



801 North Quincy Street
Suite 500
Arlington, VA 22203

PHONE: 703.841.9300
EMAIL: bvahey@americanwaterways.com

Brian W. Vahey
Director – Atlantic Region

October 31, 2022

Dr. Caroline Good
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, 13th Floor
Silver Spring, Maryland, 20910

Re: Amendments to the North Atlantic
Right Whale Vessel Strike
Reduction Rule
(NOAA-NMFS-2022-0022)

Dear Dr. Good:

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. Our industry is the largest segment of the nation's 40,000-vessel domestic maritime fleet and moves 665 million tons of cargo each year safely and efficiently. On behalf of AWO's more than 300 member companies, we appreciate the opportunity to comment on the National Oceanic and Atmospheric Administration's North Atlantic right whale vessel strike reduction rule.

AWO members lead the maritime industry in safety, security, and environmental stewardship. We are committed to working with federal and state agencies to advance these shared objectives. AWO companies from across the industry are working to build on the natural advantages of marine transportation by investing in technological innovation to further reduce our environmental impact, and our commitment to environmental stewardship includes support for the marine life with which we share our waters. It is vitally important to protect right whale populations, but these efforts must be informed by good data and implemented in a way that does not produce safety hazards that put vessels and their crews at risk.

In 2008, NOAA published a rulemaking that required most vessels over 65 feet in length to reduce speed to 10 knots or less when transiting certain areas where right whales have been known to congregate. NOAA is now proposing to expand these speed restrictions to include vessels less than 65 feet and encompass a much larger operating environment than had been covered by the previous rulemaking. This proposal will have significant navigation safety and

economic implications for virtually every class of vessel operating on the eastern seaboard, and it comes at a time in which increased traffic density and offshore development is making coastwise transportation more hazardous and complex.

Given the impacts this rulemaking will have on vessel operators, we would expect to see data showing conclusively that the previously implemented speed restrictions have been effective. We would also expect to see data demonstrating that further expansion of these restrictions is warranted. While NOAA notes that right whale casualties have been reduced in the years since the 2008 restrictions were put in place, the agency also 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.” Furthermore, NOAA’s data shows that right whale strikes in the years since the speed restrictions took effect have been rare, with 12 documented casualties since 2008. NOAA further clarifies that of those 12 casualties, 5 were from collisions with vessels less than 65 feet. If different types of vessels pose different risks to the whales, why develop a rulemaking that applies a one-size-fits-all regulatory framework to every vessel operator?

NOAA’s data also indicates that other marine animals are likely to be negatively impacted by these expanded speed restrictions. NOAA Fisheries has found that since the initial speed reduction rules took effect, there have been an *increased* number of vessel strikes of other types of marine animals, including humpback whales, fin whales, and minke whales. This led the agency to conclude that “taken at face value ... data suggest[s] that the speed restrictions put in place for right whales are not providing additional protection for other large whale species.”¹ If more types of vessels are transiting at reduced speed through larger sections of coastal waters, it seems plausible that other types of whale casualties will increase.

The vast majority of AWO member tugboats and towboats are over 65 feet in length, and as such have been subject to NOAA’s speed restrictions since the original rulemaking. The death of even a single right whale is a matter that AWO members take very seriously. However, speed restrictions have operational impacts and safety consequences, both for waterway users *and* for marine life. We are concerned that NOAA is focused too narrowly on protecting right whales and not considering the other attendant impacts that these restrictions will have across the entire coastal system.

In a shared system, rules and regulations impacting one class of vessel have the potential to impact all vessels. Every operator must maintain proper speed in order to ensure maneuverability. Vessel operators must be allowed to compensate for strong currents and ensure safe passing arrangements with a variety of vessels transiting at different speeds and with different reaction times. NOAA’s proposal to expand the universe of vessels impacted by speed restrictions will make safe transits more challenging.

¹ National Marine Fisheries Service. 2020. North Atlantic Right Whale (*Eubalaena glacialis*) Vessel Speed Rule Assessment. National Marine Fisheries Service, Office of Protected Resources, Silver Spring, MD.

The changing nature of offshore navigation is going to add an additional layer of complexity to coastwise voyages. The proliferation of wind farms will constrict the amount of offshore space vessels have to operate. When a towing vessel slows its engines down to comply with a speed restriction, it becomes harder for the operator to navigate safely. Towing vessels must also accommodate a barge in tow. Tow wire operators, for example, must be conscious of depth when they reduce their speed, as reducing speed increases the depth of the tow wire. For the last several years, operators have adjusted as needed – slowing speeds in compliance with the restrictions or transiting further offshore to avoid whale populations altogether – but as navigators lose offshore space to fixed structures, these options will become impossible, further impacting safe navigation.

Speed restrictions also make waterborne transportation more expensive and less efficient. For cargo vessels, it will make just-in-time and spot market deliveries more difficult and supply chain management more complicated. It will make crew transfer vessels and pilot vessels less efficient, impacting everything from wind farm activities to LNG deliveries. NOAA’s own data analysis suggests that the industry would bear an expense of potentially tens of millions of dollars for every whale saved. Protecting endangered species is vitally important, but practical cost impact to American consumers should be considered as well.

An operating environment of this complexity requires a complex regulatory schema, one developed through a coordinated effort by NOAA, the U.S. Coast Guard, the Bureau of Ocean Energy Management, other agencies with jurisdiction over the maritime space, and maritime industry stakeholders. It requires what BOEM Director Amanda Lefton characterized, in discussing BOEM’s approach to offshore wind development, as a “transparent, inclusive and data-driven process that avoids or minimizes potential conflicts with marine life and ensures all ocean users flourish.”

Unfortunately, NOAA’s approach seems to have been to focus solely on protecting right whale populations. There has been no clear collaboration with agencies like the U.S. Coast Guard to assess the attendant impacts the proposed and greatly expanded protections will have on the safety of the entire coastwise waterway system, or with vessel operators to understand how expanding speed reduction zones for hundreds of miles will impact the coastwise trade. Instead of working collaboratively and creatively to develop a rulemaking that helps protect all ocean life and allow all ocean users to flourish, NOAA is proposing to move forward with an over-broad regulation that applies the same speed restrictions to a wide variety of very diverse vessels operating in an area that covers the entire Atlantic coast.

Rather than merely expanding the scope of the previous rulemaking and imposing the same set of requirements on all vessels, we urge NOAA to work with other agencies and stakeholders to develop restrictions based on vessel risk and consider the wider safety needs of the industries and vessel operators that share this offshore space while ensuring that the actions taken will protect all marine species.

AWO members stand at the ready to work with NOAA on this important effort and thank you for the opportunity to comment.

Docket No. NOAA-NMFS-2022-0022
October 31, 2022
Page 4

Sincerely,

A handwritten signature in cursive script that reads "Brian W. Vahey". The ink is dark and the signature is written in a fluid, connected style.

Brian Vahey
Director – Atlantic Region