

1. INTRODUCTION

The United States Coast Guard (USCG) provides maritime humanitarian, law enforcement, and safety services to the people of the United States along the Atlantic coast. These services are performed in estuarine, coastal, and offshore waters from Maine to Florida, as well as Puerto Rico and the U.S. Virgin Islands. USCG operations have the potential for interacting with various species of fish and wildlife, including whales and sea turtles, and their habitats that are protected under U.S. laws and regulations. The USCG has the authority under Federal laws to carry out programs, in consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), to protect and conserve threatened and endangered marine species and their habitats. In addition, the USCG has a mandate under the Marine Mammal Protection Act to protect all marine mammals including those not designated as threatened or endangered under the Endangered Species Act (ESA), such as seals or porpoises. Therefore, the USCG has reviewed its various operations and has consulted with NMFS to determine the appropriate means of satisfying these responsibilities for protecting living marine resources.

This environmental impact statement (EIS) has been prepared to assist in the process of deciding the appropriate methods that the USCG should use to improve the protection and conservation of marine species and their habitats while continuing to perform the USCG's missions. This EIS presents and evaluates the potential environmental effects of various protective measures and describes the proposed adoption of the USCG Atlantic Protected Living Marine Resources Initiative (the Initiative or APLMR).

Protected living marine resources occur in estuarine, coastal, and continental shelf waters on both a permanent and seasonal basis along the entire length of the U.S. Atlantic coast from the Maine/Canada border to Key West, Florida, including Puerto Rico and the U.S. Virgin Islands. As part of an integrated strategy to protect and restore populations of endangered/threatened species, Critical Habitats and National Marine Sanctuaries have been designated along the Atlantic coast in areas found to be necessary for the survival of a species protected under the ESA, and where one or more of these species may congregate in large numbers on a seasonal basis. These same designated areas also serve to protect habitat for other marine mammals. Several other areas along the U.S. east coast are important high-use areas and important habitat for certain life stages of protected marine species. The significant threatened and endangered marine species include the following:

- Northern Right Whale
- Humpback Whale
- Finback Whale
- Sei Whale
- Blue Whale
- Sperm Whale
- Gulf of Maine Population of the Harbor Porpoise
- Loggerhead Sea Turtle
- Kemp's Ridley Sea Turtle
- Leatherback Sea Turtle
- Green Sea Turtle
- Hawksbill Sea Turtle
- West Indian Manatee

1.1 Major Conclusions

The USCG proposes to adopt measures to improve protection of protected living marine resources. The preferred alternative is to implement the USCG Atlantic Protected Living Marine Resources Initiative. The Initiative is comprised of an Internal Program that describes procedures for operating USCG vessels and aircraft in the Atlantic area in such a manner as to avoid, to the maximum extent possible, harmful interactions with protected living marine resources. The second major component of the Initiative is the Conservation Program, which consists of procedures involving other USCG activities and interactions between USCG personnel, other Federal and State entities, and the public, all of which will help promote the conservation of protected living marine resources. Each of these two parts of the Initiative is composed of individual elements that serve to either protect or conserve living marine resources more effectively. The combined implementation of these two components of the Initiative will help the USCG more effectively comply with all environmental laws and obligations made in the Memoranda of Understanding (MOU; Appendix A) that address endangered species and marine mammals.

1.2 Areas of Concern

Three areas of concern were addressed in this evaluation of the potential environmental effects of alternative USCG actions to protect and conserve living marine resources. These concerns involve the ability of the USCG to perform its missions, ongoing litigation over USCG interactions with living marine resources, and the effectiveness of any measures that the USCG could implement to protect and conserve living marine resources. The USCG has specific mandates and funding to perform its primary missions of maritime law enforcement, maritime safety, environmental protection, and national security to serve public interest.

A concern lies in the ability of the USCG to implement an aggressive plan to protect living marine resources, while still carrying out its primary missions. For example, the extreme depletion of the right whale population necessitates the need for enhanced protection of the species. Most of the time, USCG missions and species protection can be conducted in parallel. Infrequently, though, as in the case of search and rescue (SAR) missions, emergency spill response, or other nationally significant events, USCG personnel must estimate risks and proceed at speeds or in areas that may result in interactions with protected species. In specific circumstances, USCG personnel require the operational freedom to weigh relative risks. Measures to protect and conserve living marine resources were therefore designed to be compatible with performance of the core missions of the USCG.

Development of the USCG Atlantic Protected Living Marine Resources Initiative (the Preferred Alternative) also coincides with an ongoing lawsuit, Richard M. Strahan v. Rear Admiral Linnon et al. The plaintiff has made several demands regarding the USCG's role in protection of listed species. This EIS discusses USCG authorities regarding the protection of listed species, including the authority to control the activities of non-USCG entities.

Some concern has been raised regarding the effectiveness of the proposal to implement protective measures, based on the fact that some of the activities had already been implemented on a test basis at the time of the latest whale strike. The Preferred Alternative in this FEIS discusses a set of activities that go beyond those few test activities and, if adopted, should be more effective in protecting listed species and should help to prevent takings of listed species in the Atlantic. To verify the effectiveness of the proposed activities, and to ensure the fulfillment of USCG commitments specified in the FEIS, the USCG would develop a monitoring program with the intent of measuring the impacts (negative and positive) of the Initiative on USCG missions and the environment. Additionally, the monitoring program will aid the

USCG in further modifying its activities, as appropriate or necessary, to further the goals of the Initiative (see monitoring program in Chapter 5).

1.3 Issues to be Resolved

A number of issues evaluated in this document had to be resolved for the successful implementation of the USCG proposed action. In general, the issues include methods to continue performance of USCG missions while avoiding adverse effects on protected living marine resources, the need for significant interagency cooperation at all levels of government for the successful implementation of many of the elements of the proposed plan, and the absence of USCG legal authority and budgetary resources to implement some protective measures recommended by others. This EIS presents an evaluation of the potential environmental impacts of the Initiative (the Preferred Alternative) and each of the many elements that would be included as a part of the Initiative. Those elements that exceed current USCG legislative authority and require the cooperation of other entities outside of USCG control are identified, and proposed USCG actions in light of these limitations are described.

1.4 FEIS Process

The USCG published the Environmental Assessment (EA) of Potential Impacts of USCG Activities Along the Atlantic Coast, Proposed Finding of No Significant Impact (FONSI) in 1995, and extended the comment period on 11 October 1995. That extension resulted from additional information concerning an interaction between the USCG Cutter (USCGC) *RELIANCE* and a suspected Humpback whale. Subsequently, an investigation of that interaction determined that the whale involved was most likely a humpback - which is listed as an endangered species. That determination triggered the USCG consultation with the NMFS (see Appendix E). Concurrently, reports of an increase in observed northern right whale mortalities during the 1995-1996 calving season were received.

The USCG determined that a FONSI could not be reached and that additional environmental analysis was necessary. It was determined that USCG Atlantic operations and activities, which include USCG vessel operations, were potentially significant because: (1) USCG vessel operations had, prior to implementing interim protective measures outlined in the various USCG District operating procedures (see Appendix J and K), taken endangered whales; (2) the taking by the USCGC *RELIANCE* occurred after implementation of the interim protective measures addressing USCG vessel operations (see Appendix R- a copy of the completed Letter of Incident Report for the October 1995 USCGC *RELIANCE* incident); (3) the observed increase in northern right whale mortalities which leads to a need — to substantiate a “no-jeopardy” conclusion to the reinitiated consultation — for additional protective measures to further decrease the risk that additional takings would occur, and (4) the comments received in response to the September EA (see Appendix E). This determination resulted in the USCG preparing an Environmental Impact Statement. A Notice of Intent to prepare a draft environmental impact statement and a notice of scoping was published in the Federal Register on 2 April 1996 (see Appendix S - a copy of the FR notice published at 61 FR 14590).

The Draft Environmental Impact Statement was developed using a more focused approach. The USCG developed the Atlantic Protected Living Marine Resources Initiative — the Preferred Alternative — which built upon the protective measures developed and analyzed in the EA (see Appendix D), NMFS September 1995 Biological Opinion (BO) (see Appendix C), and NMFS July 1996 BO (see Appendix F). The July 1996 BO confirmed the decision to prepare an EIS and to expand the scope of protective measures being considered and analyzed. The protective measures, as developed and analyzed in the Draft EIS, which was published for public review and comment on 31 July 1996 (Appendix Q), are grouped into two programs. The first program is the “Internal Program” that focuses primarily on the operation of USCG vessels and

aircraft. The second, is the “Conservation Program” that focuses primarily on USCG activities that influence non-USCG actors who impact the western Atlantic and its resources. The Initiative, consisting of these two programs, would adopt all of the NMFS recommendations in its July 1996 BO, which includes the Reasonable and Prudent Alternative (RPA), and is intended to allow the USCG to continue its Atlantic operations and activities in a “no-jeopardy” status—thereby fulfilling the requirements of Section 7(a)(2) of the ESA (Section 1536(a)(2) of United States Code Title 16) as well as addressing USCG actions to implement conservation measures in accordance with Section 7(a)(1) of the ESA (Section 1536(a)(1) of United States Code Title 16).

The publication of this Final EIS, on 31 October 1996, will be followed by a public review period. At the conclusion of that review period, the USCG will publish a Record of Decision (ROD). That ROD will conclude the NEPA EIS process, formally announcing the USCG decision regarding the implementation of protective measures, and provide the response to NMFS regarding acceptance of the Reasonable and Prudent Alternative (RPA) presented in the July BO. In the event the ROD states that the USCG cannot meet the RPA requirements, then the USCG will explain the basis for its determination that any of the components of the RPA are unacceptable, and seek renewed consultation with NMFS while exploring potential options for an exception or exemption regarding any unacceptable components of the RPA.