

Dated: October 8, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("the Department") has revised its policy regarding the timing of issuance of critical circumstances determinations. We are now announcing this change in policy.

**DATES:** This policy is effective October 7, 1998 with respect to all ongoing and future investigations.

**FOR FURTHER INFORMATION CONTACT:** Bernard Carreau, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482-1780.

#### SUPPLEMENTARY INFORMATION:

#### Policy Bulletin 98/4: Timing of Issuance of Critical Circumstances Determinations

##### *Statement of Issue*

Whether Commerce should make a determination of critical circumstances before issuing a preliminary determination in an antidumping investigation.

##### *Analysis*

Where critical circumstances exist, U.S. law and the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement) provide for the imposition of antidumping measures retroactively for a period of 90 days prior to the preliminary determination of dumping. The purpose of this provision is to ensure that the statutory remedy is not undermined by massive imports following initiation of an investigation. Section 733(e) of the Tariff Act of 1930, as amended (the Act), permits the Department to make a preliminary critical circumstances determination at any time after initiation of an investigation. Changes in the

Antidumping Agreement also provide for critical circumstances decisions prior to a preliminary determination of dumping. Consequently, Commerce is revising its critical circumstances practice to more fully utilize the flexibility provided by the statute and the Antidumping Agreement so that dumping is remedied to the fullest extent provided under the law. Under this new practice, a preliminary determination regarding critical circumstances may be made prior to the preliminary determination of dumping, assuming adequate evidence of critical circumstances is available.

Section 733(e) of the Act directs Commerce to issue critical circumstances determinations "promptly (at any time after the initiation of the investigation under this subtitle)" as long as an allegation is made in the petition or at any time more than 20 days before the final determination. While there is no further guidance in the statute, the regulations provide that preliminary critical circumstances findings shall be made "not later than the preliminary determination," if the allegation is submitted at least 20 days before the preliminary determination, and "within 30 days after the petitioner submits the allegation," if the allegation is submitted later than 20 days before the preliminary determination. 19 CFR 351.206(c).

In order to make a preliminary finding of critical circumstances, section 733(e) of the Act requires that there be a reasonable basis to believe or suspect that:

1. There is a history of dumping causing material injury, or, that the importer knew or should have known of dumping and likely injury; and
2. There have been massive imports of the subject merchandise over a relatively short period.

The regulations define "massive imports" as an increase of 15 percent during the relatively short period. 19 CFR 351.206(h) The regulations define "relatively short period" as normally the three-month period after initiation of an investigation. 19 CFR § 351.206(i) Thus, Commerce has traditionally compared the three-month period immediately after initiation with the three-month period immediately preceding initiation to determine whether there has been at least a 15 percent increase in imports of the subject merchandise. Because of constraints on the availability of data, as a practical matter, it is virtually impossible to make a critical circumstances finding much before the

preliminary determination, as long as these two base periods are used. However, section 351.206(i) further provides that:

\* \* \* if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

Therefore, if the facts of a particular case show that importers, exporters or producers had reason to believe that a case was likely to be filed, the regulations make clear that earlier base periods can be used to measure massive imports. If earlier base periods are chosen, in accordance with this regulatory provision, and a comparison of these periods shows massive imports, the Secretary would still need to find that there has been a history of dumping and injury, or importer knowledge of dumping and likely injury, in order to make a critical circumstances finding. As with current practice, the Department would look at such factors as past U.S. dumping cases, cases in other countries, the International Trade Commission's (ITC) preliminary determination, information supplied in the petition, and other relevant information available at the time of the Department's critical circumstances determination. Because the ITC's preliminary determination of injury is normally important for this analysis, we anticipate that the earliest point at which a critical circumstances determination would be made is shortly after the ITC's preliminary injury determination, which normally occurs 45 days after the filing of the petition.

##### *Statement of Policy*

If the facts of a case show that importers, exporters, or producers had knowledge that a case was likely to be filed, and the other statutory and regulatory criteria for finding critical circumstances are met, Commerce should issue its preliminary finding on critical circumstances before the preliminary determination, and as soon as possible after initiation.

##### *Implementation*

This practice will be implemented in all ongoing and future cases where an allegation of critical circumstances is made and the facts of the case support an early critical circumstances finding, in accordance with the statutory and regulatory criteria.

Dated: October 8, 1998.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Report of Right Whale Sighting; Proposed Collection; Comment Request

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 14, 1998.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Greg Silber, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910; (phone 301-713-2322 or fax 301-713-4060).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Marine Mammal Protection Act mandates the protection and conservation of marine mammals and makes the killing or serious injury of marine mammals a violation of the Act. The northern right whale (*Eubalaena glacialis*) has been recognized as the world's most endangered large whale species. Vessel interactions are identified as one of the major threats facing these whales especially collisions with and disturbances from, vessels. Human interactions with right whales are a very serious problem for right whales in the western North Atlantic. In particular, where human activities coincide with the distribution of right whales off the east coast of the United States, especially where vessel traffic

and similar activities occur, there is the potential that right whales may be disturbed or their behavior otherwise altered, or that they may be injured or killed. In addition to disturbances caused by vessel movement or noise, vessels may affect right whales indirectly. For example, feeding behavior may be interrupted or affected as a result of a vessel breaking up dense surface zooplankton patches in certain feeding areas. The National Marine Fisheries Service (NMFS) issued regulations that prohibit all approaches within 500 yards (460m), whether by vessel, aircraft or other means, and requires whale avoidance measures under specified circumstances. Similarly, NMFS has recognized that approaches to marine mammals by aircraft below certain altitudes has the potential to harass marine mammals and has imposed restrictions on these types of approaches as conditions in various permits. If a right whale is positively identified, lookouts and/or vessel operators are encouraged to report the right whale sighting and location to the U.S. Coast Guard or other appropriate port authority, and request assistance if appropriate. Knowledge of the location of right whales may help prevent collisions and allow vessels to implement appropriate whale avoidance measures.

##### II. Method of Collection

If a right whale is positively identified and observed near a port, in a channel, in an established shipping lane, or in other areas with a high concentration of shipping activity, a vessel operator is encouraged to report the sighting to the U.S. Coast Guard or other appropriate port authority, and request assistance, if appropriate. Instructions from the Coast Guard or other port authority may require a collection of information. For example, the Coast Guard may require a vessel operator to respond on channel 16 of VHF radio.

##### III. Data

*OMB Number:* 0648-0322.

*Form Number:* N/A.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit; individuals, not-for profit institutions; Federal government; and state, local, or tribal governments (vessel operators).

*Estimated Number of Respondents:* 30.

*Estimated Time Per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 8.

*Estimated Total Annual Cost to Public:* \$0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 8, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Intent To Prepare a Supplemental Environmental Impact Statement and Notice of Scoping Meetings for the Proposed Tortugas Ecological Reserve in the Florida Keys National Marine Sanctuary

**AGENCY:** Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of Ocean and Coastal Resource Management (OCRM), Sanctuaries and Reserves Division (SRD).

**ACTION:** Notice of intent; Notice of scoping meetings.

**SUMMARY:** SRD has initiated the process to establish an Ecological Reserve within the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary) west of the Dry Tortugas National Park. The Sanctuary intends to prepare a Supplemental Environmental Impact Statement (SEIS) and hold scoping meetings to receive public input.

**DATES AND ADDRESSES:** Interested parties are invited to submit written comments by December 17, 1998, to assure full consideration during the scoping process. Written comments may be sent to Billy D. Causey, Superintendent,