

Congress of the United States

Washington, DC 20515

July 15, 2024

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street N.W.
Washington, D.C. 20503

The Honorable Richard Revesz
Administrator
Office of Information & Regulatory Affairs
725 17th Street N.W.
Washington, D.C. 20503

Dear Director Young and Administrator Revesz:

We write to express our ongoing concern with the National Oceanic and Atmospheric Administration's (NOAA) pending rule, "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule" and ask that the Office of Information and Regulatory Affairs (OIRA) and the Office of Management and Budget (OMB) resubmit the rule to NOAA for further input and review.¹

The pending rule amends a regulation that NOAA has had in place since 2008 to regulate vessel speeds to "further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions."² Since the changes to the 2008 rule were proposed, we have repeatedly heard from stakeholders that the proposed rulemaking will threaten the safety of ocean users, create a volatile regulatory environment, and place added costs and burdens on critical sectors of the American economy. Throughout this process, Congress and stakeholders have urged NOAA, instead, to incorporate the use of existing and emerging technologies that could more accurately detect whales to reduce vessel strikes. These requests have been ignored. Therefore, we request that OIRA and OMB resubmit the rule to NOAA for further input and review.

On October 10, 2008, NOAA finalized a rule that established a 10-knot speed limit on vessels 65 feet and longer.³ In 2020, NOAA's Office of Protected Resources released a report that found the number of mortalities and injuries caused by vessel strikes went down, but the reduction could not be directly linked to the vessel speed rule as a standalone program.⁴ It is important to note that NOAA still experiences challenges in ensuring compliance with the

¹ 50 C.F.R. §224.105; National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule," 87 *Federal Register* 46921-46936, August 1, 2022. Hereinafter NOAA, NMFS, "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule."

² *Id.*

³ 2008 Final Rule. "Endangered Fish and Wildlife; Final Rule To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales." October 10, 2008. <https://www.govinfo.gov/content/pkg/FR-2008-10-10/pdf/E8-24177.pdf>

⁴ National Marine Fisheries Service Office of Protected Resources. 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

current restriction and the public's awareness of them.⁵ Equally problematic, in the 2022 proposed rule, NOAA states that "it is not possible to establish a direct causal link between speed reduction efforts and the relative decline in observed right whale mortality and serious injury events following implementation of the [2008] speed rule."⁶

NOAA's proposed changes would expand the current restriction to include vessels from 35 to 65 feet. Stakeholders point out that NOAA grossly underestimated the number of boats impacted by this rule, using data that is publicly available. This expansion will fundamentally change operations for commercial and recreational ocean users. Stakeholders have shared that this expansion will dramatically limit outdoor recreation including boating and fishing, disincentivizing activities that collectively contributed more than \$550 billion, or 2.2 percent, to the United States' gross domestic product (GDP) in 2022.⁷ These limitations would also pose economic harm to the many industries that support these activities and reduce revenue for important restoration programs that have benefitted our communities. Additionally, these limitations will reduce participation in outdoor recreation robbing the American System of Conservation Funding of necessary license and excise tax revenue to fund state fish-and-game conservation and management.

There are also safety concerns with expanding this speed restriction to include vessels between 35 and 65 feet. Requiring smaller vessels to operate at reduced speeds will diminish visibility and force them to operate in dangerous weather. This could also lead to operator fatigue, further increasing the likelihood of accidents. The safety of ocean users is paramount, and those concerns must be fully heard and addressed.

Additionally, the regulatory volatility of the proposed rule will lead to greater uncertainty across sectors. While compliance with the current vessel strike rule has improved, more needs to be done. In comments submitted on the proposed rule, the Small Business Administration's (SBA) Office of Advocacy noted that there are still some stakeholders that are not aware of the current restriction in place,⁸ and suggested that "NMFS should consider additional outreach, education, and enforcement for private operators"⁹ to increase this awareness. Rather than expanding the current vessel strike rule, NOAA should instead focus on improving the enforcement and awareness of the current restriction that has been in place since 2008.

In 2008, as the current rule was being finalized, stakeholders believed that there was an opportunity to deploy innovative technologies to prevent vessel strikes. One comment received

⁵ Small Business Administration, Office of Advocacy. Comments submitted to NOAA and NMFS regarding "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (87 Fed. Reg. 46921)." October 31, 2022.

<https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-21126>

⁶ 50 C.F.R. §224.105; National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule," 87 *Federal Register* 46921-46936, August 1, 2022. Hereinafter NOAA, NMFS, "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule."

⁷ U.S. Bureau of Economic Analysis. Outdoor Recreation Satellite Account, U.S. and States, 2022.

<https://www.bea.gov/news/2023/outdoor-recreation-satellite-account-us-and-states-2022>

⁸ Small Business Administration, Office of Advocacy. Comments submitted to NOAA and NMFS regarding "Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (87 Fed. Reg. 46921)." October 31, 2022.

<https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-21126>

⁹ *Id.*

encouraged NOAA to evaluate “an expansion of technology that would provide a more effective method of spotting whales in our coastal waters.”¹⁰ At the time, NOAA stated that they were “committed to identifying and developing technological advances proven effective in reducing ship strikes,”¹¹ even though they believed that no such technology existed at the time. They also committed to conducting technology reviews, stating that NOAA “may engage the maritime industry and the scientific community to research progress in developing technological, efficient, and effective methods to address the threat of ship strikes.”¹²

At a hearing before the House Committee on Natural Resources’ Subcommittee on Water, Wildlife and Fisheries, NOAA’s Administrator, Dr. Richard Spinrad, acknowledged the value of these technologies. He also talked about working with international partners like Canada, which has invested in the development of artificial intelligence (AI), camera systems, and similar forecasting tools to help detect whales more effectively.¹³ Dr. Spinrad assured the Committee that NOAA has engaged with the private sector and other federal agencies to address these concerns. As part of the rulemaking process, NOAA held a two-day technology workshop on March 5 – 6, 2024 to discuss options to “foster the research, development, testing, and operationalization of innovative tools and management practices to offer mariners additional options for reducing lethal collisions with whales.”¹⁴

This workshop was seen as an opportunity for affected stakeholders to provide input and perspective. The report from the workshop is still being developed. That opportunity was squandered when NOAA submitted the rule to OIRA for review during the workshop on March 5, 2024.¹⁵ Clearly, NOAA had no intention of incorporating any input or new information it received through the workshop. Additionally, while OMB and OIRA have held many meetings with stakeholders, as you are aware, there are limited changes that can be made once a rule has been submitted to OIRA.

Finally, on May 22, the National Fish and Wildlife Foundation (NFWF) and NOAA announced a Request for Proposals (RFP) for \$6 million in grants under a new program, the Vessel Strike Avoidance Fund.¹⁶ Both NFWF and NOAA heralded this program in the announcement’s press release, saying “the deployment of existing, in development, or future technologies and innovations can aid right whale and other marine species conservation and address collisions.”¹⁷ However, the RFP notes the full proposals are due in September and

¹⁰ 2008 Final Rule. “Endangered Fish and Wildlife; Final Rule To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales.” October 10, 2008. <https://www.govinfo.gov/content/pkg/FR-2008-10-10/pdf/E8-24177.pdf>

¹¹ *Id.*

¹² *Id.*

¹³ Department of Fisheries and Oceans Canada. Protecting whales from vessel collisions. <https://www.dfo-mpo.gc.ca/species-especes/mammals-mammiferes/cetacean-cetaces/protecting-protection/index-eng.html>

¹⁴ North Atlantic Right Whale Vessel Strike Risk Reduction Technology Workshop. <https://www.fisheries.noaa.gov/event/north-atlantic-right-whale-vessel-strike-risk-reduction-technology-workshop>

¹⁵ RIN 0648-BI88. Received date: March 5, 2024. <https://www.reginfo.gov/public/do/eoDetails?rrid=429163>

¹⁶ National Fish and Wildlife Foundation. NFWF and NOAA Announce Vessel Strike Avoidance Fund 2024 Request for Proposals. May 22, 2024. <https://www.nfwf.org/media-center/press-releases/nfwf-and-noaa-announce-vessel-strike-avoidance-fund-2024-request>

¹⁷ *Id.*

disbursement of awards is not expected until March 2025.¹⁸ NOAA should analyze the proposals received before moving ahead with this rulemaking to strategically utilize taxpayer resources.

We share the objective of preventing vessel strikes and protecting critically endangered marine mammals like the North Atlantic right whale. However, we believe that there are better strategies to accomplish this goal while safeguarding the multiple uses of our ocean resources. It is critical that NOAA considers all the information from relevant stakeholders—and the concerns of duly elected members of Congress—to help inform regulatory decisions.

Therefore, we request OMB and OIRA resubmit this rule to NOAA and develop alternatives that consider the use of technology for vessel strike risk reduction. Clearly more must be done to engage stakeholders, incorporate feedback from the technology workshop, and analyze the devastating consequences that these changes pose to the directly and indirectly affected industries.

Sincerely,



Bruce Westerman
Chairman
House Committee on Natural Resources



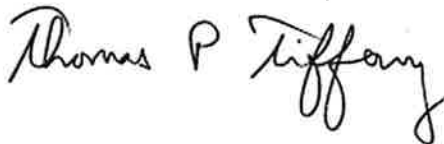
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Brian Babin
Member of Congress

¹⁸ National Fish and Wildlife Fund. Vessel Strike Avoidance Fund 2024 Request for Proposals.
<https://www.nfwf.org/programs/vessel-strike-avoidance-fund/vessel-strike-avoidance-fund-2024-request-proposals>



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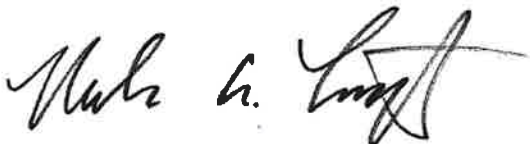
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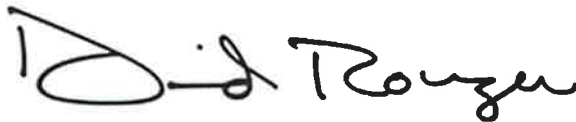
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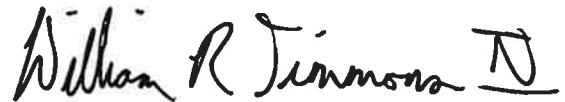
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