

## **APPENDIX F**

### **Coordination Letters**

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**Coastal Zone Management Act  
Consistency Determination Letters**

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Pursuant to the Coastal Zone Management Act, on August 4, 2006, NMFS mailed a regional coastal zone consistency determination to the 15 states potentially affected by the rulemaking. The contacts and addresses for the state coastal zone programs are listed below. NMFS received concurrence from nine states. The coastal zone consistency determination and the state-response letters follow the distribution list.

<p>Mr. Elder Ghigharelli          Department of the Environment          18 Washington Blvd.          Baltimore, MD 21230</p>	<p>Mr. Richard Chinnis          Director, Regulatory Programs          Office of Ocean and Coastal Resource Management          Department of Health and Environmental Control          1362 McMillian Avenue, Suite 400          Charleston, SC 29405-2029</p>
<p>Ms. Kim Springer          Land Use Regulation Program          Department of Environmental Protection          PO Box 439          Trenton, NJ 08625</p>	<p>Ms. Susan Love          Delaware Coastal Programs          Department of Natural Resources &amp; Environmental Control          89 Kings Highway          Dover, DE 19901</p>
<p>Mr. Tom Ouellette          Office of Long Island Sound Programs          Department of Environmental Protection          79 Elm Street, 3rd Floor          Hartford, CT 06106-5127</p>	<p>Ms. Kelie Moore          Coastal Zone Management Program          Department of Natural Resources          One Conservation Way, Suite 300          Brunswick, GA 31520 8687</p>
<p>Ms. Jasmin Raffington          Florida Coastal Management Program          Department of Environmental Protection          3900 Commonwealth Boulevard          Douglas Building, Mail Station 47          Tallahassee, FL 32399 3000</p>	<p>Mr. Larry Toth          Water Planning Office          Department of Environmental Protection          400 Market Street, 15<sup>th</sup> Floor          PO Box 2063          Harrisburg, PA 17105-2063</p>
<p>Mr. Todd Burrowes          State Planning Office          State House Station #38          184 State Street          Augusta, ME 04333</p>	<p>Mr. Chris Williams          New Hampshire Coastal Program          Department of Environmental Services          50 International Drive, Suite 200          Pease International Tradeport          Portsmouth, NH 03801</p>

<p>Mr. Alex Strycky Project Review Coordinator Office of Coastal Zone Management Executive Office of Environmental Affairs 251 Causeway Street, Suite 900 Boston, MA 02114</p>	<p>Mr. Steven C. Resler Deputy Bureau Chief Division of Coastal Resources and Waterfront Revitalization – Department of State 41 State Street Albany, NY 12231 0001</p>
<p>Mr. Jeff Willis Coastal Resources Management Council Stedman Office Building 4808 Tower Hill Road Wakefield, RI 02879-1900</p>	<p>Mr. Steve Rynas Division of Coastal Management Department of Environment and Natural Resources 400 Commerce Avenue Morehead City, NC 28557-3421</p>
<p>Ms. Ellie Irons Program Manager Virginia Department of Environmental Quality Office of Environmental Impact Review PO Box 10009 Richmond, VA 23240</p>	



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

AUG 4 2006

RE: CZMA Consistency Determination for Proposed Rule to Implement Operational Measure to Reduce the Threat of Ship Strikes to North Atlantic Right Whales.

Dear

Pursuant to the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 et seq. and 15 CFR part 930, subpart C, this document provides NOAA's National Marine Fisheries Service (NMFS), Office of Protected Resources' coastal zone consistency determination for the vessel operational measures associated with the North Atlantic Right Whale Ship Strike Reduction Strategy (Strategy) and proposed rule. This consistency determination was prepared in accordance with 15 CFR 930.36(e) and 930.39. Prior to making this consistency determination, NMFS sent a written request to your office (April 17, 2006) requesting a copy of your State's relevant enforceable policies.

Copies of NMFS' proposed rule (71 FR 36299) and Draft Environmental Impact Statement (DEIS) under the National Environmental Policy Act (NEPA) are enclosed with this letter.

## **I. Proposed Action**

The proposed operational measures include seasonal and/or temporary vessel speed restrictions within defined areas off the east coast of the United States from Maine to northern Florida. The measures are primarily within 30 nautical miles (nm) of the coast, although in some cases they extend out to 200 nm. The proposed speed restriction within these areas is 10 knots. However, NMFS is accepting comments on alternative speed limits, including 12 knots and 14 knots, and the DEIS provides an analysis of all three speed limits.

The areas and times within which speed restrictions would apply reflect regional differences in right whale distribution and behavior, oceanographic conditions, and ship traffic patterns. To this end, NMFS has divided the East Coast into three regions: Northeastern US (NEUS), which includes waters off Maine, New Hampshire, and Massachusetts; Mid-Atlantic US (MAUS), which includes waters off southern Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia; and Southeastern US (SEUS), which includes waters off Georgia and Florida.



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The areas within which speed restrictions would apply are defined as follows (more detailed descriptions are provided in Table 1 and Chapter 2 of the DEIS):

- **Dynamic Management Areas (DMAs) – All three regions.** DMAs would impose temporary restrictions on vessels in areas where right whales are detected and no specific measure(s) are in place or in force at the time. Mariners would be required either to adhere to speed restrictions when in a DMA or to route around the DMA.
- **Seasonal Management Areas (SMAs) – All three regions.** In the MAUS, SMAs would consist of a 30 nm buffer around specified ports (see Table 1). In the NEUS, off the coast of Massachusetts, SMAs would apply in designated areas in Cape Cod Bay, Off Race Point, and Great South Channel. In the SEUS, there would be a Southeast SMA off the coasts of Georgia and northern Florida.

In addition, NMFS will be recommending shipping routes in the NEUS (Massachusetts) and SEUS. Recommended shipping routes (also referred to as shipping lanes) were proposed by NMFS and assessed by the U.S. Coast Guard (USCG) with regard to navigational and environmental safety through a Port Access Routes Study (PARS). Certain routes are under consideration, and if designated, use of these routes would be voluntary and would be implemented via non-regulatory measures. If recommended routes are established, NMFS intends to monitor their use. If the routes are not used routinely, consideration will be given to making them mandatory through regulation. Routing measures are not a part of the current proposed rulemaking.

The periods and areas of application for the proposed operational measures are shown in Table 1. The proposed measures would apply to vessels 65 feet and greater in overall length and subject to U.S. jurisdiction, except for those vessels owned, operated, or contracted by the Federal government.

## **II. Regional consistency determination with State Coastal Management Program's applicable enforceable policies.**

Because the geographical extent of the proposed operational measures covers waters off the U.S. East Coast from Maine to northern Florida, this consistency determination is regional, in accordance with 15 CFR § 930.36 (e). The following paragraphs address the common coastal effects, management implications, enforceable policies common to some or all of the affected states, and unique state policies.

### **a. Coastal Effects and Management Implications**

NMFS has determined that the proposed vessel operational measures would affect water uses<sup>1</sup> (also referred to as coastal uses) in the 15 states along the East Coast, with respect to vessel traffic and operations. The measures would restrict the speed at which a vessel may transit to or from a specific port; however, vessels would otherwise follow the same protocols entering the ports, and the proposed measures would not restrict access to the port. These speed restrictions

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<sup>1</sup> As defined in § 304 (18) of the CZMA.



only apply seaward of the COLREGS demarcation lines. The proposed operational measures would not affect navigational regulations such as “no wake zones,” pilot requirements, existing traffic separation schemes, or hazards to navigation. The proposed measures would not have any physical impacts on the coastal zone’s land component, including port facilities, beaches, wetlands, or other natural coastal resources.

As noted above, NMFS proposed recommended routes for vessels entering/exiting the Cape Cod Canal, Ports of Brunswick, GA, Fernandina, FL, and Jacksonville, FL to the USCG, which published a PARS report assessing these routes on May 24, 2006.<sup>2</sup> The PARS report considered hazards to navigation and identified revisions to the NMFS-proposed routes. If established, the recommended routes would not require any dredging or other physical alteration. The routes would minimize vessel transit time in designated right whale critical habitat, and would be consistent with policies regarding marine and wildlife habitat, threatened and endangered species, and natural resources. These recommended routes would maintain access to the three affected ports in the southeast and regional ports in Cape Cod Bay and Massachusetts Bay.

DMAs have the potential to occur in state waters. Water uses may be affected by the implementation of a DMA, as vessels would either route around the area or travel through while adhering to speed restrictions. However, DMAs would be temporary and limited in extent. Any effects on water use are expected to be *de minimis*.<sup>3</sup>

None of the proposed operational measures would have an effect on water quality in state waters as they would not affect the strict Federal and state clean water legislation that prohibits the discharge of vessel pollution in state waters. The measures may have a positive effect on air quality because reducing vessel speed has been shown to reduce emissions (DEIS Section 4.3.2.3).<sup>4</sup> Any impacts on marine species in addition to the right whale are expected to be beneficial. There are no foreseeable impacts on cultural or historic resources.

Implementation of the proposed operational measures would have economic impacts, the burden of which would primarily fall on the private sector. Public facilities and activities would be minimally affected. Therefore, the estimated economic impacts are not expected to compromise the economic value of public trust areas.

A more detailed evaluation of the impacts of the proposed measures can be found in the enclosed DEIS. Impacts on the right whale and other marine species are addressed in Section 4.1 and 4.2; impacts on the physical environment are addressed in Section 4.3; and socio-economic impacts are addressed in Section 4.4.

#### **b. Consistency with State CZMA Enforceable Policies**

This section describes how the proposed vessel operational measures are consistent with the applicable enforceable policies contained in the potentially affected states’ respective federally-

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<sup>2</sup> The PARS report is available at <http://dms.dot.gov>, Docket # USCG-2005-20380-36.

<sup>3</sup> As defined in 15 CFR § 930.33(a)(3).

<sup>4</sup> Also see California’s Department of Environmental Protection – Voluntary Speed Reduction Program at <http://www.arb.ca.gov>.

approved CZMA programs. Part 1 of this section addresses common policies across the potentially affected states; Part 2 addresses policies that are unique to a particular state.

### **1. Enforceable Policies Common to Some or All of the Affected States**

After reviewing the enforceable policies from the potentially affected states, NMFS has identified the following policies common to some or all of the states:

#### Endangered species conservation and management

The proposed operational measures are consistent with state policies regarding endangered species because their objective is to reduce threats to, and help the recovery of, a critically endangered species, the North Atlantic right whale. As mentioned in Section 4.2 of the DEIS, several other endangered species may also benefit from the proposed measures.

#### Conserve public trust areas or public access for recreation

The proposed operational measures are consistent with state policies regarding public trust areas because they would not impede public recreation and navigation within, and would enhance the biological value of, these areas. As mentioned earlier, economic impacts are unlikely to affect the economic value of public trust areas. While navigation would be affected, only vessels 65 feet and longer would be required to abide by the vessel speed restriction measures during the seasonal implementation periods. Also, the proposed measures would only apply seaward of the COLREGS demarcations lines; therefore, inland waters, rivers, and bays would not be affected. Finally, the proposed measures consist primarily of speed restrictions and, therefore, would allow for public access anywhere in state waters. Recommended routes (DEIS Sections 2.1.1.2 and 2.1.3.1) may alter current vessel traffic patterns for certain size class vessels. However, the routes would mainly be utilized by large commercial vessels and would not interfere with the public right of navigation since they would be voluntary.

#### Fisheries and marine habitat conservation and management

The proposed operational measures are consistent with state policies regarding fisheries because they would not affect fish or their habitat, or interfere with any state fisheries regulations.

#### Ports

The proposed operational measures are consistent with state policies regarding ports, because they do not involve port development, would not alter port infrastructure, and would not require dredging or any physical changes to the terminals or piers. An analysis of the indirect economic impacts of the proposed measures on port areas and the surrounding communities is provided in Section 4.4.3 of the DEIS. These impacts would be minor in comparison to the direct economic impacts on the shipping industry.

#### Waterways, navigable waters, and right of passage

The proposed operational measures are consistent with state policies regarding the right of use of all navigable waterways because they would not restrict access to navigable

waters; rather, they would limit vessel speed in certain state waters during seasons when whales are present in these waters. Recommended routes are voluntary routes that would be established to avoid areas with high right whale densities; however, a vessel could route outside of these lanes to reach surrounding navigable waters.

### Air Quality

The proposed operational measures are consistent with state policies regarding air quality because, as mentioned above, they may improve air quality in port areas; it has been shown that reducing vessel speed reduces pollutant emissions.

## **2. Unique State policies**

The states of Massachusetts, Connecticut, and Georgia enforce the following policies, which are unique to their states and, therefore, are not included in the above analysis.

### Massachusetts' Port Policy # 3

Massachusetts' Designated Port Areas (DPAs) would not be affected by the proposed operational measures. There would be no change to the capacity of DPAs to accommodate water-dependent industrial uses or to exclude such uses from tidelands and any other DPA lands over which a state agency exerts control by virtue of ownership, regulatory authority, or other legal jurisdiction. The proposed measures would alter vessel speed into certain port areas seaward of the COLREGS lines; however, vessels are generally required to slow down within several miles of a port due to pilotage requirements; therefore, the measures would have a lesser effect on vessels within the vicinity of a port area in state waters. In areas affected by the recommended shipping routes, the approach route to the port would be altered, although compliance would be voluntary. But there would be no restriction to port access and no decrease in the DPA's capacity to accommodate water-dependent uses.

### Massachusetts' Ocean Resources Policy #2 and #3

Massachusetts has two specific policies regarding state consideration and accommodation of marine mineral extraction and offshore sand and gravel mining. Though the primary focus of the policies is the potential impact of such activities on marine resources, the state specifically requested that the consistency determination address how the proposed operational measures would affect vessels involved in marine extraction activities.

The proposed operational measures would neither promote nor discourage marine mineral extraction activities. While they would affect the speed and, in some cases, the routes of vessels transiting to and from marine mineral extraction sites or offshore sand and gravel mining sites, the measures would in no way impede the actual extraction of marine minerals and offshore sand and gravel mining or interfere with Massachusetts' ability to accommodate these activities.

Additionally, the policies state that Massachusetts will consider marine mineral activities when the protection of marine resources (i.e., whales), among other things, can be

assured. Since speed restrictions would enhance the protection of marine resources, the proposed measures are consistent with the policies.

#### Massachusetts' Energy Policy # 1

Massachusetts has a policy regarding the siting of coastally dependent energy facilities. In the light of this policy, the state specifically requested this determination address the effects of the proposed operational measures on vessels involved in the construction and maintenance of coastal energy facilities.

While the proposed measures would affect the speed and/or routing of vessels involved in the construction and maintenance of coastally dependent energy facilities, (i.e., offshore wind farms, deepwater ports, etc.), they would have no impact on the ability of vessels to gain access to these facilities. The economic impacts of the proposed measures on vessels that service coastally dependent energy facilities are covered in the analysis of impacts to commercial vessels 65 feet and longer presented in Sections 4.4.1 and 4.4.2 of the DEIS. Such impacts would be only to support vessels. The siting of coastally dependent energy facilities, which is the main focus of the policy, would not be affected. The proposed operational measures are consistent with energy policy # 1.

#### Massachusetts' Growth Management Principle # 2

This policy ensures that state and federally funded transportation and wastewater projects primarily serve existing developed areas; it assigns the highest priority to projects that meet the need of urban and community development centers. This policy is relevant in the present context because Massachusetts has a reasonable expectation that federally funded high-speed ferry service will become available in the foreseeable future.

The impacts of the proposed operational measures on high-speed ferry service are analyzed in Section 4.4.5 of the DEIS. Although ferry service would be affected, impacts would be only to vessels that operate seaward of the COLREGS demarcation lines. Also, the proposed speed restrictions would be seasonal and may or may not occur during the peak season for ferry service. Those vessels that would be affected could remain in operation, though at reduced speeds, and could continue to meet the needs of urban centers; therefore, the operational measures are consistent with this policy.

#### Connecticut's General Development Policy

Connecticut's General Development Policy is applicable to all proposed activities within Connecticut's coastal boundary and coastal area. This policy ensures that the development, preservation, or use of the land and water resources of the coastal area proceed in a manner consistent with the capability of the land and water resources to support development, preservation, or use without significantly disrupting either the natural environment or sound economic growth. The policy also aims to coordinate the planning and regulatory activities of public agencies at all levels of government, to ensure maximum protection of coastal resources while minimizing conflicts and disruption of economic development.

The proposed operational measures are consistent with this policy because while there would be economic impacts on several port areas in Connecticut (see Section 4.4.3 of the DEIS), these impacts would be minimal and would not significantly disrupt sound economic growth or the natural environment. In addition, NMFS is coordinating with the state of Connecticut and all potentially affected states to ensure protection of coastal resources and minimize conflicts.

#### Connecticut's Boating Policy

Connecticut's boating policy encourages use of coastal waters for recreational boating while protecting coastal resources and facilities from adverse impacts of such uses and promoting the protection and upgrading of the facilities serving the commercial fishing and recreational boating industries.

The proposed operational measures are consistent with this policy because they aim to protect against adverse impacts of vessels 65 feet and greater in length, including recreational vessels, on North Atlantic right whales. Recreational boating would not be affected aside from the speed restrictions on boats 65 feet and longer and if utilized, the recommended routes. Although large vessels may be required to abide by speed restrictions during specified seasons, most recreational and fishing boats are less than 65 feet in length. Therefore, the proposed measures would not apply to them. Economic impacts on commercial fishing and recreational boating are analyzed in Sections 4.4.4 to 4.4.7 of the DEIS.

#### Georgia's Boat Safety Policy

Georgia's Boat Safety Act establishes boating safety zones for a distance of 1,000 feet from the high-water mark of several islands. All motorized craft are prohibited from these waters, except at certain pier and marina access points. The proposed operational measures are consistent with this boat safety policy because they would not alter shipping lanes at, or inland of, the port access points; only the approaches to these points would be slightly altered.

### **III. Conclusion and Consistency Determination**

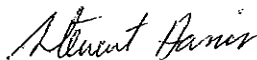
Based on the information above, NMFS has determined that the vessel operational measures in the proposed rule are consistent to the maximum extent practicable with the enforceable policies of the potentially affected states' coastal zone management programs. Please submit your state agency's concurrence with, or comments on, this determination within 60 days from the receipt of this letter (15 CFR 930.41) to the following address:

Stewart Harris  
Acting Division Chief,  
Office of Protection Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

If NMFS does not receive a reply from a state agency within 60 days from receipt of the consistency determination and supporting information as required by 15 CFR § 930.39(a), and there has not been an extension of the 60-day review period, then NMFS will assume concurrence.

Please contact Jessica Gribbon, NMFS, at (301) 713-2322, ext. 153, if you have questions about the determination findings.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stewart Harris".

Stewart Harris  
Acting Division Chief  
Marine Mammal and Sea Turtle  
Conservation Division

Enclosures

Table 1  
Summary of the Proposed Operational Measures

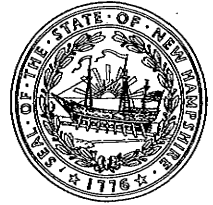
Region	Proposed Measures	Areas of Application	Period of Application
Southeast (SEUS)	Speed restrictions in the Southeast SMA and shipping lanes	Ports of Jacksonville, FL; Fernandina, FL; Brunswick, GA; and SE management area	November 15 to April 15
Mid-Atlantic (MAUS)	SMAs around nine port areas with speed restrictions	South & east of Block Island Sound (Montauk Point to western end of Martha's Vineyard)	November 1 to April 30
		Ports of New York & New Jersey	
		Delaware Bay (Ports of Philadelphia & Wilmington)	
		Entrance to Chesapeake Bay (Ports of Hampton Roads & Baltimore)	
		Ports of Morehead City & Beaufort, NC	
		Port of Wilmington, NC	
		Port of Georgetown, SC	
		Port of Charleston, SC	
Northeast (NEUS)	Speed restrictions in the CCB seasonal management area and shipping lanes	Cape Cod Bay	January 1 to May 15
	Speed restrictions in the ORP seasonal management area	Off Race Point	March 1 to April 30
	Speed restrictions in GSC seasonal management area	Great South Channel	April 1 to July 31
	DMAs	Gulf of Maine area	Year round
All Three Regions	DMAs	US territorial waters and EEZ	Year round

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The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

September 18, 2006

Stewart Harris  
Acting Division Chief  
Marine Mammal & Sea Turtle Conservation Division  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Silver Spring, MD 20910

**RE: File No. 2006-17; Proposed Rule to Implement Operational Measures to Reduce the Threat of Ship Strikes to North Atlantic Right Whales**

Dear Mr. Harris:

The New Hampshire Coastal Program has received and reviewed your consistency determination pursuant to Section 307 (c) of the Coastal Zone Management Act, 16 U.S.C. § 1456(c)(1). After reviewing the subject rule, we find it be consistent, to the maximum extent practicable, with the enforceable policies of the New Hampshire Coastal Program's federally approved coastal management program.

Should you have any questions, please feel free to contact me at (603) 559-0025.

Sincerely,

Christian P. Williams  
Federal Consistency Coordinator  
New Hampshire Coastal Program

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STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL  
DIVISION OF SOIL AND WATER CONSERVATION

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

DELAWARE COASTAL  
MANAGEMENT PROGRAM

TELEPHONE: (302) 739-9283  
FAX: (302) 739-2048

September 13, 2006

Stewart Harris, Acting Division Chief  
Office of Protection Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**RE: *Delaware Coastal Management Federal Consistency Certification  
Proposed Rule to Implement Operational Measures to Reduce Atlantic Right  
Whale Strikes***

Dear Mr. Harris:

The Delaware Coastal Management Program (DCMP) has received and reviewed your consistency determination for the above referenced project. Based upon our review and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for the Proposed Rule to Implement Operational Measures to Reduce Atlantic Right Whale Strikes.

If you have any questions regarding this determination please do not hesitate to contact me or Tricia Arndt of my staff at (302) 739-9283.

Sincerely,

A handwritten signature in black ink, appearing to read "S.W. Cooksey".

Sarah W. Cooksey, Administrator  
Delaware Coastal Management Program

SWC/tka

cc: File 06.123  
Roy Miller-DFW

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North Carolina Department of Environment and Natural Resources  
**Division of Coastal Management**

Michael F. Easley, Governor

**Charles S. Jones, Director**

William G. Ross Jr., Secretary

August 10, 2006

Stewart Harris  
Acting Division Chief  
Marine Mammal and Sea Turtle Conservation Division  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**SUBJECT:** Status of Consistency Determination Submission for the Proposed Rule to Implement Operational Measures to Reduce North Atlantic Right Whale Ship Strikes, Offshore, North Carolina (DCM#20060066)

Dear Mr. Harris:

We received your consistency determination on August 7, 2006 regarding the proposed rule to implement operational measures to reduce the potential for the North Atlantic Right Whale to be struck by ships, offshore, North Carolina. On August 8, 2006 we initiated the public review period. The project has been distributed to State agencies that would have a regulatory interest in the proposed activity for review and comment. The public review period will close on September 1, 2006. We intend to make a decision regarding whether the proposed activity would be consistent with the State's coastal program soon after.

Pursuant to 15 CFR 930.41 the State of North Carolina has sixty (60) days from the receipt of the consistency determination to either concur or object to your consistency determination unless an extension is requested. The sixtieth day is October 6, 2006.

The State is entitled to an extension of up to fifteen (15) days if additional review time is necessary. Furthermore, final Federal agency action cannot be taken sooner than ninety (90) days from the State's receipt of the consistency determination unless State concurrence is obtained. Please feel free to contact me at 252-808-2808 if you have any questions. Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,

Stephen Rynas, AICP  
Federal Consistency Coordinator

Cc: Doug Huggett, Division of Coastal Management

400 Commerce Avenue, Morehead City, North Carolina 28557-3421  
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: [www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)

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North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Michael F. Easley, Governor

Charles S. Jones, Director

William G. Ross Jr., Secretary

**MEMORANDUM**

August 8, 2006

TO: Steve Everhart  
Division of Inland Fisheries, Habitat Conservation Program  
NC Wildlife Resources Commission  
127 Cardinal Drive Extension  
Wilmington, NC 28405-5406

FROM: Stephen Rynas, AICP; Federal Consistency Coordinator

SUBJECT: Consistency Determination Submission Proposed Rule Reduce the Threat of Ship Collisions with North Atlantic Right Wales (DCM#20060066)

LOCATION: Offshore, North Carolina



The above listed document is being circulated for review and comment by **September 1, 2006**. Your responses will assist us in determining whether the proposed project would be consistent with the State's Coastal Management Program. If the proposed project does not conform to your requirements, please identify the measures that would be necessary to bring the proposed project into conformance. If you have any additional questions regarding the proposed project you may contact me at 252-808-2808 or e-mail me at: "stephen.rynas@ncmail.net".

REPLY

- No Comment.
- This office supports the project as proposed.
- Comments to this project are attached.
- This office objects to the project as proposed.

Signed: *Steve Everhart*

Date: 8/21/06

CORRECTIONS

Please identify any corrections, additions, or deletions that should be made in terms of contact information.

RETURN COMPLETED FORM

to  
Stephen Rynas, Federal Consistency Coordinator  
NC Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557-3421



North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Charles S. Jones, Director

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AUG 25 2006

Michael F. Easley, Governor

William G. Ross Jr., Secretary  
Morehead City DCM

## MEMORANDUM

**TO:** Stephen Rynas, Federal Consistency Coordinator

**FROM:** John Cece, Coastal Management Representative, NE District *J. Cece*

**THROUGH:**

**DATE:** August 21, 2006

**SUBJECT:** Project Number: DCM#20060064; Dated: July 24, 2006  
Description of Project: Draft EIS on the Proposed Strategy to Reduce Ship Strike Deaths to the North Atlantic Right Whale  
Proposed by: National Oceanic and Atmospheric Administration  
Location: Coastal North Carolina

**REFERENCE:** (a) Memo from Federal Consistency Coordinator, dated July 24, 2006

### Type of Review Performed:

- General Comments (Only of informational interest)**
- Determination of Permits Needed
- Identification of Land Use Plan Issues
- NEPA or NCEPA Comments
- Preliminary Federal/State Consistency Comments**
- Federal/State Consistency Comments

### Assessment:

- This office objects to the project as proposed.
- Comments on this project are attached.**
- This office supports the project proposal.
- No Comment

Signed:

\_\_\_\_\_  
District Manager, Northeast District

Date:

\_\_\_\_\_

**Attachment of Comments**

**Consistency Memo Dated: August 21, 2006**

**From: Field Rep John Cece**

**Comments:**

**I have reviewed the executive summary of the Draft EIS, 15 NCAC 07H, and 15 NCAC 07M and determined that the Division of Coastal Management's rules and policies do not address the actions proposed by NOAA. Therefore, the proposed actions are not inconsistent with any of the Division of Coastal Management's rules and policies.**

**From: District Manager (Position Currently Vacant)**

**Comments:**





RECEIVED

JUL 24 2006

North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

COASTAL MANAGEMENT  
ELIZABETH CITY

Michael F. Easley, Governor

Charles S. Jones, Director

William G. Ross Jr., Secretary

MEMORANDUM

July 24, 2006

TO: John Cece  
Field Representative  
DCM - Elizabeth City Office  
1367 U.S. 17 South  
Elizabeth City, NC 27909-7634

FROM: Stephen Rynas, AICP; Federal Consistency Coordinator

SUBJECT: Draft Environmental Impact Statement on the Proposed Strategy to Reduce Ship Strike Deaths to the North Atlantic Right Whale (DCM#20060064)

LOCATION: Coastal North, North Carolina

The document referenced above is being circulated for DCM environmental review and comment by **July 28, 2006**. This document is available online at <http://www.nmfs.noaa.gov/pr/shipstrike>. If you cannot access it, please let me know.

Please review the proposed project to assess the environmental, regulatory, and land issues raised by the proposed project. DCM previously reviewed this project under the scoping phase. Attached is a copy of the comments made as part of the scoping phase. Comments now relate to environmental adequacy of the draft. This includes the project's anticipated conformance with: the local land use plan, CAMA, and the Dredge and Fill law. Additionally, would the proposed project have any effects on any on any Areas of Environmental Concern? If you have any additional questions regarding the proposed project you may contact me at 252-808-2808 or by e-mail at Stephen.Rynas@ncmail.net.

REPLY

No Comment.  
 Comments to this project are attached.  
Signed: John Cece

Date: 8/1/06

CORRECTIONS

Please identify any corrections, additions, or deletions that should be made in terms of contact information.

RETURN COMPLETED FORM

to  
Stephen Rynas, Federal Consistency Coordinator  
NC Division of Coastal Management  
400 Commerce Avenue  
Morehead City, NC 28557-3421



North Carolina Department of Environment and Natural Resources  
**Division of Coastal Management**

Michael F. Easley, Governor

**Charles S. Jones, Director**

William G. Ross Jr., Secretary

August 31, 2006

Stewart Harris  
Acting Division Chief  
Office of Protection Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

**SUBJECT: CD06-044 - Consistency Concurrence for the Implementation of the Proposed Rule to Implement Operational Measures to Reduce North Atlantic Right Whale Ship Strikes, Offshore, North Carolina (DCM#20060066)**

Dear Mr. Harris:

The Division of Coastal Management (DCM) received (August 7, 2006) a consistency determination from the National Marine Fisheries Service (NMFS) finding that the implementation of the proposed rule to implement operational measures to reduce North Atlantic Right Whale ship strikes would be consistent with the State's coastal management program. North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, Chapter 7 of Title 15A of North Carolina's Administrative Code, and the land use plan of the County and/or local municipality in which the proposed project is located. It is the objective of the Division of Coastal Management (DCM) to manage the State's coastal resources to ensure that proposed Federal activities would be compatible with safeguarding and perpetuating the biological, social, economic, and aesthetic values of the State's coastal waters.

To solicit public comments, DCM circulated a description of the proposed project to State agencies that would have a regulatory interest. No comments asserting that the proposed activity would be inconsistent with the State's coastal management program were received. A copy of the responses received has been attached for reference.

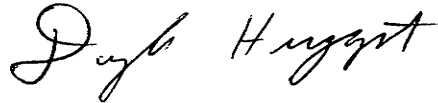
DCM has reviewed the submitted information pursuant to the management objectives and enforceable policies of Subchapters 15A NCAC 07H and 15A NCAC 07M of Chapter 7 of Title 15A of North Carolina's Administrative Code which are a part of the State's certified coastal management program and concurs that the proposed Federal activity is consistent, to the maximum extent practicable, with the enforceable policies of North Carolina's coastal management program.

Should the proposed action be modified, a revised consistency determination could be necessary. This might take the form of either a supplemental consistency determination pursuant to 15 CFR 930.46, or a new consistency determination pursuant to 15 CFR 930.36. Likewise, if further project assessments

400 Commerce Avenue, Morehead City, North Carolina 28557-3421  
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: [www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)

reveal environmental effects not previously considered by the proposed development, a supplemental consistency certification may be required. If you have any questions, please contact Stephen Rynas at 252-808-2808. Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,

A handwritten signature in cursive script that reads "Doug Huggett".

Doug Huggett  
Manager, Major Permits and Consistency Unit

Mike Street, NC Division of Marine Fisheries  
Steve Everhart, NC Wildlife Resources Commission

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Pennsylvania Department of Environmental Protection

---

Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063  
August 8, 2006

Water Planning Office

717-772-5622

Stewart Harris  
Acting Division Chief  
Office of Protection Resources  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Re: DEP File No. CZ7:FDP

Dear Mr. Harris:

The Pennsylvania Coastal Resources Management (CRM) Program has reviewed information received in this office on August 8, 2006, concerning the **Proposed Rule to Implement Operational Measures to Reduce the Threat of Ship Strikes to North Atlantic Right Whales.**

We concur with your determination that this federal action is consistent with Pennsylvania's CRM Program.

Sincerely,

Lawrence J. Toth  
Environmental Planner  
Coastal Resources Management Program



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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

Oliver H. Stedman Government Center  
4808 Tower Hill Road, Suite 3  
Wakefield, R.I. 02879-1900

(401) 783-3370  
FAX: (401) 783-3767

August 10, 2006

Mr. Stewart Harris  
Acting Division Chief  
Office of protection resources  
National Marine Fisheries Service  
Office of protected resources F/RP2  
1315 East-West Highway  
Silver Spring, MD 20910

RE: CRMC File No. 2006-08-038.

Dear Sirs:

In accordance with Title 15 of the Code of Federal Regulations, Part 930, Subpart C (Consistency for Federal Activities) and review of plans entitled:

**Proposed Rule to Implement Operational measure to Reduce the Threat of Ship Strikes to north Atlantic Right Whales,**

The Coastal Resources Management Council hereby concurs with the determination that the referenced project is consistent with the federally approved Rhode Island Coastal Resources Management Program and applicable regulations therein.

Please contact this office at (401) 783-3370 should you have any questions.

Sincerely,

Grover J. Fugate, Executive Director  
Coastal Resources Management Council

/pj

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THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
OFFICE OF COASTAL ZONE MANAGEMENT  
251 Causeway Street, Suite 800, Boston, MA 02114-2136  
(617) 626-1200 FAX: (617) 626-1240

August 9, 2006

Stewart Harris  
U.S. Department of Commerce  
NOAA/NMFS  
Silver Spring, MD 20910

RE: CZM Federal Consistency Review of Rule to Implement Operational Measure to Reduce the Threat of Ship Strikes to North Atlantic Right Whales; Statewide.

Dear Mr. Harris:

The Massachusetts Office of Coastal Zone Management (CZM) has received the necessary information to initiate our federal consistency review for the proposed project referenced above.

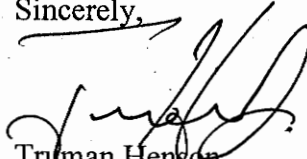
Notice that this proposal is undergoing consistency review by CZM will be published in the next edition of the Environmental Monitor. The published date of that Monitor will initiate a 21-day public comment period. Enclosed please find a copy of the schedule that we will follow during our consistency review. Although we have 60 days (extendable with your permission) in which to review your determination and to concur or object, we will make a vigorous effort to complete our review shortly after the close of the comment period.

**Note:** We cannot complete our review and issue a decision of consistency with our program policies until all applicable state environmental agency permits, licenses, certificates and other authorizations have been issued. Further, if they are required, federal permits cannot be issued until the federal permitting agency receives a consistency concurrence letter from CZM for the proposed project. To keep our review timely, we suggest that you forward copies of applicable state environmental agency permits, licenses, etc. to CZM as you receive them.

Future communications with this office regarding the technical aspects of the above-referenced project should be directed to Joe Pelczarski who will be conducting the federal consistency review of this project for the CZM Office. Please call me at (617) 626-1219 if you have any procedural questions about the review process.



Sincerely,

A handwritten signature in black ink, appearing to read 'Truman Henson', written in a cursive style.

Truman Henson  
Project Review Coordinator

TH/pb  
Enclosure  
czm#

CZM Federal Consistency Review Schedule  
For a Federal Agency Activity\*

Review Steps

1. Document Receipt  
Received consistency determination on Aug. 6, 2006.
  
  2. Public Notice
    - (a) Notice of the initiation of this federal consistency review will appear in the next edition of the MEPA Monitor which will be published on or about Aug. 23, 2006.
  
    - (b) Publication in the Monitor begins a 21 day public comment period which will close on or about Sept. 13, 2006
  
  3. CZM must issue its consistency decision within 60 days of commencement of our review unless granted an extension by the federal project proponent. The review period closes and a consistency decision will be issued no later than Oct. 6, 2006.
- \* 301 CMR 21.01 – 21.04, 15 CFE 930.41

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# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

Fax (804) 698-4500 TDD (804) 698-4021

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
1-800-592-5482

September 26, 2006

Mr. Stewart Harris  
Acting Division Chief,  
Office of Protection Resources  
National Marine Fisheries Service  
1301 East West Highway  
Silver Spring, Maryland 20910

RE: Consistency Determination for the Proposed Rule to Implement Operational Measure to Reduce the Threat of Ship Strikes to North Atlantic Right Whales, DEQ 06-147F.

Dear Mr. Harris:

As described in your August 4, 2006 letter, the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) proposes to implement the operational measures of NOAA's Ship Strike Reduction Strategy in waters off the East Coast of the United States (US). The purpose of the measure is to reduce vessel strikes to the endangered North Atlantic right whale. Due to regional differences in right whale distribution and behavior, oceanographic conditions, and ship traffic patterns, the proposed operational measures would apply only in certain areas and at certain times of the year, or under certain conditions. All vessels 65 feet and greater in overall length and subject to the jurisdiction of the US would be required to abide by the operational measures, except for vessels owned or operated by, or under contract to the Federal government. The measures also apply to all other vessels 65 feet and greater in overall length entering or departing a port or place under the jurisdiction of the US. NMFS finds the proposed action consistent to the maximum extent practicable with the enforceable policies of the Virginia Coastal Resources Management Program (VCP).

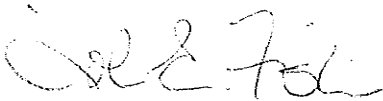
Pursuant to the Coastal Zone Management Act of 1972, as amended, the proposed action must be conducted in a manner consistent with the VCP. The VCP consists of a network of enforceable policies administered by several agencies. In order to be

consistent with the VCP, the NMFS must obtain all the applicable permits and approvals listed under the enforceable policies prior to commencing the project.

Fisheries Management is one of the VCP enforceable policies. The Virginia Marine Resources Commission (VMRC), which has responsibility for fisheries management activities within the Commonwealth's nearshore and offshore waters, was invited to comment. VMRC did not indicate that the consistency determination is inconsistent with the fisheries management enforceable policy of the VCP under its jurisdiction. Accordingly, DEQ concurs with NMFS's determination that the Proposed Rule to Implement Operational Measure to Reduce the Threat of Ship Strikes to North Atlantic Right Whales is consistent with the VCP.

Thank you for the opportunity to comment. If you have questions, please call me at (804) 698-4339.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Fisher".

John E. Fisher  
Environmental Impact Review Coordinator  
Office of Environmental Impact Review

Cc: Jack Travelstead, VMRC  
Ellie Irons, DEQ-OEIR



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



October 3, 2006

Stewart Harris
Acting Division Chief
Office of Protected Resources
National Marine Fisheries Service (NMFS)
1315 East-West Highway
Silver Spring, MD 20910

Re: Operational Measures to Reduce the Threat of Ship Strikes to North Atlantic Right Whales;
Consistency Concurrence

Dear Mr. Harris:

Your consistency determination for proposed operational measures to reduce the threat of ship strikes to North Atlantic Right Whales was received on August 9, 2006. That determination is required by Section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, Subpart C of 15 Code of Federal Regulations (CFR) Part 930, and Section II, Part VII(c) of the State of Connecticut Coastal Management Program and Final Environmental Impact Statement.

The proposed measures include seasonal and/or temporary vessel speed restrictions within defined areas off the east coast of the United States from Maine to northern Florida, and would apply to all vessels 65 feet and greater in overall length. The defined areas include a Dynamic Management Area (DMA) paralleling the East coast and extending offshore for 200 nautical miles, and a Seasonal Management Area (SMA) covering a 30 nm-wide area extending south and east of the mouth of Block Island Sound, from Montauk Point, Long Island, to the western end of Martha's Vineyard. Within the DMA, temporary restrictions would be imposed on vessels in areas where right whales are detected and no specific measure(s) are in place or in force at the time. Mariners would be required either to adhere to speed restrictions when in a DMA or to route around the DMA. The proposed seasonal speed restriction within these areas is 10 knots. This Department concurs with your determination that the proposed measures are consistent to the maximum extent practicable with Connecticut's approved Coastal Management Program, pursuant to Section 22a-96(c) of the Connecticut General Statutes.

Any fisheries management plans that have a potential to affect the Connecticut coastal area, as well as any related Environmental Impact Statements and Regulatory Impact Reviews, should be sent to Mr. Brian P. Thompson, Director of the DEP Office of Long Island Sound Programs as early as possible in the established review period, after the final contents of the documents have been determined.

Yours truly,

[Handwritten signature of Gina McCarthy]

Gina McCarthy
Commissioner

GM/TO/to

- cc: Allison Castellan, OCRM
Edward Parker, CT DEP
Eric Smith, CT DEP

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## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Land Use Regulation Program  
501 East State Street, P.O. Box 439  
Trenton, New Jersey 08625-0439  
Telephone # (609) 292-0060  
Fax # (609) 292-8115 or (609) 777-3656

JON S. CORZINE  
Governor

LISA P. JACKSON  
Commissioner

Stewart Harris, Acting Division Chief  
Marine Mammal and Sea Turtle Conservation Division  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, Maryland 20910

OCT 12 2006

RE: Federal Consistency Determination for Proposed Rule to Implement Operational Measures to reduce the Threat of Ship Strikes to North Atlantic Right Whales  
File No. 0000-06-0023.1 CDT 060001

Dear Acting Division Chief Harris:

The New Jersey Department of Environmental Protection, Land Use Regulation Program, acting pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972 (P.L. 92-583) as amended, finds the above referenced request to be consistent with New Jersey's Coastal Zone Management Program. The finding was made with reference to New Jersey's Rules on Coastal Zone Management, specifically N.J.A.C. 7:7E-8.2 (Marine Fish and Fisheries).


The proposed Rule is found in the Federal Register, Volume 71, No. 122 at 50 CFR Part 224, Docket No.0405060143-6016-02, I.D. 101205B, RIN 0648-AS36 and entitled "Endangered Fish and Wildlife; Proposed Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North American Right Whales." The proposed action is to implement the operational measures of NOAA's Ship Strike Reduction Strategy in waters off the East Coast of the United States (US) to reduce vessel strikes to the endangered North Atlantic right whale. Due to regional differences in right whale distribution and behavior, oceanographic conditions, and ship traffic patterns, the proposed operational measures would apply only in certain areas and at certain times of the year, or under certain conditions. To account for these regional variations, the US East Coast is divided into three implementation regions: northeastern US (NEUS), mid-Atlantic US (MAUS), and southeastern US (SEUS). All vessels 65 ft (19.8 m) and greater in overall length and subject to the jurisdiction of the US would be required to abide by the operational measures, except for vessels owned or operated by, or under contract to the Federal government. The measures also apply to all other vessels 65 ft (19.8 m) and greater in overall length entering or departing a port or place under the jurisdiction of the US.

The proposed measures would include the creation of Seasonal Management Areas (SMAs). SMAs are pre-determined and established areas in each of the three regions, all with

seasonal speed restrictions. In the SEUS, an SMA would be established off the coast of Georgia and Florida from November 15 to April 15. In the MAUS, SMAs would be established with a 30 nautical mile (nm) (56 km) radius around nine ports in the region from November 1 to April 30. In the NEUS, SMAs would be established in Cape Cod Bay (January 1 - May 15), Off Race Point (March 1 - April 30), and Great South Channel (April 1 - July 31). Within the SMAs and during designated time frames only, vessels would be required to proceed at a reduced speed (10, 12, or 14 knots). "November 2006 – October 2007 Tilefish Specifications Draft Environmental Assessment, Essential Fish Habitat Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis" prepared by Mid-Atlantic Fishery Management Council and the National Marine Fisheries Service, dated June 30, 2006. The proposal would adopt the preferred alternative and specify the quota of 2.175 million pounds (987 mt) of live weight.

Thank you for your attention to and cooperation with New Jersey's Coastal Zone Management Program. If you have any questions with regard to this determination, please do not hesitate to contact Andrew Heyl, Supervisor, at the above address or at 609-984-0288.

Sincerely,

  
Kevin J. Broderick, Manager  
Bureau of Coastal Regulation

- c. Tom McCloy, DFW  
Kim Springer, Planning

**State Clearinghouse Review Letters**

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Nine of the 15 potentially affected states have a state clearinghouse through which they distribute environmental impact statements to pertinent state agencies. NMFS distributed a copy of the DEIS and a cover letter to the nine participating states listed below. Six states responded, and several states provided comments on the DEIS. The cover letter and state responses follow the distribution list.

Ms. Linda Janey State Clearinghouse Review 301 W. Preston Street Suite 101 Baltimore, MD 21201	Mr. Jim Taylor Director, New Hampshire Office of Energy and Planning Attn: Intergovernmental Review Process 57 Regional Drive Concord, New Hampshire 03301-8519
Joyce Karger Department of Administration One Capitol Hill Providence, Rhode Island 02908-5870	Florida State Clearinghouse Department of Environmental Protection 3900 Commonwealth Blvd, M.S. 47 Tallahassee, Florida 32399-3000
Mr. Ken Koschek Office of Permit Coordination and Environmental Review PO Box 418 Trenton, NJ 08625-0418	Pennsylvania Department of Environmental Protection Policy Office Attention: John Dernbach Rachel Carson State Office Building, 15 <sup>th</sup> Floor 400 Market Street Harrisburg, PA 17105-2063
Ms. Chrys Baggett State Environmental Policy Act Coordinator North Carolina State Clearinghouse 1301 Mail Service Center Raleigh, NC 27699-1301	Ms. Bonny Anderson State Clearinghouse Office of State Budget 1201 Main Street, Suite 950 Columbia, SC 29201
Ms. Barbara Jackson Georgia State Clearinghouse 270 Washington Street, SW, 8 <sup>th</sup> Floor Atlanta, GA 30334	

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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20810

Re: Right Whale Ship Strike Reduction Draft Environmental Impact Statement

Dear Madam or Sir:

In accordance with provisions of the National Environmental Policy Act of 1969, we have enclosed for your review the Draft Environmental Impact Statement (DEIS) for implementation of the operational measures of the North Atlantic Right Whale Ship Strike Reduction Strategy (Strategy).

NOAA's National Marine Fisheries Service (NMFS) proposes to implement the Strategy to reduce the occurrence and severity of vessel collisions with endangered North Atlantic right whales (*Eubalaena glacialis*). The Strategy addresses the lack of recovery of the North Atlantic right whale population by reducing the likelihood and threat of ship strike related deaths and serious injuries to the species. This DEIS analyzes the potential environmental impacts of implementing the operational measures of the Strategy.

Additional copies of the DEIS may be obtained from Shannon Bettridge, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, Maryland 20910. The document is also accessible electronically through the NMFS Headquarters' website, at <http://www.nmfs.noaa.gov/pr/shipstrike/>.

A CD of the DEIS is enclosed for distribution to, and review by, the appropriate agencies of the State of . NMFS will also be providing the Coastal Management Program with a copy of the DEIS as a supporting document for the coastal consistency determination. The 60-day review period begins on July 7, 2006. Please send your comments by September 5, 2006. Written comments should be submitted to:

Chief, Marine Mammal and Sea Turtle Conservation Division  
Attn: Right Whale Ship Strike Reduction DEIS  
NMFS Office of Protected Resources  
1315 East-West Highway  
Silver Spring, Maryland 20910

Comments may also be submitted by facsimile to (301) 427-2522, or by e-mail to [ShipStrike.EIS@noaa.gov](mailto:ShipStrike.EIS@noaa.gov). (Please include in the subject line the following document identifier: Right Whale Ship Strike Reduction DEIS).





**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

Please do not hesitate to contact me at (301)713-2322 ext.153 if you have any questions.

Sincerely,

*Jessica Gribbon*  
Jessica Gribbon  
Project Manager

Enclosure







## OFFICE OF PLANNING AND BUDGET

Sonny Perdue  
Governor

Shelley C. Nickel  
Director

### GEORGIA STATE CLEARINGHOUSE MEMORANDUM EXECUTIVE ORDER 12372 REVIEW PROCESS

TO: Chief, MMSTC Div.  
Attn: Right Whale Ship Strike Reduc DEIS  
NMFS Ofc of Protected Resource  
1315 East-West Hwy  
Silver Spring, MD 20910

FROM: Barbara Jackson *BJ*  
Georgia State Clearinghouse

DATE: 8/11/2006

SUBJECT: Executive Order 12372 Review

APPLICANT: U.S. Dept. of Commerce - NOAA/NMFS

PROJECT: Draft EIS: Implement Operational Measures of North Atlantic Right Whale Ship Strike Reduction Strategy

STATE ID: GA060710023

The State level review of the above referenced document has been completed. As a result of the environmental review process, the activity this document was prepared for has been found to be consistent with state social, economic, physical goals, policies, plans, and programs with which the State is concerned.

Additional Comments: The applicant is advised that DNR's Coastal Resources Division and DNR's Wildlife Resources Division were included in this review but did not comment within the review period. Should they later submit comments, we will forward to you.

/bj

Form SC-4-EIS-4  
January 1995

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STATE OF SOUTH CAROLINA  
*State Budget and Control Board*  
OFFICE OF STATE BUDGET

MARK SANFORD, CHAIRMAN  
GOVERNOR

GRADY L. PATTERSON, JR.  
STATE TREASURER

RICHARD ECKSTROM  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

DANIEL T. "DAN" COOPER  
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO  
EXECUTIVE DIRECTOR

1201 Main Street, Suite 870  
COLUMBIA, SOUTH CAROLINA 29201  
(803) 734-2280

LES BOLES  
DIRECTOR

July 25, 2006

Jessica Gribbon  
US Dept. of Commerce  
NOAA  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Springs, MD 20910

Project Name: North Atlantic Right Whale Ship Strike Reduction Strategy

State Application Identifier: SC060605-890

Dear Ms. Gribbon:

The State Clearinghouse, Office of State Budget, has conducted an intergovernmental review of the project referenced above as provided by Presidential Executive Order 12372. All comments received, if any, as a result of the review are enclosed for your information.

The Clearinghouse does not have information on the Federal agency's review status. Please contact your Federal grantor agency with any questions concerning the status of your application.

The State Application Identifier indicated above should be used in any future correspondence with this office.

Sincerely,

A handwritten signature in cursive script that reads "Jean Ricard".

Jean Ricard  
Fiscal Manager, Grant Services

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North Carolina  
Department of Administration

Michael F. Easley, Governor

Britt Cobb, Secretary

July 12, 2006

Ms. Shannon Bettridge  
U.S. Dept. of Commerce  
Chief, Marine Mammal & Sea Turtle Con  
ATTN: Right Whale Ship Strike Reduction  
1315 East-West Highway  
Silver Spring MD 20910

Dear Ms. Bettridge:

Subject: Draft Environmental Impact Statement - Implementation of the operational measures of the North Atlantic Right Whale Ship Strike Reduction Strategy to reduce occurrence & severity of vessel collisions

The N. C. State Clearinghouse has received the above project for intergovernmental review. This project has been assigned State Application Number 07-E-0000-0016. Please use this number with all inquiries or correspondence with this office.

Review of this project should be completed on or before 08/12/2006. Should you have any questions, please call (919)807-2425.

Sincerely,

A handwritten signature in cursive script that reads "Chrys Baggett".

Ms. Chrys Baggett  
Environmental Policy Act Coordinator

**Mailing Address:**  
1301 Mail Service Center  
Raleigh, NC 27699-1301

**Telephone:** (919)807-2425  
Fax (919)733-9571  
State Courier #51-01-00  
e-mail: Chrys.Baggett@ncmail.net

**Location Address:**  
116 West Jones Street  
Raleigh, North Carolina

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# North Carolina Department of Administration

Michael F. Easley, Governor

Britt Cobb, Secretary

October 6, 2006

Ms. Shannon Bettridge  
U.S. Dept. of Commerce  
Chief, Marine Mammal & Sea Turtle  
ATTN: Right Whale Ship Strike Reduction  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Ms. Bettridge:

Re: SCH File # 07-E-0000-0016; DEIS; Implementation of the operational measures of the North Atlantic Right Whale Ship Strike Reduction Strategy to reduce occurrence & severity of vessel collisions. View document at <http://www.nmfs.noaa.gov/pr/shipstrike>.

The above referenced environmental impact information has been submitted to the State Clearinghouse under the provisions of the National Environmental Policy Act. According to G.S. 113A-10, when a state agency is required to prepare an environmental document under the provisions of federal law, the environmental document meets the provisions of the State Environmental Policy Act.

No comments were made by any state/local agencies during the course of this review. If any further environmental review documents are prepared for this project, they should be forwarded to this office for intergovernmental review.

Should you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in cursive script that reads "Chrys Baggett/SJB".

Ms. Chrys Baggett  
Environmental Policy Act Coordinator

**Mailing Address:**  
1301 Mail Service Center  
Raleigh, NC 27699-1301

**Telephone:** (919)807-2425  
Fax (919)733-9571  
State Courier #51-01-00  
e-mail [Chrys.Baggett@ncmail.net](mailto:Chrys.Baggett@ncmail.net)

**Location Address:**  
116 West Jones Street  
Raleigh, North Carolina

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DEPARTMENT OF ADMINISTRATION  
INTERGOVERNMENTAL REVIEW

STATE NUMBER: 07-E-0000-0016

H07

DATE RECEIVED: 07/12/2006

AGENCY RESPONSE: 08/07/2006

REVIEW CLOSED: 08/12/2006

MS MELBA MCGEE  
CLEARINGHOUSE COORD  
DENR LEGISLATIVE AFFAIRS  
ARCHDALE BLDG - MSC # 1601  
RALEIGH NC

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CC&PS - DEM, NFIP  
DENR LEGISLATIVE AFFAIRS  
DEPT OF AGRICULTURE  
DEPT OF CUL RESOURCES  
DEPT OF TRANSPORTATION



PROJECT INFORMATION

APPLICANT: U.S. Dept. of Commerce

TYPE: National Environmental Policy Act

ERD: Draft Environmental Impact Statement

DESC: Implementation of the operational measures of the North Atlantic Right Whale Ship Strike Reduction Strategy to reduce occurrence & severity of vessel collisions

The attached project has been submitted to the N. C. State Clearinghouse for intergovernmental review. Please review and submit your response by the above indicated date to 1301 Mail Service Center, Raleigh NC 27699-1301.

If additional review time is needed, please contact this office at (919)807-2425.

AS A RESULT OF THIS REVIEW THE FOLLOWING IS SUBMITTED:

- NO COMMENT  
 COMMENTS ATTACHED

SIGNED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

*[Handwritten signature]*  
*8/15/06*

NORTH CAROLINA STATE CLEARINGHOUSE  
DEPARTMENT OF ADMINISTRATION  
INTERGOVERNMENTAL REVIEW

RECEIVED  
JUL 14 2006

STATE NUMBER: ~~DAE 0008-0018~~ H07  
DATE RECEIVED: 07/12/2006  
AGENCY RESPONSE: 08/07/2006  
REVIEW CLOSED: 08/12/2006

MS RENEE GLEDHILL-EARLEY  
CLEARINGHOUSE COORD  
DEPT OF CUL RESOURCES  
ARCHIVES-HISTORY BLDG - MSC 4617  
RALEIGH NC

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DEPT OF CUL RESOURCES  
DEPT OF TRANSPORTATION



CU 06 - 1373  
A-(NO) RNL/eff  
7-20-06

7/31/06

PROJECT INFORMATION

APPLICANT: U.S. Dept. of Commerce  
TYPE: National Environmental Policy Act  
ERD: Draft Environmental Impact Statement  
DESC: Implementation of the operational measures of the North Atlantic Right Whale Ship Strike Reduction Strategy to reduce occurrence & severity of vessel collisions.  
View document at <http://www.nmfs.noaa.gov/pr/shipstrike>.

The attached project has been submitted to the N. C. State Clearinghouse for intergovernmental review. Please review and submit your response by the above indicated date to 1301 Mail Service Center, Raleigh NC 27699-1301. If additional review time is needed, please contact this office at (919)807-2425.

AS A RESULT OF THIS REVIEW THE FOLLOWING IS SUBMITTED:

- NO COMMENT
- COMMENTS ATTACHED

SIGNED BY: Renee Gledhill-Earley  
DATE: 7.27.06

JUL 17 2006



Maryland Department of Planning

Robert L. Ehrlich, Jr.
Governor
Michael S. Steele
Lt. Governor

Audrey E. Scott
Secretary
Florence E. Burian
Deputy Secretary

July 11, 2006

Ms. Jessica Gribbon
Project Manager, Office of Protected Resources
U.S. Department of Commerce
Attn: Right of Whale Ship Strike Reduction DEIS
1315 East-West Highway
Silver Spring, MD 20910

STATE CLEARINGHOUSE REVIEW PROCESS

State Application Identifier: MD20060705-0729

Reviewer Comments Due By: August 22, 2006

Project Description: Draft Environmental Impact Statement: to implement the operational measures of the North American Right Whale Ship Strike Reduction Strategy: seek to reduce likelihood and threat of ship strike death, and related injuries

Project Location: Maryland

Clearinghouse Contact: Bob Rosenbush

Dear Ms. Gribbon:

Thank you for submitting your project for intergovernmental review. Participation in the Maryland Intergovernmental Review and Coordination (MIRC) process helps ensure project consistency with plans, programs, and objectives of State agencies and local governments. MIRC enhances opportunities for approval and/or funding and minimizes delays by resolving issues before project implementation. The following agencies and/or jurisdictions have been forwarded a copy of your project for their review: the Maryland Department(s) of the Environment, Transportation, Natural Resources; the Counties of Anne Arundel, Dorchester, Kent, Talbot, Somerset, Wicomico, Queen Anne's, Calvert, Baltimore; Baltimore City; and the Maryland Department of Planning, including the Maryland Historical Trust. They have been requested to contact your agency directly by August 22, 2006 with any comments or concerns and to provide a copy of those comments to the State Clearinghouse for Intergovernmental Assistance. Please be assured that after August 22, 2006 all MIRC requirements will have been met in accordance with Code of Maryland Regulations (COMAR 14.24.04). The project has been assigned a unique State Application Identifier that should be used on all documents and correspondence.

NOTE TO THE REVIEW COORDINATORS: The DEIS is posted to the following website:

http://www.nmfs.noaa.gov/pr/shipstrike/

If you need assistance or have questions, contact the State Clearinghouse staff noted above at 410-767-4490 or through e-mail at brosenbush@mdp.state.md.us. Thank you for your cooperation with the MIRC process.

Sincerely,

Handwritten signature of William F. Gibson, ASST Secretary
Linda C. Janey, J.D., Director
Maryland State Clearinghouse for Intergovernmental Assistance

LCJ:BR

Enclosure(s)

REVIEWERS receive only the response form

cc: Pat Goucher - MDPL

Joane Mueller - MDE
Cindy Johnson - MDOT
Beth Cole - MHT
Ray Dintaman - DNR

Robert Caffrey - ANAR
Steven Dodd - DRCH
Gail Owings - KENT
George Kinney - TLBT

Charles Massey - SMST
Gary Pusey - WCMC
Faith Rossing - QANN
Terry Royce - BCIT

Gregory Bowen - CLVT
Bill Hughey - BLCO
Joe Tassone - MDPE
06-0729\_NDC.NEW

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MARYLAND DEPARTMENT OF THE ENVIRONMENT  
1800 Washington Boulevard • Baltimore Maryland 21230-1718  
(410) 537-4120

Robert L. Ehrlich, Jr.  
Governor

Michael S. Steele  
Lt. Governor

Kend P. Philbrick  
Secretary

Jonas A. Jacobson  
Deputy Secretary

August 18, 2006

Ms. Jessica Gribbon  
U.S. Department of Commerce  
1315 East-West Highway  
Silver Spring, MD 20910

RE: State Application Identifier: MD20060705-0729  
Project: Draft EIS...North American Right Whale Ship Strike Reduction Strategy

Dear Ms. Gribbon:

Thank you for providing the Maryland Department of the Environment (MDE) with the opportunity to comment on the above-referenced project. Copies of the documents were circulated throughout MDE for review, and it has been determined that this project is consistent with MDE's plans, programs and objectives.

Again, thank you for giving MDE the opportunity to review this project. If you have any questions or need additional information, please feel free to call me at (410) 537-4120.

Sincerely,

Joane D. Mueller  
MDE Clearinghouse Coordinator  
Technical and Regulatory Services Administration

✓ cc: Bob Rosenbush, State Clearinghouse

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MARTIN O'MALLEY  
Mayor



OTIS ROLLEY III  
Director

August 23, 2006

Linda C. Janey J.D., Director  
Maryland Department of Planning  
301 West Preston St. Room 1104  
Baltimore, MD 21201-2305

Dear Ms. Janey,

Re: State Clearinghouse Project MD20060721-0829 & MD20060705-0729

No comments or questions were received back from any or departments or agencies within the city regarding these two Clearinghouse items. The Baltimore City Department of Planning sent follow up correspondence regarding these two items, stating that if no responses were received the Department of Planning would submit responses of C5 - Consistent to the State.

The Baltimore City Department of Planning would thus like to submit responses of C5 - Consistent for both; MD20060721-0829 & MD20060705-0729.

If you have any further questions please feel free to contact me at (410) 396-5173.

Sincerely,

Terry Royce  
Planning Assistant  
Baltimore City Department of Planning



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Maryland Department of Planning

Robert L. Ehrlich, Jr.  
Governor  
Michael S. Steele  
Lt. Governor

Audrey E. Scott  
Secretary  
Florence E. Burian  
Deputy Secretary

September 1, 2006

Ms. Jessica Gribbon  
Project Manager, Office of Protected Resources  
U.S. Department of Commerce  
Attn: Right of Whale Ship Strike Reduction DEIS  
1315 East-West Highway  
Silver Spring, MD 20910

**STATE CLEARINGHOUSE REVIEW – ADDITIONAL REVIEWER COMMENTS RECEIVED**

**State Application Identifier:** MD20060705-0729

**Project Description:** Draft Environmental Impact Statement: Right Whale Ship Strike Reduction Strategy: seek to reduce likelihood and threat of Ship Strike death and related injuries

**Project Location:** Maryland

**Clearinghouse Contact:** Bob Rosenbush

Dear Ms. Gribbon:

We are forwarding the enclosed comments made by the Maryland Departments of the Environment, Natural Resources, Transportation; the Counties of Anne Arundel, Baltimore, Dorchester, and Kent; and Baltimore City regarding the referenced project for your information. Wicomico County had no comment.

The Maryland Port Administration, a modal administration of the Maryland Departments of Transportation, is working with U.S. Department of Commerce on the review of the project material. The Maryland Port Administration is also in discussion with its pilots about this matter.

The Maryland Departments of the Environment, Natural Resources; the Counties of Anne Arundel, Baltimore, Dorchester, and Kent; and Baltimore City found this project consistent with their plans, programs, and objectives. See the attached letters.

Should you have any questions, contact the State Clearinghouse staff person noted above at 410-767-4490 or through e-mail at brosenbush@mdp.state.md.us. Your cooperation and attention to the review process is appreciated

Sincerely,

Linda C. Janey, J.D., Director  
Maryland State Clearinghouse for Intergovernmental Assistance

LCJ:BR

Enclosure (Comments Received)

cc: Bill Hughey - BLCO  
Joane Mueller - MDE  
Cindy Johnson - MDOT  
Ray Dintaman - DNR

Robert Caffrey - ANAR  
Steven Dodd - DRCH  
Gail Owings - KENT

Terry Royce - BCIT  
Gary Pusey - WCMC

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Maryland Department of Planning

Robert L. Ehrlich, Jr.  
Governor  
Michael S. Steele  
Lt. Governor

Audrey E. Scott  
Secretary  
Florence E. Burian  
Deputy Secretary

November 20, 2006

Ms. Jessica Gribbon  
Project Manager, Office of Protected Resources  
U.S. Department of Commerce  
Attn: Right of Whale Ship Strike Reduction DEIS  
1315 East-West Highway  
Silver Spring, MD 20910

**STATE CLEARINGHOUSE REVIEW – ADDITIONAL REVIEWER COMMENTS RECEIVED**

**State Application Identifier:** MD20060705-0729

**Project Description:** Draft Environmental Impact Statement: Right Whale Ship Strike Reduction Strategy: seek to reduce likelihood and threat of Ship Strike death and related injuries

**Project Location:** Maryland

**Clearinghouse Contact:** Bob Rosenbush

Dear Ms. Gribbon:

We are forwarding the enclosed comments made by Maryland Port Administration, a modal administration of the Maryland Department of Transportation, regarding the referenced project for your information. See the attached letter.

Should you have any questions, contact the State Clearinghouse staff person noted above at 410-767-4490 or through e-mail at brosenbush@mdp.state.md.us. Your cooperation and attention to the review process is appreciated

Sincerely,

Linda C. Janey, J.D., Director  
Maryland State Clearinghouse for Intergovernmental Assistance

LCJ:BR  
Enclosure (Comments Received)  
cc: Ron Burns – MPA\*  
Cindy Johnson – MDOT\*

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Robert L. Ehrlich, Jr.  
Governor  
Michael S. Steele  
Lieutenant Governor

Maryland Port Commission  
Robert L. Flanagan  
Chairman

October 5, 2006

Atwood Collins, III  
Eli Whitney Debevoise, II  
Brenda A. Dandy  
George C. Doub, III  
John G. Gary, Jr.  
Michael G. Martino

Chief, Marine Mammal Conservation Division  
Attention: Right Whale Ship Strike Reduction Strategy  
Office of Protected Resources  
NOAA Fisheries  
1315 East West Highway  
Silver Springs, MD 20910

F. Brooks Royster, III  
Executive Director

MD 20060705-0729

To Whom It May Concern:

On behalf of the Maryland Port Administration (MPA), I am writing to express this agency's position about the Notice of Proposed Rulemaking and the Draft Environmental Impact Statement regarding the National Marine Fisheries Service's North Atlantic Right Whale Ship Strike Reduction Strategy. This rulemaking would have major impacts on East Coast ports (including the Port of Baltimore). Until such time more substantiated information about the proposed Ship Strike Reduction Strategy would be made available to ports, the MPA opposes this proposed rulemaking and strategy.

Ramifications of this proposed rulemaking to the Port of Baltimore would include impacts to ships entering and leaving the Chesapeake Bay to call at the Port of Baltimore. The Port is within the Middle Atlantic United States (MAUS) region, and while it is geographically to the west and outside the boundaries of the Seasonal Management Area (SMA), ships calling at Baltimore must transit the SMA.

The Port of Baltimore would be also impacted by two SMAs – the Chesapeake Bay Seasonal Management Area and the Delaware Seasonal Management Area. One geographical area of impact would be at the northern passageway to the Port, via access and egress through the Chesapeake and Delaware Canal (C & D Canal) from Delaware Bay. This passageway is within the southern boundary of the Delaware Seasonal Management Area. This particular boundary of the Delaware SMA, as it relates to the C&D Canal and the Port of Baltimore, is not pointed-out in this document and discussed in connection to impacts of this aspect of the Delaware SMA on the Port of Baltimore. Another geographical area of impact would be at the southerly entrance to the Chesapeake Bay via Cape Henry.

Once a ship completes traveling through the MAUS SMA (in the Atlantic Ocean) and enters into the Chesapeake Bay from the northern and southern ends, it should no longer be subject to these particular speed restrictions while traversing waters of the Bay and entering and leaving the Port of Baltimore. Ships, however, would still be subject to appropriate U.S. Coast Guard regulatory requirements.

This document does not adequately account for economic impacts to businesses (direct and indirect) within the Port of Baltimore that rely on timely delivery of products and goods from these ships. If these ships were to reduce sailing time to the Port of Baltimore, there would be significant lag time for ships to reach the port and thereby, produce filter-down negative impacts to businesses within the port.

When considering ocean freight costs, financial revenues, and financial performance of vessel operations calling on east coast ports, once again, there would be a filter-down negative impact on the Port of Baltimore and maritime commerce dependant businesses and jobs. Ships traveling to the Port of Baltimore from the Chesapeake and Delaware Canal or from the southerly entrance of the Chesapeake Bay (via Cape Henry) must first go through the MAUS SMA. Some ship lines could choose to take their business to other ports that either do not have these restrictions or may be more easily accessible.

Because interior waters of the Chesapeake Bay and the Port of Baltimore are geographically outside the boundaries of the SMA, there may not be direct impacts to the physical environment of the Bay and the Port as a result of these ship speed reductions. This DEIS indicates that North Atlantic right whales spend majority of their time in (although closer to land than other large whales) the eastern coastal waters of the Atlantic Ocean and that they may enter shallower waters to give birth. There is no documentation within this DEIS that specifies whether these whales enter shallower waters of the Chesapeake Bay.

There are no in-depth references or discussions in the DEIS on the impacts of the ship strike reduction or speed restrictions on passenger vessels, such as cruise ships.

There is no discussion in the DEIS on what the ship strike reduction strategy or speed restrictions would be based on - science or technology. At the August 10, 2006 public hearing in Baltimore, there was discussion by some shipping lines that sailors are asked to visually watch for whales. This document does not go into discussion about techniques that are currently used to spot the North Atlantic right whale, nor does the DEIS have any discussion on what techniques or technologies are used during nighttime hours to spot these whales.

There is no discussion in the DEIS on active communications between the National Marine Fisheries Service and the Maryland Port Administration (Port of Baltimore) about the ship strike reduction strategy.

Although the document mentions that federally-owned or managed ships are exempt, it does not adequately specify the type of ships; such as military ships.

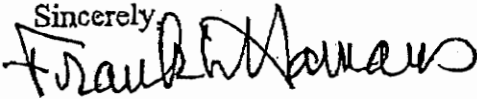
There could be increased possibility of air pollution from ships that would be required to adhere to speed restrictions in the SMA. Factors that may contribute to this issue may be related to consumption and type of fuels, speed and acceleration, number of vessel trips, distance to travel, engine type and age, emissions control technologies, and climate.

Navigational capabilities and safety of vessels that call on the Port of Baltimore, due to the proposed speed restrictions of this strategy, would be of concern to the Maryland Port Administration. Chesapeake Bay pilots have also expressed great concerns regarding the safety of these vessels at the proposed speeds. The MPA recommends that a reevaluation of these proposed speed reductions be performed with input from port communities.

Attached for your consideration is a table that references specific sections and pages within the DEIS and includes additional comments to this document.

These issues are of particular importance to the Port of Baltimore. The MPA would welcome communication from the National Marine Fisheries Service (NMFS) on the proposed rulemaking and ship strike reduction strategy. In addition, the MPA encourages the NMFS to work closely with this agency to establish an accurate effect of the proposed rules on port communities and fashion a rule that would not adversely impact the shipping industry or port communities, while protecting the North Atlantic Right Whale from vessels.

Sincerely



Frank L. Hamons, Deputy Director  
For Harbor Development

nkb/FLH

cc: Brooks Royster, MPA  
M. Kathleen Broadwater, MPA

Attachment

**Environmental Impact Statement to Implement the  
Operational Measures of the North Atlantic Right Whale Ship  
Strike Reduction Strategy**

**Draft Environmental Impact Statement, July 2006**

<b>Page No.</b>	<b>Chapter/Section</b>	<b>Review Comments</b>
ES-3	ES.3.2 Alternative 2 – Dynamic Management Areas	“DMAs are temporary and provide protection for a minimum of 15 days”. How does this apply relative to the Chesapeake Bay? During which particular days of the year does this apply relative to the Chesapeake Bay?
ES-4	ES.3.3 Alternative 3 – Speed Restrictions in Designated Areas	Please note that according to the terms of the definition of the MAUS (Middle Atlantic United States), the Chesapeake Bay would be outside of and west of the boundaries of the MAUS region.
ES-5	ES.3.6 (Preferred) - Right Whale Ship Strike Reduction Strategy – Table	This table needs a title.
1-5	1.2.2.3 Other Anthropogenic Causes of Whale Mortality	In the list of human activities, “dredging and associated disposal of dredged materials” is included. It is also listed as a form of pollution. This statement is critical about dredging and too broad. It is assumed the document is referencing ocean dredging and not dredging from within the Chesapeake Bay. This statement needs to be revised to reflect type of dredging. Dredging is a necessary activity to allow large ships to safely access and leave the Port of Baltimore.
1-7	1.2.1.4 Regional Recovery Plan Implementation Teams	Is there representation from the MAUS on the Recovery Plan Implementation team?
	Figure 2-5 & Figure 2-6	The Port of Baltimore is also impacted by the Delaware Bay Seasonal Management Area in that ships also enter the Chesapeake Bay from the north via the Chesapeake and Delaware Canal.
4-101	4.4.5.1 Cruise Industries	More in-depth discussion is needed in Sections 4.4.1 & 4.4.3 on impacts of the proposed action and the alternatives to the cruise industry. This proposed action would also have an impact on the cruise business in the Port of Baltimore.
4-125	4.7.1 Cumulative	There is no discussion on impacts of the proposed



	Effects on the Physical Environment, 4.7.1.1 Air Quality	action on neither air quality by ships calling on and leaving the Port of Baltimore, nor any of the other East Coast ports.
4-139	4.7.2.7 Liquefied Natural Gas Vessels and Deepwater Ports	There is no discussion on impacts of the proposed action to the Cove Point LNG plant in the Chesapeake Bay.
4-151	4.9 Mitigation Measures	This section does not address mitigating economic losses on east coast ports, such as the Port of Baltimore.
5-5	5.3.2.3. Impacts to Other Commercial Operations	There is no discussion pertaining to impacts to the cruise ship industry.

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS



**STATEWIDE PLANNING PROGRAM**  
Rhode Island Department of Administration  
One Capitol Hill  
Providence, RI 02908-5870  
(401) 222-6181 FAX (401) 222-2083  
[www.planning.ri.gov](http://www.planning.ri.gov)

**INTERGOVERNMENTAL REVIEW PROCESS: NOTICE OF DETERMINATION**

*Date:* October 3, 2006

*Referral Number:* EIS-06-01

Chief, Marine Mammal and Sea Turtle Conservation Division  
Attn: Right Whale Ship Strike Reduction DEIS  
NMFS Office of Protected Resources  
1315 East-West Highway  
Silver Spring, Maryland 20910

***Re: Right Whale Ship Strike Reduction DEIS***

Dear Sir/Madam:

In accordance with the rules and regulations governing the intergovernmental Review Process adopted by the State Planning Council following Presidential Executive Order 12372, we are hereby notifying you that the review of the ***Draft Environmental Impact Statement for implementation of the operational measures of the North Atlantic Right Whale Ship Strike Reduction Strategy, EIS-06-01*** is complete. No objections or substantive comments were received by this office.

A handwritten signature in cursive script that reads 'Joyce Karger'.

Joyce Karger  
Review Coordinator

Attachment

**RHODE ISLAND DIVISION OF PLANNING**

One Capitol Hill  
Providence, Rhode Island 02908-5871  
(401) 222-7901

5 JUL 25 AM 11

**REFERRAL: ENVIRONMENTAL STATEMENT**

To: THOMAS E DELLER DIRECTOR  
DEPT OF PLANNING & DEV  
400 WESTMINSTER STREET  
PROVIDENCE RI 02903

Date: 7/17/06

File Number: EIS 06 01

- Environmental Impact Statement (EIS)
- Supplemental EIS
- Notice of Intent to prepare an EIS
- Environmental Assessment Statement (EAS)
- Draft EIS
- Finding of No Significant Impact (FONSI)

Project: EIS to Implement Operational Measures of the No. Atlantic  
Right Whale Ship Strike Reduction Strategy

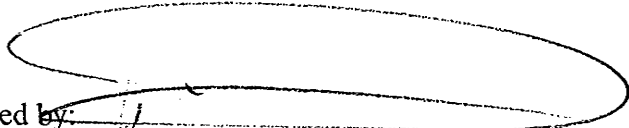
Agency: NOAA

Please review the enclosed material and send any comments or additional information to this office. Your comments must be *received* no later than ~~7/19/06~~. If additional time is needed or if you have any questions on this referral, please contact the Review Coordinator at the address or telephone number indicated above.

Additional or supplementary material is available for review in this office.  Yes  No

Comments (Use additional sheets if necessary):

No objection

Submitted by: 

Title: Thomas E. Deller  
Director

Date: 7/19/06

# FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION



RODNEY BARRETO  
Miami

SANDRA T. KAUPE  
Palm Beach

H.A. "HERKY" HUFFMAN  
Enterprise

DAVID K. MEEHAN  
St. Petersburg

KATHY BARCO  
Jacksonville

RICHARD A. CORBETT  
Tampa

BRIAN S. YABLONSKI  
Tallahassee

102

KENNETH D. HADDAD, Executive Director  
VICTOR J. HELLER, Assistant Executive Director

MARY ANN POOLE, DIRECTOR  
OFFICE OF POLICY AND STAKEHOLDER COORDINATION  
(850)488-6661 TDD (850)488-9542  
FAX (850)922-5679

September 21, 2006

Ms. Lauren Milligan  
Florida State Clearinghouse  
Florida Department of Environmental Protection  
3900 Commonwealth Boulevard, Mail Station 47 -  
Tallahassee, Florida 32399-3000

RE: FL200607062510C, Draft  
Environmental Impact Statement to  
Implement the Operational Measures of  
the North Atlantic Right Whale Ship  
Strike Reduction Strategy

Dear Ms. Milligan:

The Division of Habitat and Species Conservation, Imperiled Species Management Section, of the Florida Fish and Wildlife Conservation Commission (FWC) has coordinated agency review of the referenced Draft Environmental Impact Statement (DEIS), prepared by the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), in July 2006. We provide the following comments under the National Environmental Policy Act and the Coastal Zone Management Act/Florida Coastal Management Program.

## Project Description

The NMFS is proposing to implement the Ship Strike Reduction Strategy (Strategy) to reduce the occurrence and severity of vessel collisions with endangered North Atlantic right whales (*Eubalaena glacialis*). The Strategy addresses the lack of recovery of the North Atlantic right whale population by reducing the likelihood and threat of ship strike-related deaths and serious injuries to the species. This DEIS analyzes the potential environmental impacts of implementing the operational measures of the Strategy. The EIS commenced after a preliminary environmental assessment came to a finding of potentially significant impacts on the human environment.

Six alternatives were analyzed, and each included considerations as to whether to include new routing requirements (Alternatives 4, 5, and 6), whether to implement Dynamic Management Areas (Alternatives 2, 5, and 6), whether to implement Seasonal Management Areas (Alternative 6), and whether to include speed restrictions under various conditions (Alternatives 2, 3, 5, and 6). The alternatives would apply to all vessels longer than 65 feet and subject to the jurisdiction of the U.S., except for those owned or under contract with the federal government.

### Potentially Affected Resources

#### North Atlantic Right Whale (*Eubalaena glacialis* - endangered)

The North Atlantic right whale (*Eubalaena glacialis*) is one of the most endangered large whales in the world, with an estimated population of approximately 350 individuals (Kraus et al. 2001). North Atlantic right whales migrate south from their feeding grounds in the northeastern U.S. to their calving grounds in northeastern Florida. The calving grounds are federally designated critical habitat for this species. Mainly adult females and calves, along with some juveniles and adult males, migrate to the southeastern calving grounds each winter, and may remain in the area for four to five months. Migration from the northeastern feeding grounds typically begins in October, although some individuals may not travel as far south as the southeastern critical habitat. Most right whales have left the calving grounds by March/April for the return trip to the northern feeding and nursing areas. Migratory patterns are variable, in part because they are subject to variability of weather and climatic influences. Individuals may also venture south outside of their typical feeding areas at other times of the year, such that right whales could be found in the mid-Atlantic during much of the year. For instance, carcasses and entangled whales have been recorded off of the mid-Atlantic region in the summer months.

Although North Atlantic right whales are thought to concentrate within 55 km of the coast on their mid-Atlantic migration (Knowlton et al. 2002), sightings do occur beyond this distance from shore. We concur with Hain and Kenney (2005) that uncertainty in predicting right whale occurrence is increased with distance from the shoreline because of reduced search efforts offshore compared to nearshore areas. In the southeastern calving grounds, recent aerial survey efforts have located right whales approximately 70 kilometers (km) from the shoreline. In addition, an entangled whale, equipped with a satellite tag during disentanglement operations, was recorded at approximately 118 km off the Florida shoreline on December 5, 2005. Despite uncertainties, data and anecdotal evidence indicate that right whales can occur at distances greater than 55 km along the eastern seaboard. Recent modeling efforts indicate that the loss of as few as two females per year may ensure the extinction of the species (Caswell et al. 1999). As recently as January 2006, a dead right whale calf was found floating in the Atlantic Ocean approximately one-half mile east of the Mayport Jetty, near the mouth of the St. Johns River. A necropsy determined that the whale was killed as a result of a ship strike. The winter inhabitants off the coast of Jacksonville include the most vulnerable component of the right whale population.

The potential for right whale presence declines south from Port of Jacksonville and into the Gulf of Mexico with increasing distance from the critical habitat, but right whales have been known to venture south along the Florida coastline, and even rarely into the Gulf of Mexico. A mother and calf were observed and photographed off Miami Harbor on January 30, 2004. One early recorded sighting of right whales in the Gulf of Mexico was near Sarasota in March 1963. This past winter (January 2006), two right whales were photographed off Texas and the west coast of Florida.

### Recommendations

1. **We recommend that NMFS reduce the speed limit to 10 knots rather than either 12 or 14 knots.** Literature cited in the Proposed Rule (Laist et al. 2001, Jensen and Silber 2003, Pace and Silber 2005, and Vanderlaan and Taggart in press) is generally based upon stranding records, reports of whale strikes, and anecdotal records. These sources of data are likely to be biased with respect to many aspects of the information, such as vessel types or collision locations. Laist et al. (2001) developed a largely inferential case that speed contributes to the severity of whale injuries. Since then, Jensen and Silber (2003) compiled a large whale-ship strike database that currently provides the best available source of data on

ship strikes, albeit it includes many of the same kinds of sources noted above. Pace and Silber (2005) and Vanderlaan and Taggart (in press) attempted to compare ship strike speeds to non-strike ship speeds (Mandatory Ship Reporting data). However, the sources of the two data sets are disparate on many levels, they do not provide metrics for goodness of fit, nor do they compare their models with alternative models (particularly a "no-effect" model).

The most scientifically rigorous studies cited in the Proposed Rule are the probabilistic models of the increase in severity of impacts to large whales with increasing ship speed (Pace and Silber 2005, and Vanderlaan and Taggart, in press). In both studies, the probability of serious injury or mortality increases rapidly between speeds of 9 to 10 knots and 14 to 15 knots and continued to increase slowly above that. Two corroborating studies provide the most convincing evidence that reducing ship speed may increase protection to whales by reducing severity of impacts. Additionally, Vanderlaan and Taggart models the probability of occurrence of whale-ship collisions, showing that although the probability of encounter diminishes with increasing speed, the probability is relatively constant over the range of speed in question.

None of these studies, however, including the two probability models, provide scientific analysis of speed effects in the probability of occurrence of whale-ship collisions. In fact, reduced speed could potentially increase the probability of occurrence because slower ships would spend more time within whale habitat (although the two probabilistic studies indicate that the collisions would be less catastrophic).

The large whale ship strike database used by Pace and Silber (2003) and Jensen and Silber (2005) includes ship strikes from around the world with various vessel types and a number of whale species. Likewise, Vanderlaan and Taggart reportedly used all available records. While providing the necessary quantity of data for analysis, neither focused on the North Atlantic right whale in particular. Although it appears safe to assume that similar factors would contribute to whale-ship collisions regardless of species and location, the North Atlantic right whale is unusual in the proximity of distribution to the shoreline and shallow bathymetry during migration and calving. Further, the southeastern United States calving grounds (SEUS) would differ fundamentally from the various geographic locales included in the databases. A high proportion (75%) of struck right whales along the U.S. Atlantic Coast between 1975 and 1996 were either juveniles or calves (Laist et al. 2001), potentially indicating a higher vulnerability among younger whales. These analyses, based on a database that includes all demographic groups, may not indicate adequate protection for calves.

Careful interpretation of available literature does implicate speed as a factor in the severity of impacts to whales, and the threshold at which the rise in probability becomes steep is approximately 9-10 knots. We do recommend, however, that NMFS monitor compliance carefully and given high compliance, try to evaluate the impact, both on probability of occurrence and on severity of injuries, that reduced ship speed has on whale-ship collisions where and when restrictions are imposed.

**2. We recommend NMFS consider reducing the size threshold for vessels included in speed restrictions.** At a minimum we would suggest increased education outreach to vessel operators below the proposed 65-foot threshold. On March 10, 2005 an 11-year-old female (right whale #2425) was struck by the propellers of a 43-foot yacht causing a near amputation of part of its tail. The yacht was traveling at approximately 20 knots and was located about 7 miles from Cumberland Island, Georgia. This whale was re-sighted in Cape Cod Bay in September of 2005. The condition of the whale at that time was very poor and it is presumed that the whale has died.

**3. We recommend NMFS utilize Section 7 Consultation to ensure that large vessels that are excluded from the proposed rule by virtue of federal affiliation adhere to speed restrictions under normal circumstances and to allow them latitude only when deemed necessary.** Navy vessels are the single largest category of vessel types to report whale-ship collisions (Jensen and Silber 2003). While naval ships may be more likely to report collisions than other vessel types because of military protocols, nonetheless, federally affiliated vessels are clearly involved in ship strikes. Including these vessels in speed restrictions whenever possible would likely contribute to the protection of right whales, especially in the southern United States where the most vulnerable portion of the population (mothers and especially calves) is found.

**4. We strongly support the designation of shipping lanes within areas delineated in the Proposed Rule and advocate NMFS enforcement of mandatory shipping lanes should data reveal that ships are not complying with recommended routes.** Two risk assessment models, a generalized additive model (GAM) and a Bayesian hierarchical model, estimated the risk reduction to right whales via implementation of shipping lanes. These were conducted for the right whale southeast critical habitat by Lance Garrison of NOAA and Chris Fommesbeck of FWC. Each examined reduction of risk index for the co-occurrence of ships and right whales within 4-km x 4-km cells, using combinations of lane restrictions associated with three ports: Brunswick (Georgia), Fernandina, and Jacksonville (both in Florida). Total reduction of the risk index over that associated with the status quo was greatest for the shipping lanes examined by the U.S. Coast Guard in their Port Access Routing Study (PARS). Of a suite of six scenarios representing different traffic patterns (including status quo), three reduced risk in the 36-40% range relative to the status quo, while the other two had a 26-31% reduction. Each scenario was run under both the GAM and Bayesian models. This represents a substantial reduction in risk of co-occurrence and would likely contribute to protection of right whales in their calving grounds.

Neither implementation of shipping lanes nor speed restrictions alone completely eliminated risk to right whales. Further, the two methods complement one another in the aspect of protection provided to right whales: shipping lanes reduce the potential for occurrence of a ship strike but do not reduce severity of injuries, whereas speed restrictions would likely reduce severity of injuries but do not reduce the potential for ship strike. Given that the Marine Mammal Commission has set the Potential Biological Removal level for this species at 0, as well as the current intensity of ship strikes, combining methods to provide better protection for right whales than either provides alone may be essential for preventing pending extinction of this species.

**5. We support the proposed recommendation to extend the Seasonal Management Area (SMA) out to 30 nautical miles (nm), opposed to 20 nm, as well as the regional SMA of November 1 to April 30 in the MAUS region.** Although this area is primarily used as a migratory route by the right whale, there is some evidence from aerial surveys performed off the MAUS that at least some right whale mothers may calve in the vicinity rather than continue migrating to the SEUS. Despite reduced aerial effort in this region compared to the SEUS, at least a few identified mothers with calves were observed in MAUS that were never seen in the SEUS during the same season. Although it is relatively certain that right whales do not occupy the MAUS at densities as high as in the SEUS, reduced aerial survey effort contributes greater uncertainty to assessment of right whale use in the MAUS. Further, a recent predictive habitat model for calving right whales predicted extension of habitat further north than current intensive aerial surveys, based upon average sea surface temperatures and bathymetry (Garrison et al. in preparation). Highly suitable habitat is predicted by this model to extend out to approximately 50 nm in some areas and potentially suitable habitat to extend past 150 nm.



**6. In order to avoid confusion, we recommend that the SEUS implementation period extend from November 15 to April 16 (rather than April 15) to match those used by the Mandatory Ship Reporting System. Furthermore, we recommend that Port Canaveral be included within the SEUS Seasonal Management Area.** The FWC has surveyed the central Florida coast for many years, although less intensively in comparison to the northern region near the Georgia/Florida border. Nonetheless, right whale sightings near the central Florida coastline have been reported in the majority of years that aerial surveys were flown in that region. The Port Canaveral area is currently defined as designated critical habitat; therefore, we believe it would be prudent (and consistent) to include the entire critical habitat region within the rulemaking boundary.

**7. We support the use of Dynamic Management Areas (DMA) for protecting right whales in those areas where whale occupancy is less predictable and lack of aerial survey effort does not support the use of Seasonal Management Areas.** We concur with the Area of Enforcement extending out to 200 nm as described in the Preferred Alternative (Option 6) of the DEIS and in the Proposed Rule. In the southeastern calving grounds, recent aerial survey efforts have located right whales approximately 70 km (37 nm) from the shoreline. In addition, an entangled whale, equipped with a satellite tag during disentanglement operations, was recorded at approximately 118 km (64 nm) off the Florida shoreline on December 5, 2005. However, the criteria for establishing a DMA are cumbersome, and the delay from sighting to declaration diminishes effectiveness of DMAs. This is especially true for regions in which right whales are mainly in transit and would likely be gone before a DMA could be established. We recommend streamlining procedures, such as eliminating density requirements, for declaring a DMA and making the DMA effective upon verification and broadcast of right whale locations to mariners. Likewise, under these circumstances, the DMA should be ended upon verification that the whale is no longer in the vicinity.

**8. We recommend that NMFS investigate the use of additional means beyond aerial survey for locating right whales, such as passive acoustics, to increase the effectiveness of DMAs as a management strategy.** Although aerial survey is an invaluable tool for locating right whales in high-density areas such as the SEUS, the efficacy of aerial surveys for detecting all right whales in an area is fair at best and is dependent upon flight specifications as well as environmental factors (visibility, Beaufort Sea State levels, winds, etc.). Detectability of mom/calf pairs for standardized aerial surveys in the southeast has been estimated to be as low as 33% (Hain et al. 1999). In addition, much of right whale migratory and residency behavior on the calving grounds remains unknown. Timing of migration is variable among years and is influenced by a number of environmental factors. The offshore extent of right whale migration, and influencing factors, are also poorly known.

Passive acoustic monitoring (e.g., using hydrophone arrays) provides greater detectability of vocalizing mammals than passive listening. Passive acoustic monitoring has been used previously by the Navy (Jarvis et al. 2002) and other researchers (i.e., Clark et al. 1996). Satellite tagging of right whales could provide valuable information on migratory behavior that is difficult to obtain through traditional means, such as vessel or aerial studies, and would reduce uncertainty of right whale presence in unpredictable areas.

While recognizing the difficulties with DMAs, we also recognize the function that DMAs serve in areas in which right whale activities are less predictable and where more stringent management would be unreasonable. Any additional means for increasing the efficacy of DMAs would seem prudent, however, given the current constraints of DMAs (as noted above), the extreme endangerment of this species, and the vulnerability of mothers and calves in mid-Atlantic and southeastern United States regions.

Ms. Lauren Milligan  
September 21, 2006  
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Based on the information that we have, we do not find this proposal inconsistent with Chapters 370 or 372, Florida Statutes, under the Florida Coastal Management Program. We appreciate the opportunity to provide input on this project and are available to provide additional assistance for our suggested mitigation proposal, if needed. Please do not hesitate to contact me at 850-488-6661 if you would like to coordinate further, or Chérie Keller or Tom Pitchford at 727-896-8626 if you have any technical questions regarding these comments.

Sincerely,



Mary Ann Poole, Director  
Office of Policy and Stakeholder Coord.

map/mh  
ENV 1-3-2  
Right Whale\_334map  
cc: Jessica Gribbon, NOAA/NMFS

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