

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

28 September 2006

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:

On 23 January 2006 a right whale was killed in a gillnet off Florida in the Southeast U.S. Restricted Area. Gillnet fishing in that area is regulated by the National Marine Fisheries Service from 15 November to 31 March of each year according to provisions of the Atlantic Large Whale Take Reduction Plan. Under those regulations [50 CFR229.32 (g)(1)], if a right whale is killed in that area due to regulated gillnet fishing, the Service is required to close the area to gillnet fishing “for the rest of that time period and for that same time period in each subsequent year” unless the Assistant Administrator revises the restricted period or implements other measures. In response to the January 2006 right whale death, the Service published an emergency rule on 16 February 2006 closing the Southeast U.S. Restricted Area to all gillnet fishing for the rest of the regulated period (i.e., through 31 March 2006). The Service also convened the Southeast Subgroup of the Atlantic Large Whale Take Reduction Team on 10–12 April 2006 to consider other measures to prevent additional gillnet-related right whale deaths.

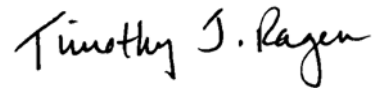
At the April meeting, the subgroup identified possible management actions, including closure of the entire area to all gillnet fishing except for limited fishing for mackerel in a portion of the restricted area during part of the 15 November–31 March period. Details of that recommended action and other alternatives were described in the enclosed report of that meeting (Ellenberg Associates, Inc. 2006). Because the 16 February emergency closure applied only through 31 March 2006, the Service’s representatives advised that the Service would need to promulgate permanent rules to either extend the closure to future years or adopt new measures that would afford right whales a level of protection equivalent to a complete closure. Given the time required for standard rulemaking procedures, Service officials noted that it would have to publish proposed permanent rules during the summer of 2006 if they were to enter into effect before the beginning of the next fishing season (i.e., 15 November 2006). Summer has now passed, and no new regulations have been proposed.

Given the time required for standard rulemaking procedures, the approaching start of the region’s gillnet fishing season on 15 November, and the urgent need to prevent additional right whale deaths, the Marine Mammal Commission recommends that the National Marine Fisheries Service immediately publish emergency rules to either (a) extend the closure adopted in the 16 February temporary rule to all future fishing seasons in the region or (b) close the Southeast U.S. Restricted Area to all gillnet fishing with the exception agreed to by the Southeast Subgroup of the Atlantic Large Whale Take Reduction Team at its April 2006 meeting.

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If you or your staff has questions regarding this recommendation, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Timothy J. Ragen". The signature is written in a cursive, slightly slanted style.

Timothy J. Ragen, Ph.D.
Acting Executive Director

Enclosure

Reference:

Ellenberg Associates, Inc. 2006. Key Outcomes for the Southeast Subgroup of the Atlantic Large Whale Take Reduction Team, April 11–12 2006, St. Augustine, Florida. Report prepared for the National Marine Fisheries Service. 22 pp.