



NORTH CAROLINA
Environmental Quality

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September 18, 2024

Shannon Bettridge, Ph.D.
Division Chief
National Marine Fisheries Service
Marine Mammal and Sea Turtle Conservation Division
NOAA Fisheries Office of Protected Resources
1315 East-West Highway
Silver Spring, Maryland 20910

SUBJECT: Consistency Determination Concerning the National Marine Fisheries Service (NMFS) Proposed Rule to Amend the North Atlantic Right Whale (NARW) Vessel Strike Reduction Rule (DCM#2024022)

Dear Dr. Bettridge:

The North Carolina Division of Coastal Management (DCM) received your consistency submission on June 18, 2024, concerning the NMFS' proposal to amend the NARW vessel strike reduction rule. The NMFS states that vessel strikes are a leading cause of NARW decline, and the consistency submission outlines that the proposed rule is intended to further reduce the likelihood of mortalities and serious injuries from vessel strikes. The proposed amendments would modify the boundaries and timing of seasonal speed restrictions, create a Dynamic Speed Zone (DSZ) program to implement temporary mandatory speed restrictions, update the rule's safety deviation provision, and extend the size threshold of regulated vessels to include vessels 35 ft to 65 ft in length (vessels 65 ft and larger are already subject to speed restrictions).

A. Determination

DCM strongly supports the NMFS' mission to protect the NARW; however, as allowed by 15 C.F.R. § 930.41, DCM responds pursuant to 15 C.F.R. § 930.43(a) that it does not concur with NMFS' determination that the proposed amendments to the rule are consistent to the maximum extent practicable with the enforceable policies of North Carolina's Coastal Zone Management Program. DCM believes that the proposed amendment will have significant adverse impacts to the State's commercial, recreational, and sportfishing industries, as well as to tourism and recreation that are not justifiable based upon the information and analysis presented in this consistency determination. DCM has reviewed the submitted information with respect to the State coastal program's enforceable policies and finds the proposed amendment is inconsistent with these policies. This finding is made due to a significant underestimation of the proposal's reasonably foreseeable impacts on the State's resources, uses, people, and economy, and a lack of sufficient information to enable the State to reach a determination of concurrence.



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B. State Policy

North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act or CAMA (G.S. § 113A-100 et seq.), the State's Dredge and Fill Law (G.S. § 113-229), Chapter 7 of Title 15A of North Carolina's Administrative Code, and the land use plan of the counties and/or local municipalities in which the proposed project is located.

The NMFS proposal is determined to be inconsistent with the State's enforceable policy under the G.S. § 113A-102, which describes the legislative findings and goals for the Coastal Management Program. The law directs the Coastal Resources Commission to "establish policies, guidelines and standards" for the "Protection, preservation and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife..." by balancing "the economic development of the coastal area", "recreation and tourist facilities and parklands", "Transportation and circulation patterns for the coastal area", "preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area" and the "protection of present common-law and statutory public rights in the lands and waters of the coastal area." DCM serves as staff to the Coastal Resources Commission and makes determinations based on the balancing of these goals.

C. Public Input

DCM published a public notice in several newspapers throughout North Carolina's coastal region and held a public hearing in Morehead City on July 23, 2024, to receive public comments on the proposed amendments. DCM received approximately 680 written comments and 20 oral comments expressing both support for the proposed amendments, with many raising significant concerns that the proposed amendments would negatively impact the economy, especially that related to recreational and commercial fishing, tourism and maritime industry and cause navigational safety hazards.

D. Uses and Impacts

North Carolina's coastal areas support industries vital to the state's coastal economy, including the commercial, recreational, and sportfishing industries. The offshore waters of North Carolina include areas that are important fishing areas such as The Point off Cape Hatteras, and Ten Fathom Ledge and the Big Rock off Cape Lookout. Numerous fish species are found in these locations including but not limited to bluefish, king mackerel, sea bass, wahoo, and tuna. Many of these species, and others, are targeted by the commercial and sportfishing fishing industries during the winter months. The economic impacts of the state's fishing industry and the rich cultural heritage of our coastal areas demonstrate the immense importance of protecting and sustaining these coastal uses and resources.

North Carolina's coast is also a popular tourist destination and the tourist economy is a leading economic driver and source of employment. Tourism supports jobs in charter fishing, scuba diving, and recreational boating among visitors and residents. Non-boaters value access to fresh seafood from markets and restaurants and rely on the commercial sector to provide their fresh catch.

North Carolina also has a long history in boat building and the industry has designed fishing vessels that operate most efficiently and safely at speeds well above 10 knots. This allows these



vessels to access fishing areas listed above in a safe, timely and efficient manner. Many of these vessels are in the size class that will be affected by the proposed rule.

DCM has significant concerns that the amendments will render commercial, recreational, and sportfishing trips impractical for the vessels and times for which the proposed rule applies due to the increased time it will take to transit to their destination offshore, the expansive geographic scale of applicability, and the increased costs per trip. During these longer trips, there is an increased potential for safety and navigation issues to arise. The analysis for the proposed rule significantly underestimates the scale of potential direct and indirect impacts to the State's coastal economy. Further, these impacts would have their greatest effect at a time of year where alternative economic and employment opportunities are at their lowest, compounding the adverse effects.

On balance, DCM believes that the likely impacts of the proposed amendments will have significant adverse impacts on economic development including tourism, recreation, fishing and maritime industry, as well as on navigation, cultural uses of the coastal area and protection of public trust rights and the ability of people to safely undertake those public trust rights, far outweigh what the consistency determination's chosen alternative presented as the possible benefits to reducing vessel strikes on NARWs.

E. Conclusion

DCM acknowledges that the NARW population is under serious and continued threat from multiple hazards—entanglement in fishing gear, sound from human activities including seismic surveys and sonar, climate change, and vessel strikes. DCM also understands that it may be difficult to conclusively demonstrate that the proposed regulatory expansion will produce the incremental benefit above the existing protections. DCM is committed to supporting the pursuit of practical and effective solutions and remains committed to supporting partnerships that could advance conservation efforts. We are fortunate to be in a state that is home to an extraordinary number of marine mammal experts, and know that they are working towards providing better data and technological tools to support and better justify expanded regulatory measures. However, based on the information provided in this consistency determination, DCM finds that with respect to the State coastal program's enforceable policies, the proposed amendment is inconsistent with these policies.

Although DCM finds this proposal inconsistent with the enforceable policies of the State's Coastal Zone Management Program, we appreciate the urgent need to improve protections for the NARW and are committed to helping to protect the species. If you have any questions, please contact me at (252) 515-5435. Thank you for your consideration of the North Carolina Coastal Zone Management Program.

Sincerely,



Daniel Govoni
Policy Section Chief



Cc Jeffrey Payne, NOAA Office for Coastal Management
Kerry Kehoe, NOAA Office for Coastal Management



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