

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

15 August 2006

Acting Chief, Marine Mammal Conservation Division
Attn: Right Whale Ship Strike Strategy
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Sir or Madam:

On 26 June 2006 the National Marine Fisheries Service published a notice in the *Federal Register* requesting comments on a proposed rule to limit vessel speeds to 10 knots in certain areas to reduce collisions between ships and North Atlantic right whales. The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the proposed measures described in the rule and fully endorses them all. Mortality from ship collisions and entanglement in fishing gear is the primary reason that the North Atlantic right whale population has failed to show any significant signs of recovery over the past 30 years. In the Commission's view, the species' survival and recovery cannot be assured unless effective action is taken to reduce both of those sources of mortality. If adopted and enforced, we believe the proposed measures will substantially reduce ship/whale collisions.

The Marine Mammal Commission commends the Service for developing and proposing these measures. Based on its review, the Commission provides the following recommendations and comments.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service adopt the measures proposed in the *Federal Register* notice, including a 10-knot speed limit in areas where ship speeds are to be restricted, the boundaries identified for all of the proposed management areas, and the identified time frames for seasonal speed restrictions in management areas.

The Marine Mammal Commission also recommends that the type of vessels to be regulated be adopted as proposed for all areas except the proposed southeast management area off Florida and Georgia. For the southeast management area only, the Commission recommends that the Service modify its proposed rules to make them applicable to all motorized vessels 40 feet or longer.

Further, the Marine Mammal Commission recommends that designation of dynamic management areas be made effective immediately after a single observation of right whale densities

satisfying the proposed criterion and immediately upon the first Coast Guard broadcast to mariners identifying the boundaries of the area.

RATIONALE

The Marine Mammal Commission offers the following rationale for the above recommendations.

Selected Speed Limit—In its *Federal Register* notice, the Service proposed a 10-knot speed limit but also solicited comments on implementing alternative speed limits of 12 or 14 knots. As discussed in the notice, the best available data on ship/whale collisions indicate that the probability of serious or lethal injuries to whales is very low when vessels travel at speeds of less than 10 knots. Risks increase rapidly at speeds between 10 and 13 knots. The data also indicate that the largest number of serious or lethal injuries occurs at speeds of 14 to 15 knots. Thus, a 14-knot limit appears to offer little, and possibly no, reduction in the risk of collision.

In establishing a speed limit, the Service also should consider human nature. When confronted with speed restrictions, many people travel at speeds slightly above the established limit. If a 12-knot limit is selected and vessel operators actually travel only a knot or two faster, they will be moving at speeds known to be dangerous to right whales. As a result, much of the potential conservation benefit of the speed restriction regulation would be lost. Accordingly, the Marine Mammal Commission recommends that the Service adopt a 10-knot speed limit as proposed.

Selected Areas for Speed Restrictions—The proposed speed restrictions would apply in areas within 30 nautical miles of major East Coast ports. The carcasses of most right whales killed by ships have first been observed near major port access routes. Available information also indicates that right whales migrating between the winter calving area and summer feeding areas travel within about 30 miles of the coastline. Thus, the boundaries of proposed management areas off East Coast ports appear appropriate and well justified. The proposed seasonal management areas along the southeast coast, in Cape Cod Bay, north and east of Cape Cod, and in the Great South Channel are where the largest seasonal concentrations of right whales have been documented. Thus, those areas are where transiting vessels are most likely to encounter right whales. Given this information, we believe that the proposed measures appropriately correspond to the areas where risks of collisions with right whales are greatest. Thus, the Marine Mammal Commission recommends that the boundaries for all of the identified management areas be adopted as proposed.

Selected Times for Speed Restrictions in Management Areas—The seasonal occurrence of right whales in key management areas is well documented. Based on our understanding of right whale movements and habitat-use patterns, the times during which seasonal speed restrictions would apply reflect the times when right whales are most likely to be present in those areas. For that reason, the Marine Mammal Commission recommends that the identified time frames for seasonal speed restrictions be adopted as proposed.

Type of Vessels to Be Regulated—The proposed rule states that the speed restrictions would apply to all vessels more than 65 feet in length. Information cited in the *Federal Register* notice indicates that collisions involving large vessels cause more than 75 percent of the serious or lethal injuries to large whales of all species. The massive propeller wounds and blunt trauma injuries found on right whales killed by ships also suggest that large vessels cause most of the lethal collisions. Accordingly, the Commission believes that focusing the regulations on vessels more than 65 feet in length is appropriate in most cases. Therefore, the Marine Mammal Commission recommends that this standard be adopted as proposed for all areas except the southeast management area off Florida and Georgia.

With regard to the southeast management area—the species' only known calving grounds—we are aware of at least five right whales (two adult females, two calves, and a juvenile) that were first seen with fresh propeller wounds off Florida and Georgia since January 2001. These cases include an adult female with a newborn calf first seen with fresh propeller wounds on 29 January 2001, a calf first seen with six propeller slashes on 23 January 2003, a calf photographed south of the mouth of the St. Johns River with several evenly spaced cuts on its fluke on 19 April 2005, an adult female with a severed fluke hit by a 43-foot recreational vessel on 10 March 2005, and a juvenile first seen with fresh propeller wounds on 11 March 2006. Based on photographs of those wounds and other information, vessels less than 65 feet in length are either known to have caused those injuries or could have caused them. Given the importance of adult females and newborn calves to population recovery, and given information suggesting that calves and nursing or pregnant females are more vulnerable to collisions than are other whales, we believe that vessel speed regulations for the southeast calving grounds should apply to all motorized vessels known to be capable of inflicting serious injuries to right whales. Accordingly, the Marine Mammal Commission recommends that, for the proposed southeast management area only, the Service modify its proposed rules to make them applicable to all motorized vessels 40 feet or longer.

Dynamic Management Areas—Concentrations of right whales, including mothers with calves, also may be sighted outside the seasonal management areas. To protect those whales, the proposed rules provide for the Service to establish temporary dynamic management areas. Transiting vessels would have to either reduce speeds to 10 knots when traveling through the designated areas or divert around them. These areas would remain in effect for 15 days after the sighting unless extended or terminated by the Service. The boundaries of dynamic management areas would extend 15 nautical miles around a core area in which the density of right whales was observed to be at least four whales per 100 square nautical miles. [The whale sighting density, boundaries and duration are based on a review of past sighting data by Clapham and Pace (2001), which found that such sightings indicate groups of feeding right whales are likely to remain within 15 nautical miles of the initial sighting location for at least two weeks.] Upon receiving a reliable sighting report meeting these criteria, the Service would establish a dynamic management area by means of an announcement in the *Federal Register* and a Coast Guard broadcast notice (and other commonly used marine communications such as the NOAA weather radio) to advise mariners of the area's establishment, location, and effective period.

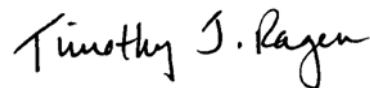
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The same trigger mechanism has been used to establish temporary dynamic management areas for fisheries under the Large Whale Take Reduction Plan. Experience with that effort appears to have validated this trigger mechanism as an effective way to identify areas where right whales have established temporary residence. Therefore, the Marine Mammal Commission concurs with the Service's plan to use those criteria for determining when and where dynamic management areas should be established.

As implemented under the Large Whale Take Reduction Plan, however, the Service has adopted a policy of deferring the effective dates for dynamic management areas until a second sighting of whales has been made and a temporary rule has been developed and published in the *Federal Register*. That policy has typically delayed the effective dates for fishery-related dynamic management areas by approximately two weeks after the initial sighting. Those delays substantially undercut and in some cases eliminate the value of such temporary measures, as whales are not given protection for some or all of the time they are in the area. Therefore, the Marine Mammal Commission recommends that the Service develop rules to instigate dynamic management areas after a single observation of right whale densities that satisfies the above criterion and immediately upon the first Coast Guard broadcast to mariners identifying the boundaries of the area.

If you have any questions regarding the above comments or recommendations, please contact me.

Sincerely,



Timothy J. Ragen, Ph.D.
Acting Executive Director

Reference:

Clapham P., and R. Pace. 2001. Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options. NMFS, NEFSC Reference Document 01-06.