

**ANIMAL WELFARE INSTITUTE – ASSATEAGUE COASTAL TRUST –  
ASSATEAGUE COASTKEEPER – CENTER FOR BIOLOGICAL DIVERSITY –  
CENTER FOR A SUSTAINABLE COAST – CHARLESTON WATERKEEPER –  
CHARLESTON SURFRIDER – CONSERVATION VOTERS OF SOUTH CAROLINA –  
EARTHJUSTICE – ENVIRONMENT NORTH CAROLINA – ENVIRONMENT  
GEORGIA – GREENLAW – GREENPEACE – THE HUMANE SOCIETY OF THE  
UNITED STATES – INTERNATIONAL FUND FOR ANIMAL WELFARE –  
MATANZAS RIVERKEEPER – NATURAL RESOURCES DEFENSE COUNCIL – NC  
COASTAL FEDERATION – NC CONSERVATION NETWORK – OCEANA – OCEAN  
CONSERVATION RESEARCH – ONE HUNDRED MILES – SANDYHOOK SEALIFE  
FOUNDATION – SAVANNAH RIVERKEEPER – SC COSTAL CONSERVATION  
LEAGUE – SOUTH CAROLINA WILDLIFE FEDERATION – SOUTHERN  
ENVIRONMENTAL LAW CENTER – SURFRIDER FOUNDATION – VIRGINIA  
CHAPTER SIERRA CLUB – WHALE AND DOLPHIN CONSERVATION –  
WILDLIFE CONSERVATION SOCIETY**

**Via Electronic Mail**

May 26, 2016

Ms. Abigail Hopper  
Director, Bureau of Ocean Energy Management  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240  
Email: [abigail.hopper@boem.gov](mailto:abigail.hopper@boem.gov)

Ms. Eileen Sobeck  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910  
Email: [eileen.sobeck@noaa.gov](mailto:eileen.sobeck@noaa.gov)

**RE: Request for Renewed Environmental Impact Review of the Proposed  
Geological and Geophysical Activities in the Mid- and South Atlantic and  
Endangered Species Act Review to Account for Significant New Information  
Regarding the Status of North Atlantic Right Whales**

Dear Ms. Hopper and Ms. Sobeck:

On behalf of our millions of activists and members, we, the undersigned national and regional organizations, are writing to alert the Bureau of Ocean Energy Management (“BOEM”) and the National Marine Fisheries Service (“NMFS”) to the availability of significant new information regarding the status of the Endangered North Atlantic right whale. The new information relates directly to the agencies’ National Environmental Policy Act (“NEPA”)

impact analysis and Endangered Species Act (“ESA”) review of the multiple proposed Mid- and South-Atlantic geological and geophysical (“G&G”) oil and gas surveys.

On March 7, 2014, BOEM released a Final Programmatic Environmental Impact Statement (“PEIS”) pursuant to NEPA with the stated purpose of disclosing and mitigating the potential environmental effects of the proposed surveys. 79 Fed. Reg. 13074 (Mar. 7, 2014). In undertaking that review, the PEIS recognized the central importance to its impact analysis of the uniquely vulnerable North Atlantic right whale. *See e.g.* PEIS at 4-27–4-29, 4-225, 4-228–4-229, Figure 4-7, Figure 4-8. Similarly, on July 19, 2013, NMFS produced a programmatic Biological Opinion on the surveys’ impacts on the right whale and other ESA-listed species.

We are writing today because that key calculus has been rendered obsolete. There is striking new science that undermines the foundation upon which the PEIS’ and Biological Opinion’s conclusions regarding North Atlantic right whales were based. The best available science now indicates that the North Atlantic right whale population is not growing (as formerly believed), but rather is declining in number.<sup>1</sup> Further, important new findings, based on a data set spanning 30 years compiled by the New England Aquarium, indicate that entanglements pose a greater threat to right whale viability at a population-level than was understood at the time the PEIS was finalized.<sup>2</sup> Reviewing these and other data, twenty-eight right whale experts—among them some of the world’s leading authorities on this endangered species—recently stated that the proposed seismic surveys would “substantially increase the risk that the population will slip further into decline and would jeopardize its survival.”<sup>3</sup>

In light of the new science, our request is twofold. First, we ask that BOEM withdraw and rewrite the flawed Atlantic G&G PEIS, or, in the alternative, supplement the PEIS with the new information discussed below. This new information is significant, and it indicates that the proposed G&G activity will severely harm<sup>4</sup> North Atlantic right whales to an extent not

---

<sup>1</sup> Pettis, H. M., and Hamilton, P. K., *North Atlantic Whale Consortium 2015 Annual Report Card*. Report to the North Atlantic Right Whale Consortium, Nov. 2015. Available at: [www.narwc.org/pdf/2015%20Report%20Card.pdf](http://www.narwc.org/pdf/2015%20Report%20Card.pdf).

<sup>2</sup> Apr. 4, 2016 letter from R. S. Wells (on behalf of the following members of the Atlantic Scientific Review Group: D. P. Nowacek, C. Clark, J. R. Gilbert, R. D. Kenney, J. Lawson, T. McDonald, M. Moore, J. A. Powell, A. J. Read, R. Seagraves, and S. B. Young) to Ms. Eileen Sobeck of the National Marine Fisheries Service on recommendations following the review of the revised draft Stock Assessment Report for the North Atlantic right whale.

<sup>3</sup> Apr. 14, 2016 letter from C. Clark, S. Kraus, D. Nowacek, A. J. Read, A. Rice, H. C. Rosenbaum, M. Baumgartner, I. Biedron, M. Brown, T. Frasier, C. Good, P. Hamilton, M. Johnson, R. D. Kenney, A. Knowlton, N. S. Lysiak, C. Mayo, W. A. McLellan, B. MacLeod, C. A. Miller, M. J. Moore, D. A. Pabst, S. Parks, R. Payne, D. E. Pendleton, D. Risch, and R. Rolland to the President of the United States stating new scientific information regarding the decline of North Atlantic right whales and the significant risk that seismic surveys pose to this declining population.

<sup>4</sup> As noted in the April 28, 2016 letter to BOEM signed by over 60 organizations, including several organizations that have signed this letter, BOEM should deny the pending permit applications for geological and geophysical exploration for minerals on the outer continental shelf in the Atlantic pursuant to the Outer Continental Shelf Lands Act, as such exploration permits involve seismic airgun blasting that would “be unduly harmful to aquatic life.” *See* 43 U.S.C. § 1340(a)(1), (g)(3); 30 C.F.R. §§ 551.2(b), 551.6(a)(2). The new information provided in this letter regarding North Atlantic right whales is yet another example of undue harm that can and should be avoided through the agency’s denial of the exploration permits.

envisioned by the 2014 PEIS. *See* 40 C.F.R. § 1502.9.<sup>5</sup> Second, we understand that BOEM and NMFS have reinitiated consultation on the proposed G&G permits for seismic exploration in the Atlantic to consider, among other changes, the recent expansion of critical habitat for the right whale. The new science also affects NMFS' Section 7 ESA review, including the agency's calculus regarding whether seismic survey activities will further compromise the survival and recovery of the Endangered North Atlantic right whale. We request that the agencies consider the new information presented in this letter during the ongoing Atlantic G&G reconsultation process.

**I. Significant new information on the status of North Atlantic right whales affects the conclusions reached in the PEIS. The agency's reliance on outdated data likely grossly underestimates the impact of Atlantic G&G activities on right whales.**

The agency is required to take a "hard look" at the environmental consequences of the proposed seismic surveys in the Mid- and South-Atlantic. *See* 40 C.F.R. § 1502.1. That review necessitated consideration of the impact of the proposed activities on North Atlantic right whales.<sup>6</sup> The PEIS identified marine mammals as the ocean resources most vulnerable to the proposed activities, including seismic airgun surveys. *See* PEIS at 2-39–2-40. Within the area of interest analyzed in the PEIS, the North Atlantic right whale is among the species of greatest concern. The right whale has a minimum population of only about 333 whales, based on the existing catalogue, and is considered one of the most imperiled large whales on the planet. As NMFS itself has repeatedly recognized, "the loss of even a single individual [North Atlantic right whale] may contribute to the extinction of the species" and "preventing the mortality of one adult female a year" may alter this outcome.<sup>7</sup>

The proposed seismic surveys will inundate the Atlantic Ocean from Delaware to Florida with high-energy noise, ensonifying the right whales' migratory corridor and winter calving and nursery grounds and impairing a range of behavior, including whale communication, feeding, and nursing. Despite this evidence, the PEIS concluded that impacts to marine mammals will be "minor to moderate." PEIS at 2-39. That conclusion is not in accord with the latest science on North Atlantic right whales.

Since BOEM's publication of the final Atlantic G&G PEIS, significant scientific information has emerged that bears directly on impacts to the North Atlantic right whale—and, by extension,

---

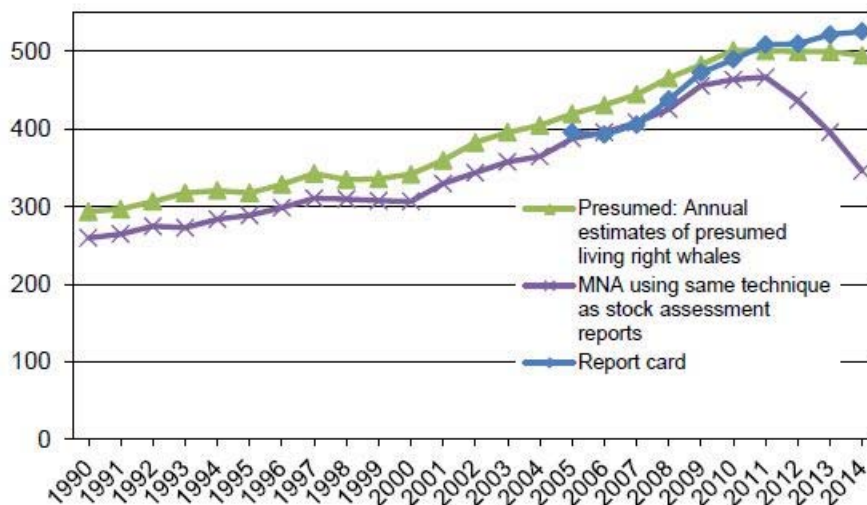
<sup>5</sup> This letter is intended to alert the agency to new scientific information and does not supplant our previous comments to BOEM on the Draft and Final PEIS.

<sup>6</sup> Indeed, in assessing the predicted environmental impact of the proposed G&G surveys on marine resources, the PEIS singled out the North Atlantic right whale for consideration above all other marine biota. The draft PEIS mentioned North Atlantic right whales 467 times—more than any other species, and more than the loggerhead sea turtle (the other species that was repeatedly singled out for special consideration) by a factor of three. The North Atlantic right whale was, likewise, the only marine mammal for which a time-area closure was identified in the PEIS. One of the key distinguishing factors between the proposed action (Alternative A) and the preferred alternative (Alternative B) was an expansion of the time-area closure for North Atlantic right whales, and Alternative B was selected as preferred in part specifically because BOEM found that it was likely to reduce the level of harm to the species. *See* PEIS at 2-71.

<sup>7</sup> *See* 69 Fed. Reg. 30,857, 30,858 (June 1, 2004); *see also* 73 Fed. Reg. 60,173, 60,173 (Oct. 10, 2008); 72 Fed. Reg. 34,632, 34,632 (June 25, 2007); 66 Fed. Reg. 50,390, 50,392 (Oct. 3, 2001).

the expected total environmental impact—of the proposed survey activity. Recently released analysis of the abundance of North Atlantic right whales based on mark-recapture data indicates that the population is no longer increasing in abundance, but is most likely declining in number.<sup>8</sup>

The North Atlantic Right Whale Consortium’s 2015 Annual Report Card uses three methods of assessing right whale population abundance: a count of the minimum number of whales alive (“MNA”) in a given year, which is the method NMFS employs in its right whale Stock Assessment Reports; an estimate of whales presumed alive that year; and a “Report Card” method that includes whales not yet catalogued.<sup>9</sup> The latest results of the Minimum Number Alive method are particularly alarming, indicating an unequivocal decline in North Atlantic right whale abundance since 2010. That decline in population is illustrated in the purple (“MNA”) line in Figure 1 below, taken from the 2015 Annual Report Card and reproduced here:



**Figure 1.** Assessments of the North Atlantic right whale population based on three available assessment methods.

The MNA method’s observation of a recent, significant decline in growth rate is supported by other important lines of evidence. First, new data show that calving occurs at a much slower rate in the North Atlantic right whale population than for southern right whales and that unusually few North Atlantic calves were born in 2015/2016.<sup>10</sup> Second, the results of a new mark-recapture analysis are also clearly indicative of decline.<sup>11</sup> Even the “Report Card” method,

<sup>8</sup> The mark-recapture study was carried out by the NOAA North East Fisheries Science Center (“NEFSC”) and the results will shortly be published. Members of the Atlantic Scientific Review Group (“ASRG”) have expressed confidence in the results of the study and have encouraged the Agency to publish those results.

<sup>9</sup> Pettis, H. M., and Hamilton, P. K., North Atlantic Whale Consortium 2015 Annual Report Card. Report to the North Atlantic Right Whale Consortium, Nov. 2015. Available at: [www.narwc.org/pdf/2015%20Report%20Card.pdf](http://www.narwc.org/pdf/2015%20Report%20Card.pdf).

<sup>10</sup> Apr. 4, 2016 letter from R. S. Wells *et al.* to Ms. Eileen Sobeck of the National Marine Fisheries Service.

<sup>11</sup> While some have suggested that shifts in right whale distribution may also be a contributing factor to the documented decline in right whales, this has not been confirmed as a significant causal factor driving the decline. On the contrary, new scientific information evidencing the negative effects of stress on North Atlantic right whale

which may potentially overestimate population size,<sup>12</sup> shows an inflection point in the right whale growth rate around 2010-2011 and a leveling off of recovery.

These findings have been widely recognized and accepted by North Atlantic right whale biologists, including those on the Atlantic Scientific Review Group (“ASRG”). The ASRG is an independent body of subject-matter experts created by the Marine Mammal Protection Act for the express purpose of advising the Secretary of Commerce “on [marine mammal] population estimates and the population status and trends of such stocks” in the Atlantic region. 16 U.S.C. § 1386(d)(1)(A). In an April 4, 2016 letter, the group considered the available data and found, *inter alia*, that the “mark-recapture analysis of the abundance of North Atlantic right whales provides support for a recent decline in the abundance of this critically endangered population of whales”; that the analysis is even “more robust to potential sources of bias than the minimum number alive approach”; and that several lines of evidence, taken together, “point to an extremely worrying situation with this stock of right whales.”<sup>13</sup>

Ten days later, in a statement released on April 14, 2016, a group of 28 leading right whale experts recognized the seriousness and significance of the new data.<sup>14</sup> This cohort of experts concluded that, based on the new abundance science, introducing another major stressor in the form of Atlantic seismic airgun surveys “would jeopardize [the North Atlantic right whale’s] survival.”<sup>15</sup>

The new evidence of right whale decline is coupled with another set of findings about right whale health. Based on a data set spanning 30 years compiled by the New England Aquarium, experts have newly concluded that entanglements pose a greater threat to right whale viability than was previously known.<sup>16</sup> As the scientists explained in their April 14, 2016 statement, the 30-year data set indicates that “[a]dult right whales freed from serious entanglement . . . typically exhibit poorer health for years afterwards, reducing their survival rates and reproduction.”<sup>17</sup> This new science is especially alarming because right whale entanglements have significantly

---

health and diminished opportunities to successfully reproduce would be expected to contribute to population decline independent of shifts in distribution.

<sup>12</sup> The “Report Card” method derives a population estimate from the summation of: i) the presumed number alive; ii) the proportion of whales new to the Catalog; and iii) calves that have not yet been catalogued. This methodology may lead to a population overestimate in at least two ways. First, the presumed number alive is based on catalogued whales seen in the last six years, leaving more recent mortalities unaccounted for. This is particularly concerning in light of the new scientific evidence highlighted in this letter regarding the significant impacts of entanglement on long-term survival, and also the fact that much mortality may go undocumented. Second, the assumption that calves that have been surveyed in the last two years still survive does not account for the particular vulnerability of calves to mortality from entanglements, as the new scientific evidence indicates.

<sup>13</sup> Apr. 4, 2016 letter from R. S. Wells *et al.* to Ms. Eileen Sobock of the National Marine Fisheries Service.

<sup>14</sup> Apr. 14, 2016 letter from C. Clark, *et al.* to the President of the United States.

<sup>15</sup> *Id.*

<sup>16</sup> See Rolland, R. M., R. S. Schick, H. M. Pettis, A. R. Knowlton, P. K. Hamilton, J. S. Clark, and S. D. Kraus, Health of North Atlantic right whales *Eubalaena glacialis* over three decades: from individual health to demographic and population health trends. *Marine Ecology Progress Series*, 542, 265-282, 2016; Knowlton, A. R., P. K. Hamilton, M. K. Marx, H. Pettis, and S. D. Kraus, 2012, Monitoring North Atlantic right whale *Eubalaena glacialis* entanglement rates: a 30 yr retrospective. *Marine Ecology Progress Series*, 466, 293-302, 2012.

<sup>17</sup> Apr. 14, 2016 letter from C. Clark, *et al.* to the President of the United States.

increased in number over the past three decades, with the greatest rates of entanglement occurring in calves and juveniles.<sup>18</sup>

Taken together, the recent information regarding the decline of the right whale population and the long-term population-level effects of entanglement call into question the species' viability and have consequences for management. The 28 marine experts warn in their April 14, 2016 statement that “[i]n light of the desperate level of endangerment of the North Atlantic right whale . . . it is critical that other major stressors are minimized or removed,” and “[t]he additional stress of widespread seismic airgun surveys may well represent a tipping point for the survival of this endangered whale, contributing significantly to a decline towards extinction.”<sup>19</sup>

## **II. NEPA requires that BOEM withdraw and rewrite or supplement the PEIS in light of the significant new information.**

In order to meet its continuing obligations pursuant to NEPA, BOEM cannot simply rest on the Atlantic G&G PEIS it finalized two years ago. *See Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 374 (1989) (an agency must “take a ‘hard look’ at the environmental effects of their planned action, even after a proposal has received initial approval”). As NEPA’s implementing regulations make clear, even after an EIS has been finalized, where there are “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts,” a supplemental EIS “shall” be prepared. 40 C.F.R. § 1502.9(c)(1)(ii); *see Friends of the River v. F.E.R.C.*, 720 F.2d 93, 109 (D.C. Cir. 1983).

Furthermore, the “hard look” required in an EIS under NEPA obligates BOEM to obtain high-quality information and accurate scientific analysis, 40 C.F.R. § 1500.1(b), and to include a “full and fair discussion” of the direct and indirect environmental impacts of the proposed activity. 40 C.F.R. § 1502.1. That duty is ongoing. 40 C.F.R. § 1502.9; *see Marsh*, 490 U.S. at 374; *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000) (explaining that “an agency that has prepared an EIS . . . must be alert to new information that may alter the results of its original environmental analysis”). The current Atlantic G&G PEIS no longer reflects the best available science, provides a full and fair discussion of significant environmental impacts, informs decision-makers and the public, or adequately minimizes adverse impacts to the environment. For all these reasons, BOEM must withdraw and rewrite the existing PEIS as it is fundamentally flawed and does not take significant new information into account.

The latest North Atlantic right whale abundance and health data constitute new information, which BOEM “must consider” and “evaluate.” *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1024 (9th Cir. 1980). The new information presented in this letter is significant on its face. It suggests that the PEIS has severely underestimated the impacts of the proposed activity on North Atlantic right whales and reveals a “seriously different picture of the environmental impact of the proposed project from what was previously envisioned.” *Hickory Neighborhood Defense League v. Skinner*, 893 F.2d 58, 63 (4th Cir.1990). Furthermore, the status of the whales and viability of the population relate directly to inquiries that are central to the principal chapter

---

<sup>18</sup> Knowlton, A. R., *et al.*, 2012.

<sup>19</sup> Apr. 14, 2016 letter from C. Clark, *et al.* to the President of the United States.

of the PEIS (Chapter 4) and the overall impact analysis. *See Natural Res. Def. Council v. Lujan*, 768 F. Supp. 870, 887 (D.D.C. 1991) (weighing the fact that three chapters of Arctic National Wildlife Refuge EIS were dedicated to impacts from oil and gas as factor in deciding supplementation was required). Finally, the new abundance and entanglement information is also now the best scientific information available.<sup>20</sup> Moreover, as previously stated, the information represents analyses of a thirty year data set carried out by a highly reputable research institution with globally recognized expertise on North Atlantic right whale, and that have been widely endorsed by experts from across the scientific community. It is, as NEPA demands, information of “high quality” and, as discussed above, widely recognized “scientific integrity.” 40 C.F.R. §§ 1500.1, 1502.24.<sup>21</sup>

A revised analysis utilizing the mark-recapture abundance data and the recent entanglement findings is likely to significantly change the agency’s assessment of the proposed Atlantic G&G activity, with substantially increased potential for adverse cumulative effects on that population. The PEIS recognized that the right whale population was below the level at which any take could be authorized under a potential biological removal (“PBR”) analysis, but the PEIS was operating under what was the current understanding at the time, namely that the population was still growing. PEIS at 4-27. We expect that if the agencies were to reevaluate the impact of the proposed surveys in light of the new science, they would find that the consequences for a population that is at a level below that which take could be authorized under a PBR analysis and declining are far more dire.

### **III. NMFS and BOEM should consider the new information on North Atlantic right whale abundance and entanglement for purposes of the currently ongoing ESA reconsultation.**

The PEIS includes a Biological Assessment prepared by BOEM, in consultation with NMFS, that concludes there will be no significant impact to any listed species resulting from the proposed activity. PEIS Appendix A at A-255. That Biological Assessment, as discussed above, is based on a status discussion and abundance estimate presented in the PEIS, which are no longer the best available science. *See* 50 C.F.R. § 402.16(b) (a federal agency must reinstate consultation if “new information reveals effects of the action that may affect listed species or

---

<sup>20</sup> The new scientific information on entanglements consists of analyses, some published, of a long term data set by the New England Aquarium, a highly reputable research institution with globally recognized expertise on North Atlantic right whales. This research has been acknowledged as the best available and as highly credible scientific information by experts from across the NARW community in a letter to the President of the United States (Apr. 14, 2016 letter from Clark, C., *et al.*, cited herein). The new mark-recapture analysis also cited in this letter was produced by the North East Fisheries Science Center (“NEFSC”), an office within NMFS that is mandated to provide the agency with high-quality scientific information upon which to base its decisions. This mark-recapture analysis will soon be published in the scientific literature and has been recommended to the agency for use in management, during the interim period before publication, by members of the Atlantic Scientific Review Group (Apr. 4, 2016 letter from Wells, R. S., *et al.*, cited herein).

<sup>21</sup> The fact that the mark-recapture abundance data is not yet published in a peer-reviewed journal does not excuse the agency from considering it in its NEPA analysis. An agency that relies on “stale scientific evidence” without justifying why it believes that evidence is superior to more recent data, violates NEPA. *See Seattle Audubon Soc. v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993); *Nw. Ecosystem All. v. Rey*, 380 F. Supp. 2d 1175, 1195 (W.D. Wash. 2005).

critical habitat in a manner or to an extent not previously considered”); 16 U.S.C. § 1536(a)(2) (requiring the agencies to analyze whether an action is likely to jeopardize the continued existence of any endangered species based on “the best scientific and commercial data available”).<sup>22</sup>

More than a year ago, on April 10, 2015, several of the undersigned organizations petitioned NMFS and BOEM to: (1) reinstate formal consultation on the G&G PEIS Biological Opinion under Section 7 of the ESA, 16 U.S.C. § 1536(a)(2), and (2) withdraw the original Biological Opinion. The petition detailed new information and activities that undermined NMFS’ analysis of the effects of the proposed seismic survey activities on ESA-listed marine mammals and other species, including a final critical habitat designation for the Northwest Atlantic Ocean Distinct Population Segment of loggerhead sea turtles, 79 Fed. Reg. 39,856 (July 10, 2014); a proposed rule to revise and greatly expand designated critical habitat for Endangered North Atlantic right whales 80 Fed. Reg. 9,314, 9,343 (Feb. 20, 2015); and the initiation of the U.S. Navy’s Atlantic Fleet Training and Testing activities that would result in tens of thousands of instances of take of the same marine mammals and within many of the same areas covered by the seismic survey permit applications.

On July 1, 2015, BOEM notified these organizations that it “was currently discussing these issues [presented in the petition] with NMFS and [is] committed to making decisions based on the best available science.”<sup>23</sup> On October 16, 2015, BOEM and NMFS reinstated Section 7 consultation for the proposed Atlantic G&G activities to consider, among other things, expanded critical habitat for right whales and all other “[n]ew information available since the issuance of the G&G Atlantic BiOp.”<sup>24</sup>

The ESA requires that NMFS and BOEM “use the best scientific and commercial data available in the Section 7 consultation process.” 16 U.S.C. § 1536(a)(2). Using the best available science, “as opposed to requiring absolute scientific certainty, is in keeping with congressional intent that an agency take preventive measures before a species is conclusively headed for extinction.” *Ctr. for Biological Diversity v. Lohn*, 296 F. Supp. 2d 1223, 1236 (W.D. Wash. 2003) (internal quotations and citations omitted) (emphasis in original).<sup>25</sup> Because it is tied to the ESA’s precautionary mandate and structure, the duty to use the best available science requires the agency to use what it does know to avoid a risk, rather than wait for perfect or published information. *See Ariz. Cattle Growers’ Ass’n v. Salazar*, 606 F.3d 1160, 1164 (9th Cir. 2010) (ESA “does not require the [agency to] act only when it can justify its decision with absolute confidence”).

---

<sup>22</sup> See also Center for Biological Diversity et al. Comments to NMFS RE: Notice of Receipt of Applications for Incidental Harassment Authorization Activities (Aug. 28, 2015) (reiterating request that NMFS reinstate formal consultation under Section 7 of the ESA).

<sup>23</sup> July 1, 2015 Letter from BOEM Director Abigail Hopper to Stephen E. Rody, Earthjustice.

<sup>24</sup> BOEM, “Atlantic G&G Permitting.” Available at: <http://www.boem.gov/Atlantic-G-and-G-Permitting/>; see also Nov. 18, 2015 Letter from BOEM Director Abigail Hopper to Stephen E. Rody, Earthjustice.

<sup>25</sup> See also *Sierra Club v. Marsh*, 816 F.2d at 1383, 1386 (ESA’s “institutionalized caution mandate[,]” requires agencies to give the “benefit of the doubt’ to preserving endangered species”) (citations omitted).



The new right whale abundance and entanglement information is the most recent science on the population status and trend of right whales, and it directly relates to the effect of seismic airgun surveys on these whales. Although the mark-recapture data is not yet published in a peer-reviewed journal, the ASRG and 28 marine biologists with particular expertise on the right whale, from respected institutions including Cornell, Duke, the New England Aquarium, Wildlife Conservation Society, UNCW, and Woods Hole Oceanographic Institution, agree that this new information is significant. These experts concur that, in light of this information, adding the proposed Atlantic G&G seismic surveys to the whales' environment "would jeopardize [the species'] survival." In sum, this information is significant, constitutes the best scientific and commercial data available, and must be used in NMFS' ongoing reconsultation with BOEM on the effects of seismic activities in the Atlantic.

## **Conclusion**

We strongly urge BOEM and NMFS to withdraw and rewrite the flawed Atlantic G&G PEIS to incorporate the significant new information regarding North Atlantic right whales. In the alternative, the agencies should not issue permits for seismic airgun operations in the Atlantic study area prior to completion of supplemental environmental analysis. It is essential that the agency's assessment of impacts, alternatives, and mitigation incorporate an accurate understanding of the population status and extreme vulnerability of the North Atlantic right whale.

The agencies should also incorporate this new information into the ongoing Section 7 reconsultation. Failure to consider these new data could lead the agencies to mistakenly greenlight an activity that could drive one of our most iconic whale species to extinction.

As always, we would welcome the opportunity to meet with you, your staff, and other relevant offices at any time to discuss these matters. For further discussion, please contact Michael Jasny of NRDC ([mjasny@nrdc.org](mailto:mjasny@nrdc.org)).

Very truly yours,

Michael Jasny  
Director, Marine Mammal Protection  
**Natural Resources Defense Council**

Georgia Hancock  
General Counsel  
**Animal Welfare Institute**

Matthew Heim  
Outreach and Communication Coordinator  
**Assateague Coastal Trust**  
**Assateague Coastkeeper**

Miyoko Sakashita  
Oceans Program Director  
**Center for Biological Diversity**

Michael Burger  
**Center for a Sustainable Coast**

Andrew J. Wunderley, Esq.  
**Charleston Waterkeeper**

**Charleston Surfrider**

May 26, 2016

Page 10

Ann Timberlake  
Executive Director  
**Conservation Voters of South Carolina**

Steve Mashuda  
Managing Attorney for Oceans  
**Earthjustice**

David Rogers, Director  
**Environment North Carolina**

Jennette Gayer  
Staff Advocate  
**Environment Georgia**

Steven D. Caley  
Legal Director  
**GreenLaw**

Phil Kline  
Senior Ocean Campaigner  
**Greenpeace**

Sharon Young  
Marine Issues Field Director  
**The Human Society of the United States**

Beth Allgood  
US Campaigns Director  
**International Fund for Animal Welfare**

Neil A. Armingeon  
**Matanzas Riverkeeper**

Todd Miller  
Executive Director  
**NC Coastal Federation**

Brian Buzby  
Executive Director  
**NC Conservation Network**

Claire Douglas  
Campaign Director for Climate and Energy  
**Oceana**

Michael Stocker  
Director  
**Ocean Conservation Research**

Alice M. Keyes  
Vice President of Coastal Conservation  
**One Hundred Miles**

Mary M. Hamilton  
Executive Director  
**SandyHook SeaLife Foundation**

Tonya Bonitatibus  
Riverkeeper/ Executive Director  
**Savannah Riverkeeper**

Hamilton Davis  
Energy Program Director  
**SC Coastal Conservation League**

Ben Gregg  
Executive Director  
**South Carolina Wildlife Federation**

Sierra Weaver  
Senior Attorney  
**Southern Environmental Law Center**

Pete Stauffer  
Environmental Director  
**Surfrider Foundation**

Eileen Levandoski  
Assistant Director  
**Virginia Chapter Sierra Club**

Dr. Susan Lieberman  
Vice President, International Policy  
**Wildlife Conservation Society**

Regina Asmutis-Silvia  
Executive Director, NA  
**Whale and Dolphin Conservation**

May 26, 2016

Page 11

Cc: Director Abby Hopper (BOEM)  
Dr. Bill Brown (BOEM)  
Ms. Jill Lewandowski (BOEM)  
Ms. Renee Orr (BOEM)  
Mr. Michael Celata (BOEM)  
Mr. Walter Cruickshank (BOEM)  
Mr. Gary D. Goeke (BOEM)  
Ms. Rebecca Lent (MMC)  
Ms. Vicki Cornish (MMC)  
Ms. Lois Schiffer (NOAA)  
Ms. Jolie Harrison (NMFS)  
Ms. Donna Wieting (NMFS)  
Mr. Mark Antoniewicz (CEQ)  
Mr. Drew McConville (CEQ)  
Mr. Whit Saumweber (CEQ)  
Rep. Frank Pallone (NJ)  
Rep. Mark Sanford (SC)  
Sen. Cory Booker (NJ)  
Sen. Bill Nelson (FL)