

RIGHT WHALE NEWS

*An independent forum for right whale conservation and recovery,
published four times a year in February, May, August, and November*

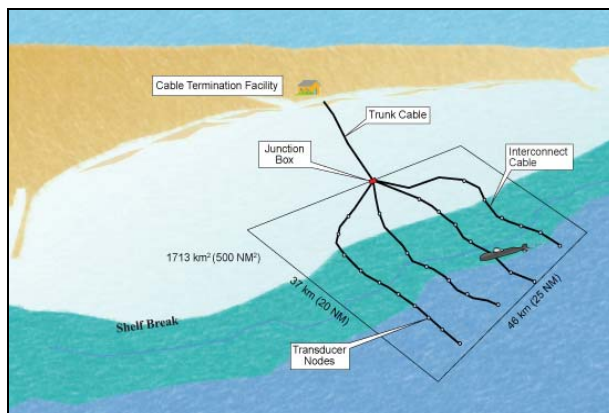
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Report from the Calving Ground: 39 Calves

The 2008-09 season resulted in the largest number of calves to be born into the population since monitoring surveys began two decades ago. In a report to the SEUS Right Whale Recovery Plan Implementation Team on 12 May 2009, Monica Zani, New England Aquarium, described 39 mother-calf pairs in the SE region (including North Carolina). Of these, there were about eight first-time mothers. About 12 mothers had given birth to their sixth, seventh, or eighth calves. In addition, about 150 other (non-mother/calf) right whales were documented in the region. Two calf mortalities were reported.

USWTR JAX Bio-monitoring Plan



The Navy has proposed a 500 square-mile instrumented training range to be located 50 nautical miles east of Jacksonville, Florida. Bio-monitoring of the site and adjacent waters began in January 2009.

In response to the US Navy's plan to construct an Undersea Warfare Training Range (USWTR) along the US Atlantic coast, a multi-institutional, comprehensive bio-monitoring program is being initiated in the waters east of Jacksonville, Florida. A consortium of universities, including Duke University, University of St. Andrews Scotland, Scripps Institution of Oceanography, and University of North Carolina Wilmington, is participating in this effort. Aerial and vessel surveys and passive acoustic monitoring will be used to investigate density, distribution, and seasonal abundance of marine mammals and sea turtles at the site. A series of 10 tracklines have been developed that will be utilized for both aerial and vessel line-transect surveys. During vessel surveys, a towed hydrophone array will also be deployed to provide

simultaneous acoustic monitoring of the site. Aerial surveys are targeting complete coverage of the site two days per month and vessels surveys are targeting 5-6 days of coverage per month. Aerial surveys began in January 2009 and will continue on a monthly basis. Vessel surveys are scheduled to begin in May. In addition to the visual surveys and simultaneous passive acoustic monitoring using the hydrophone array, two High-frequency Acoustic Recording Packages (HARPs) have been deployed at the site and will be collected and redeployed twice per year. A four-person survey team, which will be stationed in Fernandina Beach, Florida, will be conducting these surveys. Data reporting is an integral part of this survey operation. Data collected during these surveys will be uploaded quarterly to the OBIS SEAMAP website at <http://seamap.env.duke.edu/>. (*William A. McLellan, University of North Carolina Wilmington, contributed to this article.*)

Also related to the proposed USWTR, Jene Nissan, U.S. Navy/Norfolk, described the importance of the range to the Navy. He further reported that two key documents will become available in July. The Biological Opinion prepared by the National Marine Fisheries Service under the Endangered Species Act addresses potential impacts on endangered species and critical habitats. The Final Environmental Impact Statement prepared by the Navy under the National Environmental Policy Act addresses potential environmental effects. These two documents will be posted on the USWTR website: <http://projects.earthtech.com/uswtr>.

Entangled Whales Gear-Free

A record number of entangled right whales were reported in the 2008-09 SEUS season. In a report to the SEUS Right Whale Recovery Plan Implementation Team on 12 May 2009, Jamison Smith, Large Whale Disentanglement Coordinator, Northeast Regional Office/NMFS, described five cases—with gear removed from all. In recognition of this success, the NMFS Southeast Regional Office (SERO) presented awards to nine individuals who were central to the disentanglement efforts. “Disentanglement contributes to right whale recovery,” stated Laura Engleby (SERO). The awards were inscribed: “For Outstanding Efforts and Dedication to Rescuing Five Entangled North Atlantic Right Whales During the 2008-2009 Calving Season,” and were presented to Chris Slay (Coastwise Consulting); Katie Jackson and Tom Pitchford (Florida Fish and Wildlife Conservation Commission); Brian Sharp (Center for Coastal Studies); Tricia Naessig (Wildlife Trust); Kate Sparks, Mark Dodd, and Clay George (Georgia Department of Natural Resources); and Jessica Taylor (New England Aquarium).

Successful Sedation of Entangled Right Whale

Disentangling a right whale can be a costly and sometimes risky endeavor. The whale can be difficult to approach and free of gear. This results in a successful disentanglement on perhaps only 50 percent of attempts. Chemical sedation has been explored for many years, most notably with the attempts on Churchill, right whale #1102, in 2002.

Of the five cases described above, one case in particular, right whale #3311, proved to be extremely difficult due to the severity of the entanglement as well as the evasive behavior of the animal. A team from NOAA Fisheries, Woods Hole Oceanographic Institution, Coastwise Consulting, the University of Florida, Florida Fish and Wildlife Commission, Georgia Department of Natural Resources, Wildlife Trust, as well as many other organizations supporting the mission offsite, responded numerous times and were unable to get close enough to remove all of the life-threatening entangling gear.

This whale was first sighted with entangling ropes off the Georgia coast by a Wildlife Trust aerial survey team on 14 January 2009. A Georgia Department of Natural Resources crew responded immediately via boat to assess the whale's condition, attach a tracking buoy, and remove 560 feet of trailing rope. The whale was still severely entangled, so disentanglement teams attempted to assist this whale again on 22 and 23 January, 1 February, and 5 March. The animal proved to be very evasive making it difficult for the teams to approach the whale to cut the entangling ropes. On 6 March, the situation changed. A sedation team successfully administered sedatives to the whale. As a result, the disentanglement team was able to safely approach the severely injured right whale to remove an additional 380 feet of rope.

The successful at-sea chemical sedation of a free-swimming entangled right whale was the first of its kind in the world and the implications of this are far reaching. Successful sedation can provide safer working conditions for humans and whales, and decrease the amount of time crews invest in pursuing and attempting to rescue entangled whales. (*Jamison Smith, Large Whale Disentanglement Coordinator, Northeast Regional Office/NMFS, contributed to this article.*)

In recognition of this success, the NMFS Southeast Regional Office (SERO) presented awards to four individuals who were central to the sedation effort. The awards were inscribed: "For Outstanding Efforts and Dedication to the Development and Implementation of Chemical Sedation for Use in Severely Entangled Large Whale Cases." The awards were presented to Dr. Michael Walsh and Dr. James Bailey, University of Florida College of Veterinary Medicine; Dr. Michael Moore, Woods Hole Oceanographic Institution; and Dr. David Brunson, University of Wisconsin.

Workshop Held on Assessing the Effectiveness of Ship Strike Rule

The final rule to implement speed restrictions to reduce the threat of ship collisions with North Atlantic right whales (Federal Register 10 October 2008) requires that the National Marine Fisheries Service (NMFS) monitor the effectiveness of the rule in reducing ship strikes. Because of the "sunset provision," the rule expires in December 2013—five years from inception. To assess whether existing regulations are to be allowed to lapse, modified, or re-issued, NMFS estimates that conclusions regarding effectiveness need to be in hand by December 2011—2 ½ years from present. To this end, the NMFS Office of Protected Resources convened a workshop in November 2008 on "Ways to Assess the Effectiveness of the Ship Strike Reduction Rule." The goal of the workshop was to develop a strategy, involving multiple components, to monitor and assess whether vessel speed regulations are achieving the rule's intent of reducing the occurrence of ship strikes in right whales (i.e., whether the rule is "effective"). There were 15

participants at the workshop. With few exceptions, participants were NMFS staff. The workshop report indicates that participants agreed that the timeframe for implementing adequate and rigorous metrics is short. Given the variables contributing to ship strikes, detecting meaningful biological effects of the regulations would be difficult. However, basic parameters, strategies, and a number of metrics/indices were developed. The 26-page report is available by contacting Greg Silber (greg.silber@noaa.gov) or Shannon Bettridge (shannon.bettridge@noaa.gov).

Interview: Jim Lecky, Director, NMFS Office of Protected Resources



Jim Hain, Editor, *Right Whale News* (left), and Jim Lecky, Director, NMFS Office of Protected Resources, on 22 April 2009, Silver Spring, Maryland. In the nearly one-hour interview, the right whale spending plan and right whale research permits were among the topics discussed.

The Office of Protected Resources at the National Marine Fisheries Service is the federal entity entrusted with the recovery and conservation of right whales. There has been no shortage of discussion and debate about how well this responsibility has been met. In an interview with Jim Lecky, Director of the Office of Protected Resources, a number of “hot button” topics were addressed. At the same time, NMFS/OPR was provided the opportunity to express viewpoints and relay information.

Jim Hain/RWN: One of the first things I would like to talk about is the right whale (RW) spending plan, which, as we understand it, is generated internally by NMFS. The perception, rightly or wrongly, is that perhaps the external RW community and the stakeholders are not participating in this process at the level that they might. In the February issue of *Right Whale News*, we collectively put together an alternative view to the spending plan. In other words, if we had \$7M, what would we do with it? What are your feelings about that, about the current spending plan, and about how the external right whale community might contribute to the decision process and make its input?

Jim Lecky/NMFS: Money is appropriated to NMFS from Congress to spend on RW conservation. That money goes to fund things that we are mandated to do. Some of the concern I've heard expressed is how much goes to funding salaries and how much goes to overhead. I understand that it is a concern from the public, but we, in fact, have mandates to implement the Endangered Species Act. We require staff to do that, so a fair amount of our resources is dedicated to staff. There are resources available for cooperative and collaborative research—made available through the centers. Our ability to put money out on the street has waxed and waned over the years, and we are at a low period right now. But that may change with the new administration, with a stronger emphasis on conservation and some of the issues. I'm not quite sure what you're looking for in terms of access to the process, but we are unlikely to open up the process in terms of what goes to overhead and salaries.

RWN: But we never get to see that. In other words, NMFS is spending about half the money on salaries, but we are not provided any detail. Who is on the payroll? Are they working 12 months a year on RW? Is that particular situation more important to RW recovery than, for example, working off the backlog on the RW catalog?

JL: For the people who are funded on RW money, some are funded full time and some are funded part time, I don't have a breakdown on that exactly. Some of the money goes to overhead to keep the lights on, places for people to sit, and for computers. But from the management point of view, our workload on interagency consultations and reviewing federal activities are funded out of these monies. Everybody that is funded out of this program is working on right whale topics. In addition, a large number of people that work on right whale issues on a near-daily basis (in particular on ESA Section 7 consultations), are not funded by right whale appropriations.

RWN: Given that there is a certain boundary where it gets into personnel information, would that list of the \$2.9M that is spent on NMFS salaries ever be available for review?

JL: If someone made a formal request for it, I suppose we could provide it. But, I would be reluctant to put it out for review. It is the same for the salmon and most other programs—these are not subjected to that kind of review. We do have reviews. The Marine Mammal Commission (MMC) just looked at our program, and the General Accounting Office (GAO) has looked at our program over the years. Are we spending the money appropriately? Generally the outcomes have been fairly positive in terms of whether or not we are addressing conservation issues responsibly.

RWN: It sounds like the answer is no. The list of NMFS salaries is unlikely to be made available.

JL: Yes, that's right.

RWN: One of the things discussed is that, for example, there is a two-year backlog in the RW catalog at the New England Aquarium (NEAQ). Is that less important than paying someone inside NMFS?

JL: This is an unfair question. NMFS must consult under the ESA on actions undertaken by federal entities. If an agency comes to me and says I'm undertaking an activity—they can't proceed without a consultation—that is a statutory requirement. As a result, the people working in the regional offices engaged in consultations are, by statutory definition, the highest priority. In the research arena, what is the information that we need to facilitate that process and to contribute to recovery? We've got our aerial surveys that are helping us to monitor and implement some of the conservation programs, and trying to monitor the health of the population so that we can have a baseline for analyzing federal activities. It comes down to what is needed to fulfill our statutory mandates. This is a priority and requires funds.

RWN: Do you see any mechanism, or any way to increase funds to certain areas? If the research community felt, for example, that the RW catalog was underfunded, how would that argument be made?

JL: The research community could, by writing the head of our agency, identify those priorities and try to get them integrated into our budget process. We would take that advice from the public, and consider it as we weigh priorities—recognizing the mandates of the agency and everything that we are trying to accomplish. Another avenue is that there are add-ons and earmarks that come our way. Most of them are introduced or championed by people outside the agency. This is effective to the extent that the research community can find champions on the hill.

RWN: Although that is said to be in decreasing popularity. Everyone is against earmarks, even though they keep showing up.

JL: Mr. Delahunt [a Congressman from Massachusetts] got one. The community might also look to the MMC and its Committee of Scientific Advisors, as their mandate is to provide recommendations to other agencies. Another avenue is with the contractors themselves. The NEAQ and URI could say, "We can't get this work done, and let's have a discussion about how we might increase this." We have increased these contracts at about 5% per year. The catalog and database are managed by the Northeast Fisheries Science Center (NEFSC). The Center could come to us and say that an increase is needed.

RWN: Coming back to your point, you were saying that one option is to write a letter to the head of the agency. Is that Dr. Balsiger [Acting Assistant Administrator for Fisheries] or Dr. Lubchenco [NOAA administrator]? Where would that letter go, do you suppose?

JL: Either one of those places would be appropriate.

RWN [Continuing on the topic of money]: What is your response to the criticism that NMFS administering the funds is like the fox guarding the henhouse?

JL: I actually don't understand that statement. The money comes to us from Congress—Congress doesn't appropriate money to the public, they appropriate money to federal agencies. Congress' intent in appropriating money to NMFS is to provide NMFS with the resources to accomplish the missions and goals that it has for RW, and the things that the administration

should be doing for RW. I don't understand how that's putting the fox in charge of the henhouse.

RWN: Moving on to the next topic, what does your office, the OPR, see as the big successes for RW in the last year or two, and what do you see as the challenges and issues that might lie ahead?

JL: As to our successes, the regulatory packages that we've been able to get out in the last year or two identified ship strikes and fishing gear as the two biggest sources of mortality and impediments to recovery. Getting the ship-strike rule out over the last administration was a big accomplishment. The gear rule likewise has run into impediments along the way, but it's out now and will be fully implemented in the next year or so. In terms of future, we are struggling with declining resources, and are in a bad economic downturn. The money for stimulus spending and other items has the potential to adversely affect our budgets in the long run. Keeping the budget level or increasing is going to be a challenge in the coming years. Continuing to make improvements in fishing gear and addressing the issue of entanglement—we had the largest number of entanglements this year, despite the things that have been put in place—we are continuing to focus our efforts on trying to refine technology, and find new technology, that will help with the problem

RWN: Another lively conversation has to do with research permits. It seems as though there is quite a snarl with RW research permits. The lawyers and the bureaucracy have taken over and superseded reasonable common sense and reasonable progress in getting scientists into the field. In particular, there has been the programmatic EIS [Environmental Impact Statement] in development for a number of years. We understand it's still in the hopper. For the researchers who read RWN and have heartburn about research permits, what can be said about this?

JL: There are several issues here. First, I would agree that it is a cumbersome and bureaucratic process, that's what the Congress set up. During the last several years, the program has gotten more complicated as the result of litigation. We've been sued for permits that we've issued by environmental groups and by animal rights groups. We had a lawsuit over our Steller sea lion research program. This had issues that are common to a lot of our research programs for endangered species. There is the recognition that research is good and we should let it go forward. But it's not benign, and therefore needs to be regulated. At least not all of it is benign, and that's what we need to take a look at. Are there impacts on the population that are so large that the research itself is a problem? That's a question that we ourselves did not delve very deeply into historically. As a result of litigation we are having to delve into it deeply now. So when we have small populations like this that are endangered we have to go back and ask questions. Who is doing what? Where are they doing it? Is there any opportunity to reduce effect by reducing unnecessary duplication? Addressing these types of questions is where the EIS is headed. Unfortunately, it's been sidetracked by other priority issues that have arisen—other demands on the agency for things like Navy and implementation of Magnuson Act amendments have really absorbed our NEPA resources for the last several years. That has stood in the way of progress on the EIS. But we are we are currently issuing permits with environmental assessments, and doing the best we can at each permit decision point to make sure we are addressing the concerns about cumulative effects. It is a cumbersome process and does

require us to seek comment and review on each permit, and to consider and respond to comments. We have made progress, including our application-online program [see RWN November 2008].

RWN [Continuing on the topic of research permits]: One puzzlement and obstacle in a permit application is that it requires very specific information and exhaustive detail about proposals and hypotheses. As researchers, we often can't predict what will happen tomorrow. We need to be in a situation where we have an opportunity for serendipitous research—if we stumble across something and say, “Whoa, look at that.” We would like to be able to observe and document. But, this has been an argument that has been very difficult to make in the permit process. What is your view on the permit process and serendipitous research?

JL: I understand about serendipitous research. But the statute didn't contemplate it and it doesn't allow it. If you want to do something you need a permit. If you have a serendipitous opportunity that isn't going to result in a take, fine. But, if you want to do something different, you need to come in and get a permit modification. If it's totally different, you will need a different permit application.

RWN: So you don't feel that there is any latitude or future in applying for a permit that will allow for serendipitous research?

JL: The bind that puts us in as the permitting authority is, “What's the total impact of the research?” We can't define it, and I've got the Humane Society saying, “You're authorizing too much activity. You've got too much research and human interaction with this population.” There is this balance of what is the cumulative effect of all the research we've authorized. The serendipitous component that we would like to take advantage of really rubs the wrong way.

RWN: Regarding the regulations that apply to permits, might it be appropriate to think about review and re-writing? Is this an avenue that might be looked at? How likely is it that some of these permit regulations might be reviewed?

JL: The regulations are tied to the statute, but are generated by the agency. They are the agency's interpretation of the statute and are intended to provide guidance to the public as to how the agencies are going to interpret and implement their statutory authorities. One character of regulations is that they can be changed, although it's not easy to change them. It requires notice and comment rulemaking. But we have considered looking at these and we do periodically look at them. It is possible to look at the regulations and it is possible to change them, and periodically we do.

RWN: In a letter that might be written to Dr. Balsiger or Dr. Lubchenco, is this another topic that might be properly addressed?

JL: If people have recommendations on how the regulations might be modified to make the program more efficient, we are happy to look at those.

RWN: One final question, is there any message or information that you would like to provide the readers of RWN?

JL: I hope that the public appreciates the hard work that NMFS and our collaborators are undertaking to conserve this species, and to try and bring it back. We have fought some pretty hard battles over the years to get some tough rules in place, against a lot of opposition. We've made progress. We're planning to stay in the game for the long term, and we hope that we're successful.

For additional information on the Office of Protected Resources, see www.nmfs.noaa.gov/pr/.

FY09 Right Whale Spending Plan

As has been the practice in recent years, the May issue of *Right Whale News* reports the right whale spending plan for the current fiscal year. The report is based on the Congressional appropriation for FY09 and is provided with the assistance of Phil Williams, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, Maryland. All dollar amounts are expressed in thousands.

	NEC	NER	SEC	SER	F/PR	NOAA GC/CS	Total
Total Received from NMFS	2,581	2872	664	1,808	491	216	8,632
Right whale necropsy	0	0	0	0	0	0	0
Disentanglement	0	500 ¹	0	0	0	0	500
Right whale gear research	0	0	0	0	0	0	0
Aerial surveys (non-state cooperative funded)	733 ²	0	0	285	0	0	1,018
NMFS salaries (Full time equivalents and contract)	903	1,201	254	341	269	187	3,155
Take Reduction Team support	0	125	0	0	0		125
State cooperative funding (including funds for aerial surveys, recovery implementation, and enforcement)	0	596	0	1061	0	0	1,657
Ship strike reduction	0	0	0	0	202	0	202
Health assessment	0	0	0	0	0	0	0
Stranding response	0	20	0	0	0	0	20
Habitat research	(80) ³	0	0	0	0	0	(80)
Whale detection technologies	0	0	400	0	0	0	400
Sightings database/Photo-ID catalog	389	0	0	0	0	0	389
Gear Convergence Assistance ME	0	100 ⁴	0	0	0	0	100
Travel and Misc. Administrative costs	556	330	10	121	20	29	1,066

¹ Disentanglement program for Provincetown Center for Coastal Studies - congressional interest funding

² Aircraft fees and contract labor for surveys only

³ Funding from other sources, and not paid for from NOAA right whale funds

⁴ Gear convergence assistance to Maine – congressional interest funding

Excluding the two Congressional-interest items, 39% of right whale monies is directed to NMFS salaries, with the greater portion going to the Northeast Regional Office. NMFS travel and administrative costs accounts for 13%. The database and right whale catalog are level-funded.

Restored Right Whale Funding with New Integrated Focus

Contributed by Richard F. Delaney, Executive Director, Center for Coastal Studies

After many months during which funding to continue the Provincetown Center for Coastal Studies' (PCCS) long-time role with the Atlantic Large Whale Disentanglement Network was in serious jeopardy, the FY09 budget identified \$500,000 of which \$280,000 will “rescue” the whale rescue program. (No funds had been explicitly identified for the disentanglement program in the original NOAA FY09 right whale budget, and insufficient funds in the FY08 budget had created a funding gap.) This was good news for the Center, which had pioneered early disentanglement efforts in the 1980s and later joined with NOAA/NMFS to expand the network along the east coast of the United States in the mid 1990s. These funds will enable the Center to provide the capacity to have trained staff ready to respond 24/7 to entanglements of right whales and other endangered marine mammals especially in the area of greatest concentration—the federally designated Right Whale Critical Habitat (Cape Cod Bay) as well as several other habitats with historically high rates of entanglements of protected species (Stellwagen Bank, a National Marine Sanctuary; the Great South Channel; and Jeffreys Ledge). Data gathered during these operations have been used in the deliberations of the Take Reduction Team and in the development of new techniques and federal strategies to protect these endangered species.

The remainder of the restored funding will provide the major support for two other long-term right whale conservation programs conducted by the Center: the aerial surveillance of right whales during the winter in Cape Cod Bay, and the right whale feeding habitat assessment and forecasting program. These programs have been funded through the Massachusetts Division of Marine Fisheries in past years and now will be more closely integrated and focused as the new Massachusetts Large Whale Conservation Program.

For more information on the Center for Coastal Studies, see www.coastalstudies.org.

Two Exempt Vessels Strike Right Whales

The NMFS ship strike reduction rules (*Federal Register* 10 October 2008) exempt government vessels and vessels less than 65 feet in length. Within a period of several weeks, two of these exempted vessels struck and injured right whales.

On 31 March 2009, a 30-foot vessel travelling at around 22 knots in clear weather and calm seas struck an object off Hilton Head Island, South Carolina. In a report to the SEUS Right Whale Recovery Plan Implementation Team on 12 May 2009, Barb Zoodsma, SERO/NMFS, described that the impact ripped the portside propeller and shaft out of the boat, and the vessel began to take on water. Following a Coast Guard rescue and tow, the captain was queried. He never saw the object prior to impact. Afterwards, he saw a whale behind the boat and blood in the water. Based on photos he was shown, he identified the whale as a right whale. Despite a search by two aircraft in the area on the day of the event, and in the time since, the whale has not been re-sighted.

In the second event, the 50-foot NOAA research vessel, *Auk*, hit a right whale west of the Stellwagen Bank National Marine Sanctuary on 19 April 2009. The *Cape Cod Times* reports that the vessel was returning to port in Scituate, Massachusetts, and was traveling at about 20 knots at the time of the incident. Lacerations from the vessel's propeller were observed on the left fluke of the whale. The NOAA law enforcement branch is conducting an investigation.

Scientific Literature and Reports

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Memo NMFS NE 210; 440 pp. The stock assessment of the North Atlantic right whale (*Eubalaena glacialis*) is on pages 6-17. Copies may be obtained from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543 or: <http://www.nmfs.noaa.gov/pr/sars/>

Calendar

12-16 October 2009. 18th Biennial Conference on the Biology of Marine Mammals sponsored by the Society of Marine Mammalogy, to be held in Quebec, Canada. For details, go to www.marinemammalogy.org.

27 October 2009 (tentative date). Southeast U.S. Right Whale Recovery Plan Implementation Team (SEIT) meeting. To be held at the Environmental Education Center, Guana Tolomato Matanzas National Estuarine Research Reserve, Ponte Vedra, Florida. For information, contact SEIT co-chair, Leslie Ward at Leslie.Ward@MyFWC.com.

17-18 November 2009. North Atlantic Right Whale Consortium Annual Meeting. New Bedford Whaling Museum, New Bedford, Massachusetts. For information, see the Right Whale Consortium website, www.rightwhaleweb.org, in early fall.

Right Whale News

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