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The undersigned representatives of the recreational fishing and boating community understand the importance of protecting the endangered North Atlantic Right Whale (hereafter RW). Considering the safety concerns to RWs and human life, it is in our best interest to reduce strike risks. However, given the substantial impact of the proposed vessel speed rule, the fact that it raises concerns about navigational safety and safety at sea, and lack of stakeholder engagement, we urge the National Marine Fisheries Service (NMFS) to pause this rule until additional analysis on the issues expressed in this letter can be conducted, and potential new alternatives can be developed in collaboration with the recreational fishing and boating industry.

We understand that the proposed rule has been in development for over a year solely within the Office of Protected Resources and yet, no formal engagement with stakeholders occurred. As America's original conservationists, the recreational fishing and boating community management processes that impact our sport. In many cases, our industry has offered the constructive input that was ultimately used to develop management solutions that meet conservation goals and allow for the continued social and economic contributions our sector provides to the nation. The importance of this collaboration ensures the greatest benefit to our nation recreational boating alone generating \$170 billion in annual economic impact, and over 50 million American anglers fishing each year.

Unfortunately, the lack of meaningful engagement led to a proposed rule that will have excessively severe impacts on fishing and boating. The rule would expand mandatory speed restrictions to include vessels 35 - 65 feet and significantly broaden seasonal speed zones (SSZs) in both space and time impacting tens of thousands of recreational vessels. Many boaters and fishers will forego boating and fishing trips altogether due to the time, cost and safety burdens imposed by the rule. This in turn will negatively impact marinas, tackle shops, charter and party boat operations--all businesses that represent America's small business economy.

Given the clear social, conservation and economic benefits of recreational fishing and boating to the nation, and uncertainty around much of the justification for the proposal, we believe more deliberation and analysis is needed to determine if conservation g

than 70,000 recreational fishing trips in the 35 - 65 foot size class take place in the Atlantic Ocean more than 3 miles offshore in states with proposed SSZs during the months when the speed restrictions would be in place. We recommend that NMFS address shortcomings of the EA through more thorough investigation of the number of recreational vessels impacted, speeds needed for offshore trips to be viable, and the true costs and economic impacts of the lost fishing opportunities associated with Alternative 5, as they clearly exceed the \$1.2 million claimed (see Appendix A).

5. Establishing the 35 - 65 Foot Vessel Size Class

NMFS proposes that current RW speed zones do not address the threat of strike mortalities involving vessels less than 65 feet and extends proposed speed restrictions to a 35 - 65 foot vessel size class. However, since 2005, only a total of six fatal vessel strikes occurred involving vessels 42 - 54 feet. NMFS additionally makes reference that Canada expanded the length of vessels covered by dynamic mandatory 10-knot speed restrictions in the Gulf of St. Lawrence in 2019 to include vessels 43 feet or greater in length. The data suggest a smaller vessel size class of 42 - 65 feet appears more justifiable than the proposed 35 - 65 foot size class. At a minimum, it brings into question how 35 feet was selected as the low end of the range since vessels around this size have not been responsible for any right whale vessel strike mortalities in the U.S. The proposed rule appears to argue that extending speed restrictions to smaller vessels will help address safety concerns as vessel strikes pose a threat to human life. As stated, we value minimizing safety concerns from strike occurrences, but given the rarity of vessel strikes in the 35 - 65 foot size class, we expect more safety concerns and threats to human life will occur from the proposed vessel speed restrictions, due to forcing boaters to spend more time on the water in potentially unsafe conditions, than the highly improbable chances of striking a RW.

6. Misestimate of Draft Depths for 35 - 65 Foot Recreational Vessels

The NOAA Technical memorandum NMFS-SEFFSC-757, may vastly overestimate the probability of a recreational vessel 35 - 65 feet interacting with a RW. The model assumes a 10-meter (m) draft depth criteria

seasons as much as possible. Additionally, there are other recreational fishing seasons for highly migratory species that overlap with the proposed SSZs and are not sampled by MRIP (e.g., bluefin tuna).

8. Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis

Law requires NMFS to conduct a thorough evaluation of impacts to the human environment, however, the Draft Regulatory Impact Review (RIR) provides conflicting economic analyses for benefits versus impacts. For example, the RIR cites a 2020 NOAA study that estimated the direct economic output of six whale watching operations within Stellwagen Bank National Marine Sanctuary at \$95.1 million ([Schwarzmann, 2020](#)). In contrast, the RIR estimates \$46.2 million from the proposed rule cumulative impacts for all vessel size classes and regions combined. It is difficult to understand how the economic benefits of six whale watching operations exceeds the economic impact of 9,200 recreational vessels, a vessel number likely underestimated based on Southwick's findings (Attachment A). Furthermore, the RIR includes no indirect impact analysis, but indirect benefits from whale watch operators is included by reference in the benefits section. We question that NMFS was unable to compile any indirect economic impact information for recreational vessels especially when NMFS regularly publishes a Fisheries Economics of the United States report. These points call into question the thoroughness of NMFS' analysis and highlight the need to revisit to make it more consistent with the intent of the law.

9. Enforcement Concerns of the Proposed Rule

Currently, RW speed restrictions are enforced almost exclusively by evaluating Automatic Identification Systems (AIS) data. AIS data are analyzed to determine if a vessel has exceeded the speed limit within a seasonal speed restriction zone. AIS is a piece of marine electronics equipment made mandatory for certain vessels over 65 feet to improve the navigational safety of the vessel and other vessels operating in the area. AIS is not required on recreational vessels 35 - 65 feet thereby making the primary enforcement tool of the RW speed restrictions unavailable for boats 35 - 65 f

10. Updates to Safety Deviation Provisions

NMFS provides a safety deviation provision as part of the proposed rule. The deviation provision is only applicable to vessels less than 65 feet, allowing those vessels to transit at speeds greater than 10 knots within areas where a National Weather Service Gale Warning, or other National Weather Service Warning for wind speeds exceeding those that trigger a Gale Warning is in effect. The [National Weather Service](#) defines Gale force wind speeds at 39 - 46 mph. We question how NMFS arrived at a Gale force threshold because from recreational boating experience, vessels 35

Criteria 11, as the proposed rule will cause the cancellation of numerous recreational fishing and boating trips that require speeds more than 10 knots to carry out.

To understand how the proposed rule would impact the recreational fishing and boating industry and determine its consistency with the selection criteria, NMFS must have direct interaction with stakeholders. The fact that the proposed rule fails to meet 6 of the 12 alternative selection criteria is clear evidence that further engagement with our industry is necessary.

12. Exploring Technological Advancements and Mariner Outreach

Pausing the rule would provide opportunity to focus on two key areas of interest that warrant discussion. First, technology that can deliver real-time monitoring of individual RWs continues to advance. From direct observations, aerial surveillance, acoustic detection, heat signature technology, satellite monitoring and ambient DNA signatures found water samples, it is feasible to gather real-time location information on a significant portion of the RW population. Fewer than 350 ind

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

Sincerely,

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American Sportfishing Association

Dr. Guy Harvey, Ph.D., Chairman Emeritus
Guy Harvey Ocean Foundation

Chris Edmonston, VP Government Affairs
Boat Owners Association of the United States

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Appendix A

Impact Analysis for Proposed Modification to the North Atlantic Right Whale Vessel Speed Rule (50 CFR 224.105)

Prepared for



By



September, 2022

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staff for this purpose (Recreational Fisheries Program - Request ID: 5774). Analysis of these data reveal that each year more than 70,000 recreational fishing trips are taken on boats 35 feet or longer offshore

In their cost analysis, NMFS assumes one passenger per recreational vessel when calculating the cost of delayed recreational vessels. NMFS makes this assumption because there are currently no data available on the number of passengers per recreational vessel trip. Similarly, MRIP does not provide information on how many angling trips occur per vessel. In the absence of adequate data to parse MRIP angling trips to vessel trips, Southwick Associates employs the same assumption as NMFS: one person (angler) per vessel.

Uncertainties

Several assumptions needed to be made to provide the estimates above. The percent of offshore fishing trips taken by vessels 35 feet or longer is not known, so boat registration data was used as a proxy. It was assumed that saltwater fishing boats 35 feet or longer were twice as likely as smaller vessels to venture offshore given the demands of the open ocean. For example, if saltwater fishing boats 35 feet or longer accounted for 2.5% of boat registrations in a state, it was assumed those boats accounted for

Southwick Report Appendix 2: Assumptions Made to Calculate Recreational Fishing Impacts

Allocating Fishing Effort Within Months

Some of the proposed seasonal restriction dates split the months of November or April. To estimate the fishing effort impacted by the proposed speed restrictions in these cases, it was assumed that half of fishing trips in a state occur in each half of the month. For example, if there were 5,000 estimated fishing trips in November, it was assumed that 2,500 of these trips occurred from November 15th- 30th. This assumption was necessary because NOAA's Marine Recreational Information Program (MRIP) dataset only contains recreational fishing effort estimates at the monthly level.

Allocating Fishing Effort to Boats of Different Sizes

NOAA does not collect or publish the size of the fishing vessels used for recreational fishing trips in the fishing MRIP database. Therefore, several assumptions were needed to estimate the impact of restricting the speed of vessels 35-65 ft in length. The following assumptions were used:

1. All fishing trips made by "headboats" or "party boats" were made by vessels of 35 feet or longer. Most of these vessels are much larger than 35 feet, sometime approaching 100 feet or longer.
2. Saltwater fishing boats 35 feet or longer are twice as likely to make offshore fishing trips as smaller vessels, given the demands of the open ocean. For example, if saltwater fishing boats 35 feet or longer accounted for 2.5% of all boat registrations in a state, it was assumed those boats accounted for 5% of offshore fishing trips taken in that state.

Allocating Fishing Effort Within States with Partial or Multiple SSZs

Several of the proposed Seasonal Speed Zones (SSZs) cover only portions of states coastlines. Because MRIP reports fishing effort at the state level, some assumptions were needed to estimate the number of trips impacted in states with partial SSZ coverage (Florida and Massachusetts), or states where multiple SSZs affect the state's coast (Georgia and North Carolina). The following assumptions were used:

1. Offshore fishing effort is distributed evenly along each state's coast.
2. 30% of Atlantic offshore fishing trips taken in Florida between November 15th and April 15th are impacted by speed restrictions. No Gulf Coast Florida fishing trips are impacted.
3. The Georgia coast is split nearly evenly by the "Southeast" and "South Carolina" proposed SSZs. Therefore, half of offshore fishing trips taken in Georgia during April are impacted by speed restrictions, since the "Southeast" SSZ is enforced from November 15 – April 15th, and the "South Carolina" SSZ is enforced from November 1st – April 15th. Following the same logic, three-quarters of offshore fishing trips taken in Georgia during November are impacted.
4. North Carolina is impacted by three SSZs, the "South Carolina" zone which is enforced from November 1st – April 15th, the "North Carolina" zone which is enforced from November 1st – April 30th, and the " " & & , the "North Carolina" zone which is enforced from November 1st – April 15th.

5. Roughly 80% of the Massachusetts coast is covered by the “Atlantic” SSZ. It was assumed that 80% of offshore fishing trips taken during the seasonal restriction periods were impacted.

Estimating Impacted Recreational Fishing Trip Spending

To translate the number of offshore recreational fishing trips impacted by proposed SSZs to a dollar

