



ATLANTIC LARGE WHALE TAKE REDUCTION PLAN (ALWTRP)

ENFORCEMENT UPDATE *DRAFT*

Atlantic Large Whale Take Reduction Team Meeting Baltimore, MD April 5-8, 2011

Enforcement Update:

NOAA Fisheries (NMFS) Office of Protected Resource (PRD) is continuing to work with NOAA's Office of Law Enforcement (OLE) to implement and refine an enforcement strategy that ensures compliance with existing protected resource related regulations, including those promulgated under the Atlantic Large Whale Take Reduction Plan (ALWTRP). This enforcement strategy includes a three prong approach to ensure and promote compliance with existing regulatory measures: (1) education and outreach and compliance assistance; (2) enforcement actions; and (3) monitoring the effectiveness of the ALWTRP regulations.

The following provides an update of enforcement/compliance activities as related to the Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations since the Team's last meeting in April 2009.

Background

The ALWTRP regulations are designed to protect and promote the conservation of whales addressed by the ALWTRP. These regulations are enforced by federal and state law enforcement agencies. NOAA Fisheries Office of Law Enforcement (OLE) is the principal federal law enforcement agency responsible for conducting and coordinating law enforcement activities related to the implementation of the ALWTRP.

The United States Coast Guard (USCG) is the operational arm of enforcement at sea and historically speaking performs the bulk of at sea enforcement efforts. NOAA's OLE enforces many natural resource statutes and the regulations promulgated pursuant to those statutes including the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

NMFS OLE and PRD work closely with state law enforcement agencies on enforcement related issues. State law enforcement agency capabilities vary along the east coast of the US. The states conduct fisheries enforcement activities dockside, in state waters and in nearshore federal waters in conjunction with the USCG and NOAA Fisheries. The Protected Resources Division's (PRD) of the NE and SE Region have provided funding to state agencies specifically for enforcement of regulations promulgated under the

ALWTRP. These funds have been provided under Amendments to the Joint Enforcement Agreements (JEA) which OLE maintains with coastal states.

ALWTRP Enforcement Activities:

NMFS Northeast Region

In the Northeast region, there are currently 3 cases in Office of General Counsel (OGC), 2 of which involved compliance with previous DAM requirements for which warnings will be issued. In addition, there are 8 cases under investigation, 5 of which involve violations of the speed rule (see ship strike discussion below).

United States Coast Guard Activities

The USCG contributes to the ALWTRP through enforcement at sea using USCG vessels and aerial assets. In addition the USCG contributes to the non regulatory components of the ALWTRP through their excellent support of the disentanglement program; locating, identifying and in some cases towing dead marine mammals for necropsy activities and extensive support of the stranding program throughout the range of the plan. The USCG has been highly visible in the take reduction team environment and has instituted directed training to ALWTRP regulations in their fisheries training centers (See attached summary for additional details)

State JEA Amendment Information

In FY 2010, several states received JEA funds to conduct directed at sea enforcement of the ALWTRP gear regulations using JEA funds from NMFS PRD.

Table 1: JEA Activities Update for Fiscal Year (FY)¹ 2010:

State	Year(s)	PRD Funds	Patrol Hours	Contacts	Warnings	Citations	Cases
Maine	FY10	\$70K	3149	144	21	8	-----
New Hampshire	FY10	\$10K	191	147	17 ²	-----	-----
Massachusetts	FY10	\$30K	763	-----	-----	-----	-----
Rhode Island	FY10	\$30K	-----	-----	-----	-----	-----
New Jersey	FY10	\$10K	-----	-----	-----	-----	-----
Georgia	FY10	\$25K	339	-----	-----	-----	-----
Florida	FY10	\$15K	560.25	-----	-----	-----	-----

¹ For blank fields in this table, information was either unavailable or not provided by state JEA partners at the time this report was compiled. JEA activity information is pending for New Jersey for FY10 due to timing of JEA funds transfer.

² NH reported warnings issued by for ALWTRP were weak link violations. In addition, while checking on ALWTRP compliance NH issued 48 warnings for trap construction/trap tag violations and 2 summonses for lobster violations were issued. Some of the fishermen received multiple warnings because their gear was in violation in a number of ways.

Reporting by NMFS' state JEA partners has often been inconsistent on a state-by-state basis. This creates challenges to our ability to monitor various enforcement and compliance metrics (e.g., education and outreach activities, contacts, warnings, boardings, citations). This information is integral to NMFS's ability to assess the effectiveness of ALWTRP regulations.

OLE and PRD are continuing to actively work together and with our state JEA partners to ensure full and complete reporting of JEA activities to address this issue. NOAA's OLE has begun development of an online JEA reporting database that, in part, is intended to improve reporting by JEA state partners. NOAA OLE intends to have this internal database, which will be integrated with an existing OLE database thereby enhancing the ability to track enforcement activities, fully operational by FY2012.

Other state updates:

Gear hauling capabilities: in the NER the following states law enforcement agencies have vessels with gear hauling capabilities: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New Jersey. Rhode Island and New Jersey have just obtained vessels for this enforcement capability.

Education and Outreach and Compliance Assistance Activities

Education and outreach and compliance assistance activities play a key role in promoting compliance with AWLTRP regulations by educating fishermen and industry organization as well as other state and federal law enforcement agencies about regulations.

The NER PRD Gear Team has provided regular industry outreach and compliance assistance training to fishermen and industry organization throughout the northeast region. This assistance included training on specific gear related regulations and demonstrations of whale safe gear devices and compliant gear configurations. In addition, the Gear Team provides numerous trainings and demonstrations throughout the year to federal and state enforcement agencies including the U.S. Coast Guard, OLE, state JEA partners in Northeast and Mid Atlantic region.

Additional outreach activities conducted in the 2009-2010 timeframe include a large targeted mailing of an ALWTRT compliance guides to over 1000 commercial trap/pot and gillnet fishermen. The materials provided to fishermen via this mailing included both area and gear related information and methods to comply with the requirements of the ATLTRP.

Ship Strike Enforcement Actions

Ship strikes are recognized as the leading known cause of mortality for right whales. While not within the purview of the ALWTRT, enforcement efforts related to the enforcement of ship speed regulations are relevant to the ultimate goal of the conservation and recovery of the North Atlantic right whale. The Right Whale Ship

Strike Reduction Rule restricts vessels of 65 feet or greater to speeds of 10 knots or less in seasonal management areas along the East Coast.

On November 16, NOAA announced the issuance of notices of violations proposing civil administrative penalties against seven vessels for allegedly violating seasonal speed limits designed to protect North Atlantic right whales. These alleged violations occurred primarily in the southeast regions of the U.S. These civil administrative penalties are the first assessed since the Right Whale Ship Strike Reduction Rule was enacted on Dec. 9, 2008. In addition, NOAA's OLE has opened five cases related to violations of the right whale speed restriction rule in the northeast U.S. from the Great South Channel.

During the first year that the ship strike rule was in place, NOAA's OLE focused on outreach, sending letters to violators educating them about the new federal regulation. The Notices of Violation and Assessment (NOVAs) issued by NOAA's Office of General Counsel for Enforcement and Litigation are a result of enforcement the second season the rule was in place, November 2009 through April 2010.

These NOVAs focused on egregious violators, all of whom traveled through the seasonal management areas at speeds well in excess of the ten knots allowed on multiple occasions. All of the vessels charged were foreign-flagged vessels owned by foreign companies. The NOVAs ranged from \$16,500 for three violations to \$49,500 for nine violations. Three NOVAs were assessed at \$38,500 for seven violations and two NOVAs were assessed at \$44,000 for eight violations, for a total of nine NOVAs.

The ships' owners and operators have 30 days to respond to NOVAs by paying the penalty, seeking to have it modified, or requesting a hearing before an administrative law judge.

Dynamic Management Area Related Actions

In 2009, NMFS established the Dynamic Management Area Program (DMA) to address the threat of ship strikes to right whales in areas outside Seasonal Area Management Areas (SMAs – 50 CFR 224.105) and the mandatory ship speed regulations within these areas. Through the DMA program, NMFS establishes temporary management zones around persistent aggregations of right whales that occur outside of SMAs and requests that mariners avoid the zones or transit through them at 10 knots or less. Compliance with DMAs is voluntary. A DMA is triggered by a verified sighting of a group of 3 or more whales in a density ≥ 4 whales/nm². A DMA is in place for 15 days from the date the DMA is triggered.

Since April 2009, NMFS has established 45 DMA areas. NMFS notifies mariners of the DMA boundaries and effective dates via a variety of outlets. DMAs serve an important education and outreach function to mariners by alerting vessels to the presence of right whale aggregations but also to educate these mariners to the larger issue of the threat posed by ship strike mortalities to the recovery of the North Atlantic right whale. The

notification of mariners serves to educate the regulated community thereby increasing the anticipated likelihood of compliance.

**United States Coast Guard Activities-
Report to the Atlantic Large Whale Take Reduction Team**

Submitted November 2010

Activities since April 2009

The USCG has a robust program for the protection of marine species, including large whales. The USCG contributes to the Atlantic Large Whale Take Reduction Plan (ALWTRP) through at-sea enforcement using USCG vessels and aerial assets. In support of the development and enforcement of the ALWTRP, the USCG serves in an advisory capacity to the Atlantic Large Whale Take Reduction Team. In addition to enforcement, the USCG contributes to the non-regulatory components of the ALWTRP and its protected species through internal compliance and stranding/disentanglement response.

FISHERIES INTERACTIONS

Guidance and Training

District Fisheries Officers provide guidance to the field through patrol orders, Law Enforcement Bulletins, and quarterly or annual enforcement guidance. The information helps to identify threats and priorities, and it guides the operational commanders' patrol activities.

The USCG trains boarding officers, managers, and operations officers about right whales and their regulations through 2 regional fisheries training centers. The training highlights the status of large whales, discusses current regulations, and provides hands-on training.

ALWTRP Cases:

Since the April 2009 meeting, USCG has cooperated with law enforcement partners to detect and intercept several potential ALWTRP violations.

- November 2009: In partnership with the VA Marine Resources Commission, USCG detected conch pots with several ALWTRP violations: failure to have sufficient weak links and lack of sufficient gear marking. VA Marine Resources Commission seized the pots.
- November 2009: In partnership with NOAA OLE in North Carolina, USCG detected black sea bass pots with insufficient weak links. USCG seized some of the gear and issued a fisheries violation.
- April 2010: In partnership with RI Dept of Environmental Management, USCG detected a multi-species gillnetter with several ALWTRP violations: insufficient number of pingers (Harbor Porpoise TRP), insufficient number of weak links, insufficient gear marking, and insufficient anchors. Several harbor porpoise entanglements were also detected. And, the operator failed to report the incidental takes within the required 48 hrs upon returning to port.

The overall compliance rate for each District, pooled across all living marine resources boardings, met USCG's goal of 97% observed compliance for FY10.

SHIP STRIKE REDUCTION

Enforcement of NOAA's Ship Strike Reduction Rule

NOAA OLE, NOAA General Counsel and the USCG partner on enforcement efforts. Automated Information System (AIS) devices were originally developed to minimize the risk of collisions of vessels and to aid in the location of vessels in distress. The system's transponders produce a signal relaying certain identifying information about a vessel including its identifying information, course, and speed to the system. The AIS data stream was developed to reduce the likelihood of collision between vessels and is used (in addition to other detection sources) to monitor potential violations of regulations intended to reduce the risk of collisions between vessels and the North Atlantic right whale. Coast Guard currently receives AIS information in order to support Search and Rescue operations and ensure navigation safety. The Coast Guard is currently the central clearinghouse for this data, which is also utilized by the shipping industry and by third party enterprises that use AIS data to support their navigation products.

Working closely with NOAA OLE, USCG developed a web based near real-time information on filtered AIS data to help enforce and monitor the ship strike rule. This filtered AIS data records vessels that are going faster than 10 knots in a Seasonal Management Area (SMA). Any agent with a login can go onto a web-based Homeport (USCG) and get processed AIS information.

Prior to the rule's effectiveness date, USCG provided guidance to its fields units regarding at-sea and shoreside enforcement posture. The enforcement posture compliments NOAA OLE's shoreside efforts to detect potential violators.

During FY09, USCG detected 09 potential violations of the rule; 17 in FY10, and 01 FYTD. CG actions included detecting the potential violators, hailing them, and informing them of the ship strike rule and speed requirements. USCG then provided written notification to NOAA OLE for further engagement, as necessary. Current planning efforts include a pulse enforcement operation in the Mid-Atlantic during winter 2011.

Right Whale Aerial Surveys

USCG provides funding toward aircraft support for the detection of right whales. USCG partners with NOAA, the Army Corps of Engineers, and the U.S. Navy in support of aerial surveys within the southeast; and USCG partners with NOAA in the northeast. These aerial surveys are known as the Early Warning System and Sighting Advisory System, respectively. These initiatives help prevent ship strikes and contribute important data for management purposes. To this end, USCG contributed over \$259k in FY10.

Outreach/Education

Through USCG's communication system, it provides mariners with information regarding recent sightings of right whales, aggregations, injured animals, and Dynamic Management Areas. USCG also issues seasonal broadcasts to mariners informing them that right whales are known to occur during that particular time/area. These are

accomplished through Local Notice to Mariners, Broadcast Notice to Mariners, NAVTEX, and VHF.

USCG partnered with NOAA Fisheries, the shipping industry, non-governmental organizations, Florida, and Georgia to update and distribute “A Prudent Mariner’s Guide to Right Whale Protection CD-ROM.” The interactive CD program provides key educational and support information intended for shipboard operations in areas where North Atlantic right whales may be present. Focused on operations along the Atlantic Coast of North America, the program delivers crew training information about right whales, including an introduction to right whales, recommended navigational actions when operating in right whale habitat, a guide to reporting sightings of dead or injured right whales, an informative video presentation, and a short follow-up quiz. Additionally, the CD-rom includes guidelines for compliance with the Mandatory Ship Reporting System, including an innovative, interactive report generation program.

Mandatory Ship Reporting (MSR) System

USCG, in conjunction with NOAA Fisheries, operates the MSR, a ship reporting system designed to reduce the risk of commercial vessels colliding with North Atlantic right whales. The IMO-approved program commenced in 1999, and it requires all commercial ships greater than 300 gross tons to report their position, course, speed, destination, and route to the USCG prior to entering 2 designated areas of whale habitat. Ships submit these reports via satellite communications to the MSR, an automated database, which sends a return message to the ship advising them of the endangered status of the right whale and providing them with the locations of recent right whale sightings, and information on how to minimize their risk of collision. The MSR also records information from the ship reports to facilitate analysis of vessel traffic patterns in right whale habitat.

In CY09, the system provided over 816 reports to vessels in the northern reporting area and 920 reports to vessels in the southern reporting area. The total cumulative observed compliance rate for CY09 was approximately 73.2%.

In CYTD10, the system has provided over 671 reports to vessels in the northern reporting area and 672 reports to vessels in the southern reporting area. The total cumulative observed compliance rate for CYTD10 is approximately 71.3%

In addition, the USCG provided MSR data pulls to NOAA to support their AIS/MSR GIS analyses. USCG has been providing this data pull annually to assist with management efforts to reduce ship strikes of right whales.

Waterways Management

Beginning on June 1, 2009 ships 300 gross tons and above were asked to avoid an area in the Great South Channel from April through July, when right whales face the highest chance of being struck by ships. The channel is a feeding area for the endangered North Atlantic Right Whale. Also, ships transiting primarily from the south and entering Boston Harbor in shipping lanes began travelling a slightly different path. The north-

south traffic lanes have been modified to reduce the threat of ship collisions with endangered right whales and other whale species. The width of the north-south portion of the lanes narrowed from a total of four miles to three miles. The width of the east-west portion of the lanes was narrowed and modified in 2007. Implementing the “Area To Be Avoided” and narrowing the “Traffic Separation Scheme” by one nautical mile was anticipated to reduce the relative risk of right whale ship strikes by an estimated 74% during April-July (63% from the area to be avoided and 11% from the narrowing of the Traffic Separation Scheme).

INTERNAL COMPLIANCE

The USCG is committed to enforcing and complying with the natural resources management requirements of Federal and state statutes. As such, the USCG faces a difficult challenge, enforcing laws and regulations that, at times, require operation in protected habitat and in proximity to protected species.

On December 14, 2009, USCGC SHEARWATER (WPB 87349) interacted with a right whale in the lower Chesapeake Bay during a naval escort. As standard protocol, USCG followed reporting procedures detailed in the June 8, 1998, Biological Opinion under section 7 of the Endangered Species Act. USCG efforts included notifying NOAA, conducting a search, and investigating the interaction. The incident occurred with no apparent signs of whale distress such as uncharacteristic behavior, cuts, blood, or other evidence of injury.

The USCG is working with USFWS and NOAA Fisheries to re-initiate consultation on Atlantic seaboard maritime operations.

STRANDING/DISENTANGLEMENT RESPONSE

USCG vessels and aircraft provide operational assistance, logistic support, and safety standby for stranding and disentanglement responses. Some examples of USCG assistance since April 2009 for species protected under the ALWTRP include:

Date	Location	Species	Situation	USCG Response
4/9/09	Rockaway Inlet	Humpback (potential)	Reported to be attempting to beach itself.	Issued safety broadcast. Transported Stranding Network Personnel.
4/17/09	30 NM east of Cape Henry, VA	Whale, species-unidentified (black & white)	Bloated and scarred carcass sighted.	Investigated with C-130. Whale was relocated & photos relayed to NOAA for ID.
5/19/09	Horseshoe Cove, NJ	Whale, species-unidentified	Carcass on beach.	Investigated with small boat. No resighting.
5/19/09	Delaware Bay 38-39.9N 075-02.7W	Whale, species-unidentified	Carcass sighted.	Investigated with HH-65. Whale was relocated & photos relayed to NOAA.
5/23/09	Sector Boston Area of	Humpback	Reported entangled.	Investigated with HH-60. No resighting.

	Responsibility			
6/6/09	20 NM SE of Boston	Humpback	Reported entangled.	Issued safety broadcast. Relayed info to NOAA & Provincetown Center for Coastal Studies. No resighting.
8/17/09	IVO Ward Point & Raritan River, NJ	Whale, species-unidentified	Stranded on sandbar & civilians assisted it back into water.	Issued safety broadcast. Enforced protection zone around whale & notified Stranding Center. Whale subsequently re-stranded and died.
8/31/09	IVO Woods Hole, MA	Humpback	Difficulty relocating carcass.	Provided a drift analysis to relocate carcass which was later necropsied.
9/4/09	IVO Portland, ME	Whale, species-unidentified	Stranded.	CG cutter launched & remained on scene until whale was freed.
9/12/09	Merrimack River, MA	Whale, species-unidentified	Carcass sighted.	CG boat launched, took photos, and relayed photos to the Stranding Network.
9/26/09	IVO Provincetown, MA	Right	Entangled.	CG boat launched and remained on scene until Provincetown Center for Coastal Studies arrived.
9/26/09	Chesapeake Bay	Humpback	Carcass sighted.	Transported Stranding Response Team for tissue sampling and photos.
10/1/09	Port Elizabeth, NJ IVO Berth 92	Whale, species-unidentified (20-25 ft long)	Carcass sighted.	Issued safety broadcast. CG boat launched, confirmed report, & relayed photos.
11/23/09	Off Morehead City, NC	Humpback	Entangled.	Transported Entanglement Team. Sighted whale with a thin line trailing it.
12/19/09	IVO Cape Cod, MA	Whale, species-unidentified	Carcass sighted; possible it was struck by a ship	HU-25 sighted carcass on routine LMR flight. Provided drift analysis to relocate & transported biologist on flight. Not relocated.
1/18/10	IVO NJ coast	Humpback	Carcass sighted.	CG aircraft sighted carcass on routine LMR flight. No entanglement or injuries visible.

2/21/10	IVO Ponce de Leon Inlet, FL	Right	Harassment reported.	CG boat responded & instructed boaters to stay 500 yards from whales.
2/27/10	NY Harbor IVO George Washington Bridge	Whale, species-unidentified	Whale sighted.	Launched CG boat to investigate. Not relocated.
3/13/10	Off Ocean City, MD	Humpback	Carcass sighted.	CG boat launched, confirmed sighting, & relayed info to local officials.
3/15/10	Delaware Bay	Whale, species-unidentified (10 meter black whale)	Vessel strike reported by Non-USCG vessel.	Issued safety broadcast. Verified that AIS track showed vessel transiting below 10 kt limit.
3/18/10	4 NM east of Delaware coast	Whale, species-unidentified (not North Atlantic Right)	Carcass sighted.	CG boat sighted carcass & relayed info & photos to Stranding Center. Issued safety broadcast.
3/26/10	IVO east range marker of Government Cut, FL	Whale, species-unidentified	Reported entangled.	CG boat launched & remained on scene until NOAA arrived. CG aircraft were used to relocate whale.
4/7/10	IVO East Hampton, NY	Humpback	Beached.	CG boat launched. NOAA euthanized the whale.
4/25/10	IVO Cape Cod, MA	Whale, species-unidentified	Carcass sighted.	HU-25 sighted carcass on routine LMR patrol. Info & photos relayed to NOAA.
4/30/10	IVO Jones Beach, NY	Whale, species-unidentified	Carcass sighted.	CG boat launched. Not resighted.
5/8/10	IVO Point Judith, RI	Humpback	Entangled carcass sighted.	CG resources responded & assisted in investigating possible violations.
5/13/10	60 NM offshore in Great South Cannel	Right	Entangled.	CG aircraft reported entanglement. Issued safety broadcast. NOAA disentangled the whale.
5/15/10	IVO Hatteras Inlet, NC	Humpback	Carcass sighted.	CG boat launched & assisted in recovery & disposal of the whale.
5/21/10	IVO New England	Humpback	Carcass sighted.	CG cutter sighted carcass. Relayed info & photos to NOAA.
5/23/10	IVO Cape Cod,	Whale, species-	Carcass	CG aircraft launched. Not

	MA	unidentified	reported.	resighted.
5/31/10	IVO Harkers Island, NC	Finback	Stuck in shallow marsh.	CG boat launched. Whale died before rescue executed.
6/26/10	IVO Cape Cod, MA	Humpback or finback	Entangled carcass sighted.	HU-25 sighted carcass on routine LMR patrol. Investigated trawlers in vicinity. Info & photos relayed to NOAA.
6/27/10	40 NM east of Cape May, NJ	Right	Carcass sighted; decomposed; signs of entanglement.	CG cutter sighted. Issued safety broadcast. Info & photos relayed to NOAA. Provided drift analysis. Towed carcass to shore for necropsy and burial.
7/2/10	12 NM east of Waz Island, ME	Right	Carcass sighted.	CG cutter sighted & relayed to Stranding Network. Transported scientists. Provided drift analysis & CG aircraft to resight.
7/8/10	IVO Riverhead, NY	Whale, species-unidentified (likely Minke)	Carcass sighted.	CG cutter launched to relocate. Relayed info & photos to NOAA.
7/8/10	IVO Ocean City, MD	Humpback	Carcass sighted.	CG boat established safety zone around carcass until it washed ashore.
9/9/10	IVO Southwest Harbor, ME	Whale, species-unidentified	Carcass sighted.	CG cutter launched to relocate. Relayed info & photos to NOAA.
9/11/10	IVO Jefferies Ledge, MA	Right	Reported entangled.	HU-25 launched to relocate. Not resighted.
9/22/10	IVO Nantucket Lightship, MA	Whale, species-unidentified	Carcass sighted.	HU-25 sighted carcass. Info, photos, & video relayed to NOAA.

