

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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MONDAY,
AUGUST 14, 2006

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The public hearing came to order at 1:18 p.m. in the Auditorium of the O'Neill Federal Building, 10 Causeway Street, Boston, Massachusetts. Laurent Cartayrade, moderator, presiding.

PRESENT:

Laurent Cartayrade, Earth Tech
Jessica Gribbon, Earth Tech
Richard Blankfeld, Nathan Associates
Greg Silber, Office of Protected Resources
Shannon Bettridge, Office of Protected Resources

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I-N-D-E-X

INTRODUCTORY REMARKS

Laurent Cartayrade 3
Greg Silber 5
Jessica Gribbon 19
Richard Blankfeld 25

Public Comment 46

Adjourn

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

(1:18 p.m.)

MR. CARTAYRADE: Good afternoon and welcome to the public hearing for the draft EIS for the Operational Measure of the North Atlantic White Whale Ship Strike Reduction Strategy. My name is Laurent Cartayrade, I am with Earth Tech. Earth Tech is the firm that is preparing the EIS, that has prepared the draft EIS.

And I would like to introduce some of the people we have with us here today to listen to your comments and, later on, if we have any time left, to talk with you and answer questions you may have. From Earth Tech, as well, we have Jessica Gribbon who is the project manager for the EIS and who has been the main person responsible for the document. Working with Jessica, we have Richard Blankfeld from Nathan Associates who Richard was in charge of the economic analysis of the EIS which, as I'm sure you know, is a big part of the document. Finally, most important, we have representatives of NMFS Office of Protected

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1 Resources who have been working on the strategy.
2 We have Greg Silber and Shannon Bettridge who are
3 here from headquarters in Silver Spring, Maryland.

4 What's going to happen today is we
5 are first going to have a brief presentation to
6 summarize the issues and refresh your memory with
7 regard to the approach of the proposed measures
8 and the EIS. Following the presentation, we will
9 have a period to take comments. Many of you have
10 signed up for comments, so what we'll do is we
11 will call your name in the order of when you
12 signed in and we will ask you to step up here and
13 make your comment.

14 This is a comment meeting, that is we
15 will be taking them, there will be no response
16 from the agency. The response to the comments
17 that will be made today will be provided in the
18 final EIS, which will be a revision of the draft
19 EIS based precisely on the comments received.

20 Finally, today is one opportunity to
21 make comments on the EIS, it's not the only one,
22 it's part of an entire review period for the draft

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1 EIS. There are other ways for which comments can
2 be submitted, either in writing or by e-mail, or
3 even by fax. Those of you who picked up the fact
4 sheets at the door, most of the fact sheets, that
5 is those that are 8 1/2 x 11, all of them have the
6 contact information with the mailing address, fax
7 number and e-mail address that you can send
8 written comments to, if you do not speak today or
9 also for people who may not have the opportunity
10 to be here.

11 I think that covers my introduction
12 so, without further ado, I would like to introduce
13 again Mr. Greg Silber who is going to start with
14 the presentation for today.

15 Greg?

16 MR. SILBER: Thank you, Laurent.

17 I also want to mention that Kristin
18 Koyama is here, she is also with our agency, she
19 works in the Northeast Regional Office. As
20 Laurent said, my name is Dr. Greg Silber, I work
21 with the Office of Protected Resources in Silver
22 Spring, Maryland, and I want to thank you all for

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1 turning out today, it's nice to see the size of
2 the turnout. I see a number of familiar faces in
3 the audience and that's because I think we have
4 been working together on this for a number of
5 years, it's an issue we are all trying to grapple
6 with.

7 As Laurent said, one of the main
8 purposes today is to hear your public comments on
9 the draft environmental impact statement and you
10 also have the opportunity to do so in writing by
11 e-mail, hard copy, fax, whatever, but we are here
12 today to hear what you have to say. To the extent
13 possible, we ask for specific comments. If there
14 is something about what we are doing that you have
15 data that might have direct bearing on it, we need
16 those desperately, whether it's economics,
17 biological or whatever, those are the kinds of
18 information that we need.

19 I think you probably wouldn't be here
20 if you didn't realize the situation we are
21 grappling with and that is a highly depleted
22 population of North Atlantic Right Whales. There

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1 are about 300 individuals in the population, we
2 could perhaps quibble about the exact number. I
3 hope we don't put a lot of time and energy into
4 the actual number, whether the population is
5 dramatically increasing, decreasing or static, the
6 fact of the matter is there are not enough of
7 them. One of the main known threats to Right
8 Whales is that of collisions with ships.

9 If you look at the last decade and a
10 half or so, the average number of known ship
11 strike deaths is on the order of one to two per
12 year, 19 known ship strikes since 1986, three
13 since 2004, three additional that are probable,
14 and I say that only because the actual cause of
15 death could not be determined definitively, a
16 number of them have been pregnant females. Quite
17 frankly, ladies and gentlemen, we are between a
18 rock and a hard place, again a highly depleted
19 population, one in which we are facing the main
20 known threat and that is ship strikes.

21 As you probably know, the agency is
22 under litigation as we speak, we were petitioned

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1 to issue these regulations by emergency
2 regulation, the petition was denied and a lawsuit
3 ensued. I'm here to tell you that it's not only,
4 at the moment, it's an East Coast, U.S. issue, but
5 it's becoming an international issue. I've been
6 to a number of meetings and conferences in which
7 large whale ship strikes, globally, is becoming
8 one of greater visibility. The International
9 Whaling Commission has formed a working group to
10 address it specifically and, as recently as June
11 of this year, the IWC sent its recommendations and
12 its progress report to the International Maritime
13 Organization.

14 As you know, especially in this
15 region, the fishing industry has been regulated to
16 reduce the probability of entanglement in fishing
17 gear and that particular industry is quite vocal
18 about our addressing ship strikes. There is
19 congressional interest. For example, we had the
20 opportunity to address a letter to the president
21 from six senators asking us why we have not issued
22 these regulations. The point of this slide is to

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1 indicate to you that it is a range-wide issue,
2 actually the demarcations there are a little bit
3 outdated but my point is that it occurs throughout
4 the range of this population.

5 Often times I get questions
6 regionally, tell me exactly how many ship strikes
7 in my waters, but these animals migrate and often
8 times can drift in death, so we can't often
9 pinpoint exactly where a ship strike occurred, but
10 the threat exists throughout their range. We see
11 different kinds of injuries, blunt trauma,
12 hemorrhaging, propeller marks, etcetera, all
13 segments of the population are affected.

14 This is, in a nutshell, what we set
15 out to do and what we have ultimately done, to
16 this point. In the center there is our overall
17 Right Whale ship strike reduction strategy. We sat
18 down a number of years ago and decided to approach
19 this comprehensively, we wanted to do our
20 homework, we gathered all of the data and
21 information we could, both on whales as well as
22 vessels. We held, in the course of an advanced

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1 notice of proposed rule making, I think either
2 eight or nine East Coast meetings up and down the
3 East Coast at various ports, we held five public
4 hearings, we had six or so face to face meetings
5 with industry, we've met with stakeholders at
6 various times, comment periods on the ANPR,
7 comment periods on the notice of intent to prepare
8 and EIS and what you are seeing today is a result
9 of those kinds of discussions.

10 In short, we have five basic
11 elements. What we are here to talk about today,
12 the subject of the rule making and the EIS are
13 what we call operational measures for the vessels
14 and to make a distinction that one of them, mostly
15 speed restrictions are contained in the proposed
16 rule making, but there are other kinds of routing
17 measures that would affect vessels that we are
18 pursuing through other avenues. The importance of
19 this is we didn't want to forsake the things we
20 have already going, this includes mandatory ship
21 reporting systems, the aircraft surveys, getting
22 information out to mariners, etcetera.

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1 I mentioned here also that people
2 say, often people say to me why don't you just
3 tell us where the animals are and we'll take
4 proper steps? The fact of the matter is we have
5 been doing aircraft surveys for more than a
6 decade, that information is routinely passed to
7 mariners. We are embarking on enhancing, and
8 improving and implementing a comprehensive
9 education and outreach program for mariners, we
10 are working on a bilateral agreement with Canada.
11 These are animals that are transboundary in their
12 range and we are attempting, to the extent that we
13 can, ensure that there is cooperation and
14 collaboration across the border.

15 We plan to, or have already,
16 conducted what we call consultations under Section
17 7 of the Endangered Species Act. These are for
18 other federal agencies, ones that operate,
19 contract, or permit vessels.

20 Just by way of broad overview, there
21 is two basic kinds of tools that we are using, one
22 are seasonal management areas, the second,

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1 dynamically managed areas, these occur in specific
2 locations and at specific times. We have
3 attempted to limit these as concisely as we can,
4 both geographically and temporally.

5 And one of the main reasons, one of
6 the things we sat down to do when we were
7 developing this was to look at each measure with
8 respect to its conservation value, its
9 effectiveness in protecting the animals, but also
10 with respect to known or potential economic
11 impacts to the industry. We were very well aware
12 of that when we set out and, again, it was the
13 effectiveness of the measure, the economic impact
14 and the feasibility in terms of how we could get
15 them implemented.

16 Most of the measures, not all,
17 certainly a little further offshore in New England
18 waters, but a lot of them, the majority, occur
19 within about 30 nautical miles of the shore, they
20 would apply to all vessels 65 feet and greater,
21 with the exception of federal vessels. The reason
22 for this exemption is because we didn't presume

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1 nor want to affect the operations of the vital
2 missions, the national security, search and
3 rescue, other vital missions that are carried out
4 by various federal agencies but, again, the nexus,
5 the hook for us it to bring those agencies to the
6 table to provide consultation and provide
7 conservation measures that those agencies can
8 undertake.

9 This is a snapshot of the types of
10 measures that we are looking at. If you look at
11 the Mid Atlantic, these are bubbles or 30 nautical
12 mile radii around key ports. The reason that we
13 did this was we calculated that these are the
14 areas in which the whales or the density of the
15 whales and the density of ships would coincide.
16 The alternative of course was sweeping broadly
17 seasonal or defined areas, but would include the
18 entire range of the animals. Instead, to reduce
19 economic impact, we tried to focus these areas.
20 In the Southeast, again, about 30 nautical miles
21 from the shore, at certain times of the year, and
22 New England, a little more complicated, various

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1 times and various locations, but tightly defined
2 seasonally.

3 With respect to speed restrictions, a
4 quick overview on the types of information we
5 considered, we have on the order of about 300
6 records of known ship strikes of all large whale
7 species, not just Right Whales. In about 50 to 60
8 of these, the fate of the animal was known as well
9 as the speed of the ship. If you look at those
10 data grossly, the average speed was about 18
11 knots, and in around 80 percent or so, the speed
12 was 13 knots or greater. Two known, definitive
13 ship strikes of Right Whales were at 22 and 15
14 knots. Some time ago, in the mid and late `90s,
15 computer simulations that suggest that speed is a
16 fact in that the bow wake would repel an object in
17 the water, whereas it would be drawn toward the
18 ship amidships.

19 Two fairly recent papers, one
20 presented late, actually both of them presented
21 late `05 at a conference, and now in press, in the
22 scientific literature, which suggest that if you

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1 look at speed on this axis, probably of looking
2 only at death or serious injury to the large
3 whale, once you get above about 20, I can't see
4 it exactly from here, 20 to 25 knots, the
5 probability of a death or serious injury is at 100
6 percent. As you come down in speed, once you get
7 down to around 15, 14-15 knots, the probability is
8 about 75 percent. When you get down around 10
9 knots, it's still about a 40 percent probability
10 that death will occur or serious injury.

11 One question I often get is if you
12 look at the distribution of these speeds, the
13 known fate of the animal, how does that compare to
14 what most ships are doing? This paper also looked
15 at data from the mandatory ship reporting system
16 in which speeds are reported to us. If you look
17 at the distribution of these, they differ
18 significantly from these, that is these occurred
19 at higher speeds than what most of the ship
20 population is doing.

21 What I just discussed is mostly
22 having, is contained in the proposed rule making,

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1 but there are a couple of other measures that we
2 are taking, have mostly to do with routing, that
3 are not part of the proposed rules but we are
4 addressing in different ways. These are
5 recommended routes, one set in Cape Cod Bay and a
6 series of recommended routes off of, in the waters
7 off of this Southeast U.S., Georgia-Florida
8 border.

9 I wouldn't look too closely at where
10 these actually lie because they are being modified
11 in some ways, but these will, hopefully we will
12 have these charted some time in the coming months,
13 they will be recommended. They are based on
14 reducing, analysis to reduce the risk of ship
15 strikes.

16 This is an activity that's pretty far
17 along, it has to do with the traffic separation
18 scheme entering and exiting Boston. Analysis,
19 both internal and external, from my agency
20 suggests that if you move the traffic separation
21 scheme three to four miles north and you narrow
22 it, you reduce the probability, the risk of a ship

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1 strike to Right Whales by nearly 60 percent, you
2 reduce it over 80 percent for other large baleen
3 whales that are occurring in those waters.

4 This has been prepared and submitted to the
5 International Maritime Organization, it was
6 submitted by the U.S. Government in April, `06.
7 We learned not long ago it cleared the first
8 subcommittee and has been passed to the full
9 committee or will be submitted to the full
10 committee in Fall, `06. We'll learn by around the
11 end of the year, December, `06, whether it was
12 approved and we should be able to implement it by
13 mid `07.

14 Another thing that we are
15 considering, actually more than considering, we
16 are in the process of developing a proposal, is an
17 area to be avoided in Great South Channel. This
18 is sort of a term of art that means a lot more to
19 the International Maritime Organization than it
20 does to me, but, nonetheless, it will be in the
21 waters of Great South Channel at certain times of
22 the year, affecting only ships 300 gross tons and

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1 greater. We are developing the proposal now, we
2 plan to submit it to the IMO in April, `07.

3 Back to this diagram of the strategy
4 itself and its various components, again we are
5 focusing mostly today, and in this rule making
6 process and the EIS on operational measures, ship
7 speed, as well as the routing measures I just
8 mentioned. The rule making is following this
9 path. Here is the draft environmental impact
10 statement, obviously it has a bearing on this
11 side, but here is the process, routing measures.
12 It's doing the analysis and ultimately this path
13 is headed towards a final rule. Once we get your
14 comments, the comment period ends, we'll
15 synthesize, analyze those and, as need be, make
16 modifications to the final rule.

17 I think this will come up also in the
18 subsequent talks, but the comment period on the
19 proposed rule has been extended as of today,
20 perhaps yesterday, to the 5th of October, so we've
21 aligned the culmination of the comment periods so
22 that, for the draft environmental impact

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1 statement, it too will end on the 5th of October,
2 as will the comment period for the rule making,
3 and then the final box of course is an
4 implementation.

5 And now I have the pleasure of
6 passing the mic on to Jessica, who is going to
7 tell you a little bit more about the DEIS itself
8 and the process.

9 MS. GRIBBON: Hi. My name is Jessica
10 and I've been working with NOAA over the last year
11 and a half, almost two years on this environmental
12 impact statement.

13 I'm going to start this portion of
14 the presentation with giving you a little bit of
15 background on the National Environmental Policy
16 Act, which we also refer to as NEPA. All agencies
17 of the federal government must consider the
18 potential impacts of their actions on both the
19 human and the natural environment. Because NOAA's
20 rule making is a major federal action, an EIS was
21 prepared.

22 This is a summary of a typical EIS

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1 process that we summarized in seven steps, the
2 first step was the notice of intent that was
3 published in the *Federal Register* in June of last
4 year. Following this publication, we had a 30 day
5 comment period where we received comments on the
6 alternatives first mentioned and the notice of
7 intent. After about a year of research and
8 revising the document to reflect these comments,
9 NOAA issued a notice of availability for the
10 environmental impact statement on July 7th of
11 2006.

12 Right now, we are in the fourth stage
13 of this process which are the public hearings and
14 the comment period and, as Greg mentioned, this
15 was also extended for the EIS. After NOAA
16 receives all the comments, the document will be
17 revised to reflect some of these comments and then
18 we move on to the final EIS. The final EIS will
19 also be available for at least a 30 day public
20 review and, after this period, the agency can then
21 go ahead with their record of decision. This is
22 the final preferred alternative and the final rule

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1 that the agency will go on the record with
2 choosing at this stage.

3 One of the requirements of NEPA is
4 that the agency clearly states what the purpose
5 and need of the proposed action is. In this case,
6 it's to reduce the number and severity of vessel
7 collisions with the North Atlantic Right Whale,
8 thereby contributing to the recovery and
9 sustainability of the species while minimizing the
10 effects on the shipping industry and maritime
11 commerce.

12 Another requirement of NEPA is that
13 the agency consider and evaluate reasonable
14 alternatives to meet the purpose and need. In
15 this case, NMFS has considered six alternatives
16 and each alternative is a set of the operational
17 measures.

18 Alternative one is the no action
19 alternative. Although this is not a viable
20 alternative, NEPA dictates that it is measured as
21 a baseline to assess the impacts of the other
22 alternatives. Under this alternative, no new

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1 operational measures would be implemented, it
2 would simply be the continuation of some of the
3 current conservation measures that Greg mentioned.

4
5 Alternative two would implement
6 dynamic management areas within the exclusive
7 economic zone or 200 nautical miles of the shore.
8 Certain triggers, certain aggregations of whales
9 would trigger a dynamic management area, in which
10 case the agency would draw a buffer zone with
11 speed restrictions, although this alternative
12 would rely on an increased survey effort in order
13 to site these aggregations that would trigger
14 them.

15 Alternative three is a little bit
16 different and includes year round speed
17 restrictions in the Northeastern U.S. region.
18 Speed restrictions in the Mid Atlantic would take
19 place from October 1st to April 30th in all waters
20 25 nautical miles out from Providence, Rhode
21 Island to Savannah, Georgia. In the Southeastern
22 U.S., speed restrictions would include all waters

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1 in the mandatory ship reporting system south area,
2 in addition to the southeast Right Whale critical
3 habitat waters, and these restrictions would be in
4 place from December 1 to March 31st, corresponding
5 with the Right Whale calving season.

6 Alternative four includes routing
7 measures only, there would be no speed
8 restrictions associated with this alternative and
9 this alternative includes the recommended routes,
10 as Greg mentioned, the Boston traffic separation
11 scheme realignment and also an area to be avoided
12 in the Great South Channel.

13 Alternative five combines all these
14 previous alternatives, one through four.

15 And finally, alternative six is the
16 agency's preferred alternative which includes
17 speed restrictions in the three regions, as Greg
18 mentioned, who you can also see on the board to my
19 right, and also the recommended shipping routes in
20 both the Northeastern U.S. and Southeastern U.S.
21 regions.

22 An EIS includes a description of the

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1 affected environment, and in this EIS, we
2 considered the following resources: The Right
3 Whale and other marine species such as marine
4 mammals and sea turtles, the physical environment,
5 which includes air quality, water quality and also
6 ocean noise levels. And then the vessel
7 operations considered approximately 12 vessel
8 types. And in addition to that, different types
9 of shipping such as multiport string vessels and
10 also coastwise shipping. We looked at 26 port
11 areas from Eastport, Maine all the way to Cape
12 Canaveral, Florida, and then other areas that we
13 considered were cultural resources and
14 environmental justice communities.

15 After describing the affected
16 environment, an EIS analyzes the impacts on these
17 resources. I'm not going to go into the detail
18 today on the impacts of these resources because,
19 if you read the EIS, you know I would be up here
20 all afternoon but, if you would like to know more,
21 feel free to grab a CD of the EIS, it's also
22 available on-line, or we have several reference

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1 copies. However, I will emphasize a couple of key
2 points on how we evaluated some of the more
3 significant impact areas.

4 With regard to the Right Whale, we
5 couldn't quantify the impacts but, based on what
6 we know, and Greg gave you an idea of the
7 available data on the associated, the ship speed
8 associated with ship strikes, we fully expect ship
9 strikes to be reduced and the population to have a
10 positive impact on their recovery.

11 The other point I would like to make
12 is how we evaluated the economic impacts. And to
13 present this, I give you our economist, to talk
14 about his approach to analyzing the economic
15 impacts. Richard Blankfeld from Nathan
16 Associates.

17 MR. BLANKFELD: Thank you, Jessica.

18 As she mentioned, my name is Richard
19 Blankfeld, I'm with Nathan Associates. We are a
20 subcontractor to Earth Tech that was retained
21 actually back in October of 2004 to start looking
22 at the economic impact of the, at that time,

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1 advanced notice of proposed rule making and we
2 have been engaged ever since, having various
3 drafts looking at the economic impact of these
4 proposed measures.

5 I would like to say that where we are
6 today, we have available on the website a two
7 volume set which has the main report of the
8 economic impacts, that's part of the draft EIS,
9 and also an appendix volume that provides some
10 more sensitivity analysis and supporting
11 documentation, and the website where these are
12 available are on the fact sheets that were
13 available I guess at the front table and also
14 there will be another slide that comes up here
15 towards the end of this presentation where you can
16 copy down the e-mail again.

17 I also have a handout, which I think
18 we have enough for everyone in the room today, if
19 I could ask my colleagues here to just help
20 distribute these. While those are being handed
21 out, I would also like to add that I see a number
22 of familiar faces in the room this afternoon,

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1 that's primarily from those who participated in
2 some of the stakeholder meetings that we conducted
3 last fall on a draft economic impact report that
4 was available. And indeed, there was a series of
5 actually five stakeholder meetings that we held,
6 one of which was here in Boston, another one in
7 Jacksonville, Savannah, Charleston and Hampton
8 Roads, and also there were a series of meetings in
9 Washington with some of the industry association
10 members.

11 I would like to take a few minutes
12 here to quickly go through the approach to the
13 economic analysis and I realize that my comments
14 here are the only thing between that and our
15 receiving your comments here today, which is
16 indeed the primary purpose for us to be here. So
17 I'll indeed try to keep these brief, and further
18 information on all of this methodology is
19 contained in the reports that I have already
20 mentioned. When we were asked to say, well, how
21 will this affect the proposed operational
22 measures, how will it affect the shipping industry

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1 and other affected sectors of the economy, the
2 first thing we tried to do was to say what are the
3 number, what are the vessels that really will be
4 impacted by this?

5 And what we tried to do, as Jessica
6 mentioned, the rules are affecting 26 port areas
7 along the U.S. East Coast and we searched for what
8 is the best data source, the most comprehensive
9 data source on vessels coming into the U.S. East
10 Coast? It was quickly apparent from the reviews
11 that we conducted that the U.S. Coast Guard Vessel
12 Arrival Data Set, which they maintain on keeping
13 track of every single vessel that's 150 gross
14 registered tons or greater, calling into all
15 ports, but we have the part of the data set that
16 dealt with the U.S. East Coast ports that are
17 affected by this and we obtained this information
18 for a three year period from 2002 through 2004.

19 Just to give you an idea, during that
20 period, the data set included vessel arrivals of
21 over 83,000 arrivals of vessels at U.S. East Coast
22 ports and those 83,000 arrivals were conducted by

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1 over 7,300 individual vessels. What that means,
2 as many of you in the industry know, many of these
3 vessels called repeatedly throughout the year and
4 indeed that's why the number of vessels, even
5 though it's a huge number at 7,300, is still much
6 less than the total number of arrivals themselves.

7 And we looked at this data by vessel type, these
8 that were in the report, it's types of vessels
9 that are commonly used in the industry, such as
10 container ships, dry bulk carriers, passenger
11 ferries, tankers, etcetera.

12 We also, for all of those vessel
13 types, we identified vessel size ranges that are
14 relevant to those vessel types and, all together,
15 we had 18 vessel dead weight size ranges analyzed,
16 and we also looked at these vessel arrivals by the
17 time, by the date which they occurred. Because as
18 Greg mentioned, under some of the alternatives,
19 actually all of the alternatives, there are
20 seasonal measures in which the speed restrictions
21 would be put in place for certain months of the
22 year. And we looked at the seasonality and the

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1 period when the vessel arrivals historically have
2 occurred to understand indeed which vessels would
3 be affected in which port areas at specific points
4 of the year.

5 Once we identified the number of
6 vessels to be affected, we then said, well, what
7 will be the impact on these vessels in physical
8 terms? And, by that, we mean, if you are talking
9 about a speed restriction, the primary physical
10 impact is to take more time for the vessel to slow
11 down and for it to require additional time to come
12 in and out of the U.S. East Coast. And we looked
13 at these, the range of 10 knots to 14 knots, which
14 is in the proposed, which was in the proposed rule
15 at that time.

16 In looking at the speed, the impact
17 of the speed restriction, we took into account
18 specific characteristics of each port area. For
19 example, the location of the pilot buoys at
20 different port entrances. You say, well, gee, how
21 does that affect this analysis? Well it's been
22 pointed out in prior studies, and by the industry

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1 and some of the environmental groups as well,
2 actually they have all chimed in on this, that the
3 vessels, when they approach a U.S. East Coast
4 port, in most cases, have to pick up a pilot at
5 the pilot buoy. Well, in order to do that, they
6 generally slow down between, to around 8 to 10
7 knots anyway. So, depending on where the location
8 of the pilot buoy is at the access to each port,
9 hence, since they are already slowing down to pick
10 up a pilot, the effective distance of the proposed
11 regulation is less than what's just nominally
12 stated in the proposed rule.

13 For example, if it was proposed to be
14 a semicircle of 25 nautical miles offshore and the
15 pilot buoy is located four miles off shore, then
16 we were saying the effective distance was only 21
17 nautical miles. In addition to this, we also
18 looked at other factors such as vessels having to
19 slow down or speed up. A good example of this, we
20 were just in Baltimore last week at a public
21 hearing and I mentioned how the rule would apply
22 only to what we call the deep water, the area

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1 outside of a COLREGS line, for those who are
2 marine oriented.

3 Basically that means it's offshore,
4 deep water, and in the area, say, of Hampton Roads
5 and the entrance to the Chesapeake Bay. What that
6 means is, well I'll just point, this map isn't
7 going to do it. It basically means the regulation
8 is in effect on the area, if you connect it from
9 one point of land to the nearest other point at
10 Chesapeake Bay, the rule is only in effect on the
11 outside of that, not inside Chesapeake Bay itself.

12
13 Why is that important? Okay, well,
14 vessels would have to slow down prior to hitting
15 the speed restriction, say, 25 nautical miles
16 offshore, and it takes, and in order to be at 10
17 or 14 knots when they hit that area, it's been
18 pointed out by the industry, and we have adopted
19 this, that vessels can take up to 30 minutes to an
20 hour in advance in order to slow down from their
21 normal sailing speed to when they will be able to
22 be going somewhere between 10 and 14 knots in the

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1 restricted area.

2 Once they leave the restricted area
3 and start sailing up, I'm very excited by this
4 analysis. I would say leave the restricted area,
5 start sailing up the Chesapeake Bay, they then
6 need to take time to resume back to normal
7 operating speed, so these are included. I'm
8 trying to just give you a flavor of the detail
9 that we've run into. In each of the port areas,
10 we've looked at when they would need to slow down,
11 how long that would be in order to reach the
12 restricted speed, and then how much time it would
13 also take to speed up afterwards. I'll just
14 mention it does not affect, that particular impact
15 doesn't apply to all port areas, it really depends
16 on where the restrictions are relative to the
17 shoreline.

18 Another example of the detail that
19 was used in the analysis, under one of the
20 alternatives that Jessica highlighted, alternative
21 three, rather than having speed restrictions be
22 defined as a semicircle offshore of each port

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1 area, under alternative three, that had blanket
2 speed restrictions for 25 miles off the entire
3 U.S. Mid Atlantic East Coast, and that extends
4 from Providence all the way to Brunswick or
5 through Savannah.

6 What that means for me, as an
7 economist, well, when you look at vessel traffic
8 coming in and out of a U.S. East Coast port, the
9 vessels don't sail southbound, and then make a
10 right turn and go in perpendicular to the shore to
11 enter the port, what they do is they take the
12 shortest, safest distance that they can travel.

13 So, if they are coming down the U.S.
14 East Coast, they would actually enter most of
15 these port areas at a diagonal, and hence, when
16 you look at the effective distance of how long
17 they have to sail through a blanket restriction
18 that's parallel to the coast, they would be coming
19 in at an angle, instead of coming in just the
20 width of that effective distance. So, for those
21 reasons, we've increased, we have in the report
22 shown how taking into account the actual sailing

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1 routes, what is the effective distance that the
2 speed restriction would be in place under that
3 type of an alternative.

4 Another type of impact that we looked
5 at which came out of the comments in the
6 stakeholder meetings was the cumulative effect of
7 impacts at multi ports. For instance, especially
8 in the Mid Atlantic region, many of the speed
9 restrictions would be in place at the same time of
10 the year and container ships and railroad ships
11 that are calling at New York, Hampton Roads,
12 Savannah, then there are other ports, multiport
13 strings that we have identified, the industry
14 would say that indeed the impact on us of those
15 three vessels calls, all during the restriction
16 period, is greater than just summing up the impact
17 of each. And we looked into that and indeed have
18 concluded in the current version of the economic
19 analysis a factor in an amount relative to that
20 cumulative impact.

21 Moving on. Once we talk about the
22 time and the physical impact of the operational

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1 measures, how do we put that into economic terms?
2 How do we value that? And what we've used for
3 this analysis is vessel operating costs that are
4 prepared for the U.S. Army Corps of Engineers.
5 Perhaps some of you know of them, they are
6 referred to as the vessel operating costs for Deep
7 Draft vessels and the data that we were provided
8 from the U.S. Army Corps of Engineers was through
9 2004. Again, based on our own observations and
10 inputs from the industry, we realized that those
11 operating costs reflect bunker fuel prices from
12 2004 and now here we are in 2006 and the world has
13 changed quite dramatically, in terms of where fuel
14 prices are.

15 We have been able to update our
16 analysis and to update their formula on how they
17 include fuel prices as part of the total operating
18 cost to include, at the moment, we have bunker
19 prices as of October, 2005 in the current analysis
20 that's available and we'll be able to update that
21 to more recent 2006 data when we go to the final
22 version of the economic impact for the EIS itself.

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1 So what do we do? We take the hourly operating
2 cost of vessels, apply that to the delays that
3 have been estimated by each type of vessel in
4 terms of hours of delay and we calculate the total
5 direct economic impact on the shipping industry.

6 The numbers that we have come up with
7 are in some of the handouts and people say, well,
8 gee, what does this mean, 30 million, 50 million,
9 100 million? It's hard to place that number, for
10 many lay people, in an economic context. What
11 we've done in the analysis is shown that number
12 vis-à-vis two other economic indicators, if you
13 will, one is the comparison of the economic, the
14 value of the economic impact with the total value
15 of imports and exports that enter the U.S. East
16 Coast.

17 As an economist, I wanted to see,
18 well, gee, are we looking at an economic impact
19 that would be so significant that it could even
20 change the demand for U.S. traded goods and the
21 demand for shipping industry services? And when
22 we looked at the numbers, you know, what we found

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1 was that the proposed, the estimated economic
2 impact of the proposed strategy constituted 1/100
3 of one percent of the value of the traded goods.
4 So, in terms of, if you are saying, gee, as a
5 consumer here, if the industry passed along the
6 cost of this economic impact to society through
7 economic prices, one could say it might have an
8 impact of 1/100 of one percent of the value of
9 goods that are either produced or consumed along
10 the U.S. East Coast. Another measure of the
11 impact is how does it affect the shipping industry
12 itself?

13 And as an indicator of the magnitude
14 of the shipping industry on the U.S. East Coast,
15 we took a look at the maritime freight charges
16 that are estimated as part of the total imported
17 value of the goods. This is data that's
18 maintained by the Department of Commerce on
19 imports and, generally, the freight charges, while
20 it varies by commodity, when you take an overall
21 average, and it varies by port area too, based on
22 the commodities that are handled, but generally,

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1 they are somewhere between five to eight percent
2 of the value of the goods.

3 When you look at that number and the
4 economic impact relative to the value of the
5 maritime freight charges, it represents somewhere
6 on the order of magnitude of 2/10 of one percent
7 of ocean freight charges. That could be said that
8 the ocean freight charges are a proxy for the
9 revenues of the shipping industry associated with
10 the transportation of these goods so, hence, it
11 would be 2/10 of one percent of the revenues of
12 the industry. We also, I've been focusing, up to
13 now, most of the discussion on the impact on the
14 commercial shipping industry because, quite
15 frankly, it's the industry that has the largest
16 dollar impact due to its significance along the
17 U.S. East Coast, but we also took a look at other
18 industries as well.

19 Passenger ferries, who I know are
20 represented by a number of operators here in the
21 room today, in general, these regs do not apply to
22 the vast majority of passenger ferries that

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1 operate on the U.S. East Coast. The reason for
2 that, again, is because these apply offshore.
3 Most of the passenger ferries inside New York
4 Harbor, inside, the Cape May Ferry, others, they
5 all, those operate inside what's called the
6 COLREGS lines, and hence, would not be affected at
7 all by these proposed regulations.

8 There are though some passenger ferry
9 operations, such as those up here in the Cape Cod
10 Bay, some of which also to Block Island that would
11 be affected by these regulations and we've
12 included an estimate of the economic impact on
13 those types of operations in this analysis.

14 Another sector that would be affected
15 is the whale watching industry and many people
16 find that a bit ironic, but indeed, in order for
17 the whale watching industry to serve its clients,
18 it needs to get the people out to the whale
19 watching areas quickly and to bring them back
20 quickly, so they can maximize the amount of time
21 that they are in areas where whale watching would
22 be most interesting.

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1 And the speed, those vessels often go
2 at speeds well in excess of the proposed speed
3 restrictions and, in some of the alternatives, the
4 speed restrictions are also proposed for what is
5 considered high season for whale watching. So we
6 have estimated the impact of those high speed
7 whale watching vessels that have to either slow
8 down during those periods or switch to vessels of
9 a shorter length that would not be affected. I
10 don't think that was really mentioned in the
11 earlier presentations, so let me just highlight
12 that a bit.

13 All of the regulations that have been
14 proposed here today affect only vessels 65 feet or
15 greater so, indeed, some of the whale watching
16 vessels and some of the charter fishing vessels,
17 which I'll get to in a minute, those are already
18 under 65 foot in length and would not be affected
19 at all by these regulations. But what we are
20 really looking at, in terms of the economic
21 impact, are the larger vessels in those
22 categories, especially those that are high speed

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1 vessels.

2 I mentioned charter fishing, it's
3 actually a similar concept to the whale watching,
4 they want to get their clients quickly out to the
5 fishing areas. You don't want to make a half day
6 fishing trip into a whole day fishing trip only
7 because of the increased time of getting in and
8 getting out to the areas where you can do the
9 fishing. And indeed, we have looked at the impact
10 on those industries as well of having to make some
11 of the larger charter fishing head boats have to
12 slow down.

13 The other sector that's listed there
14 is the commercial fishing industry, obviously
15 that's an important industry up here in New
16 England. By and large, the majority of those
17 vessels are not affected at speed restrictions of
18 12 knots or 14 knots, it's only if the speed
19 restrictions is at 10 knots do some of those
20 vessels start to get affected and we've included
21 an estimate in the economic analysis of indeed a
22 speed restriction of 10 knots and how that might

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1 affect the time that commercial fishing vessels
2 take to go out on their fishing trips.

3 I think that summarizes the overall
4 approach to the economic analysis and, indeed, I
5 would like to refer you to the reports that are
6 available on the Web for more information on any
7 elements of that.

8 At this point, I would like to turn
9 it back to Laurent, who will have some concluding
10 remarks and I think some logistics to mention as
11 well.

12 MR. CARTAYRADE: Thank you, Richard.
13 Yes, mostly logistics.

14 Just a reminder that we are, and as
15 has been stated during the presentation, that we
16 are dealing here with really two processes that
17 are shown here and what we are dealing with today
18 is the EIS, the big blue arrow there, and comments
19 on the EIS. There was also parallel to that a
20 rule making process, which also has its own
21 channel for comments, and one of the differences
22 is that there are two different e-mail addresses.

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1 Now we have the same deadline for both processes,
2 since the deadlines have been extended, which is
3 October 5th, but the processes themselves remain
4 different.

5 I think this will conclude our
6 presentation and a reminder that the URL is there
7 for the website that may contain more information
8 than what you had so far and, with that, I would
9 like to move on to the next phase of our meeting
10 today which is the comments.

11 A couple of housekeeping issues, one
12 thing I would like to remind everybody is that we
13 are recording this meeting, we have a court
14 reporter there, and that everything that is being
15 said today is and will be on the public record, so
16 it is just a statement I wanted to, something I
17 wanted to remind you of.

18 The other thing, in terms of the
19 format of the comments, we are going to be calling
20 your names in the order that you signed in. We'll
21 ask you to step up here and make your comment. We
22 ask that, as much as possible, you stay within

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1 five minutes, which I found by experience, is
2 actually plenty of time, but under five minutes
3 would be great. There will be no, as I stated
4 earlier, there will be no response to those
5 comments directly, the response will be the final
6 EIS which will be prepared following the
7 conclusion of the comment period.

8 And I would like to apologize in
9 advance for the way I'm going to be saying your
10 names because, first, I have to read them off the
11 sign-in sheets and then, even assuming I got those
12 right, I have to pronounce them right. So
13 hopefully you will recognize yourselves when I
14 call you and, in advance, I apologize for, some of
15 them actually are going to be easy for me this
16 time, but not all of them. If you will be patient
17 with us for a couple of minutes, we are just going
18 to reorganize our little set up here and it's
19 going to take a couple of minutes, and then we
20 will start with the comments.

21 (Whereupon, at 2:10 p.m., there was a
22 brief pause until 2:12 p.m.)

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1 MR. CARTAYRADE: We'll be ready to
2 start in a minute, perhaps less than a minute.

3 The first speaker today will be Mr.
4 Ed Welch.

5 MR. WELCH: Good afternoon, ladies
6 and gentlemen. I'm Ed Welch, I'm Legislative
7 Director for the Passenger Vessel Association of
8 Alexandria, Virginia. We are a national trade
9 association that represents U.S. flag passenger
10 vessels of all types with roughly about 600
11 members representing several thousand vessels.

12 With respect to the rule making here
13 today, we are talking primarily about ferries and
14 whale watching vessels. All of our members that
15 are affected by this are small businesses under
16 the U.S. Small Business Administration guidelines.

17 And I would like to commend the
18 National Marine Fisheries Service, to begin with,
19 by responding positively to some of our comments
20 and our meetings and previous activities where we
21 pointed out that, up until basically last year,
22 the agency was assuming this rule making dealt

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1 with deep sea, commercial cargo vessels and didn't
2 have much of an impact on the types of vessels
3 that my association represents. And after several
4 insistent arguments on our part that you needed to
5 expand your scope, you did and we appreciate it.

6 I want to commend particularly Mr.
7 Blankfeld and his work because it does, he did
8 look carefully at how it affects whale watching
9 vessels and ferries and has some analysis, and we
10 appreciate that because this rule making, in your
11 own words, has a disproportionate impact on our
12 segment of the industry compared to other segments
13 of the industry.

14 I don't think it's a stretch to say
15 that the rule, as proposed, threatens the
16 existence of ferry service in the Northeast to
17 Provincetown, Martha's Vineyard, Nantucket and
18 Block Island as the New England community has
19 grown accustomed to under the current
20 circumstances. I'll explain why I reached that
21 conclusion in just a second.

22 So the question is how can the rule

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1 making be adjusted so that all the whales can be
2 protected but the ferries and also the whale
3 watching vessels can operate economically and
4 serve their customers? We, the PVA, believe and
5 we agree with the EIS that probably, with the
6 exception of the interest of Delaware Bay, the
7 proposed seasonal speed limit zones are not going
8 to have unreasonable impacts on ferries and whale
9 watching vessels. Fortunately for us and
10 fortunately for the whales, our prime seasons of
11 operations in Cape Cod Bay, and off Race Point and
12 in some of the other places do not overlap with
13 the prime seasons the whales are there, so that's
14 good for everybody all around.

15 The real problem is with the dynamic
16 management zones as in the proposed rule. The way
17 we understand it, the zones will be automatically
18 of a duration of more than two weeks, 15 days,
19 unless NMFS affirmatively removes them. They will
20 be, at a minimum, 36 or more miles in diameter and
21 so a significant area of ocean will be affected.
22 Basically what we are concerned about is that the

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1 DMA is overlaid to one of our ferry's typical
2 routes, say, across Cape Cod Bay or out to
3 Nantucket, in the prime of our season, your own
4 analysis suggests that the rational response of
5 the operator would be to cease operating for those
6 two weeks and we agree with that, most of these
7 operators can not economically carry passengers at
8 10 knots on these routes.

9 Where we do take some issue with your
10 economic analysis in that the impact is not just
11 those two weeks. If our people have to shut down
12 for two weeks in the prime of the season, and then
13 the DMA goes off after 15 days, things just don't
14 resort to where they were pre DMA. The customers
15 won't come back, the revenues of those two weeks
16 may be the crucial revenues for whether company
17 makes a profit that year or not. Remember, we are
18 talking about operating seasons that are not 365
19 days long, we are talking about operating seasons
20 that might be 90 days or perhaps 120, so you take
21 15 days out of that and that's a meaningful
22 reduction of revenue capacity.

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1 So what can we do? How can we come
2 up with something that effects, protects the
3 whales without dealing with an economically
4 crippling blow to the ferry operators and the
5 whale watching operators? Although I will have to
6 say that NMFS' own data, as I analyze it, shows no
7 instance of either a confirmed or a suspected
8 strike of a Right Whale in either Canadian or U.S.
9 East Coast waters by a ferry or whale watching
10 vessel. So it's a little bit hard for our people
11 to understand why they are being asked to
12 undertake what they consider to be draconian
13 responses when they have not been implicated even
14 by suspicion in any of the whale strikes.

15 If you look at the strikes that were
16 known, they weren't our people. If you look at
17 the strikes that are unknown derivation, most of
18 those are in geographic areas where our people
19 weren't operating or weren't even close. But we
20 are not going to sit here and say our people pose
21 no threat to the whales. That's foolish, we
22 understand that. Potentially, they could pose a

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1 threat to the whales. We would like to work with
2 the National Marine Fisheries Service and see if
3 there is some alternative to the DMAs as you have
4 proposed them. For example, and we don't have the
5 exact magic answer, our vessels are much smaller
6 than the deep sea vessels. They are more
7 maneuverable, they don't weigh anywhere close to
8 the same amount.

9 Is it necessary to have the same
10 regulatory regime for these relatively smaller
11 vessels as it is for the large cruise ships and
12 container ships? We think perhaps there might be
13 a way where you could come up with a two-tiered
14 approach to the DMAs that would lessen the
15 economic impact on us and still deal with the
16 potential threat to the whales. We would like to
17 work with you and see if you would consider that.

18 What might that constitute? We don't have an
19 answer. Out in San Francisco Bay, some of the
20 ferries out there are looking at some special
21 forward looking radar to avoid whale collisions,
22 that might be something to look at.

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1 Our vessels operate only in the day
2 time, so the question about visibility of the
3 whales at night is not a problem, so maybe if we
4 had a dedicated spotter on board, that would help
5 during these DMAs. Do the DMAs have to be as
6 large as you proposed? Do the speed limits have
7 to be down to 10 knots? After all, most of your
8 documents, up until this most recent permeation,
9 we are talking about 12 or 14 and most of your
10 data indicates that most of the problem is at 12,
11 or 14 or higher, so we don't have a specific
12 proposal today as to how to address this DMA
13 problem but, for ferries and whale watching
14 vessels, what you've got now is potentially a
15 business killer.

16 And while we don't want to be
17 perceived as uncooperative in the rule making,
18 when our folks come to us and come to you and say,
19 look, we don't see, if a DMA, if the whales
20 behaved in an out of character situation where
21 they showed up out of season in an area that
22 doesn't have a seasonal speed limit, we realize

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1 that's an irregular situation, it's an
2 unpredictable situation but, if a DMA is imposed
3 on us, our routes, it could be potentially a
4 business killer. We have got a couple of members
5 that will explain that a little bit more in their
6 testimony today.

7 Two other points I would like to
8 make. The documents and the statements here today
9 have indicated that your seasonal speed limits
10 apply outside the COLREGS line, I think that needs
11 clarifying in your final regulations. It's not
12 clear to me that the regulations themselves say
13 that, they talk about a radius from a certain
14 point. I think if you used the phrase seaward of
15 the COLREGS lines, that would help clarify that.

16 The second question I have is what
17 about the DMAs, are they only to be imposed
18 outside the COLREGS lines because, if they aren't,
19 Richard Blankfeld's comments that ferries, like
20 the Cape May Louis Ferry, aren't affected at all
21 by these regulations would have to be revised
22 because the Cape May Louis Ferry, for example,

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1 across the mouth of Delaware Bay, if all these
2 rules apply outside COLREGS, is not affected but,
3 if the DMAs can go inside the COLREGS lines, they
4 potentially could be affected.

5 So we appreciate the work that the
6 agency and contractors have done to begin
7 addressing the potential impacts on ferries, and
8 whale watching vessels and other U.S. passenger
9 vessels. They acknowledge that, under their
10 estimates, that, for example, high speed ferries
11 that are affected could lose 9.8 percent of their
12 annual revenue. We might take issue and say that
13 the impact would be greater, but at least you are
14 addressing it, we appreciate that, we would like
15 to work with you further as you refine your rule
16 making.

17 Thanks very much.

18 MR. CARTAYRADE: Thank you.

19 Before we move to the next speaker, a
20 reminder also that, if you have written comments
21 with you today, we have a box in which you can
22 place them before leaving.

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1 Our second speaker is Mr. Joe McKenly
2 or Kechnie. I'm not sure I got the name, so--

3 MR. MCKECHNIE: Close enough where I
4 was able to recognize it, anyway.

5 MR. CARTAYRADE: Well that's all that
6 matters.

7 MR. MCKECHNIE: Thank you. I'll be
8 reading my statements for the record. Good
9 afternoon. I'm Joseph McKechnie, Vice President,
10 Shipping for Suez LNG North America.

11 I thank you for the opportunity to
12 present these comments in a public forum as well
13 as the opportunity to reply with more in depth
14 written comments at a later date. Suez LNG North
15 America transports liquefied natural gas or LNG to
16 ports on the East Coast of the United States,
17 including Elba Island, Georgia, Cove Point,
18 Maryland and of course Boston, Massachusetts, all
19 of which will be affected by the proposed
20 regulations.

21 We supply LNG for heating homes and
22 businesses and the generation of power throughout

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1 the East Coast. Suez LNG supplies approximately
2 20 percent of the natural gas consumed in the New
3 England market, Suez LNG has nearly 100 vessel
4 arrivals per year on the East Coast with
5 approximately 65 arrivals per year in the Port of
6 Boston alone.

7 We strongly support NOAA in its
8 efforts to protect the North Atlantic Right Whale
9 from extinction and actively support these efforts
10 on an ongoing basis. We consistently provide our
11 vessels with Right Whale alerts and remind our
12 vessel masters of their responsibilities under the
13 Mandatory Ship Reporting System.

14 We do, however, have serious concerns
15 with the proposed rule in its present form. Of
16 great concern to us is the speed restriction of 10
17 knots. Most large deep draft vessels require the
18 ability to travel at speeds in excess of 10 knots
19 in order to main full steerage when not being
20 escorted by assist tugs, such as while inbound and
21 outbound in harbor transits. The proposed 10 knot
22 speed restrictions could result in unintended

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1 consequences for vessels by taking away the
2 master's ability to safely maneuver his vessel.

3 In addition, the Port Access Route
4 Study or PARS, as we know it here in Boston, which
5 will narrow the traffic separation scheme
6 approaching Boston by approximately 1/2 nautical
7 mile, further restricts these vessels' ability to
8 maneuver. A speed restriction of 14 knots would
9 be far more acceptable to the marine industry, it
10 would still significantly contribute to the
11 protection of the North Atlantic Right Whale.

12 Another point. The proposed
13 regulation currently exempts federal vessels,
14 including foreign sovereign vessels when they are
15 engaged in joint exercises with the U.S. Navy. We
16 urge NOAA to reevaluate this exemption as there
17 are several documented cases of federal vessels
18 being involved in whale strikes. So long as it
19 does not compromise the mission at hand, they too
20 should comply with the final version of these
21 regulations.

22 The proposed speed restrictions will

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1 also result in significant economic impacts to the
2 marine industry. While the draft EIS does address
3 economic impacts, we feel that it fails to go
4 deeply enough and does not fully detail the
5 results of these regulations and requires
6 additional evaluation. We will comment further on
7 this matter in our written comment letter.

8 We believe that the proposed rule
9 ignores the results of many partnerships, outreach
10 programs and direct participation by industry
11 representatives in protecting the North Atlantic
12 Right Whale while maintaining safety within the
13 marine industry. We have requested a 60 day
14 extension to the comment period as the proposed
15 regulations may have potential safety concerns and
16 serious economic impacts that must be addressed in
17 greater detail. This morning, we learned that
18 this request has been partially honored and we
19 appreciate the extra time. However, we still look
20 forward to the full 60 days.

21 We will put our detailed comments in
22 writing and ask that NOAA fulfill its requirements

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1 to consider them. We in the marine industry hope
2 that these comments will be given serious
3 consideration. The PARS, as mentioned previously,
4 which was fast tracked to the IMO before the
5 proposed rule was even released for public
6 comment, does not appear to have followed that
7 normal process and procedure for rule making.

8 Thank you again for the opportunity
9 to make these comments.

10 MR. CARTAYRADE: Thank you.

11 Our next speaker is Mr. John
12 Phillips.

13 MR. PHILLIPS: Thank you.

14 My name is John Phillips, I'm the New
15 England Regional Director for the Ocean
16 Conservancy and my offices are based in Portland,
17 Maine. On behalf of our over 10,000 members here
18 in New England and about 180,000 members
19 nationally, we urge you to protect the 300
20 remaining Right Whales. We've received, I think
21 you have received, rather, many e-mails, perhaps
22 several thousand, from our members and activists

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1 who asked that you adopt this 10 knot speed limit
2 in areas and at times that they are needed most.

3 Throughout most of the 1990s, I was
4 the Massachusetts Commissioner of Fisheries and
5 Wildlife and I worked on Right Whale protection,
6 along with members of my department, including
7 some who served on the Large Whale Take Reduction
8 Team, and we were focusing almost exclusively on
9 entanglement but, at the time, ship strikes were
10 talked about, but we really weren't focusing on it
11 because it was considered a fairly intractable,
12 difficult political issue, so I'm very pleased
13 that NMFS has gotten into the issues and is doing
14 something about it at this point.

15 The Right Whale is obviously gravely
16 endangered and the situation has not improved
17 since the `90s, for instance, and it remains at
18 the brink of extinction. It is also clear that we
19 can't wait any longer to implement measures to
20 prevent ship strikes and note that NMFS' analysis
21 concludes that the economic effects will be fairly
22 modest. We have such critical feeding grounds

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1 here, and an aggregation of whales and a high
2 level of reported ship strikes and, here in
3 Massachusetts, we also have a migratory corridor
4 for females headed to the Southeast to give birth.

5 In the last two years, we have lost six adult
6 females.

7 Alternative five of the DEIS would
8 provide the highest level of protection, while
9 six, alternative six, provides the bare minimum
10 needed. We urge NMFS to use the best available
11 science to ensure that the speed limits are
12 applicable in the times and places that the whales
13 need it most.

14 Two final points. There must be
15 adequate enforcement to ensure that the rules are
16 adhered to and we urge you also to move forward
17 now and to not delay. We were disappointed to
18 learn, actually, I learned it this morning, that
19 NMFS has extended the comment period until October
20 5. We would like the speed limits in place by
21 November of this year to protect the mothers and
22 calves in the Southeastern calving grounds.

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1 Thank you for providing me with the
2 opportunity to comment on this vital issue.

3 MR. CARTAYRADE: Thank you.

4 Next up is Mr. Michael Glasfeld.

5 MR. GLASFELD: Good afternoon. My
6 name is Mike Glasfeld, I'm owner of Bay State
7 Cruise Company, we are one of the ferry operators
8 from Boston to Provincetown, Ed Welch mentioned
9 our business.

10 The 35 years that our company has
11 operated that ferry route is the longest of many
12 operators that have plied that route for the 160
13 year history of the ferry, it's one of the longest
14 operating ferry routes in the United States. We
15 too are facing extinction, should this regulation
16 take hold. We are specifically concerned with the
17 DMA.

18 While we sincerely appreciate the
19 economic study that's been performed, and I
20 appreciate the opportunity to speak to you, I
21 don't think the economic study has gone far enough
22 and I will do something very unbusinesslike and

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1 share with you the nitty gritty economic picture
2 of our business and how this would impact us.
3 More than the 9.8 percent reduction of revenues
4 that we read about in this study, the two weeks
5 that would be imposed by the DMA would in fact
6 make us extinct, it would put us out of business.

7 We operate for 18 to 20 weeks a year,
8 the two ferry operators carry in excess of 100,000
9 people from Boston to Provincetown. Depending on
10 when that two weeks falls in our operating cycle,
11 we will lose either \$150,000 of revenue or
12 \$380,000 of revenue. That is more profit than we
13 have made in any of the 35 years that we have
14 operated from Boston to Provincetown. It is not
15 something we can make up, it is not something that
16 would allow us to come back the next year. In
17 fact, over the 35 years that we have conducted
18 this service, we have made money, the north of
19 break even, for 18 of those years, such is the
20 delicate balance. If it's 19 years that we don't
21 make money, I think then that's it.

22 It's more than just the impact of

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1 putting our ferry operation out of business, it is
2 also the roll down economic effect. We do, as I
3 said, bring probably in excess of 100,000. I
4 don't exactly know because the other ferry
5 operator won't share his numbers with me and I
6 won't with him, that's part of what we do as
7 businessmen, but I can tell you the Town of
8 Provincetown would be keenly sensitive to losing
9 what is calculated to be about \$350 spent by each
10 visitor to Provincetown that comes in on our
11 ferries. The effect, I assume, would be somewhere
12 around \$15 to \$20 million of lost retail revenues
13 in Provincetown.

14 There are of course the diminished
15 expenditures we will make in the market place,
16 whether it be fuel, employment, goods and
17 services. We will no longer be spending \$3.2
18 million, we will no longer be taking thousands and
19 thousands of automobiles off the road, reducing
20 greenhouse emissions by hundreds and hundreds of
21 tons. This is a known negative environmental
22 impact of us no longer being sailing on this route

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1 so, please, take into keen consideration these
2 numbers, and I will go into a little more detail
3 because I ran across this while I made these
4 points earlier in this process.

5 People say, now, how can slowing down
6 to 10 knots, in what could be a 36 mile diameter,
7 DMA, put you out of business? And we have
8 quantifiable evidence of that being the case.
9 Most recently, when the tunnel closures in and
10 around the Boston area hindered our passengers'
11 traffic by as much as 20-25 minutes, we saw a
12 precipitous drop in ridership. People do not want
13 to be slowed down by 20-25 minutes, let alone
14 expanding our ferry route run from 1.5 hours to 5
15 hours. That's what would happen if the Right
16 Whales, one Right Whale was sighted in an 18 mile
17 radius a DMA was impacted, that's a 36 mile
18 diameter. We have a 48 mile route and with the
19 slow downs in and out of the harbors, that's a
20 five hour route.

21 Further evidence of this is we had
22 been, prior to operating the high speed ferry,

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1 operating a slow speed ferry, a 16 knot ferry.
2 Once we introduced the high speed ferry, we went
3 from carrying about 40,000 passengers a year,
4 average, to 6,000 passengers a year. It goes
5 without saying perhaps that we no longer operate
6 that ferry seven days a week, it's just not
7 economically viable, so we have quantifiable
8 evidence that people will not give up what could
9 be a two and a half mile ride to Provincetown or
10 frankly a two and a half mile ride to the White
11 Mountains, perhaps, maybe that's the alternative,
12 in order to hop on a boat for five hours.

13 Thank you for your time.

14 MR. CARTAYRADE: Thank you.

15 Our next speaker, Mr. Tom Valleau.

16 MR. VALLEAU: My name is Tom Valleau,
17 I'm the Executive Director of the North Atlantic
18 Ports Association, and I'll spell my name for the
19 record, it is V, as in Victor, A-L-L-E-A-U.

20 And I would like to use my time to
21 address the economic impact elements of the study,
22 and my overall comment is that we think the

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1 economic impacts have been understated by the work
2 of Nathan Associates. We see this not just as a
3 question of slowing down ships, calculating the
4 hourly operating cost of the ships and multiplying
5 by the number of hours of delay, and calling that
6 the economic impact, and I really question Nathan
7 Associates believes that either, it's far too
8 simple, and I'll give you some examples as to why
9 I think that's the case.

10 It's not like reducing the highway
11 speed on I-295 during a snow storm and everything
12 slows down to 45 miles an hour for a day. In that
13 system, there is redundancy and resiliency, and
14 then things come back to normal and the economic
15 impacts are easily absorbed. The ocean commerce
16 system doesn't have that global resiliency, it
17 doesn't have that redundancy. I'm going to give
18 you three examples to try to illustrate the point,
19 first would be a New England manufacturer of food
20 and pharmaceutical products, and they import their
21 materials from Indonesia, manufacture them here in
22 New England, ship them back out worldwide.

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1 If that company can't get a
2 dependable supply of the Indonesian products that
3 it needs, they'll have to build a warehouse in
4 order to smooth out the highs and the lows of
5 their inventory supply in order to keep that
6 production line running, or they may relocate the
7 facility to Indonesia where the product is. They
8 are shipping it to customers worldwide, in any
9 event, and if you did that, their product cost
10 might be lower than what it is manufacturing it in
11 New England, not higher and, according to the
12 methodology that Nathan Associates uses, that
13 would be a benefit of slowing the ships down.
14 This is economics turned upside down.

15 My second example would be a
16 passenger vessel that operates from New England
17 into Canada with a 24 hour round trip cycle, a 200
18 mile voyage, ship traveling at 30 knots, hour and
19 a half, two hour turn around time in the port and
20 back. Well if you had to slow that ship down by
21 three hours on some of its voyages when the whales
22 are there and they need to be protected, it's not

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1 just a matter of multiplying the hourly operating
2 cost of the ship times the number of hours of
3 delay and calling that the economic impact. If
4 that trip were to leave, say, at noon on Monday,
5 it would leave at 3:00 on Tuesday, and it would
6 leave at 6:00 on Wednesday and it would leave at
7 9:00 on Thursday, and it would leave at midnight
8 on Friday and you wouldn't get a 24 hour daily
9 rotating service, the entire business plan is
10 compromised.

11 This is a better way to look at the
12 economic impacts of disrupting ocean operations.
13 The method that Nathan Associates used is
14 certainly simple. Once you have the formula, your
15 high school son or daughter could determine the
16 so-called impacts. It's much more nuanced, much
17 more layered, much more sophisticated than that,
18 and I think the people in this room know that.

19 My last example goes to commercial
20 fishing, the vessels are leaving their port,
21 headed for the fishing ground, they have to slow
22 down to 10 knots instead of 14 or 15 in their

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1 transit and, again, Nathan Associates takes the
2 operating cost times the hours and says that's the
3 additional cost. Instead of codfish costing \$5.95
4 a pound in the supermarket, it's going to cost
5 \$6.01 in the supermarket.

6 The National Marine Fisheries Service
7 knows there is a regulation called days at sea,
8 these boats are limited to 50 days fishing at sea,
9 generally. Their steaming time counts and if it's
10 going to take them extra hours to get from their
11 home port out to the fishing grounds, say,
12 George's Bank, these vessels are going to migrate
13 to the nearer ports, and it's already happening,
14 as the National Marine Fisheries Service is keenly
15 aware because they are pounded on this. So to
16 simply say, oh, it's just three hours times the
17 operating cost, it's a far, far more complicated
18 calculation than that.

19 I'm concerned about whether or not
20 these regulations would affect the supply of
21 heating oil and gasoline supplies in New England.

22 Reading the Nathan report does not give me

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1 comfort and my suggestion to NMFS is, before you
2 embark on this public policy, reassure yourself
3 that this isn't going to be an unforeseen factor,
4 as these events unfold.

5 I think the work on cruise ships is
6 woefully lacking in this report. The report talks
7 about ships on a string of ports. Well, cruise
8 ships are surely on a string of ports, they go to
9 a different one each day on a very strict schedule
10 and if, when you take your vacation, you expect to
11 sail at noontime on Sunday, you don't want to come
12 to find out that you are going to sail at 9:00 the
13 following Monday morning, this won't work. So I
14 think before you do a final report, please
15 rethink, and rewrite and expand the section on
16 cruise ships.

17 I looked at the ship counts. Is it
18 Mr. Blankfeld? Have I got your name right? And I
19 was looking, for example, in table 4-27 and in
20 that neighborhood and, from my every day knowledge
21 of these port operations, these figures look wrong
22 to me and not just nitpick wrong but grossly

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1 wrong, wrong by factors of 100, so either I don't
2 understand how to read this report or very wrong
3 data has been used. There is a tidal calculation
4 in this report that shows if you miss your tide,
5 how long will the ship be delayed. There is an
6 error in that because the report says tides cycle
7 every 8 hours and of course they cycle every 12
8 hours, so there is an error of 50 percent in the
9 report. This is from consultants who claim four
10 decades of maritime transportation planning
11 experience and high academic credentials, a
12 terrible mistake, if I'm right. I may be wrong,
13 but that is what I read.

14 Economic models are used that are
15 outdated and unreliable and in particular, I'm
16 thinking of the MARAD model, which is used in the
17 report, it is a creaky, dopey model that I
18 wouldn't rely on as a business planner at all, but
19 Nathan Associates found it, liked it, used it.
20 Rethink that, if you want to have the quality of
21 report that I know you are hoping to achieve.

22 I looked at the section on high speed

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1 ferries and I may have missed it but I didn't see
2 a reference to the ferry service called the Cat,
3 which operates out of Maine into Canada, carries
4 150 automobiles, 1,000 passengers, daily service
5 and travels at 50 knots. I hope that's accounted
6 for in the study. I may have missed it, but it's
7 a huge, huge factor, and if this report is going
8 to be complete, that's got to be in there.

9 In general, my comment on figures and
10 conclusions, they are unexplained. We read
11 economic impact in Charleston, \$7 million,
12 economic in New York, \$12 million. Somewhere
13 there is working papers that would explain where
14 those numbers came from and I would recommend you
15 hang onto those working papers in case you are
16 challenged at some future point to defend those
17 announcements of what these economic impacts will
18 be, even though I think they are woefully
19 understated.

20 So, in conclusion, I would say fact
21 check this report and make corrections so that
22 when Nathan Associates and the National Marine

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1 Fisheries Service put their imprimatur on this
2 work, it's the kind of quality that it should be,
3 save those working papers.

4 And my last comment would be please
5 don't overestimate the resilience of seaports and
6 the global supply chain to cope with this kind of
7 disruption. Thank you.

8 MR. CARTAYRADE: Thank you.

9 The next speaker is Ms. Patricia
10 Sullivan. Well it's not Patricia Sullivan, you
11 are Mister?

12 MR. DIGANGI: Paul DiGangi.

13 MR. CARTAYRADE: Paul DiGangi.

14 MR. DIGANGI: Good afternoon,
15 everyone. My name is Paul DiGangi, I'm of East
16 Hartford, Connecticut and I'm here to speak on
17 behalf of the Cetacean Society International for
18 which I serve on the board of directors.

19 I am grateful to NMFS for holding
20 this meeting regarding the proposed rule to
21 implement speed restrictions to reduce the threat
22 of ship collisions with North Atlantic Right

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1 Whales. CSI will submit written comments in
2 addition to my verbal comments today.

3 CSI has been involved with Right
4 Whales issues since 1979, members have supported
5 and participated in direct research by the Center
6 for Coastal Studies, including photo IDs and
7 behavioral assessments. Massive direct research
8 on the Right Whale ever since has demonstrated
9 that this remnant population of whales require
10 habitats and resources in direct conflict with
11 human uses along the East Coast and if humans
12 cannot adapt, the whale will be lost.

13 The extraordinary significance of
14 Cape Cod Bay, the Great South Channel and the Bay
15 of Fundy to the species' survival has amplified
16 everyone's concerns and extreme and welcome
17 measures have been implemented by a remarkable
18 spectrum of society. However, it is clear that
19 more must be done or this generation of our
20 society will be responsible for the preventable
21 extermination of the species.

22 The evidence is undeniable, the Right

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1 Whales continue to suffer unsustainable losses
2 from ship strikes. Two of the four known
3 fatalities so far this year are from confirmed
4 ship strikes with one in the Southeast critical
5 habitat. There is an unequivocal relationship
6 between potential fatal impacts and vessel speed,
7 the evidence supporting the 10 knot speed limit in
8 specific waters and times is also undeniable and
9 CSI supports them all with one modification.

10 The proposed data is designed to
11 protect whales' seasonal leaving Cape Cod Bay by
12 not entering. Therefore, CSI specifically urges
13 that the rule define a January start date for the
14 seasonal management area off Race Point and
15 through the Great South Channel, as Right Whales
16 are in Cape Cod Bay in January and transit these
17 areas to get there. Dynamic management is an
18 extraordinary promise as a tool to protect Right
19 Whales, but the recent average ten day
20 implementation time between sightings and vessel
21 notification is inconceivable. While disgusted
22 with some of the current obstacles interfering

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1 with timely responses, CSI supports dynamic
2 management with mandatory zones established around
3 known whales. CSI recommends whatever changes are
4 required to implement a truly dynamic management
5 risk zone around known whales without delay.

6 Under the current voluntary speed
7 reduction scheme, about 95 percent of the vessels
8 in one study refuse to slow or use an alternative
9 route after being notified of whale aggregations.
10 CSI recommends that the rule establish mandatory
11 responses by notifying vessels and enforcement of
12 required reductions with a system of fines that
13 would help defray administrative costs. However,
14 CSI does not believe it serves anyone or the
15 whales to force vessels to slow or change routes
16 based on outdated or irresponsible delayed
17 notifications. How can mariners and operators
18 have faith in the system when they find that the
19 whales actually have moved on and their effort is
20 wasted? They certainly will resist further speed
21 reductions or route changes.

22 Therefore, CSI believes that if

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1 mariners can establish that the whales they slowed
2 or turned from to avoid, based on system
3 notifications, were not actually in the
4 implemented core zone upon which the alert was
5 based because of the bureaucratic delays between
6 sightings and notifications. Those who are
7 responsible should be sued for the mariners'
8 expense of fulfilling the required slowing or
9 rerouting. CSI respects and understands that time
10 is money, CSI acknowledges that this rule may
11 impose added cost on the industry.

12 However, this is like any other
13 justifiable cost of doing business and the
14 industry already accepts a wide spectrum of
15 restrictions, it will be passed on to consumers
16 and there will be no competitive disadvantages
17 because all operators will be under similar
18 restrictions.

19 Ultimately, if a shipping company
20 vessel operator or mariner is unwilling to help
21 the society save the Right Whale and instead acts
22 to help cause its extinction, the society has the

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1 right and obligation to impose more order and
2 penalties.

3 So, in conclusion, my statement is
4 proposing that we use alternative five or six,
5 would be acceptable. Number two is to use the 10
6 knot limit. Number three, apply to all non-
7 sovereign vessels. Four, and most importantly,
8 ensuring speed limits are in place by November of
9 this year to protect mothers and calves in their
10 southeast calving grounds. And we are
11 disappointed to hear the NMFS extended the comment
12 date. There is only 300 of them left, folks.

13 MR. CARTAYRADE: Thank you.

14 The next speaker is Ms. Deb Hadden.

15 MS. HADDEN: Good afternoon, I
16 appreciate this opportunity to comment. I speak
17 today on behalf of the Massachusetts Port
18 Authority. My name is Debra Hadden and I'm the
19 Deputy Port Director for Properties and
20 Transportation.

21 MassPort has been an active member of
22 the Northeast Right Whale Take Reduction

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1 Implementation Team and the related ship strike
2 subcommittee since their inception, we strongly
3 support NOAA Fisheries' goal of protection the
4 North Atlantic Right Whale from extinction.
5 However, we have significant concerns with some of
6 the proposed recommendations and in particular,
7 the speed restrictions, as well as the process
8 through which NOAA Fisheries has put forth the
9 draft EIS and the related regulations.

10 Nearly a decade ago, NOAA Fisheries
11 reached out to the maritime industry in Boston,
12 asking us to work together to develop and
13 implement a plan to minimize ship strikes of the
14 North Atlantic Right Whale. MassPort and others
15 from the industry came to the table with NOAA and
16 other stakeholders to jointly explore solutions,
17 to educate NOAA Fisheries about the maritime
18 industry and to recommend and help implement
19 solutions that would protect the whale. Industry
20 representatives supported and helped to implement
21 many of the recommendations developed by NOAA,
22 including playing a major role in developing and

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1 distributing educational materials that have been
2 very effective in educating mariners regarding
3 identification and avoidance of Right Whales.

4 MassPort is extremely disappointed
5 that the years of collaboration and support have
6 resulted in the draft EIS and the related
7 regulations and process that we are here today to
8 discuss. We believe that NOAA's recommendations
9 and process are seriously flawed and that NOAA has
10 continuously ignored comments from MassPort and
11 other industry representatives. Our greatest
12 concern is the proposed speed restriction of 10
13 knots or less and the potential in the future that
14 NOAA will further lower the speed limit and expand
15 the extent and duration of the seasonal management
16 areas, if the speed restrictions prove effective.

17 The proposed 10 knot speed
18 restriction is simply not supported by the
19 available scientific evidence. All of the studies
20 referenced in the report clearly acknowledge
21 significant shortcomings in the data set on which
22 the recommendation is based and we are dismayed

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1 that much of the supporting documentation is based
2 on terrestrial studies, which are irrelevant, and
3 a study that is still in peer review. Well, we
4 now see it's in press but, as far as I can tell,
5 unavailable to the public for review, which makes
6 it very difficult to be commenting on the proposed
7 speed restrictions.

8 The proposed speed restrictions will
9 result in significant economic impacts to the
10 maritime industry, as well as the nation, and Mr.
11 Valleau said that as well as I could have.
12 Although the draft EIS does address economic
13 impacts, it fails to quantify the full range of
14 economic impacts that will result from the
15 proposed action. We have repeatedly commented,
16 both verbally and in writing, on this point to
17 NOAA and will continue to elaborate in our comment
18 letter. Industry representatives also continue to
19 raise safety concerns about the proposed speed
20 restrictions which we also feel continue to not be
21 adequately addressed by NOAA.

22 Finally, the proposed strategy

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1 continues to dismiss technological solutions on
2 the basis that no proven technology is currently
3 available. Industry representatives have
4 repeatedly indicated that they can avoid a whale
5 if they know its location, its real time location,
6 not where it was seen by an aerial flight at some
7 point in the recent past but its real time
8 location, but neither the recommended strategy nor
9 NOAA's and other available resources focus on
10 research and development of potential
11 technological solutions. The foundations of a
12 technological solution are available and perhaps
13 if funding and research over the past decade had
14 focused on developing technology, we would have
15 drastically reduced ship strikes and we would not
16 be here today.

17 From a process standpoint, we also
18 have serious concerns. The proposed speed
19 restrictions regulations were issued prior to the
20 availability of the draft environmental impact
21 statement, which includes many of the supporting
22 documentation, and at least one key document that

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1 supports the proposed speed regulations is still
2 not available to the public for review. A 60 day
3 comment period between July 5th and Labor Day is
4 not adequate in light of the enormous volume of
5 documentation that must be reviewed to
6 thoughtfully comment on the proposed regulations.

7 MassPort and many others have
8 requested 60 day extensions. We do appreciate
9 hearing and we saw in the *Federal Register* this
10 morning that a 30 day extension has been granted.

11 But in light of the volume of information and the
12 amount of analysis that we need to go through, and
13 that we still do not have one of the studies that
14 we can use in our review, we think that's still
15 insufficient and we respectfully request the full
16 60 day extension, and we urge NOAA to immediately
17 make the Vanderlaan and Taggart study available
18 for public review. I have no idea what *in press*
19 means, in terms of when we'll be able to acquire
20 it, but we ask that it be posted on the website so
21 those of us reviewing it can have the remainder of
22 the review time to look over that study.

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1 Another thing I need to comment on is
2 MassPort and others from the industry were stunned
3 to learn that the port access route study had been
4 submitted to the IMO five weeks before it was
5 released for public comment. NOAA and the Coast
6 Guard, we believe, directly misled the maritime
7 industry in believing our comments on the port
8 access route study would be considered before they
9 submitted a proposal to the IMO.

10 On May 24th of 2006, the Coast Guard
11 stated in the *Federal Register* the changes in the
12 traffic separation scheme would be implemented
13 through submission of a proposal from the United
14 States to the IMO and the PARS itself states that
15 the Coast Guard will seek the first available
16 opportunity to present this option to the maritime
17 industry for additional input. But in fact, the
18 federal government had already submitted a
19 proposal to the IMO in April, so it was ready to
20 go to the IMO five weeks before the public could
21 review it for comment. We just find that
22 unacceptable and it has seriously damaged the

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1 relationship that we though was a collaborative
2 working relationship for all these years between
3 NOAA and the maritime industry, and no explanation
4 of this duplicity has been provided.

5 To summarize, we do not believe that
6 NOAA is fulfilling its obligation to base whale
7 protection methods on the best available
8 scientific information, to fully consider impacts
9 on the industry or to provide the public with all
10 available studies on which the recommendations are
11 based and adequate time to review them. We will
12 put our detailed comments in a letter and hope
13 that NOAA will thoroughly consider and directly
14 address our comments.

15 Thank you.

16 MR. CARTAYRADE: Thank you.

17 The next speaker then will be Ms.
18 Patricia Sullivan.

19 MS. SULLIVAN: Good afternoon,
20 everybody. My name is Patricia Sullivan, I'm from
21 East Hartford, Connecticut and I represent
22 Cetacean Society International also.

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1 Thank you for allowing us to speak
2 today. I am here basically to summarize and
3 clarify comments that were made previously by Paul
4 DiGangi of CSI. In addition to the comments that
5 were made, I want to call attention to several
6 issues, one being of sighting, one being of
7 reporting and the final one and most critical one
8 being the critical nature of the consideration of
9 all aspects of what we do to protect the
10 critically endangered North Atlantic Right Whale.

11 One of my first points, after
12 reviewing all the information that has been
13 presented previously, is that we are basing
14 sightings on aircraft and aerial surveys, I just
15 want to point out that they are somewhat
16 ineffective. As we all know, Right Whales are
17 known to migrate and travel subsurface and feed
18 opportunistically when migrating. I think we need
19 to come up with an alternative to augment aerial
20 sightings and surveys, I don't see that addressed
21 anywhere. We request that dynamic management
22 system will quickly trigger an emergency speed

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1 restriction if whales are found to be present when
2 seasonal management measures are not in effect.

3 We request to ensure speed limits be
4 in place by November of this year to protect the
5 northeast calves, I'm sorry, to protect the
6 mothers and calves in southeast calving grounds.
7 To delay this process for another year or even
8 several months would probably mean the loss of
9 another Right Whale, we cannot afford to do this.

10 CSI urges that the rule define a January start
11 date for the seasonal management area off Race
12 Point and through the Great South Channel, as
13 Right Whales are in that area and in transit.
14 Presently, the plan proposes March 1st.

15 CSI regards the ten day
16 implementation time between sightings and vessel
17 notification to be totally unacceptable and my
18 colleague Mr. DiGangi addressed that previously.
19 Therefore, dynamic management, with mandatory
20 zones, should be established around known whales
21 and these changes should be done without delay.
22 CSI recommends the rule establish mandatory

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1 responses by notified vessels, enforcement of
2 required reductions and a system of fines that
3 would help defray administrative costs. Thorough
4 environmental and economic analyses have been
5 completed. To repeat, time is critical.

6 We appreciate all considerations that
7 have been made, and comments and the economic
8 impact but, at the present rate of decline, the
9 North Atlantic Right Whale will be extinct around
10 2019, we can not afford to lose one more whale.
11 We have the grave responsibility to take even more
12 measures than reduction in ship speeds. Critical
13 to this process is the enforcement of whatever it
14 is that we decide. Communication is critical. We
15 have the resources to enforce and implement
16 anything that is decided after this environmental
17 study and economic study and we recommend that
18 severe fines be implemented to match the severity
19 of the violation of protective measures.

20 Thank you.

21 MR. CARTAYRADE: Thank you.

22 The next speaker, Mr. George

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1 Blanchard.

2 MR. BLANCHARD: Good afternoon,
3 ladies and gentlemen. George Blanchard, Hyannis
4 Whale Watcher Cruises in Barnstable,
5 Massachusetts. Sitting here this afternoon, it
6 was very interesting watching the screen,
7 everything refers to ships, whale watching vessels
8 do not belong in this category. A DMA in the
9 prime season of the New England tourism industry
10 in the months of July or August would put me out
11 of business, I would have to close the doors.
12 Case in point, I am not only the owner, I'm a
13 captain and I'm out there every day.

14 Two weeks ago, we've been watching
15 Humpback Whales near the separation zone. A ship
16 leaving Boston, the captain spotted three whales.

17 Doing the proper thing, he called Coast Guard
18 Boston and stated that he had seen three Right
19 Whales. To the untrained eye, is it a Right Whale
20 or is it a Humpback Whale? To the trained eye,
21 sometimes it's tough at the first glance, is it a
22 Humpback Whale or is it a Right Whale? If that

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1 had triggered, under these proposed rules, a DMA
2 for no reason, that would put me out of business.

3 I don't know where the 65 foot or larger vessel
4 threshold comes in, I have 130 foot vessel so, if
5 there was a DMA in place, I would have to be
6 traveling at 10 knots. The 45 foot lobster boat
7 can pass me at 20 knots, the 58 foot recreational
8 boater can pass me at 25 knots, the 70 foot sport
9 fishing boat can pass me at over 30 knots.

10 I am going out there whale watching,
11 I have two people in the wheel house and upwards
12 of four looking for whales. I have 200-300
13 passengers or witnesses on board every day and
14 they view, on a daily basis, the reprehensible
15 behavior of recreational boaters and there is no
16 enforcement in place out there. They keep on
17 referring to high speed. I don't know if, to my
18 knowledge, there is no whale watch boat that
19 operates in New England at a speed of 10 knots, I
20 would say it would be much fairer to say that the
21 average whale watch boat travels at an 18 to 25-26
22 knot speed with a few vessels that travel in the

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1 30 knot speed.

2 As some of my other colleagues have
3 spoken, that would take my three and a half to
4 four hour trip time and extend it out to five-six
5 hours, and people just, they won't go, they will
6 not go, just like the Provincetown to Boston
7 ferry, people will not ride on something that
8 takes longer. We work closely, the whale watching
9 industry works closely with NOAA and we pass
10 information back and forth all the time.

11 You don't have the resources out
12 there on a daily basis. Just like the previous
13 speaker said, aerial photographs is not the only
14 solution, we give constant reports on whale
15 locations, we do it because it's our livelihood.
16 If we don't have any whales, we don't have any
17 business. And if you have ever been on a whale
18 watch with people, the most educational, no matter
19 what the naturalists tell people about the total
20 experience, the information that's passed on to
21 them, but hundreds of thousands of people that go
22 whale watching come away from that with just such

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1 a sense of these beautiful creatures. It's free
2 education. If you put us out of business, it's
3 gone.

4 Thank you.

5 MR. CARTAYRADE: Thank you.

6 Our next speaker will be Mr. Jim
7 Hain.

8 MR. HAIN: I am Jim Hain, with
9 Associated Scientists at Woods Hole and I also
10 spoke probably to many of these same people, also
11 in this building, in July of 2004 on the
12 preliminary leading on this topic, so some of the
13 things that I'll have to say are things that I
14 repeated or that I said initially at that time.

15 And the thing about all this is that
16 if you have the facts right, you don't have to
17 argue about it and one of the, some of the facts
18 that we know are ships hit whales, ships hit each
19 other, ships hit sailboats. These are facts, no
20 one has to argue about that. The other fact is no
21 one really wants to be involved in a collision,
22 whether it's with vessels, or whales or anything

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1 of that sort.

2 Now the other thing that most will
3 probably agree on is that we probably maybe not
4 completely but at least at a majority subscribe to
5 the idea of science-based management using best
6 available science, and this brings me to my point
7 which is the same point that I raised in 2004, and
8 that is that the science that underlies the draft
9 environmental impact statement is soft. And when I
10 look at the list of references in the draft
11 environmental impact statement to look at the
12 documents that are cited, what I find is a great
13 number of references that are in the gray
14 literature. In other words, they are unrefereed
15 and unreviewed.

16 There is a reference in there that
17 was submitted as an abstract to a meeting, to a
18 poster session, and all these would not meet what
19 are regarded as the standards of credible science
20 and science that is uncovering the truth and
21 uncovering the facts. There is an accepted
22 standard for how that is done and, once that is

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1 done, then most everyone will agree to the
2 findings. Okay, this is what was discovered and
3 this is what the results indicated. I mention,
4 without putting too fine a point on this, I'll
5 give you one example and that is figure 4-1 from
6 the draft environmental impact statement and this
7 is a graph that's entitled Vessel Speed Versus
8 Whale Injury Type and at first glance, this graph
9 appears to show you something.

10 In fact, what it shows you mostly is
11 that there is a tremendous sampling bias and that
12 any interpretation of this figure should be taken
13 with a great grain of salt, and looking at this
14 graph is like saying that most vehicle accidents
15 occur on highways, and this falls into that same
16 ballpark. To reach whatever the facts in the case
17 and whatever the scientific truth happens to be,
18 there is ways that this is done and, in the case
19 of contentious issues like Navy sonar or various
20 environmental issues, one of the methods that's
21 used is to have a review panel by the National
22 Academy of Science, the National Research Council,

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1 and this is a method that's employed.

2 One thing that's available to this
3 group and this topic are the implementation teams
4 and those teams, the Northeast team and the
5 Southeast team, are mentioned in the draft
6 environmental impact statement. Now the truth of
7 the matter is, even though the DEIS mentions these
8 teams, the truth of the matter is that the teams
9 currently are in a very compromised position. The
10 Northeast team is essentially disbanded or
11 non-functioning, whatever word we prefer to use,
12 and the Southeast team, at least in the last, I'm
13 going to say the last year or so, has had its role
14 very limited to education and outreach. And in
15 many respects, that team, even though there are
16 resources and expertise present, really hasn't
17 been charged with reviewing this kind of document
18 and this kind of topic. So I just mention that of
19 the resources that are available, the
20 implementation teams might be one and they aren't
21 the only one, there is other avenues.

22 So, in conclusion, very briefly, I

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1 expect fully that no one wants to be involved in
2 collisions with Right Whales, I would guess that
3 some kind of actions, some suite of actions will
4 emerge and that it's my view that good science and
5 good analysis can help identify those actions.

6 Thank you.

7 MR. CARTAYRADE: Thank you.

8 Our next speaker is Mr. Rob Moir.
9 I'm not sure I got the name right.

10 MR. MOIR: Hello. My name is Rob
11 Moir and I would like to speak to you as a former
12 school teacher, and as a nonprofit director and as
13 a guy who lives in Sommerville, up the street
14 here.

15 I would like to tell you a bit about
16 why I care about Right Whales and then how I would
17 like the NOAA to adopt strong protections for such
18 precious leviathans. Back in April of 1975, a
19 group of Massachusetts public and private school
20 science teachers, many of them were members of the
21 Mass Science Supervisors Association, all of them
22 were instrumental in establishing the Mass Green

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1 Educators Association, they convinced a
2 Provincetown tuna boat captain, Al Avalar, to get
3 his boat in the water early that year and take him
4 out.

5 And into the Northwest Atlantic
6 Ocean, on that bright, clear spring day, 8 to 12
7 North Atlantic Right Whales were seen, they were
8 observed feeding in the placid, calm waters of
9 Cape Cod Bay. And later that spring, Bill Watkins
10 brought his family to the beaches of Provincetown,
11 and he has a keen eye and a keen ear and, sitting
12 on the beach, he could hear the clack of the Right
13 Whale baleen plates knocking against one another
14 as the whale, open mouthed, skimmed the water for
15 plankton.

16 The next spring, Al Avalar changed
17 his focus away from tuna fishing and set out with
18 tuna fisherman Charlie Mayo's son Stormy Mayo, and
19 Stormy had just completed a Ph.D. in plankton
20 studies at the University of Miami, had
21 Massachusetts school and college teachers return
22 with students, their family, and friends and the

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1 whole whale watch industry began.

2 Now Humpback Whales soon took center
3 stage but, nonetheless, the industry, from
4 Provincetown to Newburyport, began with educators
5 witnessing the annual migration of Right Whales,
6 and for many of us here in Massachusetts, spring
7 becomes synonymous with Right Whales feeding in
8 Cape Cod Bay and by summer, the whales were gone.

9 And I'll leave on the record here
10 some further stuff that happened in the early `80s
11 but, to cut to the chase, North Atlantic Right
12 Whales are cetaceans that belong to the suborder
13 of baleen whales called mysticeti.

14 Now you know this, but they are
15 literally are mysterious whales and little is
16 known of how many years whales reproduce, how long
17 they may live, Right Whales may live 50 years 75
18 years, 150 years, maybe more. Supported by water,
19 whales live in a suspended, gravity free world
20 eating plankton that, by definition, can't swim
21 away from them. Think about it, life is pretty
22 easy and reproduction for these whales is very

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1 slow. It takes, it does not take the loss of very
2 many whales to threaten the survival of the North
3 Atlantic Right Whales.

4 Therefore, and because there are
5 fewer North Atlantic Right Whales today than when
6 I first observed them, or so it seems to us in
7 Massachusetts, and because they are such
8 magnificent animals, the state mammal for
9 Massachusetts, I stand before you to urge adoption
10 of strong protections of Right Whales and to slow
11 ships to prevent strikes. We need NOAA to
12 immediately adopt a comprehensive and adaptive
13 suite of management measures that include both
14 vessel speed limit and routing. By adaptive, I
15 mean regulations must be expectant of and
16 responsive to ongoing unforeseen elements of ocean
17 ship traffic in whales. Nature and weather
18 continues to surprise, particularly in the
19 Northwest Atlantic Ocean.

20 A dynamic management system is needed
21 that can be deployed rapidly, should the
22 unexpected happen. For example, implementing

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1 speed restrictions when the whales appear out of
2 season and perhaps lifting speed restrictions
3 during periods when whales are observed lingering
4 longer in feeding areas that are separate from the
5 ship traffic. So, you know, you need a dynamic,
6 this is a very complex problem and I applaud NOAA
7 for getting into the complexity of it because it's
8 got to be dynamic and responsive in order to meet
9 all of these different criteria that people are
10 bringing to us today.

11 So thank you for traveling to Boston
12 and holding this public hearing. Now I hope you
13 have an opportunity to get out on the water and I
14 would recommend the MBTA boat from Boston to
15 Charleston and back again, it's a few bucks, but
16 you really should take the ferry to Provincetown
17 and back again, and that would be walking the talk
18 to get a sense of what all this is involved with
19 regulating and seeing the whale watch boats coming
20 out of Newburyport, Cape Ann, Gloucester, Salem,
21 Boston, Plymouth, Barnstable, Provincetown, and
22 just the ship traffic out there and stuff, but the

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1 MBTA boat from Charleston and back, Paul Revere
2 would have used it, if he could. And while we
3 have come a ways since communicating by lanterns
4 and steeples, I hope this hearing will further
5 eliminate, will further illuminate the dire
6 necessity for responsible North Atlantic Right
7 Whale ship strike reduction strategies and
8 regulations.

9 Thank you.

10 MR. CARTAYRADE: Thank you.

11 The next speaker is Ms. Sharon Young.

12 MS. YOUNG: Good afternoon. I'm
13 Sharon Young and I'm the Marine Issues Field
14 Director for the Humane Society of the United
15 States.

16 We will be submitting more detailed
17 written comments on the DEIS. But I want to
18 highlight some of the areas of our major agreement
19 and disagreement and address some issues that came
20 up today. First of all, I would like to thank you
21 for issuing the very long overdue strategy. As
22 I'm sure you all know, we are plaintiffs against

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1 the National Marine Fisheries Service and the U.S.
2 Coast Guard for your failure to adequately protect
3 endangered whales, so I'm sure it's no surprise
4 that we urge expeditious action to protect this
5 critically endangered and declining species.

6 We agree with most of the elements of
7 the strategy outlined in the DEIS. However, I
8 want to raise a few points. Adequate risk
9 reduction will require a combination of speed
10 reduction, routing measures and dynamic response.
11 In general, we support alternative five as the
12 most protective. With regard to speed
13 restrictions, we are supporting a limit of 10
14 knots. While studies may not be entirely
15 complete, the best available science indicates
16 that speed limits at this level correlate with
17 dramatically lower risk.

18 I would like to diverge from my
19 playing comment at this point and just mention
20 that folks have brought up the notion of the
21 impact of speed, particularly in regard to dynamic
22 management but, in general, on industry, and I am

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1 a veteran of multiple take reduction teams and
2 things that arose out of the changes in the MMPA
3 in the 1990s. And I know that it's pretty common
4 for any industry that's being restricted to
5 complain that whatever restrictions are going into
6 place will put it out of business. I've heard the
7 fisherman complain at every single take reduction
8 team meeting how every new whale protection
9 measure will put them out of business, and what is
10 impacting them is not the restrictions that are
11 protecting marine mammals but rather the
12 restrictions in place for fisheries conservation
13 issues.

14 I am constantly barraged by e-mails
15 of late talking about what a great country this is
16 and American enterprise, and I fully believe in
17 American enterprise and I believe that this
18 industry and all the industries that are affected
19 can rise above the challenges that are proposed.
20 Yes, there may be the need for some changes in
21 economic analysis and, yes, there will be some
22 economic pain, but that is balanced against the

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1 survival of the species and the ESA states quite
2 clearly that it is relatively blind when it comes
3 to economic impact when it comes to the survival
4 of the species and, make no mistake about it, that
5 is what is at stake here.

6 Back on topic, adequate risk
7 reduction requires a combination of all of these
8 measures that NMFS has outlined. We generally
9 agree with the routing and seasonal management in
10 the Southeast U.S. We noted that the DEIS asserts
11 that routes and seasonal management measures are
12 selected in all areas because they capture the
13 vast majority of whales sightings and, thus, risk,
14 but the DEIS provided no sighting maps nor data,
15 except regarding the shift in the TSS lane into
16 Boston, we would like to see that remedied. The
17 DEIS also did not adequately consider the time
18 period for seasonal measures in the Northeast nor
19 consider the risk of alternatives that could have
20 been offered in its stead.

21 In particular, it assumes that Right
22 Whales require protection while feeding in Cape

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1 Cod Bay critical habitats starting in January, yet
2 it provides no protection for those whales
3 entering or leaving prior to April, though they
4 must traverse the off Race Point area to both
5 enter and leave. Data from surveys conducted by
6 the Center for Coastal Studies have indicated that
7 whales, on average, remain in the bay for only a
8 period of a few weeks, thus they require
9 protection when entering and exiting the heavily
10 trafficked area, not simply during the time that
11 they are here. The area off Race Point and the
12 Great South Channel require protection during the
13 same time period as Cape Cod Bay. This deficit in
14 the DEIS and the need to consider additional
15 alternatives should be remedied.

16 We support dynamic area management,
17 but it can only be effective with timely
18 implementation and with increased aerial surveys
19 in times and areas not currently or adequately
20 surveyed, this is of some concern to us in a time
21 when decreasing budgets are happening in the areas
22 of conservation. NMFS must also work with the

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1 Coast Guard to ensure that the measure is
2 enforced. Also, with regard to the issue of
3 dynamic management, I want to say that I am one of
4 the people who started working on whale watch
5 boats back in the early '80s when the industry was
6 old and slow, and it grew to a very healthy
7 industry without the speeds that boats currently
8 use.

9 I myself have witnessed whale watch
10 boats hit whales and injure them severely, I have
11 been involved in the prosecution of a whale watch
12 boat for that very thing. Having an observer on
13 the boat is not in and of itself any indication
14 that the vessel is at less risk, whale watch
15 boats, by their very nature, have trained
16 observers on board. Speed, however, is a
17 significant factors and the incidents of whales
18 being hit by boats, from whale watch boats,
19 rather, has increased as the speeds of those
20 vessels have increased.

21 The industry survived at lower speeds
22 in the old, dark days when folks like me came of

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1 age and I believe that it can do so again. This
2 is, after all, an industry that is there to teach
3 people about whales, to teach people about caring,
4 to teach people about the need to change our lives
5 just a little bit to respect the other creatures
6 that share this planet, and one of the best ways
7 to do that is for the boat itself to behave
8 responsibly. Right Whales can ill afford to wait
9 for protection, we are concerned that some of the
10 protective measures in the DEIS are delayed.

11 For example, the area to be avoided
12 is not, for the Great South Channel is not going
13 to even be proposed to the IMO until 2007 and will
14 not be implemented for almost two more years, this
15 is not acceptable. The DEIS also has not stated
16 how ship routing measures will be implemented, it
17 states that they are not regulatory measures but
18 it does not indicate how they will be implemented,
19 although they are an integral part of alternatives
20 three through six.

21 Right Whales can ill afford to wait.
22 This year alone two Right Whales have been found

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1 dead from collisions, one a calf in the Southeast,
2 another calf in the Southeast was injured.

3 Kraus, et al, have found and
4 published studies that the three pregnant Right
5 Whales have died in the past two years represent a
6 loss, in fact, of as many as 21 animals to the
7 population, they also stated in this published
8 study that eight Right Whales, found in their 18
9 month study period, underrepresent the actual
10 mortality, which may be as high as 47 animals, yet
11 most bodies are not recovered.

12 This death toll has to stop. By your
13 actions, you can save a species. Your conscience
14 impels it, the ESA demands that you take timely
15 and significant action to achieve the survival of
16 this species.

17 Thank you.

18 MR. CARTAYRADE: Thank you.

19 The next speaker is Mr. Rick Nolan.

20 MR. NOLAN: My name is Rick Nolan, I
21 operate Boston Harbor Cruises out of Long Wharf,
22 we operate a fast ferry to Provincetown and some

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1 whale watching vessels here in Mass Bay. I wanted
2 to speak primarily to the science, I don't think
3 the science that's been used to develop the 10
4 knot speed restriction is adequate. I do believe
5 that in fact the science that I've seen suggests
6 that 10 to 12 knots is really where most of the
7 ship strikes have occurred, at least in the data
8 that I saw in the committee that we sat on. So
9 I'm curious as to where the data that supports a
10 speed restriction of 10 knots could be so
11 conflicting with at least the information, the
12 scientific information that we saw, so that's my
13 point number one and I would like to get some
14 information on that.

15 I do think too that dynamic
16 management areas are difficult, as they are
17 proposed, because of what Mike said with regard to
18 their sheer size. I think if you go to 26 miles
19 in diameter, then that effectively would put us
20 out of business, both in the ferry to Provincetown
21 and in our whale watch operation, if it were to
22 happen in July and August. I support what Mike

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1 and George said with regard to that and what Ed
2 Welch said with regard to it.

3 When I was on the advisory council
4 two or three years back, what I thought was a
5 better proposal was some sort of real time
6 reporting, 24/7, 365 days of the year, we had a
7 network of people in the whale watch industry,
8 people flying over the sites where NMFS indeed and
9 NOAA would indeed be required to do some of their
10 own work and record information being reported
11 back to them by vessel operators, by tankermen, by
12 ships transiting across Stellwagon Bank with
13 regard to real time reporting as to what they were
14 seeing.

15 If that, for instance, were to go
16 back to a clearing house, let's say, in Scituate,
17 at the headquarters in Scituate and from Scituate,
18 that real time information went out to the
19 maritime community through a number of mediums,
20 including AIS and perhaps radio, then mariners
21 would have the ability to make decisions for
22 themselves and, particularly, masters would have

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1 the ability to make decisions for themselves as to
2 what avoidance actions they should take with
3 regard to real time information as to where
4 animals really are. Part of the problems with the
5 data that we are looking at, I think, is that they
6 are too broad based and too generally to be really
7 detailed.

8 We know that the animals are dynamic,
9 we know that the water is dynamic. As a master on
10 one of our vessels, I would be concerned, quite
11 frankly, to be restricted to 10 knots, if I deemed
12 that it was prudent and safe for my passengers to
13 be traveling at 15 or 20 knots because of sea
14 conditions on any particular day. So I'm curious,
15 with regard to the regulations, as how they mesh
16 with or how they could conflict with a master
17 trying to operate under the rules of the road, the
18 existing rules of the road. I'm curious as to how
19 they are applied in international waters and I'm
20 sure that the regulatory ability exists to do
21 that, otherwise it wouldn't be proposed in the
22 draft.

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1 But in any event, my thought is that
2 there is a problem, there is no question about
3 that, there is a solution to the problem. I don't
4 think that speed has been identified as the
5 problem and, in fact, I think that's it's going to
6 identify that 10 to 12 knots is where the highest
7 elevation of strikes has occurred, so I'm very
8 curious as to why 10 knots has been deemed to be
9 the right speed limit.

10 But in any event, with regard to the
11 dynamic management areas, I think that they are
12 just too broad. For instance, if a Right Whale
13 were to show up within Cape Code Bay some time in
14 July or August, or June, for that matter, and a
15 report of that sighting was made and that location
16 could be clearly identified, I think perhaps a
17 mile or two, or five miles, perhaps, at the most,
18 would be adequate, as long as the real time
19 reporting was done on a frequent enough basis that
20 mariners could indeed understand exactly where the
21 animals are and try to avoid them.

22 So I think what I'm asking for here,

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1 quite frankly, is that the federal government not
2 scapegoat an industry or a number of industries,
3 including the shipping industry, with regard to a
4 problem and try to come up with an easy public
5 solution. I think you've got NOAA in place and
6 NMFS in place here with a strong presence in New
7 England, you've got the headquarters in Scituate.
8 I think you have the opportunity in a number of
9 locations up and down the East Coast of the United
10 States for receiving and reporting real time
11 information regarding the presence of these
12 animals and, if you were to do that, I think you
13 would be taking progressive and proper steps in
14 the right direction to protect them.

15 MR. CARTAYRADE: Thank you.

16 Our next speaker is Mr. Charles Mayo.

17 MR. MAYO: Thanks for this
18 opportunity to address this important issue. To
19 qualify myself, some of my data actually has been
20 referred to, I am one of the co-authors on the
21 *Science* article that estimated as many as 47
22 fatalities mortalities through human causes. I am

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1 the senior scientist at the Center for Coastal
2 Studies, have been studying Right Whales in
3 Massachusetts water now for, gee, I guess it's
4 been since 1975, and focused on them recently, in
5 particular, trying to find new ways of identifying
6 their areas of aggregation, the areas that the
7 dynamic plan perhaps would address.

8 And as many of you know, we have now
9 a non-sighting, non-oceanographic way of doing a
10 reasonable job in Cape Cod Bay of predicting, on
11 very small scales, where whales are likely to be
12 over matters of days. That's, however, still a
13 process that we are working on and it is one
14 though that I think shows some hope. I mention
15 that because I've had to deal, I'm on the federal
16 panel, the take reduction team also, and I've had
17 to deal with this question of soft science and it
18 occurred to me, though I can't remember what the
19 quote is, it does lie at the base of a lot of the
20 comments that we have heard today.

21 Funkawitz and Ravitts, some of you
22 may know, wrote an extraordinary, several tone

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1 work called "Ecological Economics", and it is
2 really the bible of a lot of conservation study.
3 And they observed that, in the normal world,
4 science is hard, the facts are hard and the
5 decisions, conservation decisions and ecological
6 decisions, are soft. But they also observed that
7 in the post normal world that we are presently
8 dealing with where politics have risen
9 considerably, that the opposite is now true, and
10 we can see it in many of the major issues, Global
11 warming is a classic, where now the facts from
12 scientists are clearly soft, but the decisions
13 need to be very hard.

14 And I mention that in some depth, and
15 I don't know if it will make it into the record,
16 but I think it is central to the questions that
17 have been brought up, particularly by some of the
18 industrial groups, and my colleague, Jim Hain,
19 because the present set of circumstances are
20 indeed difficult to pin down, but there is no
21 question by any of us who have worked in Right
22 Whales for now several decades that the story with

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1 the Right Whale is a depressing one. The hardest
2 facts that we can come up with, and they seem very
3 well tested, are that the Right Whale, in all of
4 its vital measures, is going negative.

5 That can't be said for a lot of
6 endangered species, in fact, but in the case of
7 the Right Whale, nothing looks good and, as you
8 know, not only our *Science* article but earlier
9 ones of considerable value have demonstrated that
10 the situation is a critical one, and the question
11 is what do you do? We could continue the
12 bureaucratic chase or we could make a decision,
13 and so it leads me to, first of all, state that,
14 from my perspective, we need to consider, I would
15 prefer, alternative five because it is the most
16 conservation oriented of the choices, and six, if
17 not five, but I would suggest just one way of
18 addressing the problem of not many good facts.

19 We all know that we have to have
20 better technology, there is no question. Some of
21 our work with plankton fields is attempting at
22 that and there is some great work being done here

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1 and there regarding fisheries and ship strikes,
2 and that I hope would continue. So what I would
3 suggest is that perhaps, if the situation is
4 critical and the facts are soft, as the facts
5 begin to harden and we can all come to a closer
6 agreement that Jim has mentioned, that the process
7 that is being proposed have enough built in
8 flexibility, something that's not easy for
9 government, I understand, but enough flexibility
10 so that as facts harden, decisions perhaps can
11 soften and evolve.

12 The present set of circumstances,
13 just to reflect on the difficulties that we've
14 heard from a number of people, first of all, I
15 have to say that everything that I know about
16 Right Whales suggests that speed kills. I can't
17 see that there is any other way around it and it's
18 for that reason that I support five or six, if
19 necessary, but I would like to reflect, just in
20 closing, on the fact that we don't know where the
21 Right Whales are.

22 I have heard a mention of the exit

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1 area around Race Point, as you know, that's the
2 area that we work, whales are actually coming in
3 and going out of Cape Cod Bay, as best our data
4 can tell, the data from our survey team, they are
5 coming out of the bay or going into it, even at
6 the peak of the season, as often as every day or
7 two, so there is a constant stream of animals, as
8 best we can see.

9 The problem that I have is we don't
10 know where they go. It's all very easy for us to
11 say that they go to the Great South Channel and I
12 think, with soft facts, that's what we should
13 decide they do, but information is going to lead
14 us in a different direction. So I would hope that
15 the agency would acknowledge the problems, and I
16 know they do, of knowing what's going on, the
17 difficulty of trying to manage important
18 industries which may suffer. Maybe the facts in
19 economics are as soft as the facts in science in
20 fact, and that we could all realize that we must
21 take action quickly.

22 The present PBR is zero, we have

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1 already surpassed it this year and, believe me, we
2 are not seeing all the vessel strike animals,
3 everyone knows there are a lot more that are hit.
4 Let us somehow or another make a move, rather than
5 allow the situation to get any worse and, at the
6 same time, build some sort of flexibility within
7 the plan so that industry and conservationists,
8 neither of which are very satisfied with this, can
9 come together more and more as facts improve. I
10 realize that's not easy for bureaucracy, but it
11 has to match the complexity of biology, if we are
12 going to get these animals out of the hole.

13 There is, as you know, some
14 substantial question as to whether they can be
15 saved, it's this group that's going to make the
16 difference.

17 Thank you.

18 MR. CARTAYRADE: Thank you.

19 This was the last person on the list.

20 If someone in the meantime has decided they want
21 to speak, please come up here. No one else? I
22 didn't forget anyone who had signed up to speak

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1 either? If I have nobody, I guess we will be
2 closing the meeting now. It is 3:45, it looks
3 like everybody took their five minutes, and a
4 little more in some cases, but we are good. We
5 still have a few minutes for people to stick
6 around and ask questions from NOAA's
7 representatives or the EIS team. If I have
8 nothing else, thank you very much for coming and
9 we'll be closing the meeting now. Thank you.

10 (Whereupon, at 3:45 p.m., the meeting
11 was adjourned.)

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