



April 22, 2024

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th St., NW
Washington, DC 20503

The Honorable Richard Revesz
Administrator
Office of Information & Regulatory Affairs
725 17th Street, NW
Washington, D.C. 20503

Dear Director Young and Administrator Revesz:

We write to express the following major concerns about the potential impacts of the National Ocean and Atmospheric Administration's (NOAA) proposed North Atlantic Right Whale Vessel Strike Reduction Rule (VSR) on recreational vessels:

1. **Recreational Vessel Trips.** In 2019, there were 42 million saltwater fishing trips in states potentially impacted by the VSR. In 2022, 11 million U.S. residents participated in recreational saltwater fishing. Economic impacts from marine recreational fishing activities supported 691,613 jobs in 2022. Recreational fishing generated \$138 billion in sales impacts; \$45.1 billion in income impacts, and \$74.9 billion in value-added impacts. Also expenditures for fishing trips and durable goods equipment totaled \$72.3 billion¹. The proposed seasonal speed zones overlap with recreational fishing seasons for the most sought-after species – and a large part of \$6 billion of recreational trip expenditures in the affected region.
2. **Economic Impact.** Many boaters and anglers will forego boating and fishing trips altogether due to the time, cost and safety burdens imposed by the rule. This in turn will negatively impact marinas, tackle shops, charter and party boat operations – all businesses that represent America's small business economy. The Bureau of Economic Analysis (BEA) economic data show that in 2022, outdoor recreation contributed more than \$1 trillion to the U.S. economy, with boating and fishing

¹ <https://www.fisheries.noaa.gov/resource/document/fisheries-economics-united-states-report>

remaining a top contributor to the outdoor economy. Outdoor recreation represents 2.2% of U.S. GDP and creates nearly 5 million jobs and comprises 3.2% of U.S. employment². This is the largest economic impact measured in the history of BEA's Outdoor Recreation Satellite Account. The recreational boating industry generates \$230 billion in annual economic impact supporting over 800,000 U.S. jobs³. The rule's restrictions would lead to lost fishing opportunities and economic losses for business in the industry. For example, North Carolina had 214,822 offshore charter boat trips in 2020 and over 5.4 million offshore private boat trips⁴. Many of these trips would not take place if the rule is finalized.

- a. The National Marine Fisheries Service (NMFS) states that, "When estimating the potential economic impacts for recreational vessels... we used the average wage rate of each coastal state as a proxy to estimate opportunity costs⁵." This approach assumes that the only cost for recreational boaters is time, and that they will not alter or cancel their boating plans due to speed restrictions. However, as demonstrated above, the proposed speed restrictions are expected to have substantial impacts on offshore recreational fishing, leading to cancelled or shortened trips and reduced expenditures in coastal economies. These direct costs, their multiplier effects and impacts to coastal businesses should be considered as well.

3. **Safety Concerns.** The rule will compromise boater safety by forcing vessels to operate at speeds below optimal levels, reducing visibility for planing-hull boats and increasing risks of collisions. Given the rarity of vessel strikes in the 35 to 65-foot size class, these speed limitations create unsafe conditions which may keep recreational boats from going out in the water.

- a. We question how NMFS arrived at a safety deviation threshold of NOAA Weather Service-issued gale force winds warning (over 39 miles per hour). Safe boat operations are guided by a combination of wind speed and water conditions. Winds as slow as 10 mph could be terrible if the vessel is traveling against the winds in a bad sea state. There is not a "safe" wind speed or sea state, per se. Safety at sea is the combination of the two plus temperature and precipitation conditions, coupled with the boat design and the relative experience of the crew. Using federal regulation to remove the ability of a

² <https://www.bea.gov/news/2023/outdoor-recreation-satellite-account-us-and-states-2022>

³ <https://www.nmma.org/advocacy/economic-impact/recreational-boating>

⁴ <https://www.deq.nc.gov/marine-fisheries/science-statistics/fisheries-statistics/big-book/2022-license-and-statistics-annual-report/open>

⁵ <https://www.regulations.gov/document/NOAA-NMFS-2022-0022-0001>

vessel captain to operate at speeds necessary for the prevailing conditions will lead to America's boaters put at needless risk.

- b. It is also important to note that vessel speed is a significant safety feature—by engineering and design—on a recreational boat. The proposed rule will actually have the unfortunate consequence of i.) elevating the risk of collisions by reducing operator visibility (as slower speeds raise the bow of a planing-hull recreational boat while positioning the propeller as the lowest point of the vessel and the most likely to strike a subsurface object); and ii.) prolonging boater time on the water under uncomfortable or unsafe conditions. All of these will result in reduced public access to the Atlantic Ocean.
4. **Improbable Risk of Collision.** Since 2008 there have been five documented strikes of North Atlantic right whales by vessels under 65 feet in length⁶. NMFS Marine Recreational Information Program (MRIP) effort data published by NOAA found approximately 5.1 million recreational fishing trips were taken along the eastern seaboard by vessels 35 to 65 feet in length since 2008⁷. Assuming all five North Atlantic right whale strikes during this time were from smaller recreational boats, and that those boats were on fishing trips, the chance of a 35 to 65-foot recreational boat striking a right whale during an offshore fishing trip is at most 0.000098%, or less than one-in-a-million. Attempting to predict risk on a one-in-a-million chance of a strike from smaller recreational boats is not an effective management strategy and highlights the futility of expanding the seasonal speed zones to address such a small possibility of vessel strikes. The proposed rule applies the worst-case scenario on a continuing basis and represents an extreme use of the precautionary principal.
5. **Technological Alternative.** NMFS fails to consider and address technological alternatives funded by the private sector that can identify the proximate presence of whales and alert boaters so that these rare encounters ensure protection of whales without endangering people on the water – similar to “Waze®” warnings in a marine application. NMFS did not evaluate existing tools such as Automatic Identification Systems (AIS), which is used worldwide, and was developed by the U.S. Coast Guard. Other existing devices such as VHF Radios, infrared cameras, and forward-looking sonar, can all connect to the on-board Multi-Function Display (MFD) to reduce strike risk to right whales. These technological alternatives are all readily available today and are already installed on thousands of vessels within the rule size class along the east coast. The only proposed alternatives considered by NMFS in the

⁶ <https://www.federalregister.gov/documents/2022/08/01/2022-16211/amendments-to-the-north-atlantic-right-whale-vessel-strike-reduction-rule>

⁷ <https://www.fisheries.noaa.gov/data-tools/recreational-fisheries-statistics-queries>

Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis were expanding the vessel size class and the spatial and temporal boundaries of the existing rule. This lack of consideration of technological alternatives is perplexing given NMFS's statement in the Federal Register notice for its large vessel rule in 2008 that use of technology is the most desirable approach.

6. **Lack of Regulatory Authority.** Neither ESA nor MMPA provide NMFS with authority to impose broad rules to regulate a societal activity like boating for the purpose of avoiding take of a species that has a very low probability of occurring. The sources of authority set forth in the proposed rule (16 USC 1382(a) and 16 USC 1540(f)) either run afoul of the nondelegation doctrine or do not provide the broad authority NMFS is seeking to exercise. The probability of a vessel in the 35 to 65-foot size class striking a right whale is less than one in a million. Only Congress can authorize the sweeping coastal speed rule; NOAA cannot.
7. **American System of Conservation Funding.** This “user pay – public benefits” model is based on three pillars of funding: revenue from fishing and hunting licenses; excise taxes from the Wildlife Restoration Program (Pittman-Robertson Act), and excise taxes from the Sport Fish Restoration Program (Dingell-Johnson Act/Wallop-Breaux Amendment). Essentially, excise taxes collected from sporting goods purchases and marine fuels are funneled back into conservation. With fewer anglers and boaters participating in recreational activities due to onerous new vessel speed restrictions, there would be a ripple effect on the overall funding structure of conservation efforts. While the VSR rule may directly impact boating and fishing activities, its indirect effects on the [American System of Conservation Funding](#) would weaken the financial support for conservation and management in all 50 State fish and game agencies and the federal government.
8. **North American Model of Wildlife Conservation.** This model is unique to the United States and manages wildlife as public trust resources for the benefit of all citizens. The envy of every other country on earth, the [North American Model](#) is built on the cornerstones of science-based natural resource management; equal access to public trust resources for all, and a democratic rule of law that allows stakeholders to participate in the regulatory process. Most state fish and wildlife agencies receive 80 – 100% of their funding through the American System of Conservation Funding⁸. Fewer anglers and boaters on the water due to restrictive vessel speed requirements translates to reduced funding for state fish and game agencies and their conservation and management roles.

⁸<https://www.fws.gov/sites/default/files/documents/HWCC%20surpressor%20tax%20Haaland%20final%20signed%2012%2018%2023.pdf>

Conclusion

Given the clear social, conservation and economic benefits of recreational fishing and boating to the nation, and uncertainty around much of the justification for the proposal, we believe more deliberation and analysis is needed to determine if conservation goals could be achieved with less restrictive measures.

We reiterate the need to withdraw this rule until additional analysis on the issues expressed in this letter can be conducted, and potential new alternatives developed in collaboration with the recreational fishing and boating industry.

Thank you for your consideration, and we look forward to working with you to ensure our community is doing everything within reason to avoid conflicts with right whales.

Sincerely,



Jeff Angers, President
Center for Sportfishing Policy



Jeff Crane, President
Congressional Sportsmen's Foundation

cc: Council on Environmental Quality Chair Brenda Mallory
USCG Assistant Commandant for Response Policy RADM JoAnn Burdian
USCG Assistant Commandant for Prevention Policy RADM Wayne Arguin