



NORTH ATLANTIC RIGHT WHALE RECOVERY PLAN SOUTHEAST U.S. IMPLEMENTATION TEAM

TERMS OF REFERENCE

1 INTRODUCTION AND BACKGROUND

The North Atlantic right whale (*Eubalaena glacialis*) has been listed as endangered under the Endangered Species Act (ESA) since its passage in 1973, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) is responsible for the conservation and recovery of the species.

1. Section 4(f) of the ESA requires the preparation and implementation of recovery plans for all listed species.

The revised Recovery Plan for the North Atlantic Right Whale (*Eubalaena glacialis*) was published in August 2004. The recovery plan serves as a basis for recovery efforts, prioritization of research to ensure that new information will contribute toward the greatest research needs, and effective monitoring to allow NOAA Fisheries to track the status of North Atlantic right whales and the factors that may affect them. The ESA authorizes NOAA Fisheries to appoint recovery teams (i.e. implementation teams) to assist in the implementation of recovery plans. This authority was delegated to the Southeast and Northeast Regions for regional right whale implementation teams. The ESA specifically exempts recovery teams from the Federal Advisory Committee Act (FACA), but, otherwise, does not provide specific guidance related to the conduct of recovery teams.

Following completion of the 1991 Right Whale Recovery Plan, NMFS established a Southeast U.S. Right Whale Recovery Plan Implementation Team (SEIT) comprised of federal and state agencies and other organizations, to implement and coordinate recovery activities in the Southeast U.S. The majority of the SEIT's efforts were focused on implementing the "Early Warning System" (EWS) –a system of aerial surveys to detect right whales and alert mariners of the whales' locations so mariners could avoid collisions with right whales. The SEIT has been largely successful in implementing the EWS; however, over the years, SEIT membership and its purpose have become unclear in the absence of a formal process for appointing, maintaining, and operating the Team. Consequently, the SEIT is being reorganized to include: 1) Team members that are appointed via formal appointment letters from the Southeast Regional Administrator, 2) clearly stated objectives, and 3) Terms of Reference (includes definition of roles and operating rules).

2 PURPOSE AND OBJECTIVES

The SEIT has been established to assist NOAA Fisheries' Southeast Regional Office (SERO) in the implementation of the Recovery Plan for the North Atlantic Right Whale and to advise the SERO on issues related to the status and conservation of right whales in the Southeast U.S. (North Carolina to Florida). The objectives of the SEIT are to:

1. Coordinate and effect recovery plan implementation in Southeast U.S. while making efficient use of available resources via recommendations to NOAA Fisheries Service SERO.
2. Involve stakeholders in implementation of recovery plan.
3. Promote creative solutions.
4. Monitor effectiveness of recovery plan implementation and adapt accordingly.
5. Identify and prioritize information needs that can be best addressed through enhanced partnerships.

3 ROLES AND RESPONSIBILITIES

NOAA Fisheries has statutory responsibility for implementing the North Atlantic Right Whale Recovery Plan and, therefore, SERO will oversee all SEIT activities.

Additionally, the SERO will be responsible for the following: (1) establishing, modifying, and disbanding the implementation team including work groups; (2) establish and maintaining SEIT and work group sizes to enhance effectiveness; (3) defining team functions and establishing schedules for completing products (with team input and discussion); (4) approving meeting agendas; (5) transmitting team recommendations to other agencies and organizations, as appropriate; and (6) providing logistical support.

NOAA Fisheries will not pay honoraria to members or advisors. NOAA Fisheries SERO will provide administrative support, such as photocopying, procurement of supplies, and expenses related to printing and distributing materials. In addition, NOAA Fisheries SERO may contract for services to the implementation team or to outside experts for specific products or other documents for the team's use.

3.1 NOAA FISHERIES LIAISON

The NOAA Fisheries liaison is the SERO's Right Whale Recovery Program Coordinator. The NOAA Fisheries liaison is not a member of the SEIT, but will provide assistance as needed, serve as a conduit for communication between the SEIT and the SERO (in conjunction with the Team Leader), concur on implementation team or subcommittee

membership, terms of reference for the team, collaborate with headquarters, regional and science center staff on annual or periodic oversight of the recovery effort, collaborate with the Team Leader on meeting agendas and the Team on recovery tasks on which the SERO seeks input, and generally provide appropriate guidance from SERO to the SEIT. The NOAA Fisheries liaison is not a decision-maker for the team.

3.2 TEAM LEADER

The SERO will appoint a team leader for the SEIT. The team leader is a regular member of the implementation team with the following responsibilities: (1) serve as a conduit for communication with the SERO in conjunction with the NOAA Fisheries liaison; (2) facilitate team meetings and coordinate with the NOAA Fisheries liaison on meeting agendas and summaries; (3) work with the team and NOAA Fisheries liaison to identify and recommend priorities for recovery implementation; and (4) keep the team moving forward and making steady progress. As a regular member of the implementation team, the team leader is not a decision-maker for the team.

3.3 IMPLEMENTATION TEAM

Although NOAA Fisheries has statutory responsibility for implementing the North Atlantic Right Whale Recovery Plan, the participation of a variety of stakeholders is essential to recovering the species. Therefore, the SEIT will be a multi-disciplinary team representing diverse stakeholder groups with the role of implementing and coordinating the implementation of the North Atlantic Right Whale Recovery Plan in the Southeast U.S. Team size will balance the need to include diverse expertise and experience with the need to optimize manageability.

SEIT members have been appointed by the SERO and have been selected based on professional expertise or experience in the areas of conservation or biology of right whales or threats to right whales which result in the incidental mortality and serious injuries of right whales. SEIT members have also been selected for their diversity of interests, geographic location, communication network, access to resources, capability to work with diverse viewpoints, and commitment to developing creative solutions.

SEIT members have also been appointed based upon their ability to ably represent the views of an important stakeholder group. SEIT members should work to keep their constituencies informed of the SEIT's efforts and to reporting relevant feedback to the SEIT. In reporting back, SEIT members will strive to integrate the views of their constituency and not resort to the "lowest common denominator."

3.4 WORK GROUPS

Work groups may be formulated to work on specialized recovery-related topics for which the SEIT members need specific expertise. Work groups may originate in two ways:

1. NOAA Fisheries SERO identifies the need for a work group and consults with the SEIT on potential members using selection criteria in Appendix A.
2. The SEIT identifies the need for a work group, identifies candidate members for the work group using selection criteria in Appendix A, and forwards relevant recommendation to the SERO for consideration.

In either case, work groups would be convened and members appointed after discussions among SERO staff and the implementation team. However, SERO will ultimately be responsible for establishing the work group and appointing work group members. Work group members will be appointed using a similar process as SEIT members and will operate by the same Terms of Reference.

Work groups may meet independent of the entire team in order to facilitate completion of their assigned tasks. As advisors to the implementation team, these work groups would not be subject to FACA. Formation of work groups is encouraged to facilitate completion of recovery tasks and initial drafts of recommendations to be considered by the entire implementation team; however, it's the implementation team that makes recommendations to NOAA. Work groups may include additional experts who are not members of the core implementation team; however, these experts would serve the work group under the same terms as members of the implementation team (e.g., conflict-of-interest, no payment for services, and etc.). The implementation team may request SERO to contract for specific products to aid the implementation team or work groups.

To begin, suggested SEIT work groups may be necessary to address the following SERO priorities:

Aerial Survey Work Group – assess effectiveness of present survey design for achieving aerial survey objectives in Southeast U.S.;

Education and Outreach Work Group – develop, maintain, enhance and implement an education and outreach strategy for communicating the importance of efforts to mitigate ship strikes with right whales.

Passive Acoustic Work Group – determine if passive acoustics are an appropriate management tool in the Southeast U.S., identify outstanding management-related

questions regarding the use of passive acoustic monitoring (PAM) and develop a recommended plan for moving forward; and

Early Warning System Administration Work Group – maintain and enhance the Early Warning System including the sighting alert system.

4 TERMS OF SERVICE

4.1 CODE OF ETHICS

Implementation team members are advised to avoid conflict of interest and other ethical problems in accordance with the April 2, 1992, Department of Commerce Office of General Counsel guidelines:

- Members should disqualify themselves from advising on a matter that has direct and predictable effect on their personal financial interests, those of a client, or those of a company by which they are employed, apart from matters that are inherent in their employment or outside affiliation.
- Members should not solicit business for themselves or their firms or seek an economic advantage based on their position on the implementation team.
- Members should hold any unpublished information obtained as a result of their service on the implementation team in confidence and ensure that it is used exclusively for official purposes. Members should not use or permit the use of such information for their own private gain or the gain of another person.
- Members should not use the resources available to the implementation team for the purposes of assisting a political campaign, or for any campaign business.

4.2 LENGTH OF SERVICE

Length of service for the team leader and SEIT members shall be for two years, but the SERO may re-appoint an individual to an unlimited number of consecutive terms.

If a member changes jobs or is no longer a suitable representative for a given stakeholder group, the SERO will appoint a replacement representative.

Work groups are generally considered to be short term, topic driven entities and will disband upon completion of their assignment, or until the SERO deems it no longer necessary.

4.3 OPERATING RULES

4.3.1 PARTICIPATION AND COLLABORATION

- **Active, focused participation.** Every member is responsible for communicating his/her perspectives and interests on the issues under consideration. Voicing these perspectives is essential to enable meaningful dialogue. Everyone will participate; no one will dominate. Only one person will speak at a time (i.e., no sidebar conversations). Everyone will help stay on track. Participants will turn off their cell phones during SEIT meetings.
- **Respectful interaction.** Participants will respect each other's personal integrity, values and legitimacy of interests. This includes avoiding personal attacks and stereotyping.
- **Integration and creative thinking.** In developing, reviewing and revising work products, participants will strive to be open-minded and to integrate members' ideas, perspectives and interests. Disagreements will be regarded as problems to be solved rather than battles to be won. Participants will attempt to reframe contentious issues and offer creative solutions to enable constructive dialogue.
- **Mutual gains approach.** Members will work to satisfy not only their own interests but also those of other SEIT members. Members are encouraged to be clear about their own interests and to recognize the important distinction between underlying interests and fixed positions.

4.3.2 COMMITMENT TO PROCESS

- Members will make a good faith effort to work towards and eventually achieve recovery of the North Atlantic right whale. This includes working collaboratively with other SEIT members to develop a consensus-based product.
- Members will review meeting materials in advance of the meetings and come prepared to address the meeting objectives.

- Meetings will start on time. Members who know that they will be absent, late, or have to leave early will inform the team leader in advance and coordinate with their alternates as needed.
- As a set of mutual obligations, SEIT members will commit to adhere to these ground rules once they are ratified. SEIT members are encouraged to help uphold and enforce these ground rules.

4.3.3 DECISION RULES

- The SEIT will strive to develop and come to agreement on recovery plan implementation tasks and recommendations to SERO using a consensus decision rule. In particular, SEIT members will pursue “conditional unanimity,” where all participants are able to support (i.e., “to live with”) and agree not to block a package of agreements developed over the course of the group’s deliberations.
- In the event consensus cannot be reached, the SEIT will advise the SERO in writing on the range of possibilities considered by the team and the extent of support for respective elements of the SEIT’s proposals and recommendations. As appropriate, majority and minority views will also be represented.

4.3.4 MULTI-INTEREST WORK GROUPS

- NOAA Fisheries staff expect that cross-interest work groups may be an important way to develop constructive, integrative work products during and between SEIT meetings. The aim of such work groups is to encourage multi-interest options and work products rather than work products put forward by a single bloc or interest group. It is anticipated that work groups will meet primarily by teleconference.

4.3.5 MEDIA CONTACT AND CONTACT WITH POLITICAL REPRESENTATIVES

- SEIT members will refrain from discussing details of the SEIT process with the media or political representatives. In particular, SEIT members will not represent the views of others, characterize ideas or proposals still under discussion, or prejudge outcomes. SEIT members recognize that premature efforts to “negotiate through the press” or through other political avenues can undermine the success of a collaborative effort.

- SEIT members contacted by the media are encouraged to direct these inquiries to NOAA Fisheries staff. As well, NOAA Fisheries staff will work with the SEIT to develop “talking points” for relating to the media.

4.3.6 INFORMATION SHARING AND JOINT FACT FINDING

- SEIT members recognize that the SEIT efforts depend on using the best readily available information.
- SEIT members commit to identify information needs in a timely fashion and to contribute to framing needs for additional research and analysis.

SEIT members commit to share, and not withhold, relevant information. Preliminary information will be treated as such.

5 IMPLEMENTATION TASKS

The goal of the ESA is to conserve the ecosystems upon which endangered and threatened species depend and to use all methods and procedures necessary to bring such species to the point at which the measures provided under the ESA are no longer necessary. This includes controlling or eliminating threats to these species and their habitat. A recovery plan identifies and assigns priorities to actions required for the recovery of the species. A recovered population is one that is unlikely to go extinct, and is also unlikely to need future listing under the ESA because all of the known threats to the species have been removed.

The information below lists the scope of implementation tasks that should be addressed by the SEIT.

5.1 IMPLEMENTATION SCHEDULE

The North Atlantic right whale recovery plan includes an implementation schedule or action plan that lists each recovery plan action, priority (see below), estimated cost, the time required for completion, and those responsible for carrying out the recovery actions. The implementation schedule is used to direct and monitor implementation and completion of recovery actions.

Guidelines for establishing priorities for all ESA-listed species were published in the *Federal Register* on June 15, 1990 (55 FR 24296), and are as follows:

PRIORITY	TYPE OF RECOVERY ACTION
1	An action that must be taken to prevent extinction or to identify those actions necessary to prevent extinction.
2	An action that must be taken to prevent a significant decline in population numbers, habitat quality, or other significant negative impacts short of extinction.
3	All other actions necessary to provide for full recovery of the species.

The SEIT should address and implement recovery tasks in the order of their priority ranking and/or their relative importance for right whales in the Southeast U.S., recognizing that rare opportunities may occasionally arise for lower priority tasks and the team may recommend taking advantage of such opportunities.

Appendix A. NOAA Fisheries selection criteria for stakeholder group representatives as members of the SEIT.

The SEIT will represent a multi-disciplinary team in support of North Atlantic Right Whale Recovery Plan implementation in the Southeast U.S. and stakeholder group representatives will possess many of the following criteria:

- Ability to make time available.
- Diverse areas of expertise.
- Involve representatives of affected groups/stakeholders.
- Knowledge of species/or closely related species, or relevant disciplines, e.g., local planning, ecology, genetics.
- Expertise in the threats to right whales and factors contributing to status of the species.
- Expertise in recovery plan design or implementation.
- Recognized experts in the field and by other peers.
- Willing to explore all avenues in arriving at solutions necessary to recover species.
- Experience managing species.
- Willingness to work collaboratively.
- Demonstrated experience working with government on solutions.
- Able spokesperson and willing to voice interests.
- A demonstrated ability to forge creative solutions to complex problems.
- High achievement in a relevant discipline, which may include ecology, life history, shipping, resource management, whale biology.