



May 4, 2023

Dr. Richard W. Spinrad
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue NW, Room 5128
Washington, DC 20230

Re: Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule,
Docket Number NOAA-NMFS-2022-0022

Dear Dr. Spinrad,

We write to follow up on comments previously submitted regarding proposed changes to the North Atlantic Right Whale Vessel Strike Reduction Rule (“Proposed Rule”). We understand that NOAA received over 40,000 comments on the Proposed Rule, including comments from individuals and entities within our respective States.¹ In a previous letter submitted on behalf of the State of South Carolina, I raised several concerns regarding the proposed changes, including concerns that the rule may violate the Administrative Procedure Act and may implicate the Major Questions Doctrine.² We also believe that NOAA has failed to consider alternatives that would protect the North Atlantic Right Whale while allowing, in particular, jet drive propulsion vessels

¹ Steve Patterson, “Senators from Florida, Carolinas call NOAA plan to save right whales ‘costly, excessive,’” *Florida Times-Union* (Oct. 31, 2022), <https://www.jacksonville.com/story/news/environment/2022/10/31/plan-protect-right-whales-excessive-rubio-scott-tell-noaa/10601107002/>.

² State of South Carolina, Comment (Oct. 28, 2022), <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18729>.

the ability to operate safely and efficiently.³ Each of these issues is likely to form the basis of a legal challenge if the Proposed Rule is enacted.

Although these legal concerns are reason enough to oppose the proposed changes, we write now to further emphasize the many practical problems associated with the Proposed Rule. We are particularly concerned that the Proposed Rule has the potential to disrupt important sectors of our state economies, including commercial shipping and recreational fishing and boating.

As I explained in my previous letter, the Proposed Rule significantly threatens the safety and efficacy of pilot boats and commercial vessels for at least two reasons. First, by imposing the ten-knot speed restriction on all vessels as small as 35 feet, the Proposed Rule endangers the safety and efficacy of pilot boats and commercial vessels. Second, the Proposed Rule poses safety concerns because it effectively invalidates the existing deviation standard of the North Atlantic Right Whale Vessel Strike Reduction Rule.

Numerous other comments share these same concerns. For example, the Florida Harbor Pilots Association raised safety and efficacy concerns in its comment letter: “NOAA’s proposed regulations, however, would undermine compulsory pilotage and would reduce navigation safety, while impeding the efficient flow of maritime commerce. . . . [Pilot] transfers are already dangerous and would be made worse by forcing the pilot and commercial vessels to operate outside of ideal operational parameters and, again, not allowing for any speed deviation, which in many times is necessary.”⁴ The Charleston Branch Pilots’ Association predicted that these concerns will cause “ship movements [to] be relegated to the most benign days or until the seasonal management period expires.”⁵ Such a truncation of commercial shipping would be devastating to our economies and would only exacerbate existing problems with the national supply chain.

In addition to commercial shipping, the Proposed Rule has the potential to seriously disrupt the recreational fishing and boating communities of our States. These communities have a major impact on our States’ economies with recreational boating alone generating approximately \$170 billion in annual economic impact.⁶ As explained by the National Marine Manufacturers Association, the Proposed Rule imposes significant time, cost, and safety burdens on boaters and fishers. As a result of these burdens, the association predicted that many boaters may forgo trips altogether. Such a trend could have significant downstream effects on our economies, negatively impacting a variety of small businesses, including “marinas, tackle shops, charter and party boat operations.”⁷

Likewise, the South Carolina Department of Parks, Recreation & Tourism (“SCPRT”) explained the potential economic consequences of the Proposed Rule, and they are stark. SCPRT cautioned: “The proposed amendments—including the increases to the temporal and spatial

³ State of Georgia Department of Natural Resources, Response to request for information (Feb. 22, 2023).

⁴ Florida Harbor Pilots Association, Comment (Oct. 28, 2022), <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18818>.

⁵ Charleston Branch Pilots Association, Comment (Oct. 27, 2022), <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18546>.

⁶ National Marine Manufacturers Association, Comment (Oct. 31, 2022), <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-20629>.

⁷ *Id.*

boundaries of the SMAs and the inclusion of 35 ft to 65 ft length vessels as subject to the speed reduction rule—would be detrimental to our state’s costal tourism economy, the thousands of small businesses that depend on these tourism revenues, and the tens of thousands of South Carolinians whose livelihoods are intrinsically tied to the health of our state’s tourism economy.”⁸

In short, the Proposed Rule has the potential to inflict serious economic damage on our States and citizens and will likely be challenged legally because of its substantive and procedural problems. While we generally share NOAA’s concerns regarding the protection of the North Atlantic right whale, we believe there are alternative ways to protect these whales without inflicting unnecessary economic damage to our States. We respectfully ask that you reconsider the Proposed Rule and allow for further time to study possible alternative solutions to this problem. The livelihoods of millions of Americans are potentially at stake.

Respectfully submitted,



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⁸ South Carolina Department of Parks, Recreation & Tourism, Comment (Oct. 28, 2022), <https://www.regulations.gov/comment/NOAA-NMFS-2022-0022-18696>.