

# North Atlantic Right Whale Recovery Plan Northeast U.S. Implementation

## TERMS OF REFERENCE

January 2023

### 1.0 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. Section 4(f) of the ESA requires the preparation and implementation of recovery plans for all listed species. However, the resulting plan is a guidance document only and is not legally binding.

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 management 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 teams to assist in the implementation of recovery plans. This authority was delegated to the Greater Atlantic and Southeast 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.

The overall recovery implementation team we establish pursuant to ESA Section 4(f) will consist of: (1) an overarching "U.S. North Atlantic Right Whale Recovery Coordination Committee;" (2) the "North Atlantic Right Whale U.S. Implementation Team;" (3) a Northeast U.S. Implementation Team (NEIT); (4) a Southeast U.S. Implementation Team (SEIT); and any subgroups that tier off those groups. The overarching "U.S. North Atlantic Right Whale Recovery Coordination Committee" will consist of the NOAA Fisheries' Greater Atlantic Regional Fisheries Office (GARFO) Right Whale Recovery Coordinator and Southeast Regional Office (SERO) Large Whale Recovery Coordinator, and any designated chairs/co-chairs of the NEIT and SEIT. The "North Atlantic Right Whale U.S. Implementation Team" is composed of both the NEIT and SEIT. These Terms of Reference are for the NEIT.

### 2.0 PURPOSE AND OBJECTIVES

The NEIT has been established to assist NOAA Fisheries' GARFO in the implementation of the Recovery Plan for the North Atlantic Right Whale and to advise the GARFO on issues related to the status and conservation of right whales in the Northeast U.S. (Maine to Virginia). The objectives of the NEIT are to:

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

Issues related to right whale interactions with commercial fisheries are addressed under the Atlantic Large Whale Take Reduction Team process. However, on occasion, the NEIT may address or implement recovery tasks:

1. Identified by the Atlantic Large Whale Take Reduction Team to help answer questions and support their needs in the Northeast U.S., and
2. Consider emerging fisheries-related topics that are fast moving and take place outside of the existing ALWTRP process in consultation with the ALWTRP Coordinator.

### **3.0 ROLES AND RESPONSIBILITIES**

#### **3.1 NOAA Fisheries GARFO**

NOAA Fisheries is the lead Federal agency guiding implementation of the North Atlantic Right Whale Recovery Plan and GARFO will oversee all NEIT activities. Additionally, GARFO will be responsible for the following: (1) establishing, modifying, and disbanding the implementation team including subgroups; (2) establishing and maintaining NEIT and subgroup sizes to enhance effectiveness; (3) defining team functions and establishing schedules for completing products (with team input and discussion); (4) approving meeting agendas; (5) considering and, if appropriate, transmitting team recommendations to other agencies and organizations; and (6) providing logistical support.

NOAA Fisheries will not pay honoraria to members or advisors. NOAA Fisheries GARFO will provide administrative support, such as photocopying, procurement of supplies, and expenses related to printing and distributing materials.

#### **3.2 NOAA FISHERIES LIAISON**

The NOAA Fisheries liaison is the GARFO's Right Whale Recovery Program Coordinator. The NOAA Fisheries liaison is not a member of the NEIT, but will provide assistance as needed, serve as a conduit for communication between the NEIT and the GARFO, assist GARFO's determination of implementation team membership and subgroup membership in light of team input, oversee development of 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 GARFO seeks input, facilitate GARFO's response on Team recommendations in a timely manner, ensure meeting key outcomes are available on an NEIT website, and generally provide appropriate guidance from GARFO to the NEIT. The NOAA Fisheries liaison is not a decision-maker for the team.

### **3.3 TEAM LEADER**

GARFO will appoint a team leader for the NEIT. The team leader is a regular member of the implementation team with the following responsibilities: (1) Serve as a conduit for communication with GARFO 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.

### **3.4 IMPLEMENTATION TEAM**

Although NOAA Fisheries is the lead Federal agency guiding implementation of the North Atlantic Right Whale Recovery Plan, the participation of a variety of stakeholders is essential to recovering the species. Therefore, the NEIT 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 Northeast U.S. Team size will balance the need to include diverse expertise and experience with the need to optimize manageability.

NEIT members have been appointed by GARFO and have been selected based on professional expertise or experience in the areas of conservation or biology of right whales or threats which result in the incidental mortality and serious injuries of right whales. NEIT 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.

NEIT members have also been appointed based upon their ability to ably represent the views of an important stakeholder group. NEIT members should work to keep their constituencies informed of the NEIT's efforts and to report relevant feedback to the NEIT. In reporting back, NEIT members will strive to integrate the majority views of their constituency. Alternates may not be designated.

### **3.5 WORKING GROUPS**

#### **SUBGROUPS**

Subgroups may be formed to work on specialized recovery-related topics for which the NEIT members need specific expertise. Subgroups can include experts who are not members of the core implementation team. Subgroups may originate in two ways:

1. GARFO identifies the need for a subgroup and consults with the NEIT on potential members using selection criteria in Appendix A.
2. The NEIT identifies the need for a subgroup, identifies candidate members for the subgroup using selection criteria in Appendix A, and forwards the relevant recommendation to GARFO for consideration.

In either case, subgroups would (in most cases) be convened after discussions among GARFO staff and the implementation team. Subgroup membership will ultimately be

managed by GARFO using a similar process as that for NEIT members (see Sections 3.1 and 3.4) and will operate by the same/similar Terms of Reference.

Subgroups may meet independent of the entire team in order to facilitate completion of their assigned tasks. These subgroups will be considered part of the North Atlantic Right Whale Recovery Plan U.S. Implementation Team or its regional implementation teams (e.g., NEIT) established under ESA Section 4(f) and, as such, will be covered by the statute's FACA exemption. Some experts on a subgroup may be members of the overarching North Atlantic Right Whale Recovery Plan U.S. Implementation Team, from which a subgroup tiers off. However, other experts on a subgroup will not be members of that overarching body, yet all members of a subgroup will have specific expertise related to the subgroup objectives. Formation of North Atlantic Right Whale U.S. Implementation Team subgroups is encouraged to facilitate completion of recovery tasks and initial drafts of recommendations to be considered by the North Atlantic Right Whale U.S. Implementation Team or regional implementation teams (e.g., NEIT); however, it's the North Atlantic Right Whale U.S. Implementation Team or NEIT that make recommendations to NOAA Fisheries GARFO. Subgroups may also be used to sift through methodological differences or contradictory information.

#### **MULTI-INTEREST WORK GROUPS**

- NOAA Fisheries staff expect that multi-interest work groups may be an important way to develop constructive, integrative work products during and between NEIT 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. The NEIT may form a working group composed of some non NEIT members with the expertise to address a specific idea or issue, but only the NEIT can make a recommendation to NOAA Fisheries GARFO.
- Work groups will be chaired by an NEIT member.

#### **3.6 INVITED SUBJECT MATTER EXPERTS**

The NEIT recognizes that subject matter experts may enhance NEIT deliberations. Therefore, subject matter experts may be invited to attend NEIT deliberative sessions that are otherwise closed to the public. When a subject matter expert is not providing expertise but in attendance, they will become observers (see Section 3.7).

#### **3.7 OBSERVERS**

The NEIT by consensus may elect to allow non-NEIT members to attend NEIT working deliberative sessions as observers. The SEIT Chair is allowed to observe NEIT working deliberations (i.e., typically occurring in-person). The SEIT Chair may attend as an observer to remain abreast of deliberations and to facilitate continuity with the NEIT. Observers may not participate in NEIT discussions unless they are invited to do so by the Team Leader or NOAA Fisheries Liaison and they follow guidelines on participation provided by the Team Leader and/or NOAA Fisheries Liaison. All observers should refrain from releasing unpublished information, discussions and/or findings of the NEIT in the media or for advocacy purposes.

## **4.0 TERMS OF SERVICE4 TERMS OF SERVICE**

### **4.1 CODE OF ETHICS**

Implementation team members are advised to avoid conflicts of interest and other ethical problems. Members representing the Federal government must comply with the Federal standards of government ethics that would apply to them in performance of their duties. Any questions should be directed to your agency's ethics office. Non-federal members are expected to adhere to the ethics rules found in the document, "Summary of Ethics Rules for Persons Who Work With the Federal Government," (United States Department of Commerce, Office of the General Counsel, Ethics Law and Programs Division, 2022), which is attached in Appendix B.

### **4.2 LENGTH OF SERVICE**

Length of service for the NEIT members shall be for two years, but GARFO may re-appoint an individual to an unlimited number of consecutive terms.

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

Subgroups are generally considered to be short-term, topic-driven entities and will disband upon completion of their assignment or when GARFO deems it no longer necessary.

### **4.3 MEETING ATTENDANCE**

In the interest of preserving continuity, NEIT members are strongly encouraged to attend all meetings (including all days of multi-day meetings). If an NEIT member is unable to attend a meeting due to circumstances beyond their control, a substitute representative from their stakeholder group may be invited to attend meetings as an observer. The purpose of the substitute representative is to keep the absent NEIT member informed of NEIT discussions.

NEIT members are volunteering their time and resources to participate on the NEIT. Meeting attendance and participation is strongly encouraged. If an NEIT member misses two meetings, GARFO will, following discussions with the individual member, consider replacing that NEIT member in order to preserve the integrity of the NEIT and its processes. Remote attendance is acceptable only if in-person attendance is not possible due to funding, logistical and/or other constraints and capabilities exist at the meeting venue.

### **4.4 TERMS OF REFERENCE**

Revisions to the terms of reference may be made as necessary by GARFO with input from the NEIT. Agreeing to serve on the team will be construed as a willingness to accept and abide by all conditions set forth in the terms of reference.

## **5.0 MEETING ARRANGEMENTS AND OPERATING RULES**

### **5.1 MEETINGS**

The NEIT will typically meet semi-annually. The Team Leader and NOAA Fisheries Liaison, in consultation with the NEIT, will decide on the timing and location for each NEIT meeting. The Team Leader and NOAA Fisheries Liaison will seek to minimize meeting costs (including travel) while maximizing travel efficiency for Team members. Meetings may consist of an information-sharing forum/webinar or working deliberative sessions. Public participation and attendance may be possible during information-sharing fora/webinars, but not during working deliberative sessions.

In-person meetings are preferred but may not always be possible, thus, the team may also use internet-based video conferencing, telephone conference calls, and e-mail discussions to conduct team business.

## **5.2 MEETING PROCEDURES**

The NEIT will remain attentive and receptive to topics for NEIT Forum and/or NEIT meeting discussions. The NEIT will strive to post the purpose of its meetings in advance on the NEIT website to help keep stakeholders abreast of the NEIT's discussion focus.

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.

The NEIT strives to preserve an environment of information sharing and candid deliberations. NEIT members and other meeting attendees are expected to behave with professional courtesy and refrain from representing the views of other Team members; characterizing ideas and proposals still under discussion, or information shared; or prejudge outcomes in public settings or in the media.

### **5.2.1 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 is expected to participate, but refrain from dominating the discussion. Only one person will speak at a time (i.e., no sidebar conversations). Everyone will help keep the discussion on topic. Participants and other meeting attendees are asked to turn off their cell phones during NEIT 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 NEIT members. Members are encouraged to be clear about

their own interests and to recognize the important distinction between underlying interests and fixed positions.

### **5.2.2 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 NEIT members to develop a consensus-based product.
- As a set of mutual obligations, NEIT members will commit to adhere to these ground rules once they are ratified. NEIT members are encouraged to help uphold and enforce these ground rules.

### **5.2.3 DECISION RULES**

- The NEIT will strive to develop and come to agreement on recovery plan implementation tasks and recommendations to GARFO using a consensus decision rule. In particular, NEIT 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. Team members reserve the right to abstain from voting, but recognize that the Team could still achieve consensus despite that abstention. At Canada’s request, they are non-voting members of the NEIT.
- In the event consensus cannot be reached, the NEIT will advise GARFO in writing on the range of possibilities considered by the team and the extent of support for respective elements of the NEIT’s proposals and recommendations. As appropriate, majority and minority views will also be represented.

### **5.2.4 PROCEDURES FOR PROVIDING RECOMMENDATIONS**

As indicated in Section 3.0, one role of the NEIT is to advise GARFO on the conservation and recovery of endangered North Atlantic right whales in the area from Virginia to Maine. Typically, the Team will transmit recommendations via meeting key outcomes. In the rare case the NEIT submits recommendations by letter, the letter will be submitted by the Team Leader to the RA, with a copy provided to the team liaison and all team members. Distribution of letters outside of the NEIT and GARFO will be reviewed by GARFO on a case-by-case basis. When the NEIT submits a recommendation by letter, it shall include the following disclaimer:

*The NEIT is an advisory body to NOAA's National Marine Fisheries Service, GARFO. The opinions and findings presented in this document do not necessarily reflect the positions or policies of NMFS.*

### **5.2.5 CONTACT WITH NON-NEIT MEMBERS**

- NEIT members are encouraged to keep their agencies and stakeholders abreast of the topics of Team discussion, but NEIT members will refrain from discussing details of the NEIT deliberative process with non-NEIT members. In particular, NEIT members will not represent the views of other Team members, describe details of proposals still under discussion, or prejudge outcomes. NEIT members recognize that premature efforts to "negotiate through the press" or through other political avenues can undermine the success of a collaborative effort. NEIT members can discuss fact-finding topics with non-NEIT members and are encouraged to share meeting summary documents posted on the NEIT website.

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

**5.2.6 INFORMATION SHARING AND JOINT FACT FINDING**

- NEIT members recognize that the NEIT efforts depend on using the best readily available information.
- NEIT members commit to identify information needs in a timely fashion and to contribute to framing needs for additional research and analysis.
- NEIT members commit to share relevant information with each other and the NOAA Fisheries Liaison. Preliminary information should be respected as such.

**6.0 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 necessary for the recovery of the species. A recovered population is one that is unlikely to go extinct at the present time or in the foreseeable future, and is also unlikely to need future listing under the ESA because all of the known threats to the species have been sufficiently reduced.

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

**6.1 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 then further revised in the *Federal Register* on April 30, 2019 (84 FR 18243). The revised priority system applies to recovery plans that have been developed, and it is described briefly as follows:

<b>PRIORITY</b>	<b>TYPE OF RECOVERY ACTION</b>
1	These are the recovery actions that must be taken to remove, reduce, or mitigate major threats and <i>prevent extinction</i> and often require urgent implementation.
2	These are recovery actions to remove, reduce, or mitigate major threats and prevent continued population decline or research needed to fill knowledge gaps, but their implementation is less urgent than Priority 1 actions.



3	These are all recovery actions that should be taken to remove, reduce, or mitigate any remaining, non-major threats and ensure the species can maintain an increasing or stable population to achieve delisting criteria, including research needed to fill knowledge gaps and monitoring to demonstrate achievement of demographic criteria.
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The NEIT should address and implement recovery tasks in the order of their priority ranking and/or their relative importance for right whales in the Northeast 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 NEIT.**

The NEIT will represent a multi-disciplinary team in support of North Atlantic Right Whale Recovery Plan implementation in the Northeast 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.

**Appendix B: “Summary of Ethics Rules for Persons Who Work With the Federal Government,” (United States Department of Commerce, Office of the General Counsel, Ethics Law and Programs Division, 2022).**

**UNITED STATES DEPARTMENT OF COMMERCE  
SUMMARY OF ETHICS RULES  
FOR PERSONS WHO WORK WITH  
THE FEDERAL GOVERNMENT**



**2022**

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# STANDARDS OF ETHICAL CONDUCT

Persons who work with the United States Government are held to a high standard of conduct to ensure public confidence in the integrity of Government actions. Just as Federal employees are subject to certain ethics regulations, persons who work with the Government are also subject to certain ethical standards, whether you serve as a contractor, an industry representative on a Federal advisory committee, an advisor or consultant to a Federal source evaluation panel, a volunteer student intern, or otherwise. Listed below are some of the rules that you must follow. Violations of some of these rules may subject you to criminal or civil penalties.

For more information about any of these rules and guidance on their application to a specific situation, contact the  
Ethics Office of the Office of General Counsel at  
202-482-5384 or [ethicsdivision@doc.gov](mailto:ethicsdivision@doc.gov).

Additional information is also available at:  
[www.commerce.gov/ethics](http://www.commerce.gov/ethics).

## MISUSE OF GOVERNMENT RESOURCES

**Use of Equipment, Supplies, and Services** – Government resources may only be used for official authorized Government activities. This includes use of:

- Government equipment (including cell phones and other mobile devices, computers, and photocopying machines);
- Government supplies (including agency letterhead and Government envelopes);
- Government services (including telephone and fax services); and
- the time of Government personnel.

If you are working in a Government office, you should be careful to preserve Government property. If you are entitled to reimbursement from the Government for certain expenditures, such as travel costs, you must ensure that all charges you claim are legally authorized.

## MISUSE OF GOVERNMENT INFORMATION

**Use of Non-Public information** – Information you obtain through of your work with the Federal Government may not be used for your private activities or disseminated to anyone outside the Government unless the person is specifically authorized to receive the information. Information that is protected from improper use or dissemination includes:

- nonpublic trade data;
- nonpublic economic analyses;
- private personnel information;
- source selection and other nonpublic procurement information;
- classified national security information;
- protected census data;
- patent information;
- proprietary business data and trade secrets; and
- other nonpublic information.

Government information is another form of Government property. Just as Government supplies and equipment may not be used for personal activities, information obtained by the Government may only be used for Government programs. Release or dissemination of such information must be authorized by a Federal official.

**Penalties** – Depending on the nature of the information, improper use or release may result in criminal charges (such as for misuse of national security information) or civil liability (such as for misuse of business proprietary information or information covered by the Privacy Act).

## MISUSE OF GOVERNMENT AFFILIATION

**References to Association with the Government** – You may not use your association with the Government, including business contacts obtained through your work with the Government, to obtain personal benefits or favors for yourself, friends, relatives, or business associates.

Because you are not a Federal employee, you may not represent that you serve or act on behalf of the Federal Government unless you are specifically authorized to do so with regard to the specific matter. You may not use your association with the Government to imply that the Government endorses your personal activities. Therefore, you may not use a Government logo or seal on your personal business card or stationery or refer to a Government office on your business card unless your relationship with the Government is made clear (for example, “contractor for the International Trade Administration” or “member of the Industry Trade Advisory Committee on Consumer Goods”).

## ADDITIONAL RULES

**Restrictions in Agreements and Contracts** – Additional rules may apply depending on the specific arrangement or agreement between you or your employer and the Federal Government. For example, a clause in a contract under which you provide services to the Government may subject you to the same standards of ethical conduct applicable to Federal employees or may restrict you from engaging in certain activities. Similarly, if working under a student volunteer agreement or a memorandum of understanding, the terms of the agreement may impose limitations on your activities. These special provisions may require you to disclose information regarding your financial interests or employment, bar you from accepting certain gifts or payments, or otherwise regulate your conduct.

**Gifts to Federal Employees** – Federal employees are subject to ethics rules barring them from asking for a gift or from accepting gifts greater than \$20 from someone with business with their agency (unless based on a personal relationship). Because of these rules, even if you work in an office with Federal employees, you may need to be treated differently than Federal employees in your office regarding office parties and gift exchanges.