



# MARINE MAMMAL COMMISSION

02 September 2022

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

Dear Dr. Good:

The Marine Mammal Commission (the Commission) continues to be extremely concerned about the high mortality rates and declining numbers of North Atlantic right whales (*Eubalaena glacialis*), and commends the National Marine Fisheries Service (NMFS) for proposing amendments to the North Atlantic right whale (NARW) vessel strike reduction rule (87 Fed. Reg. 46921). The proposed modifications would strengthen an essential component of overall efforts by U.S. agencies, which has proven potential to slow the alarming decline of the right whale population that has occurred since 2010. The Commission, in consultation with its Committee of Scientific Advisors, is reviewing the proposed modifications to the vessel speed rule and provides the following initial comments and recommendations.

In general, the Commission strongly supports the proposed changes to the NARW speed rule given the ongoing and documented risk to the continued existence of the species from vessel strikes. In the Commission's [26 March 2021 letter](#) to NMFS regarding the vessel speed rule assessment report, the Commission noted that vessel strikes pose a serious risk to NARWs (and result in unauthorized takes of other large whale species as well). The Commission further noted that while known right whale vessel-strike deaths decreased in the decade following implementation of the 2008 speed rule, vessel-related serious and non-serious injuries increased. The Commission therefore believes the following changes that NMFS has proposed to the regulations would provide needed and potentially significant reductions in risks to NARWs from ship strikes: 1) nearly comprehensive coverage of the Seasonal Speed Zones south of Cape Ann, Massachusetts, where risks of vessel strikes are high in the most heavily-used shipping corridors, 2) inclusion of vessels between 35 and 65 feet on the basis of documented lethal strikes by these smaller vessels (notably the serious injury of female #3230 and the death of her calf in St. Augustine, Florida in 2021), 3) mandatory speed limits in Dynamic Speed Zones to address poor compliance with similar voluntary measures, and 4) enhanced data collection requirements on deviations due to safety concerns.

The Commission intends to submit more detailed comments on the proposed rule before the close of the public comment period; however, at this juncture we want to raise a critical and urgent issue. In the past 5 years, three calves and two females have been struck by vessels and killed or seriously injured<sup>1</sup> while on the calving grounds or during their northward migration through U.S. waters. Given the small size of the population and the even smaller number of reproductive-age

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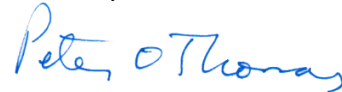
<sup>1</sup> <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-north-atlantic-right-whale-unusual-mortality-event>

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females, the loss of a single female has serious consequences for the continued existence of the species. Furthermore maximizing the survival of calves is essential to recovery. The Commission notes that NMFS is providing a 60-day public comment period for the proposed rule and supports this schedule. Nevertheless, there is a critical need to have new regulations in place, particularly in the southern portion of the species' range, before the calving season and northward migration of females and their calves begins in mid-November. This means that NMFS will have to adhere to an ambitious timeline for completing the rulemaking in order to help ensure that enhanced protections for vulnerable mother/calf pairs are in place as this year's migration and calving season begins. The Commission therefore recommends that NMFS make every effort to have a final rule in place before the first of December 2022. If necessary to meet this timeline, NMFS should use available emergency rulemaking authorities under the Administrative Procedures Act, the Endangered Species Act, and the Marine Mammal Protection Act.

The Commission appreciates the opportunity to provide preliminary comments on the proposed amendments to the North Atlantic right whale (NARW) vessel strike reduction rule and the urgency of implementing them. Please contact me if you have any questions about or would like to discuss the Commission's comments and recommendations or if the Commission can assist NMFS in meeting a December deadline.

Sincerely,



Peter O. Thomas, Ph.D.,  
Executive Director

cc: Ms. Janet Coit, JD, Assistant Administrator, National Marine Fisheries Service  
Mr. Michael Pentony, Regional Administrator, Greater Atlantic Regional Fisheries Office