

Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2020.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2020-16787 Filed 7-31-20; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XA329]

#### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council is convening a meeting of its Groundfish Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This webinar will be held on Tuesday, August 18, 2020, beginning at 10 a.m.

**ADDRESSES:** All meeting participants and interested parties can register to join the webinar for the August 18 webinar: <https://attendee.gotowebinar.com/register/2711322415268770830>.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:**

### Agenda

The panel will meet to discuss the Conservation Law Foundation petition for rulemaking on Atlantic cod. They will receive an update on the

development of Framework Adjustment 61 specifications and other measures and make recommendations to the Groundfish Committee, as appropriate. Other business will be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XV011]

#### 2019 Marine Mammal Stock Assessment Reports

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; response to comments.

**SUMMARY:** As required by the Marine Mammal Protection Act (MMPA), NMFS has considered public comments for revisions of the 2019 marine mammal stock assessment reports (SARs). This notice announces the availability of 65 final 2019 SARs that were updated and finalized.

**ADDRESSES:** Electronic copies of SARs are available on the internet as regional compilations at the following address:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Zachary Schakner, Office of Science and Technology, 301-427-8106, [Zachary.Schakner@noaa.gov](mailto:Zachary.Schakner@noaa.gov); Marcia Muto, 206-526-4026, [Marcia.Muto@noaa.gov](mailto:Marcia.Muto@noaa.gov), regarding Alaska regional stock assessments; Elizabeth Josephson, 508-495-2362, [Elizabeth.Josephson@noaa.gov](mailto:Elizabeth.Josephson@noaa.gov), regarding Atlantic, Gulf of Mexico, and Caribbean regional stock assessments; or Jim Carretta, 858-546-7171, [Jim.Carretta@noaa.gov](mailto:Jim.Carretta@noaa.gov), regarding Pacific regional stock assessments.

### SUPPLEMENTARY INFORMATION:

#### Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States, including the U.S. Exclusive Economic Zone. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury (M/SI) from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. The term "strategic stock" means a marine mammal stock: (A) For which the level of direct human-caused mortality exceeds the potential biological removal level or PBR (defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (OSP)); (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the ESA. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined.

Prior to public review, the updated SARs under NMFS' jurisdiction are peer-reviewed within NMFS Fisheries Science Centers and by members of

three regional independent Scientific Review Groups (SRG), established under the MMPA to independently advise NMFS on information and uncertainties related to the status of marine mammals.

The period covered by the 2019 SARs is 2013–2017. NMFS reviewed all strategic stock SARs and updated 65 SARs representing 76 stocks in the Alaska, Atlantic, and Pacific regions to incorporate new information. The 2019 revisions consist primarily of updated or revised M/SI estimates, updated abundance estimates, including the application of an established capture-mark-recapture method to estimate the abundance of Gulf of Maine humpback whales, and the introduction of a new method for estimating cryptic mortality for Gulf of Maine humpback whales and North Atlantic right whales. One stock (Alaska ringed seal) changed in status from non-strategic to strategic, and four stocks (Western North Atlantic false killer whale and St. Andrew Bay, St. Joseph Bay, and West Bay common bottlenose dolphin stocks) changed in status from strategic to non-strategic. The revised draft reports were made available for public review and comment for 90 days (84 FR 65353, November 27, 2019). NMFS received comments on the draft 2019 SARs through February 27, 2020 and has revised the reports as necessary. This notice announces the availability of 65 final 2019 reports, which are available on NMFS' website (see **ADDRESSES**).

### Comments and Responses

NMFS received letters containing comments on the draft 2019 SARs from the Marine Mammal Commission (Commission); Department of Fisheries and Oceans Canada (DFO); three non-governmental organizations (Center for Biological Diversity (CBD), Maine Lobstermen's Association, Inc. (MLA), and Whale and Dolphin Conservation (WDC)); and three individuals. Responses to substantive comments are below; comments on actions not related to the SARs are not included. Comments suggesting editorial or minor clarifying changes were incorporated in the reports, but they are not included in the summary of comments and responses. In some cases, NMFS' responses state that comments would be considered or incorporated in future revisions of the SARs rather than being incorporated into the final 2019 SARs.

#### Comments on National Issues

##### Minimum Population Estimates

*Comment 1:* The Commission reiterates their previous comment that section 117 of the MMPA requires

inclusion of a minimum population estimate (Nmin), a key factor for effective management of marine mammal stocks using potential biological removal (PBR). Without an Nmin derived from recent data, PBR cannot be calculated and is considered "unknown," which is useless for management purposes. Including the revised 2019 draft SARs, an Nmin estimate is lacking for 86 of the 252 identified stocks (or 34 percent). The Commission understands that a lack of resources (mainly access to vessel and aerial platforms from which surveys are conducted) is the primary hindrance to full assessment of all stocks. Nevertheless, the lack of data for over one third of the stocks recognized by NMFS is a serious shortcoming in meeting statutory obligations. The Commission appreciates the efforts NMFS has made to address this shortcoming by setting priorities across regions, coordinating requests for vessel time, and maximizing the data collected during these surveys (e.g., Ballance *et al.* 2017). The Commission reiterates its recommendation that NMFS continue its efforts to prioritize and coordinate requests to secure the necessary survey resources across regions. In addition to these internal efforts, the Commission acknowledges and encourages NMFS' continued engagement and collaboration with other Federal agencies that also require basic information on marine mammal stocks, through programs like the Atlantic Marine Assessment Program for Protected Species and similar programs in the Gulf of Mexico and the Pacific. Further, the Commission also reiterates its recommendation that these marine assessment programs continue to include appropriate personnel, logistical capability, and vessel time to allow for photo-identification, biopsy sampling, satellite tagging and other efforts to augment and increase the value of the core line-transect survey data collected. These additional efforts will assist in delineating stock structure, confirming at-sea identification of cryptic species, and furthering understanding of marine mammal distribution, habitat use, and behavior, all of which are important for reaching the overall management goals of NMFS under the MMPA.

*Response:* We acknowledge the Commission's comment and will continue to address outdated Nmin estimates, as resources allow.

##### Humpback Whale Stocks

*Comment 2:* CBD and WDC comment that revisions to humpback whale stocks that would make them consistent with the 2016 rule listing distinct population segments (DPSs) are long overdue. They

note the NMFS Procedure for "Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act" says that a stock "might be considered a high priority for possible revision if, for example: a. DPSs for the for the species to which the stock belongs have recently been recognized under the ESA, . . ." CBD–WDC state that the California/Oregon/Washington humpback whale stock should be revised in the 2019 SARs and not wait another year. The second example in the NMFS Procedure for why a stock revision may be a high priority is that "b. there are emerging and/or localized threats likely to affect the stock," which applies to the humpback whales off the U.S. West Coast because of entanglements. NMFS has documented "a recent spike in entanglements, jumping from an annual average of 9 confirmed entangled large whales between 1982 and 2013, to an average of 41 confirmed entangled large whale reports between 2014 and 2017." CBD–WDC suggest that revising the stock definitions would better protect the humpback whale DPSs by lowering PBR.

*Response:* As noted by CBD–WDC, NMFS recently finalized "Procedural Directive 02–204–03: Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act" (NMFS 2019). This Directive establishes a process for prioritizing stocks that should be considered for stock designation revisions, clarifies science and management roles in designating marine mammal stocks, emphasizes the definition of a stock as a management unit, provides guidance for determining whether multiple Demographically Independent Populations may be combined into one or more stocks for management purposes, and details the process by which stock designations are made and documented. The Directive also addresses how to designate stocks of marine mammals when DPSs of the species have been designated under the ESA.

Procedural Directive 02–204–03 became effective after the 2019 SARs were drafted. As detailed in the Directive, revising stock designations involves significant effort and, in some cases, may be ongoing for more than one SAR revision cycle. Given this, and our mandate to review and, where appropriate, revise SARs annually for strategic stocks, including those listed under the ESA, we are not able to revise stock designations for humpback whales in the 2019 SARs. However, for the reasons put forth by CBD–WDC among

others, we agree that humpback whale stocks, including the California/Oregon/Washington humpback whale stock, should be considered for stock designation revisions and our intent is address potential revised humpback whale stock designations in future SARs.

#### *Comments on Alaska Issues*

##### Alaska Native Subsistence Takes

*Comment 3:* The Commission reiterates that accurate information on the taking of marine mammals by Alaska Natives for subsistence and handicraft purposes is becoming increasingly important in light of the pace of climate changes in the Arctic and sub-Arctic regions. Over the past decade, the Commission has repeatedly recommended that NMFS, in collaboration with its co-management partners, improve its monitoring and reporting of subsistence hunting in Alaska. While there have been improvements in the number of communities reporting take levels for some ice seals in the SARs in recent years, the majority of communities that hunt or may hunt ice seals are still unaccounted for. The Commission continues to recommend that NMFS pursue additional mechanisms to gather reliable information on the numbers of marine mammals taken for subsistence and creating handicrafts, including by securing adequate funding for comprehensive surveys of subsistence use and Native hunting effort. At a minimum, the Commission encourages NMFS to consider statistical methods (e.g., Nelson *et al.* 2019) that could provide a more complete assessment of take levels from subsistence hunting. Further, the Commission encourages NMFS to continue to provide updated information in the SARs whenever it becomes available, even if it pertains only to a limited number of villages or a subset of years. The Commission would welcome the opportunity to meet with NMFS to discuss progress, next steps, and any impediments to including more comprehensive data on take levels by Alaska Natives in future SARs.

*Response:* We agree that it would be beneficial to have more comprehensive information about the harvest numbers of species of Alaska marine mammals taken for subsistence purposes and for creating handicrafts. We provide co-management funding to Alaska Native organizations under section 119 of the MMPA, in part to monitor harvests and report harvest numbers. Within the constraints of appropriations, we will continue to work with our co-

management partners to monitor subsistence harvests and make that information publicly accessible as it becomes available. Additionally, our intent is to include average statewide subsistence harvest estimates, based on a recently published analysis (Nelson *et al.* 2019), in the draft 2020 SARs for the ice-associated (spotted, bearded, ringed, and ribbon) seals.

##### Harbor Porpoise, Southeast Alaska

*Comment 4:* The Commission appreciates that NMFS has prioritized research on, and monitoring of, the Southeast Alaska (SEAK) harbor porpoise stock, but believes that more effort is required in three areas: Management planning, fisheries monitoring, and mitigation. The Commission recommended in its comments on the draft 2018 SARs that, under the requirements of the MMPA, NMFS form a take reduction team (TRT) to address the high level of incidental take by SEAK gillnet fisheries from this stock relative to PBR. NMFS responded that the MMPA allows the agency to prioritize its TRT efforts based on availability of funding and [that it is] currently implementing several other TRTs that address higher priority stocks and fisheries where the Take Reduction Plans (TRPs) are not yet meeting MMPA goals (e.g., ESA-listed North Atlantic right whales, Hawaii pelagic false killer whales, and Northern and Southern North Carolina Estuarine System bottlenose dolphins). While the Commission is aware of this constraint and supports the allocation of funding to these TRTs as a priority, it notes that several other TRTs (Atlantic Trawl Gear, Harbor Porpoise (Atlantic), Pacific Offshore Cetacean, and Pelagic Longline) that were very active at times in the past are now meeting infrequently and often only via webinar, which suggests that funds might be available to establish a new TRT. The data reported in the draft 2019 SAR include a minimum estimated mean annual U.S. commercial fishery-related mortality and serious injury rate (34 porpoises) that exceeds the PBR (12) by nearly threefold. Given the small population size and an M/SI level that significantly exceeds the PBR for this stock, the Commission recommends that NMFS reconsider its funding priorities and establish a SEAK harbor porpoise TRT as part of the development of a take reduction plan to address bycatch of SEAK harbor porpoises by gillnet fisheries.

*Response:* NMFS continues to collect and analyze information needed to assess the SEAK harbor porpoise stock and to understand the interactions with

commercial fisheries. In 2019, we conducted a vessel survey to assess distribution and abundance of harbor porpoise in inland waters of Southeast Alaska, including areas not previously surveyed. We are also continuing to evaluate population structure of harbor porpoise using environmental DNA techniques. The results of the analyses could be used to support future take reduction efforts.

We continue to implement several other TRTs that address higher priority stocks and fisheries where the TRPs are not yet meeting MMPA goals. Funds have been reallocated from TRTs that are no longer actively meeting (or meeting mainly via webinar), to support the continuing and emerging needs of the existing TRTs. In addition to convening meetings, TRT funds are used to support a variety of take reduction planning activities such as analyses to support rulemaking (e.g., economic analyses), stock assessments (e.g., abundance, distribution, genetics) and related analyses, increased or new observer coverage, fishing gear-related research, enforcement-related activities, and education and outreach. We continue to evaluate our priorities for convening TRTs and available funding on a regular basis.

*Comment 5:* The Commission appreciates the important strides that NMFS has made in the last year with the 2019 harbor porpoise survey that covered much of the range of the SEAK stock. The DNA samples collected will help determine whether the SEAK stock is composed of one or two populations, and the new data will significantly improve our understanding of the status of the stock(s). However, substantial uncertainty remains concerning the magnitude of the bycatch threat. What is known comes from an incomplete bycatch survey conducted by fisheries observers in 2012 and 2013. The Commission has urged NMFS to increase observer coverage of gillnet fisheries in Alaska, but so far, to little effect, primarily because priority shifts by NMFS defunded the Alaska Marine Mammal Observer Program, which produced the 2012–2013 bycatch estimates. The Commission is encouraged by the 2019 survey, and the data it provided to inform abundance estimates, stock structure, and the development of a fisheries monitoring plan. The Commission recommends that data collected during these surveys, along with fishing effort data, be used to identify areas for timely implementation of a fisheries observer program, in coordination with the State of Alaska. The fisheries of most interest and concern are those with the greatest

overlap between gillnets and harbor porpoises in Southeast Alaska.

*Response:* We are continuing to review the levels of harbor porpoise serious injury and mortality in Southeast Alaska, the new information on harbor porpoise abundance and stock structure, and information on the commercial fishery to evaluate whether and, if so, how best to implement a fishery observer program in Southeast Alaska.

*Comment 6:* The Commission notes that NMFS, in its response to the Commission's 2018 letter, pointed out that TRTs require a minimum amount of data and analyses to support TRT deliberations, and that it was working to gather the requisite data and analyses. The Commission recommends that NMFS provide a timeline for acquiring these data and analyses and an anticipated date for the initiation of a SEAK harbor porpoise TRT. The Commission recognizes that NMFS may lack the data and analyses typically needed to support a new TRT. However, the problem of harbor porpoise entanglement in gillnets is common and well-studied in many parts of the Northern Hemisphere, and it is well established that gillnet fisheries often represent a significant threat to harbor porpoise populations (see references in Reeves *et al.* 2013). It is widely recognized that wherever harbor porpoises and such fisheries co-occur, there will be entanglements. The use of pingers to deter harbor porpoises from gillnets has been widely implemented, in most cases with considerable success (*e.g.*, Kraus *et al.* 1997, Gearin *et al.* 1999, Trippel *et al.* 1999, Gönener & Bilgin 2009, Carlström *et al.* 2009, Dawson *et al.* 2013, Orphanides and Palka 2013, Larsen and Eigaard 2014, Zaharieva *et al.* 2019). Only in a few cases were pingers found to be ineffective at reducing harbor porpoise bycatch in gillnets. In some fisheries with harbor porpoise bycatch, the use of pingers is mandatory (*e.g.*, New England and throughout the European Union). Thus, experience throughout the species' range suggests that where gillnets are used bycatch is to be expected, and the use of pingers will likely reduce the bycatch rate significantly. Therefore, in the absence of TRT-mediated development of a take reduction plan, the Commission recommends that NMFS adopt a parsimonious approach and initiate the necessary information gathering and consultation necessary to promulgate regulations that would require the use of pingers by SEAK gillnet fisheries.

*Response:* We recognize that pingers have been used successfully to reduce

harbor porpoise bycatch in many fisheries throughout the species' range. However, because pingers have not been effective everywhere they have been used, we need to be careful and thoughtful about requiring their use in any particular fishery.

Beluga Whale, Cook Inlet

*Comment 7:* CBD–WDC note that NMFS released a report with a new abundance estimate for Cook Inlet beluga whales dated December 2019. The report reveals that the population is “estimated to be smaller and declining more quickly than previously thought.” In the report, NMFS estimates that the population contains only 279 individual whales and is declining at a rate of roughly –2.3 percent per year, a significantly faster rate of decline than the prior estimate of –0.5 percent per year reflected in the draft Cook Inlet beluga whale SAR. With this “new, more reliable methodology” and “more accurate” approach, NMFS has also revised the 2016 abundance estimate, which it now states was likely around 293 animals rather than 328. CBD–WDC recommend that NMFS revise the Cook Inlet beluga whale SAR to reflect this updated information, as well as revise the PBR accordingly. CBD–WDC question the validity of any value of PBR other than zero for this species, given this small, vulnerable population's critically-imperiled status and sharply declining population.

*Response:* The revised abundance estimates and trend for the Cook Inlet beluga whale population, released in December 2019 (Wade *et al.* 2019), and revised estimates of minimum abundance and PBR will be reflected in the draft 2020 SAR.

An underlying assumption in the application of the PBR equation is that marine mammal stocks exhibit certain population dynamics. Specifically, it is assumed that a depleted stock will naturally grow toward OSP if sources of potential mortality are controlled. If, for unknown reasons, a stock's population dynamics do not conform to the underlying model for calculating PBR, NMFS' Guidelines for Assessing Marine Mammal Stocks (NMFS 2016) instruct SAR authors to calculate a PBR but to qualify it in the SAR.

In the 2019 SAR, the Cook Inlet beluga whale PBR is calculated using the most conservative recovery factor of 0.1, resulting in an estimate of approximately one whale every two years. The “Status of Stock” section describes how the depleted Cook Inlet beluga whale stock does not conform to the expected population dynamics assumed in the application of the PBR

equation. However, it also notes that although there is currently no known direct human-caused mortality of the stock, even if the PBR level were taken, this would have little consequence on the overall population trend given the unexplained lack of increase.

Humpback Whale, Western North Pacific

*Comment 8:* CBD–WDC suggest that the Western North Pacific humpback whale SAR include conclusions from the new research from NMFS regarding humpback whales breeding in the Mariana Archipelago. Scientists learned that humpback whales do not pass through the Marianas on their way to other breeding areas, but instead are using these areas to mate and give birth.

*Response:* See response to Comment 2. Our intent is to consider this information in future SARs.

*Comments on Atlantic Issues*

Estimating Cryptic Mortality, Gulf of Maine Humpback Whales and North Atlantic Right Whales

*Comment 9:* The Commission is encouraged to see NMFS considering an approach for estimating cryptic mortality and incorporating the caveat within the “Status of the Stock” section of the SARs that, for example, observed M/SI estimates may account for only 20 percent of total estimated mortality for the Gulf of Maine stock of humpback whales. The Commission commends the agency's efforts to develop methods for estimating undetected mortality and its recognition that mortality estimates consisting only of observed deaths are biased low, a bias that all too frequently affects the assessed status of the stock. However, the Commission recommends that NMFS explain its methodology and reasoning in a peer-reviewed publication prior to including estimates of cryptic mortality in the SARs. The Commission also encourages NMFS to continue developing ways to summarize the uncertainties underlying M/SI data after discussions with the Atlantic Large Whale TRT and peer review.

*Response:* The topic of cryptic mortality is one that the agency has been advancing through constructive feedback with the Commission, the Atlantic SRG, and many partners over the past several years. For the Atlantic region, cryptic mortality was first introduced in the 2018 North Atlantic right whale (NARW) SAR. Based on feedback, the methods by which estimates were generated were expanded in the NARW SAR and added to the Gulf of Maine humpback whale SAR with the addition of annual mark-

recapture based population estimates. While the methods behind the point estimates were fully explained in the SAR, the agency has not attributed cryptic mortality estimates to a cause that might have management implications. The agency has sought guidance on this issue. Constructive dialogue occurred at the February 2020 Atlantic SRG meeting that resulted in an Atlantic SRG recommendation to NMFS that will be considered for the 2020 draft SAR, including a protocol for apportioning cryptic mortality estimates to potential anthropogenic sources, and a publication strategy to support the estimates. The agency feels it is appropriate to document the advancing approach of applying cryptic mortality in each year's SAR (conceptual introduction 2018, methodological expansion 2019, and addition of another species, management application, and supporting publication in 2020) to give stakeholders information about how the science is evolving, and early warnings of additional potential impacts to industry.

#### North Atlantic Right Whales

*Comment 10:* CBD–WDC reiterate that NMFS continues to rely on historic sightings data in the NARW report section on “Stock Definition and Range,” and suggest that this section include the significant changes in right whale distribution that have occurred since 2010, including the recent sightings of NARW#3845 (Mogul). CBD–WDC point out that NMFS continues to reference the sightings south of Nantucket and Martha's Vineyard as a “late winter use” when the agency declared Dynamic Management Areas in this region in nearly all months of 2019.

*Response:* We added the following text in the final 2019 report to make the changes in ranges more prominent: “An important shift in habitat use patterns in 2010 was highlighted in an analysis of right whale acoustic presence along the U.S. Eastern seaboard from 2004 to 2014 (Davis *et al.* 2017). This shift was also reflected in visual survey data in the greater Gulf of Maine region.” Wanderings of NARW#3845 (Mogul) were documented in 2018, outside the period of this report (2013–2017).

*Comment 11:* MLA recommends the “Stock Definition and Range” section of the NARW report reflect there are more than seven areas that have been identified where right whales are known to aggregate seasonally, which now include Nantucket Shoals and the Gulf of St. Lawrence. They suggest it would be more informative and understandable to readers if these recently identified seasonal aggregation areas were

included in the same sentence with the seven previously known areas and not discussed separately in the SAR.

*Response:* Our intent is to address this issue in the 2020 SAR in such a manner as to reflect changes in our understanding of how right whales are using their habitat, moving away from the identification of individual high-use areas and focusing more on the broad-scale nature of whale presence.

*Comment 12:* CBD–WDC comment it is unclear how the Pace *et al.* (2017) model was used to determine a best available population size of 428 individuals for 2018 when the 2019 North Atlantic Right Whale Consortium Report Card determined the best estimate for the end of 2018 was 409 individuals, reportedly using the same model for the same year.

*Response:* The estimate produced by the Pace *et al.* (2017) model, presented at the North Atlantic Right Whale Consortium, is 428. The Consortium “alters” the methods of Pace *et al.* 2017, to subtract additional mortality that occurred after the endpoint for the model time frame for which the point estimate of 428 was generated. Because the Pace *et al.* (2017) method estimates all mortality, not just observed, the agency (through discussions with the Atlantic SRG) concluded it is only appropriate for the SAR to report the un-altered output of the Pace *et al.* (2017) model.

*Comment 13:* CBD–WDC reiterate their previous comment the “Current Population Trend” section of the NARW report should be updated given the recent precipitous decline in right whales. As NMFS declared an Unusual Mortality Event for this species since 2017, during which at least 30 right whale carcasses were documented, CBD–WDC question the only reference to a serious concern regarding carcass detection dates back to 2004 and 2005. They suggest retaining the figures in this section, abbreviating historic information, and using language taken from the Hayes *et al.* (2018) NOAA Tech Memo to more clearly assess the current status, including the recent population decline.

*Response:* We agree and have removed the paragraph highlighted. We added a statement that changing distributions have exposed the population to new sources of anthropogenic mortality and cited the Hayes *et al.* (2018) Tech Memo. Also, Figure 4 in the final 2019 NARW report was generated from the 2018 Tech Memo as additional background support for this issue.

*Comment 14:* CBD–WDC appreciate the updated information in the “Current

and Maximum net Productivity Rates” section of the NARW report but believe this section is not fully reflective of current trends. For example, the document states that Corkeron *et al.* (2018) found that the calf count rate increased at 1.98 percent when considering the years 1990–2016. We do not dispute these data but note that Kraus *et al.* (2016) found that calving rates since 2010 have declined by nearly 40 percent. CBD–WDC continue to request that NMFS limit the historic data and focus on the current status of the species.

*Response:* The inclusion of data since 1990, in both the calving rate trend graph and in the discussion, is important in order to provide a longer-term context for the calving rate fluctuations. It highlights both the significance and contributing cause of the current decline.

*Comment 15:* CBD–WDC continue to question the use of an Nmin of 428 for NARW and whether any value of PBR other than zero is appropriate to use for this species when NMFS has determined the population is currently declining at 2.33 percent per year as a result of human causes.

*Response:* We follow the Guideline for Assessing Marine Mammal Stocks (NMFS 2016) in the calculation of PBR.

*Comment 16:* CBD–WDC reiterate that NMFS should consider limiting references to historic data and focus on more current impacts to the species. For example, the “Background” section of the NARW report states that 124 mortalities were recorded between 1970 and 2018, but the SAR does not indicate that nearly 40 percent (n=46) of those mortalities have occurred since 2012. Highlighting this variation is significant as it indicates that for 41 years, mortality rates averaged approximately two per year, but in the most recent 6 years, mortalities escalated to nearly eight per year, a 400 percent increase. CBD–WDC suggest NMFS re-examine its inclusion of the statement “Young animals, ages 0–4 years, are apparently the most impacted portion of the population (Kraus 1990).” These data are now decades old and more recent data should be evaluated to determine if it remains accurate.

*Response:* NMFS has removed the paragraph with older background information from the final 2019 NARW report. NMFS does not dispute the numbers discussed in the comment but must consider that the numbers are a function of two variables: The total number of mortalities and the agency's ability to detect those mortalities. Given this, it is possible for actual mortality to be much higher in years where few were

detected. To that end, NMFS has applied the output of the Pace *et al.* (2017) model to generate actual annual mortality estimates in the graph provided (Figure 5 of the final 2019 NARW report), which give a good representation of the variation in the observed mortality as well as the estimated total mortality over the 2000–2017 timespan. Given these data, it is inappropriate to estimate mortality rates solely from observed data. Discussion of the 1970 to 2018 dataset was included because that range was analyzed by Sharp *et al.* (2019). We have removed the Kraus *et al.* (1990) statement about young animals.

*Comment 17:* MLA comments the “Background” section of the NARW report is confusing as it contains potentially conflicting statements and fails to make clear the best available science. For example, in paragraph 2, with regard to human sources of mortality, there are two statements that imply different conclusions on the threats of entanglements and vessel strikes. The paragraph states, “The principal factor believed to be retarding growth and recovery of the population is entanglement with fishing gear.” It then cites data from 1970–2018, noting 124 recorded right whale mortalities of which “26 (21.0 percent) resulted from vessel strikes, 26 (21.0 percent) were related to entanglement in fishing gear, and 54 (43.5 percent) were of unknown cause.” Based on the data presented in this paragraph, the reader is likely to conclude that the best available science from Sharp *et al.* (2019) indicate that incidents attributed to vessel strike and entanglements are equal and would question why only entanglement would be singled out as the principal factor retarding the species’ recovery. In addition, the reference to Figure 4 at the end of this paragraph correctly indicates that entanglement injuries have been increasing in recent years, but it ignores the potential implications of the latter data points on vessel strikes in 2016 and 2017, when one and five vessel strikes were observed, respectively. MLA notes this spike in vessel strikes is also of grave concern for right whale recovery and should not be minimized to imply that this source of human caused mortality and serious injury is not of concern.

*Response:* We note that Sharp *et al.* (2019) reviewed only detected mortalities, and only those in condition to be necropsied. Not only have numbers of detected carcasses been shown to be uncorrelated to actual mortality rates, but when serious injuries, which account for the bulk of the cryptic entanglements, are

considered in addition to mortalities, entanglement far outweighs vessel strike as the principal factor retarding the species’ recovery. We have added a clarifying sentence to the final 2019 NARW SAR.

We appreciate the detailed review by MLA but are hesitant to place too much emphasis on small variations in a highly-volatile system. The 2016 and 2017 data were included in the analysis of Figure 4, and the resulting trend line was flat (indicating no evidence of a trend, just volatile data). Should vessel strike mortality occur at higher rates in the coming years (as observed in 2019), it may be possible a trend will emerge, but that is outside of the time period of the 2019 report.

*Comment 18:* CBD–WDC continue to request NMFS consider sublethal effects of entanglement to North Atlantic right whales, which are known to have population-level impacts, as concluded by van der Hoop *et al.* (2017) and Pettis *et al.* (2017).

*Response:* NMFS is working to quantify sublethal effects on right whales. The data presented in Figure 3 of the NARW report support the hypothesis that they are occurring. However, confounding ecosystem changes that began in 2010 are additionally playing a role.

*Comment 19:* MLA notes the last sentence of the “Fishery-Related Mortality and Serious Injury” section of the NARW report states that the effectiveness of the Atlantic Large Whale Take Reduction Plan (ALWTRP) has yet to be evaluated. However, MLA has presented an analysis of NOAA’s entanglement data to the agency which shows that entanglement cases attributed to the U.S. lobster fishery since the implementation of major modifications to the ALWTRP in 2009 and 2014 have declined by 89 percent since 2010 (from nine cases to only one), while entanglement cases attributed to gillnet or netting (unassigned by country) have nearly doubled (from four cases to seven). These data reflect the best available science on entanglement incidents in these fisheries and are used to calculate PBR. While these data do not account for entanglements that could not be traced to a fishery, they show a clear trend in known cases before 2010 when entanglements were regularly observed in U.S. lobster gear, and after 2010 when entanglements in U.S. lobster gear have become rare. MLA emphasizes these data are highly relevant and should be included in the report.

*Response:* As raised in the comment, the source of entanglement for the majority of cases goes undetermined.

Because the mortalities with known causes are less than one-third of the estimated mortalities, making judgments based on these is not precautionary when other evidence such as the large number of injuries related to entanglement mortalities speaks to the seriousness of the entanglement problem. Specifically, the frequency of non-lethal entanglement injuries within the population is approximately 26 percent per year. For the period cited (2009–2014), that would indicate more than 500 entanglements occurred for which no linkage was made, belying the caution needed in attributing mortality to a particular source with such limited samples.

*Comment 20:* The Department of Fisheries and Oceans Canada (DFO) requests a description of the process used to determine gear origin of entanglements and first sighting information for North Atlantic right whales. DFO notes it is unclear who is confirming the North Atlantic right whale entanglement numbers/information for Canada, because some of the numbers for mortalities appear to reflect data from DFO, others are known to have been established/announced without confirmation from Canada, and some are unclear regarding the source of confirmation.

*Response:* NMFS has gear experts who conduct an analysis of gear type/origin when assigning to a particular fishery or country of origin. The data and deciding variables are shared with other experts for corroboration and cases are only closed when sufficient evidence is acquired. Gear information, when available, is provided by the NMFS Greater Atlantic Regional Fisheries Office (GARFO), the NMFS Southeast Regional Office, the Whale Release and Strandings group (WRS), Marine Animal Response Society (MARS), and DFO. NMFS considers any feedback it receives from these groups. First-sighting information is provided by entanglement and stranding networks and/or the population monitoring studies (New England Aquarium for North Atlantic right whales and Center for Coastal Studies for humpback whales).

*Comment 21:* DFO asks how non-U.S. Canadian entanglements are verified. For example, the 2014 sighting of entanglement “South of SPM” is assigned as having a first sighting in Canada. DFO notes the entanglement in 2014 of NARW #1131 is stated as first spotted in the U.S. but marked as first spotted in Canada—XC (Unassigned 1st sight in CN), is not accurate. If #1131 was first spotted in the U.S. but is assumed to have Canadian gear, it

should be marked CN, but if first spotted in the U.S. and it is unclear where the gear is from, it should be marked XU (Unassigned 1st sight in U.S.). DFO points out there are a few cases of entanglements or mortalities spotted first in the U.S. but through some unknown process were later reported as Canadian origin, with no official confirmation or involvement from Canada. For example, NARW #3694 (2016) was an unconfirmed entanglement for two years and then announced as Canadian in 2018.

*Response:* Canadian event data are provided to NMFS directly from MARS and WRS. Staff from MARS and WRS are consulted regarding determinations. Regarding NARW #1131, it was first sighted entangled at Latitude: 42.25770 N, Longitude: -66.21330 W, in the Northeast Channel, in Canadian waters, so XC is accurate. We have changed the location description to “off Cape Sable Island, NS” since that is the closest point of land instead of “off Provincetown, MA.” Gear from #3694 was identified as Canadian Snow Crab by GARFO, and this result was announced through an email to the Atlantic Large Whale TRT in April 2018.

*Comment 22:* MLA is concerned about the use of the “first sight” coding in Table 1 in the “Other Mortality” section of the NARW report when attributing M/SI to a country. Despite the clear language included in the SAR regarding the limitations of what this means, these data have proved confusing and have been misrepresented by NMFS in public presentations. In August 2019, and on many other occasions, NMFS staff have presented a graph of right whale serious injury and mortality based on whales first sighted in the U.S. as evidence necessitating additional whale conservation measures in the Northeast Trap/Pot fishery. The graph, entitled “Right Whale Mortalities in U.S. Commercial Fisheries Still Exceed PBR,” relies primarily on M/SI for right whales first sighted in the U.S. to make its case.

MLA recommends NMFS consider dropping this “first sight” code under country and replace it with a generic code to indicate that these entanglements cannot be assigned to a country. Given that NMFS has already adopted an interim policy to attribute the responsibility for risk from these unknown cases equally between the U.S. and Canada, this presentation of the data is now irrelevant. Furthermore, a generic coding would be more informative and less likely to be misrepresented.

*Response:* NMFS will consider this comment, as well as the evaluation from the November 2019 Center for Independent Experts review that included significant discussion of this topic, in consideration of changes for future SARs.

*Comment 23:* CBD–WDC request NMFS reconsider its evaluation of the following cases:

- 3/7/2013 #3692—The fluke of the whale was wounded by a vessel strike in 2013. In 2014, the right tip of the fluke had fallen off and the fluke wound had not healed. Lesions and an increased cyamid load were noted and the whale was reported as thin. There have been no additional resights since 2014;

- 7/12/2013 #3123—Female whale previously seen every year since birth (2001) but last seen in 2013 after an ad hoc disentanglement;

- 9/13/2015 #1306 (“Velcro”)—Based on the most recent sightings of this whale on August 16, 2016, there was no change in configuration of the entanglement. However, a marked decline in body condition was reported and the whale has not been resighted since 2016;

- 9/13/2015 Unknown—Unknown right whale located on Roseway Basin on September 13, 2015. The whale was sighted with most of its left fluke lobe missing or composed of necrotic tissue and a significant cyamid load. There have been no resights of this whale. Given that NMFS itself has determined that “there has been no confirmed case of natural mortality in adult right whales in the past several decades,” we believe NMFS should include this whale as a Serious Injury with a value of 1 against PBR;

- 6/18/2017 #3190—Carcass in GSL with suggested blunt force trauma. Since no whales are known to have died from natural causes, this whale should be prorated; and

- 8/9/2017 #2123—Carcass was not necropsied but, according to NMFS, “photos indicated multiple linear impressions suggesting entanglement” and this case should at least be prorated.

*Response:* NMFS thanks the reviewer for the detailed examination of individual cases. Several of the cases (3/7/2013 #3692 and 9/13/2015 #1306), while confirmed as having anthropogenic injuries, have health status on par with the non-injured population, and we are unable at this time to classify them as more than likely to die as a result of the injury. The entanglement case from 7/12/2013 (#3123) was classified as a prorated injury (0.75) since it has not been confirmed that the gear has been shed.

No expert agreement is available on the injured whale documented on 9/13/2015 so, while likely human-caused and definitely serious, we are unable to account for it. The cases from 6/18/2017 (#3190) and 8/9/2017 (#2123) were both mortalities. NMFS currently has no mechanism to prorate carcasses, only injuries.

*Comment 24:* MLA comments that NARW #1142, sighted on 04/01/2014, was downgraded to a non-serious injury at the October 2018 Atlantic Large Whale TRT meeting. NMFS should confirm the status of this right whale as either serious injury or non-serious injury. If this animal has been downgraded to NSI, MLA suggests this should be reflected in the PBR calculation and summary tables.

*Response:* As was noted at the time, the determinations provided at the October 2018 Atlantic Large Whale TRT meeting were preliminary and subject to change. Additional sightings data indicate that #1142’s health continued to decline, so it remains a serious injury.

*Comment 25:* MLA notes for the right whale M/SI which occurred in 2017, there are several cases in Table 1 in the “Other Mortality” section that were coded “AE” and “CE” in the “gear type” column, which do not match the associated codes in the legend. These codes appear to reference acute or chronic injuries, rather than the gear type associated with the case. Additionally, several of the 2017 vessel strikes have been erroneously assigned a gear type.

*Response:* We have corrected those typos in the final 2019 NARW report.

*Comment 26:* DFO comments it is unclear if there is a process to review entanglement injury scores if the same North Atlantic right whales are later observed as having shown signs of recovery. For example, once a serious injury is assigned, does it remain as a serious injury if the whale is later seen to have recovered or stabilized?

*Response:* Protocols for serious injury determinations are provided in the annual M/SI report and in the NMFS Serious Injury Determination Procedural directive (NMFS 2012). If an animal is re-sighted in a condition that warrants reevaluating a previously published determination, it will be addressed.

*Comment 27:* MLA notes the “Status of Stock” section of the NARW SAR states, “The size of this stock is considered to be extremely low relative to OSP in the U.S.” The MMPA was enacted to maintain marine mammal stocks at their OSP level and to restore depleted stocks. However, this critical metric is never quantified in the NARW SAR. Maine lobstermen constantly ask

about what is considered a sustainable population of right whales. MLA requests that OSP be quantified in the SAR and, if it cannot be, to explain why.

*Response:* OSP is defined by MMPA section 3(9), with respect to any population stock, [as] the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity [K] of the habitat and the health of the ecosystem of which they form a constituent element. (16 U.S.C. 1362(3)(9)). OSP is further defined by Federal regulations (50 CFR 216.3) as a population size that falls within a range from the population level of a given species or stock that is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity level (MNPL) is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality. We have provided a graph in the NARW SAR (Figure 2) that depicts right whale population growth during 1990–2017. That graph indicates that population growth is decelerating and is at levels clearly lower than MNPL and, by definition, less than OSP. Until population growth begins to decelerate—due to density dependence, not deaths caused by human activities—then it would be inaccurate to attempt to fit a growth curve and estimate OSP from the population data.

For populations that are greatly reduced and endangered, it is best to consider the goals set forward in the ESA recovery plan documents. In this case, the 2005 North Atlantic Right Whale Recovery Plan lists the following criteria that must be met before the species can be considered for reclassifying to “threatened” under the ESA: (1) The population ecology (range, distribution, age structure, and gender ratios, etc.) and vital rates (age-specific survival, age-specific reproduction, and lifetime reproductive success) of right whales are indicative of an increasing population; (2) The population has increased for 35 years at an average rate of increase equal to or greater than 2 percent per year; (3) None of the known threats to Northern right whales (summarized in the five listing factors) are known to limit the population’s growth rate; and (4) Given current and projected threats and environmental conditions, the right whale population has no more than a 1-percent chance of quasi-extinction in 100 years.

Humpback Whale, Gulf of Maine

*Comment 28:* CBD–WDC request that NMFS consider providing a distributional map that more accurately represents the coast-wide distribution of the Gulf of Maine stock of humpback whales, including in near-shore waters of the mid-Atlantic.

*Response:* The map is intended to represent the distribution of sightings that were used to generate past and current line-transect abundance estimates. We are in the process of converting all SAR maps to stock range depictions in future reports, but in the 2019 SAR, none of the stocks have range maps.

Undifferentiated Beaked Whales

*Comment 29:* The Commission notes several SARs for beaked whales in the North Atlantic were updated in 2019. Although a PBR cannot be calculated for individual stocks, each of these SARs includes a best estimate of abundance, Nmin, and PBR calculated for “undifferentiated beaked whales,” which includes four species of *Mesoplodon* and *Ziphius cavirostris*. In many areas of the world where long-term studies occur, photo-identification of individuals indicates some level of site-fidelity (e.g., Baird 2019, Dinis *et al.* 2017, Forney *et al.* 2017, McSweeney *et al.* 2007), suggesting that many of these species have complex population structure. Designating a single “western North Atlantic stock” for each species may not reflect their stock structure. This shortcoming is compounded when abundance and PBR are reported for “undifferentiated beaked whales,” combining all five species. While the Commission is encouraged to see NMFS making efforts to obtain accurate species identifications at sea (particularly through techniques such as eDNA, photo-documentation, unmanned aerial vehicles, and acoustic monitoring), the Commission recommends that NMFS reconsider whether including an abundance estimate, Nmin, and PBR for “undifferentiated beaked whales” is meaningful for effective management of these stocks and revise the SARs accordingly if appropriate. Part of this evaluation should consider how the data are likely to be used by those who rely on and cite the information provided in the SARs.

*Response:* Taking the Commission’s recommendation, and that of the Atlantic SRG, we have reworked the abundance estimate groupings in the final 2019 SAR to be able to report separate estimates for Cuvier’s beaked whales and *Mesoplodon* beaked whales. We will continue efforts to differentiate

between the different species of *Mesoplodon* beaked whales to eventually report estimates for each species.

*Comments on Pacific Issues*

Southern Resident Killer Whales

*Comment 30:* CBD–WDC appreciate the updates made to clarify differentiation of killer whale populations in the Eastern North Pacific and to align terms used in the SAR with those commonly used today (e.g., ecotypes). However, we note that despite the availability of significantly more information about coastal distribution and habitat use by the Southern Resident killer whale (SRKW) population, the paragraph in the “Stock Definition and Geographic Range” section describing coastal sightings and habitat of the SRKWs remains relatively unchanged since at least 2014, with the most recent citation from 2013. NMFS recently issued a proposed rule to revise the SRKW critical habitat designation to include coastal waters from Washington to Point Sur, California, and included a substantial summary of the data collected by the agency itself to support the revision.

CBD–WDC request that NMFS update the paragraph describing coastal distribution and include the more recent references available in the Biological Report that accompanies the proposed critical habitat rule, including updated information from satellite tag deployments and more recent data from passive acoustic monitoring. Coastal habitat use is thoroughly described and confirmed in other NMFS SRKW material, including recent recovery documents and status updates, and we urge NMFS to describe the coastal range of the SRKWs with similar confidence in the SAR, instead of retaining the description of “uncertain” coastal habitat use from 2013.

CBD–WDC also ask that NMFS note that while the SRKWs historically utilized the inland waters of Washington and southern British Columbia (the Salish Sea) in the late spring and summer, the seasonality of their presence is changing, and they have not been seen regularly or reliably during the summer in recent years. SRKW use of the Salish Sea has been highly variable since 2013, with a historically late return to the area in both 2018 and 2019. We recommend these recent observed changes in habitat use be included in the SRKW SAR.

*Response:* NMFS has updated the geographic range language in the final 2019 SRKW SAR.



*Comment 31:* CBD–WDC comment the Center for Whale Research (CWR) conducts the annual census for the SRKWs and typically provides updates on July 1st and December 31st of each year. As noted above, the changes in seasonal habitat use by the SRKWs has resulted in late returns to the Salish Sea and has complicated the census process, with some or all of the population no longer seen before the July 1st reporting deadline. While we appreciate established use of this system to achieve both estimates of abundance and a minimum population estimate, the increasing difficulty of completing a full census by July 1st introduces uncertainty as the status of all individuals in the population cannot be confirmed. For example, in 2019 none of the SRKW population had been seen in the Salish Sea by the July 1st census date, and while CWR noted three whales as “missing” following an initial encounter in July, sightings were so infrequent that those three whales—a matriarch and two adult males—were not officially declared deceased for over a month. Given the extremely small size of the SRKW population, unconfirmed status of even one individual is significant. CBD–WDC ask that NMFS update its protocol for including the most recent population estimate for SRKWs, since using census numbers from the previous summer (e.g., July 2018) reflects a population abundance more than a year and a half out of date, and the biannual census may no longer be an accurate count for the population. We urge NMFS to include the most recent full count from CWR in the SAR, regardless of the date that count was reached.

As of fall of 2019, the SRKW population consisted of 71 individuals (not including two new calves born in December 2018 and May 2019, following established protocol of waiting one year before adding to the census count).

Given the grave concerns for the survival of the SRKW population and their precipitous decline in recent years, CBD–WDC ask that NMFS clearly state the decline observed following the “peak census count of 99 animals in 1995,” with average decrease per year, and specifically for the time period included in this SAR. Recent population viability assessments completed in both the U.S. and Canada should be used to describe the current population trend and future outlook.

*Response:* The comment on the reporting period for annual census values was addressed in the response to public comments on final 2018 SARs (84 FR 28489, June 19, 2019). The

response is reiterated here: “The Center for Whale Research is under contract to NMFS and provides a population estimate on July 1st of each year. Since the beginning of the Center for Whale Research’s study in 1976, July 1st was used as the date for the population estimate. Although additional effort in the fall months in recent years has occasionally allowed for a population estimate of December 31st, for some years sighting data of all three pods may not exist for most or all of the fall months. For the sake of consistency, we will continue to use the census data from July 1st. We do provide an update to the SRG at their annual meeting of any changes (births/deaths) since the SAR was filed.”

We have added language to the final 2019 SRKW SAR noting the annual percent decline observed in the population since the peak count in 1995.

*Comment 32:* CBD–WDC comment that growth rates and productivity in different Resident killer whale populations may be affected by variability in diet, environmental conditions, and habitat range. Alaskan Resident killer whales consume Chinook salmon, similar to Northern and Southern Resident killer whales but appear to have a more diverse diet and benefit from larger and healthier salmon runs.

Different environmental conditions, including prey availability, pollution, and disturbance levels may impact their resulting annual growth rate. To better reflect the habitat conditions and diet of SRKWs and the resulting maximum net productivity, CBD–WDC suggest that NMFS use the same growth rates and estimated net productivity rates as are used for Northern Resident killer whales. This population is closer to SRKWs in prey preference and availability as well as environmental conditions, and shares a similar history in exploitation for captive display. The maximum net productivity rate for Northern Resident killer whales has been updated and is now estimated to be 2.9 percent. Using the same rate for SRKWs yields a PBR of 0.11 (1 animal every 9 years) for a population level of 75 whales as included in the current version of the SAR; or a PBR of 0.10 (1 animal every 10 years) if the more recent population estimate of 71 is used.

*Response:* This comment was addressed in the response to public comments on final 2018 Stock Assessments (84 FR 28489, June 19, 2019). We intend to evaluate other maximum rates of increase for killer whale populations and continue to consult with the Pacific SRG regarding

potential changes to the SRKW SAR moving forward. We retain the currently-used Rmax value from the published study of Matkin *et al.* (2014) in the final 2019 SAR. The retention of the current Rmax value results in no appreciable difference in the calculated PBR compared with the Rmax value proposed by the commenter.

*Comment 33:* CBD–WDC disagree with NMFS that the total non-fishery human-caused mortality for the SRKW stock for the past five years (2013–2017) is zero. NMFS notes in the SRKW SAR the death of a young adult male, L95, from a fungal infection introduced by a satellite tag. While the infection was determined to be the cause of death for L95, we argue that human activity exacerbated this infection and contributed to the introduction of the fungus into L95’s bloodstream, hastening his death. Additionally, the death of J34, from blunt force trauma consistent with vessel strike (as noted in the SAR), should be included as another human-caused mortality and attributed as vessel strike mortality. Both NMFS and DFO have established this death as “likely from ship impact” in other material and communications, which should be reflected here for consistency. Of note, the DFO necropsy report was written in 2017, not 2019, and CDC–WDC recommend the citation be corrected. For a population in a highly vulnerable state, deaths with a high likelihood of being caused by human activity should be noted as such.

*Response:* NMFS has updated the language in the final 2019 SRKW SAR to explicitly treat these deaths as human-caused. The necropsy report and expert panel review for L95 and necropsy report for J34 indicate human-related causes as likely factors in the mortality of these animals. The DFO necropsy report citation was updated in 2019 and the citation date is correct.

*Comment 34:* CBD–WDC request that NMFS reflect the level of research that has established the preference for Chinook salmon of SRKWs and remove the phrase “appears to be” in noting that SRKWs are Chinook salmon specialists in the “Habitat Issues” section of the SRKW SAR. We also disagree with the inclusion of pink salmon in the list of other species in their diet, as the paper cited (Ford *et al.* 2016) finds that pink salmon are present in proportions of less than 0.01 in fecal samples from SRKWs. CBD–WDC suggest that NMFS include updated information on toxic contamination and potential impacts in this section.

*Response:* We have updated diet language in the final 2019 SRKW SAR with findings from Ford *et al.* (2016),

who found that a majority of the diet comprised Chinook and Coho salmon, with seasonal differences in importance. We have also added information on toxic pollutants.

#### Humpback Whale, California/Oregon/Washington

*Comment 35:* CBD–WDC comment that rather than referring to the stock structure guidance, the proposed text revision to the “Stock Definition and Geographic Range” section of the California/Oregon/Washington humpback whale report makes the issue murky by saying the “relationship of MMPA stocks to ESA distinct population segments is complex.” The NMFS Procedure, to the contrary, says that “NMFS should align stock designations with DPSs established under the ESA unless there is compelling reason not to.” Further, “maintaining incongruent MMPA and ESA management units is neither practical nor implementable.” The SARs’ continued reliance on a California/Oregon/Washington humpback stock is confusing, but the relationship of MMPA stocks to ESA DPSs is not “complex.” CDC–WDC recommend NMFS revise the stocks to align with the DPSs.

*Response:* See response to Comment 2.

*Comment 36:* CBD–WDC comment that updates to the “Ship Strikes” section in the California/Oregon/Washington humpback whale SAR are helpful and request that Rockwood and Jahncke (2019) be cited at the end of that section.

*Response:* We have added the unpublished Rockwood and Jahncke (2019) reference to the California/Oregon/Washington humpback whale SAR text.

*Comment 37:* CBD–WDC suggest the “Habitat Concerns” section of the California/Oregon/Washington humpback whale SAR be updated with the recent scientific information in the humpback whale critical habitat proposed rule and biological report.

*Response:* NMFS has added language to the California/Oregon/Washington humpback whale 2019 final SAR to reflect the critical habitat proposed rule and habitat concerns.

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Dated: July 28, 2020.

**Chris Oliver,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Federal Consistency Appeal by Electric Boat Corporation of New York State Department of State Objection

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of stay—closure of administrative appeal decision record.

**SUMMARY:** This announcement provides notice that the Department of Commerce has stayed, for a period of 28 days, closure of the decision record in an administrative appeal filed by Electric Boat Corporation (Appellant) under the Coastal Zone Management Act requesting that the Secretary of Commerce override an objection by the New York State Department of State to a consistency certification for a proposed project to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

**DATES:** The decision record for Electric Boat Corporation’s federal consistency appeal of New York State Department of State’s objection will now close on August 31, 2020.

**ADDRESSES:** NOAA has provided access to publicly available materials and