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August 16, 2024

Mr. Chris Stahl, Florida State Clearinghouse Coordinator
Department of Environmental Protection
3900 Commonwealth Blvd., M.S 47
Tallahassee, Florida 32399

RE: FL202407110193C - National Marine Fisheries Service - Proposed Rule - Proposed Amendments To The North Atlantic Right Whale Vessel Strike Reduction Rule- Waters Of The Atlantic Ocean Off Of Florida

Dear Mr. Stahl,

The Florida Fish and Wildlife Conservation Commission (FWC) has reviewed the proposed draft North Atlantic Right Whale Vessel Strike Reduction rule (87 FR 46921 (August 1, 2022)) (speed rule), the July 2022 Draft Environmental Assessment for Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (Draft EA), and the July 2022 Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis (Draft RIR), as submitted by the National Marine Fisheries Service (NOAA Fisheries) to the Florida State Clearinghouse. FWC is providing the following comments pursuant to authorities under Chapter 379 and the federal Coastal Zone Management Act (CZMA)/Florida's Coastal Management Program (FCMP). FWC is providing these comments to establish a basis for the determination of each point, as well as the necessary conditions that, if satisfied, would ensure consistency with specific enforceable policies of the FCMP.

Background

NOAA Fisheries has proposed a draft speed rule that includes: 1) changes to the spatial boundaries and timing of mandatory Seasonal Speed Zones (SSZs), 2) addition of most vessels greater than or equal to 35 feet and less than 65 feet in length to the vessel size class subject to speed restriction, 3) implementation of a Dynamic Speed Zone (DSZ) when whales are known to be present outside of SSZs, and 4) updates to the speed rule's safety deviation provision.

The FWC recognizes the significant population concerns for the North Atlantic Right Whale (NARW), a federally endangered species whose population size has declined by over 30 percent since 2010 (Pettis et al. 2022). In 2022, it was estimated that only about 356 NARWs remained, with fewer than 100 of them being females. Right whales' calving grounds are in the Southeastern U.S., including Florida, where they are typically sighted in Atlantic waters between the St. Mary's River entrance and Sebastian Inlet. Nearly all pregnant females migrate to this region, arriving as early as November and departing as late as April (Krzystan et al. 2018). The species' Potential for Biological Removal (PBR), which is the maximum number of animals that can be sustainably killed by human causes annually, is just 0.7. Therefore, any human-caused mortality is unsustainable for this critically endangered species.

Vessel strikes are one of the two leading causes of mortality in right whales, the other being fishing gear entanglements. Since 2017, when NOAA Fisheries declared an Unusual Mortality Event for the species, 55 right whales are known to have been killed or seriously injured. Of these, vessel strikes are known to have killed 15 right whales and seriously injured eight more.

Additional conservation measures are necessary to address these significant human-caused mortality issues. However, regulatory measures will only be effective if the public generally buys in to a regulatory approach. The proposed rule and associated supporting documents have not been amended to address or even acknowledge the substantial public comment that was provided to NOAA Fisheries on these documents and as such, public buy-in has not occurred and compliance with the rule is expected to be low. Due to the proposed considerable expansion of the managed area and anticipated low level of compliance, additional resources for law enforcement are absolutely necessary. It is critical that if NOAA Fisheries moves forward with the rule as proposed, they provide adequate and additional resources to law enforcement agencies so that regulations can be effectively enforced.

NOAA Fisheries has requested the State of Florida advise on the agreement or disagreement with their conclusions that the proposed rule is consistent with the provisions of the federally approved FCMP. Pursuant to the policies of Chapter 379.2401(3)(b), Florida Statutes, and 379.104, Florida Statutes, and the Coastal Zone Management Act, the FWC conditionally concurs with the federal consistency determination for the proposed draft speed rule pending the incorporation of the conditions for concurrence detailed below.

Basis for Determination

The following enforceable policies within the Florida Coastal Management Program provide the basis for FWC's determination.

Marine Fisheries; Policy and Standards- 379.2401(3)(b), Florida Statutes
Conservation and management measures shall be based upon the best information available, including biological, sociological, economic, and other information deemed relevant by the commission.

Section 2.1 of the Draft RIR states that the preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), and the requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the E.O.:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) **and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.** Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

Section 2.2 of the Draft RIR further states:

This RIR assesses management measures from the standpoint of determining the resulting changes in costs and benefits to society. To the extent practicable, the net effects of regulatory measures should be stated in terms of producer and consumer surplus, changes in profits, employment in the direct and support industries where

practicable. However, much of this information is unavailable for most vessels and areas subject to the proposed rule modifications. Therefore, the impact analysis of the proposed rule focuses on direct impacts to affected vessel owners and operators transiting within active speed restriction zones along the U.S. East Coast, and benefits of reducing vessel strike risk and severity for North Atlantic right whales.

The requirement of E.O. 12866 that states “...and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider” is of particular relevance to the proposed action because the impact analysis does not make this required consideration, and instead only “...focuses on direct impacts to affected vessel owners and operators transiting within active speed restriction zones along the U.S. East Coast, and benefits of reducing vessel strike risk and severity for North Atlantic right whales”.

Additionally, there was a significant amount of information provided by management agencies and the public through official comments and public workshops that were not taken into consideration for the draft speed rule, Draft EA, or the Draft RIR, as all of the information and comments were provided to NOAA Fisheries after these documents were released for public comment. The information and comments provided to NOAA Fisheries for these documents would help to develop “...qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider” pursuant to E.O. 12866, and would also represent “...the best information available, including biological, sociological, economic, and other information deemed relevant” pursuant to 379.2401(3)(b), F.S., which is an enforceable policy of the federally approved FCMP. Examples of the type of information and comments that were provided to NOAA Fisheries as part of public comment are as follows.

Part of NOAA Fisheries’ proposed rule would significantly expand areas and vessel size class subject to the speed restriction compared to the current rule. While FWC is certainly supportive of conserving the endangered northern right whale, FWC previously provided public comment on the proposed rule (see attached October 28, 2022, letter) highlighting data deficiencies for vessels between 35 feet and 65 feet. A fundamental component of any proposed rule should be sound science and the use of the best information available. However, the underlying encounter risk model used for this proposed rule (Garrison et al., 2022) is biased towards particular vessel size classes. While NOAA Fisheries acknowledges this bias in the proposed rule, use of the model to inform the proposed rule without inclusion of other data, such as socioeconomic impacts provided during public comment and during public workshops, which was previously requested by FWC, is not consistent with best information available and therefore not consistent with 379.2401(3)(b), F.S.

FWC comments also recommended NOAA Fisheries utilize additional existing published scientific research to comprehensively understand the risk of NARW vessel strikes, and to better inform a refinement of the area impacted by the proposed rule that would also accomplish the goal set forth by NOAA Fisheries of a 90% risk reduction of vessel strikes. Results from Montes et al. (2020) highlight that areas with the highest risk of vessel strikes to NARW are closer to shore and in high traffic areas near ports and inlets. Despite these published results and alternative recommendations from FWC to consider and incorporate them into the proposed rule, NOAA Fisheries chose not to acknowledge or consider them. Further, and more recently, Neyman et al. (2023) highlighted the importance of mariners using NOAA-recommended vessel routing lanes to reduce the risk of vessel strikes to NARW, but acknowledged these will only be effective if mariners actually use them. As of August 13, 2024, NOAA Fisheries has not made these vessel routing lanes available to

NOAA Electronic Navigation Charts, thereby hindering mariners' ability to prevent NARW vessel strikes. Given that FWC previously made recommendations to consider whether the 90% reduction in vessel strikes could be achieved with a smaller, more focused area in Florida waters and that additional relevant scientific studies (including use of vessel routing lanes) were not considered by NOAA Fisheries, the proposed rule is not utilizing the best information available and is not consistent with 379.2401(3)(b), F.S.

If implemented, the proposed rule would have significant sociological and economic impacts on the citizens of Florida. Within the Draft RIR, economic impacts of the proposed rule were evaluated at the vessel level to understand impacts to operational costs. However, this evaluation completely ignores sociological and economic impacts at the individual level as expressed and provided through public comment. Specifically, NOAA Fisheries did not evaluate how individual anglers, for-hire mates, captains, etc. would be impacted by the proposed rule and instead focused on broad scale operational costs. Additionally, NOAA Fisheries did not recognize or attempt to evaluate the cascading and localized socioeconomic effects of private recreational anglers, for-hire vessel owners, and commercial operations moving their boats and/or fishing activities to locations outside of the proposed zones, or potentially selling their boats and getting out of fishing altogether, because of the impact of the proposed rule. NOAA Fisheries received extensive public comment from agencies and stakeholders on potential sociological and economic impacts. However, based on the documents provided for review, it is evident that NOAA Fisheries did not utilize the public comment or public workshops as the best information available to comprehensively re-evaluate economic impacts, both qualitatively and quantitatively, and as a result are drastically underestimating the economic impact of the proposed rule. Without inclusion of this additional information, the proposed rule is not consistent with 379.2401(3)(b), F.S.

Conditions for Concurrence

The proposed interim rule will be consistent with FCMP enforceable policy 379.2401(3)(b), F.S., if the following actions are completed by NOAA Fisheries:

1. NOAA Fisheries must consider the best information available including the scientific studies identified above, any other information identified through public comment), and determine if the area could be reduced and range of vessel size-class subject to speed restrictions could be reduced and still achieve NARW conservation goals. These considerations and determinations must be appropriately identified and reflected in the proposed rule, Draft EA and the Draft RIR.
2. Following Action 1, any impact assessment discussed in the Draft EA or the Draft RIR must be amended to appropriately reflect any considerations or determinations by NOAA Fisheries regarding a potential reduction in area and size of vessels subject to speed restrictions. Impacts, including cascading effects, must be assessed quantitatively and qualitatively for both individuals and operations based on the best information available, including public comment received through any avenue.
3. Following Action 1, the proposed rule must be amended to appropriately reflect any determinations by NOAA Fisheries regarding a potential reduction in area and range of vessel size-class subject to speed restrictions.

4. Following Actions 1, 2, and 3, the amended proposed rule, Draft EA, and Draft RIR that reflects any determinations by NOAA Fisheries regarding a potential reduction in area and size of vessels subject to speed restrictions based on the best information available must be re-submitted to the Florida State Clearinghouse for review to ensure these conditions have been met.

Right to Hunt and Fish - 379.104, Florida Statutes

The Legislature recognizes that hunting, fishing, and the taking of game are a valued part of the cultural heritage of Florida and should be forever preserved for Floridians. The Legislature further recognizes that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural areas and resources. Therefore, the Legislature intends that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by s. 9, Art. IV of the State Constitution.

NOAA Fisheries is proposing a final rule to modify the existing North Atlantic right whale vessel speed rule to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel strikes. As presented, the proposed action, if taken by NOAA Fisheries, would severely restrict vessel-based recreational and commercial fishing opportunities off the Atlantic coast of Florida, and infringe on the right of Florida citizens to fish. The fishing and recreational boating opportunities that would be impacted by the proposed rule contribute significantly to the state and national economies, and as the Fishing Capital of the World, they also serve as a cultural cornerstone for Floridians and the many anglers visiting Florida.

The Florida Legislature has recognized that hunting, fishing, and the taking of game are a valued part of the cultural heritage of Florida and should be forever preserved for Floridians. The Legislature further recognized that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural areas and resources. Therefore, the Legislature intends that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by s. 9, Art. IV of the State Constitution.

FWC encourages NOAA Fisheries to consider additional alternatives that may lessen the impacts of the proposed rule on fishing activities. Based on the information provided by NOAA Fisheries, the proposed rule is inconsistent with 379.104, F.S.

Conditions for Concurrence

The proposed interim rule will be consistent with FCMP enforceable policy 379.104, F.S., if the following actions are completed by NOAA Fisheries:

1. NOAA Fisheries must consider the best information available including the scientific studies identified above, any other information identified through public comment), and determine if the area could be reduced and range of vessel size-class subject to speed restrictions could be reduced and still achieve NARW conservation goals. These considerations and determinations must be appropriately identified and reflected in the proposed rule, Draft EA and the Draft RIR.
2. Following Action 1, any impact assessment discussed in the Draft EA or the Draft RIR must be amended to appropriately reflect any considerations or determinations by NOAA Fisheries regarding a potential reduction in area and size of vessels

subject to speed restrictions. Impacts, including cascading effects, must be assessed quantitatively and qualitatively for both individuals and operations based on the best information available, including public comment received through any avenue.

3. Following Action 1, the proposed rule must be amended to appropriately reflect any determinations by NOAA Fisheries regarding a potential reduction in area and range of vessel size-class subject to speed restrictions.
4. Following Actions 1, 2, and 3, the amended proposed rule, Draft EA, and Draft RIR that reflects any determinations by NOAA Fisheries regarding a potential reduction in area and size of vessels subject to speed restrictions based on the best information available must be re-submitted to the Florida State Clearinghouse for review to ensure these conditions have been met.

Absent modification to the Conditions for Concurrence identified above, this letter must be treated as an objection to the consistency determination requested by NOAA Fisheries.

FWC looks forward to working with NOAA Fisheries so that the proposed draft speed rule, Draft EA, and Draft RIR, will be consistent with the CZMA and the FCMP. If you need any further assistance, please contact Jessica McCawley at (850) 487-0554, or by email at Jessica.McCawley@MyFWC.com.

Sincerely,



Roger Young
Executive Director

Attachment

ry/kf/jm/cs/lg/jc/rm

References

Garrison, L.P., Adams, J., Patterson, E.M., and Good C.P., 2022. Assessing the risk of vessel strike mortality in North Atlantic right whales along the U.S. East Coast. NOAA Technical Memorandum NMFS-SEFSC-757.

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Montes, N.L., Swett, R., and Gowan, T.A., 2020. Risk of encounters between North Atlantic right whales and recreational vessel traffic in the southeastern United States. *Ecology and Society* 25(4):12.

Neyman, L.C., Crum, N.J., Adams, J.D., Patterson, E.M., and Good, C.P., 2023. Mariner cooperation with recommended lanes in two critical habitats of the North Atlantic Right Whale, *Eubalaena glacialis*. Florida Fish and Wildlife Conservation Commission Fish and Wildlife Research Institute Technical Report No. 24.

Pettis, H.M. and Hamilton, P.K., 2023. North Atlantic Right Whale Consortium 2023 Annual Report Card. Report to the North Atlantic Right Whale Consortium



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August 16, 2024

Mr. Chris Stahl, Florida State Clearinghouse Coordinator
Department of Environmental Protection
3900 Commonwealth Blvd., M.S 47
Tallahassee, Florida 32399

RE: Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Mr. Stahl,

The Florida Department of Transportation (FDOT) writes to express statewide objection to National Marine Fisheries Service's (NOAA Fisheries) proposed amendments to the North Atlantic right whale vessel speed rule as well as the rule itself. The proposed amendments do little to nothing to address the concerns expressed in FDOT's [public comment](#) in October 2022, specifically the safety and economic stability of commercial and recreational mariners who utilize Florida's waterways and seaports in addition to the immense damage this would inflict upon America's recovering supply chain.

While NOAA's commonsense shift to now allowing mariners to increase vessel speeds in life-threatening storm conditions is a positive step, they have failed to acknowledge the fact that impeding vessel maneuverability also puts mariners at risk in *any* situation or circumstance. As clearly documented in the public responses from the U.S. Coast Guard, the American Pilots Association, and the National Transportation Safety Board; a speed restriction imposed on pilot vessels would increase mariner fatigue and overall navigation safety in pilotage waters. Reducing speed impacts the ability to maneuver the vessel safely, and also limits an operator's ability to quickly and efficiently transfer pilots to and from commercial ships, the resulting stress and exhaustion can impair marine operations and navigational safety. Equally concerning is NOAA's requirement for vessels employing safety deviations to submit an online report to NMFS within 48 hours of invoking the deviation. Justifying to a federal agency why they broke an arbitrary speed limit should not be the first order of business for mariners who just safely navigated a large vessel to port amidst hurricane conditions. More importantly, mariners should be focused solely on vessel navigation, not distracted by the significant administrative burden associated with the proposed reporting scheme. It is difficult to understand how, exactly, this added layer of red tape prevents whale strikes. Simply put, the State of Florida prioritizes the protection of endangered species; however, it should never outweigh the safety of mariners.

The amendments further throw into concern the economic viability of Florida's small and medium sized businesses that rely on the state's navigable waters to sustain their livelihoods and create



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good jobs for their local communities. The rule could negatively impact more than 800 employers in the deep sea, coastal transportation, port and harbor operations, marine cargo handling, and navigational services industries. Collectively these industries employ more than 27,000 Floridians. The impacts could also extend to Florida's shipbuilding (528 employers and 15,892 workers) and fishing industries (222 employers and 382 workers). According to the National Marine Manufacturers Association:

“This rule could put more than 810,000 American jobs and nearly \$230 billion in economic contributions in jeopardy. More than 95 percent of boats sold in the U.S. are made in the U.S., and approximately 93 percent of boat manufacturers are small business owners. Many coastal economies are built on recreational boating, fishing trips, and the hospitality industry that require access to the ocean, and this rule would create ripple effects throughout these economies.”¹

Recreational boating in Florida alone is a massive economic driver, supporting more than 109,000 jobs, 7,000 businesses, and creating more than \$33 billion in economic impact.¹ With nearly 1,200 miles of coastline – the longest contiguous coastline in the United States – this rule portends a slippery slope of over regulation that will stifle Florida's coastal economies and drive people to the welfare lines.

Finally, these amendments do virtually nothing to address the rule's adverse impacts on a supply chain recovering from a global pandemic, crippled by historic federally induced inflation, and further strained in Florida by multiple hurricanes. The cargo vessels that transit Florida's seaports are critical in the delivery of vital goods and services to our state's residents and the nation. This rule does not mitigate further delays and cost increases on goods or fuel for U.S. consumers and can drastically increase the total cost of a single voyage by upwards of \$200,000 by our estimates; a point NOAA seemingly flaunted in their June 18 notification to State Coastal Management Program Managers, stating “NMFS expects the largest proportion of costs from implementation of the proposed amendments would be borne by the commercial shipping industry.” NOAA's own economic impact study estimated that nearly 16,000 vessels will be subject to increased costs of \$46 million per year. These are costs which will inevitably be carried down to consumers already struggling to put food on their tables due to federally induced inflation. NOAA knows what it's doing, and has ignored proposals of reasonable alternatives – like technology adoption and deployment – from industry and trade associations that will protect the whales, as well as the livelihoods of hundreds of thousands of Americans, and the economic stability of coastal economies.

¹ <https://www.nmma.org/advocacy/economic-impact/recreational-boating/FL>



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In Florida, we can confidently affirm that protecting our state’s unique environment and its inhabiting marine life is one of our greatest priorities. Concurrently, we also deeply value the safety of our mariners as well as the invaluable impact their workforce has on the daily lives of Floridians. These things are not mutually exclusive. We are confident there are alternative approaches that can be considered to protect the North Atlantic Right Whale without jeopardizing the safety of pilots and crews and will serve as willing partners in finding that proper solution. The Florida Department of Transportation requests NOAA drop its proposed rule and take action to work closely with affected ports, maritime industry stakeholders, and others to accurately determine the effect any proposed rule change would have on ports and port communities.

¹ <https://www.nmma.org/press/article/24641>



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September 9, 2024

Caroline Good
NOAA Fisheries
Office of Protected Resources
Cetacean and Pinniped Conservation
1315 East-West Highway, 13th Floor
Silver Spring, Maryland 20910

RE: National Marine Fisheries Service, Proposed Rule, Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule in Waters of the Atlantic Ocean, Florida.

SAI # FL202407110193C

Dear Caroline:

On July 10, 2024 the Florida State Clearinghouse (State) received and began the coordinated review of the referenced National Marine Fisheries Service (NOAA Fisheries) draft proposal to reduce vessel speeds attempting to reducing vessel strikes of North Atlantic Right Whales (NARW) in the Atlantic Ocean under the following authorities: Presidential Executive Order 12372; § 403.061(43), *Florida Statutes* (F.S.); the Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*, as amended); and the National Environmental Policy Act (42 U.S.C. §§ 4321-4347, as amended).

NOAA Fisheries has proposed a draft speed rule that includes: 1) changes to the spatial boundaries and timing of the mandatory Atlantic Ocean Seasonal Speed Zones (SSZs), 2) addition of most vessels greater than or equal to 35 feet and less than 65 feet in length to the vessel size class subject to speed restriction, 3) implementation of a Dynamic Speed Zone (DSZ) when whales are known to be present outside of SSZs, and 4) updates to the speed rule's safety deviation provision

Florida Fish and Wildlife Conservation Commission (FWC) staff have reviewed the proposed interim rule and provided comments pursuant to authorities under Chapter 379 F.S., and the provisions of 15 C.F.R. § 930, Subpart C. The State hereby notifies NOAA Fisheries that the proposed federal action will be consistent with the enforceable policies

of the Florida Coastal Management Program (FCMP) only if the conditions listed below are satisfied. The full letters containing all FWC's current and past comments are attached to this document and incorporated by reference herein.

The State's concurrence is conditioned on NOAA Fisheries providing reasonable assurances that the State's policies and standards for managing marine fisheries (§ 379.2401(3)(b)), and the right to hunt and fish (§ 379.104, F.S.), is not infringed upon.

1. **Marine Fisheries; Policy and Standards** - *Conservation and management measures shall be based upon the best information available, including biological, sociological, economic, and other information deemed relevant by the commission. [§ 379.2401(3)(b), F.S.]*
2. **Right to Hunt and Fish** - *The Legislature recognizes that hunting, fishing, and the taking of game are a valued part of the cultural heritage of Florida and should be forever preserved for Floridians. The Legislature further recognizes that these activities play an important part in the state's economy and in the conservation, preservation, and management of the state's natural areas and resources. Therefore, the Legislature intends that the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by s. 9, Art. IV of the State Constitution. [§ 379.104, F.S.]*

The proposed interim rule will be consistent with FCMP enforceable policies only if the following actions are completed by NOAA Fisheries:

1. NOAA Fisheries must consider the best information available including the scientific studies identified above, any other information identified through public comment, and determine if the area and the range of vessel size-class subject to speed restrictions could be reduced and still achieve NARW conservation goals. These considerations and determinations must be appropriately identified and reflected in the proposed rule.
2. Following Action 1, any impact assessment discussed must be amended to appropriately reflect any considerations or determinations by NOAA Fisheries regarding a potential reduction in area and size of vessels subject to speed restrictions. Impacts, including cascading effects, must be assessed quantitatively and qualitatively for both individuals and operations based on the best information available, including public comment received through any avenue.
3. Following Action 1, the proposed rule must be amended to appropriately reflect any determinations by NOAA Fisheries regarding a potential reduction in area and range of vessel size-class subject to speed restrictions.
4. Following Actions 1, 2, and 3, the amended proposed rule that reflects any determinations by NOAA Fisheries regarding a potential reduction in area and size of vessels subject to speed restrictions based on the best information available must be re-submitted to the Florida State Clearinghouse for review to ensure these conditions have been met.

In accordance with 15 C.F.R. § 930.4, if the federal action is not altered in accordance with the conditions stated above, this conditional concurrence shall be treated by all parties as an objection. NOAA Fisheries shall not proceed with the objectionable portion of the proposed project unless: it has concluded that consistency with the enforceable policies of the FCMP is prohibited by existing federal law applicable to NOAA Fisheries, in which case, the NOAA Fisheries must clearly describe, in writing to the State, the legal impediments to full consistency; or NOAA Fisheries concludes its proposal is fully consistent with the enforceable policies of the FCMP despite this objection.

Pursuant to 15 C.F.R. § 930.43, a federal agency deciding to proceed with an activity over the State's objection or to follow an alternative suggested by the State, must notify the State of its decision prior to commencement. In accordance with 15 C.F.R. § 930.43(c), a copy of this letter has been sent to the Director of the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management. Mediation by the Secretary of the U.S. Department of Commerce may be sought pursuant to 15 C.F.R. § 930, Subpart G, for serious disagreements between the State and federal agency regarding direct federal action as contemplated by 15 C.F.R. § 930, Subpart C.

Additionally, the Florida Department of Transportation (FDOT) has reviewed the proposed rule and noted that it fails to:

1. Acknowledge the fact that impeding vessel maneuverability also puts all mariners at risk in any situation or circumstance.
2. Protect the economic viability of Florida's small and medium sized businesses that rely on the state's navigable waters to sustain their livelihoods and create good jobs for their local communities since recreational boating in Florida alone is a massive economic driver.
3. Address the rule's adverse impacts on the nation's supply chain.

The FDOT requests NOAA Fisheries drop its proposed rule and take action to work closely with affected ports, maritime industry stakeholders, and others to accurately determine the effect any proposed rule change would have on ports and port communities. Their comment letter is attached and incorporated herein. Should you have any questions please contact Charles Castagna at Charles.Castagna@dot.state.fl.us.

Thank you for the opportunity to review the interim rule. The State looks forward to working with the NOAA Fisheries to develop a rule that will protect both the North Atlantic Right Whale and all the marine industries & interests along the Florida coast. For additional information, please contact me at Chris.Stahl@FloridaDEP.gov (850) 717-9076 or Alex Reed, Administrator of the Florida Coastal Management Program, at Alex.Reed@FloridaDEP.gov, (850) 245-2094.

Sincerely,

Chris Stahl

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