



June 2, 2026

VIA ELECTRONIC SUBMISSION

Mr. Eugenio Pineiro Soler
Assistant Administrator of Fisheries
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Silver Spring, MD 20910

Re: Advanced Notice of Proposed Rulemaking to Amend the North Atlantic Right Whale Vessel Strike Reduction Rule; Docket No. 260227-0058.

Dear Assistant Administrator Pineiro Soler:

On March 4, 2026, the National Marine Fisheries Service (NMFS) announced an advanced notice of proposed rulemaking (ANPRM) on modernizing the North Atlantic Right Whale Vessel Speed Rule (Vessel Speed Rule).¹ This letter constitutes the Office of Advocacy's (Advocacy) public comments on the NMFS ANPRM.

Advocacy supports the NMFS review of the Vessel Speed Rule. Small businesses have communicated concerns about the rule with Advocacy since 2008. We hope the dialogue initiated by this ANPRM will provide the NMFS with the information it needs to reduce the unnecessary regulatory burdens the Vessel Speed Rule places on small businesses.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy in 1976 under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is a voice within the federal government that seeks to ensure small business concerns are heard in the regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of the Small Business Administration (SBA) or the Administration.

¹ 91 Fed. Reg. 10580 (March 4, 2026).

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),² gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.³ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁴

Advocacy’s comments are consistent with Congressional intent underlying the RFA, that “[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.”⁵

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁶ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule’s publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁷

B. The North Atlantic Right Whale Vessel Speed Rule

The Vessel Speed Rule was first implemented by NMFS in 2008.⁸ It imposes a seasonal, mandatory vessel speed limit of 10-knots on boats 65 feet or larger in designated areas along the east coast to help mitigate collisions with right whales.⁹ The Vessel Speed Rule was supposed to sunset after five years, but the NMFS extended the rule’s duration indefinitely in 2014.¹⁰

In 2022, the NMFS proposed extending the Vessel Speed Rule’s restrictions to boats 35 feet or larger.¹¹ Advocacy objected to this proposal because of the impact it would have on small businesses along the east coast.¹² The NMFS withdrew its proposed extension of the Vessel Speed Rule in early 2025.¹³

C. The NMFS Vessel Speed Rule ANPRM

² Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

³ 5 U.S.C. § 603.

⁴ *Id.* § 605(b).

⁵ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁶ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁷ *Id.*

⁸ 73 Fed. Reg. 60173 (Oct. 10, 2008).

⁹ 91 Fed. Reg. 10580, 10581 (March 4, 2026).

¹⁰ 79 Fed. Reg. 34245 (June 16, 2014).

¹¹ 87 Fed. Reg. 46921 (Aug. 1, 2022).

¹² U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Atlantic Right Whale Vessel Strike Reduction Rule (Oct. 31, 2022) p. 4, <https://advocacy.sba.gov/wp-content/uploads/2025/11/Advocacy-Vessel-Strike-Rule-Comment-Letter-2022.pdf>.

¹³ 90 Fed. Reg. 4711 (Jan. 16, 2025).

The NMFS is now “considering possible deregulatory action to modify and modernize” the Vessel Speed Rule.¹⁴ Specifically, the agency seeks to “reduce unnecessary regulatory and economic burdens on the regulated community by replacing current seasonal speed restrictions with alternative management areas and advanced, technology-based, strike-avoidance measures that maintain or enhance conservation efficacy.”¹⁵

To properly evaluate the effectiveness of the Vessel Speed Rule, the NMFS is requesting information on the following areas:

- The effectiveness of current and upcoming technologies to reduce vessel strikes with whales.
- How vessel strike risk correlates with vessel size.
- Using dynamic approaches for speed zones based on whale detections (sightings, acoustic, or other forms of detection) communicated to mariners via real-time electronic notification as a primary management tool in place of static management areas.
- Updating the safety provisions of the Vessel Speed Rule as well as information on the safety risk posed to smaller vessels by the 10-knot speed limit.
- The effectiveness of the Vessel Speed Rule in reducing vessel strikes with whales.
- Quantifiable data on the economic consequences of the speed rule, especially where it may have impacted operations for shipping, fishing, tourism, or other industries, including small businesses and small governmental entities.
- Information on mariner outreach and collective monitoring programs that incentivize voluntary strike avoidance through technology, education and private sector partnerships.¹⁶

Responses to this ANPRM will be used by the NMFS to “inform a possible deregulatory-focused modernization of the speed rule and the development of alternative vessel-strike reduction programs.”¹⁷ The NMFS also intends to “craft durable programs that consider both conservation and the economic vitality of coastal communities.”¹⁸

II. Recent Supreme Court Decisions Warrant a Reconsideration of the Vessel Speed Rule.

On April 9, 2025, President Donald J. Trump issued a Presidential Memorandum titled *Directing the Repeal of Unlawful Regulations*.¹⁹ The memorandum directed agencies to ensure that their regulations complied with a list of 10 different Supreme Court cases. This list included *West*

¹⁴ 91 Fed. Reg. 10580 (March 4, 2026).

¹⁵ *Id.*

¹⁶ *Id.* at 10581.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The White House, *Memorandum for the Heads of Executive Departments and Agencies, Directing the Repeal of Unlawful Regulations*, (April 9, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/>.

*Virginia v. EPA*²⁰ and *Loper Bright Enterprises v. Raimondo*.²¹ The memorandum directs agencies to “immediately take steps to effectuate the repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency’s statutory authority or is otherwise unlawful” and gives priority to rules in conflict with the listed Supreme Court decisions.²²

The Vessel Speed Rule should be re-examined in light of both *West Virginia* and *Loper Bright*. In *West Virginia*, the Court states “no one would consider generation shifting a ‘tool’ in OSHA’s ‘toolbox’ even though reducing generation at coal plants would reduce workplace illness and injury from coal dust.”²³ Similarly, the NMFS must assess whether the restrictions placed on the boating sector by the Vessel Speed Rule are a “tool” which congress has placed in its “toolbox.”

Similarly, in *Loper Bright*, the Court states that when analyzing the limits of agency authority, the only question that matters is “[d]oes the statute authorize the challenged agency action?”²⁴ Here, the NMFS must examine whether it has the specific permission from a statute passed by Congress to regulate vessel speed.

Many small businesses have told Advocacy that they do not feel there is specific statutory justification for NMFS to place speed restrictions on vessels to reduce whale strikes. Advocacy urges the NMFS to consider how both the *West Virginia* and *Loper Bright* Supreme Court decisions impact the burdens imposed by the Vessel Speed Rule.

III. The NMFS Review of the Vessel Speed Rule Aligns with the Goals of Section 610 of the Regulatory Flexibility Act.

Section 610 of the RFA offers the opportunity to retrospectively review a rule at any time. Specifically, Section 610 of the RFA examines:

- The continued need for the rule,
- The nature of complaints or comments received concerning the rule from the public,
- The complexity of the rule,
- The extent to which the rule overlaps, duplicates, or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules, and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.²⁵

²⁰ 597 U.S. 697 (2024).

²¹ 603 U.S. 369 (2024).

²² The White House, *supra* note 25.

²³ *West Virginia*, 597 U.S. at 730.

²⁴ *Loper Bright*, 603 U.S. at 375.

²⁵ 5 U.S.C. § 610.

Regular RFA Section 610 reviews are simply a “good government” practice which allow NMFS to identify and remove regulations that are no longer necessary. These reviews also allow small entities to provide input on how federal regulations continue to impact them. Advocacy highlighted the need for multiple NMFS regulations, including the Vessel Speed Rule, to undergo RFA Section 610 reviews in our October 2025 recommendations for complying with President Trump’s Executive Order (EO) 14276, *Restoring American Seafood Competitiveness*.²⁶

The Vessel Speed Rule was finalized nearly 18 years ago in October 2008.²⁷ This is nearly twice the length of time the RFA allows for a Section 610 review. While the NMFS ANPRM does not specifically mention the RFA, the questions posed align with the goals of a Section 610 review. Advocacy applauds the NMFS for beginning this long overdue examination of the Vessel Speed Rule. Additionally, Advocacy commends the NMFS for specifically asking for input on the Vessel Speed Rule’s impact on small businesses and small governmental entities.

IV. Small Entities Support the NMFS Review of the 2008 Vessel Speed Rule.

On May 22, 2026, Advocacy held a small entity roundtable to discuss the NMFS ANPRM. Every participant who spoke at the roundtable supported the NMFS review of the Vessel Speed Rule. One common sentiment expressed by roundtable attendees was the need for the NMFS to complete their review of the Vessel Speed Rule as expeditiously as possible and propose alternative solutions that will reduce the rule’s unnecessary regulatory burdens.

A. The Ability of Technology to Help Reduce Vessel Strikes has Grown Since 2008.

Roundtable attendees informed Advocacy that technology which can help to reduce vessel strikes with whales has decreased in price, become more effective and is more widely adopted by the boating industry since 2008. Specifically, recreational boating organizations at the roundtable stated they had surveyed their members and found that technology used by 5% of boats in 2008 has now become standard in the industry today.

As one roundtable attendee noted:

“[a]dvances in whale-detection and alerting technologies create opportunities to supplement traditional speed-management approaches with enhanced situational awareness and proactive avoidance measures. A performance-based framework focused on demonstrated risk reduction, rather than prescriptive equipment requirements or

²⁶ U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Recommendations for Restoring American Seafood Competitiveness (Oct. 14, 2024), <https://advocacy.sba.gov/wp-content/uploads/2025/10/Comment-Letter-Recommendations-for-Restoring-American-Seafood-Competitiveness.pdf>.

²⁷ 73 Fed. Reg. 60173 (Oct. 10, 2008).

blanket speed reductions without evidence of the presence of whale may offer a balanced path forward that supports both marine mammal conservation and efficient maritime operations.”

The boating industry has also echoed the sentiment that the NMFS should consider new approaches to reducing vessel strikes which rely on modern technology as opposed to blanket speed restrictions. One industry publication noted:

“This review creates an important opportunity for boat owners, captains, marine businesses, anglers and coastal communities to make the case for a more modern approach, one that protects endangered North Atlantic right whales while also recognizing the realities of today’s offshore boating technology, vessel design and safe navigation.”²⁸

Some roundtable attendees cited the work of the Whale and Vessel Safety (WAVS) Taskforce. WAVS is a group of companies in the boating industry whose mission is “to identify, develop, and implement technology and monitoring tools in the marine industry and boating community that are evidence-based and data-informed.”²⁹ Members of WAVS were present at Advocacy’s roundtable and expressed their desire to work with the NMFS to achieve technological solutions which would protect the North Atlantic Right Whale while aligning with the operational and economic realities of the boating industry.

Advocacy encourages the NMFS to continue to work with small businesses impacted by the Vessel Speed Rule, including the WAVS Taskforce, to better assess how technology can reduce the need for unnecessary regulatory burdens while also protecting North Atlantic right whales.

B. NMFS Regulations Should Better Acknowledge the Correlation Between Vessel Size and Strike Risk.

Participants in Advocacy’s roundtable urged NMFS to focus on the correlation between vessel size and risk of vessel strike. The current NMFS rule, in their view, overestimates the vessel strike risk for smaller boats. Many attendees pointed out that smaller-size recreational boats have a greater ability to maneuver and avoid collisions with whales. Alternatively, large cargo vessels have far less ability to change their course to avoid a whale strike when compared to smaller recreational vehicles.

Attendees noted that most whale strikes are caused by larger vessels. Supporting this notion, one study on vessel strikes “found a significant effect of vessel size class on the probability of

²⁸ Marlin Magazine, *Time to Act on Vessel Speed Rule, Again* (May 20, 2026), <https://www.marlinmag.com/advocacy/noaa-vessel-speed-rule-2026-update/>.

²⁹ WAVS Task Force, About Us, <https://www.wavstaskforce.com/about-us>.

lethality.”³⁰ The same study noted “[t]he effect of vessel size on lethality is not surprising, and the results presented here, that very large vessels have a high lethality rate across all operational speeds, are supported by studies that consider the physics of these whale-vessel interactions.”³¹

Additionally, it should also be noted that the U.S. Coast Guard already regulates vessel speed based on several different factors, including maneuverability, which correlates to vessel size.³² The RFA instructs agencies to analyze regulations to find, in part, federal rules which may “duplicate, overlap or conflict” with the rule in question.³³ A small entity should not be placed in a position where it must guess which agency’s regulation it must comply with. Here, NMFS should consider whether the Vessel Speed Rule “double regulates” small entities by placing regulatory burdens on them which could conflict with existing Coast Guard rules.

Advocacy encourages the NMFS to reevaluate the Vessel Speed Rule to account for both vessel size and other existing federal regulations which regulate vessel speed based on vessel size.

C. The NMFS Should Consider the Use of Dynamic Approaches for Speed Management Zones.

Currently, NMFS regulates vessel speed in seasonal management areas (SMAs) where north Atlantic right whales are traditionally present. The agency is asking for information on switching to an approach centered around “dynamic” or real-time whale detection “communicated to mariners via real-time electronic notification.”³⁴ This would allow speed restrictions to be set based on real-time whale locations and adjusted when whales are no longer present.

Roundtable attendees generally favored a real-time, dynamic approach to speed restrictions. One attendee noted that whales are being spotted in new areas not covered by traditional SMAs. Using real-time information on whale locations ensures that boaters restrict speed around whales when present, but do not have to unnecessarily restrict speed when there are no whales present. Attendees also recommended that data be updated in real-time, so that speed restrictions can be enacted and rescinded in a timely fashion.

Small businesses also told Advocacy that the availability of real-time data on whale locations has increased since the Vessel Speed Rule was finalized in 2008. Switching to a dynamic approach for setting speed restrictions would allow the NMFS to account for this change in technology.

³⁰ *Frontiers in Marine Science*, *The Effects of Vessel Speed and Size on the Lethality of Strikes of Large Whales in U.S. Waters* (Feb. 4, 2025), <https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2024.1467387/full#s8>.

³¹ *Id.*

³² U.S. Coast Guard, *Navigation Rules and Regulations Handbook*, Rule 6 Safe Speed (a)(ii), p.12 (Aug. 8, 2024), https://www.navcen.uscg.gov/sites/default/files/pdf/navRules/Handbook/NavRules_Handbook_Corrected_08_08_2024.pdf.

³³ 5 U.S.C. § 603 (b) (5).

³⁴ 91 Fed. Reg. 10580, 10581 (March 4, 2026).

Advocacy recommends the NMFS consider replacing traditional, static SMAs with real-time speed restrictions to both maximize protection for north Atlantic right whales and minimize regulatory burdens on small entities.

D. The NMFS Should Allow Boaters to Assess Whether Speed Restrictions Present a Safety Threat.

Currently, boaters may deviate from the NMFS speed restrictions when “the vessel is in an area where oceanographic, hydrographic and/or meteorological conditions severely restrict the maneuverability of the vessel and the need to operate at such speed is confirmed by the pilot on board or, when a vessel is not carrying a pilot, the master of the vessel.”³⁵ The language here is vague and should be altered to reflect that the mariner is in the best position to assess whether conditions at sea present a threat to their safety.

Roundtable attendees stressed that boaters should not be required to wait for an official weather statement, such as a “small craft advisory” prior to exceeding NMFS speed restrictions if they feel their safety is at risk. Additionally, third-party designations of weather conditions or ocean conditions can sometimes be inaccurate. The people in the best position to assess the risk of any scenario at sea are the boaters present where the situation is occurring.

Advocacy urges the NMFS to ensure that any modifications to the Vessel Speed Rule preserve a boater’s ability to be the primary judge of when speed limits should be exceeded for safety reasons.

E. The Current Vessel Speed Rule Is Not an Effective Means of Reducing Vessel Strikes with Whales.

The NMFS estimates that the Vessel Speed Rule imposes costs between \$28.3 and \$39.4 million per year.³⁶ Advocacy estimates that 31 percent of these costs fall on small businesses (between \$8.7 and \$12.4 million per year).³⁷ NMFS notes that in the 10 years prior to the rule’s enactment, there were 12 whale strikes leading to death or serious injury of a whale.³⁸ Ten years after the rule’s enactment, that number decreased to eight whale strikes.³⁹ This works out to between \$283 and \$394 million to prevent four whale strikes, meaning each prevented whale strike came at a cost between \$71 million and \$99 million.

³⁵ 50 C.F.R. § 224.105 (c).

³⁶ NOAA FISHERIES, OFF. OF PROTECTED RES., NORTH ATLANTIC RIGHT WHALE (*EUBALAENA GLACIALIS*) VESSEL SPEED RULE ASSESSMENT, i (June 2020), <https://perma.cc/G8NK-9ZHB>.

³⁷ Based on receipts data from the Statistics of U.S. Businesses and Nonemployer Statistics for Fishing (NAICS 1141), Deep Sea, Coastal, and Great Lakes Water Transportation (NAICS 4831), and Water-based Scenic and Sightseeing Transportation (NAICS 4872).

³⁸ *Id.*

³⁹ *Id.*

The RFA requires agencies to analyze alternatives to regulations which “accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.”⁴⁰ Many of the technologies mentioned by roundtable attendees could help provide alternative approaches for the Vessel Speed Rule to accomplish its goals while decreasing the regulatory burdens placed on small entities.

Since there are currently available technologies capable of decreasing the economic costs and regulatory burdens involved with preventing a single whale strike, Advocacy urges the NMFS to review the Vessel Speed Rule.

F. The Vessel Speed Rule Imposes Unnecessary Economic Costs on Small Entities.

Advocacy appreciates the NMFS specifically inquiring about the Vessel Speed Rule’s impacts on small businesses and small governmental entities.⁴¹ Many of the impacts on small businesses were described by Advocacy in our 2022 comment letter on the NMFS proposed expansion of the Vessel Speed Rule to boats 35 feet and larger apply to the rule as it exists currently.⁴² The input Advocacy received from small businesses in 2022 is still relevant today:

“Some ferry operators indicated they would have to rethink whether to continue ferry operations because trips that would normally only take a few hours may take significantly longer. The additional time may impact whether passengers choose to take those trips. In another example, a charter fishing company indicated that the proposed rule could have a devastating impact on same-day recreational fishing charter trips because the speed at which the boats would have to travel is so slow that it would be infeasible for them to complete the trip in a day. They stated that many tourists enjoy one-day charters and that this would eliminate a strong source of revenue from their businesses. One small boat dealer brings boats from the upper Northeast to Florida each year for a boat show. The trip normally takes 90 days to complete. If required to travel at 10 knots for the entire duration, the same voyage would take nearly 300 days.”⁴³

Every time the Vessel Speed Rule forces a small business to reduce the speed of their boat, that business loses time and opportunity while also facing increased fuel and labor costs.

Additionally, small businesses have told Advocacy that the Vessel Speed Rule discourages building boats over 65 feet. Building these larger boats employs more people and creates more opportunities than their smaller counterparts. Specifically, one roundtable attendee noted that a 68-foot boat entails 3,000 more labor hours than a 64-foot boat. Further, it was noted that a 90-foot boat results in 24,000 more labor hours than a 64-foot boat. Based on a 40-hour work week,

⁴⁰ 5 U.S.C. § 603 (c).

⁴¹ 91 Fed. Reg. 10580, 10581 (March 4, 20206).

⁴² U.S. Small Bus. Admin, Off. of Advocacy, *supra* note 12

⁴³ *Id.*, p.4.

building these larger boats translates into anywhere from 1.5-12 additional years of employment opportunities for small businesses. However, because of the arbitrary nature of the Vessel Speed Rule's 65-foot limit, these opportunities are lost.

Additionally, the NMFS should also consider not only the Vessel Speed Rule's impact on small businesses who build and rely on boats, but also the small businesses who depend upon the boating sector. Specifically, this includes fuel suppliers, bait and gear shops, repair shops, and restaurants and hotels in waterfront communities.

Advocacy encourages the NMFS to focus on minimizing unnecessary impacts to small businesses and small government as it proceeds with its review of the Vessel Speed Rule.

G. The NMFS Should Continue to Conduct Outreach to Small Businesses as it Proceeds with Modernizing the Vessel Speed Rule.

As the NMFS considers the input from this ANPRM, it should continue to conduct outreach to small businesses and small governments. Specifically, the NMFS should focus on assessing the current state of technology available to assist in helping to avoid collisions with right whales. Where technology can replace the need for regulatory burden, it should be allowed to do so.

Advocacy stands ready to assist the NMFS to ensure that small entities continue to have a voice in this important discussion.

V. Conclusion

Advocacy thanks the NMFS for proceeding with a long overdue review of the Vessel Speed Rule. We look forward to continuing to work together to help relieve the rule's unnecessary regulatory burdens on small businesses and small governments while also reducing vessel collisions with right whales.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Nick Goldstein at (202) 772-6948 or nick.goldstein@sba.gov.

Sincerely,

/s/

Everett M. Woodel, Jr.
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Nick Goldstein
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Mr. Mark Paoletta, Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget