

2. PURPOSE AND NEED FOR PROPOSED ACTION

2.1 Purpose and Need

The USCG proposes this action to aid in the fulfillment of its missions, including protection of the environment, while fulfilling USCG obligations to protect listed species. The USCG proposed action is to develop protective measures for protected living marine resources. The Preferred Alternative, adoption of the USCG Atlantic Protected Living Marine Resource Initiative (the Initiative), consists of two components: (1) an internal program addressing the USCG operation of its vessels and aircraft in the Atlantic area and USCG enforcement of the ESA and the MMPA; and (2) a conservation program regarding other USCG activities, including interactions between USCG personnel and the public. The Preferred Alternative is designed to improve the USCG efforts under various statutes and initiatives while securing the remainder of its missions and was designed to provide protective measures developed during the ESA consultation and the NEPA analyses.

Under Section 7(a)(1) of the Endangered Species Act (ESA), federal agencies, in consultation with and with the assistance of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, can utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered and threatened species.

Federal agencies are required by the Marine Mammal Protection Act (MMPA) to avoid the taking of marine mammals while conducting their missions. The MMPA prohibits the taking and importation of marine animals and marine animal products, unless a specific permit is issued. The MMPA defines “taking” as harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture, or kill any marine mammal.

The USCG is also a signatory to two Memoranda of Understanding (MOUs) that encourage protection of endangered species and marine mammals (Appendix A). In September 1995, the Commandant of the USCG signed the first MOU. The goal of this MOU has been to establish a framework for and encourage cooperation between Federal agencies to enhance implementation of the ESA. The second MOU, signed by the Department of Transportation (DOT) Deputy Assistant Secretary for Transportation Policy in December 1995, committed DOT and the USCG to the ecosystem approach to planning.

The proposed action is an effort to more effectively satisfy applicable environmental laws — specifically the Marine Mammal Protection Act and the Endangered Species Act — and MOUs designed to encourage USCG protection of endangered species and marine mammals, while meeting mission requirements.

The following brief chronology of consultations with NMFS, of protected species interactions, and events resulting from protected species interactions has prompted the USCG to develop the Preferred Alternative.

- On 6 July 1991, while conducting operations east of Delaware Bay, the USCG *CHASE* struck and killed a suspected northern right whale calf that unexpectedly surfaced beneath the vessel’s propellers.
- On 5 January 1993, under foggy conditions, the USCG *POINT FRANCIS* collided with and killed a juvenile right whale near Jacksonville, Florida.
- On 3 June 1994, NMFS announced, in the Federal Register, the designation of extensive critical habitat in the western Atlantic ocean for the northern right whale.

- On 7 June 1994, Mr. Richard Max Strahan filed suit against the USCG in the United States Federal District Court for the District of Massachusetts alleging various violations of the Endangered Species Act, Marine Mammal Protection Act, and National Environmental Policy Act based on USCG interaction with Federally protected whales, especially the northern right whale.
- On 13 December 1994, NMFS issued an advance notice of proposed rulemaking in the Federal Register to solicit comments on a petition to designate protection zones around Federally protected whales.
- On 31 March 1995, the USCG submitted a Biological Assessment (BA) to NMFS in order to continue a formal consultation regarding USCG Atlantic activities and potential USCG interactions with protected species.
- On 31 May 1995, the USCG submitted a Marine Mammal Protection Act (MMPA) small-take permit application to NMFS.
- On 1 August 1995, the USCG submitted its final BA (Appendix B) to NMFS (this was an updated revision of the BA dated 31 March 1995).
- On 15 September 1995, NMFS issued its Biological Opinion (BO; Appendix C) determining that USCG Atlantic activities did not jeopardize the continued existence of protected marine species and requiring re-initiation of consultation in the event that a future strike of an endangered whale were to take place.
- On 22 September 1995, the USCG published an Environmental Assessment (and proposed Finding of No Significant Impact) for USCG activities along the Atlantic coast (EA; Appendix D).
- During the months of September and October 1995, the USCG received numerous comments on the EA (Appendix E), several urging the USCG to prepare an EIS and to consider alternatives (additional or different protective measures).
- On 9 October 1995, the USCGC *RELIANCE* bumped a suspected humpback whale while operating outside the northwest Atlantic northern right whale critical habitat area.
- During the 1995-1996 northern right whale calving season in the southwest Atlantic, an increased number of northern right whale mortalities were observed.
- On 22 February 1996, the USCG re-initiated consultations with NMFS based on the report of the USCGC *RELIANCE* that it bumped a suspected humpback on 9 October 1995.
- On 2 April 1996, the USCG published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) and a Scoping Notice in the Federal Register.
- On 19 June 1996, the Federal District Court ordered the USCG and NMFS to complete their ESA consultation no later than 22 July 1996, and ordered the USCG to publish its DEIS no later than 31 July 1996.
- On 22 July 1996, NMFS issued a final BO (Appendix F) that considered developments occurring since the 9 October 1995, whale interaction and denied the USCG MMPA small take permit application for takings of northern right whales. The BO contains the “Reasonable and Prudent

Alternative” (RPA) that NMFS determined necessary for the USCG to continue operating in a no-jeopardy status.

The USCG needs to develop programs that maximize efforts to decrease the risk of future protected species interactions, that recognize the vast critical habitat of the northern right whale, and that take into account the operational and conservation measures developed by the public and NMFS during the ESA and National Environmental Policy Act (NEPA) analyses. The USCG ESA consultation thus far has assisted the USCG in developing the protective operating procedures and the conservation measures that are analyzed in this FEIS.

2.2 Missions of the USCG and the Need to Continue Conduct of These Missions

While addressing environmental concerns, the USCG must also ensure that it continues to conduct its other missions. The missions of the USCG are performed in fulfillment of the requirements of various laws and acts promulgated by the U.S. Congress. Congress and the Executive Branch has delegated responsibility to the USCG for enforcement of, or compliance with, various international laws and conventions dealing with activities in State, Federal, and international waters.

The USCG primary missions are maritime law enforcement, maritime safety, environmental protection, and national security. Established on August 4, 1790, the USCG is the principal Federal agency responsible for national marine transportation policy, marine safety, and maritime law enforcement on the high seas and in all waters under jurisdiction of the United States. Under its environmental protection mission, the USCG acts to minimize damage to the marine environment and its wildlife from pollutants released in the coastal zone and ocean under U.S. jurisdiction. As a unique military service, the USCG operates within the DOT during peace time and within the Department of the Navy in times of war to ensure the nation’s security.

The Preferred Alternative is designed specifically to allow USCG personnel to efficiently conduct Congressionally mandated and Presidentially directed daily operations while complying more effectively with environmental laws, specifically the Endangered Species Act and the Marine Mammal Protection Act. To accomplish its missions, the USCG performs the following numerous and varied daily operations:

- Enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to U.S. jurisdiction, such as drug interdiction.
- Engage in maritime air surveillance or interdiction to enforce or assist in the enforcement of U.S. laws.
- Administer, promulgate, and enforce laws and regulations that promote safety of life and property on and under the high seas and waters subject to U.S. jurisdiction, unless those responsibilities are specifically delegated by law to some other executive department.
- Develop, establish, maintain, and operate aids to maritime navigation, icebreaking facilities, and rescue facilities.
- Maintain a state of readiness to function as a specialized service in the Navy in time of war, including the fulfillment of Maritime Defense Zone responsibilities.

- Establish and maintain a coordinated comprehensive ports and waterways system, including all aspects of marine transportation.
- Protect the public, the environment, and U.S. economic interests by preventing and mitigating marine accidents and pollution.

The Federal and international regulations that authorize the USCG to conduct its missions are presented in Appendix G. Details on the organization and operations of the USCG are presented in Appendix H. These missions are conducted by the USCG organizational components discussed in the sections that follow.

2.2.1 Marine Environmental Protection

The mission of the Marine Environmental Protection Program is to protect the public, the environment, and U.S. economic interests by the prevention and mitigation of marine pollution. This mission is managed through the Chief, Marine Safety and Environmental Protection at USCG Headquarters. Fifteen USCG Captains of the Port, supported by three east coast USCG Districts, the National Strike Force, and the National Pollution Fund Center, direct field activities in support of the program on the U.S. east coast. The USCG Captains of the Port are the sole federally designated On-Scene Coordinators in the Coastal Zone under the National Contingency Plan. They are responsible for developing Area Contingency Plans and for directing activities to mitigate the impact of accidents and pollution incidents affecting the marine environment and maritime commerce within their respective areas of responsibility.

2.2.2 Marine Safety

The mission of the Marine Safety Program is to minimize the threat, occurrence, and magnitude of intentional or accidental marine emergencies. This mission is also managed by the Chief, Marine Safety and Environmental Protection at USCG Headquarters. Thirteen Commanding Officers of USCG Marine Safety Offices, one USCG Officer in Charge, Marine Inspection, and two USCG Captains of the Port, supported by three USCG Districts and the National Maritime Center, direct field activities in support of the program on the U.S. east coast. Over an average year, these USCG units investigate incidents, and check for compliance with domestic laws and international treaties developed to reduce the risk of incidents. The program monitors approximately 140,000 U.S. commercial vessels, 8,100 foreign flag vessels operating on U.S. waters, 3,500 waterfront facilities, and 200,000 licensed or documented merchant mariners.

2.2.3 Vessel Traffic Services

The Vessel Traffic Services (VTS) Program functions as the “electronic eyes and ears” of the port. It is responsible for enhancing the safe and efficient use of the nation’s waterways by effectively managing a system of Vessel Traffic Centers (VTC). The primary mission of the VTS Program is to establish and maintain a coordinated comprehensive ports and waterways system (*i.e.*, to facilitate the safe and efficient movement of vessel traffic to prevent collisions, groundings, and the human, property, environmental, or economic losses or consequences associated with such accidents). The VTC has the communications capability to report an incident to the responsible authority or to the mariners for appropriate trip planning consideration. The VTC also has sensors to monitor or manage appropriate responses to the incident. The VTC does not actively operate vessels of any type; it does, however, advise mariners on hazards to navigation. On the east coast of the United States, a VTC is located in New York City.

2.2.4 Law Enforcement

The USCG is the nation's leading maritime law enforcement agency tasked with enforcing the applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States. The Enforcement of Laws and Treaties (ELT) Program focuses primarily on protecting fisheries and other living marine resources, combating illicit drug trafficking, and interdicting illegal immigrants at sea. The USCG conducts fisheries law enforcement to promote a high rate of compliance with the laws and regulations which are designed to support the conservation and management of the nation's living marine resources. The platforms used in this program are varied and range from small, rigid-hull inflatable boats to 378-ft cutters, and from short-range recovery helicopters to long-range fixed-wing aircraft. The USCG uses vessels and aircraft to ensure that regulations on closed areas, fishing gear, and targeted species, as well as many other activities, are effectively enforced.

2.2.5 Search and Rescue

Search and Rescue (SAR) missions are those that have the goal of preventing the loss of life and property. Most SAR cases involve a disabled or endangered vessel in a known position and in need of assistance. The USCG response vessel or aircraft proceeds to the appropriate position at maximum safe speed (defined with regard to personnel safety). The response often results in towing a vessel back to port at the most economical speed. Search-and-rescue cases occur all along the east coast of the United States, with more than 95% of these cases occurring within 20 miles of shore. Most of the SAR cases are non-emergency in nature, which means that USCG resources need not respond at "maximum safe speed" or even directly to the incident. Each SAR case is a dynamic event. Non-emergency cases may become emergent based on a variety of factors, as outlined in USCG Addendum to the National SAR Manual, Chapter 3 - Maritime SAR Assistance Policy. Emergency operations are operations for which rapid response is required to avoid loss of life or property. The remaining SAR cases are distress situations and involve searching for lost or unlocated vessels, life rafts, or persons in the water. Vessels and aircraft are deployed to a specific area to "search" the area by using specified optimal search patterns. Any deviation from this optimal search pattern increases the risk of not locating the distressed mariner.

2.2.6 Aids to Navigation

The USCG maintains several thousand aids to navigation (ATON) along the Atlantic coast. These aids range from large lighthouses with fog signals and large heavy buoys moored offshore to small single structures and small buoys moored in estuaries and bays. Maintenance of ATON along the coast is provided by 14 seagoing and coastal buoy tenders. Augmenting these vessels are 27 ATON teams situated on shore that utilize various sized boats, some transported by trailer, to service fixed structures and the smaller buoys and to provide initial response to those aids assigned to the buoy tenders when the aids are reported to be discrepant (*e.g.*, extinguished lights, off position, etc.). Seven construction tenders and two inland buoy tenders erect or maintain structures in protected, shallow waters (<20 feet) from southern New Jersey southward. Additionally, ATON units assist in SAR, environmental cleanup, and law enforcement. ATON maintenance includes an annual or biennial visit of 1-2 hours. The time between servicing visits depends upon the environmental conditions present at the aid's assigned station. In general, those aids offshore or in the near-coastal environment are visited more often because of wear and tear to the mooring system.

2.2.7 Aviation

USCG Aviation supports all other programs with operational platforms to conduct surveillance, rescues, searches, and logistics. Aviation resources include HC-25 and HU-130 fixed-wing aircraft, which are used

for medium- and long-range surveillance (*i.e.*, usually law enforcement searches to locate a specific vessel or concentration of vessels). Typically, this entails reconnaissance at altitudes above 500 feet. These aircraft operate at altitudes below 500 feet only when dropping rescue equipment or when necessary for vessel surveillance and/or for identification. In addition to fixed-wing aircraft, the office uses two types of helicopters for short- and medium-range recovery roles. Routine patrols and transits to and from search areas are, weather permitting, normally above 500 feet. Flying low over water is sufficiently dangerous that it is normally avoided unless required by the mission being flown. Searches for persons in the water must be conducted below 500 feet to be effective. The recovery of persons in the water and dropping rescue equipment must be done while hovering well below 500 feet.

2.2.8 Engineering

The Engineering Directorate provides support in aeronautical, civil, and naval engineering for the USCG to conduct the above assigned missions. This directorate's mission is to provide engineering services, including design, construction, maintenance, and outfitting and alteration of vessels and aircraft; and to provide aids to navigation, shore establishments, machinery, and utilities. Because of the nature of the USCG missions and operations, most of the engineering activities occur in the coastal or nearshore environment.

2.3 Proposed Action Alternative — Preferred Alternative

The Preferred Alternative for improving protection of protected living marine resources is the adoption and implementation of the USCG Atlantic Protected Living Marine Resources Initiative. The Initiative has two major programs and is described in detail in Section 3.2.

2.3.1 The Internal Program

This component of the Initiative will allow USCG personnel to conduct mission-fulfilling activities, such as marine environmental protection, search and rescue, law enforcement, vessel traffic management, and marine safety, and help to avoid interaction with marine mammals and turtles in the Atlantic Ocean. Particularly in the case of whale strikes, these interactions can be highly detrimental to protected marine life and the USCG mission. For example, vessels sometimes require towing to port and extensive repairs following a strike; SAR, law enforcement, and environmental protection activities are invariably delayed after a strike. The goal of the Preferred Alternative is to reduce these harmful interactions by adopting an internal program for the operation of USCG vessels and aircraft in a manner to avoid or minimize strikes in the Atlantic.

2.3.2 The Conservation Program

This component of the Initiative is a USCG program for the conservation of all Atlantic species of protected (endangered and threatened) marine life, such as turtles and whales. This component focuses primarily on the USCG ability to influence other mariners and users of the western Atlantic. The USCG, pursuant to Section 7(a)(1) of the ESA, has reviewed its authorities to carry out its programs for the conservation of endangered and threatened species. By focusing the Preferred Alternative on protected species throughout a large ecosystem or set of ecosystems (the Atlantic ocean), as opposed to single species management, the USCG Initiative also will fulfill obligations made in the two MOUs addressing endangered species and marine mammals.