

**SUPPORTING STATEMENT
IMPLEMENTATION OF VESSEL SPEED RESTRICTIONS TO REDUCE THE
THREAT OF SHIP COLLISIONS WITH NORTH ATLANTIC RIGHT WHALES
OMB CONTROL NO. 0648-0580**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

This request is for a 3-year extension of this information collection. Final Rule 0648-BB20 published December 9, 2013 (78 FR 73726), removing a sunset provision contained in the original (December 2008) rule. There are no changes in the rule or collection of information requirements since the 2012 extension.

The North Atlantic right whale is a highly depleted species; only about 400-500 individuals exist. Collisions with vessels (i.e., “ship strikes”) are a major cause of serious injury and death, and therefore are the greatest threat to the species: From 2005 through 2009, the average reported mortality and serious injury to right whales due to ship strikes was 1.6 whales per year; the actual number is almost certainly higher as not all carcasses are detected. Evidence implicates vessel speed as a primary factor in the strikes and indicates that the occurrence and severity of ship strikes can be reduced if vessels are traveling 10 knots or less. As a result, National Oceanic and Atmospheric Administration’s (NOAA), National Marine Fisheries Service (NMFS) has promulgated regulations to restrict vessel speed in certain times and locations along the United States (U.S.) eastern seaboard to reduce the threat of lethal ship collisions with North Atlantic right whales. Ships are required to travel at 10 knots or less in certain key areas where right whales occur. In the time since the final rule was issued, no right whales have been struck and killed in the speed restriction zones established by the rule. Therefore, because the incidence of dead struck whales has been reduced to zero, to date, the rule is regarded as being quite successful in reducing the impact of this threat.

In a proposed rulemaking in keeping with the goals of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), NMFS requested comments on the vessel speed restrictions. Public and interagency comment on a proposed rule indicated that in certain sea and weather conditions, a large ship may lose maneuverability at such speeds. Therefore, NMFS decided that under such conditions a ship, at the captain’s discretion, may opt not to abide by the speed restrictions. If she/he chooses this option, she/he is required to make an entry into the ship’s log, providing such information as: the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation. The United States Coast Guard (USCG) may collect information from the log books during random, routine port boardings and NMFS enforcement agents may request copies of logbook entries in situations when non-compliance with the provisions of the rule are noted.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information from the required recording into the ships' logs will be collected by USCG personnel, or in some cases NOAA's Office of Law Enforcement (OLE), during random, routine ship boardings. The USCG or OLE staff boarding the vessel will note from the log, the location(s) and circumstance(s) for not adhering to speed restrictions and provide the information to the NMFS and/or NOAA's OLE. NMFS will review the information and if warranted (i.e., failure to adhere to required speed limits in situations when to do so would not affect maneuverability) will issue a letter for each violation reminding the ship captain and agent the need for the restrictions and possible fines that could be levied for subsequent violations. If failure to adhere to the restrictions was warranted (i.e., sea and wind conditions threatened vessel maneuverability), NMFS will retain the information for later analysis of the number of times conditions prevented captains from adhering to the restrictions.

Logbooks must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of firefighting equipment must be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

There will be no use of electronic, automated, or mechanical techniques used in information collection. The information will be noted in the ship's log and retained as vessel records.

4. Describe efforts to identify duplication.

The restrictions promulgated by this rulemaking were implemented in December 2008. No such restriction existed prior to this rule; and no additional subsequent restrictions have been implemented. Therefore, duplication of this type of recordkeeping is not possible.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Approximately 15 per cent of affected vessels are considered small businesses. This requirement does not create undue burden for small businesses. It is the minimum requirement necessary for this purpose.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

This recordkeeping is essential to the program and to the protection of endangered north Atlantic right whales.

As noted above, vessel speed restrictions are vital to reducing the threat of ship strikes to right whales. Exceptions have been granted in certain circumstances. Logbook notations will be the only means to assess if, when and how often restrictions were not adhered to due to poor weather or high sea state. Also, it is the only means through which NMFS will be able to assess whether a lack of compliance was legitimate. Without this measure, ship's captains may choose not to comply, and the promulgating and regulation enforcing agency would have no recourse. Conducting the recordkeeping less frequently would vitiate the purpose of providing the exemption. As noted below, making logbook entries for this purpose are expected to take a few minutes, in situations and by means that are routinely and periodically made by ships' crews. Therefore, the requirement is not expected to be overly burdensome and conducting it less frequently is not expected to significantly relieve burden to recordkeepers.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

None.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

NMFS published an FR notice requesting public comment on an extension collection of information on August 29, 2016 (81 FR 59186).

Two sets of comments from non-NOAA stakeholders were received. The Marine Mammal Commission recommended "that this information continue to be collected. Collection of this information (i.e. records in ship logs explaining the need to deviate from speed restrictions established to protect highly endangered North Atlantic right whales), is a core part of the regulations to reduce ship strike-related deaths and injuries of this species. This information is essential for evaluating the effectiveness of these rules and for protecting vessel

operators from prosecution for legitimate deviations from established speed restrictions.” NMFS concurs, and will take no new action in response to this comment.

The Humane Society of the United States (HSUS) noted that “...documentation of deviation from the 10-knot speed limit is necessary for NMFS to properly perform its functions of protecting right whales.” In response, NMFS concurs that collection of information via the ships’ logs is essential to enforcement and compliance of the vessel speed restrictions. The rule’s deviation provision allows mariners to exceed the speed limit in conditions when navigational safety might be jeopardized and a (relatively simple) notation in the logbook provides justification for the deviation. It also provides documentation about the circumstances for the deviation for enforcement agents. The HSUS also noted that “...NMFS should take a more proactive role in enforcing the regulations that protect these endangered animals by verifying the reliability of these ships’ logbooks.”

NMFS notes that OLE enforcement agents build cases where egregious or repeated non-compliance action is detected. Logbook entries are an integral part of, and are a routinely used in, enforcement cases to assess instances in which mariners had opted to invoke the deviation as warranted by wind and sea conditions. Under current practices, the validity of logbook entries is reliant upon the verification of their accuracy by the ship’s captain. Knowingly making an erroneous entry is punishable by law. Logbook entry accuracy may also be verified by direct, at-sea observation by USCG and other enforcement vessels and through remote sensing technologies. Therefore, NMFS expects to take no additional action in response comments by the HSUS.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

None.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Information provided by respondents will not include personal or other confidential or private data. In addition, once recorded by the respondent, the information will be gathered only by USCG personnel or NOAA OLE officers. These government officers are accustomed to handling information confidentially and their agency policies stipulate information be held in confidence. For NMFS personnel, confidentiality of the information is authorized by the Magnuson-Stevens Fishery Conservation and Management Act (MSA), Section 402(b). The Coast Guard ensures that personally identifiable information remains confidential in a few ways: a) The Department of Homeland Security (DHS) policy offers guidelines for safeguarding PII (http://www.dhs.gov/xlibrary/assets/privacy/privacy_guide_sp11_handbook.pdf) which is specifically addressed and tailored to Coast Guard missions in the Coast Guard Freedom of Information and Privacy Acts Manual, COMDTINST M5260.3. (http://www.uscg.mil/directives/cim/5000-5999/cim_5260_3.pdf); and b) in 74 FR 30308 (25 JUN 09), the Coast Guard provided a system of records notice covering logbooks and mariner information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No such information will be collected.

12. Provide an estimate in hours of the burden of the collection of information.

An estimated 3,047 respondents are expected to make 3,047 responses, in the form of the required notations/records, annually, with each response taking approximately 5 minutes. Therefore, NMFS estimates the annual burden of information collection is **254 hours**, annually.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

There is no cost to the respondents other than the labor cost of making the logbook entries.

14. Provide estimates of annualized cost to the Federal government.

The recordkeeping requirement is expected to have no cost to the Federal government that is not already subsumed in ordinary Federal personnel duties: approximately 25 hours per year in reading/following up on logbook entries of boats boarded, at \$35 per hour equals \$875 per year.

15. Explain the reasons for any program changes or adjustments.

There are no changes or adjustments.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not Applicable.

18. Explain each exception to the certification statement.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical analysis will be performed on the collected information.