

APPENDIX O

Memorandum of Agreement Dated 05 January 1995

Memorandum of Agreement Dated 30 April 1996

MEMORANDUM OF AGREEMENT

BETWEEN

THE FIRST COAST GUARD DISTRICT

AND

THE STELLWAGEN BANK NATIONAL MARINE SANCTUARY
AND THE NATIONAL MARINE FISHERIES SERVICE

CONCERNING THE COOPERATION BETWEEN THE THREE PARTIES TO INCREASE THE COORDINATION OF SANCTUARY ENFORCEMENT ACTIVITIES, PROMOTE RESEARCH AND DATA GATHERING AND THE PROTECTION OF THE SANCTUARY BY EDUCATING ITS POTENTIAL USERS AND THE GENERAL PUBLIC. THIS MEMORANDUM OF AGREEMENT DOES NOT LIMIT THE COAST GUARD LAW ENFORCEMENT AUTHORITY UNDER 14 USC 89.

REFERENCES:

- (a) Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 USC 1436, 1437)
- (b) Stellwagen Bank National Marine Sanctuary Regulations (15 CFR 940)
- (c) National Marine Sanctuary Law Enforcement Program (COMDTINST 16214.2)
- (d) Coast Guard Participation in the National Marine Sanctuary Program (COMDTINST 16004.3)
- (e) Coast Guard Law Enforcement Authority (14 USC 2, 89)

Background and Purpose:

1. The Stellwagen Bank National Marine Sanctuary encompasses 638 square nautical miles of ocean and submerged lands between Cape Cod and Cape Ann, Massachusetts. The area's unique composition requires special regulations to protect its recreational, ecological, historical, scientific, educational, and aesthetic resources.
2. The Coast Guard has authority to perform law enforcement activity 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. The First Coast Guard District possesses a variety of boats, ships, and aircraft which can help support Sanctuary management.
3. The National Marine Fisheries Service (NMFS) has authority to perform law enforcement activity upon the high seas and waters over which the United States has jurisdiction for the prevention, detection, and suppression of violations of living marine resource laws of the United States. The NMFS routinely draws upon Coast Guard

and regulations in offshore waters.

4. The purpose of this agreement is to outline the roles of the parties in meeting the program goals of the Sanctuary. This agreement does not create any financial obligations on the part of either party.

Parties:

1. The Parties of this agreement are the First Coast Guard District, the Stellwagen Bank National Marine Sanctuary, and the National Marine Fisheries Service. No third party beneficiaries are envisioned or intended.

Agreement:

1. The First Coast Guard District will perform the following subject to the availability of resources:

a. Designate the Chief, Law Enforcement Branch as the primary contact to coordinate enforcement and other Coast Guard operations within the Sanctuary.

b. Provide routine surveillance, concurrently with other Coast Guard operations, of the Sanctuary by tasking Coast Guard vessels and aircraft with the enforcement of regulations.

c. Provide targeted and dedicated enforcement patrols in the Sanctuary, especially during the months April through October, when the Sanctuary's heaviest public use occurs.

d. Provide the Sanctuary staff with copies of enforcement case documentation for violations of Sanctuary regulations, reference (b), initiated by Coast Guard and forwarded to the NMFS Northeast Region Law Enforcement Division for prosecution.

e. Disseminate information packets supplied by the Sanctuary to vessels boarded in and near the Sanctuary.

f. When requested by the NMFS or the Sanctuary, provide vessel and aircraft support to facilitate research and monitoring of activity which affects the resources of the Sanctuary.

g. Keep the NMFS and the Sanctuary informed of unclassified Coast Guard operations within the Sanctuary.

h. Publish a Notice to Mariners submitted by the NMFS which identifies the Sanctuary and the critical habitat areas of Cape Cod Bay and the Great South Channel as areas where right whales are likely to be encountered. When advised by the NMFS, the Sanctuary staff, or detected by Coast Guard assets, broadcast a Notice to Mariners when pods of right whales or other endangered marine mammals are known to be present in these areas.

i. Direct the Coast Guard Auxiliary to distribute whale

watching guidelines and other information on marine mammal protection when conducting safe boating courses and during other events.

j. Maintain close liaison with the Sanctuary staff regarding new Sanctuary initiatives and provide the Sanctuary staff with guidance with regard to Coast Guard support.

2. The Stellwagen Bank National Marine Sanctuary will:

a. Participate in the training of Coast Guard personnel in the specific enforcement requirements of the Sanctuary, reference (b), and coordinate training on topics such as the Endangered Species Act and the Marine Mammal Protection Act.

b. Provide information packets on the Stellwagen Bank National Marine Sanctuary and other information on marine mammal protection for the Coast Guard to disseminate when conducting boardings in and near the Sanctuary, and for the Coast Guard Auxiliary to distribute during its boating safety programs.

c. If available, provide observers when requested by the Coast Guard to assist Coast Guard units conducting Sanctuary survey flights, surface patrols, and other operations conducted in support of this Agreement.

d. Provide the First Coast Guard District Northeast Regional Fisheries Training Center with a point of contact, and instructors, if available, to assist in Coast Guard training of the Sanctuary's program goals and other issues related to marine mammal protection.

3. The National Marine Fisheries Service, Office of Enforcement, Northeast Region will:

a. Review violations of Sanctuary regulations as documented by Coast Guard units on Enforcement Action Reports and Offense Investigation Reports and forward completed enforcement case documentation to National Oceanic and Atmospheric Administration (NOAA) General Counsel for processing and final adjudication.

b. Advise the Chief, First Coast Guard District Law Enforcement Branch, of agency action taken by NOAA on all violations of Sanctuary regulations reported by the Coast Guard.

c. Provide the First Coast Guard District Northeast Regional Fisheries Training Center with a point of contact, and instructors, if available, to assist in Coast Guard training as to the specific enforcement requirements of the Sanctuary stated in reference (b), and provide specialized training on the Endangered Species Act and the Marine Mammal Protection Act.

d. If available, provide enforcement agents when requested by the Coast Guard to assist Coast Guard units in conducting

Sanctuary enforcement patrols and other operations in support of this Agreement.

4. Primary points of contact for implementing this Agreement are:

a. First Coast Guard District, Fisheries Enforcement Section Chief; telephone (617) 223-8420 or 24 hour number (617) 223-8555.

b. National Marine Fisheries Service, Office of Enforcement, Supervisory Special Agent Kevin Sullivan; telephone (508) 281-9261.


c. Manager, Stellwagen Bank National Marine Sanctuary; telephone (508) 747-1691.

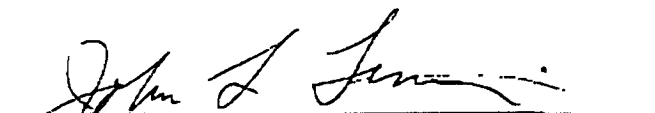
Effective Date and Termination:

1. This Agreement is effective on the date the last party signs. It may be terminated upon 30 days written notice from any party.

2. The parties to this Agreement shall meet from time to time, but not less than once a year, to discuss the goals of this agreement.


ROLLAND A. SCHMITTEN
Assistant Administrator
for Fisheries

JUL 5 1995

W. STANLEY WILSON
Assistant Administrator
for Ocean Services and
Coastal Zone Management


JOHN L. LINNON
Rear Admiral, U.S. Coast Guard
Commander
First Coast Guard District

MEMORANDUM OF AGREEMENT

BETWEEN

THE FIRST COAST GUARD DISTRICT

AND

THE NATIONAL MARINE FISHERIES SERVICE

CONCERNING COOPERATIVE EFFORTS TO PROTECT MARINE SPECIES PROTECTED UNDER THE MMPA AND ESA LOCATED WITHIN THE LITTORAL AND OFFSHORE WATERS OF THE FIRST COAST GUARD DISTRICT THROUGH THE COORDINATION OF ENFORCEMENT ACTIVITIES, DATA COLLECTION, EDUCATION, AND LOGISTICAL SUPPORT.

THIS MEMORANDUM OF AGREEMENT IS NOT INTENDED TO LIMIT OR MODIFY COAST GUARD LAW ENFORCEMENT AUTHORITY UNDER TITLE 14, UNITED STATES CODE, OR NMFS LAW ENFORCEMENT AUTHORITY UNDER TITLE 16 OF THE UNITED STATES CODE.

REFERENCES:

- (a) Endangered Species Act (16 USC 1536, et seq.)
- (b) Endangered Species Act Regulations (50 CFR Part 17)
- (c) Marine Mammal Protection Act (16 USC 1361, et seq.)
- (d) Marine Mammal Protection Act Amendments of 1994
(P.L. 103-238)
- (e) Marine Mammal Protection Act Regulations
(50 CFR Part 18)
- (f) National Marine Fisheries Service 1991 Recovery Plan for
the Northern Right Whale
- (g) National Marine Fisheries Service Whale Watching
Guidelines
- (h) Joint Project Authority (15 USC 1525)

I. Purpose and Background:

The purpose of this agreement is to outline the roles of the parties in meeting their program goals. This agreement does not create any financial obligations on the part of either party.

1. The littoral and offshore waters of the First Coast Guard District and the National Marine Fisheries Service (NMFS) Northeast Region are inhabited by a variety of marine species protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), references (a) and (c). The close relationship of the First Coast Guard District, the National Marine Fisheries Service, and the maritime community helps the Coast Guard meet its ESA and MMPA responsibilities and support NMFS efforts to recover marine mammal and sea turtle populations.
2. The United States Coast Guard (USCG) has authority to enforce the laws of the United States in waters under federal jurisdiction. To that end, the First Coast Guard District possesses numerous boats, ships, aircraft, and a variety of support facilities. Many of these assets can be directed to enforce MMPA and ESA regulations and to support marine mammal and sea turtle recovery efforts.
3. The National Marine Fisheries Service is the primary federal trustee for living marine resources. The NMFS Office of Enforcement has the authority to enforce the laws of the United States related to living marine resources in the waters under federal jurisdiction. The NMFS Office of Enforcement routinely draws upon USCG assets to enforce federal laws and regulations related to living marine resources and to investigate reports of violations. The NMFS-Northeast Fisheries Science Center (NEFSC) offers a wide variety of scientific support to NMFS programs.
4. This agreement outlines the efforts the United States Coast Guard can make to enforce regulations and support programs for the protection and recovery of marine mammals and sea turtles. It also outlines the coordination required of NMFS Northeast Region and NMFS-NEFSC to assist the United States Coast Guard in its efforts.

II. Parties:

1. The Parties to this agreement are: The First Coast Guard District and the National Marine Fisheries Service. The director, NMFS Northeast Region, the Science and Research Director, NEFSC, and the Special Agent in Charge, NMFS Office of Enforcement, Northeast Region, are agents of the principal NMFS party. No third party beneficiaries are envisioned or intended.

III. Agreement:

1. The First Coast Guard District will perform the following, subject to the availability of resources:

a. Designate the Law Enforcement Branch Chief as the primary contact for marine mammal and endangered species enforcement programs.

b. Designate the Port Safety Branch Chief as the primary point of contact for providing the commercial marine industry with information on USCG and NMFS regulatory and educational programs designed to protect and support the recovery of living marine resources protected by references (a) through (e).

c. Consistent with reference (f), direct the Port Safety Branch to identify commercial marine industries which operate in Cape Cod Bay, Great South Channel, and the Gulf of Maine, and provide those industries with educational material described in paragraph (b) above.

d. Provide periodic patrols dedicated to the enforcement of references (a) through (e), with particular emphasis on northern right whale critical habitat areas. Similarly, provide dedicated patrols to enforce commercial fisheries regulations, e.g., gear restrictions implemented in habitats to protect the northern right whale, harbor porpoise, and other protected living marine resources.

e. Disseminate information packets supplied by the National Marine Fisheries Service to vessels boarded in or near waters inhabited by northern right whales and other protected living marine resources.

f. When requested by the Northeast Fisheries Science Center, provide limited, short-term vessel and aircraft support to facilitate research and monitoring of endangered and threatened marine mammals, particularly within the designated northern right whale critical habitat and other mutually agreed upon areas proposed by the National Marine Fisheries Service.

III. Agreement: (Cont'd)

g. At the request of the National Marine Fisheries Service, publish its submitted Notice to Mariners, identifying the designated right whale critical habitat areas of Cape Cod Bay and Great South Channel. This notice will also identify other high use areas such as Stellwagen Bank and Gulf of Maine to the Bay of Fundy as areas where endangered whales, particularly northern right whales, are likely to be encountered. The notice will advise mariners to transit the waters with caution to minimize disturbance of protected marine species and avoid ship strikes of whales.

h. When advised by the National Marine Fisheries Service or detected by United States Coast Guard assets, broadcast a Notice to Mariners when right whales or other protected marine species are known to be in a specific area. The broadcast will advise mariners to exercise caution when navigating the area and, in certain cases, recommend course and speed changes as may be prudent to minimize disturbance of the marine mammals and avoid whale strikes.

i. Direct United States Coast Guard patrol units to contact vessels approaching aggregations of northern right whales or other large whales, and to advise the approaching vessels of the animals' position.

j. As outlined in reference (f), task United States Coast Guard vessels and aircraft to document encounters with large whales, sea turtles, and concentrations of other marine mammals and provide the Northeast Fisheries Science Center with sighting and photographic records of such encounters to include:

- > Entangled or injured marine mammals and sea turtles, particularly northern right whales.
- > Dead floating large whales of any species, particularly northern right whales.
- > Large aggregations of whales of any species or other protected species.

k. Direct the United States Coast Guard Auxiliary to distribute whale watching guidelines as outlined in reference (g), and other information on marine mammal and sea turtle protection when conducting safe boating courses and during other events in which the Auxiliary participates with information booths.

III. Agreement: (Cont'd)

1. Develop a centralized notification system to advise the National Marine Fisheries Service, the Northeast Fisheries Science Center, or other parties designated by the National Marine Fisheries Service, when United States Coast Guard units receive reports or become aware that a live protected species is stranded, entrapped or entangled in fishing gear. Coast Guard resources, as available, may be utilized to provide logistical support to the National Marine Fisheries Service and the Northeast Fisheries Science Center staff or other expert parties designated by the National Marine Fisheries Service, who are working to free stranded, entrapped or entangled living marine resources.

m. Provide United States Coast Guard surface units with information about whale identification, behaviors exhibited by whales, details of the prohibitions found in references (b) and (e), and recommended vessel operating guidelines in waters where protected marine species are likely to be encountered.

n. Maintain close liaison with the National Marine Fisheries Service to keep informed of new initiatives and provide guidance on how the United States Coast Guard can support the biological recovery and protection of living marine resources in the First Coast Guard District.

2. The National Marine Fisheries Service Regional Office, subject to the availability of resources, will:

a. Provide personnel to instruct students at the First Coast Guard District's Northeast Regional Fisheries Training Center on marine mammal and sea turtle protection programs in the waters from Cape Hatteras, North Carolina, to the Gulf of Maine and other mutually agreed upon topics.

b. Provide the First Coast Guard District's Port Operations Branch with information packets on the protection of endangered whales to be distributed to representatives of the commercial marine industry which operate within the First Coast Guard District.

c. If available, provide observers when requested to assist Coast Guard units conducting survey flights, surface patrols, and other operations conducted in support of this agreement.

d. Provide the First Coast Guard District's Law Enforcement Branch with a list of appropriate organizations for responding to incidents of stranding or entanglement of large whales or other protected species, and other issues relevant to the marine mammal sighting program effort outlined in this agreement.

III. Agreement: (Cont'd)

e. Provide the First Coast Guard District's Law Enforcement Branch with semiannual written resource requests for the types and numbers of United States Coast Guard units desired to support non-enforcement programs conducted for the recovery and protection of endangered living marine resources.

3. The National Marine Fisheries Service Office of Enforcement, subject to the availability of resources, will:

a. Review violations of references (a) through (e) documented by United States Coast Guard units on Enforcement Action Reports and Offense Investigation Reports, and forward completed enforcement case documentation to the National Oceanographic and Atmospheric Administration General Counsel for processing and adjudication.

b. Advise Chief, First Coast Guard District Law Enforcement Branch of agency action taken by the National Oceanographic and Atmospheric Administration on all endangered and threatened species violations detected and properly documented by the Coast Guard.

c. Provide instruction to the training staff at the First Coast Guard District's Northeast Regional Fisheries Training Center on the specific enforcement requirements of references (a) through (e) and other mutually agreed upon topics.

d. In response to specifically identified needs for investigative assistance, provide support to USCG units which have encountered MMPA and/or ESA violations in the course of patrols or other operations.

4. The National Marine Fisheries Service, Northeast Fisheries Science Center, subject to the availability of resources, will:

a. Provide instruction at the First Coast Guard District's Northeast Regional Fisheries Training Center on identification of protected species found in the Northwest Atlantic Ocean.

b. If available, provide observers upon request to assist United States Coast Guard units conducting survey flights and surface patrols conducted in support of this agreement.

c. Provide the First Coast Guard District's Northeast Regional Fisheries Training Center with mutually agreed upon training material to support the recovery of protected marine species.

III. Agreement: (Cont'd)

d. Provide instruction on programs and networks established to mitigate the hazards placed on endangered marine species by strandings, ship strikes, and entanglements.

5. Primary points of contact for implementing this agreement are:

a. First Coast Guard District:

1. Fisheries Enforcement: telephone (617) 223-8420.

2. Command Center: 24 hour telephone (617) 223-8555.

3. Port Safety: telephone (617) 223-8437.

b. National Marine Fisheries Service, Office of Enforcement, Northeast Region: telephone (508) 281-9261.

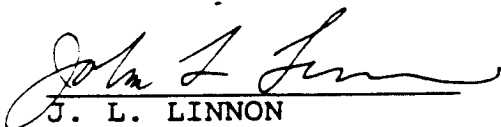
c. National Marine Fisheries Service, Habitat and Protected Resources Division, Northeast Region: telephone (508) 281-9254.

d. National Marine Fisheries Service, Northeast Fisheries Science Center: telephone (508) 548-5123.

IV. Effective Date and Termination:

1. This agreement is effective upon signature of the parties. Either party may withdraw from this agreement upon 30 days written notice to the other party.

2. The parties to this agreement shall meet from time to time, but not less than once per year, to discuss its implementation.

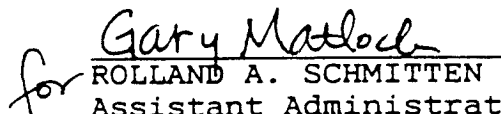


J. L. LINNON

Rear Admiral, U.S. Coast Guard
Commander

First Coast Guard District

30 April 1996



ROLLAND A. SCHMITTEN

Assistant Administrator
for Fisheries

National Marine Fisheries
Service