



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

RIN 0648-XD103

Endangered Fish and Wildlife; Petition for Rulemaking to Exclude Federally-Maintained Dredged Entrance Channels and Pilot Boarding Areas for Ports from New York to Jacksonville from Vessel Speed Restrictions

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

ACTION: Receipt of petition for rulemaking; request for comments.

SUMMARY: This notice announces receipt by the National Marine Fisheries Service (NMFS) of a petition for rulemaking to exclude federally-maintained dredged entrance channels and pilot boarding areas (and the immediately adjacent waters) for ports from New York to Jacksonville from vessel speed restrictions to reduce fatal vessel collisions with North Atlantic right whales. NMFS is also requesting comments on the petition and will consider all comments when determining whether to proceed with the suggested rulemaking.

DATES: The closing date for comments on the petition is [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0013, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0013, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

Mail: Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Vessel Speed Rule Petition.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gregory Silber, Ph.D.,
Greg.Silber@noaa.gov, Office of Protected Resources, NMFS, at
(301)427-8402.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2008, NMFS published a final rule (73 FR 60173) that established vessel speed restrictions to reduce the likelihood of deaths and serious injuries to endangered North Atlantic right whales from collisions with vessels. The regulation limited vessel speeds to 10 knots or less for vessels 65 ft (19.8 m) or greater in overall length in certain locations and at certain times of the year along the east coast of the U.S. Atlantic seaboard. The regulation contained a provision that allows for an exception to the speed restriction when navigational safety requires a deviation. This rule also contained a provision whereby the regulation would expire (or ``sunset``) on December 9, 2013.

On June 6, 2013, NMFS published a proposed rule (78 FR 34024) seeking public comment on a proposal to eliminate the sunset provision contained in the October 2008 final rule. Based on the best available science, on December 9, 2013, NMFS published a final rule (78 FR 73726) that removed the sunset provision. All other aspects of the regulation remained the

same, including the navigational safety exception referenced above.

During the public comment period for the June 2013 proposed rule, some commenters expressed concern about compromised safety that may arise from the 10-knot limit in some circumstances, despite the navigational safety exception contained in the regulation. In particular, the American Pilots' Association indicated that navigation is compromised in specific areas and suggested that NMFS ``exclude federally-maintained dredged channels and pilot boarding areas (and the immediately adjacent waters) for ports from New York to Jacksonville'' -- which they state is an approximate aggregate area of 15 square miles -- from the vessel speed restrictions.

With regard to the American Pilots' Association request, NMFS stated in its December 2013 final rule removing the sunset provision:

[We] will treat the request to exclude vessels using federally-maintained dredged port entrance channels from the speed restrictions as a petition for rulemaking under the Administrative Procedure Act, though this is not required nor is it NMFS' normal practice. We plan to issue a Notice in the Federal Register announcing receipt of the petition, along with a concise statement of the request and seek comment on the request. If NMFS decides to proceed

with the suggested rulemaking, we will notify the petitioner within 120 days, publish a notice in the Federal Register of our decision to engage in rulemaking in a prompt manner, and thereafter proceed in accordance with the requirements for rulemaking. If NMFS decides not to proceed with the petitioned rulemaking, we will notify the petitioner, provide a brief statement of the grounds for the decision, and publish in the Federal Register a notice of our decision not to proceed with the petitioned action.

Therefore, NMFS is issuing this notice to solicit comments and information on all issues related to the petition to exclude federally-maintained dredged entrance channels and pilot boarding areas (and the immediately adjacent waters) for ports from New York to Jacksonville from vessel speed restrictions to protect North Atlantic right whales.

Please include scientific or commercial data, studies, or research to support your comments and position, including scientific data or research that supports any pertinent industry or professional standards, or specific examples in support of your comments, to aid NMFS in evaluating the request for rulemaking and in determining what action, if any, is appropriate. We will consider all comments and recommendations

in determining whether to engage in the suggested rulemaking and thereafter will proceed as described above.

Authority: 5 U.S.C. 551 et seq.

Dated: January 24, 2014.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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