

Dated: April 4, 2003.  
**Tommy G. Thompson**,  
 Secretary.  
 [FR Doc. 03-8736 Filed 4-8-03; 12:42 pm]  
 BILLING CODE 4160-17-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 74

[ET Docket No. 01-75; FCC 02-298]

#### Broadcast Auxiliary Service Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** Federal Communications Commission published in the **Federal Register** of March 17, 2003, a document amending rules for Broadcast Auxiliary Services to introduce new technologies and conforming rules for Broadcast Auxiliary Services, Cable Television Relay Service, and Fixed Microwave Services. Inadvertently, the amendatory instruction for § 74.602 specified removing and revising paragraph (a)(2). This document revises the amendatory instruction to specify removing and reserving paragraph (a)(2).

**DATES:** Effective April 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ted Ryder, Office of Engineering and Technology, (202) 418-2803.

**SUPPLEMENTARY INFORMATION:** The FCC published a document in the **Federal Register** of March 17, 2003, (68 FR 12743) inadvertently specifying, in the amendatory instruction for § 74.602, removing and revising paragraph (a)(2). This correction revises the amendatory language to specify removing and reserving paragraph (a)(2).

In rule FR Doc. 03-4176 published on March 17, 2003 (68 FR 12743) make the following correction. On page 12768, in the second column, revise the amendatory instruction for § 74.602 to read as follows:

#### PART 74—[CORRECTED]

##### § 74.602 [Corrected]

■ Section 74.602 is amended by revising paragraphs (a) introductory text, the channel boundaries for channel designation B03 in the table of paragraph (a), footnote 2 of the table of paragraph (a), paragraphs (d), (f), (h), and (i) introductory text, and by removing and reserving paragraph (a)(2) to read as follows:

Federal Communications Commission.  
**Marlene H. Dortch**,  
 Secretary.  
 [FR Doc. 03-8578 Filed 4-9-03; 8:45 am]  
 BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 17, 222 and 226

[Docket No. 030318064-3064-01; I.D. 012903C]

RIN 0648-AQ74

#### Endangered Fish and Wildlife; Notice of Technical Revision to Right Whale Nomenclature and Taxonomy Under the U.S. Endangered Species Act

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is issuing a final rule concerning the nomenclature and taxonomy of the North Atlantic right whale, North Pacific right whale, and the southern right whale. The first change updates the formerly-used genus *Balaena* to the genus *Eubalaena* to conform to the taxonomy currently accepted by the scientific community and supported by the scientific literature. The second change reflects the genetic distinctiveness now recognized between Pacific and Atlantic right whale populations in the northern hemisphere. Due to recent genetic findings, NMFS is changing the species name of the northern right whale as follows: the North Atlantic right whale, *Eubalaena glacialis*, and the North Pacific right whale, *Eubalaena japonica*. These technical changes will not change the listing status of these species under the Endangered Species Act (ESA)(all three remain "endangered").

**DATES:** Effective on May 12, 2003.

**ADDRESSES:** Supporting documentation is available for public inspection, by request from NMFS, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226.

**FOR FURTHER INFORMATION CONTACT:** Aleria Jensen or Gregory Silber at (301) 713-2322.

**SUPPLEMENTARY INFORMATION:** The right whale was originally described as *Eubalaena glacialis* (Muller, 1776). However, the technical literature on the nomenclature has not been clear over

the course of the last three decades. The species was initially listed as *Eubalaena glacialis* by the U.S. Fish and Wildlife Service in the 1973 Edition of Threatened Wildlife of the United States (USFWS, 1973). Subsequently, however, some authorities have put right and bowhead whales in the same genus, *Balaena* (Rice, 1977). In addition, the current List of Endangered and Threatened Wildlife lists the right whale as *Balaena glacialis* (incl. *australis*) (50 CFR 17.11). Despite these differences in listing, the genus *Eubalaena* has been most widely recognized and commonly used in the scientific community as the genus associated with all right whale species. Virtually all related scientific literature and popular literature on marine mammals (see, for example, Cummings, 1985; Hall and Kelson, 1959; Jefferson *et al.*, 1993; Klinowska, 1991) historically use the genus *Eubalaena* to identify right whales as originally named by Muller in 1776.

*Eubalaena* is also the name accepted by both the International Whaling Commission (IWC) and NMFS. The IWC 2001 report on the world-wide status of right whales uses the genus *Eubalaena* (Best *et al.*, 2001). NMFS has used this nomenclature in its Stock Assessment Reports, the Final Recovery Plan for the Northern Right Whale (NMFS, 1991), and other technical documents dating back to at least 1991. Therefore, this nomenclatorial change would make the List consistent with the generally accepted use by the scientific community, IWC reports, and NMFS technical documents for over a decade. Thus, to recognize the currently accepted genus for right whale species worldwide, the first technical revision in this rule is to correct right whale nomenclature on the list from genus *Balaena* to genus *Eubalaena*.

The second change reflects new evidence from recent genetic studies regarding the taxonomic classification of right whales. Historically, right whales were classified as two distinct species, *Eubalaena glacialis* in the northern hemisphere (Pacific and Atlantic Ocean basins) and *Eubalaena australis* in the southern hemisphere, based on a morphological difference in the orbital region of the skull (Muller, 1954; Rosenbaum *et al.*, 2000). Other interpretations had given North Pacific right whales full species status as *Eubalaena japonica* (Lacepede 1818) or treated the population as a subspecies of *Eubalaena glacialis*. Prior to the current technical revision, North Pacific right whales have been most widely recognized as an intraspecific population of northern right whales (Rice, 1998). The taxonomic structure of

right whales had not been analyzed in a comprehensive manner for the purposes of conservation and systematics until recent genetic studies. The generally accepted analyses by Rosenbaum *et al.* (2000) conclude that the right whale should be regarded as three separate species as follows:

1. The North Atlantic right whale (*Eubalaena glacialis*), historically ranging in the North Atlantic Ocean from latitudes 60° N to 20° N;
2. The North Pacific right whale (*Eubalaena japonica*), historically ranging in the North Pacific Ocean from latitudes 70° N to 20° N; and
3. The southern right whale (*Eubalaena australis*), historically ranging throughout the southern hemisphere's oceans.

Previous genetic studies concluded there was sufficient haplotypic divergence between North Atlantic and South Atlantic right whales to indicate that the northern and southern populations have not interbred for approximately 3–12.5 million years (Malik *et al.*, 2000; Schaeff *et al.*, 1997). Through an analysis of mitochondrial DNA control region sequences isolated from skin tissue biopsy, stranded animals, and historical whaling samples, Rosenbaum *et al.* (2000) supported these conclusions and, in addition, demonstrated a relatively strong historical separation of North Atlantic, North Pacific, and Southern Ocean right whale lineages (*i.e.*, no haplotypes were shared among these three populations). Their findings led to the conclusion that these populations are three distinct evolutionary entities. In addition, the probability of future interbreeding among the three lineages is extremely low considering current distribution. The International Whaling Commission's Scientific Committee formally recognized the three-species classification for right whales at its 2000 meeting in Adelaide, Australia (IWC 2000).

Conservation measures, recovery planning, and Federal consultations have been treated distinctly for each of these species. For over a decade, the treatment of these species as discrete entities has been well-established in agency science and management. Draft recovery plans are currently in review for both North Atlantic and North Pacific right whales, designated in these plans as *Eubalaena glacialis* and *Eubalaena japonica*. Issues of critical habitat have been addressed separately for both species under U.S. management authority.

Refining the taxonomy of these endangered cetaceans is critical to the recovery planning and conservation of

these species. Genetic data now provide unequivocal support to distinguish three right whale lineages as separate phylogenetic species. The revised designation of these populations allows for consistent scientific practice and management policies in recovering these populations.

The following NMFS documents will be affected by this technical revision:

1. MMPA Stock Assessment Reports for Alaska currently refer to stocks of right whales in the North Pacific as "Northern Right Whale, *Eubalaena glacialis*". This will be changed in all future Stock Assessment Reports to read "North Pacific Right Whale, *Eubalaena japonica*".

2. All Biological Opinions prepared under section 7 of the ESA will now consider the North Pacific, North Atlantic and southern right whales as separate species for the purposes of establishing baseline information and conducting consultations on Federal actions with the potential to affect the taxa.

3. The "Final Recovery Plan for the Northern Right Whale, *Eubalaena glacialis*" (NMFS, 1991) has been divided, in the process of updating the plan, into two separate draft recovery plans: "Updated Recovery Plan for the North Atlantic right whale, *Eubalaena glacialis*" and "Updated Recovery Plan for the North Pacific right whale, *Eubalaena japonica*." These will become final as separate recovery plans.

These changes result in technical revisions to provisions related to right whales in 50 CFR parts 17, 222, and 226. However, all right whales will remain listed as endangered under the Endangered Species Act and subject to the same protections as existed prior to these changes.

#### Classification

The Assistant Administrator for Fisheries, NMFS (AA) finds that good cause exists to waive the requirement for prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B). Such procedures would be unnecessary, as the taxonomic changes made in this rule are technical and reflect actions already taken in the scientific community. This rule does not change the listing status of right whales under the ESA; therefore, it does not increase the scope of the regulated community nor add any new requirements.

This action is not subject to review under Executive Order 12866. In addition, because a general notice of proposed rulemaking is not required under 5 U.S.C. 553, or any other law, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Although this final rule simply makes taxonomic changes relative to a listing determination that NMFS has already made under the ESA and does not change the listing status of right whales under the ESA, NOAA has concluded that ESA listing determinations are exempt from requirements of the National Environmental Policy Act. Therefore, these taxonomic changes relative to a listing determination are also exempt from these requirements. (See NOAA Administrative Order 216–6.)

This final rule does not contain policies with federalism implications under Executive Order 13132.

#### Literature Cited

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Rice, D.W. 1977. A list of marine mammals of the world. U.S. Dept. of Commerce, NOAA Technical Report NMFS SSRF-711, 15 pp.

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Schaeff, CM; Kraus, SD; Brown, MW; Perkins, JS; Payne, R; White, BN. 1997. Comparison of genetic variability of

North and South Atlantic right whales (*Eubalaena*), using DNA fingerprinting. *Canadian Journal of Zoology*, Vol. 75, no. 7, pp. 1073–1080.

U.S. Fish and Wildlife Service. 1973. Threatened wildlife of the United States. Bureau of Sport Fisheries and Wildlife, Washington DC 289 pp.

**List of Subjects in 50 CFR Parts 17, 222 and 226**

Endangered and threatened species.

Dated: April 2, 2003.

**William T. Hogarth,**

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

■ For the reasons set out in the preamble, 50 CFR part 17, 50 CFR part 222, and 50 CFR part 226 are amended as follows:

**50 CFR CHAPTER 1**

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11, paragraph (h), in the table that contains the list of endangered and threatened wildlife, remove the “Whale, right” entry in between “Whale, humpback” and “Whale, Sei” and add in its place the following three entries to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

(h) \* \* \*

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common Name	Scientific Name						
*	*	*	*	*	*	*	*
Mammals .....							
*	*	*	*	*	*	*	*
Whale, North Atlantic right...	<i>Eubalaena glacialis</i>	Oceanic	Entire	E	3	226.203	224.103
Whale, North Pacific right...	<i>Eubalaena japonica</i>	do.....	do.....	do.....	do.....	NA	NA
Whale, Southern right... .....	<i>Eubalaena australis</i>	do.....	do.....	do.....	do.....	NA	NA
*	*	*	*	*	*	*	*

**50 CFR CHAPTER II**

**PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES**

■ 3. The authority citation for part 222 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

■ 4. In § 222.102, the definition for “Right whale” is revised to read as follows:

**§ 222.102 Definitions.**

\* \* \* \* \*

*Right whale* means, as used in § 224.103 of this chapter, any whale that is a member of the western North Atlantic population of the North Atlantic right whale species (*Eubalaena glacialis*).

\* \* \* \* \*

**50 CFR CHAPTER II**

**PART 226—DESIGNATED CRITICAL HABITAT**

■ 5. The authority citation for part 226 continues to read as follows:

**Authority:** 16 U.S.C. 1533.

■ 6. In § 226.203, the section heading and the introductory text are revised to read as follows:

**§ 226.203 Critical Habitat for North Atlantic right whales.**

NORTH ATLANTIC RIGHT WHALE (*Eubalaena glacialis*)

\* \* \* \* \*

[FR Doc. 03–8683 Filed 4–9–03; 8:45 am]

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