



Union of Concerned Scientists
Citizens and Scientists for Environmental Solutions

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Attn: Right Whale Ship Strike Reduction FEIS
Office of Protected Resources
National Marine Fisheries Service
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Re: Final Environmental Impact Statement to Implement Vessel Operational Measure to Reduce Ship Strikes to North Atlantic Right Whales

The following comments from the Union of Concerned Scientists (UCS) Scientific Integrity Program are in regards to final environmental impact statement (FEIS) to reduce ship strikes in North Atlantic right whales, as announced on Aug 25, 2008.

The Scientific Integrity Program has monitored and documented political interference by the White House with the final regulatory rule to implement ship speed restrictions along the U.S. East Coast to reduce the risk of collisions between large ships and whales. The restrictions proposed in that rule were derived from the preferred alternative in the draft environmental impact statement (DEIS) for the ship strike reduction strategy. As the changes in the FEIS which reduce whale protections will likely serve as the basis for a reduction of protections in the final published ship speed rule, the Scientific Integrity Program submits the following comments.

The Scientific Integrity Program recognizes the scientists as the National Marine Fisheries Service (NMFS) for their excellent, inclusive, and transparent rule-making process. In the face of great pressure from industry and the White House, they have managed to use the best available science to craft a ship strike reduction strategy that will help this critically endangered species recover.

Political Interference in the Ship Speed Reduction Rule

A broad pattern of interference in the final ship speed reduction rule has been uncovered through anonymous documents leaked to UCS, the expertise of NMFS scientists, the oversight of Congress, and the watchful community of academics and environmentalists. The rule was delayed from February 20, 2007 until September 15, 2008 while under review at the White House Office of Management and Budget. According to the executive order empowering OMB, regulatory reviews should be completed in 120 days, not 573 days.

During this delay, numerous challenges were made by White House offices to the science

underlying the rule, in an effort to substantially weaken its provisions.¹ The Council of Economic Advisers re-collected the ship strike and vessel speed data from NMFS and the academic community, and then cherry-picked data points to create a biased sensitivity analysis in an attempt to inject artificial uncertainty into the relationship between ship speed and whale mortality. The White House Office of the Vice President challenged the scientists at NMFS, contending that there was no real evidence that lowering ship speeds would make a difference. Other challenges from the White House included questioning the geographical areas designated for speed reductions, and questioning scientist's conclusions on the lesser importance of vessel size or mass in whale mortality.

Impacts of Political Interference on the FEIS

Given the modifications made to the EIS between the draft and final stages, it appears that NMFS successfully countered many of the attempts to override science with political concerns. However, the reduction in the applicable radius around mid-Atlantic ports is reminiscent of the challenges made to the ship speed reduction rule.

In one of the internal documents from the final ship speed reduction rule, NMFS scientists responded to questions from the White House regarding the impact of reducing the size of the seasonal management areas (SMAs) around mid-Atlantic ports. The scientists responded, "Moving the outer boundaries of the SMAs closer to shore, whether in one region or in all three, results in a rule that is less protective of right whales and increases the legal vulnerability of the rule."²

And yet, the FEIS includes this very change, as it reduces the radii around mid-Atlantic ports from 30 nautical miles to 20 nautical miles. The Scientific Integrity program is concerned that this change is a result of residual political pressure on NMFS science so that a sought-after goal of the shipping industry could be achieved.

Weakening Dynamic Management Areas with No Enforcement

We are also concerned that compliance with Dynamic Management Areas (DMAs) has been changed from mandatory (in the DEIS) to voluntary (in the FEIS). The rationale for this was a concern that publishing DMAs in the Federal Register would add so much delay to the rulemaking as to make it ineffective. The Scientific Integrity Program encourages NMFS to look for a better way to make these emergency rulemakings, instead of making the entire program voluntary. The Coast Guard already has such an ability to make 24 hour rulemakings.

As highlighted in the FEIS, industry compliance with current voluntary ship speed advisories is abysmal. One study showed that 95 percent of ships tracked did not slow down or route around

¹ Committee on Oversight and Governmental Reform. Chairman Waxman Releases Internal Administration Documents, Calls for Right Whale Protections. April 30, 2008. Available online at <http://oversight.house.gov/story.asp?ID=1921>

² *ibid*

areas where whales had been sighted and speed advisories had been provided.³ Another study showed that commercial whale watching vessels also had a high rate of non-compliance with vessel speed zones. And NOAA admits that another program, the Mandatory Ship Reporting System, has a “relatively low initial compliance rate” which “further suggests that voluntary-only measures would have very limited success.”⁴

Given that (1) DMAs are created in radii around actual whale sightings, (2) this species is critically endangered, (3) this industry has a documented history of low compliance rates with both mandatory and voluntary programs, and (4) very little detail is provided as to how voluntary DMA compliance would be monitored, NMFS should reconsider this part of its preferred alternative. Endangered species are listed using the best available science, and efforts taken to recover them deserve the same. This increased risk to a species in which the loss of one female could prohibit recovery forever should be reconsidered.

This Rule Should Not Have a Sunset Clause

The inclusion of a five-year sunset in the preferred alternative shifts the burden from the regulated industry to prove that their business conduct is not endangering the right whale, and instead forces NMFS to repeat the long rule drafting process again in a few years. The North Atlantic right whale lives for somewhere on the range of 50 years, and females do not begin bearing calves until approximately their tenth year, so it is extremely unlikely that the positive effects of this rule on whale populations could be adequately assessed five years from now.

The stated purpose of the FEIS is to “reduce the occurrence and severity of vessel collisions with North Atlantic right whales, thereby contributing to the recovery and sustainability of the species while minimizing adverse effects on the shipping industry and maritime commerce.”⁵ This sunset provision does nothing to promote the recovery of the whale and should be removed.

In closing, the Union of Concerned Scientists Scientific Integrity Program will continue to monitor the right whale ship strike reduction program for signs of political pressures attempting to manipulate science to achieve political or economic gains. We encourage NMFS to reconsider the compromises to whale recovery that have been made in the final environmental impact statement, but we commend them on their good work in fighting intense political interference.

Sincerely,



³ National Oceanic and Atmospheric Administration. Final Environmental Impact Statement to Implement Vessel Operational Measure to Reduce Ship Strikes to North Atlantic Right Whales (FEIS). August 2008. Chapter 1. http://www.nmfs.noaa.gov/pr/pdfs/shipstrike/feis_chapter1.pdf

⁴ FEIS. Chapter 2. http://www.nmfs.noaa.gov/pr/pdfs/shipstrike/feis_chapter2.pdf

⁵ FEIS. Chapter 1. http://www.nmfs.noaa.gov/pr/pdfs/shipstrike/feis_chapter1.pdf

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About UCS: The Union of Concerned Scientists is a leading science-based nonprofit working for a healthy environment and a safer world. The UCS Scientific Integrity Program mobilizes scientists and citizens alike to defend science from political interference and restore scientific integrity in federal policy making.