

**MARINE MAMMAL COMMISSION**  
4340 EAST-WEST HIGHWAY, ROOM 905  
BETHESDA, MD 20814

24 January 2005

William T. Hogarth, Ph.D.  
Assistant Administrator for Fisheries  
National Marine Fisheries Service  
1315 East-West Highway, Room 14564  
Silver Spring, MD 20910

Dear Dr. Hogarth:

The number of recent deaths of right whales in the North Atlantic caused by ship strikes is alarming. As discussed below, the Marine Mammal Commission strongly believes that the National Marine Fisheries Service needs to implement emergency rules at once to reduce the number of right whale deaths.

Over the past 11 months, six dead right whales have been found, including four in the past two months and two in the past two weeks (see attached table). Two of the six whales showed clear evidence of having been killed by ships. Two others had wounds from previous ship collisions, which may have contributed to their deaths. Compounding the significance of these losses is the fact that three of the animals were females carrying full-term female fetuses. Two of them were struck and killed while migrating to the species' calving grounds. North Atlantic right whales now number perhaps as few as 300 individuals. Clearly, this species is one of the nation's most endangered animals. It cannot sustain this level of mortality and injury from human causes.

Management actions taken to date have not prevented mortalities from ships. Although the Commission is aware that the Service has been developing a mitigation strategy and is planning a right whale summit aimed at reducing ship strikes, we believe that further delays in taking action will result in additional right whale deaths and increase the likelihood that the population will never recover. The Marine Mammal Commission therefore recommends that, within the next month, the Service adopt emergency regulations under the Marine Mammal Protection Act and the Endangered Species Act and initiate or re-initiate consultations under section 7 of the Endangered Species Act, as discussed below.

#### Emergency Actions for Ships

The deaths of pregnant female right whales during the species' migration clearly demonstrate that migrating whales are at significant risk from ship collisions off U.S. East Coast ports. On 1 June 2004 the Service published an advance notice of proposed rulemaking describing actions that could be taken to reduce these risks. As noted in the Marine Mammal Commission's 5 August 2004 letter to the Service, we believe the measures identified in this notice are appropriate and necessary. The Marine Mammal Commission recommends that elements of that proposed strategy be implemented immediately through adoption of emergency rules timed to coincide with the northward migration of right whales this spring. The emergency rules should require that all commercial ships entering

William T. Hogarth, Ph.D.  
24 January 2005  
Page 2

and leaving major East Coast ports travel at speeds of 12 knots or less when within 25 nautical miles of port entrances. This measure should apply to the ports of Jacksonville, Florida; Savannah, Georgia; Charleston and Georgetown, South Carolina; Wilmington and Morehead City, North Carolina; ports in Chesapeake Bay and Delaware Bay; New York; Narragansett Bay; Boston, Massachusetts; and Portland, Maine. Given the timing of the northward migration, we suggest that this measure remain in effect from 1 February through 30 April for ports between Florida and North Carolina, and from 1 February through 31 May for ports in and north of Virginia. The Marine Mammal Commission also recommends that the emergency rules require ships to proceed at 12 knots or less when within 10 nautical miles of any right whale sighting made by a qualified sighting team for a period of 24 hours after the time of the sighting. This provision should apply throughout all U.S. East Coast waters inhabited by right whales.

We also note that the Service recently announced plans to convene an emergency right whale summit. The stated purpose is to ask federal agencies that operate vessels along the East Coast to take voluntary measures to reduce the potential for ship strikes. The planned summit will accomplish little if participants simply continue to debate the same issues they have been debating for the past several years. We therefore encourage the Service to work with the other agencies prior to the summit to seek agreement to 1) immediately implement the measures called for in the Service's proposed ship strike strategy, and 2) initiate or re-initiate formal consultation under the Endangered Species Act with the Service to ensure that routine vessel operations are not likely to jeopardize the continued existence of right whales.

In addition, the Marine Mammal Commission recommends that the Service formally consult with federal agencies operating vessels along the East Coast to identify appropriate conservation measures for those agencies to take to meet fully their obligations under section 7 of the Endangered Species Act. We appreciate that national security activities and rescue missions are important functions but believe that during the consultations the Service and other federal agencies can fashion ways in which those activities can be carried out in compliance with all applicable Endangered Species Act requirements.

The Commission strongly believes that the above actions need to be taken at the earliest possible date. For the United States to maintain international credibility with regard to protecting endangered species, it must be willing to aggressively pursue recovery programs for species, such as North Atlantic right whales, that are so critically endangered by human activity. We welcome a chance to meet with you or your staff to discuss these recommendations.

Sincerely,



David Cottingham  
Executive Director

Enclosure

**Known North Atlantic Right Whale Deaths: 3 February 2004 to 21 January 2005**

<b>Date</b>	<b>Involved Whale</b>	<b>Location</b>	<b>Fate</b>	<b>Details</b>
2/3/04	Perinatal calf, male	Amelia Island, FL	Dead of unknown causes	Stranded live with fetal folds; died as efforts were being made to move it
2/7/04	#1004 Adult female with full-term fetus	5 mi east of Virginia Beach, VA	Killed by ship strike	Found floating toward shore; fractured rostrum
11/17/04	#1909 Adult female with full-term fetus	10 mi east of Chesapeake Bay, VA	Killed by ship strike	Struck by Navy Amphibious Assault Ship; large part of fluke severed
12/10/04	Unidentified adult	75 mi SE of Nantucket, MA	Dead of unknown causes	Photographed floating offshore; could not be retrieved due to weather
1/10/05	#1160 Adult female	65 mi SE of Nantucket, MA	Dead, Possible residual effect of ship strike	Unretrieved; seriously injured by ship in January 2001 on calving grounds
1/12/05	#2143 Adult female with full-term fetus	15 mi east of Cumberland Island, GA	Dead, Possible residual effect of ship strike	Towed ashore; seriously injured by ship as calf off Florida in 1991; wounds may have opened due to pregnancy and become infected