

APPENDIX U

Memorandum of Agreement Dated 25 January 1996

MEMORANDUM OF AGREEMENT

between the

UNITED STATES NAVY

UNITED STATES COAST GUARD

UNITED STATES ARMY CORPS OF ENGINEERS

and the

**UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL MARINE FISHERIES SERVICE**

for the

CONSERVATION OF THE NORTHERN RIGHT WHALE

I. PURPOSE AND SCOPE

This Memorandum of Agreement (MOA) is made and entered into by and between the U.S. Navy, hereinafter referred to as Navy; the U.S. Coast Guard, hereinafter referred to as USCG; the U.S. Army Corps of Engineers, hereinafter referred to as COE; and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, hereinafter referred to as NMFS. Collectively, the parties to this MOA will be referred to as the cooperators.

The purpose of this MOA is to establish a general framework for cooperation and participation among the cooperators in the conservation of the highly endangered northern right whale, *Eubalaena glacialis*, in its calving grounds along the Georgia and Florida coasts of the United States.

The cooperators propose to work together to achieve a common goal of preventing ship collisions with right whales within the southeastern U.S. calving grounds, assessing the status of the stock, and gaining other information to help better protect and recover the species.

II. REFERENCES AND AUTHORITIES

The cooperators enter into this agreement pursuant to the Endangered Species Act (16 U.S.C. 1536(a)(1)) which requires that all Federal agencies use their authorities to further interagency cooperation by carrying out programs for the conservation of endangered species and threatened species pursuant to 16 U.S.C. 1533.

In addition, Federal agencies are to ensure that any action authorized, funded, or carried out by such agencies will not jeopardize the continued existence of any endangered species or threatened species (16 U.S.C. 1536(a)(2)).

The northern right whale, *Eubalaena glacialis*, is listed as endangered pursuant to the Endangered Species Act (16 U.S.C. 1533).

The southeastern U.S. calving grounds of the northern right whale, *Eubalaena glacialis*, have been designated as part of the species' critical habitat (50 CFR Section 226.13).

The Economy Act (31 U.S.C. 1535) provides that funds may be transferred to the National Oceanic and Atmospheric Administration (NOAA) by the other cooperators in this agreement if it is determined that this is in the best interest of the United States Government.

III. SUBSTANCE

The NMFS is responsible for the management and protection of marine mammals and endangered marine species. The cooperators may be required to conduct activities within the southeastern U.S. calving grounds of the northern right whale. Due to its highly endangered status, any human-related mortality of this species is of grave concern. The cooperators desire to ensure, inasmuch as is practicable, that right whale/vessel interactions in the southeastern critical habitat are averted. In the past, this has been accomplished through implementation of what has become known as the right whale early warning system (EWS). This system attempts daily (weather, funding, etc., permitting) aerial surveillance of the southeastern right whale critical habitat during the calving season. When right whales are sighted, the locations are reported to local port authorities, any nearby vessels (including COE dredges), and to the USCG for transmission over NAVTEX (a broadcast system which transmits notices to mariners over receiving devices present on

most large vessels). This system has been effective in averting collisions between vessels and right whales.

Responsibilities of the Cooperators

1. The cooperators should support the conservation of northern right whales through active participation in the Recovery Plan Implementation Team for the Northern Right Whale.
2. The cooperators should participate in the EWS, unless and until such time as the cooperators agree such participation is no longer necessary.
3. Specific work projects or activities that involve the transfer of funds, services, or property among the cooperators to this MOA will require the execution of separate agreements or contracts, or addenda to this agreement, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property among the parties to this MOA must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities.
4. This MOA in no way restricts the cooperators from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
5. Nothing in this MOA shall obligate the cooperators to expend appropriations or to enter into any contract or other obligations.
6. This MOA may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all the parties. Cooperator participation in this MOA may be terminated with a 60-day written notice of any party to the other cooperators. Unless terminated under the terms of this paragraph, this MOA will remain in full force and in effect until September 30, 1996. This agreement may then be renewed annually upon written consent of all participating agencies.

IV. PRINCIPAL CONTACTS

The following persons will be the principal contacts for their respective agencies at the time of execution of this MOA. These contacts may be changed at the agencies' discretion upon notice to the other cooperating agencies.

LCDR Wesley Marquardt
Commandant (G-NIO)
U.S. Coast Guard
2100 2nd Street, S.W.
Washington, DC 20593

Mr. Rudy Nyc
Planning Directorate, CESAD PD-R
South Atlantic Division
U.S. Army Corps of Engineers
77 Forsythe Street, S.W.
Atlanta, GA 30335-6801

Mr. Joseph Wallmeyer
COMNAVBASE Jacksonville
Code N 3 - Box 102
Jacksonville, FL 32212-0102

Dr. Katherine Wang
Protected Species Management Division
NMFS, Southeast Regional Office
9721 Executive Center Dr. N.
St. Petersburg, FL 33702

V. OTHER PROVISIONS

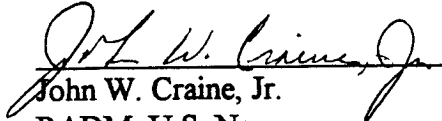
Nothing herein is intended to conflict with current NOAA, Navy, USCG, or COE directives. If the terms of this agreement are inconsistent with existing directives of either of the parties entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment or by entering into a new agreement, whichever is deemed most expedient to the interest of both parties.

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days,

the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.


VI. SIGNATURE OF EACH PARTY

IN WITNESS WHEREOF, the parties hereto have executed this MOA as of the last written date below.



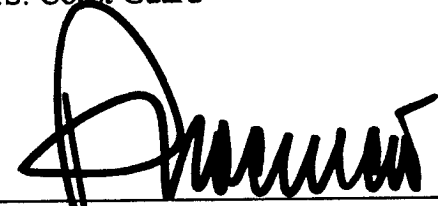
John W. Craine, Jr.
RADM, U.S. Navy
Commander in Chief
U.S. Atlantic Fleet
Director, Shore Activities Readiness

12/11/95
Date




Captain J. A. Creech, Commandant (G-ND)
Chairman, Endangered Species Act Compliance Team
U.S. Coast Guard

19 Dec 1995
Date



Ralph W. Locurcio
Brigadier General, U.S. Army
Division Engineer, South Atlantic

9 Jan 96
Date



Andrew J. Lemmer
Director, Southeast Regional Office
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

20 Jan 96
Date

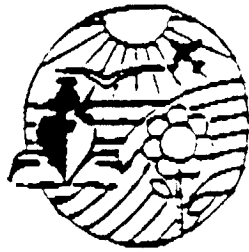
ADDENDUM 1

FUNDING OF THE RIGHT WHALE EWS IN FY96

The above listed parties have agreed that continuation of the EWS is one possible vehicle to avoid vessel/right whale collisions in the southeastern calving grounds in FY96. Pursuant to this objective, the Navy, USCG, and COE have each agreed to contribute \$80,000, for a total of \$240,000, to be awarded as a contract for implementation of the EWS. The funds will be transferred to NMFS through separate agreements and not under this MOA. Funds dedicated by the Navy, USCG, and COE for the right whale EWS will be transferred by NMFS to the contractor, once the required services have been rendered. NMFS has dedicated personnel for the administration of this contract, and will provide the states of Georgia and Florida with \$35 K each for recovery plan implementation activities in support of this agreement.



DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20380-5110



TELECOPIER TRANSMITTAL SHEET

→ ① HORST GRECZMIEL - USCG - 202 267 0053

TO: → ② JOHN MARSHALL - DOJ - 202 305 0215

PHONE NO. → ③ SPINNER FINDLAY - DOJ - 202 272 6960

~~TELECOPIER MACHINE PHONE NUMBER:~~ _____

FROM: STEVE BANKS , NAVLITOFF

EXT | FAX: 703 602 3245
PHONE NUMBER: (703) 602 3250 502 | AV 332 3250 EXT 502

DATE: 8 FEB 96

TOTAL # OF PAGES INCLUDING TRANSMITTAL SHEET: 3

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COMMENTS: GENTLEMEN, RE: NORTHERN RIGHT WHALE CONSERVATION MEASURES

ATTACHED DISCUSSION PROVIDED FOR YOUR INFORMATION. OBTAINED FROM NAVY ENVIRONMENTAL HOME PAGE _____

Steve

MITIGATING HUMAN IMPACTS ON RIGHT WHALES IN COASTAL WATERS OF GEORGIA AND FLORIDA

James Hain
National Marine Fisheries Service
Woods Hole, MA 02543

14 JULY 1995

Since 1991, airships (blimps) have been used in studies of right whales on their calving and wintering grounds in coastal waters of northeast Florida. The unique capabilities of the airship have been combined with a high-resolution video camera to record behavior of right whales. Analyses of these records are being used to reduce human impacts (principally ship strikes) on right whales.

From December through March, the coastal waters of southeastern Georgia and northeastern Florida serve as a calving ground and winter habitat for the northern right whale, *Eubalaena glacialis*, the most endangered large whale off the east coast of the U.S. In these waters, vessel traffic, at least partially associated with the ports of Jacksonville, Mayport, and Fernandina, Florida, and Kings Bay, Georgia, is relatively heavy. Ship strikes have been identified as a significant human impact, and are the focus of mitigation efforts.

With the goal of "Zero Ship Strikes," mitigation efforts consist of three principal elements: education and awareness, an Early Warning System, and research. The education and awareness program informs mariners about the whales, the habitat, and the problem. The Early Warning System consists of aircraft overflights to detect the presence of right whales, a coordinated reporting and alert procedure, and the maneuvering of vessels to avoid collision with the whales. The third element, research, supports present mitigation activities and also seeks longer term solutions.

One present research objective is to describe the sightability of right whales in these waters. The Early Warning System depends on the detection of whales, both by the monitoring aircraft and vessels seeking to avoid them. If whales are unsighted, jeopardy is increased. The behavior of the whales (e.g., surface and dive patterns, surface behaviors) is a major factor determining sightability.

Extended behavioral observations from airships (blimps) have provided unique data on sightability. Detailed behavioral information was used to describe whether whales were visible at the surface, or not visible due to submergence. Percent total surface time as well as mean surface and dive times were recorded, along with all events of blowing, fluking, flippers, breaching, play, and other behaviors. The surface time was highest for groups, intermediate for mother/calf pairs, and lowest for single juveniles. Because single juveniles are least likely to be sighted from the monitoring aircraft as well as by transiting ships seeking to avoid them, jeopardy to whales in this category is increased. Because of the apparent vulnerability of single juveniles, research on this class has been a priority. Also, because two ship strikes have occurred on young calves, emphasis has been placed on description of mother/ calf behavior during the first weeks following birth.

The viewing characteristics of a Cessna-182 aircraft (used in the monitoring program) relative to distance from the trackline were also described. Because of the "cone of visibility," view time was highest at one nmi from the trackline and decreased markedly closer and further. The resulting sighting probabilities as a function of whale "class" and distance from the trackline ranged from 15 to 87 percent.

Results to be reported in late fall 1995 will be used to refine the aerial monitoring of the Early Warning system, increase detection, and reduce jeopardy. Results will also be used to describe more accurately the distribution, demographics, and habitat use of the whales in these waters.

Planning for the future has also begun. With the benefit of four years of experience, a refined and improved effort will begin in January 1996. To combine the observation capabilities of the airship positioned at a non-obtrusive distance with high-resolution video data acquisition, we are proposing the use of a gyro-stabilized, long-lensed, camera of the type used for sporting events. The objective will be for improved acquisition and analysis of behavioral data related to sightability.

The contribution of flight time by corporate airship operators has been important to this effort. These have included MetLife, Sea World, Family Channel, and Blockbuster Video. Other collaborators include or are proposed to include Army Corps of Engineers, Associated Scientists at Woods Hole, Coastal America Program, Marine Mammal Commission, National Geographic, National Marine Fisheries Service, National Science Foundation, New England Aquarium, University of Rhode Island, and the U.S. Navy.

As indicated, this project serves as a good example of the Coastal America model:

- o Provides solutions to challenges and problems in the coastal environment
- o Emphasizes the partnership concept - public, private, corporate
- o Uses leverage - cooperation, commitment, and facilitation maximize results from often limited funding.

- o Seeks to balance economic and environmental concerns
- o Applies technology transfer - applies new or existing technology to environmental problems
- o Integrates science and management

The North Atlantic right whale, *Eubalaena glacialis*. At a population size of about 325, this is the most endangered whale in U.S. waters. An average of 10 calves are born each year in coastal waters of Georgia and Florida, December through March. However, human impacts (principally ship strikes) are jeopardizing the recovery and health of this species. The studies described in this report contribute to describing the biology of the species as well as aiding its conservation and recovery.

The Westinghouse Airships 500HL airship. This 194 ft. 6,000 m3 helium volume ship carries 2 pilots and 4 scientists for 8-hr flight days. The American Blimp Corporation's A-60+ lightship. This 132 ft. 2,000 m3 helium volume ship carries 1 pilot and 2 scientists for 8-hr flight days with mid-day refueling.

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- o Uses leverage - cooperation, commitment, and facilitation maximize results from often limited funding.