

Dated: June 16, 2005.

**P. Michael Payne,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 060804F]

#### Endangered Fish and Wildlife; National Environmental Policy Act; Right Whale Ship Strike Reduction Strategy Notice of Intent to Prepare an Environmental Impact Statement and Conduct Public Scoping

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

**ACTION:** Notice of intent; request for written comments.

**SUMMARY:** NMFS intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts of implementing the operational measures in NOAA's Right Whale Ship Strike Reduction Strategy (Strategy). This notice describes the proposed action and possible alternatives intended to reduce the likelihood and threat of right whale deaths as a result of collisions with vessels.

**DATES:** Written or electronic comments must be received no later than 5 p.m., eastern standard time, on July 22, 2005. At this time there are no scheduled scoping meetings.

**ADDRESSES:** Written comments, or requests to be added to the mailing list for this project, should be submitted to: P. Michael Payne, Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Right Whale Ship Strike EIS, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be submitted via fax to (301) 427-2522, Attn: Right Whale Ship Strike EIS, or by e-mail to:

*Shipstrike.comments@noaa.gov*. Include in the subject line the following identifier: I.D. 060804F.

Additional information including the Environmental Assessment (EA) and the economic analysis report used in the preparation of the EA are available on the NMFS website at <http://www.nmfs.noaa.gov/pr/shipstrike/>.

**FOR FURTHER INFORMATION CONTACT:** Greg Silber, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver

Spring, MD 20910; telephone (301) 713-2322, e-mail [greg.silber@noaa.gov](mailto:greg.silber@noaa.gov); or Barb Zoodsma, Southeast Regional Office, NMFS, 263 13<sup>th</sup> Avenue South, St. Petersburg, FL 33701; telephone (904) 321-2806, e-mail [barb.zoodsma@noaa.gov](mailto:barb.zoodsma@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The abundance of North Atlantic right whales is believed to be fewer than 300 individuals despite protection for half a century. The North Atlantic right whale is also considered one of the most endangered large whale populations in the world. Recent modeling exercises suggest that the loss of even an individual animal has measurable effects that may contribute to the extinction of the species (Caswell et al., 1999). The models also suggests that preventing the mortality of one adult female a year significantly alters the projected outcome.

The two most significant human-caused threats and sources of mortality to right whales are entanglements in fishing gear and collisions with ships (Knowlton and Kraus, 2001; Jensen and Silber, 2003). Collisions with ships (referred to as ship strikes) account for more confirmed right whale mortalities than any other human-related activity. Ship strikes are responsible for over 50 percent of known human-related right whale mortalities and are considered one of the principal causes for the lack of recovery in this population. Right whales are located in, or adjacent to, several major shipping corridors on the eastern U.S. and southeastern Canadian coasts.

NMFS has implemented conservation measures to reduce the likelihood of mortalities as a result of ship strikes. These activities include the use of aerial surveys to notify mariners of right whale sighting locations, interagency collaboration with the U.S. Coast Guard (USCG) which issues periodic notices to mariners regarding ship strikes, joint operation with the USCG of Mandatory Ship Reporting (MSR) systems to provide information to mariners entering right whale habitat, support of regional Right Whale Recovery Plan Implementation Teams, support of shipping industry liaisons, and consultations with other Federal agencies regarding the effects of their activities on right whales (under section 7 of the Endangered Species Act). However, right whales continue to sustain mortalities as a result of collisions with vessels despite the efforts of these programs.

NMFS recognizes that this complex problem requires the implementation of additional proactive measures to reduce or eliminate the threat of ship strikes to right whales. The goal of the Strategy is to reduce, to the extent practicable, the distributional overlap between ships and right whales. The Strategy allows for regional implementation and accommodates differences in oceanography, commercial ship traffic patterns, navigational concerns, and right whale use. Implementation of the Strategy will require proposed and final rulemaking to be taken.

##### Purpose of this Action

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. NMFS is considering a variety of measures, including regulatory and non-regulatory initiatives. NMFS may implement the operational measures of the Strategy through its rulemaking authority pursuant to the Marine Mammal Protection Act (MMPA). Under MMPA section 112(a) (16 U.S.C. 1382(a)), NMFS has authority, in consultation with other Federal agencies to the extent other agencies may be affected, to "prescribe such regulations as are necessary and appropriate to carry out the purposes of [the MMPA]." In addition, NMFS has authority under the Endangered Species Act to promote conservation, implement recovery measures, and enhance enforcement to protect right whales. NMFS is seeking public input on the scope of the required National Environmental Policy Act (NEPA) analysis, including the range of reasonable alternatives, associated impacts of any alternatives, and suitable mitigation measures.

On June 1, 2004, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) (69 FR 30857) and announced its intent to prepare a draft EA to address the potential impacts of implementing the Strategy. The EA considered the context and intensity of the factors identified in NOAA's NEPA guidelines and regulations, along with short- and long-term, and cumulative effects of a No Action Alternative and the proposed action (see **ADDRESSES**). The analysis concluded that the effects of the proposed action on the human environment are likely to be highly controversial. This finding was based on the controversial nature of the Strategy on the human environment and the possible cumulative effects of the proposed action on certain sectors within the maritime industry. The major controversy concerns the potential

economic impacts on the commercial shipping industry. Further, the EA concluded that individual impacts of the proposed action may be insignificant but the cumulative impacts on the shipping industry may be significant. As a result, the cumulative effects on the environment as a result of implementing this action, including the alternatives proposed by this action, are considered significant. Therefore, an EIS is the appropriate level of environmental analysis for the proposed action under NEPA, not an EA. This is consistent with NEPA regulations at section 1501.4(c). This notice announces NMFS's intent to prepare an EIS expanded from the EA to analyze the potential impacts of implementing the operational measures in NOAA's Right Whale Ship Strike Reduction Strategy. This notice describes the proposed action and several possible alternatives intended to reduce the likelihood and threat of mortalities caused by ship strikes.

#### Scope of the Action

The Draft EIS is expected to identify and evaluate all relevant impacts and issues associated with implementing the Strategy, in accordance with Council on Environmental Quality's Regulations at 40 CFR parts 1500, 1508, and NOAA's procedures for implementing NEPA found in NOAA Administrative Order (NAO) 216-6, Environmental Policy Act, dated May 20, 1999.

NMFS is proposing to implement the operational measures in the Strategy within each of three broad regions: (a) the southeastern Atlantic coast of the U.S., (b) the Mid-Atlantic coastal region, and (c) the northeastern Atlantic coast of the U.S.

The implementation of operational measures, and the specific times and areas (with boundaries) in which the measures would be in effect, are expected to vary within and between each region. However, each region would contain specific elements to reduce the threat of ship strikes to right whales. The operational measures proposed in the alternatives apply to non-sovereign vessels 65 ft (19.8 m) and greater in length. The operational measures do not apply to vessels operated by Federal agencies or the military. Any potential effects of Federal vessel activities, and mitigation, will be evaluated through the Endangered Species Act section 7 consultation process for all alternatives. A more detailed description of the operational measures proposed for each region are in the ANPR (June 1, 2004; 69 FR 30857).

That notice describes the proposed action and possible alternatives intended to reduce the likelihood and threat of mortalities caused by ship strikes pursuant to requirements under NEPA. In particular, the Draft EIS is intended to identify potential impacts to human activities that occur as a result of the proposed action and its alternatives.

The areas of interest for evaluation of environmental and socioeconomic effects will include the territorial sea and the Exclusive Economic Zone off the east coast of the U.S. and international waters in the North Atlantic Ocean.

#### Public Involvement and the Scoping Process

Public participation in the Strategy has been encouraged through several methods including soliciting public comments on the ANPR and holding public meetings, industry stakeholder meetings, and other focus group meetings. NMFS has been working with state and other Federal agencies, concerned citizens and citizens groups, environmental organizations, and the shipping industry to address the ongoing threat of ship strikes to right whales. NMFS' intent is to encourage the public and interest groups to participate in the NEPA process, including interested citizens and environmental organizations, affected low-income or minority populations or affected local, state and Federal agencies, and any other agencies with jurisdiction or special expertise.

NMFS published the ANPR for Right Whale Ship Strike Reduction in the **Federal Register** on June 1, 2004 (69 FR 30857) and provided a comment period to determine the issues of concern with respect to the practical considerations involved in implementing the Strategy and to determine whether NMFS was considering the appropriate range of alternatives. Comments were received from over 5,250 governmental entities, individuals, and organizations, and can be accessed at the NMFS website (see **ADDRESSES**). These comments were in the form of e-mail, letters, website submissions, correspondence from action campaigns (e-mail and U.S. postal mail), faxes, and a phone call.

NMFS extended the comment period to November 15, 2004 (September 13, 2004; 69 FR 55135) to provide for an extended series of public meetings on the ANPR and this topic in general. Five public meetings on the ANPR were held in the following locations: Boston, MA, at the Tip O'Neill Federal Building (July 20, 2004); New York/New Jersey at the Newport Courtyard Marriot (July 21,

2004); Wilmington, NC, at the Hilton Riverside Wilmington (July 26, 2004); Jacksonville, FL, at the Radisson Riverwalk Hotel (July 27, 2004); and Silver Spring, MD, at NOAA Headquarters Science Center (August 3, 2004). Public comments were requested at these meetings and transcribed for the public record. Also, nine industry stakeholder meetings were held to explain the ANPR at the following locations: Boston, MA (September 30, 2004); Portland, ME (October 1, 2004); Norfolk, VA (October 4, 2004); Morehead City, NC (October 6, 2004); Jacksonville, FL (October 13, 2004); Savannah, GA (October 14, 2004); New London, CT (October 20, 2004); Newark, NJ (October 25, 2004); and Baltimore, MD/Washington, DC (October 27, 2004). A summary report of these meetings and a list of the attendees are posted on the internet at <http://www.nero.noaa.gov/shipstrike>.

NMFS also held two focus group discussion meetings with participants from non-governmental organizations, academia, and Federal and state government agencies. The first meeting was held in Silver Spring, MD on September 26, 2004, and the second meeting was in New Bedford, MA on November 5, 2004.

The comments on the ANPR focused primarily on several broad topics including: speed restrictions, vessel size and operations, speed and routing issues specific to regions, routing restrictions (Port Access Routes Study [PARS] and Areas To Be Avoided [ATBA]), safety of navigation, suggestions for alternative or expanded dates for operational measures, military and sovereign vessel exemptions, enforcement, and compliance.

#### Alternatives

NMFS will evaluate a range of alternatives in the Draft EIS for developing a final Strategy to reduce mortality to right whales due to ship strikes based on a suite of possible mitigative measures contained in each of the elements of the overall Strategy. The following alternatives are being considered based on comments received on the ANPR and during the public meetings: Alternative 1, a no-action alternative; Alternative 2, Use of Dynamic Management Areas (DMAs); Alternative 3, Speed Restrictions in Designated Areas; Alternative 4, Use of Designated or Mandatory Routes; Alternative 5, Combination of Alternatives 1, 2, 3 and 4; and Alternative 6, NOAA Ship Strike Strategy.

For all speed restrictions being considered under an alternative, NMFS

expects to consider 10, 12, and 14 knots in the analyses. Other variations or additional alternatives may be developed based on significant issues raised during this public scoping period. The probable environmental, biological, cultural, social and economic consequences of the alternatives and those activities that may cumulatively impact the environment are expected to be considered in the Draft EIS.

**Alternative 1 - No Action (Status Quo):** Under this alternative NMFS would continue to implement existing measures and programs, largely non-regulatory, to reduce the likelihood of mortality from ship strikes. Research would continue and existing technologies would be used to determine whale locations and pass this information on to mariners. Ongoing activities under this alternative would include the use of aerial surveys to notify mariners of right whale sighting locations; the operation of Mandatory Ship Reporting Systems; support of Recovery Plan Implementation Teams; education and outreach programs for mariners; and ongoing research on technological solutions. The development, enhancement, and implementation of the draft Education and Outreach Strategy would continue in coordination with the Recovery Plan Implementation Teams. The alternative would also rely on Endangered Species Act section 7 consultations to address, and mitigate the potential effects of, the activities of vessels operated by government agencies. Additionally, efforts will continue to identify technologies that will mitigate or prevent ship strikes to right whales but that would impose minimal or no environmental impacts.

**Alternative 2 - Use of DMAs:** A second alternative under consideration would incorporate the elements of Alternative 1 with additional measures to implement DMAs. The DMA component of this alternative would be implemented ONLY when right whale sightings occur.

Under this alternative there would need to be a commitment to continuing aircraft surveillance coverage. If confirmed right whale sightings occur, a DMA would be specified and mariners would have the option of either routing around the DMA or to proceed within the DMA at restricted speeds. NMFS is considering various models for whale density required to trigger a DMA action; the current default is the same criteria used for the Atlantic Large Whale Take Reduction Plan (ALWTRP) Dynamic Area Management fishing restrictions. Consecutive DMAs would be imposed if trigger thresholds persist.

If subsequent flights confirm the whales are no longer aggregated in this location, the DMA would be lifted.

**Alternative 3 - Speed Restrictions in Designated Areas:** This alternative includes all elements of Alternative 1 and implements large-scale speed restrictions throughout the range of northern right whales. Restrictions would apply as follows:

1. Speed restrictions year round off the northeast U.S. coast. This area would include either (1) all waters bounded on the east by the U.S. coastline, the west by 68° W longitude, the north by the U.S./Canadian border and the south by 41°30' N latitude, or (2) all waters in the area used by Seasonal Area Management (SAM) zones as designated in the ALWTRP;

2. Speed restrictions from October 1 through April 30 off the U.S. mid-Atlantic coast. This area would include all waters extended from U.S. coastline out 25 nm from Providence/New London (Block Island Sound) south to Savannah, Georgia.

3. Speed restrictions from December 1 through March 31 off the Southeast U.S. This area would include all waters within the MSR WHALESSOUTH reporting area and the presently designated right whale critical habitat.

**Alternative 4 - Use of Designated or Mandatory Routes:** This alternative includes all the elements of Alternative 1 and relies on altering current vessel patterns to move vessels away from areas where whales are known to aggregate in order to reduce the likelihood of a mortality due to a ship strike.

This alternative also creates an ATBA in the Great South Channel as described in NOAA's ANPR, and considers recommendations of a PARS by the USCG. At present the PARS analysis is assessing possible lane changes in Cape Cod Bay and waters off the Southeast U.S. The alternative also will analyze the possibility of moving the Traffic Separation Scheme into/out of Boston to avoid high density aggregations of whales at the northern end of Cape Cod Bay and Stellwagen Bank.

**Alternative 5 - Combination of Alternatives:** This alternative includes all elements of Alternatives 1 - 4. The cumulative effects of Alternative 5 would be the additive effects of each of the previous alternatives.

**Alternative 6 - NOAA Ship Strike Strategy:** This alternative includes all the operational measures identified in the NOAA Ship Strike Strategy. The principal difference between Alternative 5 and 6 is that Alternative 6 does not include large-scale speed restrictions (as identified in Alternative 3) but instead

relies on speed restrictions in much smaller Seasonally Managed Areas as identified in the NOAA Ship Strike Strategy.

### Comments Requested

NMFS provides this notice to: advise the public and other agencies of the NOAA's intentions, and obtain suggestions and information on the scope of issues to include in the EIS. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all significant issues are identified. NMFS requests that comments be as specific as possible. In particular, the agency requests information regarding: the potential direct, indirect, and cumulative impacts resulting from the proposed action on the human environment. The human environment could include air quality, water quality, underwater noise levels, socioeconomic resources, and environmental justice.

Comments concerning this environmental review process should be directed to NMFS (see ADDRESSES). See **FOR FURTHER INFORMATION CONTACT** for questions. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

### Authority

The environmental review of the Ship Strike Strategy will be conducted under the authority and in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500-1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations.

### Literature Cited

- Caswell, H., M. Fujiwara, and S. Brault. 1999. Declining survival probability threatens the North Atlantic right whale. *Proc. Nat. Acad. Sci.* 96:3308-3313.
- Jensen, A.S., and G.K. Silber. 2003. Large whale ship strike database. U.S. Dep. Commerce, NOAA Technical Memorandum NMFS-F/OPR 25, 37 p.
- Knowlton, A.R., and S.D. Kraus. 2001. Mortality and serious injury of northern right whales (*Eubalaena glacialis*) in the western North Atlantic Ocean. *Jour. Cetacean Res. and Manag. (Special Issue)* 2:193-208.
- Russell, B.A. 2001.

Dated: June 16, 2005.

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Conservation Division, Office of Protected  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
Administration**

[I.D. 061405C]

**Atlantic Coastal Fisheries Cooperative  
Management Act Provisions;  
Application for Exempted Fishing  
Permit Related to Horseshoe Crabs**

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

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS announces that the  
Director, Office of Sustainable Fisheries,  
is considering issuing an Exempted  
Fishing Permit to Limuli Laboratories of  
Cape May Court House, NJ, to conduct  
the fifth year of an exempted fishing  
operation otherwise restricted by  
regulations prohibiting the harvest of  
horseshoe crabs in the Carl N. Schuster  
Jr. Horseshoe Crab Reserve (Reserve)  
located 3 nautical miles (nm) seaward  
from the mouth of the Delaware Bay. If  
granted, the EFP would allow the  
harvest of 10,000 horseshoe crabs for  
biomedical purposes and require, as a  
condition of the EFP, the collection of  
data related to the status of horseshoe  
crabs within the Reserve. This notice  
also invites comments on the issuance  
of the EFP to Limuli Laboratories.

**DATES:** Written comments on this action  
must be received on or before July 7,  
2005.

**ADDRESSES:** Written comments should  
be sent to John H. Dunnigan, Director,  
Office of Sustainable Fisheries, NMFS,  
1315 East-West Highway, Room 13362,  
Silver Spring, MD 20910. Mark the  
outside of the envelope "Comments on  
Horseshoe Crab EFP Proposal." Comments  
may also be sent via fax to  
(301) 713-0596. Comments on this  
notice may also be submitted by e-mail  
to: [Horseshoe-Crab.EFP@noaa.gov](mailto:Horseshoe-Crab.EFP@noaa.gov).  
Include in the subject line of the e-mail  
comment the following document  
identifier: Horseshoe Crab EFP Proposal.

**FOR FURTHER INFORMATION CONTACT:** Tom  
Meyer, Fishery Management Biologist,  
(301) 713-2334.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations that govern exempted  
fishing, at 50 CFR 600.745(b) and  
697.22, allow a Regional Administrator  
or the Director of the Office of  
Sustainable Fisheries to authorize for  
limited testing, public display, data  
collection, exploration, health and  
safety, environmental clean-up and/or  
hazardous removal purposes, the  
targeting or incidental harvest of  
managed species that would otherwise  
be prohibited. Accordingly, an EFP to  
authorize such activity may be issued,  
provided: there is adequate opportunity  
for the public to comment on the EFP  
application, the conservation goals and  
objectives of the fishery management  
plan are not compromised, and issuance  
of the EFP is beneficial to the  
management of the species.

The Reserve was established on  
March 7, 2001 to protect the Atlantic  
coast stock of horseshoe crabs and to  
support the effectiveness of the Atlantic  
States Marine Fisheries Commission's  
(Commission) Interstate Fishery  
Management Plan (ISFMP) for  
horseshoe crabs. The final rule  
(February 5, 2001; 66 FR 8906)  
prohibited fishing for and possession of  
horseshoe crabs in the Reserve on a  
vessel with a trawl or dredge gear  
aboard while in the Reserve. While the  
rule did not allow for any biomedical  
harvest or the collection of fishery  
dependent data, NMFS stated in the  
comments and responses section that it  
would consider issuing EFPs for the  
biomedical harvest of horseshoe crabs in  
the Reserve.

The biomedical industry collects  
horseshoe crabs, removes approximately  
30 percent of their blood, and returns  
them alive to the water. Approximately  
10 percent do not survive the bleeding  
process. The blood contains a reagent  
called *Limulus* Amebocyte Lysate (LAL)  
that is used to test injectable drugs and  
medical devices for bacteria and  
bacterial by-products. Presently, there is  
no alternative to the LAL derived from  
horseshoe crabs.

NMFS manages horseshoe crabs in the  
exclusive economic zone in close  
cooperation with the Commission and  
the U.S. Fish and Wildlife Service. The  
Commission's Horseshoe Crab  
Management Board met on April 21,  
2000, and again on December 16, 2003,  
and recommended to NMFS that  
biomedical companies with a history of  
collecting horseshoe crabs in the  
Reserve are given an exemption to  
continue their historic levels of  
collection not to exceed a combined  
harvest total of 10,000 crabs annually. In  
2000, the Commission's Horseshoe Crab

Plan Review Team reported that  
biomedical harvest of up to 10,000  
horseshoe crabs should be allowed to  
continue in the Reserve given that the  
resulting mortality should be only about  
1,000 horseshoe crabs (10 percent  
mortality during bleeding process). Also  
in 2000, the Commission's Horseshoe  
Crab Stock Assessment Committee  
Chairman recommended that, in order  
to protect the Delaware Bay horseshoe  
crab population from over-harvest or  
excessive collection mortality, no more  
than a maximum of 20,000 horseshoe  
crabs should be collected for biomedical  
purposes from the Reserve. In addition  
to the direct mortality of horseshoe  
crabs that are bled, it can be expected  
that more than 20,000 horseshoe crabs  
will be trawled up and examined for  
LAL processing. This is because  
horseshoe crab trawl catches usually  
include varied sizes and sexes of  
horseshoe crabs and large female  
horseshoe crabs are the ones usually  
selected for LAL processing. The  
remaining horseshoe crabs are released  
at sea with some unknown amount of  
mortality. Although unknown, this  
mortality is expected to be negligible.

Collection of horseshoe crabs for  
biomedical purposes from the Reserve is  
necessary because of the low numbers of  
horseshoe crabs found in other areas  
along the New Jersey Coast from July  
through early November and because of  
the critical role horseshoe crab blood  
plays in health care. In conjunction with  
the biomedical harvest, NMFS is  
considering requiring that scientific data  
be collected from the horseshoe crabs  
taken in the Reserve as a condition of  
receiving an EFP. Since the Reserve was  
first established, the only fishery data  
from the Reserve were under EFPs  
issued to Limuli Laboratories for the  
past four years, and under Scientific  
Research Activity Letter of  
Acknowledgment issued Virginia  
Polytechnic Institute and State  
University's Department of Fisheries  
and Wildlife Science on September 4,  
2001 (for collections from September 1–  
October 31, 2001), on September 24,  
2002 (for collections from September  
24–November 15, 2002), on August 14,  
2003 (for collections from September 1–  
October 31, 2003), and on September 15,  
2004 (for collections from September  
15–October 31, 2004). Further data are  
needed to improve the understanding of  
the horseshoe crab population in the  
Delaware Bay area and to better manage  
the horseshoe crab resource under the  
cooperative state/Federal management  
program. The data collected through the  
EFP will be provided to NMFS, the