

CHAMBER OF SHIPPING OF AMERICA
1730 M Street, NW
Suite 407
Washington, DC 20036
202.775.4399

August 24, 2006

Via EMail: shipstrike.comments@noaa.gov

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

Via Email: David.Rostker@omb.eop.gov

Mr. David Rostker
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: Endangered Fish and Wildlife: Proposed Rulemaking to Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales (Docket No. 040506143-6016-02.I.D.101205B; RIN 0648-AS36; Federal Register, June 26, 2006, pages 36299 – 36313)

Dear Sirs:

The Chamber of Shipping of America (Chamber) appreciates the opportunity to comment on the proposed rule regarding the implementation of speed restrictions to reduce the threat of ship collisions with the north Atlantic Right Whale.

The Chamber represents 27 U.S. based companies that own, operate or charter oceangoing tankers, container ships, and other merchant vessels engaged in both the domestic and international trades. The Chamber also represents other entities that maintain a commercial interest in the operation of such oceangoing vessels.

We would refer you to our comments submitted on November 22, 2004 in response to the request for comments on the Advanced Notice of Proposed

Rulemaking (ANPR) for Right Whale Ship Strike Reduction (RIN 0648-AS36; Federal Register, June 1, 2004, pages 30857 – 3864) since a number of the issues raised in that document are germane here as well, most specifically those relating to the impact of speed reductions (paragraph (2)). For ease in reference, a copy of those comments are attached at annex here. Specific comments we wish to offer on the proposed rule are as follows:

- (1) While we very much appreciate the recent extension of the initial comment period to October 5, 2006, we are still concerned that insufficient time for review is available, particularly relative to the significant amounts of information contained in the environmental impacts assessment and economic analysis. While, we commend the massive effort expended by NMFS/NOAA on this complex issue to provide what appear to be very comprehensive documents, these efforts have resulted in a complex and voluminous amount information which simply does not avail itself of a quick review for completeness and accuracy taking into account the short time period between release of the NPRM and the supporting documents (draft Environmental Impact Statement and the economic study). Extending the comment period at least an additional 30 days will provide the necessary time for all interested parties to review these documents and provide valuable input.
- (2) We support implementation of a 14 knot speed limit with higher speed exceptions based on unique local conditions in the covered areas during the seasonal periods outlined in the proposed rule. We can not support implementation of the suggested 10 knot speed restriction in any of the covered areas, although we do appreciate the proposition that slower speeds reduce the likelihood of a fatal ship strike. Unfortunately, the proposed rule as currently drafted provides no leeway for safety of navigation considerations which can and do arise due to local conditions including weather, current, local hydrographic characteristics and traffic density. For example, adverse weather conditions such as that encountered in the covered areas during the seasonal periods established in the proposed rule can create very strong cross currents at the mouth of breakwaters which can set the vessel off its intended route and into dangerous areas. Similarly, adverse weather conditions, particularly wind, can create an equally dangerous navigational safety issue for vessels with high sides which naturally have a large wind sail surface and are thus susceptible to being driven off its intended course from wind effects. Under either of these two conditions, vessels will need to proceed at the maximum safe speed to assure a safe and uneventful transit into and out of the port. We will do a disservice to the marine environment and living marine resources if mitigation strategies focusing on one issue (ship strikes) create greater overall negative impacts (potential for collisions, groundings due to decreased maneuverability) when they are implemented.
- (3) Following from the comments in (2) above, one possible way forward is to include in the final regulations a recommendation that vessels maintain 10 knots

through the covered areas where conditions permit subject to an exception which permits the Master or Pilot to increase speed where conditions dictate for navigational safety. This provision could be further tightened up by limiting the maximum safe speed to 14 knots in the covered areas except in those situations close into the sea buoy and/or breakwater as described in (2) above which require maximum safe speed.

- (4) As evidenced by the economic analysis, disruption of the marine transportation system along the East Coast of the US would create extremely significant and negative economic impacts. It is this fact that drove a great deal of the work done by NMFS/NOAA to identify alternative strategies which would permit the uninterrupted flow of commerce while at the same time mitigate the potential for ship strikes. However, there is no mention in the rule of what would occur if a North Atlantic Right Whale is found in the midst of a shipping channel which is the only track in and out of a particular port area. Would the port area be closed indefinitely until the whale found its way to sea? Would NMFS/NOAA activate some response resources in an attempt to shepherd the whale out of the channel? We believe that a waiver provision must be inserted in the final rule which empowers the Secretary of the Department in which the Coast Guard is operating, in consultation with the Administrator of NOAA, to temporarily waive the provisions of this rule in a clearly defined local area, in order that maritime commerce may continue to operate without the attending legal liability which would be created by this rule absent any waiver provisions. This would enable a case by case analysis of a situation by the requisite technical experts in marine biology, safety of navigation and local area conditions and thus permit the design of a rational solution which would minimize the impacts both on the North Atlantic Right Whale and marine transportation.
- (5) We believe clarifying language is necessary when describing the areas of coverage for the Mid-Atlantic U.S. as found in Section 224.105(a)(2)(i). While the chartlets included in the proposed rule implicitly suggest that the covered area is within a 30 nautical mile radius **SEAWARD** of the Colregs delineation line and the center point of the port entrance, the text description in the regulation itself does not make that clear and thus as proposed, could be read to include internal waters inshore from the Colregs delineation line. Since we do not believe this was ever the intent of the rulemaking nor should it be, we recommend changing the text of the section referenced above to read “Within a 30-nautical mile (nm)(55.6 km) radius (as measured **seaward** from the Colregs delineated coast lines and the center point of the port entrance)...”.
- (6) Finally, we respectfully reserve our right to provide further comments as we continue our review of the Draft Environmental Impact Statement and the economic analysis.

The Chamber of Shipping of America appreciates the opportunity to comment on this important issue and would be pleased to answer any questions relative to this submission.

We look forward to continuing our work with the agencies and pledge our continued commitment to develop a reasonable and effective strategy to reduce ship strikes of the North Atlantic right whale.

Sincerely,

A handwritten signature in black ink, reading "Kathy J. Metcalf". The signature is written in a cursive, flowing style.

Kathy J. Metcalf
Director, Maritime Affairs

ANNEX

**CHAMBER OF SHIPPING OF AMERICA COMMENTS ON
PROPOSED RULE TO IMPLEMENT SPEED RESTRICTIONS TO
REDUCE THE THREAT OF SHIP COLLISIONS WITH NORTH
ATLANTIC RIGHT WHALES**

(Docket No. 040506143-6016-02.I.D.101205B; RIN 0648-AS36; Federal Register, June 26, 2006, pages 36299 – 36313)

**CHAMBER OF SHIPPING OF AMERICA
1730 M Street, NW
Suite 407
Washington, DC 20036
202.775.4399**

November 22, 2004

**Via Fax: Attn: Right Whale Ship Strike Strategy
301.427.2522**

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

RE: Endangered Fish and Wildlife: Advanced Notice of Proposed Rulemaking (ANPR) for Right Whale Ship Strike Reduction (RIN 0648-AS36; Federal Register, June 1, 2004, pages 30857 – 3864)

Dear Sir or Madam:

The Chamber of Shipping of America (Chamber) appreciates the opportunity to comment on the ANPRM regarding right whale ship strike reduction strategies. While we recognize these comments are being submitted after the comment deadline, we request their consideration in your deliberations on this most important issue.

The Chamber represents 23 U.S. based companies that own, operate or charter oceangoing tankers, container ships, and other merchant vessels engaged in both the domestic and international trades. The Chamber also represents other entities that maintain a commercial interest in the operation of such oceangoing vessels.

For decades, the Chamber has been actively involved in international and domestic discussions relating to the preservation of the marine environment and marine resources. As the industry advisor to the US delegation to the International Maritime Organization's (IMO) Marine Environment Protection Committee, we have participated in plenary and working group discussions on the development of particularly sensitive sea areas (PSSAs), appropriate measures to be imposed within the context of PSSAs and other vessel precautionary measures, that justify routing of vessels around precious environmental resources. Additionally, CSA is actively involved in international and domestic discussions focusing on the impacts of anthropogenic sound in the marine environment on marine mammals.

Based on the examples provided above, it is clear that CSA's member companies have taken a proactive approach to working with governmental agencies at all levels to preserve and protect the marine environment and its precious, but limited living resources. It is also CSA's position that issues which may impact the marine environment, its living resources and the safe navigation of vessels are best addressed by the federal agencies which best understand these components, namely the US Coast Guard and relevant agencies within the Department of Commerce (NMFS, NOAA). Although legally empowered by statutory language, we do not believe that the court system is an entity which possesses sufficient knowledge to reasonably and effectively impose requirements which may impact the safety of marine operations and address the needs of the marine environment and its living resources. It is with this perspective that we welcome the significant work done on this issue by the Department of Commerce and provide our specific comments relative to the ANPRM as follows:

- (1) CSA agrees that the North Atlantic Right Whale is a seriously endangered species as evidenced by its position on the Endangered Species List for decades. Since that time, studies have indicated that the population has continued to decline to what is now estimated to be in the vicinity of 300 individuals. Clearly, we believe there is no room for argument as to whether a problem exists and thus, future actions should focus on measures necessary to promote regeneration of the population while at the same time permitting the continued safe and environmentally responsible operation of the maritime industry which is so critical to the economy of the United States. However, CSA strongly recommends that NMFS and NOAA address issues recently identified that suggest a significant undercounting of the existing population based on data generated from recent DNA matching studies which indicate a potential undercount of 12 – 14 %. While such an undercount, if documented, certainly does not remove this species from its endangered status, it is critical to accurately document the population in order to determine the true population trends, whether it be increasing or decreasing. In summary, while CSA will not

oppose reasonable mitigation strategies to reduce the potential for ship strikes, these mitigation strategies must be based on scientifically valid data and conclusions which directly relate to the state of the population, as it exists today.

- (2) CSA is aware of information that suggests that vessel speed reduction strategies permit more time for whales to exhibit avoidance behaviors as well as reduce the potential for fatal injury should a ship strike occur. While we do not disagree that, in theory, a slower vessel may permit more time for a whale to take avoidance measures, we have also seen conflicting information as to the extent that right whales exhibit this behavior. Because of this conflict in opinions taken together with the fact that a slower vessel will take more time to move through a right whale habitat, we strongly urge further consideration as to the reasonableness and efficacy of imposing speed restrictions where such measures have not been proven effective in reducing ship strikes. The agencies are also urged to consider from a practical standpoint, the correlation between reduced speeds and level of injury to an animal that is, in fact, struck by a vessel. It is noted that a speed restriction range of 10 to 14 knots is included in the ANPR discussions but there is no data to support that a strike even at the lowest end of this range, would avert a fatal injury when the strike involved a large commercial vessel of tens of thousands of deadweight tons. Even taking into account the precautionary approach, the absolute lack of data of this type suggests that speed reduction measures cannot be justified without further scientific study to correlate vessel speed and its related impact forces with the severity and type of injury expected when a ship and whale collide. While such a study may result in a finding that even lower speeds than 10 knots are necessary to create a “safe” collision relative to the well being of the whale, reduction below this level will result in significant maneuverability issues for vessels and essentially create a situation where action addressing one environmental issue e.g. the regeneration of the population, creates a far more serious environmental issue associated with the potentially catastrophic impacts associated with large vessels which are unable to safely maneuver in close quarters and proximity to the coast. With regards to speed restrictions, CSA fully endorses the position and recommendations of the Massachusetts Port Authority as included in their comments submitted to this docket.
- (3) Regardless of the mitigation measures decided, it is absolutely necessary that these measures be related to the benefit of the population. Without some relationship of this sort, we simply are imposing arbitrary measures, hoping that they may provide some benefit when we should all be actively engaged in the search for reasonable measures that provide real benefit and protection to the animals. It is unacceptable to implement requirements that we think will benefit the animals only to find out later that other solutions existed which would make that benefit a reality.
- (4) CSA believes that the real answer to this issue rests with the development of technology which can provide real time information to all stakeholders relative

to the location of the whales. While the unpredictability of dynamic management areas are of concern to the maritime industry, their application in conjunction with real time location data would well serve the dual goals of promoting the regeneration of the population through ship strike mitigation and permitting the continued efficient and environmentally responsible performance of the maritime industry. As an example, as discussed at the public meeting held in the Baltimore area, it was indicated that pop-up buoys now exist which can accurately determine the position of whales and through appropriate uplinks either through satellite or hard cabling, could provide real time information to all stakeholders, including vessel operators. With such a system, vessels could route around these locations and eliminate the potential for collision with the whales. Clearly focusing precious resources on such measures which do not require scientific study to determine their effectiveness (eliminating collisions will clearly eliminate the threat to whales) means that these resources will be focused on solving the problem rather than just studying it more.

- (5) CSA also believes that a full economic impact assessment is warranted prior to implementation of any of the proposed measures. Aside from the severe economic impacts which would flow from implementation of speed restrictions over a broad area, there are also some collateral environmental impacts which must be considered in determining appropriate mitigation strategies. For example, a number of shipping companies have determined that if speed restrictions were to be imposed along the Mid-Atlantic coast, additional vessels would need to be added to the service to meet the demands of customers thereby resulting in more vessels transiting these areas. As another example, in the likely event of cargo dislocation from one port to another due to imposition of seasonal measures as proposed, cargo will necessarily be placed on the nation's land-based transportation systems e.g. truck, rail with a resultant increase in air quality impacts and traffic congestion in areas which in most cases are not in compliance with existing air quality standards for a variety of pollutants.
- (6) Finally, with little scientific basis to assume that whales will exhibit sufficient avoidance behaviors to eliminate the risk of collisions with ships, CSA believes it is clear that the avoidance behavior must be implemented by the mariner, a presumption to which we believe all stakeholders subscribe. It appears that the only points of disagreement are what avoidance behaviors are appropriate. CSA believes that with continuation of the mariner outreach and education program combined with real time reporting of whale locations, the mariner will be provided with the necessary tools to minimize the risks of ship strikes in all critical habitats.

The Chamber of Shipping of America appreciates the opportunity to comment on this important issue and would be pleased to answer any questions relative to this submission. We look forward to continuing our work with the agencies and pledge our continued commitment to develop a reasonable and effective strategy to reduce ship strikes of the North Atlantic right whale.

Sincerely,

A handwritten signature in black ink that reads "Kathy J. Metcalf". The signature is written in a cursive style with a large, stylized 'K' and 'M'.

Kathy J. Metcalf
Director, Maritime Affairs