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APPENDIX A

FEDERAL LAWS AND CONVENTIONS AUTHORIZING U.S. COAST GUARD ACTIVITIES

The various operations performed by the USCG are essential for the protection of human health, property, and the marine environment; enforcement of state, Federal, and international laws; and to ensure the security of the United States. Mission areas of the USCG that may result in interactions (both positive or negative) or produce a risk of disturbance or harm to endangered species of whales and sea turtles in U.S. waters of the Atlantic Ocean include the following:

- Civil Engineering
- Marine Environmental Protection
- Marine Safety and Security
- Coast Guard Aviation
- Law Enforcement
- Search and Rescue
- Aids to Navigation
- Traffic Separation System
- Vessel Traffic Services

Civil Engineering provides design and logistic support for major construction, maintenance, and repair projects required by the USCG. Authorities for the activities of the Office of Engineering, Logistics, and Development are derived primarily from the authorities given under Congressional appropriations and the authorities outlined by the Commandant in COMDTINST M5400.7D.

The Marine Environmental Protection Program activities collectively contribute to broad national security interests in the areas of economic well being, international stability, and physical protection from external threats. The USCG receives authority to perform marine environmental protection activities from several Federal laws and acts, and several international conventions. The principal laws providing the basis for this program are

- **Title 46 Shipping Laws:** provide a broad basis for vessel and maritime personnel standards, Federal regulations, inspection and examination, issuance of certificates and licenses, casualty investigations, and personnel actions.

- **The Ports and Waterways Safety Act (PWSA) of 1972:** as amended, provides a basis for USCG port-state actions, and general management of ports and waterways to minimize deaths, injuries, property damage, and environmental damage.

- **The Clean Water Act (CWA):** as amended by the Oil Pollution Act of 1990, provides the basic statutory authority for USCG pollution prevention, contingency planning, and response activities within the 200-mile Exclusive Economic Zone (EEZ), for oil and hazardous substances.

- **The Act to Prevent Pollution from Ships:** implements the MARPOL Convention (Annexes I, II, and V) in U.S. law and authorizes the development of implementing regulations. Annex I covers discharges of petroleum; Annex II regulates discharges of noxious liquid substances; and Annex V prohibits dumping of plastic trash anywhere in the ocean or in navigable waters of the United States.

- **The Nonindigenous Species Aquatic Nuisance Prevention and Control Act of 1990:** provides the USCG with authority to control biological contamination of ballast water in ships visiting U.S. ports.

- **The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA):** also known as Superfund, extends response provisions of the CWA to a wide range of chemical pollutants and hazardous materials.

- **The Hazardous Materials Transportation Act:** provides the USCG with authority for regulating the transportation and handling of hazardous materials in maritime waters.

- **The Magnusen Act:** provides the basic authority for port security activities, including establishment of security zones and restricted areas.

- **The Intervention on the High Seas Act:** authorizes the USCG to take actions to prevent or eliminate danger to the U.S. coastline from pollution due to a casualty on the high seas, including authority to remove or destroy a vessel or its cargo.

- **The Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA):** regulates ocean dumping activities.

- **The Shore Protection Act:** addresses the transportation and handling of municipal and commercial waste by vessels and shoreside facilities.

The principal international agreements that underlie the USCG port–state control/enforcement activities and many USCG statutory authorities include the following:

- **Safety of Life at Sea (SOLAS):** deals with the safety of international maritime shipping and is addressed through the International Maritime Organization (IMO).

- **International Convention for the Prevention of Pollution from Ships 73/78 (MARPOL):** regulates discharges of several types of wastes from ships at sea and in coastal waters.

- **Standards for Training, Certification, and Watchkeeping (STCW):** sets international standards for training and certification of crews of ships.

- **International Convention on Load Lines, 1966 (ICLL 66):** sets guidelines for loading of ships, ensuring that they are not overloaded.

- **The Oil Pollution Preparedness and Response Cooperation (OPRC):** establishes a global framework for cooperation among nations in preparing for and combating oil and hazardous materials spills.

The Marine Safety and Security Program performs operations essential to minimize threats to the safety and security of U.S. citizens, vessels, port facilities, or national assets. The Coast Guard Captain of the Port (COTP) administers the multi-mission Marine Safety and Security and Marine Environmental Protection Programs through the following statutory authorities:

- **Ports and Waterways Safety Act (PWSA) of 1972:** provides for the establishment, operation, and maintenance of vessel traffic services, control of vessel movement, establishment of requirements for vessel operation, and other port safety controls.

- **Port and Tanker Safety Act (PTSA) of 1978:** amends the PWSA and provides the USCG with broader, more extensive, and explicitly stated authority in the supervision and control of all types of vessels, foreign and domestic, operating in U.S. navigable waters, and in the safety of all tank vessels, foreign and domestic, that transport and transfer oil and hazardous cargos in U.S. ports.

- **The Oil Pollution Act of 1990 (OPA 90):** imposes new requirements on the operation of oil tank vessels in U.S. waters, and enhances the authority of the USCG to effectively regulate the conduct of tank vessels and merchant marine personnel in U.S. waters.

- **The Act to Prevent Pollution from Ships (APPS):** implements MARPOL 73/78 which limits the operational discharges of oil and oily wastewater from ships through equipment and operational requirements, and provides reception facilities to receive wastes that cannot be discharge at sea.

- **The Marine Plastic Pollution Research and Control Act of 1987:** amended APPS, authorizing the USCG to enforce Annex V of MARPOL which prohibits disposal of plastics and garbage at sea.

- **The Magnuson Act of 1950:** as implemented by Executive Order 10173, provides the USCG with authority to prevent both intentional and accidental loss or destruction of vessels and waterfront facilities due to terrorist activities.

- **Title IF of Public Law 99-399, The International Maritime and Port Security Act as Codified in 33 USC 1226:** authorizes the USCG to carry out measures to prevent or respond to an act of terrorism against an individual, vessel, or commercial structure that is subject to the jurisdiction of the U.S. and located within or adjacent to the marine environment or a vessel of the U.S. or an individual on board a vessel.

In addition, there are several regulatory authorities that provide the USCG with authority to perform its various missions in marine safety and security.

The Aviation Program of the USCG provides essential air support for the various missions of other programs in the USCG. The basic authority for the operation of USCG aircraft is contained in Title 14 of the U.S. Code. This authority is further delegated through OMB Circular A-126, "Improving the Management and Use of Government Aircraft"; 41 CFR Part 101-137; DOT Order 6050.1 (series), "Management and Use of Department of Transportation Aircraft"; and COMDTINST 3710.1 (series).

The Operational Law Enforcement Division of the USCG provides essential services to the U.S. by enforcing the full range of applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. The Enforcement of Laws and Treaties (ELT) Program focuses primarily on protecting fisheries and other living resources, combating illicit drug trafficking, and interdicting illegal migrants at sea. The U.S. Congress has provided the USCG with statutory authority to perform law enforcement activities in these three areas.

Several statutes direct the USCG to enforce laws dealing with living marine resources in state, Federal and EEZ waters of the Atlantic Ocean. These include

- **The Magnuson Fishery Conservation and Management Act of 1976**
- **The Lacey Act**
- **The Atlantic Tunas Convention**
- **The Atlantic Salmon Convention**
- **The Marine Mammal Protection Act**
- **The Endangered Species Act**
- **The Marine Protection, Research, and Sanctuaries Act**
- **The High Seas Driftnet Fisheries Enforcement Act**
- **The Whaling Convention Act**
- **The Fish and Wildlife Conservation Act**
- **The Atlantic Striped Bass Act**
- **The Sponge Act**

Statutory authority for the USCG to perform drug interdiction activities on the high seas is contained in the following statutes:

- **14 USC Sections 2, 89, and 141 - USCG Establishment, Duties, Organization** is the basis for USCG enforcement authority upon the high seas and waters over which the United States has jurisdiction for the prevention, detection, and suppression of violations of laws of the United States.

- **46 USC App. 1901 *et seq.* - The Maritime Drug Law Enforcement Act.**

- **Presidential Decision Directive 14. PDD-14** presents the national policy statement of the administration for the conduct of drug interdiction operations in the western hemisphere beyond U.S. borders.

Statutory authority for the USCG to enforce U.S. immigration laws and related international agreements at sea are derived from the following laws:

- **14 USC 89, 141**
- **Title 8 USC - Aliens and Nationality**
- **Presidential Decision Directive (PDD/NSC-9)** identifies and authorizes the USCG to perform at-sea interdiction of Asian criminal syndicate smuggling attempts.
- **Executive Order 12908 dated 24 May 1992** specifically instructs the USCG to interdict undocumented migrants at sea by stopping and boarding defined vessels, making inquiries and, if warranted, returning the vessel and passengers to the country from which it came, or to another country.

The USCG also has general statutory authority to perform law enforcement operations on the high seas and waters under the jurisdiction of the United States. This general law enforcement authority is derived from

- **Title 14 USC - CG Establishment, Duties, Organization**
- **Title 19 USC - U.S. Customs Authority and Duties**
- **Title 21 USC - Food and Drug (Abuse)**
- **Title 26 USC - IRS Law and Enforcement**
- **Title 31 USC - Money and Finance**
- **Title 33 USC - Navigation and Navigable Waters**
- **Title 46 USC - Shipping (Maritime Safety, Inspection)**

The Search and Rescue (SAR) Program of the USCG provides essential services to the U.S. people. The primary objective of SAR is to minimize loss of life, personnel injury, and property loss and damage in the maritime environment. The statutory authority for the SAR Program is contained in Title 14, Sections 2, 88, and 141 of the U.S. Code. USCG SAR responsibility is defined further by the National Search and Rescue Plan (Appendix A of the National SAR Manual; COMDTINST M16120.5), an interagency agreement originally signed in 1956 and most recently updated in 1991, that delineates three SAR regions: inland, maritime, and overseas. The USCG is the maritime SAR coordinator.

In its Aids to Navigation Program, the USCG maintains thousands of aids to navigation along the U.S. Atlantic coast. These aids to navigation provide essential assistance to mariners by acting as road signs on the waterway or marking the location of an isolated danger. Statutory authority for the USCG to perform its Aids to Navigation missions is contained in 14 USC 81, The Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act of 1978.

The Vessel Traffic Control Program of the USCG provides essential services to mariners by facilitating the safe and efficient movement of vessel traffic, preventing collisions, groundings, and environmental or economic losses or consequences of these accidents.

Initial statutory authority for the USCG to perform vessel traffic control activities is derived from Title 14 USC which requires the USCG to "safeguard the nation's ports, waterways, port facilities, vessels, persons and property in the vicinity of the port, from accidental or intentional destruction, damage, loss, or injury." Further statutory authority for the Vessel Traffic Control Program is derived from the Ports and Waterways Safety Act (PWSA) of 1972, as amended by the Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990.

APPENDIX B

U.S. COAST GUARD ORGANIZATION

U.S. Coast Guard Organization

The basic organization pattern of the USCG reflects an assignment of military command and control with both operational and administrative responsibility, and authority among components in USCG Headquarters, Areas, District Commands, Maintenance and Logistics Commands, and individual units in the field. Duties of the USCG are, in most instances, actually performed by individual operating units such as ships, groups, stations, air stations, and marine safety offices.

The field chain of command is from the Commandant to the Area Commanders, from the Area Commanders to the District Commanders, and from the District Commanders to the Commanding Officer or Officer-in-Charge of an individual operating or logistics unit.

USCG Activities That May Result in Interactions With Endangered Species

Many USCG activities are performed in U.S. territorial waters of the western North Atlantic Ocean, in important habitat areas for species of protected whales and sea turtles. There is no risk that these activities will lead directly to disturbance or harm to listed species; therefore, these activities will not be described here.

However, performance of several mission activities of the USCG along the Atlantic coast of the United States may result in risk of a harmful interaction with one or more species of the endangered or threatened whales and sea turtles that reside during all or part of the year in U.S. territorial waters of the Atlantic Ocean. Performance of some of these activities provides the USCG with an opportunity to aid in the protection and recovery of local populations of these endangered or threatened marine animals. A brief description of those activities most likely to result in positive or negative interactions between the USCG and whales or sea turtles is provided below.

This description focuses on activities of three USCG Districts on the Atlantic coast of the United States. These Districts are:

- First District (Boston, MA) — Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey south to Toms River.

- Fifth District (Portsmouth, VA) — New Jersey from Toms River south, Delaware, Maryland, Virginia, North Carolina.

- Seventh District (Miami, FL and San Juan, PR) — South Carolina, Georgia, Florida (Atlantic and Gulf of Mexico coasts), Puerto Rico, U.S. Virgin Islands.

Civil Engineering
The Office of Engineering, Logistics, and Development provides support in aeronautical, civil, and naval engineering, logistics, and research and development for the USCG. The mission of the office is to

- Provide engineering logistics.
- Provide engineering services, including design, construction, maintenance, outfitting and alteration of vessels, aircraft, aids to navigation, shore establishments, machinery, and utilities.
- Administer a research and development program responsive to the needs of the USCG for new and improved systems, equipment, methods, and procedures.

Under the National Environmental Policy Act of 1969 (NEPA), the USCG is required to perform an environmental assessment (EA) for all major construction, repair, and maintenance projects performed in areas important to endangered or threatened species. Some coastal states may also impose planning requirements on engineering projects in the coastal zone, including construction or repair permits that may include special requirements for protection of endangered species and their habitats.

Marine Environmental Protection
The mission of the Marine Environmental Protection Program is to protect the public, the environment, and U.S. economic interests by the prevention and mitigation of marine pollution. In pursuing this mission, the USCG performs the following activities:

- Establishes and enforces Federal policies and standards for the design, construction, equipping, manning operations, and maintenance of commercial vessels, and for the qualifications of their crews.
- Develops standards for handling hazardous materials onboard vessels and marine facilities.
- Negotiates international maritime safety and environmental protection standards on behalf of the United States.
- Assures compliance of U.S. vessels with domestic and international standards (flag-state responsibilities), and compliance by all vessels and regulated facilities in U.S. ports and waters (port-state responsibilities) through a combination of education, monitoring, and enforcement.
- Controls vessel and facility operations to correct or reduce significant safety, security, or environmental threats.

- Coordinates national protocols for preparedness planning, training, and performing.

- Directs response activities to mitigate the effects of maritime casualties and pollution.

Marine pollution response and marine safety activities along the Atlantic coast of the United States, including Puerto Rico and the U.S. Virgin Islands, are performed primarily by USCG personnel at 12 Marine Safety Offices (MSO) and 2 Captain of the Port (COTP) Offices in the Atlantic coast states. The Atlantic coast offices are

- MSO Portland, ME
- MSO Boston, MA
- MSO Providence, RI
- COTP Long Island Sound, NY
- COTP New York, NY
- MSO Philadelphia, PA
- MSO Baltimore, MD
- MSO Hampton Rhodes, VA
- MSO Wilmington, NC
- MSO Charleston, SC
- MSO Savannah, GA
- MSO Jacksonville, FL
- MSO Miami, FL
- MSO San Juan, PR

Each MSO and COTP has access to an inventory of several small boats, and emergency pollution equipment.

The Marine Environmental Protection Program includes

- The Marine Safety Offices.

- The National Strike Force (NSF), composed of three teams of experts that have been trained and equipped to respond to a wide variety of environmental emergencies.

- Multi-mission USCG cutters and aircraft that provide a variety of platforms for surveillance, detection, and response.

- The National Response Center (NRC) that functions as a link between reports of pollution and the USCG or EPA Federal on-scene coordinator (FOSC) who is responsible for evaluating and responding to pollution incidents.

In 1993, the Marine Environmental Protection Program of the USCG responded to 2541 oil spill incidents and 113 spills of hazardous chemicals along the Atlantic coast of the United States.

As required by OPA 90, the USCG prepares Area Contingency Plans (ACPs) for the coastal zone and all nearshore waters of the United States. The ACPs are prepared by Area Committees, chaired by the FOSC (USCG). In preparing the ACPs, the Area Committees, NOAA, USFWS, state fish and wildlife agencies in the USCG district, state natural resource trustees, and other agencies with responsibilities for coastal zone management and protection should actively collaborate in the Area Committee process.

The ACPs describe the methods and resources that will be used to combat spills of oil and hazardous materials in coastal waters and protect sensitive habitats from harm. They identify environmental sensitivities within each area, and establish priorities and strategies for response based on those sensitivities. Each Area Committee identifies the following three types of habitats requiring protection:

- Fish and wildlife habitat areas.
- Sensitive habitats (*e.g.*, habitats that may be slow to recover from a spill).
- Human high-use areas.

The first two categories include critical habitats of endangered or threatened whales and marine turtles. Identification and sighting of these habitats is requested from the responsible agencies during the Area Committee planning process.

Sensitive areas are mapped, and natural collection sites, boom sites, and specific response strategies for different types of spilled materials in or near these areas are included on the maps. The maps also show all possible locations of endangered/threatened species (*e.g.*, critical habitat for right whales, nesting beaches for loggerhead turtles) in as much detail as practical.

The USCG also is responsible for enforcing the resolutions of MARPOL 73/78 Annex V concerning dumping of plastics and garbage from vessels and platforms at sea. To promote compliance with this international treaty, the USCG has developed a strategy of progressive education and aggressive enforcement. Floating trash, particularly plastic debris, is a substantial contributor to injury and death of all five species of endangered/threatened sea turtles in the Atlantic. Strict enforcement of the MARPOL regulations will go a long way to aid in the recovery of these turtle populations.

The compliance and response functions of the USCG along the U.S. Atlantic coast are performed by personnel stationed at the 12 MSOs and 2 COTPs on the east coast. Each year, in the Atlantic area, the USCG monitors

- 140,000 U.S. commercial vessels (mostly uninspected fishing vessels).
- 8100 foreign vessels calling at U.S. ports.
- 3500 waterfront facilities.
- 3800 offshore platforms (mostly oil/gas production platforms in the Gulf of Mexico).
- 200,000 licensed and documented merchant mariners.
- 238,000 documented U.S. commercial and recreational vessels.

Marine Safety and Security

The objective of the Marine Safety and Security Program is to minimize threats posed by human activities in U.S. waters and the marine environment which may adversely affect the safety and security of U.S. citizens, vessels, port facilities, or national assets. This objective is met through the dual mission areas of marine safety and port security. The goal of the marine safety mission is to minimize the occurrence rate and magnitude of accidents and emergencies on vessels and waterfront facilities in U.S. ports that result in deaths, serious injuries, or significant property damage. The goals of the port security mission are to ensure that each U.S. port area acquires, develops, and maintains its ability to perform essential functions by reducing each port's vulnerability to subversive activity or terrorist incidents during periods of heightened international tensions and mobilization contingencies, and to ensure the security of U.S. citizens when travelling as passengers on cruise ships.

The four primary field activities performed by the USCG in the area of Marine Safety and Security are

- **Vessel Boardings**. Boardings are performed to verify and enforce compliance with a wide variety of statutes, regulations, and international requirements.

- **Anchorage Administration.** The USCG designates anchorages in ports and coastal waters for vessels of different types and for different designated uses, and enforces anchorage regulations.

- **Harbor Patrols.** The USCG performs harbor patrols in vessels or on land for detection, deterrence, and prevention of marine casualties through enforcement of safety and pollution prevention regulations.

- **Marine Events**. The USCG issues permits for and monitors marine events, such as regattas and boat races, enforcing safety regulations and ensuring that these events do not have a significant adverse effect on endangered or threatened species in the area.

Coast Guard Aviation

The mission of Coast Guard Aviation is operational and logistics support of all USCG programs. The USCG employs a wide variety of fixed-wing and rotary aircraft throughout its mission area. Long-range and medium-range surveillance missions are performed by HC-130 Hercules and HU-25 Guardian fixed-wing aircraft, respectively. Ordinarily, these aircraft operate at altitudes greater than 500 ft. However, they may perform reconnaissance missions in support of the FOSC in oil and hazardous materials spill response operations at altitudes below 500 ft. Fixed-wing aircraft may also operate at low altitude during drops of rescue or emergency equipment or to identify a vessel. Small, two-seater aircraft, the RG-8, are used for short-range patrols. The USCG operates 17 fixed-wing aircraft in the Atlantic area. Ninety-five percent of USCG air missions are within 20 miles from shore, but some may extend out to the edge of the exclusive economic zone (EEZ) or beyond.

Two helicopters, the HH-60J Jayhawk and the HH-65A Dolphin, perform medium- and short-range recovery missions. The USCG operates 32 helicopters in the Atlantic area.

During SAR operations, the helicopters often must fly below 500 ft. Recovery of people from the water or delivery of rescue equipment often requires flying and hovering at even lower altitudes. These low-level operations are kept to a minimum because of safety concerns. Commanding Officers are required to take necessary steps to prevent unnecessary flying over known habitats of wildlife, including endangered species. An altitude of at least 3000 ft should be maintained while flying over such habitats, if it is not detrimental to the mission.

The 17 fixed-wing aircraft and 32 helicopters in the Atlantic area performed more than 21,000 sorties in 1993. Most sorties were flown out of the USCG Seventh District (12,233), followed by the First District (5303), and the Fifth District (3486).

Law Enforcement

The USCG is the nation's leading maritime law enforcement agency. In this role, it coordinates its activities with other Federal, state, and local law enforcement agencies, and with international law enforcement bodies. The Enforcement of Laws and Treaties (ELT) Program focuses primarily on protecting fisheries and other living marine resources, combating illicit drug trafficking, and interdicting illegal migrants at sea. In performance of its law enforcement mission, the USCG utilizes a wide variety of water craft ranging from small inflatable boats to 378-ft cutters. Fixed-wing aircraft and helicopters also are used. USCG resources are supplemented by U.S. naval ships and smaller vessels, various shore-based sensor systems, interagency communications systems, and support personnel.

In performing its law enforcement responsibilities, the USCG routinely

- Patrols with cutters and aircraft to perform surveillance and to identify potential violators of the law.
- Intercepts and boards suspected violators.
- Performs random interceptions, and boardings of boats and vessels to maintain an effective deterrent.

In the area of living marine resources, the role of the USCG is to provide law enforcement support that ensures compliance with laws and regulations intended to support the conservation and management of the living marine resources of the United States. The USCG shares enforcement responsibility in this area with the National Marine Fisheries Service (NMFS). The USCG has authority to perform law enforcement activity on the high seas and waters subject to U.S. jurisdiction for the prevention, detection, and suppression of violations of U.S. law, as well as to provide support to NMFS to meet its management goals for protected marine mammals and sea turtles. The USCG and NMFS are equally responsible for enforcing the legal requirements of the Endangered Species Act. Enforcement activities performed by the USCG include the following:

- Patrolling the perimeter of the U.S. EEZ to prevent encroachment and harvesting of U.S. marine resources, including endangered species and products made from them, by foreign commercial fishing vessels.

- Patrolling within the EEZ to ensure that U.S. fishing vessels comply with fishery resource management regulations, such as use of turtle exclusion devices (TEDs) in shrimp trawls.

- Protecting anadromous fish (*e.g.,* salmon) originating in U.S. territory throughout their migratory range, including areas of the high seas outside the EEZ.

- Patrolling areas of the high seas beyond the EEZ to monitor compliance of U.S. and foreign fishing vessels with international agreements (*e.g.,* the UN moratorium on large-scale high-seas pelagic drift net fishing).

As part of its enforcement authority, the USCG is expected to participate in the enforcement of provisions of several Federal statutes, including

- The Marine Mammal Protection Act (16 USC 1361, *et seq.*)
- The Endangered Species Act (16 USC 1536, *et seq.*)
- The Whaling Convention Act (16 USC, 916, *et seq.*)
- The Marine Protection, Research, and Sanctuaries Act (16 USC 1402, *et seq.*)
- The High Seas Driftnet Fisheries Enforcement Act (P.L. 102-582)
- The Fish and Wildlife Conservation Act (16 USC 2901, *et seq.*)
- The Magnuson Fishery Conservation and Management Act of 1986, as amended (16 USC 1801, *et seq.*)

The USCG also participates in the enforcement of other Federal and international regulations dealing with the protection of threatened or endangered species of marine animals and their critical habitats. Each USCG district has developed an Endangered Species Act (ESA) guide that describes methods that will be used to protect and aid in the recovery of endangered and threatened species in that district.

Search and Rescue

Under the statutory authority of Title 14, Sections 2, 88, and 141 of the U.S. Code, the USCG develops, establishes, maintains, and operates SAR facilities, and may render aid to distressed persons, and protect and save property on and under the high seas and waters subject to the jurisdiction of the United States. The USCG may also use its SAR resources to assist other Federal and state entities. The USCG is the coordinator of maritime SAR activities and, as such, is responsible for organizing available SAR facilities in waters subject to the jurisdiction of the United States, and in waters stretching from U.S. territory far into the Atlantic and Pacific Oceans, the Bering and Beaufort Seas, and the Gulf of Mexico.

More than 90% of all SAR cases involve a disabled or endangered vessel in a known position in need of assistance. The USCG response vessel or aircraft proceeds to the appropriate position at "maximum safe speed" (defined with regards to personnel safety) and

provides the appropriate assistance that usually involves towing the vessel back to port at the most economical speed. Most USCG SAR vessels have a maximum speed of 25 knots or higher, a towing speed of 8 to 10 knots, and a cruising speed of 15 to 20 knots.

SAR cases occur all along the east coast of the United States, with 95% of these cases occurring within 20 miles of shore. Ninety percent of SAR cases are non-emergent in nature, meaning that USCG resources need not respond at "maximum safe speed" or even directly to the incident.

The remaining 10% of SAR missions involve searching for a lost or unlocated vessel. In these cases, the SAR operation usually involves an area search. Vessels and aircraft are deployed to a specific area to "search" the area along specified search patterns. Strict adherence to the optimal search pattern is required to maximize the likelihood of finding the missing vessel or person(s); therefore, the USCG can not ordinarily divert from the designated search pattern to avoid a protected area.

USCG resources for SAR operations performed throughout the U.S. include the following:

- A network of 42 USCG Groups. Several are combinations of Group/Air Station or Group/MSO that are managed by the other program.
- A network of 163 USCG stations. These units are multi-mission units, performing the SAR program mission in addition to many other USCG program missions.
- More than 1700 standard and non-standard small boats (16 to 52 ft) used to provide immediate response to mariners in distress.
- An extensive VHF-FM, MF, and HF communications network for distress alerting and response coordination.
- A command and control system consisting of Area and District Rescue Coordination Centers, Section Rescue Sub-Centers, and Group operation centers.
- Personnel assigned to Groups/Stations and District staff functions supporting these activities.
- Three operational computer systems to aid in implementing various aspects of the SAR program, including a Computerized Assisted Search Planning (CASP) system; the automated Mutual Vessel Reporting (AMVER) system; and the COSPAS-SARSAT Emergency Position Indicating Radio Beacon (EPIRB) system.

The USCG operates 82 small boat units along the U.S. Atlantic coast (Table B-1, Figure B-1). Many of these vessels are shared with other USCG operational programs. There are 35 small boat units in the First District, 32 in the Fifth District, and 15 in the Seventh District. The USCG also has 95 cutters stationed at 39 home ports along the U.S. Atlantic coast (Table B-2). Most of the patrol boats are stationed in the First District. The USCG

Table B-1. U.S. Atlantic Coast Cities Hosting USCG Small Boat Units for Search and Rescue Missions.

First District	Fifth District	Seventh District
Eastport, ME	Barnegat Light, NJ	Georgetown, SC
Jonesport, ME	Beach Haven, NJ	Charleston, SC
Southwest Harbor, ME	Atlantic City, NJ	Tybes, GA
Rockland, ME	Great Egg, NJ	St. Simon Island, GA
Boothbay Harbor, ME	Townsends Inlet, NJ	Mayport, FL
South Portland, ME	Cape May, NJ	Ponce de Leon Inlet, FL
Portsmouth Harbor, NH	Fortescue, NJ	Port Canaveral, FL
Merrimac River, MA	Salem, NJ	Fort Pierce, FL
Gloucester, MA	Philadelphia, PA	Lake Worth Inlet, FL
Boston, MA	Roosevelt Inlet, DE	Fort Lauderdale, FL
Point Allerton, MA	Indian River Inlet, DE	Miami Beach, FL
Scituate, MA	Ocean City, MD	Islamorada, FL
Cape Cod Canal, MA	Crisfield, MD	Marathon, FL
Provincetown, MA	Taylors Island, MD	Key West, FL
Chatham, MA	Stillpond, MD	San Juan, PR
Woods Hole, MA	Curtis Bay, MD	
Menemsha, MA	St. Inigoes, MD	
Castle Hill, RI	Chincoteague, VA	
Point Judith, RI	Parramore Beach, VA	
Fishers Island, CT	Cape Charles, VA	
New London, CT	Milford Haven, VA	
New Haven, CT	Portsmouth, VA	
Block Island, NY	Little Creek, VA	
Montauk, NY	Coinjack, NC	
Shinnecock, NY	Oregon Inlet, NC	
East Moriches, NY	Hatteras Inlet, NC	
Fire Island, NY	Ocracoke, NC	
Jones Beach, NY	Hobucken, NC	
Rockaway, NY	Fort Macon, NC	
Eatons Neck, NY	Swansboro, NC	
Fort Totten, NY	Wrightsville Beach, NC	
New York, NY	Oak Island, NC	
Sandy Hook, NJ		
Shark River, NJ		
Manasquan Inlet, NJ		

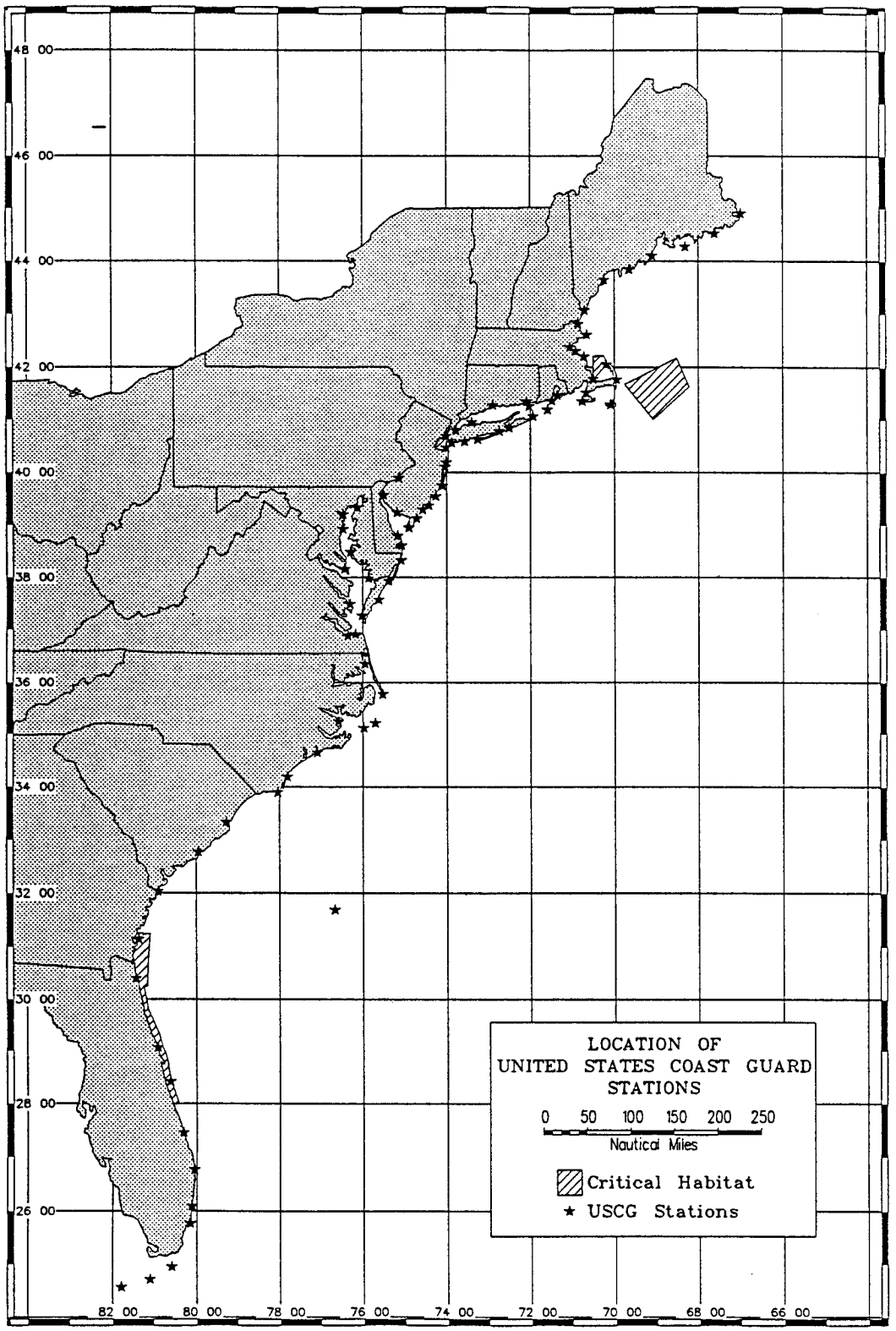

Figure B-1. Locations of USCG Stations Along the East Coast of the United States (USCG First, Fifth, and Seventh Districts).

Table B-2. Home Ports on the Atlantic Coast for USCG Cutters. Number of cutters stationed at each home port is given in parentheses.

First District	Fifth District	Seventh District
West Johnsport, ME (1)	Cape May, NJ (2)	Charleston, SC (3)
Rockland, ME (3)	Philadelphia, PA (2)	Savannah, GA (1)
South Portland, ME (3)	Chincoteague, VA (1)	Brunswick, GA (1)
Southwest Harbor, ME (1)	Portsmouth, VA (8)	Mayport, FL (3)
New Castle, NH (1)	Norfolk, VA (9)	Port Canaveral, FL (3)
Gloucester, MA (1)	Crisfield, MD (2)	Fort Pierce, FL (2)
Boston, MA (4)	Baltimore, MD (2)	Fort Lauderdale, FL (1)
Woods Hole, MA (3)	Atlantic Beach, NC (3)	Miami, FL (8)
Newport, RI (2)	Wilmington, NC (1)	Key West, FL (6)
Bristol, RI (2)	Caswell, NC (1)	San Juan, PR (1)
New London, CT (2)	Wrightsville Beach, NC (1)	Roosevelt Roads, PR (3)
New Haven, CT (1)		St. Thomas, USVI (1)
Montauk, NY (1)		
Governors Island, NY (8)		
Sandy Hook, NJ (2)		

Atlantic fleet includes about 242 vessels ranging in length from 21 ft to 378 ft. Many of the vessels are underway on SAR sorties or other at-sea activities for more than 100 days per year. The total SAR sortie activity for the USCG in the Atlantic Ocean and adjacent coastal waters in 1993 amounted to 164,741.8 hours. Most SAR sorties in boats occurred in the Seventh District (83,140.6 hours), followed by the First District (42,462.7 hours), and the Fifth District (39,138.5 hours). Aircraft operations in support of SAR showed a similar distribution with 12,233 sorties in the Seventh District, 5303 sorties in the First District, and 3486 sorties in the Fifth District.

Aids to Navigation

The USCG maintains several thousand aids to navigation along the Atlantic coast. These aids include large, shore-based lighthouses with fog signals, deep-water moored buoys, small single-pile structures, and unlighted buoys in shallow water. Aids to navigation provide the navigational signals needed by commercial and recreational vessels to navigate inshore and oceanic waterways safely (keeping vessels in designated channels and away from shoal areas, navigational hazards, and protected habitats).

Operation and servicing of aids to navigation along the U.S. Atlantic coast currently are performed from 25 sea-going, coastal, inland construction, and inland buoy tenders. Additional aids-to-navigation work is performed by 28 Aids-to-Navigation teams operating boats (21 ft to 55 ft) from shore-based facilities. These operations are performed along the Intercoastal Waterway, and from the inner harbor of navigable ports out to the sea buoy which often is several miles off shore. The majority of work is conducted in water less than 50 ft deep. Maintenance of the aids to navigation includes a routine servicing visit of one to two hours once a year, or more often if the aid is compromised (extinguished light, off assigned position, buoy struck, etc.). Buoy tenders also assist with SAR operations, environmental cleanup, and other "multi-missions." Sea-going buoy tenders assist NOAA in servicing 19 weather buoys operated by the NDBC, some of which are located 100 miles offshore.

Traffic Separation System

In consultation with the IMO, the USCG is responsible for the vessel routing and traffic separation scheme (TSS) in U.S. waters. TSSs are used to improve the safety of navigation in converging areas and in areas where the density of traffic is great or where freedom of movement of shipping is inhibited by restricted searoom, by the existence of obstructions to navigation, by limited depths, or by unfavorable meteorological conditions. TSSs may also be used to prevent or reduce the risk of pollution, harm to endangered species, or other damage to the marine environment from ship collisions or groundings in coastal areas and in critical marine habitats.

Vessel Traffic Services

The Vessel Traffic Services (VTS), operated by the USCG, are the eyes and ears of the port. VTS usually is the first to hear about or detect anything out of the ordinary. It then uses its suite of communications equipment to report the incident to the responsible authority or to the mariner for trip planning. It also has the sensors to monitor or manage appropriate responses to the incident. The VTS does not actively operate vessels of any type. It does, however, advise mariners on hazards to navigation. On the east coast of the United States, the USCG operates one VTS, located for vessel traffic in New York Harbor and its approaches from the sea.

NAVTEX transmitters are located in Boston, Massachusetts, Portsmouth, Virginia, and Miami, Florida. The NAVTEX system is a maritime radio warning system consisting of a series of coastal stations transmitting radioteletype safety messages on the international-standard, medium-frequency (518 kHz). Each station has a range of 100 to 500 NM day and night. NAVTEX coverage is reasonably continuous to 200 NM offshore. NAVTEX transmissions include distress, urgent, and safety messages; gale, storm, and hurricane warnings; and offshore marine weather forecasts. Recently, the NAVTEX system has been used during the calving season (winter) to broadcast sightings of all right whales, including mothers with calves, along the southeast U.S. coast. Routine messages normally are broadcast four to six times daily; urgent messages are broadcast upon receipt, unless an adjacent station is already transmitting.

APPENDIX C

USCG ENDANGERED SPECIES ACT PLANS

This Appendix portion is comprised of the Marine Mammal Protection Programs of Coast Guard Districts 1, 5, and 7, which together account for the entire Atlantic coast of the United States. District 1, incorporating three earlier guidelines, set the tone for development of this directive. District 5 and District 7, using District 1's directive as a guide developed similar guidelines for their geographic areas allowing for those area-specific unique characteristics of each district.

The Law Enforcement Bulletins are subject to revisions periodically as field applications dictate.

FIRST COAST GUARD DISTRICT
LAW ENFORCEMENT BULLETIN (LEB)
33-94

Subj: MARINE MAMMAL AND ENDANGERED SPECIES PROTECTION PROGRAM

Ref: (a) D1 LEB 30-91 (Marine Mammals)
(b) My 262112Z JUL 94 (Marine Mammal Sighting Program)
(c) My 131734Z JUL 94 (Marine Mammal Protection/Support to Marine Mammal Conservation Program)

1. This LEB outlines First Coast Guard District initiatives to further the federally mandated protection and recovery objectives for marine mammals and endangered marine species. References (a) through (c) are cancelled.

2. The National Marine Fisheries Service (NMFS) is the primary federal agency responsible for the conservation and management of living marine resources. The Coast Guard has authority to perform law enforcement activity upon the high seas and waters subject to U.S. jurisdiction for the prevention, detection, and suppression of violations of U.S. law, as well as to provide support to NMFS to meet management goals for protected marine mammals. The Coast Guard and NMFS are equally responsible for enforcing violations of the Endangered Species Act (ESA).

3. POC is D1 (ole) Fisheries Section, (617) 223-8423/8101.

P. J. HOWARD
By direction

Encl: (1) Marine Mammal and Endangered Species Protection Program
(2) Entanglement and Boat Collision Reporting Form
(3) NMFS Approved Local Stranding Networks
(4) Unit Checklist for D1 Sighting Program
(5) Standard Sighting Form

Enclosure (1)

MARINE MAMMAL AND ENDANGERED SPECIES PROTECTION PROGRAM

FIRST COAST GUARD DISTRICT
LAW ENFORCEMENT BULLETIN (LEB)
33-94

TABLE OF CONTENTS

MARINE MAMMAL AND ENDANGERED SPECIES PROTECTION PROGRAM

Ref: (a) 50 CFR PART 226 - Designated Critical Habitat
(b) NMFS Recovery Plan for the Northern Right Whale dtd DEC 91
(c) COMDTINST M16247.1 (series) (Maritime Law Enforcement Manual)
(d) 50 CFR PART 227 - Threatened Fish and Wildlife Jonathan Pub
(e) 15 CFR PART 940 - Stellwagen Bank National Marine Sanctuary

1. **AREAS OF SPECIAL INTEREST.** The First District Marine Mammal and Endangered Species Protection Program applies to littoral and offshore waters. However, the following areas are of special importance.

A. STELLWAGEN BANK NATIONAL MARINE SANCTUARY (SBNMS). This sanctuary was designated by Congress on 4 November 1992 and encompasses an area of water over and surrounding Stellwagen Bank. Activities in this area are regulated to protect the recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the SBNMS.

B. DESIGNATED CRITICAL HABITATS. Units should review reference (a) to become familiar with those habitats designated as critical to endangered and threatened species under section 7 of the Endangered Species Act (ESA). Within the First District, specific areas of concern include the Great South Channel and Cape Cod Bay, Massachusetts.

2. **ENDANGERED SPECIES PROTECTION EFFORT.**

A. DEDICATED SURFACE/AIR PATROLS.

(1) TASKING - CTU 44.1.1. and Groups Boston and Woods Hole will be routinely tasked to conduct enforcement boardings, disseminate information packets, and make broadcasts to mariners in the vicinity of the SBNMS and other areas of interest.

(2) AREA SURVEYS - Air Station Cape Cod and designated surface assets will periodically be directed to embark National Marine Sanctuary (NMS) and/or NMFS officials to conduct surveys to facilitate research of the SBNMS and other areas of interest.

(3) DOCUMENTING PATROL EFFORTS - Units shall document marine mammal protection efforts in their Living Marine Resource Weekly Feeder or Daily Situation Report (SITREP) Feeder. Units patrolling SBNMS shall Document their activities in Abstract of Operations reports.

B. SAFETY BROADCAST FOR RIGHT WHALES. Groups Boston and Woods Hole shall make the following safety broadcast on right whales twice a day from 1 March to 31 September and when right whales are reported in the Group's AOR:

"The severely endangered right whale is a regular visitor to Massachusetts coastal waters. The National Oceanic and Atmospheric Administration has designated Cape Cod Bay and the region east of Cape Cod as critical habitat for this species, and has identified the Stellwagen Bank National Marine Sanctuary as an additional area if importance to the right whale. Vessel operators are reminded to use caution around right whales. Intentional close approach to right whales is prohibited and may result in a violation of Federal or state law."

C. CUTTER TRANSITS. During the course of normal, non-emergency operations, First District units transiting the SBNMS, northern right whale critical habitat areas, or other areas frequently used by right whales (see paragraphs 1 and 2) shall use caution and be alert for whales, using speed proportional to the mission to reduce the possibility of whale strikes.

D. SURFACE UNIT NAVIGATION. Units shall plot and maintain the coordinates of the SBNMS and northern right whale critical habitat areas on all navigational and law enforcement working charts.

E. UNIT RESPONSIBILITIES. If a First District unit sights a whale(s), that unit shall:

(1) Give whales a wide berth, using speed proportional to the mission to reduce the possibility of whale strikes.

(2) Maintain a lookout to best avoid contact with the whales.

(3) Notify vessels in the vicinity about the locations of the whales via VHF radio, and direct those vessels to proceed through the area with caution.

(4) Inform OPCON immediately of any sightings of right whales or any other whale that is entangled, injured or dead. Also notify OPCON of any sightings of pilot whales in the vicinity of Cape Cod.

(5) Secure the area to keep onlookers from interfering with personnel authorized to respond to an injured, dead, entangled or stranded protected species. "Authorized" personnel should possess a federal or state permit.

(6) Complete and forward the sighting report per paragraph 5.E. below.

3. **OPCON RESPONSIBILITIES.**

A. NOTIFICATIONS.

(1) SAFETY VOICE BROADCAST - Upon receiving sighting reports of right whales or any other entangled or injured whale, OPCON shall initiate a Safety Voice

Broadcast (update/reissue after each sighting) as appropriate. The broadcast should advise mariners to exercise caution when navigating the area by adjusting course and speed as necessary to minimize disturbing or striking a right whale. For purposes of Safety Voice Broadcasts, dead whales will be treated as hazards to navigation.

(2) ENTANGLEMENTS, BOAT COLLISIONS, AND STRANDINGS - Complete enclosure (2) and relay the information to OPCON. OPCON shall notify appropriate authorities as outlined below:

(a) Entangled whales. OPCON shall immediately notify the Center for Coastal Studies. (See enclosure (3).) Coast Guard units shall not attempt to remove debris from entangled whales. Only the Center for Coastal Studies is authorized to have direct contact with the animals.

(b) Stranded whale. OPCON will immediately notify the local stranding network to facilitate rescue of the stranded animal. (See enclosure (3).)

(c) Stranded/entangled turtles. The Green, Loggerhead, Leatherback, and Kemp's Ridley sea turtles are presently listed as either threatened or endangered reptiles. Coast Guard personnel can cut nets or fishing gear to free entangled turtles only when immediate response may save the turtle(s) from further injury or death. OPCON shall immediately notify the Center for Coastal Studies which will provide advice or initiate action to rescue the animal(s).

(3) PILOT WHALES - Immediately relay any sightings of pilot whales in the vicinity of Cape Cod to the Center for Coastal Studies, as it may be an indication of mass stranding.

B. LOGISTICAL SUPPORT. As requested in reference (b), units are authorized and may be tasked by OPCON to provide logistical support for NMFS-approved disentanglement and stranding teams and their equipment.

C. SITREP. All cases involving protection of endangered species will be documented via SITREP.

D. LETTER REPORT. Units which assist in the salvage, rescue or disposal of a marine mammal shall submit a letter report to the U.S. Fish and Wildlife Service in accordance with chapter 8 of reference (c), with an information copy to CCGDONE (ole).

4. **DISPOSAL OF PROTECTED SPECIES.** There is no specific U.S. Coast Guard responsibility for the salvage or disposal of dead whales. Only situations that pose a safety, health, or navigation hazard, or involve significant public affairs interest, should be pursued. Units shall not tow or attempt to sink dead marine mammals without OPCON concurrence. If there is no interest by appropriate organizations after having been notified about the location of a dead whale or other protected species, abandon the carcass and continue with normal operations.

5. **D1 WHALE SIGHTING PROGRAM.** Per reference (b), the northern right whale is the most endangered large whale in the world. Only the western North Atlantic has a significant number of northern right whales (300-350), with the eastern North Atlantic population virtually extinct. The whale sighting program will provide NMFS experts with critical data. The highest sighting priority for D1 units involves right whale.

A. UNIT PREPARATIONS. Units under CCGDONE OPCON shall review references (a), (c), (d), and (e), and follow guidelines outlined in enclosure (3) in establishing an effective unit sighting program.

B. IDENTIFICATION GUIDE BOOKS. Units shall obtain and use marine mammal identification references. One good resource is "A Field Guide to Whales, Porpoises, and Seals from Cape Cod to Newfoundland." The latest edition of the book was published in 1993 by the Smithsonian Institute Press.

C. SIGHTING PRIORITIES. Whale sightings of specific interest are the northern right, humpback, fin, sei, and blue whales. The specific priorities of the D1 sighting program are:

(1) Entangled or injured right whales;

(2) "Floaters" - Dead right whales;

(3) Live sightings - Right whales;

(4) Live sightings - Pilot whales (only in the vicinity of Cape Cod);

(5) Entangled or dead whales of any other kind;

(6) "Floaters" - Dead whales of any other kind; and

(7) Large groups of whales.

D. PROBABLE LOCATIONS OF RIGHT WHALES. Historical sighting data from aerial and shipboard surveys indicates right whales are normally found in the vicinities of:

(1) BROWNS/BACCARO BANKS - Between these banks on the Nova Scotian shelf from July through November. This area appears to be significant to the whales socially; courtship activities at the surface are frequently observed.

(2) BAY OF FUNDY - Late July through mid-November, with a peak in population in September. This area appears to be the primary summer nursery.

(3) CAPE COD BAY - March through early May. This is the traditional and historical habitat. It has also been designated a critical habitat. U.S. Coast Guard presence is needed to control certain whale watching problems. Units

should work directly with the Massachusetts Environmental Police (MEP) to enforce both state and federal right whale protection regulations.

(4) STELLWAGEN BANK NMS AND JEFFREYS LEDGE - July through September. This is the period of the greatest whale watch effort. U.S. Coast Guard presence should curtail reckless vessel operations especially on weekends and major holidays.

(5) GREAT SOUTH CHANNEL - Mid-April through July. This is the southern passage to and from the Gulf of Maine. The most important task is to know where concentrations of whales are located in order to inform mariners (especially large ships).

(6) SOUTHEASTERN U.S. {CHARLESTON, SC TO MIAMI, FL) - September through April. This primary calving ground is occupied by females before, during and after calving.

E. FORWARDING OF SIGHTING REPORTS. Whale sighting information shall be forwarded per enclosure (4) using the standard format provided in enclosure (5) with supporting 35 mm photographs and VHS video. Units have direct liaison authority with the NOAA Northeast Fisheries Science Center (see enclosure (4)) to discuss pre/post-deployment issues.

6. **ENFORCEMENT OF MMPA AND ESA VIOLATIONS.**

A. PHILOSOPHY. Enforcement of Marine Mammal Protection Act (MMPA) and ESA regulations will target significant violators, i.e., those vessel operators that act in a manner that may result in injury or harassment of protected species. Education is recognized as being a fundamental part of enforcement efforts.

B. HARASSMENT DEFINITION. The term "harassment" is an element of "taking" under the MMPA and includes two levels:

(1) LEVEL A - An act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

(2) LEVEL B - An act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding or sheltering.

C. EXAMPLES OF HARASSMENT.

(1) HUMAN INTERACTIONS - Diving or swimming, throwing objects, human feeding (disrupts natural eating habits), high speed approaches by a vessel, and deliberately maneuvering a vessel close to a whale are clear examples of harassment.

(2) MORE SUBTLE VIOLATIONS - Units should also be aware of more subtle violations. Persistent engagement of a vessel in a manner that results in a recognizable and articulable disturbance of the marine mammal or endangered marine species is also a violation. Detailed narratives, videotapes, and/or photographs are essential in thoroughly documenting these cases.

D. STANDARD FOR DOCUMENTING A VIOLATION. All of the following elements of a violation must be present to justify a violation of the MMPA or ESA.

(1) Personal knowledge of guidelines (can be assumed of whale watching boat operators).

(2) Refusal to observe guidelines once advised/reminded.

(3) Documented behavior (observed, photographed, videotaped, etc.) fitting harassment definition above.

(4) Distances between the violator and whale before, during, and after the incident. Massachusetts also has regulations to protect the right whale. The following management measures under 322 CMR 12.00 apply for boats in Massachusetts state waters:

(a) Buffer Zone. There is a buffer zone surrounding a right whale which consists of an area outward from the right whale a distance of 500 yards in all directions.

(b) Departures. Vessels are required to depart immediately from any buffer zone created by the surfacing of a right whale.

(c) Approaches. Vessels may not approach a right whale or turn in any manner to intercept a right whale within a buffer zone.

(d) Interference. No vessel may disrupt the behavior of a right whale within a buffer zone.

(e) Exceptions. Any person issued a federal or state permit may conduct scientific research, observation or management of the right whale as authorized under the permit.

(f) Commercial Fishing. Commercial fishing vessels hauling back towing gear or fishing at anchor within a buffer zone created by the surfacing of a right whale may complete the haul, tow or fishing operation, provided it does so with minimum disruption to the right whale, does so in a direction away from the right whale, and departs the buffer zone immediately after the haul, tow or fishing operation.

E. ISSUING A VIOLATION.

(1) STANDARDS PRESENT - If elements listed in paragraph 6.D. alone are observed, board the vessel (if weather/operations permit) and attempt to educate the boater, issuing a written warning for minor infractions.

(2) PERSISTENCE - If the master of the vessel persists in harassment, or the actions of the vessel are plainly dangerous or involve a significant act of harassment, issue a violation to the master.

(3) DOCUMENTATION - In documenting a violation, it is critical to identify distances as well as marine mammal behavior before, during, and after the incident. Submit the Enforcement Action Report (EAR) and entire case package in the same manner as MFCMA violations to CCGDONE (ole). A list of all witnesses to the incident is also very important. Identify individuals from other vessels who are potential witnesses in your Offense Investigation Report (OIR) statements.

Note: To document violation of the Massachusetts 500 yard buffer regulation, the case is position-critical and requires additional evidence. These cases can be turned over to the Massachusetts Environmental Police (MEP) (if also on scene) for prosecution, with a copy to CCGDONE (ole).

F. SPECIAL CIRCUMSTANCES INVOLVING WHALE WATCHING BOATS. Do not board commercial whale watching boats. Warn and document suspected violators (obtain necessary information via radio) and forward completed case package (if appropriate) to CCGDONE (ole) for further review.

ENTANGLEMENT AND BOAT COLLISION REPORTING FORM

I. REPORTING SOURCE

Time/Date: _____ Rptg source: _____

Vsl name: _____ Doc/Reg #: _____

Radio call: _____ Cell phone #: _____

1st or 2nd hand report: _____ How long R/S can remain O/S? _____

II. DETAILS OF INCIDENT

Posit: _____ Geographic desc: _____

O/S WX: Winds: ____T/__._kts, Swell: ____T/___ft, Seas: ____T/___ft, Vis: ___nm, Temp: ___F, Baro: ___.___(R/F/S)

Species: _____ No of animals: _____

Dorsal fin: _____ Color: _____

Size: _____ Dead/alive: _____

Distinguishing marks: _____ Photo/video taken: _____

Type of entanglement: _____ Nature of injury: _____

Animal traveling or anchored by gear: _____ Cse/Spd: ___T ___kts

Persons already notified: _____

ENTANGLEMENT

Desc (type) of gear & identifying features (buoy color, reg #, etc.): _____

Type of line (dia, color, matl): _____

Mesh visible? _____ Floats/other gear trailing? _____

Part of body entangled? _____ #wraps around tail/body: _____

Life threatening? Describe: _____

Enclosure (2)

ANIMAL'S APPEARANCE

First impression of condition: _____

Skin condition (peeling, color, whale lice present): _____

Obvious bleeding/wounds: _____

Are marks fresh or healing? _____

Weight (robust, emaciated, ribs or vertebrae showing?): _____

ANIMAL'S BEHAVIOR

General description: _____

Breathing (pattern, sound, smell?): _____

Lifting head/flukes above water? _____ Struggling to breathe? _____

Dive duration: _____

Effects on movement (flexibility, buoyancy, surfacing angle, ability to dive, appendage movement?)

_____

_____

COLLISION

Type of wound (prop wound, part cut off, etc?): _____

Location: _____ Severity: _____

Vessel involved: _____ Doc/Reg #: _____

Operator: _____ Homeport: _____

2

NMFS APPROVED LOCAL STRANDING NETWORKS

I. ENTANGLEMENT REPORTS

(Contact the Center for Coastal Studies first, then the local stranding network)

CENTER FOR COASTAL STUDIES

P.O. Box 1036
59 Commercial St.
Provincetown, MA 02657
(508) 487-3622
Fax (508) 487-4495

II. LOCAL STRANDING NETWORKS

NORTHERN (DOWN EAST) MAINE

Steve Katona, Tom Fernald
College of the Atlantic
Bar Harbor, ME 04609
(207) 288-5015
Fax: (207) 288-5395

SOUTHERN MAINE TO MASS

Greg Early
New England Aquarium
Central Wharf, Boston, MA 02110
(617) 973-5246/6551 (9-5)
Beeper: (617) 973-5247.

RHODE ISLAND AND CONNECTICUT

Neal Overstrom, Rob Nawojchik
Mystic Aquarium
55 Coogan Blvd.
Mystic, CT 06355-1997
(203) 536-9631, ext 107
Fax: (203) 572-5969

NEW YORK

Sam Sadove, Kim Durham,
Caren Carminati
Okeanos Ocean Research Foundation
P.O. Box 776
278 E. Montauk Highway
Hampton Bays, NY 11946
(516) 728-4522/8105
Beeper: (516) 436-8013
Fax: (516) 728-5557

NEW JERSEY

Bob Schoelkopf,
Edna Selzer
Marine Mammal Stranding Center
P.O. Box 773
Brigantine, NJ 08203
(609) 266-0538
Fax: (609) 266-6300

Enclosure: (3)

UNIT CHECKLIST FOR D1 SIGHTING PROGRAM

1. COLLATERAL DUTY ASSIGNMENT. Identify person on board with primary responsibility for photographing, videotaping, and completing sighting forms of endangered marine mammals.

2. QUICK RESPONSE/REACTION. Train watchstanders in marine mammal identification and accurate completion of sighting form.

3. MATERIALS.

   A. Field Guide. Recommend units purchase "A Field Guide to Whales, Porpoises, and Seals from Cape Cod to Newfoundland." The book was written by Steven K. Katona, Valerie Rough, and David T. Richardson and published in 1993 (or latest edition) by the Smithsonian Institute Press (available/can be purchased through local book stores).
   B. Standard Sighting Forms
   C. Camera(s): 35mm, 200-400mm lens, video camera(s)
   D. Film, video tape

4. PRE-PATROL AND POST-PATROL CONTACT.

   DR. JIM HAIN
   C/O NOAA NORTHEAST FISHERIES SCIENCE CENTER
   166 WATER STREET
   WOODS HOLE, MA 02543
   (508) 548-5123
   FAX: (508) 548-5124

5. OBSERVATIONAL ABILITIES AND RECORD KEEPING.

   A. Develop habits of observation, notation, and discussion of information with others.
   B. Be alert for smaller scale oceanographic features...band slicks and "edges" represent areas of mixing...often productive for fish, birds, whales, etc.
   C. Be alert for sighting cues...birds working...
   D. Keep good notes and photographs/video. DO NOT SKIMP ON PHOTOGRAPHS.
   E. When you have made a sighting...KEEP SPOT IN VIEW!

Enclosure (4)

STANDARD SIGHTING FORM

Name of Reporter: _____

Vessel Name or Aircraft Number: _____

Data and Time of Sighting: _____

Position (Latitude & Longitude): _____

Species Observed: _____

Number Identified: _____

Distinguishing Characteristics:
[Key features - size, body shape, color, blow, natural markings (spots, blazes), dorsal fin and flippers (size and shape)]

Comments:
[calf present, injuries/wounds, behavior, other species present]

Photos Taken:
[roll & frame numbers, tape number]

Enclosure (5)

FIFTH COAST GUARD DISTRICT
LAW ENFORCEMENT BULLETIN (LEB)
05-95

Subj: MARINE MAMMAL AND ENDANGERED SPECIES PROGRAM

1. The National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS} are the primary federal agencies responsible for the conservation and management of living marine resources. The Coast Guard, by virtue of its authority to conduct at sea boardings, enforces applicable U.S. law and supports NMFS in their efforts to meet management goals for protected marine mammals. Additionally, as a service, we must also comply with the requirements of the Endangered Species Act (ESA). Of particular concern is the population of the northern right whale and its habitat. This habitat includes whale migration through D5 waters.

2. This LEB publishes guidance on operations and enforcement within the Fifth District with respect to endangered species. The Fifth District point of contact is the Fisheries Officer, who can be reached at (804) 398-6266.

R. J. LOSEA
By direction

Encl: (1) Marine Mammal and Endangered species Protection Program
(2) Entanglement and Boat Collision Reporting form
(3) NMFS Approved Local Stranding Networks
(4) Unit Checklist for D5 Sighting Program
(5) Standard Sighting Form

Enclosure (1)

MARINE MAMMAL AND ENDANGERED SPECIES PROTECTION PROGRAM

FIFTH COAST GUARD DISTRICT
LAW ENFORCEMENT BULLETIN (LED)
05-95

TABLE OF CONTENTS

Enclosure (1)

MARINE MAMMAL AND ENDANGERED SPECIES PROTECTION PROGRAM

Ref: (a) 16 USC 1361; 50 CFR 18, Marine Mammal Protection Act (MMPA)
(b) COMDTINST M16247.1 (series) (Maritime Law Enforcement Manual)
(c) 50 CFR PART 226 Designated Critical Habitat
(d) 50 CFR PART 227 Threatened Fish and wildlife

1. **OVERVIEW:** Reference (a) has designated areas in Dl and D7 as critical habitat for the severely endangered northern right whale. Right whales generally migrate south in the fall and north in the spring and transit D5 waters during their migration. Since little is known about specific migration patterns and areas, sightings are very rare but possible and very important. The other species of whales present in D5 waters during late fall to early spring are the humpback, finback, sperm, and pilot whales wit sightings occurring both inshore and offshore. Turtles may be encountered year round within the district; however most turtle strandings occur from the spring through the fall.

2. **DEDICATED SURFACE/AIR PATROLS:**

a. TASKING - CTU 44.5.1 and Groups Cape May, Eastern Shore, Hampton Roads, Cape Hatteras, and Fort Macon will be routinely tasked to conduct enforcement boardings, disseminate information packets, and make broadcasts to mariners during late fall to early spring when whales can be expected to be transiting through D5 waters.

b. AREA SURVEYS - Air Stations Elizabeth City, Cape May and designated surface assets may be directed to provide other agencies with platforms to conduct surveys of areas where high concentrations of whales have been sighted or during stranding and recovery operations. Aircraft sighting high concentrations of whales or entangled marine mammals during normal operations or training flights will complete as much of the information as possible in enclosure (5) and notify OPCON via landline upon completion of the flight. Enclosure (5) is then mailed to the reporting address listed on the enclosure.

c. DOCUMENTING PATROL EFFORTS - Units shall document marine mammal and endangered species protection efforts in the after action report of planned pulsed operations. If conducting an independent operation contained within the Group, submit a SITREP explaining the situation to OPCON info CCGDFIVE//ole// upon conclusion of the operation.

3. **SAFETY BROADCAST FOR RIGHT WHALES:** Groups Cape May, Eastern Shore, Hampton Roads, Cape Hatteras, and Fort Macon shall make the following safety broadcast on whales twice a day from 1 October to 1 May and when whales are reported in the group's AOR.

"During this time of year various species of whales, including the severely endangered right whale, may be encountered in the local offshore and inshore waters. Vessel operators are reminded to use caution around whales. Intentional close approach to whales is prohibited and may result in a violation of federal or state law.

4. **CUTTER TRANSITS:** whales can be expected to be encountered in inshore and offshore waters of D5 from late fall to early spring. During the course of normal operations, units in D5 waters shall use caution and be alert for whales, using speed proportional to the Mission to reduce the possibility of whale strikes.

5. **UNIT RESPONSIBILITIES:**

a. If a Fifth District unit sights a whale(s), that unit shall:

(1) Give whales a wide berth, using speed proportional to the mission to reduce the possibility of whale strikes.

(3) Maintain a lookout to best avoid contact with the whales.

(3) Notify vessels in the vicinity about the locations of the whales via VHF radio, and direct those vessels to proceed through the area with caution.

(4) Inform OPCON immediately of any sightings of right whales or any other whale that is entangled. stranded, injured, or dead.

(5) Secure the area to keep onlookers from interfering with personnel authorized to respond to an injured, dead, entangled or stranded protected species. "Authorized" personnel should possess a federal or state permit.

(6) Complete the sighting report (enclosure (5)) for situations listed in paragraph 7.c. Forward the report to the appropriate address listed on the bottom of enclosure (5) with a copy to Fifth district (ole).

6. **OPCON RESPONSIBILITIES:**

a. NOTIFICATIONS:

(1) SAFETY VOICE BROADCAST - Upon receiving sighting reports of right whales or any other entangled or injured whale, OPCON shall initiate a Safety Voice Broadcast (update/reissue after each sighting) as appropriate. The broadcast should advise mariners to exercise caution when navigating the area by adjusting course and speed as necessary to minimize disturbing or striking a right whale or any other entangled or injured whale. For purposes of Safety Voice Broadcasts, dead whales will be treated as hazards to navigation. The following is a sample voice broadcast:

"A right whale/large pod of humpback whales/entangled whale has been sighted in approximate position XX-XXN XXX-XXE. Mariners should avoid close approach and transit this area with caution. Intentional close approach or harassment to whales is prohibited and may result in a violation of federal or state law."

(2) ENTANGLEMENTS, BOAT COLLISIONS, AND STRANDINGS - For entanglements and collisions, complete enclosure (3), call and brief the D5 Command Center and make notifications as outlined below. For strandings, call and brief the D5 Command Center and make notifications as outlined below. A copy of enclosure (2) should be sent in accordance with the directions listed in enclosure (5). The original should be retained onboard.

(a) Entangled whales. From New Jersey through Virginia OPCON shall call the appropriate member of the marine mammal stranding network, as outline in enclosure (3), with a follow up call to the Center for Coastal Studies. In North Carolina, OPCON shall call the appropriate member of the marine mammal stranding network as outlined in enclosure (3) with a follow up call to the NMFS laboratory in Beaufort, NC. Coast Guard units shall not attempt to remove debris from entangled whales.

(b) Stranded whales. OPCON will immediately notify the local stranding network to facilitate rescue of the stranded animal. After notification of the local stranding network, brief the D5 Command Center. (See enclosure (3).)

(c) Stranded/entangled turtles. The Green, Loggerhead, Leatherback, and Kemp's Ridley sea turtles are presently listed as either threatened or endangered reptiles. Coast Guard personnel can cut nets or fishing gear to free entangled turtles only when immediate response may save the turtle(s) from further injury or death. Units shall notify OPCON by immediate means when a stranded/entangled turtle is sighted. OPCON shall call the appropriate stranding network contained in enclosure (3).

(d) Disposal of protected species. There is no specific U.S. Coast Guard responsibility for the salvage or disposal of dead whales. Only situations that pose a safety, health, or navigation hazard, or involve significant public affairs interest, should be pursued. If towing out to sea or sinking a dead animal for disposal is recommended by OPCON with concurrence from the local stranding network, refer to reference (b) chapter 8 for guidance. Units shall not tow or attempt to sink dead marine mammals without OPCON concurrence.

b. LOGISTICAL SUPPORT: Units are authorized and may be tasked by OPCON to provide logistical support for NMFS approved salvage, rescue, or disposal teams and their equipment.

c. SITREP: All cases involving protection of endangered marine mammals or sea turtles will be documented via SITREP as outlined in para 2.C. above.

d. LETTER REPORT: Units which assist in the salvage, rescue or disposal of a marine mammal shall submit a letter report to the U.S. Fish and Wildlife Service in accordance with chapter 8 of reference (b), with an information copy to CCGDFIVE (ole).

7. **D5 WHALE SIGHTING PROGRAM:** The northern right whale is the most endangered large whale in the world. Although the right whale is believed to transit north and south through D5 waters, sightings are very rare. If right whales are sighted in D5

waters the information will provide NMFS experts with critical data. Sitings of other species of whales in D5 waters will also provide NMFS scientists with valuable information.

a. UNIT PREPARATIONS: Units shall review references (a) through (d) and follow the guidelines outlined in enclosure (4) in establishing an effective unit sighting program.

b. IDENTIFICATION GUIDE BOOKS: Units shall obtain and use marine mammal identification references. One good resource is "A Field Guide to Whales, Porpoises, and Seals from Cape Cod to Newfoundland", which is available from the Smithsonian Institute Press. This publication contains identification information for whales that transit through D5 waters.

c. SIGHTING PRIORITIES: Units shall complete sighting reports and commence notification procedures outlined paragraphs 5 and 6 above for all of the marine mammal situations listed below.

(1) Entangled or injured whales

(2) "Floaters" - Dead whales

(3) Live sightings - Right whales

(4) Stranded whales of any species

(5) Large groups of whales.

d. FORWARDING OF SIGHTING REPORTS: Whale sighting information shall be forwarded per enclosure (4) using the standard format provided in enclosure (5) with supporting 35-mm photographs and VHS video. Units have direct liaison authority with the NOAA Northeast Fisheries Science Center (see enclosure (4)) to discuss pre/post-deployment issues.

8. **ENFORCEMENT OF MMPA AND ESA VIOLATIONS:**

a. PHILOSOPHY: The Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) are discussed in detail in chapter 8 of reference (b). Enforcement of these Acts will target significant violators, (i.e. those vessel operators that act in a manner that may result in injury or harassment of protected species.) Education is recognized as being a fundamental part of enforcement efforts.

b. HARASSMENT DEFINITION: The term "harassment" is an element of "taking" under the MMPA and includes two levels:

(1) LEVEL A - An act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

(2) LEVEL B - An act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption or behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding or sheltering.

c. EXAMPLES OF HARASSMENT:

(1) HUMAN INTERACTIONS - Diving or swimming, throwing objects, human feeding (disrupts natural eating habits), high speed approaches by a vessel, and deliberately maneuvering a vessel close to a whale are clear examples of harassment.

(2) MORE SUBTLE VIOLATIONS - Units should also be aware of more subtle violations. Persistent engagement of a vessel in a manner that results in a recognizable and articulate disturbance of the marine mammal or endangered marine species is also a violation. Detailed narratives, videotapes, and/or photographs are essential in thoroughly documenting these cases.

d. ELEMENTS OF A VIOLATION.

(1) Jurisdiction - See reference (b), chapter 8.c.1 for a discussion of persons and vessels subject to the Jurisdiction of the U.S. for the purposes of enforcing the ESA and MMPA.

(2) A "taking" of an endangered species (ESA) or a marine mammal (MMPA) - Taking includes among other things, killing, wounding, harming, or harassing a protected species. For an expanded discussion of the substantive prohibitions of either Act, see reference (b), chapter 8.

e. ENFORCEMENT POLICY. There are no absolute standards for determining whether particular behavior constitutes harassment. The following guidance is designed to assist D5 units in determining whether or not either of the Acts has been violated.

(1) PROXIMITY TO PROTECTED SPECIES - The following guidelines, promulgated by NMFS and utilized by NOAA in evaluating potential violations, are to be used by D5 units in determining whether a vessel's proximity to marine mammals constitutes harassment:

(a) When in sight of whales (less than 1500ft away):
(1) Avoid excessive speed or sudden changes in direction or speed.

(b) Close approach procedure (less than 600ft away):
(1) Approach stationary whales no more than idle or "no wake" speed.
(2) Parallel the course and speed of moving whales.
(3) Do not attempt a head-on approach to moving or resting whales.

(c) Multi-vessel approach (less than 300ft away):

(1) All vessels in close approach stay to the side or behind the whales so they do not box in the whales or cut off their path.

(2) When one vessel is within 300ft, other vessels stand off at least 300ft from the whale.

(3) The vessel within 300ft of the whale should limit its time to 15 minutes in close approach to whales.

(d) No intentional approach (less than 100ft away):

(1) Do not approach within 100ft of whales.

(2) If whales approach within 100ft of your vessel, put engines in neutral and do not re-engage props until whales are observed on the surface and clear of the vessel.

(2) KNOWLEDGE - An action does not have to be intentional or knowing to violate either Act. However, approaches or other interactions by an individual or vessel presumed to have knowledge of the above guidelines or other statutory prohibitions (e.g. whale watching boats) will more readily be found to constitute harassment than similar behavior by an individual or vessel without such knowledge.

(3) Refusal to observe guidelines once advised or reminded will more likely result in a finding of harassment.

f. ISSUING A VIOLATION.

(1) STANDARDS PRESENT - If any of the situations discussed in paragraph 8.e are observed, board the vessel (if weather/operations permit) and attempt to educate the boater, issuing a written warning (Enforcement Action Report - E.A.R. citing 50 CFR 18) for minor infractions.

(2) PERSISTENCE - If the master of the vessel persists in harassment or the actions of the vessel are plainly dangerous or involve harassment, issue a violation to the master citing 50 CFR 18.

(3) DOCUMENTATION - In documenting a violation, it is critical to identity distances as well as marine mammal behavior before, during, and after the incident. Submit the Enforcement Action Report (EAR) and entire case package in the sane manner as MFCMA violations to CCGDFIVE (ole). 50 CFR 18 and 16 USC 1361- 1407 are the applicable cites for the MMPA. A list of all witnesses to the incident is also very important. Identify individuals or other vessels who are potential witnesses in your Offense Investigation Report (OIR) statements.

g. SPECIAL CIRCUMSTANCES INVOLVING WHALE WATCHING BOATS. Do not board commercial whale watching boats. Warn and document suspected violators (obtain necessary information via radio) and forward completed case package (if appropriate) to CCGDFIVE (ole) for farther review.

ENTANGLEMENT AND BOAT COLLISION REPORTING FORM

I. REPORTING SOURCE

Time/Date: _____ Rptg source: _____

Vsl name: _____ Doc/Reg #: _____

Radio call: _____ Cell phone #: _____

1st or 2nd hand report: _____ How long R/S can remain O/S? _____

II. DETAILS OF INCIDENT

Posit: _____ Geographic desc: _____

O/S WX: Winds: ____T/__._kts, Swell: ____T/___ft, Seas: ____T/___ft, Vis: ___nm, Temp: ___F, Baro: ___.___(R/F/S)

Species: _____ No of animals: _____

Dorsal fin: _____ Color: _____

Size: _____ Dead/alive: _____

Distinguishing marks: _____ Photo/video taken: _____

Type of entanglement: _____ Nature of injury: _____

Animal traveling or anchored by gear: _____ Cse/Spd: ___T___kts

Persons already notified: _____

ENTANGLEMENT

Desc (type) of gear & identifying features (buoy color, reg #, etc.): _____

Type of line (dia, color, matl): _____

Mesh visible? _____ Floats/other gear trailing? _____

Part of body entangled? _____ #wraps around tail/body: _____

Life threatening? Describe: _____

Enclosure (2)

ANIMAL'S APPEARANCE

First impression of condition: _____

Skin condition (peeling, color, whale lice present): _____

Obvious bleeding/wounds: _____

Are marks fresh or healing? _____

Weight (robust, emaciated, ribs or vertebrae showing?): _____

ANIMAL'S BEHAVIOR

General description: _____

Breathing (pattern, sound, smell?): _____

Lifting head/flukes above water? _____ Struggling to breathe? _____

Dive duration: _____

Effects on movement (flexibility, buoyancy, surfacing angle, ability to dive, appendage movement?)

_____

_____

COLLISION

Type of wound (prop wound, part cut off, etc?): _____

Location: _____ Severity: _____

Vessel involved: _____ Doc/Reg #: _____

Operator: _____ Homeport: _____

NMFS APPROVED LOCAL STRANDING NETWORKS

NEW JERSEY THROUGH VIRGINIA

CENTER FOR COASTAL STUDIES

P.O. Box 1036
59 Commercial St.
Provincetown, MA 02657
(508) 487-3622
Fax (508) 487-4495

NEW JERSEY

Bob Schoelkopf,
Edna Selzer
Marine Mammal Stranding Center
P.O. Box 773
Brigantine, NJ 08203
(609) 266-0538
FAX: (609) 266-6300

DELAWARE

Leon Spence/Elaine Logothetis
Delaware Division of Fish and Wildlife
P.O. Box 1401
Dover, DE 19903
(302) 739-4782
FAX: (302) 653-3431

MARYLAND

Frances Cresswell
Maryland DNR
Oxford Cooperative Lab
904 S. Morris St
Oxford, MD 21654
(410) 226-0078
(800) 628-9944
FAX: (410) 226-5925

VIRGINIA

Jack Musick/John Keith
V.I.M.S. School of Marine Science
College of William and Mary
Gloucester Point, VA 23062
(804) 642-7313
FAX: (804) 642-7097

Mark Swingle
Virginia Marine Science Museum
717 General Booth Blvd
Virginia Beach, VA 23451
(804) 437-4949
FAX: (804) 437-4976

Dave Schofield
Christine Steinert
Dr Brent Whitaker
National Aquarium in Baltimore
Pier 3 501 E Pratt St
Baltimore, MD 21202
(410) 576-3853
Beepers: (410) 450-3852
(410) 408-6633
(410) 408-4284
FAX: (410) 576-1080

WASHINGTON D.C. (and surrounding states)

Jim Mead/Charley Porter
Smithsonian Institute
Natl. Museum of Nat. History
Division of Mammals
Washington, D.C 20560
(202) 357-1923/786-2497
FAX: (202) 357-1896

Enclosure: (3)

NMFS APPROVED LOCAL STRANDING NETWORKS

NORTH CAROLINA

Vicki Thayer
NOAA, National Marine Fisheries Service
101 Pivers Island Road
Beaufort, NC 28516
(919) 728-8762
Pager: (919) 444 8064
Home: (919) 728-7464

Rhett B. White
Frank Huggins
NC Aquarium/Roanoke Island
P.O. Box 976
Manteo, NC 27954
(919) 473-3494

James T. Barnes/Director
Stuart May
Gayle Piner
NC Aquarium, Pine Knoll Shores
P.O. Box 580
Atlantic Beach, NC 28512
(919) 247-4004

Dr W. David Webster
University of NC/Wilmington
Dept of Biological Science
601 S. College Rd
Wilmington, NC 28402
(919) 395-3756

Dr Dwight Shumway, DVM
Outerbanks Animal Hospital
Outerbanks Mall
Nags Head, NC 27959
(919) 441-6066

Felix Revello
Dr Mike Rikker
Cape Lookout NSS
P.O. Box 593
Harkers Island, NC 28531
(919) 728-2250

Park Superintendent
Hammocks Beach State Park
Rt. 2, Box 295
Swansboro, NC 28584
(919) 326-4881

Dr James Lanier/Director
Paul Barrington
Andy Wood
Richard Roberts
NC Aquarium, Ft Fisher
P.O. Box 130
Kure Beach, NC 28449
(919) 458-8258

Reis Collier
Cape Hatteras NSS
Rt. 1, Box 675
Manteo, NC 27954
(919) 473-2111

Keith Rittmaster
c/o NC Maritime Museum
Beaufort, NC 28516
(919) 728-7317

Dr Claire Hoenwarter, DVM
11 Barnard Dr
Wilmington, NC 28405
(919) 251-0081 791-1446
HOME: (919) 762-0338

Dr Joseph Bonaventura
Gail Cannon
Duke University
Marine Laboratory
Marine Biomedical Center
Beaufort, NC 28516
(919) 728-2111

Park Superintendent
Fort Macon State Park
P.O. Box 127
Atlantic Beach, NC 28512
(919) 726-3775

NMFS APPROVED LOCAL STRANDING NETWORKS

NORTH CAROLINA (cont)

Dr Stephen C. Jaffe, DVM
102 South Branch Road
Wilmington, NC 28405
(919) 458-9088

George Roundtree
138 S. Colony Circle
Wilmington, NC 28405
(919) 799-8154

Dr James Smallwood
Dr Michael K. Stroskopf
Dr Mark Cline
William (Bill) Wise
NC State Univ.
College of Veterinary Medicine
Raleigh, NC 27606
(919) 829-4200

NC State Office of Marine Affairs
417 N Blount St
Raleigh, NC 27601
(919) 733-2290

NC Museum of Natural Sciences
102 N Salisbury St
Attn: David Lee
Raleigh, NC 27601
(919) 733-7450

Dr R. Guy Jaconis, DVM
1210 W. Beaufort Road
Beaufort, NC 28516
(919) 728-7600

Dr Suzanne Botts, DVM
Experimental Pathology
Laboratories, Inc.
P.O. Box 12766
Research Triangle Park,
NC 27709
(919) 544-8061

Environmental Mgmt Dept
MCB, Bldg 1103
Attn: Charles Peterson
Camp Lejeune, NC 28542
(919) 451-2195

North Carolina Marine
Fisheries
341 Arendell St
Morehead City, NC 28557
(919) 726-7021

UNIT CHECKLIST FOR D5 SIGHTING PROGRAM

1. COLLATERAL DUTY ASSIGNMENT. Identify person on board with primary responsibility for photographing, videotaping, and completing sighting forms of endangered marine mammals.

2. QUICK RESPONSE/REACTION. Train watchstanders in marine mammal identification and accurate completion of sighting form.

3. MATERIALS.

   A. Field Guide. Recommend units purchase "A Field Guide to Whales, Porpoises, and Seals from Cape Cod to Newfoundland." The book was written by Steven K. Katona, Valerie Rough, and David T. Richardson and published in 1993 (or latest edition) by the Smithsonian Institute Press (available/can be purchased through local book stores).
   B. Standard Sighting Forms (enclosure 5).
   C. Camera(s): 35mm, 200-400mm lens, video camera(s)
   D. Film, video tape

4. PRE-PATROL AND POST-PATROL CONTACT/SIGHTING REPORT ADDRESS.

   A. New Jersey through Virginia
      DR. JIM HAIN
      C/O NOAA NORTHEAST FISHERIES SCIENCE CENTER
      166 WATER STREET
      WOODS HOLE, MA 02543
      (508) 548-5123
      FAX: (508) 548-5124

   B. North Carolina
      VICKI THAYER
      NOAA, NATIONAL MARINE FISHERIES SERVICE
      101 PIVERS ROAD
      BEAUFORT, NC 28516
      (919) 728-8762

5. OBSERVATION ABILITIES AND RECORD KEEPING.

   A. Develop habits of observation, notation, and discussion of information with others.
   B. Be alert for smaller scale oceanographic features...band slicks and "edges" represent areas of mixing...often productive for fish, birds, whales, etc.
   C. Be alert for sighting cues...birds working...
   D. Keep good notes and photographs/video. DO NOT SKIMP ON PHOTOGRAPHS.
   E. When you have made a sighting...KEEP SPOT IN VIEW!

Enclosure (4)

STANDARD SIGHTING FORM

Name of Reporter: _____

Vessel Name or Aircraft Number: _____

Date and Time of Sighting: _____

Position (Latitude & Longitude): _____

Species Observed: _____

Number Identified: _____

Distinguishing Characteristics:
[Key features - size, body shape, color, blow, natural markings (spots, blazes), dorsal fin and flippers (size and shape)]

Comments:
[calf present, injuries/wounds, behavior, other species present]

Photos Taken:
[roll & frame numbers, tape number]

AFTER COMPLETING FORM, MAIL TO:

NEW JERSEY THROUGH VIRGINIA
DR. JIM HAIN
C/O NOAA NORTHEAST FISHERIES
SCIENCE CENTER
166 WATER STREET
WOODS HOLE, MA 02543
(508) 548-5123
FAX: (508) 548-5124

NORTH CAROLINA
VICKI THAYER
NOAA, NATIONAL MARINE
FISHERIES SERVICE
101 PIVERS ROAD
BEAUFORT, NC 28516
(919) 728-8762

Enclosure (5)

U.S. Department of Transportation
United States Coast Guard

Commander
Seventh Coast Guard District

909 S.E. First Avenue
Miami, Fl., 33131-3050
Staff Symbol: ole
Phone: 305-536-5623

SEVENTH DISTRICT INSTRUCTION 16214.5

Subj: MARINE MAMMAL AND ENDANGERED SPECIES PROTECTION PROGRAM

Ref: (a) 50 CFR PART 226 - Designated Critical Habitat (Jonathan Pub)
(b) 50 CFR PART 227 - threatened Fish & Wildlife (Jonathan Pub)
(c) 50 CFR PART 638 - Coral & Coral Reefs of the Gulf and South Atlantic (Jonathan pub)
(d) NMFA Recovery Plan for the Northern Right Whale dtd DEC 91

1. PURPOSE. This instruction establishes procedures for Coast Guard units within Seventh District waters to further the federally mandated protection and recovery objectives for marine mammals and endangered marine species. It is intended to minimize the impact of Coast Guard operations on such species and to prevent, or detect and initiate enforcement action on, violations of U.S. law.

2. DIRECTIVES AFFECTED. None.

3. DISCUSSION. The National Marine Fisheries Service (NMFS) is the primary federal agency responsible for the conservation and management of Living Marine Resources. The Coast Guard has authority to perform law enforcement activity upon the high seas and waters subject to U.S. Jurisdiction for the prevention, detection, and suppression of violations of U.S. Law, as well as to provide support to NMFS to meet management goals for protected marine mammals. The Coast Guard and NMFS are both responsible for enforcing violations of the Endangered Species Act (ESA).

4. ACTION. All Seventh District units, cutters, and aircraft operating within the Seventh District shall comply with the provisions of references (a) through (d) and enclosure (1) of this instruction.

Encl. (1) Marine Mammal & Endangered Species Protection Program
(2) Selected extracts from reference (d)

MARINE MAMMAL AND ENDANGERED SPECIES PROTECTION PROGRAM

1. **AREAS OF SPECIAL INTEREST.** The Seventh District Marine Mammal and Endangered Species Protection Program applies to lateral and offshore waters. However, the following areas are of special importance:

A. **DESIGNATED CRITICAL HABITATS.** Units should review reference (a} to become familiar with those habitats designated as critical to endangered and threatened species under section 7 of the Endangered Species Act (ESA}. Within the Seventh District, specific areas of concern include the waters adjacent to Sandy Point, St. Croix, U.S. Virgin Islands (for Leatherback Sea Turtles); and the coastal waters between 31-15N and 30-15N from the coast out to 15 NM and the coastal waters between 30-15N and 28-00N from the coast out to 5 NM (for Northern Right Whales).

B. **HABITAT AREAS OF PARTICULAR CONCERN.** Units should review reference (c) to become familiar with those habitats designated as Habitat Areas of Particular Concern (HAPC). Within the Seventh District, specific areas of concern include the Oculina Bank which is bounded on the north by 27-53N, on the south by 27-30N, on the east by 79-56W and on the west by 80-00W. Within the HAPC, fishing with bottom longlines, traps, pots, dredges, or bottom trawls is **prohibited.** Although technically located within Eighth District waters, the Florida Middle Grounds are routinely patrolled by Group St. Petersburg assets. Reference (c) contains the specific coordinates of the Middle Grounds in which fishing with bottom longlines, traps, pots, dredges or bottom trawls is **prohibited.** Additional prohibitions concerning possession of coral and allowable octocorals also apply.

2. **ENDANGERED SPECIES PROTECTION EFFORT.**

A. DEDICATED SURFACE/AIR PATROLS.

(1) TASKING - GANTSEC, CTU 44.7.7 and Groups Miami, Mayport and Charleston will be routinely tasked to conduct enforcement boardings, disseminate information packets, and make broadcasts to mariners in the vicinity of these areas of interest.

(2) AREA SURVEYS - Air Stations Miami & Clearwater and designated surface assets will periodically be directed to embark National Marine Sanctuary (NMS) and/or NMFS officials to conduct surveys to facilitate research of the areas of interest.

(3) DOCUMENTING PATROL EFFORTS - Units shall document marine mammal protection efforts in their weekly MIPRs or Daily Situation Report (SITREP) Feeder. Additionally, units patrolling either the Florida Keys or Grays Reef Marine sanctuaries shall document their activities in Abstract of Operations reports in addition to the MIPRs/SITREPs.

B. SAFETY BROADCAST FOR RIGHT WHALES. Groups Charleston and Mayport shall make the following safety broadcast on right whales twice a day from 1 December to 1 April and when right whales are reported in the Group's AOR:

"The severely endangered Northern Right Whale is a regular visitor to North Florida/South Georgia coastal waters. The National Oceanic and Atmospheric Administration has designated the coastal waters between 31-15N and 30-15N from the coast to 15 NM offshore, and the coastal waters between 30-15N and 28-00N from the coast to 5 NM offshore, as critical habitat for this species. Vessel operators are reminded to use caution around and remain clear of right whales. Intentional close approach to right whales is prohibited and may result in a violation of Federal or state law."

C. CUTTER TRANSITS. During the course of normal, non-emergency Operations, Seventh District units transiting the Northern Right Whale critical habitat areas shall use caution and be alert for whales, using speed proportional to the mission to reduce the possibility of whale strikes.

D. SURFACE UNIT NAVIGATION. Units should plot and maintain the coordinates of the Northern Right Whale critical habitat areas on navigational and law enforcement working charts.

E. UNIT RESPONSIBILITIES. If a Seventh District unit sights a whale(s), that unit should:

(1) Floating units should give whales a wide berth, using speed proportional to the mission to reduce the possibility of whale strikes, and maintain a diligent lookout in the area to best avoid contact with that whale or other whales in the area.

(2) Notify vessels in the vicinity about the locations of the whales via VHF radio, and advise those vessels to proceed through the area with caution.

(3) Inform OPCON immediately of any sightings of right whales or any other whale that is entangled, injured or dead.

(4) When authorized personnel are responding to an injured, dead, entangled or stranded protected species, Coast Guard units in the vicinity should assist as operations permit by securing the area to keep onlookers from interfering. "Authorized" personnel should possess a federal or state permit.

(5) Complete and forward the sighting report per paragraph 5.e. below.

3. **OPCON RESPONSIBILITIES.**

A. NOTIFICATIONS

(1) SAFETY VOICE BROADCAST - Upon receiving sighting reports of right whales or any other entangled or injured whale, OPCON should initiate a Safety Voice Broadcast (update/reissue after each sighting) as appropriate. The broadcast should advise mariners to exercise caution when navigating the area by adjusting course and speed as necessary to minimize disturbing or striking a right whale. For purposes of Safety Voice Broadcasts, dead whales will be treated as hazards to navigation.

(2) ENTANGLEMENTS, BOAT COLLISIONS, AND STRANDINGS - Units shall complete the Entanglement & Boat Collision Reporting Form and relay the information to OPCON. OPCON shall notify appropriate authorities as outlined below:

(a) Entangled whales. OPCON shall immediately notify the agencies listed on page 11 of this instruction. Coast Guard units should not attempt to remove debris from entangled whales. Only the Center for Coastal Studies is authorized to have direct contact with the animals.

(b) Stranded whales. OPCON will immediately notify the local stranding network to facilitate rescue of the stranded animal.

(c) Stranded/entangled turtles. The Green, Loggerhead, Leatherback, and Kemp's Ridley sea turtles are presently listed as either threatened or endangered reptiles. Coast Guard personnel can cut nets or fishing gear to free entangled turtles only when immediate response may save the turtle(s) from further injury or death. OPCON should immediately notify the Center for Coastal Studies which will provide advice or initiate action to rescue the animal(s).

B. LOGISTICAL SUPPORT. Units are authorized and may be tasked by OPCON to provide logistical support for NMFS-approved disentanglement and stranding teams and their equipment.

C. SITREP. All cases involving protection of endangered species will be documented via SITREP.

D. LETTER REPORT. Units which assist in the salvage, rescue or disposal of a marine mammals shall submit a letter report to the U.S. Fish and Wildlife Service in accordance with chapter 8 of the Maritime Law Enforcement Manual, with an information copy to CCGD7 (ole).

4. **DISPOSAL OF PROTECTED SPECIES.** There is no specific U.S. Coast Guard responsibility for the salvage or disposal of dead whales. Only situations that pose a safety, health, or navigation hazard, or involve significant public affairs interest, should be pursued. Units shall not tow or attempt to sink dead marine mammals without OPCON concurrence.

If there is no interest by appropriate organizations after having been notified about the location of a dead whale or other protected species, abandon the carcass and continue with normal operations.

5. **D7 WHALE SIGHTING PROGRAM.** Per reference (d), the Northern Right Whale is the most endangered large whale in the world. Only the western North Atlantic has a significant number of northern right whales (300-350), with the eastern North Atlantic population virtually extinct. The whale sighting program will provide NMFS experts with critical data. The highest sighting priority for D7 units involves right whales.

A. UNIT PREPARATIONS. CCGD7 units should review references (a) through (d), and follow guidelines outlined in this instruction in establishing an effective unit sighting program.

B. IDENTIFICATION GUIDE BOOKS. Units should ensure that appropriate personnel are able to identify Right Whales and other protected species. The Sierra Club Handbook on Marine Mammals is available from the Sierra Club for $15.00. Marine Mammals Ashore - A Field Guide for Strandings is available for $25.00 front Texas A&M University. This publication has waxed pages which are water resistant in a spiral bound format. "A Field Guide to Whales, Porpoises, and Seals from Cape Cod to Newfoundland" was written by Steven K. Katona, Valerie Rough, and David T. Richardson and published in 1993 by the Smithsonian Institute Press.

C. SIGHTING PRIORITIES. The specific priorities of the D7 sighting program are:

(1) Entangled or injured right whales;

(2) "Floaters" - Dead right whales;

(3) Live sightings - Right whales;

(4) Entangled or dead whales of any other kind;

(5) "Floaters" - Dead whales of any other kind; and

(6) Large groups of whales.

D. PROBABLE LOCATIONS OF RIGHT WHALES. Historical sighting data from aerial and shipboard surveys indicates right whales are normally found in the vicinities of:

(1) BROWNS/BACCARO BANKS - Between these banks on the Nova Scotian shelf from July through November. This area appears to be significant to the whales socially; courtship activities at the surface are frequently observed.

(2) BAY OF FUNDY - Late July through mid-November, with a peak in population in September. This area appears to be the primary summer nursery.

(3) CAPE COD BAY - March through early May. This is the traditional and historical habitat. It has also been designated a critical habitat. U.S. Coast Guard presence is needed to control certain whale watching problems. Units should work directly with the Massachusetts Environmental Police (MEP) to enforce both state and federal right whale protection regulations.

(4) STELLWAGEN BANK NMS AND JEFFREYS LEDGE - July through September. This is the period of the greatest whale watch effort. U.S. Coast Guard presence would curtail reckless vessel operations especially on weekends and major holidays.

(5) GREAT SOUTH CHANNEL - Mid-April through July. This is the southern passage to and from the Gulf of Maine. The most important task is to know where concentrations of whales are located in order to inform mariners (especially large ships).

(6) SOUTHEASTERN U.S. {CHARLESTON, SC TO MIAMI, FL) - September through April. This primary calving ground is occupied by females before, during and after calving.

E. FORWARDING OF SIGHTING REPORTS. Whale sighting information shall be forwarded to the SEUS Team for Recovery of the Right Whale (see paragraph.3). The use of 35-mm photographs and VHS video to supplement the reports is encouraged. Direct liaison with the NOAA (are outlined on p. 11) to discuss pro/post-deployment issues is also encouraged.

6. ENFORCEMENT OF MMPA AND ESA VIOLATIONS

A. PHILOSOPHY. Enforcement of Marine Mammal Protection Act (MMPA) and ESA regulations will target significant violators, i.e., those vessel operators that act in a manner that may result in injury or harassment of protected species. Education is recognized as being a fundamental part of enforcement efforts.

B. HARASSMENT DEFINITION. The term "harassment" is an element of taking under the MMPA and includes two levels:

(1) LEVEL A - An act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

(2) LEVEL B - An act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns. including, but not limited to, migration, breathing, nursing, breeding, feeding or sheltering.

C. EXAMPLES OF HARASSMENT.

(1) HUMAN INTERACTIONS - Diving or swimming, throwing objects, human feeding (disrupts natural eating habits), high speed approaches By a vessel, and deliberately maneuvering a vessel close to a whale are clear examples of harassment.

(2) MORE SUBTLE VIOLATIONS - Units should also be aware of more subtle violations persistent engagement of a vessel in a manner that results in a recognizable and articulable disturbance of the marine mammal or endangered marine species is also a violation. Detailed narratives, videotapes, and/or photographs are essential in thoroughly documenting these cases.

D. STANDARD FOR DOCUMENTING VIOLATIONS. Evidence of the following elements of a violation should be obtained to establish a violation of the MMPA or ESA.

(1) Personal knowledge of guidelines in references (a) through (c) (can be assumed of whale watching boat operators).

(2) Refusal to observe guidelines in references (a) through (c) once advised/reminded.

(3) Documented behavior (observed, photographed, videotaped, etc.) fitting harassment definition above.

(4) Distances between the violator and whale before, during, and after the incident.

(a) Buffer Zone. There is a buffer zone surrounding a right whale which consists of an area outward from the right whale a distance of 500 yards in all directions.

(b) Departures. Vessels are required to depart immediately from any buffer zone created by the surfacing of a right whale.

(c) Approaches. Vessels may not approach a right whale or turn in any manner to intercept a right whale within a buffer tone.

(d) Interference. No vessel may disrupt the behavior of a right whale within a buffer zone.

(e) Exceptions. Any person issued a federal or state permit may conduct scientific research, observation or management at the right whale as authorized under the permit.

(f) Commercial Fishing. Commercial fishing vessels hauling back, towing gear or fishing at anchor within a buffer zone created by the surfacing of a right whale may complete the haul, tow or fishing operation, provided it does so with minimum disruption to

the right whale, does so in a direction away from the right whale and departs the buffer zone immediately after the haul, tow or fishing operation.

E. ISSUING A VIOLATION.

(1) STANDARDS PRESENT - If "harassment" as discussed in paragraph 6.0. is observed, board the vessel (if weather/operations permit) and attempt to educate the vessel operator. Issuing a written warning for minor infractions is authorized at the boarding officers discretion if it is deemed that the mariner's actions were unintended or due to ignorance of the law, and will be corrected.

(2) PERSISTENCE - If the master of the vessel persists in harassment, or the actions of the vessel are plainly dangerous or involve a significant act of harassment, issue a violation to tho master.

(3) DOCUMENTATION - In documenting a violation, it is critical to identity distances as well as marine mammal behavior before, during, and after the incident. Submit the Enforcement Action Report (EAR) and documentation in the same manner as MFCMA violations to the local NMFS agent. A list of all witnesses to the incident with phone numbers and/or addresses is also very important. Identity individuals or other vessels who are potential witness in your Offense Investigation Report (OIR) statements.

F. SPECIAL CIRCUMSTANCES INVOLVING WHALE WATCHING BOATS. Commercial whale watching boats need not be boarded for all perceived violations. If apparent violations are observed, warn and document suspected violators (obtain necessary information via radio) and forward completed case package (if appropriate) to NMFS for further review.

Encl: (1) to CGD SEVENINST 16214

ENTANGLEMENT AND BOAT COLLISION REPORTING FORM

I. REPORTING SOURCE

Time/Date: _____ Rptg Source: _____

Vsl Name: _____ Doc/Reg #: _____

Radio Call: _____ Cell Phone: _____

1st or 2nd hand report: _____ How long R/S can remain O/S? _____

II. DETAILS OF INCIDENT

Posit: _____ Geographic Desc: _____

O/S Wx: Winds ____T/_____KTS, Swell _____T/_____FT

Seas ____T/____FT, Vis ____NM, Temp ____F, Baro ___.___(R/F/S)

Specie: _____ # of Animals: _____

Dorsal Fin: _____ Color: _____

Size: _____ Deal/Alive: _____

Distinguishing Marks: _____ Photo/Video Taken: _____

Type of Entanglement: _____ Nature of Injury: _____

Animal traveling or Anchored by Gear: _____ Cse/Spd: _____

III. ENTANGLEMENT

Desc (type) of gear & identifying Features (buoy color, reg #, etc) _____

_____

Type of Line (dia, color, matl): _____

Mesh Visible? _____ Floats/other gear trailing? _____

Encl: (1) to CGD SEVENINST 16214

ENTANGLEMENT AND BOAT COLLISION REPORTING FORM (Page 2)

Part of Body Entangled? _____ # Wraps around tail/body: _____

Life Threatening? Describe: _____

Encl: (1) to CGD SEVENINST 16214

I. **NMFS APPROVED LOCAL STRANDING NETWORKS**
(Report to in the order listed)

MR. MIKE HARRIS
SOUTHEASTERN U.S. IMPLEMENTATION TEAM FOR RECOVERY OF THE NORTHERN RIGHT WHALE
1-800-272-8363ext 229
(912) 262-3336

NMFS ENFORCEMENT, SOUTHEAST REGION
ENDANGERED SPECIES BRANCH
(813) 570-5344

FLORIDA DEPARTMENT OF ENVIRONMENTAL RESOURCE MANAGEMENT (DERM)
1-800-342-5367

Encl: (1) to CGD SEVENINST 16214

UNIT CHECKLIST FOR D7 SIGHTING PROGRAM

1. COLLATERAL DUTY ASSIGNMENT. Identify positions on board with primary responsibility for photographing, videotaping, and completing sighting forms for endangered marine mammals.

2. QUICK RESPONSE/REACTION. Train watchstanders in marine mammal identification and accurate completion of sighting form.

3. MATERIALS.

   a. Field Guide. It is recommended that units have a field guide to aid in the identification of endangered marine mammals. A list of books that have been found useful for this purpose is on p.4 of this Instruction.
   b. Standard Sighting Forms
   c. Camera(s): 35mm, 200-400mm lens, video camera(s)
   d. Film, video tape

4. PRE-PATROL AND POST-PATROL CONTACT.

   Mr. Bill Brooks
   C/O NOAA NORTHEAST FISHERIES SCIENCE CENTER
   JACKSONVILLE, FLORIDA
   (904) 448-4300

5. OBSERVATIONAL ABILITIES AND RECORD KEEPING.

   a. Develop habits of observation, notation, and discussion of information with others.
   b. Be alert for smaller scale oceanographic features...band slicks and "edges" represent areas of mixing...often productive for fish, birds, whales, etc.
   c. Be alert for sighting cues...birds working..
   d. Keep good notes and photographs/video. DO NOT SKIMP ON PHOTOGRAPHS.
   e. When you have made a sighting...KEEP SPOT IN VIEW!

Enclosure (2)

RECOVERY PLAN

for the

NORTHERN RIGHT WHALE
(*Eubalaena glacialis*)

Prepared by the

RIGHT WHALE RECOVERY TEAM

for the

OFFICE OF PROTECTED RESOURCES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
SILVER SPRING, MARYLAND

December 1991

Approved: Michael F. Tillman

Michael F. Tillman
Deputy Assistant Administrator for Fisheries

EXECUTIVE SUMMARY

The northern right whale, *Eubalaena glacialis*, is the world's most endangered large whale. Current estimates place the total number of remaining animals at no more than 600. About 350 occupy the waters of the western North Atlantic and between 100 and 300 occur in the North Pacific Ocean. The northern right whale was initially placed in this precarious position because of hunting, which started over 800 years ago and continued until the 1930's. While protected by international agreement for over 50 years, there is no evidence that the number of northern right whales has increased substantially although other large whale species, similarly protected, have shown various population increases. Both natural and human-induced factors have been suggested as responsible for this absence of measurable recovery.

This recovery plan identifies known and potential factors affecting the northern right whale and recommends actions to reduce or eliminate impacts to the northern right whale. The impacts and recommended recovery actions are presented separately for the North Atlantic and North Pacific populations.

The major threats to the North Atlantic population were identified as collisions with ships, entrapment or entanglement in fishing gear, habitat degradation and disturbance by vessels. Risks to the North Pacific population(s) are poorly known, but are presumed to be similar to those in the North Atlantic. Hunting, while not presently a problem, could reemerge as a significant problem should international prohibitions become ineffective.

While certain measures designed to assist the northern right whale are already in place, additional actions, as discussed in detail in the plan, need to be accomplished. Recovery will not be quick. It is estimated that even under the best of conditions, it will take more than 100 years for the northern right whale population to reach pre-exploitation levels in both oceans.

The plan presents an action strategy to guide a coordinated effort to allow the northern right whale the best chance of recovery based on the present state of knowledge and information. Recommended recovery actions include, but are not limited to: (1) an aggressive program of education and enforcement to reduce the risks of ship collisions and entanglement in fishing gear that entrap northern right whales, (2) the consideration of designation of three areas in the waters of the United States as "critical habitat" which are deemed to be necessary to the survival of the species, and (3) the restriction of recreational whale watching activities directed at the northern right whale. In addition to cooperation with Canadian authorities to ensure the fullest protection possible for this highly migratory species, research on many aspects of northern right whale ecology and vulnerability is needed.

Many of the recommended actions require funds; this plan recommends that priority in the allocation of these funds be given to the Western North Atlantic population. As more information is learned about the North Pacific population, a separate recovery effort is recommended for those animals. In addition, steps should be taken to coordinate and, as appropriate, combine efforts benefitting the northern right whale with other species, especially the humpback whale.

II. THE NORTHERN RIGHT WHALE

A. Species Description and Taxonomy

The northern right whale, *Eubalaena glacialis* (Müller, 1776), is a robust, medium-sized baleen whale. Adults generally range in length between 45 and 55 feet and can weigh up to 70 tons. Females grow larger than males. The northern right whale's distinctive features include the absence of a dorsal fin, a large head (more than 1/4 of the body length), a narrow upper jaw and strongly bowed lower jaw. Tough cornified skin patches on the head, called callosities, are used with other marks to identify individuals. Two rows of dark baleen plates descend from the upper jaw. The plates are long (up to nine or more feet) and numerous, with about 225 on each side. The animals are generally black in color although individuals often exhibit variable white patches on the throat and belly. The tail is broad, deeply notched, and all black with a smooth trailing edge. Because of the two widely separated blowholes, its spout or blow forms a distinctive V-shape when seen from the front or back. The animals blow is a useful field characteristic for identifying a right whale from a distance. (Kraus *et al.*, 1988).

In this plan, the recommendations of Schevill (1986) will be followed and all northern right whales in both the North Atlantic and North Pacific oceans will be considered as one species, *Eubalaena glacialis* (Müller, 1776). There is a question as to whether the Atlantic and Pacific populations deserve separate recognition at the subspecific level. If such a separation is demonstrated as valid, the North Atlantic population could be referred to as *Eubalaena glacialis glacialis* (Müller, 1776) and the North Pacific population could be *Eubalaena glacialis japonica* (Gray, 1864).

The southern right whale is currently considered to be a separate but closely related species, *Eubalaena australis* (Desmoulins, 1822). The justification for keeping the two species taxonomically separate rests on skeletal data (Müller, 1954) and recently completed genetics studies (Schaeff *et al.*, 1991). However, even if they are combined, right whales of the genus *Eubalaena* will, with the possible exception of the blue whale, still be the rarest of the world's large whales and will still require a committed effort to assist their recovery.

B. Zoogeography

The pre-exploitation distribution of the northern right whale probably included the temperate and subarctic, coastal and/or continental shelf waters of the North Pacific and North Atlantic Oceans. Post-exploitation distribution--that is, since 1935--is more limited in both oceans. In general terms, the waters between Nova Scotia and Florida in the Western North Atlantic and the waters in the Gulf of Alaska (50°-58°N, 140°-152°W) appear to be the primary areas inhabited by the present northern right whale populations. The recent distribution of both North Atlantic and North Pacific populations is described briefly in Sections III.A.2 and IV.A.2. Further detail is provided in Brownell *et al.* (1986).

Because of the disjunct geographic distribution of northern right whales in the North Atlantic and North Pacific Oceans and their ocean-specific recovery needs, the plan will address the two populations separately.

C. Protective Legislation

Right whales have been protected from commercial whaling by the International Whaling Commission and its implementing legislation since 1949. In U.S. waters, northern right whales are protected by the Marine Mammal Protection Act (MMPA) and ESA. Right whales are also listed as 'endangered' (Appendix I) under the Convention on International

Trade in Endangered Species of Wild Fauna and Flora (also known as CITES), and by the Committee on the Status of Endangered Wildlife in Canada under the Cetacean Protection Regulations of Canada (Gaskin, 1987). Except for one known incident of directed take (Sergeant, 1966), international protection for this species has been followed.

Under the ESA it is a violation to 'take' (defined as; to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt any of the above) endangered species of fish or wildlife. In addition, endangered species or their parts or products may not be exported from, or imported into the United States, except for "scientific purposes or to enhance the propagation or survival of the affected endangered species." The ESA also authorizes Cooperative Agreements between states and the Federal Government for increased endangered species management, research, and law enforcement. In addition, the ESA requires all Federal agencies to consult with The National Marine Fisheries Service (NMFS) to ensure that any action taken, permitted or funded will not jeopardize the continued existence of listed species under the jurisdiction of NMFS. This requirement is a very important regulatory tool for protecting the northern right whale and its habitat because many activities that may affect the northern right whale or its habitat will be conducted, permitted, or funded by a Federal agency.

The MMPA established a national policy to protect marine mammals so that they can reach and maintain optimum sustainable population levels consistent with the maintenance of the health and stability of the ecosystem of which they are a part. The MMPA prohibits the 'take' of any marine mammal, with certain specific exceptions, in a manner similar to the ESA.

III. NORTH ATLANTIC POPULATION

A. Natural History

1. Stocks

Historical data and recent sightings suggest that the North Atlantic was inhabited by two stocks, one on each side of the ocean. However, there is no current evidence to suggest that a viable population in the eastern North Atlantic still exists, although very small numbers may remain (Brown, 1986).

2. Distribution and habitat use

Although 20th century sightings of northern right whales have been recorded from areas such as Greenland, Bermuda and Texas, observations of the western North Atlantic population are concentrated in five known 'high-use' areas: (1) coastal Florida and Georgia, (2) the Great South Channel east of Cape Cod, Massachusetts, (3) Cape Cod Bay and Massachusetts Bay, (4) the Bay of Fundy, and (5) Browns and Baccaro Banks south of Nova Scotia. Sightings also occur in waters between these five areas. Additional 'high-use' areas may exist, since recently collected photographic and genetic data indicates a segment of the population that is not often seen in the known habitats frequently (Kraus, pers. comm.).

The population appears to migrate seasonally. Generally, most of the whales spend the spring and early summer off the coast of New England, then in the latter part of the summer and fall, move to the waters off southern Canada. Some whales may remain in these northern waters throughout the winter, but most leave. A small portion of the population, consisting almost entirely of pregnant females and juveniles, migrates south in the winter to the only known calving ground for the species, the coastal waters of Georgia and northeast Florida. Winn *et al.* (1986) characterized this distribution pattern as occurring in distinct seasonal phases, although a certain amount of variability is to be expected as whales respond to changing environmental conditions including the availability of prey. Because many recommended recovery actions are both seasonally and geographically specific, these phases are described in more detail below.

Phase 1. Winter calving.

The coastal waters of the southeastern United States, and especially the shallow waters from Savannah, Georgia, south to Cape Canaveral, Florida, are a wintering ground for a small but significant part of the population. Although a few juveniles and males have been sighted in the region, most of the records of the last decade involve adult females, many of whom are accompanied by very young calves (Kraus *et al.*, 1988). The fact that at least six newborn calves have washed ashore on the southeast coast in the last 10 years adds to the evidence that these waters are an important calving ground. In addition, adult females are occasionally observed unaccompanied early in the season and later with a calf. The winter calving season appears to begin as early as September and can end as late as April. However, sporadic sightings of newborn calves have occurred in May, July and September. Peak abundance and calving appears to be from December through March. Sighting effort has not been uniform throughout the entire period, however, and further work is needed to determine more accurately when whales are present and the frequency of their occurrence. The whales seen in the southeast represent only a small portion (approximately 5-10 percent) of the total known population (Kraus, 1985). The wintering ground(s) for the remainder of the population remains unknown. It is believed that remote telemetry research will be essential in locating the wintering ground(s) for the rest of the population.

traditional/historical northern right whale habitat. One northern right whale was killed by a ship in this area in 1986. Shipping frequency needs to be assessed.

1114. Great South Channel.

Northern right whales are present in the area from mid-April through June, although distribution varies from year to year. The Great South Channel is the southern passage to and from the Gulf Of Maine for shipping between Boston, Portland, and points south. Since the shipping lanes are bounded on the east by Georges Bank and on the west by Cape Cod and Nantucket Shoals, it would be difficult to shift them. The frequency of shipping through the channel needs to be assessed.

1115. Southeastern United States (Charleston, South Carolina, to Miami, Florida).

This region is the known primary calving ground for North Atlantic right whales, and is occupied by females before, during and after calving from September through April. Significant shipping ports include Charleston, South Carolina, Savannah and Brunswick, Georgia; and Fernandina Beach, Jacksonville, and Port Canaveral, Florida. There are also military installations with significant ship traffic at Kings Bay, Georgia, and Mayport and Canaveral, Florida. Because of the sand bottom and coastal currents, all of these ports and military installations require extensive maintenance dredging. An assessment of vessel traffic around Kings Bay was done by the Navy for the winters of 1988, 1989, and 1990. Vessel traffic frequency for the rest of the area is unknown.

1116. Migratory routes between the high-use areas discussed above.

Northern right whales move between the high-use areas off New England and Canada to and from the southeastern U.S. waters. The specific routes are poorly known. Northern right whales are vulnerable to ship strikes in these migratory routes but the level of vulnerability is unknown.

112. Analyze known kills and scarring patterns on living northern right whales to identify vessel activities that put whales at risk of collision.

Studies of scars or injuries on whales can provide information about how collisions with ships occurred. Estimates of vessel sizes, types, and travel speeds are needed to identify ships posing a high risk to northern right whales. Such information should be used in conjunction with assessments of vessel types found in each known habitat to identify high risk seasons and regions to target for management actions.

All known ship collision mortalities have involved juveniles less than 4 years old. An assessment of age or sex related behaviors is needed to identify areas and/or seasons where such activities put juvenile northern right whales at risk of ship collisions. Existing data should be examined in more detail to determine how ship strikes may be occurring. Research is needed on the responses of northern right whales engaged in different activities to the approach of large vessels.

OBJECTIVE 3. Identify and protect habitats essential to the survival and recovery of the northern right whale.

By virtue of particular biological, physical, and/or chemical conditions, certain geographic areas appear to be essential for meeting the biological requirements of northern right whales. Human activities may either diminish the capacity of these areas to meet these requirements, or act to displace whales to less suitable habitats. For example, oil spills or discharges of toxic chemicals in preferred feeding areas may contaminate or reduce the abundance of prey. Similarly, if pregnant females are displaced from preferred calving areas, other sites may not be suitable for successful calving and nursing. Restoration and maintenance of a population can only succeed if essential habitats are maintained in an optimum condition over an extended period of time because the recovery of the northern right whale will probably not occur in our lifetime.

The marine ecosystem is a complex and dynamic environment. No single component or habitat exists in isolation from the system as a whole. Physical boundaries between regions or ecosystem components are usually variable and migratory species shift from one region or food web to another. As in all ecosystems, impacts on one component of the ecosystem usually affect the other components in some way. Long-term protection of any individual species or habitat must eventually include reduction of adverse anthropogenic impacts on the entire marine ecosystem.

Natural events or environmental conditions, such as changes in weather or climate, or shifts in the prey distribution, may affect the location and condition of essential habitats. Although such changes cannot be predicted at the present time, it is important that the recovery program be flexible to respond when changes are detected.

To date, five essential habitat areas have been identified in the coastal waters of the United States and Canada. Four of these areas are used seasonally as feeding, mating, and/or nursing areas. They are the Great South Channel, Cape Cod and Massachusetts Bays, the lower Bay of Fundy, and the southern Nova Scotian shelf. The fifth area, which is used during winter by females as a calving and nursing ground, includes nearshore waters off Georgia and northeast Florida. Habitats used by other age and sex classes of northern right whales during the winter have not yet been located, and other feeding or calving grounds might exist.

The survival and eventual recovery of the North Atlantic right whale population is dependent upon protective measures both for the species and its habitat. Existing Federal, state, provincial and local laws and regulations must be rigorously enforced in regard to northern right whale habitat. If existing conservation statutes or programs are found to be inadequate to protect northern right whale habitat, then additional statutes should be promulgated as necessary, and programs developed to improve protection of essential habitat.

Under the ESA, special emphasis should be placed on protection of essential northern right whale habitat in Section 7 consultations carried out by all Federal agencies. Other applicable Federal and state statutes should be strictly applied in situations involving known northern right whale habitat.

Existing protective mechanisms may or may not be adequate to detect problems affecting northern right whale habitat. In addition, restrictions put in place to mitigate known adverse effects to essential northern right whale habitats may not be properly carried out due to inadequate follow-up monitoring. An evaluation of the adequacy of existing statutes to protect each known habitat is necessary.

TABLE 3

Unpublished list of Pacific northern right whale sightings north of 50° N contained in the Platforms of Opportunity Program data base, NMFS National Marine Mammal Laboratory, Seattle, WA. Numbers contained in parentheses are tentative sightings. Current listings taken June 10, 1987.

Date	Latitude	Longitude	Number of Individuals	Comments
07/07/77	56°27.5'N	135°38.4'W	1	
03/27/79	59°35.8'N	139°55.8'W	4	Seen at 25 yards
10/16/80	58°48.1'N	145°00.3'W	(1)	
06/21/83	51°29.0'N	173°38.5'E	1	Gillnet Retrieval
09/01/85	54°29.5'N	133°45.0'W	(1)	
09/08/85	56°54.1'N	163°55.6'W	1	