



WORLD SHIPPING COUNCIL  
PARTNERS IN TRADE

## **Comments of the World Shipping Council on the NOAA Right Whale Final Environmental Impact Statement**

**September 29, 2008**

### **I. Introduction**

The World Shipping Council (“the Council”, “WSC” or “we”) submits these comments in response to the Final Environmental Impact Statement (FEIS) to Implement Vessel Operational Measures to Reduce Ship Strikes to North Atlantic Right Whales, which was released by the National Oceanic and Atmospheric Administration (NOAA) on August 25, 2008.

The stated purpose of the measures discussed in the FEIS is to reduce the likelihood of death and serious injury to endangered North Atlantic right whales from collisions with ships. The Council, a non-profit association of more than thirty international ocean carriers, was established to address public policy issues of importance to the international ocean liner shipping industry. The Council’s members are primarily operators of containerships and roll-on/roll-off vessels that serve America’s international commerce.<sup>1</sup> They provide regular, scheduled services connecting U.S. importers and exporters with virtually every country in the world. They serve all of the East Coast ports covered by the measures under consideration, and the nature of their services makes them, as acknowledged in the FEIS, subject to the most severe economic impact from the proposed rule.

The Council again welcomes the opportunity to comment in this rulemaking process. We have provided our views on the right whale ship strike issue in three past stages of the process, beginning with the Advance Notice of Proposed Rulemaking (ANPRM) in 2004. We have also been active since then working with NOAA to develop education and outreach programs to help improve mariner training and awareness of right whale management programs. The results of

---

<sup>1</sup> A list of WSC member companies is available at [www.worldshipping.org](http://www.worldshipping.org).

these and other joint industry/government efforts will be discussed further in our Conclusion. The Council's most comprehensive right whale ship strike comments were submitted to the docket of the Notice of Proposed Rulemaking (NPRM) on October 5, 2006. [http://www.worldshipping.org/nmfs\\_comments.pdf](http://www.worldshipping.org/nmfs_comments.pdf)

In those comments we have:

- Supported the establishment of Areas to be Avoided (ATBAs), Dynamic Management Areas (DMAs), and new Port Access Route Studies (PARS). We have repeatedly stated that the objective should be to keep vessels away from areas where right whales are known to be. (Pages 3, 14-15)
- Challenged the science and statistics in the record of the rulemaking as the basis for imposing a speed limit on large vessels. (Pages 4-9)
- Noted the evidence that slower vessel speed in areas where right whales may be could actually increase the probability of a ship strike. (Page 5)
- Called into question the exemption of government vessels and vessels under 65-feet in length from application of the proposed rule, when these vessels, according to the government's own database, are clearly responsible for the majority of ship strikes. (Pages 3-4, 7)
- Cited the evidence that large commercial ships (particularly containerships) are the least likely class of vessel to be responsible for right whale ship strikes and the most heavily impacted economically by the proposed measures. (Pages 14-18)
- Pointed out that 10 knots is not a safe maneuvering speed for large ships and asked that any speed measure imposed under a new rule contain a safety exception that would permit a master to conform his vessel's speed to weather, tides, inlet infrastructure or vessel traffic at any time. (Pages 13-14)
- Suggested an alternative formula and rationale for vessel speed (14 or 15 knots) and restricted areas (20 nautical miles) for mid-Atlantic ports. (Pages 8-9, 20)

## **II. General Comments**

The Council has reviewed the FEIS, in particular the "preferred option" outlined by NOAA. We thank NOAA for recognizing that the 30 nautical mile (nm) zone proposed earlier for mid-Atlantic ports is lacking scientific justification. While we do not support a vessel speed limit, we agree that 20 nm is a more reasonable and scientifically justifiable zone for any right whale management initiatives in the mid-Atlantic. We believe it is fully consistent with NOAA's stated purpose of developing "...the regulatory approach expected to be most effective at facilitating population recovery while minimizing adverse economic impact." (FEIS, ES. 2). We also continue to support the implementation of recommended routes through critical habitats

in the northeast and southeast management areas as proposed in the preferred option. And we are pleased that NOAA has added an exemption from any applicable speed limit for the safe navigation of a vessel under certain conditions.

We are, however, very disappointed that NOAA has chosen to maintain a 10-knot seasonal speed limit for vessels entering and leaving mid-Atlantic ports – the area with the least scientific justification and the greatest economic impact on the liner shipping industry.

We have also reviewed the two recent studies (*Vanderlaan and Taggart 2007* and *Slutsky 2007*) cited by NOAA in the FEIS, and we do not believe they provide any new scientific evidence to support a vessel speed limit (particularly a 10-knot limit) to protect right whales.

*Vanderlan & Taggart* is merely a repackaging of a previous study by the authors with some older ship strike data included (1960-1970), which we can not find in the public record. *Slutsky 2007* strengthens our earlier position that vessel speed plays no part in the effect of a large ship strike, when it occurs, on the condition or survivability of a whale; and that whales with propeller cuts are not victims of large ship strikes. In that study, based on a 2007 Naval Surface Warfare Center simulation exercise, 50 separate simulations of actual direct collisions between a moving ship hull and an instrumented whale model at hull speeds ranging from 5 to 25 knots all resulted in a “severe” collision likely to result in whale mortality -- meaning that in a direct strike, vessel speed is unlikely to affect whether a whale survives. In all 50 near-collision (offset) simulations at 5 to 25 knots, the hull’s hydrodynamic forces kept the whale clear of the working propeller.

In citing *Slutsky 2007* in a January 18, 2008, letter to the Office of Management and Budget, a number of prominent environmental groups concluded that: “...whales directly in the path of a vessel nearly always result in fatal interaction.” We believe this conclusion is correct and reinforces our position that vessel speed limits will not protect the whales. Keeping ships away from areas where right whales are known to congregate, through ATBAs, or where they are sighted, through mandatory DMAs, is the most effective way to protect the whales from ship strikes.

The Council does not believe there is a scientific basis for any speed limit. Nevertheless, we have referred in our earlier comments to a number of findings in various studies cited by NOAA in the 2006 NPRM to support an alternative to the proposed 10-knot limit, i.e., 14 or 15 knots, which would relieve a substantial economic burden on carriers and be at least equally protective of the whales. This is again supported by *Vanderlaan and Taggart 2007* which repeats their earlier finding that concludes:

“In summary, and acknowledging the uncertainties, our analyses provide compelling evidence that as vessel speed falls below 15 knots, there is a substantial decrease in the probability that a vessel strike to a large whale will prove lethal.”

Indeed, even the May 19, 2005 Petition for Initiation of Emergence Rulemaking filed by nine major environmental groups did not request a 10-knot vessel speed limit. Instead, that petition sought a rule that would "require all ships entering and leaving all major East Coast ports to travel at speeds of 12 knots or less". We again see no scientific justification for NOAA to choose its lowest speed alternative, a 10-knot limit, as "preferred".

### **III. Conclusion**

There have been no reported right whale ship strikes by any vessel during 2007 or 2008 to date. This is not to say the problem has been solved; however, substantial progress is being made. The shipping industry is working closely with government agencies to assure understanding of and compliance with voluntary vessel routing measures in the northeast and southeast right whale critical habitat areas. The industry has also dramatically improved compliance with the Mandatory Ship Reporting System since its inception. Additionally, as mentioned earlier, we are working with NOAA on education and outreach programs to help improve mariner training and awareness of right whale management programs.

The shipping industry is working with NOAA to identify, investigate and promote new technologies to locate and track right whales so as to reduce the incidence of ship/whale encounters. Promising technologies are being developed in the areas of active and passive acoustics, tagging, satellite tracking and others. A system of passive acoustic buoys around the LNG project offshore of Boston is having success in locating right whales in its vicinity and diverting vessels from the area.

WSC applauds NOAA for its efforts in this rulemaking to reduce the incidence of interaction between whales and ships. We see no evidence, however, that vessel speed limits will protect whales. We urge NOAA to adopt a Final Rule which:

- Includes enforcement against the vessels that NOAA's own database shows are the primary cause of right whale ship strike mortalities – government ships and vessels under 65-feet in length.
- Enforces mandatory DMAs in all defined coastal zones, with realistic duration and distance parameters, which will require vessels to avoid locations where right whales have been sighted.
- Contains no speed restrictions in mid-Atlantic SMAs or, if such restrictions are included, the limit be set at 14 knots and enforced within the 20 nautical mile zones set out in the preferred option.

WSC appreciates the opportunity to comment on this important initiative. We and our member lines look forward to continuing our work with NOAA to find effective ways to protect the endangered North Atlantic right whales.