics.

1. Whether specific unoccupied areas not presently proposed for designation may be essential to the conservation of the northern right whale in the North Pacific Ocean

Although the extant population abundance of right whales is likely low (i.e., <100 individuals), the absence of recent right whale sightings in other areas of the North Pacific Ocean may reflect a lack of survey effort. Increased survey efforts since 1996 have resulted in a substantial increase in the number of northern right whale sightings. The probability that other areas of dense concentrations of copepods exist is high, based on the biology and ecology of copepods in the North Pacific Ocean and the vast, historical geographic range of northern right whales. Survey efforts outside those areas where whales have been seen over the last decade may produce additional sightings and provide more information on northern right whale feeding areas.

Further, a portion of the extant population of northern right whales likely migrates to areas other than those proposed as critical habitat, where females calve during winter. Although the location of these areas is unknown, they should be considered essential to the whale's conservation, and thus a PCE under the ESA.

As discussed above, northern right whales could be consistently sighted in the near future (e.g., 5 years) during both summer and winter in areas not currently proposed for critical habitat. The State of Alaska believes NMFS should address how such potential sightings would be evaluated in further revisions to the designation of right whale critical habitat, including how quickly a revision would be completed.

We recommend NMFS increase survey efforts (vessel, aerial, and acoustic) to locate right whales, and also to assess what factors may influence the spatial and temporal distribution and persistence of dense copepod concentrations.

2. Current or Planned Activities in the Areas Proposed as Critical Habitat and their Possible Impacts on Proposed Critical Habitat

The proposed northern right whale critical habitat area in the southeastern Bering Sea includes areas important to king and Tanner crab research and commercial fisheries. The Alaska Department of Fish & Game (ADF&G), in cooperation with the North Pacific Fishery Management Council, manages commercial crab fisheries in the proposed southeastern Bering Sea critical habitat area. Cost-recovery fishing by ADF&G in the proposed critical habitat area provides essential funding for crab research activities, such as population surveys and gear studies. The proposed critical habitat area also contains nearly all of the important commercial fishing areas in the Bristol Bay red king crab and eastern Bering Sea Tanner crab fishery. The 2004 Bristol Bay red king commercial crab harvest was approximately 15.4 million pounds with an estimated ex-vessel value of \$72.6 million. Of this volume, approximately 56 percent was harvested in statistical areas completely contained in the proposed critical habitat, and about 43 percent was harvested in statistical areas partially contained in the proposed critical habitat.

The proposed critical habitat also contains areas of historic importance for the eastern Bering Sea Tanner crab fishery, which has re-opened for a small fishery in 2005 for the first time since 1997. Of the total harvest in the eastern Bering Sea Tanner crab fishery from 1985 to 1996, 26 percent was from statistical areas completely contained within the proposed critical habitat, and 46 percent was from

statistical areas partially contained in the proposed critical habitat. The eastern Bering Sea Tanner crab fishery is managed as two separate harvest levels for the areas west and east of 166° W longitude. The proposed critical habitat contains most of the historically productive fishing areas east of 166° W longitude. Of the total 1985 to 1996 harvest from the areas east of 166° W longitude in the eastern Bering Sea Tanner crab fishery, 35 percent was from statistical areas completely contained within the proposed critical habitat, and 61 percent was from statistical areas partially contained in the proposed critical habitat.

Much of the commercial crab fishing activity in the eastern Bering Sea occurs in the winter months when northern right whales are likely absent from these critical habitat areas. Available data suggest that right whales may be in the eastern Bering Sea primarily during the spring and summer months, although right whale vocalizations have been detected as late as early December. The Bering Sea crab fisheries are closed during the spring and summer months to allow for crab spawning and biological surveys.

The number of vessels fishing commercially for crab has also decreased significantly due to the recent implementation of a quota-based management system. The formation of harvesting cooperatives has resulted in significant consolidation of the Bering Sea crab fleet. In 2004, 252 vessels registered to participate in the Bering Sea red king crab fishery. After implementation of the quota-based program in August 2005, just 89 vessels will participate in the 2005-2006 red king crab fishery, even though the allowable harvest increased by almost three million pounds. Further, while the Alaska Board of Fisheries passed regulations increasing legal gear usage from 250 pots to 450 per vessel, under the quota-based management approach only about 15,000 pots were actually deployed. This compares to more than 45,000 pots fished during the 2004 Bristol Bay red king crab season.

The State of Alaska has determined that current crab research and commercial fishing activity in the proposed southeastern Bering Sea critical habitat area has no effect on the PCE, i.e., the copepod or euphausiid species aggregations upon which northern right whales feed. In addition, the timing of commercial crab fishing does not appear to be coincident with northern right whale use of the proposed critical habitat areas. Reports of increasing numbers of northern right whale sightings in the proposed Bering Sea critical habitat area over the last decade reinforce our determination that fishing activity does not adversely impact northern right whale habitat.

3. Any Foreseeable Economic or other Potential Impacts Resulting from the Proposed Critical Habitat Designations

Since NMFS determined that current fishing activities have no impact on the PCEs for northern right whales, the State of Alaska anticipates that no fishing or related activity (e.g., seafood processing or transiting) would be restricted or otherwise altered as a result of critical habitat designation. However, if NMFS contemplated regulatory changes to fisheries taking place in the proposed right whale critical habitat areas, there could be significant economic impacts on fishermen, processors, and fishery-dependent communities in Alaska. We suggest NMFS explain how, or if, the designation of critical habitat for right whales would affect those management actions that would be pursued if the incidental take of right whales would occur in commercial fisheries.

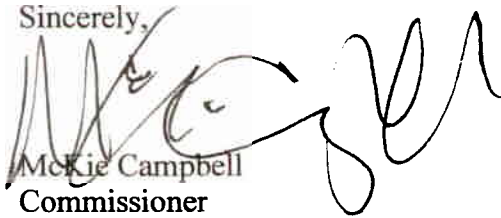
Ms. Kaja Brix

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January 3, 2006

Thank you for the opportunity to comment on the Proposed Rule for revision of critical habitat for the northern right whale in the Pacific Ocean.

Sincerely,

A handwritten signature in black ink, appearing to read 'McKie Campbell', written over a printed name and title.

McKie Campbell
Commissioner

cc: James W. Balsiger, Administrator, Alaska Region, NOAA