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*VIA Certified Mail, Facsimile and EMAIL*

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**RE: Blue Whale Ship Strike Mortality off California: Petition for an Emergency Rulemaking to Reduce the Risk of Unlawful Take of Endangered Species**

Dear Mr. Gutierrez and Mr. Hogarth:

The Center for Biological Diversity formally requests that the Secretary of Commerce through the National Marine Fisheries Service (“NMFS”) promptly initiate an emergency rulemaking pursuant to your authorities under the Endangered Species Act (“ESA”) (16 U.S.C. § 1531 *et seq.*) and Marine Mammal Protection Act (“MMPA”)(16 U.S.C. § 1361 *et seq.*) to set marine vessel speed limits in the Santa Barbara Channel off California to prevent further mortality resulting from ship strikes to endangered blue whales (*Balaenoptera musculus*). As you are likely aware, at least three blue whales have been documented killed as a result of ship strikes in this area within the past two weeks. Such a clustering of ship-strike mortalities of blue whales is unprecedented and constitutes a threat to the recovery of the species.

In recent years, blue whales normally passed through the Santa Barbara Channel en route to feeding grounds further north, including Monterey Bay. Most blue whales generally leave the channel by the end of August. However, this year, likely due to abnormal ocean conditions, large numbers of blue whales have remained to feed in the Santa Barbara Channel since June, placing them in the path of vessels plying some of the busiest shipping lanes in the world. Whether or not an additional co-factor (e.g. domoic acid poisoning, military sonar exercises, etc.) is making blue whales more susceptible to ship strikes remains to be seen. Regardless, as NMFS’ efforts with regard to the North Atlantic right whale clearly demonstrate, the only effective mechanism to reduce the risk to large whales from ship strikes is to institute mandatory vessel speed limits in the areas and at times when whales and commercial vessels overlap. We therefore request that NMFS immediately promulgate via emergency regulation a 10 nautical mile per hour speed limit in the Santa Barbara Channel for all vessels over 65 feet in length, such regulation to remain in effect until all blue whales have been documented to have departed the area for the year.

## I. The Endangered Blue Whale and Ship Strikes

The blue whale is the largest animal known to have ever lived on earth. Once numbering over 300,000, the global blue whale population has been reduced by commercial whaling to likely fewer than 10,000 individuals. Blue whales off California are part of the Eastern North Pacific Stock, one of two North Pacific stocks identified by distinct, stereotypic calls. The current best estimate for the Eastern North Pacific Stock is 1,186 animals. NMFS 2007. Draft U.S. Pacific Marine Mammal Stock Assessments: 2007 (“2007 Draft SAR”), available at [http://www.nmfs.noaa.gov/pr/pdfs/sars/po2007\\_draft.pdf](http://www.nmfs.noaa.gov/pr/pdfs/sars/po2007_draft.pdf).

Under the MMPA the blue whale is considered both “depleted” and “strategic.” The potential biological removal (“PBR”) for the Eastern North Pacific Stock is 2 animals per year, and because the stock spends approximately half its time outside of U.S jurisdiction (primarily in waters off Mexico and Central America), the PBR allocation for U.S. waters is 1 animal per year.

The blue whale has been listed as “endangered” under the ESA since the statute’s inception. In 1998, NMFS approved a final recovery plan for the species. The recovery plan identified ship strikes as one of the primary threats to the species in the Pacific.

Ship strikes were implicated in the deaths of at least four and possibly six blue whales off California between 1980 and 1993 (Barlow et al. 1995; Barlow et al. 1997). The average number of blue whale mortalities in California attributed to ship strikes was 0.2 per year from 1991-1995 (Barlow et al. 1997). Further mortalities of this nature probably have occurred without being reported. Several of the whales photo-identified off California had large gashes on the dorsal body surface that were thought to have been caused by collisions with vessels (Calambokidis 1995).

Recovery Plan at 12. The recovery plan also specifically recommends actions to identify areas where ship strikes occur and to take appropriate action to reduce or eliminate such impacts:

4.1 Identify areas where ship collisions with blue whales might occur, and areas where concentrations of blue whales coincide with significant levels of maritime traffic or pollution.

4.2 Identify and implement methods to reduce ship collisions with blue whales.

*Id.* at 21. The recovery plan concludes that “implementation of appropriate measures designed to reduce or eliminate such problems are essential to recovery” and that such actions “must be taken to prevent a significant decline in population numbers.” *Id.* at 36.

Despite the recommendations of the recovery plan, NMFS has not addressed blue whale ship strikes, and ship strikes have become an increasing problem for the species. According to the most recent stock assessment report, “ship strikes were implicated in the deaths of blue

whales in 1980, 1986, 1987, 1993, 2002 and 2004.” 2007 Draft SAR at 138. In 2003, a blue whale was documented injured (blood in the water) from a ship strike. *Id.* Moreover, there were an additional five serious injuries and three mortalities of unidentified large whales from ship strikes, while additional blue whale mortality from ship strikes likely occurs and goes unreported. *Id.* The average minimum number of blue whale mortalities and serious injuries from 2000-2004 was 0.6 per year. *Id.*

While the number of blue whale ship-strike mortalities has increased in recent years, the three mortalities in 2007 are unprecedented. The first mortality was documented when a blue whale was found dead in Long Beach Harbor on the weekend of September 8<sup>th</sup>. According to NMFS stranding coordinator Joe Cardaro, as quoted in the LA Times, the Long Beach whale was likely hauled into the harbor on the bow of a ship that hit it in the Santa Barbara Channel. *LA Times*, September 15, 2007, Blue whale washes up on beach near Ventura, available at <http://www.latimes.com/news/printedition/california/la-me-whale15sep15,1,4125655.story?coll=la-headlines-pe-california>. That whale was subsequently towed out of the harbor without a necropsy. Several days later, on September 11, a second whale was observed dead near San Miguel Island. It washed ashore in Ventura County on September 14. A necropsy of this whale revealed broken bones indicative of a ship strike. Finally, on September 19, a third blue whale was spotted in the Santa Barbara Channel. This whale was towed to shore on September 21, and a subsequent necropsy identified broken bones indicative of a ship strike. In addition to these three confirmed mortalities, a dead blue whale was reported near San Clemente Island on September 12, and another washed ashore near Ensenada, Mexico. These latter two whales may be re-sightings of the Long Beach whale which was towed out to sea, or may represent additional whales killed by ships.

While blue whale sightings in the Santa Barbara Channel are relatively common, most are in the summer as they pass through en route to feeding areas off central and northern California. The whales’ presence in the Santa Barbara Channel in September is apparently unprecedented, and likely the result of changing ocean conditions that have affected numerous species of California marine life in recent years. Whatever the reason for the whales’ extended stay in the Channel, their continued presence puts them at great risk of ship strikes.

The Ports of Los Angeles and Long Beach are the most active of any U.S. port, with thousands of large vessels arriving each year. As a consequence, the northbound and southbound shipping lanes in the Santa Barbara Channel are among the busiest in the world. The overlap of these shipping lanes with the foraging habitat of the blue whale puts this endangered species at great risk. While we can not likely change the behavior of the blue whales so as to avoid ship strikes, we can and must regulate the behavior of the vessels that pose a risk to the whales. As NMFS’ experience with the North Atlantic right whale, a species facing extinction due to ship-strike mortality, demonstrates, the most effective mechanism to reduce the risk of fatal ship strikes is to regulate vessel speed. As discussed below, NMFS has both the authority and duty to promulgate regulations to regulate vessel speed so as to protect the blue whale.

## II. The ESA and MMPA Require NMFS to Take Action to Prevent Additional Blue Whale Ship Strike Mortality

Both the ESA and the MMPA give NMFS the authority to promulgate all necessary regulations to protect the blue whale from ship strikes. Section 11(f) of the ESA authorizes NMFS to “promulgate such regulations as may be appropriate to enforce [the ESA]”. 16 U.S.C. § 1540(f). Similarly, the MMPA mandates that NMFS “shall proscribe such regulations as are necessary and appropriate to carry out the purposes of [the MMPA]”. 16 U.S.C. § 1382(a). As described below, these statutes not only authorize NMFS to take action to protect the blue whale, they require it.

Section 2(c) of the ESA establishes that it is “...the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” 16 U.S.C. § 1531(c)(1). The ESA defines “conservation” to mean “...the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.” 16 U.S.C. § 1532(3). Similarly, Section 7(a)(1) of the ESA directs that the Secretary of Commerce review “...other programs administered by him and utilize such programs in furtherance of the purposes of the Act.” 16 U.S.C. § 1536(a)(1). Additionally, Section 4(f) specifically requires that NMFS both “...develop and *implement* plans (hereinafter...referred to as ‘recovery plans’) for the conservation and survival of endangered species and threatened species...” 16 U.S.C. § 1533(f) (emphasis added). Drafting a recovery plan is not sufficient to comply with this statutory mandate. Consistent with the intent that recovery plans actually be implemented, Congress required that recovery plans “...incorporate...(i) a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species.” 16 U.S.C. § 1533(f)(1)(B)(i).

As discussed above, the recovery plan for the blue whale explicitly requires NMFS “to reduce or eliminate” mortality from ship strikes, and concludes that such action is “essential to recovery” and “must be taken to prevent a significant decline in population numbers.” Recovery Plan at 21, 36. For NMFS to meet its mandates under Sections 2, 4 and 7 of the ESA, the agency must take prompt action to address ship strikes that are resulting in unsustainable levels of mortality to the blue whale.

Not only does the recent mortality of blue whales from ship strikes threaten the recovery of the species, such take is unlawful. The ESA prohibits any “person” from “taking” threatened and endangered species in the territorial sea of the United States or upon the high seas. 16 U.S.C. §§ 1538(a)(1)(B)&(C). The definition of “take”, found at 16 U.S.C. § 1532(19), states,

The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

Injuring or killing a blue whale via a ship strike is a violation of this prohibition. It is also unlawful for any person subject to the jurisdiction of the United States to “cause” the take of a listed species. The ownership, operation, and authorization of vessels resulting in take of blue

whales has occurred and continues to occur in the absence of any permit from NMFS authorizing such take. NMFS has an obligation to enforce the take prohibition of the ESA as well as to take all necessary action to prevent further violations of the statute.<sup>1</sup>

The MMPA also requires NMFS to take action to prevent further ship strike mortalities of blue whales. The overriding purpose of the MMPA is to maintain species and populations as functional parts of their ecosystems.

Such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystems in which they are a part, and consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions.

16 U.S.C. § 1361(2). Moreover, Congress declared that marine mammals “should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem.” *Id.* at § 1361(6).

To achieve these ends, Congress dictated that NMFS “*shall* prescribe such regulations as are necessary and appropriate to carry out the purposes of [the MMPA]”. 16 U.S.C. § 1382(a). Additionally, for strategic stocks such as the blue whale, Congress explicitly authorized NMFS to “develop and implement conservation or management measures to alleviate . . . impacts” where activities in areas of “ecological significance to marine mammals may be causing a decline or impeding the recovery of the strategic stock.” *Id.* at § 1382(e).

In passing the MMPA, Congress explicitly recognized the statute provided a much needed mechanism for regulating vessel traffic that harmed marine mammals. *See* 1972 H.R. Rep. No. 92-707 (1972), reprinted in 1972 U.S.C.C.A.N. 4144, 4147-4150 (noting that “the operation of powerboats in areas where the manatees are found” represented a threat to that species and, absent the new provisions of the MMPA, “at present the Federal government is essentially powerless to force these boats to slow down or curtail their operations.” The MMPA “would provide the Secretary of the Interior with adequate authority to regulate or even forbid the use of powerboats in waters where manatees are found.”)<sup>2</sup>

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<sup>1</sup> In addition to NMFS' obligations under the ESA, Section 7(a)(2) requires all other federal agencies whose actions may affect the blue whale to ensure that they do not jeopardize the species. 16 U.S.C. § 1536(a)(2). NMFS should require all agencies who may have jurisdiction over shipping in the Santa Barbara Channel (e.g. the Navy, Army Corps of Engineers, Coast Guard, MARAD, etc.) to consult on their actions in relation to the recent ship strikes.

<sup>2</sup> Under the MMPA, the Secretary of the Interior has jurisdiction over manatees while NMFS has jurisdiction over whales. While the species may differ, the provisions of the MMPA apply in the same manner. Additionally, as noted above, the ESA, which was passed a year after the MMPA, also provides NMFS with authority to regulate shipping impacts on endangered marine mammals.

In addition to protecting populations of marine mammals, the MMPA also protects individual marine mammals. The primary mechanism by which the MMPA protects marine mammals is through the implementation of a “moratorium on the taking” of marine mammals. 16 U.S.C. § 1371(a). Under the MMPA, the term “take” is broadly defined to mean “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill *any* marine mammal.” *Id.* § 1362(13) (emphasis added); *see also* 16 U.S.C. § 1362(18)(A) (definition of “harassment” expressly applies to acts that affect “*a* marine mammal or marine mammal stock in the wild”)(emphasis added); *Natural Resources Defense Council v. Evans*, 279 F.Supp.2d 1129, 1157 (N.D. Cal. 2002) (“In expressing concern about harassment to ‘a marine mammal,’ Congress was concerned about harassment to individual animals.”).

In addition to the moratorium set forth in Section 1371, Congress enacted Section 1372, which makes it unlawful for persons to take any marine mammal. Section 1372(a)(1) makes it unlawful for “any person . . . vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas.” The provisions of Section 1372(a)(2)(A) make it unlawful for “any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States.” Section 1372(a)(2)(B) prohibits persons from “using any port, harbor, or other place under the jurisdiction of the United States to take or import marine mammals or marine mammal products.” The take of blue whales via ship strikes in the Santa Barbara Channel violates these provisions of the MMPA.

As discussed above, the Eastern North Pacific Stock of blue whales is a strategic stock that is far below its optimum sustainable population. Take of more than one animal a year exceeds the potential biological removal and will therefore, by definition, impede recovery. At least three blue whales are known to have been killed in only a two week stretch this month.<sup>3</sup> These takes are not only individually unlawful, but are well above sustainable limits. As with the ESA, NMFS has the authority and the obligation to take immediate action to address these violations of the MMPA. As demonstrated below, a speed limit on shipping in the Santa Barbara Channel is necessary to achieve this end.

### **III. A Ten Nautical Mile per Hour Vessel Speed Limit in the Santa Barbara Channel is Necessary to Protect Blue Whales**

Through this petition, we formally request that NMFS implement on an emergency basis a ten nautical mile per hour speed limit in the Santa Barbara Channel for all vessels over 65 feet in length, such regulation to remain in effect until all blue whales have been documented to have departed the area for the year.<sup>4</sup> In the alternative, in the event NMFS determines an emergency rulemaking is not warranted, we request that NMFS expeditiously proceed with such rulemaking pursuant to notice and comment, such that all necessary protective measures are in place prior to the return of blue whales to the Santa Barbara Channel in 2008.

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<sup>3</sup> The multiple ship-strike mortalities also likely qualify as an “unusual mortality event” as defined by the MMPA, requiring further response from NMFS. *See* 16 U.S.C. § 1421c; *see also* 71 Fed. Reg. 75234 (“Notice: Availability of new criteria for designation of marine mammal Unusual Mortality Events (UMEs)”).

<sup>4</sup> This petition is submitted pursuant to 5 U.S.C. § 553(e) (right to petition), 5 U.S.C. § 553(b)(emergency rulemaking), 16 U.S.C. § 1382 (MMPA), and 16 U.S.C. § 1540(f) (ESA).

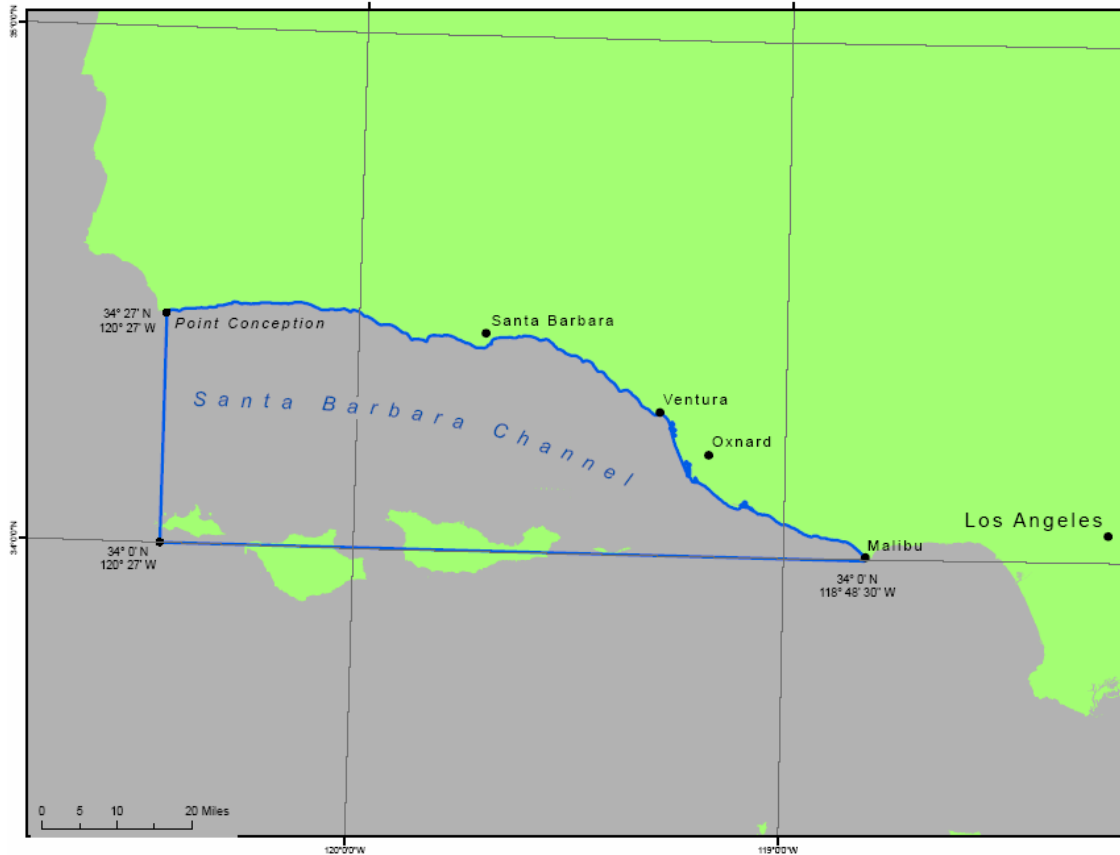


Figure 1: The Santa Barbara Channel

## A. Proposed Regulatory Text

50 CFR part 224 is proposed to be amended as follows:

### PART 224--ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for 50 CFR Part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 et seq.

2. In part 224, a new Sec. 224.106 is added to read as follows:

Sec. 224.106 Speed restrictions to protect blue whales.

(a) The following restrictions apply to: all vessels subject to the jurisdiction of the United States greater than or equal to 65 ft (19.8m) in overall length, and all other vessels greater than or equal to 65 ft (19.8 m)

in overall length entering or departing a port or place under the jurisdiction of the United States.

(1) Santa Barbara Channel: Vessels shall travel at a speed of 10 knots or less during the period of June 1 to December 1 each year in the area bounded by: the shoreline at Point Conception, 34[deg]27'N lat., 120[deg]27'W long.; south to 34[deg]0'N lat., 120[deg]27'W long.; and west to the shoreline at 34[deg]0'N lat., 118[deg]48'30"W long.

(2) [reserved]

(b) It is unlawful under this section:

(1) For any vessel subject to the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section; or

(2) For any vessel entering or departing a port or place under the jurisdiction of the United States to violate any speed restriction established in paragraph (a) of this section.

## **B. The Proposed Regulation is Necessary to Effectuate the Purposes of the ESA and MMPA**

The proposed regulatory language would restrict vessels subject to United States jurisdiction to speeds that have previously been determined by NMFS and independent experts to be necessary to meaningfully reduce the risk of ship-strike mortality to large whales. NMFS is currently engaging in a rulemaking to set marine vessel speed limits in area along the East Coast of the United States so as to protect the North Atlantic Right Whale. *See* 71 Fed. Reg. 36299 (June 26, 2006) (“Endangered Fish and Wildlife; Proposed Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales”). The language we have proposed to regulate vessel speeds in the Santa Barbara Channel parallels that NMFS has developed for the right whale.

In the right whale rulemaking, NMFS acknowledged the limitations of voluntary measures and advisories.

Despite conservation efforts developed and undertaken by agencies, stakeholders, partners and industry throughout the 1990s, right whale deaths from ship strikes continue. NMFS believes that existing measures have not been sufficient to reduce the threat of ship strikes or improve chances for recovery (for example, a study of mariner compliance with NOAA-issued speed advisories in the Great South Channel reported that 95 percent of ships tracked (38 out of 40) did not slow down or route around areas in which right whale sightings occurred (Moller et al., 2005)). Accordingly, NMFS determined that further action was required.



71 Fed. Reg. at 36301. NMFS concluded that speed limits were likely the most effective measure to actually reduce ship strike mortalities. We believe such mandatory measures are appropriate here.

NOAA's proposed use of speed restrictions to reduce ship strikes is based on several types of evidence. *An examination of all known ship strikes indicates vessel speed is a principal factor.* Records of right whale ship strikes (Knowlton and Kraus, 2001) and large whale ship strike records (Laist et al., 2001; Jensen and Silber, 2003) have been compiled. In assessing records in which vessel speed was known, Laist et al. (2001) found “a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision.”

71 Fed. Reg. at 36303 (emphasis added).

We request that NMFS impose a ten nautical mile per hour (i.e. ten knot) speed limit in the Santa Barbara Channel as that is the speed NMFS has determined is most effective at protecting large whales. In the right whale rulemaking NMFS summarized the finding of scientists on the relationship of vessel speed to whale injuries and mortalities.

Using a total of 64 records of ship strikes in which vessel speed was known, Pace and Silber (2005) tested speed as a predictor of the probability of a whale death or serious injury. *The authors concluded that there was strong evidence that the probability of death or serious injury increased rapidly with increasing vessel speed.* Specifically, the predicted probability of serious injury or death increased from 45 percent to 75 percent as vessel speed increased from 10 to 14 knots, and exceeded 90 percent at 17 knots. In a related study, Vanderlaan and Taggart (in review) analyzed all published historical data on vessels striking large whales. Looking at cases where a strike occurred, the authors found that the probability that a strike would result in lethal rather than non-lethal injury ranged from 20 percent at 9 knots, to 80 percent at 15 knots, to 100 percent at 21 knots or greater.

71 Fed. Reg. at 36303 (emphasis added).

NMFS' proposed ten-knot speed limit in the right whale regulation is also supported by the Marine Mammal Commission. In its comment letter on the proposed rule, the Commission explained why setting the speed limit higher than ten-knots would likely be ineffective.

In its Federal Register notice, the Service proposed a 10-knot speed limit but also solicited comments on implementing alternative speed limits of 12 or 14 knots. As discussed in the notice, the best available data on ship/whale collisions indicate that the probability of serious or lethal injuries to whales is very low when vessels travel at speeds of less than 10 knots. Risks increase rapidly at speeds between 10 and 13 knots. The data also indicate that the largest number of serious or lethal injuries occurs at speeds of 14 to 15 knots. Thus, a 14 knot limit appears to offer little, and possibly no, reduction in the risk of collision.

In establishing a speed limit, the Service also should consider human nature. When confronted with speed restrictions, many people travel at speeds slightly above the established limit. If a 12-knot limit is selected and vessel operators actually travel only a knot or two faster, they will be moving at speeds known to be dangerous to right whales. As a result, much of the potential conservation benefit of the speed restriction regulation would be lost. Accordingly, the Marine Mammal Commission recommends that the Service adopt a 10-knot speed limit as proposed.

Marine Mammal Commission, August 15, 2006 letter at 2.

In sum, the only effective mechanism to reduce the risk of ship strikes on large whales is a speed limit in the time and place where whales and ships overlap. A ten nautical mile per hour speed limit in the Santa Barbara Channel is necessary and appropriate to reduce the risk of vessel collisions with blue whales.

In the right whale rulemaking, NMFS proposed to apply the speed limit to vessels 65 feet and longer.

Available data indicate that most lethal collisions are caused by large vessels (Laist et al., 2001; Jensen and Silber, 2003). In this proposed rulemaking, NMFS proposes 65ft (19.8m) as the vessel size threshold for speed restrictions. NMFS is aware that right whale collisions can occur with vessels smaller than 65 ft (19.8 m) and result in serious injury or death. Sixty-five feet (19.8m) is a size threshold recognized in the maritime community and commonly used in maritime regulations to distinguish between motorboats and larger vessels, of which the latter are subject to additional regulatory requirements (e.g., Automatic Identification System (AIS) requirements; International Navigational Rules Act, Rules of the Road sections).

71 Fed. Reg. at 36305. This same rationale as applied to the right whale applies here, and we believe NMFS should set speed limits in the Santa Barbara Channel for all vessels 65 feet and greater.<sup>5</sup>

This petition seeks to have the requested ten nautical mile per hour speed limit apply in the waters of the Santa Barbara Channel from June 1 until December 1. In “normal” years blue whales are generally seen in the Santa Barbara Channel from June through August, with occasional animals seen as late as November. This year the whales have remained in the area throughout September and there is no indication as to when they will depart. We believe that a speed limit should cover the entire season that whales are present in the channel. Keeping the regulation in effect until December will likely protect any whales that remain in the channel into the fall.

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<sup>5</sup> Given the critically imperiled status of the right whale, speed restriction on vessels smaller than 65 feet may be appropriate in some areas to address the greater impact of ship strikes on the right whale. The 65 foot threshold is likely sufficient for the blue whale in the Santa Barbara Channel.

#### IV. Conclusion

The blue whale is one of the most endangered marine mammals in the world. At least three of these endangered and legally protected species have died in Southern California waters this month. All three deaths were likely the result of ship strikes occurring in the Santa Barbara Channel, with two of the mortalities confirmed as ship strikes following necropsies. While any mortality of endangered whales should be avoided, this recent level of mortality threatens the recovery of the species and is cause for alarm. Whether this high mortality is simply a result of an unusually high number of whales feeding in one of the busiest shipping lanes in the world, or is tied to domoic acid poisoning or some other environmental factor rendering individual whales more vulnerable to ships remains to be seen. However, regardless of *why* more whales are dying this year, it is entirely clear that the direct *cause* of their deaths is from ship strikes.

As NMFS efforts to reduce ship strike mortalities to right whales in the Atlantic demonstrate, the only mechanism that is likely to actually be effective in reducing large whale mortalities from ships is to impose mandatory large vessel speed limits in the times and areas where there is overlap between vulnerable whales and high large vessel traffic. Therefore, the appropriate response of NMFS to the current blue whale mortality event is to impose a seasonal speed limit of 10 nautical miles per hour on all vessels 65 feet or larger in the Santa Barbara Channel. Such action via regulation should be promptly initiated so as to be effective this year and remain in place in succeeding years until and unless it can be demonstrated that ship strikes no longer pose a threat to blue whales in the area. We look forward to your prompt response to this petition.

Sincerely,



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