



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Water, Wildlife and Fisheries Republican Members
From: Subcommittee on Water, Wildlife and Fisheries staff,
Annick Miller (annick.miller@mail.house.gov) and Doug Levine
(doug.levine@mail.house.gov); x58331
Date: Tuesday, June 6, 2023
Subject: Oversight Hearing on: “*Examining the impacts of the National Oceanic and Atmospheric Administration’s proposed changes to the North Atlantic Right Whale Vessel Strike Reduction Rule*”

The Subcommittee on Water, Wildlife and Fisheries will hold an oversight hearing on “*Examining the impacts of the National Oceanic and Atmospheric Administration’s proposed changes to the North Atlantic Right Whale Vessel Strike Reduction Rule*” **on Tuesday, June 6, 2023, at 10:15 a.m. EDT in 1324 Longworth House Office Building.**

Member offices are requested to notify Thomas Shipman (Thomas.Shipman@mail.house.gov) by 4:30 p.m. on Monday, June 5, 2023, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- The National Oceanic and Atmospheric Administration is pushing policies that negatively impact recreational and commercial fisheries without regard to the economic impacts.
- The proposed changes increase the dangers faced by pilots and pilot boat crews and reduce navigation safety in Federal Navigation Channels.
- The proposed changes will restrict access to the Atlantic Ocean, making boating and fishing trips unsafe and nearly impossible.

II. WITNESSES

- ***The Honorable Janet Coit***, Deputy Administrator for the National Oceanic and Atmospheric Administration, Washington, D.C.
- ***Mr. Clayton L. Diamond***, Executive Director, American Pilots’ Association, Washington, D.C.
- ***Mr. Fred Gamboa***, Captain, Andreas’ Toy Charters, Princeton, NJ
- ***Mr. Frank Hugelmeyer***, President and CEO, National Marine Manufacturers Association, Washington, D.C.

- **Dr. Jessica Redfern**, Associate Vice President of Ocean Conservation Science, Anderson Cabot Center for Ocean Life at New England Aquarium, Boston, MA [*minority witness*]

III. BACKGROUND

North Atlantic Right Whale

The North Atlantic right whale (right whale) is an endangered large whale species.¹ The right whale's name originates from the fact that, as early as the 11th century, whalers considered right whales the "right" whale to hunt.² Right whales migrate seasonally along the east coast, spending summer and fall in New England and Canadian waters.³ During winter months, right whales migrate to the southeastern United States for calving.

Protections for right whales began in 1935 with the ratification of the League of Nation's Convention for Regulation of Whaling.⁴ While the 1935 Convention was criticized for being ineffective, it paved the way for the establishment of the International Whaling Commission (IWC).⁵ The IWC was established by the International Convention for the Regulation of Whaling in 1946 as the global body responsible for the management of whaling and conservation of whales.⁶ This included: catch limits by species and area, designating specified areas as whale sanctuaries, protection of calves and females accompanied by calves, and restrictions on hunting methods.⁷ Currently, the IWC has 88 signatory governments, including the United States.⁸ In 1986, the IWC adopted a global moratorium on commercial whaling due to the depleting whale stocks.⁹

In the United States, right whales are protected under the Endangered Species Act of 1973 (ESA)¹⁰ and the Marine Mammal Protection Act of 1972 (MMPA).¹¹ In fact, right whales were considered endangered in 1970, before the enactment on the ESA.¹²

Due to population concerns, the National Oceanic and Atmospheric Administration (NOAA) developed a species recovery plan in 1991 and updated the plan in 2005.¹³ Recovery strategies focus on: reducing death and injuries from vessel strikes and commercial fishing operations, identifying important habitat, monitoring the health of the stock, conducting studies on potential

¹ NOAA, About the Species: North Atlantic right whale. <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>

² International Whaling Commission, Right Whale Species. <https://iwc.int/about-whales/whale-species/right-whale>

³ NOAA, About the Species: North Atlantic right whale. <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>

⁴ International Convention for the Regulation of Whaling, Creation of the IWC. <https://iwc.int/commission/creation-of-the-iwc>

⁵ Id.

⁶ International Whaling Commission, Commission Overview. <https://iwc.int/commission>

⁷ Id.

⁸ Id.

⁹ NOAA Fisheries, International Whaling Commission. <https://www.fisheries.noaa.gov/international-affairs/international-whaling-commission>

¹⁰ 16 U.S.C. 1531 et seq.

¹¹ 16 U.S.C. 1361 et seq.

¹² List of Endangered Foreign Fish and Wildlife, 35 Fed. Reg. 18319 (1970).

¹³ NOAA, Institutional Repository: Recovery Plan for the North Atlantic Right Whale, 2005.

<https://repository.library.noaa.gov/view/noaa/3411>

threats, and assessing the population.¹⁴ In 2017, NOAA declared an unusual mortality event (UME) for the right whale due to the number of mortalities and serious injuries in the population.¹⁵ While the exact cause of the UME is unknown, vessel strikes and entanglements with commercial fishing gear continue to be considered the leading causes of whale mortalities and injuries.

In 1996, to address the fishing impacts on right whales, NOAA tasked the Atlantic Large Whale Take Reduction Team to prepare an Atlantic Large Whale Take Reduction Plan (Take Reduction Plan).¹⁶ The Take Reduction Plan focuses on the management measures for fisheries as it relates to three large whale species: the North Atlantic right whale, humpback whale, and fin whale. The Take Reduction Plan was finalized in 1997 and has been amended multiple times.¹⁷ More information on NOAA's Take Reduction Plan can be found [HERE](#).

Vessel Strike Reduction Rule

In 2008, to address vessel strikes, NOAA proposed speed restrictions for vessels over sixty-five feet in length when going through seasonal management areas.¹⁸ The seasonal management areas were selected because they are areas known to be inhabited by right whales. Figure 1 shows the seasonal management areas, and the months speed restrictions are in effect.

The final rule established a maximum speed limit of 10 knots in the seasonal management areas, a sunset after five-years and included exemptions for military vessels, federally owned or operated vessels, vessels actively engaged in search and rescue, and a safety deviation for vessels operating under severe conditions which require them to go above 10 knots to maneuver safely.¹⁹

In 2013, NOAA made the speed restriction rule permanent.²⁰ Any vessel over 65 feet long must

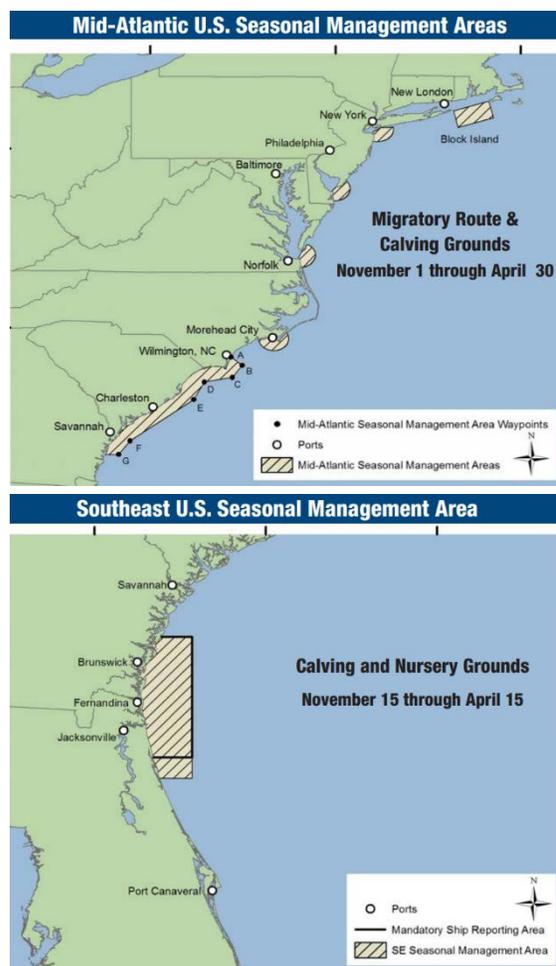


Figure 1: 2008 Rule Seasonal Management Areas
Source: NOAA

¹⁴ Id.

¹⁵ Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46921-46936 (2022).

¹⁶ 61 FR 40819 - <https://www.govinfo.gov/app/details/FR-1996-08-06/96-20026>

¹⁷ NOAA, Atlantic Large Whale Take Reduction Plan Regulations From 1997-2015.

<https://www.fisheries.noaa.gov/action/atlantic-large-whale-take-reduction-plan-regulations-1997-2015>

¹⁸ Endangered Fish and Wildlife; Final Rule To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales. 73 Fed. Reg. 60173-60191 (2008).

¹⁹ Id.

²⁰ Endangered Fish and Wildlife; Final Rule To Remove the Sunset Provision of the Final Rule Implementing Vessel Speed Restrictions To Reduce the Threat of Ship Collisions With North Atlantic Right Whales. 78 Fed. Reg. 73726-73736 (2013).

therefore continue to limit its speed to 10 knots, unless it qualifies under the above listed exemptions.²¹

NOAA's speed restriction rule also stated that NOAA would publish and seek comment on a report evaluating the conservation value and economic and navigational safety impacts of right whale vessel speed regulations, including any recommendations to minimize the burden of such impacts.²² In January 2021, NOAA released the assessment and initiated a public comment period until the end of March 2021.²³ The assessment made several recommendations, including increasing enforcement, modifying the safety deviation provision so it could not be used as frequently, and expanding the speed restrictions to small vessels.²⁴ NOAA received over thirty comments. Notably, the American Pilots' Association, one of the Republican witnesses at today's hearing, provided comments expressing concerns with requiring "contemporaneous electronic notification" to decrease the number of vessels using the speed restriction exemption to maneuver safely. In addition, their comments strongly opposed expanding the speed restriction rule to vessels smaller than 65 feet, stating that "could be dangerous for our member pilots and the crews that operate their pilot boats."²⁵

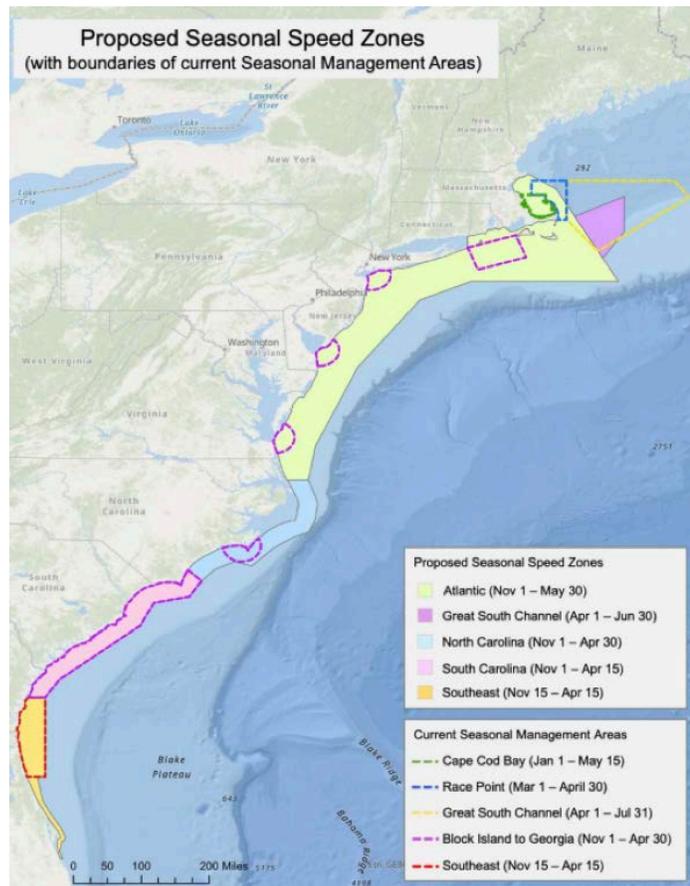


Figure 2 Proposed Seasonal Speed Zones
Source: NOAA

On August 1, 2022, NOAA published the proposed rule amending the North Atlantic Right Whale Vessel Strike Reduction Rule.²⁶ The proposed rule extends the applicability of the speed restriction rule to include boats measuring 35 feet and longer, expands the seasonal management areas (renamed as seasonal speed zones and shown in Figure 2), makes dynamic management

²¹ Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46921-46936 (2022).

²² 50 CFR § 224.105

²³ Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46921-46936 (2022).

²⁴ NOAA, North Atlantic Right Whale (*Eubalaena glacialis*) Vessel Speed Rule Assessment, June 2020.

https://media.fisheries.noaa.gov/2021-01/FINAL_NARW_Vessel_Speed_Rule_Report_Jun_2020.pdf?null

²⁵ NOAA, Public Comments Received on the North Atlantic Right Whale Speed Rule Assessment, March 2021.

[https://media.fisheries.noaa.gov/2021-](https://media.fisheries.noaa.gov/2021-06/Public%20Comments%20Received%20on%20NARW%20Speed%20Rule%20Assessment%20-%20March%202021%20508.pdf?null)

[06/Public%20Comments%20Received%20on%20NARW%20Speed%20Rule%20Assessment%20-%20March%202021%20508.pdf?null](https://media.fisheries.noaa.gov/2021-06/Public%20Comments%20Received%20on%20NARW%20Speed%20Rule%20Assessment%20-%20March%202021%20508.pdf?null)

²⁶ Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46921-46936 (2022).

areas mandatory (renamed as dynamic speed zones), and changes how the current safety deviations can be used.²⁷

While the proposed rule says the actions are “significant” under Executive Order 12866, something that would normally require review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget, this rule was not reviewed by OIRA. It was determined that NOAA’s draft Regulatory Impact Review estimated that only approximately 15,899 vessels would be affected by the rule and the cost of \$46 million per year was not high enough to warrant review.²⁸

In response, a coalition of stakeholders (including one of today’s Republican witnesses the National Marine Manufacturers Association) submitted a letter to NOAA expressing concerns regarding the economic impact analysis, the underlying assumptions to justify the rule, and stakeholder engagement in developing the proposed rule.²⁹ The stakeholders contend that the proposed changes will restrict access to the Atlantic Ocean, making boating and fishing trips unsafe and nearly impossible.³⁰ According to comment letters submitted by the recreational boating industry, NOAA undercounted the number of recreational vessels impacted by the proposed rule. Of the 15,899 vessels identified in the draft Regulatory Impact Review, 9,200 were estimated to be recreational vessels. There are more than 63,000 registered recreational saltwater vessels measuring 35 to 65 feet in states across the proposed impact area.³¹ Considering those numbers, stakeholders estimate that the economic impact of cancelling boating and fishing trips as a result of the proposed rule could put 340,000 American jobs and nearly \$84 billion in economic contributions in jeopardy.³²

One of the main factors cited for the large economic impact is the expansion of the seasonal speed zones (SSZ) and implementation of mandatory dynamic speed zones (DSZ).³³ The expanded SSZ (shown in Figure 2) covers a vast area extending from Massachusetts to central Florida. This includes areas up to 90 miles offshore, for up to 7 months out of the year in some instances. While the SSZ are seasonal and intended to protect whales during the breeding season, the DSZs are triggered by actual whale sightings. A DSZ is triggered when three right whales are identified, resulting in a 15-day speed limit of 10 knots for that zone.³⁴

The proposed rule also makes changes to the safety deviation exemption. Safety deviations include instances in which it would be unsafe to travel at 10 knots, such as during a weather event, unusual wave activity, or medical emergency. Under the proposed rule, the deviation provision is only applicable to vessels less than 65 feet within areas where a National Weather

²⁷ Id.

²⁸ Id.

²⁹ Letter from Boating Industry, October 3, 2022. <https://www.sportfishingpolicy.com/wp-content/uploads/2022/10/Right-Whale-Rec-Fishing-and-Boating-Comment-Letter-10.3.22.pdf>

³⁰ Letter from Boating Industry, October 3, 2022.

<https://www.nmma.org/assets/cabinets/Cabinet585/Right%20Whale%20Rec%20Fishing%20and%20Boating%20Comment%20Letter%2010-3-2022%20Final.pdf>

³¹ Letter from Boating Industry, October 3, 2022.

<https://www.nmma.org/assets/cabinets/Cabinet585/Right%20Whale%20Rec%20Fishing%20and%20Boating%20Comment%20Letter%2010-3-2022%20Final.pdf>

³² Coastal Recreation, Economic Impacts to Coastal Communities. <https://www.coastalrecreation.org/about-the-issue/>

³³ Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46921-46936 (2022).

³⁴ Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46921-46936 (2022).

Service Gale Warning, or other National Weather Service Warning for wind speeds exceeding those that trigger a Gale Warning is in effect.³⁵ The NOAA’s National Weather Service defines Gale Warnings as sustained wind speeds of 34 to 47 knots (about 39 - 54 miles per hour).³⁶ Boater safety advocates have raised concerns over the ability of small vessels to operate safely at 10 knots during those conditions.³⁷ Beyond recreational boating, the American Pilots’ Association (APA), which represents the pilots that handle well over 90 percent of all large ocean-going vessels moving in international trade in the waterways of the United States, opposed the proposed changes. In particular, APA is concerned the expansion of the speed restrictions to smaller vessels and the significant expansion of SSZs would “increase the dangers faced by pilots and pilot boat crews, reduce navigation safety in Federal Navigation Channels and pilot boarding areas, and negatively impact, if not cripple, port operations on the entire East Coast.”³⁸ A representative from the APA and a charter boat captain will testify on the impacts of the proposed rule.

Rule Status

NOAA is currently reviewing the over 20,000 public comments submitted for the proposed rule.³⁹ While there is no official timeline, NOAA anticipates a final rule by the end of the year.⁴⁰

³⁵ Id.

³⁶ NOAA, National Weather Service, Marine Definitions. https://www.weather.gov/key/marine_definitions

³⁷ BoatUS Comment Letter, October 28, 2022. <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18954>

³⁸ American Pilots’ Association Comment Letter, October 31, 2022. <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18954>

³⁹ NOAA, Rulemaking Docket, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule. <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18954>

⁴⁰ Timeline was discussed by NOAA during the May 23, 2023 budget hearing. <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=413262>