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Judge orders feds to come up with right whale proposal

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ANCHORAGE, Alaska — A judge has ordered a federal agency to come up with its proposal for providing critical habitat protection for North Pacific right whales, considered the world's most endangered whales.

The strongly worded decision was issued late Tuesday by U.S. District Judge William Alsup in San Francisco. It orders the National Marine Fisheries Service to come up with its critical habitat proposal for the whales in four months, or explain why not.

Most of the U.S. population of North Pacific right whales summer in one area of Alaska's Bering Sea. There are believed to be fewer than 100 whales.

The judge also said the agency can't call for more study of the issue, but "must use the facts currently available" to come up with its critical habitat proposal.

Alsup described NMFS's behavior regarding the whales as "arbitrary," "capricious," and "an abuse of discretion."

The ruling was a victory for the Center for Biological Diversity, which filed the lawsuit and petitioned for years for critical habitat designation for the whales.

"The judge here has clearly recognized that right whales are in desperate need of protection. He has ordered the Bush administration to stop dilly-dallying and protect

these whales because we simply don't have time to waste to make sure that these whales recover," said Brent Plater, a lawyer for the conservation group.

Sheela McLean, spokeswoman for the National Oceanic and Atmospheric Administration's fisheries service in Juneau, said the agency is still evaluating the judge's order.

"We will work with the court order," she said.

The order requires NMFS to issue its critical habitat proposal by Oct. 28, or publish in the Federal Register why no area should be designated. The agency also has to name a person by July 15 to lead the effort. The court wants to see a progress report by Sept. 1.

Designating a critical habitat area where the whales spend the summer would not necessarily mean a halt to fishing in that area of the Bering Sea, McLean said. One thing the agency will have to do is evaluate other activities that occur in the designated area, she said.

The Bering Sea is home to the largest commercial fishery in the United States.

Plater said NMFS has known for years that North Pacific right whales gather summers in a 60,000 square-mile area in the Bering Sea known as "the box", but has done nothing to protect them.

The center would like to see about 300,000 square miles designated as critical habitat

but would be happy even with less, he said.

"I think at this point a designation of anything would be helpful to these animals," Plater said.

North Pacific right whales were hunted nearly to extinction in the 1800s before receiving international protection in 1931. They have been listed as endangered since 1973.

McLean said the small numbers go way back. In the early 1900s a whaling station in Alaska's Aleutian Islands recorded 6,000 whales, but only nine of them were right whales.

"That suggests right whales were very rare at that time," she said.

Until recently, whale experts believed the North Pacific right whale was headed to extinction. But that assessment changed just last summer when 25 right whales were spotted in the Bering Sea. The number was twice as many as previously seen.

For the past several years, NOAA has been trying to learn more about the whales and what would be considered their critical habitat, McLean said.

"Because the population is so small and because they travel far, we don't know much about their range and habits," she said.

McLean pointed to several recent scien-

tific successes, including placing satellite tags on two whales that led researchers last summer to the bonanza find in the Bering Sea.

On the Net:

www.biologicaldiversity.org/swcbd/species/right/index.html

www.afsc.noaa.gov