COMMENTS OF THE AMERICAN PILOTS’ ASSOCIATION
ON THE FINAL ENVIRONMENTAL IMPACT STATEMENT ON
SHIP STRIKE REDUCTION MEASURES [EIS No. 20080334]

September 29, 2008

In response to the Notice in the August 29, 2008 Federal Register, the American Pilots’ Association (APA), a leading national advocate of navigational safety, submits the following comments on the Final Environmental Impact Statement (FEIS) on Ship Strike Reduction Measures. As we indicated in our November 15, 2004 comments on the Advance Notice of Proposed Rulemaking for these proposed rules and again in our October 5, 2006 comments on the Notice of Proposed Rulemaking for these measures (both of which are attached), APA cannot support the blanket imposition of 10-knot speed limits on vessels in certain areas along the U.S. East Coast, including some areas encompassing pilotage waters. While we understand and have long supported NOAA’s goals regarding the North Atlantic Right Whales, these speed restrictions pose a significant threat to navigational safety, could increase the likelihood of a marine casualty and, ironically, could result in an increased risk of harm to the marine environment, including potential harm to the North Atlantic Right Whale.

APA again emphasizes that we have been and will continue to be a genuine partner with NOAA’s National Marine Fisheries Service (NMFS) in the ongoing and important efforts to protect and restore the North Atlantic Right Whale population. However, in all candor, APA’s latest comments are submitted with growing frustration that our views regarding the potential negative impact these speed restrictions are likely to have on navigational safety (which we understand are held by many others with expertise in maritime navigation) seem not to be taken into account during the rulemaking process for these proposed regulations.

In our previous comments, APA has stressed that imposing blanket speed restrictions in and along the approaches to the diverse ports along the East Coast, each with its own geographic, wind, tide, and current peculiarities, could have a negative impact on vessel maneuverability, steerageway, and ultimately on the safe transit of the large commercial vessels aboard which pilots often conduct their duties. Yet again, we reiterate these serious concerns.
It is precisely in the approaches to ports, with vessel traffic funneled together, narrow channels and sea lanes, shoal waters, unique hazards, and often challenging winds and currents, where pilots must exercise their independent judgment and apply their local expertise to ensure the optimal course and speed of vessels are chosen. These nationally dictated “one size fits all” speed limits up and down the East Coast undercut the valuable contributions that pilots are recognized as bringing to commercial shipping in U.S. waters, namely exercising seasoned judgment, born from years of experience and expertise with local conditions. In some situations, pilots may judge that greater speeds are required in order to combat the effects of strong winds and/or currents. The plain fact is that, in some places, at certain times, 10 knots would not be the most prudent speed to ensure the safe transit of large commercial vessels that frequently carry petroleum products or hazardous or dangerous cargo. Should these dangerous products be released into the water, they could cause serious harm to the marine environment and to the Right Whales themselves.\(^1\)

In addition to negatively impacting how much control pilots will have on maneuvering large commercial vessels in confined and often congested waters, these speed limits would also impose impractical and potentially harmful limits on pilots’ ability to safely maneuver their own pilot boats and efficiently conduct their piloting operations. Because some pilot vessels along the East Coast are slightly greater than 65 feet in length, they would therefore be subject to these proposed speed restrictions.

Pilot boats must routinely operate in and among twirling winds and currents and near dangerous shoals and other hazards to navigation in order to deliver pilots to waiting or departing commercial vessels. They must approach moving vessels at speeds carefully calculated to bring the boat alongside the ship at the best possible angle and moment to facilitate what is, even in the most benign of conditions, a dangerous personnel transfer operation. In many instances, it would not be safe to operate in this type of environment at 10 knots or slower. Pilot boats must be able to maintain the maneuverability required for the transfer operations and considerable discretion is necessary to determine the appropriate and necessary speed. The proposed speed restriction, therefore, would place the personal safety of pilot boat crews and pilots at significant risk.

Due to the demands of piloting, pilot boats are special-purpose craft built for high speed operation. They must carry pilots to and from ships that are, in many places, at considerable distances from shore. The pilot boat operations and boat characteristics have been designed to minimize the travel time between ship and shore and between ships in order to prevent congestion and delay from ships having to wait to embark or disembark a pilot, and to avoid subjecting pilots to long pilot boat trips that would significantly add to pilots’ workload and fatigue. Numerous studies have shown that fatigue is a major cause of vessel mishaps.

In short, compulsory pilotage is navigation safety regulation. While not per se a governmental function, pilots without question provide a critical public safety function. Applying the proposed speed restrictions to pilot boats would interfere with, and undermine, this important navigation safety measure and could have the unintended consequence of increasing the likelihood of a maritime mishap and/or marine pollution event.

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\(^1\) As the FEIS notes, North Atlantic Right Whales spend considerable time on the ocean’s surface where much of the oil and other chemicals are likely to gather after a spill.
While the proposed rules implementing the speed restrictions do include what is characterized as an "exemption" for navigational safety reasons, the reality is that this so-called exemption would do little to alleviate APA's navigational safety concerns, but would place a significant and unreasonable administrative burden upon pilots and the ships' crews. The "exemption" is crafted so as to only apply under extraordinary circumstances when oceanographic, hydrographic, and/or meteorological conditions would severely restrict vessel operations. The "exemption" would not apply to the many hundreds of annual routine transits in and out of East Coast ports during which vessels would be compelled to operate at a speed that may not be conducive to the safest possible navigation. Under the proposed regulation's purported "exemption", if weather or sea conditions are such that a pilot's judgment leads him or her to direct that the vessel be operated at a speed greater than 10 knots, he or she must comply with an overly burdensome administrative and bureaucratic system. The key concept that this "exemption" does not take into account is that piloting large commercial vessels must always be done with careful consideration of local ocean and weather conditions, not just under unusually severe conditions. Safe navigation requires the exercise of independent judgment – including the selection of a safe speed – after careful consideration of the unique conditions present.

APA's state-licensed member pilots are among the Nation's most respected experts in shiphandling and navigational safety. Most have many years of hands-on experience piloting large vessels in America's most challenging waterways where winds, currents, and other elements constantly expose vessels, the public, and the marine environment to peril. Many of these pilots live and have worked many years to protect the very ports along the U.S. East Coast at which these proposed rules are aimed. As we have said repeatedly throughout this rulemaking process in both our formal written comments and in discussions with NOAA and NMFS officials, it is the unanimous view of pilots, who are in perhaps the best position to judge, that these proposed blanket speed restrictions pose an unacceptable risk of increasing the likelihood of ship groundings, collisions, and allusions, all of which could cause serious harm to the marine environment.

APA and our member pilots have actively cooperated with NMFS in its important work of seeking to protect and bolster the population of North Atlantic Right Whales and we commit to continuing to do so. However, it would not be responsible for us to fail to continue to voice our strong concern that the imposition of these speed restrictions poses a significant risk to safe navigation in U.S. waters and, as a result could have the unintended consequence of increasing the potential for harm to the North Atlantic Right Whale and the marine environment generally.

We respectfully ask that these comments be considered in the formation of any final rule. Specifically, we ask that any final rule permit pilots to exercise the independent judgment that is both expected of them by the public and that is so necessary to ensuring the protection of the American public, and the Nation's environment, waterways, and economic interests. We look forward to continuing to work together in the future.
COMMENTS OF AMERICAN PILOTS’ ASSOCIATION
ON NOTICE OF PROPOSED RULEMAKING
TO IMPLEMENT SPEED RESTRICTIONS TO REDUCE
THE THREAT OF RIGHT WHALE STRIKES
[Docket No. 040506143-6016-02, I.D. 101205B]

October 5, 2006

The American Pilots’ Association (APA) submits the following comments on the
Notice in the June 26, 2006 Federal Register of regulations proposed by NOAA’s
National Marine Fisheries Service (NMFS) to impose speed limits on vessels in certain
areas along the US East Coast at certain times of the year for the purpose of reducing the
likelihood and severity of ship strikes of North Atlantic Right whales.

The APA cannot support the proposed rules. Those rules could have a severe
negative impact on the operations of affected vessels and could seriously reduce
navigation safety. In addition, there is inadequate scientific evidence that the speed
restrictions would have the intended effect. Indeed, as the APA discussed in its
November 15, 2004 comments on the ANPR in this rulemaking proceeding (copy
attached), there is considerable scientific opinion that slower speeds may increase the
incidence of ship strikes of large whales. Given the substantial adverse economic and
safety impacts of the proposed speed restrictions, the equivocal and speculative nature of
the research to date does not provide sufficient justification for the proposed rules.

The Notice indicates that the NMFS rightly recognized that an important issue
raised by proposed speed limits is whether those limits would cause vessels to lose
necessary maneuverability. According to the Notice, the NMFS believes that is not true.
The examples and arguments offered by the NMFS in support of that belief that “ships
operating under the proposed regulations will be able to maintain maneuverability,”
however, are not compelling. Examples of other speed restrictions or reduced-speed
operations noted by NMFS are inapposite. Many of the cited speed restrictions are in
sheltered waters. Others, such as the practice of vessels slowing down to board or
dismembark a state pilot, take place in open, deep waters where a temporary decrease in
speed or maneuverability would not pose a significant risk. Some of the areas that would
be subject to the proposed speed restrictions, whether in designated waters during specified times of the year or in ad hoc dynamically managed areas, however, are in waters with narrow channels, dangerous shoals, and frequent strong currents and high winds. Most of the speed restrictions would apply during winter months when strong northeast winds are common. These are conditions of relatively greater navigational challenge. Steerage way and maneuverability is particularly important in such conditions. These are not the times or the places to reduce the margins of navigation safety.

As experts in shiphandling and in understanding how ships maneuver and interact with the elements, pilots are uniquely qualified to assess the impact of the speed restrictions on vessel maneuverability and navigation safety. APA member pilots in many of the areas that would be affected by the proposed regulations report that the speed restrictions would pose an unacceptable risk of groundings and ship-to-ship collisions, with potentially devastating environmental damage (which could do more harm to the right whales than ship strikes). These pilots are submitting comments explaining the local conditions, typical vessel operations, prevalent navigation demands, and the need to maintain speeds greater than the proposed restrictions. The APA urges the NMFS to consider those comments and to consult with ship pilots and other professional mariners before proceeding with the proposed rules.

No group in the maritime community has been more active in assisting the NMFS in its efforts to protect the Northern right whale than the APA and its member pilots. We have recommended, however, that as protective measures are ratcheted up in the face of perceived lack of progress in this effort, NMFS should be careful that measures with significantly increasing economic and safety impacts are based on adequate study.

The stakes in this matter are indeed high – for navigation safety, for environmental protection, for the shipping industry, for the economic well-being of this country, and, indeed, for the whales themselves. Hasty and ill-considered action, no matter how well-meaning, could have far reaching negative consequences. As the APA said in its 2003 comments, we are concerned about a “rush to judgment” on this subject. Measures eventually adopted on the basis of better science, more reliable information, and true consultation with experts such as pilots will have a better chance of success.
COMMENTS OF AMERICAN PILOTS’ ASSOCIATION
ON ADVANCED NOTICE OF PROPOSED RULEMAKING
FOR RIGHT WHALE SHIP STRIKE REDUCTION MEASURES
50 CFR Part 224 [I. D. 040704A]

November 15, 2004

The American Pilots’ Association (APA) submits the following comments on the Notice in the June 1, 2004 Federal Register of regulations being considered by NOAA’s National Marine Fisheries Service (NMFS) to implement a strategy to reduce vessel collisions with North Atlantic right whales.

The APA and its members have been strong supporters of, and active participants in, efforts by NMFS and others to protect the endangered right whales. The APA cannot, however, support implementation of NMFS’ proposed operational restrictions on the shipping industry at this time. The efforts to protect the right whale and assist in its recovery would be better served by pursuing alternative measures while conducting the research necessary to determine whether routing and speed restrictions such as those proposed in the Notice would be effective in “reducing the likelihood and threat of ship strike mortalities.”

Interest of the APA
The APA is the national association of professional maritime pilots. Virtually all of the approximately 1170 state-licensed pilots working in the coastal ports and waterway areas of the United States belong to APA member pilot groups. These pilots handle over 90 percent of all ocean-going vessels in US waters. Their role, and official responsibility, is to protect the safety of navigation and the marine environment in the waters for which they are licensed. This is considered a public service, and pilots are charged by their state with preventing vessel operations that might pose a danger to navigation or to the state’s economy and environment. In order to fulfill that mission, state pilots are required not only to have detailed knowledge of the local waters but also to be expert shiphandlers and to understand how ships maneuver and interact with the elements.
As professionals who make their living on the water, pilots also have a deep concern for the health of the marine environment. APA member pilots are active in local and national environmental organizations and work closely with NOAA and state marine authorities. At the national level, the APA has a formal Partnership Agreement with NOAA and its National Ocean Service (NOS).

APA member groups along the east coast have been particularly active in the efforts to protect the North Atlantic right whale. In fact, NOAA recently selected an APA group, the Northeast Marine Pilots Association of Newport, Rhode Island, as Environmental Heroes in recognition of the group’s efforts to educate shipmasters about the endangered North Atlantic right whale, in support of the NMFS Northeast Regional Office in Gloucester, MA. Strong supporters of the NMFS right whale education efforts with the shipping industry, the pilots began carrying right whale placards, videos, and information on board vessels in 2002 to help masters understand the possible vulnerability of the whales to collisions with ships and to increase awareness of their endangered status. The group also provides masters with recent right whale sightings and guidance on the Right Whale Mandatory Ship Reporting System (MSR) requirements. The NOAA Fisheries white paper, Actions Ongoing or Underway by NOAA Fisheries to Reduce Ship Strikes, describes the assistance of this group as well as the similar efforts of APA pilots in the port of Boston and several other east coast ports.

Comments

Those involved in the ongoing efforts to protect the right whale recognize the shortage of reliable information about the migratory patterns, habitat, and specific behavior of the right whale. Clearly, there is a lot that we do not know about the right whale. That lack of knowledge may not be critical for some measures, such as the MSR. More intrusive and costly measures, such as route and speed reductions, however, should be based on a higher level of knowledge and scientific research. In addition, those two particular measures focus on precisely those areas of the right whale’s existence about which we know the least.

Our ability to predict where right whales might be at any point in time, for example, is extremely limited. An August, 2004 article in the Bangor News cited this problem, as described by a NOAA spokesperson:

“Frankly, there’s very little known about where the population goes at certain times of the year and how they use their habitat,” said Terry Frady, a spokeswoman from the National Oceanic and Atmospheric Administration.

Each spring, a few dozen right whales appear off Cape Cod, and every winter a handful are spotted giving birth to their calves off the coasts of Florida and Georgia.

“That leaves 90 percent of the population that we don’t know where they are,” Frady said.
And for months, sometimes years at a time, individual whales just disappear.


According to the contracted report used by NMFS to develop its proposed strategy for reducing ship strikes of the right whale, in some of the areas that would be subject to the proposed operational measures, there is virtually no information about right whale presence. “In certain port areas, there is very little or no data on right whale occurrence, distribution and movements (e.g., Mid Atlantic)” (Russell, Bruce A, Recommended Measures to Reduce Ship Strikes of North Atlantic Right Whales, August 23, 2001, p.25).

We similarly know very little about how right whales react to approaching vessels. The assumption underlying the proposed speed reductions is that the slower speed would give a right whale more time to get out of the way and make it easier for the whale to do so. There apparently is no definitive study, however, that indicates that a right whale will actually try to avoid an approaching vessel or would be any more successful in the attempt if a vessel’s speed were reduced to 10 to 14 knots. The speculative nature of the rationale for the reduced speed proposal is apparent in its description in the NOAA Fisheries' supporting white paper, “Large Whale Ship Strikes Relative to Vessel Speed: “If right whales are indeed cognizant of the danger of approaching vessels and exhibit avoidance behavior, then speed reduction may be beneficial by reducing the hydrodynamic forces imposed on the whale and providing a longer reaction time to escape the danger zone” (p.12, citing Knowlton et al. 1995; emphasis added).

It may turn out that the assumptions of the rationale for the speed restriction are valid. There is equally credible evidence, however, that whales are attracted to vessels. If that is true, reducing the vessel’s speed would increase the time in which whales could approach the ship. Also, there is considerable support for the theory that the faster the vessel is moving, the greater the bow wave pushing a whale farther away from the vessel and whatever negative hydrodynamic forces may draw the whale back into the ship. Finally, it is a fact that reducing a vessel’s speed reduces its maneuverability. This diminished maneuverability could make the vessel less able to avoid collisions with not only right whales but other vessels as well.

In sum, the justification offered for the route and speed restrictions is not based on the type and quality of data that would warrant the proposals' potential disruption and costs to the shipping industry. NMFS should move quickly on research efforts to better understand the movements and behavior of the right whale and should expand its support for new technologies that would improve the tracking and detection of right whales. The APA also agrees with the recommendation in the contractor’s report for developing greater knowledge about right whale behavior in relation to ships. As the contractor states, “Little is known about how right whales react to approaching vessels, and what
characteristics of a vessel’s sound enable a whale to hear an approaching vessel and realize that there is a threat of a collision” (Russell 2001).

**Conclusion**

Although we understand the nature of an Advanced Notice of Proposed Rulemaking and acknowledge the extensions of the comment period, we are concerned that there may be a “rush to judgment” on the proposed measures. The APA urges NMFS to take a careful and cautious approach. Measures eventually adopted on the basis of better science and more reliable information will have a better chance of success.