

APPENDIX B

**Notice of Intent (NOI) to prepare a DEIS and written scoping comments
&
Notice of Availability (NOA) of the DEIS and comments**

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Dated: June 16, 2005.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05-12342 Filed 6-21-05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060804F]

Endangered Fish and Wildlife; National Environmental Policy Act; Right Whale Ship Strike Reduction Strategy Notice of Intent to Prepare an Environmental Impact Statement and Conduct Public Scoping

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for written comments.

SUMMARY: NMFS intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts of implementing the operational measures in NOAA's Right Whale Ship Strike Reduction Strategy (Strategy). This notice describes the proposed action and possible alternatives intended to reduce the likelihood and threat of right whale deaths as a result of collisions with vessels.

DATES: Written or electronic comments must be received no later than 5 p.m., eastern standard time, on July 22, 2005. At this time there are no scheduled scoping meetings.

ADDRESSES: Written comments, or requests to be added to the mailing list for this project, should be submitted to: P. Michael Payne, Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Right Whale Ship Strike EIS, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be submitted via fax to (301) 427-2522, Attn: Right Whale Ship Strike EIS, or by e-mail to: Shipstrike.comments@noaa.gov. Include in the subject line the following identifier: I.D. 060804F.

Additional information including the Environmental Assessment (EA) and the economic analysis report used in the preparation of the EA are available on the NMFS website at <http://www.nmfs.noaa.gov/pr/shipstrike/>.

FOR FURTHER INFORMATION CONTACT: Greg Silber, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver

Spring, MD 20910; telephone (301) 713-2322, e-mail greg.silber@noaa.gov; or Barb Zoodsma, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; telephone (904) 321-2806, e-mail barb.zoodsma@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The abundance of North Atlantic right whales is believed to be fewer than 300 individuals despite protection for half a century. The North Atlantic right whale is also considered one of the most endangered large whale populations in the world. Recent modeling exercises suggest that the loss of even an individual animal has measurable effects that may contribute to the extinction of the species (Caswell et al., 1999). The models also suggests that preventing the mortality of one adult female a year significantly alters the projected outcome.

The two most significant human-caused threats and sources of mortality to right whales are entanglements in fishing gear and collisions with ships (Knowlton and Kraus, 2001; Jensen and Silber, 2003). Collisions with ships (referred to as ship strikes) account for more confirmed right whale mortalities than any other human-related activity. Ship strikes are responsible for over 50 percent of known human-related right whale mortalities and are considered one of the principal causes for the lack of recovery in this population. Right whales are located in, or adjacent to, several major shipping corridors on the eastern U.S. and southeastern Canadian coasts.

NMFS has implemented conservation measures to reduce the likelihood of mortalities as a result of ship strikes. These activities include the use of aerial surveys to notify mariners of right whale sighting locations, interagency collaboration with the U.S. Coast Guard (USCG) which issues periodic notices to mariners regarding ship strikes, joint operation with the USCG of Mandatory Ship Reporting (MSR) systems to provide information to mariners entering right whale habitat, support of regional Right Whale Recovery Plan Implementation Teams, support of shipping industry liaisons, and consultations with other Federal agencies regarding the effects of their activities on right whales (under section 7 of the Endangered Species Act). However, right whales continue to sustain mortalities as a result of collisions with vessels despite the efforts of these programs.

NMFS recognizes that this complex problem requires the implementation of additional proactive measures to reduce or eliminate the threat of ship strikes to right whales. The goal of the Strategy is to reduce, to the extent practicable, the distributional overlap between ships and right whales. The Strategy allows for regional implementation and accommodates differences in oceanography, commercial ship traffic patterns, navigational concerns, and right whale use. Implementation of the Strategy will require proposed and final rulemaking to be taken.

Purpose of this Action

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. NMFS is considering a variety of measures, including regulatory and non-regulatory initiatives. NMFS may implement the operational measures of the Strategy through its rulemaking authority pursuant to the Marine Mammal Protection Act (MMPA). Under MMPA section 112(a) (16 U.S.C. 1382(a)), NMFS has authority, in consultation with other Federal agencies to the extent other agencies may be affected, to "prescribe such regulations as are necessary and appropriate to carry out the purposes of [the MMPA]." In addition, NMFS has authority under the Endangered Species Act to promote conservation, implement recovery measures, and enhance enforcement to protect right whales. NMFS is seeking public input on the scope of the required National Environmental Policy Act (NEPA) analysis, including the range of reasonable alternatives, associated impacts of any alternatives, and suitable mitigation measures.

On June 1, 2004, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) (69 FR 30857) and announced its intent to prepare a draft EA to address the potential impacts of implementing the Strategy. The EA considered the context and intensity of the factors identified in NOAA's NEPA guidelines and regulations, along with short- and long-term, and cumulative effects of a No Action Alternative and the proposed action (see **ADDRESSES**). The analysis concluded that the effects of the proposed action on the human environment are likely to be highly controversial. This finding was based on the controversial nature of the Strategy on the human environment and the possible cumulative effects of the proposed action on certain sectors within the maritime industry. The major controversy concerns the potential

economic impacts on the commercial shipping industry. Further, the EA concluded that individual impacts of the proposed action may be insignificant but the cumulative impacts on the shipping industry may be significant. As a result, the cumulative effects on the environment as a result of implementing this action, including the alternatives proposed by this action, are considered significant. Therefore, an EIS is the appropriate level of environmental analysis for the proposed action under NEPA, not an EA. This is consistent with NEPA regulations at section 1501.4(c). This notice announces NMFS's intent to prepare an EIS expanded from the EA to analyze the potential impacts of implementing the operational measures in NOAA's Right Whale Ship Strike Reduction Strategy. This notice describes the proposed action and several possible alternatives intended to reduce the likelihood and threat of mortalities caused by ship strikes.

Scope of the Action

The Draft EIS is expected to identify and evaluate all relevant impacts and issues associated with implementing the Strategy, in accordance with Council on Environmental Quality's Regulations at 40 CFR parts 1500, 1508, and NOAA's procedures for implementing NEPA found in NOAA Administrative Order (NAO) 216-6, Environmental Policy Act, dated May 20, 1999.

NMFS is proposing to implement the operational measures in the Strategy within each of three broad regions: (a) the southeastern Atlantic coast of the U.S., (b) the Mid-Atlantic coastal region, and (c) the northeastern Atlantic coast of the U.S.

The implementation of operational measures, and the specific times and areas (with boundaries) in which the measures would be in effect, are expected to vary within and between each region. However, each region would contain specific elements to reduce the threat of ship strikes to right whales. The operational measures proposed in the alternatives apply to non-sovereign vessels 65 ft (19.8 m) and greater in length. The operational measures do not apply to vessels operated by Federal agencies or the military. Any potential effects of Federal vessel activities, and mitigation, will be evaluated through the Endangered Species Act section 7 consultation process for all alternatives. A more detailed description of the operational measures proposed for each region are in the ANPR (June 1, 2004; 69 FR 30857).

That notice describes the proposed action and possible alternatives intended to reduce the likelihood and threat of mortalities caused by ship strikes pursuant to requirements under NEPA. In particular, the Draft EIS is intended to identify potential impacts to human activities that occur as a result of the proposed action and its alternatives.

The areas of interest for evaluation of environmental and socioeconomic effects will include the territorial sea and the Exclusive Economic Zone off the east coast of the U.S. and international waters in the North Atlantic Ocean.

Public Involvement and the Scoping Process

Public participation in the Strategy has been encouraged through several methods including soliciting public comments on the ANPR and holding public meetings, industry stakeholder meetings, and other focus group meetings. NMFS has been working with state and other Federal agencies, concerned citizens and citizens groups, environmental organizations, and the shipping industry to address the ongoing threat of ship strikes to right whales. NMFS' intent is to encourage the public and interest groups to participate in the NEPA process, including interested citizens and environmental organizations, affected low-income or minority populations or affected local, state and Federal agencies, and any other agencies with jurisdiction or special expertise.

NMFS published the ANPR for Right Whale Ship Strike Reduction in the **Federal Register** on June 1, 2004 (69 FR 30857) and provided a comment period to determine the issues of concern with respect to the practical considerations involved in implementing the Strategy and to determine whether NMFS was considering the appropriate range of alternatives. Comments were received from over 5,250 governmental entities, individuals, and organizations, and can be accessed at the NMFS website (see **ADDRESSES**). These comments were in the form of e-mail, letters, website submissions, correspondence from action campaigns (e-mail and U.S. postal mail), faxes, and a phone call.

NMFS extended the comment period to November 15, 2004 (September 13, 2004; 69 FR 55135) to provide for an extended series of public meetings on the ANPR and this topic in general. Five public meetings on the ANPR were held in the following locations: Boston, MA, at the Tip O'Neill Federal Building (July 20, 2004); New York/New Jersey at the Newport Courtyard Marriot (July 21,

2004); Wilmington, NC, at the Hilton Riverside Wilmington (July 26, 2004); Jacksonville, FL, at the Radisson Riverwalk Hotel (July 27, 2004); and Silver Spring, MD, at NOAA Headquarters Science Center (August 3, 2004). Public comments were requested at these meetings and transcribed for the public record. Also, nine industry stakeholder meetings were held to explain the ANPR at the following locations: Boston, MA (September 30, 2004); Portland, ME (October 1, 2004); Norfolk, VA (October 4, 2004); Morehead City, NC (October 6, 2004); Jacksonville, FL (October 13, 2004); Savannah, GA (October 14, 2004); New London, CT (October 20, 2004); Newark, NJ (October 25, 2004); and Baltimore, MD/Washington, DC (October 27, 2004). A summary report of these meetings and a list of the attendees are posted on the internet at <http://www.nero.noaa.gov/shipstrike>.

NMFS also held two focus group discussion meetings with participants from non-governmental organizations, academia, and Federal and state government agencies. The first meeting was held in Silver Spring, MD on September 26, 2004, and the second meeting was in New Bedford, MA on November 5, 2004.

The comments on the ANPR focused primarily on several broad topics including: speed restrictions, vessel size and operations, speed and routing issues specific to regions, routing restrictions (Port Access Routes Study [PARS] and Areas To Be Avoided [ATBA]), safety of navigation, suggestions for alternative or expanded dates for operational measures, military and sovereign vessel exemptions, enforcement, and compliance.

Alternatives

NMFS will evaluate a range of alternatives in the Draft EIS for developing a final Strategy to reduce mortality to right whales due to ship strikes based on a suite of possible mitigative measures contained in each of the elements of the overall Strategy. The following alternatives are being considered based on comments received on the ANPR and during the public meetings: Alternative 1, a no-action alternative; Alternative 2, Use of Dynamic Management Areas (DMAs); Alternative 3, Speed Restrictions in Designated Areas; Alternative 4, Use of Designated or Mandatory Routes; Alternative 5, Combination of Alternatives 1, 2, 3 and 4; and Alternative 6, NOAA Ship Strike Strategy.

For all speed restrictions being considered under an alternative, NMFS

expects to consider 10, 12, and 14 knots in the analyses. Other variations or additional alternatives may be developed based on significant issues raised during this public scoping period. The probable environmental, biological, cultural, social and economic consequences of the alternatives and those activities that may cumulatively impact the environment are expected to be considered in the Draft EIS.

Alternative 1 - No Action (Status Quo): Under this alternative NMFS would continue to implement existing measures and programs, largely non-regulatory, to reduce the likelihood of mortality from ship strikes. Research would continue and existing technologies would be used to determine whale locations and pass this information on to mariners. Ongoing activities under this alternative would include the use of aerial surveys to notify mariners of right whale sighting locations; the operation of Mandatory Ship Reporting Systems; support of Recovery Plan Implementation Teams; education and outreach programs for mariners; and ongoing research on technological solutions. The development, enhancement, and implementation of the draft Education and Outreach Strategy would continue in coordination with the Recovery Plan Implementation Teams. The alternative would also rely on Endangered Species Act section 7 consultations to address, and mitigate the potential effects of, the activities of vessels operated by government agencies. Additionally, efforts will continue to identify technologies that will mitigate or prevent ship strikes to right whales but that would impose minimal or no environmental impacts.

Alternative 2 - Use of DMAs: A second alternative under consideration would incorporate the elements of Alternative 1 with additional measures to implement DMAs. The DMA component of this alternative would be implemented ONLY when right whale sightings occur.

Under this alternative there would need to be a commitment to continuing aircraft surveillance coverage. If confirmed right whale sightings occur, a DMA would be specified and mariners would have the option of either routing around the DMA or to proceed within the DMA at restricted speeds. NMFS is considering various models for whale density required to trigger a DMA action; the current default is the same criteria used for the Atlantic Large Whale Take Reduction Plan (ALWTRP) Dynamic Area Management fishing restrictions. Consecutive DMAs would be imposed if trigger thresholds persist.

If subsequent flights confirm the whales are no longer aggregated in this location, the DMA would be lifted.

Alternative 3 - Speed Restrictions in Designated Areas: This alternative includes all elements of Alternative 1 and implements large-scale speed restrictions throughout the range of northern right whales. Restrictions would apply as follows:

1. Speed restrictions year round off the northeast U.S. coast. This area would include either (1) all waters bounded on the east by the U.S. coastline, the west by 68° W longitude, the north by the U.S./Canadian border and the south by 41°30' N latitude, or (2) all waters in the area used by Seasonal Area Management (SAM) zones as designated in the ALWTRP;

2. Speed restrictions from October 1 through April 30 off the U.S. mid-Atlantic coast. This area would include all waters extended from U.S. coastline out 25 nm from Providence/New London (Block Island Sound) south to Savannah, Georgia.

3. Speed restrictions from December 1 through March 31 off the Southeast U.S. This area would include all waters within the MSR WHALESSOUTH reporting area and the presently designated right whale critical habitat.

Alternative 4 - Use of Designated or Mandatory Routes: This alternative includes all the elements of Alternative 1 and relies on altering current vessel patterns to move vessels away from areas where whales are known to aggregate in order to reduce the likelihood of a mortality due to a ship strike.

This alternative also creates an ATBA in the Great South Channel as described in NOAA's ANPR, and considers recommendations of a PARS by the USCG. At present the PARS analysis is assessing possible lane changes in Cape Cod Bay and waters off the Southeast U.S. The alternative also will analyze the possibility of moving the Traffic Separation Scheme into/out of Boston to avoid high density aggregations of whales at the northern end of Cape Cod Bay and Stellwagen Bank.

Alternative 5 - Combination of Alternatives: This alternative includes all elements of Alternatives 1 - 4. The cumulative effects of Alternative 5 would be the additive effects of each of the previous alternatives.

Alternative 6 - NOAA Ship Strike Strategy: This alternative includes all the operational measures identified in the NOAA Ship Strike Strategy. The principal difference between Alternative 5 and 6 is that Alternative 6 does not include large-scale speed restrictions (as identified in Alternative 3) but instead

relies on speed restrictions in much smaller Seasonally Managed Areas as identified in the NOAA Ship Strike Strategy.

Comments Requested

NMFS provides this notice to: advise the public and other agencies of the NOAA's intentions, and obtain suggestions and information on the scope of issues to include in the EIS. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all significant issues are identified. NMFS requests that comments be as specific as possible. In particular, the agency requests information regarding: the potential direct, indirect, and cumulative impacts resulting from the proposed action on the human environment. The human environment could include air quality, water quality, underwater noise levels, socioeconomic resources, and environmental justice.

Comments concerning this environmental review process should be directed to NMFS (see ADDRESSES). See **FOR FURTHER INFORMATION CONTACT** for questions. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

Authority

The environmental review of the Ship Strike Strategy will be conducted under the authority and in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500-1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

Literature Cited

- Caswell, H., M. Fujiwara, and S. Brault. 1999. Declining survival probability threatens the North Atlantic right whale. *Proc. Nat. Acad. Sci.* 96:3308-3313.
- Jensen, A.S., and G.K. Silber. 2003. Large whale ship strike database. U.S. Dep. Commerce, NOAA Technical Memorandum NMFS-F/OPR 25, 37 p.
- Knowlton, A.R., and S.D. Kraus. 2001. Mortality and serious injury of northern right whales (*Eubalaena glacialis*) in the western North Atlantic Ocean. *Jour. Cetacean Res. and Manag. (Special Issue)* 2:193-208. Russell, B.A. 2001.

Dated: June 16, 2005.

P. Michael Payne

Chief, Marine Mammal and Sea Turtle
Conservation Division, Office of Protected
Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061405C]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit Related to Horseshoe Crabs

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Notice; request for comments.

SUMMARY: NMFS announces that the
Director, Office of Sustainable Fisheries,
is considering issuing an Exempted
Fishing Permit to Limuli Laboratories of
Cape May Court House, NJ, to conduct
the fifth year of an exempted fishing
operation otherwise restricted by
regulations prohibiting the harvest of
horseshoe crabs in the Carl N. Schuster
Jr. Horseshoe Crab Reserve (Reserve)
located 3 nautical miles (nm) seaward
from the mouth of the Delaware Bay. If
granted, the EFP would allow the
harvest of 10,000 horseshoe crabs for
biomedical purposes and require, as a
condition of the EFP, the collection of
data related to the status of horseshoe
crabs within the Reserve. This notice
also invites comments on the issuance
of the EFP to Limuli Laboratories.

DATES: Written comments on this action
must be received on or before July 7,
2005.

ADDRESSES: Written comments should
be sent to John H. Dunnigan, Director,
Office of Sustainable Fisheries, NMFS,
1315 East-West Highway, Room 13362,
Silver Spring, MD 20910. Mark the
outside of the envelope "Comments on
Horseshoe Crab EFP Proposal." Comments
may also be sent via fax to
(301) 713-0596. Comments on this
notice may also be submitted by e-mail
to: Horseshoe-Crab.EFP@noaa.gov.
Include in the subject line of the e-mail
comment the following document
identifier: Horseshoe Crab EFP Proposal.

FOR FURTHER INFORMATION CONTACT: Tom
Meyer, Fishery Management Biologist,
(301) 713-2334.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted
fishing, at 50 CFR 600.745(b) and
697.22, allow a Regional Administrator
or the Director of the Office of
Sustainable Fisheries to authorize for
limited testing, public display, data
collection, exploration, health and
safety, environmental clean-up and/or
hazardous removal purposes, the
targeting or incidental harvest of
managed species that would otherwise
be prohibited. Accordingly, an EFP to
authorize such activity may be issued,
provided: there is adequate opportunity
for the public to comment on the EFP
application, the conservation goals and
objectives of the fishery management
plan are not compromised, and issuance
of the EFP is beneficial to the
management of the species.

The Reserve was established on
March 7, 2001 to protect the Atlantic
coast stock of horseshoe crabs and to
support the effectiveness of the Atlantic
States Marine Fisheries Commission's
(Commission) Interstate Fishery
Management Plan (ISFMP) for
horseshoe crabs. The final rule
(February 5, 2001; 66 FR 8906)
prohibited fishing for and possession of
horseshoe crabs in the Reserve on a
vessel with a trawl or dredge gear
aboard while in the Reserve. While the
rule did not allow for any biomedical
harvest or the collection of fishery
dependent data, NMFS stated in the
comments and responses section that it
would consider issuing EFPs for the
biomedical harvest of horseshoe crabs in
the Reserve.

The biomedical industry collects
horseshoe crabs, removes approximately
30 percent of their blood, and returns
them alive to the water. Approximately
10 percent do not survive the bleeding
process. The blood contains a reagent
called *Limulus* Amebocyte Lysate (LAL)
that is used to test injectable drugs and
medical devices for bacteria and
bacterial by-products. Presently, there is
no alternative to the LAL derived from
horseshoe crabs.

NMFS manages horseshoe crabs in the
exclusive economic zone in close
cooperation with the Commission and
the U.S. Fish and Wildlife Service. The
Commission's Horseshoe Crab
Management Board met on April 21,
2000, and again on December 16, 2003,
and recommended to NMFS that
biomedical companies with a history of
collecting horseshoe crabs in the
Reserve are given an exemption to
continue their historic levels of
collection not to exceed a combined
harvest total of 10,000 crabs annually. In
2000, the Commission's Horseshoe Crab

Plan Review Team reported that
biomedical harvest of up to 10,000
horseshoe crabs should be allowed to
continue in the Reserve given that the
resulting mortality should be only about
1,000 horseshoe crabs (10 percent
mortality during bleeding process). Also
in 2000, the Commission's Horseshoe
Crab Stock Assessment Committee
Chairman recommended that, in order
to protect the Delaware Bay horseshoe
crab population from over-harvest or
excessive collection mortality, no more
than a maximum of 20,000 horseshoe
crabs should be collected for biomedical
purposes from the Reserve. In addition
to the direct mortality of horseshoe
crabs that are bled, it can be expected
that more than 20,000 horseshoe crabs
will be trawled up and examined for
LAL processing. This is because
horseshoe crab trawl catches usually
include varied sizes and sexes of
horseshoe crabs and large female
horseshoe crabs are the ones usually
selected for LAL processing. The
remaining horseshoe crabs are released
at sea with some unknown amount of
mortality. Although unknown, this
mortality is expected to be negligible.

Collection of horseshoe crabs for
biomedical purposes from the Reserve is
necessary because of the low numbers of
horseshoe crabs found in other areas
along the New Jersey Coast from July
through early November and because of
the critical role horseshoe crab blood
plays in health care. In conjunction with
the biomedical harvest, NMFS is
considering requiring that scientific data
be collected from the horseshoe crabs
taken in the Reserve as a condition of
receiving an EFP. Since the Reserve was
first established, the only fishery data
from the Reserve were under EFPs
issued to Limuli Laboratories for the
past four years, and under Scientific
Research Activity Letter of
Acknowledgment issued Virginia
Polytechnic Institute and State
University's Department of Fisheries
and Wildlife Science on September 4,
2001 (for collections from September 1-
October 31, 2001), on September 24,
2002 (for collections from September
24-November 15, 2002), on August 14,
2003 (for collections from September 1-
October 31, 2003), and on September 15,
2004 (for collections from September
15-October 31, 2004). Further data are
needed to improve the understanding of
the horseshoe crab population in the
Delaware Bay area and to better manage
the horseshoe crab resource under the
cooperative state/Federal management
program. The data collected through the
EFP will be provided to NMFS, the

Written Comments from Right Whale Ship Strike NOI (June 22, 2005)

Comment Number	Specific Comment	Response
1	Supports Alternative 6 as the minimum threshold for protection.	Acknowledged ¹
2	NOAA/NMFS should return to interagency process to resolve policy issues identified in a joint USCG/Dept. of State letter dated November 10, 2004. Alternatives should be consistent with domestic and international policy concern and proposed alternatives in the NOI could affect interrelated issues such as: Effects on freedom of navigation, application to foreign flag vessels in innocent passage, and gaining international awareness and acceptance; and Means of enforcing speed restrictions and routing measures on the open seas and, correspondingly, determining whether and ensuring the measures being considered are effective. Interagency discussions should be part of the scoping process to ensure that all reasonable alternatives are analyzed in the EIS and that the EIS adequately presents justification for each alternative's viability.	Outside the scope of DEIS ² ; NOAA has resumed the interagency process since the publication of the NOI and continues to consult with other agencies. These issues are being discussed through the interagency process.
3	The USCG passenger vessel data is incomplete and only captures a fraction of actual arrivals; this may be due to differing definitions of "passenger vessel" and "small passenger vessel" in the United States Code, or that most US-flagged passenger vessels have tonnage below 100 gross tons, which were below the USCG threshold. Consider using the National Ferry Database (US DOT) as an additional source of passenger vessel arrivals. Draft EA's treatment of the whale watching industry contains no statistics regarding the number of operators, number of vessels, or economic value of this industry. The EIS should include information on the number of affected whale watching vessels and the economic impacts on the industry. Conduct interviews with ferry operators to discuss the possible impacts of the proposed operational measures and analyze the potential for large impacts on particular ferry companies or routes. EIS should analyze the impacts on smaller (200 passengers or below) overnight cruise vessels that are in coastwise service along the east coast.	Acknowledged The USCG database does not capture vessels less than 150 gross tons. This database was utilized in the economic analysis for the DEIS
4	Supports Alternative 6 as a minimum for the protection and survival of right whales.	Acknowledged
5	Supports Alternative 6 as the most appropriate alternative to affect the most significant range of vessel activities likely to impact right whales.	Acknowledged
	Stakeholder interviews were conducted as a part of the economic impact assessment. (Also see Section 4.4.5.2)	If these vessels are captured in the USCG vessel arrival database, then they will be analyzed in the DEIS under passenger vessels.
		Acknowledged

¹ Acknowledged indicates that NMFS considered the comment, but did not believe a response was warranted.

² If a response is outside the scope of the DEIS, it is generally specific to the language/measures in the proposed rule, and not the DEIS, which only analyzes these measures.

Written Comments from Right Whale Ship Strike NOI (June 22, 2005)

Comment Number	Specific Comment	Response
6	<p>Reinitiate the interagency ship strike reduction dialogue to facilitate productive discussion on the overall Strategy with the involved federal agencies.</p> <p>Substitute the following language [in clarifying sovereign vessels]: Operational measures do not apply to public vessels. Public vessel means a vessel that is owned or operated by the United States, or a foreign government, when the vessel is used on government non-commercial service. Public vessels include warships, naval auxiliaries, USNS vessels, afloat prepositioned force ships, pre-commissioned vessels, and other vessels owned or operated by the United States when engaged in non-commercial service.</p> <p>Consider addition of a new alternative that expands the use of existing conservation measures to the Mid-Atlantic region with no adoption of regulatory measures.</p> <p>Clarify the effects analysis in the No Action Alternative.</p> <p>The scope of the EIS should be clarified such that the "Scope of Action" mirrors the draft EA/OEA and the summary description provided in the Federal Register.</p> <p>EIS should delete any evaluation of section 7 consultation by other agencies from the scope of the defined alternatives.</p> <p>The EIS must fully describe the very limited nature of the data from which the proposed 12-knot speed restriction is derived, and ensure that the effectiveness of this measure in reducing right whale collisions is clearly assessed using best available science.</p> <p>There is no discussion in the EA allowing for the discretion on the part of the master if safety is an issue.</p> <p>There is no description of how this speed is to be defined; engine order telegraph, vessel's speed along its track, or speed through the water?</p> <p>There was little explanation indicating how 12 knots was decided upon.</p> <p>Given the sparse nature of data concerning ship speed and right whale collisions, and the lack of reaction generally displayed when approached by a ship the assumption that 12 knots will be protective and reduce hydrodynamic forces that draw the whale into the ship or propeller does not seem warranted.</p>	<p>Outside scope of DEIS; NOAA has resumed the interagency dialogue with the involved Federal agencies.</p> <p>NMFS provides language to clarify sovereign (or Federal) vessels in the proposed rule.</p> <p>This alternative was considered but rejected as it would not provide sufficient protection to migrating right whales.</p> <p>Analyzed in Ch.4 Acknowledged</p> <p>The DEIS does not evaluate Section 7 consultation as the process is outside the scope of the DEIS, although previous consultations are described in Appendix A. Additional data has become available since the EA was posted, and these data have been incorporated into the DEIS, along with a description of existing data.</p> <p>NMFS is aware of navigational safety as it pertains to the measures being proposed. Public health and safety and vessel maneuverability are also mentioned in the DEIS. Speed restrictions will be a function of "ground speed".</p> <p>The DEIS will analyze 10, 12, and 14 knots, and the proposed and final rules will identify and provide justification for the maximum speed.</p> <p>Policies regarding speed restrictions are based on the best available data. The DEIS and proposed rule reflect this.</p>

Written Comments from Right Whale Ship Strike NOI (June 22, 2005)

Comment Number	Specific Comment	Response
6 (Continued)	<p>The assumptions that right whales might not hear ships because high frequency propeller noise is outside their best hearing range and that machinery noise would not be projected forward of the ship are problematic. Although some high frequency tonals may not be perceived, the lower frequency components of the broadband radiated noise are within the estimated best frequency of right whales.</p> <p>Provide the synopsis presented in the NEIT/SEIT meetings that gives a more comprehensive description of the Navy's protective measures. Also note the percentage of coastal traffic the Navy comprises, to provide perspective.</p>	<p>Most ship noise is probably well within the hearing range of right whales. The factors that contribute to right whale vulnerability to ship strikes are not well known, but hearing range is probably not one of them. Refer to the sections on right whale hearing and ocean noise in Chapter 3.</p> <p>The DEIS provides a comprehensive description of current Navy mitigation measures using information from these meetings. The percentage of Navy vessel traffic was also added; see Appendix A.</p>
7	<p>The comprehensive measures included in Alternatives 5 and 6 have the best chance of meeting this criteria and complying with the ESA and MMPA.</p> <p>NMFS should examine carefully in the DEIS the impact on right whales of delaying implementation of protective measures.</p> <p>Agrees that NMFS has both the authority and the obligation to take immediate measures to protect this imperiled marine mammal.</p> <p>The objections raised by affected economic sectors through the ANPR and public outreach processes, while not trivial, do not present sufficient justification for NMFS to limit right whale protections.</p> <p>Commenter urges NMFS to carefully consider the scope of its regulations in the DEIS and clearly identify effective measures for recreational vessels throughout all three regions.</p> <p>The purpose and need of the proposed action must be defined to encompass the requirements of the MMPA and ESA, and the consideration of alternatives should be structured accordingly.</p> <p>Commenter supports the use of Dynamic Management Areas to overlay additional protections where more consistent management, either seasonal or year round, is insufficient or impractical; they are insufficient by themselves. (Applicability and enforcement of these measures should be made explicit in any proposed regulations involving dynamic management.)</p> <p>The commenter strongly endorses the immediate creation of a speed limit of 10 knots in the areas and during the times NMFS has identified in the NOI. They also endorse year-round restrictions in the broader geographic scope detailed in Alternative 3, although Alternative 3 alone does not present a comprehensive approach necessary to ensure right whale protection.</p> <p>Mandatory shipping routes are insufficient by themselves and must be included as part of a comprehensive strategy to protect right whales.</p>	<p>Acknowledged</p> <p>Outside scope of the DEIS</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>The DEIS analyzes 10, 12 and 14 –knot speed restrictions for all alternatives.</p> <p>Routing measures are analyzed in alternatives 4, 5, and 6. Alternatives 5 and 6 combine routing measures with additional measures.</p>

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Comment Number	Specific Comment	Response
7 (Continued)	<p>The ship strike strategy (Alternative 6) may need to be modified or supplemented to provide sufficient protections for right whales. Enforcement for routing, speed restrictions, dynamic management areas as well as the MSR system, should be thoroughly explored by the agency, explained in detail, and presented for public comment in any proposed rule.</p> <p>It is essential that NMFS undertake and update ESA Section 7 consultations for large sovereign vessels not covered by the Strategy in order to ensure compliance with the ESA for those other agencies.</p>	<p>Alternative 6 has been modified from the original version published in the NOI.</p> <p>Enforcement is outside the scope of the DEIS; any comments on enforcement will be addressed in the final rule.</p>
8	<p>The ESA is clear that cost is not a threshold consideration when weighing measures to protect endangered species, and the act remains relatively blind to cost when the survival of a species is at stake. Therefore, NMFS must provide meaningful protection measures for the species regardless of the resulting economic costs.</p> <p>There is also an economic incentive to preserving the species. The multi-million dollar whale watching industry in the US and Canada could be adversely affected by the continual decline in right whales. The aesthetic and spiritual value of preserving a healthy right whale population should also be evaluated in the EIS.</p> <p>Commenter believes that [Alternative 2] dynamic management is an important component of an overarching risk-reduction program; in and of itself, it is not sufficient to reduce risk. They are also concerned with the timeliness of DMA implementation and stated that the EIS should evaluate whether or how this can be done on a more timely bases for reducing risk from ship collisions.</p> <p>Speed restrictions [Alternative 3] are an important component of risk reduction as they allow more time for both the whale and the mariner to avoid collision and can reduce the force of impact in the event of a collision, but the commenter does not believe that they are sufficient in and of themselves as a means reducing risk.</p> <p>Routing [Alternative 4], like dynamic management and speed restrictions, needs to be part of a larger program of risk reduction that incorporates a number of strategies to reduce risk.</p> <p>Commenter generally supports Alternative 5 provided these measures encompass all of the additional measures outlined in the NOAA ship strike strategy and include expanded protection measures.</p> <p>A speed limit of 10 knots appears to be the most protective.</p>	<p>Section 7 consultations commence at the action agency's discretion and are outside the scope of the DEIS.</p> <p>The proposed operational measures would be promulgated pursuant to NMFS' authorities under ESA section 11(f) and MMPA section 112(a). Under these provisions, NMFS has discretion in how it fashions protective measures for right whales, including taking into account ways to minimize economic and other impacts.</p> <p>Acknowledged</p> <p>Acknowledged; analyzed in Alternative 2, 5 & 6.</p> <p>Acknowledged; analyzed in Alternatives 3, 5 & 6.</p> <p>Acknowledged; analyzed in Alternatives 4, 5 & 6.</p> <p>Acknowledged.</p> <p>Acknowledged</p>

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Comment Number	Specific Comment	Response
8 (Continued)	<p>Commenter is concerned that sovereign vessels are exempt; therefore the EIS should evaluate the impact of exempting these vessels.</p>	<p>Sovereign vessels are exempt from the operational measures, therefore it is outside the scope of the EIS to evaluate the impact of their exemption.</p>
9	<p>NMFS must make every effort to implement these regulations as soon as possible.</p> <p>NMFS must also address the steps needed to ensure the effective enforcement of these regulations, including making sufficient resources available and developing and implementing new technologies.</p> <p>Commenter recommends that the Coast Guard join as a co-author in this rulemaking process, so that these regulations are specifically incorporated into its enforcement regime. If the USCG does not join as a co-author of these regulations, then NMFS should enter into a Memorandum of Agreement with the USCG detailing each entity's enforcement authority and the division of the administrative burden.</p> <p>While issues of economic impact of these regulations must be addressed through the NEPA process, these, and other similar considerations, must give way so that the right whale may receive the required level of protection. See TVA v. Hill, 437 US 153, 174 (1978) (concluding that is it "beyond doubt that Congress intended endangered species to be afforded the highest of priorities").</p> <p>Arguments that the regulatory measures will lead to shipping delays and economic losses...are directly at odds with the underlying intent of the ESA, which was enacted to reverse the trend of species being driven to extinction as "the consequence of economic growth and development untempered by adequate concern and conservation" (16 USC. § 1531).</p> <p>Commenter recommends regulations cover all vessels under the jurisdiction of the US measuring 65 ft and greater. However, an exemption could be created for those sovereign vessels operation pursuant to parameters established in a Biological Opinion issued by NMFS.</p> <p>Commenter believes that while a DMA system should be implemented as a management tool, given the systems obvious limitations it should not be relied upon in lieu of uniform seasonal management measures, but rather, should augment them.</p>	<p>Acknowledged</p> <p>See response to comment 7.</p> <p>The USCG has been an active partner in reducing the threat of ship strikes, as participants in recovery plan implementation teams, and an interagency working group. The USCG has prepared a Port Access Routes Study to assess a number of proposed ship strike reduction measures. However, the proposed regulations will be promulgated under NMFS' ESA/MMPA authorities.</p> <p>NMFS is seeking to obtain the greatest protection for right whales while at the same time minimizing economic impacts. Also see response to comment 8.</p> <p>NMFS is attempting to promote recovery of right whales by reducing the threat of ship strikes. At the same NMFS is seeking to minimize economic impacts.</p> <p>The operational measures apply to all vessels under the jurisdiction of the US, except vessels owned or operated by, or under contract to, the Federal government. A number of Federal agencies are already operating under mitigation measures from a Biological Opinion (see Appendix A).</p> <p>Acknowledged; analyzed in Alternatives 5 & 6.</p>

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Comment Number	Specific Comment	Response
<p>9 (Continued)</p>	<p>When developing a system to prevent ship strikes, NMFS cannot base the trigger criteria on one particular type of whale behavior, but rather, must establish a system that will identify whales at a high risk of being involved in whale-vessel interaction.</p> <p>Alternative 3 does not go far enough to protect the species; while the temporal and geographic scope of the speed restrictions are substantial, they would not protect whales that are found outside of management areas at other times of the year.</p> <p>Noting the shortcomings addressed in comments submitted on the ANPR, the commenter considers the regulatory measures outlined in Alternative 6 to be the bare minimum necessary to protect the right whale. They recommend that NMFS make the necessary changes and additions to the regulatory framework proposed in the ANPR before the EIS is commenced.</p> <p>The liner shipping industry operates 'strings' of vessels, mostly container ships, on regular day-of-the-week schedules to a fixed range of ports in the US and abroad. A delay to one vessel can impact not only that vessel's schedule, but also the schedules of other vessels in the string.</p> <p>Vessel operating costs are considerably higher in 2005 than the 2002 estimates.</p> <p>Cost estimates in the EA for speed reduction measures are based on time/distance/speed conversions in the restricted zones and do not take into account additional costs such as extra fuel burned at sea to maintain schedules.</p> <p>Costs associated with bypassing scheduled ports to maintain schedules are considerable and need to be examined in the EIS.</p> <p>Commenter does not believe the data support a reduction in ship strikes at a 12 knot speed restriction, and strongly supports hydrodynamic studies.</p> <p>The EIS should contain a full review of the role of Naval and Coast Guard vessels in efforts to reduce right whale ship strikes.</p> <p>Commenter supports Alternatives 2 and 4.</p> <p>The EIS should very clearly articulate the proposed management measures that would apply to each port/region in order to allow a complete understanding of the restrictions being considered. Of particular concern is the incomplete description of Dynamic Management Areas. The EIS should summarize the details associated with DMA implementation and information on restrictions that would have resulted using sighting data over the most recent 5 years.</p>	<p>Additional DMA triggers were developed for the alternatives to account for whales at a high risk of being struck by a vessel.</p> <p>Acknowledged; analyzed in proposed alternatives.</p> <p>Alternative 6 has been modified since the ANPR and NOI.</p> <p>Impacts on multi-port vessel strings are analyzed in Sections 4.4.2.</p> <p>The most current data available (2004 and 2005) is used in the DEIS to make these assessments.</p> <p>All direct and indirect impacts are assessed in the DEIS. Fuel is incorporated into the operating costs, described in Section 3.4.1.4.</p> <p>These impacts are analyzed in the Indirect Impacts, Section 4.4.3.</p> <p>Several research papers provide supporting evidence for speed restrictions (e.g. Laist et al., 2001; Jensen and Silber, 2003; Pace and Silber, 2005; Vanderlaan and Taggart, in review) and are discussed in the DEIS. NOAA is also considering hydrodynamic studies.</p> <p>Current Navy and USCG protection measures are described in the DEIS, Appendix A.</p> <p>Acknowledged</p> <p>The DEIS (e.g. Ch.2 – Alternatives) describes the measures proposed in each alternative by region. The details of DMA implementation are summarized in Alternative 2 and the proposed rule.</p>
<p>11</p>	<p>The EIS should contain a full review of the role of Naval and Coast Guard vessels in efforts to reduce right whale ship strikes.</p> <p>Commenter supports Alternatives 2 and 4.</p> <p>The EIS should very clearly articulate the proposed management measures that would apply to each port/region in order to allow a complete understanding of the restrictions being considered. Of particular concern is the incomplete description of Dynamic Management Areas. The EIS should summarize the details associated with DMA implementation and information on restrictions that would have resulted using sighting data over the most recent 5 years.</p>	<p>Additional DMA triggers were developed for the alternatives to account for whales at a high risk of being struck by a vessel.</p> <p>Acknowledged; analyzed in proposed alternatives.</p> <p>Alternative 6 has been modified since the ANPR and NOI.</p> <p>Impacts on multi-port vessel strings are analyzed in Sections 4.4.2.</p> <p>The most current data available (2004 and 2005) is used in the DEIS to make these assessments.</p> <p>All direct and indirect impacts are assessed in the DEIS. Fuel is incorporated into the operating costs, described in Section 3.4.1.4.</p> <p>These impacts are analyzed in the Indirect Impacts, Section 4.4.3.</p> <p>Several research papers provide supporting evidence for speed restrictions (e.g. Laist et al., 2001; Jensen and Silber, 2003; Pace and Silber, 2005; Vanderlaan and Taggart, in review) and are discussed in the DEIS. NOAA is also considering hydrodynamic studies.</p> <p>Current Navy and USCG protection measures are described in the DEIS, Appendix A.</p> <p>Acknowledged</p> <p>The DEIS (e.g. Ch.2 – Alternatives) describes the measures proposed in each alternative by region. The details of DMA implementation are summarized in Alternative 2 and the proposed rule.</p>

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Comment Number	Specific Comment	Response
11 (Continued)	<p>A full economic impact assessment should be conducted on each port affected by the regulations and included in the EIS. It should consider direct costs incurred by the shipping lines as a result of the delays, the indirect costs the industry and the regional economy, and the economic implications and job losses associated with temporary and permanent vessel diversions that will likely result.</p> <p>If the proposed regulations cause ships to temporarily or permanently divert from one port to another, it will result in a shift of cargo movement along the eastern seaboard from vessels to trucks. This will result in air quality and traffic impacts along an already highly congested corridor, much of which is already in non-compliance for various air contaminants. These and other secondary environmental impacts should be fully evaluated and quantified for each region in the EIS.</p> <p>Commenter strongly opposes mandating a specific speed limit without any scientific bases that it will be effective, particularly with the knowledge that speed restrictions will cause economic impacts and that a 10 to 13 knot limit may not allow for the safest operation of a vessel. Prior to proceeding with the EIS, the necessary studies must be conducted.</p> <p>NMFS should work with the maritime industry and initiate whatever studies are necessary to fully explore technological solutions (GPS, AIS) to providing mariners with real time locations for right whales.</p>	<p>Ch.4 provides an analysis of the impacts on each port, the direct costs to the shipping lines, collectively, and the economic implications that may result will be analyzed in the socioeconomic section.</p> <p>Foreseeable indirect environmental impacts are analyzed in Section 4.4.3 of the DEIS.</p> <p>Data indicate that ship speeds of 12 knots or less would reduce the risk of whale death and serious injury resulting from collisions with ships. The USCG has implemented speed restrictions of 10 knots or less; these speeds apparently do not affect maneuverability in most circumstances.</p>
12	<p>Commenter urges NMFS to dedicate significant resources toward research and development of the potential technological solutions such as acoustic/sonar detection systems.</p> <p>The EIS should fully evaluate all potential alternatives to speed and route restrictions and compare them with the proposed regulatory measures.</p> <p>Commenter supports the EIS process and encourages NMFS to evaluate the economic impact that the strategy would have not only on vessel operators, but also on marine terminal operators, maritime labor organizations, local pilots, shippers and other potentially affected entities.</p> <p>The evaluation should include an economic analysis of the impacts to ship call schedules, cargo handling and distribution related activities. In addition, the impact of the proposed alternatives on the regional economies served by the affected ports should be addressed.</p>	<p>NMFS has and will continue to work with the maritime industry. Technological solutions are being researched through NOAA grants, although technological solutions are not included in the operational measures.</p> <p>Outside the scope of the DEIS.</p> <p>Analyzed in the Chapter 2: Alternatives.</p> <p>Foreseeable effects on local economies, including port-related jobs, are analyzed in Section 4.4.3. However, as delays from speed restrictions in SMAs will be known months in advance, there should be minimal, if any, landside impacts.</p> <p>See response to comment 12.</p>
13	<p>The evaluation should include an economic analysis of the impacts to ship call schedules, cargo handling and distribution related activities. In addition, the impact of the proposed alternatives on the regional economies served by the affected ports should be addressed.</p>	<p>See response to comment 12.</p>

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14	<p>The economic and public safety consequences of the proposed restrictions could be substantial for [Suez liquefied natural gas North America (SLNGNA)], [Distrigas of Massachusetts (Distrigas)] and the customers it serves.</p> <p>For vessel port calls into Boston, MA, the proposed restrictions could also delay the deployment of resource-constrained public safety, immigration and customs officials, severely hindering SLNGNA's ability to meet very strict tide limitations for transits into Boston, bridge closure restrictions in Chelsea, and nighttime transit restrictions in Boston Harbor. If vessels are delayed in arriving at Boston, SLNGNA will be subject to substantial market risk due to day-to-day market fluctuations.</p> <p>Vessels inbound to Cove Point, MD face nighttime transit restrictions, as well as eight-hour transit, thus making the discharge window extremely tight. Vessels are required to arrive at the Cape Henry Pilot Station at least eight hours prior to dusk or must wait until the following day to transit. Delays occasioned by the proposed regulations, [in addition to the abovementioned restrictions] especially if DMAs are employed, could cause SLNGNA to miss scheduled load dates as well as subsequent discharge dates.</p> <p>As a further consequence of the proposed restrictions, the number of cargoes shipped by SLNGNA annually could potentially be reduced. Therefore it is critical that the cumulative impacts of the proposed operational measures, including the significant impacts to the natural gas supply for New England, be critically evaluated during the scoping and EIS processes.</p>	<p>The economic impacts of the proposed restrictions on LNG vessels is analyzed in the cumulative impacts section 4.7.3.1. NIMFS is not aware of any public safety issues posed by the proposed regulations.</p> <p>Impacts on the shipping industry in the port of Boston are included in Section 4.4 and other effects, including tide limitations are addressed in the cumulative effects analysis (Section 4.7.3).</p> <p>Restrictions will be known ahead of time, allowing captains time to plan accordingly. Transits may be increased but mariners will have sufficient information for most spatial restrictions prior to planning their routes and can compensate accordingly. (Sections 4.4 and 4.7.3)</p>
15	<p>The scope of the EIS should include the potential impact of the proposed measures on marine terminal operating costs and total logistical costs, in addition to the costs to vessel operators. This would ensure that an appropriate assessment of the socioeconomic impacts on port communities was undertaken.</p>	<p>See previous response to comment 14. However, impacts on the natural gas supply for New England is outside the scope of the DEIS.</p> <p>See response to comment 12.</p>
16	<p>The EIS process should not interfere with immediately taking the necessary steps to protect right whales as required by the ESA and MMPA. Courts have been quite clear on this (See Appendix A, comment 16 for case citations). Pac. Legal Found. v. Andrus, held that NEPA compliance should not interfere with agency's compliance with ESA. US v. South Florida Water Mgmt. Dist., noted that NEPA should not be used to frustrate actions to benefit the environment and that and EIS could proceed concurrent with action. Sierra Club v. Marsh, found that "[i]t would be inconsistent with NEPA's purposes" to allow a party to "obstruct implementation" of a government action "which will protect endangered species."</p>	<p>The situation of the North Atlantic right whale is serious, and ship strikes are the principal threat. NMFS determined that the petition for emergency rulemaking was not warranted because promulgating a speed limit at that time, would curtail full public notice, comment and environmental analysis, duplicate agency efforts and reduce agency resources for a more comprehensive strategy, as well as risk delaying implementation of the draft Strategy.</p>

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Comment Number	Specific Comment	Response
16 (Continued)	<p>The NOI cites solely the potential economic impacts of implementing the Strategy as the reason for conducting the EIS. As NMFS must surely be aware, economic impacts alone are not sufficient grounds for conducting an EIS. E.g., County of Seneca v. Cheney, and Knowles v. United States Coast Guard.</p>	<p>Under the "Purpose of this Action", the NOI also cites NEPA requirements to conduct environmental analysis.</p>
17	<p>The commenter does not agree that speed restrictions should be mandated for vessels transiting ports on the US East Coast without having substantially more scientific data on which to base this decision.</p> <p>The EIS final rulemaking should state that the safety and steerage of the vessel has been considered as a primary concern.</p> <p>The economic study included in the draft EA should be updated and should include long-term projections of impacts based on the future fleet anticipated to call on the US East Coast. The proposed restrictions will result in delays, diversions and bypasses that will directly affect the economic strength of individual ports and port communities, as well as the shipping industry.</p> <p>Savannah has additional restrictions imposed by the USCG on transits associated with LNG vessels.</p> <p>The commenter believes that current measures such as the Early Warning System, aerial surveys and outreach and educational efforts by NMFS are working, and until there is proof that the proposed strategy will result in better protection or that reduced speeds can be proved to reduce collisions with ships, the commenter does not support the strategy.</p>	<p>See response to comments 10 and 11.</p> <p>Both the DEIS and the proposed rule addresses ships' maneuverability.</p> <p>The economic study has been updated and expanded in the DEIS. However, the DEIS does not include quantitative long-term future projections. NEPA analysis is based on the most recent available data.</p> <p>Analyzed in Chapter 4.7.3, Cumulative Impacts.</p> <p>See Section 1.3 in reference to the effectiveness of current measures. With respect to speed restrictions, see responses to comments 10 and 11.</p>
18	<p>The proposed action identified in the NOI to prepare an EIS will, if ever actually implemented, be inadequate to protect the critically endangered right whale from ship strikes. Drafting and circulation of a DEIS, taking public comments, responding to such comments, preparing the FEIS, issuing proposed and final rules, and finally, implementing the requirements of any final rule will take, at a minimum several months or several years to accomplish.</p> <p>The commenter urges NMFS to take immediate actions and issued an emergency regulation consistent with Marine Mammal Commission recommendations to protect right whales from ship strikes pending the completion of the EIS and notice and comment rulemaking.</p> <p>Commenter does not understand why NMFS is not even considering as an alternative applying the rulemaking to federally owned or operated vessels. NMFS should initially apply their general rulemaking to all vessels; following specific agency consultations, agencies could then perhaps seek modification of such rules to better match their specific operational requirements.</p> <p>With regard to the NMFS preferred alternative, the commenter does not understand why NMFS is declining to apply "large-scale speed restrictions" in favor of seasonal restrictions in "Seasonally Managed</p>	<p>NMFS believes the proposed action will reduce the threat of ship strikes to North Atlantic right whales, and is adhering to review and comment processes required by law.</p> <p>This petition for emergency rulemaking was denied in the Federal Register (70 FR 56884, September 29, 2005).</p> <p>See response to comment 8.</p> <p>Proposed operational measures will apply at times and locations in which co-occurrence of whale and ship densities are highest. The SMAs are based on right whale sighting data that indicate the time of</p>

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Comment Number	Specific Comment	Response
	<p>Areas". NMFS should instead impose year-round speed restrictions covering all areas in which right whales might be found throughout the year, and seasonal speed restrictions only in those areas in which right whales are only found for portions of the year.</p>	<p>the year the whales are present.</p>
19	<p>Application of plan to recreational vessels over 65 feet is unsupported and unreasonable. The commenter does not understand and opposes NMFS rationale for applying any new management measures to recreational boats that are 65 feet or more, and recommends that NMFS not apply its management measures to recreational vessels of any length.</p>	<p>NMFS considered and rejected exempting recreational vessels. There have been several reported instances (1-southeastern US, 1-South Africa) where recreational vessels over 65 feet have struck and injured whales. In March 2005, a recreational vessel struck a right whale, and resulted in severely lacerated tail flukes.</p>
	<p>NMFS must consider the impacts of its proposals to the boaters and the businesses, such as marinas, boat dealers and repair shops, restaurants, etc., that support them.</p>	<p>Acknowledged</p>
	<p>Any new management measures must be designed and implemented with the full involvement and approval of the USCG. NMFS should begin interagency consultations with the USCG before going further on any proposed measures.</p>	<p>See response to comment 9.</p>
	<p>The commenter supports the No Action Alternative, unless and until recreational boats are excluded from these new management measures and until NMFS works with the Coast Guard to develop proposals that adequately take into account the potential impacts on vessel safety and homeland security.</p>	<p>See response to comment 19 with respect to application of the proposed rule to recreational vessels. NMFS works regularly with the USCG on proposed actions, including its preparation of a Port Access Route Study to assess navigational safety. Federal agency vessels, including those of the US armed forces engaged in national defense of homeland security activities are exempt from the measures.</p>
20	<p>Prior assessments have addressed economic impacts to vessel operators calling at East Coast ports but the impacts to port operators and other members of the maritime community operating in these ports have not been thoroughly evaluated. The evaluation should include an economic analysis of the impacts to ship call schedules, cargo handling and distribution operations, pilot and tug operations, and other maritime transportation related activities.</p>	<p>See response to comment 12.</p>
	<p>The impact of the proposed alternatives on the regional economies served by the affected ports should be addressed.</p>	<p>Socioeconomic impacts will be addressed in Section 4.4.</p>
21	<p>NMFS must provide meaningful protections for the species regardless of the resulting economic costs. Specifically, the ESA is designed to "halt and reverse the trend toward species extinction, whatever the cost" (T.V.A. v. Hill, 1978).</p>	<p>See response to comment 8.</p>
	<p>The EIS should consider the ethical values that some people hold in relation to whales and the marine environment. There are equally important "value-based" reasons as to why society would choose to protect whales; reasons for which there are no economic metrics to define.</p>	<p>Quantitative estimates of the economic benefits to protecting right whales are currently unavailable; however, Section 5.3.1 of the EIS qualitatively discusses these benefits.</p>
	<p>Regulations are necessary for recreational and commercial whale watch vessels, based on the proven inadequacy of the 1999 voluntary Whale Watch Guidelines.</p>	<p>Acknowledged</p>

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Comment Number	Specific Comment	Response
21 (Continued)	<p>The commenter believes that all sovereign vessels should be included in the ship strikes management regime, regardless of the federal agencies' individual efforts to address ship strikes, and the requirements under Section 7 of the ESA.</p> <p>NMFS should work closely with DoD in light of P.L. 108-136, and at a minimum obtain a memorandum of understanding that outlines protective measures that DoD will take to adhere to ship strike management measures to protect NARWs.</p> <p>Alternative 6 is the minimum level of protection necessary to protect right whales from vessel collisions. However, alternative 6 excludes large-scale speed restrictions, and for this reason, NMFS should combine alternatives 5 and 6 to include broader-scale speed restrictions...Ships should be required to adhere to speed restrictions not to exceed 13 knots, and preferably a restriction of < 13 knots....</p> <p>As a part of a suite of management measures (speed restrictions; ATBA; re-routing; mandatory shipping lanes), the commenter supports the use of DMAs year round for the entire eastern seaboard to address the occurrence of right whales outside of established management areas and/or time periods.</p> <p>Individual sightings in the mid-Atlantic should be considered as triggers for dynamic measures.</p> <p>Commenter suggests that NMFS apply speed restrictions and other management measures during the entire period when right whales are present each year in the Southeast region: November 15- April 15.</p> <p>The TSS and the area extending westward from the GSC management area to Nantucket and Cape Cod, and northward to the southern boundary of the Off Race Point area, should be subject to management measures for the ships 65' or greater on an annual bases from March 15th through July 31st, including speed restrictions.</p> <p>In addition to designating the GSC proposed mgmt. area, and the suggested area to the west as an ATBA for all ships greater than 65' or 300 gross tons, NMFS should impose a uniform speed restriction of 10-13 knots applicable to these vessels during the designated time period.</p> <p>Management measures standing alone would be insufficient in protecting right whales from ship strikes. The commenter supports the designation of mandatory routes as part of a comprehensive ship strike management regime.</p> <p>The commenter believes that mandatory shipping lanes with speed restrictions should be designated in the western portion of CCB for approaches to Boston, Portland, and Canada from the Cape Cod Canal and vice versa.</p> <p>There is a rectangular area east of the Off Race Point proposed management area and west of the GSC management area that should be included in the scheme. The commenter recommends that NMFS</p>	<p>See response to comment 8.</p> <p>See response to comment 8.</p> <p>Acknowledged; analysis is provided in the DEIS.</p> <p>Acknowledged; analyzed in alternatives 2, 5 & 6.</p> <p>Additional triggers for a DMA are analyzed in alternatives 2, 5 & 6.</p> <p>These dates (Nov. 15-Apr. 15) have been adopted in Alternative 6 for the SEUS region.</p> <p>Acknowledged; analyzed in alternatives 3, 4, 5 & 6.</p> <p>Speed restrictions in the GSC seasonal management area are proposed and analyzed in alternatives 3, 5 & 6.</p> <p>Analyzed in alternatives 4, 5 & 6.</p> <p>Recommended shipping routes from the Cape Cod Canal are analyzed in the Port Access Route Study and alternatives 4, 5 & 6.</p> <p>Relative to the ANPR and the NOI, the Off Race Point and GSC management areas expanded; and these revisions will be reflected in the DEIS. See Chapter 2, Alternative 6.</p>

Written Comments from Right Whale Ship Strike NOI (June 22, 2005)

Comment Number	Specific Comment	Response
22	<p>strongly consider the area delineated by the eastern boundary 42°30' N, 69° 54' W, and western boundary 42° 30' N, 69° 00'W, and the northern boundary coordinates even with the northern boundaries of the Off Race Point and GSC management areas, as an ATBA from March 15- July 31st .</p> <p>It is important to consider the role of right whales in the ecosystem, the economic benefit of the survival of right whales, as well as the negative economic impacts that may result from their extinction.</p> <p>If DMAs were to be successful as a sole ship strike reduction measure, dedicated surveys of the entire east coast would need to be conducted year round. While DMAs are an important management tool, they cannot be relied upon as the sole measure to reduce ship strikes.</p> <p>The plan does not account for any vessels under 20 m. Any vessel is capable of striking a whale fatally since the force of the strike is equivalent to the product of vessel mass and acceleration.</p> <p>Commenter is concerned that NMFS will exempt sovereign vessels.</p> <p>Commenter is deeply concerned that the rationale for the use of seasonal measures appears to be solely based on limited survey effort. Opportunistic sightings indicate that whales are active in these areas throughout the year.</p> <p>Alternative 4, in and of itself, is an insufficient risk reduction measure. Additionally, since DMAs are not included in Alternative 4, there are no means to require action is taken when whales are found in areas not previously considered in this alternative.</p> <p>Commenter believes alternative 5 is the most conservative proposed by NMFS and alternative 6 is the minimum threshold of protection in order to ensure the survival of the critically endangered North Atlantic right whale population.</p> <p>Commenter favors alternative 6, given several considerations outlined in the comment (Appendix A).</p> <p>Daylight transits only in "small specific areas". Alternatively night time transit in a controlled traffic scheme as per alternative 6.</p> <p>Only supports speed reduction of 12 knots or greater.</p> <p>A competent agency should instate a "Traffic Scheme" designed to take in consideration whales' habitat and behavior. Access to traffic scheme should be coordinated by shore "Traffic Control Stations".</p> <p>The number of vessels transiting at the same time in the traffic scheme should be coordinated and limited. Vessels in the traffic scheme should run at the same speed and properly spaced.</p> <p>Check in points to "Traffic Control" to verify that position, course and speed of vessels in the traffic scheme are consistent.</p>	<p>Monetary estimates of the benefits to protecting right whales and the negative economic impacts that may result from extinction are currently unavailable; however, Section 5.3.1 of the EIS qualitatively discusses the benefits.</p> <p>Acknowledged</p> <p>The strategy accounts for the vessel size classes that pose the highest risk to right whales.</p> <p>See response to comment 8.</p> <p>See response to comment 18.</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>Comment is not specific enough for a response.</p> <p>Acknowledged</p> <p>Recommended shipping routes are considered in alternatives 4, 5 & 6, and in the USCG's Port Access Route Study.</p> <p>International regulations exist that set the rules for transiting in traffic separation schemes. And, due to navigational safety concerns and commercial timetables, there may be limits on how much ships can be coordinated.</p> <p>Comment is not specific enough for a response.</p>
23	<p>strongly consider the area delineated by the eastern boundary 42°30' N, 69° 54' W, and western boundary 42° 30' N, 69° 00'W, and the northern boundary coordinates even with the northern boundaries of the Off Race Point and GSC management areas, as an ATBA from March 15- July 31st .</p> <p>It is important to consider the role of right whales in the ecosystem, the economic benefit of the survival of right whales, as well as the negative economic impacts that may result from their extinction.</p> <p>If DMAs were to be successful as a sole ship strike reduction measure, dedicated surveys of the entire east coast would need to be conducted year round. While DMAs are an important management tool, they cannot be relied upon as the sole measure to reduce ship strikes.</p> <p>The plan does not account for any vessels under 20 m. Any vessel is capable of striking a whale fatally since the force of the strike is equivalent to the product of vessel mass and acceleration.</p> <p>Commenter is concerned that NMFS will exempt sovereign vessels.</p> <p>Commenter is deeply concerned that the rationale for the use of seasonal measures appears to be solely based on limited survey effort. Opportunistic sightings indicate that whales are active in these areas throughout the year.</p> <p>Alternative 4, in and of itself, is an insufficient risk reduction measure. Additionally, since DMAs are not included in Alternative 4, there are no means to require action is taken when whales are found in areas not previously considered in this alternative.</p> <p>Commenter believes alternative 5 is the most conservative proposed by NMFS and alternative 6 is the minimum threshold of protection in order to ensure the survival of the critically endangered North Atlantic right whale population.</p> <p>Commenter favors alternative 6, given several considerations outlined in the comment (Appendix A).</p> <p>Daylight transits only in "small specific areas". Alternatively night time transit in a controlled traffic scheme as per alternative 6.</p> <p>Only supports speed reduction of 12 knots or greater.</p> <p>A competent agency should instate a "Traffic Scheme" designed to take in consideration whales' habitat and behavior. Access to traffic scheme should be coordinated by shore "Traffic Control Stations".</p> <p>The number of vessels transiting at the same time in the traffic scheme should be coordinated and limited. Vessels in the traffic scheme should run at the same speed and properly spaced.</p> <p>Check in points to "Traffic Control" to verify that position, course and speed of vessels in the traffic scheme are consistent.</p>	<p>Monetary estimates of the benefits to protecting right whales and the negative economic impacts that may result from extinction are currently unavailable; however, Section 5.3.1 of the EIS qualitatively discusses the benefits.</p> <p>Acknowledged</p> <p>The strategy accounts for the vessel size classes that pose the highest risk to right whales.</p> <p>See response to comment 8.</p> <p>See response to comment 18.</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>Acknowledged</p> <p>Comment is not specific enough for a response.</p> <p>Acknowledged</p> <p>Recommended shipping routes are considered in alternatives 4, 5 & 6, and in the USCG's Port Access Route Study.</p> <p>International regulations exist that set the rules for transiting in traffic separation schemes. And, due to navigational safety concerns and commercial timetables, there may be limits on how much ships can be coordinated.</p> <p>Comment is not specific enough for a response.</p>

Written Comments from Right Whale Ship Strike NOI (June 22, 2005)

Comment Number	Specific Comment	Response
23 (Continued)	Consider tagging whales with solar powered radar detectors.	Alternative considered but rejected. See Section 2.3.3.
	Consider sounds and/or other technology to keep whales away from traffic scheme/lanes.	Alternative considered but rejected. See Section 2.3.4, right whale hearing.
24	Fishing boats and leisure boats should be prohibited activities, other than transit, in the traffic scheme.	International regulations exist that set the rules for transiting in traffic schemes.
	Create awareness programs through education and controlled tours.	Outreach and education programs are included in the strategy, although are not operational measures considered in the DEIS.
25	The proposed LNG terminal near Eastport, Maine in Passamaquoddy Bay will mean that tankers arriving will cross the right whale breeding ground concentrations when they turn to come into the bay.	Acknowledged; see Sections 4.7.2.7 and 4.7.3.1.
	Ships that strike whales should be fined.	The MMPA prohibits the taking of whales. Enforcement actions may include penalties, and even imprisonment; however, at this time, fines for ships that comply with regulations are not being considered.
26	Implement emergency regulations now.	See response to comment 18
	Year-round speed restrictions should be in place now. Ships should only go in certain routes not all over the ocean.	Year round speed restrictions are unwarranted in certain areas as whale protection measures, but year-round speed restrictions are proposed in the NEUS under Alternative 3. Certain shipping routes are being considered under Alternatives 4, 5, and 6.
27	The success of this effort will depend largely on a continuing effort to report sightings by as many pilots and ships' crew members as possible. Recreational boaters should be encouraged to report sightings over marine channel 16 or over toll-free phone numbers.	Sighting reports by untrained observers often need to be verified, because erroneous sightings may put undue burden on the shipping industry.
	Penalties should be strongly considered for ships' owners whose pilots have been adequately forewarned and yet strike whales due to failure to comply with required speed limits.	See response to comment 25.
28	Commenter supports the continued non-regulatory measures as defined in Alternative 1 and if speed restrictions become part of the management strategy, then seasonally managed speed restricted areas versus coast-wide speed restrictions are encouraged.	Acknowledged; analyzed in alternatives 1 & 6.
	Commenter suggests that all potentially impacted port facilities have a PARS that would allow a captain's speed year-round within the access route.	PARS are for routing measures. Routes are being considered only for certain locations.
28	East and west coast submarine travel and the use of active sonar are potentially detrimental to marine life.	Acknowledged

Written Comments from Right Whale Ship Strike NOI (June 22, 2005)

Comment Number	Specific Comment	Response
29	Commenter commends the agency for drafting [these regulations], although states that the government has moved to slowly. Asks agency to remember there are citizens who do not belong to "special interest" groups to whom you should listen.	NMFS recognizes the urgency of the problem and is working to move the process forward within the constraints of legal mandates.
30	Commenter believes Alternative 1 is the most logical of the 6 options. More substantial-definitive data is required to support consideration of additional measures.	Acknowledged
31	Are there technical alternatives to control commercial shipping?	NMFS has considered certain technical alternatives, but rejected these alternatives from further analysis (see Section 2.3).
	Is the NOAA "65 ft and above" criteria supported by any scientific facts?	Yes; see Section 1.4.
	Are there better criteria than arbitrary calendar requirements to determine when the restrictions should apply? Current surveillance methods and warnings are effective.	The dates for management measures are based on years of right whale sighting data.
	Are there better approaches than arbitrary coast-wide restrictions that could reduce the overall dollar cost of the regulations?	Alternative 6 analyzes restrictions in specific areas and alternative 5 analyzes coast-wide restrictions. Right whale range includes all waters off the US and Canadian east coast.
	If imposed, how will the restrictions be evaluated for effectiveness? Is there a plan for continuing improvement of the approved actions?	NMFS will develop plans for monitoring effectiveness and improving the program if the threat of ship strikes continues at an unacceptable rate.
32, 33	NOAA should prepare an EIS that compares alternatives in dollar costs and presents the dollar value of return on investment for the Strategy. Supportive of Alternative 6 as the minimum threshold for protection; although additional protections may be needed for areas and times beyond those outlined in the Strategy.	This DEIS includes a cost analysis of the alternatives, however the value of the return on the investment is not available at this time. Acknowledged
34	Supportive of Alternative 6	Acknowledged
35, 36	Encourages going forward with implementing the Strategy as written.	Acknowledged
37	Supports guidelines to help protect and minimize damage to right whales.	Acknowledged
38	Supports Alternative 6 although does not believe that any of the alternatives go far enough to do what is necessary to protect this magnificent animal from extinction. The whale is a natural resource; it belongs to all of us. It makes no sense that a special interest group be allowed to control the future of the resource. It is not theirs to control. It is ours to protect. It is imperative that the draft proposal by NMFS to slow ships and modify shipping routes away from critical habitat is given a time line for putting these modifications into effect immediately.	Acknowledged Acknowledged Acknowledged
39		Acknowledged

Written Comments from Right Whale Ship Strike NOI (June 22, 2005)

Comment Number	Specific Comment	Response
40	<p>The proposed regulations have no meaningful science to support their imposition on the maritime industry.</p> <p>Speed restrictions impacting vessels on their approach and departure from Boston Harbor could have a major impact on how freight travels into the entire New England regions. If ports are bypassed, taking containers off ships and putting them on trucks will significantly increase truck traffic on the I95 corridor either south from Halifax or north from New York.</p> <p>Boston is a small port that provides a waterborne method of transporting goods and people to a large geographic sector of our country. Loss of a major steamship line could have significant and long range negative consequences to this region.</p> <p>Technology must be given the opportunity to participate in providing a workable strategy. AIS and forward looking sonar are available now.</p>	<p>See response to comment 6.</p> <p>These issues are addressed in the indirect and cumulative impacts sections.</p> <p>Impacts on port operations are mentioned in Section 4.4.</p>
41	Supports Alternative 6	See response to comment 31.
42	A whale bumper fit over the bow and welded in place with the space in the new concavity on either side filled in to prevent parasitic drag is in order.	Acknowledged Insufficient information in the comment to provide a response.
43	Please rush into effect the draft proposal to slow ships down.	Acknowledged; see response to comments 16 and 29.

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minimal reasonable activity levels (Reduced Operations Alternative), to the highest reasonable activity levels that could be supported by current facilities, plus the potential expansion and construction of new facilities for existing capabilities and for specifically identified future actions (Expanded Operations Alternative). The No Action Alternative would continue current mission support work at LANL and includes approved interim actions and facility construction, expansions or modifications, and decontamination and decommissioning for which NEPA impact analysis has already been completed. All alternatives assume LANL will continue to operate as a NNSA national security laboratory for the foreseeable future.

Following the end of the public comment period described above, the NNSA will consider and respond to the comments received, and issue the Final LANL SWEIS. The NNSA will consider the environmental impact analysis presented in the Final LANL SWEIS, along with other information, in determining the Record of Decision for the continued operation of LANL.

Signed in Washington, DC, this 26th day of May 2006.

Thomas P. D'Agostino,

Acting Administrator, National Nuclear Security Administration.

[FR Doc. 06-6055 Filed 7-6-06; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Big Stone II Power Plant and Transmission Project Draft Environmental Impact Statement (DOE/EIS-0377)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice extending comment period.

SUMMARY: The Western Area Power Administration (Western), U.S. Department of Energy (DOE), Upper Great Plains Customer Service Region, and the Rural Utilities Service (U.S. Department of Agriculture), and U.S. Army Corps of Engineers (U.S. Department of Defense) as cooperating agencies, announce the extension of the public comment period for the Big Stone II Power Plant and Transmission Project Draft Environmental Impact Statement (EIS).

DATES: The comment period on the Draft EIS is extended until July 24, 2006.

ADDRESSES: Written comments on the Draft EIS should be addressed to Ms. Nancy Werdel, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228-8213, fax (720) 962-7263 or 7269, or e-mail BigStoneEIS@wapa.gov.

FOR FURTHER INFORMATION CONTACT: For further information or to request a copy or summary of the Draft EIS, contact Ms. Nancy Werdel, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228-8213, (800) 336-7288, fax (720) 962-7263 or 7269, or e-mail BigStoneEIS@wapa.gov.

For general information on DOE's NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH-42, U.S. Department of Energy, Washington, D.C. 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: On May 23, 2006, Western published a notice in the *Federal Register* (71 FR 29617) announcing the availability of the Draft EIS and a schedule for public hearings. The Environmental Protection Agency published its notice of availability of the Draft EIS (EPA EIS No. 20060178) on May 19, 2006 (71 FR 29148), that began a 45-day comment period, ending July 3, 2006. Based on requests received from agencies and members of the public, Western is extending the comment period until July 24, 2006. Further information on this proceeding is contained in the DOE Notice of Availability previously referenced.

Dated: June 28, 2006.

Michael S. Hacskaylo,
Administrator.

[FR Doc. E6-10656 Filed 7-6-06; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6677-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167. An explanation of the ratings assigned to draft environmental

impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060125, ERP No. D-FRC-L05235-WA, Baker River Hydroelectric Project, Application to Relicense the Upper Baker and Lower Baker Developments, Mt. Baker-Snoqualmie National Forest, Baker River, Whatcom and Skagit Counties, WA.

Summary: Although EPA had no objections to the proposed project, EPA recommended that updated information be provided in the final EIS on the CWA 401 water quality certification. Rating LO.

EIS No. 20060160, ERP No. D-BPA-L08064-OR, Klondike III Wind Project (300 megawatts {MW}) and Biglow Canyon Wind Farm (400 megawatts {MW}) Integration Project, Construction and Operation of a Double-Circuit 230-Kilovolt (kV) Transmission, Sherman County, OR.

Summary: EPA expressed environmental concern about wetland impacts and requested additional information on tribal consultations and outcomes, and extent of public involvement in the project planning. Rating EC1.

EIS No. 20060163, ERP No. DB-COE-K36100-CA, American River Watershed Project, Post Authorization Decision Document, Folsom Dam Raise, Folsom Bridge Project, Propose to Construct a Permanent Bridge and Roadway across the American River, City of Folsom, Sacramento County, CA.

Summary: EPA expressed environmental concerns about impacts to air quality and requested additional information related to mitigation and partnerships with local transportation agencies to reduce the traffic impacts in the area. Rating EC2.

Final EISs

EIS No. 20060145, ERP No. F-COE-D35060-PA, Allegheny and Ohio Rivers Commercial Sand and Gravel Dredging Operations, Granting and Extending Permits for Continuance of Dredging and US Army COE Section 10 and 404 Permits Issuance, PA.

Summary: EPA continues to express environmental concerns about shallow river bottom impacts and CWA Section 404 issues. EPA requested the adoption of an adaptive management process, additional conceptual mitigation, and permit restrictions.

EIS No. 20060169, ERP No. F-FRC-C03015-00, Crown Landing Liquefied

Natural Gas Terminal, Construct and Operate in Gloucester County, NJ and New Castle County, DE; and Logan Lateral Project, Construct and Operate a New Natural Gas Pipeline and Ancillary Facilities in Gloucester County, NJ and Delaware, PA.

Summary: While EPA has no objection to the proposed action, EPA did request clarification on mitigation plans for wetlands and shallow water habitat impacts, as well as a Clean Air Act General Conformity Analysis.

EIS No. 20060175, ERP No. F-FRC-G03029-LA, Creole Trail Liquefied National Gas (LNG) Terminal and Pipeline Project, Construction and Operation, Cameron, Calcasieu, Beauregard, Allen, Jefferson, Davis and Acadia Parishes, LA.

Summary: EPA expressed environmental concerns about uncertainties over the evaluation of dredged material and requested that a Record of Decision not be issued until these concerns are adequately addressed.

EIS No. 20060176, ERP No. F-FRC-G03028-00, Port Arthur Liquefied Natural Gas (LNG) Project, Construction and Operation, U.S. Army COE Section 10 and 404 Permits, (FERC/EIS-0182D), Jefferson and Orange Counties TX and Cameron, Calcasieu and Beauregard Parishes, LA.

Summary: EPA does not object to the preferred action.

EIS No. 20060202, ERP No. F-NOA-E86003-00, Snapper Grouper Fishery, Amendment 13C to the Fishery Management Plan, Phase Out Overfishing of Snowy Grouper, Golden Tilefish, Vermilion Snapper and Sea Bass, Implementation, South Atlantic Region.

Summary: EPA does not object to the proposed action.

EIS No. 20060210, ERP No. F-UAF-K11109-AZ, Barry M. Goldwater Range (BMGR), Integrated Natural Resources Management Plan (INRMP), Implementation, Yuma, Pima, and Maricopa Counties, AZ.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060224, ERP No. F-GSA-L80018-WA, Peace Arch Port of Entry Redevelopment Project, Improvements to Security, Safety and Functionality, Canadian Border in Blaine, Whatcom County, WA.

Summary: EPA's previous issues were resolved, therefore EPA does not object to the proposed action.

Dated: July 3, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E6-10678 Filed 7-6-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6676-9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or <http://www.eps.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 6/26/2006 through 6/30/2006 Pursuant to 40 CFR 1506.9.

Special Notice: EIS's filed June 19 through June 23, 2006 scheduled to appear in the **Federal Register** on June 30, 2006 was published on Monday July 3, 2006. Comment periods and wait periods will be calculated from June 30, 2006.

EIS No. 20060274, Fifth Draft Supplement, AFS, 00, Northern Spotted Owl Management Plan, Removal or the Modification to the Survey and Management Mitigation Measures, Standards and Guidelines (to the Northwest Forest Plan) New Information to Address Three Deficiencies Final Supplemental EIS (2004), Northwest Forest Plan, OR, WA, and CA, Comment Period Ends: 10/5/2006, Contact: Kathy Anderson 503-808-2256.

EIS No. 20060275, Draft EIS, AFS, OR, Maury Mountains Allotment Management Plan, To Implement or Eliminate Livestock Grazing in Six Allotments in the Maury Mountains of the Ochoco National Forest, Prineville, OR, Comment Period Ends: 8/21/2006, Contact: Kevin Keown 541-416-6500.

EIS No. 20060276, Draft EIS, FRC, TX, Calhoun Point Comfort Liquefied Natural Gas (LNG) Project, (Docket Nos. CP05-91-000 and CP06-380-00) Construction of New Pipeline on 73 acres, Port of Port Lavaca, Calhoun and Jackson Counties, TX, Comment Period Ends: 8/21/2006, Contact: Todd Sedmak 1-866-208-FERC.

EIS No. 20060277, Draft EIS, NNS, NM, Los Alamos National Laboratory Continued Operations, Los Alamos County, NM, Comment Period Ends: 9/5/2006, Contact: Elizabeth Wither 505-845-4984.

EIS No. 20060278, Draft DIS, NOA, 00, North Atlantic Right Whale Ship

Strike Reduction Strategy, To Implement the Operational Measures to Reduce the Occurrence and Severity of Vessel Collisions with the Right Whale, Serious Injury and Deaths Resulting from Collisions with Vessels, Comment Period Ends: 9/5/2006, Contact: Jessica Gribbon 703-706-9404.

EIS No. 20060279, Final Supplement, AFS, 00, Southwestern Region Amendment of Forest Plans, Implementation, Updated Information, Standards and Guidelines for Northern Goshawk and Mexican Spotted Owl, AZ and NM, Wait Period Ends: 8/7/2006, Contact Rita Moots 505-842-3125.

EIS No. 20060280, Draft EIS, AFS, 00, North Zone Range 05 Project, Reauthorizing Livestock Grazing on Eight Existing Allotments, Black Hills National Forest, Bearlodge and Northern Hills Ranger Districts, Crook County, WY and Lawrence County, SD, Comment Period Ends: 8/21/2006. Contact: Alice Allen 605-673-4853.

Amended Notices

EIS No. 20060178, Draft EIS, WPA, 00, Big Stone II Power Plant and Transmission Project, Propose Power Plant, Transmission Alternatives, and Substation Modification (DOE/EIS-0377), U.S. Army COE Section 10 and 404 Permits, Big Stone City, Grant County, SD and Big Stone County, MN, Comment Period Ends: 7/24/2006, Contact: Nancy Werdel 720-962-7251.

Revision of **Federal Register** Notice Published on 5/19/2006: Extended Comment Period from 7/3/2006 to 7/24/2006.

Dated: July 3, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 06-6077 Filed 7-6-06; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0312; FRL-8069-8]

Notice of Filing of Pesticide Petitions for Establishment or Amendment of Regulations for Residues of a Pesticide Chemical in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction			
No.	Sub.	Specific Comment	Response
1		Supportive	Acknowledged
2	a	Requests U.S. government vessels are included (except during extreme circumstances) or NMFS should reinstate consultation, exempt vessels should have two on-board trained observers and use either aerial spotters or passive sonar.	U.S. government vessels remain exempt in the final rule. NMFS expects to review Biological Opinions and requests some agencies to reinstate ESA consultation, although the decision to reinstate lies with the action agency, and not NMFS. A number of requirements including trained observers are included in several of the reasonable and prudent measures in current Biological Opinions.
	b	Supports alternative 5 at 10 knots, and urges NMFS to implement regulations by the November calving season.	Acknowledged; the final regulations will be implemented in a timely manner; however legal requirements must be followed, including undergoing a peer review, responding to comments, revising the proposed rule, clearance, OMB review, and releasing the FEIS. It is not until all of these legal mandates are fulfilled that the final rule can be implemented.
3		Same as #2	See response to # 2
4		Same as #2	See response to # 2
5		Same as #2	See response to # 2
6		Same as #2	See response to # 2
7		Same as #2	See response to # 2
8		Same as #2	See response to # 2
9		Same as #2	See response to # 2
10		Same as #2	See response to # 2
11		Same as #2	See response to # 2
12		Same as #2	See response to # 2
13		Same as #2	See response to # 2
14		Same as #2	See response to # 2
15		Same as #2	See response to # 2
16		Same as #2	See response to # 2
17		Same as #2	See response to # 2
18		Same as #2	See response to # 2
19		Same as #2	See response to # 2
20		Same as #2	See response to # 2
21		Same as #2	See response to # 2
22		Same as #2	See response to # 2
23		Same as #2	See response to # 2

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction			
No.	Sub.	Specific Comment	Response
24		Same as #2	See response to # 2
25		Same as #2	See response to # 2
26		Same as #2	See response to # 2
27		Same as #2	See response to # 2
28		Same as #2	See response to # 2
29	a	1. DMAs - It is imperative that the effective date and time of the initial designation of a DMA be the same as or several hours after the actual notice of mariners through the USCG's broadcast notice to mariners. NMFS should model the initial designation and rulemaking process after the USCG's emergency <i>Limited Access Areas</i> designation process. "...to delay the effective date of the DMA for several days but leave the DMA in place for the full 15-day period from the effective date of the DMA rule, would endanger the right whales during the unnecessary administrative process in the front end and pose undue burden on the shipping industry on the back end."	Consistent with changes in restrictions, mariner obligations under the DMA program are voluntary only (for the preferred alternative). DMAs will be implemented as soon as possible following a sighting that triggers a DMA. NMFS will issue announcements of DMAs to mariners via its customary maritime communication media (e.g., NOAA Weather radio, web sites, e-mail and fax distribution lists), and any other available media outlets. NMFS intends to monitor voluntary compliance and will consider making them mandatory if compliance is low.
	b	2. Block Island Sound SMA - Current rectangular SMA will not be effective for vessels en-route to New Haven, Bridgeport, and New London, CT. Recommends that the western boundary of the proposed SMA be revised to a line drawn southwest from Montauk Point to intersect with an extended (to the west) southern boundary of the proposed SMA.	In considering the comments and reviewing sighting data in this area, NMFS has decided not to alter the boundary of the Block Island Sound SMA identified in the proposed rule. A qualitative assessment suggests that the boundary of the Block Island Sound SMA is appropriate because all right whale sightings in the URI and NMFS databases from the Rhode Island coast to 30 nm offshore of Long Island, Block Island, and Martha's Vineyard Island are included within the current SMA.
	c	3. Enforcement should be within the scope of the EIS and should be addressed in the final rule as it has a direct impact on and is part of the operational measures.	Enforcement continues to only be addressed in the rule and not the EIS. NOAA is committed to implementing an effective enforcement strategy and will continue to work with all of its interagency partners, including the USCG, to do so. In addition, NOAA has identified some available technologies that could potentially be used to supplement existing enforcement capabilities and will further explore the application of these measures.
30		Same as #2	See response to # 2
31		Same as #2	See response to # 2
32		Same as #2	See response to # 2
33		Supportive	Acknowledged

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction			
No.	Sub.	Specific Comment	Response
34		Supports 10-knot speed limit, and extension of the regulations to US government vessels (except when vessels are already operating under mitigation measures or circumstances involving human safety missions, national disaster, or times of warfare. Supports alternative 5.	Acknowledged
35		Proposed rule is overbroad, concerned that the rule exempts vessels of Federal agencies, concerned by NOAA's budget cuts.	Acknowledged
36		Urges NOAA to immediately adopt a comprehensive and adaptive suite of management measures that includes both vessel speed limit and routing.	Acknowledged
37	a	Suggests that any studies/data or necropsies be peer-reviewed by individuals not associated with NOAA/NMFS or receiving funding from said agencies in compliance with Section 515 of the Department of Commerce's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information and NOAA's Information Quality Guidelines.	NMFS followed agency guidelines under the Data Quality Act, and conducted a pre-dissemination review. The proposed rule, Draft EIS, and Economic Analysis underwent peer-review following the public hearings, and the comments and recommendations from the review were incorporated into the Final EIS and final rule.
	b	A 12-knot speed restriction is a reasonable accommodation.	Acknowledged
	c	If speed restrictions and traffic lanes are to be implemented [in the SEUS], they should be limited to the Critical Habitat and not extend to the MSRS boundary. Requests a review of the proposed seasonal implementation of measures in the SEUS, because recent aerial surveys attest to the fact that animals are not present in the critical habitat before December and are gone by the end of March.	The boundary of the Southeast SMA extends to the MSRS boundary because the management areas are a confluence of areas where whales are known to occur and where ships transit, whereas the critical habitat is primarily based on whale sightings. Independent sighting data and NMFS data indicate that whales are present in the SEUS as early as November and as late as April, when they are entering and leaving the SEUS.
	d	DMAs need to be "actively" managed (i.e. the agency should continuously confirm the presence of whale in a DMA throughout its 15-day implementation period).	In the NEUS, southern portion of the MAUS, and SEUS, surveys are systematic during the season when whales are known to occur, and in that respect, there is potential for a DMA would be actively managed in season, although the infrastructure for conducting an out of season aerial survey is not currently in place. This is why the 15-day implementation period is based on the expected residence time for right whales (Clapham and Pace, 2001), in other words, where DMAs are implemented, it is likely that the aggregation will remain there for the entire time.
	e	Update economic studies every year to reflect current fuel prices.	The economic analysis in the FEIS has been updated to include 2008 fuel prices.

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction		
No.	Sub.	Response
Specific Comment		
38	a	<p>Concerned with speed restrictions from the pilot boarding area near the sea buoy to the shoreline due to hazardous weather during the months the restrictions are proposed for. Some vessels, especially large, high sided vessels such as large container ships or car carriers...will require speeds well in excess of the proposed 10-knot speed restriction in order to pass through the breakwaters safely.</p> <p>1) Is there any provision for enforcement of the proposed rules and fines for violation?</p> <p>2) What is the definition of "speed" as used in the rules, do you consider the effects of tidal current when defining speed in your proposal?</p> <p>3) Do the proposed rules have language which exempts vessels otherwise regulated to facilitate safety of navigation, particularly when entering or departing the narrow jetty entrance to/from Jacksonville? See comment for remaining questions 4 through 11.</p>
	b	NOAA's Civil Administrative penalty schedules can be found online at: http://www.gc.noaa.gov/enforce-office3.html .
	c	<i>Speed in the rule is measured as "speed over ground"</i> .
	d	See response to # 38a
39		The comment period for both the proposed rule and DEIS were extended for 39 and 30 days, respectively.
40		See response to # 2
41		See response to # 2
42		Acknowledged
43		Acknowledged
44		Acknowledged
45		Acknowledged
46		Acknowledged
47		Acknowledged

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction		
No.	Sub.	Response
Specific Comment		
48		Urgently asks that the regulations are implemented before the calving season so mothers and infants are not lost.
49		Anecdotal story about people driving on A1A and pulling over to see whales with binoculars, and commenter would like for his grandchildren to have the same experience. Alternatives 5 and 6 look good. Make considerations for ships (i.e. pilot vessels) when it's going to affect the safety of the ship. Hopes the agency can do something soon before the November calving season.
50	a	Recommends selecting the lowest speed limit to give the greatest protection to right whales; requests government vessels and contract vessels are required to observe speed restrictions during ordinary operations, but certain exemptions are okay (e.g. human safety, natural disaster or warfare).
	b	Supports alternative 5, and suggests working with the USCG to create a shipping channel outside of the SE right whale critical habitat the extends south of the current SE SMA, so ship speed is restricted through the critical habitat and into the ports and that these vessels have observers on board.
	c	Hopes NOAA will implement measures as quickly as possible.
51		Concerned that the agency has known about ship strike reduction measures since 2000/2001, but still has not implemented them and that the agency is still one year away from putting measures into place even though a calving season is coming up. "It's imperative that the Agency no longer delay putting this rule in place, including not extending the comment period on the DEIS and these proposed measures."
52	a	Concerned about the length of the DEIS, and that several unpublished references in the DEIS were not made available for review (e.g., Vanderlaan and Taggart).
		The final regulations will not be implemented until all public comments are received and addressed, the peer-review and OMB review are complete, and the EIS is revised based on comments. However, NMFS established recommended routes for vessels in November 2006 prior to the winter calving season. See response to # 38a in reference to the comment about considerations for ship safety. See response to 2b in reference to the comment about the calving season. In consultation with other agencies, a determination was made to exempt all sovereign vessels and those under contract. Requirements under Section 7 of the ESA will apply to actions by Federal agencies. NMFS has already worked with the USCG to develop lanes which reduce the risk of ship strike. Recommended routes were established in this region in November 2006. While trained observers can be effective in locating whales, in many instances (e.g. at night, high sea states, and when whales are submerged) they will not be effective in detecting whales. Instead, planned and known restrictions will apply at times/locations where whales are very likely to occur and the confluence of vessels and whales is high. NMFS is working on implementing the measures in a timely fashion, while adhering to review and comment processes required by law. NMFS received requests both for extensions up to 60 and 90 days on both the proposed rule and DEIS, and requests urging NMFS to not extend the comment period. To accommodate both requests, NMFS granted a 39 and 30 day extension on the rule and DEIS, respectively. NMFS did not have the authority to distribute the 'in press' copy of Vanderlaan and Taggart, and had no power over the lag time between receiving an 'in press' copy of the paper and when it was actually published. The paper was published in Marine Mammal Science in January 2007.

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No.	Sub.	Response
		Specific Comment
		Response
	b	The Maryland Port Administration requests an extension to the comment period for at least 60 days after all unpublished draft documents (e.g., Vanderlaan and Taggart) have been made available and the Notice of Availability has been published in the Federal Register.
53	a	Supports efforts to restore the right whale population, although is concerned with speed restrictions and opposes blanket speed restrictions. Commenter is skeptical that speed restrictions will have any significant impact on the right whale population.
	b	Also, commenter suggested that there is a low probability of ship encounters with right whales in the mid-Atlantic, based on the assumption in the economic analysis that there would only be one DMA implemented per year in each port in the mid-Atlantic.
	c	Requests an extension to the comment period for the DEIS and proposed rule.
54	a	Agrees that Section 7 consultation is an appropriate process for exempting Federal vessels from the regulations, if the consultations are initiated and completed.
	b	Alternative 6 is the bare minimum for protective measures, and alternative 5 would provide the highest level of protection, but commenter suggests ending up somewhere between these two alternatives by using the best available science to propose speed limits in times and places the whales need them most. Supports 10 knots.
	c	Enforcement measures need to be in place before the regulations are implemented.
	d	Timing is everything; please do not extend the comment period, and consider emergency speed restrictions beginning in November of 2006 for the SE critical habitat area if the regulations are not in place by this time.
		The comment period for the DEIS was initially 15 days longer than the minimum 45-day comment period, and then this was extended an additional 30 days. In total, the comment period for the DEIS was 90 days.
		Acknowledged; research indicates that reducing vessel speed will reduce the severity of ship strikes (Knowlton and Kraus, 2001; Jensen and Silber, 2003; Laist et al., 2001, Pace and Silber, 2005; and Vanderlaan and Taggart, 2007).
		There have been several documented ship strikes in the mid-Atlantic, including a strike in 2001 in VA, in 1998 near the NC/VA state line, 1991 in DE, and 1983 in NJ to name a few (see Jensen and Silber 2003). The economic analysis made an assumption (based on a report by Knowlton et al. 2002) that there would be one DMA per year in the MAUS. The majority of whales in the MAUS would be protected through SMAs, and outside of these measures, there is an estimated one DMA per year. This assumption is from sighting data in the MAUS, a region which has the lowest survey effort of the three regions; however, it is the best available data.
		Both the comment periods for the DEIS and the proposed rule were extended 30 and 39 days, respectively.
		Acknowledged
		Acknowledged
		Acknowledged
		NMFS has requests for 30-, 60-, and 90-day extensions for the comment period. As the environmental stakeholders requested not extending the comment period and the industry requested up to a 90-day extension, NMFS took both requests into consideration when extending the comment period for the rule 39 days and the DEIS 30 days.

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction		
No.	Sub.	Response
55	a	Supports alternative 5 and a 10-knot speed limit with no exemptions for any vessel that poses a threat to these whales.
	b	Commenter is disappointed that the entire Chesapeake Bay region is not included.
	c	Opposes any extension on the comment period and the cooling off period.
	d	Supports the increase in funding for enforcement and emergency efforts to implement these protections.
56		"I think that the 10 knot rule will result in anywhere from 40 to 45 percent mortality or serious injury to right whales and I just don't really think that is acceptable. I do think it's a great step in the right direction and that is where we should be heading." Commenter hopes the agency will ensure the proposed rule is implemented efficiently and quickly.
57	a	Don't know what the cost of enforcing these regulations will be or the infrastructure or policing. "We should talk about the total cost to the taxpayer and also we would like to know if it is more likely that more than two right whales per year...are likely to be saved from mortality."
	b	The World Wildlife Fund and the Intergovernmental Panel on Climate Change of the United Nations both recommended that in order to cut down on high altitude emissions from aircraft, that the first type of air service that should be cut is air freight. The WWF suggested that "fast shipping" using low emission fuels would be a good way of cutting the enormous pollution created by air freighters.
	c	Commenter asked why a more comprehensive hydrodynamic study hasn't been completed. If the agency doesn't differentiate between the hydrodynamic properties of vessels, it would be putting a serious obstruction in the way of things like the Volvo Race. "Huge numbers of people have to transit the coastal waters by cruise ship and they are going to be affected."
		Acknowledged
		Bays and inland waters are not included because these waters are not typical habitat for right whales and to implement speed restrictions in these waters would place an undue economic burden on the industry.
		See response to # 54d
		Acknowledged
		Acknowledged
		Information on enforcement is contained in the final rule, although it is not possible to accurately portray likely costs at this time. At this time, NMFS is unable to predict the actual number of right whales that are likely to be saved from mortality (Section 4.1 of the FEIS addresses the qualitative nature of the analysis).
		Outside the scope of the EIS.
		A series of hydrodynamic studies are being conducted. The results will help inform NMFS' decisions regarding vessel speed restrictions.

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction		Response
No.	Sub.	Specific Comment
	d	The regulations will have a greater impact because more ships will likely go to Halifax and it may detract from employment in certain ports. Also yacht races such as Volvo Race and Bermuda Race will be affected and economic impact should be considered. Impacts on cruise ships should be considered.
	e	The Department of Transportation encourages the use of "fast shipping" to reduce the enormous quantity of traffic going north and south on I-95.
58	a	Commenter's company, employees, and captains are in favor of complying with effective measures to preserve whales and other marine life. The company has instituted bow watches when transiting the Port of Jacksonville and has purchased night vision goggles, and participated in reporting programs.
	b	Parts of the proposed rulemaking, such as shipping lanes are effective because it reduces the area that you have to watch for whales. However a blanket approach that applies to all ports and all ships in different areas may not be the most effective solution.
	c	If a captain sees a whale and notify ships in the area, and avoids the whale, it is a very effective strategy to preserve the whales.
	d	Pop-up buoys that can identify the presence of whales and send notification through a satellite sounds like an excellent technology.
		The impact of vessels diverting to Halifax on employment and income is included in analysis as acknowledged by commenter. Discussion of the impact on cruise industry was included in DEIS and expanded in FEIS. The Volvo yacht race in 2005/2006 arrived in Baltimore in mid-April. In the Baltimore area, most of the race activities occur within the Chesapeake Bay and will not be affected by the seasonal speed restrictions. Under Alternative 6 speed restrictions at the entrance of Chesapeake Bay are proposed from Nov 1 through April 30. The itinerary of the next race 2008/2009 can be developed taking into consideration the proposed speed restrictions. The Bermuda Race is held during the summer months and is not affected by the proposed speed restrictions. The start date of the race is June 15th from Marion, MA.
		Acknowledged
		NMFS encourages mariners to continue voluntary measures to reduce ship strikes.
		The rulemaking does not contain a blanket approach; the waters are divided into three regions, each with a different implementation period, based on the best available data.
		The ability of captains or posted lookouts to detect whales is limited by low/no light levels and high sea states, and the fact that whales are submerged most of the time. Even if a whale is sighted, a mariner must still take evasive action, which is subjective, decreases navigational safety, and may put undue burden on responsible mariners who do so when others do not. Merely providing right whale locations is not adequate without specific expectations of appropriate action to take.
		Pop-up buoy identification of whales has several limitations; the whales must be vocalizing, the system would not detect all whales present, and it is not always possible to determine the number of whales without visual verification. This approach would still require evasive action by the mariner.

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction		Response
No.	Sub.	Specific Comment
	e	Speed does not necessarily have a correlation; you can hit a whale and kill it at 10 knots or you can kill it at 14 or 20 knots.
	f	Pilots in Jacksonville and ship captains are concerned about going through the breakwaters where there is high winds and 6.5 knot cross-currents. Some boats can go through at 10 knots, if they are small and low, but big ships can't go through them that slow and not risk hitting the breakwater. So, there has to be enough flexibility in this rule to allow the safety of the people, ships, and to listen to the pilots who are experts.
	g	Commenter is in favor of the rule, even though their particular trade line would incur higher costs due to burning more fuel to speed up to make the schedule for customers, and possibly build faster ships in the future to accommodate for lost time at port.
59	a	It's important to consider the hydrodynamic characteristics of vessels and the size of vessels that is causing right whales to die after being struck. It would be unfortunate if the rule were implemented at 10 knots, and then one or two years from now find out that there is the same level of deaths, but they were occurring at 10 knots instead of 18 knots.
	b	Maybe AIS would be a means to track whales; it would be hard to do for every whale, but it might be useful to help the ships identify where the whales were.
60		Supports alternative 5, reducing the shipping lanes, and implementing the highest speed restriction. After implementation, NMFS should continue to watch exactly how that affects the ship strikes and aim for zero ship strikes and keep working on technology and doing research to help recover the species.

Response

The probability of killing a whale at 10 knots is less than at 14 or 20 knots. NMFS has used the best available scientific evidence in determining that the use of speed restrictions is an effective means to reduce the likelihood and severity of ship strikes, and has used this evidence to set the limit for the restrictions. See Section 4.1.3 of the FEIS for a summary of this evidence.

See response to # 38a

Increased fuel consumption for vessels having to go faster to make up time is not and should not be included in the economic analysis. The economic analysis conservatively assumes that vessels will not speed up to make up time and hence includes the maximum estimate of delay that would be incurred. If vessels make up for the delay by speeding up then the estimated economic impact would need to be revised to reduce or exclude the cost applied for the time delayed. Further, the indirect economic impact would need to be lowered if the delays are avoided by increasing vessel speeds.

Available computer simulation studies on hydrodynamics indicate that hydrodynamic forces increase with increasing speed. See Section 2.1 of the FEIS for a summary of findings from recent hydrodynamic studies.

If it were possible to develop this technology, it is likely many years away. Experience with satellite tagging indicates that attachment to the whale is the most significant challenge. More over, even if it were possible to determine where every right whale was at all times, the mariner would still need to take evasive action, e.g., limit speed.

Acknowledged

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction		
No.	Sub.	Response
61		Specific Comment
	a	With the exception of Delaware Bay, the proposed seasonal speed limit zones are not going to unreasonably affect ferries and whale watch vessels.
	b	Concerned with DMAs, especially if one was implemented in a typical ferry route during the prime of their season, as they would cease operating for those two weeks. However, the commenter does not believe that the economic impact is limited to those two weeks; the passengers may not return and the revenues of those two weeks may decide whether or not the company make s a profit that year. The PVA would like to work with NMFS to an alternative to the DMAs as currently proposed to lessen the potential impacts on ferry vessels and whale watching boats.
	c	The PVA suggests that the use of forward looking radar, spotters, and possibly a two-tiered approach for small vs. large vessels may protect the whales without having such a large economic effect.
62	d	The final rule should clarify that the speed restrictions are only proposed seaward of the COLREGS lines. Q: Are DMAs only proposed seaward of the COLREGS lines, and if not, the economic analysis should be revised for ferry vessels.
	a	Concerned with 10-knot speed restriction because most deep draft vessels require the ability to travel at speeds in excess of 10 knots in order to maintain full steerage when not being escorted by tugs. A speed restriction of 14 knots would be far more acceptable.
	b	The proposed narrowing of the Boston TSS in the PARS may further restrict vessel LNG vessels' ability to maneuver.
	c	Urge NOAA to reevaluate the exemption of Federal vessels...more detailed comments in written letter.
	a	Alternative five would provide the highest level of protection, while alternative six provides the bare minimum.
	b	Urges NMFS to use the best available science to ensure the speed limits are applicable to the times and places that the whales need it the most.
63	c	There must be adequate enforcement, and the speed limits should be in place by November of this year.
	a	A DMA would have more of an impact than 9.8% reduction in revenues, it would put the company out of business. The proposed regulations would expand our ferry route run from 1.5 hours to 5 hours, thus decreasing demand.
64		Response
		See Sections 4.4.5 and 4.4.6 for regional impacts on ferry and whale watch vessels.
		The final rule identifies voluntary rather than mandatory DMAs.
		Radar is only effective above the surface of the water. See response to #50b regarding spotters (aka observers). Although the commenter did not provide any specification as to what type approach is being suggested, in general, a two-tiered approach for small and large vessels would be difficult to implement and enforce.
		DMAs are only proposed seaward of the COLREGS demarcation lines.
		NMFS has made exceptions to the rule under certain situations, see response to # 38a. While a 14-knot speed restriction may be acceptable to the maritime community, it would not be effective at meeting the purpose and need to reduce ship strikes.
		See response to #38a
		Outside the scope of the EIS.
		Acknowledged
		See response to # 58e
		Adequate enforcement will be in place prior to implementation of the final rule. See response to 2b in reference to implementing speed limits by November.
		The potential for ferry operators on certain routes of going out of business is included in the FEIS analysis. See response to # 61b

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No.	Sub.	Response
		Specific Comment
		Response
	b	Further, there is the roll down economic effect. The Town of Provincetown would be sensitive to losing what is calculated to be about \$350 spent by each visitor to Provincetown that comes in on Bay State ferries.
	c	There are also diminished expenditures including fuel, employment, goods and services that would be affected and more cars would be driving to Provincetown, increasing emissions.
65	a	The economic impacts have been understated. The ocean commerce system doesn't have the global resiliency or redundancy to cope with the disruption from the proposed rule. Commenter provided three examples to illustrate this point: 1). New England manufacturer of pharmaceutical products who imports materials from Indonesia, 2). Passenger vessel that operates from New England to Canada with a 24 hour round trip cycle, and 3). Commercial fishing vessels that are already limited by a certain number of days at sea. Thus, the impacts are not just a question of slowing down ships, calculating the hourly operating costs and multiplying by the number of hours of delay; it's much more layered and sophisticated.
	b	Concerned about whether or not the regulations would affect the supply of heating oil and gasoline supplies in New England.
	c	The work on cruise ships is lacking in the economic report as these vessels are on a string of ports. Commenter suggested rewriting and expanding this section.
	d	The ship counts (vessel arrival numbers) seem wrong by factors of 100, so the data used may be inaccurate.
	e	There is an error in the economic report about tidal delays because the report says that tides cycle every 8 hours, when in fact, they cycle every 12 hours.
		Some tourists that decide to not use the ferry during periods of speed restrictions can use alternative transport modes to travel to Provincetown and this will dampen the economic impact on that community. The economic losses that may occur in Provincetown may also be offset by economic gains in other regional communities as tourists spend money on other activities in the area.
		Expenditures on fuel may increase due to some tourists using alternative transport modes to the ferry.
		It is important to note that the timing and duration of the proposed seasonal speed restrictions will be well-known and that vessel itineraries will be developed taking them into account. Hence the unexpected disruptions mentioned to the manufacturing and transport logistics systems will not occur. Most commercial fishing vessels are not affected by the proposed speed restrictions and they do not travel at the speeds suggested by the commenter.
		Timely supplies of heating oil and gasoline supply will not be affected as shipping lines will incorporate the proposed speed restrictions in their revised itineraries.
		The section on impact on cruise industry was expanded for the FEIS.
		Table 4-27 of the FEIS Economic Analysis report presents estimates of the direct economic impact of the proposed operational measures on the shipping industry. The units in the table are in terms of thousands of dollars. The table does not present information on the number of vessel arrivals. Data on annual vessel arrivals in each port can be found in tables presented in Chapter 2 of the FEIS Economic Analysis. Further tables on the number of vessel arrivals potentially affected during the proposed periods of speed restrictions are presented in Chapter 4 of the FEIS Economic Analysis.
		The economic analysis used a 12-hour tidal cycle. The 8-hour reference was the period from the end of one tidal window to the beginning of the next tidal window assuming an average of a 4-hour tidal window.

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No.	Sub.	Specific Comment	Response
	f	The economic models, such as the MARAD model are outdated and unreliable.	The MARAD model was developed to analyze the economic impact of ports using an accepted standardized methodology and is the best available model for the purpose of this analysis.
	g	The Cat high speed ferry seems to be omitted from this section in the economic report, and it should be accounted for as it operates daily from Maine to Canada, carries 150 automobiles, 1,000 passengers, and travels at 50 knots.	The CAT ferry is included in the USCG vessel arrival database, although the number of arrivals appears to be underreported. However, the Cat operating season is from the end of May to the middle of October and it would not be affected by the seasonal speed restrictions under Alternative 6 which are proposed from March 1-April 30 for the Gulf of Maine.
	h	The figures and conclusions [in the DEIS] are unexplained, for example there is a \$7 million impact in Charleston, but the reader does not know where these numbers come from, and working papers would include this information.	The methodology used for the estimated economic impacts is summarized in the main text of the FEIS and described in detail in the economic report, which includes detailed tables presented in the Appendix volume.
66	a	CSI specifically urges that the rule define a January start date for the seasonal management area Off Race Point and through Great South Channel, as right whales are in Cape Cod Bay in January and transit these areas to get there.	The start and end dates for the SMAs were based on several data sets, including NMFS sightings data from the 1960s. The New England Aquarium dataset, which includes sighting data from 1978 to 2003, had minimal or no sightings in the proposed ORP and GSC SMAs in January or February. Therefore, any sightings in these months did not warrant an additional two months of restrictions, starting in January (Merrick, 2005; Merrick and Cole, 2007). Russell (2001) also states that right whales disperse from CCB in April. In considering the comments and reviewing the above sighting data in this area, NMFS has decided not to alter the boundaries and times identified in the proposed rule.
	b	CSI supports dynamic management, but recommends whatever changes are required to implement a truly dynamic management risk zone around known whales without delay.	See response to # 61b
	c	CSI recommends that the rule establish mandatory responses by notifying vessels and enforcement of required speed reductions with a system of fines that would help defray administrative costs.	Mariners will be notified of the seasonal regulations well ahead of time, and information regarding temporary restrictions (DMAs) will be distributed prior to implementation. See response to #38b in regards to enforcement fines.
	d	Alternative 5 or 6 would be acceptable at 10 knots, for all non-sovereign vessels.	Acknowledged
	e	Commenter also stated that the speed limits should be in place by November of this year.	See response to # 2b

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		Specific Comment	Response
67	Sub. a	<p>Commenter's greatest concern is the proposed speed restriction of 10 knots or less and the potential in the future that NOAA will further lower the speed limit and expand the extent of the seasonal management measures. The 10-knot speed restriction is not supported by available scientific evidence.</p>	<p>Evidence indicates that vessel speed restrictions will reduce the probability of whale death and serious injury (Laist et al., 2001; Pace and Silber, 2005; Vanderlaan and Taggart, 2007). NMFS has determined that this is the best approach to reducing the threat of ship strikes to right whales. NMFS does not intend to further lower the speed restrictions; however, NMFS intends to monitor the effectiveness of the program, and will consider additional measures, if ship strike deaths of right whales continue unabated and the species does not show signs of recovery.</p>
	b	<p>Although the draft EIS does address economic impacts, it does not quantify the full range of economic impacts that will result from the proposed action.</p>	<p>No specifics provided in oral comments. Detailed comments are addressed in Nathan Associates response to written comments provided by Michael Leone of MassPort (comment 111 below).</p>
	c	<p>The proposed rule was issued prior to the availability of the DEIS, which includes many of the supporting documentation, and at least one key document that supports the proposed speed regulations is still not available to the public for review. Requests a 60-day extension.</p>	<p>The proposed rule was published in the <i>Federal Register</i> three days prior to distribution of the DEIS. The EPA has specific timelines for publication of the NOA in the <i>Federal Register</i>. The EIS is submitted the week before the NOA appears in the <i>Federal Register</i> on the following Friday. See response to # 54d regarding the comment periods. Also, the proposed rule had a comment period for a total of 102 days, and the DEIS comment period was 92 days.</p>
	d	<p>The PARS had been submitted to the IMO five weeks before it was released for public comment.</p>	<p>The commenter may be confused about the process for the various studies and proposals. A PARS is not submitted to the IMO. The USCG prepared a PARS report at the request of NMFS to assess navigational and environmental issues regarding routing measures NMFS was considering. The USCG published a notice of study and request for comments in the <i>Federal Register</i> on February 18, 2005 (70 FR 8312). Then the USCG sought public input on the draft PARS on May 24, 2006 (71 FR 29876). In the meantime, the U.S. Government began preparation of a proposal to the IMO regarding the Boston TSS. Clearance of the final PARS report took longer than anticipated; the proposal to the IMO, with supporting documents including the PARS report was submitted to the IMO in March 2006. The IMO endorsed the proposal and it was implemented in July 2007.</p>

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction		
No.	Sub.	Response
68		Specific Comment
	a	Aerial surveys are ineffective and an alternative to augment aerial sightings and surveys should be developed.
	b	Requests dynamic management will quickly trigger an emergency speed restriction if whales are found when seasonal management measures are not in effect.
	c	Requests speed limits are in place by November of 2006.
69	d	CSI urges that the rule define a January start date for the seasonal management area Off Race Point.
	a	A DMA in the prime season of the New England tourism industry in the months of July or August would put Hyannis Whale Watchers out of business.
	b	If a sighting of a whale other than a humpback by an untrained eye that didn't know the difference between the two species triggered a DMA for no reason, it would put the company out of business.
	c	The regulations would lengthen the average three and a half to four hour trip to five or six hours, which whale-watch clients would not stand for.
70		The science that underlies the DEIS is soft, and a lot of the references are unreviewed. NOAA has implementation teams that are available to peer-review the DEIS.
		The DEIS used the best available science at the time. There is a limited amount of literature on the ship strike issue because ship strike records are limited, and those that are available may be lacking one or more component(s) (e.g., speed, vessel type/size) that is necessary for analysis. The science should strengthen with time and the rule can be adaptive to new science and technology that arises in the future; however, the final rule must move forward with what the policy makers have available now. See response to comment #37 regarding peer-review.
71	a	In general, supports alternative 5 and a speed limit of 10 knots.
	b	Supports DMAs, but it can only be effective with timely implementation and with increased aerial surveys in times and area not currently or adequately surveyed.
		The potential for ferry operators on certain routes of going out of business was included in the FEIS analysis. See response to # 61b.
		A DMA would only be triggered by a reliable report from qualified individuals who are trained to identify a right whale and distinguish this species from other large whale sightings; therefore, sightings of other whales would not trigger a DMA. Unless the sighting is reported by Provincetown Center for Coastal Studies or Whale Center New England, NMFS will confirm all potential sightings with an aerial survey.
		The delays due to the proposed regulations were fully considered in the FEIS economic analysis.
		The DEIS used the best available science at the time. There is a limited amount of literature on the ship strike issue because ship strike records are limited, and those that are available may be lacking one or more component(s) (e.g., speed, vessel type/size) that is necessary for analysis. The science should strengthen with time and the rule can be adaptive to new science and technology that arises in the future; however, the final rule must move forward with what the policy makers have available now. See response to comment #37 regarding peer-review.
		Acknowledged
		See response to # 29a. Aerial surveys are conducted systematically in the NEUS, southern portion of the MAUS, and SEUS, and elsewhere when funding is available.

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No.	Sub.	Response
	c	<p>NMFS must work with the USCG to ensure that the measure is enforced.</p> <p>Acknowledged</p>
	d	<p>The DEIS asserts that routes and seasonal management measures are selected in all areas because they capture the majority of whale sightings, and thus, risk, but does not provide sighting maps nor data, except regarding the shift in the TSS lane into Boston.</p>
	e	<p>The DEIS should consider the time period for seasonal measures in the Northeast, i.e., it assumes that right whales require protection while feeding in Cape Cod Bay starting in January, yet it provides no protection for those whales entering or leaving prior to April, though they must traverse the Off Race Point area to both enter and leave. The Off Race Point and Great South Channel require protection during the same time period as Cape Cod Bay.</p> <p>See response to # 66a. The spatial and temporal boundaries for the SMAs are based on a threshold of moderate and high densities of right whales, and even though there may be whales present year round in the Gulf of Maine, these are low densities that did not meet the threshold for protection within a SMA, and instead are provided protection with a DMA. (See Merrick <i>et al.</i>, 2001 and Clapham and Pace, 2001 for information on defining SMAs). However, if in the future either sightings data or DMA implementations indicated that a specific area may be a candidate for SMAs, i.e., if a specified number of whales are observed in the same area during the same season for three or more years, then this area would be re-analyzed. In addition, vessel traffic in the northern Gulf of Maine is relatively light, with minimal consistent traffic patterns.</p>
	d	<p>The DEIS should state how ship routing measures will be implemented.</p> <p>The FEIS explains how ship routing measures are implemented. Recommended routes in Cape Cod Bay and in the waters off Georgia and Florida were established in November 2006. They were published on nautical charts, available at http://www.nmfs.noaa.gov/pr/shipstrike/routes.htm, and announced in USCG Local Notice to Mariners (https://navcen.uscg.gov/lnm/default.htm). They will also be noted in international shipping publications, Admiralty Publications, and Notice to Mariners, issued by the United Kingdom and the U.S. National Geospatial-Intelligence Agency, respectively. The shift in the Boston TSS has been approved by the IMO, was established in July 2007, and announced in Notice to Mariners. A proposal to create an ATBA was submitted to the IMO in April 2008, and if approved, would be implemented in 2009. The USCG would publish a notification of these changes in the <i>Federal Register</i>. These measures would be voluntary.</p>

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72	a	Commenter does not think that the science that's been used to develop the 10-knot speed restriction is adequate. Commenter believes that the highest elevation of strikes occur at 10 to 12 knots, and is curious why 10 knots is the correct speed limit.	See response to comment # 70. Section 4.1.3 of the DEIS states that the majority of ship strikes occurred at 13-15 knots, followed by 16-18 knots, and 22-24 knots (Jensen and Silber, 2003). Another paper concurs with this data and concludes that most deaths occurred when a vessel was traveling in excess of 13 knots. Therefore the highest occurrence of strikes does not occur at 10 to 12 knots.
	b	DMAs are difficult as proposed due to their sheer size. If there is a 26 nautical mile DMA in July or August, then both the ferry to Provincetown and the whale watch operation may be put out of business.	See response to # 69a
	c	Commenter suggested a system with 24/7 real time reporting 365 days of the year, where information would be transmitted back to a clearinghouse, and then distributed to the maritime community through AIS and radio, and then the mariners could make decisions for themselves as to what avoidance actions they should take.	Currently the infrastructure for such a system does not exist, and knowledge of right whale locations is only part of the equation. A mariner must still take some type of evasive action, which would be subjective. See the final rule for a more detailed explanation.
	d	Commenter inquires how the regulations would conflict with a master trying to operate under the rules of the road.	General rules of the road still apply in operation of vessels. NMFS believes that these regulations would not conflict with such practices.
73		Commenter referred to observations from the authors of "Ecological Economics," that in a post normal world, the facts from science are soft, but the decisions must be hard (vs. a normal world where science is hard, facts are hard, and the decisions are soft). Given that the situation is critical, we could continue the bureaucratic chase or we could make a decision, and the commenter would prefer alternative 5, and if not 5, then alternative 6. Suggests that if the situation is critical and the facts are soft, as the facts begin to harden, and we can come to a closer agreement, that the measures have enough flexibility to evolve as the facts harden and the decisions soften.	NMFS is taking steps to reduce the serious threat of ship strikes to an endangered species that is not recovering. The actions are based on the best available science. NMFS will monitor the effectiveness of the actions, and will modify the measures if ship strike deaths continue. Also see response to # 70.
74	a	Support Alternative 6; however, raises issues about the methods for implementation. NOAA will need to base the ship strike reduction plan on new methods for locating, verifying, and predicting the occurrence of whales. The plan should therefore acknowledge the need to evolve, to incorporate new management and implementation methods as information becomes available, and to more realistically define right whale distribution and movement. Commenters recommended the following actions:	Much of the restrictions to vessel operations are based on historical sightings data and known occurrence of the animals. Therefore, in this context, enhanced detection and monitoring are not necessary for the current SMAs. DMAs are based on real-time detection and, for this, NMFS will need to rely on aircraft and vessel surveys. If new sightings and other data become available in the future, then NMFS will be committed to adapting the timing and the dimensions of the restricted areas to these data.

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	b	<p>1). Review with specialists the several-year old definitions for areas requiring DMA and SMA status [Merrick et al., 2001 and Clapham and Pace, 2001].</p> <p>2). Review all whale field projects, both vessel and ship, and coordinate survey activities as much as possible.</p> <p>3). Systematically increase NOAA aircraft surveys of present SMAs with the possibility of applying a dynamic (DMA) approach to those areas in the future.</p>
	c	Outside the scope of the EIS.
	d	Aerial surveys are conducted based on the level of funding the program receives; therefore, it would be difficult to systematically increase these surveys. However, the extent of, and protocol for the surveys are periodically reviewed to render them as effective as possible.
	e	See response to # 61b. The surveys are quite extensive; however, due to uncertain weather conditions and other constraints, aerial surveys cannot be conducted every day of a DMA to verify the presence of whale.
	f	Most of these are defined in the final rule. Additional information on survey design, objectives, and protocol can be found at NMFS aerial survey website: http://www.nefsc.noaa.gov/read/protosp/RightWhale/ ; and in various studies, papers, and analysis accompanying this rulemaking are provided at: http://www.nmfs.noaa.gov/pr/shipstrike/ and http://www.nero.noaa.gov/shipstrike/ .
	g	NMFS is committed to monitoring the effectiveness of the regulations and the ship strike reduction program. Means to adapt the plan, particularly if ship strikes continue unabated, are inherent in the plan.
75		Acknowledged

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No.	Sub.	Specific Comment	
76	a	NOAA should select and fund studies to develop the "No Action" alternative, the most effective approach to protecting right whales. The remaining options [alternatives] lack any scientific support to justify their effectiveness. The surveillance and tracking methods under this alternative will become increasingly effective as technology is improved and applied.	A number of ship strikes of right whales have occurred with existing measures ("No Action Alternative") in place. Alternatives 2, 3, 5, and 6 all rely on temporary or seasonal speed restrictions to reduce the occurrence and severity of ship strikes. Vessel speed has been demonstrated to be a significant factor in strikes based on analysis of known ship strikes. Alternative 4 proposed shipping lanes to separate whales and ships spatially, thus lessening the probably of encountering each other.
	b	The DEIS emphasizes low relative costs in comparison to overall shipping costs but does not justify the actual cost or effectiveness of slowing ships.	The FEIS analyzes both the actual costs of slowing ships as well as the relative costs to overall shipping. The effectiveness of slowing ships down is based on the best available science.
77		Commenter opposes the proposed reduction in vessel speed as the rule would likely cause more collisions because of the reduction in noise that whales depend on the prevent accidental collisions with vessels. A slow and quiet vessel is setting the whale up for certain impact by "sneaking up" on the unsuspecting mammal. More studies need to be done to make the right choices.	Section 3.1.6 of the FEIS describes right whale hearing. Although right whale hearing is believed to be in a range similar to the range of noise produced by large vessels, and the whales almost certainly hear vessels, it has been demonstrated that whales do not generally associate vessel noise with danger and do not swim away from vessels (Nowacek et al., 2004). Thus, the level of noise the vessel is producing is not likely a determining factor in the collisions.
78	a	Commenter objects to the proposed rule for speed reductions. The proposed rule ignores valid scientific approaches to reducing right whale strikes that are listed in the DEIS "no action" options, such as surveillance and tracking.	The No Action Alternative is the status quo, which has been ineffective in reducing ship strikes, thus the need for new actions. Surveillance and tracking are both limited due to weather, equipment failure, and funding, and are not sufficiently comprehensive to help with population recovery. In addition, even given the best possible survey and tracking methods, mariners would still be required to take evasive action.
	b	Commenter further takes issue with the assertion in the DEIS that the cost to the shipping industry should be "relatively low", and with the failure to provide any cost-effective analysis in the impact statement. The commenter's company will have some 48 coastwise vessel transits through the mid-Atlantic region in 2007, and even assuming the net effective loss to each vessel's schedule was just one day, the total cost to the company will exceed \$1.5 million during the year. Commenter does not consider this a "relatively low cost" as comfortably assumed in the DEIS.	The first part of this comment relates to the economic benefits of protecting the right whale which is being analyzed by the NEFSC under a contingent valuation study separate from the EIS effort (71 FR 54798) September 2006. The second part of this comment is unsubstantiated. It is not clear why, nor were data provided, to indicate the estimated net effective loss to each vessel as one day (24 hours), nor is the basis of the economic valuation of \$1.5 million provided.

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		Specific Comment
	c	<p>Urges NOAA to shelve the proposed rule until an appropriate scientific analysis is completed on both the efficacy or the proposed speed restriction and the alternatives that have been summarily consigned to the "no action" list.</p> <p>Same as # 2</p>
79		<p>Same as # 2</p>
80		<p>Please make it extremely unlikely that any right whale is struck by a ship. Slow to 10 knots and post lookouts whenever there is a risk of collision.</p>
81		<p>Same as # 2</p>
82	a	<p>Commenter supports Alternative 5 of the DEIS and consultation with Federal vessels to ensure that their activities don't endanger right whale populations.</p>
	b	<p>Concerned with the exemption of government vessels from the speed restrictions. In war time this would be necessary for the U.S. Navy and U.S. Coast Guard vessels, but in peacetime they should observe the same environmental requirements as the civilian fleet greater than 65 feet in length.</p>
	c	<p>They key is increasing the survival into the adult reproductive stage and having a larger percentage of the adult females being reproductively active.</p>
83		<p>Same as # 2</p>
84		<p>Same as # 2</p>
85		<p>Same as # 2</p>
86		<p>Same as # 2</p>

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87		Supports speed restrictions; realizes that traveling at slower speeds will result in a major inconvenience and higher operating expenses for some vessel operators, but we as a society have clearly stated through our support for legislation such as the Endangered Species Act, that a short-term economic burden is worth it in order to minimize our detrimental impacts of species at risk of extinction.	Acknowledged
88	a	Strongly supports the 10-knot speed restriction. Support Alternative 5, but if Alternative 6 is implemented, commenter encourages NMFS to consider using telemetry devices to track individual whales whenever possible. This would allow vessels to be notified well in advance of the presence of right whales, and would greatly improve the effectiveness of DMAs.	Support Acknowledged. Using telemetry devices would require attaching a transmitter to all right whales to track each individual's movement. Historically, tags attached to large whales have had a short lifetime, and sometimes resulted in infection. Finally, while telemetry may remain a useful tool for monitoring the movements of individual animals, it is improbable for an entire population. Even with knowledge of the location of every individual, the mariner would still need to take evasive action, e.g. slow the vessel. This increases unpredictability for shipping companies - an undesirable outcome, as indicated by the industry. Known times and locations of restrictions provide predictability.
	b	Requests that US government vessels and vessels under contract also be required to observe speed restrictions. Exceptions should only be allowed under extreme circumstances, such as human safety missions, times of warfare or national disaster, or when the Federal vessels are already operating under mitigation measures from a Section 7 consultation under the ESA. If Federal vessels are exempted, commenter encourages NMFS to immediately re-initiate Section 7 consultation to ensure that Federal agency vessels and activities are not jeopardizing North Atlantic right whales.	In 2005, NMFS contacted all relevant Federal agencies and asked that vessels proceed at 12 knots or less when in right whale habitat; most have voluntarily complied when vital missions are not compromised. Although it is the action agency, and not NMFS that initiates Section 7 consultation, NMFS will review Federal agency actions and BOs, and pursuant to 50 CFR 402.14(a), can request action agencies to initiate or re-initiate consultation. Also see response to # 82b.
	c	Commenter hopes the protective measures will be implemented as soon as possible, before the next calving season.	See response to # 2b
	d	Commenter hopes that flexibility will be maintained to modify the proposed regulations if new temporal or spatial distribution data are collected in the future.	The final rule provides a response to this comment.
89	a	Alternative 5 is the most protective option and, if implemented along with an imposed speed restriction of 10 knots, offers the only chance, albeit slim, for recovery for the NARW.	Acknowledged
	b	The proposed action should not exempt vessels which are owned, operated or under contract to the U.S. Federal agencies as well as foreign vessels engaged in joint exercises with the U.S. Navy. Commenter opposes this exemption because the reasons given for the exemption are unsatisfactory; despite internal measures, and Federal vessels continue to strike and kill a significant number of NARWs. Military vessels are quiet and as a result these vessels are less readily heard by whales which increases the likelihood of such a vessel striking a whale. The DEIS fails to address the ship strike threat from vessels transiting to and from the OPAREAS from port.	See responses to # 82b and #88b with respect to the Federal vessel exemption. This exemption does not relieve Federal agencies of their obligations under the ESA. See response to #77 in regards to quiet military vessels and right whale hearing. The DEIS did not address vessel traffic in Navy OPAREAS, although the FEIS includes a more detailed description of the number of Federal vessels operating in the affected

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No.	Sub.	Specific Comment	Response
			area.
	c	The DEIS does not discuss stressors such as contaminants and endocrine disruptors, body condition/nutritional stress, genetics, infectious diseases and marine biotoxins in the cumulative impacts section although they are present and likely increasing. The DEIS does not discuss additional potential threats facing these whales such as overfishing of prey species and ingestion of foreign objects.	Contaminants, endocrine disruptors, stress, diseases, and biotoxins were discussed in Section 3.1.1.2 and in the cumulative impacts Section 4.7.1.3. Section 1.1.2.3 of the FEIS has been updated to include climate and ecosystem changes, although at this time, NMFS is not aware of any data or peer reviewed publications on overfishing of prey species with respect to North Atlantic right whales.
	d	The statement in the cumulative impact summary section that states the ship strike regulations and fisheries regulations should reduce the mortality rate dismisses other threats such as climate change and the impacts of ocean noise on right whales. In the presence of uncertainty, the precautionary principle is the widely-accepted course of action to follow.	Climate change is discussed in Section 4.7.1.1 and Ocean noise is discussed in Section 4.7.1.2. While these may not be specifically mentioned in Section 4.7.3.5, effects of other natural and anthropogenic threats were taken into consideration. While the effects of ship strikes and entanglements are known, at this time it is difficult to gauge the magnitude of the impacts from climate change and ocean noise, which are relatively new findings. Therefore, these issues are not dismissed, but rather there is no quantitative estimate of the number of injuries and deaths from these occurrences from which to measure against those we do know.
90		Same as # 2	See response to # 2
91		Same as # 2	See response to # 2
92		Same as # 88	See response to # 88
93	a	There are insufficient data to support the theory that the restrictions would afford additional protection for right whales against ship strikes.	See response to # 58e
	b	Requiring vessels over 65 feet in length to reduce speeds to 10 knots would cause considerable harm to the maritime community.	The impacts of the rule on the maritime community have been assessed in Chapter 4 of the EIS.
	c	The commenter proposes two alternative measures in the effort to protect right whales: 1) Utilize electronic tracking devices. This method has worked on tracking polar bears, seals and other animals. Local maritime authorities would be alerted when whales are in shipping lanes or	See response to # 88a

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No.	Sub.	Specific Comment	Response
		nearby.	
	d	2) Utilize local air Coast Guard units to patrol our ship channels. Again local maritime authorities would be alerted when whales are spotted nearby. This additional responsibility would be in lieu of having to enforce speed restrictions or levying fines.	NOAA is committed to implementing an effective enforcement strategy and will continue to work with all of its interagency partners, including the USCG, to do so. In addition, NOAA has identified some available technologies that could potentially be used to supplement existing enforcement capabilities and will further explore the application of these measures.
94	a	Commenter agrees that some of the proposed actions are likely to reduce ship strikes and should be implemented; however, a 10 knot speed restriction for 5 months in the SEUS area would not significantly reduce the likelihood of ship strikes or whale deaths. Although traffic lanes, DMAs, and detection and tracking technologies offer encouraging promises of success with very reasonable costs, the 10-knot SMAs would offer the least potential success and the largest economic impact.	Routing measures, SMAs, and DMAs have been analyzed to ensure these measures are based on the best available science, some measures have been peer reviewed, and NMFS would not propose regulations that the agency did not believe would be successful. (The commenter provided no basis for the statement that a 10-knot speed restriction would not reduce ship strikes.)
	b	Requests further studies to verify the quantity of vessels in the three specific speed ranges with the percentages of vessel strikes. (Commenter thinks that these data suggest that speed is not very relevant). The Clyne study suggested that there might be a positive correlation between increased vessel speed and a reduced risk of whale strikes.	NMFS has relied on the best available science in determining the action needed. To delay the action to allow time for further study and analysis would be inconsistent with NMFS' mandates under the ESA and MMPA to recover this population. Computer simulations by Clyne (1999) found that the number of simulated strikes with passing ships was reduced with increasing vessel speeds, however the number of strikes that occurred in the bow region increased with increasing vessel speeds.
	c	Concerned with the safe transit of ships through harbor breakwaters, and if any speed restrictions are adopted, a waiver would have to be included to allow the pilots to perform their duty, particularly during periods of cross winds and currents.	See response to # 38a
	d	Commenter's calculations for their own three ships amount to \$575,000; however the total annual cost for all containerhips in Jacksonville is shown as \$765,600, which seems incorrect. Speed restrictions would create an obstacle to the Short Sea Shipping Initiative.	The basis of the commenters estimated economic impact was not provided. Also commenter's vessels are not included in containerhips but in the ro-ro vessel category. The potential impact of the proposed speed restrictions on coastwise shipping is discussed in the FEIS Economic Analysis Report. This analysis included data on all U.S. East Coast ports, interviews with the industry, and multiple visits to affected ports.

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No.	Sub.	Specific Comment	
	e	<p>Commenter does not believe the presented data for the Jacksonville transit area (1 unconfirmed mortality in 10 years) substantiates speed restrictions in these waters and also noted that slowing ships will cause them to spend about twice as much time traveling through the area. Speed restrictions in the SEUS should be limited to the critical habitat area only. The establishment of the proposed traffic lanes in concert with a concentrated 'watch' and 'whale tracking' efforts during the season will help ships to know where whales are and avoid them.</p>	<p>High concentrations of both whales and ships are known to occur in the Jacksonville area, and while there may be a low number of confirmed ship strike deaths in Jacksonville, there have been many more in the greater area (northern Florida). From 1975 to 2002, there were six reported ship strikes in waters off FL and the southeastern U.S. (Jensen and Silber, 2003). More recently, there were four ship strikes in 2006 in the SEUS alone (Glass et al., 2008). The SE SMA is based on both right whale sightings and vessel traffic, whereas the critical habitat is more focused on right whale sightings. Even the most effective 'watch' or observer programs would only detect a fraction of the whales. See responses to #88a about tracking devices, and #99h about the amount of time vessels spend in an area.</p>
	f	<p>Support DMAs, although suggest that the speed restrictions are lifted as soon as the traffic lanes are clear of whales, rather than the proposed 15 days.</p>	<p>Based on comments received, NMFS has decided to make the DMA program voluntary for the preferred alternative. That is, DMAs will become effective when whales are observed; however, mariners will be urged to avoid the area or travel through it at a reduced speed. The 15-day period for a DMA designation is based on analysis of the expected tenure of such an aggregation (Clapham and Pace). It is not always possible due to weather and logistical constraints, to make multiple subsequent aerial surveys to confirm whales are no longer present.</p>
	g	<p>Commenter believes that implementing new technology, such as pop-up buoys and tagging whales with transmitters, can improve the detection of whales. Also, AIS with VHF radio communication and MSR should be considered for real time ship strike avoidance.</p>	<p>See response to # 58d in reference to pop-up buoys and #88a in reference to tagging whales.</p>
	h	<p>Any solution for improving food supply, avoiding diseases, reducing debris, pollution, and toxins in coastal waters could reduce the 66% of whale deaths that don't involve any type of vessel. The commenter calculated containerships and freighters to account for 4.9% of ship strike deaths, and questions why this small percentage is the focus of the proposed rule when there are various other threats, natural and human.</p>	<p>In a relatively high number of cases, it is not possible to determine the cause of a right whale death, usually due to advanced decomposition. If the cause is not known, it does not implicate low food supplies, pollution, disease, and toxins. Death and serious injury resulting from collisions with ships is the greatest known and the greatest direct threat to human activities. Speed restrictions will apply to all vessels 65 feet and greater, and does not apply unequally to certain segments of the maritime industry.</p>
95		<p>Same as # 88</p>	<p>See response to #88</p>

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No.	Sub.	Specific Comment
96	a	<p>Although considerable information is provided throughout the DEIS, the FEIS should provide a summary comparing whale protection benefits and costs for each of the alternatives.</p>
	b	<p>The FEIS should also verify if any of the action alternatives would individually result in a significant economic effect on the shipping or fishing industry or if all alternatives would not have a significant economic effect (as suggested on pg. ES-7) even though differences among alternatives exist.</p>
	c	<p>The rationale for selecting the final preferred alternative in the FEIS should be discussed in the FEIS and should include environmental aspects.</p>
	d	<p>EPA favors alternative 5 since it offers the greatest protection; however they agree that NOAA's preferred alternative (Alt. 6) as well as Alternative 3, would also benefit right whale recovery and would have less economic effects</p>
	e	<p>After implementation and monitoring, the operational measures should be adaptable by NOAA to improve right whale protection as needed.</p>
		<p>NMFS is conducting a North Atlantic right whale economic benefit study, and requested comments in the <i>Federal Register</i> in September 2006 (71 FR 54798). The direct and indirect costs to the maritime industry resulting from this action and each of its alternatives is provided in the economic study and in Chapter 4 of the FEIS. While specific numbers quantifying the cost benefits of right whale protection are difficult to come by, a qualitative discussion is provided in Section 5.3 of the Regulatory Impact Review. And in general, whale watching, eco-tourism, and other industries benefit from viable whale populations.</p> <p>Direct and indirect costs of the proposed action and alternatives are discussed in the economic analysis in Chapter 4 of the FEIS. The explanation on page ES-7 is in reference to the significance of the impacts on the financial revenues of the shipping industry, which are deemed insignificant for each alternative, based on the small percentage of impacts relative to U.S. East Coast ocean trade and freight costs. Impacts to the fishing industry were also deemed insignificant when measured against commercial fishing landings. However these statements are at the industry-wide level. Impacts at the individual or firm level are analyzed in the Regulatory Flexibility Analysis in the proposed and final rules. Further, in terms of EO 12866, Alternatives 3, 5, and 6 have a total direct and indirect impact of more than \$100 million, and are considered significant. This is discussed in the FEIS.</p> <p>The FEIS includes the rationale for selecting the preferred alternative in Section 2.6.</p> <p>Acknowledged</p> <p>The final rule provides language on monitoring, adapting the actions to enhance protection if warranted, and measures for effectiveness.</p>

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No.	Sub.	Specific Comment	Response
	f	<p>Additional EPA comments include the following topics: 1. Federal vessels - The FEIS should define Federal vessels further and estimate the percentage of traffic they comprise relative to overall ship traffic. Unclear if all federal vessels would be exempt at all times. The FEIS should clarify if foreign vessels would be subject to the proposed measures. 2. Ship speeds - Requests that the FEIS compare the proposed speed restrictions to the current cruising speeds of typical commercial vessels, and this figure should be expressed as a percentage. Also, would there be any cost savings in diesel fuel consumption of ship speeds were reduced? 3. Enforcement - IF speed restrictions are to regulatory via rulemaking, how would these measures be enforced, and what means would be applied to non-compliant vessels? 4. Observers - On board observers would be needed for whale sightings, and the FEIS should discuss this process. 5. Affected specific vessels - For the final preferred alternative, the FEIS should further evaluate such effects on whale watch, ferry, and charter vessels, and consider reasonable mitigation or avoidance procedures such as those provided on ES-8. 6. Cost effects - The FEIS should provide a timeframe for the economic impacts (annual, etc.). 7. EPA appreciates the thorough cumulative effects section. 8. Modifications - The EPA concurs with the approach to adaptive management (pg.4-151) and, as part of this effort, the FEIS should discuss how whale ship strikes are monitored, enumerated, assessed, and reported. Also, what performance measures might be used to determine success for the operational measures after they are implemented?</p>	<p>1. The approximate number of federal vessels, their operation areas and activities, when exemptions apply, and federal obligations under the ESA are discussed in detail in the FEIS. The estimates of vessel numbers are based only on publically available information. The FEIS does state that foreign vessels calling at US ports are subject to the proposed measures. The impacts to foreign vessels are analyzed separately from US vessels because of different operating costs (see Sections 3.4.1.4 and 4.4.1). 2. Section 3.4.1.4 of the FEIS states the average operating speeds for the 12 vessel types considered in this analysis. Expressing the 10-knot speed restriction as a percentage of current operating speeds is complicated because the average speed varies by dead weight ton (DWT) of the vessel, so for each of the 12 vessel types, there are 18 DWT categories. Also, ship speed varies with sea conditions, cargo, location, and other circumstances. The cost savings in fuel consumption with reduced speeds would be negligible. 3. The FEIS defers to the rule on the enforcement strategy. 4. It is not clear why the commenter believes on board observers are necessary (See response to # 50b). While the rule does not include an observer program, many federal vessels do employ trained observers. 5. Although NOAA does not have any additional mitigation measures aside from those mentioned in the FEIS, the agency believes that voluntary DMAs and the 30- to 20-nm change in mid-Atlantic SMAs will reduce the impacts to these industries. The FRFA, to be included in the Final Rule, also will identify potential mitigation measures for small businesses. 6. All costs are annual. 7. Acknowledged. 8. See response to #96e (the FEIS defers to the final rule on this topic).</p>
97		Supportive	Acknowledged
98		Same as # 2	See response to # 2
99	a	From 1970 through 2005, about 25 right whale mortalities have been attributed to vessel collisions (Marine Mammal Commission, 2005); this is approximately 0.7 per year.	Acknowledged

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No.	Sub.	Specific Comment	Response
	b	<p>The proposed rule and the Draft Environmental Impact Statement are flawed in: 1) presentation and interpretation of facts and 2) failure to meet generally accepted standards of data handling and statistical analyses. For example, all three of the publications cited within the PR (Knowlton and Kraus, 2001; Laist et al., 2001; and Jensen and Silber, 2003) are based on non-random samples, and therefore are anecdotal and are not representative of the true impact vessels have on whale populations. Also, neither the method of data collection, nor the standard by which the data were analyzed, nor the intended conclusion of these three studies, is consistent.</p>	<p>NMFS used the best available science and evidence in formulating its actions, and believes the analysis is quite rigorous. It would be difficult to use random samples because strikes are statistically rare, and only certain ship strike records are complete with all data fields required for analysis. The commenters did not provide alternative data on which to base new analyses.</p>
	c	<p>Based on records of whale collisions where vessel speed was reported, mortality and injury by vessels 65 ft and larger at speeds of less than 14 kts is not indicated (except for two records, one whale watching vessel that injured a humpback at 12 knots, and a fishing vessel that injured an unknown whale at 9 knots). Additionally, there is no evidence in these records to provide for evaluating or discriminating possible effects of speeds between 10 and 13 kts. Of the 58 records used by Jensen and Silber, 29 (or 50%) were for vessels equal to or greater than 65 feet in length.</p>	<p>See response to #99b</p>
	d	<p>Consideration of vessel speed vs. whale collisions is not simple, but rather, involves a matrix of inter-related dimensions and probabilities. Not all factors point in the same direction, and indeed, to some degree at least, may be offsetting. Vessels traveling at higher speeds may: 1) provide a lesser response time for whales exhibiting avoidance behavior, 2) draw a whale into the vessel in the case of an "appearing whale" or at speeds of 20 kts or greater, and 3) increase level-of-injury IF a collision occurs. On the other hand, vessels traveling at faster speeds may: 1) provide an acoustic signature that allows for greater whale response time, 2) push the whale away from the vessel, thus avoiding a possible collision, and 3) reduce exposure and risk of a vessel/whale interaction. A third alternative in the matrix is the situation where speed is not a factor. In several of the hydrodynamic simulations, whether a collision did or did not occur was independent of vessel speed or at least over a wide range of vessel speeds.</p>	<p>Faster vessels may be louder, but this is irrelevant because it has been shown that even though right whales presumably hear well within the frequency ranges emitted by ships, they apparently are not motivated to, or cannot, avoid loud oncoming ships (Nowacek, 2004). If a whale is in a specific area when the vessel approaches, it may indeed push the whale away, but could also draw it into the vessel. There is no significant difference in exposure for a vessel traveling from 6-24 knots; exposure only increases at speeds less than 6 knots (Vanderlaan and Taggart, 2007). Vanderlaan and Taggart (2007) looked at vessel mass and dismissed it. Also, in an analysis of vessel mass versus vessel speed and the likelihood and severity of injury to manatees, Calleson and Frohlich (2007) concluded that vessel speed, not mass, was the most critical factor. They found, for example, that a doubling of the speed of a vessel would quadruple the amount of impact energy to the manatee, while quadrupling the speed would increase the amount of energy by a factor of 16.</p>

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	e	Of the 58 reported collisions, where speed of vessels is known, more than half were by vessels exempt by the proposed rule: 20.5% were by vessels under 65 feet in length, 31.0% were by military vessels and several others occurred in Canadian waters.
	f	The cited studies over emphasize the large whale speed database (a compilation of anecdotal records), which contains only 5% (3 of 58) right whale records, one citation of which is highly questionable, as it was a retroactive right whale categorization made 25 years after the collision incident.
	g	Commenter believes that NMFS' estimates of 300 individuals in the NARW population are conservative and outdated. Kraus et al. (2005) estimates 350 right whales; genetic analysis suggests that there may exist 10% more males than originally suggested (based on photo-identification catalog; there may be 10% more females (T.R. Frasier, Trent univ.); and the population growth rate of 2.5% (Knowlton et al., 1994) may still be valid.
	h	Gerstein et al. (2005) cautions that reducing vessel speeds without compensating for the acoustical consequences may actually increase the risk of collisions, and may be counter-productive to the protection of whales. A slowly moving vessel will take longer to pass through an area potentially occupied by a right whale, thus increasing exposure, and a whale will have longer to surface or move in a way that increases jeopardy.
100	a	Support for: alternative 5 at 10 knots or less, vessel size of 65 feet or greater, the ATBA and shift in the TSS, speed restrictions in GSC and ORP, shipping lanes and speed restrictions in Cape Cod Bay, SMAs with speed restrictions in the mid-Atlantic, and speed restrictions and shipping lanes in the southeastern U.S. It is critical that the final rule be implemented in a timely manner, and that timeline be contained in the rule itself.
	b	Commenter is concerned with the timing to implement DMAs, and would like to see the details of the mechanism by which such measures can be swiftly enacted. Also, the DEIS does not address whether acoustic monitoring data could be used to initiate a DMA, or whether the whales have to be visually observed to confirm their presence.
		Acknowledged. As a result of interagency cooperation and ESA Section 7 consultations, Federal agencies have been quite vigorous in reporting vessel/whale interactions. Therefore, the data in the report cited, as indeed the report itself points out, are weighted toward those sources as compared to members of the commercial maritime industry who may be reluctant to report, unaware of the importance of reporting, or unaware that a vessel that the vessel has been involved in a strike.
		See response to #99b
		See the final rule for the rationale behind the NMFS estimate of 300 animals. In addition, regardless of the actual population size, the species remains listed as endangered under the ESA, and by that authority, it is illegal to take an individual of this species.
		See response to #99d regarding right whale hearing and Vanderlaan and Taggart's (2007) random walk analysis. NMFS conducted an analysis of the hypothesis that vessel speed restrictions would increase exposure of right whales to strikes, and concluded that the likelihood would not be increased by slower vessels (Garrison, unpublished).
		Acknowledged
		As DMAs are now voluntary in Alternative 6; they will be effective as soon as possible following verification of the sighting that triggers the DMA, and notification of mariners. NMFS will notify mariners of a DMA through standard maritime electronic communication media. The FEIS does not address alternative triggers to DMAs, such as acoustic monitoring, because this technology is only available seasonally and in select habitats, and thus is not a viable alternative trigger at this time.

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	However, NMFS is considering additional detection technologies, such as acoustics, for this purpose.
	See response to #71e
	See responses to # 66a and #71e
	Acknowledged
	Federal vessels are exempt because they engage in public health and welfare missions (e.g., human safety, law enforcement, and national security) that could be compromised by a mandatory speed limit. However, NMFS requested Federal agencies to observe the speed limit where their missions would not be compromised. In the case of Federal agencies whose vessels are not engaged in such missions, the number of vessels is very small (see Section 3.4.7), and there is no incentive for these agencies not to voluntarily observe the speed limit. Therefore, while these vessels are exempt, NMFS expects them to comply with voluntary speed restrictions their requirements under Section 7 of the ESA. Also see responses to #82b and #88b.
	Passenger vessels including cruise vessels are included in the economic analysis. It is important to note that the timing and duration of the seasonal speed restrictions will be well-known and that vessel itineraries will be developed taking them into account. The section on impact on cruise industry is expanded in the FEIS.
	Recent data has confirmed the consistent presence of right whale aggregations in the Gulf of Maine in fall and winter, although the only measures in this area are DMAs. A preferred way to protect these animals would be wider area restrictions for the Gulf of Maine from October through June.
c	Commenter suggests that protection for the ORP and GSC SMAs should be started on January 1st to match the starting date for Cape Cod Bay.
d	The manner by which the rule will be enforced is also critical.
e	Commenter would like to see the exemption of Federal vessels more specifically focused on those vessels unlikely to be able to comply with the regulations because of service in the national interest or for NMFS to include a detailed explanation as to why all such vessels should be included in the exemption.
f	The port of Baltimore is affected by two SMAs, the Chesapeake Bay and Delaware Bay SMA, although the particular boundary of the Delaware SMA, as it relates to the C & D Canal is not pointed out in the DEIS. There are no in-depth references in the DEIS on the impacts of the speed restrictions on passenger vessels, such as cruise ships.
101	a

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	<p>Specific Comment</p> <p>The document does not adequately account for economic impacts to businesses within the port of Baltimore that rely on timely delivery of products and goods from these ships.</p>
b	<p>Response</p> <p>Direct and indirect costs to the industry and local economies are provided in the economic analysis in Chapter 4 of the FEIS. It is important to note that aside from DMAs, the timing and duration of the proposed seasonal speed restrictions will be well-known and that vessel itineraries will be developed taking them into account. Hence unexpected disruptions to the manufacturing and transport logistics systems should not occur as a result of the proposed seasonal speed restrictions.</p>
c	<p>Right whales are rarely sighted in the Chesapeake Bay, but a dead, stranded right whale was recovered east of Cape Charles in 1993.</p>
d	<p>Section 1.2 of the FEIS discusses current surveys and the region, but does not go into detail on the months of the survey or what agency coordinates. Currently, the agency has no technology in place to spot whales at night. See the final rule for a detailed discussion of the use of technology.</p>
e	<p>Section 4.3 of the FEIS discusses the relationship between vessel speed and emissions, and in general, emissions decrease as speed decreases. One example of this relationship is in the ports of Los Angeles and Long Beach, California, where they established vessel speed restrictions to reduce air emissions.</p>
f	<p>See response to # 38a</p>
102	<p>Chesapeake Bay pilots have also expressed great concerns regarding the safety of these vessels at the proposed speeds. (<i>Additional comments on the DEIS are in a table in the letter.</i>)</p> <p>Ten knots is the speed restriction identified in the final rule. Vanderlaan and Taggart (2007) actually do address the relationship between speed and the occurrence of a collision. The authors used a random walk model, and found that under 6 knots, the probability of an encounter increased with speed; however, the encounter probability from 6-24 knots is similar; thus a speed restriction of 10 knots would not change the encounter probability. These conclusions are consistent with an independent analysis by Garrison (<i>unpublished</i>). NMFS plans to monitor the effectiveness of the restrictions, and modify them, if appropriate, to maximize conservation.</p>

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	b	Recommend NMFS consider reducing the size threshold for vessels included in speed restrictions, or at minimum, increase education and outreach to vessel operators below the proposed 65-foot threshold.	NMFS agrees that vessels less than 65 feet may pose a threat to right whales and will continue to consider means, including future rulemaking, to address vessel classes below 65 feet. NMFS developed outreach and education programs for vessels less than 65 feet, and plans to enhance and continue executing these programs, particularly those that target recreational vessels.
	c	Recommend NMFS utilize Section 7 Consultation to ensure that large vessels that are excluded from the proposed rule by virtue of Federal affiliation adhere to speed restrictions under normal circumstances and to allow them latitude only when deemed necessary.	Acknowledged
	d	Strongly support the designation of shipping lanes within areas delineated in the Proposed Rule and advocate NMFS enforcement of mandatory shipping lanes should data reveal that ships are not complying with recommended routes.	Acknowledged
	e	Support the proposed recommendation to extend the SMA out to 30 nm, opposed to 20 nm, as well as the regional SMA of November 1 to April 30 in the MAUS region. In order to avoid confusion, commenter recommends that the SEUS implementation period extend from November 15 to April 16 (rather than April 15) to match those used by the MSRS. Further, Port Canaveral should be included within the SEUS SMA.	Based on comments received, NMFS reviewed right whale sightings data and determined that certain changes should be made to the timing and boundaries of the SMAs. The commenter's proposed recommendations are not among those changed in the final rule. Whale distributions around Port Canaveral do not extend very far from shore because of the steep slope and high water temperatures. While sightings occur in the area, they are all close to shore in waters that are shallower than large vessel drafts. On the port approach, vessels will have reduced speed by the time they get into shallow water where whales occur.
	f	Support DMAs, although recommend streamlining procedures, such as eliminating density requirements for declaring a DMA, and making the DMA effective upon verification and broadcast of right whale locations to mariners. Recommend that NMFS investigate the use of additional means beyond aerial survey for locating right whales, such as passive acoustics, to increase the effectiveness of DMAs as a management strategy.	As DMAs are voluntary in the preferred alternative, notices will go out when a DMA is triggered and mariners will be asked (via all maritime communications available) to observe the speed restrictions or route around the DMA. See response # 100b in reference to the second comment.
103	a	Pilots have expressed major concerns regarding the safety of navigation at the proposed speeds as they pertain to ship strikes.	See response to # 101f

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	b	<p>The DEIS does not adequately address the issue of whether the 20 percent of ship strikes where speed is known (Jensen and Silber, 2003) is a representative sample of the total number of ship strikes, and thus, can be interpreted as statistically significant.</p>	<p>NMFS used the best available science in determining ways to reduce the threat of ship strikes to right whales. A relatively small number of large whale ship strikes records have associated vessel speed data. Because these data are the best, and only available, they have been analyzed in several studies. In addition, Pace and Silber (2005) examined the distribution of speeds at which known ship strikes occurred versus the speeds of ships reporting into the Mandatory Ship Reporting systems, which they considered representative of speeds that ships travel in general. The authors found that the two distributions were significantly different, suggesting that vessels that struck whales were going faster than ships tend to travel in general. Section 4.1.3 of the FEIS.</p>
	c	<p>While the economic analysis attempts to measure the impact of individual vessels slowing down on their way into port and considers the additional cost to vessels operating on multi-port strings, the commenter is not convinced that the economic analysis accurately calculates the cost associated with ship diversion, or ship dislocations (especially with vessels that transit the Panama Canal).</p>	<p>We have included the direct and indirect cost of the increased travel time due to delays caused by the operational measures. If cargo is to divert to other routes this would be because the total additional costs associated with those routes are less than the cost of additional travel time due to delays at the current port. Hence it would be double-counting to also include any additional overland transport costs to the estimated impact already presented. In addition, port dislocation is not expected to occur on a regular basis, given that the speed restrictions are uniform along the U.S. East Coast. That is, they affect all ports equally.</p>
	d	<p>The port industry is also concerned that NMFS is not investing enough money in technology that could provide at least a partial solution to the problem.</p>	<p>NOAA is committed to exploring and testing technological solutions to address ship strikes, and has provided substantial funding for a number of years for research and development. However, any technological solution must be (a) proven as directly effective in reducing ship strikes, and (b) environmentally benign. At this time, NMFS believes that no technology exists or will be imminently available that has both of these features, and therefore, existing technologies are not capable of meeting the objectives of directly addressing and eliminating the problem.</p>
104	a	<p>Alternative 2 would appear much more effective than measures contained in Alternative 6.</p>	<p>Acknowledged</p>

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	b	The direct and indirect impacts on the port of NY/NJ are more significant in dollar value than for any other port, although there is no assessment of the jobs, wages, and tax revenues lost or Gross Regional Product not realized, even though the MARAD Port Economic Impact Kit that the DEIS uses is capable of producing such results.	The FEIS Economic Analysis Report states the total economic impact from the MARAD model that includes the indirect effect of expenditures made by firms supplying the deep-draft port industry and the firms that supply those firms. It also includes an induced effect that corresponds to changes in consumer spending that is generated by changes in labor income accruing to the workers in the deep-draft port industry as well as employment in the supplying businesses. Hence the employment, income and GRP impacts are included in the estimates provided in the FEIS Economic Analysis Report.
	c	The DEIS does not assess the indirect economic impact resulting from lost ship calls due to cumulative delays of vessels engaging in multi-port strings. The DEIS provides no explanation how the average delay of 30 minutes per port for carriers with multi-port itineraries was determined. For the port of NY/NJ, All Water Services have grown from 7 strings in 2002 to 25 strings in 2005 and 19 of these strings transit the Panama Canal. An impediment that would keep the ships from making a given tidal window increases the unreliability of this all water service.	An explanation of the 30-minute average delay is provided in Section 4.4.2 of FEIS. The estimated impact of the cumulative effect of multi-port strings is presented in the FEIS Economic Report. In economic terms, a change in vessel port calls from one US port to another US port has offsetting economic impacts from a national economic perspective. Also bear in mind that the times and locations of the restrictions will be known ahead of time, and advanced voyage planning would be possible to minimize service disruptions.
	d	The DEIS does not assess the potential trade-offs between all water services via the Panama Canal and overland rail service to the East Coast from West Coast ports.	The small estimated average delay on vessel arrivals due to the proposed operational measures of less than one hour does not warrant a detailed analysis of global maritime shipping routes.
	e	The DEIS assessment of indirect economic impact resulting from port diversions uses a .5% diversion of ship calls for a 12 knot speed restriction and 1.5 % for a 10 knot speed restriction, but does not explain how these diversion percentages were determined.	These diversion percentages are being explained in the FEIS Economic Analysis Report.
	f	The DEIS includes increased terminal operating costs to a certain extent in the indirect economic impact, and logistics costs are somewhat considered in the analysis in Table 4-41; however, there is still no analysis of the changes in logistics costs as a result of port diversion, which creates the necessity of shipping these goods to their ultimate destinations by inland modes over longer distances rather than by the existing water routing.	We have included the cost of the increased vessel time due to delays caused by the operational measures. If cargo is to divert to other routes this would be because the total additional costs associated with those routes are less than the cost of vessel time due to delays at the current port. Hence it would be double-counting to also include any additional overland transport costs to the estimated impact already presented.
	g	The DEIS does not provide rationale to support its assumptions that the average value of the indirect ship calls diverted from the Port of Boston, at \$900,000, would apply to all other large East Coast ports or that a value of \$500,000 would apply per vessel call diverted from smaller ports. In addition, the DEIS assumes without providing justification that for mid-Atlantic ports all these vessel calls will be diverted to Canada.	These assumptions are further explained in Section 4.4.3 of the FEIS and in the Economic Impact Report.

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105	a	<p>Blanket speed restrictions are not included in the final rule. The final rule contains an exemption for maneuverability, see response to #38a. NMFS is not aware of issues with ship maneuverability with programs that currently have vessel speed restrictions in place, including the 12-knot speed restriction in the Port of Los Angeles, the 13-knot speed restriction in Glacier Bay, Alaska, or USCG imposed speed restrictions in various locations along the East Coast.</p>
	b	<p>Commenter finds no convincing evidence that ship strikes are less likely to occur at slower speeds.</p>
	c	<p>NOAA is working with the USCG to develop an enforcement protocol, including exploring various technologies.</p>
	d	<p>NMFS believes that these actions are not contradictory to the U.S. Ocean Action Plan. They are consistent with the ESA and MMPA. See response to #121d regarding collaboration with NOS and technological solutions.</p>
	e	<p>The mid-Atlantic region accounted for 22% of known right whale encounters, or ship strikes from 1975-2002, which, although less than those in the NEUS, is not 'rare' (Jensen and Silber, 2003). Sighting data in this region is more limited than data in the NEUS and SEUS, although this likely results from less frequent aerial surveys and not the actual number of individuals present. Among the comments NMFS repeatedly heard from the shipping industry is that DMAs introduce unpredictability in voyage planning. The ability to have advanced voyage planning is one of the main reasons that NMFS opted for restrictions in predictable times and locations.</p>
	f	<p>Provisions for eliminating or modifying these regulations or other actions will rely on the measures set forth in the right whale recovery plan.</p>
		<p>Opposes blanket speed restrictions based on the negative impacts on the nation's Maritime Transportation System (MTS) and economy when weighed against the uncertainty of any positive impacts on the right whale population. Also, in many instances, ships become less maneuverable at the proposed reduced speed, and by reducing the control over a ship the risks are increased for incidents that could result in the loss of human life or environmental damage</p>
		<p>Commenter finds no accounting for enforcement speed restrictions, and questions who will enforce and where the funding would come from.</p>
		<p>Commenter finds the proposed regulations contrary to two elements of the President's U.S. Ocean Action Plan. One priority is to improve the MTS, and speed restrictions are a detriment to the MTS. The other priority is to advance knowledge of the oceans through technologies and the Integrated Ocean Observing System (IOOS). Commenter recommends better coordination of the objectives of NMFS with NOS in the pursuit of technological and observing solutions with higher probabilities of improving the right whale population.</p>
		<p>Due to the rarity of right whale encounters in the mid-Atlantic, instead of blanket speed restrictions, we recommend utilizing alternative measures without the severe risks and impacts of speed restrictions (i.e., DMAs only, observers, and whale reconnaissance flights).</p>
		<p>Should speed restrictions be implemented, commenter recommends including provisions for the sun-setting of the regulations when they are determined to be ineffective, or if the right whale population reaches 400 or experiences sustained growth of say 4% over 5 years.</p>

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106		See response to # 105
107		See response to # 2
108	a	See response to # 38a
	a	The proposed rule falls short in maintaining safety of navigation b/c it severely restricts the Master's authority and obligation to navigate safely (cites COLREGS safe speeds). COLREGS does not attach a number to "safe speed" for good reason; it is different for each vessel and situation. The rule would reduce maneuverability and endanger safety. Seek other more effective solutions that will not compromise safety of navigation while continuing to work with mariner to develop other means of protecting whales.
	b	Upset that PARS conducted on TSS was filed with IMO before notice of public comment was sent to FR. Why is NOAA supporting this before getting public comment?
109	a	Reducing ship speed of large ships could reduce the ton-force significantly; for ships larger than 500 tons, speed is more important than the size of a ship in determining lethal injury to a whale, and for ships less than 500 tons, both mass and speed may be important.
	b	While NOAA's proposal to slow down large ships is supported by theoretical and empirical analyses, commenter recommends NOAA employ a ship mass criterion rather than a ship length criterion.
	c	Right whale departures from the Florida-Georgia border varies from around March 2 to March 31, while the modal departure period is March 7-11, which suggests that the actual variation in right whale northerly migrations ~ ± 15 days. Therefore, the period of protection for the northerly migration should extend to May 1 rather than April 30 [1]. NOAA should use this information to direct and stratify survey efforts in the mid-Atlantic.
	d	The protection from the 30-nm buffer in the MAUS is limited; NOAA should consider employing spatial and temporal management windows within the MAUS during which speed restrictions would be imposed over a significantly wider swath than 30 nm around ports as presently contemplated.
		Outside the scope of the EIS.
		NMFS believes that the analysis conducted by Vanderlaan and Taggart (2007), including three different analytical techniques provided adequate indication that the amount of force striking the whale is more strongly a function of vessel speed than vessel mass. Also, in an analysis of vessel mass versus vessel speed and the likelihood and severity of injury to manatees, Calleson and Frohlich (2007) concluded that vessel speed, not mass, was the most critical factor. They found, for example, that a doubling of the speed of a vessel would quadruple the amount of impact energy to the manatee, while quadrupling the speed would increase the amount of energy by a factor of 16.
		See response to # 109a
		Based on comments, NOAA reassessed sighting data and determined that the timing of the SMAs in the MAUS will remain the same. NOAA intends to continue to assess incoming sighting data and modify the areas as appropriate. In addition, NOAA chose to have inclusive (rather than rolling) dates for this region, in part, to provide predictability to the maritime industry.
		The 30-nm buffer proposed in the MAUS in the DEIS has been changed to 20-nm. This is based on the best available data and analysis of all known right whale sightings between 1972 and 2000, a sample of 290 sightings, from Massachusetts to the South Carolina/Georgia border. When considered relative to the distance from the shore, about 83 percent of the sightings are within 20 nm (see Section 2.1.2 of the FEIS). The incremental change in whales observed

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	beyond 20 nm is small (less than 10 percent). Although the boundary of the MAUS is extended south in the final rule, the width does not change (See response to #109c).
e	Data suggest that right whales utilize ORP SMA in the month of May, although the period is currently proposed for March 1 - April 30.
f	The Gulf of Maine is utilized by North Atlantic right whales and hosts several busy ports, although there are no proposed speed restrictions or routing measures in this area. Commenter recommends similar speed restrictions in the Gulf of Maine as those in the Mid-Atlantic.
g	The DEIS does not consider that the proposed alternate routes may negatively impact other species if their distributions fall outside of right whale habitat, therefore, the commenter recommends that the DEIS analyze potential negative impacts on other species of large whales if the proposed speed restrictions are implemented and vessels transiting near these areas choose alternate routes.
h	The DEIS does not consider the potential benefits of speed reductions in terms of fuel economy and reduced costs of operations.
110	a Selective use, or omission, of available data: 1. No maps/tables of right whale distribution or ship strikes. Add sighting data and/or ship strike locations to figures where the alternatives are plotted. Include a table of known strikes to right whales. While the December 2004 mortality of a right whale can not be documented as a ship strike, (because the carcass was not retrieved) the omission of this occurrence may underestimate the impact on this species, thus this mortality should be noted in the DEIS (Section 4.1.1.1).
b	2. Inconsistent information regarding species. Information in the text box on page 1 is inconsistent for the three species mentioned. The impacts on other species in Section 3 are not listed consistently.
	See responses to #66a and #71e
	See response to #66a and #71e
	Section 4.2 of the DEIS (and 4.7.2.5 of the FEIS) analyze the impacts of the shift in the Boston TSS on other species occurring in the area. The FEIS will analyze the impacts of recommended routes on other species where sighting data are available for these species in proximity to the routes.
	The impact of lower speeds on fuel consumption varies by type of vessel. Some commenters (see response to #70) believe that the proposed speed restrictions will increase fuel consumption as vessels are designed to operate more efficiently at higher speeds. This issue is discussed in the FEIS.
	Maps of right whale sightings for the NEUS and SEUS have been added to chapter 2, along with graphs of right whale distance from shore in the MAUS. A table of known ship strikes to right whales is not included because there are several different sources of ship strike records, which are not always consistent with the NIMFS-confirmed ship strike records. Further, the cause of death in many suspected ship strike records is unconfirmed. The potential right whale mortality in December 2004 has been added to Chapter 4.
	This information in the text box has been revised to provide consistent information for all three species. The bottlenose dolphin and seabird descriptions in Section 3.2 have been updated.

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	c	<p>3. Inconsistent information regarding data analyses. Data charts 4-9 and 4-10 do not indicate a specific speed while 4-19 says 12 knots. Data Chart 4-42 considers impacts for alternatives 2, 3, and 6 only. Section 4.4.1.7 only discusses 2003 but the text compares 2003 and 2004. Section 3.3.3.2 mentions emissions at normal cruising speeds, although commenter could not find and reference to changes in emissions based on the speed restrictions. Appendix C does not reference the figures in Chapter 2. Page 4-7 gives the seconds a whale has to avoid a vessel when it slows to 12 knots, but does not calculate the same for 10 and 14 knots.</p>	<p>Data charts 4.9 and 4.10 do not indicate a specific speed because the impacts for Alternative 4 are the same at all speeds, since speed restrictions are not proposed under this alternative. Data chart 4-42 only considers the impacts for alternatives 2, 3, and 6 because there are no impacts for alternative 4 and the impacts are the same for 3 and 5 - this is stated clearly in the text. Section 4.4.1.7 of the FEIS was updated to include information for 2004, and then these impacts are compared to those in 2003; Data Charts 4-20 and 4-21 list all impacts in 2003 and 2004. Section 4.3 of the FEIS qualitatively discusses potential changes in emissions based on the proposed speed restrictions. Appendix C in the FEIS references the figures in Chapter 2. The FEIS includes the seconds for avoidance at 10 and 14 knots.</p>
	d	<p>4. Conflicting or imprecise information. Section 1.1.1 - while it is true that commercial hunting of right whales occurred at that time, [1935] a general ban on commercial whaling of other species did not go into effect until 1986. Page 3-20 states that mysicetes feed on zooplankton, but some species are piscivorous.</p>	<p>These sections have been updated in the FEIS.</p>
	e	<p>5. Right whale habitat underestimated. The DEIS states that right whale habitat extends from southern Canada to northern Florida; however, right whale habitat actually extends to mid-Florida and sightings have occurred south of the critical habitat and into the Gulf of Mexico. Sightings occur around Port Canaveral, although there are no measures proposed for this area.</p>	<p>This section has been updated in the FEIS. DMAs are proposed for Port Canaveral.</p>
	f	<p>6. Compliance and effectiveness of current management practices are not discussed. If current strategies are to be additive, and funding is limited, then it is unclear why the DEIS does not at least estimate the effectiveness of existing programs, yet implies they will continue as part of each proposed Alternative.</p>	<p>Section 1.2.1.2 has been updated to include compliance rates with the MSR systems. Compliance data for other programs are not available. NMFS has concluded that existing practices have not been effective in reducing ship strikes.</p>
	g	<p>7. Incomplete consideration of foraging data. The reference to Goodyear (1996) on page 3-5 is not presented correctly in the document. The Goodyear study was conducted in the Bay of Fundy, not in CCB, where surface feeding is known to occur more regularly. Further, research by Baumgartner and Mate (2003) shows contrasting data in comparison to Goodyear.</p>	<p>Goodyear 1996 covers feeding behavior in the Bay of Fundy, Great South Channel, Cape Cod/Massachusetts Bays, and the Gulf of Maine. All Goodyear references on page 3-5 of the DEIS are accurate. Both authors contend that right whales spend the majority of their time feeding at depth in the BOF; Goodyear states that right whales feed at depths with the highest density of copepods, which are generally 40 to 60 meters above the bottom, where the bottom is 120 to 230 m, and Baumgartner and Baumgartner and Mate (2003) observed rightwhales foraging on discrete layers of C. finmarchicus stage 5 copepodites (C5) just above the</p>

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		bottom mixed layer in the Bay of Fundy.
	h	8. Stellwagen Bank National Marine Sanctuary boundaries misrepresented. Section 3.3.1.2 of the DEIS indicates that Jeffreys Ledge and Stellwagen Bank are both within the SBNMS. While the commenter acknowledges that SBNMS does include a small portion of the southern end of Jeffreys, it does not encompass all of it. This may inaccurately portray that Jeffreys Ledge is afforded protection by SBNMS, when it does not, and in fact would only receive protection under DMAs under the proposed rule, which is not sufficient given that this area may be a fall feeding habitat and is frequented by large vessels calling at the Port of Portsmouth, NH.
	i	Comments directly relating to the proposed alternatives: 1. Unspecified variations between proposed alternatives. The differences of distance and dates between the proposed alternatives appear to be arbitrary and no rationale is provided for these variations. Alternative 3 utilizes the proposed SAM zones for the ALWTRP, which exclude CCB. It is unclear why CCB is not included in Alternative 3 as they are in Alternative 6. If NMFS intends it to be included, then this is not clear in the explanation provided.
	j	2. Proposed speeds considered are not consistent with findings from available research. Commenter questions why 14 knots was considered as a potential speed when research indicates most deaths occur in excess of 14 knots?
		This section has been updated in the FEIS. See response to #66a and #71e regarding measures in Jeffreys Ledge/Gulf of Maine.
		All of the dates in Alternatives 3, 4, and 5 have been streamlined to match the dates in Alternative 6, except for the year-round speed restrictions in the NEUS and the October 1 - April 30 period in the MAUS for alternatives 3 and 5. These dates are different because this alternative has more conservative measures, including implementing speed restrictions for longer time periods. Cape Cod Bay is included in Alternative 3, although this was not clear in Chapter 2, so the text has been revised accordingly.
		Fourteen knots was considered in the FEIS to provide a range of speeds, and to request comments from the public on this speed, even though this speed has less conservation value than lower speeds. However, the final rule identifies a speed restriction of 10 knots.

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	k	<p>3. Data presented are not qualified. Commenter is concerned as to how the alternatives were modeled using data on the frequency of ship strikes in the three regions. These data should be interpreted in light of effort. Questions why the DEIS did not analyze relative risk in the regions based on whale residency and vessel density. While the DEIS does consider positive impacts afforded to other species, it does not attempt to qualify these data.</p>	<p>The alternatives were not modeled using data on the frequency of ship strikes in each of the regions per se, rather they were based on sightings data that are corrected for effort and with regard to areas with a high density of vessel traffic. For example, in the MAUS, the speed restrictions are centered around major port areas, which by default, have a higher density of vessel traffic than an area without a port, and this area is also the migratory corridor for right whales. In a sense, the restrictions in the NEUS do reflect the relative risk in this area, which has the highest occurrence of ship strikes of the three regions, and it also has three SMAs that are in place for longer periods than those in the MAUS or SEUS, where ship strikes do not occur as frequently. The section on the positive impacts other species has been expanded in the FEIS, and is based on the description in Section 4.2.4.1 of the FEIS, and cited from Jaquet et al., 2005; Merrick, 2005; NCOOS, 2006; and Mahaffey, 2006.</p>
	l	<p>4. Analyses are incomplete and may not adequately address risk. Section 1.3 mentions the 82' vessel collision, but not the more recent collision with a smaller, 43' foot vessel. The time period for the ORP SMA still does not provide protection for whales entering into CCB from ORP.</p>	<p>The section has been updated to include the recent collision with a 43' foot vessel. See response to # 66a.</p>
	m	<p>5. Funding cuts are not considered in the DEIS. There is a proposed 25% (\$2 million) reduction in the right whale budget for FY07. Yet, the DEIS does not address how potential cuts in funding will impact existing measures which NIMFS' acknowledges are already insufficient as sole protection measures.</p>	<p>NMFS acknowledges that appropriations for right whale protection can fluctuate. However, NMFS is committed to implementing (as a matter of priority) measures that reduce threats to, and fosters recovery of, this species. In addition, aircraft surveys aside, which are a part of right whale base funding, the ship strike reduction program and its related activities is not expected to be resource intensive.</p>
	n	<p>6. Dynamic Managed Areas are insufficiently addressed within the DEIS. The DEIS states the triggers for a DMA, although is unclear as to whether a single reliable report must be one individual reporting all three whales. The DMA triggers for the MAUS are unclear in how one would determine whether the animal is migratory or not. Unclear whether the triggers for DMAs were exclusively visual, or could include acoustical documentation of whales in an area. The DEIS does not appear to discuss the time necessary to implement a DMA and resulting affect on potential risk reduction. Furthermore, the DEIS does not take into account proposed cuts in funding for aerial survey funding when considering the value of DMAs.</p>	<p>A single reliable report could consist of one individual reporting the aggregation of three whales. The DMA triggers specific to migratory whales are not proposed in the final rule. Instead, the Clapham and Pace trigger would apply to all areas throughout the range of right whales. At this time, acoustic detection is not included in the process for triggering a DMA; however, NMFS is considering ways to make this and other detection technologies a means for informing DMA and other conservation programs. DMAs are now voluntary in the final rule; they will be effective immediately through various maritime communication media. Section 1.2.1.1</p>

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		of the FEIS describes funding with respect to aerial surveys and DMAs.
	o	7. Sovereign vessel exemption is not justified. The DEIS does not clarify why sovereign vessels, under normal operation simply requested to voluntarily comply. It is unclear why the designated measures for military vessels do not coincide with those proposed in the DEIS.
	p	8. Ambiguous suggestions within the alternatives. The proposed ATBA is mentioned, but there is no indication as to when this will happen or how this was considered in the DEIS.
	q	No cogent explanation as to why Alternative 6 is the preferred alternative.

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No.	Sub.	Specific Comment	
111	a	<p>The available scientific data does not support NMFS' contention that reducing vessel speeds will decrease the likelihood or severity of ship strikes of the North Atlantic Right Whale, or that the data support a 10-knot versus 12- or 14-knot speed restriction. The data set used to support NMFS' recommendation is extremely limited, particularly at 10- to 14-knot and slower speeds, and each of the studies cited in the Proposed Rule to support the speed restriction clearly acknowledges the shortcomings of the data. The data are so inconclusive regarding whether or not reducing vessel speed will minimize the likelihood or severity of vessel strikes, and the economic impact of the proposed regulations so great, that the proposed speed restrictions are premature, scientifically unsubstantiated, and could do more harm than good. <i>Refers to Testevrede and Hain report.</i> NMFS should withdraw proposed rule from consideration and immediately pursue hydro, acoustic, technological and other studies to develop and implement solutions. Once that is accomplished, revised proposal should be issued.</p>	<p>See the responses to comments in the final rule and Section 4.1.3 of the FEIS. Also see response to # 111h regarding technology.</p>
	b	<p>More than 50% of reported large whale collisions involved vessels that would have been exempt from rule. Explain further decision to exempt >50% of vessels involved in historic strikes. No explanation is provided how non-emergency agency operations such as routine transits would be compromised. NMFS provides no explanation as to why mandatory speed limits are proposed for merchant vessels when the requirements in place for the non-emergency operation of military vessels have been repeatedly determined by the agency to adequately protect the right whale. The effectiveness of the rules for military vessels should cause the agency to advocate their use for merchant vessels. In regulating commerce, Federal agencies should first consider less costly and intrusive measures, particularly when those measures are likely to be equally effective in accomplishing the desired goal. Rules for vessels in routine, non-emergency ops should be identical for commercial and military vessels. Any proposed regulations should apply to all vessels, including government vessels and vessels <65' LOA.</p>	<p>Note that the introduction of the Ship Strike Database Report (Jensen and Silber) states that there is likely a reporting bias for Federal vessels because they are expected to report ship strikes, while other vessel operators either have little incentive or are unaware of a strike; therefore the actual number of non-Federal vessels is likely higher than reported in the database. Regardless of the number, most Federal agencies are already operating under ship strike reduction measures from Biological Opinions that are similar to measures in the rule. See response to # 110o in regard to Federal vessels engaged in non-emergency operations. NMFS has examined a number of less costly measures, although none were found to be equally effective (See Section 2.3).</p>
	c	<p>NMFS uses the average speed at which vessel strikes occurred to support the proposed speed restrictions. However, it is important to note that the average speed at which vessel strikes occur coincides with the speeds that vessels typically travel. There have been few whale strikes at speeds less than 10 knots because vessels do not typically travel at this speed (other than as they enter ports, where whales are typically not present). The data do not provide any indication that vessels moving faster are more likely to strike whales. In fact, the Jensen and Silber data could indicate that ship strikes decreased as vessel speed increased. Pace and Silber only used the mandatory ship reporting system (MSRS) data, rather than a more extensive data set. MSRS data does not include military vessels, recreational vessels or commercial vessels less than 300 gross tons.</p>	<p>"Average" speeds were not used in setting vessel speed restrictions. Several studies (e.g. Laist et al., 2001; Vanderlaan and Taggart, 2007; Pace and Silber, 2005) found that vessel speed was a factor in ship collisions, and the two latter studies assesses speed as a probability (not an average) of resulting in serious injury or death. With regard to average speed used by vessels, Pace and Silber (2005) examined the distribution of speeds at which known ship strikes occurred relative to speeds of ships reporting into the MSR systems, which were considered representative of speeds that ships travel in general. The authors found that the two distributions were statistically different. That is, these data suggest that vessels involved in ship</p>

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		strikes were going faster than ships tend to travel in general.
	d	Commenter supports the Dynamic Management Area (DMA) concept as long as DMAs are triggered and remain in effect based on reliable, real time information on whale locations. DMA should expire after 3 days unless subsequent surveys indicate RW remain. Lifting of DMA should be accomplished by marine broadcast and other means in addition to or rather than FR publication to ensure prompt communication.
	e	Any regulations promulgated should require vessels to travel at a slow, safe speed rather than a set speed limit. This allows the vessel operator, who knows the characteristics and limitations of the vessel being operated, to make real time decisions based on weather conditions and other location-specific circumstances as to a safe transit speed. "Slow, safe speed" standards, consistent with USCG and Navy vessels, rather than a set speed limit. If NMFS sets a speed limit, it should be no less than 14 kts, as this is better supported by scientific data and addresses industry concerns. (See <i>comment letter for extensive comments on USCG requirements and Section 7 consultation.</i>)
	f	Neither the preamble to the proposed rule nor the DEIS discuss or analyze the significant differences between the burdensome and costly proposed rules for merchant vessels and the rules which apply to military vessels. Chapter 2 of the DEIS does not address the Navy and Coast Guard vessel operating rules as an alternative. Without an analysis of whether the existing restrictions for military vessels would be effective for merchant vessels operating in the same waters, the proposed speed restrictions are arbitrary and capricious in that the agency has failed to consider an alternative being used to address a large category of vessels that have historically been involved in whale strikes. There does not appear to be any scientific basis for using a different approach to protect whales from government versus commercial vessels.
		The period in which a DMA is in effect was based on information regarding right whale residence time in specific areas (Clapham and Pace) and will not be revised to a 3-day conclusion in the final rule. Lifting of a DMA is will be announced through customary maritime communication media, including, but not limited to, marine broadcasts, NOAA weather radio, web sites, e-mail and fax distribution lists, etc. The final rule identifies a 10-knot speed restriction. See response to #38a in regards to maneuverability. Slow safe speed can be subjective and is not enforceable.
		As stated in response #110o, in the long run, after Section 7 consultations are reviewed, it is likely that the ship strike reduction measures identified in Biological Opinions will be very similar to the measures identified in the final rule, and equally protective. While USCG and Navy operations are not discussed in Chapter 2, Section 3.4.7 of the FEIS describes the number of vessels each agency operates on the East Coast, and the nature of their operations. Appendix A of both the Draft and Final EIS further describes these agencies current ship strike reduction measures. Also see response to # 111b in response to ship strike reports and Federal vessels.

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No.	Sub.	Specific Comment	Response
	g	<p>In response to comments on the DEIS scope expressing concern about the safe navigation of vessels at these speeds, NMFS replied: "The USCG has implemented speed restrictions of 10 knots or less; these speeds apparently do not affect maneuverability in most circumstances." If NMFS continues to pursue set speed limits, to which we are opposed, we request that they provide a list in the FEIS (or prior) of locations where USCG has proposed <10 kt speed restrictions in open ocean areas similar to the areas for which the regulations would apply. We also request that the FEIS provide documentation that USCG agrees that whatever vessel speed restriction is promulgated will not affect maneuverability in the areas affected by the proposed speed restrictions even: 1) under various weather conditions (particularly since the SMAs and DIMAs are largely in place in the winter and spring months in which high winds and other adverse weather conditions are a common occurrence); and 2) for the range of vessels to which the regulations will apply. If set speed restrictions are imposed, it is imperative that they contain a provision that allows the vessel operator to maintain a higher speed if necessary to ensure safe navigation.</p>	<p>NMFS did not receive any definitive data or information during the comment period on the rule or DEIS that vessels lose steerage at specific speeds. Speed restrictions imposed by the USCG (identified in the rule), National Park Service, and ports of Los Angeles and Long Beach suggest that large vessels are able to maintain steerage at reduced speeds. Nonetheless, based on comments received, NMFS has allowed provisions for vessels to maintain speed in adverse weather conditions. Approval of the rule by the USCG and other Federal agencies is provided during the interagency clearance process. See response to #38a for this language.</p>
	h	<p>NOAA continues to dismiss technological solutions on the basis that no proven technology is currently available. Industry representatives have repeatedly indicated that they can avoid a whale if they know its location, yet neither the recommended strategy nor NOAA's and other available resources focus on research and development of potential technological solutions. The foundations of a technological solution are available, and perhaps if funding and research over the past decade had focused on developing technology to reduce the likelihood and severity of ship strikes, we would already see results.</p>	<p>NOAA is committed to exploring and testing technological solutions to address ship strikes, and has provided substantial funding for a number of years for research and development (http://www.nero.noaa.gov/prot_res/prgrants/index.htm). However, any technological solution must be (a) proven as directly effective in reducing ship strikes, and (b) environmentally benign. At this time, NMFS believes that no technology exists or will be imminently available that has both of these features, and therefore, existing technologies are not capable of meeting the objectives of directly addressing and eliminating the problem. Even with perfect detection technologies, the mariner must still take evasive action, such as slowing down, which may put undue burden on responsible mariners who alter course or speed when others do not, thus affecting navigational safety. Further, this type of voluntary action has not proven to be sufficient.</p>
	i	<p>Extensive comments about PARS routing, and is not pleased with the public comment period for PARS. TSS Option #1 should be implemented through the IMO rather than Option #4. (See letter)</p>	<p>Outside the scope of the EIS.</p>

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<p>Sub.</p> <p>j</p>	<p>Specific Comment</p> <p>Economic analysis significantly underestimates likely impact of regulations. Economic and environmental impact analyses should be revised and reissued for public comment to address all of these comments.</p> <ol style="list-style-type: none"> 1. ATBA and Boston TSS should be included in the economic impact analysis for the preferred alternative. 2. The proposed speed restrictions shown in Figure 4-12 of the Nathan Associates report are less extensive than those in the proposed rule. 3. The proposed 10-knot speed restrictions were released prior to the DEIS, although the economic analysis in the DEIS focuses on a 12-knot speed restriction. 4. The Indirect impacts are still not qualified, in part due to faulty underlying assumptions that are applied equally to all ports. 5. The EIS should quantify and evaluate the additional truck traffic and air emissions associated with cargo diversions that may result from the proposed regulations.
	<p>NMFS does not believe that additional public comment is warranted given that a total of 102 and 92 days were provided for commenting on the rule and DEIS, respectively. In addition, numerous stakeholder and industry meetings were held, interviews were conducted at key port areas, and no specific data were provided to support the comment on underestimating the economic impact.</p> <ol style="list-style-type: none"> 1. The ATBA and Boston TSS are not included in any of the alternatives in the FEIS, but they are quantitatively and qualitatively considered in the cumulative impacts section. 2. The Great South Channel is not shown in Figure 4-12 as it is organized by port region and port area to match with port arrivals. However, a clarifying footnote was added in the FEIS to include the speed restrictions for the Great South Channel. Those speed restrictions were taken into consideration for the FEIS Economic Analysis. 3. As noted, the detailed economic analysis of Alternative 6 at the 10-knot limit is presented in Appendix F of the DEIS Economic Analysis Report. In the FEIS, all alternatives are analyzed in detail at 10 knots. 4. Under Alternative 6 speed restrictions are proposed for Boston for only two months, not the 4-5 months indicated by the commenter. The FEIS further explains the rationale for the assumptions on diverted traffic. 5. The economic analysis indicates that under certain alternatives a minimal percentage of vessels may be diverted, which could result in cargo being transferred to truck or rail. These percentages do not merit a detailed air quality analysis of emissions from these intermodal sources, as the effects are expected to be minimal. Further, it would be difficult to estimate the quantity of cargo being diverted, the destination, and the type of intermodal source the cargo would be transported by. While vessels may be diverted to other ports under certain circumstances, this would not increase emissions at sea; it would only redistribute them, and further, the reduction in emissions from reduced speeds may serve to balance out the introduction of additional emissions in a certain port area.

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112	a	Strongly support Alternative 5 at a 10-knot speed restriction for all vessels greater than 65 feet, and only narrowly drawn exemptions for national security and human safety.	Acknowledged
	b	The sweeping [Federal agency] exemption encompasses a class of vessels known to be one of the largest contributors to mortality in right whales and is overly broad to meet the need that certain missions may be compromised by speed restrictions. Research vessels and other vessels with no tie to national defense or lifesaving should not be exempt.	See response to # 100f
	c	<u>Executive Summary:</u> The alternatives table on ES-3 states that there are no SMAs proposed for alternatives 3 and 5, yet these speed restrictions are seasonal. NMFS should use terminology that allows readers to better discern the differences intended between SMA and seasonally imposed measures. Alternative 5 only offers the highest level of protection in relation to the other five alternatives (ES-6), but in some cases it is less protective than Alternative 6. The DEIS should explain the rationale for limiting protective measures in non-preferred alternatives.	The DEIS used language that differentiated the SMAs in alternative 6 with those proposed in alternatives 3 and 5. The FEIS consistently uses the SMA terminology throughout the document. Section 2.6 of the FEIS explains the rationale for choosing the preferred alternative over other less protective alternatives.
	d	<u>Chapter 1:</u> Section 1.2.1.1 - The DEIS should provide information on recent trends in funding for surveys and the relative contribution of systematic surveys versus opportunistic "reliable" reports for determining when to trigger Dynamic Management.	The FEIS provides information on funding for surveys from 2000 through Fiscal Year (FY) 07. For DAMS implemented through the ALWTRP from January - November 5, 2006, 7 were triggered through sightings on surveys and 4 were triggered through reports from Provincetown Center for Coastal Studies (PCCS), Whale Center New England (WCNE), a whale watch boat, and a commercial tanker. Although all reports, except those from PCCS and WCNE must be verified by NMFS.
	e	Section 1.2.1.4 - As the NEIT has been virtually disbanded and the role of the both implementation teams has changed to support education on the Strategy, the DEIS is misleading in its implication that recovery teams exist for right whales or any endangered whales on the US East Coast.	Descriptions of activities of the NEIT and SEIT have been updated to reflect their current status through FY08.
	f	Section 1.2.1.6 - This section should state the lack of compliance with ship advisories, and which agencies have not complied with the NMFS advisories recommending slowing to 12 knots or less, as this helps in understanding the impact of exempting Federal vessels from otherwise mandatory risk reduction measures.	This section has been revised to include the requested information.
	g	Section 1.4 - Disagrees with the timing of the measures for Off Race Point and Great South Channel. Questions the mechanism for triggering a DMA. Concerned that routing is not part of the current rulemaking; the DEIS should discuss the risk to whales if recommended routes are not designated or/and when protective measures are implemented on a staggered basis.	See responses to # 66a and #71e. The mechanism for triggering a DMA is based on analysis by Clapham and Pace (2001). The recommended routes were implemented in November 2006.

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		Response
	h	<p>Chapter 2: Section 2.1 - Any exemption from compliance with the operational measures should be limited to those involved in activities related to national defense or life saving. The DEIS should contain an estimate of the number of vessels that would be exempted from compliance so that the impact of this exemption on risk reduction can be appropriately gauged.</p>
	i	<p>Section 2.1.1 - Concerned that the measures in the SEUS do not apply throughout the Southeast Critical Habitat, and in particular, there are no measures proposed for Port Canaveral in the preferred alternative. The time periods for implementation in the SEUS differ from alternatives 3 and 5 from alternative 6. The truncated time period (Dec. 1 - Mar. 31) for alternatives 3 and 5 should be corrected to coincide with NMFS' own stipulation of the time of greatest risk to right whales in the SEUS (Nov. 15- Apr. 15).</p>
	j	<p>Section 2.1.1.2 - It would be helpful for the DEIS to provide the data and basis underlying the conclusions in textual form regarding the shipping lanes in the SEUS, because figures 2-1 and 2-2 only show the 'relative' risk reduction and not the whale sightings.</p>
	k	<p>Section 2.1.2 - Only some of the mortalities in the MAUS are included in the DEIS. In 2004 alone, two pregnant right whales and their near-term calves were found dead off NC from ship strikes and another female was seriously injured off Georgia in 2005.</p>
	l	<p>Section 2.1.2.1 - The language in the DEIS does not make it clear that the 30-nm distance in the MAUS is proposed only in the preferred alternative and not the distance from shore proposed in alternatives 3 and 5. The DEIS does not analyze the differential risk posed by omitting this 5 nm swath in alternatives 3 and 5. Concerned that the Block Island Sound SMA does not protect the area north of the boundary, and suggests extending measures northward to the COLREGS line in this area.</p>
	m	<p>Section 2.1.3.1 - The DEIS should provide a summary of the data that underlie that choice of the time period for CCB rather than simply assert the Jan. 1 - May 15 period.</p>
	n	<p>Section 2.1.3.2 - The text provides no justification for the very limited time period for protective measures in ORP when available data indicate that the measures should be in place by at least January 1, coinciding with the start date for CCB. The DEIS analysis should consider the need to restrict ship traffic in the ORP area from Dec. 1 through May 30 and discuss the relative risk of instead choosing the shorter period of time.</p>
		<p>See response to 100f. The FEIS contains an estimate of the number of Federal vessels that will be exempt (see Section 3.4.7).</p>
		<p>Whale distributions around Port Canaveral do not extend very far from shore because of the steep slope and high water temperatures. While sightings occur in the area, they are all close to shore in waters that are shallower than large vessel drafts. On the port approach, vessels would have slowed down by the time they get into shallow water where whales occur. Based on comments, NMFS has modified the dates for alternatives 3 and 5 to November 15 - April 15 in the FEIS.</p>
		<p>This section has been revised to include the data underlying the placement of the recommended routes in the SEUS, which was based on right whale sightings, vessel traffic and safety of navigation.</p>
		<p>The second female mortality in North Carolina has been added to this section; however the serious injury in Georgia is included in the SEUS region section.</p>
		<p>Section 2.2 of the DEIS provides an explanation that states that some of the measures proposed in Section 2.1 have been modified for certain alternatives. Section 2.2.6 states that Alternative 6 implements the measures described in Section 2.1; some of which have changed since the DEIS (see Section 2.3). Sections 2.2.3 and 2.2.5 further clarify the 25-nm distance in the MAUS. The FEIS analyzes the risk posed by omitting 5-nm in alternatives 3 and 5. See response to #29b for the Block Island Sound SMA.</p>
		<p>This section has been revised to include a summary of the data used to determine the time period for CCB.</p>
		<p>This section has been revised to include a summary of the data used to determine the time period for ORP. See responses to #66a and #71e.</p>

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No.	Sub.	Response
		Specific Comment
	o	Section 2.1.3.3 - The timing of protective measures in GSC must also begin Jan. 1 to protect northward migration, and the DEIS should consider the benefits of extended protection.
	p	Section 2.1.4 - It would be helpful if the DEIS discussed the relative contribution of dedicated surveys versus "qualified individuals" in triggering DMAs and thus speculate on impacts to DMA if surveys are dramatically curtailed for budgetary reasons. Whales are left unprotected for an average of 10 days prior to implementing restrictions. NMFS should work with the USCG to develop real-time implementation, under the USCG's Limited Access Areas authorization. The Final EIS should clarify what is meant by a "concentration of three or more whales" and how it differs from criteria developed by Clapham and Pace.
	q	Section 2.2.3 - The final rule to amend the ALWTRP has not yet been published and the boundaries of the SMAs in alternative 3 remain uncertain. The DEIS should analyze the relative risk reduction if boundaries for the fisheries-related seasonal management areas remain unchanged.
	r	Section 2.2.4 - The DEIS should discuss why speed restrictions have not been considered as a requirement with the lanes it proposed in Alternative 4, and should analyze this risk. Commenter is concerned that the ATBA for the GSC could not go into effect until 2008.
	s	Chapter 3: Section 3.1 - Concrete information on right whale seasonal distribution should be provided in this section such that reviewers can readily see sightings mapped in the context of the various areas in which risk reduction measures are proposed.
	t	Section 3.1.2.2. - This section does not discuss residence time in CCB, thus commenter suggests incorporating Mayo 2001-2004 and Scheville et al. 1986.
	u	Section 3.1.2.3 - The source, Payne et al. 1990 should be incorporated into this section as it discusses the distribution of right and humpback whales in relation to the abundance of sand lance.
	v	Chapter 4: Section 4.1.3 - Extend information regarding avoidance time if speed were reduced to 10 knots, and when the vessel is 91 meters from the whale rather than 50 meters, since NMFS states that last-second flight response may occur when a vessel is within 100 yards (approximately 91 meters).
	w	Section 4.1.3.1 - The analysis should discuss the number of whales that would be unprotected during this truncated period of protection in ORP in light of studies indicating their distribution and movements through this area in January through March.
	x	Section 4.1.3.3 - SEUS speed restrictions and their relative impact are difficult to understand from the text in this section; it would be helpful to have a map clearly showing the differences between alternatives, as the current figure (2-14) is small.
		See responses to # 66a and #71e.
		The FEIS includes information on the DMAs triggered from qualified individuals verses dedicated surveys. After a DMA is triggered and verified, the location and parameters of DMAs would be distributed immediately, and the DMA should be voluntarily observed immediately. The USCG's Limited Access Areas authorization will not be utilized for the DMA program. The criteria for DMA triggers and parameters are described in Clapham and Pace and the FEIS.
		The boundaries of the SMAs in alternative 3 will remain as proposed in the DEIS even if these boundaries are altered in the final rule to modify the ALWTRP.
		Speed restrictions are not considered with the lanes in Alternative 4 as there were several comments on the NOI to analyze the effectiveness of routing measures as a stand alone measure. If approved, the ATBA in the GSC would not go into effect until 2009, although speed restrictions should be in place prior to this date.
		Chapter 2 has been revised to include maps with sighting data for the three regions, and the figures also show the measures.
		These references have been added to Section 3.1.2.2.
		This reference has been added to Section 3.1.2.3.
		Information in this section has been extended to include avoidance time when a vessel is 100 meters from the whale (information at 91 meters is not available).
		Whales will not be unprotected during January through March because DMAs will be implemented if three or more whales are sighted outside the time of ORP.
		A separate figure for Alternative 6 has been added to the FEIS (Figure 2-18).

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	y	Section 4.1.4.1 - The DEIS should discuss the fact that the shift in the Boston TSS may take effect in 2007, whereas the ATBA may not take effect until 2008, and evaluate the risk reduction if the ATBA does not go into effect along with other measures proposed in Alternative 4, 5, and 6.
	z	Section 4.4 - The economic analysis significantly overestimates the costs that may result from implementation of the regulations, although it fails to quantify the economic benefits that will be realized.
	aa	Section 4.4.3 - The potential indirect impacts, including the diversion of traffic to other ports, increased intermodal costs, and impacts on local economies are accounted for in this Section. However, with respect to traffic diversions, the analysis that specifically addresses the possibility of vessels bypassing Boston is based on several unsupported assumptions. The analysis that assumes 20% of container and ro-ro shipping volume would be diverted to Canada is also unsupported. Therefore, these assumptions undermine the reliability of the conclusion that Alternative 5 would result in indirect impacts of over \$159 million at 10 knots. Sections 4.4.4-4.4.7 summarize data on the impacts on commercial, fishing, passenger vessels, whale watching vessels, and charter vessel operations from the DEIS Economic Analysis Report. (See letter for specific comments.)
	ab	Appendix A: The DEIS must, in some place, discuss the number of sovereign vessels and vessels under contract to the government, since it proposes to exempt them. Also, there are significant discrepancies in timing and nature of protective measures in the BO's summarized in this appendix from those in the proposed rule. The risk reduction measures in the final rule should be a part of reasonable and prudent alternatives to jeopardy in any new BO's.
113	a	Urges NMFS to reject the 12 and 14 knot options in favor of 10 knots.
	b	Urges NMFS to consider an exemption to speed restrictions for all vessels and ports when: 1) vessels are landward of the sea buoy, 2) vessels are under the control of a licensed pilot, and 3) the pilot determines that increased speed is necessary for safe passage.
		The FEIS discusses timelines for making modifications to the TSS servicing Boston and establishing an ATBA. One modification to the Boston TSS occurred in July 2007, and while a second modification to the TSS and creation of the ATBA may not occur until 2009, speed restrictions will be imposed in this area through the GSC SMA in the interim.
		The commenter notes "that this (economic) analysis provides an accurate upper-end picture of the potential economic impact of these regulations. Hence the later statement that the analysis significantly overestimates the costs that may result from the implementation of the regulations must be considered within this context. The second part of the comment relates to the economic benefits of protecting the right whale which is being analyzed under a contingent valuation study separate from the EIS effort. See response to # 78b.
		4.4.3: Further explanation of the assumptions used for port diversions are presented in the FEIS. The cost of increased vessel time due to delays caused by the operational measures have been included. If cargo is to divert to other routes this would be because the total additional costs associated with those routes are less than the cost of vessel time due to delays at the current port. Hence it would be double-counting to also include any additional overland transport costs to the estimated impact already presented. 4.4.4 - 4.4.7: These comments are generally summary statements that do not require a response.
		See response to #112h regarding the number of Federal vessels. See response to #110o regarding the discrepancy between the measures in Biological Opinions and those in the rule.
		Acknowledged
		See responses to #38a

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction

No.	Sub.	Specific Comment	Response
	c	<p>The boundaries of the SEUS SMA should be expanded northward and seaward 30 nm to include the ports of Savannah and Charleston in addition to Jacksonville, Fernandina and Brunswick. The landward boundaries of the SEUS and NEUS SMAs are not defined; commenter proposes the COLREGS lines. A contiguous MAUS SMA (similar to Alternative 3) should be proposed and effective from Oct. 1 to Apr. 30 in between the NEUS and SEUS SMAs out to 30 nm.</p>	<p>The boundary of the SEUS SMA has effectively been expanded northward in the final rule, although this area is included in the MAUS region. The SMA in the southern portion of the MAUS region now has speed restrictions in a continuous 20-nm area from Wilmington, NC, south to Brunswick, GA. This action will provide added conservation value because an aggregation of right whale sightings along the South Carolina coastline will be included. The landward boundaries of all measures are the COLREGS lines. A contiguous SMA for the entire MAUS was considered in Alternative 3, although this measure has a higher economic impact on the shipping industry, and thus is not included in the preferred alternative. The dates remain unchanged.</p>
	d	<p>Supports routing measures provided that NMFS: 1) implements voluntary routes in a timely manner, 2) implements routes for MAUS ports where routing would reduce risk of collision, and 3) reconsiders mandatory routing measures if compliance rates are low.</p>	<p>Recommended routes were established in mid-November 2006, and if after monitoring, NMFS finds low compliance rates, mandatory routes will be considered. Routing measures for MAUS ports are not considered in the rulemaking.</p>
	e	<p>DMAs will likely be ineffective, cumbersome, and costly to implement in the MAUS and SEUS.</p>	<p>Acknowledged</p>
	f	<p>The DEIS fails to explain how NMFS intends to enforce speed restrictions and what penalties will be levied for noncompliance. NMFS should coordinate with USCG to obtain access to the AIS network.</p>	<p>See response to #29c</p>
	g	<p>Encourage NMFS to redouble its support for technological solutions. Additional funding, interagency collaboration and access to scientific research permits are sorely needed in order to develop practical, long-term, whale detection/avoidance technologies.</p>	<p>See response to # 111h</p>
114	a	<p>Support the PARS routes, the ATBA, and implementation of DMAs.</p>	<p>Acknowledged</p>
	b	<p>Commenter does not see the scientific basis in the record of the rulemaking for imposing a 10-knot speed restriction within 30-nm of East Coast ports in the mid-Atlantic range. Therefore, commenter urges NMFS to adopt an interim final rule implementing measures which help mariners avoid areas where right whales are, or are likely to be, at certain times. These measures should include sovereign vessels and vessels under 65 feet. Then, during the Interim final rule, NMFS should undertake serious scientific research on the speed issue.</p>	<p>Outside the scope of the EIS (comment refers to the rulemaking).</p>
	c	<p>Commenter finds no compelling evidence that speed is a determining factor in the incidence of ship strikes to large whales.</p>	<p>See responses to # 53a and 70.</p>

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No.	Sub.	Specific Comment	Response
	d	<p>Commenter submits that the ship strikes reported in Jensen and Silber indicate that ship strikes decreased as vessel speed increased, partially because more ships travel in the slower speed ranges.</p>	<p>Death and serious injury probability analysis (Vanderlaan and Taggart, 2007; Pace and Silber, 2005) indicates that vessel speed is a factor and that probability increases with vessel speed. The probability of death occurring from a collision was approximately 35-40 percent at 10 knots, 45-60 percent at 12 knots, and 60-80 percent at 14 knots. See responses to #72a and #103b.</p>
	e	<p>Commenter quotes Vanderlaan and Taggart (2006) and states the study concluded that "...the encounter probability [between a ship and whale] increases slowly as speed decreases from 24 knots or greater and then begins to increase more rapidly as vessel speed continues to decrease toward zero."</p>	<p>Commenter misinterpreted the data; the increase in encounter probability between 24 knots and 6 knots is less than one-tenth, indicating that there is no statistically significant difference in encounter probability between 24 and 6 knots, which includes the range considered by NMFS. Only speeds below 6 knots would have a significant increase in encounter probability, and NMFS is not considering speeds that low. That is, slower vessels only pose a greater threat to right whales by transiting an area longer if they are traveling less than 6 knots.</p>
	f	<p>Upon reviewing the records in Jensen and Silber in which vessel speed and size are known, less than 9% of the incidents involved vessels within the size range and type most affected by the rule, and all of the interactions occurred at speeds in excess of 15 knots, which indicates this should be the minimum speed limit.</p>	<p>Vessels less than 65 feet have been implicated in ship strikes, and NMFS realizes that these vessels may pose a threat to right whales, and will consider means, including future rulemaking, to address this issue. In terms of vessel type, Jensen and Silber (2003) indicate that there is a reporting bias for military vessels due to standardized government reporting, therefore it is likely that strikes with other vessel types that are subject to the rule are underestimated. Even though Federal vessels are not affected by the rule, most of these agencies are operating under ship strike reduction activities identified in Biological Opinions. See response to #114d regarding speed.</p>
	g	<p>There are 13 vessels in the Jensen and Silber data set that are less than 20 meters, which is more than twice the amount than those lengths affected by the rule. This indicates that vessels less than 20 meters in length are of far greater concern than large containerships.</p>	<p>The rulemaking will apply to vessels 65 feet and greater, although vessels less than 65 feet may pose a threat to right whales, and NMFS will continue to consider means, including future rulemaking, to address vessel classes below 65 feet. In the meantime, NMFS will continue to engage in education and outreach programs regarding right whale vulnerability to ship strikes specific to the recreational, fishing, and other coastal maritime activities that involve vessels less than 65 feet.</p>

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No.	Sub.	Specific Comment
	h	The proposed rule provides virtually no discussion of the extent to which the proposed speed restrictions may be based on an attempt to lessen the severity (as opposed to the frequency) of a whale/vessel collision.
	i	1. Commenter urges NMFS to guard against the unsupported assumption that is some speed reduction is good, a greater speed reduction must be better. 2. The admitted need for additional hydrodynamic testing indicates it is entirely possible that the optimum speed for avoiding whale injury is not necessarily the slowest navigationally feasible speed. 3. Moving from no controls to the most severe controls precludes any possibility of collecting additional data at speeds between today's 18-22 knot average and the most severe proposed restriction of 10 knots.
	j	The 30-nm zone in the mid-Atlantic is arbitrary with no adequate scientific evidence that the measures will provide added protection for right whales. Given the evidence that most strikes in the mid-Atlantic occur near shore by smaller vessels, 20-nm is a more logical limit.
	k	If the agency were in fact to issue a final rule with a 30 nm speed restriction zone around each mid-Atlantic port, it would need to explain the relationship of the data presented in Table 1, "Combined distance from shore of all sightings and tagged animal sighting" and Table 3, "Total number of sightings within 40 miles of port and % within each buffer" of <i>Knowlton (2002)</i> and affirmatively demonstrate that whales are found further offshore around port areas than in other areas.
	l	If NMFS were to issue a final rule with a 30 nm geographical scope, it would have to explain why 20 nm is adequate for Navy vessels, but 30 nm is necessary for commercial vessels. Failure to provide a reasoned explanation for these inconsistent positions would render any rule incorporating a 30 nm limit arbitrary and capricious.
	m	Reduced vessel speed for large ships results in reduced maneuverability, particularly for high-profile vessels and with hazardous weather conditions. Therefore any speed in the proposed rule must contain a safety exemption that permits a captain to conform his vessel's speed to the conditions he faces.
		Comment refers to the rulemaking. Outside the scope of the EIS.
		Outside the scope of the EIS.
		The 30-nm SMAs in the MAUS have been changed to 20-nm in the FEIS. The studies that form that basis for this change are described in Section 2.1.2. Also see response to #114k.
		NMFS partially relied on Knowlton <i>et al.</i> (2002) for the formulation of measures in the ANPR. Following the ANPR, and prior to publishing the NPR, NMFS conducted a review of the MAUS SMAs and the Knowlton paper (Memo from Richard Merrick to Greg Silber, dated 9/29/2005). A much larger database was utilized in the latter analysis, and several other parameters were revised. The Merrick (2005) review came to a similar finding that 90 percent of right whale sightings occurred within 30-nm of the coast. However, in the FEIS, there is a 20-nm zone around mid-Atlantic ports based on analyses conducted in 2008 (see Section 2.1.2 of the FEIS). The SMAs around ports are also based on the determination that vessel traffic is also concentrated at these locations.
		Outside the scope of the EIS.
		See response to #38a

Comments on the Draft Environmental Impact Statement for Right Whale Ship Strike Reduction		Response
No.	Sub.	Specific Comment
	n	The per hour cost estimate for a vessel at sea used in the estimate is 2.5-4 times too low.
	o	The estimate of hours lost per port call is 2.5-3 times too low.
	p	There is no estimate of the cost of extra fuel required to make up lost time on a multi-port string-a major added cost.
	q	The cost to the shipping and port industries and its customers if vessels are forced to bypass a port to maintain schedule is high but difficult to calculate or predict.
		<p>The commenter states the DEIS used an average operating cost at sea for containerhips of \$1,100 per hour. However, the actual weighted average operating cost at sea for June 2008 for containerhips presented in the FEIS report is \$3,140 per hour. Operating costs by type and size of vessel were presented to industry members during the course of the study who confirmed that they were in the correct range. The commenter did not provide justification for this statement; in order to review their per hour estimate, the commenter would have to provide hourly vessel operating costs for different size categories of vessels as shown in the economic report.</p> <p>The Economic Analysis addressed the issue of the time necessary for vessels to slow down as described in the report. In many port areas, vessels slow to board pilots. Perhaps the commenters did not take this into consideration.</p> <p>Increased fuel consumption for vessels having to go faster to make up time is not and should not be included in the economic analysis. The economic analysis conservatively assumes that vessels will not speed up to make up time and hence includes the maximum estimate of delay that would be incurred. If vessels make up for the delay by speeding up then the estimated economic impact would need to be revised to reduce or exclude the cost applied for the time delayed. Further the indirect economic impact would need to be lowered if the delays are avoided by increasing vessel speeds.</p> <p>The FEIS and accompanying economic report consider the cost of increased vessel time due to delays caused by the operational measures. If cargo is to divert to other routes this would be because the total additional costs associated with those routes are less than the cost of vessel time due to delays at the current port. Hence it would be double-counting to also include any additional overland transport costs to the estimated impact already presented.</p>

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No.	Sub.	Specific Comment
115	r	There are a number of other costs and operational considerations associated with speed restrictions that are not dealt with in the DEIS: 1). The DEIS recognizes the added cost to coastwise shipping in the cabotage trades based on additional miles traveled southbound along the coast to stay outside of the 30 nm zone. Commenter states that liner vessels in international trade would face the same situation and added cost. 2). Ships' engines will require additional maintenance as a result of continuous variation of speed and poor combustion, and engine fouling from slow steaming. 3). The ANPR restrictions are primarily during winter months when speed and schedules are already adversely affected by the weather. 4). Modern containership engines are designed to operate at a high RPM and are shown to have an increased production of NOx emissions when operated at lower RPM for a longer time.
	a	How can NMFS responsibly justify putting the entire economic burden for compliance with speed restrictions on 100% of the ocean going commercial fleet when, at best, it may be responsible for less than 50% of the collisions?
	b	Has NOAA considered a study of the maneuverability of vessels at each management area (each port) for each of the speed restrictions evaluated as part of the EIS (10, 12, and 14 knots)?

The first bullet under this comment is the need to include liner vessels involved in international trade in the estimated impact of coastwise and cabotage traffic. The FEIS clarifies that these vessels were included in the DEIS Economic Analysis Report. The second bullet relates to vessels that require additional maintenance as a result of the continuous variation of speed. This element was considered in the FEIS in qualitative terms. The third bullet states that restrictions are proposed during the winter months when speed and schedules are already adversely affected by the weather. To the degree that vessels are operating at slower speeds during the periods that speed restrictions are proposed, this would result in a lower estimate of economic impact. The fourth bullet relates to emissions produced when vessels operate at lower RPM for a longer period. Although emissions vary depending on engine type and age, in general, emissions decrease as speed decreases (see response to # 101e).

In nearly 300 records of known vessel collisions with all whale species, vessels of nearly all sizes and types are represented. The regulations as currently proposed would apply to all non-sovereign vessels 65 feet and greater. Therefore, if the regulations are established, the economic burden would be shared by all segments of the maritime industry operating vessels over 65 feet, including fishing, whale watch, and passenger industries, in addition to the ocean going commercial fleet.

Navigational safety is of utmost importance to NOAA. Although navigational characteristics may differ at individual ports, NOAA believes that meteorological and hydrographic conditions are not likely to be appreciably different at each port along the eastern seaboard. Therefore, NOAA has no current plans to conduct the studies suggested. If funding permits, NOAA may consider some hull maneuverability studies. In the meantime, NOAA is funding hydrodynamic studies of the effects of varying ship speeds on objects (e.g., whales) in the ship's path. NOAA believes that the operational measures should be consistent at all ports. If they differed, one port may suffer unnecessary and/or disproportionate economic hardship if shipping interests

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No.	Response
	sought other ports for their business (i.e., port dislocation).
c	Will NOAA study the impacts to vessel maneuverability with hydrodynamic models of each of the ports included within the proposed SMAs?
d	Has NOAA considered minimum safe speed as an alternative to naming a specific vessel speed restriction?
e	If the USCG is tasked with enforcement, how will this additional responsibility impact its other critical duties, such as homeland security? Will these issues be addressed in the EIS and will these issues be included in the economic impact study?
f	Did NOAA consider a provision by which to terminate the speed restrictions?

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Response

sought other ports for their business (i.e., port dislocation).

The studies suggested have not been contemplated. See response #115b.

See response to # 38a

NMFS and USCG are developing enforcement protocols that likely will involve technologies. The USCG's responsibility for enforcement is not expected to adversely affect their homeland security missions. These issues are not addressed in the FEIS or Economic Impact Study; they are only addressed in the final rule.

There is some uncertainty regarding the manner in which ships and whales interact and the relationship of speed and other factors to whale injuries and mortalities. As further discussed in the comment and responses section of the rule, some commenters, citing these uncertainties, have raised issues regarding whether this regulation will significantly reduce serious injury and deaths of large whales caused by ship strikes. In view of these uncertainties, and the burdens imposed on vessel operators, this rule will expire five years after the effective date of the final rule. During the five-year effectiveness of the rule, to the extent possible with existing resources NOAA will synthesize existing data, gather additional data, or conduct additional research on ship-whale interactions to address those uncertainties. NOAA will also review the economic consequences of this rule. After this analysis is complete, NOAA will determine what further steps to take regarding this rule.

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No.	Sub.	Specific Comment
	g	<p>Will NOAA consider additional research on the right whale prior to setting speed restrictions? Can NMFS support the claim that there are only 300 right whales surviving today?</p>
	h	<p>Won't slower speeds keep vessels and whales in restricted areas for longer periods of time; thus increasing the potential for collisions? Can NMFS and NOAA guarantee that slower vessel speeds will reduce collisions between whales and ships?</p>
	i	<p>The economic analysis did not take into account several important factors and greatly undervalued the overall impact the industry and to the nation. Specific comments followed on the contribution of Georgia's ports of Savannah and Brunswick on the state economy, and concluded that based on these significant contributions, the impacts on these two ports were underestimated. Weather patterns at each of the affected ports should be evaluated and the costs of enforcing should also be included in the economic impacts.</p>
116	a	<p>Commenter has 5 passenger vessels in CCB and MA Bay, all 80-100' length overall, including ferry, whale-watch, and charter fishing vessels. An average trip at 20-25 knots takes 4 hours for 1-1.5 hrs of watching. A 10 knot limit would increase it to 6-hr trip. Expects to lose 90% of passengers.</p>

The measures contained in the rulemaking are based on the best available science. The determinations NMFS has made are based on tens of thousands of right whale sighting records, vessel traffic data, millions of dollars in research grants, and several years of synthesizing all that is known of this subject. NMFS has consulted industry experts and other Federal agencies. Nonetheless, data are always being collected that will help shape this and future actions. NMFS relies on Stock Assessment Reports (SARs) and peer reviewed literature to assess the status of the NARW population. The most recent SAR (Waring et al., 2007) indicates a minimum population size estimate of 295 individuals in 1992 (Knowlton et al., 1994); an updated analysis gave an estimate of 299 individuals in 1998 (Kraus et al., 2001). More recently, a review of the photo-id recapture database on June 15, 2006, indicated that 313 individually recognized whales were known to be alive during 2001(Waring et al., 2007).

See response to #102a. While vessels would be transiting for a longer time, the encounter probability does not increase at 10 knots; a vessel would have to be traveling at 6 knots or less for the encounter probability to significantly increase (Vanderlaan and Taggart, 2007). Based on the best available science, NMFS expects the 10-knot speed restriction to reduce collisions.

The comments provide information on the statewide economic impact of the ports of Savannah and Brunswick. However, the commenter provides no specifics to substantiate the comment that the economic impact analysis of the proposed operational measures is an underestimate. See response to # 115b regarding weather patterns. The cost of enforcing the restrictions will be borne by the Federal (and perhaps state) governments. The economic analysis assesses the costs to the maritime industry, and not the government.

These impacts are included in Sections 4.4.5, 4.4.6, and 4.4.7 of the FEIS.

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No.	Sub.	Response
		Specific Comment
		Response
	b	Suggests reducing the 500-yd restriction for RW approaches to a safe distance for observation and data collection.
	c	The 20 meter length designation is arbitrary.
	d	Exemption for sovereign vessels, should also exempt whale watching vessels.
	e	The DEIS fails to put forth an analysis on both the value of education and outreach provided by the whale watch operators and the value of out of season and out of habitat sightings of right whales provided to NMFS by whale watch operators.
	f	Given the size of the proposed management areas, it is unlikely that a vessel departing from Plymouth would re-route around Cape Cod Bay and Race Point to view whales in another area, as suggested in the DEIS.
	g	Recommends a 16-knot speed restriction and a 4 nautical mile diameter for DMAs with frequent monitoring and updating of whale positions.
117	a	The discussion in the DEIS allowing for discretion on the part of the master if safety is an issue is not readily apparent. Although in most cases 10 knots is probably safe for most ships under typical conditions, vessels that are difficult to maneuver may require greater speed in order to maintain course or effectively maneuver to avoid collision under certain combinations of wind and current.
		Commenter is referring to a separate NOAA regulation. Outside the scope of the EIS.
		Section 1.4 describes the rationale for the 65 feet (20 meter) length designation.
		Whale watching vessels will not be exempted with Federal vessels because whale watch operators are not required to consult under Section 7 of the ESA, therefore there is no separate mechanism to bring these vessels into compliance.
		The whale watching section (3.4.5) has been revised to address this comment.
		The statement in the DEIS about whale watching vessel operators seeking other whale habitats in the event of a DMA or during an SMA was a general statement and may not apply to all geographic areas.
		NMFS determinations regarding vessel speed restrictions are based on the best available science which indicates that greater conservation value is achieved at lower vessel speeds; that is the probability of serious injury and death decreases with lower speeds. NMFS is required to develop steps to recover the species and has determined that a 10-knot speed restriction has greater conservation value than speeds above 13 knots. The dimensions of the DMA are based on analysis of aggregation sites, movements, and duration (Clapham and Pace, 2001). NMFS believes these dimensions are appropriate.
		See response to #38a

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No.	Sub.	Response
		Specific Comment
		Response
	b	<p>The rationale for the proposed speeds is not well-supported. Although there are additional hydrodynamic studies proposed, it appears that at the present state of knowledge, the whale would have to be attempting to avoid the ship in order to have a decrease in speed reduce the risk of being hit, thus the assumption that 10 knots will be protective and reduce hydrodynamic forces that draw the whale into the ship or propeller does not seem warranted. Instead of proposing a maximum allowable speed, consider the example set by COLREGS and the Navy allowing for discretion on the part of the master if safety is an issue.</p>
	c	<p>Provide a synopsis of Navy protective measures and results of the 1997 BO early in the DEIS, when mentioning the exemption of sovereign vessels. At minimum, references to appendix A should be given whenever there is a specific mention of the sovereign vessel exemption.</p>
	d	<p>Provide a chart clearly depicting the ATBA.</p>
	e	<p>All language with regards to NMFS reviewing Federal actions involving vessel operations to determine where ESA Section 7 consultations would be appropriate should be deleted because the decision to initiate Section 7 consultation is made by the action agency.</p>
	f	<p>Provide a synopsis of Navy vessel traffic in the appropriate DEIS section, noting that Navy ships account for about 3 percent of total ship presence out to 200 nm (Filadelfo, 2001).</p>
	g	<p>Provide a more detailed synopsis of how the Navy took steps to ensure the continued protection of the right whale with regards to the incident in 1996 when six right whale deaths occurred in waters adjacent to the SEUS right whale critical habitat area.</p>
118		See response to # 2
119		See response to # 2

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No.	Sub.	Response
120		Specific Comment
	a	Commenter supports Alternative 5, although was unable to find a clear explanation why Alternative 6 was NFMS preferred alternative. The DEIS did not clarify why the time period during which the measures apply in the SEUS is different for alternatives 5 and 6. This lack of discussion tends to make such choices appear arbitrary.
	b	Commenter supports the 10 knot limit and believes that the purpose of the DEIS and rule will be compromised at any speed above 10 knots, although the commenter found it difficult to review the economic loss at this speed because the analysis summarized data only for 12 knots.
	c	Urges NMFS to use a 1 January start date for the Race Point SMA as right whales are in Cape Cod Bay in January and transit these areas to get there.
	d	A flaw in the DEIS and current strategy is notification delays; give the mariners reliable and timely information and compliance will increase dramatically, even from exempted vessels.
	e	It is false for the DEIS to say that two recovery plan implementation teams exist.
	f	The most efficient and cost effective way to deal with ship strikes is to improve detection, predictions, and timely notification to mariners. The DEIS instead relies on inadequate aerial surveys and static approaches for locating and predicting right whales. There are several improved concepts that deserve attention, and the general strategy of the FEIS should be to invite and adapt new data, and support new techniques.
	g	Although currently unrealistic, right whale ship strike prevention would be close to 100% probable if the position of each whale was known. Commenter suspects that the overall economic burden would be less, and requests that the FEIS present a clear summary of total cost savings from this approach.
	a	Include the National Marine Sanctuaries Act (NMSA) and the boundaries of SBNMS in the DEIS.
121		

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No.	Response
<p>Sub.</p> <p>b</p> <p>Under Alternative 6, 36.81 percent of SBNMS, primarily the northwestern and northeastern corners and the western boundary of the sanctuary would not be managed at any time of year under the DEIS's proposed operational measures. Under the preferred alternative, both Cape Cod Bay and Off Race Point SMAs would be operational from March 1st to April 30th, resulting in 63.19 percent of the sanctuary under speed restrictions for two months in the spring. Therefore, only a portion of the resources in SBNMS would receive protection during certain times of the year.</p>	<p>As the NMSP stated in their comment letter, the measures set forth in the rule and EIS were designed to minimize ship strikes to right whales in specific areas with high-density aggregations, and does not address the issue of ship strikes to all species in SBNMS as a whole. The NMSA allows the Secretary to issue regulations for each sanctuary designated and the system as a whole that, among other things, specify the types of activities that can and cannot occur within the sanctuary (16 U.S.C. §1439). Therefore, if necessary, SBNMS can issue separate regulations for the 36.81% of the Sanctuary that is not protected by the rule, and in other areas during times when the speed restrictions are not in force.</p>
<p>c</p> <p>Preferred alternative does not account for increasing evidence from visual sighting data and acoustic monitoring data that right whales are predictably present in relatively high densities outside the temporal and spatial extents of the SMAs proposed for the northeast region. (Specifically for right whales transiting through Jeffreys Ledge in the late summer and fall).</p>	<p>In determining the spatial and temporal extents of the SMAs, NMFS analyzed decades of sightings data and defined these parameters based on high densities of right whale sightings. Acoustic data are not widely available, are limited to one or two years of data, do not accurately reflect the exact location of the vocalizing whales, and the vocalizations may be confused with those of other species. While this may be a viable detection tool in the near future, expanding the SMAs based on these data will not be considered in the final rule and preferred alternative. See response to # 70 regarding adaptive management.</p>
<p>d</p> <p>Acoustic data should also be utilized to ensure the effectiveness of dynamic management areas, especially during nighttime, periods of low visibility, and in medium to high sea states. The NMSP has proposed that, if their license applications are approved, the LNG companies in this area should install and operate an array of real-time acoustic detection buoys around the Boston TSS, and recommends that the data from this array should be integrated to identify DMAs. The NMSP recommends NMFS invest in the use of real-time acoustic detection buoys within areas of management concern for endangered whale species in the northeast, either to supplement the LNG buoys or independent of them.</p>	<p>In order to trigger and implement DMAs consistently, NMFS would have to install passive acoustic devices and the land-based technology to transmit the locations throughout the regions, which would be cost prohibitive. The final rule describes additional limitations of acoustic detection buoys. NMFS will continue to collaborate with SBNMS and others on passive acoustic devices, and may consider this technology a viable alternative in the future.</p>
<p>e</p> <p>Without sufficient data to increase the utility of DMAs, the National Marine Sanctuaries Program (NMSP) prefers the year-round speed restrictions included in alternatives 3 and 5.</p>	<p>Acknowledged</p>
<p>f</p> <p>Six of the nine autonomous recording units in SBNMS array detected vocalizing right whales from January 6 through March 28. The highest densities of calls were recorded in the northeastern and southwestern sampling sites. While whales in the southwestern site within SBNMS would be protected under the CCB SMA, whales in the northeastern portion of SBNMS would not be protected at any time of the year.</p>	<p>See response to # 121</p>

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No.	Sub.	Specific Comment	Response
	g	The magnitude of indirect impacts on other species depends on the degree to which the distribution of other species overlap in time and space with the distribution of right whales. Humpback, fin, and sei whales are present within SBNMS and the Gulf of Maine between April and November. Therefore, the NMSP believes alternatives 3 and 5 would provide more benefits to multiple species than Alternative 6.	Acknowledged
	h	The DEIS includes the proposed shift in the TSS in alternatives 4 and 5, but not in alternative 6, therefore the NMSP prefers Alternatives 4 and 5.	While the TSS was included in alternatives 4 and 5 of the DEIS, it is not included in any alternatives in the FEIS. Analysis of the TSS has been moved to the cumulative impacts section because this measure is a U.S. action that is decided on by the IMO. Further it will occur independently of the final rule, at a different time, and the USCG will alert mariners of the change in the TSS through a notice in the <i>Federal Register</i> .
	i	The NMSP supports operational measures that minimize the exposure of baleen whales to continuous received levels above 120 dB and impulsive received levels higher than 160 dB.	Acknowledged
	j	The NMSP supports a 10-knot speed restriction.	Acknowledged