

RECORD OF DECISION

1. **SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, as amended, the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), and the U.S. Coast Guard (USCG) National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts (COMDTINST M16475.1B), the USCG is recording this Record of Decision on the Final Environmental Impact Statement for the Atlantic Protected Living Marine Resources Initiative. The USCG will implement the proposed action (the Preferred Alternative) as described in the Final Environmental Impact Statement issued on 31 October 1996.
2. **DATES:** The Record of Decision was recommended by the Endangered Species Act Compliance Team (comprised of the Director of Operations Capabilities, Operations Organization; Director of Field Activities, Marine Safety and Environmental Protection Organization; and Director of Engineering, Systems Organization; and Deputy Chief, Office of Chief Counsel,), the Environmental Coordinating Council (comprised of the Assistant Commandants for Operations, Marine Safety and Environmental Protection, and Systems, and the Chief Counsel), and the U.S. Coast Guard Chief of Staff prior to my approval on 9 December 1996.
3. **ADDRESS:** Inquiries regarding the Record of Decision of the Final Environmental Impact Statement should be submitted to Mr. Keith Boi, Chief, Planning and Coordination Staff, Operations, at Commandant (G-O-1), 2100 Second Street, SW, Washington, DC 20593, telephone number (202) 267-1439, fax number (202) 267-4185.
4. **SUPPLEMENTARY INFORMATION:**
 - a. **The Decision:** The U.S. Coast Guard will implement the proposed action (the Preferred Alternative) as described in the Final EIS for the Atlantic Protected Living Marine Resources Initiative (the Initiative) issued on October 31, 1996, to satisfy the purpose and need of fulfilling its obligations for protected living marine resources while continuing to fulfill its missions to provide maritime humanitarian, law enforcement, environmental protection and safety services to the people of the United States.
 - b. **Alternatives Considered:** In addition to the proposed action, the following alternatives were evaluated in the Draft and Final EIS, and considered but not adopted in issuing this Record of Decision.

- (1) The No-Action Alternative would have continued the current operations without implementing any protective measures developed during the Endangered Species Act consultation.
- (2) The non-USCG Vessel Speed Restriction Alternative would have required the USCG to seek authority to regulate vessel speeds under the Endangered Species Act. This alternative alone is too limited in scope to best meet the purpose and need for the Initiative. The National Marine Fisheries Service (NMFS) has this authority, and is the appropriate agency to issue such regulations. The USCG has decided not to issue regulations as requested in a related petition for rulemaking but will, under the Initiative, enforce such regulations issued by NMFS, and will continue to address this issue in existing recovery implementation team and interagency forums.
- (3) The non-USCG Vessel Approach Distance Alternative would have required the USCG to seek authority to regulate approach distances under the Endangered Species Act. This alternative alone is too limited in scope to best meet the purpose and need for the Initiative. NMFS has this authority and is in the rulemaking process to develop such regulations. The USCG has decided not to issue regulations requested in a related petition for rulemaking but will, as part of the Initiative, continue to address this issue in existing recovery implementation team and interagency forums.
- (4) The Marine Vessel Operator Licensing Alternative would have required the USCG to include protected living marine resource information in testing criteria for members of the public applying for USCG licenses to operate vessels and include compliance with protected living marine resources regulations as a specific condition for licensing. This alternative alone is too limited, and the Initiative requires including living marine resource information in the materials used as the basis for future testing. Licenses require compliance with all existing laws and regulations, so a specific condition is not necessary.
- (5) The Conditioning of Marine Event Permitting Alternative would have required placing living and marine resource conditions or other constraints on permits issued under the Act of April 28, 1908 (33 U.S.C. section 1233). This alternative alone is too limited and the Initiative includes continuing the current marine event permitting process which allows issuing authorities to add conditions or deny permits for marine events based on consideration of environmental concerns. The USCG has

postponed implementing any changes to the existing marine event permitting process and will reassess whether and how to change that process in consultation with the National Marine Fisheries Service and the Fish and Wildlife Service. Furthermore, marine event sponsors and participants must comply with all existing laws and regulations; consequently, the USCG has decided not to issue regulations making compliance with NMFS issued protective regulations a special condition in the issuance of permits.

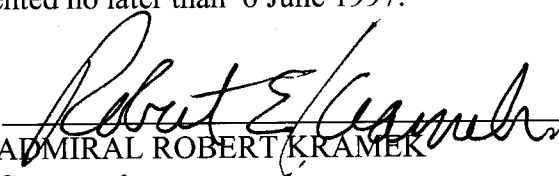
- c. Other Actions Considered but Rejected: In addition to the alternatives that were evaluated in the Draft and Final EIS, the following actions were identified as considered but rejected in the Final EIS: (1) the USCG would adopt and implement the Initiative without various protective measures which comprise the component elements of the Initiative's Internal Program and Conservation Program; (2) the USCG would not patrol U.S. Coastal Waters; (3) the USCG would operate at slow speed or high altitude at all times; and (4) the USCG would avoid critical habitat at all times.
- d. Environmentally Preferable Alternative: The proposed action, the Preferred Alternative - adopting and implementing the Initiative, is considered to be the best method of protecting living marine resources and is therefore the environmentally preferable alternative.
- e. Measures to Minimize Environmental Harm: The Initiative was designed to minimize harmful environmental impacts. All practicable measures to avoid or minimize environmental impacts have been identified and incorporated. These include USCG vessel speed and whale approach distance guidance which were previously implemented as interim protective measures and will now be formally adopted.
- f. Public Involvement: The USCG mailed its proposed outline for development of its Environmental Assessment of Potential Impacts of U.S. Coast Guard Activities Along the U.S. Atlantic Coast (EA) on 25 May 1995 to interested agencies and individuals. After publishing its EA and providing a Federal Register notice and mailing copies to interested agencies and individuals, the USCG received numerous public comments during September and October 1995. On 2 April 1996, the USCG published a Notice of Intent to prepare a Draft Environmental Impact Statement (EIS) and Scoping Notice in the Federal Register. The Draft EIS was published 31 July 1996 and the prescribed public comment period ended 16 September 1996. More than 100 copies of the Draft EIS were sent to interested federal and state agencies and private agencies and individuals, and more than 110 copies of the Final EIS were mailed to

agencies, organizations and individuals who commented on the DEIS and to any others who requested copies.

5. THE BASIS FOR THE DECISION: After evaluating the public comments on the EA, DEIS, and the FEIS, the Preferred Alternative best accomplishes the U.S. Coast Guard's goal to meet its protected living marine resource obligations while continuing to provide its humanitarian, law enforcement, safety and environmental protection services. The Initiative best achieves the necessary balance between the missions of the U.S. Coast Guard and the necessary focus on protected living marine resources such as the northern right whale with the fewest negative environmental impacts. The general consensus of the public comments received supports the adoption and implementation of the Preferred Alternative, the Initiative. The Initiative represents USCG efforts to protect and conserve protected marine species, provides for a monitoring plan that will address the adequacy of the protective measures contained in the Initiative, and recognizes that future developments in marine science may require reassessment. Consequently, the USCG has decided not to promulgate a conservation plan as a regulation as requested in a related petition for rulemaking.

The above factors and considerations warrant selecting the Preferred Alternative, identified as the proposed action in the Draft EIS as modified in the Final EIS. The Preferred Alternative, the Initiative, will be implemented and it includes a monitoring plan that will be developed and implemented no later than 6 June 1997.

Date: 9 December 1996


ADMIRAL ROBERT KRAMEK
Commandant
United States Coast Guard