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NGO in general consultative status  
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September 22, 1999

The Honorable Penny Dalton  
Assistant Administrator for Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Ms. Dalton,

This letter is to bring to your attention a matter that is of grave concern to The Humane Society of the United States (HSUS). As of the date of this letter, there are three north Atlantic right whales in the Bay of Fundy that are seriously entangled in fishing gear. Desperate efforts this past week by U.S. researchers have so far failed to disentangle a right whale known as #2030. This adult female, a critical member of this beleaguered species, appears likely to die in the near future as a result of the grave injury caused by her entanglement. The fate of the other two right whales in the Bay of Fundy remains unclear. Reports to date indicate that at least six north Atlantic right whales have been seen entangled in 1999. It is imperative that immediate action be taken to reduce risk to this critically endangered species.

There is evidence that the current Atlantic Large Whale Take Reduction Plan (ALWTRP) is not effective in reducing risk to north Atlantic Right Whales.

We note that in its response to comments on the take reduction plan (64FR7529-7556) the National Marine Fisheries Service (NMFS) stated "The ALWTRP is not a static plan. If it is not achieving its goals, or if better ways to achieve the goals can be identified, it can be modified." The Marine Mammal Protection Act stipulates that the goal of a take reduction plan is to reduce mortality and serious injury to below the Potential Biological Removal (PBR) level within 6 months of the plan's implementation. The PBR for north Atlantic right whales is 0.4, although the Atlantic Scientific Review Group has recommended that PBR should be calculated at zero for this species. Right whale mortality and serious injury dramatically exceeds PBR each year, and the take reduction plan has apparently done little to alter this fact.

In its final take reduction plan (*ibid.*), NMFS stated that two of the four right whales seen entangled in the Bay of Fundy in 1997 "are likely to be classified as serious injuries or mortalities when the reports are reviewed." These entanglements occurred just prior to publication of the interim final plan. In 1998, following publication of the interim final plan, several right whales become entangled and one, a right whale known as #2212, was entangled three times and still retains gear in its mouth. A compilation of entanglements provided to NMFS by the Center for Coastal Studies, and reviewed by the Gear Advisory Group in October 1998, classifies this as a serious injury. So far in 1999, a right whale known as Staccato was killed by a ship strike and right whale #2030, entangled subsequent to the final plan, is seriously injured and likely to become a mortality. With five animals killed or seriously injured in the past two years, both the short-term and long-term goals for the plan are clearly not being met. These five animals represent close to 2% of a population that NMFS considers to be declining (John Rittgers memo for the record, 2/99). Both Staccato and right whale #2030 are adult females of breeding age, a segment of the population that we can ill afford to lose. This level of mortality and serious injury poses jeopardy to the existence of the stock.

The HSUS believes that in light of this new information, the NMFS must reopen consultation under Section 7 of the Endangered Species Act.

**Promoting the protection of all animals**

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The Biological Opinion issued for the interim final rule (7/97) and on the final rule itself (2/99) state that there is no “new information [to] change the basis for the previous conclusion of the biological opinion issued July 15, 1997.” The conclusion of the 1997 consultation was that operation of the fisheries “under elements of this plan may affect but will not jeopardize the continued existence of any listed species under NMFS jurisdiction.” We believe that the large number of recent entanglements, some of which have caused serious injuries and one of which may result in a mortality, constitutes new information that necessitates reconsideration of the findings from the previous biological opinion. The HSUS believes it is no longer valid to conclude that elements of the plan offer protection sufficient to prevent jeopardy to listed species.

The HSUS urges the NMFS to reconvene the Take Reduction Team as soon as possible so that the Take Reduction Plan can be modified.

Although entanglement can occur in Canadian waters, at least some of these serious injuries appear to have occurred in U.S. waters. Right whale #2212 was entangled multiple times in Cape Cod Bay in 1998 and was apparently seriously injured. Both right whale #2030 and right whale #1158 were observed entangled in fishing gear earlier this year (1999) in the waters in or near the Great South Channel off the coast of Massachusetts. Disentanglement efforts in that area were not successful and now #2030 is critically injured. It is important that the NMFS reconvene the Take Reduction team to consider this information and discuss modifying the plan to reduce risk to these animals.

In light of the fact that at least two of these animals were seen entangled in fishing gear in the area of the Great South Channel Critical Habitat, we believe that the Take Reduction Team, or the NMFS itself, must close a portion of the Critical Habitat known as “the sliver.” This triangle shaped area on the west side of the critical habitat is approximately 55 miles in length and several miles wide. Both right whales and gillnetting were observed to co-occur in this area during aerial surveys in both 1998 and 1999. In the final ALWTRP, the NMFS chose to leave the sliver area open to gillnetting, while closing the remainder of the Critical Habitat. The rationale for this action was that the majority of right whales are sighted outside of this area. This does not address the risk posed to animals found in or transiting through the sliver area.

We note that the NMFS stated in its response to commenters in the Final Rule that “[NMFS] will consider closing [the sliver] area in the future if MMPA goals are not being met and will urge the Take Reduction Team to discuss this option as a way to continue progress.” As noted above, the goals set by the MMPA are clearly not being met. We believe that it is imperative that this area be included in the closure that affects the rest of the Great South Channel Critical Habitat, and that the NMFS consider instituting a buffer zone around Critical Habitat to reduce risk posed by fishing effort that clusters around the boundary of the closed area when right whales are transiting the Great South Channel. Given the gravity of this situation, the NMFS should act on an emergency basis to take this action.

The HSUS is alarmed by the large number of entanglements that have occurred in the past two years. Disentanglement efforts do not appear to be sufficient to prevent serious injury and mortality. It is crucial that the NMFS re-examine the components of the ALWTRP and then act expeditiously to reduce the risk to the imperiled north Atlantic right whale. We are committed to protecting marine mammals and would be pleased to assist you in whatever way possible to safeguard the future for these critically endangered animals.

Sincerely,

John W. Grandy, Ph.D.  
Senior Vice President  
Wildlife Programs

cc: John Twiss, Marine Mammal Commission