

APPENDIX P

Green World, Inc., Petition Dated 04 August 1994

GreenWorld Inc.

Suite 193
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Boston, MA 02215

A PETITION UNDER THE ENDANGERED SPECIES ACT TO DESIGNATE A 500 YARD RADIUS PROTECTION ZONE AROUND EVERY NORTHERN RIGHT WHALE (*EUBALAENA GLACIALIS*)

TO: Rear Admiral John L. Linnon, Commander First District,
United States Coast Guard
408 Atlantic Avenue
Boston, MA 02210

Admiral Robert E. Kramek, Commandant
United States Coast Guard
2100 Second Street, S. W.
Washington, D. C. 20592

DATE: August 4, 1994

To the Above Named Parties:

This is a petition pursuant to the federal *Administrative Procedures Act* and the *Endangered Species Act*, 16 U. S. C. § 1531 *et seq.*, to have the U. S. Coast Guard promulgate regulations to prohibit any person or vessel from approaching or remaining within 500 yards of any Northern Right Whale (*Eubalaena glacialis*). The intent of the proposed regulation is to have the Coast Guard effectively enforce the protective prohibitions of the *ESA* and to prevent the killing, injury, and disturbance of any Northern Right Whale.

Northern Right Whale is a federally listed endangered species of whale facing the threat of imminent extinction. One out of every three deaths of Northern Right Whales is caused by people, principally through vessel collisions and entanglements in fishing gear. Northern Right Whales are also being disturbed and disrupted in the performance of their vital life functions (e. g. feeding) from vessel activity in their immediate area. With less than 250 of these whales left in the Atlantic ocean, the death of a single further Northern Right Whale could be the precipitating event that condemns this critically endangered species to imminent extinction.

The *ESA* imposes on the U. S. Coast Guard the non-discretionary duty to enforce the prohibitions of the act. "The provisions of this chapter *shall be enforced* [our emphasis] by the Secretary of the Treasury, the Secretary of the Department in which the Coast Guard is operating ..." 16 U. S. C. 1540(e)(1). The *ESA* grants the authority to the U. S. Coast Guard to promulgate and implement regulations in support of its enforcement of the prohibitions of the act. *Id.* at 1540(f).

essential for the survival of this species, and the full protection of these whales is essentially for the survival of the Northern Right whale population.

It is apparent from the most practical and elemental considerations of these issues that vessel operations anywhere near a Northern Right whale is a hazard to these whales and their survival as a species. Vessel operations near any Northern Right Whale poses the threat and possibility of collision as well as disturbing and impairing their vital life activities. It is absolutely required by the *ESA*'s prohibitions that all vessel operations be kept at a safe distance from the Northern Right whale if they are to become protected to the point where it would be expected that they would not become involved in collisions with vessels or the entanglement in fishing gear.

We therefore petition the U. S. Coast Guard to codify the following protective measures for the Northern Right Whale and other endangered species of whales —

1. It is prohibited, and a take under the terms of the *ESA* for any person or vessel to approach or stay within 500 yards of any Northern Right Whale at any time. If anyone finds themselves within 500 yards of a Northern Right Whale, then they are immediately to leave the area as soon as possible and in a manner that would not further take the Northern Right Whale in question or threaten their health and safety further.

2. In order to insure that no one can evade enforcement of this rule by claiming that they "did not know what a Northern Right Whale looks like" and for the protection of other endangered species of whales, a similar distance rule as above should be adopted for all other federally listed endangered species of whale but the distance used instead should be 100 yards. This petitioned for rule is consistent with the "similarity of appearance" provision of the *ESA*, 16 U. S. C. § 1533, in which similarly appearing — but not as endangered — species are protected equally to the species of concern because their appearance is so similar that the species of concern would fail to be protected because it would be readily mistaken for the unprotected species.

3. That in addition to codifying the above provisions as regulation also make them special conditions in the issuance of permits, that the U. S. Coast Guard make these provisions as conditional to its issuing permits for the operation of vessels and the licensing of captains and masters of ships. By doing this the U. S. Coast Guard would greatly enhance its ability to enforce the above proposed regulations. By having permits issued on the condition of complying with these regulations, a person would face immediate suspension of its permit for any accused violation pending review proceedings instead of facing suspension or fines after it has been convicted of the violation. Vessel operators and captains would be far more anxious to comply with these regulations knowing that even giving the appearance of violating these regulations would bring immediate sanctions against them.

This rule should be adopted and sufficiently enforced so that it would achieve a zero number of incidents in which a Northern Right Whale was killed, injured, or disturbed from doing its vital activities any more. It should be intercepted by all state and federal agencies as a conservation strategy for the Northern Right Whale that has been adopted to enhance the "conservation cross section" of the Northern Right Whale. Instead of seeing the Northern Right Whale itself that must be protected as a point in the Ocean, now a circle 1000 yards in diameter is what should be from vessel and project interaction.

feed, socialize, and reproduce in this space without disturbance. The enforcement of the petitioned for distance rule would in reality protecting a Northern Right Whales immediate and most critical habitat and the rule should be applied as a habitat protection rule.

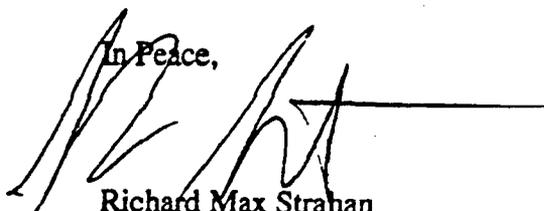
This type measure to protect endangered whales has already found wide support. A similar distance rule was adopted by the Commonwealth of Massachusetts (322 C. M. R. 12.00 *et seq.*) in 1989. The federal recovery team for the Northern Right Whale has on more than one occasion recommended that a similar rule be adopted. The Department of Fisheries and Oceans in Canada has published guidelines and warnings to boaters for operation of vessels around whales. They recommend that for most of the time that vessels stay 400 meters from whales and always at least 100 meters.

Unless the U. S. Coast Guard adopts the petitioned for regulations it will not be possible to keep vessels from striking or disturbing Northern Rights whales. It will not be possible to avert the imminent extinction facing this critically endangered species.

As required by the provisions of the *ESA*, you must acknowledge the receipt of this petition by notifying me within thirty days of your receipt of it. You must also publish in the Federal Register your receipt of this petition and request comments from the public on the petitioned for action. To not do these two acts violates my rights under the *ESA* and the *APA*. I would be glad to discuss this petition with you at length. Feel free to contact me.

I await your reply.

In Peace,

A handwritten signature in black ink, appearing to read 'RM Strahan', written over a horizontal line.

Richard Max Strahan
National Campaign Director
and for Himself