



September 18, 2024

Shannon Bettridge
Division Chief
Marine Mammal and Sea Turtle Conservation Division
NOAA Fisheries, Office of Protected Resources
1315 East-West Highway
Silver Spring, MD 20910

Re: CZM Federal Consistency Review of the NOAA Proposed Rule to Amend
the North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Dr. Bettridge:

On June 18, 2024, the Massachusetts Office of Coastal Zone Management (CZM) received your federal consistency certification determination for the proposed amendments to the existing North Atlantic right whale (NARW) vessel speed rule (“proposed rule”) to further reduce the likelihood of mortalities and serious injuries to endangered NARW from vessel strikes. The submission contained a description of the proposed rule, and a regional consistency determination for federally approved state Coastal Zone Management Act (CZMA) programs for coastal states bordering the Atlantic Ocean, including Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. Specific to Massachusetts, the proposed rule would implement a Seasonal Speed Zone (SSZ) from November 1 – May 30, which would require most vessels greater than 35 feet (ft) in length to travel less than 10-knots within a majority of Massachusetts coastal waters, including Nantucket and Vineyard Sounds (the Sounds). The regional consistency determination included a section describing how the proposed amendments are consistent with the applicable enforceable policies contained in the potentially affected states’ respective federally approved CZMA programs. This determination is submitted pursuant to the federal consistency regulation 15 Code of Federal Regulations (CFR) Part 930 Subpart C Section 930.31. Pursuant to the Coastal Zone Management Act of 1972, as amended, federal activities located within or outside the Massachusetts Coastal Zone that may have reasonably foreseeable effects on coastal resources or coastal uses must, to the maximum extent practicable, be implemented in a manner consistent with the enforceable policies of the Massachusetts Coastal Management Program. Based on a determination of insufficient information and inconsistency with the enforceable CZM Ports and Harbors Policy #4, CZM objects to the proposed rule.

The Commonwealth of Massachusetts recognizes the importance of protecting the endangered NARW and the role that vessel speed limits have in reducing vessel strikes to marine mammals. Massachusetts has been a leader in implementing dynamic and seasonal speed limits and was the first to require vessels <65 ft to comply with speed restrictions. Massachusetts also implements regulations to reduce entanglement risks to NARW and other whales by imposing seasonal and dynamic closures to fixed gear fishing and mandating the use of buoy lines designed to break in the



event of entanglement. Massachusetts has also prioritized monitoring of NARW with aerial surveys and forthcoming acoustic monitoring equipment. The Commonwealth continues to support the current seasonal and dynamic speed limits in federal waters, and supports efforts to keep the speed limits updated as whale distributions shift and new data become available.

On August 9, 2024, a meeting was held between CZM, NOAA, and the Massachusetts Division of Marine Fisheries (DMF) to discuss the proposed rule. In that meeting, CZM and DMF requested that NOAA share the NARW sightings data provided by the North Atlantic Right Whale Consortium (“Consortium”) used to inform the formation of the proposed rule. In a letter dated August 12, 2024, CZM requested an extension in the federal consistency review period for the proposed rule to September 3, 2024, to allow CZM and DMF additional time to evaluate the provided sightings data. On August 14, 2024, NOAA granted the extension request. On August 19, 2024, NOAA provided the requested data to CZM. On August 23, 2024, CZM submitted an additional data request to the Consortium for data from 2000-2023 (or most current), and for a greater spatial extent, which included all of Massachusetts state waters. On August 26, 2024, the Consortium provided the requested data to CZM. To allow time to evaluate the data provided by the Consortium and continue the review of the proposed rule, CZM requested an additional extension from NOAA to October 8, 2024. On August 30, 2024, NOAA granted an extension to the federal consistency review period to September 18, 2024.

Public Participation

Pursuant to 15 CFR §930.2, on July 24, 2024, CZM published a public notice of the federal consistency review of the proposed rule in the *Environmental Monitor*, the Massachusetts Environmental Policy Act Office’s bi-weekly publication. During the comment period, which closed on August 14, 2024, CZM received five comment letters opposing the proposed rule's implementation. CZM received one additional comment letter opposing the proposed rule on August 20, 2024, which was considered in CZM’s review. Copies of the comment letters received by CZM are attached to this letter for reference and the paragraphs below provide summaries of the comments received.

Of the six total comment letters received by CZM, two letters were submitted by ferry service companies that transport passengers and goods between mainland Massachusetts and the islands of Nantucket and Martha’s Vineyard. Both letters indicate a safety concern regarding the operation of ferries at the proposed 10-knot speed limit, as well as the significant economic burden and impact on the well-being of Massachusetts residents and businesses that would result from the implementation of the proposed rule. Specifically, the Hy-Line Cruises company, which provides year-round high-speed ferry services to Nantucket, notes that approximately 20,000 school-age athletes, as well as passengers attending medical appointments and critical work crews, are transported to and from mainland Massachusetts and Nantucket during the time period proposed for the SSZ (November 1 – May 30). The proposed rule would eliminate the operation of the high-speed ferry service for a total of seven months. Coupled with the Dynamic Speed Zones (DSZ) during the months of June – October, in which a NARW sighting within the SSZ would result in the implementation of the 10-knot speed rule for a minimum of 10 days, the companies state that the proposed rule would effectively put Hy-Line Cruises and other similar companies out of business. For Hy-Line Cruises specifically, this would result in the loss of 350 jobs, 150 of which are full-time, year-round positions.

Additionally, CZM received comments from the town of Nantucket, the Nantucket Planning and Economic Development Commission (NP&EDC), and New England Development opposing

the proposed rule. In its letter, the town of Nantucket asserts that the proposed rule is arbitrary and capricious given the lack of data on the effectiveness of speed rule restrictions resulting in fewer NARW vessel strikes. The town notes that NOAA's acknowledgement in the NOAA Technical Memorandum NMFS-SEFSC-757 associated with the proposed rule amendment states, "it is not possible to confirm a direct causal link" (page 2) between the decline in observed NARW mortality and speed reduction efforts. The town also references the significant impact the proposed rule will have on its residents' economy and livelihoods due to reduction of ferry services that support the town. The elimination of fast ferry services and the 30% reduction in daily total trips to the island of Nantucket by the standard speed Nantucket Steamship Authority ferry would significantly impact the transportation of goods, groceries, fuel, building materials, gasoline, and essential workforce personnel. The town explicitly notes disruption in the transportation of public safety personnel, medical personnel, and patients and residents traveling for medical appointments and treatments that rely upon the ferry service. In addition, the town Police Chief, Fire Chief, and the Director of Public Works all note the impact the proposed rule would have on public safety, critical operations, and development. Specifically, the proposed rule would disrupt and possibly eliminate routine and emergency safety operations, endangering public safety and health. The NP&EDC described similar concerns and additionally note that the economically disadvantaged and underserved residents of the island and those traveling to the island would be those most affected. Both the town and NP&EDC reference an analysis in production by the Donahue Institute at the University of Massachusetts Amherst that shows a preliminary result of \$187.8 million in lost economic activity in Nantucket if the proposed rule were enacted. New England Development, which owns multiple hospitality venues and the Nantucket Boat Basin in the town of Nantucket, comments that the proposed rule, specifically the impact the proposed rule would have on the ferry services to and from the island, would drastically affect the economy of the town and the residents and businesses that support Nantucket.

The American Pilots' Association (APA) provided comments to CZM opposing the proposed rule citing safety concerns and unsafe working conditions that the proposed rule may create. Specifically, the APA states that pilot boat operators must have the discretion to adjust speed and direction at any given time to optimize safety during transfer operations. Pilots must rely on the maintenance of a safe and sufficient speed to navigate large ocean vessels through areas of cross currents, heavy winds, and two-way vessel traffic in the proposed SSZs. The APA expresses concern that the proposed rule only increases the difficulty of navigating large ocean vessels, increasing the danger faced by pilots during their typical operations. The APA also notes that the proposed rule would result in an economic impact on pilots operating in the SSZs as a result of the costs necessary to comply with the proposed rule.

In addition to the comment letters received by CZM during the federal consistency review, CZM and DMF engaged in additional outreach efforts to stakeholders that may be impacted by the proposed rule. DMF contacted the Stellwagen Bank Charter Boat Association (SBCBA), whose membership includes the for-hire fleet, recreational anglers, and commercial fishermen that fish the state and federal waters of the northeast United States. The SBCBA provided CZM and DMF with a comment letter from SBCBA submitted to NOAA fisheries, dated October 28, 2022, in response to the proposed rule. The letter is attached for reference. In its letter, SBCBA notes that the proposed rule would result in the elimination of the for-hire fishing industry that transits Massachusetts state waters to access Stellwagen Bank and Coxes Ledge. DMF also sent a survey to potentially affected for-hire operators in an attempt to assess the monetary value lost as a result of the proposed rule. Of the 106 owners who were contacted regarding the survey, DMF received responses from 19 owners. These 19 survey respondents reported a total of \$1,085,250 in potential annual monetary value lost

due to the proposed rule. Applying the calculation methods used by the Woods Hole Oceanographic Institution for calculating economic impacts from offshore wind development and for correcting for survey response rates, the total economic impacts could exceed \$10,000,000 annually for the fishing and associated industries in Massachusetts. Beyond the economic impact, DMF estimates that over 50,000 fishing days could be impacted for recreational anglers who book for-hire trips.

On July 19, 2024, a group of State Representatives and Senators submitted a letter to NOAA regarding the proposed rule. This letter outlined many of the concerns the letters submitted to CZM raised, including the imposed economic hardship, safety and medical concerns, and transportation impacts resulting from the proposed rule.

Objection Based on Determination of Insufficient Information

Pursuant to 15 CFR §930.43(b), CZM issues this objection to the proposed rule based upon a finding that NOAA has failed to supply sufficient information to support the implementation of the proposed rule and the claim that the proposed rule is consistent with the enforceable policies of CZM. In accordance with 15 CFR §930.39, for a federal agency activity that requires federal consistency review, “the consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement.” The data and information provided by NOAA in its consistency determination for the proposed rule is not comprehensive nor sufficient to determine if the proposed rule is consistent with CZM enforceable policies to the maximum extent practicable. The data and information provided and the concerns CZM has with it are outlined in the following three sections on NOAA’s risk modelling, additional data and information informing the rule, and the economic impacts the rule will have.

Vessel Strike Mortality Risk Model

Given the available NARW survey data, it appears that the Sounds are neither a migratory corridor nor a feeding ground for the NARW. Inclusion of the Sounds in the proposed Atlantic SSZ is based on vessel strike mortality risk modeling that is limited by shortcomings of whale density model inputs. NOAA utilized the vessel strike mortality model developed by Garrison et al. (2022) as part of the analysis to evaluate the spatial and temporal distribution of vessel strike mortality risk for the NARW. The model uses a range of components including encounter risk, parameters of whale behavior (including the probabilities of successfully avoiding a vessel and of being present near the surface), probability of mortality when a strike occurs as a function of vessel speed, survey-based whale density estimates, and vessel distribution. The data used for the NARW distribution layer in the vessel strike risk model had zero NARW sightings in the areas of Nantucket Sound and Vineyard Sound from 2003-2020, despite the presence of survey coverage in those areas (Roberts et al. 2024). Since the surveys data contains zero sightings in the Sounds, the abundance values for NARW in these areas of the whale density maps appear to be an artifact of the predictive model, likely based on similar environmental variables in adjacent grid cells that do have whale sightings. The effect of this “spillover” effect on whale distribution is seen in the outputs of the vessel strike risk model, which overlays whale density with vessel traffic and artificially amplifies the risk in the Sounds.

Furthermore, since the vessel density input to the mortality risk model is AIS data, and AIS is only required on vessels 65 ft or greater, the model does not accurately represent risk for 35 ft-65 ft vessels. The expected risk reduction achieved with the proposed rule is made more uncertain by the

lack of complete data on the smaller vessels that will now be subject to the rule. By including the Sounds in the proposed rule, NOAA appears to have weighted heavily the incomplete data on the presence of vessel traffic with minimal and insufficiently robust NARW distribution data in these areas to determine risk.

Nantucket and Vineyard Wind Sound Right Whale Sightings and Acoustic Detections

According to the Draft Environmental Assessment, NOAA supplemented the vessel strike mortality risk model outputs with additional opportunistic sightings, acoustic detections of right whale presence, and additional information on future activities that might impact vessel traffic, including proposed and leased wind energy sites and U.S. Coast Guard proposed vessel safety fairways to identify areas of highest risk.

To both CZM and DMF's knowledge, no NARW vessel strikes have been documented in either Vineyard or Nantucket Sounds, despite the relatively high volume of vessel traffic in these areas. While there have been occasional opportunistic sightings of NARWs in the Sounds, no aggregations have been observed there, and only one sighting of a live NARW in the Sounds has occurred since 2015. Many of the sightings are uncertain and were made by non-experts. CZM, in partnership with DMF, analyzed the NARW sightings data provided by the Consortium. The data provided for the Sounds show 26 sighting events from 2000-2023 with a total of 58 potential NARWs sighted. All the sightings were documented as opportunistic, with 25 of the 26 reports provided by non-experienced marine mammal observers. The data are coded for the reliability of the observer's judgment about the identity of the species observed, which includes Unsure/Possible, Probable, and Sure/Definite. Of the 26 opportunistic sighting events, 50% ($n=13$) were Sure/Definite sightings, 35% ($n=9$) were Probable, and 15% ($n=4$) were Unsure/Possible. Unsure/Possible sightings are not confirmed as NARW sightings and should not be used in analyses. Of the opportunistic sightings in the Sounds from 2000-2023, 42% ($n=11$) occurred in April. The month with the second most sightings was July with 5 sightings (20%). Around 69% of total sightings occurred in the Sounds during the proposed November – May seasonal management time period. The data show that only a single sighting of a live NARW has occurred since 2015, which was coded as Probable.

In addition to the data provided by the Consortium, three deployments of bottom-mounted acoustic monitoring moorings have occurred to date in Nantucket Sound. These deployments occurred from November – July 2010 and 2011 for a total of 277 days of operation. During that time, only a single day in mid-January 2011 had a possible, but not confirmed, acoustic detection of a NARW, indicating that on 99.9% of the listening days, no NARW were detected within the detection range of the hydrophones, which is approximately 5 nautical miles.

Economic Analysis

The data and information provided by NOAA that analyzes the economic impact of the proposed rule are not comprehensive nor sufficient to evaluate the proposed rule for consistency with CZM's enforceable policies. In the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis conducted by NOAA for the proposed rule, for the preferred alternative, alternative 5, Table A-12 of the report provides "The total estimated costs by affected vessels in active SSZs and DSZs by service type under Alternative 5" (Office of Protected Resources, 2022). The values documented for impacts to commercial fishing, passenger vessels, pilot vessels, and recreational vessels when combining vessels ≥ 35 ft and < 65 ft, and vessels ≥ 65 ft in length are \$502,168, \$11,849,124,

\$3,178,259, and \$1,188,668 respectively, which represent the total estimated costs for affected vessels across the entire Atlantic Coast. Given the estimates provided by affected stakeholders in comment letters to CZM, and DMF's estimates based on survey data collected for for-hire fishing vessels, the values provided by NOAA significantly underestimate the economic burden of the proposed rule on Massachusetts Coastal Zone uses. Furthermore, the estimated costs provided by NOAA do not take into account the economic impact the proposed rule will have on the economies of coastal communities that rely on the ferry services transiting the Vineyard and Nantucket Sounds that supply transport of goods, services, and passengers. Based on this evaluation, the economic impact of the proposed rule as described by NOAA is neither comprehensive nor sufficient to evaluate the proposed rule for consistency with CZM enforceable policies.

Objection Based on Determination of Adverse Coastal Effects as Inconsistent with Policies

Pursuant to 15 CFR §930.43(a), CZM issues this objection to the proposed rule based upon a finding that the proposed rule is inconsistent with specific enforceable policies of CZM. As stated above, the estimated costs of the preferred alternative of the proposed rule significantly underestimate the economic burden the proposed rule will have on Massachusetts coastal communities and coastal zone uses. If implemented, the proposed rule would adversely affect and significantly disrupt the Massachusetts for-hire fishing industry, the ferry service industry, and the coastal communities that rely on these services, including for public safety purposes. In order to be consistent with Ports and Harbors Policy #4 of the Massachusetts Coastal Management program, which is implemented in accordance with the Public Waterfront Act, M.G.L. c. 91 and the regulations at 310 CMR 9.00, CZM must find that projects “shall not significantly disrupt any water-dependent use in operation ... Additionally, the rules hold that no proposed project may displace any water-dependent use that has occurred on the site within five years prior to the date of license application.” Although the proposed rule will not be required to obtain a Chapter 91 license in accordance with the regulations at 310 CMR 9.00, pursuant to 15 CFR §930.39(e), “Even when Federal agencies are not required to obtain State permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such State permit programs that are part of a management program.” Due to the adverse effects the proposed rule will have on water-dependent uses in the Massachusetts Coastal Zone, including the displacement of water-dependent uses such as the for-hire fishing industry and the ferry service industry, CZM cannot find the proposed rule consistent with the enforceable Ports and Harbors Policy #4.

Proposed Alternative Measures

Pursuant to 15 CFR §930.43(a)(1), CZM offers the following alternatives, which if adopted by NOAA, would allow the proposed rule to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the Massachusetts Coastal Management program.

Given the significant adverse effects the proposed rule will have on water-dependent uses in the Massachusetts Coastal Zone, specifically within Vineyard and Nantucket Sounds, one alternative would be to exclude the Sounds from the SSZ implemented by the proposed rule.

In the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis conducted by NOAA for the proposed rule, NOAA identified five regulatory alternatives. Alternative 2 would restrict the speed of most vessels ≥ 35 ft and < 65 ft in length to 10 knots or less within current Seasonal Management Areas (SMAs), while Alternative 4 would combine Alternative 2 with a new

mandatory DSZ framework. Specifically, Alternative 4 establishes that “Under the new DSZ framework, mandatory speed reduction zones would be triggered when certain levels of right whale detections occur outside of active SMAs and there is a greater than 50% likelihood the whales will remain within the designated DSZ while effective. Speed restrictions within designated DSZs would apply to the same vessels subject to speed restriction within SMAs.”

The Commonwealth of Massachusetts recognizes the importance of protecting the endangered NARW and has implemented measures to protect the species while they transit Massachusetts state waters. Beginning in 2018, DMF has implemented seasonal speed limits of 10 knots for March and April in Cape Cod Bay, and Massachusetts was the first state in the nation to require vessels <65 ft to comply with speed restrictions. Massachusetts supports efforts to keep speed rules current, including changing the speed rule zones and times of year when changes are based on new data or shifting NARW distributions, applying the current speed limits to 35 ft-65 ft vessels with appropriate safety exceptions, and making the DSZ mandatory by placing speed limits where and when NARW are active. Additionally, DMF, as part of a broader regional monitoring network with NOAA and other coastal states bordering the Atlantic Ocean, will be implementing a passive acoustic monitoring program for NARW in 2024. As part of this program, a year-round archival buoy will be installed in Nantucket Sound to monitor for NARW detections. The Commonwealth of Massachusetts also recognizes the potential to expand monitoring efforts to the utilization of real-time buoy deployment to dynamically manage for NARW.

Required Statement

As stated above, CZM affirms again its objection to the proposed rule because (1) NOAA has failed to supply sufficient information to support the implementation of the proposed rule and the claim that the proposed rule is consistent with the enforceable policies of the Massachusetts Coastal Management program; and (2) the proposed rule is inconsistent with specific enforceable policies of CZM, namely the enforceable Ports and Harbors Policy #4. With this letter, CZM has exercised its right to ensure that concurrence may not be interpreted by detailing an objection to the proposed rule. Therefore, should the matter be interpreted and treated as an objection, the following statement shall apply:

Pursuant to 15 CFR §930.43(d), if resolution has not been reached at the end of the 90-day period, NOAA should consider using the dispute resolution mechanisms outlined in 15 CFR §930.44 and postpone the final action until the problems have been resolved. NOAA shall not proceed with the proposed rule over CZM’s objection unless NOAA has concluded that under the “consistent to the maximum extent practicable” standard described in section 930.32 consistency with the enforceable policies of the Massachusetts Coastal Management program is prohibited by existing law applicable to NOAA and NOAA has clearly described, in writing, to the CZM the legal impediments to full consistency or NOAA has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the CZM agency objects. In accordance with 15 CFR §930.44, either NOAA or CZM may request the Secretarial mediation or the Office of Ocean and Coastal Resource Management mediation services provided for in subpart G of 15 CFR §930.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. Brizius", written in a cursive style.

Alison Brizius
Director, Office of Coastal
Zone Management

Cc: Tyler Soleau, MA CZM
Sean Duffey, MA CZM
Dan McKiernan, MA DMF
David Kaiser, NOAA OCM
Kerry Kehoe, NOAA OCM
Kate Swails, NOAA OCM
Caroline Good, NOAA Fisheries
Deborah Ben-David, NOAA
Jeffrey Payne, NOAA

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 NOAA NMFS-SEFSC-757: 42 p.

Office of Protected Resources, National Marine Fisheries Service. 2022. Draft regulatory impact review and initial regulatory flexibility analysis for amendments to the North Atlantic right whale vessel strike reduction rule. National Oceanic and Atmospheric Administration: 61 p.

Office of Protected Resources, National Marine Fisheries Service. 2022. Draft Environmental Assessment for amendments to the North Atlantic right whale vessel strike reduction rule. National Oceanic and Atmospheric Administration: 80 p.

Roberts J.J., Yack T.M., Fujioka E., Halpin P.N., Baumgartner M.F., Boisseau O., Chavez-Rosales S., Cole T.V.N., Cotter M.P., Davis G.E., DiGiovanni Jr. R.A., Ganley L.C., Garrison L.P., Good C.P., Gowan T.A., Jackson K.A., Kenney R.D., Khan C.B., Knowlton A.R., Kraus S.D., Lockhart G.G., Lomac-MacNair K.S., Mayo C.A., McKenna B.E., McLellan W.A., Nowacek D.P., O'Brien O., Pabst D.A., Palka D.L., Patterson E.M., Pendleton D.E., Quintana-Rizzo E., Record N.R., Redfern J.V., Rickard M.E., White M., Whitt A.D., Zoidis A.M. (2024). North Atlantic right whale density surface model for the U.S. Atlantic evaluated with passive acoustic monitoring. *Marine Ecology Progress Series* 732: 167-192. doi: 10.3354/meps14547

Nantucket and Martha's Vineyard Ferries
Hyannisport Harbor Cruises
Cape Cod Canal Cruises
Deep-Sea Fishing
Cape Cod Custom Tours
Nantucket Island Tours



A Service of Hyannis Harbor Tours, Inc.

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August 1, 2024

Mr. Sean Duffey
Project Review Coordinator
Massachusetts Office of Coastal Zone Management

Re: Hy-Line Cruises' Comments to Proposed Changes to the North Atlantic Right Whale Vessel Strike Regulations

Good afternoon.

My name is Philip Scudder and I, along with my brother Murray, are the Managing Partners of Hy-Line Cruises.

Hy-Line Cruises is a privately owned, passenger only, ferry company located at 22 Channel Point Road in Hyannis, Massachusetts. We provide year-round, high-speed ferry service to the Island of Nantucket and seasonal, (May thru October), high-speed ferry service to Martha's Vineyard Island. We began our ferry operations in 1971 with traditional ferries operating seasonally. In 1996, we introduced high-speed technology to our Nantucket service and expanded to a year-round operation. We have continued that year-round service, uninterrupted, for the past 28 years. We transport the majority of passengers who travel to the Islands from Hyannis, carrying more than 900,000 passengers per year.

Hy-Line understands and supports the desire to protect the North Atlantic Right Whale population from ship strike, however, this must be accomplished through reasonable regulation, taking into consideration the wellbeing of the residents and businesses that will be impacted by these changes. In our area, those would be the communities on the islands of Nantucket and Martha's Vineyard. Consideration should also be given to the ferry operators who are mandated or licensed to transport passengers and goods to the Islands.

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MARKETING
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GROUP SALES¹
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To that end, Hy-Line Cruises, respectfully, requests: **The exemption of Nantucket and Vineyard sounds from the expanded Right Whale Strike Regulations being proposed by the National Oceanic and Atmospheric Administration (NOAA).**

1. THE WATERS OF THE SOUNDS

The existing, and now proposed expanded regulations, exempt other specific bodies of water in this area. Those being Long Island Sound, Narraganset Bay, and Buzzards Bay. We believe the reasons that qualify these waters for an exemption should also apply to Nantucket and Vineyard sounds.

The Sounds are shallow, warm bodies of water when compared to the surrounding seaward waters south and east of the Islands and those in Cape Cod Bay. They do not provide the desired habitat for Right Whales to congregate and forage. This probably explains why a Right Whale sighting is extremely rare and a ship strike has never been documented in these waters.

Hy-Line makes over 4,600 crossings of Nantucket Sound each year, and in its more than 50 years of operating ferries in these waters and making over 100,000 crossings, there has never been a Right Whale strike by a Hy-Line ferry nor has there been even a report of a sighting of a Right Whale by a Hy-Line Captain or crew member. Additionally, to our knowledge, there has never been a Right Whale strike or sighting by any other ferry operating in Nantucket Sound during this same time.

It's also important to note that since the inception of the existing regulations, there has never been a temporary Dynamic Management Area (DMA) declared in Nantucket Sound even during the November thru May timeframe now being proposed for a Seasonal Mandatory Speed Zone, which would be the most probable time for this to occur. This again, points to the fact that Right Whales simply do not frequent Nantucket Sound.



2. PROPOSED NEW SPEED RESTRICTIONS WILL HAVE A DEVASTATING IMPACT

Hy-Line's introduction of year-round, high-speed ferry service to Nantucket in 1996 was the beginning of a steady transformation in the quality-of-life for families living on the Island. There is no bridge or tunnel connecting Nantucket to the mainland. For decades island residents had to arrange their travel around a 2–3-hour ferry ride, in each direction, to reach the mainland. Consequently, many didn't leave the Island unless it was absolutely necessary. Technology changed that. Because the trip to the mainland is now only 1 hour in each direction aboard high-speed ferries, islanders can travel off-island at their convenience. They have become part of the wider mainland community. School and youth athletic programs can compete more fully statewide. And other off-island programs for dance, music, gymnastics, and more, which had never been a practical option for islanders, are now available for island families to access. During the 7 months being proposed for the Seasonal Mandatory Speed Zone, (Nov. 1 - May 31), Hy-Line carries more than 20,000 school age athletes between Nantucket and Hyannis. Having a year-round, high-speed ferry service allows for convenient, timely, travel for medical appointments. And it is now possible for work crews to travel from the mainland to Nantucket daily to help meet the infrastructure and project demands of the public sector, utility companies, and community businesses on the Island.

The expanded regulation being proposed to create a Seasonal Mandatory Speed Zone, (Nov. 1 – May 31), will totally eliminate Hy-Line's passenger ferry service for seven months. Our ferries were designed and built to operate at speeds between 25 – 35 knots. It is not economically feasible nor is it safe to operate these ferries at 10 knots in open waters.

Also, under the new regulations, during the remaining 5 months, (June 1 – Oct. 31), when high-speed travel would be allowed to resume, Dynamic Speed Zones can be created in Nantucket Sound, each lasting a minimum of 10 days, if implemented. This would have a huge negative effect on the traveling public and the economic viability of Hy-Line Cruises because of the high volume of travel during this time of year. We carry 65% of our total passengers during these 5 months. More than half of those travel in July and August alone, when we make as many as 36 daily departures to, from, and between the islands and carry up to and above 5,000 passengers per day.



Astonishingly, as currently proposed, a Right Whale sighting in Cape Cod Bay would impose the speed restriction in Nantucket Sound even though there is the land mass of Cape Cod separating those two bodies of water.

Couple this with the proposed, new Seasonal Mandatory Speed Zone, and Hy-Line Cruises would very likely be put out of business. It would mean the loss of approximately 350 jobs, 150 of which are full-time, year-round. To quantify the adverse effect on the economy, a full economic impact study should be written before any of these proposed changes are adopted. We see the negative economic impact on the islands of Nantucket, Martha's Vineyard and surrounding ports would easily be in the hundreds of millions of dollars.

3. GENERAL INFORMATION ABOUT THE ISLAND FERRY SYSTEM

Ferry service between the mainland of Cape Cod and the islands of Nantucket and Martha's Vineyard is mandated by Massachusetts state law through the Enabling Act which was created in 1960 and amended in 1974. The Act was further enhanced through licensing which has created a unique, public/private, ferry transportation system that ensures island residents access to the goods, services, and necessities of life required for the 21st century. And now, over 80% of all passengers traveling between Hyannis and Nantucket use the high-speed option.

This "unique in the country" public/private ferry transportation system is comprised of two ferry companies – the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, a public entity, and the privately held, Hy-Line Cruises.

The Steamship Authority (SSA) is, by its enabling statute, "the lifeline" to both Nantucket and Martha's Vineyard, carrying passengers, automobiles, trucks, and freight, year-round.

Hy-Line Cruises, as the year-round provider of high-speed passenger service to Nantucket, is now considered by many on that Island as, "the second lifeline".



4. NEGATIVE IMPACT ON A FEDERAL HIGHWAY ADMINISTRATION PROGRAM

Hy-Line Cruises and the Steamship Authority are part of the Federal Highway Administration's National Transit Database Program (NTD).

This program works through the Cape Cod Regional Transit Authority to provide important commuter travel data that is compiled to document intermodal connectivity along federal highways and across the maritime highway of Nantucket Sound. The program requires commuter connections between the mainland ports on Cape Cod with the islands of Nantucket and Martha's Vineyard.

If the proposed NOAA regulations are implemented, the ferries will lose the ability to provide commuter connections to and from the islands on an uninterrupted basis which will result in the loss of millions of dollars in federal grant revenue being used to improve intermodal transportation on the mainland of Cape Cod and the Islands.

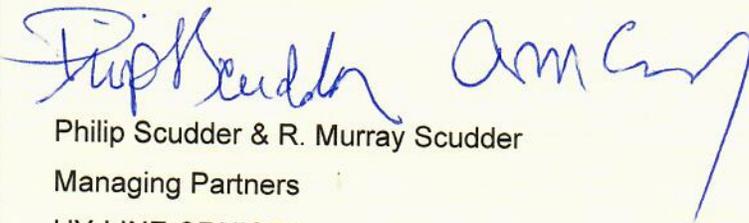
IN CONCLUSION:

For all the reasons stated above, Hy-Line believes that the waters of Nantucket Sound and Vineyard Sound should be exempt from NOAA's proposed Seasonal Mandatory Speed Zone (Nov. 1 – May 31) and from any Dynamic Speed Zone (June 1 – Oct. 31).

Hy-Line Cruises will cooperate with NOAA to deploy and utilize any technology on our vessels that is currently available or may become available in the future, to assist in tracking the location of Right Whales and protecting the North Atlantic Right Whale species.

Thank you for your consideration.

Respectfully Submitted,


Philip Scudder & R. Murray Scudder
Managing Partners
HY-LINE CRUISES

From: [charterwhitecap \(null\)](#)
To: [Duffey, Sean \(EEA\)](#)
Subject: 10 mph
Date: Friday, August 2, 2024 10:32:05 AM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Sean, Captain Brad White here from White Cap Charters from scituate ,

My thoughts are opposing the proposed 10 mile an hour ban as proposed because I do not believe it'll solve any issues at hand, it will negatively and deeply impact our struggling charter business and I believe it to be government overreach into solutions that Won't necessarily work.

Thank you

Brad White

White Cap charters LLC, Marshfield, Massachusetts

August 14, 2024

George X. Pucci
gpucci@k-plaw.com

BY ELECTRONIC MAIL ONLY (sean.duffey@mass.gov)

Mr. Sean Duffey
Massachusetts Office of Coastal Zone Management
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Town of Nantucket – Comments on the Coastal Zone Management Act Consistency
Determination for the Proposed Amendment to the North Atlantic Right Whale Vessel Strike
Reduction Rule

Dear Mr. Duffey:

This firm represents the Town of Nantucket, Massachusetts (Town). Please accept this letter as the Town's written comments on the Office of Coastal Zone Management's Consistency Determination pursuant to the Coastal Zone Management Act for the National Marine Fisheries Service (NMFS), the National Oceanic and Atmospheric Administration (NOAA), and the Department of Commerce (Commerce)'s Proposed Rule entitled "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule."¹ See 16 USC § 1451 et seq.

At the outset, the Town emphasizes that the protection of the endangered North Atlantic Right Whale is of critical importance and it commends all efforts to do so. That said, rules aimed at protecting the species must be rooted in science, sound analysis, and decision-making with a rational basis. Given that there are other potential strategies to better detect and reduce vessel strikes that do not impact the Town's economy and Massachusetts coastal waters and uses on such a large scale, those impacts should be analyzed in further detail before adoption of the rule. In the alternative, an exemption for Nantucket Sound must be included in the proposed rule.

As currently drafted, the rule does not carve out an exception for Nantucket Sound, as it does for nearby waters in Buzzards Bay, Long Island, and Narragansett Bay. Considering the existing documentation (or lack thereof) of vessel strikes or observances of the North Atlantic Right Whale in Nantucket Sound, the proposal is arbitrary and capricious and inconsistent with law. As such, the Town strongly opposes the proposed rule without an exemption for Nantucket Sound and urges the Massachusetts Office of Coastal Zone Management to deem it inconsistent with coastal uses and resources in Massachusetts, as set forth in detail below.

¹ NMFS, NOAA, Commerce, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 50 C.F.R. Part 224, available at <https://www.federalregister.gov/documents/2022/08/01/2022-16211/amendments-to-the-north-atlantic-right-whale-vessel-strike-reduction-rule/>.

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I. BACKGROUND

NOAA states that the North Atlantic Right Whale (*eubalaena glacialis*) is at increased risk of mortality or serious injury due to vessel strikes because they spend a lot of time at or close to the water surfaces and are difficult to see due to their dark color and lack of dorsal fin.² In 2008, NMFS/NOAA first established a rule aimed at the species' protection by establishing a seasonal 10-knot speed limit on certain vessels along the U.S. East Coast, in an attempt to reduce the likelihood of mortalities and injuries from vessel strikes. Since its adoption in 2008, there have been calls to expand and incorporate emerging technologies to map and detect the whale species that could be used more accurately to protect them, instead of reducing vessel speeds, increasing the safety risks for maritime transportation, and disrupting economies all along the coast where such vessel speed reductions have not been causally demonstrated to protect the species.

Indeed, in 2020, NOAA analyzed the impact of the existing speed reduction rule to “evaluate how effective it is at reducing the incidence of right whale mortality and serious injury due to vessel strikes and where it could be improved.”³ Although certain incidents have been reduced, NOAA ultimately concluded that it was “not possible to determine a direct causal link” between speed reduction efforts for vessels and protection of the right whale.⁴ In proposing the 2022 amendment, NOAA itself expressly stated that “it is not possible to establish a direct causal link between speed reduction efforts and the relative decline in observed right whale mortality and serious injury events following implementation of the [2008] speed rule.”⁵

Due to the lack of causation between the rule and its intended effect, the use of alternate technologies should be explored further, so as to maintain consistency with Massachusetts coastal uses and resources. In or around 2008, NOAA stated that it was “committed to identifying and developing technological advances proven effective in reducing ship strikes,” though none had existed at the time, including conducting technology reviews and to “engage the maritime industry and the scientific community to research progress in developing technological, efficient, and effective methods to address the threat of ship strikes.”⁶ For example, Canada has invested in developing technology such as underwater microphones, acoustic technology, and imaging to forecast and detect right whales more effectively in real-time, so as to alert vessels to the presence of whales and prevent collisions.⁷ Rather than analyze and invest in this more effective technology, however, NMFS and NOAA have proposed a rule which would significantly hinder the livelihoods and economics of the Town, the coastal waters and resources of the island and the mainland, and in Nantucket Sound and beyond.

Given that there is no established causation between reduction in certain vessel speeds and right whale protection, let alone a determination of how expanding the rule to include vessels from 35-65 feet in length will further reduce the risk of vessel strikes, the Town submits that the proposal is arbitrary and capricious and

² NOAA, Right Whale Migration in an Urban Ocean, available at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>.

³ NOAA, North Atlantic Right Whale Speed Rule Assessment, at 1-2 (June 2020), available at https://www.fisheries.noaa.gov/s3/2021-01/FINAL_NARW_Vessel_Speed_Rule_Report_Jun_2020.pdf.

⁴ *Id.*

⁵ NMFS, NOAA, Commerce, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 50 CFR Part 224, available at <https://www.federalregister.gov/documents/2022/08/01/2022-16211/amendments-to-the-north-atlantic-right-whale-vessel-strike-reduction-rule/>.

⁶ NMFS, NOAA, Commerce Final Rule, October 10, 2008, available online at <https://www.federalregister.gov/documents/2008/10/10/E8-24177/endangered-fish-and-wildlife-final-rule-to-implement-speed-restrictions-to-reduce-the-threat-of-ship>.

⁷ Fisheries and Oceans Canada, available online at <https://www.dfo-mpo.gc.ca/species-especes/mammals-mammiferes/cetacean-cetaces/protecting-protection/index-eng.html>.

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August 14, 2024
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inconsistent with law. In Nantucket Sound, requiring speed reduction for vessels that are 35-65 feet includes the high-speed ferry services to and from the island, which will be unable to travel from November 1 through May 30 of the year. The Nantucket Steamship Authority, which is legislatively created through St. 1960, c. 701, as amended, to provide for the “transportation of persons and necessities of life for the islands of Nantucket ...” will be unable to provide its services during seven months of the year. See Exhibit A, Letter from the Steamship Authority, attached hereto. These high-speed ferry providers who travel to and from the island numerous times per day have stated that there have been no documented right whale sightings (let alone ferry vessel collisions) in the Nantucket Sound, for 25 years. Ex. A. The commercial fishers concur and have never seen right whales in their frequent travels in Nantucket Sound.

The potential impact on coastal uses and resources, including the direct and secondary economic effects, is further detailed below.

II. LEGAL STANDARD

Section 307 of the Coastal Zone Management Act of 1972 (the “Act”) gives states a strong voice in federal agency decision-making when a proposed rule concerns activities that may affect a state’s coastal uses or resources. See 16 U.S.C. §§ 1451-1464. To that end, when a federal action will have reasonably foreseeable effects on coastal uses or resources, it must be deemed to be consistent with the enforceable policies of a state’s coastal management plan to be approved. See 16 U.S.C. § 1456(c)(1)(A).

The phrase “any coastal use or resource” means “any land or water use or natural resource of the coastal zone.” 15 C.F.R. § 930.11(b). Coastal uses or resources “include, *but are not limited to*, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects.” *Id.* An “Effect on coastal use or resource” is defined as “any reasonably foreseeable effect on any coastal use or resource resulting from a federal agency activity or federal license or permit activity.” 15 C.F.R. § 930.11(g). Effects may impact coastal use; may be direct or secondary; and may result from the incremental impact of past, current, or future action. 15 C.F.R. § 930.11(g).

Here, as set forth below, the proposed rule and its results will have an impermissible effect on the coastal uses and resources in Nantucket Harbor, Nantucket Sound, the Town and County of Nantucket, and along the coastal waters of Massachusetts. Specifically, it will have direct and secondary impacts on public access and transportation to and from the island (including ferry services for residents to obtain medical access, public safety, tourism, schools, housing, food, and fuel, among others), the economy, fishing and recreation, development, scenic and aesthetic enjoyment, and hazard management in the Town and County of Nantucket. Among other impacts and inconsistencies, the Office of Coastal Zone Management should deem the project impermissibly inconsistent with Massachusetts law and policies and oppose it, or else request an exemption for Nantucket Sound.

III. THE PROPOSED AMENDMENT IS INCONSISTENT WITH COASTAL USES AND RESOURCES IN AND AROUND NANTUCKET SOUND.

Based on the numerous impacts to coastal uses and resources outlined by various industries in the letters and exhibits attached hereto, as well as will be supplemented with a final report from UMass Amherst’s

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Donahue Institute, the proposed rule plainly would be inconsistent with and have an impermissible effect on coastal uses and resources of the Town and County of Nantucket, by and through the Nantucket Sound and its connection to the mainland.

A. Public Access to the Island Will be Impacted, Where the High-Speed Ferry Service Would Be Terminated for the Majority of the Year.

The proposed expansion to include vessels from 35 to 65 feet will prohibit the Nantucket Steamship Authority, as the only lawful transporter of the island's essential food, medicine, and fuel, from travelling to and from the island from November 1 through May 30 of every year. Ex. A. The restriction would eliminate the fast ferry service to the island altogether and would cut the total trips per day by 30%, which is one of the only means by which groceries, goods, fuel, building materials, gasoline, and the essential workforce can travel to and from the island. It would also impact medical care, food access, essential workforce commuting, and increase the already-existent housing crisis on the island.

As preliminary findings from the UMass Amherst's Donahue Institute Report suggest:

- According to the U.S. Decennial Census, there are 1,245 people who live off island and work in Nantucket. Given their daily commute would be six hours with the vessel speed restriction, we assume they would no longer come. And with local home prices being what they are, we also assume they would not move to the island. Losing these workers for seven months results in \$187.8 million of lost economic activity in Nantucket. Tax revenue impacts are \$25 million, including nearly \$18 million in federal, \$4 million state, and \$3 million local.
- During the seven months in question from November through May, off island residents spend approximately \$41 million in Nantucket. A significant portion of that is attributable to commuters and day trippers and is at risk.
- Using data from IMPLAN, it is estimated that \$337 million of goods move back and forth between the mainland and Nantucket during the November through May period. Given that a third of freight capacity will be lost, that puts \$112 million of goods at risk.

Notably, These preliminary findings do not yet include any visitation changes during these months, which would include fewer people coming to the island for Thanksgiving, the Christmas Stroll, April's Daffodil Festival, and Figawi Race weekend, some of the island's main visitation events.

The Nantucket Planning and Economic Development Commission, Conservation Commission of Nantucket, and Town and County of Nantucket have similarly detailed potential economic impacts in letters which are attached hereto as Exhibit B. Likewise, the Nantucket Island Chamber of Commerce has detailed the impacts to the island in a letter attached hereto as Exhibit C.

B. Medical Services and Education Would Be Disrupted.

The proposed rule also would disrupt critical access to medical care for island residents, including the ability of hospital patients and residents to seek medical care on the mainland and back. See Exhibit D, Letter

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from Mass General Brigham. Specifically, during the months of November through May, the hospital relies on weekly, bi-weekly, and monthly visits from physicians in 28 critical subspecialties such as Cardiology and Oncology to provide care for island residents. Id. Without high-speed ferry service, and with the additional complication of slower and reduced car ferries, these visits could be terminated and residents would either have to make their way off island or defer critical care. Id. The same is true for behavioral health needs, as there are no behavioral health facilities on Nantucket, so patients must be sent to a mainland facility. Id. Critical medicines and (perishable) pharmaceutical supplies also would be halted. Id.

Further, the rule would impact the Nantucket Public Schools, as it would make it impossible to hire teachers and staff that can afford to live on Nantucket, and would in particular impact the students with special needs who are subject to contracts with staff who commute to the island from the mainland and who would be unable to do so. See Exhibit E, Letter from Nantucket Public Schools. Student athletes could not compete and food programs for low-income students would be disrupted as well. Id.

C. Public Safety, Critical Operations, Environmental, and Development Impacts.

The Nantucket Police Chief, Fire Chief, and the Director of Public Works have also noted the disruption in public safety, critical operations, and development that would result from this proposed rule. See Exhibit F, Testimony from Police Chief, Fire Chief, and DPW Director. Specifically, the rule would hinder, if not eliminate, routine operations of Nantucket's public safety departments who must travel from and return to the island in a single day to transport child abuse victims to Cape Cod, deliver and retrieve evidence from crime labs, and attend educational training programs on the mainland. Id.

Further, without the high-speed ferry service, the Town's vulnerable populations will suffer, as there is no Massachusetts Department of Children and Families (DCF) caseworker on Nantucket. Ex. F. The same is true for mental health and addiction services, where there is no DCF provider. Id. The Fire Department and Police force are already impacted by the existing housing crisis and many live on the mainland and commute to Nantucket for work every day by high-speed ferry, which they will be unable to do, threatening the ability of the island to staff critical public safety positions. Id.

Finally, the island's critical recycling and waste operations, along with other environmental health concerns on the island, will be hindered by the reduction in high-speed ferry services for seven months per year. Id. The ability to get consultants to conduct infrastructure repair for critical projects from November through May (during the seasons of major storms, ice, and snow events) will be impacted, among other concerns. Ex. F. The DPW relies upon the Steamship Authority's freight hauling capabilities to maintain access to public infrastructure during the harshest weather months on the island. Id. The safety of boaters who have to travel at reduced speeds during harsh weather conditions is a further likely result of this rule, further demonstrating inconsistency with coastal uses and resources.

IV. CONCLUSION

In short, the potential impact of this rule has been grossly underestimated. The Town has endeavored to comment briefly on some of the inconsistencies with coastal use and resources resulting from the proposed rule, but this letter does not begin to cover all the potential impacts that the Town and County of Nantucket, along with the State of Massachusetts, may experience from the proposed rule. The Town further reserves the right to supplement this letter with a final report from UMass Amherst's Donahue Institute.

Mr. Sean Duffey
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The Town, therefore, requests that Nantucket Sound be exempt from these new speed restrictions. There has never been a documented right whale sighting by the ferry service providers, nor a documented strike of a North American Right Whale by a ferry service provider. Exempting the Nantucket Sound and/or the high-speed ferry providers is a simple and effective means of allowing the island to retain its essential services and livelihood without harming the species.

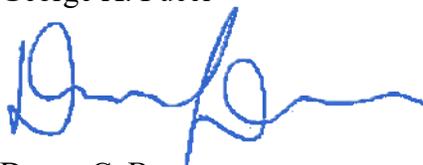
Like other coastal states experiencing similar impacts have taken issue with the amendment,⁸ the Town urges the Massachusetts Office of Coastal Zone Management to oppose the rule for its inconsistency with state coastal uses and resources and request an exemption for Nantucket Sound.

Please contact us with any questions.

Very truly yours,



George X. Pucci



Devan C. Braun

GXP/DCB/asc

Enc.

cc: Town Manager
Assistant Town Manager
Planning Director
Select Board

⁸ See, e.g., Georgia's Coastal Resources Division, Letter to NOAA (Feb. 22, 2024), available online at <https://gadnrlc.org/sites/default/files/crd/pdf/PressReleases/CRD%20Vessel%20Strike%20Reduction%20Rule%20Effects%20and%20Policies%20Letter%20022223.pdf>.

Exhibit A



Woods Hole, Martha's Vineyard and Nantucket Steamship Authority

AUTHORITY MEMBERS

MOIRA E. TIERNEY
New Bedford Member, Chair

ROBERT F. RANNEY
Nantucket Member, Vice Chair

ROBERT R. JONES
Barnstable Member, Secretary

JAMES M. MALKIN
Dukes County Member

PETER J. JEFFREY
Falmouth Member

ROBERT B. DAVIS
General Manager

MARK K. ROZUM
Treasurer/Comptroller

TERENCE G. KENNEALLY
General Counsel

October 28, 2022

By: Electronic Submission - <https://www.regulations.gov/>

Department of Commerce
National Marine Fisheries Service (NMFS),
National Oceanic and Atmospheric Administration (NOAA)
1401 Constitution Ave. N.W. Hoover Bldg. Rm 5128
Washington, DC 20230

Re: Comments on Proposed Amendments to the
North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Sir/Madam:

The Woods Hole, Martha's Vineyard and Nantucket Steamship Authority (the "Authority") is a public instrumentality created by the Commonwealth's legislature through its Enabling Act, St. 1960, c. 701, *as amended*, to provide for the "transportation of persons and necessities of life for the islands of Nantucket and Martha's Vineyard" by operating its ferry boat line between the mainland and the islands. The Authority is the "lifeline" for those islands, providing the only year-round passenger, automobile and truck ferry service delivering food, medicine, fuel and numerous other consumables and products from the mainland. Historically, the Authority annually carries approximately 3,000,000 passengers, 475,000 cars and 195,000 trucks to and from the islands in the performance of its essential state mandated function.

The Authority has reviewed the recently published proposed amendments to the North Atlantic right whale vessel strike reduction rule. The amendments¹ include the following:

- Changes to the spatial boundaries and timing of mandatory Seasonal Management Areas (SMAs) to better address areas and times where vessel strike risk is high;

¹ As set forth in *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule*, 87 Fed. Reg. 46,921 (Aug. 1, 2022) (to be codified at 50 C.F.R. pt. 224). Copy attached.

- Inclusion of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to the speed restriction;
- Implementation of a Dynamic Speed Zone (DSZ) framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs; and
- Updates to the speed rule's safety deviation provision.

The Authority is strongly opposed to (1) changing the current Seasonal Management Areas (SMAs) protocols to the proposed Seasonal Speed Zones (SSZs) for the Atlantic region from November 1st to May 30th and (2) the implementation of mandatory speed restrictions in the proposed DSZ including Vineyard Sound and Nantucket Sound that are triggered by acoustical detection of right whales. The implementation of mandatory speed restrictions in Vineyard Sound and Nantucket Sound will result in a significant reduction in the number of scheduled trips that the Authority can complete during its winter, spring, and fall operating schedules between the Massachusetts mainland and the islands.

On its Martha's Vineyard traditional ferry (passengers and freight) route (approximately eight and one-quarter miles one way) from Woods Hole, Massachusetts, the Authority operates twenty-one (21) round trips during its winter, early spring and fall operating schedules and twenty-eight (28) round trips during its spring operating schedule at speeds between twelve (12) and thirteen (13) knots.

On its Nantucket traditional ferry (passengers and freight) route (approximately twenty-nine miles one way) from Hyannis, Massachusetts, the Authority operates six (6) round trips during its winter and fall operating schedules and nine (9) roundtrips during its spring operating schedule. The Authority also operates a high-speed (passengers only) ferry at approximately thirty (30) knots on its Nantucket route during its spring, summer, and fall operating schedules.

Currently, the Authority operates primarily on a United States Coast Guard approved eighteen (18) hour operating day on both routes. The Authority's vessel speeds are foundational operating conditions for it to meet its published and approved schedules and any reduction in those speeds will compromise or impede the Authority's ability to meet its schedules and fulfill its service obligations to the islands. These concerns are particularly heightened during the winter months because the Authority is the only lawful transporter of essentials for the islands' residents such as home heating fuel, gasoline, medicines and food.

NMFS's current regulatory measures require (1) vessels greater than sixty-five (65) feet in length to transit at speeds of ten (10) knots or less in designated SMAs (50 CFR § 224.105 - Speed restrictions to protect North Atlantic Right Whales) and (2) a minimum approach distance of 500 yards from right whales (50 CFR § 224.103 - Special prohibitions for endangered marine mammals.) A copy of NOAA's map depicting the current speed restriction SMAs is attached hereto. In its operations, the Authority implements these protocols when its vessels encounter any whales (typically humpback and minke) to avoid any vessel strikes with whales.

The proposed SSZs and mandatory speed restrictions in the proposed Vineyard Sound and Nantucket Sound DSZs will require the Authority to reduce its ferries' operating speeds to

ten (10) knots or less. A copy of NOAA's map depicting the proposed speed restriction SSZs is attached hereto. If implemented, these speed reductions will require the Authority to eliminate one-third or thirty-three percent (33%) of its year-round traditional ferry roundtrips and eliminate its high-speed service during its early spring and late fall operating schedules on the Nantucket route. The elimination of these essential services will provide less transportation capacity to island residents, cause delays in the delivery of goods to the island and result in a fundamental shift in the lifestyle of the island residents as ferry travel will become more crowded, more time consuming, and expensive as the Authority anticipates longer operating days and as a result increasing cost. Further, the island's tourist and hospitality economies will suffer significant reductions without fast, timely and reliable high-speed ferry service to deliver passengers to the island.

The Authority's concerns are not limited only to its Nantucket route. The proposed speed reductions in Vineyard Sound will require the Authority to eliminate one-seventh or some fourteen percent (14%) of its traditional ferry roundtrips to Martha's Vineyard. Furthermore, the loss of significant revenue on the Authority's Nantucket route will certainly impact its gross revenue overall leading to likely fare increases on both routes. Again, both islands' tourist and hospitality economies will suffer with a downturn in the number of passengers carried to the islands.²

The Authority also seeks to ensure that any implementation of the proposed DSZs accounts for large physical land masses such as Cape Cod or the islands of Martha's Vineyard and Nantucket. In scenarios where three (3) or more right whales are spotted, or a confirmed acoustic detection occurs south of Martha's Vineyard or Nantucket then the DSZs imposed to protect these whales should be limited to the waterways south of the islands. The same concerns arise in a scenario where whales are spotted in Cape Cod Bay, but the speed zone restrictions are potentially imposed upon stakeholders transiting Nantucket or Vineyard Sounds. To place speed zone restrictions on waterways physically blocked by land masses from where the whales are situated would be impractical, unreasonable, and utterly burdensome to vessels operating in those waters.

All of the above concerns are considered and analyzed despite the fact that the Authority during its sixty (60) plus years of operating experience across Vineyard Sound and Nantucket Sound, including nearly five hundred thousand (500,000) ferry trips over the past twenty-two (22) years, has failed to encounter, observe or been notified of any North Atlantic right whales in Nantucket or Vineyard Sounds.

The imposition of speed zones in Nantucket or Vineyard Sounds without sufficient scientific data would be an arbitrary decision that warrants further support from stakeholders that operate in the impacted waterways. The Authority is more than willing to support the federal government's efforts to obtain more data on the impacts that its ferry operations might have upon right whale habitat. As mentioned in the *Federal Register* of August 1, 2022, the installation and

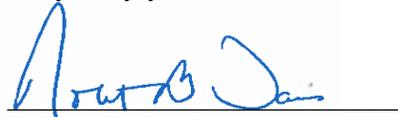
² The Authority's operating revenues in 2021 totaled \$128,239,112. Passenger revenue accounted for 24.3% of the Authority's total operating revenues in 2021, while automobile revenues represented 34.7%, freight revenues represented 29.4%, parking revenues represented 5.6%, and miscellaneous revenues represented 6.0% of total operating revenues. A copy of the Authority's 2021 Annual Report can be viewed at [SSA Annual Report 2021](#).

use of avoidance technologies onboard vessels and the deployment of marine mammal observers in areas where right whales are known to congregate are better uses of resources that address vessel strikes. The Authority supports these types of measures rather than at an across-the-board reduction on vessel speeds, which is simple in articulation, but it is impractical and negatively impactful to the Authority's operations and more importantly, to the islands' residents, which the Authority is mandated to serve.

Finally, the Authority questions the reasoning behind the omissions of Buzzards Bay, Narragansett Bay and Long Island Sound from the proposed North Atlantic right whales seasonal speed zones. If observed and documented right whale activity occurs to the south of Long Island, Nantucket and Martha's Vineyard and the above-mentioned bodies of water are omitted from the proposed North Atlantic right whales seasonal speed zones, it logically follows that the waters of Vineyard Sound and Nantucket Sound (north of the islands) should also be omitted. The Authority's longstanding operations in the Sounds without encountering a right whale should be a strong indicator that it is prudent and safe for the Authority to continue to operate its vessels at their current speeds and the whales will be left to safely forage south of the islands.

We sincerely thank you for your review and consideration of the Authority's comments and request that the proposed rule be amended further to omit its application to the waters of Vineyard Sound and Nantucket Sound.

Very truly yours,



Robert B. Davis
General Manager

Exhibit B

NP&EDC

NANTUCKET PLANNING AND ECONOMIC DEVELOPMENT COMMISSION



June 10, 2024

Senator Ed Markey
255 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Elizabeth Warren
309 Hart Senate Office Building
Washington, D.C. 20510

Congressman William Keating
2351 Rayburn House Office Building
Washington, D.C. 20510

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

Dear Senators Markey and Warren and Congressman Keating:

The Nantucket Planning & Economic Development Commission is writing to you to express our extreme opposition to the inclusion of Nantucket and Vineyard Sound in the Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule as proposed by the National Oceanic and Atmospheric Administration (NOAA).

As proposed, the amendments to the rule, while intended to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, are misplaced in their applicability to Nantucket and Vineyard Sound. It is our understanding that a right whale sighting has not been confirmed in Nantucket and Vineyard Sound during the time period during which NOAA began documentation, and our local fisherman and ferry operators have also confirmed that no local sightings have occurred.

The required reduction in vessel speed November 1 through May 1 would have catastrophic effects on the residents of Nantucket. Being geographically isolated approximately thirty (30) miles south of Cape Cod, high speed passenger and traditional vehicle ferry travel is the primary transportation source to and from the island. Passenger travel by plane, once the preferred method, has been almost entirely replaced by ferry travel during the off-season, which is when this speed reduction rule would be in effect. The proposed amendments would eliminate all high speed (1 hour one-way) ferry service and reduce traditional vehicle ferry service from 3 round trips per day to 2 round trips per day, with each one-way trip being extended from approximately two hours and fifteen minutes to two hours and fifty minutes. While this may not seem important from a distance, residents have an entirely different point of view.

The combination of fast ferry elimination and slow ferry service reduction will have significant economic and quality of life impacts to Nantucket residents and businesses. Negative quality of life impacts include, but are not limited to: delivery of necessities such as food, medical supplies, fuel, and other materials, access to off-island medical care, school age children would no longer be able to participate in sports, social interactions such as a trip off island for the day to shop, see friends or family, or attend an event would no longer be possible. Last but certainly not least, the residents who can least afford these impacts – the economically disadvantaged and underserved residents within areas designated as environmental justice communities - will be most individually affected.

Economic impacts, which we argue far exceed the amount estimated by NOAA, include significant shoreside impacts – none of which were considered. The high cost of living on Nantucket is a major impediment to island life that is partially addressed by a commuting workforce who rely on year-round and daily fast ferry service. A reduction in the labor force would have a trickle down effect on all local businesses. Aside from the removal of year-round and daily high speed ferry service, the delay and reduction in goods brought to the island via the traditional vehicle ferry service would have far reaching impacts, particularly when weather conditions cause delays and cancellations. Nantucket has successfully extended the tourism “shoulder season” to bolster the economy through the off-season with events such as Nantucket Noel throughout the months of November/December and Nantucket Daffodil Festival in April – both of which would likely no longer be possible.

The Nantucket Planning & Economic Development Commission is entirely supportive of the protection of endangered species such as right whales where the proposed regulatory impacts would have a benefit. In the case of Nantucket and Vineyard Sound, no such benefit has been confirmed. While well intentioned, the proposed rule seems to only have negative consequences to Nantucket and would effectively leave the island isolated with unnecessarily limited access to the mainland.

Please use your influence and support to recommend that Nantucket and Vineyard Sound is removed from the proposed rule. Thank you, in advance, for your attention to our concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry G. Rector".

Barry G. Rector,
Chairman



TOWN AND COUNTY OF NANTUCKET

16 Broad Street
Nantucket, Massachusetts 02554

Telephone (508) 228-7255

Facsimile (508) 228-7272

www.nantucket-ma.gov

June 5, 2024

Senator Ed Markey
255 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Elizabeth Warren
309 Hart Senate Office Building
Washington, D.C. 20510

Congressman William Keating
2351 Rayburn House Office Building
Washington, D.C. 20510

RE: Proposed NOAA North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Senators Markey and Warren and Congressman Keating:

Nantucket Island and its more than 15,000 year-round residents urgently need your assistance and support.

It is critical that Nantucket Sound be exempted from the proposed NOAA North Atlantic Right Whale Vessel Strike Reduction Rule. A decision on this rule is imminent from The Office of Management and Budget, and, if adopted as currently written, it would have a devastating and life-altering impact on Nantucket.

The need to institute measures to protect the right whale population is indisputable. But right whale conservation efforts must be focused where the whales travel and congregate and that is *not* Nantucket Sound. According to our primary ferry operators, there have been no documented right whale sightings in Nantucket Sound during more than one million trips between Hyannis and Nantucket over the past 25 years. Many (if not all) of Nantucket's long-time commercial fishers concur and have never seen right whales in their frequent travels to the Hyannis area from Nantucket.

The Draconian edict would eliminate fast ferry passenger service to the island for more than half of the year, and significantly reduce the number of trips the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority could operate for its traditional freight and vehicle ferries during that period to two round-trip passages per day (weather permitting). These vessels provide the freight, vehicle, food, fuel, municipal, solid waste disposal and medical supply "lifeline to the islands." There could also be lengthy disruptions in ferry service during the rest of the year if a right whale were to be sighted as far away as Cape Cod Bay.

The economic consequences on Nantucket would be cataclysmic – likely more than \$100 million and much higher than NOAA's flawed estimation which does not account for major shoreside impact. Beyond the obvious decimation of our tourism industry, islanders would be severely limited in access to off-island medical care, mutual aid for public safety emergencies and travel to school academic and athletic events. The hundreds of daily commuters from Hyannis - who are indispensable in keeping so many of our businesses operating due to the severe housing crisis on Nantucket-- would no longer be available for employment. In fact, The Federal Transportation Administration in 2023 designated the Hyannis to Nantucket ferry route as a commuter service eligible for federal funding.

The proposed rule would also disproportionately affect economically disadvantaged and underserved residents on both sides of Nantucket Sound, as Hyannis and Nantucket both have areas designated as environmental justice communities.

To this end, we urge you to request that NOAA amend the proposed rule with an exemption for Nantucket Sound when considering seasonal speed zones, similar to exemptions granted for the waters of Long Island Sound, Buzzards Bay and Narragansett Bay.

Please do not allow a stunningly shortsighted and inadequately researched – yet well intentioned – rule to sever Nantucket's lifeline to the mainland.

From 30 miles at sea, we are relying on your support and advocacy.

Sincerely,



Brooke Mohr
Chair, Nantucket Select Board

TOWN OF NANTUCKET CONSERVATION COMMISSION

IAN GOLDING, CHAIR
131 PLEASANT STREET
NANTUCKET, MA 02554

CONCOM@NANTUCKET-MA.GOV
508-228-7230



June 4th, 2024

Attn: National Oceanic and Atmospheric Administration, Fisheries, Office of Management and Budget (NOAA Fisheries OMB)

Re: Opposition to the potential adoption of the “North Atlantic Right Whale Vessel Strike Reduction Rule” without specific exemptions granted for Nantucket and Vineyard Sound

Based on a unanimous vote (7-0) at the May 23rd, 2024, meeting of the Nantucket Conservation Commission, I have been authorized to issue this letter of opposition regarding potential adoption of the NOAA Fisheries “North Atlantic Right Whale Vessel Strike Reduction Rule”. This rule, as currently drafted, has the potential to cause impacts for Nantucket and Martha’s Vineyard that are exponentially higher than those expected in mainland communities. In 2023, the Steamship Authority transported 97,635 trucks (SSA classifies a truck as over 20’ length) between Cape Cod and The Islands.

Our island relies on two ferry services for much of its shipping and transportation needs. Only one ferry operator, The Steamship Authority, carries all the fuel, vehicles, and freight bound for Nantucket. The year-round residents rely on these boats, our lifeline to the mainland, to keep our homes heated, groceries on the shelves, and medicine stocked at the pharmacy. Nantucket is a functional, bustling community of year-round residents, kept alive in large part due to the ferries.

As one may imagine, this issue is not just about the movement of freight, but the movement of people. The ferry services to Nantucket provide the most economical option for travel to and from the island. Shutting down the fast ferry service from November 1st to May 31st will disproportionately affect our middle to lower income residents. Year-round residents rely on reliable fast-ferry service to get children and loved-ones to medical appointments, among other necessary off-island excursions. Those with greater means, including contingents of the summer seasonal population, will be able to opt for more costly options such as private and commercial flight. The loss of our fast ferry through these months would also eliminate all our team sports programs, further isolating our community of island

TOWN OF NANTUCKET CONSERVATION COMMISSION

IAN GOLDING, CHAIR
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schoolkids. This move seems counterproductive to our Commissions commitment to environmental justice and what it means for Nantucket.

The Nantucket Conservation Commission holds the protection of endangered species as a core value. However, there have been no confirmed observations, either by visual sighting or acoustic detection, of the North American Right Whale in Nantucket Sound, or Vineyard Sound, since NOAA Fisheries began documentation. As the local regulatory body whose goal is to protect our natural resources, we understand the impetus behind the proposed rule, but ask that appropriate scientific data and technologies are applied when developing policies. We cannot in good conscience support adopting this rule, which will negatively impact Nantucketer's lives in myriad ways, without any proof that a Right Whale will benefit.

For these reasons, The Nantucket Conservation Commission opposes the adoption of this rule without specific exemptions made for Nantucket and Vineyard Sound. The Commission is requesting an audience with NOAA Fisheries and the Office of Budget and Management to discuss this matter and would be happy to provide more information or comments as needed.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "I. Golding", is written over a faint, larger blue signature that is mostly illegible.

Ian Golding, Chair
Nantucket Conservation Commission

Exhibit C



Nantucket Island Chamber of Commerce
508-228-1700
NantucketChamber.org

June 6, 2024

Senator Elisabeth Warren
309 Hart Senate Office Building
Washington, DC 20501

Senator Ed Markey
225 Dirksen Senate Office Building
Washington, D.D. 20510

Congressman William Keating
2351 Rayburn House Office Building
Washington, D.C. 20510

The Nantucket Island Chamber of Commerce urgently requests your attention regarding the North Atlantic right whale vessel strike speed reduction rule. As an organization representing over 730 member businesses, and through our designation as a Regional Tourism Council of the Mass. Office of Travel and Tourism, we are uniquely qualified to speak to the economic impacts of the proposed speed reduction.

While we are in favor of reasonable measures to protect the right whale, the proposed speed restriction is foolishly broad and overreaching. We are asking you to request an exemption for Nantucket Sound, the crucial transit route between the island and mainland. Reliable transportation to and from Nantucket is not a luxury or a convenience, it is a necessity.

During the November-April timeframe outlined in the proposal, the speed reduction would eliminate passenger "fast" ferry service, and cut the total freight trips per day by *at least* 30%. Nearly 100% of consumer and wholesale goods arrive by boat, including home heating fuels, groceries, medical supplies, building materials, and gasoline. The essential workforce commuting on the passenger ferries during these months should not be dismissed either, with their removal decreasing available labor volume and increasing local labor costs. Despite the summer months remaining out of the restriction proposal, the catastrophic economic impact would be felt year round, with residents and visitors facing meteoric prices and scarce inventories.

Tourism remains our single biggest economy, including traditional hospitality industries like hotels and restaurants, as well as the ancillary industries such as seasonal retail, landscaping, housekeeping, construction and maintenance, and recreational boating. Fully calculating the negative impact on tourism spending is impossible. However, consider just the tax revenue impacts. Behind Boston, Nantucket generates the second largest Room Tax revenues for the Commonwealth. By eliminating reliable travel to Nantucket during any part of the year, the entire state will shoulder the burden of tax revenue losses, reinforcing the need for your immediate legislative action. This measure would have an irreversible and crippling effect for the entirety of Nantucket's business and tourism sectors.

We urge you to create an exemption for our vital waterway, and we will gladly participate to create and support reasonable conservation solutions for the North Atlantic right whale.

Thank you for your consideration,

Nantucket Island Chamber of Commerce

A handwritten signature in black ink, appearing to read 'Peter Burke', written in a cursive style.

Peter Burke
Executive Director

Exhibit D

June 6, 2024

Shalanda Young
Director
Office of Management and Budget
1650 17th St NW
Washington, DC 20500

Submitted via shalanda.d.young@omb.eop.gov

Director Young:

We are writing to express our concerns with the proposed rule by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce entitled "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule." The proposed rule is now under review by your agency as a final rule. We have requested a meeting to discuss this issue further but have not yet been assigned a time.

The proposed rule establishes speed limits for vessels in Nantucket and Vineyard Sound during the months of November through May. The impact on traditional freight service and high speed-passenger service to the islands of Nantucket and Martha's Vineyard will seriously impact the ability of Nantucket Cottage Hospital (NCH) and Martha's Vineyard Hospital (MVH) to provide healthcare on the islands and limit the overall access to care for island residents. ***We strongly urge you take all possible steps to ensure that Nantucket and Vineyard Sounds, which are not known be North Atlantic Right Whale habitat, be exempted from this rule.***

Located on Nantucket Island, Nantucket Cottage Hospital (NCH) is a not-for-profit community hospital that delivers health care under unique circumstances: providing quality facilities, programs, and services to a year-round population of 14,000 residents, which increases to almost 100,000 during the summer months, all while being isolated from the mainland. It is located about 30 miles off the southern coast of Cape Cod, Massachusetts. This 110-year-old hospital includes a complete inpatient ward, a full range of modern diagnostic and treatment capabilities for both emergency and ongoing care, and numerous outpatient services and programs. Martha's Vineyard Hospital (MVH) is a critical access, not-for-profit, community hospital on the island of Martha's Vineyard. It is located about 7 miles off the southern coast of Cape Cod, Massachusetts. Committed to delivering high-quality healthcare to the community and its visitors, MVH provides acute, ambulatory, and specialty services either on-site or through its affiliation with Mass General Hospital.

The Steamship Authorship, which is the main provider of high-speed ferry service to and from the mainland to both Nantucket and Martha's Vineyard, estimates under the proposed speed restrictions there would be a 33% reduction in scheduled trips by its vessels. Reducing high-speed ferry service to and from the islands during the months of November through May will have a major impact on our hospitals ability to serve our patients and communities. It will reduce the overall access to healthcare for

the islanders. High-speed ferry, with a sailing time to Nantucket of 1 hour and 45 minutes to Martha's Vineyard, each way, is the only practical way to make a single day trip to and from the islands.

Behavioral Health Crisis Patients: There are no inpatient behavioral health facilities on Nantucket or Martha's Vineyard. Patients who need that level of care must be sent to a mainland facility. Behavioral health crisis patients are not allowed to fly by air ambulance. The only way to get them to the care they need is by an ambulance that must make the round trip to get the patient and then delivers them to a mainland inpatient facility by ferry. The logistics of this are very complex. For instance, ambulances are not typically available in the early morning, and many inpatient facilities do not accept patients after normal working hours. With the extreme shortage of inpatient behavioral health capacity in Massachusetts, if a patient cannot be delivered in a tight time window, that bed is given to a different patient and the search begins all over again. This logistical challenge is already causing care for island patients who are in behavioral health crisis to have their care delayed by a minimum of 24 hours. At current levels, this would impact 40-50 patients during the months of November through May at NCH, and about 84 patients a year at MVH.

Subspecialty Patient Care: During the months of November through May, NCH relies on weekly, bi-weekly, and monthly visits from physicians in 28 critical subspecialties such as Cardiology and Oncology to provide care for island residents. MVH also relies on physician specialists who come over from the mainland to care for patients. Without high-speed ferry service, and with the additional complication of slower and reduced car ferries, these visits would come to a halt and residents would either have to make their way off island or defer critical care.

Patients Who Need to Travel for Care: Not all medical services can be provided on the island and many island residents must travel for needed specialized care. Eliminating high-speed ferry service will impact everyone who needs travel for health care, but we fear it will disproportionately impact our most vulnerable populations who cannot afford a hotel or miss an extra day of work, and who will be forced to forego the care they need.

Medical and Pharmaceutical Supplies: NCH and MVH rely on regular shipments of medical and pharmaceutical supplies that come by truck via Steamship Authority vessels. Currently the hospitals receive shipments several times a week. Medical and pharmaceutical supply chains rely on just in time deliveries and any disruption in delivery can lead to critical shortages. This includes pharmaceutical shipments that are perishable.

Emergency Equipment Repair: NCH and MVH rely on specialized equipment to deliver life sustaining emergency care on the islands. This includes CT Scanner, MRI machine, and specialized operating room equipment. When equipment like this needs service, specialized equipment is needed from the mainland.

Workforce impact: It is no secret that there is a nationwide shortage of nurses and other healthcare professionals. In the islands the challenge of recruiting and retaining employees is exacerbated by the high cost of living, the lack of affordable housing, and the isolated geography. Eliminating high-speed ferry service will lead to the immediate loss of employees who currently make the 2-hour commute to NCH and MVH several days a week. In addition, the lack of affordable, convenient transportation to and from the islands during the winter months, will make the already difficult job of recruiting talent to the islands that much harder.

We appreciate this opportunity to provide comments on a matter that directly impacts our patients and employees. We look forward to receiving a scheduled meeting time to discuss this matter further with your team. In the meantime, if you should have any questions, please do not hesitate to contact Aimee Golbitz, Director of Public Policy and Research at Mass General Brigham, at agolbitz@mgb.org.

Sincerely,



Amy Lee, MBA
President, Nantucket Cottage Hospital

Denise Schepici

Denise Schepici
President, Martha's Vineyard Hospital

Exhibit E



Nantucket Public Schools



www.npsk.org

School Committee

10 Surfside Road . Nantucket, MA 02554 . Phone: 508-228-7285 . Fax: 508-325-5318

June 14, 2024

Senator Ed Markey
255 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Elizabeth Warren
309 Hart Senate Office Building
Washington, D.C. 20510

Congressman William Keating
2351 Rayburn House Office Building
Washington, D.C. 20510

RE: Proposed NOAA North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Senators Markey and Warren and Congressman Keating:

We are members of the Nantucket Schools Committee vested with ultimate legal responsibility to protect the best interests of the Nantucket Public Schools, with its 1,707 students and over 350 staff members. **We write on their behalf to highlight the particular and dire impacts that the proposed NOAA North Atlantic Right Whale Vessel Strike Reduction Rule will have on them. Our school community, students, and staff urgently need your assistance and support.**

It is critical that **Nantucket Sound be exempted from the proposed Rule**. If adopted as currently written, it would have a devastating and life-altering impact on the Nantucket Public Schools and their ability to educate the island's children effectively.

To be clear, we see right whale conservation efforts as a highly important and worthwhile matter. But those efforts must be focused where the whales actually travel and congregate, and that is not Nantucket Sound. According to our primary ferry operators, there have been **no documented right whale sightings in Nantucket Sound during more than one million trips between Hyannis and Nantucket over the past 25 years**. Many (if not all) of Nantucket's long-time commercial fishers concur and have never seen right whales in their frequent travels to the Hyannis area from Nantucket.

This edict would eliminate fast ferry passenger service to the island for more than half of the year and significantly reduce the number of trips the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority could operate for its traditional freight and vehicle ferries during that period to two round-trip passages per day (weather permitting). These vessels provide the freight, vehicle, food, fuel, municipal, solid waste disposal, and medical supply "lifeline to the islands." As countless members of the Nantucket public have made clear, the economic consequences on Nantucket would be cataclysmic – likely more than \$100 million and much higher than NOAA's flawed estimation, which does not account for major shoreside impact. **But the effect on our island's schools would also be uniquely devastating.**



Nantucket Public Schools



www.npsk.org

School Committee

10 Surfside Road . Nantucket, MA 02554 . Phone: 508-228-7285 . Fax: 508-325-5318

With a 77% participation rate in our school athletic program, **it would be nearly impossible for our student-athletes, many of whom are multiple-sport athletes, to compete in middle and high school athletic competitions**, and we would struggle to have any teams or officials come to the island to play Nantucket teams. For island children, athletics is one of the most important options for after-school activities, and our Athletic Department depends on fast ferry transportation almost every day to transport Nantucket student-athletes and student-athletes from other communities to and from our island schools.

We are also deeply concerned about **the ability to maintain our regular food service supply for our school cafeterias**. Unbeknownst to many, close to 43% of Nantucket children are considered economically disadvantaged, and often their only opportunity for two nutritionally balanced meals comes from our school cafeterias.

Nantucket Public Schools have an added challenge - the remoteness of island living in **attracting high-quality educators to move to Nantucket and teach in our schools**. Our ability to hire teachers and other staff to educate our island's growing number of students, who are so deserving of meaningful and appropriate education, would be greatly reduced. Our school employees would be severely limited in accessing essential services and opportunities for off-island, real-world learning for our children, required professional development for educators, and other important educational experiences for staff and students. Finally, and of the highest importance, our **students who have severe special needs are entitled by law to the services they require so that can receive a free and appropriate public education. Many of these services are met through contract providers, many of whom commute to the island. The proposed rule could well affect how and when these services are provided, with unpredictable consequences.**

We are certain that you will agree that the list of adverse impacts on our schools and their students should be avoided, especially when balanced against the lack of evidence that the proposed rule will confer any real benefit if implemented for Nantucket Sound. To this end, we urge you to request that NOAA amend the proposed rule with an exemption for Nantucket Sound when considering seasonal speed zones, similar to exemptions granted for the waters of Long Island Sound, Buzzards Bay, and Narragansett Bay.

Please do not allow a stunningly shortsighted and inadequately researched – yet well-intentioned – rule to sever Nantucket's lifeline to the mainland. The effect it would have on Nantucket's children and their futures would be devastating.

From 30 miles at sea, we are relying on your support and advocacy.

Sincerely,

Pauline Proch

Pauline Proch
Chair, Nantucket School Committee

Laura Gallagher Byrne

Laura Gallagher Byrne
Vice-Chair, Nantucket School Committee

Exhibit F

6/24/24 – 4 P.M.

NANTUCKET POLICE CHIEF JODY KASPER

Good morning. I'm Nantucket Police Chief Jody Kasper. Thank you for the opportunity to be heard today.

Let me get right to the point – Passage of the NOAA North Atlantic Right Whale Vessel Strike Reduction Rule without an exemption for Nantucket Sound would have significant public safety impact for Nantucket Island, its law enforcement officers and its residents. I, like my colleagues at the Town of Nantucket, wholeheartedly support efforts to conserve and grow the North Atlantic Right Whale population, but these initiatives must be focused on where the whales travel and congregate, and that is not Nantucket Sound. I fear what could happen from both a safety and economic perspective if the rule were to be approved “as is.”

Please allow me to highlight some of the potential impacts the rule could have on policing and public safety on Nantucket.

It is quite common for members of the Nantucket Police Department to travel off-island and return on the same day. This is part of our routine operations. We transport child abuse victims to the Children's Cove child advocacy center on Cape Cod to conduct forensic interviews, we deliver and retrieve evidence from crime labs, we conduct background investigations for new employees, we participate in regional meetings, and we attend critical training and education programs. All of these activities require ferry travel to the mainland.

Without high-speed ferry service for more than half of the year, this type of travel would not be feasible, and some of our most vulnerable populations – *including children and crime victims* – would suffer. Individuals in our care who require mental health and recovery/addiction services would also be affected, as many of these critical services are located off-island. In fact, there would be reduced capacity for many state services to effectively and efficiently support island residents in need, including the Massachusetts Department of Children and Families, which does not have a caseworker on Nantucket.

There would also be reduced capacity for mutual aid assistance from other local and state police agencies – *yes, bad things can and do happen on Nantucket*. A disruption to high-speed ferry service would severely hinder our ability to utilize off-island regional emergency services such as drug task forces, police specialty units, K-9 resources, bomb detection and public safety equipment sharing.

Even the court system would be affected – there is no Assistant District Attorney or judge who lives permanently on Nantucket. They, along with prosecutors and other court personnel, rely on high-speed ferry travel for arraignments and hearings on the island.

The rule would also take a significant toll on the Nantucket Police Department itself, which has already been affected by the island's affordable housing crisis and high cost of living. We would likely experience a reduction in the number of candidates applying for open police officer positions and would be limited in our ability to send officers and civilian employees off-island for education and training opportunities. It would also impact us financially through increased overtime expenses to account for vacant positions and officers being off-island longer while they are attending training or appointments; increased sick time use for employees who have off-island medical appointments; and increased cost to bring training opportunities to the island since trainers would likely require overnight accommodations.

The impacts that this proposed rule would have on the public health and safety of residents and visitors on Nantucket are far-reaching and would dramatically and negatively impact our ability to provide professional and effective police services.

Again, thank you for the opportunity to speak today.

I urge the Office of Management and Budget to amend the proposed rule to include an exemption for Nantucket Sound.

I'll now turn things over to our Fire Chief, Michael Cranson.

NANTUCKET FIRE CHIEF MICHAEL CRANSON

Good morning, I am Nantucket Fire Chief Michael Cranson. Thank you for listening to us today. First and foremost, please know that I – and the

Nantucket Fire Department – support right whale conservation efforts, but, as you've heard earlier, they do not frequent the waters of Nantucket Sound.

Our department has already been severely affected by the affordable housing crisis and exorbitant living expenses on Nantucket, and the approval of the NOAA North Atlantic Right Whale Vessel Strike Reduction Rule without an exemption for Nantucket Sound would be devastating and extremely dangerous for island residents and firefighters.

We live and work on an island with many colonial-era buildings, a densely populated downtown area, a busy airport, events that attract large crowds – *and the occasional world leader* - throughout the year, and an active harbor that serves a main transportation hub for travel to and from the island. In the event of an emergency or major fire – *which does indeed happen* -- we cannot wait nearly three hours for help to arrive from the mainland. The possible scenarios that could unfold on the island keep me awake at night.

We have firefighters that commute to work from the mainland. Without an exemption for Nantucket Sound, the proposed rule would require them to come to the island a full day before their scheduled workday to be on shift for the 8 a.m. start time.

The Nantucket Fire Department also has contracts with off-island vehicle mechanics who are specifically trained to repair emergency vehicles. Possible vessel speed restriction would further delay repairs to critically needed emergency apparatus and increase the cost of these repairs.

Ongoing training in the fire service is an absolute necessity and we need to travel to the mainland for education programs and certifications. Nantucket firefighters attend off-island training continuously throughout their careers, from recruit academy training, paramedic training, and all other training. The high-speed ferry restrictions would make it necessary, in many cases, for the firefighter to leave the island a day before the scheduled training so that they could arrive to the training on time on the day it is conducted. This will require the town to spend additional funds on rental vehicles and lodging for these firefighters.

It is my belief that this restriction will hurt firefighter recruitment both for call firefighters and career firefighters on Nantucket.

Please add Nantucket Sounds to the exemption list that includes Buzzards Bay, Narragansett Bay and Lond Island Sound.

Thank you again for taking the time to listen to my concerns this morning.

Now Andrew Patnode, Nantucket Department of Public Works Director, will discuss additional impacts.

NANTUCKET DPW DIRECTOR ANDREW PATNODE

Good morning. I'm Drew Patnode, Nantucket Department of Public Works Director.

The Department of Public Works, like other town departments, would be significantly impacted by the proposed vessel speed reductions in Nantucket Sound. Our department operates, maintains, and manages construction of all town facilities, public buildings, employee housing units, roads, bridges, culverts, parks and recreation facilities, and solid waste operations. The value of major and minor infrastructure repair, maintenance, and construction projects that the department is responsible for every year is in the tens of millions of dollars. Along with those construction costs, we contract with many vendors, consultants, engineers, and service providers to support our operations throughout the year, most of which reside on the other side of Nantucket Sound.

The ability to get personnel to the island on the high-speed ferry and freight, vehicles, equipment, and materials on the traditional ferry to the island in the fall, winter, and spring months is crucial to our department's ability to serve the island community year-round. Our scope of responsibilities is vast, with no duty more or less important than the next.

Since 2009 DPWs have been classified as first responders under the U.S. Department of Homeland Security's Emergency Services Sector Coordinating Council's Sector Specific Plan. During storm events, of which there are many 30 miles out to sea, the DPW is responsible for providing the labor, equipment, and specialized machinery as a part of the town's emergency response services. Specifically, nor'easters and other snow and

ice events in the winter months can be frequent, and our ability to source materials and repair and maintain our fleet during these events is essential to this community. Our department relies on the Steamship Authority's freight hauling capabilities to supply and replenish road salt and other materials necessary to provide safe transportation, maintain access to public facilities, and maintain operation of public infrastructure during the harshest weather months on the island.

Competing interests for limited boat reservations and highly sought after "standby" reservations would likely impose severe limitations our ability to proactively access critical resources needed to provide basic services for the Nantucket's more than 15,000 year-round residents on a daily basis, but also in the most urgent of times.

The Solid Waste Division of the Nantucket Department of Public Works already navigates uniquely challenging circumstances to properly manage solid waste on the island. In conjunction with the Department of Public Works Solid Waste Division, the Town's solid waste contract operator, Waste Options Nantucket (WON), has coordinated tens of thousands of solid waste shipments over the last 24 years.

Based on the current Steamship Authority (SSA) schedule, Waste Options is allowed to request reservations for solid waste shipments twice a year, once for the months of May-October and once for the months of October – May. As a rule of thumb, WON requests three loads per day, Monday-Friday. Of the 25 (and growing) waste streams that come into the Solid Waste Facility, Construction & Demolition (C&D) and Non-Recyclable Non-Compostable (NRNC) waste shipments are prioritized when scheduling solid waste shipments off island.

Approximately two weeks before Memorial Day and running through Thanksgiving, including major holiday weekends, the schedule is constrained because of the pressure put on the SSA by other travelers, town departments, and private businesses. During this time, the SSA offers standby reservations only for the large dump trailers utilized by Waste Option's subcontracted haulers. These loads are often approved for travel on short notice, so WON and their haulers must be ready to react when the opportunity presents itself. It is very difficult to get a load of solid waste off Nantucket, delivered to an approved disposal facility off Cape Cod, and

make the SSA freight or vehicle ferry for a return to the island in the same day. Many times, throughout the year these “standby shipments” are vital to the successful management of solid waste for Nantucket and quite often make all the difference in getting waste off Nantucket in a timely manner. Proper management of solid waste is crucial to the public and environmental health of the island, and the ability to transport as much solid waste on the SSA ferry as we currently do is paramount to that endeavor.

If SSA trips and reservations are decreased by one-third, the impact on our ability to effectively manage solid waste would be devastating. Frankly, we are barely able to transport enough solid waste off the island for disposal and recycling as things currently stand. WON stockpiles non-critical solid waste streams, while concentrating shipments of C&D and NRNC for disposal off Nantucket in order to maximize the available ferry space and remain, ever so slightly, in compliance with State and Federal permits and regulations.

The landfill at the Solid Waste Facility currently receives only baled residual NRNC waste, which is separated by the composting of Municipal Solid Waste (MSW). In Fiscal Year 2023 (FY23) the Solid Waste Facility received 14,500 tons of MSW & NRNC waste. Using the on-site Composter, this resulted in approximately 6,000 tons of residuals being disposed in the single active landfill cell. A reduction in SSA trips by one-third would result in the landfill receiving an additional 2,000 tons per year. The introduction of an additional 2,000 tons per year would reduce the useful airspace much faster than has ever been anticipated. The effect of this increased on-site disposal volume would have incredibly detrimental impacts on the landfill, the town’s finances, and public and environmental health. The site-assigned area as permitted by the Massachusetts Department of Environmental Protection (MassDEP) for the landfill is strictly limited. When the available landfill space is gone, there are few alternatives, if any. One would be to implement Alternative Technologies for Processing, though none of which are currently permitted in the State of Massachusetts. The other option would be to... ship all non-compostable MSW, C&D, and NRNC waste off island, dramatically increasing the number of shipments needed to manage the island’s solid waste, in a scenario where one-third of the current ferry reservations are suddenly no longer available.

The existing Transfer Station, where C&D and NRNC waste is received, is permitted to accept 49 tons per day. In FY23, the transfer station received a total of 9,200 tons of C&D waste which then needed to be shipped off-island for recycling. A very important fact that cannot be overlooked is that landfill disposal of C&D waste is banned in Massachusetts. If ferry capacity is limited and C&D waste is unable to be transported to a proper recycling facility, there is no currently permitted or commercially viable alternative to manage this material. In this scenario, the Solid Waste Facility would then be burdened by not only the need to stockpile backlogged C&D and NRNC, but an exponentially increased risk of fire, potentially resulting in catastrophic environmental impacts, public health risks, and substantial property damage.

Simply put, reducing vessel speeds in Nantucket Sound would have devastating effects – environmentally, fiscally, and public health wise – on the town’s ability to manage solid waste, which is undeniably one of the most significant responsibilities we hold as a municipality.

Thank you for the opportunity to speak this morning. Please consider an exemption for Nantucket in the NOAA North Atlantic Right Whale Vessel Strike Reduction Rule.

NP&EDC

NANTUCKET PLANNING AND ECONOMIC DEVELOPMENT COMMISSION



August 14, 2024

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Attn: Caroline Good
1315 East-West Highway
Silver Spring, Maryland 20810

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

Dear Ms. Good:

The Nantucket Planning & Economic Development Commission is writing to you to express our extreme opposition to the inclusion of Nantucket and Vineyard Sound in the Coastal Zone Management Act's Consistency Determination for the National Marine Fisheries Service (NMFS) and the National Oceanic and Atmospheric Administration (NOAA's) Proposed Rule entitled "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule". Please accept this letter as our written comments as the Regional Planning Agency representing the Town and County of Nantucket. In addition, we echo the concerns and issues addressed in the letter submitted by KP Law on behalf of the Town of Nantucket.

As proposed, the amendments to the rule, while intended to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, are misplaced in their applicability to Nantucket and Vineyard Sound. It is our understanding that a right whale sighting has not been confirmed in Nantucket and Vineyard Sound during the time period during which NOAA began documentation, and not since a rule aimed at the species protection was first established in 2008. Our local fisherman and ferry operators have also taken the position that no local sightings have occurred.

The required reduction in vessel speed November 1 through May 30 would have catastrophic effects on the residents of Nantucket. Being geographically isolated approximately thirty (30) miles south of Cape Cod, high speed passenger and traditional vehicle ferry travel is the primary transportation source to and from the island. Passenger travel by plane, once the preferred method, has been almost entirely replaced by ferry travel during the off-season, which is when this speed reduction rule would be in effect. The proposed amendments would eliminate all high speed (1 hour one-way) ferry service and reduce traditional vehicle ferry service from 3 round trips per day to 2 round trips per day, with each one-way trip being extended from approximately two hours and fifteen minutes to two hours and fifty minutes. While this may not seem important from a distance, residents have an entirely different point of view.

The combination of fast ferry elimination and traditional ferry service reduction will have significant economic and quality of life impacts to Nantucket residents and businesses. Negative quality of life impacts include, but are not limited to: delivery of necessities such as food, medical supplies, fuel, and other materials, access to off-island medical care, school age children would no longer be able to participate in sports, social interactions such as a trip off island for the day to shop, see friends or family, or attend an event would no longer be possible. Last but certainly not least, the residents who can least afford these impacts – the economically disadvantaged and underserved residents within areas designated as environmental justice communities - will be most individually affected.

Economic impacts, which we argue far exceed the amount estimated by NOAA, include significant shoreside impacts – none of which were considered. The high cost of living on Nantucket is a major impediment to island life that is partially addressed by a commuting workforce who rely on year-round and daily fast ferry service. A reduction in the labor force would have a trickle down effect on all local businesses. Aside from the removal of year-round and daily high speed ferry service, the delay and reduction in goods brought to the island via the traditional vehicle ferry service would have far reaching impacts, particularly when weather conditions cause delays and cancellations. Nantucket has successfully extended the tourism “shoulder season” to bolster the economy through the off-season with events such as Nantucket Noel throughout the months of November/December, Nantucket Daffodil Festival in April, Nantucket Wine Festival in May, and the Figawi Sailboat Race Memorial Day week-end – none of which would likely be possible.

The Town of Nantucket commissioned an economic analysis to be completed by the University of Massachusetts Amherst’s Donahue Institute. The analysis is not yet complete and we reserve the right to supplement this letter when the complete report is completed. However, preliminary findings include the following impacts, which we find to be extremely compelling:

- According to the Census, there are 1,245 people who live off island and work in Nantucket. Given their daily commute would be six hours with the vessel speed restriction, we assume they would no longer come. And with local home prices being what they are, we also assume they would not move to the island. Losing these workers for seven months results in \$187.8 million of lost economic activity in Nantucket. Tax revenue impacts are \$25 million, including nearly \$18 million in federal, \$4 million state, and \$3 million local.
 - Note: you can’t add together the economic activity number and the tax number. They are separate concepts.
- During the seven months in question, off island residents spend approximately \$41 million in Nantucket. A significant portion of that is attributable to commuters and day trippers and is at risk.
- Using data from IMPLAN, we estimate that \$337 million of goods move back and forth between the mainland and Nantucket during the November through May period. Given that a third of freight capacity will be lost, that puts \$112 million of goods at risk.

The Nantucket Planning & Economic Development Commission is entirely supportive of the protection of endangered species such as right whales where the proposed regulatory impacts would have a benefit. In the case of Nantucket and Vineyard Sound, no such benefit has been confirmed. While well intentioned, the proposed rule seems to only have negative consequences to Nantucket and would effectively leave the island isolated with unnecessarily limited access to the mainland.

Please support our recommendation that Nantucket and Vineyard Sound is removed from the proposed rule. The impacts to our residents of all ages and economic backgrounds deserve serious consideration. Thank you, in advance, for your attention to our concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry G. Rector". The signature is fluid and cursive, with a large initial "B" and "R".

Barry G. Rector,
Chairman

August 20, 2024

Sean Duffey, Project Review Coordinator
Massachusetts Office of Coastal Zone Management
100 Cambridge Street, #900
Boston, MA 02114

Sean.duffey@mass.gov

Re: Comment Letter
Consistency Review of Massachusetts Coastal Zone Management Policies
Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Mr. Duffey:

This letter, including Attachment A, which is incorporated herein by reference, serves to provide comments regarding consistency of the Massachusetts Coastal Zone Management (MCZM) enforceable¹ policies relative to the proposed amendments known as the North Atlantic Right Whale Vessel Strike Reduction Rule (hereinafter “Speed Rule” or “proposed amendments”). For several years, there have been voluntary North American Right Whale (NARW) speed restrictions that were imposed by National Oceanic and Atmospheric Administration (NOAA) in certain areas to protect the remaining NARW population off the coast of the United States (16 USC 1531-1543; 50 CFR s. 224.105).

In 2022, the National Marine Fisheries Service (NMFS), a division of NOAA, proposed new, mandatory regulations, which requires that all ships 35 feet in length or more, cannot exceed 10 knots during the period of November to May, each year. Nantucket Sound is proposed to be included in the new Atlantic Zone Seasonal Speed Zones (SSZs) where the proposed Speed Rule would be applicable. The SSZs are proposed to replace the Seasonal Management Areas (SMAs) which never included Nantucket Sound.

On March 5, 2024, the proposed amendments were released to the White House Office of Regulatory Affairs for potential issuance. This triggered the review of coastal zone consistency in coastal states. In response, the MCZM Public Notice requesting public comments on the NMFS proposed amendments was published in the July 24, 2024 Environmental Monitor with a 21-day comment period.

NMFS issued a letter dated June 18, 2024 (hereinafter the NMFS Letter) requesting each state coastal zone agency submit concurrence or objection to the Speed Rule within 60 days (by August

¹ State policies which are legally binding through constitutional provisions, laws, regulations, land-use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.

18, 2024)². We understand that this deadline has not been extended by NMFS and lack of response would indicate consistency concurrence by a state. The NMFS Letter indicated that the MCZM did not identify any enforceable policies relative to the Speed Rule. In general, this may be appropriate except for when the policies are applied to the addition of Nantucket Sound to the Atlantic Zone SSZ. The NARW has never been sighted in Nantucket Sound, therefore, the Speed Rule is NOT CONSISTENT with at least four of the MCZM policies as further described in this letter and Attachment A.

For purposes of this letter (including Attachment A), we focus on impacts of the proposed amendments on Nantucket Sound located between the south coast of Cape Cod and the north coast of Nantucket Island and subsequent direct impacts to Nantucket Island. New England Development, through its related entities, represents one of the largest, single, commercial land and building owners on Nantucket. We own multiple hospitality venues, including the White Elephant, White Elephant Residences, the Jared Coffin House, the Boat Basin Cottages, and others. In addition, we own the Nantucket Boat Basin, the primary marina in Nantucket. We also own much of the commercial restaurant and retail properties on Main Street and on the Commercial, Straight, and Old South Wharves. We employ, year-round and seasonally, 800-1,000 people on Nantucket Island. The proposed amendments will drastically affect the economy of Nantucket, both year-round and seasonally as the Speed Rule will impact the ferries which are vital lifelines connecting Nantucket to the mainland as well as commercial, industrial, and recreational maritime activities.

CONSISTENCY REVIEW

The following table (also included in Attachment A) is a summary of all of the MCZM policies including those that are considered as enforceable and those that, based on our review of the proposed amendments, that are applicable to the Speed Rule, specifically in relation to Nantucket Sound and Nantucket Island. Attachment A includes the text of each of the policies and goes into depth those four policies that we believe are NOT CONSISTENT with the proposed Speed Rule as the NARW has never been sighted in Nantucket Sound.

The following four MCZM policies are considered as enforceable and, based on our review, are applicable to the Speed Rule. Following our review, it is our opinion that the Proposed amendments are NOT CONSISTENT with these four applicable MCZM policies as they relate to Nantucket Sound and Nantucket Island:

- Habitat Policy #1
- Ports and Harbors Policy #4
- Protected Areas Policy #3
- Public Access Policy #1

Habitat Policy #1 [enforceable] *Protect coastal, estuarine, and marine habitats—including salt marshes, shellfish beds, submerged aquatic vegetation, dunes, beaches, barrier beaches, banks, salt ponds, eelgrass beds, tidal flats, rocky shores, bays, sounds, and other ocean habitats—and coastal freshwater streams, ponds, and wetlands to preserve critical wildlife habitat and other*

² The Coastal Zone Management Act (CZMA) requires federal actions affecting the coastal zone be consistent with a state's coastal management program.

important functions and services including nutrient and sediment attenuation, wave and storm damage protection, and landform movement and processes.

Table 1: Summary of MCZM Policies And Consistency Relative to the Speed Rule

MCZM Policy	Enforceable	Consistency of Speed Rule
Coastal Hazards		
Coastal Hazards Policy #1	Enforceable	Not Applicable
Coastal Hazards Policy #2	Enforceable	Not Applicable
Coastal Hazards Policy #3	Enforceable	Not Applicable
Coastal Hazards Policy #4	Not Enforceable	Not Enforceable
Energy		
Energy Policy #1	Enforceable	Not Applicable
Energy Policy #2	Not Enforceable	Not Enforceable
Growth Management		
Growth Management Policy #1	Not Enforceable	Not Enforceable
Growth Management Policy #2	Not Enforceable	Not Enforceable
Growth Management Policy #3	Not Enforceable	Not Enforceable
Habitat		
Habitat Policy #1	Enforceable	NOT CONSISTENT
Habitat Policy #2	Enforceable	Not Applicable
Ocean Resources		
Ocean Resources Policy #1	Enforceable	Not Applicable
Ocean Resources Policy #2	Enforceable	Not Applicable
Ocean Resources Policy #3	Enforceable	Not Applicable
Ports and Harbors		
Ports and Harbors Policy #1	Enforceable	Not Applicable
Ports and Harbors Policy #2	Enforceable	Not Applicable
Ports and Harbors Policy #3	Enforceable	Not Applicable
Ports and Harbors Policy #4	Enforceable	NOT CONSISTENT
Ports and Harbors Policy #5	Not Enforceable	Not Enforceable
Protected Areas		
Protected Areas Policy #1	Enforceable	Not Applicable
Protected Areas Policy #2	Enforceable	Not Applicable
Protected Areas Policy #3	Enforceable	NOT CONSISTENT
Public Access		
Public Access Policy #1	Enforceable	NOT CONSISTENT
Public Access Policy #2	Not Enforceable	Not Enforceable
Public Access Policy #3	Not Enforceable	Not Enforceable
Water Quality		
Water Quality Policy #1	Enforceable	Not Applicable
Water Quality Policy #2	Enforceable	Not Applicable
Water Quality Policy #3	Enforceable	Not Applicable

The NARW is listed as Endangered by both the federal government and the Massachusetts Natural Heritage and Endangered Species Program (NHESP). NHESP has mapped the waters in and around Cape Cod and the Islands including Nantucket Sound out to the limit of state waters (approximately three miles offshore) as Priority and Estimated Habitats. Areas in Nantucket Sound seaward of the three-mile limit are not mapped as habitat as they are in federal waters. Many of these habitats are mapped for state-listed waterbirds such as terns.

As stated in the NMFS Letter, “the proposed amendments are consistent with state policies regarding coastal uses related to recreation and commercial fishing and coastal resource management because they would not affect fish and their habitat, interfere with any fisheries resources or coastal resource regulations, or have any physical impact on natural coastal resources. However, there may be seasonal economic impacts to the fishing industry by increasing transit times and longer trips to fishing areas in federal waters, for vessels that otherwise would transit in excess of 10 knots.” As no NARW have been observed within Nantucket Sound, the proposed amendments will result in seasonal economic impacts. Nantucket Sound should be removed from the Atlantic Zone SSZ which would eliminate economic impacts to Nantucket and other towns surrounding the sound with no detrimental impact to the NARW.

Portions of Nantucket Sound are within the Cape & Islands Ocean Sanctuary defined as being located between mean low water and the limit of state waters (approximately three miles offshore). This sanctuary is also located within the Massachusetts Ocean Management Planning Area. The remainder of Nantucket Sound seaward of the three mile limit is not identified as a sanctuary or within an ocean management planning area as these are considered federal waters. The Massachusetts Ocean Management Plan (OMP) establishes an elevated level of protection for special, sensitive, or unique (SSU) resources (such as the NARW) and important existing water-dependent uses. Based on this mapping created for the OMP, no NARW habitat is identified in Nantucket Sound, therefore, the proposed amendments are NOT CONSISTENT with the MCZM policies relative to habitat.

Ports and Harbors Policy #4 [enforceable] For development on tidelands and other coastal waterways, preserve and enhance the immediate waterfront for vessel-related activities that require sufficient space and suitable facilities along the water’s edge for operational purposes.

According to the NMFS Letter, “the proposed amendments are consistent with state policies regarding the right of use of all navigable waterways because they would not restrict access to navigable waters’ rather they would limit vessel speed in certain state waters during seasons when North Atlantic right whales are present in these waters.” No NARW have ever been recorded or observed in Nantucket Sound, therefore, the proposed amendments are NOT CONSISTENT with Ports and Harbors Policy #4.

According to MCZM 2011 Policy Guide, “It is CZM’s intent to ensure that the Commonwealth waterways and port resources are maintained and improved by the least environmentally damaging practicable alternatives. To accomplish this objective, CZM has developed policies concerning dredging and disposal of dredged material, priorities for channel dredging, Designated Port Area management, protection of water-dependent uses along the

waterfront, and the promotion of additional improvements to developed ports.” These Ports and Harbors Policies are intended to help support maritime activities. The proposed amendments will be detrimental to marine activities in Nantucket Sound including major economic impacts. Therefore, as the amendments will result in negative impacts to ports and harbors in Nantucket Sound where no NARW have ever been recorded or observed, the amendments are NOT CONSISTENT with this policy.

Protected Areas Policy #3 [enforceable] *Ensure that proposed developments in or near designated or registered historic places respect the preservation intent of the designation and that potential adverse effects are minimized.*

The entire island and county of Nantucket is designated and registered as a historic district. The impact of the proposed amendments will impact the economic stability of the island which is dependent on maritime activities including the rich maritime history. The proposed amendments will impact the ferry services to Nantucket which is dependent on these water-dependent services affecting not only tourists but residents and folks dependent on jobs on the island and on food and materials shipped to the island. According to the NMFS Letter, “There are no foreseeable impacts on cultural or historic resources.” For many of the reasons set forth in this letter, we disagree with this conclusion. Therefore, the proposed amendments are NOT CONSISTENT with Protected Area Policy #3.

Public Access Policy #1 [enforceable] *Ensure that development (both water-dependent or nonwater-dependent) of coastal sites subject to state waterways regulation will promote general public use and enjoyment of the water’s edge, to an extent commensurate with the Commonwealth’s interests in flowed and filled tidelands under the Public Trust Doctrine.*

The proposed amendments will impact public access to state and federal waters within Nantucket Sound. The NMFS Letter states “the proposed amendments are consistent with state policies regarding public access for recreation because they would not impede access to federal waters for public recreation.” In addition, “the proposed amendments consist primarily of speed restrictions and, therefore, would allow for public access anywhere in state waters.” As noted in Attachment A, access to the water will be affected negatively for the following reasons:

- The Hy-Line (High-Speed Ferry) is dependent on faster speeds that will not longer be allowed and may cease to exist as it currently services 800,000 passengers, 40% of which trips occur between November and May.
- The Steamship Authority would not be able to provide adequate levels of freight service to and from Nantucket between November and May, resulting in shortages of food, fuel and basic household items.
- School sports would likely be cancelled, as there would no longer be an ability for students, on a daily basis, to go to the mainland.
- Medical appointments and medical treatments currently serviced on the mainland would have to be curtailed.
- Construction projects that occur primarily in the off-season (which last year totaled over \$2 Billion), would be significantly reduced. On an average day during the winter, as

many as 200 contractors are on the morning and afternoon Hy-Line ferries, which may not be running between November and May.

- Employment would be significantly curtailed, as many of the workers on Nantucket (including Town employees), commute on a daily basis to and from the mainland.
- Significant popular tourist events, such as the Christmas Stroll (and many other events) would be significantly curtailed due to impacts on the ferries directly affecting the local Nantucket economy.

While the Speed Rule would not prevent access, tangentially there will be major economic impacts to all the maritime uses in Nantucket Sound including ferry access to the island and access to commercial, industrial, and recreational boating access. Therefore, the proposed amendments are NOT CONSISTENT with Public Access Policy #1.

CONCLUSION

In summary, life on Nantucket as it is currently situated, with its 17,000 residents and over 70,000 seasonal residents, would be dramatically and permanently negatively impacted by the proposed amendments. The proposed amendments are being proposed to include Nantucket Sound even through no NARW has ever been seen.

The potential solution for Massachusetts, is that areas such as Nantucket Sound should be excluded from the proposed amendments. If Nantucket Sound isn't excluded in its entirety, the shipping lanes, which form the lifeline for Nantucket, should be exempted, so that the needed freight, supplies and residents can daily traverse to the mainland.

We support the protections proposed for the NARW but are opposed to the inclusion of Nantucket Sound. For example, we support the use of Dynamic Management Areas (DMAs) that are identified if a NARW is sighted and slow down zones for all vessels are implemented in real time. This type of active management based on real time sightings will help to prevent impacts to NARW should they happen to appear within Nantucket Sound, which is unlikely based on the physical characteristics of Nantucket Sound and supported by decades of data.

ACTION REQUESTED

Based on our assessment described in this letter and in Attachment A, the proposed Speed Rule is NOT CONSISTENT with at least four of the enforceable and applicable MCZM policies. We recommend that MCZM provide comments immediately to NOAA and NMFS reflecting such. We request that MCZM submit the following objections to NMFS in a timely manner:

- The inclusion of Nantucket Sound as a SSZ does not further the national interest in the coastal zone policy objectives or purposes in a significant or substantial manner and therefore, Nantucket Sound should be removed from the Atlantic Zone SSZ.
- The national interest furthered by the proposed amendments is outweighed by the adverse effects on the coastal resources of Nantucket Island and Nantucket Sound specifically the detrimental economic impacts that would be unfairly borne by the residents, visitors, town and county of Nantucket.

- The alternative of not including Nantucket Sound in the Atlantic Zone SSZ would permit maritime activities to continue without the Speed Rule in Nantucket Sound with no effects to the NARW and no economic effects to Nantucket Island and surrounding communities.

Respectfully submitted,

NEW ENGLAND DEVELOPMENT AND
NANTUCKET ISLAND RESORTS



By: John E. Twohig

ATTACHMENT A
Consistency Review of Massachusetts Coastal Zone Management Policies
Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

REQUEST TO EXTEND COMMENT PERIOD

The MCZM Public Notice requesting public comments on the NMFS proposed amendments to protect the North American Right Whale (NARW) was published in the July 24, 2024 Environmental Monitor with a 21-day comment period. Other than this Public Notice, there was no other notification provided to the public nor was there sufficient time for the public to review the MCZM policies for consistency relative to the Speed Rule. Cape Cod and Nantucket residents and government officials, boards, and commissions have been actively following the proposed amendments and have provided comment letters to their Congressmen and Senators and the US Office of Budget and Management Consultation. Interested parties should also have the ability to submit comments regarding the MCZM consistency. Many coastal states held public hearings on the consistency review. Therefore we are requesting that the comment period be extended in order to accept comments on this issue.

ENVIRONMENTAL JUSTICE

According to the Federal Register³, “The proposed action [Speed Rule] is not expected to have a disproportionately high effect on minority populations or low-income populations under [federal] Executive Order 12898.” As the MCZM falls under the Massachusetts Executive Office of Energy and Environmental Affairs (EEA) and is subject to the EEA Environmental Justice (EJ) Policy, MCZM is required to develop an EJ strategy⁴ including, but not limited to, the following:

- Enhanced communication activities to expand information access for EJ populations
- Integrate EJ populations into outreach, environmental monitoring, and citizen volunteering activities
- Strengthen technical assistance to proactively address EJ issues and support EJ populations
- Support meaningful engagement with EJ populations and input during public comment, hearings, and information sessions for program activities.

As shown on Figure 1, there are numerous EJ communities located on Cape Cod (specifically in and around Hyannis where the ferries dock) and on Nantucket and Martha’s Vineyard. Many of the residents in these EJ communities are dependent on employment directly affected by maritime activities in Nantucket Sound. We are not aware that MCZM has provided any outreach to EJ communities on Cape Cod or the Islands regarding the Speed Rule and consistency. Few were aware of the recent Public Notice published in the Environmental Monitor and not enough time was provided to develop comments regarding consistency. As the economic impacts of the Speed Rule

³ <https://www.federalregister.gov/documents/2022/08/01/2022-16211/amendments-to-the-north-atlantic-right-whale-vessel-strike-reduction-rule>

⁴ Massachusetts Executive Office of Energy and Environmental Affairs. February 2024. Environmental Justice Strategy Secretariat and agency strategies for proactively promoting environmental justice in the Commonwealth of Massachusetts <https://www.mass.gov/doc/february-2024-environmental-justice-strategy-english/download>

will impact the EJ communities, we request that outreach be performed with the EJ communities regarding the proposed amendments and the comment period be extended.

SEASONAL SPEED ZONES (SSZ)

In 2022, the NMFS, a division of NOAA, proposed new, mandatory regulations, which requires that all ships 35 feet in length or more, cannot exceed 10 knots during the period of November to May, each year. Nantucket Sound is proposed to be included in the new Atlantic Zone Seasonal Speed Zones (SSZs) where the proposed Speed Rule would be applicable. The SSZs are proposed to replace the Seasonal Management Areas (SMAs) which never included Nantucket Sound.

Nantucket Sound is not presently mapped as a SMA but is proposed to be located within the Atlantic Zone SSZ where speed limitations will be required between November 1 and May 30 of each year to protect the NARW. We do not agree with the modification of the boundaries and creation of a new SSZ to include Nantucket Sound as no NARW have ever been recorded in Nantucket Sound.

Numerous letters have been submitted to the US Office of Budget and Management Consultation, NOAA, and NMFS requesting an exemption of Nantucket Sound from the SSZ similar to what exists for Long Island Sound and Buzzards Bay. As shown in the Figures 2 through 4, Nantucket Sound has never been a location where the NARW has been sighted including formal surveys by private, state, and federal agencies. In addition, according to Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority, their crews and other private entities such as Hy-Line Cruises which are licensed by the Steamship Authority, have run thousands of trips back and forth across Nantucket Sound for years but have never observed any NARW presumably due to the shallowness of the sound as shown in Figure 2.

The Hy-Line ferry is the only convenient access to Nantucket with 800,000 passenger trips annually, 40% (or 320,000) of which occur during the months of November through May. There is no longer convenient short trip air service between Hyannis and Nantucket. The whole function and design of the high-speed ferry is to operate at a higher speed. The Speed Rule would eliminate this function. Many of these trips between November and May are workers who live off Island. There is limited space for worker housing on-Island, therefore, most of the workers, including construction workers and service industry workers, are dependent on the high-speed ferry. If the travel time to the Island for the workers is increased, this would be reflected in service and construction costs and reduce the availability of workers in Nantucket. There are already many challenges in finding help on Nantucket. Lack of a high-speed ferry would compound these issues. This is a direct impact on not only the workers heading to Nantucket but the residents (and economic vitality) of Nantucket.

NMFS LETTER

NMFS issued a letter dated June 18, 2024 (hereinafter the NMFS Letter) requesting each state coastal zone agency submit concurrence or objection to the Speed Rule within 60 days (by August 18, 2024)⁵. We understand that this deadline has not been extended by NMFS and lack of response

⁵ The Coastal Zone Management Act (CZMA) requires federal actions affecting the coastal zone be consistent with a state's coastal management program.

would indicate consistency concurrence by a state. The NMFS Letter indicated that the MCZM did not identify any enforceable policies relative to the Speed Rule.

According to the NMFS Letter, NMFS has determined that the proposed amendments would affect water uses as defined by the Coastal Zone Management Act (CZMA) as “a use, activity, or project conducted in or on waters within the coastal zone” [16 USC 1453(18)] “with respect to vessel traffic and operations”. Also, the NMFS Letter “expects the largest portion of costs from implementation of the proposed amendments would be borne by the commercial shipping industry.” In addition, “Other vessel sectors are expected to incur cost burdens, particularly those characterized by higher speed operations such as passenger vessels (tour boats, charter fishing vessels, high-speed ferries), pilot boats, recreational boats, and some commercial fishing and industrial vessels.” The NMFS Letter also goes on to state that “the estimated economic impacts are not expected to compromise the economic value of coastal resources.” We disagree with these statements and conclusions as there would be detrimental economic impacts that would be unfairly borne by the residents, visitors, town and county of Nantucket. See below for more information.

NMFS DRAFT ENVIRONMENTAL ASSESSMENT FOR AMENDMENTS TO THE NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE – JULY 2022

This Draft Environmental Assessment (DEA) prepared in 2022 for the Speed Rule included an assessment of expanding SSZ “boundaries and timing to better capture areas and times with elevated vessel strike risk” and “minimize impacts to resources (economic, transportation) and small entities”. As no NARW have ever been observed in Nantucket Sound, inclusion of the sound in the proposed Atlantic Zone SSZ does not meet the goals and objectives set forth in the DEA. The DEA notes that data indicates a shift in the NARW distribution, but this shift still does not include Nantucket Sound and will likely not include Nantucket Sound due to the shallow waters (see Figure 2). In addition, there would be detrimental economic impacts unfairly borne by the residents, visitors, town and county of Nantucket. See below for more information.

Alternatives reviewed in the DEA were selected for many reasons, including developing regulations which should “use the smallest footprint and timeframe necessary for SSZs and DSZs to achieve conservation goals.” Removal of Nantucket Sound from the SSZ would achieve this purpose. The DEA also identified that regulations developed should “minimize impacts to resources (economic, transportation) and small entities.” If there are no NARW in Nantucket Sound, then removing Nantucket Sound from the SSZ would reduce any economic impacts as envisioned in the DEA.

ECONOMIC IMPACTS

If the Speed Rule is approved, there would be devastating economic impacts on communities like the towns of Martha’s Vineyard, Nantucket, and Hyannis. Impacts on Nantucket would include, but not be limited to:

- The Hy-Line (High-Speed Ferry) is dependent on faster speeds that will not longer be allowed and may cease to exist as it currently services 800,000 passengers, 40% of which trips occur between November and May.

- The Steamship Authority would not be able to provide adequate levels of freight service to and from Nantucket between November and May, resulting in shortages of food, fuel and basic household items.
- School sports would likely be cancelled, as there would no longer be an ability for students, on a daily basis, to go to the mainland.
- Medical appointments and medical treatments currently serviced on the mainland would have to be curtailed.
- Construction projects that occur primarily in the off-season (which last year totaled over \$2 Billion), would be significantly reduced. On an average day during the winter, as many as 200 contractors are on the morning and afternoon Hy-Line ferries, which may no longer would be running between November and May.
- Employment would be significantly curtailed, as many of the workers on Nantucket (including Town employees), commute on a daily basis to and from the mainland.
- Significant popular tourist events, such as the Christmas Stroll (and many other events) would be significantly curtailed due to impacts on the ferries directly affecting the local Nantucket economy.

CONSISTENCY WITH MCZM POLICIES

The following table is a summary of the MCZM policies identified as enforceable that, based on our assessment, are applicable to impacts of the Speed Rule, specifically in relation to Nantucket Sound and Nantucket Island.

The following MCZM policies are considered as not enforceable and are not addressed here:

- Coastal Hazards Policy #4
- Energy Policy #2
- Growth Management Policy #1
- Growth Management Policy #2
- Growth Management Policy #3
- Ports and Harbors Policy #5
- Public Access Policy #2
- Public Access Policy #3

The following MCZM policies are considered as enforceable but, based on our review, are not applicable to the Speed Rule as it relates to Nantucket Sound and Nantucket Island.

- | | |
|---|--|
| <ul style="list-style-type: none"> • Coastal Hazards Policy #1 • Coastal Hazards Policy #2 • Coastal Hazards Policy #3 • Energy Policy #1 • Habitat Policy #2 • Ocean Resources Policy #1 • Ocean Resources Policy #2 • Ocean Resources Policy #3 | <ul style="list-style-type: none"> • Ports and Harbors Policy #1 • Ports and Harbors Policy #2 • Ports and Harbors Policy #3 • Protected Areas Policy #1 • Protected Areas Policy #2 • Water Quality Policy #1 • Water Quality Policy #2 • Water Quality Policy #3 |
|---|--|

Table 1: Summary of MCZM Policies And Consistency Relative to the Speed Rule

MCZM Policy	Enforceable	Consistency of Speed Rule
Coastal Hazards		
Coastal Hazards Policy #1	Enforceable	Not Applicable
Coastal Hazards Policy #2	Enforceable	Not Applicable
Coastal Hazards Policy #3	Enforceable	Not Applicable
Coastal Hazards Policy #4	Not Enforceable	Not Enforceable
Energy		
Energy Policy #1	Enforceable	Not Applicable
Energy Policy #2	Not Enforceable	Not Enforceable
Growth Management		
Growth Management Policy #1	Not Enforceable	Not Enforceable
Growth Management Policy #2	Not Enforceable	Not Enforceable
Growth Management Policy #3	Not Enforceable	Not Enforceable
Habitat		
Habitat Policy #1	Enforceable	NOT CONSISTENT
Habitat Policy #2	Enforceable	Not Applicable
Ocean Resources		
Ocean Resources Policy #1	Enforceable	Not Applicable
Ocean Resources Policy #2	Enforceable	Not Applicable
Ocean Resources Policy #3	Enforceable	Not Applicable
Ports and Harbors		
Ports and Harbors Policy #1	Enforceable	Not Applicable
Ports and Harbors Policy #2	Enforceable	Not Applicable
Ports and Harbors Policy #3	Enforceable	Not Applicable
Ports and Harbors Policy #4	Enforceable	NOT CONSISTENT
Ports and Harbors Policy #5	Not Enforceable	Not Enforceable
Protected Areas		
Protected Areas Policy #1	Enforceable	Not Applicable
Protected Areas Policy #2	Enforceable	Not Applicable
Protected Areas Policy #3	Enforceable	NOT CONSISTENT
Public Access		
Public Access Policy #1	Enforceable	NOT CONSISTENT
Public Access Policy #2	Not Enforceable	Not Enforceable
Public Access Policy #3	Not Enforceable	Not Enforceable
Water Quality		
Water Quality Policy #1	Enforceable	Not Applicable
Water Quality Policy #2	Enforceable	Not Applicable
Water Quality Policy #3	Enforceable	Not Applicable

The following four MCZM policies are considered as enforceable and, based on our review, are applicable to the Speed Rule as it relates to Nantucket Sound and Nantucket Island. Following our review, it is our opinion that the Proposed amendments are NOT CONSISTENT with these four applicable MCZM policies:

- Habitat Policy #1
- Ports and Harbors Policy #4
- Protected Areas Policy #3
- Public Access Policy #1

COASTAL HAZARDS

Coastal Hazards Policy #1 [enforceable] *Preserve, protect, restore, and enhance the beneficial functions of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, land subject to coastal storm flowage, salt marshes, and land under the ocean.*

This policy is not applicable to the Speed Rule.

Coastal Hazards Policy #2 [enforceable] *Ensure that construction in water bodies and contiguous land areas will minimize interference with water circulation and sediment transport. Flood or erosion control projects must demonstrate no significant adverse effects on the project site or adjacent or downcoast areas.*

This policy is not applicable to the Speed Rule.

Coastal Hazards Policy #3 [enforceable] *Ensure that state and federally funded public works projects proposed for location within the coastal zone will:*

- *Not exacerbate existing hazards or damage natural buffers or other natural resources.*
- *Be reasonably safe from flood and erosion-related damage.*
- *Not promote growth and development in hazard-prone or buffer areas, especially in velocity zones and Areas of Critical Environmental Concern.*
- *Not be used on Coastal Barrier Resource Units for new or substantial reconstruction of structures in a manner inconsistent with the Coastal Barrier Resource/Improvement Acts.*

This policy is not applicable to the Speed Rule.

ENERGY

Energy Policy #1 [enforceable] *For coastally dependent energy facilities, assess siting in alternative coastal locations. For non-coastally dependent energy facilities, assess siting in areas outside of the coastal zone. Weigh the environmental and safety impacts of locating proposed energy facilities at alternative sites.*

This policy is not applicable to the Speed Rule.

HABITAT

Habitat Policy #1 [enforceable] *Protect coastal, estuarine, and marine habitats—including salt marshes, shellfish beds, submerged aquatic vegetation, dunes, beaches, barrier beaches, banks, salt ponds, eelgrass beds, tidal flats, rocky shores, bays, sounds, and other ocean habitats—and coastal freshwater streams, ponds, and wetlands to preserve critical wildlife habitat and other important functions and services including nutrient and sediment attenuation, wave and storm damage protection, and landform movement and processes.*

The NARW is listed as Endangered by both the federal government and the Massachusetts Natural Heritage and Endangered Species Program (NHESP). NHESP has mapped the waters in and around Cape Cod and the Islands including Nantucket Sound out to the limit of state waters (approximately three miles offshore) as Priority and Estimated Habitats. Areas in Nantucket Sound seaward of the three mile limit are not mapped as habitat as they are in federal waters. Many of these habitats are mapped for state-listed waterbirds such as terns.

As stated in the NMFS Letter, “the proposed amendments are consistent with state policies regarding coastal uses related to recreation and commercial fishing and coastal resource management because they would not affect fish and their habitat, interfere with any fisheries resources or coastal resource regulations, or have any physical impact on natural coastal resources. However, there may be seasonal economic impacts to the fishing industry by increasing transit times and longer trips to fishing areas in federal waters, for vessels that otherwise would transit in excess of 10 knots.” As no NARW have been observed within Nantucket Sound, the proposed amendments will result in the seasonal economic impacts. Nantucket Sound should be removed from the Atlantic Zone SSZ which would eliminate economic impacts to Nantucket and other towns surrounding the sound with no detrimental impact to the NARW.

Portions of Nantucket Sound are within the Cape & Islands Ocean Sanctuary defined as being located between mean low water and the limit of state waters (approximately three miles offshore). This sanctuary is also located within the Massachusetts Ocean Management Planning Area. The remainder of Nantucket Sound seaward of the three mile limit is not identified as a sanctuary or within an ocean management planning area as these are considered federal waters. The Massachusetts Ocean Management Plan (OMP) establishes an elevated level of protection for special, sensitive, or unique (SSU) resources (such as the NARW) and important existing water-dependent uses. Based on this mapping created for the OMP, no NARW habitat is identified in Nantucket Sound, therefore, the proposed amendments are NOT CONSISTENT with the MCZM policies relative to habitat.

Habitat Policy #2 [enforceable] *Advance the restoration of degraded or former habitats in coastal and marine areas.*

This policy is not applicable to the Speed Rule.

OCEAN RESOURCES

Ocean Resources Policy #1 [enforceable] Support the development of sustainable aquaculture, both for commercial and enhancement (public shellfish stocking) purposes. Ensure that the review process regulating aquaculture facility sites (and access routes to those areas) protects significant ecological resources (salt marshes, dunes, beaches, barrier beaches, and salt ponds) and minimizes adverse effects on the coastal and marine environment and other water-dependent uses.

This policy is not applicable to the Speed Rule.

Ocean Resources Policy #2 [enforceable] Except where such activity is prohibited by the Ocean Sanctuaries Act, the Massachusetts Ocean Management Plan, or other applicable provision of law, the extraction of oil, natural gas, or marine minerals (other than sand and gravel) in or affecting the coastal zone must protect marine resources, marine water quality, fisheries, and navigational, recreational and other uses.

This policy is not applicable to the Speed Rule.

Ocean Resources Policy #3 [enforceable] Accommodate offshore sand and gravel extraction needs in areas and in ways that will not adversely affect marine resources, navigation, or shoreline areas due to alteration of wave direction and dynamics. Extraction of sand and gravel, when and where permitted, will be primarily for the purpose of beach nourishment or shoreline stabilization.

This policy is not applicable to the Speed Rule.

PORTS AND HARBORS

Ports and Harbors Policy #1 [enforceable] Ensure that dredging and disposal of dredged material minimize adverse effects on water quality, physical processes, marine productivity, and public health and take full advantage of opportunities for beneficial re-use.

This policy is not applicable to the Speed Rule.

Ports and Harbors Policy #2 [enforceable] Obtain the widest possible public benefit from channel dredging and ensure that Designated Port Areas and developed harbors are given highest priority in the allocation of resources.

This policy is not applicable to the Speed Rule.

Ports and Harbors Policy #3 [enforceable] Preserve and enhance the capacity of Designated Port Areas to accommodate water-dependent industrial uses and prevent the exclusion of such uses from tidelands and any other DPA lands over which an EEA agency exerts control by virtue of ownership or other legal authority.

This policy is not applicable to the Speed Rule.

Ports and Harbors Policy #4 [enforceable] *For development on tidelands and other coastal waterways, preserve and enhance the immediate waterfront for vessel-related activities that require sufficient space and suitable facilities along the water's edge for operational purposes.*

According to the NMFS Letter, "the proposed amendments are consistent with state policies regarding the right of use of all navigable waterways because they would not restrict access to navigable waters' rather they would limit vessel speed in certain state waters during seasons when North Atlantic right whales are present in these waters." This statement is correct although as no NARW have ever been recorded or observed in Nantucket Sound, therefore, the proposed amendments are NOT CONSISTENT with Ports and Harbors Policy #4.

According to MCZM 2011 Policy Guide, "It is CZM's intent to ensure that the Commonwealth waterways and port resources are maintained and improved by the least environmentally damaging practicable alternatives. To accomplish this objective, CZM has developed policies concerning dredging and disposal of dredged material, priorities for channel dredging, Designated Port Area management, protection of water-dependent uses along the waterfront, and the promotion of additional improvements to developed ports." These Ports and Harbors Policies are intended to help support maritime activities. The proposed amendments will be detrimental to marine activities in Nantucket Sound including major economic impacts. Therefore, as the amendments will result in negative impacts to ports and harbors in Nantucket Sound where no NARW have ever been recorded or observed, the amendments are NOT CONSISTENT with this policy.

PROTECTED AREAS

Protected Areas Policy #1 [enforceable] *Preserve, restore, and enhance coastal Areas of Critical Environmental Concern, which are complexes of natural and cultural resources of regional or statewide significance.*

This policy is not applicable to the Speed Rule.

Protected Areas Policy #2 [enforceable] *Protect state designated scenic rivers in the coastal zone.*

This policy is not applicable to the Speed Rule.

Protected Areas Policy #3 [enforceable] *Ensure that proposed developments in or near designated or registered historic places respect the preservation intent of the designation and that potential adverse effects are minimized.*

The entire island and county of Nantucket is designated and registered as a historic district. The impact of the proposed amendments will impact the economic stability of the island which is dependent on maritime activities including the rich maritime history. The proposed amendments will impact the ferry services to Nantucket which is dependent on these water-dependent services affecting not only tourists but residents and folks dependent on jobs on the island and on food and materials shipped to the island. According to the NMFS Letter, "There are no foreseeable impacts on cultural or historic resources." We disagree

with this conclusion. Therefore, the proposed amendments are NOT CONSISTENT with Protected Area Policy #3.

PUBLIC ACCESS

Public Access Policy #1 [enforceable] *Ensure that development (both water-dependent or nonwater-dependent) of coastal sites subject to state waterways regulation will promote general public use and enjoyment of the water's edge, to an extent commensurate with the Commonwealth's interests in flowed and filled tidelands under the Public Trust Doctrine.*

The proposed amendments will impact public access to state and federal waters within Nantucket Sound. The NMFS Letter states “the proposed amendments are consistent with state policies regarding public access for recreation because they would not impede access to federal waters for public recreation.” In addition, “the proposed amendments consist primarily of speed restrictions and, therefore, would allow for public access anywhere in state waters.” Access to the water will be affected negatively for the following reasons:

- The Hy-Line (High-Speed Ferry) is dependent on faster speeds that will not longer be allowed and may cease to exist as it currently services 800,000 passengers, 40% of which trips occur between November and May.
- The Steamship Authority would not be able to provide adequate levels of freight service to and from Nantucket between November and May, resulting in shortages of food, fuel and basic household items.
- School sports would likely be cancelled, as there would no longer be an ability for students, on a daily basis, to go to the mainland.
- Medical appointments and medical treatments currently serviced on the mainland would have to be curtailed.
- Construction projects that occur primarily in the off-season (which last year totaled over \$2 Billion), would be significantly reduced. On an average day during the winter, as many as 200 contractors are on the morning and afternoon Hy-Line ferries, which may no longer would be running between November and May.
- Employment would be significantly curtailed, as many of the workers on Nantucket (including Town employees), commute on a daily basis to and from the mainland.
- Significant popular tourist events, such as the Christmas Stroll (and many other events) would be significantly curtailed due to impacts on the ferries directly affecting the local Nantucket economy.

While the Speed Rule would not prevent access, tangentially there will be major economic impacts to all the maritime uses in Nantucket Sound including ferry access to the island and access to commercial, industrial, and recreational boating access. Therefore, the proposed amendments are NOT CONSISTENT with Public Access Policy #1.

WATER QUALITY

Water Quality Policy #1 [enforceable] *Ensure that point-source discharges and withdrawals in or affecting the coastal zone do not compromise water quality standards and protect designated uses and other interests.*

This policy is not applicable to the Speed Rule.

Water Quality Policy #2 [enforceable] *Ensure the implementation of nonpoint source pollution controls to promote the attainment of water quality standards and protect designated uses and other interests.*

This policy is not applicable to the Speed Rule.

Water Quality Policy #3 [enforceable] *Ensure that subsurface waste discharges conform to applicable standards, including the siting, construction, and maintenance requirements for on-site wastewater disposal systems, water quality standards, established Total Maximum Daily Load limits, and prohibitions on facilities in high-hazard areas.*

This policy is not applicable to the Speed Rule.

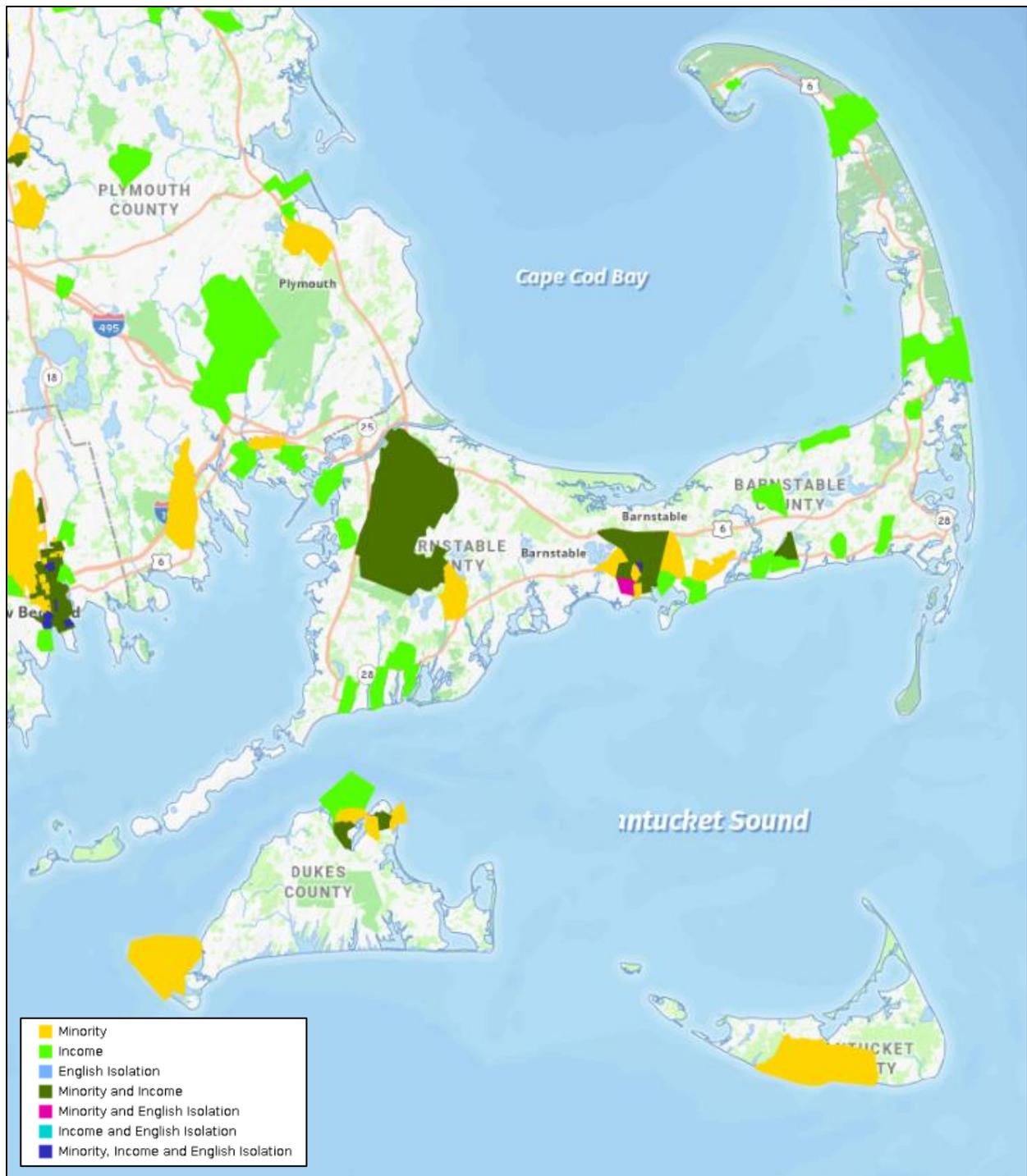


Figure 1: Environmental Justice Populations on Cape Cod and the Islands
 (Source: <https://maps.massgis.digital.mass.gov/MassMapper/MassMapper.html>; 2020 Census)

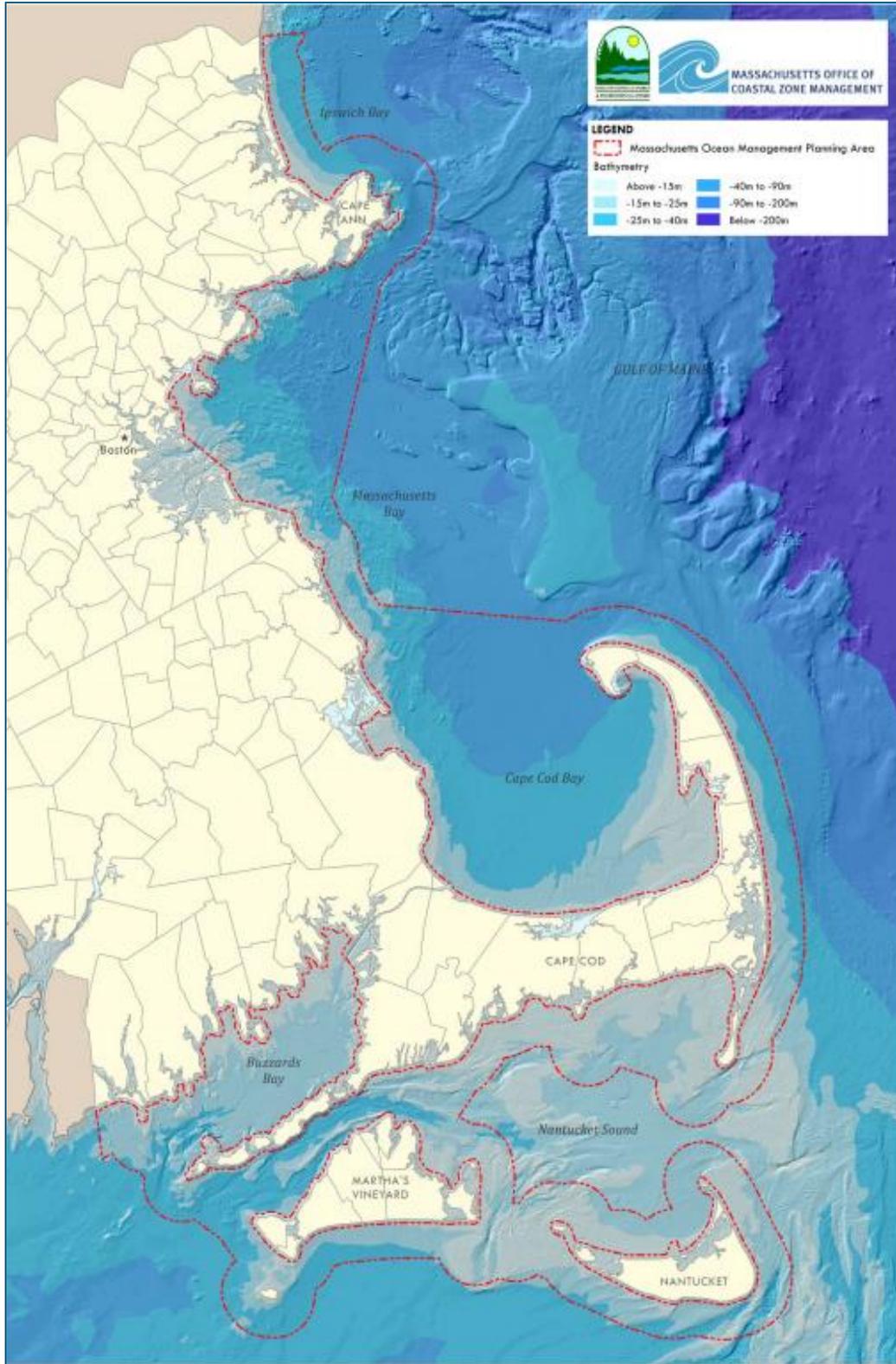


Figure 2: Massachusetts Ocean Management Planning Areas
 (Source: 2021 Massachusetts Ocean Management Plan; Figure 1)



Figure 3: Special, Sensitive, or Unique (SSU) Resources: NARW Core Habitat
 (Source: 2021 Massachusetts Ocean Management Plan; Figure 4)

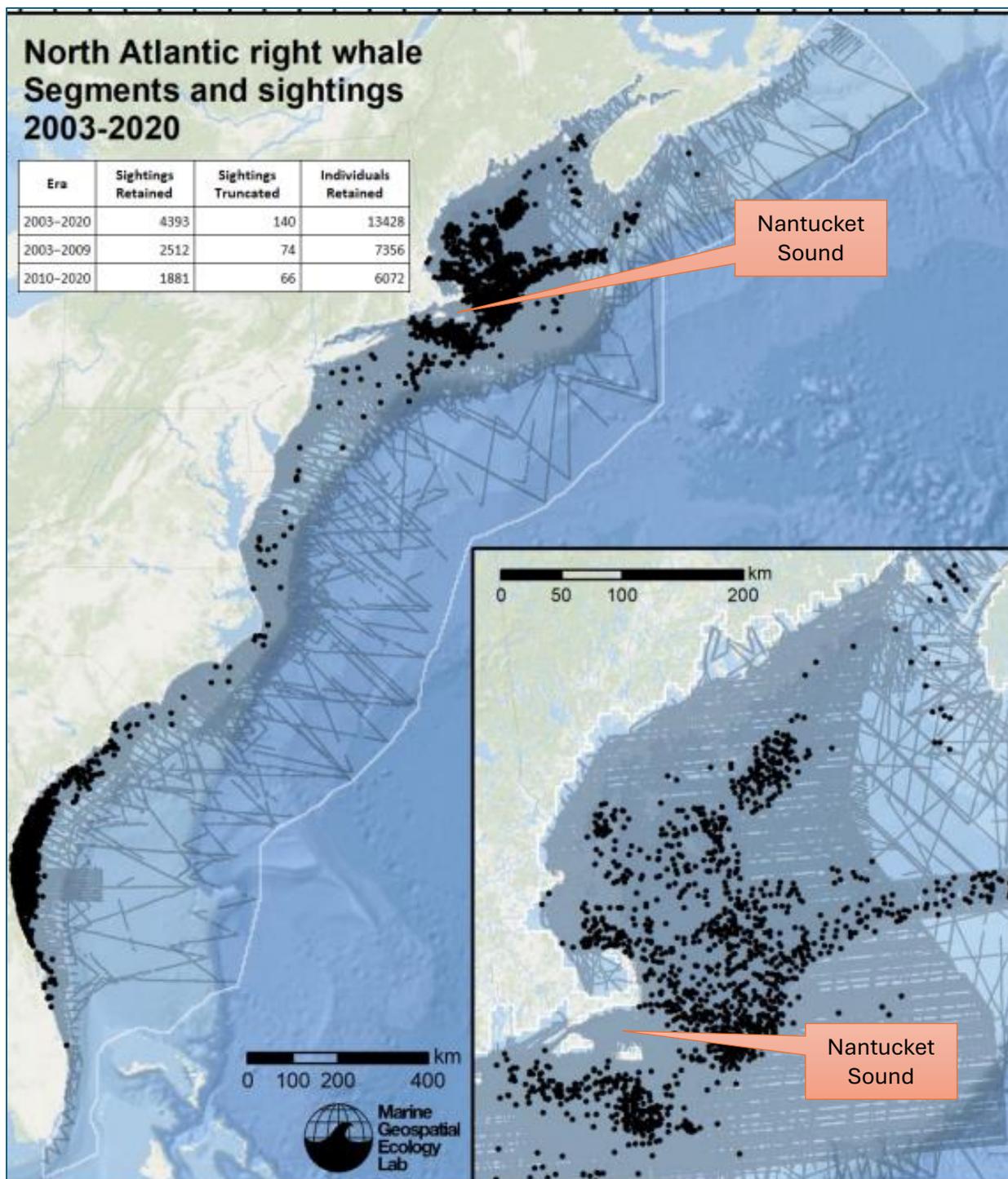


Figure 4: North Atlantic Right Whale Segments and Sightings 2003-2020

(Source: https://seamap.env.duke.edu/seamap-models-files/Duke/EC/North_Atlantic_right_whale/Docs/NARW_v12_overview.pdf)



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OPERATIONS DIRECTOR

July 26, 2024

Massachusetts Office of Coastal Zone Management
CZM Project Review Coordinator
Attn: Sean Duffy
Sean.duffey@mass.gov

SUBJ: NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE

Dear Sean:

The American Pilots' Association (APA)¹ disagrees with the June 18, 2024 NMFS "Coastal Zone Management Act (CZMA) Consistency Determination for the Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Rule." Specifically, APA disagrees with the impacts to waterways, navigable waters, and right of passage, such as safety of navigation and pilotage; the impacts to ports, harbors, piers, and related facilities; and the economic impact to pilot operations. Further, this rulemaking was proposed without any meaningful engagement with the various sectors of the maritime industry – including specifically maritime pilot groups or the APA – and without any serious analysis of the economic impacts the proposal would have on these maritime sectors. Likewise, it seems that NMFS is waiting until the last minute to engage with the states on this issue, as this rule was first proposed in August of 2022, and it is now July of 2024. For your reference, APA submitted comments² to the National Marine Fisheries Service's (NMFS) August 1, 2022 Notice of Proposed Rulemaking (NPRM), *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule*.³ We strongly urge you to consider our serious concerns - as outlined below - pass them on to NMFS, and urge NMFS to withdraw the proposed rulemaking as it is not consistent with Massachusetts's coastal zone management interests.

APA is of the strong view that the proposed NMFS rule does not appropriately account for the safety of America's maritime pilots and pilot boat crews, the safe movement of large merchant vessels carrying

¹ The American Pilots' Association (APA) has been the national association of professional maritime pilots since 1884. Virtually all of the more than 1,200 State-licensed pilots working in the coastal ports and approaches of the United States, as well as all of the U.S. registered pilots operating in the Great Lakes system under authorization by the Coast Guard, belong to APA member pilot groups. These pilots handle well over 90 percent of all large ocean-going vessels moving in international trade in the waterways of the United States. The role and official responsibility of these pilots is to protect the safety of navigation and the marine environment in the waters for which they are licensed. For more visit: www.americanpilots.org

² <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18954>

³ Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46921 (proposed Aug. 1, 2022) (to be codified at 50 C.F.R. Part 224).

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GREAT LAKES

commercial cargo (including hazardous cargos), and the significant negative economic impacts the proposal would have. In general, the proposed modifications to the NARW vessel strike reduction rule significantly expand the existing NARW vessel speed restriction regulations to the detriment of pilot and pilot boat crew safety, safe navigation of large commercial vessels, and the health of the maritime supply chain and the business of pilot groups along the entire East Coast.

Overview

Before summarizing APA's concerns with the proposed rule, which are spelled out in detail at the link in Footnote 1, it is worth acknowledging the significance of the proposed amendments to the NARW vessel speed restriction. NMFS proposes to more than double the existing speed restriction area, blanketing the entire U.S. East Coast with Seasonal Speed Zones (SSZ) for six to seven months every year.⁴ Additionally, under NMFS' proposal the 10 knot speed restriction would apply to all vessels greater than or equal to 35 ft, (the rule currently applies to vessels greater than 65 ft). Finally, the proposed amendments would drastically change the existing regulatory navigation safety "deviation clause," (the provision that allows vessels to exceed the 10 knots speed restriction if navigation safety concerns dictate), making the deviation clause so overly burdensome and complicated that it is virtually unusable. In addition, NMFS' choice to overtly stress the criminal penalties associated with the vessel speed regulations in its regulatory proposal has the dangerous effect of criminalizing critical navigation safety decisions made in a dynamic and already extremely challenging operational environment. The following paragraphs briefly summarize APA's rationale for opposing the proposed amendments to the NARW speed restriction regulations.

Impacts to Waterways, Navigable Waters, and Right of Passage

Safety of Life at Sea

First, and foremost, this is an issue of the safety of life at sea. The application of speed restrictions to pilot boats (which have been purposefully built by East Coast pilot groups, in good faith reliance on NMFS' current NARW regulations and at a cost of tens of millions of dollars, to be less than 65 feet) and the significant expansion of SSZs would increase the dangers faced by pilots and pilot boat crews during dangerous pilot transfer operations. Pilot transfer operations (when a pilot transfers between a pilot boat and larger ocean-going vessel) are inherently dangerous operations. Despite safety regulations and extreme care being taken during the pilot transfer process, eight U.S. pilots and one pilot boat crew member have been killed during transfers since 2006, and four pilots around the world have been killed during the transfer process in calendar year 2023 alone. Unnecessarily limiting the size, capabilities, or the speeds of pilot boats would increase the dangers faced by pilots, pilot boat operators, and pilot boat crews. Limiting pilot boat size is dangerous because, generally speaking, larger vessels of similar design provide much greater stability and ease of handling in a maritime environment, especially the off-shore heavy weather environment in which pilots operate. Pilot boat operators must make split-second decisions related to course and speed changes to provide a stable platform to transfer pilots to and from massive vessels. This precision operation requires that both vessels be moving – often at speeds more than 10 knots – and pilot boat operators must have unfettered discretion to adjust speed at a moment's notice in order to optimize the safety of the transfer. Plain and simple, limiting this discretion and placing arbitrary and artificial speed constraints on pilot boats is dangerous. Finally, and what is so frustrating about NMFS' decision to try to apply NARW vessel speed restrictions to pilot boats, is that this is unnecessary. NMFS has advised APA that it is not aware of a single incidence of a pilot boat ever striking a NARW.

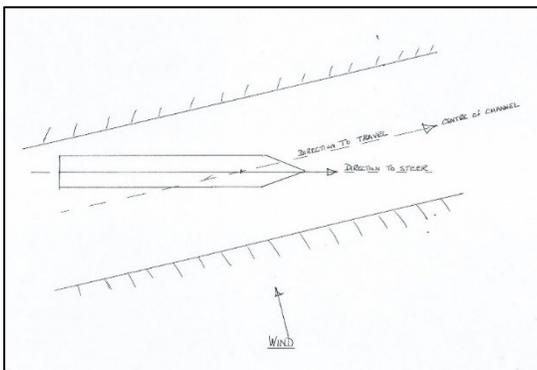
⁴ Despite proposing this vast expansion of the NARW vessel speed restriction zones, NMFS unironically claims in its Notice of Proposed Rulemaking that it "aimed to identify the smallest spatial and temporal footprint possible for speed restriction areas." See 87 F.R. 146, 46925.

Navigating Large Ships in Narrow Channels

Second, the professional maritime pilots whom APA represents are charged with safely navigating massive ocean-going vessels, laden with thousands of passengers, vital supplies, and sometimes hazardous cargo, into and out of port. Vice Admiral Brian M. Salerno, at the time the Coast Guard's Deputy Commandant for Operations, described the work of a pilot as follows:

Each day, pilots are asked to take all sizes and types of vessels through narrow channels in congested waters where one miscalculation could mean disaster. They are trained, highly professional individuals, whose judgments must be spot-on for the hundreds of decisions they must make at every turn to bring a vessel safely to its berth or out to sea.⁵

This NMFS proposal, if enacted, will significantly limit pilots' ability to perform these critical safety and environmental protection duties. Pilots must safely navigate massive vessels, often 800-1300 feet in length, in narrow Federal Navigation Channels (FNC)⁶ that, in some instances, are less than 1000 ft wide and extend 10-18 miles offshore along the East Coast. There is little room for error when navigating a 1300ft ship in a 1000ft wide channel. Pilots rely on being able to maintain a safe and sufficient speed to navigate these vessels through areas of cross currents, heavy winds, and two-way vessel traffic where NMFS is proposing its blanket speed restriction. A pilot may find it necessary – to alter the vessel's "crab angle" to combat the lateral forces of the winds and currents to keep the vessel safely in the channel. "Crabbing" requires the pilot to increase the vessel's speed on a moment's notice and to steer the vessel into the lateral forces, such as the wind and currents, which are working to effectively push the vessel off its intended course. Often the winds and currents are perpendicular to the entrance channels in the winter months when the NARW speed restrictions are in place. A significant amount of water flow over the rudder is required to maintain these crabbing angles and, in many instances, given the size of the vessels, the only method of ensuring adequate water flow is to speed up – frequently in excess of 10 knots. The below diagram illustrates the significance of "crabbing" in a narrow channel.



⁵ *A Career as a Ship Pilot, PROCEEDINGS OF THE MARINE SAFETY & SECURITY COUNCIL, THE COAST GUARD JOURNAL OF SAFETY AT SEA, Fall 2008, at 9*

⁶ Federal Navigation Channels are coastal channels and waterways that are maintained and surveyed by the U.S. Army Corps of Engineers (USACE). These channels are necessary transportation systems that serve economic and national security interests.



Due to the rapid growth in length, width, sail area, and draft of vessels calling at U.S. ports, concerns about the ability of pilots to safely navigate in narrow and challenging FNC waters has only increased since mandatory NARW speed restrictions began in 2008. In short, given the exponential growth of the ships calling at U.S. ports, the routine use of the navigation safety deviation clause is, out of necessity, becoming increasingly prevalent. See the below diagrams to see just how quickly vessels from various shipping sectors have grown over the years since the NARW speed restriction first entered into force.





NMFS’ proposed changes to the navigation safety deviation clause – perhaps purposefully – are so cumbersome and unwieldy that if imposed they would make the safety deviation clause unusable for pilots. What’s more, to date NMFS has not pointed to any concrete data that supports changing this safety deviation clause. In fact, NMFS has been unable to provide APA with a single confirmed incidence of a NARW being struck by piloted vessel in an FNC. Instead, NMFS’ support and rationale for changing the safety deviation clause seems entirely speculative.

Considering the Economic Impacts

The Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, requires an agency to consider the economic and other relevant impacts when acting to protect an endangered species. This was not done in NMFS’ proposal to amend the NARW vessel speed regulations. The courts have taken up this very issue. In *Bennet v. Spear*, the Court addressed the failure of the Secretary to “determine the critical habitat [for certain endangered species] without complying with the mandate of § 1533(b)(2) that the Secretary ‘tak[e] into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat’” under the ESA.⁷ By NMFS’s own admission, the agency does not have an accurate picture of the detrimental economic impact the proposed rule will have on the national, state, and local economies. The draft Regulatory Impact Review (RIR) significantly underestimates the direct economic impact of the proposed rule and fails to consider the qualitative impacts as required by EO 12866.⁸ The impact to pilot operations alone will be more than NMFS’ total projected economic impact as this rule will render most pilot boats along the East Coast obsolete and would require the acquisition of additional boats and the hiring of considerably more pilots, pilot boat crews and maintenance staff. NMFS’ RIR estimates that the economic impact for all East Coast pilot groups would be \$3,178,259, but our member pilot groups conservatively put

⁷ *Bennett v. Spear*, 520 U.S. 154 (1997).
⁸ EO 12866 s. 1.

the estimated cost at \$46,000,000 or more.⁹ In other words, NMFS underestimated the impact to East Coast pilot operations by a magnitude of at least 14.

Further, NMFS acknowledges in its RIR that “the impact analysis of the proposed rule focuses on direct impacts to affected vessel owners and operator” because much of the impacts on “producer and consumer surplus, changes in profits, employment in the direct and support industries” is unavailable.¹⁰ Troublingly, NMFS acknowledged during an August 24, 2022 webinar that they did not have or consider relevant economic data such as the economic impact on small boat operators, the impact to communities served by high speed ferries, the impact on off-shore fishing, and, most troubling, the impact to ports (which encompasses the impacts on pilots and pilot groups). It is particularly egregious that NMFS has yet to post this webinar, as it has done with all of its other virtual events.¹¹ Finally, NMFS disregards the benefit-cost analysis (BCA) – what it acknowledges as “the preferred method for analyzing the consequences of a regulatory action” – because the value of the right whale might not be adequately captured by people’s willingness to pay to protect these animals and because it would require more extensive research.¹²

The evidence to support what in this regulatory parlance is referred to as a “Need for Additional Action” is at best scant. Much more evidence is necessary to justify considering such a significant regulatory proposal. In justifying its “Need for Additional Action,” NMFS first acknowledges that its 2021 review determined that the existing “speed rule had made progress in reducing vessel strike risk.”¹³ Yet, NMFS concludes that more speed restriction regulations are needed despite acknowledging that “it is not possible to establish a direct causal link between speed reduction efforts and the relative decline in observed right whale mortality and serious injury events.”¹⁴ NMFS’ rationale is confused and self-conflicted. The agency starts by speculating that the existing speed restrictions have helped; but then states that there is no direct correlation between speed restrictions and the decline in right whale mortality; and finally ends with the puzzling conclusion that radical changes to the vessel speed restriction regulations – including geographic scope and vessel size applicability – are necessary.

This all begs the question, “are additional speed restrictions even needed?” NMFS speculates that more action is necessary “[b]ased on estimates of total right whale deaths” that NMFS estimates, based on conjecture, are only “approximately one-third of actual annual right whale mortality,” to conclude that a vast number of lethal NARW strikes go undetected.¹⁵ In plain words, NMFS uses an estimation of an estimation – a “guess-timation” – of total right whale deaths to imply that the same proportion of deaths apply to the narrower vessel strike cause of death.

Most alarming is that NMFS completely disregards the direct evidence it has that suggests that the existing Seasonal Management Areas (SMAs) are working. NMFS states “[s]trikes occur both inside and outside active SMAs, but in many cases, the location of the strike event remains unknown.”¹⁶ However, in the very next sentence NMFS acknowledges that there have been five vessel strikes by vessels under 65 feet, but only 1 of them was in the area outside the existing vessel restriction zones.¹⁷ This direct evidence is in

⁹ Had NMFS contacted and engaged East Coast pilot groups and APA prior to publishing its proposal, the economic impact would have been more accurate.

¹⁰ *Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule* (Office of Protected Resources National Marine Fisheries Service (NMFS) National Oceanic and Atmospheric Administration Department of Commerce, July 2022), s. 2.2 pps 14-15.

¹¹ NMFS has not yet posted the recording from its August 24, 2022 webinar. However, during that webinar, the NMFS Economist, Chao Zou-Garfo, acknowledged that economic data was not considered and/or needed for small boats (1857 EST), communities served by high-speed ferries (1859 EST), off-shore fishing (1921 EST), and ports (1925 EST). The recording for the August 16, 2022 webinar is available at the NOAA Fisheries, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule website at <https://www.fisheries.noaa.gov/action/amendments-north-atlantic-right-whale-vessel-strike-reduction-rule>.

¹² *Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule* at 15-16.

¹³ 87 Fed. Reg. at 46,924.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

direct contradiction to NMFS conclusion and justification for doubling the size of the SMAs. Curiously, NMFS does not provide location information on the other seven vessel strikes that occurred since 2008. Instead, NMFS goes back to speed data for six lethal collisions in U.S. waters since 1999 despite acknowledging that NMFS lacks vessel speed data associated with collision events in most cases.¹⁸ As far as speed data, the petition provides no concrete, nor updated, reason for a 10 knot or other speed restriction other than referring to a 2007 study that determined that the chance of whale fatality increased the most between the speeds of 10 to 14 knots.¹⁹

So, NMFS ignores its own direct evidence since 2008 showing that the existing SMAs are working and instead chooses to speculate that existing speed restrictions justify more speed restrictions. Further, NMFS relies on an estimate of an estimate of total right whale deaths to imply that a substantial percentage of vessel strike deaths are going undetected to justify additional action. NMFS relies on the sum of these various possibilities, while ignoring direct evidence to the contrary, to warrant the drastic expansion of existing mandatory ship-speed rule along the entire East Coast without exploring other alternatives, such as technology and increased dynamic speed zones.

Conclusion

APA and its members have been working closely with NOAA for over twenty years to protect the NARW. In fact, the very purpose of state compulsory pilotage is protecting the waters and marine environment while keeping maritime commerce moving safely and efficiently. This is a duty that every pilot takes to heart. Pilots care immensely about the waters and the marine environment as they work, live, raise their families, and recreate on the waters they pilot.

Again, we strongly urge you to consider the serious concerns that we have raised, convey them to NMFS, and urge NMFS to withdraw the proposed rulemaking as it is not consistent with Massachusetts's coastal zone management interests. APA and pilots up and down the East Coast remain committed to working with NMFS and others in the Federal and State governments to address these challenges and would welcome the opportunity to expand on our comments if necessary.

Respectfully,

Clayton L. Diamond

Clayton L. Diamond
Executive Director-General Counsel
American Pilots' Association

¹⁸ *Id.*

¹⁹ *Id.*



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October 28, 2022

Ms. Janet Coit
Assistant Administrator
NOAA Fisheries
1315 East West Highway
Silver Spring, Maryland 20910

RE: Comments to Proposed North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Assistant Administrator Coit:

On behalf of the Stellwagen Bank Charter Boat Association (SBCBA) whose membership includes the for hire fleet, recreational anglers and commercial fisherman that fish the state and federal waters of the northeast United States the following is in response to the proposed changes to the North Atlantic Right Whale Vessel Strike Reduction Rule. The SBCBA understands the importance of protecting endangered North Atlantic Right Whales to reduce vessel strikes. The substantial impact of the proposed vessel speed rule raises concerns about navigational safety and safety at sea, and lack of stakeholder engagement. As a result, we recommend that the National Marine Fisheries Service (NMFS) pause this rule until additional analysis on the issues expressed in this letter can be conducted, and potential new alternatives developed in collaboration with the fishing and boating industry.

With increased water temperatures and climatic shift of our stocks our fishing season extends more than ever within the months during the proposed speed restriction. This period corresponds with the seasons of some of our most popular recreational and commercial fisheries such as bluefin tuna, haddock, striped bass, black sea bass, tautog and summer flounder. It should also be noted that due to the distance to the Canyons a 10 knot speed limit and time to transit such a distance will result in boats not leaving the dock. Ultimately there is significant fishing effort that does not appear to have been considered with this proposed action that will have a significant economic impact on the recreational and commercial fishery and the entire blue economy that relies on such to make a living.



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The recreational boating industry generates approximately \$170 billion in annual economic impact per year with over 50 million American anglers fishing each year. The proposed rule represents a massive expansion in terms of time, spatial area and impacted vessels. The NMFS appears to agree with this assessment and states that the proposed rule “to be a major federal action subject to NEPA” and affecting “thousands of mariners along the U.S. East Coast.” NEPA defines an environmental assessment as detailed review of the proposed action on the purpose and expected outcomes. An Environmental Impact Statement includes a much more comprehensive review of all reasonable alternatives and a deeper analysis on the cumulative impacts from the proposed action and offers greater opportunities for public involvement. As a result SBCBA believes that it is appropriate to conduct an Environmental Impact Statement for this proposed rule. Clearly, it is in the interest of our industry to evaluate all possible alternatives in an open, transparent process.

A speed restriction of 10 knots in such a large area will all but eliminate the opportunity for thousands of anglers and/or vessels to undertake trips where weather windows can be very narrow. Such will also impact select vessels in the maritime industry that bus customers or ship materials in state and federal waters. 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 and all businesses that represent America’s small business economy. More deliberation and analysis is needed to determine if conservation goals could be achieved with less restrictive measures. A pause in rulemaking would provide opportunity to further evaluate the importance of those trade-offs detailed below.

As part of this proposed rule, Southwick and Associates analyzed the probability of a recreational fishing trip in the 35-65 ft. size class striking a Right Whale to better characterize realized risk (Appendix A). This analysis demonstrates that the chances of a recreational boat striking a Right Whale is exceedingly rare, it also shows that in general, the recreational fishing and boating sector does not pose a significant threat on an individual Right Whale level. Despite considerable boat activity, recreational boats are not interacting with Right Whales at a rate consistent with the NMFS risk model.



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NMFS attempting to predict risk on a one and a million chance of a vessel strike. Almost all the strike mortality events in the 35-65 vessel size class occurred within current seasonal speed zones (“SSZs”, as referenced in section 1) and higher mortality occurrences within current SSZs is expected because existing SSZs are bottleneck points for vessel traffic being centered around major Atlantic ports (see current SSZ Figure). This observation lends management to focus more on vessel traffic density on a spatial scale, not on the absolute number of trips.

NMFS’s technical memo states that, “the high densities predicted along the mid-Atlantic may not be realistic.” These inflated density values feed the risk assessment model and produce outcomes that are inconsistent with actual risk and the occurrence of known strikes. The model also served as a primary tool in the development of the proposed rule, thus, the density bias is reflected in those expansive measures. NMFS acknowledges that model development and evaluation is ongoing to address this source of bias. This needs to be addressed prior to moving forward with the proposed rule.

Further exploration of available datasets indicates the NEPA Environmental Analysis (EA) underestimates the number of anglers, boaters, and economic impact associated with the proposed rule. SBCBA recommends that NMFS address shortcomings of the EA through more thorough investigation of the number of vessels impacted, speeds needed for offshore trips to be viable, and the true costs and economic impacts of the lost fishing opportunities associated with Alternative 5, as they clearly exceed the \$1.2 million claimed.

The proposed rule appears to argue that extending speed restrictions to smaller vessels will help address safety concerns as vessel strikes pose a threat to human life. The SBCBA values minimizing safety concerns from strike occurrences, but given the rarity of vessel strikes in the 35-65 ft. size class, we expect more safety concerns and threats to human life will occur from the proposed vessel speed restrictions, due to forcing boaters to spend more time on the water in potentially unsafe conditions, than the highly improbable chances of striking a Right Whale.

The SBCBA recommends that the NMFS conduct a thorough evaluation of impacts to the human environment, however, the Draft Regulatory Impact Review (RIR) provides conflicting economic analyses for benefits



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versus impacts. The RIR includes no indirect impact analysis, but indirect benefits from whale watch operators. The SBCBA questions that NMFS was unable to compile any indirect economic impact information for recreational vessels especially when NMFS regularly publishes a Fisheries Economics of the United States report. These points highlight the need to revisit to make it more consistent with the intent of the law.

NMFS provides a safety deviation provision as part of the proposed rule. The deviation provision is only applicable to vessels less than 65 ft., allowing those vessels to transit at speeds greater than 10 knots within areas where a National Weather Service Gale Warning, or other National Weather Service Warning for wind speeds exceeding those that trigger a Gale Warning is in effect. The [National Weather Service](#) defines Gale force wind speeds at 39 to 46 mph. SBCBA questions how NMFS arrived at a Gale force threshold. Typically vessels 35 to 65 ft. cannot operate safely at 10 knots during wind speeds exceeding approximately 25mph. Therefore, the SBCBA suggests NMFS lower the wind speed deviation threshold to 25-31mph to ensure safe vessel operation at sea.

Many boats lack high displacement hull design that often provides ocean going and commercial vessel stability and the ability to operate safely in significant sea states. Vessels utilize speed to conduct fishing and other trips during weather windows of opportunity. Vessels forced to not exceed a 10 knot speed limit during high winds and nasty weather, results in conditions that would compromise safety of the passengers and vessel. Speed is also a safety asset in the event of localized weather events such as thunderstorms where a vessel could return to port or avoid a line of thunderstorms with the ability to operate above 10 knots. The proposed rule would unfairly deprive a primary safety feature of boats 35 ft. and larger.

Operating at speeds that do not exceed 10 knots, for most recreational boats, forces the vessel to operate at a less than optimal speed and angle of attack. Operating at these speeds raises the bow which reduces the visibility of the operator to see and avoid hazards in the water, including Right Whales. Most recreational boats have hull designs that allow the boat to ride level when on plane. Operator visibility is optimized when a boat is on plane. The proposed rule may actually have the unfortunate consequence of reducing operator visibility and elevating the risk of collisions.



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Pausing the rule would provide opportunity to address the technology that can deliver real-time monitoring to protect Right Whales. From direct observations, aerial surveillance, acoustic detection, heat signature technology, satellite monitoring and ambient DNA signatures found water samples, it is feasible to gather real-time location information on a significant portion of the Right Whale population. Outreach is recommended with the fishing and boating community detailing ways they can provide direct observations of Right Whales to NOAA.

The SBCBA welcomes developing ways to provide real-time positioning on navigational hazards, including Right Whales, to vessel operators. The SBCBA also supports this approach because it applies empirically based targeted precaution instead of excessively severe measures. Developing ways to distribute this information to vessel operators will only occur through direct engagement with the industry, fishing, and boating organizations.

The SBCBA is sensitive to the status and outlook of the North Atlantic Right Whale population and do not want to contribute to mortality of Right Whales due to vessel strikes. The magnitude of the proposed rule warrants careful consideration to ensure that a practical, enforceable and realistic plan is put in place to address the declining Right Whale population. Consistent with above, we recommend that the NMFS pause this rule until additional analysis on the issues expressed in this letter can be conducted via an Environmental Impact Statement with resulting alternatives developed in collaboration with the fishing and boating industry to protect the Right Whale population.

If you have any questions or comments, please contact us at the email below.

Very truly yours,

Capt Timothy Brady

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SBCBA, Vice President
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Capt Rick Golden

Capt. Rick Golden
SBCBA, Secretary



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Ron Amidon, MassF&G
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COMMONWEALTH OF MASSACHUSETTS
THE GENERAL COURT
STATE HOUSE, BOSTON 02133-1053

July 19, 2024

Richard Spinrad, Administrator
NOAA/National Oceanic and Atmospheric Administration
1401 Constitution Avenue NW, Room 5128
Washington DC 02030

Dear Administrator Spinrad:

We write to express our and our constituents' viewpoints regarding the proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule. The North Atlantic Right Whale has immense ecological, cultural, and economic importance to the Commonwealth and the residents of Cape Cod, Martha's Vineyard, and Nantucket. With only 360 whales remaining, sustained and effective conservation efforts are essential to reverse centuries of destruction. Massachusetts is committed to ensuring that these efforts move forward and are successful. However, the proposed application of the mandatory 10-knot speed restrictions for vessels between 25 and 65 feet in length in Nantucket Sound, Vineyard Sound, and Cape Cod Bay without a mechanism to lift the speed restriction when Right Whales are not present in those areas would impose severe economic hardship while not furthering the goal of reducing ship strikes. The economic impacts would burden and threaten the very viability of residents of Cape Cod and the Islands, many of whom are already struggling to "make it" in the challenging economic and housing environment.

Nantucket Sound is the crucial transit route connecting Nantucket and the mainland. Both freight and fast-ferry service from Hyannis to Nantucket are essential to maintaining the year-round population's ability to make a life on the Island. Home heating fuels, groceries, medical supplies, building materials, and gasoline are shipped to the island daily through Nantucket Sound. Traditional ferry and fast-ferry services are also required to enable the essential workforce to commute to the Island regularly. The Town cannot sustain itself year-round should Nantucket Sound be included in the Seasonal Management Area under these amendments. As envisioned, the application of a Seasonal Speed Zone to Nantucket Sound would reduce the number of daily freight ferry trips by a third and eliminate fast-ferry service. The economic impact onshore would be crippling to the Island.

Beyond the economic impact on the island, the implementation of the Seasonal Speed Zone would pose a grave risk to public health and public safety. Off-island medical transport which relies in part on fast ferry service would be dramatically curtailed. Lengthened transport times are a substantial risk to future patients who will need to be moved off island. These speed

controls would also dramatically slow response time for first responders answering mutual aid calls to on island emergencies, lengthening response times from neighboring Cape-based emergency services to hours.

Vineyard Sound is similarly situated as the primary transit route connecting Martha's Vineyard and the mainland. While the reduction in ferry and freight service is not as profound, the impact on shoreside jobs and businesses is great. A decrease in ferry service to Martha's Vineyard will further strain an already heavily utilized ferry system. Beyond the immediate reduction in service, the Woods, Hole, Martha's Vineyard and Nantucket Steamship Authority projects a loss of revenue that would require fare increases to maintain its remaining services. This will come as an increased cost to Islanders who must regularly travel off island and have no alternative transportation options.

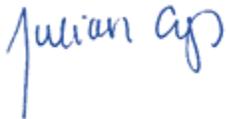
The impacts of the proposed amendments are not solely limited to island communities only reachable by ferry and air service. The extended Seasonal Speed Zone limitations in Cape Cod Bay will have deep negative impacts on the communities of the outer Cape from Orleans to Provincetown. Every day, residents and visitors to the outer Cape communities travel by ferry to get to work, go to doctor's appointments, or to connect with friends and families. Of course, thousands of tourists also choose to leave their cars at home and enjoy the 100-minute ride to and from Boston to Provincetown. The proposed speed restriction would turn that 100-minute ride into a five-hour trip, effectively putting the ferries out of business. The impact on the local economy would be dramatic. The Town of Provincetown alone estimates an economic loss of up to \$100 million to the local economy if the ferry services were to be subjected to these restrictions. The loss or reduction of these services to Provincetown and the outer Cape would further exacerbate existing traffic congestion in the area.

Massachusetts has always led the way and has already made effective management decisions in order to ensure the safety of the North Atlantic Right Whale during the time of year they are feeding in Cape Cod Bay. All vertical lines are out of the water, and protective speed restrictions are in place. Massachusetts has for years maintained active monitoring of the North Atlantic Right Whale populations in Cape Cod Bay including the use of spotter planes to conduct regular surveys and reports on the number, status, and location of North Atlantic Right Whales in our waters. Only when the last Right Whales have left the bay are speed restrictions lifted and fixed gear fishers allowed to deploy their gear.

Careful reconsideration must also be given to the policy of mandatory slowdowns for a two-week period any time a Right Whale is "heard" with acoustic monitoring devices. The developers of these devices themselves admit that the buoys can neither determine the number nor the location of the Right Whales when detected and serve more for information gathering than active monitoring. In summer months, there are thousands of sighting resources including whale watching, fishing, and recreational vessels. In the air, there are spotter, commercial, and recreational airplanes over Cape Cod Bay. Even with all of these "eyeballs on the waters, there has never been a sighting of a Right Whale in Cape Cod or Massachusetts Bay at that time, yet the buoys hear pings. We ask that in the full consideration of these proposed amendments the mandatory two-week slowdowns not be triggered by these acoustic devices.

We support sustained and effective conservation efforts that protect the Right Whale and are proud that Massachusetts has pioneered many of the policies being considered for much of the Eastern Seaboard. Using methods DMF currently has in place in Cape Cod Bay in Nantucket Sound and other impacted waters can serve as a viable alternative to the proposed speed restrictions, providing the ability to lift the restriction if Right Whales are not present in the area. We would encourage the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the Department of Commerce to continue to robustly engage with the Commonwealth, the Healey-Driscoll Administration, and local communities to explore this option as an alternative to the proposed implementation of the amended rule. We are confident that in working together, we will be able to implement measures that effectively protect the North Atlantic Right Whale, while also minimizing deleterious impacts on Cape Cod, Martha's Vineyard, and Nantucket.

Respectfully,



Julian Cyr
State Senator
Cape & Islands



Sarah K. Peake
State Representative
4th Barnstable



David T. Vieira
State Representative
3rd Barnstable



Dylan Fernandes
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