UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for Operations
Washington, D.C. 20230

MEMORANDUM

AUG 30 2017

TO: Assistant Administrator, NMFS
Assistant Administrator, NOS
Assistant Administrator, NESDIS
Assistant Administrator, OAR
Assistant Administrator, NWS
Director, OMAO
Directors, Staff Offices
NOAA General Counsel

FROM: Benjamin Friedman
Deputy Under Secretary for Operations

SUBJECT: Optimizing Compliance with NOAA's Trust Resource Statutes

BACKGROUND.

NOAA generates tremendous value for the Nation by conserving and managing ocean and coastal ecosystems and resources, performing world-class research, and monitoring, modeling and reporting on the Earth's environment to support decision-making and to protect life and property. In performing this mission, NOAA is committed to maintaining the highest ethic of stewardship for the resources NOAA is charged with protecting.

NOAA leadership has long recognized that rigorous compliance with the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the National Marine Sanctuaries Act (NMSA), the Magnuson-Stevens Fisheries Conservation and Management Act (MSA), the Coastal Zone Management Act (CZMA) and related statutes (collectively referred to as "NOAA Trust Resource Statutes") reflects the agency's core value as a steward for the Nation's marine and coastal resources. To this end, in 2014, the Deputy Under Secretary for Operations (DUS/O), VADM Michael Devaney, issued a directive that reaffirmed the obligation of the leadership of each Line Office (LO) and Staff Office (SO) to assure compliance with NOAA Trust Resource Statutes for all agency activities.[1] Among other things, this directive recognized the value of completing and implementing an institutional plan for compliance, and contemplated the establishment of a cross-NOAA working group to provide for consistent and sustained compliance. While substantial progress has been made implementing the foregoing directive, there is much still to do, and it remains a priority for NOAA to ensure the processes for compliance with NOAA Trust Resource Statutes are effective, streamlined, and durable as we carry out the Agency's critical mission.

[1] Memorandum from the Deputy Under Secretary, *Promoting Compliance with NOAA's Environmental Statutes* (August 22, 2014).

PURPOSE.

This memorandum builds upon the success of the 2014 directive and the progress made to date in achieving and sustaining compliance with NOAA Trust Resource Statutes, and provides additional guidance and tools to integrate and streamline the multi-faceted compliance process as NOAA carries out its mission. As the DUS/O, I am ultimately responsible for maintaining overall leadership and responsibility for NOAA-wide compliance with statutes protecting natural and cultural resources, including NOAA Trust Resource Statutes, as well as promoting a culture of compliance. This memorandum establishes a framework and defines roles and responsibilities to optimize how we meet these obligations. Working in concert and sharing the wealth of knowledge, experience and expertise across all parts of the Agency, I am confident we will create significant administrative efficiencies, streamline compliance, and provide continued leadership as stewards of this Nation's valuable coastal and marine resources.

DIRECTIVES TO PROMOTE AND SUSTAIN COMPLIANCE WITHIN NOAA.

1. LO Assistant Administrators and SO Directors are responsible for ensuring compliance with Federal statutes protecting natural and cultural resources, including NOAA Trust Resource Statutes, and must designate sufficient staff and resources to ensure sustained compliance. As part of this responsibility, each LO/SO shall appoint a NOAA Trust Statutes Representative ("LO/SO Representative") to serve as a compliance liaison to LO/SO leadership and provide a central point of contact for issues related to NOAA Trust Resource Statutes. Should any conflicts arise between LOs/SOs regarding compliance with NOAA Trust Resource Statutes that cannot be resolved at the LO/SO level, such conflicts will be elevated and resolved by the DUS/O.
2. To assist the LO/SO to meet the obligations described above, the NOAA General Counsel will provide corporate-level coordination and assistance, through the Office of General Counsel's Environmental Review and Coordination Section. In serving this role, the NOAA General Counsel will: (1) convene and facilitate a standing Working Group with representatives from each LO and SO – including subject matter experts – to coordinate NOAA Trust Resource Statute compliance issues, policies, procedures, and training; (2) develop any necessary guidance documents; (3) establish an ongoing assessment and reporting process to track compliance milestones and report on progress to NOAA leadership; (4) coordinate and facilitate cooperative approaches for cross–NOAA compliance issues and issues involving important NOAA equities that may have implications beyond a single LO or SO; (5) collect and disseminate best practices, tools, and related compliance resources; and (6) assist in coordinating interagency communications and collaborations related to NOAA Trust Resource Statutes.
3. To ensure durable commitments to the purposes of this directive and gain lasting efficiencies at NOAA, an Administrative Order will be developed to memorialize the roles and responsibilities across the agency with respect to compliance with NOAA Trust Resource Statutes. The Office of General Counsel, together with the Working Group established by this directive will assist in the Administrative Order's development. In preparing this Administrative Order, the Working Group should work collaboratively with the Environmental Compliance Office within the NOAA Environmental, Safety, and Sustainability Office to ensure consistency with NAO 216-17, NOAA Environmental Compliance Program.

Attachment

Memorandum from the Deputy Under Secretary, *Promoting Compliance with NOAA's Environmental Statutes* (August 22, 2014).

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AUG 2 2 2014

MEMORANDUM

TO: Dr. Holly Bamford, Assistant Administrator, NOS
Mark Paese, Assistant Administrator (Acting), NESDIS
Craig McLean, Assistant Administrator (Acting), OAR
Patricia Montanio, Assistant Administrator, PPI
RADM David Score, Director, OMAO
Eileen Sobeck, Assistant Administrator, NMFS
Dr. Louis Uccellini, Assistant Administrator, NWS

FROM: VADM Michael S. Devany, Deputy Under Secretary for Operations

SUBJECT: Promoting Compliance with NOAA's Environmental Statutes

PURPOSE:
To be better environmental stewards by improving NOAA's compliance with NOAA's environmental statutes by directing NOAA Line Offices to undertake specific, immediate compliance steps and by offering assistance to NOAA programs through training, coordination and regular communication on the subject of compliance.

BACKGROUND:
- Environmental statutes of particular concern are those which NOAA manages, including the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the National Marine Sanctuary Act (NMSA).
- Each Line/Staff Office maintains responsibility for environmental compliance in all of its programs. Assistant Administrators (AAs) understand that significant progress must be made on non-compliant programs.
- Each Line Office[1] has designated an individual to serve as their environmental compliance lead (LO Lead), who is tasked with supporting their AA in ensuring compliance with the environmental statutes listed above. As of August 2014, the LO Leads are:

OAR:	Gary Matlock
NESDIS:	John Gironda
NMFS:	Steve Leathery
NOS:	David Holst
NWS:	Scott Burgoon
OMAO:	Bill Cunningham

[1] PPI does not maintain an LO Lead because its activities are entirely administrative. For the purposes of this memorandum, OMAO is considered a Line Office.

- This directive is largely derived from the work of the NOAA Compliance Working Group, including their NOAA Statutes Institutional Plan (which was never finalized). This memo provides the way forward for managing these issues at NOAA, including establishment of a successor working group.

DIRECTIVES TO PROMOTE ENVIRONMENTAL COMPLIANCE WITHIN THE LINE OFFICES:

1. **Establishment of the STATUTES Working Group:** This directive establishes the **S**upport, **T**raining **A**nd **T**echnical **U**nderstanding of **T**he **E**nvironmental **S**tatutes (STATUTES) Working Group. The STATUTES Working Group will be led by NMFS; its scope and mission will be:
    - **Membership:**
        - all Line Office Environmental Compliance Leads;
        - NOAA statute experts (at least one person for each NOAA statute - ESA, MMPA, NMSA, and MSA[2]); and
        - a representative from PPI with experience in NEPA.
    - **Training:** the STATUTES Working Group will develop and provide training for NOAA Line, Staff, and Program Offices.
    - **Issues:** the STATUTES Working Group will serve as a forum for sharing information, and raising and discussing environmental compliance issues as they arise.
    - **Compliance Resources:** the STATUTES Working Group will compile, assimilate, and post environmental compliance resources on line.

2. **Role of Line Office Compliance Leads:** In accordance with the "*Compliance with NOAA's Environmental Statutes*" memorandum (April 19, 2012), LO leads must assist the AA in executing the agreed-upon compliance steps for their respective office. This includes:
    - actively ensuring compliance with the NOAA environmental statutes for all Program Offices in their Line Office;
    - developing and overseeing the plan/schedule for maintaining/bringing programs into compliance;
    - identifying potential compliance challenges and elevating those issues to the DAA or AA as required; and
    - maintaining regular and direct access to their AA in order to keep Line Office leadership up-to-date on matters relevant to compliance with NOAA statutes.

3. **Implementation of Best Management Practices:** LOs must consider Best Management Practices for reducing impacts to resources protected by the NOAA statutes listed above, as appropriate for the mission or operation under consideration. The *Environmental Impact Avoidance and Mitigation Measures* guidance document (attached as Attachment A) includes

[2] Specifically, staff with expertise in ESA section 7 interagency consultations and section 10 permits; MMPA section 101 incidental take authorizations and section 104 directed take permits; NMSA sanctuary regulations for permits and section 304(d) consultations; and MSA consultations for Essential Fish Habitat (EFH).

a list of Best Management Practices that are broadly applicable to NOAA's operations and trust resources.

4. **Present Compliance Progress at the NOAA Executive Panel (NEP):** Deputy AAs must present recent progress made by their Line Office to me on a quarterly basis during scheduled meetings of the NEP. The specific issues to be addressed in these presentations are provided in Attachment B.

5. **Compliance Responsibilities for NOAA Programs onboard OMAO Platforms:** When a NOAA program makes use of an OMAO platform (ship, boat, aircraft, or other conveyance), the NOAA program undertaking the mission (the "mission office") will be responsible for determining what steps are required for the proposed cruise to bring NOAA into compliance with all applicable federal environmental laws, including the NOAA statutes listed above. These steps may include, but are not limited to, securing permits or authorizations, or completing formal or informal consultations.

   The mission office will perform all necessary identified compliance steps, with input provided by OMAO on any transiting, navigation, or other platform operations required to support or conduct the mission in question.

   Where possible (and in accordance with the application provisions of the applicable statutes), permits, authorizations, and/or consultations will be jointly assigned to the appropriate mission office staffer (often, the Chief Scientist) and to the OMAO Command[3], who is ultimately responsible for complying with permits/authorizations/consultations that govern actions taken on the platform. Where joint assignment is not possible, all permits, authorizations, and/or consultations will be physically delivered to the Command and this transmittal will be acknowledged by Command signature.

   The Action Office will discuss the permitting, authorization, and/or consultation process with OMAO:
   - In the ship time request;
   - In the aircraft support request;
   - In the Project Instructions; and
   - As needed throughout the project implementation.

   OMAO retains the sole responsibility for complying with all environmental statutes for those transit operations that are not connected to a mission requirement from another Line Office.

[3] The term "Command" here means the Commanding Officer, Master, or any other term for the head of the OMAO platform at issue, whether it be a vessel or an aircraft.

Attachment A: Environmental Impact Avoidance and Mitigation Measures guidance document

Last Updated April 27, 2012
[most recent update available at https://nightshark.nmfs.noaa.gov/pr/compliance/]

ENVIRONMENTAL IMPACT AVOIDANCE AND MITIGATION MEASURES

Table of Contents

Last updated April 27, 2012.
Consultation and/or permitting is mandatory.

Introduction

NOAA is charged with administering and enforcing various laws enacted to conserve and protect marine resources, including the Endangered Species Act, Marine Mammal Protection Act, Essential Fish Habitat provisions of the Magnuson-Stevens Act, and the National Marine Sanctuaries Act. An overview of these statutes is available here.

In addition to administering these laws, NOAA also engages in many missions involving such activities as research, restoration, surveying, ship transiting, monitoring, maintenance, and other activities (hereinafter referred to as "operations") that may result in impacts to marine trust resources. NOAA has a responsibility to comply with the conservation and protection laws it administers. Compliance includes consultation, permitting, and adopting measures to avoid or mitigate adverse impacts.

NOAA program offices must begin permitting and consultation for operations that may result in impacts to trust resources. This document is intended to provide a compendium of interim measures that may help to reduce impacts to NOAA trust resources while the permitting and consultation process is underway. NOAA program offices should consider these measures for inclusion in existing field protocols and during the planning stages of relevant actions. These should be considered voluntary impact avoidance and mitigation measures for use in advance of consultations with relevant statute experts. However, it is important to note that **certain items listed below are mandatory** (e.g., reporting ship strikes).

Different regions and program offices may have already developed relevant protocols intended to protect trust resources. The measures listed here are not intended to displace or override other existing or future protocols, but are instead meant to supplement and inform. This is not an exhaustive list of avoidance and mitigation measures.

Adherence to these measures does not waive an office's responsibility to undergo necessary consultations and obtain permits. Further, if an incident occurs without proper permitting and/or consultation in place, parties in charge of the operation may be held responsible, even if suggested avoidance and mitigation measures are in place. If any marine mammal, sea turtle, or other protected species is injured, captured, or harassed, the incident must be immediately reported to the stranding program and the NMFS regional office so that proper steps can be taken. NOAA offices engaged in activities that may result in impacts to NOAA trust resources are responsible for environmental compliance, which requires analysis of the effects of an action under the National Environmental Policy Act (NEPA) as well as consultation with one or more regulatory offices. Note that protected species include marine mammals and many species of sea turtles, seabirds, and fish. Nearly all NOAA vessel operations are subject to consultation under Section 7 of the Endangered Species Act and those contemplating operations should contact relevant Offices and staff regarding consultations, permits, and authorization. Operators should provide ample lead time for these consultations and processing of authorizations.

Please be aware that the outcome of a consultation or permitting process **may result in different measures tailored to the specific action**. Absent full statutory compliance, the measures

contained herein are a valuable interim step toward full environmental compliance and are useful for planning.

Also, keep in mind that this document focuses on impact avoidance measures associated with specific statutes administered by NOAA for safeguarding trust resources. NOAA offices remain responsible for complying with all other applicable laws.

I. General Measures

a. Vessel Use

Ship Strike and Avoidance

Any time a vessel is under way, these measures should be used to mitigate the risk of ships striking protected species. Ship strikes must be reported immediately to the regional stranding network. Contact information is available on NOAA Fisheries' website and is listed at the end of this document.

At All Times:

- Vessels under way should have at least one person (operator or watchstander) maintaining watch for protected species.
- Understand and comply with region-specific regulations and guidelines for viewing and approaching marine mammals.
- Vessel operators should adhere to recommended shipping routes established along the east coast within the Northeast and Southeast regions.

Upon Sighting Protected Species:

- For large whales, attempt to remain parallel to the animal's course. Avoid excessive speed or abrupt changes in direction until the animal has left the area.
- Reduce vessel speed to 10 knots or less as safety permits when whales are observed near an underway vessel. Always proceed with caution when a whale is sighted at the surface, as there may be additional submerged animals in the vicinity.
- When whales are sighted directly in the vessel's path or in close proximity to a moving vessel, reduce speed and shift the engine to neutral, as safety allows. Do not engage the engines until the animals are clear of the area.
- Maintain a distance of 100 yards or greater from large whales.
- Maintain a distance of 50 yards or greater from sea turtles or small marine mammals when possible.
- Vessels are prohibited from coming within 100 yards of humpback whales. Vessels are also prohibited from coming within 200 yards of southern resident killer whales in the inland waters of Washington state.

Measures for North Atlantic Right Whales:

- If the whale is believed to be a North Atlantic right whale, vessels must maintain a minimum distance of 460 meters from the animal (50 CFR 224.103).

- Vessels 65 feet and over must comply with the ship speed restrictions designed to protect North Atlantic right whales by reducing speeds to 10 knots or less within Seasonal Management Areas. This is a mandatory regulation. (50 CFR 224.103).
    - Sovereign vessels such as those operated by OMAO are exempt from the speed restrictions, but adherence to the speed restrictions is a valuable avoidance and mitigation measure.
- Where possible, vessel operators should reduce speeds and/or avoid Dynamic Management Areas (where whales occur and Seasonal Management Measures are not in effect).
- When possible, vessel operators should not enter the Area to be Avoided (ATBA) in the Great South Channel between April 1 and July 31 when right whales face their highest risk of ship strikes.
- Vessel operators must comply with Mandatory Ship Reporting Systems in the Northeast and Southeast regions. This is a mandatory regulation.
- These measures and more information are listed on the Office of Protected Resources website.

Habitat Protection

Standard Measures:

- Have a plan in place in the case of accidental spillage.
- Use oil-absorbing materials in the bilge areas of all boats with inboard engines.
- Properly dispose of all waste.
- To avoid disturbance of sensitive habitats, vessels should be operated at sufficiently low speeds to reduce wake energy in nearshore areas.

b. Use of Sampling Gear

The deployment and operation of mobile or stationary gear is known to pose a risk to protected species in the area of operation. Therefore, NMFS recommends that gear is not deployed or operated when protected species are observed within the project area. During deployment, there may be a greater risk of entanglement, and the continued trawling or use of mobile gear while protected species are present will increase the risk of incidental capture and/or entanglement.

Monitoring Protocol

Standard Measures:

- The most important measure for avoiding gear interaction with protected species is to avoid deploying gear where protected species are present, when possible, and to keep watch whenever sampling gear is in the water. At least one dedicated observer should be used any time mobile or fixed gear is deployed (e.g., trawl nets, gill nets).
- The area peripheral to the sampling area (within line-of-sight) should be visually scanned for the presence of protected species for at least 30 minutes prior to gear deployment. Depending on the specific sampling activity and the species that may be present, it may be more appropriate to either accomplish this upon arrival at the location or during transit to the sampling location (deploying gear immediately upon arrival in order to reduce potential attraction of marine mammals).

- Observers should receive training on monitoring protocols, identification of protected species, handling and release protocols, and reporting requirements.
- Observers should be placed at the most suitable vantage point (e.g., highest point with 360° view of the surrounding seas).
- Observers should not be assigned any other duties during periods of gear deployment, except providing navigational hazard alerts.
- Observers should be equipped with equipment necessary to sight and identify protected species as well as to estimate location, distance, and bearing to animal.

Observer(s) are responsible for communicating sightings directly to the Commanding Officer, Chief Scientist, or other responsible party. As described for ship strike avoidance, during periods of active acoustic use and during transiting, crew on the bridge should opportunistically make observations for protected species and seek to avoid them during transits and/or periods of active acoustic use. Because good visibility is critical to effective observation and avoidance, sampling should be avoided in times of low visibility, including nighttime, when possible. If sampling cannot be avoided (i.e., protocols call for night sampling) visual monitoring should be conducted to the extent possible using the naked eye and existing lighting.

Visual monitoring should begin at least 30 minutes prior to the beginning of gear deployment. If a protected species is observed, the observer should note and monitor the position (including latitude/longitude of vessel and relative bearing and estimated distance to the animal) until the animal dives or moves out of visual range of the observer. Observers should continue to scan for additional animals that may surface in the area, as there may be multiple animals surfacing at varying time intervals. If protected species are observed, do not deploy or operate gear until the animals are clear of the area or not observed for 15 minutes for turtles and small marine mammals or 30 minutes in the case of large whales or other potentially deep-diving whales.

Visual monitoring should continue for the duration of active sampling. If protected species are sighted in the peripheral area during active sampling, observers should monitor the location of the protected species in relation to the deployed gear. In addition to observers scanning nearby waters, other crew should carefully observe any gear trailing from the vessel for signs of protected species entanglement.

Avoid Entanglement in Lines

Protected species are known to become entangled in a variety of lines associated with fishing gear; therefore, reducing any slack in associated lines may help reduce entanglement potential. Some slack in certain buoy lines is necessary to account for winds and tidal action; however, minimize slack where practical to minimize the potential for rope to become wrapped on an animal that is travelling through the area or interacting with the gear.

Knots in line increase entanglement risk, particularly in baleen. Maintaining rope so that it is as knotless as possible may reduce the likelihood of seriously injuring or killing a large whale.

Standard Measures:

- Reduce any unneeded slack in lines.

- Use stiffer line materials when possible, as these are less likely to make small coils and increase potential for entanglement.
- Reduce knots in line as much as possible.
- Clearly mark lines and buoys so that stranding personnel and other NMFS experts may identify the gear in the event an animal becomes entangled. In general, buoys, buoy lines, nets, etc. should be marked repeatedly along the gear using colors that are readily visible (e.g., red or black marks on white rope). This is particularly important for gear that is set for long periods of time or is not tended.

Habitat Protection

Standard Measures:

- Limit the time gear is deployed on the bottom to the minimum necessary to collect sample. The use of video monitoring of trawl opening can ensure the trawl is only open until a full sample is collected.
- Avoid contact (gear or anchors) with sensitive bottom habitat (e.g., submerged aquatic vegetation (SAV) and hard bottom)
- Report deep sea coral bycatch and collect a sample of each species for species confirmation.

II. Specific Gear Types

a. Buoys

Standard Measures:

- Avoid placing large buoys in areas supporting submerged aquatic vegetation. Locate in deep water to avoid light limitation and grounding impacts to the intertidal zone, and ensure that adequate water depth is available between the substrate and the bottom of the buoy throughout all tide cycles. (Johnson et al. 2008, pg. 52)
- Conduct in-water work during the time of year when managed species and prey species are least likely to be impacted. (Johnson et al. 2008, pg. 52)

b. Trawling and Dredging[1]

General Measures for Protected Species:

- Slow tow speeds and/or shorten trawl times/distances to the extent allowed by your sampling objectives.
- Limited tows to under 30 minutes if possible to reduce the risk of drowning a captured sea turtle.

[1] The measures described in this section address forms of gear that have significant potential to impact trust resources. In contrast, the following forms of gear have little potential for adverse environmental impacts: CTD and rosette samplers, radiometers, Bongo and Neuston nets, MOCNESS net systems, and vertically deployed or towed imaging systems.

- Avoid pinniped rookeries or haul-out sites or other areas known to have high densities of marine mammals, to the extent practicable.
- Gear should be configured, where possible, with Turtle Excluder Devices (TEDs). Dredges may use turtle deflector dredge frames.
- Clean nets prior to deployment to remove prey items that might attract marine mammals.. Do not discard fish products or offal prior to the operation, as this may attract protected species to the area of operation and cause them to become more susceptible to capture.
- Consider a "set first" rule – deploy gear immediately upon arrival at a sampling location to avoid attracting animals to a stationary vessel. Conduct additional sampling upon conclusion of tows.

Operational Measures:

- Do not discard fish products or offal during the operation.
- Follow monitoring protocols as described above.
- Crew members other than the Observer should watch the deployed gear for signs of an entangled animal throughout the operation.
- The ship should alter course or cancel sampling, where practicable, to avoid marine mammals sighted nearby.
- Immediately respond to any net disturbance during deployment, active sampling, and haul back to ensure the best chance of releasing the animal alive.

At-sea response to potential interaction with protected species requires the use of professional judgment on the part of the Commanding Officer, Chief Scientist, or other responsible party.

Representative scenarios upon sighting of protected speciess during active sampling will be context-specific, dependent upon concerns about human safety, and in accordance with best professional judgment. Scientists and other responsible parties should understand as much as possible the options available to them under various scenarios, which could include:

1. If marine mammals are observed after shooting the doors while the trawl is actively being deployed, the trawl may be rapidly retrieved (unless the CO deems it unsafe per protocols) and brought on deck to ensure no protected species are captured; OR,
2. The CS, per protocols and in consultation with the CO, may continue with trawl deployment to depth depending on various factors; OR,
3. If protected species are seen near the net, the ship should back down briefly, followed by retrieval of the net; AND,
4. If the trawl is retrieved, it should not be reset until the Chief Scientist, in consultation with the Commanding Officer and observer, determines the protected species are no longer in the area where they could be incidentally taken by the trawl or the ship shall move to the next sampling location.

Measures In the Event of a Live Protected Species Capture/Entanglement:

- Work from the vessel as quickly and carefully as possible to open the bag of the trawl for prompt release of the animal.
- If possible, the animal shall be released directly back into the water to avoid further injury from being brought aboard the ship.

- If the animal is not able to be released directly back into the water, the net shall be carefully placed on the deck of the ship, and the bag opened to prevent the animal from falling on the deck and becoming further injured.
- Ensure the animal's blowhole is free of obstructions and work quickly and carefully to return the animal to the water.
- Do not lift a sea turtle by the flippers.
- If a sea turtle has been partially drowned, follow the NMFS Sea Turtle Resuscitation Guidelines. 66 FR 67495, http://www.gpo.gov/fdsys/pkg/FR-2001-12-31/html/01-31976.htm.
- The event must be reported properly (see Reporting). This is mandatory.

Habitat Protection:

- Avoid areas with habitat types that are slow to recover from impacts, such as live bottom (corals, sponge, submerged aquatic vegetation)
- Implement seasonal restrictions to avoid impacts to habitat during species critical life history stages (e.g., spawning season, egg, and larval development period). Recommended seasonal work windows are generally specific to regional or watershed-level environmental conditions and species requirements. (NMFS Alaska 2011, pg. 2-15)
- Anchor away from submerged aquatic vegetation and hard bottoms.
- Avoid contact with sensitive bottom habitat (like submerged aquatic vegetation and hard bottom) when performing hydrographic surveys.
- Staff are encouraged to report deep sea coral bycatch and to collect a small sample of each species when possible for species confirmation at the science center.

c. Set Nets

Measures Before Beginning Operations:

- When practical, set nets in locations upstream of known marine mammal occurrences.
- Ensure the gillnet float line has buoys adequate in number, size, and color to ensure good visibility and properly float the top line, increasing the ability to detect if a marine mammal becomes entangled in the net.
- Inspect and repair nets before and between deployments as necessary. Damaged or ragged nets increase entanglement potential.
- Reduce bag in the net, by ensuring proper anchor weight is keeping the net mouth open. Additional anchor weights should be used during tidal changes or in areas of high current.

Measures During Operations:

- Tend the net regularly. The entire net should be hand-checked once per hour to ensure protected species are not entangled in the net. This may be achieved while the net remains in the water by pulling the net up from the buoy line and dropping it back in
- During sampling, an observer should continuously monitor the net and associated float buoys for potential signs of a protected species entanglement, such as splashing, buoys sinking below the waterline, or other notable disturbance in the net.
- If protected species are sighted in the peripheral sampling area during active sampling, immediately raise and lower the net leadline. If protected species do not depart the area,

haul the gear onto the vessel and avoid resetting the net until the area is clear of protected species.

Measures In the Event of a Live Protected Species Capture/Entanglement:

- For human safety, do not enter the water to attempt disentangling the animal. Do not try to stop or prevent the animal from further wrapping in the gear.
- For entangled large whales, do not attempt to secure the gear to the vessel. If the whale sounds with gear attached, the vessel may be capsized or swamped.
- Large whales are typically not in imminent danger. Do not try and free it at risk of injury, add a marker buoy if necessary and safe to do so, and disengage to protect yourself. Immediately call the Regional Stranding Coordinator and allow authorized responders with experience and proper tools attempt to assist.
- Handling a net containing a large, powerful, animal that is panicked and attempting escape increases the risk of entangling and/or injuring personnel. Maintain calm and work as quietly as possible to avoid further agitating animal. If the animal is small enough to bring aboard for disentanglement, it may be safer to do so.
- If the animal is too large or active to bring aboard, bring it alongside the vessel and support it at the surface while attempting to remove the gear. Maintain awareness when using hooks or knives for gear removal to avoid injuring personnel or further injuring the animal.
- Do not lift a sea turtle by the flippers.
- While continuing to cradle the animal, work to cut the net away from the animal. Ensure all net is cut away from the animal before release. Marine mammals should remain in the water as much as possible while working to disentangle them, as this increases chances of survival and ensures human safety.
- Once the animal is free from gear, prior to its release: (1) photograph the animal and any specific lesions or abrasions caused by the entanglement if possible; (2) note condition upon release and any injuries (e.g, swam away vigorously with no obvious injuries; did not swim away vigorously; surfaced to breathe); and (3) note pertinent details on the nature of the entanglement, such as, but not limited to, gear characteristics, where in the net the animal was entangled, etc.
- If an animal (including, sea turtles, dolphins, large whales) dies in the gear or is observed dead in the water, immediately call the Regional Stranding Coordinator or contact NOAA through the U.S. Coast Guard at VHF Ch. 16 for instructions.
- If a sea turtle has been partially drowned, follow the NMFS Sea Turtle Resuscitation Guidelines. 66 FR 67495, http://www.gpo.gov/fdsys/pkg/FR-2001-12-31/html/01-31976.htm.

d. Longlines

Protected Species Measures:

- Do not chum or discard offal or spent bait before or during gear deployment, as this may attract protected species.
- Combine use of large circle hooks (e.g., 18/0) and finfish bait to reduce sea turtle bycatch; circle hooks also reduce marine mammal bycatch.

- If practical, ensure branchlines are long enough for a hooked sea turtle to reach the surface to breathe depending on set depth.
- Follow the specific fishery regulations and requirements for your area and season.

Seabird Take:

- Tori lines consisting of paired streamers should be used to protect seabirds. This method has been shown to be effective, and is particularly important when performing longline surveys in the Alaska region.
- Alternatively, use set gear with weighted hooks over the side of the boat, rather than the stern.

Habitat Protection:

- Avoid the use of bottom longline gear in areas with live bottom (e.g., submerged aquatic vegetation, corals, sponges.

Measures In the Event of a Sea Turtle Capture/Entanglement:

- Follow the protocols issued by NMFS for releasing a hooked sea turtle in NOAA Technical Memorandum NMFS-SEFSC -580: Careful Release Protocols for Sea Turtle Release with Minimum Injury, http://www.sefsc.noaa.gov/turtles/TM_580_SEFSC_CRP.pdf

e. Traps

Standard Measures:

- Use selective gear suitable for the sampling objectives.
- Clearly mark the buoy and vertical line attached to the trap or anchor with colored bands using paint or tape. If using multiple traps strung together in "trawls", clearly mark groundlines.
- Carve the buoy with easily identifiable labels.
- Recover all traps to avoid leaving ghost traps.
- Avoid placement of traps in live hard bottom habitats with coral and sponges.
- Consider using pot trawls instead of single pots to reduce vertical lines in the water.

III. Active Acoustics

Standard Measures:

- Reduce use of active acoustics as much as possible. Active acoustic sources should be used only when required for navigation or data collection and should be used at the lowest source level and highest frequency available that is suitable for the purpose.
- Note that seismic surveys, which use extremely powerful sound sources, will always require substantial mitigation measures developed during the consultation and permitting process.

IV. Aerial Surveys

The following measures should be followed any time NOAA engages in aerial surveys or any other activities involving overflight. Noise from overflight may disturb protected species below.

Standard Measures:

- Aircraft should maintain a minimum altitude of 1,000 feet when practical. When low altitude is not vital to operational objectives, altitudes above 1,500 feet are preferable.
- Aircraft personnel should maintain watch for protected species.
- If survey protocol dictates flight altitude below 1,000 feet, the aircraft should maneuver to avoid sensitive areas like pinniped haul-outs and rookeries, aggregations of marine mammals at sea, and mother-calf pairs.
- These areas should be avoided by a 1,000 foot lateral distance.
- In addition, flights conducted at altitudes lower than 1,000 feet may require a permit from the Office of National Marine Sanctuaries should the operation occur within the Gulf of the Farallones or Monterey Bay national marine sanctuaries. Flights conducted lower than 2,000 feet altitude occurring within the Olympic Coast National Marine Sanctuary may also require a sanctuary permit.

V. Reporting

Any time NOAA staff observe sick, injured, or entangled species, they must report the matter.

Standard Measures:

- Sick, injured or entangled protected species must be reported immediately to the regional stranding network. Contact information is available on NOAA Fisheries' website and is listed at the end of this document. The Regional stranding coordinator will provide immediate direction for how to proceed.
    - For large whale entanglements in the Atlantic, please contact Provincetown Center for Coastal Studies at 1-866-755-6622.
- The activity should cease pending discussions on the nature of the take and outcomes with NOAA Fisheries.
- Any take of a protected species must be reported to the NMFS Regional Office per consultation and/or permit requirements.
- Staff are encouraged to report deep sea coral bycatch and to collect a small sample of each species when possible for species confirmation at the science centers.

VI. Restoration Activities

NOAA engages in various habitat restoration efforts. The following measures should be considered, along with many other concerns, for all restoration efforts.

Standard Measures:

- Avoid restoration work during critical fish windows to reduce direct impacts to important ecological functions such as spawning, nursery, and migration. This requires scheduling

projects when managed species are not expected in the area. These periods should be determined prior to project implementation to reduce or avoid any potential impacts.
- Plan staging areas in advance and keep the areas as small as practical.
- Consider sensitive resources like rare plants and historic sites in advance of operations and use a buffer zone around these resources.
- Temporary access pathways should be established prior to restoration, and no other paths should be used.
- Provide adequate training and education to volunteers and project contractors to mitigate adverse impacts to the restoration site.
- During restoration, protect the water column through the use of turbidity curtains, haybales, and erosion mats.
- After restoration work is completed, remove and restore temporary access pathways and staging areas.

VII. Avoidance Measures for National Marine Sanctuaries and Papahanaumokuakea Marine National Monument

Federal agencies should consult the specific regulations for each sanctuary and the monument, and should avoid conducting their activities these areas if any activity may adversely affect sanctuary or monument resources.

All of the Avoidance Measures listed above are applicable to work in sanctuaries. For more information on sanctuary or monument permitting, consultations, or for site-specific avoidance measures, contact the appropriate sanctuary or monument superintendent.

VIII. Additional Information Regarding Avoidance Measures to Prevent Impacts on Essential Fish Habitat

The essential fish habitat avoidance and mitigation measures provided throughout this document should be regarded as a list of common measures and not an exhaustive list of all possible avoidance measures to reduce impacts to the quality and/or quantity of essential fish habitat. The following resources should be consulted for additional avoidance measures and more details about impacts to essential fish habitat from non-fishing and fishing activities:

- Hanson J, Helvey M, Strach R. (editors) 2003. Non-fishing impacts to essential fish habitat and recommended conservation measures. National Marine Fisheries Service (NOAA Fisheries), version 1. Southwest Region, Long Beach, CA.
- Johnson MR, Boelke C, Chiarella LA, Colosi PD, Greene K, Lellis K, Ludemann H, Ludwig M, McDermott S, Ortiz J, Rusanowsky D, Scott M, Smith J. February 2008. NOAA Technical Memorandum NMFS-NE-209L Impacts to Marine Fisheries Habitat from Nonfishing Activities in the Northeastern United States. (pg. 1-339).National Marine Fisheries Service, Alaska Region. November 2011. Impacts to Essential Fish Habitat from Non-fishing Activities in Alaska. (pg. 1-123).

- Stevenson D, Chiarella LA, Stephan D, Reid R, Wilhelm K, McCarthy J, Pentony M. January 2004. NOAA Technical Memorandum NMFS-NE-181 Characterization of the Fishing Practices and Marine Benthic Ecosystems of the Northeast U.S. Shelf and an Evaluation of the Potential Effects of Fishing on Essential Fish Habitat. (pg. 1-179).

IX. Marine Mammal Stranding and Entanglement Contact Numbers

(Contact Numbers Last Updated: April 10, 2012)

NMFS Alaska Region
Aleria Jensen, Stranding Coordinator
Phone: (907) 586-7248

NMFS Northeast Region
Mendy Garron, Stranding Coordinator
Phone: (978) 282-8478

Lanni Hall, Assistant Stranding Coordinator
Phone: (978) 282-8492

Jamison Smith, East Coast Disentanglement Coordinator
Phone: (978) 281-9336

NMFS Northwest Region
Brent Norberg, Stranding Coordinator
Phone: (206) 526-6550

Kristin Wilkinson, Assistant Stranding Coordinator
Phone: (206) 526-4747

NMFS Southeast Region
Blair Mase, Stranding Coordinator
Phone: (305) 361-4586

Erin Fougeres, Stranding Program Administrator
Phone: (727) 824-5323
Erin.Fougeres@noaa.gov

NMFS Southwest Region
Sarah Wilkin, Stranding Coordinator
Phone: (562) 980-3230

NMFS Pacific Islands Region
David Schofield, Stranding Coordinator
Phone: (808) 944-2269

NMFS National Enforcement Hotline for Violations

- 1-800-853-1964

Northeast Region Marine Mammal and Sea Turtle Stranding & Entanglement Network

Northeast Region Marine Mammal and Sea Turtle Stranding & Entanglement Hotline

- 866-755-6622

Southeast Region Marine Mammal Stranding Network (including Puerto Rico and U.S. Virgin Islands)

NMFS Southeast Marine Mammal Stranding Hotline

- 877-433-8299

Southwest Region Marine Mammal Stranding Network

California

- NMFS Southwest Regional Office
  Long Beach, CA
  562-980-3230

Northwest Region Marine Mammal Stranding Network

Northwest Marine Mammal Stranding and Enforcement Hotline

- 800-853-1964

Pacific Islands Region Marine Mammal Stranding Network (including Guam, American Samoa and Northern Mariana Islands)

Pacific Islands Region Marine Mammal Stranding & Entanglement Hotline

- 888-256-9840

Alaska Region Marine Mammal Stranding Network

Alaska Marine Mammal Stranding Hotline

- 1-877-9-AKR-PRD (1-877-925-7773)

Attachment B: Issues to be Addressed in Environmental Compliance Updates to the NEP

Issues to be Addressed by each Line Office DAA in Quarterly Environmental Compliance Updates to the NEP

1. Has your designated Line Office lead been in regular communication with you or the AA regarding environmental compliance issues for your Line Office?
2. Has your Line Office communicated the Best Management Practices (BMPs) to all potentially-affected programs?
3. Have these BMPs been adopted in all programs for which they are appropriate?
    a. Have they been effective?
    b. How are you tracking their effectiveness?
4. What is the status of environmental compliance efforts for your Line Office's *High Risk Projects and Programs*?
    a. What is the cause of any delays?
    b. How can the DUS/O assist you in completing these compliance efforts?
5. Has your Line Office identified any additional short- or long-term compliance issues that should be brought to the attention of NOAA leadership?
6. How has your Line Office made use of the STATUTES working group for training, coordination, or project-specific compliance help?