

**WRITTEN TESTIMONY  
OF JANE LUXTON  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE  
ON  
THE PROPOSED RULE TO IMPLEMENT  
SPEED RESTRICTIONS TO REDUCE THE THREAT OF  
SHIP COLLISIONS WITH NORTH ATLANTIC RIGHT WHALES  
BEFORE  
COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

**MAY 21, 2008**

Good morning, I am Jane Luxton, from the National Oceanic and Atmospheric Administration (NOAA). Thank you, Chairman Rahall, and members of the Committee for the opportunity to discuss the proposed rule to implement speed restrictions to reduce the threat of ship collisions with North Atlantic right whales.

The North Atlantic right whale (*Eubalaena glacialis*) is one of the most critically endangered large whale species in the world; the latest NOAA peer-reviewed stock assessment indicates that a minimum of 313 individuals were estimated to have existed in 2002. The minimum population size has likely hovered near 300 individuals for several decades, having increased from perhaps fewer than 100 individuals by 1935, when international protection for right whales came into effect. From 1995 to 2002 (the period when estimates are available) the minimum number of right whales alive has fluctuated from 284 individuals in 1995 to 313 individuals in 2002. These numbers indicate that this population remains at risk. Collisions with marine vessels (“ship strikes”) are one of the greatest known human-related causes of right whale deaths and serious injuries.

To address this threat, NOAA, in collaboration with other agencies and stakeholders, developed a right whale ship strike reduction program, which includes rulemaking to reduce ship speeds in areas where right whales occur. NOAA described the program in an Advanced Notice of Public Rulemaking (ANPR; 69 Fed. Reg. 30,857) on June 1, 2004. After considering comments on its ANPR and consulting with other affected agencies, NOAA published a proposed ship speed restriction rule on June 26, 2006 (71 Fed. Reg. 36,299).

The proposed rule would impose a ship speed limit of 10 knots on commercial vessels 65 ft and greater in overall length, which are subject to the jurisdiction of the United States. The proposed rule also sought comments on 12 and 14 knot speed limits. For reasons I will explain in a moment, U.S. vessels owned or operated by, or under contract to, the

Federal Government would be exempt from this speed restriction. The proposed restrictions would apply in specific marine areas and certain port entrances along the east coast of the United States, imposing seasonal speed limits only in parts of designated regions that correspond to right whale feeding, migration, and nursery/calving areas and high vessel density. The areas designated were confined as much as possible to reduce economic impact to the shipping industry. The proposed rule also includes speed restrictions that are triggered in “Dynamic Management Areas” where NOAA determines there is a concentration of three or more right whales or there are one or more right whales in a designated shipping lane. NOAA’s proposed rule exempted federal vessels based on a determination that national security and navigational and human safety missions of some agencies may be compromised by a mandatory speed limit. NOAA further noted that such an exemption would not relieve federal agencies of their obligations to protect endangered right whales under the Endangered Species Act, including Section 7.

In conjunction with this rule, NOAA also completed a draft Environmental Impact Statement (EIS) analyzing six alternatives. The EIS included an economic analysis of the rule. NOAA announced the availability of the draft EIS on July 7, 2006 (71 Fed. Reg. 38,640). NOAA accepted written comments on the proposed regulation and the draft EIS, and held several public hearings in Jacksonville, Baltimore, and Boston during 2006.

NOAA received more than 10,000 comments on the proposed rule from the following groups:

- state or federal agencies
- shipping industry and cruise lines
- ports, pilots, marinas, and longshoremen
- whale watch and passenger ferries
- recreational fishing sector
- environmental groups
- members of environmental groups
- individuals

Comments focused on the data available, speed restrictions, area covered by the rulemaking, economic impacts, and safety concerns. Of the comments, more than 9,700 were some type of form response.

After considering all public comments on the proposed rule and consulting other affected agencies, NOAA drafted a final rule and transmitted it to the Office of Management and Budget (OMB) on February 20, 2007, in accordance with Executive Order 12866. At present, NOAA’s final rule is under interagency review.

NOAA has also taken steps to reduce ship strikes through vessel routing measures. The United States prepared and submitted to the International Maritime Organization (IMO) a proposal to reconfigure the “Traffic Separation Scheme” that services Boston, Massachusetts. The proposed realignment is expected to provide a significant reduction

in ship strike risk to right whales and all baleen whale species occurring in the area, with minimal concurrent impact to mariners. The IMO reviewed and adopted the proposal, and the realignment was implemented in July 2007.

NOAA has also addressed the threat of large whale entanglement in fishing gear. On October 5, 2007, NOAA issued a final rule (72 FR 57104) to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan. This final rule revises the management measures for reducing the incidental mortality and serious injury to the Northern right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), and fin whale (*Balaenoptera physalus*) in commercial fisheries to meet the goals of the Marine Mammal Protection Act and the Endangered Species Act.

Thank you again, Mr. Chairman, for the opportunity to testify. I am happy to respond to any questions.