

**Finding of No Significant Impact
For Actions Analyzed In:
“Environmental Assessment and Regulatory Impact Review for
Measures to Protect Right Whales in their Southeast U.S. Calving Habitat”
NMFS 2006.**

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria.

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?

The proposed action is not expected to cause any damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs, given that the action restricts the use of gillnet gear in an area to avoid entanglement of right whale cows and calves. The value of this area was considered in the essential fish habitat consultation process and the unique characteristics will not be impacted by this Proposed Action.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

The proposed action is not expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.), given its limited geographic scope and because the action merely restricts gillnet activity. However, the proposed action may be beneficial to marine species that are potentially adversely affected by gillnetting activity in the expanded southeast U.S. restricted area.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Public health and safety is not expected to be adversely affected by implementation of gear restrictions, as described under the proposed action. Gillnetting has not been shown to have any effects on public health and safety in general. Additionally, this proposed action will not substantially change the way gillnetting is conducted, but will prohibit the use of some gillnets during the specified period and in the specified area.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

The proposed action is not expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species. The proposed action is expected to provide additional protection to the critically endangered right whale. It is also expected that other protected marine mammals and ESA-listed sea turtles, to the extent their distribution and abundance coincide with the geographic scope of the action, will benefit from the proposed gillnet restrictions.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

No significant social or economic impacts interrelated with natural or physical environmental effects are expected from this action. This action affects only a small percentage of overall gillnet fishermen during a limited timeframe. The natural and physical environmental effects of the action consist of preventing entanglement of right whales by limiting their exposure to gillnet gear. There are no known significant social or economic impacts associated with these effects, though there are measurable societal benefits attributable to preventing injury to the whales.

6) Are the effects on the quality of the human environment likely to be highly controversial?

The effects of gear restrictions on the human environment are not likely to be highly controversial. The impact of gear restrictions may be controversial to a small segment of the fishing community, but the overall effects on the human environment are not expected to be highly controversial. These gear restrictions are limited in time and geographic area, and are being implemented in an effort to facilitate the coexistence of fishing activity and whales. These factors restrict the scope of the effects on the human environment. In contrast, the potential effects of a failure to act, which could include further injury or mortality to right whales in their calving area, would be highly controversial with the environmental organization community and a sizeable segment of the public.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

The restrictions on gillnetting will not impact park land, farmlands, wild and scenic rivers, or wetlands, as these areas are not in the vicinity of the southeast U.S. restricted area. As determined during the consultation process, this action will not impact essential fish habitat. Compliance with these restrictions is not likely to result in the permanent loss or destruction of, or impact to any historic or cultural resources or ecologically critical areas.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The effects on the human environment from the proposed action are not expected to be highly uncertain or involve unique or unknown risk. The gillnet prohibitions and exemptions are clearly detailed and were derived through discussions with the fishing community, and the

analysis of potential impacts is based on a thorough review of reliable information on fishery effort and landings.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

The EA examines the cumulative effects of the proposed action on five valued ecosystem components with ecological, scientific, cultural, socio-economic, historical, or aesthetic significance in the affected environment. Based on the information presented, it does not appear that the Proposed Action will have significant impacts on society nor will it result in cumulatively significant impacts.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

There is no evidence that the implementation of gear restrictions will adversely affect entities listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historic resources. Compliance with these restrictions is not likely to result in the permanent loss or destruction of any resources.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

The implementation of gear restrictions will not result in the introduction or spread of a non-indigenous species.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

These restrictions do not set a precedent for future actions with significant effects and is not a decision in principle about future considerations. The use of gear restrictions as a management tool has been found to be effective in other, similar circumstances and has been determined to be the most appropriate mechanism for the agency to meet its conservation objectives under the ESA and MMPA. These restrictions address the unique issue of gillnet fisheries that coincide with the use of coastal habitats by right whales in a specific area, the expanded southeast U.S. restricted area during specific times of the year. Thus, it is being implemented to achieve a specific geographically-restricted, species-specific objective, and is therefore not expected to establish a precedent for future actions.

13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Implementation of gear restrictions will not result in a violation of a Federal, state or local law for environmental protection. In fact, gear restrictions would be expected to support Federal,

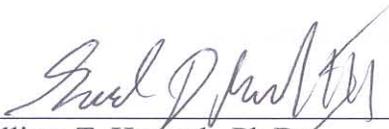
state and local laws for environmental protection because they are expected to achieve the agency's conservation objectives under the MMPA and ESA.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

The proposed action is not reasonably expected to result in cumulative adverse effects on a target species or non-target species since the proposed action is to expand the southeast U.S. restricted area and increase protections for right whales by restricting gillnetting. Although the purpose and need of the proposed action is focused on the protection of right whales within the expanded southeast U.S. restricted area, beneficial effects for finfish and sharks are expected. Thus, it is reasonable to expect that non-target species may also experience beneficial effects.

DETERMINATION

In view of the information presented in this document and the analysis contained in the attached Environmental Assessment and Regulatory Impact Review for Measures to Protect Right Whales in their Southeast U.S. Calving Habitat, it is hereby determined that the proposed agency actions analyzed therein will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.



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11/6/06

Date