

Note: November 2022.

This Directive may no longer be current. Please check with the program office responsible for this Directive to determine if there are any updates or if the Directive is no longer in use.



COMDTINST 16475.7
MAY 27 2003

COMMANDANT INSTRUCTION 16475.7

Subj: PROTECTED LIVING MARINE RESOURCES PROGRAM

- Ref:
- (a) National Environmental Policy Act, 42 U.S.C. Sections 4321-4335
 - (b) Endangered Species Act of 1973, 16 U.S.C., Sections 1531-1544
 - (c) Marine Mammal Protection Act of 1972 16 U.S.C., Sections 1361-1421
 - (d) National Sanctuaries Act, 16 U.S.C. 1431 et seq.
 - (e) Migratory Bird Treaty Act, 16 U.S.C. Sections 703-712
 - (f) National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts Manual, COMDTINST M16475 (series)
 - (g) Maritime Law Enforcement Manual, COMDTINST M16247.1 (series)
 - (h) Final Environmental Impact Statement for the U.S. Coast Guard Atlantic Protected Living Marine Resources (APLMR) Initiative (NOTAL)
 - (i) Ocean Steward, Protected Living Marine Resources Strategic Plan
 - (j) COMDT COGARD (G-OPL) Washington DC 261302Z Sep 02 (NOTAL)
 - (k) COMDT COGARD (G-OPL) Washington DC 251923Z Oct 02 (NOTAL)
 - (l) Final Baseline Assessment of U.S. Coast Guard Operations in the Gulf of Mexico of 15 Dec 97
 - (m) Final Baseline Assessment of U.S. Coast Guard Operations in Alaska of 27 Apr 01
 - (n) Final Endangered Species Act Biological Assessment for the U.S. Atlantic Coast of 1 Aug 95
 - (o) COMPACAREA COGARD (PO) Alameda CA 031922Z Jul 02 (NOTAL)

1. PURPOSE. Outline Coast Guard actions, during Coast Guard operations, to support the recovery of protected living marine resources through internal compliance with and enforcement of Federal, State and international laws designed to preserve marine protected species. District Commanders are required, as part of the Coast Guard wide effort, to establish, maintain and update their Protected Living Marine Resources Program (PLMRP). The PLMRP will ensure Coast Guard operations

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NON-STANDARD DISTRIBUTION:

comply with references (a) thru (h) and other applicable Federal regulations and guidance such as Executive Orders. Additionally, to supplement the general enforcement guidance provided by reference (g) the PLMRP will provide specific enforcement guidance, when appropriate, that will address the unique environment and population of protected species of the District. The PLMRP focuses on Coast Guard cutter, boat and aircraft operations; not on the activities involved in construction, maintenance and repair of shore facilities.

2. ACTION. District Commanders shall establish and maintain a Protected Living Marine Resources Program. Internet release is authorized.
3. DIRECTIVES AFFECTED. None.
4. BACKGROUND. Reference (h) is the Coast Guard Environmental Impact Statement (EIS) delineating the potential threat of Coast Guard operations to protected species in the Atlantic Ocean, which includes the preferred alternative to mitigate negative interactions between Coast Guard units and marine protected species. One of the EIS mitigation measures contained in the preferred alternative requires the establishment of a Commandant Instruction on Protected Living Marine Resources and the development of District protected living marine resources programs. In addition, the Marine Protected Species Division (G-OPL-5) was established within the Office of Law Enforcement (G-OPL) and the Commandant issued reference (i): the Coast Guard's Strategic Plan for Marine Protected Species (Ocean Steward). Ocean Steward is a vital element in the Coast Guard's strategic goal of protecting our natural resources.
5. DISCUSSION. In recent years, there has been a dramatic increase in public and governmental concern about the state of our oceans and their living resources. The Coast Guard already has effective, coordinated plans for enforcing our nation's fisheries management regulations, protecting the marine environment from oil pollution, and responding to maritime disasters. There is a need to adapt the same approach to marine protected species, specifically those species and geographic areas that are protected under the Endangered Species Act, the Marine Mammal Protection Act, the National Marine Sanctuaries Act, and similar regulations or executive orders.
6. PROCEDURES. Ocean Steward's goal is to help the nation recover and maintain healthy populations of marine protected species. Baseline Assessments (BA) for all oceanic environments in which the Coast Guard operates will be prepared and updated to assist the process of identifying possible interactions with protected species. Thereafter, Environmental Assessments (EA) and EISs will be prepared as appropriate. Headquarters, working with the affected Area, will prepare BAs, EAs and EISs, with assistance of field units, as needed. These documents will serve to support each District PLMRP. Consistent with these documents Districts shall:
 - a. Identify local and migratory/seasonal populations of protected species and take action as appropriate to reduce potential opportunities for conflict between the protected species and Coast Guard vessel or aircraft operations.
 - (1) In identifying populations of indigenous and migratory protected species, districts should consider guidance provided in Biological Assessments (references l thru n), local knowledge, National Marine Sanctuaries, and any formally designated and/or candidate

Marine Protected Areas. (Enclosure (1) is a current list of marine protected species)
 Districts should also consider partnering or coordinating with the local offices of the Fish and Wildlife Service and National Oceanic and Atmospheric Administration Fisheries in identifying populations of indigenous and migratory protected species in the area.

- (2) In striving to reduce potential opportunities for conflict between protected species and operations, districts should encourage area avoidance, promulgate speed/approach guidance similar to reference (o), ensure the posting of properly trained lookouts aboard cutters, and other similar measures where appropriate.
- b. Participate in multi-agency planning groups to identify potential for non-regulatory cooperative efforts designed to lessen or eliminate future impact upon regional and migratory protected and candidate species. Planning groups appropriate for district participation might include take reduction teams, sanctuary advisory committees, and stranding networks.
 - c. Record PLMR efforts in appropriate databases (i.e., AOPS, MISLE) and message traffic (i.e., LMR Enforcement Summary, SITREPs) to ensure accurate archiving of Coast Guard activities and Auxiliary response.
 - (1) AOPS - Record resource hours dedicated to activities involving protected living marine resources. Additional guidance is provided in reference (j) and the AOPS Users Guide. The latter is available on the intranet at <http://aops.osc.uscg.mil>.
 - (2) MISLE – Record boardings and enforcement actions involving protected living marine resources. Additional guidance is provided in reference (k) and the MISLE Users Guide. The latter is available on the intranet at http://mislenet.osc.uscg.mil/user_guides.aspx.
 - (3) LMR Enforcement Summary – Record significant events involving protected living marine resources, including assistance to other agencies and incidents where other operational commitments prevented Coast Guard units from responding to legitimate requests for assistance involving marine protected species recovery activities. Additional guidance is provided in reference (k) and enclosure (4) to reference (g).
 - (4) SITREP – Law Enforcement SITREPS for events involving protected living marine resources should be prepared in accordance with and when prescribed by enclosure (4) to reference (g).
 - d. Protected living marine resources programs that support the Coast Guard's Strategic Plan and meet the objectives delineated in reference (i) shall include:
 - (1) Description of areas of special interest, including designated critical habitats and marine sanctuaries;
 - (2) Enforcement procedures; Districts should develop specific guidance, taking into account the particularities of the natural environment in which they operate, to supplement the general enforcement guidance already provided in chapter 8, paragraph 3 of reference (g);

- (3) Marine animal stranding response protocols to include Area Contingency Plan for Oil and Hazardous Waste Spill Control;
- (4) Operational control (OPCON) and monitoring responsibilities;
- (5) Procedures for disposition of dead or injured protected species; and
- (6) Forms for reporting boat collisions with marine animals, entangled turtles or whales as well as the names and telephone numbers for stranding network personnel. Generic forms, enclosure (2), can be downloaded from the G-OPL-5 website (<http://cgweb.uscg.mil/g-o/g-opl/>) and customized to meet District specific needs.

Note: (Enclosure (3) is a sample PLMRP instruction, that is illustrative only, and can be downloaded from the G-OPL-5 website (<http://cgweb.uscg.mil/g-o/g-opl/>) to assist the development of a District instruction tailored for the particular environment)

- 7. ENVIRONMENTAL ASPECT and IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this directive. This document falls under categorical exclusion number 33 (figure 2-1) of reference (f) as it is a guidance document that implements applicable statutory, regulatory and other guidance documents without substantive change.
- 8. FORMS/REPORTS. None.

D. S. BELZ//s//
Assistant Commandant for Operations

Encl: (1) Listing of Protected Species
(2) Sample Forms
(3) Sample PLMRP Instruction (based on D17 Instruction)

LISTING OF PROTECTED SPECIES

(Current as of 3 April 2003)

Sea Turtles

Green Turtle
Hawksbill Turtle
Kemp's Ridley Turtle
Leatherback Turtle
Loggerhead Turtle
Olive Ridley Turtle

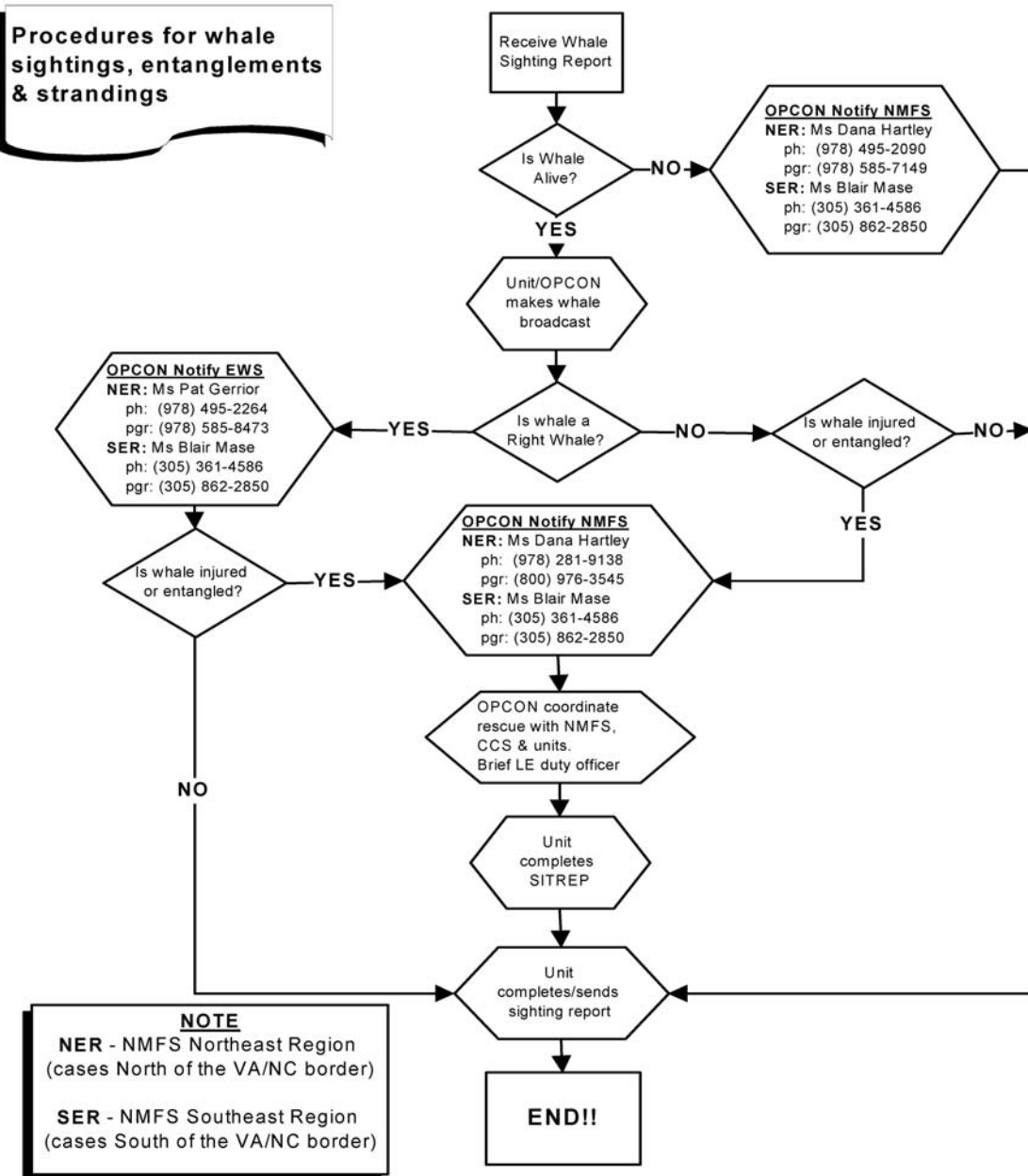
Cetaceans

Blue Whale
Sei Whale
Fin Whale
Gray Whale
Sperm Whale
Northern Right Whale
Humpback Whale
Beluga Whale
Spinner Dolphin
Spotted Dolphin
Bottlenose Dolphin
Harbor Porpoise

Pinnipeds

Caribbean Monk Seal
Guadalupe Fur Seal
Hawaiian Monk Seal
Steller Sea Lions

Whale Sighting, Entanglement, Stranding Procedures



Whale Sighting Form

Name of Reporter: _____

Vessel Name or Aircraft Number: _____

Date and time of sighting: _____

Position (Lat/Long): _____

Species observed: _____

ID Certainty: ☐ Definite ☐ Probable ☐ Possible

Number identified: _____

Distinguishing Characteristics:

[Key features - size, body shape, color, blow, natural markings, (spots, blazes) dorsal fin and flippers (size and shape)]

Comments:

[calf present, injuries/wounds, behavior, other species present]

Photos taken:

[roll & frame numbers, tape number]

After completing form mail to:

New Jersey through Virginia
Protected Species Branch
National Marine Fisheries Service
166 Water Street
Woods Hole, MA 02543
(508) 495-2087 Fax: (508) 495-2258

North Carolina
Blair Mase
SouthEast Fisheries Science Center
75 Virginia Beach Drive
Miami, FL 33149
(305) 361-4586 Fax: (305) 361-4562

ENTANGLEMENT AND BOAT COLLISION REPORTING FORM**I. REPORTING SOURCE**

Time/Date: _____ Reporting Source: _____
 Vessel Name: _____ Doc/Reg Number: _____
 Radio Call: _____ Cell Phone: _____
 1st or 2nd How long can
 hand Report: _____ R/S remain O/S?: _____

II. DETAILS OF INCIDENT

Position: _____ Geographic Desc: _____
 O/S Wx: Winds _____ T/ _____ KTS, Swell _____ T/ _____ FT
 Seas _____ T/ _____ FT, Vis _____ NM, Temp _____ F, Baro _____ (R/F/S)
 Species: _____ Number of Animals: _____
 Dorsal Fin: _____ Color: _____
 Size: _____ Dead/Alive: _____
 Distinguishing Marks: _____ Photo/Video Taken: _____
 Type of Entanglement: _____ Nature of Injury: _____
 Traveling or Anchored by Gear: _____ Course/Speed: _____

III. ENTANGLEMENT

Type of Gear & Identifying Features (color, reg #, etc) _____
 Type of Line (Dia, color, material) _____
 Mesh Visible?: YES/NO _____ Float/Other Gear Trailing?: _____
 Part of Body Entangled?: _____ # Wraps around Tail/Body: _____
 Life Threatening?/Describe: _____

IV. ANIMAL'S APPEARANCE

First Impression of Condition: _____
 Skin Condition (peeling, color, whale lice, etc): _____
 Obvious Bleeding/Wounds: _____
 Marks Fresh or Healing?: _____
 Weight (robust, emaciated, ribs or vertebrae showing): _____

V. ANIMAL'S BEHAVIOR

General Description: _____
 Breathing (pattern, sound, smell?): _____
 Struggling to Breathe?: _____
 Lifting Head/Flukes above water?: _____
 Effects on movement (flexibility, buoyancy, surfacing angle, ability to dive, appendage movement, etc): _____

VI. COLLISION

Type of Wound (prop wound, part cut off, etc)?: _____
 Location: _____ Severity: _____
 Vessel Involved: _____ Doc/Reg #: _____
 Operator: _____ Homeport: _____

COAST GUARD DISTRICT INSTRUCTION 16XXX.X

Subj: PROTECTED LIVING MARINE RESOURCES PROGRAM

Ref: (a) 50 CFR Part 216 - Regulations Governing the Taking and Importing of Marine Mammals
(b) 50 CFR Part 222 - Endangered Fish and Wildlife
(c) 50 CFR Part 226 - Designated Critical Habitats
(d) 50 CFR Part 227 - Threatened Fish and Wildlife
(e) Maritime Law Enforcement Manual, COMDTINST 16247.1 (series)

1. PURPOSE. This instruction directs Coast Guard units within XXXXXX District waters to further 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, detect, and initiate enforcement action on, violations of those U.S. laws protecting Marine Mammals and Endangered Species.
2. ACTION. All XXXXXX District units, cutters, and aircraft operating within the XXXXXX District shall comply with the provisions of references (a) through (e) and enclosure (1) of this instruction.
3. DIRECTIVES AFFECTED. None
4. DISCUSSION. The National Oceanic and Atmospheric Administration (NOAA) Fisheries is the primary federal agency responsible for the conservation and management of Living Marine Resources (with the exception of sea otters, polar bears and walrus which are under the jurisdiction of the U.S. Fish and Wildlife Service). 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 NOAA Fisheries to meet management goals for protected marine mammals. The Coast Guard and NOAA Fisheries are both responsible for enforcing violations of the Endangered Species Act (ESA).
5. ENVIRONMENTAL ASPECT and IMPACT CONSIDERATIONS. Environmental considerations were examined in the development of this directive, and have been determined not to be applicable.

6. FORMS/REPORTS. None.

XXXXXXXXXXXX
Chief of Staff

Encl: (1) Marine Mammal & Endangered Species Protection Program

PROTECTED LIVING MARINE RESOURCES PROGRAM
(Enclosure (1) to Sample DISTINST)

1. AREAS OF SPECIAL INTEREST. The XXXXX District Protected Living Marine Resources Program applies to littoral and offshore waters. However, designated critical habitats are of special importance. Units should review reference (c) 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 XXXXX District, specific areas of concern include steller sea lion rookeries, haulouts and associated areas as listed in part 226.12(a) and 227.12, and three proposed special aquatic foraging areas as listed in part 226.12(c).
2. CUTTER TRANSITS. Whales can be expected to be encountered in inshore and offshore waters of the XXXXX District throughout the year.
 - A. During the course of non-emergent operations all vessels will incorporate the following speed guidance:

Reductions in vessel speed should be considered when a whale is sighted, known to be in the immediate area, or known to have been sighted within five nautical miles. In these situations, vessels shall use those courses and speeds as appropriate, yet navigationally prudent, to avoid a collision with a whale, and if necessary, reduce speed to a minimum at which the vessel can be kept on course or come to all stop.
 - B. During the course of non-emergent operations all vessels will incorporate the following approach guidance:

Do not approach whales head-on, nor approach within 100 yards. Approach distances may vary if the Coast Guard vessel is assisting in the rescue of an endangered whale or performing duties to enforce the Endangered Species Act or Marine Mammal Protection Act.
 - C. These guidelines should not influence the conduct of emergency operations: those that require rapid response such as SAR to avoid loss of life and property, urgent law enforcement incidents, and situations involving national security.

3. UNIT RESPONSIBILITIES:

A. NOTIFICATIONS:

- (1) ENTANGLEMENTS, BOAT COLLISIONS, AND STRANDINGS - In cases of entanglement, boat collisions or strandings units shall complete the appropriate form and pass the information to the command center immediately. A copy of the Entanglement & Boat Collision Reporting Form is provided as enclosure (2). Coast Guard units should not attempt to remove debris from entangled whales.

A

Marine Mammal Stranding Report is provided as enclosure (3). The Command Center shall notify the appropriate authorities as outlined below:

- (a) Entangled or stranded whales. The DXX Command Center shall immediately notify the NOAA Fisheries Protected Resource Management Division's Stranding Coordinator at (907)586-7235 (fax: 586-7012).

- (b) Stranded/entangled Steller Sea Lions. Steller Sea Lion stocks west of 144° W longitude have recently been listed on the endangered species list.

The DXX Command Center shall immediately notify the NOAA Fisheries Protected Resource Management Division's Stranding Coordinator at (907)586-7235 (fax: 586-7012).

B. LOGISTICAL SUPPORT. Units are authorized and may be tasked by OPCON to provide logistical support for NOAA Fisheries-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 the Maritime Law Enforcement Manual, with an information copy to CGDXX (moc).

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 follow-up determined to be necessary 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. DXX WHALE SIGHTING PROGRAM:

- A. UNIT PREPARATIONS. Units operating in the DXX AOR should review references (a) through (d) and follow the guidelines outlined in this instruction to establish an effective unit sighting program. The program will include reporting sightings to the National Marine Mammal Laboratory (NMML) for inclusion in their national data base. NMML distributed sighting forms to all cutters in PACAREA in June 1996. Additional forms may be obtained by calling the NMML at 206-526-4030. They will also answer any questions about the national sighting program.
- B. IDENTIFICATION GUIDES. Units should ensure that appropriate personnel are able to identify protected species. The Guide to Marine Mammals of Alaska is available from the Alaska Sea Grant College Program at the University of Alaska Fairbanks for \$15.00. This publication has pages which are water resistant in spiral bound format. NMML also recommends the Sierra Club Handbook of Whales and Dolphins and the Sierra Club Handbook of Seals and Sirenians, both available from the Sierra Club Bookstore, San Francisco (415)977-5600.
- C. COLLATERAL DUTY ASSIGNMENT. Units should identify a person onboard that has primary responsibility for photographing, videotaping and submitting completed sighting forms for endangered marine mammals.
- D. SIGHTING PRIORITIES. All sightings of marine mammals should be documented on the NMML Marine Mammal Sighting form. The specific priorities of the DXX sighting program are:
 - (1) Entangled or injured whales;
 - (2) "Floaters" - dead whales;
 - (3) Large groups of whales.
- E. PROBABLE LOCATIONS OF WHALES. Historical sighting data from aerial and shipboard surveys indicates whales are normally found in the vicinities of:
 - (1) West Coast of Alexander Archipelago (March-June) - gray whale seasonal migrants seen close to shore on the northbound transit.
 - (2) Shelikof Bay (Kruzof Island) (July-August) - a few gray whales are seen in and near this bay.
 - (3) Davidson Bay (Chichagof Island) (July-August) - a few gray whales are seen in and near this bay.

- (4) West coasts of Prince of Wales Island, Baranof Island and Chichagof Island (March-September) - humpback whales are found in scattered distribution. (September-early February) - humpback whales are found in clumped distribution in areas where herring overwinter (Ullola Channel, Sitka Sound, Tenakee Inlet and sometimes Salisbury Sound and Lisianski Inlet).
- (5) Ketchikan Area (Revillagigedo Channel and lower Clarence Strait) (December) - a few humpback whales, with increasing sightings in the past 2-3 years.
- (6) Seymour Canal (October-early February) humpback whales.
- (7) Lower Lynn Canal and upper Stephens Passage (May-September and January) - humpback whales in increasing numbers in the past 2-3 years.
- (8) Upper Lynn Canal (May) - humpback whales.
- (9) Frederick Sound and Stephens Passage (late July-September) - humpback whales.
- (10) Chatham Strait (May-October) - humpback whales. Tenakee Inlet has sightings into October most years.
- (11) Icy Strait and Glacier Bay (May-September) humpback whales.
- (12) Coastal corridor Cape St. Elias to Unimak Pass (March-June) - migrating gray whales.
- (13) Middleton Island to shelf edge SE of Kodiak (Summer) - sperm whales.
- (14) Stevenson Entrance (between Afognak and Barren Islands) and Marmot Bay (June-October) - humpback and fin whales.
- (15) Unimak Pass (Spring-Fall) - migrating gray whales. (Summer and possibly year-round) - humpback whales.
- (16) Western Aleutians (Buldir, Seguam Pass) (Summer) - sperm whales and beaked whales.
- (17) Shelikof Strait to Chirikof Is. (spring-fall) - humpback and fin whales.
- (18) Upper Cook Inlet (May-September) - beluga whales.
- (19) Kenai River (September-October) - beluga whales.
- (20) Kachemak Bay (May) - beluga whales.

- (21) Kotzebue (June-July) - beluga whales.
- (22) Point Lay (July) - beluga whales.
- (23) Yakutat (Winter) - beluga whales.
- (24) Norton Sound beluga whales follow the icepack north.
- (25) Bowhead whales are found on the North Slope and also in the North/Northwestern Bering Sea.

F. FORWARDING OF SIGHTING REPORTS. Whale sighting information shall be documented on the NMML Marine Mammal Sighting form, and forwarded to the address on the form at the end of patrol. Use of 35-mm photographs and VHS video to supplement reports is encouraged.

6. ENFORCEMENT OF MMPA AND ESA VIOLATIONS

A. PHILOSOPHY. Enforcement of Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA) regulations will target significant violators. The MMPA prohibits the take of all marine mammal species in U.S. waters. "Take" is defined as "to harass, hunt, capture, collect or kill, or attempt to harass, hunt, capture, collect or kill any marine mammal." Education is recognized as being a fundamental part of enforcement efforts.

B. HARASSMENT DEFINITIONS. 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, but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

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 the guidelines contained in references (a) through (d) (this can be assumed of whale watching boat operators).
- (2) Refusal to observe the guidelines contained in references (a) through (d) once advised/reminded.
- (3) Documented behavior (observed, photographed, videotaped, etc.) fitting the 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 all whales which consists of an area outward from the whale a distance of 100 yards in all directions. Northern right whales have a 500 yard buffer zone.
 - (b) Approaches. Vessels may not approach a whale or turn in any manner to intercept a whale within a buffer zone.
 - (c) Interference. No vessel may disrupt the behavior of a whale within a buffer zone.
 - (d) Exceptions. Any person issued a federal scientific research permit may conduct scientific research, observation or management as authorized under the permit.
 - (e) Commercial Fishing. Commercial fishing vessels hauling back, towing gear or fishing at anchor within a buffer zone created by a surfacing whale may complete the haul, tow or fishing operation, provided it does so with minimum disruption to the whale, does so in a direction away from the 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 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 officer's 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 witnesses 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, document the suspected violations (obtain necessary information via radio) and forward the completed case package (if appropriate) to NMFS, with a copy to the appropriate MSO for possible licensing sanctions.