



June 18, 2024

RE: Coastal Zone Management Act Consistency Determination for the Proposed Rule to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule

Dear State Coastal Management Program Managers,

The purpose of this document is to provide the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) Office of Protected Resources consistency determination for the [proposed amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule](#) ("speed rule") pursuant to the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 *et seq.* and 15 CFR part 930, subpart C. This "regional" consistency determination was prepared in accordance with 15 CFR §§ 930.36(e) and 930.39, and is being provided to the federally-approved state CZMA programs for coastal states bordering the Atlantic Ocean, including Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. NMFS sent an email on January 23, 2023 to the listed state CZMA programs requesting a copy of the relevant enforceable policies for your state prior to making this consistency determination.

I. Proposed Action

NMFS proposed amendments to the existing North Atlantic right whale (*Eubalaena glacialis*) vessel speed rule to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel strikes, which are a leading cause of the species' decline and a primary factor in an ongoing [Unusual Mortality Event](#).¹ The proposed rule would: (1) modify the boundaries and timing seasonal speed restrictions (renamed as Seasonal Speed Zones or SSZs) to better align with areas characterized by elevated collision-related mortality risk; (2) create a Dynamic Speed Zone (DSZ) program to implement temporary mandatory speed restrictions when whales are known to be present outside active SSZs; (3) extend the size threshold of regulated vessels to include most vessels 35 ft (10.7 m) or greater in length; and (4) update the speed rule's safety deviation provision. See [87 FR 46921](#) (August 1, 2022). Changes are needed to stabilize the ongoing North Atlantic right whale population decline and prevent the species' extinction. The proposed changes were designed to address the risk of ongoing lethal strikes in U.S. waters, including strike events that have occurred within state coastal waters. The amendments were informed by a coastwide collision mortality risk assessment, and updated information on North Atlantic right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events.

The proposed SSZs include substantial spatial and temporal changes to the current speed zones in the Northeast and Mid-Atlantic regions, and more modest changes in the Southeast region.

¹Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel strikes, particularly in areas where right whales are likely present and vessel traffic is common and traveling at high speeds.

The annual effective dates of the proposed SSZs are summarized as follows with geographic coordinates provided in the proposed regulatory text (see attached map):

- (1) Atlantic Zone (November 1 - May 30)
- (2) Great South Channel Zone (April 1 - June 30)
- (3) North Carolina Zone (November 1 - April 30)
- (4) South Carolina Zone (November 1 - April 15)
- (5) Southeast Zone (November 15 - April 15)

NMFS proposed no active SSZs between July and October, and only the Great South Channel Zone would be active during the month of June. This is consistent with data showing fewer North Atlantic right whales present in U.S. waters during summer and early fall period.

To address elevated vessel strike risk in areas outside SSZs, NMFS proposed to implement a new mandatory Dynamic Speed Zone (DSZ) program to replace ongoing voluntary Dynamic Management Area (DMA)/Slow Zone programs, which have shown poor cooperation from mariners. Under the proposed program protocol, a temporary DSZ would be declared within discrete areas outside active SSZs, within U.S. waters from Maine to Florida (excluding the Gulf of Mexico), if (1) a confirmed visual sighting of a North Atlantic right whale aggregation (three or more whales in close proximity) or a confirmed right whale acoustic detection occurs; and (2) NMFS makes a determination that the area to be designated as a DSZ has a greater than 50 percent likelihood of North Atlantic right whale presence during a minimum effective period of 10 days. Proposed SSZs were developed with the understanding that DSZs would be used to implement mandatory speed restrictions when appropriate outside of active SSZs.

Recent vessel strike events have highlighted the lethality of collisions involving vessels less than 65 ft (19.8 m) in length. Since 2020 alone, NMFS has documented four lethal North Atlantic right whale vessel strikes in U.S. waters involving vessels 35ft (10.7 m) to 65 ft (19.8 m) in length, including : (1) a calf killed off New Jersey in June 2020; (2) a calf killed off Florida in February 2021; and (3) its mother seriously injured in the same strike event and (4) a calf found dead in Georgia in March 2024. Since the existing speed rule (50 CFR § 224.105) does not mitigate risk from lethal collisions involving vessels less than 65 ft (19.8 m) in length, NMFS proposed to extend the size threshold for regulated vessels to include most vessels greater than or equal to 35 ft (10.7 m) in overall length.

The proposed rule also included modifications to the current safety deviation provision to enhance mariner safety, and enforcement monitoring. The proposed changes would expand the scope of the current safety deviation for vessel experiencing severe maneuverability constraints to include: (1) emergency situations that present a threat to the health, safety, or life of a person; and (2) allow vessels less than 65 ft (19.8 m) in length to transit at speeds greater than 10 knots (5.1 m/s) within areas where a National Weather Service Gale Warning, or other National Weather Service Warning (e.g., Storm Warning, Hurricane Warning) for wind speeds exceeding those that trigger a Gale Warning is in effect. The proposed amendments would also replace the current safety deviation logbook entry with a requirement for vessels employing certain safety deviations to submit an online report to NMFS within 48 hours of invoking the deviation.

II. Regional consistency determination with State Coastal Management Program's applicable enforceable policies

This is a regional consistency determination, in accordance with 15 CFR § 930.36(e), because the geographic extent of the proposed amendments covers the waters off the U.S. East Coast from Maine to Florida (excluding the Gulf of Mexico). The seasonal zones extend from Massachusetts to northern Florida; and dynamic zones may be declared between Maine and Florida, excluding interior waters (except in Massachusetts). The following paragraphs address the common coastal effects, management implications, enforceable policies common to some or all of the affected states, and unique state policies.

A. Coastal Effects and Management Implications

NMFS has determined that the proposed amendments to the vessel speed rule would affect water uses² (also referred to as coastal uses) in the 15 states along the U.S. East Coast, with respect to vessel traffic and operations. The proposed amendments would not affect navigational regulations such as traffic separation schemes, no wake zones, boating safety zones, pilotage requirements, or hazards to navigation. The proposed amendments would not have any physical impacts on the coastal zone's land component, including port facilities, beaches, wetlands, or other natural coastal resources.

The amended SSZs would overlap (seasonally) with state waters but not occur within most inland bays, estuaries and inlets with the exception of certain areas along the Massachusetts coast (i.e., Cape Cod Bay). DSZs may be declared within the same areas, but are expected to be more common in the Mid-Atlantic and Northeast regions. State coastal uses in both federal and state waters would be affected (seasonally) by SSZs and may be affected by DSZ declarations, as vessels would need to transit through any active zones while adhering to speed restrictions. While SSZs would be seasonal, and DSZs temporary and limited in extent, the speed restrictions would impact the transit times of vessels that otherwise would have traveled at speeds in excess of 10 knots, including commercial ships, cruise ships, tug and tow boats, work and industrial vessels, and recreational and commercial fishing vessels.

None of the proposed amendments are expected to impact water quality, as they would not affect strict federal and state clean water legislation that prohibits the discharge of vessel pollution in state or federal waters. NMFS anticipates that the amendments would have a positive effect on air quality and ocean noise because studies have shown that reducing the speed of large ships (in particular) reduces polluting emissions and ocean noise. Any impacts on other marine species, in addition to the North Atlantic right whale, are expected to be beneficial. There are no foreseeable impacts on cultural or historic resources.

NMFS expects the largest proportion of costs from implementation of the proposed amendments would be borne by the commercial shipping industry. Other vessel sectors are expected to incur cost burdens, particularly those characterized by higher speed operations such as passenger vessels (tour boats, charter fishing vessels, high-speed ferries), pilot boats, recreational boats, and some commercial fishing and industrial vessels. The seasonal nature of the proposed speed

² As defined in CZMA § 304(18) (16 U.S.C. § 1453(18)).

zones is expected to partially temper impacts of the proposed rule, as fewer or no speed zones will be in effect during the fairest weather months. We estimate that 89% of the cost burden of the proposed rule would accrue to vessels operating in the Mid-Atlantic and Northeast regions (between Maine and North Carolina) and 11% of costs would be borne by vessels operating in the Southeast (South Carolina to Florida). Public facilities and activities would be minimally affected. Therefore, the estimated economic impacts are not expected to compromise the economic value of coastal resources.

A more detailed evaluation of the impacts of the proposed amendments can be found in the [Draft Environmental Assessment](#) and [Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis](#).

B. Consistency with State CZMA Enforceable Policies

This section describes how the proposed amendments are consistent with the applicable enforceable policies³ contained in the potentially affected states' respective federally approved CZMA programs. Part 1 of this section addresses common policies across the potentially affected states, and Part 2 addresses policies that are unique to a particular state.

1. Enforceable Policies Common to Some or All of the Affected States

Endangered species conservation and management

The proposed amendments are consistent with state policies regarding endangered species because their objective is to reduce threats to, and help the recovery of, a critically endangered species, the North Atlantic right whale. Several other endangered species may also benefit from the proposed amendments.

Public access for recreation

The proposed amendments are consistent with state policies regarding public access for recreation because they would not impede access to federal waters for public recreation. Economic impacts are unlikely to affect the economic value of coastal areas. While transit speeds would be affected, only vessels 35 ft (10.7 m) and longer would be required to abide by the vessel speed restriction measures during the seasonal implementation periods or when there is an active DSZ. Also, the proposed amendments would only apply from the U.S. East Coast shoreline out to the extent of the Atlantic Exclusive

³ Pursuant to 15 CFR § 930.34(d) ("Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request."), NMFS sent an email dated January 23, 2022, to the 15 affected states requesting states to provide any reasonably foreseeable effects on the uses or resources of their state's coastal zones, which also included requesting states to identify the enforceable policies that pertain to those effects for NMFS' consideration. Eight states (Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, and Virginia) responded to our letter but only five of those states identified enforceable policies (Georgia, Maryland, New Hampshire, New York, and Virginia). NMFS determined that the following enforceable policies provided by the five states are not applicable or only tangentially applicable to the effects arising from the proposed rule: New Hampshire Enforceable Policies #3, #4, #8, #9, #12, #14, and #15; New York Enforceable Coastal Policy #29. All other applicable enforceable policies are included in Part 1 or Part 2 of this section. Any comments provided by states on the proposed action in response to NMFS' request for enforceable policies are not addressed in this consistency determination letter.

Economic Zone; therefore, most inland waters, rivers, and bays would not be covered by speed restrictions. Finally, the proposed amendments consist primarily of speed restrictions and, therefore, would allow for public access anywhere in state waters.

Fisheries and coastal resource conservation and management

The proposed amendments are consistent with state policies regarding coastal uses related to recreational and commercial fishing and coastal resource management because they would not affect fish or their habitat, interfere with any fisheries resources or coastal resource regulations, or have any physical impact on natural coastal resources. However, there may be seasonal economic impacts to the fishing industry by increasing transit times and longer trips to fishing areas in federal waters, for vessels that otherwise would transit in excess of 10 knots.

Ports, harbors, piers, and related facilities

The proposed amendments are consistent with state policies regarding ports, harbors, piers, and related facilities, because they do not affect the activities or traditional uses of these facilities within the regulated waters. The proposed amendments do not affect the enhancement, development, or infrastructure of these facilities.

Waterways, navigable waters, and right of passage

The proposed amendments are consistent with state policies regarding the right of use of all navigable waterways because they would not restrict access to navigable waters; rather, they would limit vessel speed in certain state waters during seasons when North Atlantic right whales are present in these waters.

Air quality

The proposed amendments are consistent with state policies regarding air quality because, as mentioned above, may improve air quality in coastal areas; it has been shown that reducing vessel speed reduces pollutant emissions.

2. Unique State Policies

The New Hampshire and Georgia CZMA programs contain the following enforceable policies, which NMFS believes to be unique⁴ to their states, and therefore, are not included in the above analysis.

New Hampshire's Coastal Program Enforceable Policy #16

New Hampshire's Coastal Program Enforceable Policy #16 states that marine and estuarine research and education will be promoted and supported to benefit coastal resource management. The proposed amendments are consistent with this state policy because they will not impede research and education activities from occurring; rather, they would only require regulated vessels to reduce speed if a research or education activity is taking place on the waters within an active SSZ or DSZ.

⁴ While these policies may not in fact be unique to a specific state, NMFS is only addressing the enforceable policies provided by the states that responded to our email dated January 23, 2022, which requested affected states to provide a copy of their enforceable policies.

Georgia's Boat Safety Act, O.C.G.A., 52-7-1, et seq.

Georgia's Boat Safety Act establishes boating safety zones for a distance of 1,000 feet from the high-water mark of several islands. All motorized craft are prohibited from these waters, except at certain pier and marina access points. The proposed amendments are consistent with this boat safety policy because they would not alter accessibility to the access points; only the speed at which regulated vessels could approach the access points would be seasonally or temporarily affected.


III. Conclusion and Consistency Determination

Based on the above information, NMFS has determined that the proposed amendments to the North Atlantic right whale vessel speed rule are consistent to the maximum extent practicable with the enforceable policies of the potentially affected states' CZMA programs. Please submit your state agency's concurrence or objection with our determination within 60 days from the receipt of this letter (15 CFR § 930.41) to Caroline Good at caroline.good@noaa.gov.

NMFS will assume concurrence if a state agency does not reply within 60 days from receipt of this consistency determination and supporting information, as required by 15 CFR § 930.39(a), and there has not been an extension of the 60-day review period.

Please contact Caroline Good, at caroline.good@noaa.gov if you have any questions about this consistency determination.

Sincerely,

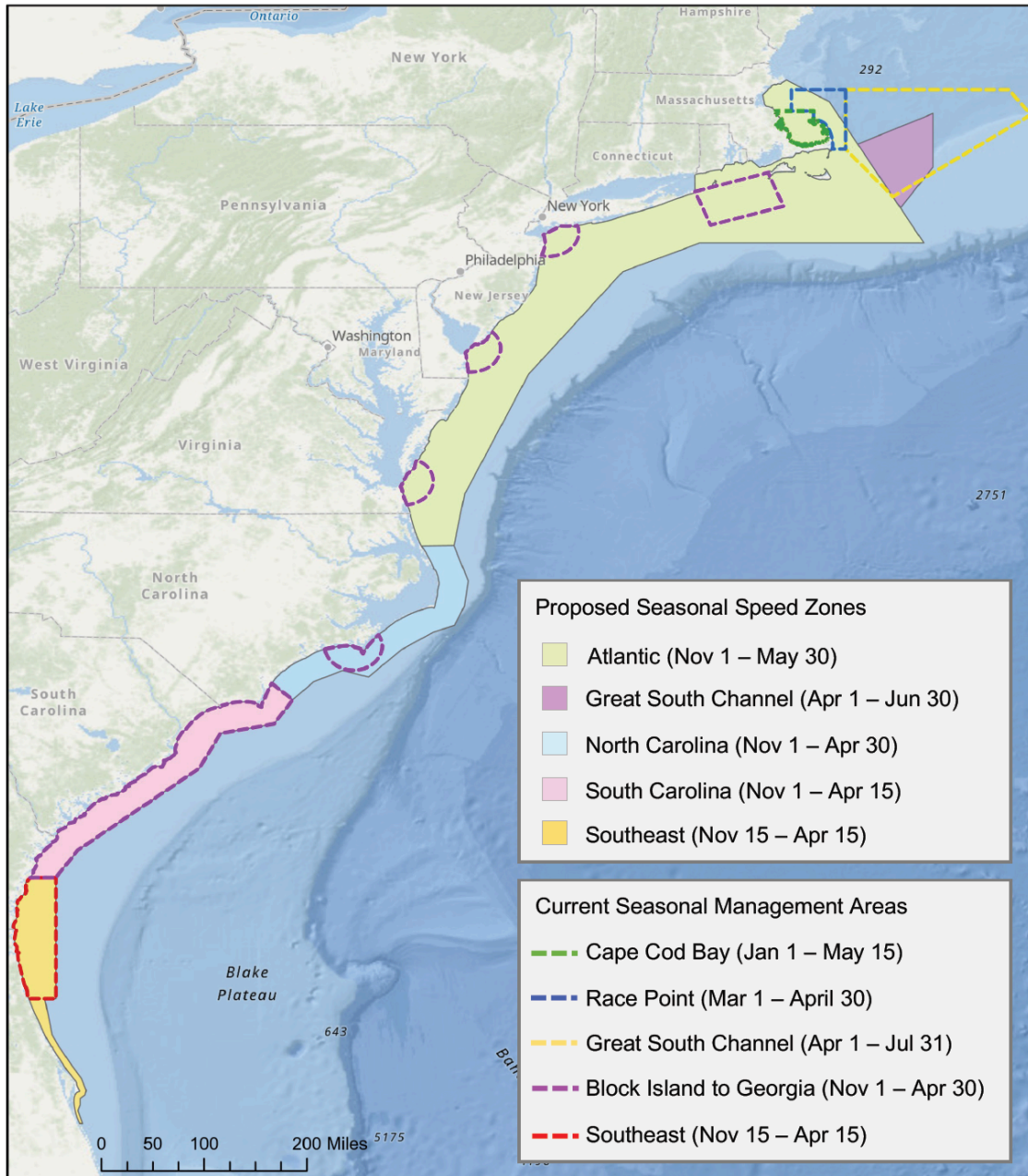


Shannon Bettridge
Division Chief
Marine Mammal and Sea Turtle Conservation Division
NOAA Fisheries Office of Protected Resources



NOAA
FISHERIES

Proposed North Atlantic Right Whale Seasonal Speed Zones (Most Vessels 35 Feet or Longer)



NOAA Fisheries is proposing to modify the boundaries and timing of current vessel speed restrictions (Seasonal Management Areas) along the U.S. East Coast and create proposed Seasonal Speed Zones to reduce the risk of lethal collisions with endangered North Atlantic right whales. Most vessels 35 feet or longer would be required to transit at 10 knots or less within active proposed Seasonal Speed Zones.