

Committee on Natural Resources
Subcommittee on Water, Wildlife and Fisheries
Oversight Hearing
1324 Longworth House Office Building
June 6, 2023
10:15 AM

"Examining the impacts of the National Oceanic and Atmospheric Administration's proposed changes to the North Atlantic Right Whale Vessel Strike Reduction Rule."

Questions from Rep. Westerman from Arkansas for Assistant Administrator Janet Coit

1. How many North Atlantic right whales have been lethally struck, outside of the current speed zones since 2008, by vessels between 35 to 65 feet in length?

Response: Vessels between 35 and 65 feet in length are known to have accounted for five of the 14 documented lethal strike events in U.S. waters since the speed rule went into effect in December 2008, demonstrating the significant risk that vessels of this size class present to right whales. (Note: Vessel length was unknown for eight of these lethal events, and likely greater than 65 feet for one of the events.) Four of the five documented collision events known to involve a vessel between 35 and 65 feet in length occurred inside active Seasonal Management Areas, and one was just outside (i.e., less than 100 yards) although all vessels involved were not subject to mandatory speed restrictions due to their size.

Furthermore, since 2009, operators of vessels less than 65 feet in length have reported an additional six vessel collisions (including five serious injuries) with undetermined large whale species in U.S. waters that may have involved right whales based on the location and timing of the events (Henry et al. 2017).

2. Based on Mr. Gamboa's testimony, he indicated if the proposed vessel speed restrictions were to go into effect, he would lose a third of his business, \$140,000. That is just one business. Can NOAA verify the number of HMS Permits and federal for-hire permits that have been issued from Florida to Massachusetts?

Response: Based on 2021 and 2022 data, approximately 1,957 charter/for-hire fishing vessels, 1,194 commercial vessels, and 3,430 recreational vessels (6,581 vessels total) had a NMFS Atlantic Highly Migratory Species (HMS) [permit](#) or other offshore permit issued by the Greater Atlantic Regional Fisheries Office ([GARFO](#)) or Southeast Regional Office ([SERO](#)), and are potentially impacted by the proposed rule. This estimate only includes vessels between 35 and 65 feet in length and a hailing port or principal port in the area from southern Maine (York, Maine) to South-Central Florida (Port St. Lucie area). This is not the

total number of permits issued in this area, but rather the number of unique vessels, since many vessels have a combination of permit types and uses. For example, a vessel may hold HMS, GARFO and SERO-issued permits, but that vessel would only be counted once. Additionally, one vessel may have a permit for charter/for-hire and recreational use, and in that case it was counted as a charter/for-hire vessel instead of recreational. Also, vessels greater than 65 ft in length, which are already subject to speed restrictions, may carry a variety of commercial and recreational fishing permits.

Estimated Number of Impacted Vessels 35-65 ft in Length with NMFS HMS or Offshore Fishing Permits

For-Hire/Charter	1,957
Commercial	1,194
Recreational	3,430
Total	6,581

3. This proposed rule greatly expands static seasonal management areas, for speed restrictions. However, NOAA already has a process to identify and put in place dynamic management zones, or DMA's. These zones are supposed to be responsive to sightings or known locations. For these DMA's, how does NOAA identify the location of the North Atlantic Right Whale and promptly communicate that information to the boating and mariner community? Can you provide details about the typical timeline from identifying a known or potential location of the Right Whales to the dissemination of this information to end users on the water? Furthermore, does NOAA collaborate with any third-party organizations to gather crowd-sourced whale sightings and publish them for use to make navigation decisions while under way by the broader mariner community, and was evaluating or improving those collaborations part of the rule making process?

Response: NMFS implemented a voluntary Dynamic Management Area program concurrently with the mandatory speed rule in 2008. Under current protocols, a Dynamic Management Area is triggered when a group of three or more right whales are sighted in close proximity. Confirmed right whale sightings usually come from formal scientific

surveys but can also be reported by members of the public, other government entities (e.g., U.S. Coast Guard (USCG)), or mariners. NOAA offers options, including the [Whale Alert app](#), to [report](#) both live and stranded/injured marine mammals and sometimes local research organizations/aquariums also alert NMFS to reports from the public. Since 2020, NMFS' Dynamic Management Area program has also included acoustically triggered Slow Zones. Once the sightings or acoustic detection trigger is met, NMFS establishes a boundary around the whales (usually within 24-36 hours) for 15 days and urges vessels to either avoid the area or transit through at speeds less than 10 knots. Dynamic Management Areas/Slow Zones may be extended if whales remain in the area. NMFS alerts mariners to Dynamic Management Area and Slow Zone declarations through website postings, emails to lists of interested parties, USCG Local Notices to Mariners, and USCG Broadcast Notices to Mariners.

Vessel operators or interested parties can sign up for [email or text notifications](#) about the latest Right Whale Slow Zones, or visit Facebook (@NOAAFisheriesNEMA) and Twitter (@NOAAFish_GARFO) for announcements. Vessel operators or interested parties can also check for Dynamic Management Areas/Slow Zones on our [online right whale sightings map](#) or on the free [Whale Alert app](#), which will automatically notify vessel operators entering one of these areas.

The effectiveness of the voluntary Dynamic Management Area program was evaluated as part of the NMFS [2020 Vessel Speed Rule Assessment](#). We found that mariner cooperation with voluntary speed recommendations in Dynamic Management Areas is generally low, and as such likely does not provide a meaningful reduction in vessel strike risk. The 2008 speed rule stated that the agency would "monitor voluntary compliance" and if cooperation was not satisfactory would "consider making them mandatory, through a subsequent rulemaking" (73 FR 60173, October 10, 2008). The proposed vessel speed rule modifications would replace this voluntary program with a mandatory Dynamic Speed Zone program that would improve on the existing Dynamic Management Area program.

4. Marine Cartography and Marine technology for smaller vessels have advanced substantially since the existing vessel speed restrictions were put in place in 2008. Chart plotters capable of updateable cartography are commonplace across the recreational boating industry now, meaning maps and charts can be updated on a near daily basis for boats of all classes and sizes. During the drafting process of the proposed rule, did NOAA actively engage in discussions with manufacturers of marine vessels and marine electronics to explore and obtain information about existing technologies that could significantly enhance its capacity to identify known or potential whale locations in real-time or near real time, and effectively disseminate that information to a wide audience? Furthermore, did NOAA assess

ways to enhance its current practices and timelines for identifying known whale locations and promptly sharing that information?

Response: NMFS is aware of the wide variety of navigation systems used on different vessel types. The systems employed on different vessels use a diversity of chart products, and depending on capabilities, and the age of the system, have a range of capacities for updating information. In developing the proposed rule, NMFS focused on measures that would have the greatest and most immediate impact on reducing lethal strike events along the U.S. coast given the urgent need to minimize risk to the species and prevent its extinction. The current Dynamic Management Area/Slow Zone program serves as a de facto warning to mariners about the presence of right whales. However, given the low level of mariner cooperation with voluntary slow downs, the Agency proposed to ensure any future dynamic management program would provide meaningful protection to North Atlantic right whales, including improvements in communication with mariners. In the proposed rule (87 FR 46921; June 29, 2022), we specifically solicited input from mariners about how best to communicate information, including about the designation of dynamic zones. During the public comment period, we received over 90,000 comments and are considering them as we work towards final action. We believe that providing data on vessel speed restrictions, voluntary measures, and whale locations directly to vessel navigational systems (where possible given vessel equipment/systems) will be an effective and efficient addition to our communication efforts.

We are working to identify technologies that could be used or modified to both detect and avoid whales, as well as emerging technologies possibly capable of detecting whales, and/or enhancing vessel avoidance capabilities to reduce strikes. To accelerate this work, we are dedicating \$82 million in Inflation Reduction Act (IRA) funding over the next four years for North Atlantic right whale conservation, \$20 million of which is specifically to reduce vessel strike risk by developing, testing and ultimately, implementing effective detection and avoidance technology.

Currently, we conduct aerial surveys and passive acoustic monitoring along the U.S. East Coast and communicate right whale detections to mariners through a variety of mechanisms. For example, the Whale Alert app provides mariners and members of the public a user-friendly tool that displays whale sightings and detections. Through the app, users can also report live, dead, or distressed whale sightings to the appropriate response agency. The NMFS-partnered <https://whalemap.org/> website provides comprehensive information including historic sightings and acoustic detections.

Questions from Rep. Buddy Carter from Georgia for Assistant Administrator for NOAA Fisheries

Safety of Life (Pilots, Pilot Boat Crews, and Mariners in General)

1. Prior to publishing its proposed amendments to the North Atlantic Right Whale (NARW) vessel strike reduction rule in August of 2022, did NOAA conduct any outreach as it relates to the impacts the proposed amendments to the NARW rule will have on maritime pilots and pilot-boat crews?

Response: In January 2021, NMFS released the [North Atlantic Right Whale Vessel Speed Rule Assessment](#) which evaluated several aspects of the existing right whale speed rule and associated voluntary Dynamic Management Area program including mariner compliance/cooperation, biological efficacy and safety considerations. The report also included recommendations for potential changes to the current speed rule. NMFS solicited public comment on the report through March 2021 and received 34 unique comments (representing over 21,000 individuals) from stakeholders and members of the public, including comments from the American Pilots Association, Brunswick Bar Pilots Association, Brunswick Pilot Boat Corp, the Savannah Pilots Association, Florida Harbor Pilots Association, Quoddy Pilots, Charleston Pilots Association, Delaware Bay Launch, and the Cape Fear Pilots Association.

2. If the answer to the above question is yes, please provide the details of that outreach to include the dates of the out-reach and the parties that NOAA talked, met, or consulted with as well as any pertinent information pertaining to the anticipated impacts that the proposed rule would have on maritime pilots and pilot-boat crews.

Response: In addition to the published speed rule assessment report and solicitation of public comment (described in the previous response), NMFS staff had additional meetings with relevant stakeholders regarding the assessment report and pilot operations including the following:

- On February 5, 2021, NMFS staff met with Hope Moorner representing the Georgia Ports Authority.
- On April 22, 2021, NMFS staff met with Clay Diamond and Jorge Viso representing the American Pilots Association.
- On June 10, 2021, NMFS staff met with Trey Thompson representing the Savannah Bar Pilots Association and members of Sen. Ossoff and Sen. Warnock's staff.

During these meetings, NMFS staff generally listened to input and comments from these stakeholders.

3. Prior to publishing the proposed amendments to the NARW vessel strike reduction rule in August of 2022, did NOAA consider the operational impacts to pilot boats, including the speed at which various pilot boats must obtain before they are on plane, the impacts of boat operator visibility and pilot boat stability when a pilot boat is not operating on plane?

Response: NMFS considered impacts to pilot boat operations from the proposed regulations and met with pilot boat stakeholder groups prior to release of the proposed rule (as described above). NMFS also considered comments received in response to the North Atlantic Right Whale Vessel Speed Rule Assessment as described above. None of the written comments received on the assessment report from the pilots associations specifically discussed pilot vessel operations on plane.

4. If the answer to the above question is yes, please provide the pertinent information pertaining to the anticipated impacts that the proposed rule would have on pilot boat operations.

Response: The current speed rule already applies to pilot boats greater than 65 ft in length within active Seasonal Management Areas. We estimated that the changes to the proposed rule would impact an additional 26 pilot vessels, with pilot boats less than 35 ft in length remaining unaffected. Overall, we estimated that pilot vessels likely impacted by the proposed rule would incur 2927 delayed transit hours each year. Under the proposed rule, should a pilot boat encounter oceanographic, hydrographic, and/or meteorological conditions severely restricting the maneuverability of the vessel, that pilot boat may exceed the 10-knot speed limit if necessary to maintain safe maneuvering speed. Additionally, any pilot vessel less than 65 ft in length may transit at speeds greater than 10 knots (5.1 m/s) within areas where a National Weather Service Gale Warning, or other National Weather Service Warning (e.g., Storm Warning, Hurricane Warning) for wind speeds exceeding those that trigger a Gale Warning is in effect.

5. I understand and appreciate that NOAA took the time to discuss pilot safety and other concerns with the American Pilots' Association (APA) in September of 2022. Since APA submitted its comments to NOAA in October of 2022, has NOAA had any further discussion with the APA or consultation with other parties pertaining to the pilot safety concerns raised in APA comments to the proposed rulemaking and questions 1 and 3 above?

Response: Yes.

6. If the answer to the above question is yes, please provide the details of that outreach to include the dates of the out-reach and the parties that NOAA talked, met, or consulted with as well as any pertinent information pertaining to the anticipated impacts that the proposed rule would have on maritime pilots, pilot-boat crews, and pilot boat operations.

Response: NMFS staff met with Clay Diamond representing the APA again on June 29th, 2023, to gain clarification on certain elements (including safety matters) of their comments provided during the proposed rule comment period. Mr. Diamond reiterated certain aspects of the APA comments. Outreach and communication related matters of relevance to the current and proposed speed rule were also discussed at the meeting.

7. If the answer to the above question is no, will NOAA discuss these serious safety concerns with APA and provide any planned updates to the proposed rule for review before publishing a final rule?

Response: N/A

8. Prior to publishing its proposed amendments to the NARW vessel strike reduction in August of 2022, did NOAA conduct any outreach as it relates to the impacts the proposed amendments to the NARW rule will have on the safety of mariners operating under the new speed restrictions?

Response: Please see response to Question #1.

9. If the answer to the above question is yes, please provide the details of that outreach to include the dates of the out-reach and the parties that NOAA talked, met, or consulted with as well as any pertinent information pertaining to the safety of mariners operating under the new speed restrictions.

Response: As discussed above, in January 2021, NMFS released the [North Atlantic Right Whale Vessel Speed Rule Assessment](#) and solicited comments on the report. The agency received 34 unique comments (representing over 21,000 individuals) from stakeholders and members of the public, including comments from industry, pilot associations, ports, environmental NGOs, fishing interests, government and the public. Some of these comments, which are posted publicly on the [NMFS website](#), included input regarding mariner and navigational safety issues.

10. Since APA submitted its comments to NOAA in October of 2022, has NOAA had any further discussion with or consultation with other parties pertaining to the safety of mariners operating under the new speed restrictions?

Response: Yes, since the APA submitted comments on 10/28/22, NMFS staff had additional discussions with external groups regarding mariner safety.

11. If the answer to the above question is yes, please provide the details of that outreach to include the dates of the out-reach and the parties that NOAA talked, met, or consulted with as well as any pertinent information pertaining to the safety of mariners operating under the new speed restrictions.

Response: NMFS staff met with members of Senator Whitehouse's staff on Oct 31, 2022, regarding sailing races and the proposed speed regulations, and on Jan 18, 2022, NMFS staff met with the USCG National Boating Safety Advisory Committee. Safety issues discussed included vessel passenger safety should a whale strike occur and general impacts to vessel operations and potential safety issues.

Navigation Safety of Large Vessels in Narrow Restricted Channels

1. Prior to publishing its proposed amendments to the NARW vessel strike reduction rule, did NOAA conduct any outreach as it relates to the impacts of the rule on the safe navigation of large vessels operating in the Federal Navigation Channels (FNC)? Specifically, did NOAA talk to the U.S. Coast Guard or the Army Corps of Engineers on the potential impacts to navigational safety to large vessels in FNCs?

Response: As noted above (in the response to question #9), NMFS solicited public comment on its [North Atlantic Right Whale Vessel Speed Rule Assessment](#). Neither USCG nor U.S. Army Corps of Engineers (USACE) provided comment on the Assessment. Both the USCG and USACE had an opportunity to review the proposed rule prior to publication as part of the Office of Information and Regulatory Affairs (OIRA) interagency review process under E.O. 12866. NMFS staff work regularly in partnership with USCG on outreach and enforcement of the current right whale speed rule. We are carefully considering the input received from other Federal agencies as we work towards developing a final action on the proposed rule. Federal agencies will be provided with an opportunity to review any final rule via the OIRA review process.

2. If the answer to the above question is yes, please provide the details of that outreach to include the dates of the out-reach and the parties that NOAA talked, met, or consulted with as well as any pertinent information pertaining to the anticipated impacts that the proposed rule would have the navigational safety of large vessels in FNCs.

Response: In early 2021, NMFS conducted outreach on the speed rule in the form of comment solicitation on the [North Atlantic Right Whale Vessel Speed Rule Assessment](#).

(Those comments are publicly available at the same website.) NMFS had no specific meetings with external stakeholders focused on the safe navigation of large vessels in FNCs prior to publication of the proposed rule but did meet with stakeholders on related topics (as described earlier). NMFS coordinates regularly with USCG regarding implementation and enforcement of the right whale speed rule (and other right whale protection efforts), but these interactions are too numerous to detail here. NMFS has not met specifically with USCG or USACE, nor has either agency raised concerns to NMFS, regarding navigational safety of large vessels in FNCs, except that USCG has confirmed to NMFS that they have not had any reports of a vessel reporting a casualty event which cited the NARW speed regulations as a contributing factor.

Questionable Support for Proposed Regulations

1. What is the current NOAA estimation of the NARW population? Please provide details on what NOAA considers to be the total NARW population.

Response: As published in the 2022 stock assessment report for North Atlantic right whales, NMFS' best estimate of the population is 338 individuals (95% Credible Intervals: 325-350). This represents the population as of November 2020 due to the time necessary to process and analyze data.

2. Does NOAA count NARW calves in the total NARW population?

Response: NMFS does not consider calves part of the population for a marine mammal stock assessment. Calves (whales less than 1 year of age) are not counted as part of the population for a year. The population model using sightings data is only relevant to subadults and adults because an individual whale needs to be >6 months old to enter the sightings catalog as a uniquely identifiable individual. For the purposes of stock assessment and population monitoring, calves are small and vulnerable to some threats that are not relevant to adults. However, every year, NMFS and our partners closely monitor the calving grounds in the southeastern U.S., identifying and counting every unique mother-calf pair. It is very rare for a new calf to not be documented as part of these annual surveys. These efforts are crucial for understanding individual and temporal variation in reproduction, even though calves are not technically tallied as recruits to the population during assessments.

3. Please provide the total NARW population for every five years from current time through when NOAA first tracked such statistics. For example, what was the NARW population in 2018, 2013, 2008, 2003, etc...?

Response: Under Section 117 of the MMPA, NMFS has published a revised North Atlantic right whale stock assessment report every year since 1997. Under the ESA, NMFS completes a North Atlantic right whale status review every 5-years, with the most recent review completed in November 2022. Based on current methods and the most up-to-date data, the total NARW population during the requested time period is below:

Year	Estimated population
2022	338
2017	436
2012	478
2007	414
2002	347
1997	317

Failure to Consider Economic Impact as Required by Law

1. Has NOAA updated its estimated economic impact of the proposed NARW vessel strike reduction rule?

Response: In July 2022, NMFS published an economic assessment entitled "Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis" for the proposed rule for public comment. We are carefully considering the input received as we work towards developing a final action on the proposed rule, which will include an updated economic assessment.

2. If the answer to the above question is yes, please provide the details of that updated economic impact, including the impact on maritime commerce on the East Coast.

Response: Any final rule will be accompanied by an updated economic assessment.

3. If NOAA has not updated its estimated economic impact, given that we just heard NOAA's estimated economic impacts might have failed to consider over \$8 Billion in impact, will NOAA update this estimate before moving forward with a final rule?

Response: Any final rule will be accompanied by an updated economic assessment.

4. NOAA held a webinar on August 24, 2022 to discuss the proposed NARW rulemaking. During this webinar, NOAA Economist, Chao Zou-Garfo, acknowledged that, regarding the NARW rulemaking, economic data was not considered and/or needed for small boats (6:57 pm EST), communities served by high-speed ferries (6:59 pm EST), off-shore fishing (7:21 pm EST), and ports (7:25 pm EST). The recording for NOAA's August 16, 2022 webinar is available at the NOAA Fisheries, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule website at <https://www.fisheries.noaa.gov/action/amendments-north-atlanticright-whale-vessel-strike-reduction-rule>. NOAA has not yet published the recording of the August 24, 2022 webinar. Why is this recording not yet published? When does NOAA plan on publishing the recording from its August 24, 2022 webinar?

Response: NMFS presented three webinars on the proposed vessel speed rule, on August 10, 2022; August 16, 2022; and August 24, 2022. All webinars used the same presentation and materials. We recorded the August 16 webinar presentation and posted it on our website: <https://videos.fisheries.noaa.gov/detail/video/6311444099112/amendments-to-the-north-atlantic-right-whale-vessel-strike-reduction-rule-informational-webinar?autoStart=true&page=6&q=whales>

NMFS did not publicly post any recordings of the Q&A portions of the webinars and does not have plans to do so. Also, please note, that at the beginning of each webinar, NMFS made it clear that the purpose of the webinar was to provide clarification regarding the proposed rule so there was no confusion about what was being proposed. The webinar was not a formal hearing, and the agency was not taking verbal input as formally submitted comments.

Every vessel type and size potentially impacted under the proposed rule was fully considered in the draft economic assessment (including costs associated with delayed transit). ([Please see the Draft Regulatory Impact Review and Initial Regulatory Flexibility](#)

Analysis.) Any statements by agency staff made during the webinar that may have suggested otherwise were potentially erroneous, taken out of context, or misunderstood.

Questions from Rep. Kiggans from Virginia for Assistant Administrator Janet Coit

1. At a time of inflation and increasing financial pressure on families, this proposal will increase costs of shipping goods and conducting fishing activities, thus increasing costs to consumers for a variety of goods including sustainable seafood. In addition, this rule will increase the costs to construct, operate, and maintain offshore energy projects, thus increasing the costs of electricity to ratepayers.

a. Has NOAA conducted a cost benefit analysis of this rule and if so, what were the results of that analysis?

Response: In July 2022, NMFS published the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis for its proposed "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule." This draft report evaluated the costs and benefits of the proposed amendments to the current speed rule to better protect North Atlantic right whales from lethal collisions with vessels in U.S. waters.

The benefits of North Atlantic right whale and other endangered whale protections include tourism benefits accruing from activities such as commercial whale watching operations. A study by Hoyt (2001) suggests that roughly half of all commercial whale watching worldwide occurs in the United States, largely centered in New England. Large whales also provide ecosystem services, including playing an important role in carbon cycling in the oceans, and contribute to sense of place, education, and research. Finally, slowing vessel speeds is expected to provide ancillary benefits for mariner safety, ocean noise reduction, and the lowering of polluting emissions.

The draft report estimated the direct costs to vessel operators from the proposed changes to the speed rule. We estimated that approximately 15,899 vessels would be potentially affected along the U.S. Atlantic coast from Maine to Florida, resulting in up to 121,061 additional transit hours annually across all vessel types, size classes, and regions. The total estimated annual costs associated with the proposed rule are \$46,216,122. Over 86% of the costs are expected to be incurred by vessels operating in the Northeast and Mid-Atlantic regions (ME to NC) largely due to the greater proposed expansion of seasonal speed restrictions in those areas and the higher amount of commercial traffic overall. The cost estimates provided in the draft report were based on operating and fuel cost estimates from 2021, and these estimates can vary year to year. Additionally, it is important to recognize that not all vessels that would be subject to speed restriction would actually be impacted, or heavily impacted, by the proposed changes. For example, many vessels already transit below 10 knots, or close to 10 knots, as part of their regular operations. These include certain industrial vessels, commercial fishing vessels, sailing vessels, and others. Finally, the draft economic report does not address future activities, such as

offshore wind development, because at the time the draft report was written, there was a high degree of uncertainty about the future location, timing and nature (i.e., vessel types, speeds, etc.) of associated vessel activity.

2. Environmental regulation is at its best when it harnesses human ingenuity to come up with innovative solutions—the Clean Water Act and Clean Air Act have succeeded using this model: setting performance-based targets and creating the space for new technologies to meet those targets. We know that there are a range of promising technologies out there that could monitor and detect whales in real time and thereby reduce the risk of vessel strikes.

a. How does the vessel speed rule, with its one-size-fits-all across-the-board speed restriction, incentivize the development and implementation of new whale detection and monitoring technologies? b. What changes can be made to the proposed vessel strike rule that can further encourage and incentivize the development and implementation of this technology?

Response: Changes to the speed regulations are proposed to reduce vessel strike risk based on a coast wide collision mortality risk assessment and updated information on right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events. These changes are essential to stabilize the ongoing right whale population decline and prevent the species' extinction. That said, we remain open to incorporating additional tools in the future and are working to identify technologies that could be developed or modified to detect and avoid whales to reduce strikes. To accelerate this work, we are dedicating \$82 million of Inflation Reduction Act (IRA) funding over the next four years for right whale conservation, \$20 million of which is to reduce vessel strike risk by developing, testing and ultimately, implementing effective detection and avoidance technology.

Detecting whale presence is essential but only part of the equation for reducing the risk of lethal vessel strikes. Since 2008, NMFS has declared voluntary Dynamic Management Areas/Slow Zones where whales are recently detected only to have low cooperation from mariners in slowing down. The agency seeks to harness technologies that will help better monitor whales but also work with vessel operators to maximize the value of that information to reduce strike events.

3. In the context of offshore wind surveys, construction, operations, and maintenance, slower vessel speeds will result in more on-water time and more overall trips conducted by multiple vessels to complete the same tasks compared to vessels operating at higher speeds.

a. How do more trips, more vessels, and more overall vessel time on the water impact the overall collision risk to North Atlantic Right Whales?

Response: North Atlantic right whale vessel speed restrictions reduce the likelihood of lethal collisions between vessels and whales. It is challenging to predict how different mariner groups might respond, adjust, or otherwise modify operations to accommodate measures in the proposed rule. This is especially true for future offshore wind development. Given that we lack robust predictions of coast-wide vessel activity for offshore wind surveys, construction, operations, and maintenance, we cannot quantitatively assess the potential impact of the proposed rule on these activities.

The proposed changes to the speed rule will impact a wide variety of vessel types and operators, and we anticipate decisions regarding changes to vessel operations will vary depending on the unique nature of a vessel's operations, needs, schedule, flexibility, and cost. We are carefully considering the public input received on our draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis prepared for the proposed "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule" as we work towards developing a final action on the proposed rule.

Irrespective of any existing or proposed speed regulations, federally permitted or funded activities that may affect an ESA-listed species (such as offshore wind development projects) must be conducted in a manner that is not likely to jeopardize the continued existence of such species. As such, federal permitting agencies often require measures such as speed restrictions to minimize impacts on listed species. In addition, any activity that is likely to result in take of marine mammals as defined under the Marine Mammal Protection Act (MMPA) is advised to obtain an MMPA incidental take authorization so that any take is lawful. Such an authorization also requires NMFS to prescribe mitigation measures that provide the "means of effecting the least practicable adverse impact" on the affected species, which often includes speed restrictions.

b. Follow up question: Has NOAA calculated how many additional vessel trips and how much additional time on water would result from the implementation of this rule?

Response: In July 2022, NMFS published its Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis for its proposed "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule." The assessment estimated delayed (or additional) transit hours that would likely accrue to each vessel type in each region as a result of a 10-knot speed restriction within relevant speed restriction areas and seasons. We estimate 15,899 vessels would potentially be affected along the U.S. Atlantic coast from Maine to Florida, resulting in up to 121,061 additional transit hours annually across all vessel types,

size classes, and regions. This analysis evaluated the economic impacts of 10-knot mandatory speed limits for vessels that normally would transit at speeds greater than 10 knots in active or newly proposed speed restriction zones. Additionally, it is important to recognize that not all vessels that would be subject to speed restriction would actually be impacted, or heavily impacted, by the proposed changes. For example, many vessels already transit below 10 knots, or close to 10 knots, as part of their regular operations. These include certain industrial vessels, commercial fishing vessels, sailing vessels, and others. As noted above, in our assessment we were not able to quantify impacts to future vessel operations associated with offshore wind development.

c. Follow up question: Has NOAA accounted for increased human safety risk from additional time on the water?

Response: We considered mariner safety during all aspects of the proposed rule development, and continue to consider input received during the public comment period for any final action. In addition to the existing deviation exception in the current regulation for navigational safety, the proposed rule would newly allow vessels to exceed the 10-knot speed limit during emergency situations when the health, safety, or life of a person is at risk; vessels would have to submit a safety deviation report if a speed deviation occurs. Vessels less than 65 ft in length also would be allowed to transit at speeds greater than 10 knots within areas with a National Weather Service Gale Warning, or other National Weather Service Warnings greater than gale force winds (e.g., Storm Warning, Hurricane Warning) without submitting a safety deviation report. NMFS expects all mariners, as part of prudent offshore wind vessel operations, to monitor weather and ocean conditions prior to setting out and be mindful of how a 10-knot speed restriction may impact their operations, including vessel staffing needs.

4. If implemented, these vessel speed restrictions may require offshore hoteling of operations and maintenance crews for offshore wind energy projects, especially as projects begin to be developed further from shore. How has NOAA accounted for the socioeconomic impact of crews being away from family for extended periods of time?

Response: As future operations, the socioeconomic impacts from potentially hoteling crews for offshore wind energy development were outside of the scope of NMFS' economic assessment for this rule.

Questions from Rep. Nancy Mace from South Carolina for Assistant Administrator for NOAA Fisheries

Safety of Life (Pilots, Pilot Boat Crews, and Mariners in General)

- 1. Are you aware of studies done by the Army Corps of Engineers which show 10 knot speeds in channels can reduce safety margins by 40-50% compared to 15 and 20 knots?**

Response: NMFS is uncertain about which study Rep. Mace is referring to and as such, cannot comment further. USACE had an opportunity to review the proposed rule prior to publication as part of the Office of Information and Regulatory Affairs (OIRA) interagency review process under E.O. 12866.

- 2. Did NOAA take potential safety risks like collisions, grounding, capsizing, and swamping of commercial and recreational vessels into account in developing this rule?**

Response: Vessel safety is a priority for NMFS, and the agency considered many aspects of mariner safety. Recent assessments indicate that reducing the speed of large vessels is associated with a reduction in marine casualty events (Chang and Park 2019), and the NMFS North Atlantic Right Whale Vessel Speed Rule Assessment (NMFS 2020) noted a decline in vessel grounding events within active, existing SMAs following implementation of the 2008 vessel speed rule. Collisions with whales are a serious hazard for vessel operators. There are many cases from the United States and around the world of vessels sustaining significant damage, and even sinking, following collisions with whales (NMFS 2020). For example, in March 2009, a 30-foot pleasure craft collided with a whale off Hilton Head, SC and sustained damage significant enough to require passenger rescue by the USCG. For small and mid-sized vessels, avoiding vessel strikes is a matter of safety for both mariners and whales.

NMFS proposed additions to the current safety deviation provision (relating to safe maneuvering speed) to also allow vessels less than 65 ft in length to exceed the 10-knot speed limit in areas with a National Weather Service Gale Warning, or other National Weather Service Warnings greater than gale force winds (e.g., Storm Warning, Hurricane Warning) without having to submit a safety deviation report. In addition, all vessel sizes would be able to exceed 10 knots during emergency situations when the health, safety, or life of a person is at risk.

- 3. Just last year, Charleston became the deepest port on the east coast after a \$600 Million deepening project. The proposed rulemaking would**

substantially reduce the impact of this project by making it impossible to safely let two ships pass in the channel. Did NOAA consider economic impact on ports in developing this rule?

Response: For the past 14+ years, the entrance channel to the port of Charleston has been covered by the current Seasonal Management Area 10-knot speed restriction (Nov 1 - Apr 30 each year), with vessels regularly, and safely, transiting the entrance channel under two-way traffic. The USCG has informed NMFS that no mariner casualty events have been reported by vessels in that area citing right whale speed restrictions as a factor. Impacts to large ocean-going ships were included in the draft economic assessment that accompanied the proposed rule.

4. What is the timeline for NOAA to release a final rule of 87 FR 46921, Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule?

Response: We anticipate taking final action in 2023.

5. What studies has NOAA conducted or researched to assess the safety of navigation of large vessels at slow speeds in dredged channels? Has NOAA considered the work of the Army Corps of Engineers Research and Development Center, studying the deleterious effects of slow speed in Charleston's dredged entrance channel?

Response: Large ocean-going vessels transit at a variety of speeds within dredged channels outside of speed regulated areas. NMFS 2020 North Atlantic Right Whale Vessel Speed Rule Assessment highlights some of the work NMFS did to review the safety of dredged channels. From the report at page 20-21:

“In May 2019, USACE released a navigation study detailing vessel simulations conducted to evaluate different widening alternatives proposed as part of the ongoing Charleston Harbor Deepening and Widening Project (USACE, 2019). Part of this assessment examined the Fort Sumter Range, a channel segment often referred to as the “entrance channel” to Charleston harbor. Only one alternative was considered for Fort Sumter Range, which included no widening to the existing 800 ft (1000 ft overall) channel. Simulations were run for this no-widening alternative to examine two-way traffic issues, based on an 800 ft wide channel deepened to 54 ft, and an overall 944 ft wide channel deepened to 49 ft along the sides (Figure 60). The simulations used an exemplar container ship with the following dimensions: length 1,201 ft, beam 160 ft and draft 49.9 ft. This is the maximum size for a Post-Panamax vessel.

Two-way traffic runs (i.e., two ships passing) in the channel were simulated on ebb and flow tides with a 30-knot crosswind under two speed conditions: 1) unrestricted speeds, and 2) speeds restricted to 10 knots in keeping with the vessel speed rule. The conditions were chosen to reflect "credible worst-case scenarios." Pilots conducting the simulations observed a decrease in steerage and an increase in the ship's "effective beam" during the restricted runs. The pilots also experienced groundings on some runs while trying to pass each other in the channel. Two-way traffic was deemed viable at 10 knots but with poorer handling. In contrast, the pilots reported being able to better control ships at unrestricted speeds (typically 13-14 knots).

These simulations were designed to test the limits of safe navigation, using the largest vessels, under poor weather conditions, with two-way traffic in the channel. Fortunately, the simulated scenario described in the report is rare. During the active SMA period in this region (November 1 - April 30), 30-knot winds are an uncommon event. Based on wind data from the National Data Buoy Center (NDBC) between 2016 and 2018, wind speeds of 30 knots or higher never exceeded 3% of wind speed observations at the NDBC offshore buoy #41004 during any month the SMA was active. Of the 18 months of data we reviewed, 13 months had no observations of winds ≥ 30 knots. Wind speeds of 25 knots or higher were also infrequent and never exceeded 16% of wind speed observations at the offshore buoy during any month the SMA was active. At an inshore station (#FBIS1), closer to the harbor entrance, wind speeds of 30 knots or higher never exceeded 2% of wind speed observations during any active month and wind speed events of 25 knots or higher never exceeded 3% of wind speed observations during any active month."