

October 31, 2022

Ms. Janet Coit
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East West Highway
Silver Spring, MD 20910

Re: Questions on NOAA Technical Memorandum NMFS-SEFSC-757 and Draft Regulatory Impact Review/Initial Regulatory Flexibility Analysis, Proposed North Atlantic Right Whale Vessel Strike Reduction Rule

Dear Administrator Coit:

The undersigned representatives of the recreational fishing and boating community submit this supplemental letter as part of the official public

Risk Modeling and the Establishment of the Proposed Seasonal Speed Zones

In reviewing the proposed expansion of the seasonal speed zones, it is unclear if modeled risk is uniform across the entire area or what risk threshold was used to determine if an area requires protection or not. This is critically important for us to understand if the level of modeled risk is representative of actual risk. From our understanding, the risk assessment does not treat vessel size class differently meaning all the vessels, and associated risk, are grouped together resulting in a broad expansion of the speed zones in space and time. Assuming that vessels in the 35-to-65-foot size class have the same risk to RW as vessels 65 foot and greater is incorrect given known differences in vessel characteristics (e.g., draft depth, vessel traffic patterns). Given the significant differences in characteristics between vessel size class, risk must be modeled for each size class independently.

Although vessel traffic data for the 35-to-65-foot size class are limited, we believe observed vessel traffic patterns for this size class are represented by available data and expect additional data would confirm existing vessel traffic patterns. Therefore, we recommend that NMFS reconsider alternatives specific to vessel size classes given known risk differences between vessels 3

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Appendix 1: Outstanding questions regarding NMFS' Technical Memorandum NMFS-SEFSC-757 (TM), the

Did NMFS do any sensitivity analysis to determine if draft has a favorable impact on strike risk based on this statement that the primary avoidance response of whales in response to approaching vessels is vertical?

This statement seems inconsistent with previous statements that link vessel strike risk to spatial whale density, not population size. Can NMFS provide clarification on this point?

Does this statement confirm that risk will go up if the right whale population is rebuilt?

Does NMFS acknowledge that this model predicts that management measures will become more restrictive if the right whale population increases?

On page 13, the TM states:

This statement is inconsistent with the areas where the most vessel strikes have occurred which is the waters off Georgia. Does this confirm that risk is not well aligned with actual strikes?

Can NMFS identify the primary predictor of vessel strike risk?

On page 15, the TM states:

The spatial density model appears to significantly overestimate whale density. The confidence intervals are very high for right whale density model runs, particularly in winter months. How is this significant uncertainty accounted for in the risk assessment?

If unreliable estimates of whale density are used, how does this affect the confidence intervals for the risk model outputs?

Is the bias associated with

Can NMFS use the Fisheries Economics of the US Report to assist in quantifying both direct and indirect impacts?

Economic Benefits Calculations

On page 16, the RIR states: "

This estimate is inconsistent with an estimate provided on page 17 of the RIR where 6 whale watching operations are estimated to generate \$132 in economic output from 6 whale watching businesses

Did NMFS use MRIP effort estimates to calculate impacts to vessels, anglers and trips?
Did NMFS use eVTR's to estimate the number of impacted vessels, anglers and trips?

On page 21, the RIR states:

Did NMFS factor in Department of Transportation and USCG regulations on hours of operation on the water and requirements to have two captains on board for trips over 12 hours?

On page 36, the RIR states:

Did NMFS consider preparing a survey to gather this information? There are multiple datasets that could be used for sample frames. A survey of this nature would give a better understanding of canceled trips due to speed restrictions.
Does NMFS acknowledge that it is unrealistic to think that this type of information can be solicited, gathered and submitted by the industry and public in 90 days?

On page 11 of Appendix A in the RIR: This estimation approach does not include the loss in value (on both the new and used boat market) of a boat 35 foot or larger that cannot exceed 10 knots for 7 months of the year.

Did NMFS reach out to vessel manufacturers or dealers to understand how the speed restrictions would impact the value of products over 35 foot and that are designed to exceed 10 knots?
Does NMFS acknowledge that a vessel over 35 foot that can only go 10 knots for 7 months out of the year results in a loss of value?

Proposed Rule

On page 3, the proposed rule includes exemptions to the speed requirements for military vessels, vessels owned or contracted by federal agencies or vessels engaged in search and rescue activities. While exempt from the proposed rule, these vessels would still be required to do consultations as per section 7 of the Endangered Species Act. The consultation process may include alternative recommendations to reduce risk of vessel strikes on right whales.

How many vessels does NMFS estimate to operate under this exemption?
Has the Section 7 consultation process been initiated?
Will the Section 7 consultation process be on an individual vessel basis, or would a fleet wide consultation be conducted?
What mitigating measures will NMFS consider for these vessels to operate at speeds that exceed the 10-knot limit?