



COMMONWEALTH of VIRGINIA
Office of the Governor

Travis A. Voyles
Secretary of Natural and Historic Resources

August 30, 2024

Dr. Richard Spinrad
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue NW
Washington, D.C. 20230

Re: North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Administrator Spinrad:

As Secretary of Natural and Historic Resources for the Commonwealth of Virginia, I write today in strong opposition to the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule.

As part of the Federal Consistency Determination (FCD) for the proposed rule, the Commonwealth of Virginia through the Virginia Department of Environmental Quality has formally objected to the proposed rule due to our finding that it is inconsistent with the marine fisheries and wildlife and inland fisheries enforceable policies of the Virginia Coastal Zone Management (CZM) Program. Therefore, I urge you to withdraw this rule until additional consideration and analysis on the issues expressed in the Commonwealth's review and objection of the FCD can be conducted.

While this intended action aims to safeguard marine life, the proposed rule would have unintended and detrimental consequences to critical economic activities and the utilization of our fisheries, endangering vessels operating off our coasts and throughout the waters of the Commonwealth. A wide variety of Virginia specific and national stakeholder groups have expressed their discontent with the proposed rule, reflecting the broad consensus on the uncertainty around the justification for the proposal and effectiveness of the implementation. In addition to specific comments from our natural resource agencies representing Virginia, other groups with strong ties to Virginia that have detailed their opposition include the Port of Virginia, the Virginia Maritime Association, the American Pilots' Association, the Virginia Pilot Association, the Virginia Legislative Sportsmen's Caucus, and many other individuals and groups representing fishing, shipping, and marine industries.

The implementation of this proposed rule in the Commonwealth would have a far-reaching impact, even beyond our waters. Virginia's ports and waterways are among the most significant in the nation, with the Port of Virginia serving as critical gateways for the movement of goods across the country as the third largest container port and the fastest growing on the Atlantic Coast. Virginia is also home to one of the oldest seafood industries in the United States, the nation's fourth largest producer of marine products, and the largest seafood production state on the East, with an annual economic impact of over one billion

dollars. This, along with a vibrant recreational and charter fishing industry, represent just a portion of the critical economic activities that will be unnecessarily impacted by this misguided action.

Despite claims that the proposed rule is consistent with state policies regarding coastal uses related to recreational and commercial fishing and coastal resource management, the justification for the proposed rule lacks the necessary supportive scientific, economic, and sociological information. Without these details, the proposed rule continues to present a merely speculative outlook. For example, after a simple review it is evident there may be seasonal economic impacts to the fishing industry by increased transit times to fishing areas in federal waters. Additionally, NOAA has not ensured the proposal has properly accounted for vessel and crew safety, disregarding the fact that certain likely impacted watercraft are not designed to operate within the lower speed limit and that forcing slower maneuvering speeds for large vessels would add unnecessary safety hazards for mariners and the public.

Finally, even if the proposed rule were to be consistent with the Commonwealth's enforceable policies, there remains a serious issue regarding enforceability. NOAA's proposal relies on automatic identification systems (AIS) to monitor compliance for vessels under 65 feet remotely. Most affected vessels fall into this category and are not required to carry AIS, necessitating real-time enforcement by law enforcement vessels. By its own acknowledgment, NOAA has determined that only approximately 20 percent of vessels within that size range have AIS in place. Without accompanying financial support from the federal government, the Commonwealth would be unable to implement real-time enforcement of such new regulations on NOAA's behalf.

As the primary law enforcement agencies with jurisdiction of state waters, the Virginia Marine Resources Commission (VMRC) and the Virginia Department of Wildlife Resources (DWR) do not patrol federal waters and lack offshore-capable vessels, and NOAA lacks on-the-water enforcement capabilities. Therefore, it is unclear how the rule would be enforced. If enforcement is limited, compliance will be poor, and collision risk will not be reduced, while those vessels that comply will suffer the negative impacts of the proposed rule. Without enforcement, there is little ability to affirm that requiring these vessels to operate at reduced speeds will result in the desired strike reduction outcome.

As evident in the enclosed letter further detailing the Commonwealth's objection to NOAA's proposal rule through the Federal Consistency Determination (FCD), there are numerous unintended and detrimental consequences influencing the inconsistency with Virginia's enforceable policies. More deliberation and analysis are needed to determine if conservation goals could be achieved with less restrictive measures. Unless new potential alternatives developed in collaboration with the impacted industries and stakeholders are considered, the Commonwealth of Virginia will continue to object to the proposed rule.

Thank you for your consideration of this formal objection to the proposed rule, and we are committed to continuing to work with NOAA towards a better approach to conserving the North Atlantic Right Whale in a manner that also ensures safe access and utilization of our coastal resources.

Sincerely,



Travis A. Voyles
Secretary of Natural and Historic Resources

Enclosed: DEQ Objection to the Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule (Speed Rule) (DEQ 24-098F)



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

August 29, 2024

Ms. Caroline Good
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Sent via email: caroline.good@noaa.gov

RE: National Oceanic and Atmospheric Administration National Marine Fisheries Service
Federal Consistency Determination: **Objection** to the Proposed Rule to Amend the North
Atlantic Right Whale Vessel Strike Reduction Rule (Speed Rule) (DEQ 24-098F)

Dear Ms. Good:

The Commonwealth of Virginia has completed its review of the federal consistency determination (FCD) for the above-referenced project. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of FCDs and responding on behalf of the Commonwealth. This letter is in response to the FCD that was submitted on June 18, 2024 for the proposed rule to amend the North Atlantic Right Whale Vessel Strike Reduction Rule (Speed Rule). The Commonwealth of Virginia **objects** to the proposed federal action because it is inconsistent with the marine fisheries and wildlife and inland fisheries enforceable policies of the Virginia Coastal Zone Management (CZM) Program due to a lack of sufficient information. Please see the Federal Consistency Objection section below for more details. The following agencies participated in this review:

Virginia Marine Resources Commission (VMRC)
Department of Wildlife Resources (DWR)

PROJECT DESCRIPTION

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) is proposing amendments to the existing North Atlantic right whale (NARW) vessel speed rule. NOAA NMFS states that the amendments would further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel strikes, which are a

leading cause of the species' decline. The proposed rule would: (1) modify the boundaries and timing of 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 feet or greater in length; and (4) update the speed rule's safety deviation provision. NOAA NMFS states that changes are needed to stabilize the ongoing North Atlantic right whale population decline and prevent the species' extinction. The proposed changes are designed to address the risk of ongoing lethal strikes in U.S. waters, including strike events that have occurred within state coastal waters. The FCD states that the amendments were 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.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

This FCD 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 inside or outside of Virginia's designated coastal management area that can have reasonably foreseeable effects on coastal resources or coastal uses must, to the maximum extent practicable, be implemented in a manner consistent with the Virginia CZM Program. The Virginia CZM Program consists of a network of programs administered by several agencies. In order to be consistent with the Virginia CZM Program, the project activities must be consistent to the maximum extent practicable with the enforceable policies of the Virginia CZM Program and all the applicable permits and approvals listed under the enforceable policies of the Virginia CZM Program must be obtained prior to commencing the project. DEQ coordinates the review of FCDs with agencies administering the enforceable and advisory policies of the Virginia CZM Program.

FEDERAL CONSISTENCY OBJECTION

Pursuant to 15 CFR 930.43(b), the Commonwealth of Virginia objects to NOAA NMFS' consistency determination based on insufficient information pertaining to the marine fisheries enforceable policy that is administered by the Virginia Marine Resources Commission (VMRC) and the wildlife and inland fisheries enforceable policy that is administered by the Department of Wildlife Resources (DWR).

DEQ received the FCD and necessary information on June 18, 2024, which is the date that the review commenced. The date that DEQ's decision was originally due was August 16, 2024. Due to a 15-day review period extension pursuant to §930.41(b) of the federal consistency regulations

as discussed with NOAA NMFS (telephone call, Julia Wellman/Caroline Good, August 7, 2024), the revised due date for DEQ's decision is August 30, 2024.

Inconsistency with Enforceable Policies

The VMRC evaluated the proposed action and has determined that insufficient data is available to quantify coastal effects on the marine fisheries enforceable policy. Therefore, the VMRC deems that this project is inconsistent with the marine fisheries enforceable policy because the justification for the proposed rule lacks scientific, economic, and sociological information for the VMRC to decide. The proposed rule will negatively impact and underestimate the effect on the commercial and for-hire recreational fishing businesses as it directly impacts the economic value of their respective sectors. The socioeconomic analysis in the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis (DRIR) primarily relies on automatic identification system (AIS) data from 2020-2021 and voluntary participation in the Dynamic Management Area/Slow Zone (DMA/SZ) to assess vessel activity. This approach is neither comprehensive nor accurate for estimating vessel activity in these sectors.

On July 29, 2024 (email, Julia Wellman/Caroline Good), DEQ requested additional information from NOAA NMFS per VMRC's letter, which also described the necessity for the additional information to determine consistency with the marine fisheries enforceable policy. VMRC states that the NOAA NMFS' analysis lacks any state, federal fishing footprint, or private data regarding the operations and locations of Virginia's commercial or for-hire recreational sectors. The reliance on federally reported data is insufficient for the basis of rulemaking. Therefore, VMRC recommends utilizing a more robust socioeconomic model that can be built by the NOAA National Centers for Coastal Ocean Science (NCCOS) using more data sources than AIS. This model should be informed by sources such as federal fishing footprint data, state-derived fishing data, and private fishing data for the commercial, for-hire, and recreational sectors. Additional information is available for consideration in the marine fisheries enforceable policy section below.

The DWR has evaluated the proposed action and finds it to be inconsistent with the wildlife and inland fisheries enforceable policy, particularly with respect to the conservation and protection of endangered and threatened species (Code of Virginia, Article 6, Chapter 5, Title 29.1). Specifically, there are insufficient data provided in the proposed rule and consistency determination to determine whether the proposed action aligns with this enforceable policy. Additional information and further study on the impacts of "light draft" (35-65 ft.) vessels on NARW are needed. The justification for the proposed rule lacks enforceability and indication of whether or not it will have the impact intended. The DWR also requests NOAA's implementation and enforcement plans for the proposed action. Additional information is available for consideration in the wildlife and inland fisheries enforceable policy section below.

On August 15, 2024 (email, Julia Wellman/Caroline Good), DEQ asked NOAA NMFS to respond to DWR's information request and submitted a reminder for NOAA NMFS to respond to VMRC's information request. DWR's letter described the requested information and the necessity for the additional information to determine consistency with the wildlife and inland fisheries enforceable policy.

Description of Enforceable Policies

The marine fisheries enforceable policy states that it is the policy of the Commonwealth to conserve and promote the seafood and marine resources of the Commonwealth, including fish, shellfish and marine organisms, and manage the fisheries to maximize food production and recreational opportunities within the Commonwealth's territorial waters. Marine fishery management shall be based upon the best scientific, economic, biological, and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement. In support of this policy, any activity in the Commonwealth's tidal waters must:

- A. Achieve optimum yield from fisheries without engaging in overfishing.
- B. Not negatively impact the short and long term viability of the Blue crab stock in Virginia.
- C. Protect spawning stock, nursery areas and habitat.
- D. Not encroach upon the natural oyster beds, rocks, and shoals of the Commonwealth, which shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth.
- E. Engage in the planting or propagating of oysters only on assigned leases (i) that are not on waterfront that is already assigned or reserved for the riparian owners, (ii) on the beds of the bays, rivers, and creeks and shores of the sea lying outside the limits of navigation projects adopted and authorized by Congress and not required for the disposal of materials dredged incident to the maintenance of such projects, and (iii) on grounds other than the Commonwealth's natural oyster beds, rocks, or shoals held in trust for the benefit of the public.
- F. Not encroach upon the lawful use and occupation of previously leased ground for the term of the lease unless exercising riparian rights or the right of fishing.

Citations: Va. Code Ann. §§ 28.2-101, -201, -203, -203.1, -225, -551, -600, -601, -603 -618, and -1103, -1203 and the Constitution of Virginia, Article XI, Section 3.

The threatened and endangered species section of the wildlife and inland fisheries enforceable policy states that no person shall harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, possess, collect, transport, sell or offer to sell, or attempt to do so, any species of fish or wildlife listed as threatened or endangered by the Board of Game and Inland Fisheries, except:

- A. for zoological, educational, or scientific purposes and for propagation of such fish or wildlife in captivity for preservation purposes, when such actions will result in long-term survival benefits to such species; or
- B. when incidental to other lawful actions and where the species will accrue long-term survival benefits from measures implemented in concert with or as mitigation for the incidental take; or
- C. actions affecting a designated experimental population of said species, when such actions are taken in the context of implementing an approved Conservation Plan for the species; or
- D. possession, breeding, sale, and transport of nonnative wildlife listed as threatened or endangered by the United States Secretary of the Interior pursuant to provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), as amended, when (i) the federal designation does not specifically prohibit such possession, breeding, selling, or transporting and (ii) the nonnative wildlife is not listed by the Board of Game and Inland Fisheries as a predatory or undesirable species because its introduction into the Commonwealth would not be detrimental to the native fish and wildlife resources of Virginia.

Citation: Code of Virginia, Article 6, Chapter 5, Title 29.1

Additional Coordination and Notification

Pursuant to §930.43(d), the Commonwealth encourages NOAA NMFS to work with VMRC, DWR and DEQ to resolve the issues raised with the proposed rule. If NOAA NMFS intends to use the dispute resolution mechanisms as provided within the federal consistency regulations, the Commonwealth requests that NOAA NMFS notify DEQ as soon as possible. Pursuant to §930.43(e), if NOAA NMFS decides to proceed with implementing the proposed rule as objected to by the Commonwealth, NOAA NMFS must notify DEQ of its decision to proceed before doing so.

PUBLIC PARTICIPATION

In accordance with 15 CFR §930.2, a public notice of this proposed action was published in the DEQ Office of Environmental Impact Review Program Public Notice Bulletin and on the DEQ website from June 24, 2024 to August 2, 2024. The original public comment period was June 24, 2024 to July 18, 2024. On July 16, 2024, DEQ extended the public comment period by 15 days due to a request.

During the public comment period, DEQ received 22 comments. Four additional public comments were received on August 4, 2024; these comments are included in the chart below

since they were identical to form letter comments received within the public comment period. The public comments are attached.

Public Comments		
Comments	Commenters	Response
DEQ should object to the project or state that the project is inconsistent with the enforceable policies. The proposed rule is inconsistent with the enforceable policies.	American Pilots' Association (Brendan O'Shea, Clayton Diamond), Andrew Comstock, Berry Muller, Brennan Hart, Butch Williamson, George Green, Heather Lougheed, James Adams, Jason Seward, Jim Beale, Kelly Bobek, Kim Carter, Mark Huddleston, Phil Elliott, Robert Pride, Ronald Marciszyn, Scott Mond, Sheryl Williamson, Stacey Youngdale, Thomas Johnson, Port of Virginia (Andrew Sinclair), Bi-Partisan Virginia Legislative Sportsmen's Caucus (Delegate Hyland F. "Buddy" Fowler, Jr.)/Congressional Sportsmen's Foundation (Kaleigh Leager), Virginia Maritime Association (Will Fediw, David White), Virginia Pilot Association (Captain Whiting Chisman, Frank Rabena), Volvo Penta of the Americas (Christopher M. Clements)	See the Federal Consistency Objection section for additional information.
The proposed rule creates negative economic impacts.	American Pilots' Association (Brendan O'Shea, Clayton Diamond), Andrew Comstock, Berry Muller, Brennan Hart, Butch	Economic impacts are discussed in the Marine Fisheries section. VMRC states that the proposed rule is inconsistent

	<p>Williamson, George Green, Heather Lougheed, James Adams, Jason Seward, Jim Beale, Kelly Bobek, Kim Carter, Mark Huddleston, Phil Elliott, Robert Pride, Ronald Marciszyn, Scott Mond, Sheryl Williamson, Stacey Youngdale, Thomas Johnson, Port of Virginia (Andrew Sinclair), Bi-Partisan Virginia Legislative Sportsmen’s Caucus (Delegate Hyland F. “Buddy” Fowler, Jr.)/Congressional Sportsmen’s Foundation (Kaleigh Leager), Virginia Maritime Association (Will Fediw, David White), Virginia Pilot Association (Captain Whiting Chisman, Frank Rabena), Volvo Penta of the Americas (Christopher M. Clements)</p>	<p>with the marine fisheries enforceable policy due to insufficient data. VMRC states that the review of the public comments creates additional concerns for the VMRC related to utilizing the best available data to avoid and minimize impacts on the recreational and commercial fishing and seafood sectors. VMRC’s complete public comment response letter is attached.</p>
<p>The proposed rule is burdensome and complicated. There are concerns about enforceability.</p>	<p>American Pilots’ Association (Brendan O’Shea, Clayton Diamond), Port of Virginia (Andrew Sinclair), Virginia Maritime Association (Will Fediw, David White), Virginia Pilot Association (Captain Whiting Chisman, Frank Rabena)</p>	<p>VMRC and DWR state that the proposed rule is inconsistent with the marine fisheries and wildlife and inland fisheries enforceable policies, respectively, due to insufficient data. Enforceability concerns are discussed in the Marine Fisheries and Wildlife and Inland Fisheries sections. VMRC’s complete public comment response letter is attached.</p>

<p>NOAA NMFS did not use appropriate or relevant data and analysis to justify the proposed rule.</p>	<p>American Pilots’ Association (Brendan O’Shea, Clayton Diamond), Port of Virginia (Andrew Sinclair), Virginia Pilot Association (Captain Whiting Chisman, Frank Rabena), Volvo Penta of the Americas (Christopher M. Clements)</p>	<p>VMRC and DWR state that the proposed rule is inconsistent with the marine fisheries and wildlife and inland fisheries enforceable policies, respectively, due to insufficient data. Data and analysis needs are discussed in the Marine Fisheries and Wildlife and Inland Fisheries sections.</p> <p>VMRC states that the review of the public comments creates additional concerns for the VMRC related to utilizing the best available data to avoid and minimize impacts on the recreational and commercial fishing and seafood sectors. VMRC’s complete public comment response letter is attached.</p>
<p>The proposed rule will not protect the whales. NOAA NMFS should pursue alternative methods to protect the North Atlantic Right Whale.</p>	<p>Matt Waddell, Bi-Partisan Virginia Legislative Sportsmen’s Caucus (Delegate Hyland F. “Buddy” Fowler, Jr.)/Congressional Sportsmen’s Foundation (Kaleigh Leager), Virginia Maritime Association (Will Fediw, David White), Virginia Pilot Association (Captain Whiting Chisman, Frank Rabena)</p>	<p>DWR states that the proposed rule is inconsistent with the wildlife and inland fisheries enforceable policy due to insufficient data. The protection of NARW is addressed in the Wildlife and Inland Fisheries section.</p>
<p>The proposed rule will negatively impact the Port of Virginia and other ports along the East Coast, specifically as it relates to port efficiency.</p>	<p>Port of Virginia (Andrew Sinclair), Virginia Maritime Association (Will Fediw, David White)</p>	<p>The operation of ports is outside the legal scope of the state’s review under the federally approved enforceable policies of the</p>

		<p>Virginia Coastal Zone Management Program. However, the advisory policies of the Virginia Coastal Zone Management Program state that commercial ports are identified as vital to the Commonwealth. In accordance with 15 CFR Part 930, subpart C, § 930.39(c), DEQ recommends that NOAA NMFS specifically consider how the proposed rule affects the Port of Virginia based on its concerns, including those related to pilot transfers. See the Advisory Policies Section for additional information.</p> <p>VMRC states that the proposed rule is inconsistent with the marine fisheries enforceable policy due to insufficient data. VMRC states that the review of the public comments creates additional concerns for the VMRC related to utilizing the best available data to avoid and minimize impacts on the recreational and commercial fishing and seafood sectors. VMRC's complete public comment response letter is attached.</p>
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<p>The proposed rule negatively impacts the safety of pilots, pilot boat crews, mariners and crew members, anglers, boaters, and navigation. Reporting requirements would create unsafe distractions during navigation.</p>	<p>American Pilots’ Association (Brendan O’Shea, Clayton Diamond), Port of Virginia (Andrew Sinclair), Bi-Partisan Virginia Legislative Sportsmen’s Caucus (Delegate Hyland F. “Buddy” Fowler, Jr.)/Congressional Sportsmen’s Foundation (Kaleigh Leager), Virginia Maritime Association (Will Fediw, David White), Virginia Pilot Association (Captain Whiting Chisman, Frank Rabena), Volvo Penta of the Americas (Christopher M. Clements)</p>	<p>Issues of maritime safety are outside the legal scope of the state’s review under the federally approved Virginia Coastal Zone Management Program.</p> <p>VMRC states that the proposed rule is inconsistent with the marine fisheries enforceable policy due to insufficient data. VMRC states that the review of the public comments creates additional concerns for the VMRC related to utilizing the best available data to avoid and minimize impacts on the recreational and commercial fishing and seafood sectors. VMRC’s complete public comment response letter is attached.</p>
<p>The proposed rule has negative consequences for recreational fishing and boating, recreational enjoyment, and tourism.</p>	<p>Andrew Comstock, Berry Muller, Brennan Hart, Butch Williamson, George Green, Heather Lougheed, James Adams, Jason Seward, Jim Beale, Kelly Bobek, Kim Carter, Mark Huddleston, Phil Elliott, Robert Pride, Ronald Marciszyn, Scott Mond, Sheryl Williamson, Stacey Youngdale, Matt Waddell, Thomas Johnson, Bi-Partisan Virginia Legislative Sportsmen’s Caucus (Delegate Hyland F. “Buddy” Fowler, Jr.)/Congressional</p>	<p>Issues of tourism are outside the legal scope of the state’s review under the federally approved Virginia Coastal Zone Management Program.</p> <p>VMRC states that the proposed rule is inconsistent with the marine fisheries enforceable policy due to insufficient data. Regarding recreational fishing, VMRC states that the marine fisheries enforceable policy states that it is the policy of the Commonwealth to</p>

	<p>Sportsmen’s Foundation (Kaleigh Leager), Volvo Penta of the Americas (Christopher M. Clements)</p>	<p>maximize recreational opportunities within its territorial waters and that management decisions should be based on the best available scientific, economic, biological, and sociological information. The approach should be responsive to the needs of interested and affected citizens, promote resource utilization efficiency, and leverage all available capabilities for research, administration, management, and enforcement. Considering this policy, the letters provide critical insights suggesting that the proposed rule may not sufficiently address, avoid, or mitigate impacts on recreational fishermen, nor does it seem to incorporate the best available information for this sector. VMRC states that the review of the public comments creates additional concerns for the VMRC related to utilizing the best available data to avoid and minimize impacts on the recreational and commercial fishing and seafood sectors. VMRC’s public comment response letter is attached.</p>
<p>The proposed rule conflicts with safe boating laws and</p>	<p>Andrew Comstock, Berry Muller, Brennan Hart, Butch</p>	<p>These references are outside the legal scope of the state’s</p>

<p>regulations and other state and federal laws as well as the Constitution of Virginia.</p>	<p>Williamson, George Green, Heather Lougheed, James Adams, Jason Seward, Jim Beale, Kelly Bobek, Kim Carter, Mark Huddleston, Phil Elliott, Robert Pride, Ronald Marciszyn, Scott Mond, Sheryl Williamson, Stacey Youngdale, Thomas Johnson, Virginia Maritime Association (Will Fediw, David White), Virginia Pilot Association (Captain Whiting Chisman, Frank Rabena)</p>	<p>review under the federally approved Virginia Coastal Zone Management Program.</p> <p>DWR states that in response to comments from the Virginia Maritime Association and Virginia Pilot Association, state safe boating laws and regulations are not an aspect of any of Virginia’s enforceable policies for federal consistency reviews under the Coastal Zone Management Act. Conservation actions, such as speed limits, implemented without the ability to enforce and monitor, result in confusing and seemingly arbitrary restrictions upon the boating community, with whom DWR must partner to enhance marine mammal protection in Virginia’s waters. Implementation of the proposed actions may negatively impact DWR’s efforts to build a conservation coalition among the various vessel owners and operators, and other stakeholders, that frequent Virginia’s waters.</p>
<p>NOAA NMFS did not meaningfully engage the maritime industry and key stakeholders. NOAA NMFS</p>	<p>American Pilots’ Association (Brendan O’Shea, Clayton Diamond), Andrew Comstock, Berry Muller, Brennan Hart, Butch</p>	<p>The NOAA NMFS rulemaking process is outside the legal scope of the state’s review under the federally</p>

<p>should work closely with all stakeholders.</p>	<p>Williamson, George Green, Heather Lougheed, James Adams, Jason Seward, Jim Beale, Kelly Bobek, Kim Carter, Mark Huddleston, Phil Elliott, Robert Pride, Ronald Marciszyn, Scott Mond, Sheryl Williamson, Stacey Youngdale, Thomas Johnson, Port of Virginia (Andrew Sinclair), Bi-Partisan Virginia Legislative Sportsmen’s Caucus (Delegate Hyland F. “Buddy” Fowler, Jr.)/Congressional Sportsmen’s Foundation (Kaleigh Leager), Virginia Maritime Association (Will Fediw, David White), Volvo Penta of the Americas (Christopher M. Clements)</p>	<p>approved Virginia Coastal Zone Management Program.</p>
<p>NOAA NMFS did not prepare an environmental impact statement pursuant to the National Environmental Policy Act (NEPA).</p>	<p>Andrew Comstock, Berry Muller, Brennan Hart, Butch Williamson, George Green, Heather Lougheed, James Adams, Jason Seward, Jim Beale, Kelly Bobek, Kim Carter, Mark Huddleston, Phil Elliott, Robert Pride, Ronald Marciszyn, Scott Mond, Sheryl Williamson, Stacey Youngdale, Thomas Johnson, Volvo Penta of the Americas (Christopher M. Clements)</p>	<p>NEPA is outside the legal scope of the state’s review under the federally approved Virginia Coastal Zone Management Program.</p>
<p>The proposed rule will create a risk to the environment (such as from oil spills) by</p>	<p>Port of Virginia (Andrew Sinclair), Virginia Pilot</p>	<p>Vessel collisions and other maritime incidents are outside the legal scope of the state’s</p>

increasing the possibilities of groundings, vessel collisions and other incidents.	Association (Captain Whiting Chisman, Frank Rabena)	review under the federally approved Virginia Coastal Zone Management Program.
NOAA NMFS should leave the existing rule in place rather than pursue the proposed rule or should exempt certain vessels and areas from the proposed rule.	Port of Virginia (Andrew Sinclair), Virginia Pilot Association (Captain Whiting Chisman, Frank Rabena)	The proposed exemptions are outside the legal scope of the state’s review under the federally approved Virginia Coastal Zone Management Program.
The proposed rule will interfere with the Commonwealth’s renewable energy goals.	Virginia Maritime Association (Will Fediw, David White)	Renewable energy is outside the legal scope of the state’s review under the federally approved Virginia Coastal Zone Management Program.

ADVISORY POLICIES

The FCD does not indicate that the advisory policies of the Virginia CZM Program have been considered. However, the FCD states that the proposed rule does not affect the activities, traditional uses, enhancement, development or infrastructure of ports within regulated waters.

While the operation of ports is outside the legal scope of the state’s review under the federally approved enforceable policies of the Virginia Coastal Zone Management Program, the advisory policies of Virginia’s Coastal Zone Management Program identify commercial ports as waterfront development areas that are vital to the Commonwealth.

In accordance with 15 CFR Part 930, subpart C, § 930.39(c), federal agencies should give consideration to management program provisions which are in the nature of recommendations. Therefore, DEQ recommends that NOAA NMFS specifically consider how the proposed rule affects the Port of Virginia based on its concerns, including those related to pilot transfers.

OTHER STATE APPROVALS

Other state approvals which may apply to this project are not included in this FCD. Therefore, the federal agency must also ensure that this project is constructed and operated in accordance with all applicable federal, state and local laws and regulations.

ANALYSIS OF ENFORCEABLE POLICIES

The FCD states that the proposed rule is consistent to the maximum extent practicable with the following enforceable policies common to some or all of the affected states: endangered species conservation and management; public access for recreation; fisheries and coastal resource conservation management; ports, harbors, piers and related facilities; waterways, navigable waters and right of passage; and air quality. VMRC states that the proposed rule is consistent to the maximum extent practicable with the tidal wetlands, dunes and beaches, and submerged lands enforceable policies of the Virginia CZM Program. DWR states that the proposed rule is consistent to the maximum extent practicable with the Commonwealth lands enforceable policy of the Virginia CZM Program.

The analysis which follows responds to the discussion of the enforceable policies of the Virginia CZM Program that apply to this project and review comments submitted by agencies that administer these enforceable policies.

1. Marine Fisheries. The FCD (page 5) states that the proposed amendments are consistent with state policies regarding coastal uses related to recreational and commercial fishing and coastal resource management because they would not affect fish or 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.

1(a) Agency Jurisdiction. The policy stresses the conservation and promotion of seafood and marine resources of the Commonwealth, including fish, shellfish and marine organisms, and management of fisheries to maximize food production and recreational opportunities within the Commonwealth's territorial waters. The policy is administered by VMRC (Virginia Code §§ 28.2-101, -201, -203, -203.1, -225, -551, -600, -601, -603 -618, and -1103, -1203 and the Constitution of Virginia, Article XI, Section 3).

1(b) Agency Findings. The VMRC has evaluated the proposed action and has determined that insufficient data is available to quantify coastal effects on the marine fisheries enforceable policy. Therefore, VMRC states that this project is inconsistent with the marine fisheries enforceable policy because the justification for the proposed rule lacks scientific, economic, and sociological information for the VMRC to decide. The proposed rule will negatively impact and underestimate the effect on the commercial and for-hire recreational fishing businesses as it directly impacts the economic value of their respective sectors. The socioeconomic analysis in the DRIR primarily relies on AIS data from 2020-2021 and voluntary participation in the DMA/SZ to assess vessel activity. This approach is neither comprehensive nor accurate for estimating vessel activity in these sectors. The analysis lacks any state, federal fishing footprint,

or private data regarding the operations and locations of Virginia’s commercial or for-hire recreational sectors. The reliance on federally reported data is insufficient for the basis of rulemaking.

Economic Impacts to Commercial Fishing Businesses

Virginia maintains a robust, non-federally regulated commercial fishing sector that is very active during the proposed closure (or area where the proposed speed limit applies). Those vessels are greater than or equal to 35 feet in length and less than 65 feet in length, have limited reporting requirements, and are not required to carry AIS. Those vessels operating during the proposed period of enforcement travel significant distances offshore to pursue their target species. Requiring those vessels to operate at speeds of 10 knots or less will add significant time to their transit and reduce their ability to effectively catch their target species, negatively affecting their catch per unit of effort.

The DRIR clearly acknowledges the reporting period of 2020-2021 as the global COVID-19 pandemic and further states that insufficient information was available to reflect vessel operations (DRIR, 2022). During this same period, the fishing industry suffered significantly due to reductions in landed product due to business closures, resulting in significantly reduced on-water operations of those fishermen. Therefore, the assumptions in the DRIR on the total socioeconomic impact underestimate the economic harm to Virginia’s commercial fleet.

Economic Impact to For-hire and Recreational Fishermen

The Virginia for-hire sector operates primarily in offshore waters in vessels less than 65 feet. The proposed rule will negatively impact their operations by adding logistical challenges of increased duration while running at or below 10 knots. The for-hire sector has limited reporting requirements or vessel tracking data and it is unclear if the socioeconomic analysis has accurately captured those activities. Additionally, the DRIR utilizes AIS and voluntary participation in the DMS/SZ to determine vessel activity. It is unclear, specifically to Virginia, how those vessels were included in the assessment; therefore, VMRC is unable to determine the level of coastal effects relevant to the marine enforceable policy. While the DRIR states the intent of the RIR is to assess management measures from the “...standpoint of determining the resulting changes in costs and benefits to society,” it fails to accurately characterize the socioeconomic impacts to those industries important to Virginia (DRIR, 2022).

Enforceability of the Proposed Change

The VMRC has concerns about the enforceability of the proposed activity, particularly since NOAA relies on AIS to monitor compliance for vessels under 65 feet remotely. Most affected vessels fall into this category and are not required to carry AIS, necessitating real-time

enforcement by law enforcement vessels on the water. VMRC does not patrol federal waters and lacks offshore-capable vessels, and NOAA lacks on-the-water enforcement capabilities. Therefore, it is unclear how the rule will be enforced, given the limited resources, numerous constraints, and the expansive area involved. If enforcement is limited, compliance will be poor, and NARW collision risk will not be reduced, while those vessels that comply will suffer the negative impacts of the proposed rule.

1(c) Agency Recommendations.

VMRC recommends that NOAA NMFS provide the requested information from its comments, so VMRC can evaluate the proposed rule for consistency with the marine fisheries enforceable policy.

VMRC recommends utilizing a more robust socioeconomic model that can be built by NCCOS using more data sources than AIS. This model should be informed by sources such as federal fishing footprint data, state-derived fishing data, and private fishing data for the commercial, for-hire, and recreational sectors.

VMRC strongly recommends that NOAA work with federal and state law enforcement agencies to develop a realistic enforcement plan and craft the final rule accordingly.

1(d) Conclusion. As proposed, the project is inconsistent with the marine fisheries enforceable policy of the Virginia CZM Program.

2. Wildlife and Inland Fisheries. The FCD (page 4) states that the amendments are consistent with state policies regarding endangered species because their objective is to reduce threats to, and help the recovery of, a critically endangered species, the North Atlantic right whale. Several other endangered species may also benefit from the proposed amendments.

2(a) Agency Jurisdiction. The Department of Wildlife Resources (DWR) administers the enforceable policy for activities affecting wildlife and inland fisheries to ensure they do not negatively impact the Commonwealth's efforts in conserving, protecting, replenishing, propagating and increasing of the supply of game birds, game animals, fish and other wildlife of the Commonwealth (*Virginia Code* §§ 29.1-501, -512, -521, -530.2, -531, -533, -542, -543.1, -545, -548, -549, -550, -552, -554, -556, -569, and -574; 4 VAC §§ 15-30-10, -20, -50, and 15-290-60), fish or wildlife listed as threatened or endangered by the Department of Wildlife Resources Board (*Virginia Code* §§ 29.1-501, -564, -566, -567, and -568; 4 VAC §§ 15-20-130 and -140), the use of drugs on vertebrate wildlife (*Virginia Code* § 29.1-501 and -508.1), and nonindigenous aquatic nuisance, predatory, or undesirable species (*Virginia Code* §§ 29.1-501, -542, -543.1, -545, -569, -571, -574, and -575; 4 VAC §§ 15-20-210, -30-20, -30-40, and 15-290-60).

2(b) Agency Findings. The DWR has evaluated the proposed action and finds it to be inconsistent with the wildlife and inland fisheries enforceable policy, particularly with respect to the conservation and protection of endangered and threatened species ([Code of Virginia, Article 6, Chapter 5, Title 29.1](#)). Specifically, there are insufficient data provided in the proposed rule and consistency determination to determine whether the proposed action aligns with this enforceable policy. Additional information and further study on the impacts of “light draft” (35-65 ft.) vessels on NARW are needed. The justification for the proposed rule lacks enforceability and indication of whether or not it will have the impact intended. The DWR also requests NOAA’s implementation and enforcement plans for the proposed action.

The DWR offers the following additional comments related to this finding:

NARW transit through Virginia waters during their seasonal migrations. Acoustic surveys revealed that their presence in Virginia waters typically peak in the fall and late winter/early spring, coinciding with the timing of the southward and northward migration, respectively. The same acoustic surveys also detected NARW in Virginia’s waters year-round, suggesting these waters may be used for more than just transiting (Salisbury *et al.* 2015), a proposition that requires further investigation.

The DWR agrees with NOAA that additional measures are needed to stabilize the ongoing NARW population decline and prevent the species’ extinction. The DWR also recognizes that the increased commercial vessel traffic and vessel size using the ports of Virginia and Baltimore, combined with military vessel traffic and off-shore wind development traffic, makes the shipping lanes approaching the entrance into the Chesapeake Bay, as well as the area surrounding the mouth of the Bay, a challenging navigation space for large whales. While the DWR does not know where the animals were initially struck, two significant NARW-vessel strike mortalities have been documented in the past two years in this area, one in February 2023 discovered just inside the mouth of the Chesapeake Bay and the other in April 2024 that was first sighted floating approximately 30 nm east of the North Carolina/Virginia border. Five NAWR stranded in Virginia between 2001 and 2018. These strandings occurred on an oceanfront beach at the Virginia/North Carolina border (n = 1), in nearshore (n = 1) and offshore waters (n = 1) east of the Virginia Beach coastline and on Virginia’s barrier islands located seaward of the lower Delmarva Peninsula (n = 2). Four occurred in winter (January - March) and one occurred in early September. Four of the five whales exhibited evidence of human interaction, two consistent with vessel strikes. In addition, a pregnant NAWR whale that stranded in northeastern North Carolina with vessel strike injuries in November 2004 likely collided with a large vessel in Virginia waters and subsequently stranded in North Carolina (Sharp *et al.*, 2019; Virginia Aquarium Stranding Response Program, *unpublished data*).

Several studies have shown that the original vessel speed restrictions have been effective in reducing vessel strike mortality (Conn *et. al.*, 2013, Silber *et. al.*, 2014); however, the distribution of NARW has changed dramatically since the rule was enacted in 2008. Increased sightings in the Gulf of St. Lawrence suggest that NARW have shifted their foraging distribution northward possibly due to a shift in prey distribution (Pettis and Hamilton 2016). Winter surveys have documented neonate calf presence as far north as Cape Fear, North Carolina, suggesting the calving grounds may be extending northward as well.

The DWR recognizes the need for additional conservation measures and appreciates the fact that spatial and temporal changes in NARW breeding and foraging activities make it difficult to develop regulations that effectively reduce human-induced mortality while minimizing impacts on human safety and economic interests. While there are significant aspects of the proposed regulatory action that the DWR thinks will contribute positively to reducing NARW-vessel strike mortalities and stabilize or increase current NARW numbers, there are significant gaps in information regarding the enforceability of the proposed regulatory action that lead DWR to question whether or not it will have the impact intended or if directly affected parties will be able to comply with the requirements to result in success.

At the current time, NOAA uses AIS data to monitor compliance of vessels >65 feet remotely and retroactively. The regulatory action proposes to include vessels ≥ 35 feet and less than 65 feet into the compliance requirements for reductions in speed in the various speed zones. Most vessels in that size range are not required to carry AIS, and those that carry AIS can turn the system on or off at any time. By its own acknowledgment, NOAA has determined that only approximately 20% of vessels within that size range have AIS in place. There is no obvious path outlined for related monitoring and enforcement of speed limits when a super-majority of potential impacted vessels lack the AIS.

Without enforcement, the regulatory and management agencies have little ability to affirm that requiring these vessels to operate at reduced speeds will result in the desired strike reduction outcome. The Commonwealth has extremely limited resources and is unable to implement real-time enforcement of such new regulations on NOAA's behalf. Funding to states over the past two decades from NOAA's Species Recovery Grants to States Program under Section 6 of the Endangered Species Act and the complementary John H. Prescott Marine Mammal Rescue Assistance Grant program is wholly insufficient to enable the states or their partners to staff and implement appropriate entanglement and stranding response, monitoring, or other conservation measures. As an example, due to lack of funding, aerial surveys of waters in and around Virginia have been extremely minimal, and there is an insufficiency of data on which to base regulatory and management actions.

Proposed exemptions for all federally and federally contracted vessels need further clarification before the DWR is able to determine the effect of such actions on this consistency review.

Additionally, DWR understands that NOAA is proposing to use a new online reporting tool for those vessels that need to vary from the proposed established speed zones. This system has not yet been developed nor tested by end users, and their ability to use it efficiently is entirely unknown.

2(c) Agency Recommendations. DWR recommends that NOAA NMFS provide the requested information from its comments, so DWR can evaluate the proposed rule for consistency with the wildlife and inland fisheries enforceable policy.

2(d) Conclusion. As proposed, the proposed rule is inconsistent with the wildlife and inland fisheries enforceable policy of the Virginia CZM Program.

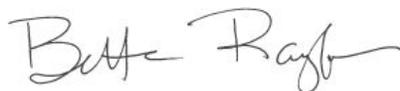
REGULATORY AND COORDINATION NEEDS

1. Marine Fisheries. Coordinate with VMRC (Rachael Peabody, director of environmental policy, at 757-247-2269 or Rachael.Peabody@mrc.virginia.gov) to resolve issues of consistency with the marine fisheries enforceable policy.

2. Wildlife and Inland Fisheries. Coordinate with DWR (Hannah Schul, environmental services program manager, at 804-968-8546 or Hannah.Schul@dwr.virginia.gov) to resolve issues of consistency with the wildlife and inland fisheries enforceable policy.

Thank you for the opportunity to comment on this FCD. The detailed comments of reviewers are attached. If you have questions, please contact me or Julia Wellman at 804-774-8237.

Sincerely,



Bettina Rayfield, Manager
Environmental Impact Review and Long Range Priorities Program
Virginia Department of Environmental Quality
804-659-1915
Bettina.Rayfield@deq.virginia.gov
Central Office
1111 E. Main St., Suite 1400
Richmond, VA 23219
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Enclosures

NOAA NMFS Speed Rule FCD
DEQ 24-098F

ec: Jeffrey L. Payne, NOAA Office for Coastal Management
Travis Voyles, Secretary of Natural and Historic Resources
Jennifer M. Walle, Deputy Secretary of Natural and Historic Resources
Harry Schwab, Special Assistant, Secretary of Natural and Historic Resources
Michael Rolband, DEQ Director
Rachael Peabody, VMRC
Hannah Schul, DWR



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road

Building 96

Fort Monroe, VA 23651

Travis A. Voyles
Secretary of Natural and Historic
Resources

Jamie L. Green
Commissioner

July 29, 2024

Department of Environmental Quality
Office of Environmental Impact Review
1111 East Main Street
Richmond, VA 23219

RE: DEQ #24-098F “Proposed Rule to Amend the North Atlantic Right Whale (NARW) Vessel Strike Reduction Rule.

Dear Ms. Howard,

Please accept this correspondence as the Virginia Marine Resources Commission’s (VMRC) Federal Consistency decision regarding the “Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule”, DEQ #24-098F.

VMRC serves as stewards of Virginia’s marine and aquatic resources, and protectors of its tidal waters and homelands for present and future generations. As such, VMRC manages saltwater fisheries and their habitats for the benefit of all citizens of the Commonwealth and the ecosystem. As a networked partner of Virginia’s Coastal Zone Management Program (VCZM), VMRC has review responsibility of Virginia’s Marine Fisheries, Submerged Lands, Dunes and Beaches, and Tidal Wetlands enforceable policies through the federal Coastal Zone Management Act (CZMA) federal consistency review authority. The below determination has been made:

Tidal Wetlands: The proposed project does not impact tidal wetlands and is therefore **consistent** with the tidal wetlands enforceable policies;

Dunes and Beaches: The proposed project does not impact coastal primary sand dunes and beaches and is therefore **consistent** with the dunes and beaches enforceable policies;

Submerged Lands: The proposed project does not impact state-owned submerged lands and is therefore **consistent** with the submerged lands enforceable policies;

Marine Fisheries: The VMRC has evaluated the proposed action and has determined that insufficient data is available to quantify coastal effects on this enforceable policy. Therefore, the VMRC deems that this project is **inconsistent** with Virginia’s Marine Enforceable Policy

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because the justification for the proposed rule lacks scientific, economic, and sociological information for the VMRC to decide. The proposed rule will negatively impact and underestimate the effect on the commercial and for-hire recreational fishing businesses as it directly impacts the economic value of their respective sectors. The socioeconomic analysis in the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis (DRIR) primarily relies on AIS data from 2020-2021 and voluntary participation in the Dynamic Management Area/Slow Zone (DMA/SZ) to assess vessel activity. This approach is neither comprehensive nor accurate for estimating vessel activity in these sectors. The analysis lacks any state, Federal fishing footprint, or private data regarding the operations and locations of Virginia's commercial or for-hire recreational sectors. The reliance on federally reported data is insufficient for the basis of rulemaking. Therefore, we recommend utilizing a more robust socioeconomic model that can build by NCCOS using more data sources than AIS. This model should be informed by sources such as Federal fishing footprint data, state-derived fishing data, and private fishing data for the commercial, for-hire, and recreational sectors.

Economic Impacts to Commercial Fishing Businesses

Virginia maintains a robust, non-federally regulated commercial fishing sector that was very active during the proposed closure. Those vessels are greater than or equal to 35 feet in length and less than 65 feet in length, have limited reporting requirements, and are not required to carry AIS. Those vessels operating during the proposed period of enforcement travel significant distances offshore to pursue their target species. Requiring those vessels to operate at speeds of 10 knots or less will add significant time to their transit and reduce their ability to effectively catch their target species, negatively affecting their catch per unit of effort.

The DRIR clearly acknowledges the reporting period of 2020-2021 as the global COVID-19 pandemic and further states that insufficient information was available to reflect vessel operations (DRIR, 2022). During this same period, the fishing industry suffered significantly due to reductions in landed product due to business closures, resulting in significantly reduced on-water operations of those fishermen. Therefore, the assumptions in the DRIR on the total socioeconomic impact underestimate the economic harm to Virginia's commercial fleet.

Economic Impact to For-hire and Recreational Fishermen

The Virginia for-hire sector operates primarily in offshore waters in vessels less than 65 feet. The proposed rule will negatively impact their operations by adding logistical challenges of increased duration while running at or below 10 knots. The for-hire sector has limited reporting requirements or vessel tracking data and it is unclear if the socioeconomic analysis has accurately captured those activities. Additionally, the DRIR utilizes AIS and voluntary participation in the DMS/SZ to determine vessel activity. It is unclear, specifically to Virginia, how those vessels were included in the assessment, therefore, we are unable to determine the level of coastal effects relevant to the marine enforceable policy.

While the DRIR states the intent of the RIR is to assess management measures from the "...standpoint of determining the resulting changes in costs and benefits to society" it fails to accurately characterize the socioeconomic impacts to those industries important to Virginia (DRIR, 2022).

Enforceability of the Proposed Change

The VMRC has concerns about the enforceability of the proposed activity, particularly since NOAA relies on AIS to monitor compliance for vessels under 65 feet remotely. Most affected vessels fall into this category and are not required to carry AIS, necessitating real-time enforcement by law enforcement vessels on the water. VMRC does not patrol federal waters and lacks offshore-capable vessels and NOAA lacks on-the-water enforcement capabilities. Therefore, it is unclear how the rule will be enforced, given the limited resources, numerous constraints, and the expansive area involved. We strongly recommend that NOAA work with federal and state law enforcement agencies to develop a realistic enforcement plan and craft the final rule accordingly. If enforcement is limited, compliance will be poor, and NARW collision risk will not be reduced, while those vessels that comply will suffer the negative impacts of the proposed rule.

If the above-referenced project is modified in any manner, including any changes resulting from permit, license, or certification revisions, including those ensuing from an appeal, or the project is noted to be having effects on coastal resources or uses that are different than originally proposed, it is incumbent upon the proponent to notify the CZM, submit an explanation of the nature of the change pursuant to 15 CFR 930, and submit modified state permits, licenses, or certifications. VMRC requests that the VMRC is notified of such an instance so that we can use this information to determine if further federal consistency review is required.

If you have any questions regarding this review, please contact me at rachael.peabody@mrc.virginia.gov.

Sincerely,

Rachael Peabody

Rachael Peabody, Director of Environmental Policy

Virginia Marine Resources Commission



COMMONWEALTH of VIRGINIA

Marine Resources Commission

380 Fenwick Road

Building 96

Fort Monroe, VA 23651

Travis A. Voyles
Secretary of Natural and Historic
Resources

Jamie L. Green
Commissioner

August 15, 2024

To: Julia Wellman
Office of Environmental Impact Review
Virginia Department of Environmental Quality
1111 East Main Street, Suite 1400
Richmond, Virginia, 23219

Dear Ms. Wellman,

On behalf of the Virginia Marine Resources Commission (VMRC), I would like to acknowledge and respond to the public comments submitted to the Department of Environmental Quality (DEQ) regarding DEQ #24-098F, "Proposed Rule to Amend the North Atlantic Right Whale (NARW) Vessel Strike Reduction Rule."

We have carefully reviewed the comments provided by various stakeholders, including the caucus of Mid-Atlantic States (DE, MD, PA, VA, WV) of the Congressional Sportsmen's Foundation, Mr. Andrew Comstock, Volvo Penta, Mr. Matt Waddell, Port of Virginia, Virginia Maritime Association, American Pilots Association, and Virginia Pilot Association. We appreciate the time and effort each of these organizations and individuals invested in offering their perspectives on this important issue.

Please find below our response to these comments as they pertain to VMRC's position and ongoing efforts:

Recreational Fishing:

The letters from Mr. Andrew Comstock, Volvo Penta, Mr. Matthew Waddell, and the Caucus of Mid-Atlantic States of the Congressional Sportsmen Foundation directly pertain to Virginia's enforceable recreational fishing policies. These letters raise several key issues: they express concerns about safe navigation during recreational fishing, argue that the proposed seasonal management zones may offer minimal benefits for right whale conservation, and highlight a lack of comprehensive stakeholder engagement by NOAA in shaping the rule.

Virginia's Marine Fisheries enforceable policy states that it is the policy of the Commonwealth to maximize recreational opportunities within its territorial waters and that management decisions

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should be based on the best available scientific, economic, biological, and sociological information. The approach should be responsive to the needs of interested and affected citizens, promote resource utilization efficiency, and leverage all available capabilities for research, administration, management, and enforcement.

Considering this policy, the letters provide critical insights suggesting that the proposed rule may not sufficiently address, avoid, or mitigate impacts on recreational fishermen, nor does it seem to incorporate the best available information for this sector.

Commercial Fishing and Seafood:

The Port of Virginia, Virginia Maritime Association, American Pilots Association, and Virginia Pilot Association represent key stakeholders involved in Virginia's container shipping and marine terminal operations, specifically in importing and exporting packaged, processed, and value-added seafood products. In their letters, they express concerns about the equal weighting of ocean uses in decision-making processes, emphasizing the need to balance both human activities and natural resource sustainability. They argue that the proposed rule lacks this balanced approach.

Additionally, the letters highlight concerns related to the International Regulations for Preventing Collisions at Sea (COLREGS) and the need for proper steerage, which is critical for ensuring the safety of all vessels, including commercial and recreational fishing vessels. They also point out that the proposed speed zones may conflict with existing state boating safety regulations, making it difficult for vessels to comply.

The letters argue that the proposed amendments could conflict with and impair multiple beneficial uses of Virginia's state waters, including recreation, navigation, and commercial and industrial vessel activities. These conflicts, they assert, could harm the public interest and economic welfare of Virginia residents, including fishing and seafood sectors. The letters further suggest that the proposed rule may not adequately address, avoid, or mitigate the impacts on commercial fishermen and seafood industries. Finally, they express concern about creating federal rules in state waters without the direct involvement of state agencies, potentially leading to inadequate consideration of the best available information.

In conclusion, the review of the public comments creates additional concerns for the VMRC related to utilizing the best available data to avoid and minimize impacts on the recreational and commercial fishing and seafood sectors.

Sincerely,

A handwritten signature in black ink that reads "Rachael Peabody". The signature is written in a cursive, slightly slanted style.

Rachael Peabody, Director of Environmental Policy

Virginia Marine Resources Commission



COMMONWEALTH of VIRGINIA

Department of Wildlife Resources

Travis Voyles
*Secretary of Natural
and Historic Resources*

Ryan J. Brown
Executive Director

August 15, 2024

Julia Wellman
Virginia Department of Environmental Quality
Office of Environmental Impact Review and Long Range Priorities
1111 East Main Street, Suite 1400
Richmond, VA 23219

Re: Revised Federal Consistency Determination -
Proposed Rule to Amend the North Atlantic Right
Whale Vessel Strike Reduction Rule (DEQ #24-
098F); ESSLog#42842

Dear Ms. Wellman,

The Virginia Department of Wildlife Resources (DWR) received your August 6, 2024, review request for the Federal Consistency Determination on the National Oceanic and Atmospheric Administration's Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule (DEQ #24-098F). We appreciate the opportunity to review and comment on the Proposed Rule's consistency with certain Enforceable Policies of the Virginia Coastal Zone Management Program. This correspondence supersedes the DWR's Federal Consistency Determination letter submitted on August 12, 2024.

The DWR is Virginia's wildlife (including freshwater) management agency and exercises law enforcement and regulatory jurisdiction over these resources, including state or federally Endangered or Threatened species, but excluding listed insects (Va. Code § 29.1-563). The DWR is a consulting agency under the U.S. Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), and provides environmental analysis of projects or permit applications coordinated through the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, the Virginia Department of Transportation, the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, and other state or federal agencies. The DWR is party to cooperative agreements with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under Section 6 of the Endangered Species Act as related to the management and conservation of federally listed fish and wildlife.

As a network partner of Virginia's Coastal Zone Management Program, the DWR has review responsibility of the Wildlife and Inland Fisheries and Commonwealth Lands enforceable policies through the federal Coastal Zone Management Act federal consistency review authority. The following determinations have been made:

Commonwealth Lands: The DWR has evaluated the proposed action and finds that the proposed action does not impact Commonwealth lands under the ownership or management responsibilities of the agency and is therefore *consistent* with the Commonwealth Lands enforceable policies.

Wildlife and Inland Fisheries: The DWR has evaluated the proposed action and finds it to be *inconsistent* with Virginia's Wildlife and Inland Fisheries Enforceable Policy, particularly with respect to the conservation and protection of endangered and threatened species ([Code of Virginia, Article 6, Chapter 5, Title 29.1](#)). Specifically, there are insufficient data provided in the proposed rule and consistency determination to determine whether the proposed action aligns with this enforceable policy. Additional information and further study on the impacts of "light draft" (35-65 ft.) vessels on NARW are needed. The justification for the proposed rule lacks enforceability and indication of whether or not it will have the impact intended. The DWR also requests NOAA's implementation and enforcement plans for the proposed action.

The DWR offers the following additional comments related to this finding:

NARW transit through Virginia waters during their seasonal migrations. Acoustic surveys revealed that their presence in Virginia waters typically peak in the fall and late winter/early spring, coinciding with the timing of the southward and northward migration, respectively. The same acoustic surveys also detected NARW in Virginia's waters year-round, suggesting these waters may be used for more than just transiting (Salisbury *et al.* 2015), a proposition that requires further investigation.

The DWR agrees with NOAA that additional measures are needed to stabilize the ongoing NARW population decline and prevent the species' extinction. The department also recognizes that the increased commercial vessel traffic and vessel size using the ports of Virginia and Baltimore, combined with military vessel traffic and off-shore wind development traffic, makes the shipping lanes approaching the entrance into the Chesapeake Bay, as well as the area surrounding the mouth of the Bay, a challenging navigation space for large whales. While the DWR does not know where the animals were initially struck, two significant NARW-vessel strike mortalities have been documented in the past two years in this area, one in February 2023 discovered just inside the mouth of the Chesapeake Bay and the other in April 2024 that was first sighted floating approximately 30 nm east of the North Carolina/Virginia border. Five NAWR stranded in Virginia between 2001 and 2018. These strandings occurred on an oceanfront beach at the Virginia/North Carolina border (n = 1), in nearshore (n = 1) and offshore waters (n = 1) east of the Virginia Beach coastline and on Virginia's barrier islands located seaward of the lower Delmarva Peninsula (n = 2). Four occurred in winter (January - March) and one occurred

in early September. Four of the five whales exhibited evidence of human interaction, two consistent with vessel strikes. In addition, a pregnant NAWR whale that stranded in northeastern North Carolina with vessel strike injuries in November 2004 likely collided with a large vessel in Virginia waters and subsequently stranded in North Carolina (Sharp *et al.*, 2019; Virginia Aquarium Stranding Response Program, *unpublished data*).

Several studies have shown that the original vessel speed restrictions have been effective in reducing vessel strike mortality (Conn *et al.*, 2013, Silber *et al.*, 2014); however, the distribution of NARW has changed dramatically since the rule was enacted in 2008. Increased sightings in the Gulf of St. Lawrence suggest that NARW have shifted their foraging distribution northward possibly due to a shift in prey distribution (Pettis and Hamilton 2016). Winter surveys have documented neonate calf presence as far north as Cape Fear, North Carolina, suggesting the calving grounds may be extending northward as well.

The DWR recognizes the need for additional conservation measures and appreciates the fact that spatial and temporal changes in NARW breeding and foraging activities make it difficult to develop regulations that effectively reduce human-induced mortality while minimizing impacts on human safety and economic interests. While there are significant aspects of the proposed regulatory action that the DWR thinks will contribute positively to reducing NARW-vessel strike mortalities and stabilize or increase current NARW numbers, there are significant gaps in information regarding the enforceability of the proposed regulatory action that lead the department to question whether or not it will have the impact intended or if directly affected parties will be able to comply with the requirements to result in success.

At the current time, NOAA uses Automatic Identification System (AIS) data to monitor compliance of vessels >65 feet remotely and retroactively. The regulatory action proposes to include vessels ≥ 35 feet and less than 65 feet into the compliance requirements for reductions in speed in the various speed zones. Most vessels in that size range are not required to carry AIS, and those that carry AIS can turn the system on or off at any time. By its own acknowledgment, NOAA has determined that only approximately 20% of vessels within that size range have Automatic Identification System (AIS) in place. There is no obvious path outlined for related monitoring and enforcement of speed limits when a super-majority of potential impacted vessels lack the AIS.

Without enforcement, the regulatory and management agencies have little ability to affirm that requiring these vessels to operate at reduced speeds will result in the desired strike reduction outcome. The Commonwealth has extremely limited resources and is unable to implement real-time enforcement of such new regulations on NOAA's behalf. Funding to states over the past two decades from NOAA's Species Recovery Grants to States Program under Section 6 of the Endangered Species Act and the complementary John H. Prescott Marine Mammal Rescue Assistance Grant program is wholly insufficient to enable the states or their partners to staff and implement appropriate entanglement and stranding response, monitoring, or other conservation measures. As an example, due to lack of funding, aerial surveys of waters in and around Virginia have been extremely minimal, and there is an insufficiency of data on which to base regulatory

and management actions.

Proposed exemptions for all federally and federally contracted vessels need further clarification before the DWR is able to determine the effect of such actions on this consistency review. Additionally, we understand that NOAA is proposing to use a new online reporting tool for those vessels that need to vary from the proposed established speed zones. This system has not yet been developed nor tested by end users, and their ability to use it efficiently is entirely unknown.

The DWR notes comments received from the Virginia Maritime Association and Virginia Pilot Association. State safe boating laws and regulations are not an aspect of any of Virginia's enforceable policies for federal consistency reviews under the Coastal Zone Management Act. Conservation actions, such as speed limits, implemented without the ability to enforce and monitor, result in confusing and seemingly arbitrary restrictions upon the boating community, with whom we must partner to enhance marine mammal protection in Virginia's waters. Implementation of the proposed actions may negatively impact our efforts to build a conservation coalition among the various vessel owners and operators, and other stakeholders, that frequent our waters.

The DWR welcomes further discussion on federal consistency as established in Virginia's Wildlife and Inland Fisheries and Commonwealth Lands Enforceable Policies. Please contact me at Hannah.Schul@DWR.Virginia.gov or (804) 968-8546 with questions and/or additional information requests.

Sincerely,



Hannah Schul
Environmental Services Program Manager
Virginia Department of Wildlife Resources

CC: Ryan Brown, DWR
Rebecca Gwynn, DWR
Paul Kugelman, DWR
Ruth Boettcher, DWR

Literature Cited

- Conn, P. B., & Silber, G. K. 2013. Vessel speed restrictions reduce risk of collision-related mortality for North Atlantic right whales. *Ecosphere*, 4(4), 1–16.
- Pettis, H. M. and P. K. Hamilton. 2016. North Atlantic Right Whale Consortium annual report card. Report to the North Atlantic Right Whale Consortium, November 2016.
- Salisbury, D. P., C. W. Clark and A. N. Rice. 2015. Right whale occurrence in the coastal waters of Virginia, U.S.A.: Endangered species presence in a rapidly developing energy market. *Marine Mammal Science* 32(2): 508-519. <https://doi.org/10.1111/mms.12276>
- Sharp, S. M., McLellan, W. A., Rotstein, D. S., Costidis, A. M., Barco, S. G., Durham, K., Pitchford, T. D., Jackson, K. A., Daoust, P. Y., Wimmer, T. & Couture, E. L. (2019). [Gross and histopathologic diagnoses from North Atlantic right whale *Eubalaena glacialis* mortalities between 2003 and 2018.](#) *Diseases of Aquatic Organisms*, 135(1): 1–31.
- Silber, G. K., Adams, J. D., & Fonnesebeck, C. J. 2014. [Compliance with vessel speed restrictions to protect North Atlantic right whales \(peerj.com\)](#)

request for additional information: FCD North Atlantic Right Whale Vessel Strike Reduction Rule (Speed Rule)

Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

Thu 8/15/2024 12:07 PM

To: Caroline Good - NOAA Federal <caroline.good@noaa.gov>

Cc: Rayfield, Bettina (DEQ) <Bettina.Rayfield@deq.virginia.gov>

 2 attachments (310 KB)

Revised DWR Federal Consistency Determination - NARW Proposed Rule 08-15-2024.pdf; Speed Zone CZM Review_Final (2).doc;

Ms. Good,

I am emailing about the federal consistency determination for the NOAA NMFS proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (speed rule).

The Virginia Department of Wildlife Resources (DWR) administers the wildlife and inland fisheries enforceable policy of the Virginia Coastal Zone Management Program and has responded with the attached comments. Please see the DWR letter for the identified information requests.

Will you please respond to both the DWR and VMRC information requests by Monday, August 19? I have attached VMRC comments again as reference.

If you have any questions, please feel free to reach out to us.

Regards, Julia

Julia Wellman

Environmental Impact Review Coordinator

Office of Environmental Impact Review and Long Range Priorities

Division of Environmental Enhancement

[Virginia Department of Environmental Quality](https://www.deq.virginia.gov/)

1111 East Main Street, Suite 1400

Richmond, Virginia 23219

(804) 774-8237

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From: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

Sent: Tuesday, August 6, 2024 11:30 AM

To: caroline.good@noaa.gov <caroline.good@noaa.gov>

Cc: Rayfield, Bettina (DEQ) <Bettina.Rayfield@deq.virginia.gov>

Subject: requesting 15-day review extension: FCD North Atlantic Right Whale Vessel Strike Reduction Rule (Speed Rule)

Good morning Ms. Good,

I am emailing to follow up on NOAA NMFS' response to the July 29 email below and to request an extension on the FCD review period for proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction

Rule (speed rule).

I did not receive a response yesterday from NOAA NMFS regarding the July 29 email. **Do you have an estimate on when NOAA NMFS will respond this week?** We hope to receive a response from NOAA NMFS as soon as possible in order to have sufficient time to conduct additional coordination as necessary within the review period.

In addition, we are requesting a 15-day review period extension pursuant to § 930.41(b), which states, "Federal agencies shall approve one request for an extension period of 15 days or less." The original 60-day deadline is August 16.

The 15-day extension would change the deadline that DEQ's FCD response to due to NOAA NMFS to Friday, August 30.

Will you please confirm that Friday, August 30 is the new deadline for DEQ to submit comments on the FCD?

We look forward to hearing from you this week.

Please feel free to reach out to us if you have any questions.

Regards, Julia

Julia Wellman

Environmental Impact Review Coordinator
Office of Environmental Impact Review and Long Range Priorities
Division of Environmental Enhancement
[Virginia Department of Environmental Quality](https://www.deq.virginia.gov/)
1111 East Main Street, Suite 1400
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From: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

Sent: Monday, July 29, 2024 2:07 PM

To: caroline.good@noaa.gov <caroline.good@noaa.gov>

Cc: Rayfield, Bettina (DEQ) <Bettina.Rayfield@deq.virginia.gov>; Peabody, Rachael (MRC) <Rachael.Peabody@mrc.virginia.gov>

Subject: requesting response: FCD North Atlantic Right Whale Vessel Strike Reduction Rule (Speed Rule)

Good afternoon Ms. Good,

I am emailing about the federal consistency determination for the NOAA NMFS proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (speed rule).

The Virginia Coastal Zone Management (CZM) Program is a networked program with several agencies administering the enforceable policies. As the lead agency for the Virginia CZM Program, the Virginia Department of Environmental Quality (DEQ) is responsible for coordinating the Commonwealth's review of federal consistency determinations and certifications with cooperating agencies and responding to the appropriate federal agency or applicant.

The Virginia Marine Resources Commission (VMRC) administers the marine fisheries enforceable policy and has responded with the attached comments. VMRC has determined that the proposal is inconsistent with the

marine fisheries enforceable policy based on insufficient information.

Deadline: Will you please review the attached comments and respond by August 5?

VMRC is specifically requesting the following to evaluate the consistency of the proposal with the marine fisheries enforceable policy:

"The analysis lacks state, Federal fishing footprint, or private data regarding the operations and locations of Virginia's commercial or for-hire recreational sectors. The reliance on federally reported data is insufficient for the basis of rulemaking. Therefore, we recommend utilizing a more robust socioeconomic model that can build by NCCOS using more data sources than AIS. This model should be informed by sources such as Federal fishing footprint data, state-derived fishing data, and private fishing data for the commercial, for-hire, and recreational sectors."

If you have any questions, please feel free to reach out to us.

Regards, Julia

Julia Wellman

Environmental Impact Review Coordinator
Office of Environmental Impact Review and Long Range Priorities
Division of Environmental Enhancement
[Virginia Department of Environmental Quality](https://www.virginia.gov/department-of-environmental-quality/)
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American Pilots' Association Federal Consistency Comments for North Atlantic Right Whale

Brendan O'Shea <boshea@americanpilots.org>

Fri 7/19/2024 10:34 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

Cc: Clay Diamond <cdiamond@americanpilots.org>

 1 attachments (507 KB)

APA_Coastal Zone Management Ltr_VA.pdf;

Good morning, Julia,

The American Pilots' Association (APA) is the national association of professional maritime pilots and represents virtually all of the more than 1,200 State-licensed pilots working in the coastal ports and approaches of the United States, including State pilots in Virginia. The APA is submitting comments in response to the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) Federal Consistency Determination for the NMFS proposal to amend the North Atlantic Right Whale Vessel Strike Reduction Rule. APA has significant concerns with the proposed rules impacts to safety of pilots, safe navigation of large ocean-going vessels, and the economic impact to pilot operations.

Please contact me or Clay Diamond with any questions.

Best regards,

Brendan

Brendan O'Shea

Deputy Director - Associate General Counsel

American Pilots' Association

499 South Capitol Street, S.W.

Washington, DC 20003

Phone: (202) 484-0700

Cell: (703) 678-9217

email: boshea@americanpilots.org

Web: www.americanpilots.org

This electronic message contains information from legal counsel at the American Pilots' Association. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not the intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at boshea@americanpilots.org.



AMERICAN PILOTS' ASSOCIATION

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WASHINGTON, DC 20003
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SECRETARY-TREASURER

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DEPUTY DIRECTOR-ASSOCIATE GENERAL COUNSEL

CLAYTON L. DIAMOND
EXECUTIVE DIRECTOR-GENERAL COUNSEL

LISA TOWNSHEND
OPERATIONS DIRECTOR

July 19, 2024

Virginia Department of Environmental Quality (DEQ)
DEQ Central Office
Office of Environmental Impact Review
Attn: Julia Wellman
1111 East Main Street, Suite 1400
Richmond, VA 23219

SUBJ: NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE

Dear Julia:

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 Virginia's coastal zone management interests.

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).

CAPT. ERIC A. NIELSEN
VICE PRESIDENT
NORTH ATLANTIC STATES

CAPT. R. TREY THOMPSON III
VICE PRESIDENT
SOUTH ATLANTIC STATES

CAPT. CLINT A. WINEGAR
VICE PRESIDENT
GULF STATES

CAPT. MICHAEL T.D. MILLER
VICE PRESIDENT
GULF STATES – LOUISIANA

CAPT. HANS H. ANTONSEN
VICE PRESIDENT
PACIFIC STATES

CAPT. JOHN R. BOYCE
VICE PRESIDENT
GREAT LAKES

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 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.

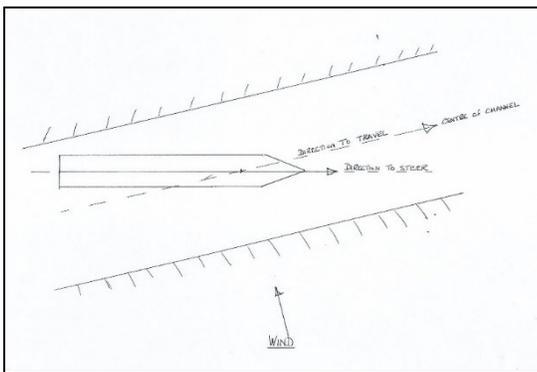
⁴ Despite proposing this vast expansion of the NARW vessel speed restriction zones, NMFS unironically claims in its Notice of Proposed Rulemaking that it "aimed to identify the smallest spatial and temporal footprint possible for speed restriction areas." See 87 F.R. 146, 46925.

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.

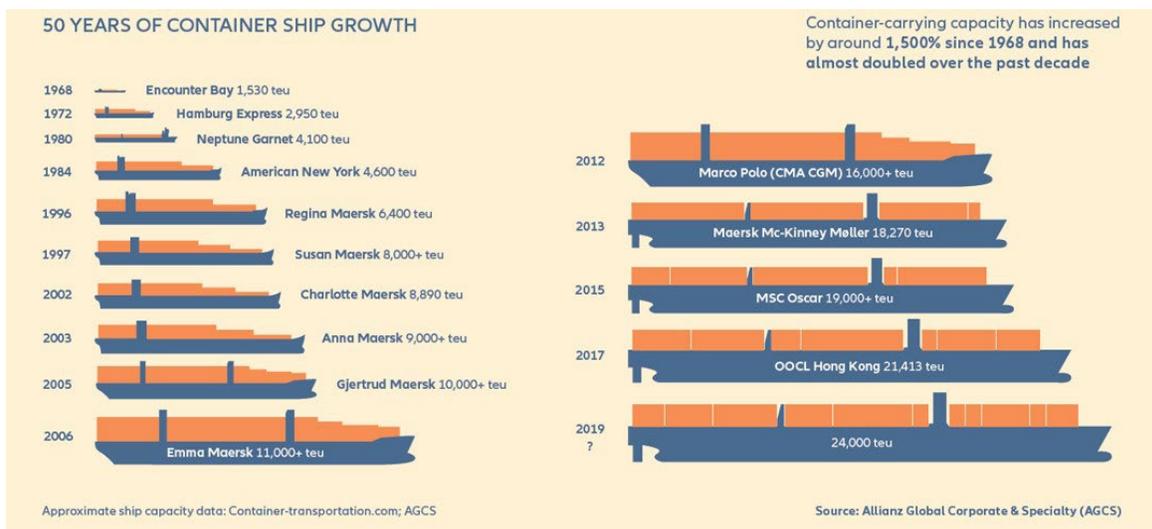


⁵ *A Career as a Ship Pilot, PROCEEDINGS OF THE MARINE SAFETY & SECURITY COUNCIL, THE COAST GUARD JOURNAL OF SAFETY AT SEA, Fall 2008, at 9*

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 Virginia'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.*

Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule

Andrew Sinclair <asinclair@PortofVirginia.com>

Wed 7/31/2024 4:50 PM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

📎 1 attachments (477 KB)

DEQ NARW Comments POV.pdf;

CAUTION: This Email originated from OUTSIDE of the COV. Do not open attachments or click links unless this email comes from a known sender and you know the content is safe..

Ms. Wellman,

Please see attached The Port of Virginia's concerns regarding NOAA National Marine Fisheries Service's proposed amendments to the existing North Atlantic right whale vessel speed rule. Please let me know if you have any questions or need additional information.

Regards,

Andrew

Andrew M. Sinclair

Director, Federal Government Affairs

Virginia Port Authority

600 World Trade Center

Norfolk, VA 23510

Office: (757) 683-2129

Cell: (757) 650-1364

www.portofvirginia.com



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VIRGINIA PORT AUTHORITY
600 World Trade Center, Norfolk, VA 23510
(757)683-8000

July 31, 2024

Ms. Julia Wellman
Office of Environmental Impact Review
Virginia Department of Environmental Quality
1111 East Main Street, Suite 1400
Richmond, Virginia, 23219

Dear Ms. Wellman:

The Port of Virginia is concerned with the changes proposed by National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) to the existing North Atlantic right whale vessel speed rule. Further, the port urges the Virginia Department of Environmental Quality (DEQ) to object to NOAA's consistency determination.

The Code of Virginia (§ 62.1-132.3) charges the port, "on behalf of the Commonwealth, to foster and stimulate the commerce of the ports of the Commonwealth". The proposed rule, if implemented, would significantly hinder and impede our ability to fulfill these duties. We filed our objections directly with NOAA in October 2022 in response to their Notice of Proposed Rulemaking. Those comments are attached to this letter for reference.

We appreciate DEQ's attention to our concerns. Please do not hesitate to reach out to me for more information regarding our concerns and the impacts of the proposed rule on our ability to fulfill our statutory duties.

Sincerely,

Andrew M. Sinclair
Director, Federal Government Affairs

Enclosure



VIRGINIA PORT AUTHORITY
600 World Trade Center, Norfolk, VA 23510
(757)683-8000

October 28, 2022

Dr. Caroline Good
Office of Protected Resources
National Oceanic & Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

Dear Dr. Good:

The Port of Virginia is concerned with the changes proposed in the Notice of Proposed Rulemaking “Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule”. The rule raises significant life and safety concerns and, if implemented, would have detrimental effects on maritime commerce, causing further delays to an already strained supply chain.

Virginia’s ports and waterways are among the most nationally and economically significant in the United States. The Port of Virginia is the third largest container port, and among the fastest growing, on the US East Coast. With shipping channels that are currently 50-feet deep and ongoing construction to Congressionally-authorized 55-feet, unlimited air-draft, along with extensive intermodal connections to the Midwest, Virginia is a critical gateway for the movement of goods across the country and to the world. Nationally, The Port of Virginia supports nearly 1.3 million jobs, \$88.8 billion in wages, and more than \$340 billion in sales.

While the port fully supports reasonable measures to protect endangered species, including the North Atlantic Right Whale (NARW), we are concerned that the proposed rule inadvertently reduces safety for shipping and maritime pilots, as well as negatively impact port efficiency along the East Coast.

The changes in the proposed rule include speed restrictions for vessels between 35-65 feet, longer time of year restrictions, a larger area where these restrictions would apply, and changes to the deviation clause. Each of these presents an increased risk to the health and safety of mariners and to the environment that have not been adequately addressed in the rule or supporting documentation.

Approximately 3,000 vessels transit through Norfolk Harbor annually. An increasing share of those vessels are Ultra-Large Container Vessels (ULCVs) which have high dead slow speeds. Requiring them to navigate at bare steerage way while operating in a Traffic Separation Scheme, near shoal water, or in adverse weather conditions creates a danger to navigation off our coast.

Expanding current speed restrictions under the proposed rule to vessels as small as 35 feet would also endanger the pilots and crews operating such vessels. Pilot launches are custom designed, high-performance vessels that operate in all weather conditions and conduct operations every day of the year. The Virginia Pilot Association's newest launches are 56 feet and equipped with state of the art navigation and safety equipment. For these vessels to run at 10 knots, the RPMs are just above idle. For many pilot launches, it takes at least 17 knots to get the boat "on plane" and then at least 14 knots to keep it planed. When not on plane, the pilot launch's bow protrudes higher above the water line and blocks the pilot launch operators' vision. Additionally, the pilot launch becomes less maneuverable.

Pilot transfer operations (when a pilot transfers from a pilot vessel to larger ocean-going vessels) are inherently dangerous, and the proposed rulemaking would make these operations even more dangerous, as it would force both pilot launches and commercial vessels to operate outside of the ideal operational parameters to conduct such pilot transfers. Pilot launches must routinely operate in and among swirling winds and currents and near dangerous shoals and other hazards to navigation in order to deliver pilots to waiting or departing commercial vessels that are often great distances from shore. These boats must approach moving vessels at speeds carefully calculated to bring the boat alongside the ship at the best possible angle and moment to facilitate what is, even in the most benign of conditions, a dangerous personnel transfer operation.

The proposed rule's speed restrictions on pilot vessels would adversely impact marine and navigation safety by increasing pilot fatigue related to pilots' trips meeting these large ocean-going vessels. Pilot launches were designed to transfer pilots to and from commercial ships quickly, efficiently, and safely to avoid subjecting pilots to long and arduous vessel transits that would significantly increase workload and fatigue. However, the proposed rule would force pilots to transit at 10 knots or less, which would significantly increase the risk of fatigue. These dangers are a principal factor that can adversely impact mariner well-being, marine operations, and navigation safety.

The proposed speed restrictions would also negatively impact commercial vessels and port efficiency up and down the East Coast. Frequently, a pilot launch will depart port with more than one pilot on board, transit to the pilot boarding area, deliver one pilot to an awaiting vessel, and then quickly move to deliver pilots to other vessels. In other scenarios, a pilot launch may retrieve a pilot from a vessel that has finished its transit out of port and through the offshore pilotage waters and deliver that pilot to another vessel that is awaiting a pilot for its inbound transit. These large ocean-going vessels are well-spaced for safety reasons and may be several miles or more apart. Requiring pilot launches to conduct transfers at slower speeds will lead to additional delays for commercial vessels transiting in and out of port and in the movement of goods, leading to even further impacts on an already strained supply

chain. The economic impacts of these added delays and the reduced efficiency on port operations were not factored into NOAA's economic analysis.

Lastly, the proposed changes to the deviation clause will place a significant burden on the ship's master and the pilot. Requiring a vessel operator to complete and submit a deviation report to NOAA's National Marine Fisheries Service within 48 hours of deviating from the rule is extremely burdensome because preparing these extremely lengthy and detailed reports would remove the operator's time and attention away from more crucial matters such as safely navigating the vessel. The only practical way to comply with the rule would be for the ship's master to complete the report in near real time and the pilot to remain on the ship to review and "attest" to the information on the form.

These proposed burdensome reporting requirements would also be distracting at the worst possible time. Under the very circumstances that the deviation clause should be invoked, the vessel's pilot and ship's master need to be focused on the navigation of the vessel and not distracted by the significant administrative burden associated with the proposed reporting scheme. Furthermore, a pilot or vessel master may find it necessary to increase the vessel's speed on a moment's notice. This is particularly true for two-way traffic like that experienced in Virginia's Federal Navigation Channels. Limiting a pilot's and master's flexibility and ship handling options by requiring them to be worried about these additional bureaucratic steps, especially when trying to focus on navigating a large commercial vessel in these challenging waterways would certainly jeopardize navigational safety.

These proposed reporting requirements are not only disruptive and distracting but given the characterization of the reporting requirements in the criminal context, the requirements will have a dire impact on the dynamics of the critical Master-Pilot relationship. The proposed language to the deviation clause regulation overtly criminalizes decisions that must be made by vessel masters and pilots and potentially recommendations made by pilots to vessels masters. A mutually supportive and trusting relationship between the pilot and the ship's master/bridge crew is a critical component of navigation safety in pilotage waters. If this relationship is damaged or compromised, there will be negative consequences. Many questions remain over the enforceability, potential criminality, and due process for cases where there is disagreement in a deviation's justification. These are not adequately addressed in the proposed rule change.

In summary, applying speed restrictions to pilot vessels and altering the deviation clause as proposed would be dangerous for pilots and the crews that operate these boats, would increase pilot/pilot boat crew fatigue, would negatively impact port efficiency in Virginia and ports throughout the country, and would unduly burden both the master and pilot during the very time when they need to be focused on the safe operation of the vessel.

We recommend that NOAA leave the existing rule in place rather than pursue the proposed amendments. If the current rulemaking continues to move forward, then we recommend the following changes:

- Exempt pilot vessels from the regulations.
- Exempt all vessels while navigating within pilot boarding areas and Federal Navigation Channels.
- Exempt all vessels transiting within safety fairways as determined by the U.S. Coast Guard.

These changes to NOAA's proposed NARW speed restriction areas would alleviate navigational safety concerns in these critical channels, which are a very small part of the area covered by the proposed regulation and is needed to ensure the continued efficient flow of maritime commerce. Critically, there appear to be no known cases of a ship strike of a NARW ever occurring in a Federal Navigation Channel or pilot boarding area nor by a pilot launch.

The Port of Virginia like ports up and down the East Coast is committed to taking steps to protect and preserve the North Atlantic Right Whale. However, it is critical that steps are taken to balance conservation goals with the safe and efficient movement of cargo into and out of our nation's ports. Prior to any modification to the existing rule, the effects on life and safety and the impacts on maritime commerce must be understood, sufficiently evaluated, and appropriately weighed.

We urge NOAA to work closely with the affected ports and other maritime industry stakeholders to determine an accurate effect of any rule changes on port communities. We appreciate your time and attention to our concerns and welcome the opportunity to address this with you further.

Sincerely,



Andrew M. Sinclair
Director, Federal Government Affairs

North Atlantic Right Whale Vessel Strike Reduction Rule

Kaleigh Leager <kleager@congressionalsportsmen.org>

Fri 8/2/2024 11:14 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@DEQ.virginia.gov>

 1 attachments (130 KB)

VA Caucus CMZ Letter - Right Whale.pdf;

Dear Ms. Wellman,

Attached you will find a letter from the VA Legislative Sportsmen's Caucus Co-Chair, Del. Hyland "Buddy" Fowler regarding the North Atlantic Right Whale Vessel Strike Reduction Rule.

Please let me know if you have any comments, questions, or concerns.

Best regards,



Kaleigh Leager
Senior Coordinator, Mid-Atlantic States (DE, MD, PA, VA, WV)
Congressional Sportsmen's Foundation

Phone 202-543-6850 X 20 **Mobile** 202-253-6883
Web www.congressionalsportsmen.org
Email kleager@congressionalsportsmen.org
110 North Carolina Avenue, SE, Washington, DC 20003

August 2, 2024

Julia Wellman
Federal Consistency Coordinator
DEQ Central Office
Office of Environmental Impact Review
1111 East Main Street, Suite 1400
Richmond, Virginia, 23219

Re: North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Ms. Wellman:

As a Co-Chair of the Bi-Partisan Virginia Legislative Sportsmen's Caucus, I am writing to express my concerns regarding the proposed amendment to the North Atlantic right whale vessel strike reduction rule. I am fully supportive of right whale conservation efforts, however given the substantial impact of the proposed vessel speed rule on the ability of anglers and boaters to safely venture offshore of Virginia for much of the year, the fact the proposed seasonal management zones will have little measurable benefits to right whale conservation, and the lack of overall stakeholder engagement by NOAA in the development of the rule, I urge you to find that the proposed rule is not consistent with Virginia's enforceable policies under the Coastal Zone Management Act (CZMA).

As currently proposed, the rule would expand mandatory speed restrictions to include vessels 35 to 65 feet and significantly broaden seasonal speed zones (SSZs) in both space and time, impacting tens of thousands of recreational vessels. Equally concerning is the impact this rule would have on the recreational charter fishing industry and non-boat owners. Thousands of Virginia anglers who cannot afford their own boat must rely on charter fishing businesses to access their marine resources. The proposed 10-knot maximum speed limit extending 40 offshore will considerably extend travel times, reduce available fishing time, increase trip costs, and prohibit safe access to productive fishing areas for much of the year, ultimately resulting in many few offshore trips annually. I fear the unintended consequences of what is being proposed will have significant detrimental effects to our coastal economies and our way of life with little or no gain for right whales.

With recent advancements in technologies including aerial surveillance, satellite tagging, vessel-mounted infrared cameras, marine radar, forward facing sonar, crowd-sourcing applications, and geofencing capabilities to transmit known locations to nearby vessels, North Atlantic right whale conservation could be more successfully achieved by using this real-time information to alert boaters of right whale presence so that they may avoid dangerous collisions.

In Summary, I am fully supportive of realistic efforts to conserve the North Atlantic right whale, but more effective North Atlantic right whale conservation objectives could be achieved through technological solutions. The proposed rule will have significant impacts on the ability for Virginians to safely access our marine resources and the economic benefits that access provides.

For this reason, I ask the Virginia Department of Environmental Quality to find the rule inconsistent with the enforceable polices of our CZMA programs.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Hyland F. Fowler, Jr.", written in a cursive style.

Delegate Hyland F. "Buddy" Fowler, Jr.

DEQ Request for Comment on NMFS Consistency Determination

Will Fediw <will@vamaritime.com>

Fri 8/2/2024 7:47 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

Cc: Rayfield, Bettina (DEQ) <Bettina.Rayfield@deq.virginia.gov>; Green, Ryan (DEQ) <Tim.Green@deq.virginia.gov>

 3 attachments (2 MB)

Virginia Maritime Association Response to NOAA 10.25.2022.pdf; Virginia Pilot Association Response to NOAA 9.12.2022.pdf; Virginia Maritime Association - Comment Letter to DEQ re NMFS Consistency Determination 8.2.2024.pdf;

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Good Morning Julia,

As per the following instructions (<https://www.deq.virginia.gov/Home/Components/Calendar/Event/1481/133>), please find our attached comment letter, dated August 2nd, 2024, regarding the consistency review of the enforceable policies of the Virginia Coastal Zone Management Program.

You will also find two attached enclosure letters referenced in the letter.

Thank you for the opportunity to provide input on this matter; please consider us a resource for all maritime and navigation-related issues.

Sincerely,

Will Fediw
Senior Vice President



757-622-2639 (office)
757-418-4413 (mobile)
will@vamaritime.com

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VIRGINIA MARITIME

A S S O C I A T I O N

August 2, 2024

BY E-MAIL (Julia.Wellman@deq.virginia.gov)

Julia Wellman
Office of Environmental Impact Review
Virginia Department of Environmental Quality
1111 East Main Street, Suite 1400
Richmond, Virginia, 23219

RE: Comments on National Marine Fisheries Service Consistency Determination for Proposed North Atlantic Right Whale Vessel Strike Reduction Rule Amendments

Dear Ms. Wellman:

The Virginia Maritime Association (“Association”) is the 104-year-old trade association representing over 450 businesses directly and indirectly engaged in the flow of waterborne commerce through Virginia’s ports, to include vessel operators, marine terminal & warehouse operators, shipbuilding & repair yards, trucking firms, offshore wind developers, and all manner of companies involved in freight transportation and logistics. This letter provides comments on behalf of the Association regarding the National Oceanic and Atmospheric Administration National Marine Fisheries Service’s (“NOAA NMFS’s”) consistency determination letter of June 18, 2024 (“CD Letter”) for NMFS’s Proposed North Atlantic Right Whale Vessel Strike Reduction Rule Amendments published August 1, 2023 in the Federal Register at 87 FR 86921 (“Amendments”).

I. OVERVIEW

We acknowledge that the intent of these Amendments is to ensure the safety and preservation of the North Atlantic Right Whale, and we appreciate the strong relationship NMFS’s parent agency, NOAA, shares with the commercial maritime industry. However, we have analyzed the Amendments and the CD Letter carefully in our role as the “Voice of Port Industries” representing its members as stakeholders in any number of regulatory actions. In short, we find that the Amendments are inconsistent with enforceable policy of the Commonwealth of Virginia reflected in Virginia statute and regulation, and that the CD Letter’s determination that the Amendments are not inconsistent with Virginia enforceable policies, including those pertaining to Virginia’s coastal zone, is clearly erroneous. More specifically, the Amendments (i) present substantial safety and economic concerns for maritime commerce; (ii) will hinder the Commonwealth’s ability to invest in and to sustain existing investment in navigation channel and port terminal infrastructure, thereby easing supply chain congestion and inefficiencies; and (iii) will interfere with Virginia’s fulfillment of renewable energy policy and objectives especially through off-shore wind energy generation. Also, our letter submitted to NOAA NMFS, dated October 25, 2022, addressed our concerns in these respects, which letter is hereby incorporated by reference into the comments provided in our letter of today.



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In addition, on a broader scale for Virginia, these Amendments introduce increased navigational risks that could jeopardize a critical economic engine for our state. From 2019-2023, the greater Port of Virginia and related terminals along the Elizabeth and James Rivers (collectively, “Port”) has received an average of over 2,350 deep-draft vessel calls on an annual basis, not including the thousands of additional transits from towing vessels, barges, dredges, offshore wind support vessels, pilot boats, and other shallow-draft vessels supporting commerce. These vessels are essential to the movement of international and domestic cargo, the maintenance of our navigation channels, and the construction and operation of offshore renewable energy projects. This collective activity of the Port accounts for over 14% of Virginia’s gross state product (“GSP”), 729,600 jobs, \$8.1 Billion in state and local tax revenue, and \$178.1 Billion in total sales.¹ Moreover, how well this vessel activity can navigate through Virginia waters is critical to the safe passage of these vessels and, in turn, continuation and growth of this commerce for the benefit of Virginia’s economy and residents.

We face a critical point in time as we near completion of the Norfolk Harbor’s deepening and widening projects and construction of the Coastal Virginia Off-Shore Wind Project (“CVOW”). Vessel movements to, from, and through the Port will change dramatically over the next few years, and assurance of viable and safe commercial navigation and the usefulness of our federal navigation channels is essential. We understand and agree protecting endangered species, including the North Atlantic Right Whale, is important. To that end, we encourage a balanced approach to such protection efforts generally and, more particularly, the exploration of alternative protection methods to meet these goals. However, such broader efforts and specific methods need to account for other uses of Virginia waters and should not impair the usefulness of the Norfolk Harbor projects – whether existing, underway, or being planned – thereby risking physical harm to mariners and causing financial harm to the public.

II. RELEVANT VIRGINIA ENFORCEABLE POLICIES

Regarding consistency of the Amendments with the enforceable policies of the Virginia Coastal Zone Management Program (“VCZMP”), we (1) challenge numerous assertions made in the CD Letter, (2) contend the Amendments conflict with the policies of any state agency which enforces safe navigation and vessel operation, and (3) find that the Amendments conflict with and impair the ability of the Commonwealth to uphold and fulfill other codified public policy and duties. There are several relevant enforceable state policies that are undermined by the Amendments in these respects. As a result, the CD Letter wrongly concludes that the Amendments are not inconsistent with Virginia enforceable policy.

¹ Raymond A. Mason School of Business, William & Mary College, *The Fiscal Year 2022 Economic Impacts of the Virginia Maritime Industry*, available at https://vamaritime.com/common/Uploaded%20files/Events/Press%20Releases/2023%20FINAL%20VMA_Economic_Impact.pdf.



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A. Vessel Safe Speed and Navigational Control and Safety.

As previously stated, the “speed limit” imposed by the Amendments would result in a restriction of safe maneuvering speed that would place undue risk on the safety of pilot operations and the navigation of commercial vessels, as well as impose burden on the pilots or vessel operators to prepare and file laborious administrative reports based on conditions that require full attention of the pilots or vessel operators at the time of concern.

The Convention on the International Regulations for Preventing Collisions at Sea (“COLREGS”) are internationally agreed upon rules of safe navigation, which the United States incorporated in Title 33 of the Code of Federal Regulations (CFR), Part 83, also known as the Navigation Rules. Section 83.06, or “Rule 6,” states that,

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

The regulation goes on to list several factors to take into account when determining safe speed and does not explicitly give a particular speed for a particular size or class or type of vessel.

Any state or federal agency rule setting a standard for or enforcing safe navigation would (or should) base a safe speed determination on the COLREGS and the Navigation Rules. For example, the Department of Wildlife Resources’ (“DWR”) Safe Boating Guide incorporates and tracks the COLREGS and the Navigation Rules, notifying operators of all vessels² operating on “waters of the Commonwealth”³ to follow not only the Safe Speed law, but the entirety of the Navigation Rules as well. Indeed, “[v]essels complying with the Inland Navigation Rules, 33 CFR Parts 83, 84, and 86, as established by the U.S. Coast Guard are considered to be in compliance with the requirements of [4VAC15-390].” 4VAC15-390-10.

Furthermore, DWR regulation addressing “safe speed” reads as follows:

It shall be unlawful to operate a watercraft in excess of a safe speed. A safe speed is a speed less than the maximum at which the operator can take proper and

² Per 4VAC15-390-10, a “vessel” is as defined in § 29.1-700 of the Code of Virginia. Section 29.1-700 defines a “vessel” as “every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.”

³ Va. Code § 29.1-700 defines “Waters of the Commonwealth” as “any public waters within the territorial limits of the Commonwealth, the adjacent marginal sea and the high seas when navigated as a part of a journey or ride to or from the Virginia shore.”



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effective action to avoid collision and stop within a distance appropriate to the prevailing circumstances and conditions. *In establishing a safe operating speed, operators shall take into account the state of visibility, traffic density, maneuverability of the vessel with special reference to stopping distance and turning ability, the presence of background light at night, the proximity of navigational hazards, the draft of the vessel, the limitations of radar equipment, and the state of wind, sea, and current.* Any person who violates any provision of this section shall be guilty of a Class 1 misdemeanor as provided by §§ 29.1-738 and 29.1-738.03 of the Code of Virginia. 4VAC15-390-150 (emphasis added.)

Therefore, state law sets a standard for determination of safe operating speed based on various conditions and expressly compels all vessel operators to comply with that standard. By inference, then, vessels operating contrary to the meaning of safe operating speed are doing so in violation of state law (or could be presumed to be in violation thereof). The Amendments would restrict speed to levels too slow to achieve safe operating speed for certain vessel types and/or in certain navigational and maneuverability conditions (e.g., designed minimum propulsion, wind, current, tide, collision hazards, and at-sea vessel boarding needs). In so doing, they directly conflict with the COLREGS, the Navigation Rules, and state regulation as to vessel safe speed or safe operating speed and are therefore contrary to express international, federal, and state law.

To the degree that one may counter this concern by stating that the vessel speed limit cannot create unsafe conditions by causing a vessel to travel more slowly, that person misunderstands captaining or piloting a vessel in condition that challenge the ability to navigate as needed. It is absolutely essential that a vessel be able to maintain speed above 10 knots under any number of conditions to operate safely.

One of many examples involves vessel pilots. Not being able to gain or maintain speed of greater than 10 knots can create a dangerous situation for the state-licensed vessel pilots that are mandated by Virginia law to bring commercial vessels safely into and out of our Port. As stated in the attached September 12, 2022 letter to NOAA NMFS from the Virginia Pilot Association, the ideal speed to conduct pilot boarding operations underway is 8-12 knots, based on varying conditions. Conducting these operations at a speed of 10 knots or less as mandated by the Amendments could put the pilots and their boat crews, and in turn the vessels they are boarding or debarking from, in danger. While the proposed Amendments discuss maximum vessel speeds needed to protect endangered species, such speeds need to be consistent with the minimum safe operating speeds needed to protect the human lives operating and traveling on these vessels, and to prevent accidents which could cause environmental harm. In short, no



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vessel, whether under control of a pilot or other operator, should be put at risk of floundering because it cannot maintain sufficient speed to remain in control.

NMFS seeks to counter the concerns about maintaining sufficient speed by offering limited opportunities to rebut the presumption that the speed limit should apply. However, the burden for making rebuttals and overcoming such presumption falls on the vessel operator to demonstrate the sufficiency of the conditions to warrant speed in excess of 10 knots. Also, such rebuttal efforts come with extensive reporting obligations that depend on accurate recounting of specific conditions at the time when speed exceeded 10 knots. Needless to say, recording the details of such situations with accuracy in the middle of such conditions is not always feasible. Also, in this regard, NOAA NMFS discards the professional vessel operation judgment of pilots or other vessel captains and places itself as the sole judge of whether decision-making by the vessel pilot or captain at the time of these conditions were sufficient to warrant speed greater than 10 knots. NOAA NMFS regulators do not have the statutory authority or agency expertise to conduct such armchair quarterbacking, and doing so means that every pilot and captain will second-guess his or her decision-making when experience and skill-based assessment of conditions in that moment and immediate judgment calls for which speed is necessary for safe vessel operation may make the difference between safe passage and great danger or disaster.

The approach set forth in the Amendments as to the proposed vessel speed limit therefore undermines and frustrates the Commonwealth's jurisdiction and application of the enforceable policy of the Commonwealth expressed in statute and regulation to oversee and regulate what safe operating speed should be in state waters. The Amendments are therefore clearly inconsistent with the Commonwealth's enforceable policies as to vessel safety in waters of the Commonwealth.

B. Interference with Virginia's Jurisdiction over Beneficial Uses of Virginia Water.

The CD Letter states at page 5 that "[t]he 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." However, the right of use of "all navigable waters" depends on such use being safe and consistent with the underlying purpose of such use. Instead, the CD Letter assumes the question of whether such "access to navigable waters" would be safe access.



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Indeed, the proposed Amendments would conflict with and impair multiple beneficial uses of Virginia “state waters” or “waters of the Commonwealth,” to include recreation, navigation, commercial, and industrial vessel activities, and be injurious to the public interest of Virginia residents and economic welfare. State waters “are a natural resource which should be regulated by the Commonwealth.”⁴ In addition, “[t]he regulation, control, development and use of waters *for all purposes beneficial to the public* are within the jurisdiction of the Commonwealth which in the exercise of its police powers may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.” Va. Code § 62.1-11.A (emphasis added). Va. Code § 62.1-10.b defines “beneficial use” of state waters to include:

both instream and offstream uses. *Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values.* Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority. (Emphasis added.)

Finally, “[t]he public welfare and interest of the people of the Commonwealth require the *proper development, wise use, conservation and protection of water resources* together with protection of land resources, as affected thereby.” Va. Code § 62.1-11.B (emphasis added). Note, then, that under statutory state policy as to waters, neither navigation nor protection of fish and wildlife habitat are elevated above each other; each have equal prioritization among beneficial uses of state waters (behind public water supply for human consumption). Therefore, the protection of fish and wildlife habitat at the expense of safe navigation would seem to be at odds with the interest of the public.

NOAA NMFS has opined that the Amendments will help ensure vessel safety by reduction of whale strikes by such vessels. However, it uses sledgehammer when a chisel would provide a more accurate and controlled result; the proposed mandate of speeds of less than 10 knots is too blunt a tool considering all of the beneficial uses that need to be balanced for Virginia waters per state policy. NOAA NMFS fails to consider alternative approaches, such as greater use of technology to track whale movement more discretely and limit the time and area of such reduced speeds, and otherwise minimize the adverse impacts on commercial shipping (and other beneficial uses). A more tailored and specifically designed instrument is needed here to strike

⁴ “Water” is defined as “all waters, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction and which affect the public welfare.” Va. Code § 62.1-10.a



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the balance of beneficial uses in a reasonable manner that does not pit protection of whales against safe vessel operation across wide expanses of state waters. Moreover, it seems to have ignored Virginia's jurisdiction over the beneficial uses of state waters and its prerogative to balance such uses.

C. Assumptions by NOAA NMFS as to Adverse Impacts on Commercial Shipping and Port Investments.

The Association takes issue with many of the economic impact assumptions contained in the CD Letter impact letter.

The CD Letter at page 3 states that the "...proposed amendments would not affect navigational regulations such as traffic separation schemes, no wake zones, boating safety zones, pilotage requirements, or hazards to navigation," and "...would not have any physical impacts on...port facilities." But this glosses over other serious adverse impacts to the operations of and financial position of Port facilities in Virginia.

Although the Amendments may not directly physically impact the Port terminal facilities, the decrease in transit speeds would result in significant operational impacts based on delays in arrivals into the Port. The CD Letter concedes this at page 3 in stating that the Amendments "...would impact transit times of vessels." As previously mentioned, this could severely impact the efficiency of our Port terminals and increase costs of commercial shipping. The CD Letter admits as much when it states on page 3 that "the largest proportion of costs from implementation [of the Amendments]...would be borne by the commercial shipping industry," to include passenger vessels, pilot boats, and industrial vessels. Such inefficiencies and related costs could be reasonably expected to create greater risk of legal liabilities for commercial shipping and passenger lines in the supply chain based on breach of contract provisions as to timing of shipment and receipt of goods and arrivals and departures of passengers. In addition, the financial viability of these terminals and their utilization rate will be adversely impacted by slower vessel transits.

The CD Letter also states that the Commonwealth of Virginia could be disproportionately impacted, as NOAA NMFS estimates that "...89% percent of the cost burden...would accrue to vessels operating in the Mid-Atlantic and Northeast regions (between Maine and North Carolina) and 11% of costs borne by vessels operating in the Southeast (South Carolina to Florida)." This could benefit Virginia's direct competitors in the ports of Charleston and Savannah, in turn jeopardizing over \$1 billion in navigation channel and terminal improvements made by the Commonwealth.



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As noted, all of this creates additional risks for existing and ongoing investments made by the Commonwealth and the private sector in Port infrastructure. Yet the CD Letter somehow, and erroneously, concludes in this regard that “[t]he proposed amendments are consistent with state policies regarding ports, harbors, piers, and related facilities, because they do not affect the activities or traditional uses of these facilities within the regulated waters. The proposed amendments do not affect the enhancement, development, or infrastructure of these facilities.” CD Letter at 5. This conclusion could hardly be any more incorrect.

Additionally, the Amendments would conflict with and impair the ability of the Virginia Port Authority (VPA) to execute one of its key statutory missions:

It shall be the duty of the Authority, on behalf of the Commonwealth, to foster and stimulate the commerce of the ports of the Commonwealth and related facilities by serving as the United States Eastern Seaboard gateway for the global import and export of freight throughout the world, to promote the shipment of freight through the maritime and inland ports, to seek to secure necessary improvements of navigable tidal waters within the Commonwealth, and in general to perform any act or function that may be useful in developing, improving, or increasing the commerce, both foreign and domestic, of all maritime and inland ports of the Commonwealth and related facilities. Va. Code § 62.1-132.3.

The Code of Virginia charges the VPA with broad duties regarding the stimulation of commerce. However, the Amendments would create inefficiencies in the movement of vessels and cargo that would impose a competitive disadvantage on the Port that would frustrate the VPA’s ability to stimulate commerce.

III. CONCLUSION

It is critical that Virginia’s Port (including the many private terminals and support vessel operations) and navigational channels are able to safely receive the largest vessels in the global fleet now and in the future. Given the significant public investments in our navigation channels and terminal infrastructure, the Commonwealth of Virginia, and our nation, cannot afford to have any federal or state regulations that will materially limit the efficiency of commercial vessels, increase their congestion, and increase the risk to their safety under foreseeable adverse navigation conditions.



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In light of the points made above, the Association requests that the Department reject NOAA NMFS “not inconsistent” determination of the CD Letter. We suggest that the Department seek a collaborative approach with NOAA NMFS and stakeholders of the beneficial uses of state waters (or waters of the Commonwealth) to develop a more balanced approach to protection of the Right Whale in such waters that does not create such significant risks and burdens for vessel operators and pilots. The Association would be glad to participate in such an effort on behalf of its varied membership.

We appreciate your serious consideration of our concerns and look forward to continuing our longstanding collaboration with the VCZMP and other Department programs.

Sincerely,



David White
Executive Director

Enclosures

- 1.) Virginia Maritime Association Response to NOAA, dated October 25, 2022
- 2.) Virginia Pilot Association Response to NOAA, dated September 12, 2022



Dr. Caroline Good
Office of Protected Resources
National Oceanic & Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

October 25th, 2022

Re: NOAA-NMFS-2022-0022 North Atlantic Right Whale Vessel Strike Reduction Rule

The Virginia Maritime Association (VMA) represents nearly 500 businesses directly and indirectly engaged in the flow of waterborne commerce through Virginia's ports, to include marine terminals, the Virginia Pilot Association, Virginia Port Authority, international ocean carriers, towing vessel operators, dredge operators, offshore wind developers and related companies. As the "Voice of Port Industries" representing these interested parties, we write to provide comments on the proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, hereafter referred to as "the Amendments."

We appreciate the intent of these Amendments, to ensure the safety and preservation of the North Atlantic Right Whale, as well as the strong relationship NOAA shares with the commercial maritime industry. However, these Amendments may have unintentional safety and economic impacts, as well as hinder key Administration goals relating to renewable energy, infrastructure investment, and easing supply chain congestion.

Over the last several years, the greater Port of Virginia has received an average of over 2,200 deep-draft vessel calls on an annual basis, not including the thousands of additional transits from towing vessels, barges, dredges, offshore wind support vessels, pilot boats, and other shallow-draft vessels supporting commerce. These vessels are essential to the movement of international and domestic cargo, the maintenance of our navigation channels, and the construction and operation of offshore renewable energy projects, all accounting for over 10% of Virginia's GSP.

After engaging with our broad membership and partner organizations to determine impacts, we offer the following compilation and analysis to better assist in your determination of overall effects of the Amendments.

Boundary modification of Seasonal Management Areas to Seasonal Speed Zones

The modification of the spatial and temporal boundaries of existing Seasonal Management Areas (renamed Seasonal Speed Zones) will create a much larger East Coast enforcement zone that envelops the Bureau of Ocean Energy Management's (BOEM) existing and proposed Central Atlantic offshore wind lease areas, as well as essential safety fairways being proposed by the U.S. Coast Guard through the Port Access Route Study process. Given the amount of ongoing and upcoming offshore wind construction activity in the Mid-Atlantic region, there will be significant impacts to the fleets of smaller vessels servicing wind farms and other projects such as ocean channel dredging.



VIRGINIA MARITIME

A S S O C I A T I O N

Additionally, thousands of cargo vessels regularly travelling at speed up and down the East Coast will be impacted by the overall reduction in transit speed, greatly increasing the per-day costs of the vessel, increasing cargo delivery time to the customer, and potentially requiring even more vessels in the service route to accommodate for the reduction in speed and service.

The Mid-Atlantic region will also see a disproportionate increase in the enforcement zone boundaries from the existing Seasonal Management Areas, which could inadvertently increase congestion and harm the competitive position of the greater Port of Virginia. **See Figures 1 and 2 attached.**

Finally, the increase of the seasonal applicability window to seven months from the previous six will further exacerbate the impacts, causing undue strain on an already stressed supply chain.

Inclusion of most vessels equal or greater than 35' and less than 65' in length overall (LOA)

The Amendments would reduce the LOA of the previous vessel applicability, greatly increasing the number of impacted vessels and enveloping entirely new industries. Smaller vessels, such as pilot boats, offshore wind crew transfer vessels (CTV's), and launch vessels that support ocean channel dredging and other activities would be adversely impacted, greatly reducing their purpose-built functionality and safety.

For example, the above-mentioned vessels are specifically designed to operate at higher speeds in order to safely deliver personnel and supplies quickly. The element of speed in this case improves the operational stability and maneuverability of the vessel, reduces the amount of applicable crew hours on the vessel, as well as the work hours on the non-crew passengers heading to their destination. By reducing their operating speed, both larger and smaller vessels will be forced to operate outside ideal parameters, increasing the risks to personnel, equipment, and the environment by reducing their full maneuvering capabilities. Additionally, more vessels and more crew would be required to perform the same level of output, drastically increasing the amount of capital and operating expenses for impacted vessel operators. Given the existing state of the U.S. economy, this could be catastrophic for smaller businesses.

Furthermore, these costs could make these critical services unviable economically, severely impacting the cost, and overall feasibility, of offshore construction projects such as ocean channel dredging and offshore wind farms. This would essentially be the regulation of one federal agency (NOAA) adversely impacting the mission of other agencies (BOEM and U.S. Coast Guard) and hindering the current Administration's goals for renewable energy production offshore and supply chain fluidity.

Change to the recordkeeping for rule deviation

When considering the timely decisions that are required of prudent seamanship, it is unreasonable and unsafe to require a nearly immediate reporting of deviations from the vessel master (to be attested by the pilot). In our port, the precautionary area at Chesapeake Bay Entrance is where several channels converge to create a high vessel density area where pilot boardings are conducted. The practical effect of this reporting requirement is that when making split-second decisions concerning speed and safety, the mariner may be faced with choosing between a possible penalty or the safety of the vessel and its crew.



VIRGINIA MARITIME

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Furthermore, it is unclear in the Amendments who will be reviewing the deviation reports of pilots and master mariners who have decades of experience, nor the qualifications of those reviewers. It has also been questioned on how NOAA intends to accurately monitor vessel speeds, and how they plan to enforce infractions.

Recommendations

In conclusion, we believe these proposed Amendments will harm several facets of the East Coast commercial maritime sector, to include safety of life and economic impacts, as well as directly conflict with the Administration's other priorities of renewable energy, infrastructure investment, and supply chain fluidity.

We also wish to offer the following recommendations:

- Exempt pilot vessels from the regulations
- Exempt all vessels while navigating within pilot boarding areas and Federal Navigation Channels
- Exempt crew transfer vessels (CTV's) transiting to or from offshore wind lease areas
- Exempt vessels transiting within safety fairways as determined by the U.S. Coast Guard

We appreciate the opportunity to offer this feedback; feel free to contact me if there are any questions or additional information we can provide.

Sincerely,

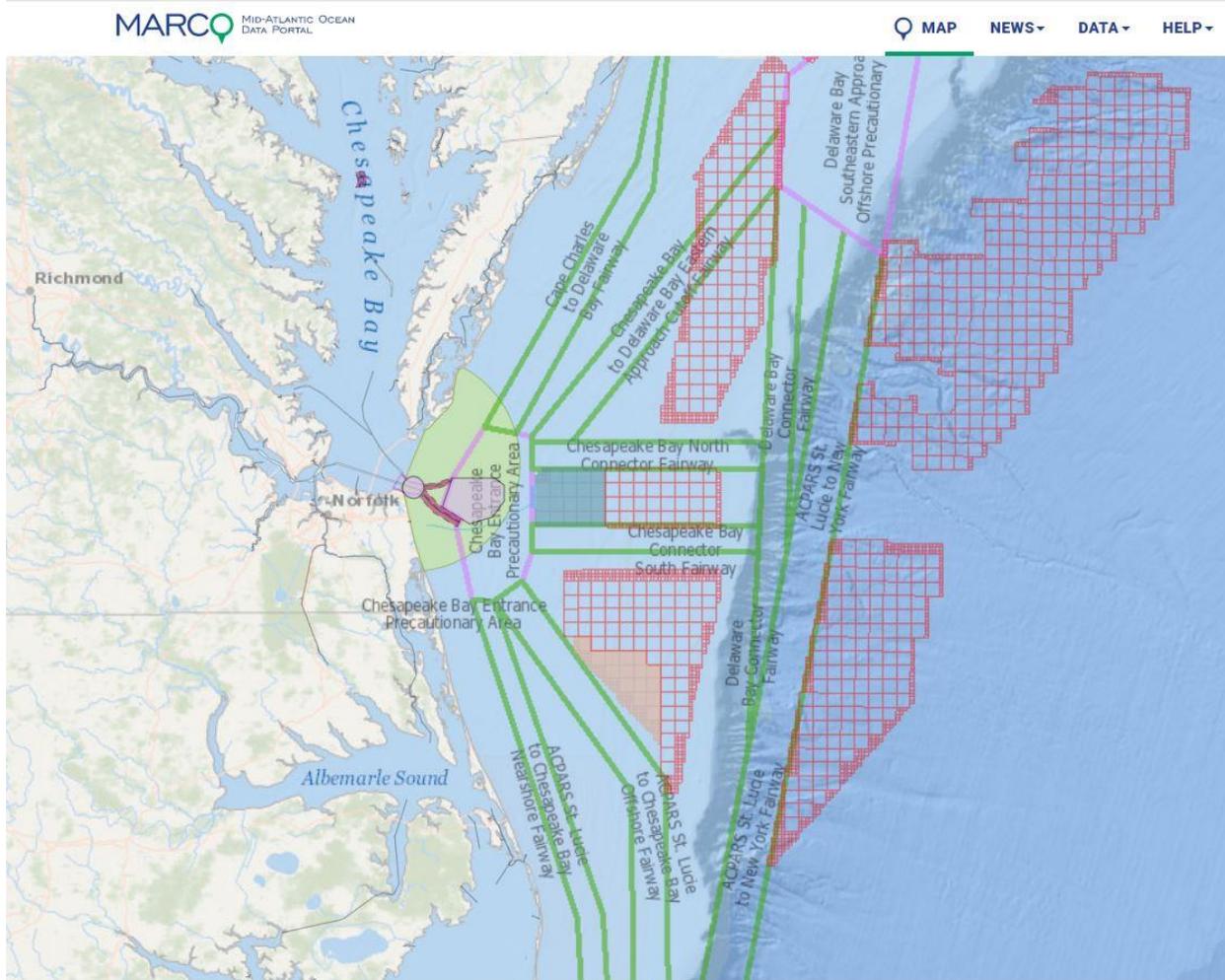


Will Fediw
Vice President, Industry & Government Affairs

VIRGINIA MARITIME ASSOCIATION

Figure 1

Existing North Atlantic Right Whale Seasonal Management Areas



Source: MARCO Mid-Atlantic Ocean Data Portal

<https://portal.midatlanticocean.org>



Virginia Pilot Association

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COMMENTS FROM THE VIRGINIA PILOT ASSOCIATION

FOR THE PROPOSED AMENDMENTS TO THE NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE DOCKET NO. 220722-0162 RIN 0648-B188

September 12, 2022

On behalf of the members of the Virginia Pilot Association, I respectfully submit comments on the proposed amendments to the North Atlantic Right Whale (NARW) Speed regulations. NMFS is proposing to increase the size of the Seasonal Speed Zones to approximately 45 miles off the coast of Virginia, change the regulations for reporting use of the speed restriction navigation safety deviation clause which intend to criminalize the mariner, and despite that NMFS acknowledges that, "while it is not possible to establish a direct causal link between speed reductions efforts and the relative decline in observed right whale mortality," intends to reduce the vessel size to which the speed restrictions apply to 35'.

Before the advent of the NARW speed regulations in 2008, the Virginia Pilot Association has stood a vigilant watch off the coast of Virginia for whales of all descriptions and has actively engaged in avoidance and voluntary speed reductions to prevent whale strikes. Because we work on the water, we have a deep understanding and appreciation for the need to preserve and protect marine wildlife and the marine environment and we support reasonable and responsible efforts to protect the NARW.

Our comments on these regulations have been consistent since 2006; the current vessel speed regulations present an unnecessary danger to deep draft vessels approaching the entrance to Chesapeake Bay which is the entry point to the vital ports of Virginia and Baltimore. NMFS should reevaluate the existing speed restrictions in the narrow sea lane approaches to East Coast ports because the physical size of ships in the world shipping fleet has increased dramatically since the speed regulations were first proposed. In 2017, the Port of Virginia welcomed the first call of an Ultra Large Container Vessel (ULCV- which are approximately 1200' long 175' wide high displacement vessels) and had approximately 58 ULCV transits that year. In 2021, of the approximately 6000 vessel transits in Virginia Ports, 266 were ULCVs and the ULCV number will increase in 2022. ULCV's have high dead slow speeds and for them to operate in a Traffic Separation Scheme, near shoal water, in all weather conditions, at bare steerage way in close proximity to other vessel traffic, which includes LNG, bulk carriers, tankers, cruise ships and Naval vessels (Virginia is host to the largest naval base in the world and this base is homeport to the largest ships in the Navy's fleet), creates a danger to navigation off our coast. It should also be noted that Federal and Naval vessels are not required to observe the NARW vessel speed regulations.

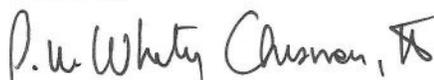
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attested by the pilot, and shows the intent of NMFS is to direct the movement of large ocean-going vessels from shore. In the precautionary area at Chesapeake Bay Entrance, four channels converge to create a high ocean-going vessel density area and this is where pilot boarding operations are conducted. The practical effect of this reporting requirement is that when making these split-second decisions concerning safety and speed, the mariner will have to consider that any navigation decision that he or she makes may result in criminal charges. In addition, presently NMFS has not provided any information on who will be reviewing the deviation reports and "second-guessing" pilots and master mariners who have decades of experience on the water directing the movement of large commercial vessels.

We would like NMFS to reconsider including pilot vessels in the amended speed regulations which intends to capture vessels of 35' and greater LOA. Limiting the speed of a pilot launch to 10 knots while conducting personnel transfers is dangerous. Pilot launches are custom designed, high-performance vessels that operate in all weathers and conduct operations every day of the year. Our newest launches are 56', well below the current regulation of 65', and equipped with state of the art navigation and safety equipment. For these vessels to run at 10 knots, the RPMs are just above idle. The ideal speed of a ship is 8-12 knots when boarding pilots with these launches and therefore the launch should not be restricted to idle speed. In other words, NMFS' proposal to apply NARW speed restrictions to pilot boats puts pilots and pilot boat crewmembers in danger. Launches also perform multiple boardings when operating in this area and must be capable of transiting at more than idle speed to move between ships. It should also be considered that reducing the speed of pilot vessels reduces the efficiency of port operations as a pilotage system is finely calibrated to meet needed rest requirements, the amount of time to transit from shore to the pilot boarding ground and safety.

In conclusion, we encourage NOAA Marine Fisheries to consider more effective and safe regulations to protect the North Atlantic Right Whale and given the potential unintended consequences of the proposed regulation we request that NMFS extend the comment period to December 31, 2022. On behalf of the members of the Virginia Pilot Association, I strongly oppose the amended vessel whale strike speed regulations. I also recommend that NOAA marine fisheries consider exempting the Southeast Sea lane Traffic Separation Scheme and Pilot Area off Cape Henry and exempt pilot vessels from the existing and any future vessel speed regulations.

Sincerely,

A handwritten signature in black ink that reads "J.W. Whiting Chisman, III". The signature is written in a cursive style with a large, stylized "W" and "C".

J.W. Whiting Chisman, III
President

Public Comment Submission for NOAA Project 24-098F

Frank Rabena <vicepresident@vapilotassn.com>

Fri 8/2/2024 3:42 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

Cc: Whiting Chisman <president@vapilotassn.com>

📎 3 attachments (3 MB)

Virginia Pilot Association Response Letter to VDEQ Consistency Ruling.pdf; NARW 2022.pdf; APA_Coastal Zone Management Ltr_VA.pdf;

CAUTION: This Email originated from OUTSIDE of the COV. Do not open attachments or click links unless this email comes from a known sender and you know the content is safe..

Dear Ms. Wellman,

Thank you for receiving this message.

We are writing to provide comments regarding the National Oceanic and Atmospheric Administration (NOAA) Project 24-098F, concerning the Coastal Waters near Virginia. Attached are three relevant documents that outline the Virginia Pilot Association's and, subsequently, the American Pilots' Association's detailed positions on related maritime regulations and their impacts on navigational safety, economic stability, and regulatory coherence within the Commonwealth:

- 1. Virginia Pilot Association Response Letter to VDEQ Consistency Ruling:** This document highlights our strong opposition to the proposed rule amendments, citing significant risks to navigational safety, economic implications, and conflicts with Virginia's enforceable policies.
- 2. APA Coastal Zone Management Letter to VDEQ:** This letter provides an overview of the American Pilots' Association's stance on the proposed amendments, emphasizing the adverse effects on pilot operations and the maritime industry's economic health.
- 3. Virginia Pilot Association Comments on Proposed NARW Speed Regulations:** This document presents our comments on the proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, detailing the potential dangers and operational inefficiencies these regulations would introduce.

Thank you for considering our input. Please don't hesitate to contact us for more information or clarification regarding our comments.

Best regards,
Frank



Attachments:

1. Virginia Pilot Association Response Letter to VDEQ Consistency Ruling
2. APA Coastal Zone Management Letter to VDEQ

3. Virginia Pilot Association Comments on Proposed NARW Speed Regulations



Virginia Pilot Association

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07/31/2024

Julia Wellman
Virginia Department of Environmental Quality
Office of Environmental Impact Review
1111 East Main Street, Suite 1400
Richmond, Virginia, 23219
Julia.Wellman@deq.virginia.gov

Dear Ms. Wellman,

The Virginia Pilot Association (VPA) writes to express our strong opposition to the National Marine Fisheries Service's (NMFS) June 18, 2024, Coastal Zone Management Act (CZMA) Consistency Determination for the Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Rule. As essential stakeholders in Virginia's maritime sector, we believe the proposed rule poses significant risks to navigational safety, economic stability, and regulatory coherence within the Commonwealth.

Safety of Navigation and Pilotage

The proposed rule imposes a 10-knot speed restriction on all vessels greater than or equal to 35 feet, including pilot boats. This restriction jeopardizes the ability of pilots to safely conduct transfer operations, which are inherently dangerous and often necessitate speeds greater than 10 knots to ensure stability and safety, especially in adverse weather conditions. The precision required in pilot transfer operations demands that the pilot boat and the larger vessel maintain speeds that facilitate safe maneuvering. Limiting these speeds can endanger the lives of pilots and crew members during these critical operations.

Furthermore, operating vessels at speeds significantly lower than what is deemed safe can lead to grounding, collisions, and other navigational hazards. For instance, maintaining a speed that is too slow in areas with strong currents, strong winds or heavy traffic can impede a vessel's ability to maneuver effectively, increasing the risk of incidents. These incidents threaten human life and pose substantial environmental risks, including oil spills and damage to marine habitats. A mariner's decisions and appropriate reaction times to avoid these incidents cannot wait for the approval of someone with zero situational or institutional knowledge remotely located ashore.

Economic Impact on Pilot Operations

The economic implications of the proposed amendments are severe. NMFS's Regulatory Impact Review (RIR) grossly underestimates the economic impact on pilot groups, projecting a cost of \$3,178,259, while our conservative estimates indicate costs exceeding \$46,000,000. We will be forced to purchase larger vessels that can travel further with more personnel to mitigate the delays in piloting services caused by the reduced speed. Any delay in piloting services to vessels in need increases risk to the vessel and the Commonwealth's environment. This discrepancy underscores the lack of meaningful engagement with the maritime industry, including pilot associations, and a failure to accurately assess the financial burden the proposed rule will impose on essential maritime operations.

Conflicts with Virginia's Enforceable Policies

The proposed rule conflicts with Virginia's statutory regime for vessel safety and navigable waters. According to Virginia Code § 29.1-735.A, "The Board [of Wildlife Resources] shall adopt such regulations as it deems appropriate: (i) to provide rules for the safe and reasonable operation of vessels to reduce the risks of collision, personal injury, and property damage as a result of such operation." Moreover, 4VAC15-390-150 defines a "safe speed" as a speed less than the maximum at which the operator can take proper and effective action to avoid collision and stop within a distance appropriate to the prevailing circumstances and conditions. Imposing a blanket speed limit disregards the nuanced approach required for safe navigation and may compromise vessel safety, particularly in challenging maritime environments.

The Virginia regulations for safe speed are consistent with the U.S. Coast Guard's (USCG) Navigation Rules (COLREGS) and the International Maritime Organization's (IMO) standards for safe speed, which are designed to ensure the safety of life at sea. The COLREGS, which are international standards adopted by the IMO, requires vessels to travel at a safe speed to avoid collisions and ensure navigational safety. These rules consider visibility, traffic density, maneuverability, and weather conditions. Virginia's regulations mirror these international standards, highlighting the importance of maintaining appropriate speeds based on prevailing conditions to ensure the safety of navigation.

Further, the proposed rule seems to be inconsistent with the enforcement policies of the Virginia Marine Resources Commission (VMRC) and the Department of Wildlife Resources (DWR), which prioritize safe navigation and the protection of fish and wildlife habitats equally (Va. Code § 62.1-11). The proposed speed restrictions could imperil vessel safety and thus contravene state policies to balance navigation safety with environmental protection.

Legal and Procedural Concerns

The proposed rule also raises significant legal questions, including potential violations of the Administrative Procedure Act and conflicts with the Major Questions Doctrine. NMFS has not provided adequate evidence to justify such expansive speed restrictions. It has not considered

less disruptive alternatives to achieve the desired protection for the North Atlantic right whale without compromising maritime safety and economic activity.

Conclusion

Given these concerns, we urge the Virginia Department of Environmental Quality to object to NMFS's determination of consistency. The proposed amendments are not aligned with Virginia's enforceable policies and present unacceptable risks to navigational safety and the economic viability of maritime operations.

We appreciate your attention to this critical matter and are available to discuss our concerns further.

Sincerely,

A handwritten signature in black ink that reads "Whiting Chisman". The signature is written in a cursive style with a large, prominent "W" and "C".

Capt. Whiting Chisman

President

Virginia Pilot Association

president@vapilotassn.com



Virginia Pilot Association

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COMMENTS FROM THE VIRGINIA PILOT ASSOCIATION

FOR THE PROPOSED AMENDMENTS TO THE NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE DOCKET NO. 220722-0162 RIN 0648-B188

September 12, 2022

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Our comments on these regulations have been consistent since 2006; the current vessel speed regulations present an unnecessary danger to deep draft vessels approaching the entrance to Chesapeake Bay which is the entry point to the vital ports of Virginia and Baltimore. NMFS should reevaluate the existing speed restrictions in the narrow sea lane approaches to East Coast ports because the physical size of ships in the world shipping fleet has increased dramatically since the speed regulations were first proposed. In 2017, the Port of Virginia welcomed the first call of an Ultra Large Container Vessel (ULCV- which are approximately 1200' long 175' wide high displacement vessels) and had approximately 58 ULCV transits that year. In 2021, of the approximately 6000 vessel transits in Virginia Ports, 266 were ULCVs and the ULCV number will increase in 2022. ULCV's have high dead slow speeds and for them to operate in a Traffic Separation Scheme, near shoal water, in all weather conditions, at bare steerage way in close proximity to other vessel traffic, which includes LNG, bulk carriers, tankers, cruise ships and Naval vessels (Virginia is host to the largest naval base in the world and this base is homeport to the largest ships in the Navy's fleet), creates a danger to navigation off our coast. It should also be noted that Federal and Naval vessels are not required to observe the NARW vessel speed regulations.

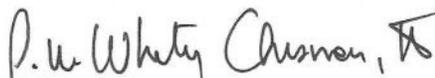
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In conclusion, we encourage NOAA Marine Fisheries to consider more effective and safe regulations to protect the North Atlantic Right Whale and given the potential unintended consequences of the proposed regulation we request that NMFS extend the comment period to December 31, 2022. On behalf of the members of the Virginia Pilot Association, I strongly oppose the amended vessel whale strike speed regulations. I also recommend that NOAA marine fisheries consider exempting the Southeast Sea lane Traffic Separation Scheme and Pilot Area off Cape Henry and exempt pilot vessels from the existing and any future vessel speed regulations.

Sincerely,



P.W. Whiting Chisman, III
President



AMERICAN PILOTS' ASSOCIATION

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CAPTAIN JORGE J. VISO
PRESIDENT

CAPTAIN W. CRAYTON WALTERS III
SECRETARY-TREASURER

BRENDAN P. O'SHEA
DEPUTY DIRECTOR-ASSOCIATE GENERAL COUNSEL

CLAYTON L. DIAMOND
EXECUTIVE DIRECTOR-GENERAL COUNSEL

LISA TOWNSHEND
OPERATIONS DIRECTOR

July 19, 2024

Virginia Department of Environmental Quality (DEQ)
DEQ Central Office
Office of Environmental Impact Review
Attn: Julia Wellman
1111 East Main Street, Suite 1400
Richmond, VA 23219

SUBJ: NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE

Dear Julia:

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 Virginia's coastal zone management interests.

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).

CAPT. ERIC A. NIELSEN
VICE PRESIDENT
NORTH ATLANTIC STATES

CAPT. R. TREY THOMPSON III
VICE PRESIDENT
SOUTH ATLANTIC STATES

CAPT. CLINT A. WINEGAR
VICE PRESIDENT
GULF STATES

CAPT. MICHAEL T.D. MILLER
VICE PRESIDENT
GULF STATES – LOUISIANA

CAPT. HANS H. ANTONSEN
VICE PRESIDENT
PACIFIC STATES

CAPT. JOHN R. BOYCE
VICE PRESIDENT
GREAT LAKES

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 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.

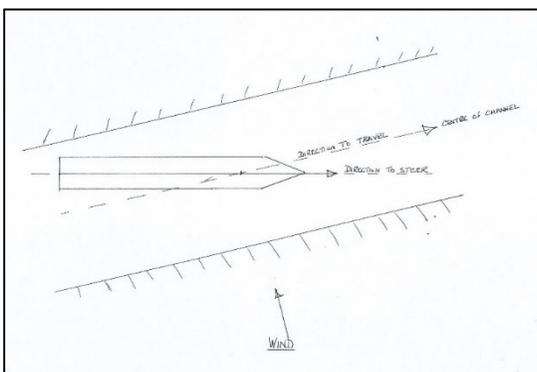
⁴ Despite proposing this vast expansion of the NARW vessel speed restriction zones, NMFS unironically claims in its Notice of Proposed Rulemaking that it "aimed to identify the smallest spatial and temporal footprint possible for speed restriction areas." See 87 F.R. 146, 46925.

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.

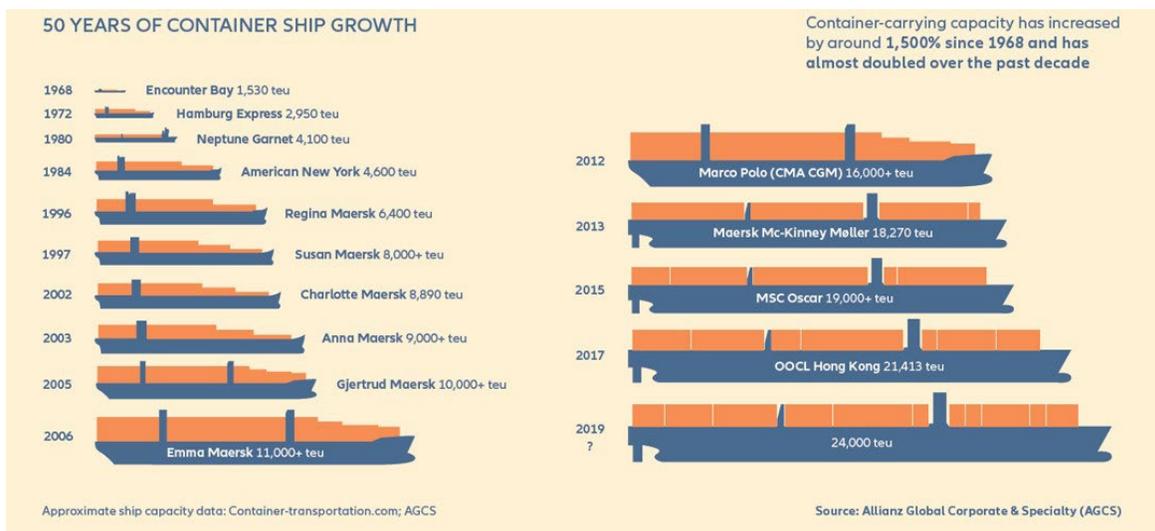


⁵ *A Career as a Ship Pilot, PROCEEDINGS OF THE MARINE SAFETY & SECURITY COUNCIL, THE COAST GUARD JOURNAL OF SAFETY AT SEA, Fall 2008, at 9*

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 Virginia'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.*

National Oceanic and Atmospheric Administration 24-098F

Clements Christopher <christopher.clements@volvo.com>

Tue 7/30/2024 8:09 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

📎 1 attachments (1 MB)

20240728165218379.pdf;

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Ms. Wellman,

Please find attached hereto comments submitted by Volvo Penta of the Americas, LLC regarding NOAA's proposed Vessel Speed Restriction Rule. Please let us know should you want to discuss any further.

Christopher M. Clements
Vice President – Legal & Compliance

Volvo Penta of the Americas, LLC
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volvopenta.com

V O L V O P E N T A

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<https://www.volvogroup.com/en-en/privacy.html>

July 29, 2024

Via Email: Julia.Wellman@DEQ.virginia.gov

Ms. Julia Wellman
Environmental Impact Review Coordinator
Virginia Department of Environmental Quality
Office of Environmental Impact Review
1111 East Main Street, Suite 1400
Richmond, Virginia 23219

Re: Comments to NOAA's Vessel Speed Restriction

Dear Ms. Wellman:

On behalf of Volvo Penta, I appreciate the opportunity to provide comments to the Virginia Department of Environmental Quality's Office of Environmental Impact Review for its review of the federal consistency submission made by the National Oceanic and Atmospheric Administration's (NOAA) proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule. NOAA's proposed changes would harm our business and adversely impact how Virginians enjoy our state's coastal resources.

For nearly 30 years, Chesapeake, Virginia, has served as the home of Volvo Penta of the Americas. Volvo Penta is a leading supplier of engines and power systems for recreational and commercial boats. We also operate a research and development engine test facility on the Nansemond River in nearby Suffolk, Virginia. In total, Volvo Penta employs over 250 people and the greater Volvo Group has two other production sites and combined Volvo employees almost 5,000 people with 10,000 indirect jobs in the Commonwealth. Volvo Group has made over 520MUSD in capital investments in the Commonwealth since 2011. Much of this benefit for the Commonwealth is funded by the sale of several engines for boats for offshore fishing and cruising to supplying the engines that provide maintenance and transportation to offshore wind construction – many of which include vessels greater than 35 feet directly affected by NOAA's proposed rule.

NOAA's proposed rule would require boats greater than 35 feet in length to travel at 10 knots (11 mph), as far as 90 miles from the mouth of the Chesapeake Bay and Virginia Beach, posing major concerns for accessing key fisheries located in both Virginia and federal waters. This proposal threatens Virginia's history of ensuring public access to our waterways and abundant fisheries.

In its letter to the Department, NOAA states that the proposed changes "would not impede access to Federal waters," "allow for public access anywhere in state waters," and "estimated economic impacts are not expected to compromise the economic value of coastal resources." These statements could not be further from the truth. Not only does our state have a rich tradition of

boating, sportfishing, and outdoor activities, but recreational boating is a significant economic driver in our great state. Recreational boating in Virginia supports nearly 17,000 jobs across 729 businesses. With over 200,000 registered boats in our state, the recreational marine community has a \$4.4 billion impact.

Not only would the proposed changes impede access to state and federal waters, but the rule would discourage consumers from buying a 35-foot boat built for those exact purposes. If the new speed zones were to go into effect, running a boat at speeds of 10 knots or less would take far too long to be practicable to access key fisheries. Given the significant safety risks and time constraints, we are deeply concerned boaters will not use their boats as often or will stop using them altogether.

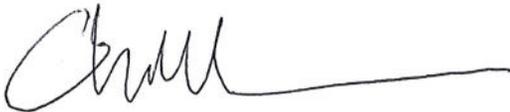
Despite the devastating impact to recreation access and Virginia's economy, NOAA failed to prepare a full environmental impact statement as required by the National Environmental Policy Act. Instead, NOAA based its assessment by looking solely at the costs to small boats due to transit delays. But not only did NOAA underestimate the number of impacted recreational boats by more than 50,000, it ignored other very real direct and indirect costs of the proposal.

Thus, Virginia saltwater fishing tournaments, chartered fishing trips, recreational boat outings, engine manufacturers, marina and dealer owners and operators, and small businesses, like tackle shops and restaurants are in the crosshairs of NOAA's proposed changes to the rule. NOAA failed to consider multiple unintended consequences and did not engage with key stakeholders when developing the proposed rule.

Given the effects this proposed rule would have on Virginia and the economic impact Volvo may have in the Commonwealth, I urge your office to object to NOAA's determination that this proposal is consistent with Virginia's Coastal Zone Management Program. We appreciate your consideration and look forward to working with you on policies that protect the North Atlantic right whale and the Commonwealth's economy.

Sincerely,

Volvo Penta of the Americas, LLC



Christopher M. Clements
Vice President – Legal & Compliance

Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule

Matthew Waddell <fishmaster1976@yahoo.com>

Tue 7/16/2024 12:03 PM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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Good day,

I wanted to express how I disagree with this proposal. I've been boating my whole life and been in the Atlantic ocean over 200 times. These whales dive under when they hear vessels, I've seen it in my 32 sportfish. Any good captain is going to slow down near them anyway because the whales typically promote fishing grounds for the fleet. In my opinion this is an amendment that will do nothing to save whales.

Matt Waddell
Mathews county VA
804-694-6670

NOAA Proposal Contradicts Virginia's Constitution

Andrew Comstock <postal@sparkinfluence.net>

Thu 7/18/2024 11:52 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

I am deeply concerned over the National Oceanic and Atmospheric Administration's (NOAA) proposed changes to its North Atlantic Right Whale Vessel Strike Reduction Rule and the impact this would have on my access to our state's coastal resources.

The requirement to travel at 10 knots (11 mph), as far as 90 miles from the mouth of the Chesapeake Bay, poses major concerns for businesses and access to key fisheries. Not only does this proposal contradict Virginia's Constitution, which states the people will have "the use and enjoyment for recreation of adequate public lands, waters, and other natural resources...", but this would have severe consequences for small businesses, recreational enjoyment, and the promotion of tourism.

Recreational boating in Virginia supports nearly 17,000 jobs across 729 businesses. With over 200,000 registered boats in our state, recreational boating has a \$4.4 billion impact on the state's economy. In its letter, NOAA states that the proposed amendments "would not impede access to Federal waters," "allow for public access anywhere in state waters," and "estimated economic impacts are not expected to compromise the economic value of coastal resources." These statements could not be further from the truth.

Despite the devastating impact to recreation access and Virginia's economy, NOAA failed to prepare a full environmental impact statement as required by the National Environmental Policy Act. Instead, Virginia saltwater fishing tournaments, chartered fishing trips, recreational boat outings, engine manufacturers, marina and dealer owners and operators, and small businesses, like tackle shops and restaurants are in the crosshairs of NOAA's proposed changes to the rule. NOAA failed to consider multiple unintended consequences and did not engage with key stakeholders when developing the proposed rule.

I ask that you object to NOAA's determination that this proposal is consistent with Virginia's CZMA program.

Andrew Comstock
amcomstock@gcmartinco.com
332 Shade Tree Dr
Colonial Heights, VA 23834

NOAA Proposal Contradicts Virginia's Constitution

Berry Muller <postal@sparkinfluence.net>

Thu 7/18/2024 11:55 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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Berry Muller
berrymuller@mullerconstruction.com
PO Box 249
Quinton, VA 23141

NOAA Proposal Contradicts Virginia's Constitution

Brennan Hart <postal@sparkinfluence.net>

Thu 7/18/2024 11:56 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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I ask that you object to NOAA's determination that this proposal is consistent with Virginia's CZMA program.

Brennan Hart
pbh@threeriverssolutionsllc.com
1911 Main Line Blvd
Alexandria, VA 22301

NOAA Proposal Contradicts Virginia's Constitution

Butch Williamson <postal@sparkinfluence.net>

Thu 7/18/2024 11:55 AM

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Butch Williamson
bwilliamsonjr88@gmail.com
PO Box 5223
Onancock, VA 23417

NOAA Proposal Contradicts Virginia's Constitution

George Green <postal@sparkinfluence.net>

Thu 7/18/2024 11:53 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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George Green
george@dgelectrical.com
1422 John Tyler Memorial Hwy
Charles City, VA 23030

NOAA Proposal Contradicts Virginia's Constitution

Heather Lougheed <postal@sparkinfluence.net>

Thu 7/18/2024 11:54 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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I ask that you object to NOAA's determination that this proposal is consistent with Virginia's CZMA program.

Heather Lougheed
heatherleelougheed@gmail.com
5220 Lighthorne Rd
Burke, VA 22015

NOAA Proposal Contradicts Virginia's Constitution

James Adams <postal@sparkinfluence.net>

Thu 7/18/2024 11:54 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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James Adams
jadams003@msn.com
104 Creek Point Ct
Colonial Heights, VA 23834

NOAA Proposal Contradicts Virginia's Constitution

Jim Beale <postal@sparkinfluence.net>

Thu 7/18/2024 11:52 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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Jim Beale
jimbeale@paxtonco.com
1111 Ingleside Rd
Norfolk, VA 23502

NOAA Proposal Contradicts Virginia's Constitution

Kelly Bobek <postal@sparkinfluence.net>

Thu 7/18/2024 11:53 AM

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Kelly Bobek
kellybobek@aol.com
15568 Smithfield PI
Centreville, VA 20120

NOAA Proposal Contradicts Virginia's Constitution

Phil Elliott <postal@sparkinfluence.net>

Thu 7/18/2024 11:52 AM

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Phil Elliott
captphil1@mac.com
121 Broaddus Dr
Hopewell, VA 23860

NOAA Proposal Contradicts Virginia's Constitution

ROBERT PRIDE <postal@sparkinfluence.net>

Thu 7/18/2024 11:51 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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ROBERT PRIDE
bobpride@gmail.com
205 Powhatan Dr
Poquoson, VA 23662

NOAA Proposal Contradicts Virginia's Constitution

Ronald Marciszyn <postal@sparkinfluence.net>

Thu 7/18/2024 11:49 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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Ronald Marciszyn
ronmarciszyn@gmail.com
3840 3 Ships Lndg
Virginia Beach, VA 23455

NOAA Proposal Contradicts Virginia's Constitution

Sheryl Williamson <postal@sparkinfluence.net>

Thu 7/18/2024 11:54 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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Sheryl Williamson
sherylwilliamson9500@yahoo.com
PO Box 522
Onancock, VA 23417

NOAA Proposal Contradicts Virginia's Constitution

Stacey Youngdale <postal@sparkinfluence.net>

Thu 7/18/2024 11:50 AM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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Stacey Youngdale
stacey.youngdale@volvo.com
640 Belaire Ave
Chesapeake, VA 23320

NOAA Proposal Contradicts Virginia's Constitution

Thomas Johnson <postal@sparkinfluence.net>

Thu 7/18/2024 11:50 AM

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Thomas Johnson
tjohnson@slnusbaum.com
329 Whitehaven Ln
Virginia Beach, VA 23451

NOAA Proposal Contradicts Virginia's Constitution

Kim Carter <postal@sparkinfluence.net>

Sun 8/4/2024 3:41 PM

To: Wellman, Julia (DEQ) <Julia.Wellman@deq.virginia.gov>

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Kim Carter
kcvikingsfan11@gmail.com
100 Carolyn Dr
Roanoke, VA 24019

NOAA Proposal Contradicts Virginia's Constitution

Scott Monds <postal@sparkinfluence.net>

Sun 8/4/2024 3:41 PM

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Scott Monds
smonds@nationalexterminating.com
5729 Aura Dr
VIRGINIA BEACH, VA 23457

NOAA Proposal Contradicts Virginia's Constitution

JASON SEWARD <postal@sparkinfluence.net>

Sun 8/4/2024 3:40 PM

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JASON SEWARD
jseward2001@netscape.net
9467 Shelley Dr
MECHANICSVILLE, VA 23116

NOAA Proposal Contradicts Virginia's Constitution

Mark Huddleston <postal@sparkinfluence.net>

Sun 8/4/2024 3:40 PM

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