

United States Senate

WASHINGTON, DC 20510

October 20, 2022

Richard W. Spinrad
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue NW, Room 5128
Washington, DC 20230

Dear Administrator Spinrad:

We write regarding the proposed rulemaking amending the North Atlantic Right Whale (NARW) Vessel Strike Reduction Rule. After briefings from our harbor pilots, ports experts, fishermen, and boaters, we understand the proposed changes would challenge navigation safety, endanger mariners, and threaten the viability of South Carolina, North Carolina and Florida ports, as well as the boating and fishing industries and communities in our states. While we support NOAA's efforts to protect the NARW, we have serious concerns about this current proposal.

Among other changes, this NOAA proposal would dramatically expand – nearly doubling – the areas in which the seasonal 10 knot vessel speed restrictions apply, essentially blanketing the entire East Coast including the Federal Navigation Channels in our states. Further, the proposed rulemaking would apply the speed restriction to all vessels greater than or equal to 35 feet and alter the long-standing and effective navigation safety “deviation clause” contained in the current regulations. With regard to port safety and commercial viability, the rule was originally amended in 2008 to provide a navigation safety deviation clause that would allow large commercial ships to safely navigate within the confines of the narrow offshore Federal Navigation Channels (FNC) along the U.S. east coast. FNCs are the coastal channels that are maintained and surveyed by the U.S. Army Corps of Engineers. They are marine highways that serve all the east coast ports and are vital to the nation's economy, supply chain, and national security interests. Both the U.S. Coast Guard and the U.S. Army Corps of Engineers have affirmed the need for large commercial ships to maintain safe control in entrance channels, and since ships have grown up to three times larger since 2008, safety margins have become even more critical.

At great state and federal expense, our ports have been improved to accommodate these larger ships with the expectation that NOAA's navigation safety deviation clause would be maintained. It is also important to note that a number of ports in our states, including Charleston, Jacksonville, Morehead City and Wilmington are designated by the U.S. Maritime Administration as “Commercial Strategic Ports” that are part of the National Port Readiness Network. These commercial ports support force deployment and military equipment shipments during wartime and other national emergencies.

These speed restrictions should not apply in FNCs, especially the FNCs leading to our Nation's Commercial Strategic Ports. Further, as NOAA has stated publicly, the agency is not aware of there ever having been a vessel strike of a NARW in one of these channels, so they should be excluded from the speed restriction zones.

In addition, this proposed rule change seeks to make other administrative changes to the navigation safety deviation clause, as well as inserting the overt threat of criminal penalties for exceeding the 10 knot speed restriction. These proposed changes would effectively revoke the deviation clause, making the clause unworkable and in essence causing foreign ship masters to ignore the

independent judgement and expertise of the harbor pilot. It is in these off-shore, unsheltered, restricted channels – with the challenging combination of strong currents, confused winds, heavy vessel traffic, and close proximity to dangerous shoal waters – where harbor pilots ply their trade. Pilots must be free to build cooperative relationships with foreign ship masters and have available the full range of ship handling options in order to maximize navigational safety and protect the marine environment. The proposed changes to the navigation safety deviation clause threaten pilots' ability to effectively carry out their responsibilities.

If NOAA were to follow through with its proposal to lower the speed restriction application threshold to 35 feet, this would apply the 10 knot speed restriction to all of our states' offshore pilot boats, the small vessels that transport harbor pilots to and from large commercial merchant vessels that are subject to compulsory pilotage. It is the consensus view of the American Association of Port Authorities, the Chamber of Shipping of America, the International Organization of Masters, Mates & Pilots union, and the American Pilots' Association that applying the NARW speed restrictions to pilot vessels *"would be dangerous for pilots and the crews that operate these boats, would increase pilot/pilot boat crew fatigue, would negatively impact port efficiency in ports throughout the country, and would unduly burden both the vessel master and pilot during the very time when they need to be focused on the safe operation of the vessel."* Similar to FNCs, because NOAA is not aware of a single incidence of a pilot boat striking a NARW, pilot boats should be excluded from the NARW speed restriction rules.

Finally, as currently constructed, this proposal would cause significant harm to the charter and recreational boaters and fishermen, marinas, boat builders, and related industries that are the economic backbone of many of our states' coastal communities. Angler spending on impacted offshore recreational fishing trips is estimated at more than \$15 million per year. These trips are likely to be cancelled or significantly shortened if vessels used are subject to a 10 knot speed restriction. In addition, according to data from NOAA Fisheries, approximately 5.1 million recreational fishing trips were taken in this region by vessels 35 - 65 feet in length since 2008; thus the chance of a 35 - 65 foot recreational vessel striking a NARW during an offshore fishing trip is less than one in 1,000,000. Such a costly, sweeping proposal is excessive, and NOAA must find a better way to achieve its conservation goals.

Again, while we support NOAA's efforts to protect the NARW, these efforts should not put mariners in danger, unnecessarily disrupt the maritime supply chain that is so important to our country's economy and national security, or harm the small businesses that drive our coastal communities. We urge NOAA to work in good faith with key stakeholders, including ports, pilots, shipping, labor organizations, and boating and fishing groups, to modify its proposal so that the NARW is protected, but the unintended consequences discussed above can be eliminated.

Sincerely,



Lindsey O. Graham
United States Senator



Tim Scott
United States Senator



Richard Burr
United States Senator



Thom Tillis
United States Senator



Marco Rubio
United States Senate



Rick Scott
United States Senate