

U. S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-ICA
Phone: (202) 366-4280
FAX: (202) 366-7124

DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

STATEMENT OF

REAR ADMIRAL JEFFREY J. HATHAWAY

ON THE

**BILL TO AMEND THE ENDANGERED SPECIES ACT AND THE
MARINE MAMMAL PROTECTION ACT**

BEFORE THE

COMMITTEE ON RESOURCES

U.S. HOUSE OF REPRESENTATIVES

MAY 06, 2003



Rear Admiral Jeffrey J. Hathaway
United States Coast Guard
Director of Operations Policy (G-OP)



RADM Jeff Hathaway is a native of Whittier, California. He attended the Coast Guard Academy in New London, Connecticut, and graduated in 1974 with a Bachelor of Science degree. In 1983 he earned a Master of Business Administration degree from the University of California at Irvine, and in 1994 RADM Hathaway graduated from the Industrial College of the Armed forces with a Master of Science degree in National Resources Strategy.



After graduation from the Coast Guard Academy, RADM Hathaway was assigned to USCGC VENTUROUS (WMEC 625) in Long Beach, California, as a deck watch officer. Subsequent afloat tours have included duty as Operations Officer aboard VENTUROUS, and as Commanding Officer of USCGC CITRUS (WMEC 300) in Coos Bay, Oregon, USCGC LEGARE (WMEC 912) in Portsmouth, Virginia, and USCGC MUNRO (WMEC 724) in Alameda, California.

RADM Hathaway's experience ashore includes assignments as a duty officer in the Coast Guard Pacific Area Rescue Coordination Center, assignment officer in the Officer Personnel Division of Coast Guard headquarters, and cutter management duty on the Pacific Area Operations, Division staff. He has also served as Military Assistant to the U.S. Secretary of Transportation, Chief, Coast Guard Congressional and Governmental Affairs Staff, and as Executive Director, United States Interdiction Coordinator. He was most recently assigned to the Navy Pentagon Staff as Director, Interagency Support and Anti-Terrorism/Force Protection Division, OPNAV N32/34. RADM Hathaway assumed his current duties as Director, Coast Guard Operations Policy on 28 February 2003.

RADM Hathaway's personal awards include the Legion of Merit (four awards), Meritorious Service Medal (two awards), Coast Guard Commendation Medal (two awards), and Coast Guard Achievement Medal (three awards).

RADM Hathaway is married to the former Rebecca Haviland of Youngstown, Ohio. Becky is employed full time as a registered nurse and recently retired as a Commander in the U.S. Navy Nurse Corps Reserve. They have four children.

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PROPOSED AMENDMENTS TO THE ENDANGERED SPECIES ACT
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May 6, 2003

Good afternoon, Mr. Chairman and distinguished members of the Committee. It is a pleasure to appear before you today to discuss H.R. 1835, which is still under review by the Administration. As you know the Administration has recently introduced its own Readiness and Range Preservation Initiative, which includes some similar provisions to H.R.1835.

Since one of the Coast Guard's five strategic goals is Protection of Natural Resources, we take very seriously the provisions of the Endangered Species Act and the Marine Mammal Protection Act. Not only does the Coast Guard develop operational guidance and procedures to ensure our compliance with the acts, we also enforce the regulations associated with these Acts in conjunction with National Oceanic and Atmospheric Administration (NOAA) Fisheries and the U.S. Fish and Wildlife Service.

Many of the Coast Guard's responsibilities require our units to conduct operations which have the potential to disrupt marine mammal and endangered species behavior patterns. The Coast Guard frequently operates in areas where marine mammals or endangered species are present. When so doing, the Endangered Species Act and the Marine Mammal Protection Act can come into play because the mere presence of our ships and aircraft have the potential to disrupt protected species behavior. Ironically, this includes Coast Guard activities undertaken to protect marine mammals, protected species and other living marine resources. Our efforts to enforce fisheries regulations, right whale approach regulations, steller sea lion and sea turtle critical habitat areas, whale watching regulations, harbor porpoise pinger regulations, and manatee speed zones ensure a rich, diverse sustainable ocean environment that promotes survivability of protected species.

Beyond law enforcement duties, Coast Guard buoy tenders occasionally find seals and sea lions hauled out on navigational aids (buoys) that must be serviced or replaced. By servicing navigational aids, we protect marine mammal and endangered species habitats from the impact of potential ship groundings and collisions. However, we also thereby raise the specter of operating in violation of the Acts. In addition, responding to non-emergent Search and Rescue and oils spills place our assets in potential conflict with both Acts.

To ensure that we comply with both the Marine Mammal Protection Act and the Endangered Species Act while engaged in our day-to-day operations, we have established specific guidelines and procedures to ensure our operations mitigate risks to protected

species and their habitats. Examples include relocating training operations away from protected species habitats, conducting operations such as engine trials during non-intrusive times of the year, training shipboard lookouts in marine mammal identification, and operating ships at reduced speeds when marine mammals are present. Nonetheless, except for emergency search and rescue operations, none of our operations, including those that ensure military readiness and those that benefit marine mammal and endangered species populations are exempt from the Endangered Species Act and some may not be covered by the provisions under which taking may be authorized under the Marine Mammal Protection Act.

Our day-to-day operations in the marine environment place us in situations where we are often the first or best responders to deal with efforts to assist protected species that may be in distress. In the specific instances when the Coast Guard is responding to a protected animal in distress, we either have received permits or have been added to NOAA Fisheries permits to ensure our compliance with the Acts.

However, the Coast Guard's pursuit of an incidental take authorization, at least with respect to its operations that could result in the lethal taking of northern right whales in the North Atlantic, has been unsuccessful. This is because the National Marine Fisheries Service has determined that any incidental mortality of this species cannot be considered to be negligible for purposes of the Marine Mammal Protection Act and likely would jeopardize the survival and recovery of the species in violation of section 7 of the Endangered Species Act. In addition, the permit process is geared for approval of specific activities that can be identified and assessed well in advance. Often Coast Guard operations require on the spot decisions - requesting individual incidental take permits is simply not feasible.

Since the Coast Guard is a multi-mission service, most Coast Guard activities would not fall under the military readiness exemption of the amendment. However, there are activities where the Coast Guard shares similar interests and military readiness concerns with the Department of Defense. National Defense and Homeland Security are two of our service's statutorily tasked missions. Coast Guard assets use Coast Guard and Department of Defense facilities and weapons ranges vital to our ability to maintain our readiness.

The Coast Guard understands the need for all federal agencies to minimize their impact on marine mammals and protected species and notes that this proposed amendment does not exempt our military partners or us from this responsibility. Therefore, the Coast Guard supports the proposed amendments goals of maintaining military readiness while carefully balancing environmental needs. This critical balance will ensure that neither our environment nor the nation's military readiness will be compromised.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.