STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

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December 27, 2007

Ms. Kaja Brix
Assistant Regional Administrator
Protected Resources Division, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802

Re: Northern right whale

Ms. Brix:

Enclosed are comments from the State of Alaska regarding designation of critical habitats for the North Pacific right whale as noticed in Federal Register Volume 72, Number 208 dated October 29, 2007.

The Proposed Rule identifies two areas in the North Pacific Ocean as critical habitat for the North Pacific right whale population, one in the eastern Bering Sea and another in the Gulf of Alaska south of Kodiak Island. Information obtained by examination of harvested whales in the North Pacific and plankton tows near feeding right whales indicates that several species of large copepods and some euphausiids represent the primary prey of the North Pacific right whale. The State of Alaska believes NMFS properly concluded that primary prey availability is the only PCE of North Pacific right whale critical habitat that can be determined with certainty.

The proposed critical habitat areas are based on the assumption that right whales will return to feed where dense concentrations of primary prey consistently occur. Thus, NMFS proposed as critical habitat those areas containing copepod PCEs where relatively recent and persistent sightings of whales have occurred. It is reasonable to assume such areas are likely essential to the conservation of the species, and the State of Alaska supports the designation of the two proposed areas as right whale critical habitat, although whales appear to present in significant numbers only on a seasonal basis.

The State of Alaska also supports NMFS' finding that fishing activities in the North Pacific do not affect right whale PCEs and pose no threat to the proposed critical habitat. It is

clear that commercial fisheries do not target or significantly affect the PCEs for North Pacific right whales and should not be restricted or otherwise altered as a result of the critical habitat designation in the two proposed areas.

The Proposed Rule also contains a request for public comment on several specific issues. The following comments pertain to three of those topics.

1. *Whether designated PCE's may require special management consideration or protection.*

Existing regulatory mechanisms for the protection of North Pacific right whale habitats are extensive (see attached). There is no scientific or commercial information indicating that a failure of any of these mechanisms contributed to the decline of the North Pacific right whale or that any currently authorized or proposed development project would have significant adverse effects on the recovery of the North Pacific right whale within their designated critical habitats. As such, we do not believe that additional regulation or special management consideration is necessary for protection of the North Pacific right whale or the PCE's upon which it depends at this time.

2. *Current or Planned Activities in the Areas Proposed as Critical Habitat and their Possible Impacts on Proposed Critical Habitat.*

Commercial Fishing. The proposed North Pacific right whale critical habitat area in the southeastern Bering Sea includes areas important to king and Tanner crab research and commercial fisheries. The Alaska Department of Fish & Game (ADF&G), in cooperation with the North Pacific Fishery Management Council, manages commercial crab fisheries in the proposed southeastern Bering Sea critical habitat area. Cost-recovery fishing by ADF&G, in the proposed critical habitat area provides essential funding for crab research activities, such as population surveys and gear studies. The proposed critical habitat area also contains nearly all of the important commercial fishing areas in the Bristol Bay red king crab and eastern Bering Sea Tanner crab fishery. The 2004 Bristol Bay red king commercial crab harvest was approximately 15.4 million pounds with an estimated ex-vessel value of $72.6 million. Of this volume, approximately 56 percent was harvested in statistical areas completely contained in the proposed critical habitat, and about 43 percent was harvested in statistical areas partially contained in the proposed critical habitat.

The proposed critical habitat also contains areas of historic importance for the eastern Bering Sea Tanner crab fishery, which re-opened for a small fishery in 2005 for the first time since 1997. Of the total harvest in the eastern Bering Sea Tanner crab fishery from 1985 to 1996, 26 percent was from statistical areas completely contained within the proposed critical habitat, and 46 percent was from statistical areas partially contained in the proposed critical habitat. The eastern Bering Sea Tanner crab fishery is managed as two separate harvest levels for the areas west and east of 166° W longitude. The proposed critical habitat contains most of the historically productive fishing areas east

of 166° W longitude. Of the total 1985 to 1996 harvest from the areas east of 166° W longitude in the eastern Bering Sea Tanner crab fishery, 35 percent was from statistical areas completely contained within the proposed critical habitat, and 61 percent was from statistical areas partially contained in the proposed critical habitat.

Much of the commercial crab fishing activity in the eastern Bering Sea occurs in the winter months when northern right whales are likely absent from these critical habitat areas. Available data suggest that right whales may be in the eastern Bering Sea primarily during the spring and summer months, although right whale vocalizations have been detected as late as early December. The Bering Sea crab fisheries are closed during the spring and summer months to allow for crab spawning and biological surveys.

The number of vessels fishing commercially for crab has also decreased significantly due to the recent implementation of a quota-based management system. The formation of harvesting cooperatives has resulted in significant consolidation of the Bering Sea crab fleet. In 2004, 252 vessels registered to participate in the Bering Sea red king crab fishery. After implementation of the quota-based program in August 2005, just 89 vessels participated in the 2005-2006 red king crab fishery, even though the allowable harvest increased by almost three million pounds. Further, while the Alaska Board of Fisheries passed regulations increasing legal gear usage from 250 pots to 450 per vessel, under the quota-based management approach only about 15,000 pots were actually deployed. This compares to more than 45,000 pots fished during the 2004 Bristol Bay red king crab season.

The State of Alaska has determined that current crab research and commercial fishing activity in the proposed southeastern Bering Sea critical habitat area has no effect on the PCE, i.e., the copepod or euphausiid species aggregations upon which northern right whales feed. In addition, the timing of commercial crab fishing does not appear to be coincident with North Pacific right whale use of the proposed critical habitat areas. Reports of increasing numbers of North Pacific right whale sightings in the proposed Bering Sea critical habitat area over the last decade reinforce our determination that fishing activity does not adversely impact North Pacific right whale habitat.

Aleutian Basin lease sales. The State of Alaska has completed a best interest finding for proposed oil and gas leasing along the Alaska Peninsula and Aleutian Islands. These lease sales are within state waters and are not within the area proposed for designation as critical habitats. That said, the State believes that the final ACMP consistency determination and identified mitigation measures are adequate to protect North Pacific right whales that occupy nearby critical habitats.

3. *Any foreseeable Economic or other Potential Impacts Resulting from the Proposed Critical Habitat Designations*

Commercial Fishing. NMFS analysis properly recognizes that current fishing activities have no impact on the PCEs for North Pacific right whales and thus would be unlikely to

result in "adverse modification" of critical habitat, thus the State of Alaska anticipates that no fishing or related activity (e.g., seafood processing or transiting) would be restricted or otherwise altered as a result of critical habitat designation. However, if NMFS contemplated regulatory changes to fisheries taking place in the proposed right whale critical habitat areas, there could be significant economic impacts on fishermen, processors, and fishery-dependent communities in Alaska. Redesignation of critical habitat, taking into account these economic impacts would be needed if NMFS were to change its position regarding commercial fishing impacts.

Aleutian Basin lease sales. The State of Alaska has completed a best interest finding for proposed oil and gas leasing along the Alaska Peninsula and Aleutian Islands. These lease sales are within state waters and are not within the area proposed for designation as critical habitats. Because these areas lie outside the area proposed as critical habitat and because the final ACMP consistency determination and identified mitigation measures are adequate to protect North Pacific right whales and nearby habitat, the State does not believe that the designation of critical habitat will have significant economic impacts on the lease program. Redesignation of critical habitat, taking into account economic impacts, would be needed, however, if NMFS were to attempt to impose significant additional restrictions outside of designated critical habitat based on proximity to critical habitat.

Summary

Based on its analysis indicating that the proposed critical habitat areas are likely important seasonal feeding areas, the State of Alaska supports the designation of the two proposed areas as North Pacific right whale critical habitat. The State of Alaska does not believe that there is any scientific or commercial data supporting expansion of the proposed areas or further regulation or management of PCE's upon which the right whale depends at this time. Critical habitat designation should not interfere with commercial fishing or with development of lease sales, and therefore modification of the proposed critical habitat areas based on economic considerations is not needed.

If a decision to develop a recovery plan is made, ADF&G stands ready to assist the Service with its development.

Sincerely,

Doug Vincent-Lang, ESA Coordinator
Alaska Department of Fish and Game

cc: Ken Taylor, Doug Larsen, Tina Cunning, Denby Lloyd, Steven Daugherty

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION (ADEC) ROLE IN HABITAT PROTECTION

The following is a summary of ADEC regulatory authorities and a compilation of mitigation measures that pertain to the North Pacific right whale.

Water Quality Standards. The Division of Water's mission is to improve and protect water quality. In keeping with this mission, the division:

- Establishes standards for water cleanliness
- Regulates discharges to water and wetlands
- Provides financial assistance for water and wastewater facility construction, and waterbody assessments and remediation
- Trains, certifies and assists water and wastewater system operators
- Monitors and reports on water quality

Water quality standards for the State of Alaska are found in the Alaska Administrative Code at 18 AAC 70. In addition, Section 401 of the Clean Water Act requires the Environmental Protection Agency (EPA) and the U.S. Army Corp of Engineers (ACE) to seek state certification that state water quality standards are being met before issuing a final permit.

Cruise Ships. Cruise ships in Alaska operate under a number of federal and state regulations.

- Ballast water reporting to the United States Coast Guard (USCG)
- Graywater/Blackwater regulated under 33 C.F.R. 159, Subpart E by USCG
- Graywater/Blackwater also regulated under AS 46.03.460 – 490 and 18 AAC 69

The ADEC Commercial Passenger Vessel Environmental Compliance program regulates visible air emissions and wastewater discharged from cruise ships. Small cruise ships and Alaska Marine Highway vessels (ferries) are required to use best management practice plans.

Ballast Water Discharge Regulations. All vessels, foreign and domestic transiting the Aleutian Islands are subject to mandatory federal ballast water exchange regulations at 33 C.F.R. 151, Part D. These regulations require that the entire amount of ballast water loaded at the port of origin is exchanged with sea water during the voyage and include recordkeeping requirements.

Spill Prevention and Response. The ADEC Spill Prevention and Response (SPAR) Division's mission is to prevent, respond and ensure the cleanup of unauthorized discharge of oil and hazardous substances. SPAR is responsible for protecting Alaska's land, waters and air from oil and hazardous substances spills. The Industry Preparedness Program (IPP) requires regulated facilities and vessel to develop state-approved contingency plans, to establish a facility-wide spill prevention program and to ensure that personnel, equipment and financial resources are available to respond to spills. In the event of a spill the Prevention and Emergency Response Program (PERP) serves as

the State's emergency responders to oil and hazardous substance spills and ensures that cleanup measures are implemented as soon as possible.

The ADEC requires all vessels transporting oil and hazardous substances within the State of Alaska to have a contingency plan in the event of a spill. Each operator is required to follow the ADEC format as described in 18 AAC 75, Article 4 which is located at the following link: http://www.dec.state.ak.us/spar/statutes_regs.htm#regs75

In addition to industry contingency plans, ADEC and other agencies, including ADF&G, formalized regional plans to ensure consistency. The Aleutian area has its own regional plan. This regional plan is located at: http://www.akrrt.org/AIPlan/aitoc.shtml. The industry contingency plans are a way that ADEC can ensure that the company is prepared and thinking in advance before they travel in Alaska waters. ADF&G reviews relevant industry plans with a focus on the protection of fish and wildlife.

Following is the "*Unified Plan and Subarea Contingency Plan Description*" of the regional plans.

> The Aleutian Subarea Contingency Plan is a supplement to the *Alaska Federal/State Preparedness Plan for Response to Oil & Hazardous Substance Discharges/Releases* (commonly referred to as the Unified Plan). The Unified and the Subarea Contingency Plans represent a coordinated and cooperative effort by government agencies and were written jointly by the U.S. Coast Guard, the U.S. Environmental Protection Agency, and the Alaska Department of Environmental Conservation. The Oil Pollution Act of 1990 (OPA 90) requires the USCG and the USEPA to prepare oil spill response plans for the State of Alaska, which is designated as an entire planning region under federal guidelines. Alaska statute requires the ADEC to prepare a state-wide master plan addressing oil and hazardous substance discharges. The Unified Plan meets these federal (National Contingency Plan and OPA 90) requirements for regional and area planning, as well as State planning requirements.
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> OPA 90 requires the development of Area Contingency Plans for the inland and coastal zones of each federal region. For the Alaska region, there are three Coast Guard Captain of the Port zones and one inland zone. The three Captain of the Port zones are: 1) Southeast, which covers all of Southeast Alaska; 2) Prince William Sound, which covers the Prince William Sound area; and 3) Western Alaska, which includes the rest of coastal Alaska from Cook Inlet out the Aleutians and north to the Beaufort Sea and the Canadian border. The inland zone is subdivided into two sectors: 1) the North Slope oil production area and the Trans-Alaska Pipeline System (TAPS) and 2) all other areas inland from the coastal zones.
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> Alaska statute divides the state into ten regions for oil and hazardous substance spill planning and preparedness. The USCG and the USEPA joined with the ADEC to use these ten regions for area planning instead of the federal planning divisions since this would facilitate unified planning for the State of Alaska and prove more practical

as well (for example, the huge COTP Western Alaska planning area is replaced by seven more manageable divisions). Because the State of Alaska is called a planning "region" under federal planning guidelines and to avoid confusion with the other federal term, "area contingency plans," these ten subordinate planning regions of the State are called "subareas" in the context of the Unified Plan.

The Unified Plan contains information applicable to pollution response within the entire State of Alaska and meets the pollution response contingency planning requirements applicable to the federal and State governments. The plan provides broad policy guidance and describes the strategy for a coordinated federal, State and local response to a discharge, or substantial threat of discharge, of oil and/or a release of a hazardous substance within the boundaries of Alaska and its surrounding waters.

Under both federal and State law, the responsible party for an oil or hazardous substance incident is required to report the incident and mount a response effort to contain and cleanup the release. The federal and State governments mandate response plans for oil tank vessels and facilities that have stringent spill response requirements. If the responsible party fails to respond adequately or if no responsible party can be identified, then the federal and State governments will rely on the Unified Plan and the appropriate Subarea Contingency Plan for response protocols and guidance.

Whereas the Unified Plan contains general information for response efforts taking place anywhere in the State of Alaska, the Subarea Contingency Plan (SCP) concentrates on issues and provisions specific to its particular subarea. The Southeast Alaska SCP focuses on the southeast Alaska region of the State. The boundaries of this subarea are described in the Background Section of this plan. The Southeast Alaska SCP provides information specific to the area, including emergency response phone numbers, available response equipment and other resources, specific response guidelines, and information on hazardous substance presence and sensitive areas protection.

Alaska State statute mandates a public review of all new plans, an annual departmental review of these plans, and another public review whenever the plans are significantly revised. The ADEC offers a public review of these plans for a period of 30 to 60 days during which verbal and written comments are accepted. During this comment period, several public meetings are held at locations appropriate for the plan being reviewed. The federal government does not require public review for any of its plans, though the USCG and the USEPA, as part of the Alaska unified planning process, do cooperate with the State of Alaska and participate in the public review process.

Neither the federal nor the State government maintains a formal approval process for these plans. The Unified Plan and the SCPs are presented to the Alaska State

Emergency Response Commission and the Alaska Regional Response Team (ARRT) for review and comment. The ARRT's concurrence is also part of the process for plan promulgation. Final promulgation of the plan is accomplished once the three plan holders – the USCG, the USEPA and the State of Alaska – sign the letter of promulgation.

Shipping. ADEC and U.S. Coast Guard are working on a multi-stage risk assessment of maritime transportation in the Bering Sea and the Aleutian Archipelago. A summary of this effort can be found at: (http://www.dec.state.ak.us/spar/perp/ai_risk/ai_risk.htm). This effort is being driven by the December 8, 2004 grounding and subsequent oil spill from the M/V Selendang Ayu with other marine casualties in the region. Included in the planning effort are summaries of ongoing research efforts and historic spills and assessments of resources at risk and existing response strategies and plans.

The first phase of this long-term risk assessment and mitigation strategy is to initiate a project titled: *Risk of Oil Spills in the Aleutian Islands- A Study to Design a Comprehensive Risk Assessment*. A committee established within the Transportation Research Board of the National Academies is conducting this project. The committee will held it's first meeting on October 29-30, 2007 in Anchorage. Information about the committee membership, the statement of task for this study, and other background data can be found on the National Academies' web site using the following link: http://www8.nationalacademies.org/cp/projectview.aspx?key=48853

ALASKA DEPARTMENT OF NATURAL RESOURCES (ADNR) ROLE IN HABITAT PROTECTION

The following is a summary of ADNR regulatory authorities and a compilation of mitigation measures that pertain to the Northern right whale. This information is organized by DNR division.

OFFICE OF PROJECT MANAGEMENT & PERMITTING

Ed Fogels, 269-8423 (ed.fogels@alaska.gov)

The Office of Project Management and Permitting (OPMP) functions under AS 38.05.020(b)(9) which requires the Commissioner of DNR to coordinate permitting activities for all large resource development projects, and AS 27.05.010(b) which requires DNR to be the lead agency for permitting all large mine projects. OPMP's goal is to ensure that all aspects of a large project are considered during a single review and approval process. The OPMP is currently coordinating the permitting of mining, oil & gas, and transportation projects, including BP's Liberty project, BLM's planning for NPRA-NE, the Bullen Point infrastructure corridor permitting, and Shell Oil's OCS exploratory activities.

OPMP assigns a project manager to serve as the primary contact for a large project. The project manager coordinates the permitting activities of the state team assigned to work on the project. The Large Project Team is an interagency group, coordinated by

OPMP, that works cooperatively with project applicants and operators, federal resource agencies, and the Alaskan public to ensure that projects are designed, operated and reclaimed in a manner consistent with the public interest. The project manager's primary responsibility is to ensure a coordinated process with minimum duplicity of efforts. This often involves tailoring the process to fit specific project needs.

The goal of the state's Large Project Team is to coordinate the timing and completion of the numerous permits. The team reviews all the complex technical documents generated during the process and provides coordinated comments. The team also coordinates stakeholder involvement and provides a single point of contact for the public. The team provides the public, agencies and the applicant the opportunity to view the project as a whole. The Large Project Team also coordinates, to the extent possible, with local governments.

The requirement for the federal authorizations usually triggers the requirement for an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). The State usually participates as a cooperating agency in the EIS process, and the team endeavors to dovetail the state's permitting process with the EIS process. For example, during the Pogo Mine process, the public Draft EIS included drafts of all the major state permits. This gave the public the opportunity to see how the state's management decisions could be implemented on the ground, and enabled them to comment on the project as a whole.

DIVISION OF COASTAL AND OCEAN MANAGEMENT
Randy Bates, 465-8797 (randy.bates@alaska.gov)

The Division of Coastal and Ocean Management (DCOM) is responsible for administering the Alaska Coastal Management Program (ACMP). The ACMP facilitates the implementation of various herring conservation measures at several distinct levels during resource planning processes as well as at the level of individual project planning and development. Below is a listing of the ACMP responsibilities of DCOM:

1. Pre-application assistance & meetings. The DCOM is tasked with arranging and scheduling meetings between a prospective developer and the agency personnel that would be reviewing, critiquing and, ultimately, writing permits to authorize a given development project. These meetings provide an invaluable opportunity for industry to meet face-to-face with agency scientists and resource managers. Oftentimes herring issues are brought to an applicant's attention at these meetings. Thus, when a developer is made aware of potential conflicts and/or potential adverse impacts of their planned project ahead of time, the finalized plan of operation or facility footprint is substantially modified before permit applications are even filed. At these meetings, prospective applicants are made aware, if they are not already, of the need to design and site facilities so as to be consistent with statewide standards and district enforceable policies. Applicants are also made aware of the (oftentimes) many distinct special-interest groups

that need to be "kept in the loop" for the planning/approval process. This list typically includes commercial and recreational fishing interest groups, conservation and environmental groups, etc.

2. Requirements/Standards for what review materials need be submitted. Applicants need to provide DCOM and review participants with (A) a completed Coastal Project Questionnaire; (B) map(s) identifying the location of the project and adjacent facilities, diagrams, technical data, and other relevant material; (C) description of any man-made structures or natural features that are at or near the project site; and (D) an evaluation of how the proposed project is consistent with the state standards and with any applicable district enforceable policies, sufficient to support the consistency certification.

   These materials are of paramount importance in assisting agency personnel and the public in reviewing a given project for its potential impacts to coastal uses and resources. It is partially with these materials that a review participant can suggest alternative measures that will improve a proposed development project.

3. Public process/ public review. Most federal agency actions and activities that require a State or federal authorization (permits) go through both public and agency review processes often coordinated by DCOM. This fulfills many agencies responsibility for posting/distributing public notice. It also provides a key tool wherein USFWS, NMFS, ADF&G, state agency biologists, the coastal district, and the public can raise and address issues related to scientific, social and/or environmental concerns relative to herring habitats, population dynamics, or health. Federal agency activities and activities that require a State or federal authorization must go through the consistency review process and be found consistent/compliant with ACMP enforceable policies (statewide standards and district enforceable policies) before the authorizations for the activity can be issued. Oftentimes DCOM will negotiate and include specific alternative measures designed to minimize potentially adverse impacts to herring into a project description before it can be found consistent/compliant and authorizations can be issued.

4. DCOM assists coastal districts develop, adopt, and implement Coastal Management Plans, including district enforceable policies. According to statewide standards of the ACMP as well as the local enforceable policies, the ACMP review process functions as a tool for evaluating an activity and modifying the project description by adding minimization or mitigating measures (in the form of Alternative Measures).

5. DCOM works to act as a facilitator to attempt to resolve conflicts among the resource agencies, an affected coastal resource district, and/or an applicant--before, during, or after a project is permitted.

6. Where the specific aspects of an activity that would otherwise be subject to authorization by the ADEC are not subject to that department's authorization because the activity is either a federal activity or is located on federal land or the OCS, the DEC can review, comment on, and/or add alternative measures to the activity's project description ***only*** through the ACMP. Thus, the ACMP provides a valuable and substantive venue for the state to review, comment on, allow, disallow or make modifications to certain federal agency activities or activities that require a State or federal authorization that are located on federal land or the OCS. This leverage is of paramount importance in areas that happen to be important as habitat for herring.

Specific Statewide standards and Coastal District Enforceable policies that address habitat include, but are not limited to:

- **11 AAC 112.300. Habitats.** (b)(1) Offshore areas must be managed to avoid, minimize, or mitigate significant adverse impacts to competing uses such as commercial, recreational, or subsistence fishing, to the extent that those uses are determined to be in competition with the proposed use;
- **11 AAC 112.300. Habitats.** (b)(9)(A) Important habitat designated by a coastal district must be managed for the special productivity of the habitat in accordance with the district enforceable policy; and
- **11 AAC 112.300. Habitats.** (b)(9)(B) Important habitat identified by a state agency must be managed to avoid, minimize, or mitigate significant adverse impacts to the special productivity of the habitat.

DIVISION OF OIL AND GAS

The Division of Oil and gas has completed a best interest finding for proposed oil and gas leasing along the Alaska Peninsula and Aleutian Islands. This included a final ACMP consistency determination and identification of mitigation measures. These can be found at:
http://www.dog.dnr.state.ak.us/oil/products/publications/akpeninsula/ak_peninsula.htm

DIVISION OF MINING, LAND AND WATER
Comments prepared by Wyn Menefee, 269-8501 (wyn.menefee@alaska.gov**)**

The Division of Mining, Land and Water (DMLW) has the responsibility and authority to manage all commercial and recreational use of state land and resources. A limited amount of uplands, shorelands, tidelands, and submerged lands out to the three mile limit are also managed by DMLW. In addition DMLW manages water allocations on all lands, including on federal and private land.

The DMLW authority primarily comes from AS 38.05, 41.23, 46.15 and 46.17. The division is responsible for preparing area plans and management plans for state lands. This is done through a public process to create policy and guidance for State land

management. This includes consideration of sensitive habitats and development needs. The Bristol Bay Area Plan was adopted in April 2005 and was a complete revision of the 1984 plan. It covers 19 million acres of state lands. The revised plan also classified tidelands south of the Alaska Peninsula that could be developed for oil and gas.

DMLW authorizes land uses through permits, leases, rights of way, sales, and other authorizations. All DMLW authorizations are granted in accordance with the area plans. In addition, authorizations must first be found consistent with the Alaska Coastal Management Program's plans and enforceable policies. The division will consider these plans and place any restrictions or mitigating measures in the authorizations through stipulations to protect social or environmental concerns, inclusive of critical habitats.

Most authorizations undergo public and agency review, during which ADFG, U.S. Fish and Wildlife Service or other participating agencies can bring attention to any environmental concerns about the project. DMLW will then address those concerns, commonly through attaching appropriate stipulations to the authorization.

The DMLW issues many authorizations for activities on State-owned lands in the Aleutian Island area. Since these activities are within the coastal zone, the permits are subject to a consistency finding under the ACMP.

DMLW's statutes and regulations are fairly general and non-specific regarding fish and wildlife conflicts but generally require compliance with other statutes and regulations and minimization of environmental impacts. For example, the authority for attaching stipulations to DMLW permits is 11 AAC 96.040(b): "Each permit is subject to any provisions the department determines necessary to assure compliance with this chapter, to minimize conflicts with other uses, to minimize environmental impacts, or otherwise to be in the interests of the state." Leasing statutes and regulations also don't have any specific language.

Summary of Regulatory Mechanisms in Place to Protect the North Pacific Right Whale

Existing regulatory mechanisms for the protection of North Pacific right whale habitats are extensive. There is no scientific or commercial information indicating that a failure of any of these mechanisms contributed to the decline of the Northern right whale or that any currently authorized or proposed development project would have significant adverse effects on the recovery of the North Pacific right whale within their designated critical habitats. As such, we do not believe that additional regulation of shipping is necessary for protection of the North Pacific right whale at this time and do not believe that designation of critical habitat will require additional regulatory measures for the protection of habitat.