

**Center for Biological Diversity • Conservation Law Foundation
Defenders of Wildlife • Humane Society of the United States
Humane Society Legislative Fund • Whale and Dolphin Conservation**

October 17, 2019

Adrienne Thomas
PRA Officer, NOAA
151 Patton Avenue, Room 159
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Submitted electronically at PRAComments@doc.gov

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 and Dr. Good:

On behalf of the Center for Biological Diversity, Conservation Law Foundation, Defenders of Wildlife, Humane Society of the United States, Humane Society Legislative Fund, Whale and Dolphin Conservation and our millions of supporters and members, we offer the following comments regarding ongoing information collections regarding the implementation of vessel speed restrictions to reduce the threat of ship collisions with North Atlantic right whales. *See* 84 Fed. Reg. 54,119 (Oct. 9, 2019). **Our organizations, most of whom have participated in this process for more than a decade, firmly support 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.**¹

¹ Specifically, 50 C.F.R. 224.105(c) requires a logbook entry if a deviation from the 10 knot speed limit is necessary for safe maneuverability of a vessel “in an area where oceanographic, hydrographic and/or meteorological conditions severely restrict the maneuverability of the vessel.” The logbook entry must provide the reasons for the deviation, the speed at which the vessel is operated and the area, time and duration of the deviation.

NOAA invites public comments on a number of issues. Our responses are below:

(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 collection of this information is necessary for the agency's functions and has practical utility. According to NOAA's own research, the ship strike speed rule has reduced the risk of collisions to endangered North Atlantic right whales in U.S. waters by up to 90%.² Moreover, an analysis of right whale deaths from ship strikes between 1990 and 2012 found that, in the zones that were later designated as Seasonal Management Areas (SMAs), deaths dropped significantly, from 2 per year in 2000–06 to roughly 0.33 per year in 2007–12.³

NOAA's research also indicates that compliance with the rule is directly related to its enforcement.⁴ While monitoring vessel speeds can be done remotely via AIS, the only mechanism by which a deviation from the speed rule can be justified is if it is logged by the master of vessel at the time of deviation. Therefore, these data are the only means by which a deviation from the speed rule may be determined to have been in compliance with the statutory and regulatory requirements or whether a Notice of Violation and Assessment should issue.

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

Since 2008, NMFS has consistently indicated that the "burden for logbook entries in the event of deviation from speed restrictions is estimated to average 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. There is no additional cost to the affected public." (73 Fed. Reg. 60,173 (Oct. 10, 2008); 78 Fed. Reg. 73,726 (Dec. 9, 2013)). The current request for comments indicates only a modest increase in annual burden hours as a result of an increase in vessel activity within speed zones (84 Fed. Reg. 54,119). Therefore, we do not find any reason to believe that the estimated burden on the Agency is inaccurate.

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

As indicated in the rule, vessel masters must log why a deviation from the speed rule was necessary for the safe operation of the vessel. 50 C.F.R. § 224.105(c). We have previously indicated the utility of this information as it applies to enforcement of the rule. While we have no additional recommendations regarding the quality or clarity of the information required to be collected, we remind NOAA that maintaining an official logbook is a normal and legal requirement of vessel operations (46 C.F.R. § 35.07-5).

² Conn, P. B., and G. K. Silber. 2013. Vessel speed restrictions reduce risk of collision-related mortality for North Atlantic right whales. *Ecosphere* 4(4):43. <http://dx.doi.org/10.1890/ES13-00004.1> and Silber, G, J. Adams, and C. Fonnesebeck. 2014. Compliance with vessel speed restrictions to protect North Atlantic right whales.

³ Van der Hoop, J, A. Vanderlaan, T. Cole et al., 2014. Vessel Strikes to Large Whales Before and After the 2008 Ship Strike Rule. *Conservation Letters*. v8, Issue1. January/February 2015. <https://doi.org/10.1111/conl.12105>.

⁴ Silber GK, Adams JD, Fonnesebeck CJ. 2014. Compliance with vessel speed restrictions to protect North Atlantic right whales. *PeerJ* 2:e399 <https://doi.org/10.7717/peerj.399>.

(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

Although specific technological processes may eventually improve reporting, we observe that the majority of survey respondents did not find reporting information to the Mandatory Ship Reporting (MSR) System burdensome.⁵ As logbook entries regarding deviation from the speed rule should occur less frequently than those required by the MSR system and require substantially less information be provided, we assert that this process is not burdensome on mariners as the regulation is currently implemented.

Additional Comments:

Prior to the 2008 ship speed rule, alarming numbers of deaths resulting from vessel collisions demonstrated the necessity for mandatory seasonal speed limits in busy port areas traversed by right whales. There is no documented evidence that indicates that the current substantive or procedural regulatory requirements are economically burdensome or excessively time-consuming. We also note that published research has proven that speed limits are effective in reducing vessel-related mortality. Indeed, one publication found that that “vessel-strike mortality to large whales has decreased inside active SMAs. Otherwise, vessel-strike mortalities have increased outside of active SMA.”⁶ Since the 2008 rule, as made permanent in 2013, right whales have expanded their seasonal feeding habitat use. They are now regularly sighted in the waters south of the Islands of Martha’s Vineyard and Nantucket and serial Dynamic Management Areas (DMAs), lasting for months at a time, have been declared for these waters.⁷ We ask that the agency maintain the current SMAs—and the required reporting—and consider expansion of these protected areas.

We appreciate this opportunity to comment.

Sincerely,

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⁵ Silber, G. and K. Wallmo. 2017. Assessing a Long-Standing Conservation Program: Mariner’s Perspectives on the North Atlantic Right Whale, *Eubalaena glacialis*, Mandatory Ship Reporting System. Marine Fisheries Review 78(3-4):22-36. DOI: 10.7755/MFR.78.3-4.3

⁶ Schick, R.S., Halpin, P.N. & Read, A.J., *et al.* (2009) Striking the right balance in right whale conservation. *Can. J. Fish. Aquat. Sci.*, 66, 1399- 1403; *see also* Gende S.M., *et al.* 2019. Active Whale Avoidance by Large Ships: Components and Constraints of a Complementary Approach to Reducing Ship Strike Risk. *Front. Mar. Sci.* 6:592. doi: 10.3389/fmars.2019.00592.

⁷ *See*, as an example, this report from May 2019: NOAA: Extended: Vessel Speed Restriction Zone South of Nantucket to Protect Right Whales at: <https://content.govdelivery.com/accounts/USNOAAFISHERIES/bulletins/247c230>. Aggregations of right whales remain south of the Islands as recently as September 2019 *See*: https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales?utm_medium=email&utm_source=govdelivery#dynamic-management-areas

A full accounting of all the DMAs, which clearly shows near continual use of this area by feeding right whales can be found at: <https://www.nefsc.noaa.gov/psb/surveys/>.

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