National Marine Manufacturers Association
nmma.org
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June 26, 2024

The Honorable Cliff Bentz
Chairman
Subcommittee on Water, Wildlife and Fisheries
House Committee on Natural Resources

The Honorable Jard Huffman
Ranking Member
Subcommittee on Water, Wildlife and Fisheries
House Committee on Natural Resources

Dear Chairman Bentz and Ranking Member Huffman,

On behalf of the National Marine Manufacturer's Association ("NMMA"), I write today to express our industry's strong support for H.R. 8704, *To require the Secretary of Commerce to establish a grant program to foster enhanced coexistence between ocean users and North Atlantic right whales and other large cetacean species,* introduced by Representatives Buddy Carter (R-GA) and Mary Peltola (D-AK). This bill would prevent the finalization of the National Marine Fisheries Service's ("NMFS") proposed amendments to the North Atlantic right whale ("NARW") vessel speed regulations at 50 C.F.R. Part 224 (the "Vessel Speed Rule" or "Rulemaking") and would establish a grant program to encourage development and deployment of emerging technologies that would significantly reduce the threat of vessel strikes to large cetaceans such as the North Atlantic right whale.

As you know, the final Vessel Speed Rule is currently under review at the Office of Management and Budget ("OMB").The purpose of this letter is to reiterate certain technical and procedural shortcomings of the Rulemaking, highlight information about technological solutions that have emerged during the pendency of the Rulemaking, and to underscore the benefit that the grant program established by H.R. 8704 would have on the continued recovery of the North Atlantic right whale.

As explained further below, the proposed Vessel Speed Rule failed to consider currently available technology as a potential alternative approach to reducing the risk of vessel strikes on the NARW. The NMMA and other stakeholders raised this concern in comments on the proposed Vessel Speed Rule and, since the close of the comment period, NMFS has solicited and collected information on technological options. Yet, to our knowledge, NMFS is not considering this information as part of its Rulemaking process, even though the information would significantly impact the agency's analysis of options to address risks from vessel strike on the NARW. In fact, NOAA is obligated under the Administrative Procedures Act to reopen the rulemaking process to consider new information that significantly affects the Rulemaking. On May 15, 2024, NMMA made a request to NMFS to reopen the docket for additional public comment on technological options to achieve a performance-based vessel strike reduction rule that can reduce whale strike risk without significant safety, economic, and privacy consequences. This request will be submitted in today's hearing record and is supplementary to the public's responses to the August 1, 2022 Rulemaking, including comments from NMMA that highlight the many technical and procedural flaws of the proposal. In particular, the NMMA explained that NMFS had failed to consider technology-based alternatives that would achieve the same (or superior) results with regard to protecting the NARW, without the drastic adverse economic and safety impacts.[1]

[1] *See* Comments of NMMA on the Vessel Speed Rule at 11-12, available at https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-20629.

Since the close of the 2022 comment period, the NMMA and other stakeholders have been actively involved in educating policymakers within NMFS and the National Oceanic and Atmospheric Administration ("NOAA") regarding the benefits of leveraging marine technology solutions to safeguard marine life and boater safety as an alternative to NMFS's current approach. NMFS has welcomed this engagement and hosted a NARW Vessel Strike Risk Reduction Technology Workshop on March 5-6, 2024 (the "Technology Workshop").[2] In addition, the Whale and Vessel Safety ("WAVS") Task Force, a coalition of marine industry stakeholders and experts in various disciplines, sent a white paper to NMFS in advance of the Technology Workshop which set the stage to discuss many available and developing technologies ("WAVS White Paper").[3] The Technology Workshop made clear to all stakeholders that NMFS is now well aware of the technologies currently available that can be utilized alone or on a layered basis to reduce NARW vessel strike risk.[4]

Unfortunately, NMFS reverse engineered its Rulemaking process by issuing a proposal without seeking or soliciting input from any recreational boating or fishing interests or the marine industry at-large. In fact, the Vessel Speed Rule is based on an archaic premise that recreational boating, fishing, and marine industry are not technology- or innovation-driven. The WAVS Task Force effort proves otherwise and was developed based off a greater need to demonstrate innovation leadership in this sector, especially as it relates to advancing conservation and marine mammal management.

As discussed below, there are several technological alternatives available today that, if deployed properly, would likely be more effective at reducing NARW strike risk than expansive speed and routing restrictions and avoid the severe negative impacts that would be caused by the Vessel Speed Rule. NMFS is aware of these technological solutions—it has actively solicited this information from stakeholders. The agency cannot simply turn a blind eye to this information as it undertakes this Rulemaking. Further, the agency is well-suited to create a collaborative structure with all stakeholders, including the marine industry, to implement technology solutions that can successfully reduce risks of NARW vessel strikes. As contemplated throughout the public comments submitted, recreational boating, fishing, and marine industries support the protection of endangered species but find serious fault with the data used to justify the Rulemaking and the unrealistic approaches that would be required to achieve compliance with the Vessel Speed Rule.

The Members of this Subcommittee, holding a significant representation of the coastal districts that would be impacted by this Rule, if it advances to a final stage as proposed, understand the significant threat of this proposal. The recreational boating industry is responsible for a $230 billion annual contribution to the United States economy, and the outdoor recreation industry as a singular entity contributes 2.2% of the country's annual gross domestic product.[5] There are jobs, livelihoods, homes, and communities at stake if this Rule is allowed to continue forward towards finalization.

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[2] *See* generally NOAA Fisheries, North Atlantic Right Whale Vessel Strike Risk Reduction Technology Workshop, available at https://web.cvent.com/event/7467a542-8d8d-4020-82d8-7cef9482a3d2/websitePage:b2fe19ef-3416- 4fa1-a7a6-1df5a28b9242. In addition to the presentations and materials included on the Technology Workshop website, all presentations and information developed and/or received in connection with the Technology Workshop should be part of the docket for, and considered as part of, the Rulemaking.

[3] Letter from WAVS Taskforce to Mary Colligan, NOAA Fisheries, dated October 30, 2023

[4] For example, NMFS created a table to consolidate the categories of various technologies that can be utilized to reduce the risk of NARW strikes. *See* https://custom.cvent.com/8D2B15A58CD6472E897351F27F2DF309/files/5cdb90075da041c894d0a21b32eed916.pdf.

[5] U.S. Bureau of Economic Analysis. Outdoor Recreation Satellite Account, U.S. and States, 2022. *See* https://www.bea.gov/news/2023/outdoor-recreation-satellite-account-us-and-states-2022.

Technology holds significant advantages over other forms of risk reduction tools such as speed reduction and re-routing. And because collision avoidance (with any objects in the water, including marine mammals) has been a priority for recreational boat and supply manufacturers for decades, this technology is well-developed as the private sector is incentivized to constantly improve and innovate. Each of the technology alternatives discussed below—either alone or layered together—provide a better alternative for reducing risks to NARW from vessel strikes that NMFS must and should have considered as part of the ongoing Rulemaking. These types of technologies are what can be become immediately available for deployment with the funding provided by the grant program that this bill establishes.

1. Detection Technologies

   A variety of detection technologies are readily available and can be utilized, alone or in combination with other methods, to reduce NARW strikes. These technologies include acoustic detection, visual detection, satellite and drone imagery, infrared cameras, forward-looking sonar, and heat signature technology. These instruments generally can connect to the on-board Multi-Function Display ("MFD") to provide real-time information regarding the boat's surroundings and thereby reduce the risk of NARW strikes. One readily available example already used for species protection is vessel-mounted navigational radar that utilizes S and X band radar for vessel avoidance and navigations. X-band radars are used for a sharper image and better resolution, while S-band radar is used during rain or fog and for identification.

   Other countries recognize the importance of these technologies to address NARW strikes. For example, the Tethys Research Institute conducted a study in the Mediterranean Cetacean Sanctuary (located along the Italian and French coast) that analyzed how best to deal with threatened whale populations and high levels of maritime traffic and nautical activities. Their approach includes, among other things, drones and other detection devices that notify vessels that they are likely to encounter a cetacean on their route.[6]

2. Automatic Identification System ("AIS") and On-Board Electronics

   As detailed at the recent Technology Workshop, AIS is already in use by the Coast Guard for security and coastal management purposes. This same technology is widely utilized among recreational boaters as it is commercially available and included on many new boats as standard equipment for safety purposes. AIS technology is a viable alternative for distributing real-time (or near real-time) monitoring information to boaters regarding factors that are relevant to NARW strike risk.

   For example, utilizing existing technology, NOAA could issue an acutely focused dynamic management area and a vessel's on-board cartography would be updated in near real-time to reflect that new zone.

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[6] As discussed in the WAVS White Paper, visual and infrared images can be analyzed by artificial intelligence ("AI") to detect and classify objects in the water such as NARWs:

> The benefit of AI is that it allows for immediate analysis of information even in adverse conditions more effectively than can be done by human observers, thereby allowing vessel operators to have better situational awareness and to make better informed decisions for the vessel and the whale. Whale Seeker, Space Whale, Awarion, Sea AI, Sea Machines, and Avikus are but a few examples of companies that have developed AI tools to scan images for the presence of whales. These products are currently being trained with the intent of deployment for field verification in the coming months.

"Dynamic regulatory polygons could be broadcast using AIS and chartplotters on vessels of all sizes, and can be taught to receive, display, and alarm based on those dynamic polygons." [7]

In addition, existing on-board technology allows users to share their own data points in real time. Crowdsource infrastructure and communities such as ActiveCaptain, Community, and Navionics Community Edits allow a user's point-based data to be distributed in real-time and loaded to a chartplotter through a mobile application. As a result, NARW positions "reported by real-time monitoring programs and technology…can be distributed to on-board marine electronics and displayed and alarmed on screen in near real-time." [8] Input of such data would also enable NOAA and other research entities to augment the volume of the agency's monitoring data.

3. Technology for Aggregating & Disseminating Information

   As boaters collect data through detection devices or other instruments, technology exists to aggregate this information and share it in near real-time with NOAA and other boaters. For example, the WhaleReport Alert System ("WRAS") aggregates whale detection data from multiple sources and sends out alerts. In fact, the U.S. Coast Guard recently launched a Cetacean Desk in the Puget Sound region that utilizes WRAS to aggregate data and disseminate notices to mariners.[9]
   The Coast Guard's pilot project is just one example of how technology is being used to aggregate relevant information and provide it to mariners to improve situational awareness. This pilot program should serve as a national model to create publicly accessible repositories of data points that can be shared with the marine community in real time.

4. Modeling/Predicting/Forecasting Whales

   Data aggregation enables existing programs to create predictive models that can be utilized for avoidance purposes. One example is Risk Terrain Modeling ("RTM") which is a tool used to "diagnose environmental conditions that connect with spatial patterns of whale-vessel strikes. RTM can help us identify and prioritize the areas where these collisions are significantly most likely to happen at the micro-level" so that boaters can take steps to prevent such strikes.[10]

   Similar predictive modeling was recently highlighted by Fathom Science at a recent presentation to the bipartisan Congressional Boating Caucus.[11]

There is already work being done in this space to advance these technology solutions. Adopting a similar model to the program that would be authorized by H.R. 8704, the White House announced on May 22, 2024 that $6 million in Inflation Reduction Act ("IRA") funding would be made available to the National Fish and Wildlife Foundation ("NFWF") to support grants for projects that develop technologies such as the approaches detailed

[7] *Id.* at 5.
[8] Id.
[9] U.S. Coast Guard News, "Press Release: U.S. Coast Guard introduces cetacean desk, enhancing cetacean safety in Salish Sea," available at https://www.news.uscg.mil/Press-Releases/Article/3681963/us-coast-guard-introducescetacean-desk-enhancing-cetacean-safety-in-salish-sea.
[10] WAVS White Paper at 5.
[11] WAVS Taskforce presentation to Congressional Boating Caucus (April 11, 2024)

above.[12] Using this approach as a pilot model, there will be critical evidence available to NMFS that the recreational boating industry has the capability to advance and deploy these new technologies.

This new grant program, entitled the "Vessel Strike Avoidance Fund", has been established as "a catalyst to foster promising detection and communication technologies from development to implementation".[13] The funding of this program and the notice of request for proposal in conjunction with NOAA demonstrates that there is a understanding of the tangential benefit that deployment of technology solutions can bring to the effort of NARW recovery. This model, and the framework that would be established by H.R. 8704, will bring the vision of these technologies to reality.

The approaches employed by H.R. 8704 are a steadfast way to ensure that there is a real effort made to recover the depleted population of NARWs present in the Nation's ocean access points, while protecting and sustaining the way of life for mariners in communities up and down the Eastern seaboard. The NMMA fully supports H.R. 8704, *To require the Secretary of Commerce to establish a grant program to foster enhanced coexistence between ocean users and North Atlantic right whales and other large cetacean species and* urges a swift passage through the House Committee on Natural Resources with bipartisan support. The NMMA believes that all stakeholders with an interest in this rule should fully embrace a modern, outcomes-oriented strategy to protect the NARW, human lives, and our nation's economy—a strategy that embraces current technology, quality data, and collaboration with public and private-sector partners. This reasonable approach is far more likely to be effective at reducing strike risk than the expansive, unenforceable, and ill-conceived Vessel Speed Rule.

Sincerely,

Frank Hugelmeyer
President and CEO
National Marine Manufacturers Association

[12] National Fish and Wildlife Foundation Media Center, "Press Release: NFWF and NOAA announce Vessel Strike Avoidance Fund 2024 requests for proposals", available at https://www.nfwf.org/media-center/press-releases/nfwf-and-noaa-announce-vessel-strike-avoidance-fund-2024-request.
[13] Id.