

APPENDIX J

USCG Operational Directives and Operating Procedures

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USCG OPERATIONAL DIRECTIVES AND OPERATING PROCEDURES

This Appendix portion is comprised of the marine mammal protection operational directives and operating procedures of Coast Guard Districts 1, 5, and 7, which together account for the entire Atlantic coast of the United States. The First Coast Guard District Law Enforcement Bulletin (LEB) 33-94 (dated Nov 30, 1994), incorporating three earlier guidelines, set the tone for development of these directives and procedures. The Fifth and Seventh Districts, using the First District's directive as a guide developed the Fifth Coast Guard District Law Enforcement Bulletin (LEB) 05-95 (dated Mar. 28, 1995), and the Seventh Coast Guard District Instruction 16214.5, Subject: Marine Mammal and Endangered Species Protection Program (dated Apr. 14, 1995), 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 canceled.
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**

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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 of 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.

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**

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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 D1 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 with 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.
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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.
- (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, 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. Sightings 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 Institution 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 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 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 further review.

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.

W.P. LEAHY

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 Institution 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 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 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 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 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. Identify 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.

Enclosure (2)