The American Waterways Operators

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Mr. Samuel D. Rauch, III
Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Re: Advance Notice of Proposed Rulemaking to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule (Docket No. 260227-0058)

Dear Mr. Rauch:

The American Waterways Operators (AWO) is the tugboat, towboat, and barge industry's advocate, resource, and united voice for safe, sustainable, and efficient transportation on America's waterways, oceans, and coasts. As the largest segment of the nation's 40,000-vessel domestic maritime fleet, our industry safely and efficiently moves 665 million tons of cargo each year and enables the flow of goods on the inland and intracoastal waterways; the Atlantic, Pacific and Gulf Coasts; and the Great Lakes.

Thank you for the opportunity to comment on the National Oceanic and Atmospheric Association's (NOAA) Advance Notice of Proposed Rulemaking to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule.

Because most AWO member tugboats exceed 65 feet in length, they have been subject to NOAA's speed restrictions since the rule first went into effect in 2008. Although tugboats rarely reach the minimum speed thresholds set by the rule, AWO has consistently engaged constructively on the North Atlantic Right Whale Vessel Speed Rule because we recognize our industry's responsibility in endangered species conservation. But while it is vitally important to protect right whale populations, these efforts must be grounded in sound data and implemented in ways that do not create safety hazards for vessels or their crews. We believe that effective Right Whale protection policies must be based on three core tenets.

Sound Data and Informed Risk

In 2022, NOAA proposed expanding Right Whale protections to include speed restrictions for smaller classes of vessels and expanded speed zones. In our comments, AWO noted that the agency was proposing these expansions even as its own scientific data showed that Right Whale casualties have declined since the 2008 restrictions were implemented; that speed restrictions for Right Whales do not necessarily protect other marine mammals; and that vessels of different sizes may pose different strike risks. As we noted at the time, NOAA sought to expand an older regulatory framework without assessing whether it was still the most appropriate response to the vessel-strike data its scientists had collected since the 2008 rule went into effect.

Whether NOAA chooses to pursue a regulatory or de-regulatory approach to Right Whale protections, our response is the same: it is impossible to improve policy if stakeholders cannot respond to updated data on the effectiveness of the existing regulation and new information on changes to the regulated environment. On the Right Whale regulations specifically, maritime stakeholders lack a clear understanding of the risks at issue. What are the different risks associated with different vessel sizes? How do various speed-reduction thresholds affect other marine mammals? And how has the changing maritime landscape—for example, the development of offshore wind farms—altered whale behavior? Vessel operators are looking to NOAA to provide this information. Before determining policy, AWO urges NOAA to establish an industry-inclusive engagement process that uses updated data to inform a revised regulatory approach. Until that work is done, any rulemaking effort—regardless of its aim—will be premature.

Develop a Participatory Process, not a Punitive One

AWO appreciates NOAA's willingness to consider a different process for regulating vessel speeds. NOAA's current model of imposing seasonal, broad-area speed limits and grading operators for compliance — with fines for deviations — functions as a punitive system that does not reflect the operational realities of marine transportation. Vessel operators must maintain sufficient speed to ensure maneuverability, and they must be able to compensate for strong currents and ensure safe passing arrangements with a variety of vessels transiting at different speeds and with different reaction times. This does not always align with a requirement to reduce speed in a specific area at a specific time, especially when no whales are confirmed to be present.

NOAA's proposed dynamic management areas would address these operational realities in part by establishing speed restrictions for particular areas in real time when whales have been reported present in that area. In practice, however, dynamic regulation changes require a sophisticated system of stakeholder outreach to ensure vessel operators are aware that speed restrictions have taken effect. Imposing penalties for speed restrictions that mariners were not made aware of undermines confidence in the regulatory process and will damage NOAA's credibility with the maritime community.

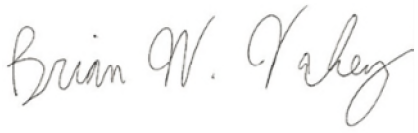
The ideal regulatory system combines predictability with practicality. Blanket restrictions across potentially hundreds of miles of open ocean, regardless of whether whales are known to be present, is predictable but impractical; dynamic zones are practical but unpredictable. This balance will be difficult to achieve, but an operating environment of this complexity requires a complex regulatory framework, one developed through a coordinated effort with input from NOAA, the U.S. Coast Guard, the Bureau of Ocean Energy Management (BOEM), other agencies with jurisdiction over the maritime domain, and maritime industry stakeholders.

Leverage Emerging Technologies

In 2024, a bill was introduced in Congress to establish a grant program to develop marine technologies to detect Right Whales. AWO strongly supported this bill, and although it did not pass, we continue to believe that it represents the best approach to further reducing Right Whale casualties. Maritime surveillance technology can be employed as the cornerstone of a wide-scale monitoring approach, focused on shipping routes, offshore wind lease areas, and other vectors of maritime activity that may pose a risk to marine mammals. We urge NOAA to work with Congress to authorize a maritime surveillance task force comprised of representatives from the National Marine Fisheries Service, BOEM, and the U.S. Coast Guard to work with maritime industry stakeholders to stand up a large-scale surveillance and detection system along the Atlantic Coast.

Together, these three tenets would strengthen and preserve the intent of the regulation while ensuring that it supports, rather than undermines, safe vessel operations. AWO appreciates the opportunity to comment and welcomes the chance to provide additional input as this rulemaking moves forward.

Sincerely,



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