

December 9, 2019

Via email to PRAComments@doc.gov

Adrienne Thomas
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**RE: Comment on Proposed Information Collection; Comment Request;
Implementation of Vessel Speed Restrictions to Reduce the Threat of
Ship Collisions with North Atlantic Right Whales, 84 Fed. Reg. 54,119
(Oct. 9, 2019)**

Dear Ms. Thomas:

Oceana, the largest international ocean conservation organization solely focused on protecting the world's oceans with approximately 850,000 members and supporters in the United States, appreciates the opportunity to submit comments regarding the proposed information collection. Oceana supports the extension of the currently approved information collection requirements, which require a vessel operator to log and justify any deviation from compliance with the 10-knot speed restriction in Seasonal Management Areas along the East Coast.

A 2007 study found that “an increase in vessel speed by 1 knot increases the odds of a lethal injury 1.5-fold . . . regardless of initial speed. A two-knot increase in speed increases the odds by 2.3 fold . . . and a five-knot increase leads to a 7.9-fold increase in the odds of a

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lethal injury.”¹ The study also found that the probability of a fatal strike increases from 20% at 8.6 knots to 80% at 15 knots to nearly 100% at 20 knots or more.² Speed restrictions are therefore critical to reduce vessel collisions with the endangered North Atlantic right whale.

In response to the questions posed in the Federal Register notice regarding proposed information collection related to vessel speed restrictions, Oceana responds as follows:

- Oceana maintains that the Fisheries Service should not only continue but also expand the collection of logbook data as this information is necessary to monitor current vessel speed regulations and to inform the development of any future regulations to effectively avoid vessel strikes that injure or, worse yet, kill endangered North Atlantic right whales.
- Oceana believes that the minimal increase in burden to expand the scope of the reporting requirement to encompass more respondents is a worthwhile tradeoff for ensuring better monitoring and understanding of vessel speed deviations.
- Oceana suggests that the Fisheries Service require a record entry in the logbook noting who was at the helm and their title or role at the time of the vessel speed deviation. The Fisheries Service should also verify the accuracy of self-reported logbook data using independent sources and explore ways to do so in an automated manner. In addition, the agency should make the logbook data and its verification of this information available to the public via periodic reporting on its website.

¹ Angelia S. M. Vanderlaan & Christopher T. Taggart, *Vessel Collisions with Whales: The Probability of Lethal Injury Based on Vessel Speed*, 23(1) MARINE MAMMAL SCI. 144, 149 (2007).

² *Id.*

- Oceana recommends that electronic reporting should be implemented to automate the reporting process and to supplement, but not replace, logbook data, which provides important information about why vessels violate speed restrictions.

These views are discussed in more detail below.

BACKGROUND

The North Atlantic right whale (*Eubalaena glacialis*) is one of the most endangered large whales on the planet. Their current habitat and migration routes span from the southeastern coast of the United States all the way to southeastern Canada, with occasional sightings in Europe and Iceland.³ In pursuit of a shifting food source due to warming waters, these whales are expanding their range and exposing themselves to new areas and increasing their risk of being struck by a ship or entangled in fishing gear.⁴ The North Atlantic Right Whale Consortium estimates that approximately 400 individuals remain, and the number of deaths per year far exceeds the number of births.⁵ Vessel strikes are one of the leading causes of North Atlantic right whale mortality.⁶ As North Atlantic right whales live and migrate in coastal and offshore waters, including in areas close to major ports along the Atlantic seaboard, they often swim and aggregate in or near shipping lanes, making the whales vulnerable to collisions with ships and other vessels.⁷ Studies have

³ North Atlantic Right Whale Species Directory, NOAA FISHERIES, <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale> (last visited Dec. 9, 2019); Heather Pettis, *North Atlantic Right Whale off the Coast of France*, ANDERSON CABOT CTR. FOR OCEAN LIFE AT THE NEW ENGLAND AQUARIUM (July 5, 2019), <https://www.andersoncabotcenterforoceanlife.org/blog/north-atlantic-right-whale-off-the-coast-of-france/>; *Rare Right Whale Spotted in Iceland*, ICELAND MONITOR (July 25, 2018), <https://icelandmonitor.mbl.is/news/news/2018/07/25/rare-right-whale-spotted-in-iceland/>.

⁴ Sean A. Hayes et al., *North Atlantic Right Whales: Evaluating Their Recovery Challenges in 2018*, NOAA Tech. Memorandum NMFS-NE-247, at 1 (2018), available at <https://www.nefsc.noaa.gov/publications/tm/tm247/>.

⁵ North Atlantic Right Whale Consortium, Home, NORTH ATLANTIC RIGHT WHALE CONSORTIUM, <https://www.narwc.org/> (last visited Dec. 9, 2019).

⁶ North Atlantic Right Whale Species Directory, NOAA FISHERIES, <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale> (last visited Dec. 9, 2019).

⁷ *Id.*

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shown, however, that vessel strike mortality of marine mammals decreases inside active Seasonal Management Areas where vessel speed restrictions are in place.⁸

North Atlantic right whales are protected under both the Endangered Species Act⁹ and the Marine Mammal Protection Act.¹⁰ In an effort to prevent the continued decline of the population, the Fisheries Service invoked its authority under these two statutes to establish regional and temporal speed restrictions along the United States Atlantic seaboard in 2008.¹¹ These 10 knot speed restrictions, which applied to most non-sovereign vessels 65 feet in length or greater, had certain exceptions, such as allowing speeds over 10 knots when necessary for safe maneuvering in severe conditions.¹² An additional exception applied to law enforcement vessels engaged in law enforcement or search and rescue duties.¹³ The speed restriction regulations require a vessel that deviates from the 10 knot speed restriction to make a logbook entry providing “the reasons for the deviation, the speed at which the vessel is operated, the latitude and longitude of the area, and the time and duration of the deviation.”¹⁴ In addition, “[t]he master of the vessel shall attest to the accuracy of the logbook entry by signing and dating it.”¹⁵ The proposed information collection would extend current logbook reporting requirements to more respondents.¹⁶

⁸ Robert S. Schick et al., *Striking the right balance in right whale conservation*, 66 CANADIAN J. FISHERIES & AQUATIC SCI. 1399, 1402 (2009); see also Scott M. Gende et al., *Active Whale Avoidance by Large Ships: Components and Constraints of a Complementary Approach to Reducing Ship Strike Risk*, 6 FRONTIERS IN MARINE SCI. 592 (2019).

⁹ 16 U.S.C. §§ 1531 *et seq.*

¹⁰ 16 U.S.C. §§ 1361 *et seq.*

¹¹ Endangered Fish and Wildlife; Final Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales, 73 Fed. Reg. 60,173 (Oct. 10, 2008). The Fisheries Service’s legal authority for the speed restrictions is cited as the Endangered Species Act (16 U.S.C. §§ 1531-43) and the Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*). *Id.* at 60,187.

¹² *Id.* at 60,183.

¹³ *Id.*

¹⁴ 50 C.F.R. § 224.105(c). Maintaining logbook data is a basic U.S. Coast Guard requirement for vessel operations. See, e.g., 46 C.F.R. § 97.35-3 (logbook requirements for cargo and other vessels); 46 C.F.R. § 35.07-5 (logbook requirements for tank vessels).

¹⁵ *Id.*

¹⁶ Proposed Information Collection; Comment Request; Implementation of Vessel Speed Restrictions To Reduce the Threat of Ship Collisions With North Atlantic Right Whales, 84 Fed. Reg. 54,119 (Oct. 9, 2019).

DISCUSSION

NOAA invites public comments on a number of issues. Oceana's responses to each follow:

(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.

The proposed collection of information is necessary for the administration of the current regulations and for informing the development of any future regulations necessary to avoid vessel strikes that injure or, worse yet, kill endangered North Atlantic right whales. The collected information will show seasonal, annual, and interannual trends for aberrant vessel speeds across the protected range of the North Atlantic right whale and will be useful in informing future regulations. The logbooks themselves will be immensely useful in analyzing the causes of the increases in speed. Understanding the reasons for vessel speed increases could lead to remedies that further reduce risks to North Atlantic right whales. In short, this data collection should continue.

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information.

The expected burden for logging speed deviations is approximately five minutes per response "including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information."¹⁷ The Fisheries Service expects "no additional cost to the affected public."¹⁸ The current extension expects a modest increase in the anticipated number of respondents

¹⁷ Endangered Fish and Wildlife; Final Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales, 73 Fed. Reg. 60,173, 60,184 (Oct. 10, 2008).

¹⁸ *Id.*

and annual burden hours due to the increase in the number of vessels transiting the speed restricted areas over time.¹⁹ Oceana sees no reason to doubt the expected burden level and views the minimal increase in burden to expand the scope of the reporting requirement to more respondents as a worthwhile tradeoff for ensuring better monitoring and understanding of vessel speed deviations.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected.

In addition to the reasons for the deviation, the speed at which the vessel is operated, the latitude and longitude of the area, and the time and duration of the deviation,²⁰ the Fisheries Service should also require a record entry in the logbook noting who was at the helm and their title or role at the time of the vessel speed deviation.

It is vitally important that efforts be made to assess the accuracy and precision of the collected information to ensure that it is representative of the true behavior of the affected vessels.²¹ As such, independent sources should be used to assess and confirm the frequency and duration of the speed restriction violations. This external information would additionally serve to ensure accurate reporting in logbooks. The ability to independently verify self-reporting would minimize the likelihood of individuals mis- or underreporting violations. Independent sources would be particularly relevant in ascertaining whether a vessel slightly exceeded the 10 knots for a few minutes to maneuver or if the vessel

¹⁹ Proposed Information Collection; Comment Request; Implementation of Vessel Speed Restrictions To Reduce the Threat of Ship Collisions With North Atlantic Right Whales, 84 Fed. Reg. 54,119 (Oct. 9, 2019). The majority of survey respondents did not find reporting information to the Mandatory Ship Reporting (MSR) System burdensome. See Gregory K. Silber and Kristy Wallmo, *Assessing a Long-Standing Conservation Program: Mariner's Perspectives on the North Atlantic Right Whale, Eubalaena glacialis, Mandatory Ship Reporting System*, 78(3-4) MARINE FISHERIES REV. 22, 27 (2017).

²⁰ 50 C.F.R. § 224.105(c).

²¹ Gregory K. Silber et al., *The Right Whale Mandatory Ship Reporting System: A Retrospective*, PEERJ at 10 (Mar. 31, 2015) (establishing that the study could not use approximately 40 percent of the self-reported records due to errors in the self-reporting).

dramatically exceeded the speed limit for an extended period of time, which would be a more severe violation.

Furthermore, the Fisheries Service should explore ways to automatically compare its data on the weather and tides with the logbook entries to ensure that the reasons cited for exceeding the speed limits are supported by objective information about external conditions. For example, if a vessel claims to have exceeded the speed restrictions to maneuver in a storm, it would be useful to cross-check whether there was actually a storm in the area on that day. If a vessel claims there was atypical tidal flows requiring it to exceed the speed limit, then it would be helpful to check the moon phase in relation to tidal shifts. By using these methods to verify accurate reporting, the Fisheries Service can ensure the regulations are being followed. In addition, the agency should make the logbook data and its verification of this information available to the public via periodic reporting on its website.

(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.

The Fisheries Service should consider using Electronic Vessel Trip Reports (eVTRs), which are being developed and used in a wide range of maritime industries, including commercial, for-hire, and recreational fishing, as a means of automating much of the reporting process.²² In particular, the agency should explore the utility of this technology specifically for vessels that are affected by this regulation. While the integration of eVTRs with the Automatic Identification System (AIS) could identify instances of exceeded speeds, logbooks should still be used to explain the reasons behind them.

²² In fact, NOAA already allows the use of Electronic Vessel Trip Reporting in certain fisheries, such as the Greater Atlantic Region fishery. *Vessel Trip Reporting in the Greater Atlantic Region*, NOAA FISHERIES <https://www.fisheries.noaa.gov/new-england-mid-atlantic/resources-fishing/vessel-trip-reporting-greater-atlantic-region> (last visited Nov. 18, 2019).

CONCLUSION

Vessel speed restrictions can only be effective if properly monitored and effectively managed. The proposed expansion of logbook data reporting to include more respondents in relation to vessel speed deviations is a step in the right direction. As noted above, studies have shown that vessel strike mortality decreases inside active Seasonal Management Areas where vessel speed restrictions are in place.²³ As the North Atlantic right whale has expanded its range in search of a shifting food source, the Fisheries Service must once again invoke its broad authorities under the Endangered Species Act and the Marine Mammal Protection Act to react quickly to this emergency situation, which places the continued existence of an endangered marine mammal species in jeopardy and in danger of extinction or depletion as a result of man's activities. In addition to expanding logbook data collection on vessel speed deviations, the agency should immediately expand its regulatory regime, including the expansion of Seasonal Management Areas, to protect the North Atlantic right whale from all threats, including vessel strikes.

We appreciate the opportunity to provide input and thank you for your time. We will continue to be engaged in this process moving forward.

Sincerely,



Whitney Webber
Campaign Director, Responsible Fishing

²³ Robert S. Schick et al., *Striking the right balance in right whale conservation*, 66 CANADIAN J. FISHERIES & AQUATIC SCI. 1399, 1402 (2009); see also Scott M. Gende et al., *Active Whale Avoidance by Large Ships: Components and Constraints of a Complementary Approach to Reducing Ship Strike Risk*, 6 FRONTIERS IN MARINE SCI. 592 (2019).

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cc:

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