

UNITED STATES OF AMERICA

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DEPARTMENT OF COMMERCE
NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION

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DRAFT ENVIRONMENTAL IMPACT STATEMENT
PUBLIC HEARING

OPERATIONAL MEASURES OF THE NORTH ATLANTIC
RIGHT WHALE SHIP STRIKE REDUCTION STRATEGY

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THURSDAY,
AUGUST 10, 2006

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The public hearing came to order at 1:00 p.m.
in the 3rd Floor Theater of the Maryland Science
Center, 601 Light Street, Baltimore, MD, Laurent
Cartayrade, moderator, presiding.

PRESENT:

LAURENT CARTAYRADE, Earth Tech
SHANNON BETTRIDGE, Office of Protected Resources
RICHARD BLANKFELD, Nathan Associates
JESSICA GRIBBON, Earth Tech
MICHELLE MCGREGOR, Office of Protected Resources
GREG SILBER, Office of Protected Resources

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P-R-O-C-E-E-D-I-N-G-S

1:22 p.m.

MR. CARTAYRADE: Okay. Now that we have worked out, that's where we left our children, I think we're going to get ready to start. My name is Laurent Cartayrade and I want to welcome you to the public hearing for the Draft EIS for the Operational Measures of the North Atlantic Right Whale Ship Strike Reduction Strategy. I am with Earth Tech. Earth Tech is the consultant that has been preparing the EIS for NOAA's NMFS.

With us today also is the project manager for the EIS, my colleague, Jessica Gribbon, some of you, I think, know her already and she will be telling you a few words in a minute about the Draft EIS and there are representatives of the Office of Protected Resources at NMFS who have been working on the strategy and the operational measures. Greg Silber who will be also telling you in a minute more about the operational measures themselves and Shannon Bettridge who is also working on the strategy.

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1 This public hearing is a reminder.
2 This public hearing is being held as part of the
3 public preview process for the EIS. This is one
4 way, one among several ways, for people in
5 organizations and agencies to provide comments on
6 the EIS. There are other methods to comment. We
7 can provide written comments in the mail by email
8 or by fax. And for those of you, I think,
9 everybody who picked up the fact sheets outside,
10 the contact information to send comments is on
11 every single one of them, at least the 8.5 x 11
12 ones has the contact information.

13 Currently, the deadline for the
14 comments is September 5th. It may be extended, in
15 which case you will be informed about it. Right
16 now, we think we show the deadline still September
17 5th.

18 A couple of words on what is going to
19 happen. We're going to have a short presentation
20 which is going to be -- the goal of which is really
21 to refresh your memory about the EIS and what's in
22 it. I'm sure you have all read it cover to cover.

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1 It's a fascinating document.

2 We will hear from Greg about the
3 operational measures. We will hear from Jessica
4 about the EIS and NEPA and we will hear from
5 someone I forgot to introduce, and I apologize,
6 Richard, Richard Blankfeld from Nathan Associates,
7 who is the lead for the Economic Analysis in the
8 EIS and will give you an overview of how the
9 economic analysis was conducted.

10 After all the presentations, we will
11 open the floor for comments. Some of you are
12 signed up to speak, so what we will do is that we
13 will call people in the order that they signed in
14 and we will ask you to come over up to the mic and
15 make your comment.

16 So this is what's going to happen.
17 Without wasting any more time, I'm going to pass
18 the mic to Greg, who is going to start with
19 presentation and tell you more about the
20 operational measures considered in the EIS. Thank
21 you.

22 I would like to add, and I forgot

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1 this, I apologize, that as of now, we are recording
2 officially the meeting and so what is being said
3 starting now until the official end of the meeting
4 is going to be part of the public record.
5 Something that, you know, we have to make you aware
6 of. Thank you.

7 DR. SILBER: Thank you, Laurent. As
8 Laurent said, my name is Greg Silber. I work in
9 the Office of Protected Resources at the National
10 Marine Fisheries Service. My role is to sort of
11 kick this off. We wanted to make these
12 presentations very brief and we're going to talk
13 fast, so we can get a fair amount of information to
14 you quickly.

15 Just to give a little bit of
16 background, so everybody is on the same page, we're
17 sort of assuming most folks are familiar with this
18 issue, perhaps have read the proposed rule and the
19 Draft Environmental Impact Statement. Nonetheless,
20 we're going to take a few minutes to sort of lay it
21 out for you.

22 I want to thank you for turning out

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1 today. I see a number of familiar faces in the
2 crowd and that is -- the reason for that is because
3 a lot of you folks have been working on this issue
4 along side us for a number of years.

5 Again, as Laurent said, the purpose of
6 this meeting is to receive public comment. We want
7 to sit down as quickly as we can, so that we can
8 hear -- allow you folks to make comments directly
9 to us verbally, and as he said, they will be
10 recorded and they are a part of the public record
11 and they constitute your comments on the DEIS.

12 I think most of you are familiar with
13 the information on this slide, otherwise, you
14 probably wouldn't be here. We're looking at a
15 highly depleted species, that is the North Atlantic
16 Right Whale that occurs along the east coast of the
17 United States and in Canada. There are about 300
18 individuals in the population all told. I think we
19 could probably quibble a little bit about whether
20 there are 300 or 295 or 235, a number I heard
21 yesterday, but the fact of the matter is they are
22 highly depleted and these numbers are too low.

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1 One of the principal threats along
2 with the entanglement in fishing gear is that of
3 ship strikes. Known deaths to this population we
4 lose on an average of one to two individuals a year
5 as a result of ship strikes. We have lost 19 since
6 1986. Three known ship strikes since 2004 and
7 three additional possible ship strikes and a number
8 of these recent ones were pregnant females.

9 Quite frankly, we're between a rock
10 and a hard place, which is the mission of our
11 Agency is to recover this population and at present
12 it is not doing so. This is not only an issue for
13 the east coast of the United States. I have been
14 to a number of international meetings in which ship
15 strikes of whales worldwide is becoming highly more
16 visible.

17 At the International Whaling
18 Commission meeting in St. Kitts in June, the
19 International Whaling Commission has formed a Ship
20 Strike Committee. They are reviewing ship strikes
21 globally and the International Whaling Commission
22 decided to pass on its conclusions to the

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1 International Maritime Organizations.

2 The Fishery Service is currently under
3 litigation to move as quickly as possible to
4 implement rulemaking. We were petitioned some
5 months ago to establish emergency rules. The
6 petition was denied and a lawsuit followed.

7 This slide is merely to point out that
8 ship strikes occur throughout the range of this
9 animal. Actually, the data are a little old, but
10 the point is that ship strikes occur throughout
11 their range. I often get questions about tell us
12 about specific ship strikes in my area off North
13 Carolina, off of Baltimore or wherever.

14 The point is these animals migrate up
15 and down the coast and they interact with vessels
16 throughout their range. We see a number of
17 different types of injuries. We see blunt trauma,
18 propeller scars. We see hemorrhaging. We see
19 broken bones.

20 We set out some years ago to develop
21 an overall comprehensive strategy to address this
22 issue and our goal was to do our homework the best

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1 we could, use all of the best scientific
2 information available and we had a couple of goals,
3 obviously, one was to develop measures that were
4 effective in conserving the population, but at the
5 same time we were well-aware of the potential
6 economic impacts to the shipping industry.

7 We identified and reviewed well over
8 100 different types of measures and we looked at
9 them in terms of the conservation effectiveness,
10 the potential economic impact and the logistics
11 involved and the constraints involved in actually
12 implementing them.

13 So the basis of our overall strategy
14 has five components. One is we are focusing a lot
15 on trying to improve and enhance our overall
16 Education and Outreach Program. We are working on
17 a Conservation Agreement with Canada. These
18 animals are transboundary and we're developing a
19 bilateral agreement, so that our conservation
20 efforts mesh to the extent possible.

21 We are working under the Endangered
22 Species Act consultations under Section VII of the

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1 ESA. This is for the operations of various federal
2 agencies. We did not want to lose sight of the
3 fact of the various kinds of conservation measures
4 we already have in place. This includes, of
5 course, the Mandatory Ship Reporting System we have
6 in place, aircraft surveys, systematic surveys
7 which occur in a number of places and pretty much
8 every good weather day throughout the range of the
9 animal and sighting information is passed on
10 through broadcast notice to mariners, the ship
11 reporting system, NAVTEX, emails and faxes.

12 I mention this because often times
13 people within the industry and others ask me why
14 not just tell us where the animals are and we'll
15 avoid them, but, in fact, we have been doing that
16 for on the order of 12 to 15 years. The sighting
17 information is passed on through every medium that
18 we can think of.

19 The main point of this slide, however,
20 is to talk about, in the meeting today as well as
21 our proposed rulemaking, the operational measures
22 for vessels. And I want to make an important

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1 distinction here. We have, as you know, proposed
2 rule that's now out for review and there are a
3 number of other measures that we're considering or
4 actively pursuing that are not part of the
5 rulemaking.

6 So we will be making that distinction
7 throughout this talk. The EIS, of course, includes
8 an analysis of all of these, what is restricted
9 pretty much to these.

10 Briefly, as an overview, I want to
11 point out that the restrictions that we are looking
12 at are limited to vessels 65 feet and greater.
13 Most of the areas we are talking about are within
14 about 30 miles of the coast, nautical miles of the
15 coast. This varies a little bit towards in New
16 England waters where it extends further to sort of
17 conceptually different approaches.

18 One is that of seasonally managed
19 areas and those are specific times, specific places
20 that are clearly defined by certain boundaries
21 throughout the year and then another approach
22 conceptually that is dynamically managed areas in

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1 places in which the animals that we can't predict
2 on a regular historical basis might occur in
3 aggregations, usually feeding aggregations, and the
4 approach there would be to provide restrictions in
5 that specific area for a specific amount of time.

6 We did not include sovereign vessels,
7 those operated by federal agencies. We do not want
8 to presume that we could affect national security
9 and navigational safety, the health or the vital
10 missions of various agencies as they pursue their
11 mission. However, as I mentioned before, the nexus
12 for that for us to approach that is through the
13 Endangered Species Act.

14 We have and can request that those
15 agencies consult with us. A lot of them, a number
16 of them already are, currently are, have
17 conservation measures in place. The U.S. Coast
18 Guard, for example, posts lookouts. They help us
19 with the Mandatory Ship Reporting System, help us
20 with aircraft surveys, etcetera, etcetera. The
21 U.S. Navy also is engaged, but this, my point is
22 this, is the nexus at which we will review it just

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1 in biological opinions and enhance them if need be.

2 Just as a quick overview, these are
3 the seasonally managed areas that we're talking
4 about. And we are looking at speed restrictions
5 between 10 and 14 knots in these areas and at these
6 times. The proposed rule is asking for comments
7 specifically on 10 knots, but we're asking also for
8 comments on 12 and 14 knots. The DEIS addresses
9 that range and specifically for these measures.

10 In short, there are specific times and
11 places in the northeast and the southeast and along
12 key ports in the Mid-Atlantic of the United States.

13 Our goal was to again make these as effective as
14 possible in protecting the animals, but at the same
15 time, again, we were well-aware of potential
16 economic impacts.

17 So as a result, whereas the range of
18 the animal is this entire area and extends pretty
19 far offshore, what we have attempted to do was look
20 at places where ships and whales aggregate. So as
21 a result, we tried to and have limited these in
22 time and space as much as we possibly can. As an

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1 example by way of contrast, one of the alternatives
2 in the Draft Environmental Impact Statement has
3 much more sweeping further from shore, longer time
4 frame speed restrictions.

5 I wanted to spend a minute or two
6 talking about the speed restrictions, the type of
7 information and the data that we used to make the
8 conclusions that we did. We have on the order of
9 about 300 records of ship strikes to all large
10 whale species. This number is growing. It's
11 larger than this now. If you look at the ship
12 strikes in which the fate of the animal as well as
13 the speed of the ship were known, we have something
14 on the order of 50 to 60 records.

15 If you look at just the gross
16 statistics, the average speed in those cases was 18
17 knots. Nearly 80 percent of them were at 13 knots
18 or greater. Two known ship strikes to right whales
19 were at 22 and 15 knots. In the past, work has
20 been done using computer simulations to attempt to
21 get at this question. And in general, they
22 suggested that whales or an object in the water can

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1 be repelled by a bow wave, but are drawn towards
2 the ship in amidships. And that is also or can be
3 a function of ship speed. That is that those
4 drawing and repelling factors increase with
5 increasing speed.

6 Using those same data, too, a number
7 of different kinds of analyses have been done.
8 Actually, two completely separate and independent
9 studies have looked at the probability using those
10 data of a serious injury or a mortality relative to
11 ship speed. And this graph is from this particular
12 paper presented in December '05 in an international
13 conference. A similar paper was presented and also
14 is now headed for journal publication in the
15 scientific peer reviewed literature.

16 Basically, this graph, in short, says
17 that when you consider speeds of 25 knots or
18 greater, actually closer to 22, 23 knots the
19 probability of a serious injury or death is near
20 100 percent. This is again a known ship strike.
21 If you look at say 14 knots, the probability of
22 death or serious injury is about 75 percent. Even

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1 down around 10 knots, the probability is around 40
2 or 50 percent that a lethal injury or death will
3 occur.

4 I tried to explain to people that
5 these data are either being reanalyzed or coming to
6 us on a daily -- I mean, not on a daily, but on a
7 regular basis as we try to noodle out this problem.

8 I'll give you one example of a paper that appeared
9 in the literature, April '06, and has to do with
10 manatees, not right whales, but it looks at vessel
11 speed and suggests that in Florida waters deaths of
12 manatees dropped from a yearly average of about 2
13 to 2.5 per year in places where speed restrictions
14 were not imposed to an average of about a third of
15 a death per year, a quarter or a third death of a
16 death per year in places where speed restrictions
17 were instituted.

18 Another question I often get is
19 looking at this distribution, is it the same as
20 what ships are actually doing? That is is this
21 biased by -- this distribution, is it different
22 from what ships are generally traveling at? We

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1 looked at that as well and we used data from our
2 Mandatory Ship Reporting System and it suggests
3 that the curves are different, that is it's more
4 likely to see ship strikes at high speeds relative
5 to what all ships are doing.

6 I'm going to move now from talking
7 about the proposed rulemaking to other measures,
8 other actions that we are pursuing. One is the
9 idea of providing recommended routes in two
10 locations. One in Cape Cod Bay, a series of
11 routes, and others off the southeast part of the
12 United States. We are looking into this now and
13 these will be, if we can get these charted,
14 recommended routes and the analysis suggests that
15 would reduce the risk of ship strikes in these
16 areas.

17 This is a graph of the traffic
18 separation scheme that services Boston,
19 Massachusetts. The analysis suggests that here is
20 the existing TSS. If you shift it by 12 degrees
21 north and you narrow it, it would reduce the
22 probability, the risk factor of a ship strike to

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1 right whales by nearly 60 percent and nearly 80
2 percent, over 80 percent for all baleen whales,
3 large endangered whales that occur in those waters.

4 This has been submitted to the
5 International Maritime Organization. It was
6 submitted in April '06. It has cleared one
7 subcommittee. It will be submitted to the full
8 committee in the fall of this year. We will learn
9 by the end of the year the outcome of their
10 deliberations and we can possibly implement it as
11 early as mid '07.

12 Here is an example of the potential
13 economic impact or the impact to the industry. The
14 distance here is about 3 to 4 miles. We're also
15 considering what is called "An Area to be Avoided."

16 This would occur in Great South Channel waters off
17 of New England. This, too, would have to be
18 submitted and approved by the International
19 Maritime Organization. We are shooting for next
20 April, April '07. It would apply to only ships 300
21 gross tons and greater and would be restricted to
22 this time period.

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1 One last point about the process
2 generally. As I indicated, overall ship strike
3 strategy we're pursuing each of these different
4 kinds of approaches. One of which, one major
5 component of the operational measures, we have a
6 proposed rulemaking during this stage right here
7 now, of course, and these other measures as well,
8 we're here today to discuss the Draft Environmental
9 Impact Statement.

10 Obviously, these two things are
11 linked. This analyzes this as well as the other
12 measures that we are looking at. This process is
13 headed toward the final rulemaking, public comment
14 on this and eventually to a final EIS, which leads
15 me to my next responsibility here, which is to
16 introduce Jessica to talk about the NEPA process
17 and a little bit more about the DEIS.

18 MS. GRIBBON: Hi. My name is Jessica
19 and I have been working with NOAA over the last
20 year and a half or so on this EIS. And I'm going
21 to begin this portion of the presentation by
22 providing you with a little bit of background on

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1 the National Environmental Policy Act, which is
2 also referred to as NEPA.

3 All federal agencies must consider the
4 impacts of their actions on both the human and the
5 natural environment. Because NOAA is preparing
6 proposed rulemaking for the Operational Measures of
7 the Ship Strike Reduction Strategy, this is
8 considered a major federal action and this is why
9 we prepared an Environmental Impact Statement.

10 This is the typical EIS process, which
11 I summarized in seven steps. The first step was
12 the Notice of Intent that NOAA published in June of
13 2005. After the Notice of Intent, we had a 30 day
14 scoping period where we received comments on the
15 alternatives listed in the Notice of Intent. After
16 about a year of research and revising the document
17 and the alternatives to take the comments into
18 consideration, NOAA issued a Draft EIS on July 7th.

19 Right now, we are in the fourth stage
20 of the process, which is the public hearing and the
21 comments. After all the comments are received and
22 most likely the comment period will be extended, as

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1 mentioned before, these are again revised in the
2 Draft Environmental Impact Statement and the result
3 is the final EIS. If you would like to receive a
4 copy of the final EIS, make sure you indicated this
5 on the sign-in sheet. But it will also be available
6 online.

7 After the final EIS goes through at
8 least a 30 day public review period, the Agency
9 issues a Record of Decision or a ROD. This
10 identifies the final alternative, which is the
11 measures they are going to go ahead and implement
12 in the final rule.

13 One of the requirements of NEPA is
14 that the Agency clearly states what the purpose and
15 need of the proposed action is. In this case, it
16 is to reduce the number and severity of vessel
17 collisions with North Atlantic Right Whales while
18 contributing to the recovery and sustainability of
19 the species and also minimizing the effects on the
20 shipping industry and Maritime Commerce.

21 Another requirement of NEPA is that
22 the Agency consider and evaluate reasonable

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1 alternatives to meet this purpose and need. In
2 this case, NMFS has considered six alternatives.
3 Each alternative is a set of the operational
4 measures.

5 Alternative 1 is the no action
6 alternative. Even though it's not a viable
7 alternative, NEPA mandates that this serves as a
8 baseline to measure against the other alternatives.

9 In this case, Alternative 1 no new operational
10 measures are proposed. It simply would consist of
11 continuing the ongoing conservation measures that
12 Greg already mentioned.

13 Under Alternative 2, Dynamic
14 Management Areas, this is the temporary speed
15 restrictions, that Greg mentioned, that would be
16 triggered when certain aggregations of whales are
17 spotted. However, as this is the only measure in
18 this alternative, it would require an increased
19 survey effort to be able to spot these aggregations
20 that would actually trigger a DMA.

21 Alternative 3 includes year round
22 speed restrictions in Cape Cod Bay, off Race Point

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1 and in Great South Channel management areas. In
2 the Mid-Atlantic this is a little bit different
3 from the picture that we had and this is what Greg
4 was referring to. Instead of just 30 nautical mile
5 buffer zones outside of all the ports, there would
6 actually be a 25 nautical mile speed restriction
7 from Providence, Rhode Island to Savannah, Georgia.
8 And these would be in place from October 1st
9 through April 30th.

10 In the southeastern U.S., speed
11 restrictions would occur in all waters of the
12 mandatory ship reporting system, whale south
13 reporting area, in addition to the southeastern
14 U.S. Critical Habitat. These restrictions would be
15 in place from December 1st to March 31st to coincide
16 with the right whale calving season.

17 Alternative 4 only includes routing
18 measures. There is no speed restrictions
19 associated with this alternative. It would be the
20 recommended routes, the shift in the Boston traffic
21 separation scheme and the Area To Be Avoided in the
22 Great South Channel.

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1 Alternative 5 combines all of the
2 previous alternatives.

3 And finally, Alternative 6, the
4 Agency's preferred alternative, combines the speed
5 restrictions, which Greg mentioned and are also
6 depicted on the board to my right, and also the
7 recommended routes in Cape Cod Bay and the three
8 ports in the southeastern U.S.

9 The EIS also includes a description of
10 the affected environment. In this EIS, we consider
11 the following resources: The right whale and other
12 marine species, such as other marine mammals and
13 sea turtles; the physical environment, which
14 includes bathymetry and substrate, air quality,
15 water quality, ocean noise levels, vessel
16 operations and we considered multiple vessel types
17 as well as multi-port string vessels and coast-wise
18 shipping.

19 We looked at 26 port areas along the
20 east coast from Eastport, Maine to Cape Canaveral,
21 Florida and we also looked at impacts on cultural
22 resources and environmental justice communities.

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1 After describing the affected
2 environment, the EIS analyzes the impacts on these
3 resources. I'm not going to go into the impacts on
4 these resources, because I would be up here all
5 afternoon, but I am going to go into a couple of
6 key points that we evaluated and some of them are
7 significant impact areas.

8 With regard to the right whale, we
9 can't quantify the impacts, but based on the data
10 that we have, and Greg gave you an idea of this,
11 and what we know on ship speed versus the severity
12 and probability of ship strikes, we fully expect
13 that ship strikes will be reduced from the strategy
14 and that there will be positive impacts on right
15 whale recovery.

16 The other point I would like to make
17 is how we evaluated the economic impacts. And to
18 present this, I give you our economist to talk
19 about the approach he used in analyzing these
20 impacts, Richard Blankfeld from Nathan Associates.

21 MR. BLANKFELD: Thank you, Jessica. I
22 actually have a handout which I would ask my

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1 colleagues to just distribute through the room
2 quickly, if we could. While they are handing it
3 out, I'll start with my presentation.

4 I'm an economist with a firm called
5 Nathan Associates based nearby here in Arlington,
6 Virginia. And we have been serving as a
7 subcontractor to Earth Tech to conduct the economic
8 impact analyses for their environmental reviews
9 that have been done on behalf of NOAA. I first
10 started working on this in October of 2004 when the
11 environmental reviews of the Advanced Notice of
12 Proposed Rulemaking was published and those
13 environmental reviews began.

14 Our task is to identify what is the
15 economic impact of these proposed speed
16 restrictions and routing measures that you have
17 heard described here today. In order to do this,
18 we came up with a methodology that has four main
19 components and I'm going to take a few minutes this
20 afternoon to just run you through these to give you
21 a feel for the work that has been done.

22 Just before commencing on that, I

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1 would like to let you know, so you don't have to
2 take detailed notes on everything I am saying, we
3 have reports that are on the website that is part
4 of the handouts, the fact sheets that were at the
5 front table, the general website for the ship
6 strike strategy and there is a two volume set
7 that's available there on the economic impact, the
8 main volume which provides all the details on the
9 approach, methodology, data sources and the
10 findings that we have had, as well as an appendix
11 volume which presents a number of the sensitivity
12 analyses and further documentation.

13 In order to start with the economic
14 impact analysis, we said well, first off, what
15 ships are affected by this? And we searched around
16 for what we believed, thought would be the best
17 possible data set on the number and kinds of
18 vessels that call at the U.S. East Coast. And it
19 became very clear to us right away that the most
20 comprehensive source for information on that is a
21 data set that's available from the U.S. Coast Guard
22 on every single vessel arrival at U.S. East Coast

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1 Ports.

2 And we were able to get the data under
3 Freedom of Information Act requests from the Coast
4 Guard for 2002 through 2004, and, indeed, it
5 literally has any vessel greater than 150 gross
6 registered ton that called at a U.S. Port is
7 included in that data set. All together, over that
8 three year period, we have information on more than
9 83,000 vessel arrivals at the U.S. East Coast Ports
10 and these are being made by a total of over 7,000
11 different vessels themselves.

12 So as you know, some of the vessels
13 call repeatedly and that's why the number of vessel
14 arrivals are greater than the total number of
15 vessels themselves. We analyzed that data and
16 disaggregated it into 26 U.S. East Coast areas that
17 correspond to the areas that were described
18 earlier. The information was disaggregated into 12
19 vessel types that are commonly used for shipping
20 industry analysis.

21 Also vessel deadweight size ranges, we
22 had 18 different size ranges that we looked at.

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1 And again, we looked at these vessel arrivals by
2 date, in terms of which ones would be within the
3 specific periods when the speed restrictions would
4 be implemented and those arrivals that historically
5 have occurred outside of the restricted seasonal
6 period.

7 Once we identified the number of
8 vessels and the types of vessels that would be
9 affected, we then said well, what is the impact on
10 these vessels? And obviously, with speed
11 restrictions the first thing you say is well, gee,
12 the speed restriction occurs 25 nautical miles
13 outside the port, you can run the math pretty
14 quickly. And if they have to slow from 20 knots to
15 10 knots, you can calculate how much extra time it
16 would take.

17 But as we looked into this more and we
18 talked with the industry and actually reviewed some
19 prior studies that have been done, it's clear that
20 it's more complicated than that. For instance, at
21 many of the ports along the east coast, the vessels
22 already slow down in order to pick up a pilot at a

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1 pilot buoy which is anywhere from 3 to 13 nautical
2 miles offshore.

3 So there is a period where they would
4 be slowing down naturally anyway in order to pick
5 up a pilot and hence the effective distance, what
6 we call the effective distance of the speed
7 restriction is less than the total of 25 nautical
8 miles zone that the speed restriction is being said
9 to be implemented.

10 On the other hand, in talking with the
11 industry there are some places where the speed
12 restrictions would require them to slow down prior
13 to getting to the area where the speed restriction
14 is in effect and then to take time to just get back
15 up to normal sailing speed after they left the area
16 where the speed restriction is.

17 Being here in Baltimore, this is a
18 great example of where this could occur. The speed
19 restrictions are only off the coastline, so they do
20 not include the Chesapeake Bay area and officially
21 the area, anything inside what's called "The COLREG
22 Line," for you Coast Guard and mariner types.

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1 Basically, that's a line that connects the -- if
2 you drew a line from just along the east coast, it
3 would be the direct line connecting all the
4 furthest land points and not their inland bays and
5 harbors.

6 So for that reason, the area within
7 the Chesapeake Bay is excluded from the speed
8 restrictions. While a vessel approaching the
9 Hampton Roads area would have to slow down, because
10 of the speed restrictions that are offshore, but
11 then once they get past that, they will have to
12 take time to get back up to normal sailing speed or
13 speeds that they would travel within the bay and we
14 have included those kinds of factors in the
15 analysis. So the extra slow down and speed up time
16 in addition to the time that they are under the
17 speed restriction itself.

18 Just as another example of the level
19 of analysis that was done, I am not sure if all you
20 guys can see from the back, but this chart up here,
21 and these will be available, you can come look at
22 them after the meeting as well, this shows semi-

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1 circles around each port area. That's in
2 Alternative 6.

3 The Alternative 3 that both Jessica
4 and Greg referred to in their presentations have
5 what I call just a "blanket" covering the entire
6 coastline from the Mid-Atlantic area down to the
7 southeast offshore continuously. Well, when
8 vessels approach these U.S. East Coast Ports, they
9 don't come in, they don't go sailing down and then
10 make a right turn into the port or a left turn as
11 the case may be, but they would approach it down
12 the most efficient diagonal route.

13 Well, when you have a blanket speed
14 restriction that is continuous along the east
15 coast, the actual distance that the vessel would be
16 traveling through the restricted area is greater
17 than this more limited restricted area of a semi-
18 circle. So we have looked into the differences in
19 terms of the number of nautical miles that a speed
20 restriction would actually be affecting vessels on
21 the routes that they travel, not just saying it's,
22 you know, purely as stated in the alternatives

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1 themselves.

2 Moving on, the next part of the
3 economic analysis is to say well, what's the value
4 of this time of delay, you know, that the vessels
5 have to slow down? And for this, we have used the
6 U.S. Army Corps of Engineer data set that is
7 typically used for any economic analysis of a
8 federal action, whether it is a deepening of a port
9 or looking at inland waterway improvement.

10 In this case, they have a document
11 called the Vessel Deep Draft Vessel Operating Costs
12 and we have worked with the people in the Army
13 Corps of Engineers because the data they were able
14 to provide us was only up through 2004 and as all
15 of you sitting in this room know fuel prices and
16 bunker fuel prices I think have increased
17 dramatically since 2004. We have been able to
18 update their operating class to reflect current
19 bunker fuel prices.

20 Also, the cost of the vessel per hour
21 varies by the type of vessel, by the size of vessel
22 and whether it is U.S. or foreign flag. And we

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1 have -- those estimates are included in our
2 analysis. Hence, for each of the alternatives that
3 we analyzed, we have then calculated the economic
4 impact on the shipping industry by these various
5 characteristics, port area, vessel type, vessel
6 size, etcetera.

7 Those impacts are what we call the
8 direct economic impact on the shipping industry.
9 Under some of the alternatives, we also have what
10 we call "secondary impact" on the port and
11 intermodal operations. I think a good example of
12 this could be in the port area of Boston which
13 under Alternative 3 would be confronted with year-
14 round speed restrictions off the New England Coast.

15 Well, you know, instead of having this
16 very limited seasonal restriction, when you go
17 through a year-round restriction and you say these
18 are going to be in place forever and ever going
19 forward, people start to change their behavior.
20 And we think in that case, indeed, some of the
21 traffic that is currently calling in the Port of
22 Boston would be diverted to other ports, such as

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1 outside the U.S. even to Halifax and other Ports in
2 Canada.

3 So we have estimated the loss of jobs
4 and income associated with those jobs in ports such
5 as Boston and other ports where we have identified
6 that kind of impact but through a much lesser
7 significance.

8 Finally, once we have this total value
9 of the economic impact, you want to know what does
10 that number mean. You know, you hear these numbers
11 \$30 million, \$50 million, \$100 million, well, you
12 know, how significant is that? Well, there are two
13 ways we have looked at that in terms of comparing
14 it to other economic values.

15 One is in terms of the value of trade.
16 We traded goods that are coming in and out of the
17 U.S. East Coast Ports and generally when you look
18 at the value of the economic impact relative to the
19 value of the goods themselves, it comes up that the
20 percentage of impact is like 1/100th of 1 percent of
21 the value of traded goods.

22 As an economist, what does that mean

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1 to me? Well, it means that, you know, the jeans
2 that we import and then the TVs that we, you know,
3 import from China mostly nowadays, the economic
4 impact of these operational measures would have an
5 impact on the cost of that TV in terms of 100th of 1
6 percent of it's value.

7 In talking to the shipping industry,
8 they are saying well, you know, this is really
9 affecting us, not just the goods that we carry. If
10 you look at measures of what are the operating
11 costs of the shipping industry and the -- and we
12 have data that comes from the import statistics on
13 the maritime freight component of imported goods,
14 basically, the economic impact in those terms is a
15 little bit larger, but still it's 2/10^{ths} of 1
16 percent of the ocean freight costs.

17 In other words, these operational
18 measures would have a hard -- a minimal impact on
19 the overall freight cost of bringing goods into the
20 U.S. East Coast and out from the East Coast.

21 My comments so far have really been on
22 the shipping industry, because that was the

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1 industry we thought that would be most directly
2 impacted by these measures, but we have also looked
3 at several other maritime activities that could
4 potentially be affected. These include especially
5 for -- well, one is still on the shipping side, our
6 container industry that make multi-port calls on
7 the U.S. East Coast.

8 Again, this came out of the
9 stakeholder meetings that we held in the last year
10 at five port areas along the U.S. East Coast.
11 These meetings were in Jacksonville, Savannah,
12 Charleston, Norfolk and Boston. And people were
13 saying to us, especially from the container
14 industry, we don't just call at one port. Our
15 vessels are taking liner operations and could be
16 operating and calling at two or three U.S. East
17 Coast Ports during the period where -- of speed
18 restrictions.

19 They are saying the cumulative impact
20 of these multi-port calls is greater than what you
21 are measuring in terms of just each individual one.

22 We looked into that and, indeed, we have included

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1 in the analysis an additional factor for this
2 multi-port cumulative effect.

3 Since you guys have a handout, we're
4 okay with that, the presentation here. The next
5 area was passenger ferries. Generally, the
6 passenger ferry business will not be affected by
7 these proposed rules and that's because the
8 majority, vast majority, and we're talking over 95
9 or 98 percent of the passenger ferry operations
10 along the East Coast, work inside what's called the
11 COLREG Lines.

12 So they are inside the harbor areas
13 and inside the U.S. Coastline which is limited to
14 outside of which the regulations will be in effect.

15 There are a few operations, especially in New
16 England, Block Island Ferry, for those of you who
17 are familiar with that type of thing, and some of
18 the ferry operations to Cape Cod and other islands
19 and Marthas Vineyard, etcetera, that are affected.

20 And we have included the impact on those ocean
21 going ferries, if you will, in the analysis.

22 Quite interestingly, we had comments

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1 from the whale watching industry saying how they
2 would be affected negatively by this and there is
3 some truth to that. You know, the market for
4 people interested in going out on these whale
5 watching vessels, they want to get out to where the
6 whales are quickly. They don't want to have to
7 take an extra hour of sailing time to reach those
8 areas and they are quite concerned that, indeed,
9 instead of it being a four hour round trip and
10 having your whale watching experience that it
11 becomes a six or seven hour experience where the
12 amount of whale watching time is still the same,
13 it's just the time to get out there and back is
14 longer. That could affect the demand for their
15 business.

16 The charter fishing operators have a
17 similar impact. Some of the charter fishing
18 vessels actually do run at high speeds out to the
19 fishing banks and they would have to be -- they
20 would be affected, those that are 65 feet or over
21 would be affected by these regulations. And
22 indeed, there could be an impact on the demand for

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1 their business.

2 The other category that's up here now
3 is commercial fishing and there generally the
4 commercial fishing fleet operates at speeds below
5 12 knots. There are some that with the speed
6 restrictions of 10 knots that will be affected in
7 terms of the time it takes again to go out on their
8 fishing trips. But again, in terms of the overall
9 magnitude of the impact, it's relatively a small
10 impact compared to those I have mentioned before in
11 the shipping industry.

12 So I think that gives an overview of
13 the approach that we have taken to the economic
14 analysis. Indeed, I would refer you to the details
15 that are in the reports that are available on the
16 website. Actually, there are also an extra copy
17 for reference if any of you want to after this
18 comment period is over this afternoon, and we still
19 have some time, to browse through it on the table
20 over on my right. Thank you.

21 MR. CARTAYRADE: Thank you.

22 MR. BLANKFELD: My next task is to

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1 reintroduce Laurent Cartayrade, who is going to say
2 some conclusionary remarks here.

3 MR. CARTAYRADE: Thank you. We are
4 coming to the end of the presentation. I think
5 there is one little -- I know how to operate this.
6 There you go. This is really a transition to the
7 next phase of our meeting, which is the comment
8 phase where we're going to invite the people who
9 asked to speak to come over and make a comment on
10 the EIS. But before we do that, just a couple of
11 reminders.

12 As I said earlier, this is only one
13 opportunity to comment. There are others. You can
14 comment in writing, comment by email or by fax and
15 the contact information for this is on the fax
16 sheets we gave, we had available at the door. And
17 the other reminder is that, as I think was
18 mentioned earlier, we already have two processes
19 here.

20 We have the rulemaking process and the
21 EIS process. Our concern today is the EIS. And we
22 have a deadline for the comments on the EIS, which

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1 is September 5th. Comments on the rule, on the
2 other hand, about the rulemaking process have a
3 different deadline, at least as of today, and that
4 is August 25. So you may want to keep that in
5 mind, depending on what you want to comment on
6 either today as in the EIS or in the future on
7 either of those processes.

8 I think this brings our presentation
9 to a conclusion. I would like to -- there you go.
10 I would like to explain to you briefly how we're
11 going to operate for the comments. I believe all
12 of you signed in when coming in. If someone here
13 hasn't signed in, please, when you leave put your
14 name on the list, so we know who has been here.

15 As part of the sign-in, several of you
16 have asked to make an oral statement and I have the
17 names here and we are going to call each person in
18 the order that they signed in, since we have two
19 books, we're going to alternate from one book to
20 the other, so the order will be about right.

21 I would like to ask you if possible to
22 keep your comments to five minutes. From past

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1 experience, there doesn't seem to be a problem,
2 but, you know, in order to make sure that everybody
3 has the time to make a statement, please, try to
4 stay under five minutes. We will first call, of
5 course, the people who signed in. If you have not
6 signed in to speak and in the meantime you have
7 changed your mind, of course, you know, once we go
8 through the people who signed in, you are welcome
9 to come up and make a statement on your own.

10 I am going to -- yes, sorry?

11 MS. BICK: Is there an opportunity to
12 ask some questions for points of clarification to
13 the Board now?

14 MR. CARTAYRADE: What is going to
15 happen, we're going to go through the comment
16 period and those are comments, that is, you know,
17 there is no response immediately to those comments.

18 The response to the comments will be the final
19 EIS. The comments will be addressed as part of the
20 final EIS, which will be issued at other future
21 date.

22 However, once we close the comments

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1 period, we are going to have, I think, because I
2 only have 12 people signed in, so we're not going
3 to take the entire time, so we're going to have a
4 bit of an open house session, more informal setting
5 and that will be, I think, a good opportunity and a
6 good time to ask questions in kind of a more
7 informal setting, questions from NMFS
8 representatives.

9 So to that extent, we will have the
10 opportunity to talk with them, if you want to ask
11 specific questions. Okay. I'm in the spotlight
12 now. I'm going to ask for your patience for a
13 couple of minutes while we kind of move things
14 around to set up for all the comments and then we
15 will start calling the speakers. I think we asked
16 people to be speaking. Yes, I did. It's a
17 positive slot.

18 The microphone is adjustable if you--
19 there is a little wheel here that you can move up
20 and down so that it fits every person's height. If
21 you are having a problem with it, I will help you.

22 I will be calling the names as, you know, I read

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1 them off the sign-in sheet. I apologize if I get
2 your name wrong, you know, because I couldn't spell
3 it or because I can't pronounce it right.
4 Hopefully, you know, every person will recognize
5 their name. So again, I apologize in advance.

6 We're ready? So our first speaker
7 today is Ms. Sue Barry, I believe. Sue, isn't it?
8 That would be it, sorry.

9 MS. BARCO: Barco.

10 MR. CARTAYRADE: Barco, but not quite
11 that. Sorry.

12 MS. BARCO: That's all right. It's
13 probably my handwriting.

14 MR. CARTAYRADE: I would also ask you,
15 by the way, to state your name and you know if any,
16 your affiliation at the beginning of your comments,
17 so our Court Reporter can get it down.

18 MS. BARCO: Certainly. Thanks.

19 MR. CARTAYRADE: Thank you.

20 MS. BARCO: My name is Susan Barco. I
21 am the Stranding Response Coordinator for the
22 Virginia Aquarium Foundation in Virginia Beach,

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1 Virginia. I am here representing the Virginia
2 Aquarium Foundation. In the past five years my
3 organization has responded to 18 large whale
4 strandings, including five right whales, eight
5 humpback whales, as well as fin, sei and minke
6 whales.

7 Of the 12 whales where we could
8 determine the circumstances of death, 11, including
9 four of the five right whales, appeared to have
10 died from injuries sustained because of human
11 activities. Of these, eight showed signs
12 consistent with death by ship strike, including
13 three of the right whales. Two of those were
14 pregnant females.

15 Most of the whales that showed signs
16 of ship strike were apparently healthy and alive
17 when struck by ships. Several had been actively
18 feeding at the time of death. Because of the
19 condition of these whales, it's very likely that
20 they were struck by ships in the vicinity of the
21 Chesapeake Bay.

22 While not considered a critical

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1 habitat for right whales, the waters off of
2 Chesapeake Bay are transited by individuals,
3 especially pregnant females, in the fall and early
4 winter and females with newborn calves in the late
5 winter and spring. These whales are on their way
6 to and from feeding and calving areas and while the
7 whales may not linger in our area, it is clearly a
8 dangerous place for them.

9 So I'm here on behalf of the Virginia
10 Aquarium Foundation to support both the NOAA Ship
11 Strike Reduction Plan mentioned in the DEIS and
12 future research on additional ways to mitigate ship
13 strikes of right whales and other whale species in
14 the U.S., especially near the entrance of
15 Chesapeake Bay.

16 We believe that speed reduction is
17 currently the best mitigation strategy available to
18 NOAA, but encourage both NOAA and the commercial
19 and military shipping folks that are working on it
20 to continue to search for and, when possible, test
21 other ship strike reduction strategies.

22 My colleagues and I in the U.S. Marine

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1 Mammal Stranding Network hope to be responding to
2 fewer whales killed by ships in the future. Thank
3 you.

4 MR. CARTAYRADE: Thank you very much.
5 Our next speaker is Mr. Andrew Hawley.

6 MR. HAWLEY: My name is Andrew Hawley.
7 I am with Defenders of Wildlife and if actually I
8 could just read briefly from the summary of impacts
9 that we were just handed.

10 Under Alternative 1, there will be a
11 significant, direct, long-term negative effect on
12 the right whale population and recovery status.
13 Ship strikes would continue and possibly even
14 increase with the predicted rise in shipping in the
15 future.

16 This is the Alternative 1 for the DEIS
17 that you have put out. Yet, this is actually the
18 measures that the Government is currently
19 implementing because they have continued to delay
20 time and time again putting in the protective
21 measures that you have admitted need to be put in
22 place to protect the species.

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1 These measures have been known to the
2 Agency and all interested stakeholders for a number
3 of years, at least since 2000/2001. From that
4 point it took several years to get to an Advanced
5 Notice of Proposed Rulemaking and then it took
6 another more than two years to get to a proposed
7 rule.

8 Under the most optimistic
9 circumstances, we are still at least a year away
10 from measures being put in place and as we move now
11 towards yet another calving season, this species is
12 going to be left unprotected as they have for the
13 past five or six years and since before that. It's
14 imperative that the Agency no longer delay in
15 putting this rule in place, including not extending
16 the comment period on this DEIS and these proposed
17 measures.

18 Every one of the interested
19 stakeholders here have known about these rules and
20 they have not changed significantly since they were
21 first proposed in their current form generally
22 since 2000. To delay this process any longer is

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1 just placing the whales more and more at risk.

2 Thank you.

3 MR. CARTAYRADE: Thank you. Our third
4 speaker is Mr. Nathaniel Brown.

5 MR. BROWN: Good afternoon. My name
6 is Nathaniel Brown. I am the Principal Planner in
7 the Office of Harbor Development at the Maryland
8 Port Administration. Today I speak on behalf of
9 Mr. Frank L. Hammons, who is the Deputy Director
10 for Harbor Development, and for the Maryland Port
11 Administration.

12 This Draft Environmental Impact
13 Statement is over 650 pages long. The Notice of
14 Availability was published on July 14th, only three
15 weeks ago, and relies on thousands of pages that
16 reference the EIS, which relies upon several
17 unpublished draft documents not made available with
18 the EIS such as the Vanderlaan and Taggart Study,
19 as referenced in the Federal Register. The
20 supporting documentation has not yet been made
21 available to the MPA. We have, therefore, not yet
22 had access to this study.

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1 The Maryland Port Administration
2 requests to be granted an extension of time for at
3 least 60 days after all unpublished draft documents
4 have been made available and the Notice of
5 Availability has been published in the Federal
6 Register in order for the MPA to perform a proper
7 analysis of this proposed rule and to reply to this
8 issue. Thank you.

9 MR. CARTAYRADE: Thank you. Our next
10 speaker is Mr. David White.

11 MR. WHITE: Thank you. My name is
12 David White and I am with the Virginia Maritime
13 Association. The Virginia Maritime Association is
14 a trade association representing the parties
15 involved directly and indirectly in the flow of
16 international commerce through the Port of Hampton
17 Roads. We're formally known as the Hampton Roads
18 Maritime Association.

19 First, I would like to say that we do
20 support efforts to restore the right whale
21 population. We have been one of the parties
22 engaged in working with NOAA and the National

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1 Marine Fisheries Service to provide information,
2 and we appreciate all of the efforts of those that
3 have been involved to date to that goal.

4 We are concerned primarily about the
5 emphasis on ship speed restrictions and we do
6 oppose blanket speed restrictions. We do remain
7 very skeptical that any conclusions can be drawn
8 that reducing ship speeds will have any significant
9 impact on the right whale population, especially
10 with the exemptions granted to the Government, to
11 all Government vessels.

12 Blanket speed restrictions, as
13 proposed, have significant negative economic
14 impacts on the orders of tens of millions of
15 dollars annually, if not hundreds of millions of
16 dollars annually. From the DEIS, I would like to
17 say two items that reflect low probabilities of
18 ships encounters in the Mid-Atlantic with right
19 whales.

20 The Dynamic Management Areas would
21 only need -- and this is directly from the DEIS.
22 The Dynamic Management Areas would only need to be

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1 implemented once per year in each port in the Mid-
2 Atlantic. And also from the DEIS, there is less
3 than one sighting each year in the Mid-Atlantic
4 ports areas.

5 The Virginia Maritime Association is
6 concerned about a blanket approach being taken for
7 the entire east coast. The only known result from
8 speed restrictions will be a negative economic
9 impact.

10 We encourage taking great caution when
11 tampering with the nation's marine transportation
12 system and supply chain and immediately, the first
13 action, should be an extension granted to the
14 comment period for the DEIS as well as the Notice
15 of Proposed Rulemaking. Thank you.

16 MR. CARTAYRADE: Thank you. Our next
17 speaker is Ms. Serda Ozbenian.

18 MS. OZBENIAN: I'm Serda Ozbenian with
19 the Animal Welfare Institute. The Animal Welfare
20 Institute welcomes the National Marine Fisheries
21 Service's proposed rule to implement speed
22 restrictions on certain vessels in an attempt to

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1 reduce the threat of ship collisions with North
2 Atlantic Right Whales. Excuse me.

3 We also appreciate the measures that
4 have been presented in the proposed rule, which are
5 more restrictive than those included in the
6 Advanced Notice of Proposed Rulemaking of June
7 2004. The proposed ruling is long overdue. This
8 year alone has seen at least two North Atlantic
9 Right Whales struck and killed by ships. The
10 population of these whales is in a critical
11 situation and the loss of one whale by ship strike
12 is an avoidable tragedy.

13 These whales already face synergistic
14 threats from other anthropogenic sources, including
15 bycatch, chemical pollutants, climate change and
16 the reduction in the numbers of prey species, as
17 well as ingestion of foreign objects and ocean
18 noise. In fact, ocean noise is a potential factor
19 contributing to collision rates according to the
20 International Whaling Commission's Ship Strikes
21 Working Group's first report to the Conservation
22 Committee dated May 2006.

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1 The report states that high levels of
2 ambient noise may make it difficult for cetaceans
3 to detect approaching vessels and to judge their
4 relative location and movement. Cetacean responses
5 to approaching vessels may also be affected by
6 habituation to vessel noise. In addition, exposure
7 to very loud sounds may cause damage to the
8 auditory system and reduce the ability to detect
9 oncoming vessels.

10 We're concerned that the rule is not
11 inclusive to all vessels over 65 feet, but exempts
12 vessels of federal agencies. The rule states that
13 operation of these vessels and those of other
14 federal agencies will be subject to guidance
15 provided through consultations under the ESA.

16 It had been estimated that the single
17 biggest known source of whale strikes is by U.S.
18 Government vessels with the Coast Guard and Navy
19 accounting for nearly one quarter of all the
20 reported ship strikes on whales. To merely address
21 this significant threat through consultation and
22 guidance is totally inadequate.

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1 We are also concerned that last month
2 the House passed its Appropriations Bill which
3 would slash NOAA's budget by \$500 million. At a
4 time when the oceans and its inhabitants are in
5 desperate need of attention, as recommended by both
6 the U.S. Commission on Ocean Policy and the Pew
7 Oceans Commission, this is not the time to cut
8 funding for the only Agency with the authority and
9 means to address these problems. Thank you.

10 MR. CARTAYRADE: Thank you. Our next
11 speaker is Mr. Earl Bradley.

12 MR. BRADLEY: Hello. My name is Earl
13 Bradley. I am here today on behalf of the Maryland
14 Chapter Sierra Club which has over 15,000 members
15 statewide. Ensuring the continuing viability of
16 endangered species, including the north right
17 whale, is one of our top priorities. Thus, we
18 strongly support the 10 knot limit to reduce the
19 danger on ship strikes.

20 We also encourage the extension of the
21 proposed limits to U.S. Government vessels and
22 vessels under U.S. contract, except when those

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1 vessels are already under mitigation, measures on
2 Endangered Species Act or operating in
3 circumstances involving human safety missions,
4 natural disaster and times of warfare.

5 We urge you to -- with respect to the
6 DEIS, we expect you'll adopt Alternative 5, which
7 will provide the greatest possible protection to
8 right whales. We thank you for your efforts today
9 and for the consideration of our views. And I have
10 a written copy of my comments for your use.

11 MR. CARTAYRADE: Thank you. I would
12 like to take advantage of this to indicate
13 something I forgot. We have a box in there for
14 everybody, you know, who may have their comments in
15 written form.

16 I mean, they can either give them
17 directly to one of our representatives here or put
18 them in the box as well if you have, you know,
19 written comments. We also have comment forms that
20 you can write comments today on the spot or take
21 them home with you and mail them later. Just a
22 reminder.

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1 Our next speaker is Ms. Sierra Weaver.

2 MS. WEAVER: Hello. My name is Sierra
3 Weaver. I am a Staff Attorney for the Ocean
4 Conservancy here in Washington, D.C. and I thank
5 you very much for allowing me to speak today on
6 this important issue of right whale ship strikes.
7 I am here representing over 180,000 members of the
8 Ocean Conservancy, including over 73,000 in east
9 coast states bordering right whale habitat.

10 As you know, the Ocean Conservancy has
11 been active on right whale issues for a very long
12 time, including on this rulemaking throughout the
13 process dating back to 2004. Our members have also
14 been personally active. I believe you currently
15 have about 5,000 comments that have come in by
16 email on the proposed rule.

17 In addition to the thousands of
18 comments you have received over the years and what
19 I am delivering today is 1,363 signed member
20 petitions urging Dr. Hogarth and the Agency to take
21 action now on both ship strikes and right whale
22 entanglement in fishing gear.

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1 So as several folks have said already,
2 we have known since about 2001 that ship strikes
3 were a problem. That dates back to Bruce Russell's
4 white paper on the issue and, of course, the
5 science has improved since that time and the case
6 for speed restrictions is stronger now than ever
7 before.

8 Five years have passed since that
9 first White Paper and, yet, the animals keep dying.

10 A Science article from last summer entitled "Right
11 Whales in Crisis" made clear that the deaths since
12 2004 were both unprecedented and unsustainable.
13 Indeed, even that article called for emergency
14 regulations on speed to reduce ship strikes.

15 It's clear that we can wait no longer
16 to implement these measures and we thank you for
17 putting out this proposed rule. As the Agency has
18 said so many times and as we have echoed, the loss
19 of even one brings the species closer to
20 extinction.

21 And, of course, one of the silver
22 linings we see in all of this is in that economic

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1 presentation that we heard earlier. We are happy
2 to see that the Agency has done its homework on
3 this issue and that economics is not a reason to
4 slow down this rule.

5 We have heard, you know, 100th of 1
6 percent of the value of traded goods, two 10^{ths} of 1
7 percent of ocean freight costs, and my reading of
8 the DEIS is even though as protective options will
9 cost less than one half of 1 percent of annual
10 shipping revenues. So this is economically a drop
11 in the bucket compared to potential huge benefits
12 for the species. So what we want to do is the
13 right thing and make sure these protections go in
14 place now.

15 In doing the right thing,
16 comprehensive management measures are key. We
17 think they need to be comprehensive in their
18 applicability, the range in which they apply and
19 the mechanisms for reducing risk.

20 On applicability, all vessels over 65
21 feet in length, sorry, non-sovereign vessels, we
22 believe that the sovereign vessels can go through

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1 the Section 7 consultation process and that is an
2 appropriate means for doing it, but those
3 consultations need to happen.

4 On the range, no region can be left
5 out because they are all critical to the species.
6 As we have already heard, we have got the feeding
7 grounds up in the northeast, we have got the
8 calving grounds down in the southeast and here in
9 the Mid-Atlantic we have got the migratory corridor
10 for pregnant females. This is one of the most
11 critical segments of the population and they need
12 to be protected as they make their way up and down
13 the coast.

14 Finally, on comprehensiveness, we need
15 to talk about mechanisms for reducing risk and the
16 DEIS Alternatives 5 and 6 are the only alternatives
17 that meet this criteria. From our perspective,
18 Alternative 6 is the bare minimum of what needs to
19 happen to protect right whales. Alternative 5
20 would provide the highest level of protection as
21 these protections would cover larger areas for
22 longer periods of time.

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1 We think we probably need to end up
2 somewhere in between. In particular, we urge the
3 Agency to use the best available science to ensure
4 that the speed limits are applicable in the times
5 and places the whales need them most.

6 For example, we see a very big gap
7 between the year-round restrictions for the
8 northeast in Alternative 5 and the two to four
9 month seasonal restrictions in Alternative 6. We
10 would like to see some balancing between those to
11 add some more protection without significantly
12 increasing the economic cost.

13 The same goes for the difference
14 between the 30 mile radius around the ports in the
15 Mid-Atlantic and the blanket 25 mile an hour or 25
16 mile speed limit zone. We just think there is a
17 lot of room to maneuver for adding protection while
18 keeping economic costs reasonable.

19 Finally, 10 knots is the speed limit
20 we need to stick with. As you said in your
21 presentation, that still includes a 45 percent risk
22 of death or serious injury if a ship strike occurs.

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1 Raising that risk up to 60 or 75 percent with 12
2 or 14 knots is just not appropriate or acceptable
3 for a species this imperiled.

4 Before I end, I would just like to
5 make two final critical points. First,
6 enforcement. We have already heard today about
7 appropriations. Funding for implementing this
8 strategy is low. We have raised enforcement again
9 and again throughout this process and want to make
10 sure that once these measures go into place, they
11 are actually going to make a difference on the
12 water. So we believe that that needs to be dealt
13 with as we move into the final rule stage.

14 And second, most critically, timing is
15 everything on this. We can't wait any longer. The
16 Ocean Conservancy again urges you to act
17 immediately. We have made this call before with
18 our petition for emergency rulemaking. The Marine
19 Mammal Commission has made this request. The right
20 whale scientific community has made this request
21 and, again, we just can't wait any longer.

22 We ask you to, please, not extend the

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1 comment period. We ask you to, please, consider
2 waiving the 30 day cooling off period after the
3 final EIS is published, and we would also like the
4 Agency to consider emergency speed restrictions
5 beginning in November of this year for the
6 southeast critical habitat area if these measures
7 aren't going to be in place.

8 As we keep hearing, it's a long
9 process. We know it's going to take awhile to get
10 the final rules completed. We want to make sure
11 that these mothers and calves have protections in
12 place for this winter calving season. Thank you.
13 We will also be submitting written comments.

14 MR. CARTAYRADE: Thank you. Our next
15 speaker is Ms. Alyce Ortiza.

16 MS. ORTIZA: Did you say Ortiza?

17 MR. CARTAYRADE: Probably. I do
18 apologize.

19 MS. ORTIZA: Okay. My name is Alyce
20 Ortiza and I am a resident of Maryland and I am
21 grateful to have this opportunity. I am also
22 grateful to the Ocean Conservancy for notifying me

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1 of this special hearing.

2 And I also want to reiterate my
3 support for Alternative 5, for the highest level of
4 protection, for year-round protection, for the 10
5 knots speed limit with no exemptions for any vessel
6 that poses a threat to these whales and to other
7 marine life, and particularly an emphasis on noise
8 reduction by Naval vessels.

9 And I am also disappointed that the
10 entire Chesapeake Bay region is not included, it
11 certainly should be, and testimony has been
12 provided I think in a compelling manner to that
13 extent. I also oppose any extension on the comment
14 period and I also oppose the cooling off period.

15 And it appears that the shipping
16 industry has had ample time to offer effective
17 alternatives and innovations and they have failed
18 to do so, and the continued death toll is a sad
19 evidence of their failure. So I don't think they
20 are in a position to be, essentially, trying to
21 oppose these protections.

22 And I would also extend that

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1 opportunity of having had enough time to the
2 Maryland Port Authority who has certainly had at
3 least three years under the Ehrlich Administration
4 to become informed about the issues and to have
5 alternatives if they oppose this, and if they have
6 no alternatives then to accept this.

7 And I also support the increase in
8 funding for enforcement and any emergency efforts
9 to implement these protections. And thank you
10 again for inviting me.

11 MR. CARTAYRADE: Thank you. Our next
12 speaker is Ms. Melissa Ehreneich.

13 MS. EHRENEICH: Close.

14 MR. CARTAYRADE: I'm having a bad day,
15 I'm afraid, today. I'll keep apologizing until I
16 get it right.

17 MS. EHRENEICH: Oh, yes. Well, it's
18 kind of funny because my maiden name is Smith.

19 MR. CARTAYRADE: That would be, you
20 know, quite easy.

21 MS. EHRENEICH: Yes, it would be
22 easier. Hi. Thank you for the opportunity to

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1 speak today. This is my first time ever speaking
2 at a public hearing, so I appreciate the
3 opportunity. My name is Melissa Ann Ehreneich. I
4 am originally from Maryland, born and bred here. I
5 am speaking today as a private citizen. I thank
6 you again for the opportunity to do so.

7 I grew up in Maryland, in Takoma Park,
8 Maryland and to be quite honest with you, for
9 several decades I never really thought much about
10 marine wildlife. I thought about crabs, thought
11 about oysters, but I didn't really think too much
12 about marine wildlife until November of 2002. I
13 moved up to Cape Cod to be with my husband and give
14 birth to my little boy.

15 The moment I hit Cape Cod I learned
16 all sorts of things about marine wildlife because
17 they were washing up on shores and getting tangled
18 in all sorts of ropes and fishing gear and getting
19 struck by ships. I was there on Cape Cod when they
20 had the Churchill Watch and I think the saddest
21 thing about all of this is that ship strikes can be
22 prevented.

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1 It's harder to prevent ghost nets and
2 shipping lines or fishing lines from entangling
3 whales and we don't really know why whales beach on
4 beaches, but we do know why ship strikes happen.
5 And I think one of the reasons they happen is
6 because we're going too fast and when we go too
7 fast, we can't slow down. We know this on land.

8 That's why we have stop signs and
9 speed bumps to slow people down so that they don't
10 go too fast, particularly in areas where a lot of
11 people live or where populations of concern, like
12 children, or people who are deaf or blind or the
13 elderly. It makes good sense on land and it makes
14 great sense in the water.

15 And today I just wanted to say that I
16 applaud the National Marine Fisheries Service for
17 the proposed rule because I think it's a great step
18 in the right direction. I understand from today's
19 discussion and the economic analysis that was
20 presented earlier that this is almost kind of a no-
21 brainer.

22 We don't have to do much to make a big

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1 difference. And as a mother of a small child who
2 is 3 years old, there is no real term, there is no
3 real language for me that makes any sense when you
4 say safe enough. There is only safe. This
5 proposed rule is safe enough, but it is not safe.

6 I think the 10 knot rule will result
7 in anywhere from 40 to 45 percent mortality or
8 serious injury to right whales and I just don't
9 really think that is acceptable. I do think it's a
10 great step in the right direction and that is where
11 we should be heading.

12 I would also like to echo several of
13 the comments earlier that this thing has been a
14 long time in coming and before there is another
15 deathwatch or a death that we could have prevented,
16 I would really hope that the Agency would step up
17 to the plate and make sure that this happens
18 efficiently and quickly and in an emergent way if
19 possible or if needed.

20 Thank you very much for the
21 opportunity to speak, and it's really exciting to
22 be a private citizen and to have a forum to discuss

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1 my views. Thank you.

2 MR. CARTAYRADE: Thank you. Our next
3 speaker is Mr. David Giles.

4 MR. GILES: Hi. My name is David
5 Giles. I run a firm of Naval architects and marine
6 consultants called Thornycroft Giles and
7 Associates. I am based in the U.K. but also have
8 an office in the U.S. and I was brought up from the
9 age of 4 to 10 sailing on the Rhode River, on the
10 Chesapeake Bay, so I have a lot of local interest.

11 First, I would like to point out that
12 we do not know what the cost of enforcement of
13 these regulations is going to be or the
14 infrastructure or policing, and I think that to
15 provide just an idea of the industry impact is
16 rather misleading. We should talk about the total
17 cost to the taxpayer and also we would like to know
18 if it is more likely that more than two right
19 whales per year, as mentioned on page 36308 of the
20 review, are likely to be saved from mortality.

21 Second, I would like to make the point
22 that the World Wildlife Federation and the

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1 Intergovernmental Panel on Climate Change of the
2 United Nations have both recommended that in order
3 to cut down on high altitude emissions from
4 aircraft, that the first type of air service that
5 should be cut is air freight.

6 And they have suggested, in fact the
7 World Wildlife Fund as it was in 1994 suggested,
8 that faster shipping using low emission fuels would
9 be a very good way of cutting the enormous
10 pollution created by air freighters which are the
11 oldest planes in the air usually, and I think that
12 should be borne in mind.

13 In fact, there are two very
14 responsible bodies who have recommended that much
15 more high priority freight should go by sea than
16 should go by air with the new technologies that are
17 available to shipping, which have not been
18 considered in the current report.

19 I would also like to ask Dr. Silber
20 about a hydrodynamic study that he was going to
21 undertake that he told us about on the meeting in
22 June 2004. I mentioned the fact that he recognizes

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1 the limitations of the studies so far and advised
2 that it is his intention to pursue a more
3 comprehensive hydrodynamic study that will examine
4 the many ship types and configurations, propulsion,
5 propeller types and other configurations and their
6 effect on water flow.

7 The suction of a 200,000 ton gross-
8 registered tonnage tanker moving at 10 knots is
9 vastly greater than that of a small sailing boat, a
10 70 foot sailing boat moving at 20 knots. And I
11 think that if you don't differentiate between the
12 hydrodynamic properties of vessels, you are making
13 a serious -- you are putting a serious obstruction
14 in the way of things like Volvo Race and the
15 Bermuda Race and a number of yacht races which are,
16 like the Volvo Race, coming to Baltimore.

17 I think if these restrictions apply,
18 some of the sailing boats are over 70 feet in
19 length and they are achieving speeds in good winds
20 coming up the coast of the United States, speeds of
21 up to 20 knots and they are quite often quite close
22 in shore to get out of the steep waves of the gulf

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1 stream. So I think that you should consider the
2 impact on that.

3 And, also, I see no mention of cruise
4 ships. Huge numbers of people have to transit the
5 coastal waters by cruise ship and they are going to
6 be affected. It's going to take them a great deal
7 longer to get from New York down to the West Indies
8 or to the Bahamas if this takes place.

9 And, finally, I would like to point
10 out that the Department of Transportation for many
11 years has been encouraging the use of shipping,
12 particularly fast shipping, to reduce the enormous
13 quantity of traffic going north and south on I-95
14 and there are various initiatives to try and get
15 people to carry containers or trailers by ship, by
16 faster ship, rather than just going up and down I-
17 95.

18 And this obviously would be
19 prohibitive under the new regulations because they
20 are not likely to go more than about 20 miles
21 offshore between, say, New York and Jacksonville.
22 I mean, they could go a bit more for certain

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1 periods of time.

2 So I think it is going to have a huge
3 impact and much greater than has been realized at
4 the moment because of the increasing number of
5 different types of ship which are going to arrive,
6 whether we like it or not.

7 And, also, I think it will detract
8 from the employment and from other important
9 activities in ports like Baltimore, Philadelphia
10 and elsewhere because more and more ships will
11 probably go to Halifax, as you so rightly
12 suggested.

13 Thank you for giving me the
14 opportunity to speak at your meeting, and I will be
15 submitting a written application as well. Thank
16 you.

17 MR. CARTAYRADE: Thank you. Our next
18 speaker is Mr. Philip Barry, I believe.

19 MR. BATES: No, Bates.

20 MR. CARTAYRADE: Bates. Sorry, I just
21 could not read your handwriting, I'm afraid.
22 Philip Bates. I apologize.

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1 MR. BATES: Thank you. My name is
2 Phil Bates and I'm Senior Vice President of Sea
3 Star Line, which operates rural container ships
4 between the United States and Puerto Rico. And I
5 actually was here for the crabfest and I decided to
6 come to this hearing instead on my own.

7 I can't relate to the entire area.
8 Our experience and my comments will relate to the
9 area where we operate, which is actually
10 Jacksonville, the smaller zone in the south. We
11 have experience there.

12 And I wanted to start by saying that
13 our company, our employees, the captains of our
14 ships, our Marine Department, are all in favor of
15 doing anything that can be done that is effective
16 to help preserve whales and other marine life and
17 we would like to help and we think, by the way,
18 that we have.

19 One of the speakers mentioned that
20 there was some blanket approach to this and we
21 think maybe that is -- that should be pursued. A
22 blanket approach that applies to all ports, all

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1 ships, different areas may not be the most
2 effective solution.

3 We can see clear distinctions. For
4 instance, just some of the things I heard today
5 from people are very different from our statistics
6 in our area, so we think that -- and we will be
7 submitting some written commentary that applies to
8 our area.

9 Parts of the proposed rulemaking we
10 think are very good. The reduced shipping lanes.
11 Okay. Although they do cost, they may add some
12 cost to our operations and so on, we agree that
13 that is an effective proposed measure and
14 particularly because it happens.

15 We have studied the -- we have been
16 going to the hearings and collecting information
17 for two years and we have found that the maps of
18 where the whales are happens to not be in the
19 primary routes taken by ships, so it happens to
20 coincide. So even though there is some deviation
21 for where some ships would go, we think it's an
22 effective measure.

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1 And one of the things we have noticed
2 is that the shipping lanes happen to not be where
3 there is artificial reefs and areas where there's
4 fish, maybe shoals. So it may be that the whales
5 actually naturally congregate in areas that happen
6 to be outside of the normal shipping channels. But
7 we think this one is effective because it reduces
8 the area that you have to watch for whales, which
9 by far seems to me is the most effective way to
10 avoid whales, is to watch for it and avoid it.

11 And so reducing the area that you have
12 to watch, being able to watch it more carefully we
13 think is effective and it certainly, you know,
14 would cause more focus on behalf of the ships, on
15 the ships and other people. We have not heard
16 enough about spotter planes, there are some, in all
17 this discussion. We very seldom hear about the
18 steps taken to watch for whales.

19 Now, I'm going to put it very simply.
20 If you see where a whale is and you notify the
21 ships, the boats, whatever types they are, and you
22 try to avoid that whale, that is a very effective

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1 strategy to try to preserve whales. So we're very
2 much in favor of that. We have participated
3 happily in the reporting program.

4 I would like to mention that in two
5 years we have seen one whale and we come in and out
6 of Jacksonville. We pass through four times a week
7 at least, sometimes, some weeks, six times. And in
8 all those hundreds of passages, we have seen one
9 whale in two years of watch.

10 Now, when this first came up and we
11 realized it was a concern, we did something that we
12 weren't asked to do. We decided to voluntarily
13 institute bow-watches, a special bow-watch in the
14 whale areas as we're approaching Jacksonville. No
15 one asked us to. We decided to do it in San Juan
16 as well.

17 But the additional watch, we found
18 that the one whale that we saw was very far off.
19 It seemed to be moving away from the ship and the
20 closest point of approach was about a half a mile.

21 Okay. So we think that watching for whales is an
22 effective strategy. Many things could be done and

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1 should be done to do more of that.

2 We have heard something about -- I was
3 hoping to hear something about the pop-up buoys
4 which we heard is a technology that has been
5 discussed here in Baltimore about a buoy that can
6 help, that can identify the presence of whales and
7 send notification through a satellite. We think
8 that sounds like an excellent technology and,
9 again, coupled with reduced shipping lanes, that
10 makes a lot of sense to me. Again, if you can
11 identify where a whale is, you have a better chance
12 of avoiding it.

13 Now, I have heard -- you know,
14 everyone seems to be -- by the way, I agree with
15 everyone's passion, I like whales, okay, who wants
16 to do anything they can, but we seem to be in an
17 automatic response that a speed limit is the
18 answer, okay, and that 10 knots is maybe better
19 than 12 or 14.

20 And I will start by saying I think you
21 can hit a whale and kill it at 10 knots or you can
22 kill it at 14 knots or 20 knots. You don't want to

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1 hit whales. Okay. But the speed to me does not
2 necessarily have a direct correlation. We have
3 read some stuff. We have heard some indications.
4 We don't think it's necessarily very convincing or
5 clear, and it may apply very differently to
6 different kinds of vessels.

7 In our area, there is one other
8 statistically determined besides the one we know,
9 which is that we have seen one whale, is that we
10 know that in the history of our company for 15
11 years we have never hit a whale. Okay. We also
12 know that there has been one attributed right whale
13 death in the last 10 years, is the statistic we
14 have heard, one in our area in 10 years due to a
15 confirmed ship strike vessel. That is in our area.

16 It sounded like there may be other
17 areas where there may be more and, you know, more
18 things should be considered. That is a very, very
19 low incidence. By contrast, there are whales
20 dying. There are additional whales dying and one
21 of our people took enough initiative to go out with
22 the scientists and look at a whale that had washed

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1 up. And in that particular case they could not
2 determine the cause of death, and that seems to be
3 that in many cases it's not exactly clear why the
4 whale has died.

5 So, again, we're saying if you want to
6 help the whales, one of the things we would like to
7 see is a lot of effort in trying to determine why
8 they are dying. You have a better chance of
9 determining the cause if you can determine why they
10 die. I'm sorry. If you can determine the cause,
11 now you can find effective solutions for the
12 causes.

13 I don't know. I'm not a scientist. I
14 don't know how much is pollution. I don't know,
15 you know, what the actual causes are, but I haven't
16 seen enough convincing evidence to say that ships
17 hitting them is why, is a major factor.

18 So if we want to -- we hope the
19 rulemaking -- the rulemaking also has some very
20 distinct problems with being brought in terms of
21 let's have a rule that is 10 knots in all cases.
22 We found out from the pilots in Jacksonville and

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1 from our ship captains that going through one
2 particular spot, going through the breakwaters
3 where we have high winds, 6.5 knot cross-currents,
4 that whereas some boats can go through at 10 knots
5 if you're small and low, we have determined that
6 big ships can't go through them that slow and not
7 risk hitting the breakwater.

8 Now, I want everybody here who is
9 environmentally-minded to think about what happens
10 if we rip the side of a tanker open on the
11 Jacksonville breakwater or some of these other
12 areas. So there has to be enough flexibility in
13 this rule to allow the safety of people, ships and
14 to listen to the pilots who are the experts in what
15 they have to do to do this right.

16 So that is an example of some of the
17 details where there has to be a bit more
18 flexibility. I am not sure. I guess there is a
19 portion of this that addresses the idea that if you
20 see whales in an area, maybe it's not even in the
21 season, we would want the best evasive action to
22 occur then as well. So, again, flexibility to try

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1 to get to the intended purpose sounds like a good
2 idea.

3 So I want to say that we're very, very
4 much in favor of this. By the way, the economics
5 in our particular trade line are substantially more
6 expensive. We would have to actually burn a lot
7 more fuel to speed up or make the schedule for our
8 customers. We would incur overtime. So I looked
9 at it and I think the ocean portion is probably
10 correct, but there is actually a substantial
11 greater cost and inconvenience.

12 The biggest cost is probably having to
13 build faster ships in the future to accommodate for
14 that. That, by the way, is around a billion
15 dollars for the U.S. ships trading in Puerto Rico.
16 So that item by itself, I think it's a little
17 understated in terms of, you know, there are only
18 certain factors you can identify which may only
19 relate -- which relate broadly.

20 There are specific factors that may
21 relate to the cruise industry that could be very
22 substantial. So I think we're talking about a lot

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1 of money. We think the money should be spent well,
2 as best it can. And, number one, we think that
3 people should look for whales, have the best
4 reporting systems possible. We are very much in
5 favor of the ships reporting as much as they can.

6 We just invested in night vision
7 goggles, no one has asked us to do that, to be able
8 to see them better in twilight times. So we think
9 there's things that can be done and the key is to
10 identify where they are, to take all the measures
11 that make sense, to avoid them. We don't think a
12 lot of money should be wasted on a very broad speed
13 restriction if we can't identify benefit in
14 specific areas.

15 And so that is my comment. Thank you.

16 MR. CARTAYRADE: Thank you. Our next
17 speaker is Mr. Bruce Russell.

18 MR. RUSSELL: Good afternoon. My name
19 is Bruce Russell, President of JS&A Environmental
20 Services. I have worked on the right whale and
21 ship strike problem since 1998. I am here today
22 speaking on behalf of myself.

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1 I have three issues that I want to
2 discuss with relationship to the Draft
3 Environmental Impact Statement from a purely
4 technical perspective. I just didn't want to
5 comment that I did look at the economic impact
6 assessment in great detail and went through my own
7 personal checklist based on issues that I saw over
8 the seven or eight years that I worked on this
9 issue and the economic impact assessment hit all
10 the issues that I had heard over the years. So I
11 was really pleased with that.

12 On Dynamic Management Areas, in the
13 direct environmental -- excuse me, in the proposed
14 rulemaking, comments were asked about the time
15 period when the Dynamic Management Areas would be
16 imposed. I think there is a huge economic impact
17 related to when they are imposed and how long they
18 are imposed and I think that was not adequately
19 addressed in the Draft Environmental Impact
20 Statement.

21 If the Dynamic Management Areas are to
22 be imposed the way they are imposed for the DAMs

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1 and for fisheries where there is a four or five day
2 at least delay in getting them in place, because of
3 rulemaking process, because there is no emergency
4 rulemaking process in place, that is going to put a
5 tremendous burden on the shipping industry for the
6 following reasons, and they are not addressed in
7 the economic impact assessment nor in the Draft
8 Environmental Impact Statement.

9 If a notice goes out to the mariners
10 on the Coast Guard direct pass frequencies or other
11 mechanisms to notify the mariners that there is a
12 problem out there, the prudent mariner is obligated
13 to take action even though there may not be a rule
14 in place. And now, some will and some won't,
15 because the ones that won't will take a risk. But
16 those that do are assuming a burden during that
17 four or five day window if you don't -- if those
18 measures are imposed like the DAMs.

19 If they are imposed like the DAMs, for
20 15 days after the effective date of the rule, then
21 for five days at the end, because the DAMs would be
22 in place or the DMAs would be in place for an

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1 additional five days outside the window when we
2 know from a statistical basis, from the Clapham
3 Pace Report, that the whales aren't there.

4 So you're having an effective
5 regulation not for 15 days, but for 20 days, and
6 the back end of that would impose a burden on the
7 industry for no reason at all. I mean, it borders
8 on being arbitrary and capricious because there is
9 no whales there from a statistical perspective
10 based on the studies that the Agency has done
11 themselves. At the same time there is burden on
12 the industry the first five days.

13 So I think that the economic window
14 that you're really looking at is not 15 days for
15 the purpose of the economic impact assessment
16 report and the Environmental Impact Statement, but
17 for 20 days, and I think that imposes an unfair
18 burden on the industry and I think that it also
19 regulates the industry improperly.

20 So I would support the idea that was
21 posed in the ANPR to develop a mechanism much like
22 the Coast Guard's mechanism on limited access areas

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1 where the rule could go into place within hours of
2 making a determination that the whales are in an
3 area and triggers the dynamic management.

4 The second concern that I have is in -
5 - I know it's in at least Alternative 6, but it may
6 show up elsewhere. It's in the Block Island
7 seasonal management area. The Block Island
8 seasonal management area is not a hemispherical
9 area that would abound the entrances to Block
10 Island Sound and Buzzards Bay. It's a rectangle
11 that goes from Montauk Point out 30 nautical miles
12 and from Martha's Vineyard out 30 nautical miles
13 and it's a box from a COLREG line.

14 The problem with that is that vessels
15 that are coming from the south and west, from New
16 York, for example, or from Hampton Roads, for
17 example, coming into the Block Island Sound area
18 cut the corner and they actually enter the Block
19 Island Sound area or they would actually enter the
20 Block Island Sound area about 4 or 5 miles off the
21 coast of the tip of Montauk Point.

22 So they actually make an oblique and

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1 so, therefore, they would be cutting across the
2 migratory corridor of the right whales 30 miles
3 from the coast where there will be no protections.
4 So I would recommend either that the south, excuse
5 me, the western corner of that seasonal management
6 area be extended several miles to the west off of
7 Long Island or to make an oblique line at a
8 westerly/southwesterly heading out to the 30
9 nautical miles.

10 And I have provided my comments, by
11 the way, in the email address on the web, but we
12 presented that information, Amy Knowlton and I, in
13 a paper that we did under contract to the northeast
14 region. It was entitled "Traffic Management
15 Scenarios."

16 If that is not included in the
17 economic impact assessment and the Draft
18 Environmental Impact Statement, then there is a
19 risk presented to the whales for not providing
20 protection and it's also a gross underestimation of
21 what the economic impacts would be in that area,
22 gross relative to that particular area.

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1 The third area is enforcement and I
2 was a little bit disturbed that enforcement is not
3 discussed in either the ANPR or the Draft EIS, but
4 because we're here today only to discuss the draft
5 EIS I would like to describe the concerns I have
6 about that. These are multi-fold and so bear with
7 me a little bit.

8 In Section 1.12 of the Draft
9 Environmental Impact Statement it states that, in
10 part, enforcement will not be included in the EIS
11 as it is outside the scope. It cannot be outside
12 the scope. Enforcement operational measures that
13 affect shipping, it affects the companies
14 themselves, because they have to do things from a
15 self-importance perspective, from an education
16 perspective, a lot of things, and they have to deal
17 with that.

18 And we demonstrated that if in the
19 implementation of the mandatory ship reporting
20 system, if you did not have good self-enforcement,
21 you did not have good implementation of the
22 Mandatory Ship Reporting System.

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1 Secondly, in that same section, 1.12,
2 it goes on to say the National Marine Fisheries
3 Service will address enforceability in the final
4 rule. Enforceability and enforcement have nothing
5 to do with each other. Okay. Enforcement is the
6 mechanisms that the Agency takes or their partner
7 agencies do. Enforceability has got to do with is
8 this rule enforceable?

9 So that statement is, from my
10 perspective as a former enforcement officer with
11 the Coast Guard, gibberish, but it also suggests
12 that, to my argument, that enforcement should be
13 addressed in the Draft Environmental Impact
14 Statement or the next version, the final version of
15 the EIS.

16 Specifically, there are three reasons
17 why I think enforcement should be in the EIS and it
18 has to do with education and outreach which is also
19 mentioned that is not included in there. The
20 International Maritime Organization has been
21 working really hard to develop programs where ships
22 and shipping companies do a lot of self-enforcement

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1 and the mechanisms are related to the International
2 Safety Management Code.

3 And I notice all of the alternatives
4 are quiet about the International Safety Management
5 Code and it's an important mechanism that shipping
6 itself, particularly international shipping, takes
7 a look at what they are doing and making sure that
8 they are operating in a safe and environmentally
9 sound practice.

10 In my past life I worked closely with
11 NOAA and the Coast Guard to develop some language
12 that went into the Coast Guard's implementation and
13 the Marine Safety Management Manual on the ISM Code
14 and I'm hoping that that is part of the strategy,
15 but I believe it needs to be addressed in both the
16 Notice of Proposed Rulemaking as a requirement, as
17 well as in the Draft Environmental Impact Statement
18 as a key part of some of the operational measures
19 that have to be addressed.

20 Corollary to that, a lot of shipping
21 companies are now implementing environmental
22 management systems under ISO 14001 for their

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1 companies and a lot of it, they are doing that in
2 tandem with the International Safety Management
3 Code because they found that the ISM Code itself
4 was not adequate to ensure that the vessels were
5 operating in an environmentally safe manner and I
6 think that that needs to be addressed, because the
7 two go hand-in-hand and that is woefully
8 inadequate.

9 Well, it's completely missing in the
10 Draft Environmental Impact Statement so that's
11 going to take some time for those companies to
12 address that, but that is one of those mechanisms
13 that companies use to make sure that their
14 operators at sea are doing the right thing.

15 The last part that was silent in the
16 Draft Environmental Impact Statement and in also in
17 the proposed rulemaking was the use of the
18 Automatic Information System, AIS. It's a new IMO
19 requirement. It's online now and that should be
20 part and parcel of how the Agency can save money
21 and in an enforcement program.

22 Now, if there is any concern with the

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1 relationship to using it for enforcement purposes,
2 the Swedish government is now using AIS to monitor,
3 not monitor, to help backtrack illegal discharges
4 of oil in their special area in the North Sea and
5 in their waters.

6 And so there is an international
7 precedent for AIS being used for enforcement and I
8 think it should be a key element of the enforcement
9 strategy because it would be quite simple to use
10 that and also tantamount to the Coast's Guard's
11 Port Stay Control Program to verify that ships have
12 slowed down or diverted from an area because they
13 would have to keep logs on board.

14 As I said, I submitted my comments in
15 writing for both the rulemaking and the Draft EIS.

16 Thank you for the opportunity.

17 MR. CARTAYRADE: Thank you. I am at
18 the end of my list of people who signed to speak.
19 If now we have people, you know, who came in late
20 or have changed their mind about speaking, please,
21 do make yourself known and come up.

22 Do we have anyone who would like to

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1 speak before we conclude the meeting? You'll both
2 get your chance so, please, sir, just state your
3 name as you start.

4 MR. GEHRKE: Okay.

5 MR. CARTAYRADE: Thank you.

6 MR. GEHRKE: I'm going to try to talk
7 quickly because my battery is dying and I couldn't
8 print this out. My name is Heath Gehrke.

9 I work for the Cape May/Lewes Ferry.
10 Our ferry goes across the Delaware Bay, the mouth
11 of the Delaware Bay. I don't believe, and I was
12 hoping to find out and of course I was a little
13 late -- I don't believe that our operating route is
14 in the management area unless it was a Dynamic
15 Management Area. So I'm happy for that if that's
16 true.

17 I do want to tell you just a little
18 bit about the ferry. We operate five vessels and
19 we carry about a million passengers a year and we
20 carry about 350,000 automobiles across the Delaware
21 Bay. If we were impacted like the proposed
22 rulemaking states with the 7.9 percent decrease in

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1 revenue, that would be about \$1 million in revenue
2 to us alone. So I think it indicates that maybe
3 the \$100 million or \$113 million might be a little
4 bit understated, something to look into.

5 I think most of all as an operator of
6 a 320 foot automobile ferry, I want to kind of echo
7 some of the comments that were made before and that
8 I think it's very important to consider the
9 hydrodynamic characteristics of vessels. What is
10 not stated in the rulemaking is what size of vessel
11 is causing these ship strikes or causing these
12 deaths to the whales.

13 Certainly, I think different size
14 vessels have different effects on the whale. I
15 think it's important to check into that. How many
16 strikes are due to military vessels? How many
17 strikes are due to large commercial vessels?
18 Certainly, we think there is probably a difference
19 there between different types of vessel.

20 There was some comment earlier about
21 the 10 knot speed limit. I read a lot of facts in
22 the proposed rulemaking about the average speed at

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1 which ship strikes cause death, and I agree with
2 some of the comments made earlier in that, you
3 know, most vessels don't travel at 10 knots. So
4 naturally your statistics for deaths by ship strike
5 at 10 knots are going to be less.

6 I think it would be unfortunate if we
7 implemented a rule where we reduce the speed and a
8 year from now or two years from now we saw that we
9 were having the same level of deaths, but they were
10 just occurring at 10 knots instead of 18 knots. I
11 think it's important to take that into account.

12 One of the things I noted was that for
13 humpback whales it was okay to go 13 knots, so I'm
14 not sure why the right whale needs 10 knots where
15 the humpback whale in Glacier Park in Alaska is
16 okay at 13 knots.

17 One other quick comment that someone
18 was talking about using AIS as a measure of
19 enforcement, but some of the captains and so forth
20 that work for us said maybe AIS would be a means to
21 track the whales. If you don't know what AIS is,
22 it's a measure that ships can identify other ships.

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1 You see on your radar scope a return of the ship
2 and now the ship is identified with its name.

3 It seems to me like maybe with modern
4 technology there would be a way to implement an
5 Automatic Identification System for the whales.
6 Certainly, it would be hard to do for every whale,
7 but it would be something that might be useful
8 because the ships could identify where the whales
9 were.

10 You mentioned other satellite tagging
11 information systems. I'm not a scientist, but
12 certainly we're in favor of something like that
13 because the more that we can track the whales, the
14 easier it is for us to avoid them at 10 knots, at
15 12 knots, at 14 knots or whatever speed it ends up
16 being.

17 In terms of economics, I don't think
18 the argument of economics is very powerful maybe in
19 this room but, you know, there are an estimated 300
20 right whales. So at \$113 million, you know, the
21 cost per whale of implementing this is significant
22 and the cost per ship strike at two per year is,

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1 you know, over \$500,000 per year.

2 Maybe that is not a good enough reason
3 not to implement this rule, but I guess what we
4 would like to say is if there are some more
5 effective measures, we should look into those. It
6 would be sad if after we implemented the measures
7 we still had one death per year and we really
8 hadn't made any progress.

9 I don't know enough about whales, but
10 I would like to know why are the whales dying.
11 What about the other ones that are dying other than
12 the two that die per year due to ship strikes. It
13 seems like maybe that's a more effective means if
14 we can solve that problem instead of the ship
15 strike problem.

16 My company has been very active in
17 environmental issues and supportive of
18 environmental issues. We haven't had a chance to
19 act on the right whale issue, but we have done
20 things to restore the oyster beds in the Delaware
21 Bay and I think we feel very strongly that the
22 environment is to be protected, and we feel very

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1 strongly that right whales should be protected, but
2 I don't think we feel as strongly that this measure
3 will be significant. Thank you.

4 MS. BICK: Hello. My name is Bonnie
5 Bick and I'm here as a private individual. I'm a
6 member of a number of environmental groups and I
7 really feel like I have the ability to represent a
8 lot of individuals with my testimony, because of
9 the fact that so many people are concerned about
10 the future of the right whale and all whales. And
11 we have a history of not doing the right thing for
12 so long, that it is very important that we
13 implement everything we can to protect the right
14 whale.

15 The National Marine Fisheries Service
16 is to be commended for holding this hearing and for
17 addressing this issue. I would support Alternative
18 5 and the idea of reducing the shipping lanes so
19 that we could have a better tracking system and, of
20 course, watching for whales in every way possible.

21 But mainly, we should use science to address the
22 problem and we should use every bit of advanced

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1 technology to address the problem.

2 I'm sure that's what the National
3 Marine Fisheries Service is in the process of
4 doing. Stewardship is very important and if you
5 put -- it's very difficult to put economics and the
6 right whale even on the same balance sheet, because
7 we have an obligation to be stewards to these
8 creatures that we historically used in a way that,
9 you know, we wouldn't have done if we had
10 understood them better.

11 So now that we do understand better, I
12 think we should just, you know, dedicate ourselves
13 to the protection of the whales and the sea
14 creatures. So I would say in regards to this
15 debate about the speed that we should implement the
16 highest restriction on speed and continue to watch
17 exactly how that affects the ship strikes and aim
18 for zero ship strikes and keep working on
19 technology and doing research to bring ourselves to
20 the goal of bringing back these right whales from
21 their endangered state. Thank you very much.

22 MR. CARTAYRADE: Thank you. Do we

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1 have any more speakers who would like to make a
2 comment? It looks like no, so I would like to
3 thank you all for coming. I know we had a
4 competing event going on in the city and we all are
5 appreciative of you being here. However, we are
6 here until 4:00, which is where the meeting will be
7 -- shortly end.

8 We're going to close now the official
9 meeting and the official public breakout. However,
10 you are welcome to stick around and talk with NMFS
11 representatives or ask any questions that you would
12 like to ask from them. Again, thank you very much
13 for coming and we wish you a good afternoon and a
14 good evening.

15 On the book outside, please, do put
16 down your name, so we have a record of about how
17 many people attended, if you haven't already put
18 it. Thank you.

19 (Whereupon, the public hearing was
20 concluded at 3:20 p.m.)

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