



June 5, 2023

The Honorable Cliff Bentz
Chairman
Committee on Natural Resources
Subcommittee on Water, Wildlife and
Fisheries
U.S. House of Representatives

The Honorable Jared Huffman
Ranking Member
Committee on Natural Resources
Subcommittee on Water, Wildlife, and
Fisheries
U.S. House of Representatives

Dear Chairman Bentz and Ranking Member Huffman,

In advance of the Subcommittee's June 6, 2023, 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 Congressional Sportsmen's Foundation (CSF) would like to offer the following written testimony for the record. While we fully support meaningful efforts to conserve whales and other marine species, we would like to express our strong concerns and opposition to the proposed changes to the North Atlantic right whale vessel speed regulations as published in the Federal Register on August 1, 2022 (Docket No. 220722-0162). Specifically, we were disappointed by the National Marine Fisheries Service's (NMFS) lack of engagement with the angling and boating community in the development of the proposed rule, the egregious assumptions made in the vessel strike risk modeling regarding vessels 35-65 feet in length, and the rule's focus on a draconian regulation that avoids meaningful mitigation measures while causing significant and unnecessary harm to angling and boating access and coastal economies along the Atlantic seaboard.

The proposed North Atlantic right whale vessel strike reduction rule would amend current vessel speed regulations in the Atlantic by requiring boats 35 feet and longer to travel at no more than 10 knots, from the shoreline to as far as 90 miles offshore, for up to seven months of the year. The new proposed slow speed zone stretches from Massachusetts to Florida, as opposed to discrete speed reduction areas currently in effect for vessels 65 feet and larger.

The recreational marine industry accounts for \$203 billion in national economic contributions, supporting over 800,000 U.S. jobs and 36,000 businesses. In Atlantic coastal states alone, recreational boating and fishing is a crucial economic driver, supporting 340,000 American jobs and nearly \$84 billion in economic activity. Recreational fishing is an important cultural pastime across the United States, including along the Atlantic Coast. In fact, according to a query of the Marine Recreational Information Program (MRIP), Atlantic states anglers took nearly 6.4 million trips in federal waters in 2022. It is difficult to understand how representatives and stakeholders of this important component of the American economy and culture were not consulted or given an opportunity to be part of meaningful solutions to the conservation challenges facing North Atlantic right whales, but instead are facing a devastating rule created in a vacuum that will have far reaching negative implications for recreational access and coastal economies.

The vessel strike risk assessment modeling used to justify the proposed rule relied on several inaccurate assumptions. For instance, the NMFS Technical Memorandum (TM) noted that "...the high densities predicted along the mid-Atlantic may not be realistic." The admittedly high whale density bias likely produced model outcomes that are inconsistent with actual risk. However, this assumption ultimately led to the drastically expanded seasonal management zones in the proposed rule.

Another example of an erroneous assumption used in the risk assessment model centers on vessel draft depth. The model assumed a draft depth of 10 meters for all vessels, which is 32.8 feet or 394 inches. Yet, a 35-foot center console fishing boat typically drafts only 36 inches with engines down, or 9.1% of the assumed draft depth. Essentially, a 90% reduction in the modeled probability of a 35-foot center console striking a North Atlantic right whale could be achieved simply by correcting the model to reflect realistic draft depths.

Furthermore, NMFS failed to consider safety at sea for vessels under 65 feet, and particularly center consoles and those powered by outboards, which are designed to run on a level plane at higher speeds with less hull in the water column. Operating at 10 knots or less is below planning speed, forcing the bow to ride high, blocking visibility for the operator and potentially leading to collisions with hazards in the water, including North Atlantic right whales or other vessels. In addition, the proposed rule would take away a primary safety feature of recreational boats 35 feet and larger, which often must use speed to avoid weather events such as thunderstorms where a vessel could return to port or avoid a line of thunderstorms. Finally, the safety deviation provision only in the case of a gale-force wind advisory by the National Weather Service is a clear indication that the authors of the rule are not familiar with the vessels they intend to regulate. By the time a gale-force wind advisory (39 - 46 mph) is issued, the sea conditions, in almost all circumstances, will have deteriorated to a point that most vessels in the 35-64 foot class caught at sea will unlikely be able to achieve planning speed and return to safe harbor in a reasonable amount of time.

While significant questions remain as to the validity of the modeling exercises used to arrive at the proposed rule, ultimately the overly precautionary expansion of the seasonal management zones will do little for whale conservation. Based on the number of suspected North Atlantic right whale strikes by boats 35-64 feet in length over the last 15 years, versus the number of fishing vessel trips taken during that same time, there is less than 1 in 1,000,000 chance of recreational fishing boats in this category fatally striking a whale under existing regulations.

Instead, NMFS should work with the fishing and boating community on technologically based solutions that involve real-time monitoring and vessel notifications as to the presence of whales before implementing changes to current regulations. In fact, Congress has already authorized such a solution in the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 (Public Law 117-263) by directing NMFS to implement a pilot program involving real-time monitoring of whales, and following implementation of the pilot program, to provide a report on how the program was used to, "...direct sector-specific mitigation measures that avoid and significantly reduce risk of serious injury and mortality to North Atlantic right whales." Unfortunately, this program received no funding as part of the NDAA authorization level (\$5

million), however, CSF and our partners are advocating for funding for this program in the upcoming appropriations bills. CSF maintains that funding this program will provide real-time data and information on the movement of right whales to help guide reasonable and calculated conservation efforts that will not devastate the recreational fishing and boating industry.

CSF stands ready and willing to work with NMFS on real-time monitoring and vessel notification technologies that provide meaningful conservation measures to conserve North Atlantic right whales while maintaining access to our Atlantic fisheries resources and protecting coastal economies.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Horton".

Senior Director, Fisheries Policy