

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

15 May 2006

William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway, Room 14564
Silver Spring, Maryland 20815

Dear Dr. Hogarth:

On 22 January 2006 a dead right whale calf was found floating about 16 nautical miles off Jacksonville Beach, Florida, in the species' calving area. The carcass was towed to shore where a necropsy revealed net marks and wounds indicating that the likely cause of the calf's death was entanglement in a gillnet. On 15 February the National Marine Fisheries Service implemented emergency rules that prohibited all gillnet fishing in the calving area for the remainder of the calving season. The Marine Mammal Commission commends the Service for its quick and appropriate response to protect right whales in this area.

Recommendations□

In consultation with its Committee of Scientific Advisors on Marine Mammals, the Marine Mammal Commission recommends the following actions to ensure protection of mother-calf pairs of right whales from entanglement in gillnet fisheries in or near the calving area and along the southern portion of their migratory route:

(1) The Service promulgate a permanent rule that prohibits all gillnet fishing in the southeast U.S. restricted area (see enclosed map) during the period from 15 November through 15 April, with an exception for mackerel and shark gillnet fishing south of 29°N latitude; and

(2) The Service promulgate a permanent rule that extends the southeast U.S. restricted area to include waters within 40 miles of shore off northern Georgia and South Carolina (see enclosed map) and that prohibits all gillnet fishing in this extension during the period from 1 November through 30 April unless and until gear modifications or fishing practices are identified that would ensure that no right whales would be entangled.

Rationale□

Regulations implementing the Atlantic Large Whale Take Reduction Plan allow gillnet fishing in the calving area during the period that right whales are likely to be present. However, that fishing is subject to restrictions specific to each gillnet fishery that occurred in the area at the time the regulations were adopted. Those measures are presently applied during the regulatory period from 1 December to 31 March. However, we understand that the beginning and ending dates of this

period may soon be extended to 15 November and 15 April, thereby ensuring protection of right whales arriving early or departing late from the calving grounds. The measures are applied in the southeast U.S. restricted area, which extends from shore out to 80°W longitude (about 70 miles off Jacksonville Beach) from Savannah, Georgia, to Sebastian Inlet, Florida.

Regulations implementing the large whale plan [50 CFR 292.32(g)(1) and (2)] require the Assistant Administrator to close the restricted area if any gear allowed in the area is found to cause serious injury or mortality of any right whale. That closure is to stay in effect for the remainder of the fishing season and for subsequent years unless other measures are identified and adopted that will ensure that no right whales are taken. Based on the evidence implicating a gillnet in the death of the right whale calf, the Service announced in the 16 February 2006 *Federal Register* emergency rules closing the restricted area to all gillnet fishing effective 15 February through the end of the 2006 regulated season. In taking this action, the Service noted that a new gillnet fishery for whiting had developed since regulations for the restricted area were adopted and that the emergency rule applied to that fishery, as well as to any other gillnet fishing in that area and during that period. However, because the emergency rules apply only for the 2006 fishing season, compliance with the regulations will require additional rulemaking to either (1) extend the closure for subsequent years or (2) adopt new gillnet fishing restrictions that would be as effective as a closure.

To help determine additional restrictions for meeting required take reduction standards, the Service convened a southeast subgroup of the Atlantic Large Whale Take Reduction Team on 11–12 April 2006 in St. Augustine, Florida. During that meeting the subgroup, which includes a representative of the Marine Mammal Commission, agreed that mackerel and shark gillnet fishing south of 29°N latitude (about 10 miles north of Cape Canaveral, Florida, in the southern third of the calving area) could be allowed in November, December, and March but not in January and February, provided that existing regulations for those fisheries were modified to prevent all nighttime sets. The basis for the agreement was the lack of any past sightings of right whales in this region (i.e., south of 29°N latitude in the restricted area) during November and December, very infrequent right whale sightings in this region in March, and existing regulatory provisions that require gillnets in those fisheries to remain attached to the tending vessel, to be kept under constant observation when deployed, and to be pulled if any whale is sighted from the vessel.

The subgroup could not reach agreement on measures that could safely allow gillnet fishing in the restricted area north of 29°N latitude where most right whales occur. Some subgroup members suggested that additional gear modifications, observer requirements, and fishing practices could decrease the probability of entangling right whales. Others believed that, given the relatively large number of whales in that area, most of which are mature females and their calves, a complete closure was the only way to ensure that no further gillnet entanglements would occur. Because of the differing views, the Service will need to make a decision without a consensus opinion from the team.

In view of the importance of each individual right whale, the Marine Mammal Commission believes a permanent prohibition is needed for all gillnet fishing in the southeast U.S. restricted area, with an exception for mackerel and shark gillnet fishing south of 29°N latitude as agreed to by the

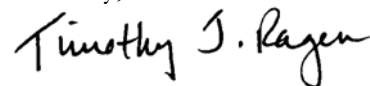
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take reduction team's southeast subgroup at its April meeting. Among other things, this prohibition would ensure that the regulations apply not only to fisheries specifically identified in the regulations but also to new fisheries that might develop using identical or nearly identical fishing gear and therefore pose a similar threat. This prohibition would simplify enforcement, minimize the chance of illegal fishing that might proceed under the cover of authorized gillnet fishing, and promote precautionary management so urgently needed for such a critically endangered species.

A related measure that was raised but not discussed in depth at the subgroup meeting was to extend the southeast U.S. restricted area northward to the South Carolina/North Carolina border. This extension, applied from 1 November to 30 April, would include the migratory corridor used by virtually all mother-calf pairs, as well as portions of the calving area used by some mother-calf pairs. It also would provide protection for right whales for two weeks as they approach their calving area and then an additional two weeks as they depart the calving area and begin their migration north. The subgroup, as well as representatives of the Service present at the meeting, were aware of no gillnet fisheries operating in that area from November through April. For that reason, the Commission believes that a northward extension of the restricted area and an accompanying prohibition on all gillnet fishing in that extension would ensure protection of right whales without economic cost to fisheries

If you or your staff have questions regarding these comments and recommendations, please contact me or David Laist, the Commission's representative on the Atlantic Large Whale Take Reduction Team.

Sincerely,



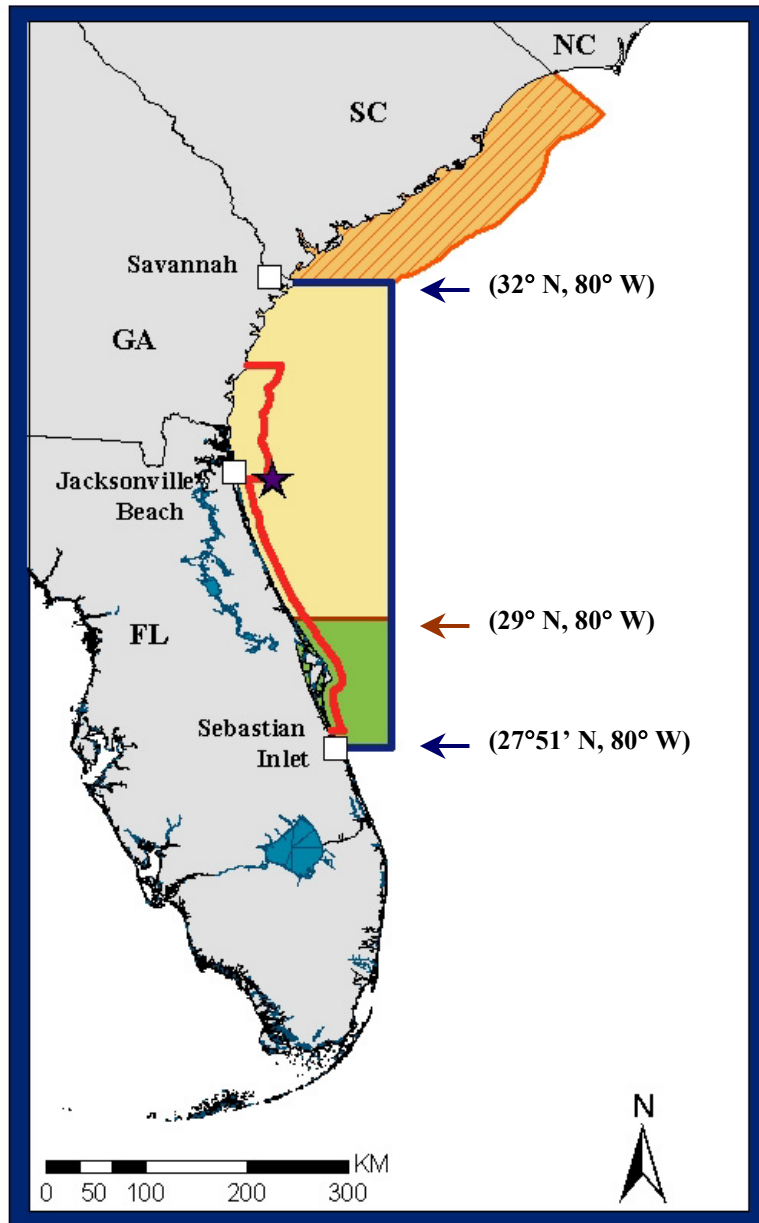
-for-

John E. Reynolds, III, Ph.D.
Chairman

Enclosure

cc with enclosure: Mr. David M. Bernhart
Mr. P. Michael Payne
Ms. Donna S. Wieting

SOUTHEAST U.S. GILLNET FISHING RESTRICTIONS FOR NORTH ATLANTIC RIGHT WHALE CALVING GROUNDS RECOMMENDED BY THE MARINE MAMMAL COMMISSION



LEGEND

- ★ Right Whale Carcass First Observed
22 January 2006
- Southeast North Atlantic Right Whale
Critical Habitat Area (shoreward of this line)
- Southeast U.S. Restricted Area for Gillnets
- ▨ Northeast Extension to the Southeast U.S.
Restricted Area Recommended by the
Marine Mammal Commission for Closure
from 1 November- 30 April
- ▨ Area Recommended by the Marine
Mammal Commission for Closure to All
Gillnets from 15 November- 15 April
- ▨ Mackerel and Shark Gillnet Fishing Only
in November, December, and March
Subject to Restrictions Recommended by
the Southeast Subgroup of the Atlantic
Large Whale Take Reduction Team