

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

9 June 2003

William T. Hogarth, Ph.D.
Director, National Marine Fisheries Service
Assistant Administrator for Fisheries, NOAA
1315 East-West Highway, Room 14564
Silver Spring, MD 20910

Dear Dr. Hogarth:

Dr. Greg Silber recently stopped by to brief our staff on the National Marine Fisheries Service's Ship Strike Reduction Strategy and plans to move ahead with interagency consultations. We applaud this step forward and all the hard work that went into developing the strategy. The Commission has been urging the Service and other agencies to develop an effective way to reduce ship strikes for many years. These documents indicate some progress. The government, collectively, has a long way to go before the Service and other agencies can implement what is laid out in the strategy. The Commission remains committed to helping this effort in any way we can. In that light, we offer the following comments on the documents Dr. Silber provided and the overall strategy.

The outlined ship strike strategy is going to require buy-in from many federal and state agencies, the regulated community, and Congress. To accomplish this, the Commission urges the Service to establish an interagency task force with representatives from involved agencies who are authorized to speak on behalf of their agencies. One way to do this would be for Admiral Lautenbacher or you to write to counterparts at the Coast Guard, the State Department, the Defense Department, the Office of Management and Budget, the Council on Environmental Quality, and the Commission soliciting representatives to serve on the task force. A letter at this level would demonstrate the backing of senior NOAA leadership for the proposed strategy, which will be necessary to gain support for the program throughout the Executive Branch. We would hope that such a letter would designate yourself or a senior Service official as the lead for the task force, with Dr. Silber or another knowledgeable staff as the primary day-to-day contact. This would demonstrate the seriousness of your agency's commitment to address this matter.

Once a task force has been established, we trust that the Service and other agencies will identify the highest priority steps that they can take to reduce ship strikes as soon as possible. In this regard, the Service's strategy identifies five elements, each of which is important. We would propose to have the task force establish priorities and an implementation timeline for each element.

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The operational measures that will actually protect right whales and other large cetaceans are the most important elements of the strategy. They will also be the most controversial and contentious with other agencies and industry groups. The Service will need to present convincing biological, transportation, and economic analyses to overcome preconceived notions that could otherwise stymie implementation of these measures. The Northeast and Southeast Fishery Science Centers and Regional Offices have collected extensive data documenting shipstrikes with right whales and other whales. They have worked with the Coast Guard and others to implement a vessel reporting system and obtained valuable information about ship traffic. The Commission believes that the Service has adequate information at this time to initiate a rulemaking action to restrict vessel speeds in designated areas at certain times of the year. We urge the Service to make this its highest priority at the interagency task force meetings and that it solicit views on how such a vessel management system might be most effectively implemented.

One of the issues that has come up among agencies in the past on this topic is what are the most appropriate authorities by which to manage ship traffic – the Marine Mammal Protection Act, the Endangered Species Act, the Port and Harbors Safety Act, or some combination of those Acts? The Administration proposal to reauthorize the Marine Mammal Protection Act addresses this as well. To help resolve this long-simmering debate, the Commission has contracted with Professor Alison Rieser of the University of Maine Law School and Professor Daniel Bodansky of the University of Georgia Law School to evaluate the provisions of current laws and, if necessary, recommend amendments to clarify the existing statutes. We expect that they will complete their analysis by the end of 2003. We anticipate the results will assist the interagency effort.

The Commission is ready to assist the Service and others in any way we can. Please let us know how we can help get the interagency task force up and running effectively.

Sincerely,

A handwritten signature in black ink that reads "David Cottingham". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

David Cottingham
Executive Director

Cc: Laurie Allen
Lindy S. Johnson, Esq.
Rebecca Lent
Gregory K. Silber, Ph.D.