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Dr. Carolyn Good, Cetacean & Pinniped Conservation
NOAA Fisheries, Office of Protected Resources
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RE: Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule: Georgia's CZMA Relevant Enforceable Policies and Reasonably Foreseeable Effects

Dear Dr. Good:

Staff of the Georgia Coastal Management Program (GCMP, the Program) have reviewed your January 23, 2023 request for information on the reasonably foreseeable effects of the proposed amendments to the vessel speed regulations on Georgia's coastal uses and resources, as well as the identification of the relevant enforceable policies of the GCMP, to assist you in preparing a federal consistency determination under the Coastal Zone Management Act (CZMA). Relevant enforceable policies with a link to the entire code section may be found under the Enforceable Policies link on our website (https://coastalgadnr.org/FederalConsistencyCRD) and include:

1. Georgia Air Quality Act, O.C.G.A. 12-9-1, et seq.;
2. Georgia Boat Safety Act, O.C.G.A. 52-7-1, et seq.;
3. Georgia Endangered Wildlife Act of 1973, O.C.G.A. 27-3-130, et seq.;
4. Protection of Endangered, Threatened, Rare, or Unusual Species, Georgia Rules and Regulations 391-4-10, et seq.; and
5. Game and Fish Code, Right to Fish, O.C.G.A. 27-1-3, et seq.

The Program appreciates this opportunity to identify unnecessary impacts to Georgia's coastal uses from the Rule as currently proposed and suggest modifications to minimize these effects while still achieving reduced risk to North Atlantic right whales (NARW) from vessel collisions. NOAA estimates that the Rule, as proposed, could reduce NARW vessel strike mortality by 27.5%[1]. Speed and track data are not available for most vessels <65' in length, making these

[1] Garrison, LP., Adams, J., Patterson, E.M., and Good, C.P., 2022. Assessing the risk of vessel strike mortality in North Atlantic right whales along the U.S. East Coast. NOAA Technical Memo NMFS-SEFSC-757.

results unreliable. The actual risk reduction the proposal would achieve is uncertain given these large data gaps. NOAA and Georgia Department of Natural Resources (GDNR) records[2] indicate that there have been 9 collisions between vessels <65' and known or suspected NARWs that likely resulted in mortalities or serious injuries (MSIs):

- All known or suspected lethal collisions involved vessels likely >40';
- Three collisions involved vessels <40' but the outcome for the whale and/or species was unknown;
- All known vessels had inboard engines and through-hull propellers, except for one 48' vessel that apparently had hull-mounted IPS drives;
- No cases involved vessels with outboard, inboard/outboard, or jet propulsion; and
- Of the 6 vessels for which there is data, their drafts ranged from 3.3' to 7.4'.

Reducing Vessel Length Threshold from 65' to 35':

The available data do not justify 10 knot speed restrictions for all vessels 35 feet long and longer. The smallest vessel confirmed to have struck and killed a NARW was 43 feet long with twin through-hull propellers and a draft of 3.6 ft[3]. Suspected serious injuries that *may* have involved right whales have been caused by smaller vessels (30, 33 and 39 ft) but these were also caused by vessels with through-hull propellers, two of which were deeper draft (3.5 ft, 7.4 ft); the draft of the third vessel is not known. Many of the recreational vessels >35 long that NOAA is proposing to regulate in Georgia waters have outboard propulsion and shallow drafts, especially when operating at planing speeds (>20 knots). All pilot boats used at Georgia ports have jet drive propulsion (i.e., no external propellers) and shallow planing hulls. More investigation is needed into the relationships between vessel length, draft, speed, mass and propulsion type for vessels <65' to determine which classes of vessels pose the greatest risk to NARWs. It is possible that risk from outboard and jet driven vessels with shallow drafts and planing hulls can be adequately mitigated at slow planing speed (~20 knots). If so, NARW collision risk could be reduced, while also allowing many vessel operators to continue operating at efficient speeds. Unfortunately, NOAA did not consider this possibility. The current available data does not warrant a rule change to reduce the vessel length threshold from 65' to 35' across the board at this time as that will result in unwarranted effects to Georgia's coastal uses.

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[2] October 31, 2022 letter from Georgia Dept. of Natural Resources' Wildlife Resources Division, NMFS 2022-0022.
[3] A 43 ft Grand Banks yacht struck and injured an adult NARW offshore of Georgia on March 10, 2005. The whale's fluke was partially severed and it likely died months later.

Effects on Georgia's Coastal Uses:

The effects to Georgia's coastal uses, should the Rule be adopted as proposed, include but are not limited to:

- Reduced fuel efficiency for many vessels with planing hulls that typically require speeds of ~20 knots to operate efficiently, that could result in increased fuel consumption and air pollution;
- Longer transit times for Georgia's 214 recreational and for-hire fishing vessels in the >35'to <65' class to reach the 30 offshore artificial reefs, the Savannah and Brunswick Snapper Banks (The Ledges), Grays Reef National Marine Sanctuary, and/or the Gulf Stream 50 miles offshore, all of which are within or easterly of the current Seasonal Speed Zones (SSZs). This could result in the loss of business to charter captains due to the longer fishing day and/or increased rates for customers;
- Longer transit times for harbor pilot boats that make over 5,000 transits per year to escort cargo vessels into the Port of Savannah and Port of Brunswick. Georgia's pilot boats are >35' and <65' with jet propulsion and likely have a lower risk of lethal collision compared to vessels that are deep draft and have internal propellers. A 10-knot speed restriction would almost double their transit times from the pilot docks to boarding areas and further increase supply-chain delays;
- Longer transit times for State government research vessels engaged in offshore longline fishing research, offshore artificial reef deployment and maintenance, trawling surveys, and other offshore activities. With an increase in transit time of up to two hours each trip, more days will be needed to complete contractual duties, which will increase personnel and fuel costs that will ultimately be borne by taxpayers; and
- There is potential for future offshore oil and gas exploration and development to be impacted by longer transit times, which could increase the cost of production and reduce America's energy independence.

Proposed rule modifications that could reduce unjustified effects to Georgia's coastal uses include, but are not limited to:

- Exempt vessels with drafts <2';
- Exempt vessels <40' in length; and
- Increase speed restriction to 20 knots for vessels with outboard motors or jet propulsion to allow them to operate at efficient planing speeds, which may result in greater compliance.

Expanding the Boundaries of 10-knot Seasonal Speed Zones (SSZs):

Available data indicate the occurrence of NARWs south of Cape Hatteras in early November and in April is extremely low and does not justify an expansion of the SSZ dates[4]. All the effects to Georgia's coastal uses listed above would be exacerbated by increasing the SSZ restriction dates. Additionally, the western boundary of the proposed SSZs (the shoreline and COLREG lines) do not accurately reflect the distribution of NARW in Georgia and South Carolina. Most shallow waters within 1-2 nautical miles of the coastline are not good NARW habitat[5,6]. Proposed rule modifications that could reduce unjustified effects to Georgia's coastal uses include, but are not limited to:

- Consolidate the Southeast SSZ, South Carolina SSZ and the portions of the North Carolina SSZ south of Cape Hatteras into a single contiguous "Southeast SSZ";
- Make the "Southeast SSZ" active from November 15 to March 31;
- Align the western (shoreward) boundary of the SSZ with the 3 fathom (18') depth contour in Georgia and South Carolina, including shipping channels, to:
    - Allow a north-south passage route to reduce SSZ transits;
    - Allow cargo vessels to reach ports faster; and
- Collision risk could be managed in the rare occasions that NARWs are present in early November and April, or in nearshore waters shallower than 3 fathoms, with temporary Dynamic Speed Zones (DSZs).

Making 10-knot Dynamic Speed Zones (DSZs) Mandatory:

- Modify the DSZ trigger to include mother/calf pairs for waters south of Cape Hatteras due to their slow swim speeds and long residency times[7].

Modifying the Criteria and Reporting Requirements when Vessel Operators Deviate from the Rule to Maintain Safety:

Vessels under 65' with planing hulls are more impacted by sea state than larger vessels with displacement hulls and operating at <10 knots will disproportionately reduce their stability,

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[4] Roberts, J.J., Schick, R.S., Halpin, P.N., 2002. Final Project Report: Marine Species Density Data Gap Assessments and Update for the AFTT Study Area, 2020 (Opinion Year 4). Document version 2.2. Report. Unpublished.
[5] Gowan, T.A. and Ortega-Ortiz, J.G., 2014. Winter habitat model for the North Atlantic right whale (*Eubalaena glacialis*) in the southeastern United States. PLoS One, 9(4), p. e95126.
[6] Roberts, J.J., Schick, R.S., Halpin, P.N., 2022. Final Project Report: Marine Species Density Data Gap Assessments and Update for the AFTT Study Area, 2022 (Opinion Year 4). Document version 2.2. Report. Unpublished.
[7] Hain, J.H., Hampp, J.D., McKenney, S.A., Albert, J.A. and Kenney, R.D., 2013. Swim speed, behavior, and movement of North Atlantic right whales *(Eubalaena glacialis)* in coastal waters of northeastern Florida, USA. PloS one, 8(1), p.e54340.

maneuverability, and safety[8]. Special Marine Warnings, which are warnings of potentially hazardous weather conditions usually of short duration (less than 2 hours) producing wind speeds of 34 kt or more, and/or waterspouts affecting areas including coastal waters forecast[9], occur unpredictably in Southeast coastal waters throughout the winter months. Proposed rule modifications that could reduce unjustified effects to Georgia's coastal uses include, are but not limited to:

- Add Special Marine Warnings (SMWs) to the list of weather warning that operators of vessels <65 ft can use to deviate from speed restrictions.

Reasonably Foreseeable Effects on Coastal Uses - Enforcement and Compliance:

We have significant concerns about the ability of NOAA or other law enforcement agencies to enforce the proposed Rule. Reducing the minimum vessel size to 35 feet will dramatically increase the number of vessels that need to be monitored. At the current time, NOAA uses Automatic Identification System (AIS) data to monitor compliance of vessels >65 ft remotely and retroactively. However, most vessels <65 ft are not required to carry AIS. Those that carry AIS can turn their AIS on or off at any time. The Coast Guard's official stance on changing AIS carriage requirements is:

"Notwithstanding that the Coast Guard strongly encourages the use of AIS, we have no plans to expand AIS carriage beyond our current regulation"[10].

The ability to establish a vessel's speed for regulatory purposes without the use of systems such as AIS or radar with mini-automatic radar plotting aid (MARPA) is limited and would be based on real-time enforcement by law enforcement vessels operating on the water. It is unclear how this will work given the limited resources available, numerous constraints and the expansive area involved. NOAA Office of Law Enforcement will need to consider what burden of proof is acceptable to establish a violation for enforcement of the proposed regulations if vessels without AIS are included within the Rule. We strongly recommend that NOAA work with federal and state law enforcement agencies to develop a realistic enforcement plan and craft the final rule accordingly. If enforcement is limited, compliance will be poor and NARW collision risk will not be reduced.

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[8] September 22, 2022 letter from Savannah Bar Pilots, Inc., NMFS 2022-0022.
[9] NOAA National Weather Service, 2022. Definitions for Marine Forecasts. Accessed from https://www.weather.gov/gum/MarineDefinitions on October 20, 2022.
[10] U.S. Coast Guard, 2022. AIS Frequently Asked Questions. Accessed from https://liwww.navcen.uscg.gov/ais-frequently-asked-questions on October 20, 2022.

We request clarification and supporting data regarding proposed exemptions for all federal and federally contracted vessels under the proposed Rule. Finally, we would like to state our position, supported by biological data, that implementation of additional vessel speed regulations in the Southeast will be insufficient for recovery of NARW in the absence of meaningful reductions in rope entanglement elsewhere in the range of this critically endangered species. We look forward to reviewing a revised rule based on scientific data that more reasonably balances North Atlantic right whale vessel strike risk and impacts to Georgia's coastal uses. Please contact Kelie Moore, CRD Federal Consistency Coordinator; Clay George, WRD Senior Wildlife Biologist; or me if you have any questions of if we may be of further assistance.

Sincerely,

Doug Haymans, Director

Attachments: October 31, 2022 letter from Georgia Dept. of Natural Resources' Wildlife Resources Division, NMFS 2022-0022

September 22, 2022 letter from Savannah Bar Pilots, Inc., NMFS 2022-0022

DH/km