

June 14, 2023

Chairman Cliff Bentz
House Committee on Natural Resources
Subcommittee on Water, Wildlife and
Fisheries
1331 LHOB, Washington, DC 20515

Ranking Member Jared Huffman
House Committee on Natural Resources
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1332 LHOB, Washington, DC 20515

Dear Chair Bentz and Ranking Member Huffman,

The Southern Environmental Law Center (“SELC”) submits this statement to the House Natural Resources Committee’s Water, Wildlife, and Fisheries Subcommittee regarding its June 6, 2023 oversight hearing, *Examining the Impacts of the National Oceanic and Atmospheric Administration’s Proposed Changes to the North Atlantic Right Whale Vessel Strike Reduction Rule*. As an organization working to protect the wildlife and natural resources of the Southeast, we write to reiterate our strong support for the “Proposed Rule” to amend the 2008 North Atlantic Right Whale Vessel Strike Reduction Rule (“Vessel Speed Rule”), 87 Fed. Reg. 46,921 (Aug. 1, 2022), and to provide additional information to be considered by the Subcommittee.

North Atlantic right whales are rapidly declining toward extinction, with only about 340 individuals remaining in the population, including fewer than 70 reproductive females.¹ The population has been in decline since 2010 due to increased human-caused mortality and decreased reproduction, coinciding with climate-change driven shifts in right whale distribution.² Anthropogenic trauma is the leading cause of death for right whales.³ Outside their first year of life, natural death of a right whale has not been observed in the last two decades because they succumb to human-caused mortality before they can die of old age or other natural causes.⁴ The population is now sufficiently small that it cannot sustain the loss of even one whale per year to human causes.⁵

Collisions with vessels are one of the two leading causes of injury and death for right whales. Right whales are particularly prone to vessel strikes, given their slow speeds, extended time spent at or near the surface, and primary habitat overlapping highly trafficked coastal waters.⁶ Calves, juveniles, and females, which are essential to the future viability of the population, are disproportionately vulnerable to vessel strikes.⁷ Since 2017, vessels have killed, seriously injured, or sub-lethally impacted 16 right whales, an average of about three per year.⁸ However, research shows that actual mortality and serious injury rates are likely more than *three times higher*, as more than two-thirds of right whale deaths go undetected.⁹ At a time when the population cannot stand to lose even one whale per year to human causes, these numbers plainly demonstrate that without addressing this threat, the species faces a real prospect of extinction.

On August 1, 2022, the National Marine Fisheries Service (“NMFS”) released a much-needed Proposed Rule that aims to substantially reduce the risk of vessel strikes to right whales, 87 Fed. Reg. 46,921. Unfortunately, since the release of the Proposed Rule, misinformation

about these changes has proliferated, citing incorrect data about the impacts to the recreational boating and fishing industries, as well as the pilot operator sector. It is important to correct these inaccuracies which are putting the implementation of these important protections at risk.

Myth: The Proposed Rule is not necessary and would not help save right whales.

The scientific community is in unanimous agreement that without urgent action to stop mortalities from both vessel strikes and fishing gear entanglements, right whales will be functionally extinct in our lifetime. The right whale population cannot sustain the loss of one whale per year to human causes; yet annual mortalities and serious injuries from vessel strikes alone consistently exceed this level. To make matters worse, in the last three years, three calves and one nursing mother have been lost to vessel strikes.¹⁰ Despite the grim situation, there is strong evidence that recovery is attainable. Right whales have been rescued from the brink before: after being hunted to near extinction in the 1900s, the population saw two decades of growth between 1990 and 2010.¹¹ Put simply, these measures are essential to once again prevent the collapse of the right whale population.

While NMFS's 2008 Vessel Speed Rule represented a significant step in reducing deadly vessel strikes, the best available science now shows that it must be expanded to help bring serious injuries and mortalities to a sustainable level. The Proposed Rule is based on years of extensive, sound scientific analysis and, if adopted, would address *90 percent* of fatal and injurious vessel strike risk for right whales.¹² For example, the proposed change to include vessels 35 feet and longer is long overdue and reflects years of data demonstrating the known risk smaller vessels pose to right whales, 87 Fed. Reg. at 46,928. The three most recent known incidents of vessel collisions with calves all involved vessels either confirmed or suspected to be smaller than 65 ft long. *Id.* Although the risk of striking a right whale may seem low to an individual boater, the risk to each right whale is dangerously high. With so few whales left, every vessel strike is detrimental to the potential recovery of this species.

Myth: The Proposed Rule would decimate coastal economies and severely restrict ocean access.

Public perceptions of the economic impacts of the Proposed Rule have been dramatically inflated. Contrary to misinformation, the Proposed Rule is still limited in when, where, where, and to what vessels it will apply. First, the proposed *seasonal* speed zones would only impact boat traffic during months when right whales are known to be at elevated risk. 87 Fed. Reg. at 46,931. For the majority of the East Coast, this applies only to winter months, which fortunately coincide with most "off-seasons for recreational boating. *Id.* These measures are vital to protect right whales during their calving season in the Southeast, their migration season in the Mid-Atlantic, and their foraging season in New England. Second, the Proposed Rule only extends 20-30 nautical miles from shore along most of the East Coast, well below the distance that is required for many offshore recreational fishing trips. *Id.* While these measures may add some travel time to trips, these zones do not prohibit fishing, boating, or any other activities. Third, the Proposed Rule only covers vessels down to 35 feet and longer—a small segment of the overall boating population. The thousands of boats that are shorter than 35 feet will not be subject to any new speed limits.

Myth: The Proposed Rule would threaten mariner safety and put human life at risk.

NMFS has long valued the importance of mariner safety when crafting its Vessel Speed Rule. In 2008, the agency incorporated myriad safety provisions into the initial rule, and in fact found that boating safety *increased* after the rule went into effect.¹³ The Proposed Rule does not change any of those provisions, and in fact strengthens them, by expanding the types of exemptions for emergency situations such as inclement weather, as well as updating reporting protocols. 87 Fed. Reg. at 46,930. The Proposed Rule continues to prioritize human safety while increasing species protections, meaning that whale safety and mariner safety can continue to co-exist.

Myth: There are alternatives available to protect right whales from vessel strikes.

While opponents are quick to critique the Proposed Rule, they offer few realistic solutions to these critiques, if any at all. The fact is, short of eliminating vessels from an area, slowing vessel speeds is the most effective strategy available to prevent vessel collisions with right whales in U.S. waters. Slowing speeds to 10 knots or less reduces the risk of serious injury and mortality from vessel collisions by 80 to 90 percent.¹⁴ In addition to reducing the severity of impact, slow speeds reduce the probability of a collision by allowing both vessels and whales more maneuverability to avoid one another.¹⁵

There are currently no technological alternatives that are proven effective as vessel speed limits. Unlike other large whale species, right whales are notoriously difficult to visually detect on the water due to their lack of dorsal fin and extended time spent at sub-surface depth. Studies show that even the most trained observers in perfect conditions cannot spot right whales 100 percent of the time.¹⁶ In addition, unlike other large species like sharks, right whales cannot be permanently tagged and tracked in real time to avoid vessel collisions. While future possibilities for near real-time technologies show promise, unfortunately without these available, even the experience and careful tendencies of mariners are not enough to reduce vessel strike risk to right whales.

Myth: NOAA did not consult with affected stakeholders before issuing the Proposed Rule.

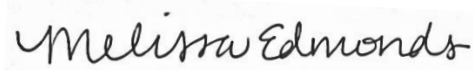
Past rulemakings as far back as 2006 show that NMFS has been publicly considering and soliciting feedback from the regulated community on plans to regulate smaller vessels over larger areas for decades. 73 Fed. Reg. 60,173 (Oct. 10, 2008), 78 Fed. Reg. 73,726 (Dec. 9, 2013). Most recently, in 2021, the agency solicited public comment on a Vessel Speed Rule Assessment which included, among other things, scientific evidence showing that expansions of speed zone areas and regulated vessel classes were necessary to protect right whales from ongoing deaths and serious injuries from vessel collisions.¹⁷ NMFS is presently considering public comments on the Proposed Rule, in accordance with all proper policies.

In conclusion, we strongly support the Proposed Rule, which would give right whales a fighting chance for survival and recovery. Saving this species from extinction will take a collective effort from the fishing, boating, and shipping industries to effectively reduce the risk of deadly vessel collisions. The federal government has an obligation to protect these whales from this clear threat by implementing stronger regulations and enforcement procedures.

Sincerely,



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Federal Legislative Director
Southern Environmental Law Center



Melissa L. Edmonds
Science & Policy Analyst
Southern Environmental Law Center

¹ Heather M. Pettis et al., *North Atlantic Right Whale Consortium 2022 Annual Report Card*, N. ATL. RIGHT WHALE CONSORTIUM (Feb. 2023), available at <https://www.narwc.org/report-cards.html>, at 1.

² Richard M. Pace, III et al., *State-space mark-recapture estimates reveal a recent decline in abundance of North Atlantic right whales*, *ECOLOGY & EVOLUTION* (Sept. 18, 2017); Sarah M. Sharp et al., *Gross and histopathologic diagnoses from North Atlantic right whale *Eubalaena glacialis* mortalities between 2003 and 2018*, *DISEASES OF AQUATIC ORGANISMS* (June 20, 2019); Nicholas R. Record et al., *Rapid climate-driven circulation changes threaten conservation of endangered North Atlantic right whales*, *OCEANOGRAPHY* (June 2019); Erin L. Meyer-Gutbrod et al., *Marine species range shifts necessitate advanced policy planning: The case of the North Atlantic right whale*, *OCEANOGRAPHY* (June 11, 2018).

³ Peter Corkeron et al., *The recovery of North Atlantic right whales, *Eubalaena glacialis*, has been constrained by human-caused mortality*, *ROYAL SOC'Y OPEN SCI.* (Nov. 7, 2018); Sharp et al., *supra* note 2.

⁴ NAT'L MARINE FISHERIES SERV. (NMFS), DRAFT ENVIRONMENTAL ASSESSMENT FOR AMENDMENTS TO THE NORTH ATLANTIC RIGHT WHALE VESSEL STRIKE REDUCTION RULE (July 2022), available at <https://www.fisheries.noaa.gov/action/amendments-north-atlantic-right-whale-vessel-strike-reduction-rule> [hereinafter "Draft EA"], at 12.

⁵ Sean A. Hayes et al., *U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments–2021*, NMFS (May 2022), available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>, at 23 (showing the Potential Biological Removal at 0.7).

⁶ See Susan E. Parks et al., *Dangerous dining: Surface foraging of North Atlantic right whales increases risk of vessel collisions*, *BIOLOGY LETTERS* (Aug. 3, 2011).

⁷ Dana A. Cusano et al., *Implementing conservation measures for the North Atlantic right whale: Considering the behavioral ontogeny of mother-calf pairs*, *ANIMAL CONSERVATION* (Oct. 19, 2018).

⁸ NMFS, *2017–2023 North Atlantic Right Whale Unusual Mortality Event* (last visited May 31, 2023), <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event>.

⁹ Richard M. Pace, III et al., *Cryptic mortality of North Atlantic right whales*, *CONSERVATION SCI. & PRACTICE* (Feb. 2, 2021).

¹⁰ *Dead North Atlantic Right Whale Sighted off New Jersey*, NMFS (June 29, 2020), <https://www.fisheries.noaa.gov/feature-story/dead-north-atlantic-right-whale-sighted-new-jersey>; *North Atlantic Right Whale Calf Injured by Vessel Strike*, NMFS (Jan. 13, 2020), <https://www.fisheries.noaa.gov/feature-story/north-atlantic-right-whale-calf-injured-vessel-strike>; *North Atlantic Right Whale Calf Stranded Dead in Florida*, NMFS (Feb. 14, 2021), <https://www.fisheries.noaa.gov/feature-story/north-atlantic-right-whale-calf-stranded-dead-florida>.

¹¹ Richard M. Pace, III et al., *supra* note 2.

¹² Draft EA at 18.

¹³ NMFS, *NORTH ATLANTIC RIGHT WHALE (*EUBALAENA GLACIALIS*) VESSEL SPEED RULE ASSESSMENT* (June 2020), available at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales> [hereinafter "2021 Vessel Speed Rule Assessment"], at 20.

¹⁴ See, e.g., Gregory K. Silber et al., *Hydrodynamics of a ship/whale collision*, J. EXPERIMENTAL MARINE BIOLOGY & ECOLOGY (Aug. 2010); Angela S.M. Vanderlaan & Christopher T. Taggart, *Vessel collisions with whales: The probability of lethal injury based on vessel speed*, MARINE MAMMAL SCI. (Dec. 21, 2006); Paul B. Conn & Gregory K. Silber, *Vessel speed restrictions reduce risk of collision-related mortality for North Atlantic right whales*, ECOSPHERE (Apr. 3, 2013); Julien Martin et al., *A quantitative framework for investigating risk of deadly collisions between marine wildlife and boats*, METHODS IN ECOLOGY & EVOLUTION (July 27, 2015).

¹⁵ Scott M. Gende et al., *A Bayesian approach for understanding the role of ship speed in whale-ship encounters*, ECOLOGICAL APPLICATIONS (Sept. 1, 2011); Conn & Silber, *id.*

¹⁶ David N. Wiley et al., *Vessel strike mitigation lessons from direct observations involving two collisions between noncommercial vessels and North Atlantic right whales (Eubalaena glacialis)*, MARINE MAMMAL SCI. (July 2016).

¹⁷ 2021 Vessel Speed Rule Assessment, *supra* note 13.