



August 30, 2024

Shannon Bettridge
NOAA Fisheries Office of Protected Resources
1315 East-West Highway
Silver Spring, MA 20910

RE: CZMA Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule, HQ5-1S22-0GKB5
Charleston County

Dear Shannon Bettridge:

This Coastal Zone Consistency review is in response to the U. S. Department of U. S. Department of Commerce National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA NMFS) Coastal Zone Consistency Determination submitted to South Carolina Department of Environmental Services, Bureau of Coastal Management (SCDES-BCM) on June 18, 2024. SCDES BCM's review began on June 18, 2024. SCDES BCM was granted a 15-day review extension on August 16, 2024, due to the extent of public comment received and the impacts of Tropical Storm Debby.

SCDES BCM is in support of efforts to protect the North Atlantic Right Whale population. However, for the reasons discussed herein, we do not concur with NOAA NMFS's determination that the proposed amendments to the rule are consistent to the maximum extent practicable with the enforceable policies of South Carolina's Coastal Zone Management Program. The SC General Assembly tasked SCDES BCM with the basic policy to protect both the environment and to promote the economic improvement of the coastal zone and the people of South Carolina¹. Therefore, we must object to the consistency determination.

The proposed federal action by NOAA NMFS consists of a proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule ("speed rule"). NOAA NMFS evaluated five alternatives as part of the proposed amendment:

- Alternative 1 (No Action Alternative) would not change the status quo. No action would be taken and vessel speed regulations along the U.S. East Coast would continue as is under 50 CFR 224.105.
- Alternative 2 would restrict the speed of most vessels ≥ 35 ft in length and < 65 ft in length to 10 knots or less within existing SMAs, as defined in North Atlantic right whale vessel speed regulations at 50 CFR 224.105. This action alternative would not apply to U.S. vessels owned or operated by, or under contract to the Federal Government or law enforcement vessels of a State, or political subdivision thereof,

¹SC Code of Ann. § 48-39-30(A) The General Assembly declares the basic state policy in the implementation of this chapter is to protect the quality of the coastal environment and to promote the economic and social improvement of the coastal zone and of all the people of the State.

when engaged in law enforcement or search and rescue duties, as defined at 50 CFR 224.105 for vessels \geq 65 ft in length.

- Alternative 3 would modify the spatial and temporal boundaries of the existing SMAs (Figure 2) to create newly proposed SSZs (Figure 1). Most vessels $>$ 65 ft in length would be required to restrict their speed to 10 knots or less within these new boundaries when the SSZs are active, as defined in North Atlantic right whale vessel speed regulations at 50 CFR 224.105(a).
- Alternative 4 would restrict the speed of most vessels \geq 35 ft in length and $<$ 65 ft in length to 10 knots or less within existing SMAs, as detailed in Alternative 2, in addition to establishing a new mandatory DSZ program. 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.
- Alternative 5 (Preferred Alternative) would modify the spatial and temporal boundaries of the existing SMAs to the proposed SSZs, add vessels \geq 35 ft in length and $<$ 65 ft in length to the vessels size class subject to speed regulation (50 CFR 224.105(a)), and establish a mandatory DSZ program. Speed restrictions within designated DSZs would apply to the same vessels subject to speed restriction within SSZs.

NOAA NMFS proposed rule would: (1) modify the boundaries and timing seasonal speed restrictions (renamed as Seasonal Speed Zones or SSZs) to better align with areas characterized by elevated collision-related mortality risk; (2) create a Dynamic Speed Zone (DSZ) program to implement temporary mandatory speed restrictions when whales are known to be present outside active SSZs; (3) extend the size threshold of regulated vessels to include most vessels 35 ft (10.7 m) or greater in length; and (4) update the speed rule's safety deviation provision. The proposed changes were designed to address the risk of ongoing lethal strikes in U.S. waters, including strike events that have occurred within state coastal waters. The amendments are state to be informed by a coastwide collision mortality risk assessment, and updated information on North Atlantic right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events.

Pursuant to 15 C.F.R. § 930.4 SCDES BCM objects with the determination that the project is consistent to the maximum extent practicable with the enforceable policies contained within the S. C. Coastal Zone Management Program (SCCZMP) pursuant to 15 C.F.R. § 930.41. This objection is based upon the review of the Guidelines for Evaluation of All Projects as well as the Activities in Areas of Special Resource Significance (*Navigational* Channels) policies contained in the SCCZMP. Specifically, SCDES BCM finds the proposed amendment inconsistent with:

**Coastal Zone Management Program Chapter III. C. Uses of Management
Concern. 3. Resource Policies, Guidelines for the Evaluation of All Projects**

5) The extent to which the project includes consideration for the maintenance or improvement of the economic stability of coastal communities.

**Coastal Zone Management Program Chapter III. C. Uses of Management
Concern. 3. Resource Policies. Section II. Transportation Facilities A. Ports**

9) Potential negative impacts on navigation which might restrict port and harbor activities in the area will be considered in evaluation of permits for marinas, docks and piers, transportation facilities (especially bridges), cables and pipelines and other relevant activities.

Coastal Zone Management Program Chapter III. C. Uses of Management Concern. 3. Resource Policies. Section XII. Activities in Areas of Special Resource Significance C. Navigational Channels

3) The South Carolina State Ports Authority, as mandated under Section 15(A)(2) of the Coastal Management Act, shall review applications for permits in navigable waterways in the critical areas and certify prior to the issuance of such permit that the project or activity would not unreasonably interfere with commercial navigation.

In review of the public comments received from South Carolina State Ports Authority, Savannah River Maritime Commission, the South Carolina Department of Natural Resources, the South Carolina Commissioners of Pilotage, South Carolina Attorney General Alan Wilson, and the United States Senators from South Carolina, North Carolina, and Florida, among others, with the submitted consistency determination, Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis, and Draft Environmental Assessment for Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, the proposed amendment reasonably foreseeable negative effects on large commercial and recreational vessel navigability, disproportionately impact recreational fishing in the Southeast with the inclusion of vessels larger than 35 feet which supports our local coastal community economies, effect the maneuverability of large commercial and pilot vessels which has the potential to negatively impact the movement of goods while also raises safety concerns for the transfer of the harbor pilots to those large commercial vessels in the port of Charleston and Savannah which effect the greater state-wide economy. These comment letters are incorporated and attached as part of the SCDES BCM consistency review.

SCDES BCM understands the complexities of balancing coastal resource uses and management for protected species. NOAA NMFS provided five alternatives to potentially further reduce vessel strikes on North Atlantic Right Whales. The Preferred Alternative was the most impactful and restrictive of those five. Should NOAA NMFS elect to utilize any of the four remaining alternatives or should NOAA NMFS elect to move forward with the Preferred Alternative, then NOAA NMFS should notify SCDES BCM.

Please contact me if you have any questions regarding the Speed Rule and SCDES BCM's objection. It is our intention to work with the NOAA NMFS to address any concerns that you may have so that the Speed Rule can be consistent with the enforceable policies of the SCCZMP.

Sincerely,



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Cc: Ms. Myra Reece, Interim Director, SC Department of Environmental Services
Dr. Jeff Payne, Director, NOAA Office for Coastal Management
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Ms. Caroline Good, NOAA Fisheries Office of Protected Species