



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No 1108195182318-01]

RIN 0648- BB20

Endangered Fish and Wildlife; Proposed Rule to Eliminate the Expiration Date Contained in the Final Rule to Reduce the Threat of Ship Collisions with North Atlantic Right Whales

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to eliminate the expiration date (or “sunset clause”) contained in regulations requiring vessel speed restrictions to reduce the likelihood of lethal vessel collisions with North Atlantic right whales. The regulations restrict vessel speeds to no more than 10 knots for vessels 65 ft (19.8 m) or greater in overall length in certain locations and at certain times of the year along the east coast of the U.S. Atlantic seaboard. The speed regulations will expire December 9, 2013, unless the sunset clause is removed. NMFS seeks public comment on the Proposed Rule to eliminate the sunset clause and on metrics for assessing the long term costs and benefits of the rule to the endangered North Atlantic right whale population.

DATES: Written or electronic comments (see ADDRESSES) must be received no later than 5 p.m. local time on [insert 60 days after date of publication in the Federal Register].

ADDRESSES: Copies of this proposed rule and related documents can be obtained from: www/nmfs.noaa.gov/pr/shipstrike. Written requests for copies of these documents should be

addressed to: Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Right Whale Ship Strike Reduction Rule, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. You may submit comments, identified by [NOAA-NMFS-2012-0058], by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

Mail: Send comments to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, Attn: Right Whale Ship Strike Reduction Rule.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gregory Silber, PhD, Greg.Silber@noaa.gov, Office of Protected Resources, NMFS, at (301) 427-8485.

SUPPLEMENTARY INFORMATION:

Background

The Western North Atlantic right whale (*Eubalaena glacialis*) was severely depleted by commercial whaling. By the early 1900s, the remaining population off North America was

reduced to no more than a few hundred whales. Despite the existence of protection from commercial whaling since 1935, the remaining population has failed to fully recover. The most recent (October 2011) peer-reviewed estimate of minimum population size is 444 North Atlantic right whales known to be alive in 2009 (Waring et al., 2012), which is approximately the same number that existed 25 years ago (Best et al., 2001). At this level, North Atlantic right whales are not only one of the world's most critically endangered large whale species but also one of the world's most endangered mammals.

Population models suggest that their abundance may have increased at a rate of approximately 2 percent per year during the 1980s, but that it declined at about the same rate in the 1990s (Caswell et al., 1999; Waring et al., 2012). Analysis of data on the minimum number of whales alive during 1990–2009 (based on 2011 analysis) indicate an increase in the number of catalogued whales during the period, a mean growth rate of 2.6 percent, but with high inter-annual variation in numbers (Waring et al., 2012). These population trends are low compared to those for populations of other large whales that are recovering, such as south Atlantic right whales and taxonomically similar western Arctic bowhead whales, which have had growth rates of 4-7 percent or more per year for decades.

Inherently low rates of reproduction in large whales mean that recovery rates for these populations can be low even under the best of circumstances. North Atlantic right whales may live 60 years or more. The age of first reproduction for female North Atlantic right whales is about 7 to 10 years old and calving intervals for the population have been estimated to average from about 3.5 to more than 5 years over the past three decades (Kraus et al., 2001; Kraus et al., 2007). Considering the high rates of natural mortality for calves and juveniles compared to adults, population projections indicate that female right whales must produce at least four calves

over their lifetime to allow population growth, because half of the calves born are male, and the survival of female calves to adulthood is less than one in two (Kraus et al., 2001).

Between the mid-1980s and late-1990s, documented calf production for the North Atlantic right whale population averaged about 11 calves per year (Kraus et al., 2001). Since 2001, a series of good calving years has been a source of optimism for future recovery. Between 1993 and 2010, calf production averaged about 17 calves per year (Waring et al., 2012) and the average calving interval for adult females declined to close to its lowest recorded level (between 2000 and 2006) (Kraus et al., 2007). However, not all calves enter the population as viable adults or sub-adults due, for example, to natural mortality. Between 17 and 45 calves are estimated to have died between 1989 and 2003 (Browning et al., 2010). The mean number of adult females recruited into the population between 2000/01 and 2005/06 was 3.8 per year (Kraus et al., 2007).

Because of the species' low reproductive output and small population size, even low levels of human-caused mortality can pose a significant obstacle for North Atlantic right whale recovery. Population modeling studies in the late 1990s (Caswell et al., 1999; Fujiwara and Caswell, 2001) indicated that preventing the death of two adult females per year could be sufficient to reverse the slow decline detected in right whale population trends in the 1990s. However, in some years the rate of removal of individuals from this population due to human activities may exceed this number. In the 2004/2005 calving season alone three adult females were found dead with near-term fetuses.

The primary causes of the right whale's failure to recover are deaths resulting from collisions with ships and entanglement in commercial fishing gear (Clapham et al., 1999; Knowlton and Kraus, 2001; Moore et al., 2005; NMFS, 2005). An average of approximately two known vessel collision-related right whale deaths have occurred annually over the last decade

(Henry et al., 2012, Waring et al., 2012) and an average of 1.2 known vessel-strike related fatalities occurred in the period 2006-2010 (Waring et al., 2012). NOAA believes the actual number of deaths can possibly be higher than those documented, as some deaths likely go undetected or unreported, and in many cases when deaths are observed it is not possible to determine the cause of death from recovered carcasses due, for example, to advanced decomposition. Kraus et al., (2005) concluded that the number of documented deaths may be as little as 17 percent of the actual number of deaths from all sources.

Studies indicate that female (van der Hoop et al., 2012) and sub-adult (Knowlton and Kraus, 2001) right whales are more often ship strike victims than are other age and gender classes. Although the reasons for this are not clear, one factor may be that pregnant females and females with nursing calves may spend more time at the surface where they are vulnerable to being struck. The effect of this on population recovery may be particularly profound if the lost female is at the height of, or just entering, her most reproductively active years because of the loss of her reproductive potential, and that of her female offspring, indefinitely.

The number of right whale deaths resulting from vessel collisions appears to be related to an overlap between important right whale feeding, calving, and migratory habitats and shipping corridors along the eastern United States and Canada. Most right whales that died as a result of ship collisions were first reported dead in or near major shipping channels off east coast ports between Jacksonville, Florida and New Brunswick, Canada. Right whales appear to be particularly vulnerable to ship strikes in their nursery areas off Georgia/Florida (Vanderlaan et al., 2009). Based on massive injuries to whales killed by ships (e.g., crushed skulls, internal hemorrhaging, severed tail stocks, and deep, broad propeller wounds) (Campbell-Malone, et al.,

2008), it appears that many right whales killed by vessels are victims of collisions with large ships.

For the North Atlantic right whale population to recover, vessel-related deaths and serious injuries must be reduced. The North Atlantic Right Whale Recovery Plan (NMFS, 2005) ranks steps to reduce and eliminate such deaths among its highest priorities, and indicates that developing and implementing an effective strategy to address this threat is essential to recovery of the species. The ultimate goal of identifying and implementing conservation measures, including this one, on behalf of an endangered species is to recover the species.

NMFS has taken steps to reduce vessel collisions with right whales, including extensive efforts to raise awareness among, and encourage voluntary actions by, vessel operators to reduce the risk of collisions (descriptions of these actions can be found in 73 FR 60173 (October 10, 2008); Lagueux et al., 2011; MMC, 2010). Despite those measures, whale deaths from ship strikes continue (Henry et al., 2012) and voluntary measures appear to be insufficient to address the problem (71 FR 36304; June 26, 2006). Accordingly, NMFS promulgated regulations that require vessels 65 feet and greater in length to travel at speeds of 10 knots or less in certain defined areas during certain times of the year (73 FR 60173; October 10, 2008).

As indicated in that rule, vessel speed has been implicated as a principal causal factor in the severity of vessel collisions with large whales. As vessel speed increases, the probability of serious injury or death of a whale involved in a strike increases (Pace and Silber, 2005; Vanderlaan and Taggart, 2007). Studies have also indicated that as vessel speed increases so does both the size of the zone of influence around the hull of a vessel (i.e., the area in which a whale is vulnerable to a strike or might be drawn into a strike) and acceleration (i.e., impact

velocity) experienced by the whale involved in a collision (Campbell-Malone, 2007; Silber et al., 2010).

Among the comments that NMFS received on its 2008 proposed rule for the vessel speed restrictions were those indicating that the specific ways in which whale and vessel interacted prior to a collision were not well understood, and vessel speed restrictions were not likely to achieve their intended purpose, and thus that the rule should expire at a time certain. NMFS acknowledged there was uncertainty regarding the manner in which ships and whales interact at the time of a strike and the mechanisms that drive the relationship of speed and other factors (e.g., whale behavior in response to an approaching vessel) that lead to injuries and deaths. In view of those uncertainties and the burdens imposed on vessel operators, NMFS added a “sunset” provision to the final rule under which the regulation would expire five years from its effective date (i.e., December 9, 2013). Given that the justification for establishing the initial rule remains applicable and is supported by subsequent studies regarding the diminished probability of lethal strikes and an absence of vessel-related right whale deaths since the rule went into effect (as discussed below), NMFS specifically requests comments on this proposed rule to remove the sunset provision contained in the existing regulations.

Further, in accordance with Executive Order 13563, NOAA conducts periodic and retrospective reviews of its existing regulations. Recent retrospective analysis of the existing rule (which was done by quantifying actual vessel speeds following implementation of the rule) indicate that economic impacts of the rule are substantially lower than were initially projected in 2008 (Nathan Associates Inc., 2012). However, quantifying the benefits of the existing vessel speed restriction rule can be less straightforward because the rule has been in effect for a relatively short period and because it can be difficult to determine if growth rates in a small

biological population are linked to a specific conservation measure, particularly when that population is subject to a number of threats.

Studies indicate that the North Atlantic right whale population is slowly growing (Waring, et al., 2012). In addition, as noted above, recent studies indicate that the probability of lethal strikes have been diminished substantially as a result of the rule (Lagueux et al., 2011; Wiley et al., 2011; Conn and Silber, 2013), and there have been no vessel-strike related right whale deaths in the areas covered by the vessel speed restriction rule since its implementation. Still, there may be additional means of assessing whether the rule is meeting its objectives, and, therefore whether an alternative time for a sunset provision may be appropriate. To address these questions and provide benchmarks or a timetable for retrospective review of any final rule in this proceeding, NOAA seeks public feedback about information that may help establish the amount of time and the studies needed to determine how effective the rule is in protecting and recovering the population over the long term. In other words, to conduct a reassessment of the benefits of the rule, what metrics are needed and how much time is needed to obtain data for such metrics?

In this regard, NMFS indicated that while the rule was in effect, the agency would, to the extent possible with existing resources, synthesize existing data, gather additional data, or conduct additional research on ship/whale collisions to address those uncertainties. NMFS also committed to review the previously estimated economic consequences of the speed restriction rule (73 FR 60183 (comment and response 11)). Some of this work has now been completed (Nathan Associates Inc., 2012). NMFS also noted in the final rule that determining the biological effectiveness of protective measures like the speed rule to a high level of statistical significance is difficult and takes many years of data collection (73 FR 60182 (comment and response 7)).

In November 2008, NMFS convened a workshop, and later prepared a report that identified ways to assess the rule's effectiveness (Silber and Bettridge, 2009). As did the final rule, the workshop participants recognized that adequately assessing the effectiveness of any protective measure (the vessel speed rule included) with statistical rigor would be nearly impossible in brief sampling periods (e.g., 2-3 years) because definitively-determined ship strike-related right whale deaths are rare occurrences, and the ability to ascribe a cause of death is limited. Therefore, conclusions regarding the rule's biological effectiveness would require data collection periods longer than one to five years. These caveats notwithstanding, NMFS committed to assess the rule's effectiveness to the extent possible.

Consistent with the workshop report, NMFS initiated studies to assess, among other things, vessel operator response to, and compliance with, the provisions of the rule; changes in ship strike-related death rates in U.S. east coast large whale populations; and economic impacts of the rule to shipping and related maritime interests. The findings of these studies are summarized in Silber and Bettridge (2012). Statistical analyses contained in the 2012 report indicated that the sampling period was too short to make a meaningful determination about the rule's impact on the right whale population. Simply detecting a relatively large change in the rate of known ship strike deaths and serious injuries would require 5-7 or more years (depending on the magnitude of the change), perhaps longer (Pace, 2011; Silber and Bettridge, 2012). Thus, for these reasons and others indicated above, it is difficult to make definitive conclusions at this time regarding the long-term biological effectiveness of the current vessel speed restriction rule.

With regard to reassessment of the existing rule, NMFS will continue to monitor right and large whale death rates; determine causes of whale deaths when possible; monitor right whale population size, demographics, and such things as calving and recruitment rates; monitor

vessel operations in response to the vessel speed restrictions; attempt to further assess the relationship between vessel speed and the likelihood of ship strikes of whales; and evaluate new and historic whale sighting records. Such analysis eventually may lead to subsequent rulemaking to modify or refine certain aspects of the regulation (e.g., possible changes to the locations, dimensions, or duration of management areas, or termination of parts or all of the rule's provisions). Those efforts are ongoing but will not be concluded before the current rule expires. Therefore, NMFS also requests comments on its ongoing activities to monitor and assess the rule's effectiveness, as well as input on the data, metrics, and time needed to do so.

NMFS continues to believe the 2008 speed regulation is an important conservation measure for North Atlantic right whales, based on the supporting information contained in the preamble for the 2008 rule, additional information that has emerged since, and the lack of any new information that contradicts our original conclusions that the regulation is justified. Accordingly, NMFS is proposing to remove the sunset clause to allow this protective regulation to remain in effect and seeks comment on this proposed action. In addition, given that the justification for establishing the initial rule remains applicable and is supported by subsequent studies, but that difficulty remains in quantifying the benefits of the existing rule, NOAA requests comments on whether the final rule should include an extension of the sunset provision that would allow time for a more comprehensive assessment of the benefits and effectiveness of the rule, and what time frame would be appropriate for such an extension. Further, NOAA seeks comments on modifications that would improve the effectiveness of the rule.

Justification for this Proposed Rule

The use of vessel speed restrictions in the 2008 rule to reduce lethal vessel strikes of right whales was based largely on analysis by Laist et al. (2001), Pace and Silber (2005), and Vanderlaan and Taggart (2007). These studies found that the likelihood of serious injury and death in whales struck by vessels was diminished by reduced vessel speed. The latter two analyses indicated that the probability of death or a serious injury of a struck whale is rapidly diminished when vessel speeds are below 12 knots (and the probability decreases as speed decreases). Vanderlaan and Taggart (2007) concluded that for each one-knot increase in vessel speed the likelihood of a fatal whale strike increased by 1.5-fold. Based on the findings reported in these same studies, vessel speed restrictions are being used in other locations to reduce the threat of ship strikes to large whales including humpback whales in Glacier Bay, AK, and fin and sperm whales in the Mediterranean Sea. Vessel speed restrictions have also been effective in reducing vessel strikes of manatees (Laist and Shaw, 2005), and the relationship between vessel speed and the likelihood of collisions with marine turtles has been demonstrated (Hazel and Gyuris, 2006; Hazel et al., 2007).

The studies relied upon for the 2008 rule continue to represent the best available information and NMFS is not aware of any new information that contradicts the original basis for the speed restriction. Additional relevant peer-reviewed studies have been published since the rule went into effect. Among them, Vanderlaan et al. (2009; regarding right whales along the U.S. and Canadian eastern seaboard), Vanderlaan and Taggart (2009; right whales in Canadian waters), and Gende et al. (2011; humpback whales in Alaskan waters) concluded that vessel speed restrictions are effective in reducing the occurrence or severity of vessel strikes of right and other large whale species in various geographic locations. Recent modeling studies estimated

that the vessel speed restrictions established by the 2008 final rule have substantially lowered the probability of lethal vessel strikes of North Atlantic right whales (Lagueux et al., 2011; Wiley et al., 2011; Conn and Silber, 2013). In addition, no right whale vessel strike-related fatalities have occurred in or near the vessel speed restriction areas established by the 2008 rule (from December 2008 to present). At least two right whale deaths or serious injuries have occurred as a result of vessel strikes since implementation of the rule, but they either occurred outside vessel speed zones or involved vessels not subject to the rule. In one case the vessel type involved is not known and a non-military sovereign vessel was involved in the second case. Operators of sovereign vessels in U.S. waters that are not subject to the provisions of the rule (e.g., military vessels) are well aware of the vessel speed restrictions through ESA Section 7 consultations with NMFS, regular interagency collaboration and notification, and through NMFS involvement in these agencies' marine conservation programs. Also, NOAA provides information to operators of vessels that are not subject to the rule due to vessel size (e.g., those less than 65 feet in length) via notices that routinely accompany marine weather broadcasts and other radio broadcasts to boaters, information posted at small ports and dock facilities, a smart phone application, the distribution of brochures, its maritime community liaisons, press releases, and in meetings with the general public.

Based on the information relied upon for the 2008 speed restriction rule and subsequent information cited herein, NMFS has determined that the provisions of that rule should be extended to maintain the status quo and to continue a measure designed to reduce the threat of vessel collisions with Western North Atlantic right whales. The way to achieve that is through the proposed removal of the expiration provision currently in the regulation. The underlying

science and administrative record providing support for the vessel speed restrictions remain unchanged. All other provisions of the rule as it now exists would remain in place.

Public Participation

It is the policy of the Department of Commerce, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the ADDRESSES section. All comments must be received by midnight of the close of the comment period.

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Classification

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

This final rule does not have Federalism implications as that term is defined in Executive Order 13132.

This proposed rule does not contain any new collections of information subject to the Paperwork Reduction Act (PRA). However, the regulation that this proposed rule would extend does contain such a collection of information. If under certain conditions deviation from the speed restriction are necessary to maintain safe maneuvering speed, the vessel log book must contain an entry, signed and dated by the master of the vessel, documenting the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation. These entries are estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. On October 30, 2008, the Office of Management and Budget (OMB) approved the collection-of-information requirements contained in the October 10, 2008, final rule with an expiration date of April 30, 2009. On August 27, 2009, OMB approved a request by NMFS to extend its approval of the collection-of-information requirements without change, with an expiration date of August 31, 2012. NMFS has applied for an extension of this expiration date. There is no additional cost to the affected public.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

NMFS prepared a draft and final Environmental Impact Statement (FEIS) pursuant to the National Environmental Policy Act and an accompanying Economic Analysis report for the existing rule. While the FEIS contained an alternative with an expiration clause, the DEIS and economic analysis evaluated an alternative without an expiration, and that alternative was

incorporated by reference into the FEIS. This proposed rule seeks only to remove the expiration clause of the existing speed regulation. The provisions of the speed regulation that would remain upon removal of the expiration are otherwise the same as those analyzed in those documents. NMFS prepared a Supplemental Information Report (SIR) that provides updates to the information and analysis contained in the FEIS. NMFS also prepared an updated economic analysis for the existing regulation. Based on the SIR, NMFS determined preliminarily that a supplemental NEPA analysis is not required for this proposed rule. The FEIS is posted at: <http://www.nmfs.noaa.gov/pr/shipstrike/>. Copies of the Economic Analysis prepared for the FEIS are available from NMFS's Office of Protected Resources (see ADDRESSES).

Pursuant to the Regulatory Flexibility Act, NMFS prepared the following Initial Regulatory Flexibility Analysis (IRFA).

IRFA

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule, as well as the preambles to the vessel speed restriction 2006 proposed (71 FR 36299) and 2008 final (73 FR 60173) rules. This proposed rule would extend the provisions of the existing rule by removing its expiration date. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

This IRFA incorporates analysis prepared for the 10-knot vessel speed restrictions contained in the 2006 proposed and 2008 final rules, and the corresponding initial and final Regulatory Flexibility Act analyses and determinations contained in those rulemaking actions. It also incorporates economic analysis contained in the FEIS, and the Regulatory Impact Review (RIR) and Economic Analysis (Nathan Associates Inc., 2008) prepared for the 2008 final rule. In addition to these documents, incorporated here by reference, NMFS has conducted studies to

update the previously prepared (i.e., 2008) economic and other analyses. Results of those studies are provided in Silber and Bettridge (2012) and in Nathan Associates Inc. (2012) and are summarized in “Economic Impact” section below.

NMFS believes that there may be disproportionate impacts resulting from implementation of this proposed rule among types of small entities within the same industry as well as between large and small entities of different vessel types occurring within different industries based on the IRFA developed for the 2008 final rule. There may also be disproportionate impacts between or among vessels servicing different areas or ports, but there are no data or evidence to indicate that this is the case. The economic impacts of the proposed rule as it relates to small entities are discussed below.

This proposed rule would contribute to the protection of the critically endangered North Atlantic Right Whale and advance the objectives outlined in the recovery plan for the species. NMFS believes that the justification for the utility of vessel speed restriction in reducing the risk of fatal strikes to whales as provided in the final rule and as contained in various scientific studies (e.g., Vanderlaan and Taggart, 2007) continue to apply. In addition, this conclusion has been backed by subsequent modeling analyses presented in a number of peer-reviewed papers published since implementation of the vessel speed rule (e.g., Gende et al., 2011; Vanderlaan et al, 2009; Wiley et al., 2011; Conn and Silber, 2013) and as referenced in the “Justification for this Proposed Rule” section of this proposed rule (above). This proposed amendment to the existing rule would preserve the status quo beyond the current expiration date.

Description and Estimate of the Number of Affected Small Entities to Which this Rule Will Apply

This proposed rule will continue to apply to vessels that are 65 feet (19.8 m) or greater in overall length. Five industries are directly affected by this proposed rulemaking: commercial shipping, passenger ferries, whale watching vessels, commercial fishing vessels, and charter fishing vessels. This analysis uses size standards prescribed by the Small Business Administration (SBA). Specifically, for international and domestic shipping operators, the SBA size standard for a small business is 500 employees or less. The same threshold applies for international cruise operators and domestic ferry service operators. For whale watching operators and charter fishing commercial fish harvesters, the SBA threshold is \$7.0 million of average annual receipts. For commercial fishing operators, the SBA threshold is \$4.0 million of average annual receipts. Based on the economic analysis provided for the 2008 final rule and the most recent economic impact studies (Nathan Associates Inc., 2012), the number of small entities potentially affected by this proposed rule, by industry, are expected to be as follows: 362 commercial shipping vessels of various classifications (31 of which are passenger ships), 297 commercial fishing vessels, 40 charter fishing vessels, 14 passenger ferries, 22 whale-watching vessels.

Detailed information on small entities, other than commercial shipping, can be found on pages 143 through 147 and in Tables 4–45 (commercial fishing), 4–46 (passenger ferries), and 4–49 (whale watching) of the Economic Analysis for the FEIS (Nathan Associates Inc., 2008) prepared for the 2008 final rule and as updated on pages 31-36 of the Nathan Associates Inc. (2012) report. Detailed information on small entities in the commercial shipping sector is contained on pages 158 through 161 of the Economic Analysis for the FEIS and pages 29-33 of Nathan Associates Inc. (2012). Those analyses are incorporated here, as are updates to the economic impact analysis as noted below.

Based on analysis contained in the FRFA that accompanied the 2008 final rule and the 2012 Nathan Associates Inc. report (which is also incorporated into this IRFA), NMFS concludes that there may be disproportionate impacts resulting from implementation of that rule among types of small entities within the same industry as well as between large and small entities of different vessel types occurring within different industries. NMFS also believes that there may be disproportionate impacts between large commercial shipping and large passenger vessels, and the group consisting of passenger ferries, high-speed whale watching vessels, and charter fishing vessels (see “Economic Impacts” below). These conclusions were based on the assumption that large commercial vessels would be less adversely affected than their companion small commercial and shipping vessels.

Economic Impacts

Proposed Alternative (continuation of 10-knot speed restriction)

The proposed alternative continues the imposition of a 10-knot speed limit applied in defined areas on a seasonal basis. As noted above, economic impact analyses are contained in the IRFA for the 2006 proposed rule and Final Regulatory Flexibility Analysis (FRFA) for the 2008 final rule, draft and final EIS, and the accompanying 2008 economic analysis for the vessel speed restrictions. These analyses remain pertinent to this proposed action (and are not reprinted here, but are incorporated by reference). Further, they have been updated based on data collected since the 2008 rule has been in effect, including more recent (i.e., 2009 and 2012) bunker fuel prices and improved vessel operation information (i.e., actual, rather than projected, vessel traffic and speed data). This analysis can be found in Appendix K of Silber and Bettridge (2012) and in Nathan Associates Inc. (2012) which are available at <http://www.nmfs.noaa.gov/pr/shipstrike/>. The results of the updated economic analysis indicate that the overall economic impacts as well

as the economic impacts to each of the industries directly affected by this proposed rule are likely to be lower than what had been predicted for the 2008 final rule.

Previous estimates for the 2006 proposed rule and the 2008 final rule had relied on 2003/2004 USCG port-call data (the best available at the time), 2004 vessel operating costs, 2008 fuel costs, and typical vessel operating speed by vessel type and size. New information was used to revise the economic impact estimates. The primary operational impact on the shipping industry is the extra sailing time caused when vessels limit their speed. Changes in sailing times were assessed using Automatic Identification System (AIS) vessel operation information, which enabled a more precise analysis of actual vessel speeds rather than assumptions about expected at-sea speed capabilities. Therefore, these data provided a quantification of the actual number and actual speeds of trips through affected areas rather than port-call information.

The results from the updated economic analysis indicate that the overall average delay in sailing time for all vessels was 0.37 hours (22 min) and ranged from 0.08 hours (5 min) for refrigerated cargo ships to 0.62 hours (37 minutes) for combination cargo (e.g., oil-bulk-ore) carriers. The estimated delays were lower than what was predicted for the 2008 final rule, which projected overall estimated average delays of 1.2 hours for all vessel types and over 2 hours for freight barge trips into some ports.

The IRFA for the 2006 proposed rule reflected the alternatives being considered at the time to achieve the purpose and need. That information, while still relevant, is not repeated here. This current IRFA for the proposed action reflects the current purpose and need, namely, to maintain the status quo of reducing the risk of lethal ship strikes to highly endangered North Atlantic right whales.

The only alternative considered in this proposed rule is the “no action” alternative. This alternative would allow the provisions of the 2008 final rule to expire in December 9, 2013. The no-action alternative would be economically preferable for some small entities, including some passenger ferries, high-speed whale watching vessels, and charter fishing vessels. The “no action” alternative was rejected because NMFS has determined that vessel speed restrictions are needed to reduce the threat of ship collisions with right whales and to aid in the recovery of this highly endangered species.

The rule making process for the 2008 final rule considered different speed alternatives. As the IRFA and FRFA for that rule making acknowledged, a 12-knot or 14-knot speed limit would be economically preferable for some small entities. However, based on the best information available both then and now, the likelihood of serious injury and death to whales increases with vessel speed. Therefore, NMFS continues to believe that 10 knots provides the greatest protection for, and the greatest likelihood of allowing recovery of, right whales.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

Recordkeeping requirements associated with this rule include logbook entries in the event of deviation from speed restrictions. These entries are estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

There are no compliance requirements other than the management actions contained in this proposed rule.

List of Subjects in 50 CFR Part 224

Endangered marine and anadromous species.

Dated: May 31, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for 50 CFR part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 et seq.

2. In § 224.105, paragraph (d) is removed.

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