FSTED

Florida Seaport Transportation and Economic Development Council

# Seaport Environmental Management Committee

## Wednesday, August 31, 2022
## 9:00 a.m.-12:00 p.m.

## To Join via Zoom

**Dial-in Information:** 1-309-205-3325
**Meeting ID:** 824-2986-0444
**Passcode:** 083122

# TAB 1
# Call to Order

FSTED

Florida Seaport Transportation and Economic Development Council

# Seaport Environmental Management Committee
# AGENDA

**August 31, 2022**
**9:00 a.m. – 12:00 p.m.**
**Casa Marina, Key West**

1. Call to Order, Welcome

2. Roll Call

3. Approval of the January 31, 2022, SEMC Meeting Minutes

4. Agency Updates
    a. Florida Department of Environmental Protection (FDEP)
    b. Florida Department of Economic Opportunity (DEO)
    c. U.S. Army Corps of Engineers - Civil Works and Regulatory Divisions
    d. Florida Inland Navigation District (FIND)
    e. Florida Fish & Wildlife Conservation Commission (FWC)

5. Partner Updates

6. Legislative Update

7. Open Discussion
    a. Right Whale Rule
    b. Inflation Reduction Act
    c. Diesel Emission Reduction Program (DERA) & VW Grant Update
    d. Federal Updates (WOTUS, NEPA, PFAS, EPA Ports Initiative, etc.)
    e. Other Issues

8. Adjourn

# TAB 2
# Roll Call

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Florida Seaport Transportation and Economic Development Council

# Seaport Environmental Management Committee
# ROLL CALL

**August 31, 2022**
**9:00 a.m. – 12:00 p.m.**
**Casa Marina, Key West**

| Representative | Organization | Designee |
|---|---|---|
| John Murray | Port Canaveral | Bob Musser |
| Randy Oliver | Port Citrus | |
| Jonathan Daniels | Port Everglades | Erik Neugaard |
| David Kaufman | Port Fernandina | |
| Stanley Payne | Port of Fort Pierce | |
| Eric Green | Jacksonville Port Authority | Nick Primrose |
| Steven McAlearney | Port of Key West | |
| Carlos Buqueras | Manatee County Port Authority | Daniel Fitz-Patrick |
| Hydi Webb | PortMiami | Becky Hope |
| Manuel Almira | Port of Palm Beach | |
| Alex King | Panama City Port Authority | |
| Clark Merritt | Port of Pensacola | |
| David Wirth | Port St. Pete | |
| Guerry Magidson | Port of Port St. Joe | |
| Chris Cooley (Chair) | Tampa Port Authority | |
| John Truitt<br>Lainie Edwards<br>Alex Reed | Florida Department of Environmental Protection | |
| Ben Melnick<br>James Stansbury | Florida Department of Economic Opportunity | |
| Shawn Zinszer<br>Eric Summa<br>Jason Spinning<br>Angela Dunn | U.S. Army Corps of Engineers | |
| Mark Crosley | Florida Inland Navigation District | |
| Jason Hight | Florida Fish and Wildlife Conservation Commission | |

# TAB 3
# Approval of the January 31, 2022, SEMC Meeting Minutes

FSTED

Florida Seaport Transportation and Economic Development Council

# Seaport Environmental Management Committee

**MEETING SUMMARY**
**January 31, 2022**
**2:00 p.m.- 3:30 p.m.**

1. **Call to Order, Welcome:** The Seaport Environmental Management Committee (SEMC) meeting was called to order at approximately 2:00 p.m. by Chairman Chris Cooley.

2. **Roll Call:** Jeff Littlejohn called roll. Attending the meeting were the following members and guests:

Chris Cooley, Chair – Port Tampa Bay
Emily Fisher – Florida Ports Council
Bob Musser – Port Canaveral
Nick Primrose – JAXPORT
Basil Binns – PortMiami
Alvaro Zayas – PortMiami
John Miller – Port Panama City
Ben Melnick – FDEO
Lainie Edwards – FDEP
Daniel Hubbard – FDOT
Katelyn Ruka – FDOT
Angela Dunn – U.S. Army Corp of Engineers
Herschel Vinyard, A&R
Jeff Littlejohn – A&R, Consultant to FPC
Mike Rubin – Florida Ports Council
Erik Neugaard – Port Everglades
George Isiminger – Port Manatee
Deborah Owens – PortMiami
Shelby Husbands – Port Panama City
Thomas Coggins – Port Pensacola
James Stansbury – FDEO
John Truitt – FDEP
Sabrina Viteri – FDOT
Jason Hight – FWC
Lenore Alpert – Florida Ocean Alliance
Jorge Caspary – Cameron-Cole LLC

3. **Approval of the August 25, 2021, SEMC Meeting Minutes:** After welcoming the members and guests to the meeting, Chair Cooley asked for any comments or revisions to the August 25, 2021, meeting minutes. Hearing no comments, Chair Cooley requested a motion for approval. A motion was made by Bob Musser and seconded by Basil Binns. The motion passed unanimously.

4. **Agency Updates:**
   a. **Florida Department of Environmental Protection (FDEP):** John Truitt, Deputy Secretary for Regulatory Programs at FDEP gave the committee an update for the department. Truitt detailed that there is no current, dedicated legislation for FDEP in this 2022 session; however, they are tracking PFAS and stormwater. Truitt also mentioned that a new water director was coming onboard, Mike Lynch. Next, Dr. Lainie Edwards gave a brief update for FDEP. Dr. Edwards advised that the Resilient Florida Program was implemented, and the grant portal was opened on July 1, 2021. They received a total of 584 applications totaling $2.34 billion. DR. Edwards then went into detail on induvial grants applications within the Resilient Florida Program.
   b. **Florida Department of Economic Opportunity (DEO):** James Stansbury, Bureau Chief of Community Planning and Growth at DEO gave his update from the department. Stansbury addressed two upcoming grant programs at DEO that include

Community Planning Technical Assistance Grants and Competitive Florida Communities Program.

c. **U.S. Army Corps of Engineers-Civil Works and Regulatory Division:** Angela Dunn, Chief, Environmental Branch, gave an update from the U.S. Army Corp of Engineers. Dunn detailed the recent happenings in the Civil Works Program, which included starting maintenance dredging the Tampa upper channels, releasing the revised draft supplemental EIS for Port Everglades deepening, PortMiami deepening feasibility study was put on hold at headquarters, and finally they are eight months into their Tampa harbor feasibility study.
d. **Florida Inland Navigation District (FIND):** No report to discuss.
e. **Florida Fish & Wildlife Conservation Commission:** Jason Hight, Director, Office of Conservation Planning Services at FWC gave an update for his department. Hight discussed the ongoing research and issues regarding manatee mortality and water quality issues.

5. **Partner Updates:**
   a. **Florida Ocean Alliance**: Lenore Alpert, Executive Director of the Florida Ocean Alliance (FOA) joined the meeting to give an update on their efforts to protect and enhance our oceans and coastal environments. Alpert also mentioned their new Chair of FOA is Paul Anderson, CEO and Port Director of Port Tampa Bay. Alpert discussed Florida's Blue Economy. Florida's Blue Economy is where the state and communities enjoy both economic and environmental resiliency.
   b. **Florida Recycling Partnership:** Keyna Cory, Executive Director at Florida Recycling Partnership gave an update on recycling statewide. Cory addressed that she needs the help from our ports to host recycling events and educational programs.

6. **Legislative Update:** Jeff Littlejohn, Senior Policy Advisor at Adams & Reese (A&R) provided an update on the current 2022 legislation. Littlejohn discussed SB 7012 run by Senate Environmental Natural Resources Committee that would create a PFAS taskforce. The second set of bills discussed were HB 1475 and SB 1418 on soil and groundwater contamination that would require DEP to promulgate some rules to set standards and until that happens to stop sending out requirements to do site assessment reports. Another set of bill's HB 349 and SB 198 are entitled water resources management. The item to flag in these bills are provisions that would create seagrass mitigation banks. Lastly, Jason Hight with FWC mentioned the FWC bill, which has derelict vessel provisions we are monitoring. Littlejohn provided a list of more bills in the SEMC materials packet due to their water and water-quality related nature.

7. **Open Discussion:**
   a. **Contaminated Site Closure Policy:** A number of seaports have had varying degrees of success getting legacy contaminated sites closed with FDEP. There have been a couple of different types of approaches to legacy contaminant management, whether that contamination is in the soil or in the groundwater; furthermore, some ports have been successful in getting area wide land use control memoranda in place between the Port Authority and the department.

b. **FDEP Turbidity Rule (wrap up):** Dr. Edwards discussed the turbidity rule in her report. As an update, this rule will require two approval steps before it goes forward. First, the Environmental Regulatory Commission will have to adopt the change in state water quality standards and then because of the statement of estimated regulatory costs, which is going to be somewhere between $13 and $26 million over a five-year period. It's kind of no news is good news. We're still on the old rule, which means you have to do a site-specific background determination for your turbidity standards for dredge projects.
c. **Florida Ocean Alliance/Blue Economy:** Lenore Alpert discussed this in her report.
d. **Diesel Emission Reduction Program (DERA) Grants:** Chair Cooley advised that he would send out a PDF document illustrating the DERA Grants.
e. **Federal Updates (Mitigation Policy, WOTUS, NEPA, PFAS, etc.): Mitigation Policy:** The Army Corps and National Marine Fisheries Service signed a joint memo regarding ESA consultation for maintenance of authorized projects, and this affects civil works projects and for projects approved to the regulatory program. So, if a port is an applicant for seawall maintenance projects or pier replacement projects, the Corps now has the discretion to consult with the National Marine Fisheries Service on current and future impacts to species that may attach to that authorized structure and evaluation of future effects. This is now official federal policy. **WOTUS:** The Biden Administration signed an executive order in January that directed the US EPA and Army Corps of Engineers to revise the definition of waters once again. On November 18, a proposed rule with a proposed definition was published and the public comment period is open until February 7. **NEPA:** All of the agencies affected by the National Environmental Policy Act were advised through an executive order that the Council Environmental Quality was directed by the White House to undertake another review of the NEPA rule. The NEPA procedures were more or less unchanged for almost 40 years, but the Trump administration directed CQ to revise/streamline the NEPA reviews. Now, CQ is directed to put it back like it was, and so, there was a Notice of Proposed Rulemaking in October. **PFAS**: EPA has promulgated a work plan roadmap loss of potential changes to the regulation of PFAS and PFAS containing substances.
f. **Other Issues:** No other issues were discussed.

8. **Adjourn:** Chair Cooley asked for any other open discussion, hearing none, the meeting was adjourned at 3:30 p.m.

# TAB 4
# Agency Updates

# TAB 4a
# Florida Department of Environmental Protection (FDEP)

# TAB 4b
# Florida Department of Economic Opportunity (DEO)

# TAB 4c
# U.S. Army Corps of Engineers-Civil Works and Regulatory Division

# TAB 4d
# Florida Inland Navigation District (FIND)

# TAB 4e
# Florida Fish & Wildlife Conservation Commission

# TAB 5
# Partner Updates

# TAB 6
# Legislative Update

# TAB 7
# Open Discussion

# TAB 7a
# Right Whale Rule

# Compliance Guide for Right Whale Ship Strike Reduction Rule (50 CFR 224.105)

**NOAA FISHERIES SERVICE**

**ATTENTION: All vessels greater than or equal to 65 ft (19.8 m) in overall length and subject to the jurisdiction of the United States and all vessels greater than or equal to 65 ft in overall length entering or departing a port or place subject to the jurisdiction of the United States.**

**YOU MUST SLOW TO SPEEDS OF 10 KNOTS OR LESS IN SEASONAL MANAGEMENT AREAS**

Mandatory speed restrictions of 10 knots or less are required in Seasonal Management Areas along the U.S. East Coast during times when right whales are likely to be present. The purpose of this regulation is to reduce the likelihood of deaths and serious injuries to these endangered whales that result from collisions with ships.

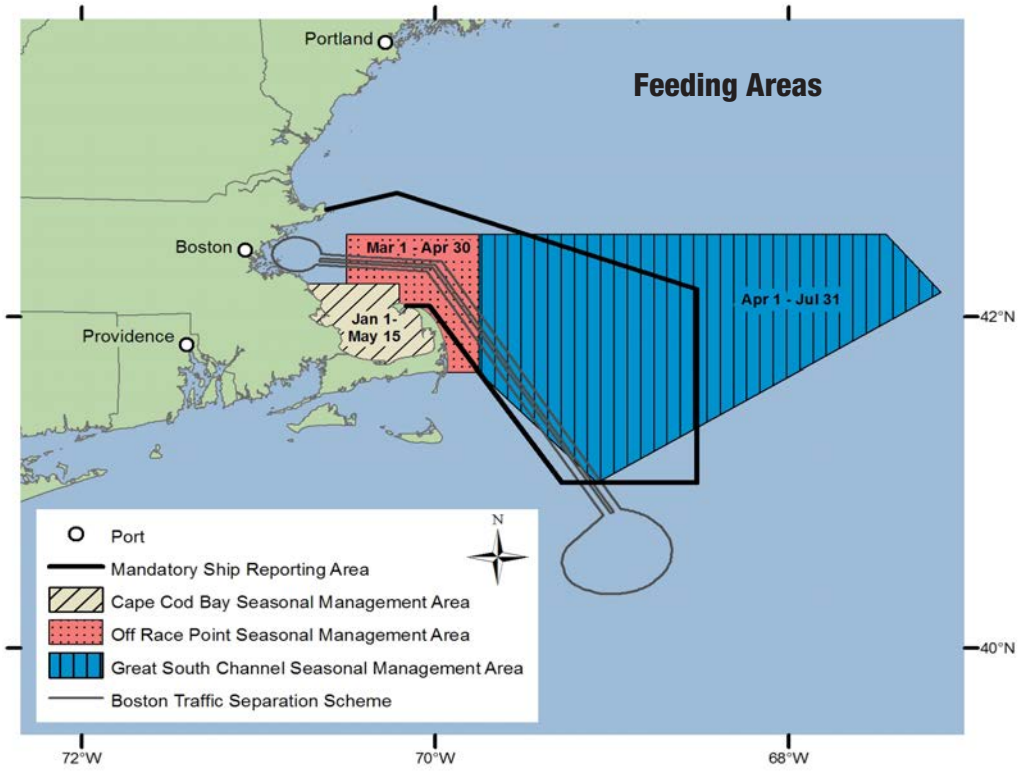
NOAA

Vessels may operate at a speed greater than 10 knots only if necessary to maintain a safe maneuvering speed in an area where conditions severely restrict vessel maneuverability as determined by the pilot or master.

If a deviation from the 10 knot speed restriction is necessary, the following information must be entered into the logbook:

- Reasons for deviation
- Speed at which vessel is operated
- Latitude and longitude at time of deviation
- Time and duration of deviation
- Master of the vessel shall sign and date the logbook entry

## Northeast U.S. Seasonal Management Areas




## Feeding Areas

**Cape Cod Bay**
**January 1 - May 15**
Includes all waters of Cape Cod Bay with Northern Boundary of 42º04'56.5"N, 070º12'W to 42º12'N, 070º12'W then due west back to shore.

**Off Race Point**
**March 1 - April 30**
Waters Bounded by:
42º04'56.5"N 070º12'W
42º12'N, 070º12'W
42º12'N, 070º30'W
42º30'N, 070º30'W
42º30'N, 069º45'W
41º40'N, 069º45'W
then due west back to shore.

**Great South Channel**
**April 1 - July 31**
Waters Bounded by:
42º30'N, 069º45'W
42º30'N, 067º27'W
42º09'N, 067º08'24"W
41º00'N, 069º05'W
41º40'N, 069º45'W
then back to starting pt.

The rule does not apply to waters inshore of COLREGS lines.

## Migratory Route

**November 1 through April 30**

Vessel speed is restricted in the following areas:

- Block Island Sound waters bounded by:
  40°51'53.7" N 070°36'44.9" W
  41°20'14.1" N 070°49'44.1" W
  41°04'16.7" N 071°51'21.0" W
  40°35'56.5" N 071°38'25.1" W
  then back to starting point.
- Within a 20-nm (37 km) radius of the following (as measured seaward from the COLREGS lines):
  - -Ports of New York/New Jersey:
    40°29'42.2"N 073°55'57.6"W
  - -Entrance to the Delaware Bay (Ports of Philadelphia and Wilmington):
    38°52'27.4"N 075°01'32.1"W
  - -Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore):
    37°00'36.9"N 075°57'50.5"W
  - -Ports of Morehead City and Beaufort, NC:
    34°41'32.0"N 076°40'08.3"W
- Within a continuous area 20 nm from shore between Wilmington, NC, to Brunswick, GA, bounded by the following:

| Point | Latitude | Longitude |
|---|---|---|
| A | 34°10'30"N | 077°49'12"W |
| B | 33°56'42"N | 077°31'30"W |
| C | 33°36'30"N | 077°47'06"W |
| D | 33°28'24"N | 078°32'30"W |
| E | 32°59'06"N | 078°50'18"W |
| F | 31°50'00"N | 080°33'12"W |
| G | 31°27'00"N | 080°51'36"W |

and west back to the shore.

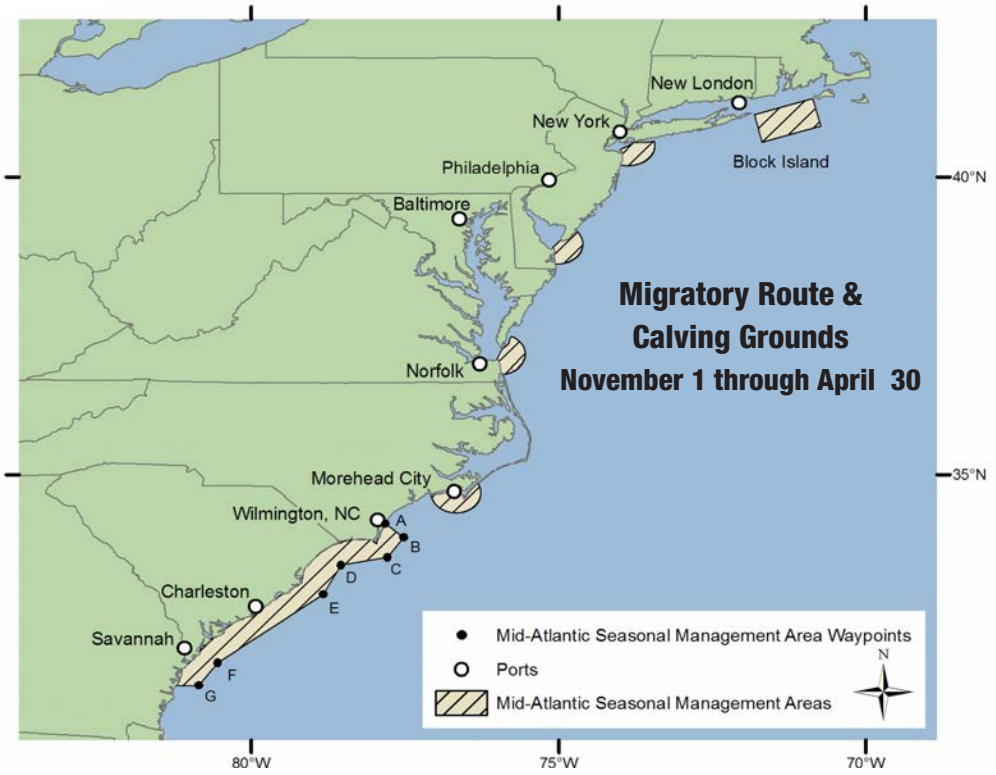
## Calving and Nursery Grounds

**November 15 through April 15**

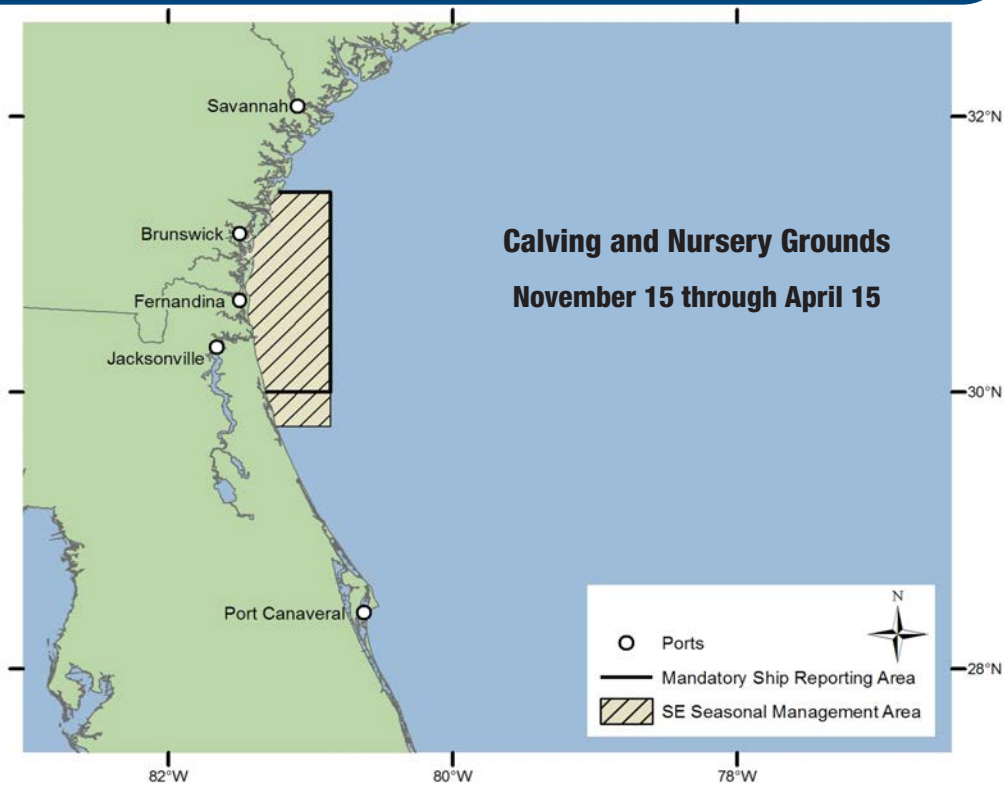
Vessel speed is restricted in the area bounded to the north by latitude 31°27'N; to the south by latitude 29°45'N; to the east by longitude 080°51'36"W.

For more information, visit:
http://www.nmfs.noaa.gov/pr/shipstrike
http://nero.noaa.gov/shipstrike
http://rightwhalessouth.nmfs.noaa.gov

## Mid-Atlantic U.S. Seasonal Management Areas




## Southeast U.S. Seasonal Management Area




The rule does not apply to waters inshore of COLREGS lines.

**Voluntary Dynamic Management Areas** (DMAs) may also be established by NOAA Fisheries Service. Mariners are encouraged to avoid these areas or reduce speeds to 10 knots or less while transiting through these areas. NOAA Fisheries Service will announce DMAs to mariners through its customary maritime communication media.

**This serves as NOAA's small entity compliance guide.**

OMB Control #0648-0580



U.S. Department of Commerce | National Oceanic and Atmospheric Administration | National Marine Fisheries Service

# Rule to Amend the North Atlantic Right Whale Vessel Speed Regulations Open for Comment

News

July 29, 2022

Proposed changes would expand mandatory speed restrictions to include vessels 35 to 65 feet long and broaden seasonal speed restriction zones. Comments are due by September 30, 2022.

North Atlantic right whale #3230 "Infinity" and her calf were struck off the coast of Florida in February 2021. Her calf pictured above died from the strike. “Infinity” was spotted several days later with injuries suggestive of a vessel strike. - Photo: Florida Fish and Wildlife Commission. All photos taken under NOAA permit 18786

NOAA Fisheries is proposing changes to the North Atlantic right whale vessel speed rule to further reduce the likelihood of lethal vessel collisions. The changes would broaden the spatial boundaries and timing of seasonal speed restriction areas along the U.S. East Coast. They would also expand mandatory speed restrictions of 10 knots or less to include most vessels 35–65 feet in length.

“Collisions with vessels continue to impede North Atlantic right whale recovery. This proposed action is necessary to stabilize the ongoing right whale population decline, in combination with other efforts to address right whale entanglement and vessel strikes in the U.S. and Canada,” said Janet Coit, Assistant Administrator for NOAA Fisheries.

Proposed changes to the current speed rule address two key problems impacting right whale recovery:

1. Misalignment between areas and times of high vessel strike risk and current Seasonal Management Areas spatial and temporal bounds
2. Lack of mandatory speed restriction on vessels between 35 and 65 feet in length that present a lethal threat to right whales

During the past two and a half years alone NOAA Fisheries has documented four lethal (death and serious injury) right whale vessel strike events in U.S. waters. These events are impeding the species’ recovery and contributing to the population's decline.

Additional changes to the speed rule include:

- Creation of a mandatory Dynamic Speed Zone program establishing temporary 10-knot transit zones when right whales are detected outside designated Seasonal Speed Zones
- Updates to the rule's safety provisions, allowing vessels to exceed the 10-knot restriction in limited circumstances

North Atlantic right whales are approaching extinction with fewer than 350 individuals and fewer than 100 reproductively active females remaining. This decline is associated with an ongoing Unusual Mortality Event that has documented 51 right whale serious injuries and deaths in U.S. and Canadian waters since 2017. Climate-related impacts and prey availability have contributed to the population's reduced fitness. However, vessel strikes and entanglements continue to drive the population's decline and are the primary cause of serious injuries and mortalities. North Atlantic right whales are especially vulnerable to vessel strikes due to their coastal distribution and frequent occurrence at near-surface depths. This is particularly true for females with calves.

"We have made progress in addressing the threat of vessel strikes, but additional action is warranted to further reduce the risk of lethal strike events to ensure the species can get back on track to recovery," said Kim Damon-Randall, Director, Office of Protected Resources, NOAA Fisheries.

NOAA Fisheries and our partners are dedicated to conserving the North Atlantic right whale population.

## Comment on the Proposed Rule

The comment period for the proposed rule is open through September 30, 2022. You may submit comments electronically. NOAA Fisheries may not consider comments sent by any other method (such as e-mail or mail), to any other address or individual, or received after the end of the comment period.

Additional information on the proposed changes and how to submit comment

Last updated by Office of Protected Resources on August 04, 2022

FLORIDA PORTS COUNCIL

JAXPORT

Port Canaveral

Port Everglades

Port of Fernandina

Port of Fort Pierce

Port of Key West

PortMiami

Port Manatee

Port of Palm Beach

Port of Panama City

Port of Pensacola

Port of Port St. Joe

Port St. Pete

Port Tampa Bay

March 26, 2021

Dr. Caroline Good
Office of Protected Resources
National Oceanic & Atmospheric Administration
1315 East-West Highway, 13th Floor
Silver Spring, MD 20910
*Submitted Electronically:* narw.vesselstrike@noaa.gov

**Re: Right Whale Speed Rule Assessment – Comments on Report and Future Actions or Modifications to Vessel Strike Reduction Efforts**

Dr. Caroline Good:

The Florida Ports Council appreciates the opportunity to comment on National Oceanic & Atmospheric Administration's (NOAA) Report on the North Atlantic Right Whale Vessel Speed Rule Assessment (Report), and future actions NOAA may take in response to the Report. The Council has reviewed the Report and are aware of the sensitivity of the right whale population. However, based on the findings in the report we believe any additional regulation further limiting vessel speed or expanding the size of the current seasonal management areas (SMA) is unnecessary and unsupported.

The Report lacks a cause and effect between the current Speed Rule Regulations and a decrease in right whale vessel strikes. Notably, the report states that it is not possible to determine a direct causal link in reduced vessel strikes since the implementation of the rules. We are concerned that the proposed revisions to reduce vessel speeds or increase SMAs would be promulgated without data supporting such a causal relationship. The lack of data to support the need to further restrict vessel speeds is emphasized by the economic impacts to the regulated industry, which the Report estimates to be approximately $28-$39 million annually – more than 2/3 of which is borne by the shipping industry. We strongly encourage NOAA to continue further analysis of cause-and-effect relationships prior to increasing restrictions, which will increase the costs to the regulated community.

The current regulations sufficiently protect the species and while allowing professional mariners to safely navigate larger ocean-going vessels through confined offshore channels and safely into port, often at speeds substantially greater than 10 knots to maintain safe navigation. The Council continues to support the speed deviation provided in 50 CFR 224.105, as it permits professional mariners to use their experience and informed judgment to determine a safe ensuring navigation safety and protecting the maritime environment.

**TEL:** 850.222.8028 | **FAX:** 850.222.7552
502 East Jefferson Street, Tallahassee, Florida 32301 | **www.flaports.org**

While we do not believe the Report supports amending the current rules, should NOAA undertake any amendatory efforts, we strongly support maintaining the current vessel speed rules, exempting the federally approved dredged channels from the speed restrictions for the above-stated safety reasons, and not expanding the SMAs. It should be noted, exempting all of the federally improved dredged channels from Boston to Jacksonville would reduce the 15,000+ square miles of waters covered by the seasonal speed restrictions by just a fraction of one percent.

On behalf of the Florida Ports Council, we appreciate the opportunity to provide the above comments. If you have any questions or need any assistance from us, please feel free to contact our environmental consultant, Matt McDonald, at matt@littlejohnmann.com or 850-528-3947.

Sincerely,

Doug Wheeler,
President & CEO

Cc: Jeff Littlejohn, P.E., Environmental Consultant, Florida Ports Council
Matt McDonald, J.D., Environmental Consultant, Florida Ports Council

**TEL:** 850.222.8028 | **FAX:** 850.222.7552
502 East Jefferson Street, Tallahassee, Florida 32301 | **www. flaports.org**

support MA benefit design and care delivery innovations to achieve higher quality, equitable, and more person-centered care? Are there specific innovations CMMI should consider testing to address the medical and non-medical needs of enrollees with serious illness through the full spectrum of the care continuum?

10. Are there additional eligibility criteria or benefit design flexibilities that CMS could test through the MA VBID Model that would test how to address social determinants of health and advance health equity?

11. What additional innovations could be included to further support care delivery and quality of care in the Hospice Benefit Component of the MA VBID Model? What are the advantages and disadvantages of receiving the hospice capitation payment as a standalone payment rather than as part of the bid for covering Parts A and B benefits?

12. What issues specific to Employer Group Waiver Plans (EGWPs) should CMS consider?

*D. Support Affordability and Sustainability*

We are committed to ensuring that Medicare beneficiaries have access to affordable, high value options. We request feedback on how we can improve the MA market and support effective competition.

1. What policies could CMS explore to ensure MA payment optimally promotes high quality care for enrollees?

2. What methodologies should CMS consider to ensure risk adjustment is accurate and sustainable? What role could risk adjustment play in driving health equity and addressing SDOH?

3. As MA enrollment approaches half of the Medicare beneficiary population, how does that impact MA and Medicare writ large and where should CMS direct its focus?

4. Are there additional considerations specific to payments to MA plans in Puerto Rico or other localities that CMS should consider?

5. What are notable barriers to entry or other obstacles to competition within the MA market generally, in specific regions, or in relation to specific MA program policies? What policies might advantage or disadvantage MA plans of a certain plan type, size, or geography? To what extent does plan consolidation in the MA market affect competition and MA plan choices for beneficiaries? How does it affect care provided to enrollees? What data could CMS analyze or newly collect to better understand vertical integration in health care systems and the effects of such integration in the MA program?

6. Are there potential improvements CMS could consider to the Medical Loss Ratio (MLR) methodology to ensure Medicare dollars are going towards beneficiary care?

7. How could CMS further support MA plans' efforts to sustain and reinforce program integrity in their networks?

8. What new approaches have MA plans employed to combat fraud, waste, and abuse, and how could CMS further assist and augment those efforts?

*E. Engage Partners*

The goals of Medicare can only be achieved through partnerships and an ongoing dialogue between the program and enrollees and other key stakeholders. We request feedback regarding how we can better engage our valued partners and other stakeholders to continuously improve MA.

1. What information gaps are present within the MA program for beneficiaries, including enrollees, and other stakeholders? What additional data do MA stakeholders need to better understand the MA program and the experience of enrollees and other stakeholders within MA? More generally, what steps could CMS take to increase MA transparency and promote engagement with the MA program?

2. How could CMS promote collaboration amongst MA stakeholders, including MA enrollees, MA plans, providers, advocacy groups, trade and professional associations, community leaders, academics, employers and unions, and researchers?

3. What steps could CMS take to enhance the voice of MA enrollees to inform policy development?

4. What additional steps could CMS take to ensure that the MA program and MA plans are responsive to each of the communities the program serves?

**III. Collection of Information Requirements**

Please note, this is a request for information (RFI) only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. In addition, this RFI does not commit the Government to any policy decision and CMS will follow established methods for proposing future policy changes, including the MA Advance Notice and Rate Announcement process. We note that not responding to this RFI does not preclude participation in any future procurement or rulemaking, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this RFI.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on July 26, 2022.

Dated: July 27, 2022.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2022–16463 Filed 7–28–22; 4:15 pm]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 224

**[Docket No. 220722–0162]**

**RIN 0648–BI88**

## Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS is proposing changes to the North Atlantic right whale (*Eubalaena glacialis*) vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event. The proposed rule would: (1) modify the spatial and temporal boundaries of current speed restriction areas referred to as Seasonal Management Areas (SMAs), (2) include most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the size class subject to speed restriction, (3) create a Dynamic Speed Zone framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs, and (4) update the speed rule's safety deviation provision. Changes to the speed regulations are proposed to reduce vessel strike risk based on a coast-wide collision mortality risk assessment and updated information on right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events. Changes to the existing vessel speed regulation are essential to stabilize the ongoing right whale population decline and prevent the species' extinction.

**DATES:** Submit comments on or before September 30, 2022.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2022–0022, by electronic submission. Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0022 in the Search box. Click the ''Comment'' icon, complete the required fields and enter or attach your comments. You may submit comments on supporting materials via the same electronic submission process, identified by NOAA–NMFS–2022–0022.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). The Draft Environmental Assessment, and the Draft Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared in support of this proposed rule, are available via the internet at *https://www.regulations.gov/* or obtained via email from the persons listed below.

**FOR FURTHER INFORMATION CONTACT:** Caroline Good, *caroline.good@noaa.gov,* 301–427–8402.

**SUPPLEMENTARY INFORMATION:**

## Background

The North Atlantic right whale (*Eubalaena glacialis*) was severely depleted by commercial whaling and, despite protection from commercial harvest since 1935, has not recovered. Following two decades of growth between 1990 and 2010, the species has been in decline over the past decade (Pace *et al.* 2017; Pace 2021), with a recent preliminary population estimate of fewer than 350 individuals remaining. North Atlantic right whale abundance began to decline in 2010 due to a combination of increased human-caused mortality and decreased reproductive output (Pace *et al.* 2017). The decline coincided with changes in whale habitat use patterns, characterized by the whales' increasing use of areas with few protections from anthropogenic harm (Davis *et al.* 2017; Meyer-Gutbrod and Greene 2018; Record *et al.* 2019). The species' decline has been exacerbated by an ongoing Unusual Mortality Event (UME) that NMFS declared in 2017, pursuant to section 404 of the Marine Mammal Protection Act (MMPA), and includes an unprecedented 51 known mortalities and serious injuries to date, impeding the species' recovery. NMFS interprets the regulatory definition of serious injury as any injury that is ''more likely than not'' to result in mortality, or any injury that presents a greater than 50 percent chance of death to a marine mammal (NMFS 2014). Thus, lethal strike events are those that have or are likely to result in a mortality.

Entanglement in fishing gear and vessel strikes are the two primary causes of right whale mortality and serious injury. Human-caused mortality to adult females, in particular, is limiting recovery of the species (Moore *et al.* 2005, 2021; Corkeron *et al.* 2018; Hayes *et al.* 2019; Sharp *et al.* 2019). Anthropogenic trauma was the sole source of mortality for right whale adults and juveniles for which a cause of death could be determined between 2003 and 2018 (Sharp *et al.* 2019). North Atlantic right whale calving rates dropped from 2017 to 2020, with zero births recorded during the 2017–2018 season. The 2020–2021 calving season had the first substantial calving increase in five years, with 20 calves born, followed by 15 calves during the 2021–2022 calving season. However, mortalities continue to outpace births, and best estimates indicate fewer than 100 reproductively active females remain in the population.

NMFS has determined that the Potential Biological Removal (PBR) for the species—defined by the MMPA as ''the maximum number of individuals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population''—is 0.7 whales (NMFS 2021). This means that for the species to recover, the population cannot sustain, on average over the course of a year, the death or serious injury of a single individual due to human causes. Observed human caused mortality far exceeds this level and a recent assessment of total right whale mortality estimates range-wide indicates that observed deaths likely captured only about 36 percent of the actual total deaths between 1990 and 2017 (Pace *et al.* 2021). Right whale abundance will continue to decline, imperiling species recovery, unless human caused mortality is substantially reduced in the near term.

North Atlantic right whales inhabit U.S. waters year-round but predominate during late fall through early summer. Within U.S. waters, the whales primarily forage in the greater Gulf of Maine region (Pershing *et al.* 2009; Davies *et al.* 2014). The species' only known winter calving area lies within the South Atlantic Bight between northern Florida and North Carolina (Keller *et al.* 2012; Gowan and Ortega-Ortiz 2014). The Mid-Atlantic region serves both as a migratory habitat for whales moving between calving areas and northern foraging grounds, as well as a foraging habitat. Right whales can be highly mobile, traveling upwards of 40 nautical miles per day, or, when engaged in certain behaviors (*e.g.,* foraging), relatively stationary, remaining within several miles for days (Baumgartner and Mate 2005; Crowe et *al.* 2021). The whales' primary distribution includes seasonal coastal habitats characterized by extensive commercial and recreational vessel traffic.

North Atlantic right whales are vulnerable to vessel strike due to their coastal distribution and frequent occurrence at near-surface depths, and this is particularly true for females with calves. The proportion of known vessel strike events involving females, calves,

and juveniles is higher than their representation in the population (NMFS 2020). Mother/calf pairs are at high risk of vessel strike because they frequently rest and nurse in nearshore habitats at or near the water surface, particularly in the Southeast calving area (Cusano *et al.* 2018; Dombroski *et al.* 2021). Calving females have the longest residence time of any demographic group on the Southeast calving ground, staying on average about three months in the region before traveling with their nursing calves to northern foraging areas (Krzystan *et al.* 2018). Right whales nurse their calves for up to a year. This promotes rapid calf growth (Fortune *et al.* 2012) but also places mother/calf pairs at increased risk of vessel interactions, not only within the Southeast calving ground but also along the Mid-Atlantic and New England coasts, which are important migratory and foraging areas for right whales.

Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart 2007; Conn and Silber 2013; Van der Hoop *et al.* 2014; Martin *et al.* 2015; Crum *et al.* 2019). In 2008, NMFS implemented 10-knot (5.1 meters/second (m/s)) vessel speed restrictions for a five-year period for most vessels greater than or equal to 65 ft (19.8 m) in overall length within designated areas commonly referred to as Seasonal Management Areas (SMAs) along the U.S. East Coast to reduce the risk of mortality and serious injury from vessel strike (73 FR 60173, October 10, 2008 (50 CFR 224.105)). NMFS later removed the five-year ''sunset'' provision from the speed rule (78 FR 73726, December 9, 2013; 79 FR 34245, June 16, 2014), and the rule continues in effect today.

Reducing vessel speed is one of the most effective, feasible options available to reduce the likelihood of lethal outcomes from vessel collisions with right whales. Previous investigations indicate that NMFS' speed regulations at 50 CFR 224.105 for most vessels greater than or equal to 65 ft (19.8 m) in length reduced the risk of lethal vessel strikes to right whales (Conn and Silber 2013; Laist *et al.* 2014). In 2021, NMFS released the North Atlantic Right Whale Vessel Speed Rule Assessment (hereafter ''speed rule assessment'') documenting a reduction in observed right whale serious injuries and mortalities resulting from vessel strikes since implementation of the speed rule in 2008 (50 CFR 224.105), but highlighting the need for additional action to more effectively address the risk of vessel strikes to right whales (NMFS 2020).

NMFS is addressing risk from fishing gear entanglement through separate regulatory actions from this proposed rule as informed by the Atlantic Large Whale Take Reduction Team (ALWTRT) and continues to work on additional measures to further reduce lethal entanglements. The MMPA directs NMFS to reduce incidental entanglements in commercial fisheries that cause mortalities and serious injuries of marine mammal stocks above a biological reference point (*i.e.* PBR) through a consensus-based Take Reduction Process. The ALWTRT is a large stakeholder group NMFS has convened numerous times since 1996 to develop recommendations to reduce mortality and serious injury of right whales and other large whales covered under the Atlantic Large Whale Take Reduction Plan. The ALWTRT continues to meet regularly to develop recommendations to further modify the Plan and reduce right whale entanglements in commercial fisheries.

**Summary of Current North Atlantic Right Whale Vessel Strike Reduction Measures**

NMFS has implemented a combination of regulatory requirements and voluntary programs aimed at modifying mariner behavior and/or increasing mariner awareness of right whale presence to reduce vessel collision risk. Together, these efforts address two aspects of reducing strike risk: (1) reducing the spatial overlap of right whales and vessels, and (2) reducing the speed of vessels in areas and at times when right whales are likely to be present. Below is a summary of vessel strike reduction actions implemented by NMFS and other Federal partners to date.

*Statutory Protections*

(1) ''Take'' Prohibitions. Both the Endangered Species Act (ESA) and the MMPA generally prohibit the unauthorized ''take'' of North Atlantic right whales. Under the ESA, ''take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' (16 U.S.C. 1532(19)). Under the MMPA, ''take means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill.'' (16 U.S.C. 1362(13)).

(2) ESA Section 7 Consultations. As required by Section 7(a)(2) of the ESA, as amended (ESA; 16 U.S.C. 1531 *et seq.*), all U.S. Federal agencies must consult with NMFS to ensure that any actions they authorize, fund, or carry out that may affect ESA-listed species under NMFS jurisdiction are not likely to jeopardize the continued existence of those species or adversely modify or destroy their designated critical habitat. When Federal agencies authorize vessel activities potentially co-occurring with right whales and engage in consultations with NMFS, they often implement measures governing vessel speed designed to reduce the risk of right whale interactions.

*Regulatory Measures*

(1) North Atlantic Right Whale Vessel Speed Rule. In 2008, NMFS implemented a rule requiring most vessels equal to or greater than 65 ft (19.8 m) in length to transit at speeds of 10 knots (5.1 m/s) or less in designated SMAs (73 FR 60173, October 10, 2008) pursuant to its authority under the MMPA and ESA. Some vessels are exempt from this requirement including military vessels, vessels owned, operated or contracted by the Federal government, and vessels engaged in enforcement or search and rescue activities (50 CFR 224.105(a)). Although these vessels are exempt from the speed rule, they are not exempt from consultation under section 7 of the ESA. During consultations, mitigation measures, including reduced speeds, may be recommended or specified to reduce the threat of vessels collisions with right whales. Regulatory requirements, such as those proposed here that contain a maximum vessel speed but no minimum, are separate from any requirements specified as part of ESA section 7 consultations and are not expected to result in the need to reinitiate existing consultations (50 CFR 402.16). In addition, subject to specific requirements, vessels may deviate from the speed restriction (*i.e.,* exceed the speed limit), under limited circumstances, to maintain safe maneuvering speeds (50 CFR 224.105(c)). Vessels employing this safety deviation must make a notation in the vessel logbook detailing the event. Ten SMAs were designated along the U.S. East Coast with seasonally active periods reflective of temporal trends in right whale habitat use. The locations of the SMAs were informed by vessel traffic (*i.e.,* port entrances were assumed high traffic areas relative to other areas) and right whale distribution data at the time the rule was established. NMFS selected the 10-knot (5.1 m/s) speed limit based on analyses of large whale vessel strike events where the vessel speed at the time of impact was known. Researchers found the probability of whale mortality increased substantially

with vessel speed, with the greatest increase occurring between speed of 10 to 14 knots (5.1 to 7.2 m/s; Vanderlaan and Taggert 2007). Based on these findings, NMFS determined that the use of speed restrictions was an effective means to reduce the likelihood and severity of vessel collisions.

(2) 500 Yard (457.2 m) Minimum Approach Distance. In 1997, NMFS implemented a minimum approach distance for vessels in the vicinity of North Atlantic right whales in an effort to reduce harassment and risk of injury (62 FR 6729, February 13, 1997). It is illegal for a vessel to approach within 500 yards (457.2 m) of a right whale, and if a vessel finds itself within 500 yards (457.2 m) it ''must steer a course away from the right whale and immediately leave the area at a slow safe speed'' (50 CFR 224.103(c)(1–2)). Exceptions are made if ''compliance would create an imminent or serious threat to a . . . vessel'' (50 CFR 224.103(c)(3)).

*Non-Regulatory Measures*

(1) Great South Channel Area To Be Avoided (ATBA). An ATBA is an International Maritime Organization (IMO)-established vessel routing measure within a specified area to avoid navigational hazards or environmentally sensitive areas. In June 2009, an ATBA was established in the Great South Channel to the east of Cape Cod, MA after gaining approval from the IMO. All vessels greater than or equal to 300 gross tons are recommended to avoid this area between April 1 and July 31.

(2) Recommended Routes. In 2006, a joint U.S. Coast Guard/NOAA effort established recommended routes for vessels transiting across Cape Cod Bay and into/out of ports in Florida and Georgia. The routes are recommended between January and May in Cape Cod Bay and between November and April off Florida and Georgia. Mariners are recommended to follow the routes to minimize their transit distance through important right whale habitat areas.

(3) Modification to the Boston Traffic Separation Scheme (TSS). In 2007, following a successful application to the IMO led by the Stellwagen Bank National Marine Sanctuary and NMFS, a modified TSS (commonly referred to as a shipping lane) was implemented to the north of Cape Cod, MA for vessel traffic navigating to and from the Port of Boston. The modification narrowed the TSS and shifted its route to the north around Cape Cod to reduce the overlap with large whale foraging grounds.

(4) Dynamic Management Areas (DMAs) and Right Whale Slow Zones. NMFS implemented a voluntary DMA program concurrently with the mandatory speed rule in 2008. A DMA is triggered when a group of three or more right whales are sighted in close proximity. Beginning in 2020, the NMFS Greater Atlantic Region modified the DMA program to include acoustically triggered Slow Zones. Once the trigger is met, NMFS establishes a boundary around the whales for 15 days and encourages vessels either to avoid the area or transit through at speeds less than 10 knots (5.1 m/s). DMAs/Slow Zones may be extended if whales remain in the area. The agency alerts mariners to DMA and Slow Zone declarations through website postings, emails to lists of interested parties, U.S. Coast Guard Local Notices to Mariners, and U.S. Coast Guard Broadcast Notices to Mariners.

**Need for Additional Action**

In January 2021, NMFS released an assessment evaluating the effectiveness of the North Atlantic right whale speed rule and associated voluntary DMA program (NMFS 2020) and invited the public to submit comments. The review found that the speed rule had made progress in reducing vessel strike risk to right whales but that additional action is warranted to further reduce the threat of vessel collisions. While it is not possible to establish a direct causal link between speed reduction efforts and the relative decline in observed right whale mortality and serious injury events following implementation of the speed rule, the preponderance of evidence suggests speed reductions, as implemented, have helped. NMFS' data on documented vessel strike events continues to affirm the role of high vessel speeds (≤ 10 knots (5.1 m/s)) in lethal collision events and supports existing studies implicating speed as a factor in lethal strikes events. NMFS has documented five right whale vessel strike cases in U.S. waters that resulted in *non-serious* injuries for which vessel speed is known. Only one of the five vessels involved was transiting in excess of 10 knots (5.1 m/s) at the time of the collision. In contrast, of the nine documented lethal right whale vessel collisions in U.S. waters since 1990 for which vessel speed is known, eight involved vessels transiting in excess of 10 knots (5.1 m/s).

Since the speed rule first went into effect, NMFS has documented 12 right whale mortality and serious injury events involving vessel collisions in U.S. waters, along with an additional five mortality and serious injury events involving unknown whale species, possibly right whales. These figures likely underestimate the total number of lethal right whale vessel strikes in U.S. waters. Strikes occurring farther offshore and/or involving large ocean-going vessels are likely underreported in the data because most large ships are not able to detect interactions with large whales, and whales that die well offshore are less likely to be detected overall. Based on estimates of total right whale deaths, documented mortalities from all sources represent approximately one-third of actual annual right whale mortality range-wide (Pace *et al.* 2021). Thus, in addition to the observed events, NMFS recognizes that additional lethal vessel strike events likely went undetected in U.S. waters.

A detailed examination of documented right whale vessel strike events in the U.S. further reveals the following:

(1) Vessels less than 65 ft (19.8 m) in length accounted for five of the 12 documented lethal strike events in U.S. waters since 2008, demonstrating the significant risk this unregulated vessel size class can present to right whales.

(2) Vessel strikes continue to occur all along the U.S. coast from the Gulf of Maine to the Florida coast. There is no indication that strike events only occur in ''hot spots'' or limited spatial/seasonal areas.

(3) Strikes occur both inside and outside active SMAs, but in many cases, the location of the strike event remains unknown. Four of the five collision events involving vessels less than 65 ft (19.8 m) in length occurred inside active SMAs, although the vessels involved were not subject to mandatory speed restrictions due to their size.

(4) Of the six lethal vessel strike cases documented in U.S. waters and involving right whales since 1999 where vessel speed is known, only one involved a vessel transiting at under 10 knots (5.1 m/s) (~9 knots (4.6 m/s)), although in most cases, we lack vessel speed data associated with collision events.

(5) Females, calves, and juveniles are disproportionately represented in the vessel strike data. This is concerning given the paucity of reproductively active females remaining in the population and their critical role in stabilizing the population decline.

(6) Non-lethal vessel collisions with right whales continue to occur. NMFS' best estimates indicate that vessel strikes (in U.S. waters or first seen in U.S. waters) have resulted in at least 26 non-serious right whale injuries since 2008, although these data do not account for the possibility of blunt force trauma injuries, which are not usually visibly detectable and make accurate

assessments of strike injuries challenging.

Despite NMFS' best efforts, the current speed rule and other vessel strike mitigation efforts are insufficient to reduce the level of lethal right whale vessel strikes to sustainable levels in U.S. waters. NMFS has determined that additional action is needed to address gaps in current management programs and better tailor mitigation efforts. In evaluating potential changes to the current speed rule NMFS considered up-to-date strike risk modeling, data on right whale strike events, species distribution, and vessel traffic characteristics in right whale habitat, and the extensive and informative comments received in response to the 2020 speed rule assessment.

*Summary of Proposed Changes*

NMFS proposes changes to the existing North Atlantic right whale vessel speed regulations. The proposed measures detailed below seek to reduce the risk of mortality and serious injury from vessel strike events in U.S. waters and include the following:

(1) Changes to the spatial boundaries and timing of mandatory SMAs to better address areas and times where vessel strike risk is high;

(2) Inclusion of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to the speed restriction;

(3) Implementation of a Dynamic Speed Zone (DSZ) framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs; and

(4) Updates to the speed rule's safety deviation provision.

**Modification of Seasonal Speed Zones (Currently Referred to as Seasonal Management Areas)**

Since implementation of the speed rule in 2008, the distribution of right whales has shifted, resulting in a misalignment between areas of high vessel strike risk and current SMA spatial and temporal bounds. Improved data on vessel traffic and right whale distribution/habitat use further highlight this discrepancy and the need to adjust SMA boundaries to better address the risk of collisions. For example, after 2010, right whales began to frequent the region south of Martha's Vineyard and Nantucket, MA, and are now regularly observed in large aggregations foraging in the area (Leiter *et al.* 2017). Prior to this period, that region, while part of right whale habitat, was not identified as an important foraging area. In 2021 alone, 67 voluntary DMAs and Slow Zones were declared (28 of which were off Martha's Vineyard and Nantucket), demonstrating the ongoing spatial and temporal mismatch between whale aggregations and vessel strike protections.

The goal for vessel speed regulation remains unchanged—to reduce the likelihood of right whale serious injuries and mortalities from vessel collisions. To maximize the reduction of vessel strike risk, NMFS developed proposed modifications to the SMAs using a coast-wide vessel strike mortality risk model, North Atlantic right whale visual sighting (NARWC 2021) and acoustic detection (NEFSC 2022) data, recent vessel traffic Automatic Identification System (AIS) data, and information on other relevant planned ocean activities, including offshore wind development.

Additional factors were considered when developing proposed SMA spatial boundaries and timing to optimize effective right whale protection, including minimizing impacts on the regulated community:

(1) NMFS sought to provide robust protection for right whales over a 10 to 15 year time horizon, and design built-in adaptivity to climate change and other factors to ensure that the speed rule remains resilient to shifts in right whale distribution and habitat use over time. This timeframe also provides a stable and predictable long-term regulatory structure for the maritime community.

(2) NMFS aimed to identify the smallest spatial and temporal footprint possible for speed restricted areas to minimize the extent of regulatory action while achieving necessary conservation goals. This assumes a framework will be in place to implement mandatory speed restrictions dynamically to address right whales outside the proposed SMAs (see Mandatory Dynamic Speed Zones).

(3) Changes to speed regulation areas/boundaries focused on reducing vessel traffic operating at speeds in excess of 10 knots (5.1 m/s), since high transit speed is implicated in strike events, and we have the ability to modify this aspect of vessel operation in right whale habitats.

*Description of the Vessel Strike Mortality Risk Model*

NMFS evaluated the risk of right whales being struck and killed by vessels in U.S. waters along the East Coast using an encounter risk model (Garrison *et al.* 2022). This model simulates the likelihood of a fatal vessel strike based on six sources of information: (1) the spatial distribution and density of right whales; (2) the spatial distribution and amount of vessel traffic; (3) the likelihood that a whale and a particular vessel will be in close proximity; (4) the likelihood that a whale will be near the surface during the interaction; (5) the likelihood that a whale will successfully move to avoid the interaction; and (6) the likelihood of mortality if a collision occurs. A similar approach was previously applied to large whales on the U.S. West Coast (Rockwood *et al.* 2017, 2020) and right whales occurring off the coast of Florida (Crum *et al.* 2019).

NMFS modeled the spatial distribution of right whales using a compilation of aerial survey data collected by the agency and many different external research groups. The model and approaches are similar to those described in Roberts *et al.* (2016) and Gowan and Ortega-Ortiz (2014) and reflect the distribution of right whales since 2010 (Roberts *et al.* 2021). Environmental variables were used to predict the monthly changes in right whale distribution between Florida and the Nova Scotian shelf.

NMFS characterized vessel traffic using data collected via satellite and terrestrial based AIS that transmits information on vessel movements, speed, and characteristics for those vessels that carry AIS units. For each spatial cell in the right whale distribution model, NMFS summarized the length of transit, time of transit, and average speed of each vessel from the available AIS data. These data were summarized monthly for 2017–2019. Generally, most vessels greater than or equal to 65 ft (19.8 m) in length are required to carry AIS transceivers. While many vessels less than 65 ft (19.8 m) in length also carry AIS, they are likely to be under-represented in these data, and therefore, the risk of interactions with right whales is under-represented in the model.

NMFS modeled the likelihood of a whale-vessel encounter using the approach described in Martin *et al.* (2015), where the probability of close encounter between a whale and a vessel within a given spatial cell is a function of vessel size, whale swimming speed, and vessel speed. Given a close encounter, the probability that a whale will be near the surface (in the upper 10 m (32.8 ft) of the water column) where it would be susceptible to a vessel strike was estimated based on available data on dive-surface behavior from animal-borne tags from different regions where whales occur (Baumgartner and Mate 2003; McGregor and Elizabeth 2010; Parks *et al.* 2011; Baumgartner *et al.* 2017; Dombroski *et al.* 2021).

It remains unclear how right whales respond to close approaches by vessels (<1509 ft (460 m)) and the extent to which this allows them to avoid being struck. Rockwood *et al.* (2017) and Crum *et al.* (2019) examined different ways of accounting for avoidance behaviors within encounter risk models. Conn and Silber (2013) indicated that encounter rates were higher with fast-moving vessels than expected, which may be consistent with successful avoidance of slower vessels by whales. NMFS' model included a potential avoidance behavior accounting for random effects of the distance at which a whale reacts, the speed the whale swims to escape, and the direction the whale chooses to swim. This approach accounts for the increased likelihood that a whale will escape a slower moving vessel and includes the large amount of uncertainty in whale behavioral response to approaching vessels.

In this framework, if a collision between a whale and a vessel occurs, the likelihood that the collision will be fatal is a function of vessel speed. NMFS applied the model of Conn and Silber (2013) to evaluate this probability. It should be noted that the data in this model are primarily from larger vessels, so it may be less appropriate for some of the small vessels included in the current analysis.

*Application of the Vessel Strike Mortality Risk Model*

We used the mortality risk model (Garrison *et al.* 2022) to evaluate areas and times with the highest risk of vessel strike mortalities for right whales. Areas of highest risk are primarily associated with places where there is both a high density of vessel traffic and high density of right whales. In U.S. waters, these areas correspond generally to the Atlantic East Coast region, particularly between late fall and early spring (November through April). The highest risk areas occurred in the Mid-Atlantic between Cape Hatteras, North Carolina, and New York, and in relatively shallow waters over the continental shelf. High-density vessel traffic areas in approaches to major commercial ports pose the greatest risk of vessel strike mortalities. While vessels less than 65 ft (19.8 m) in length are under-represented in the AIS data, the spatial distribution of the risk of interactions with these vessels were also examined. In general, the risk of interactions with vessels less than 65 ft (19.8 m) in length was higher close to shore. NMFS examined the monthly spatial distribution of vessel strike risk to identify regions and times where slowing vessel traffic to speeds less than 10 knots (5.1 m/s) would have the greatest impact on reducing the overall risk of vessel strike mortalities for right whales.

Once these spatio-temporal areas were identified, NMFS compared them with additional opportunistic and survey-based right whale sightings information, including demographics, acoustic detections of right whale presence, and additional information, where available, on possible future activities that might impact vessel traffic, including proposed and leased wind energy sites and U.S. Coast Guard proposed vessel safety fairways (85 FR 37034, June 19, 2020). It is important to note that the risk model is not informed by right whale sightings prior to 2010, opportunistic sightings, or acoustic detections. Additionally, as discussed above, vessel traffic from boats less than 65 ft (19.8 m) in length are under-represented in the model. Comparing these additional data with areas identified by the risk model informed optimal revised SMA boundaries based on the totality of information available.

NMFS then used the risk model to simulate the maximum overall reduction in risk of lethal right whale strikes that could be achieved with the revised SMA boundaries. The revised boundaries were identified based on evaluation of those areas and times with the greatest chance of reducing lethal strikes to right whales. For the simulation, we artificially set the speed of transits within the revised SMA time-space boundary that had an average speed greater than 10 knots (5.1 m/s) to the 10-knot (5.1 m/s) speed that would be required. We then re-calculated the total risk of vessel strike mortality for this simulated dataset and compared to the status quo, thereby providing an estimate of the lethal strike risk reduction, in time and space, should the SMA boundaries be revised to be the expanded SSZs.

Based on this analysis of the proposed SMA boundaries and the additional risk reduction expected to accrue from the use of mandatory DSZs (see Mandatory Dynamic Speed Zones), NMFS anticipates the proposed revisions would address over 90% percent of the risk reduction that can be achieved by reducing vessel speeds to 10 knots (5.1 m/s), relative to the status quo. While the risk model underestimates the strike risk associated with traffic from vessels greater than 35 ft (10.7 m) to less than 65 ft (19.8 m) in length, given the expected coastal distribution of this traffic based on available data, we anticipate this component of strike risk will be sufficiently accounted for by the revised SMA boundaries/timing.

*Proposed Boundaries and Effective Periods for Seasonal Speed Zones*

NMFS proposes changes to the current boundaries and effective periods of the areas seasonally subject to the 10-knot (5.1 m/s) speed restriction along the U.S. East Coast to better address the ongoing risk of right whale mortality and serious injury from vessel collisions (Figure 1). To more accurately describe them, we will refer to the areas as Seasonal Speed Zones (SSZs) (rather than Seasonal Management Areas or SMAs). The new SSZs include substantial spatial and temporal changes in the Northeast and Mid-Atlantic regions, and more modest changes in the Southeast region. The proposed SSZs with effective dates each year are summarized as follows with geographic coordinates provided in the proposed regulatory text:

(1) Atlantic Zone (November 1–May 30)
(2) Great South Channel Zone (April 1–June 30)
(3) North Carolina Zone (November 1–April 30)
(4) South Carolina Zone (November 1–April 15)
(5) Southeast Zone (November 15–April 15)

NMFS proposes no active SSZs between July and October, and only the Great South Channel Zone would be active during the month of June. This is consistent with data showing fewer right whales present in U.S. waters during this time period. Proposed SSZs were developed with the understanding that DSZs would be used to implement mandatory speed restrictions when appropriate outside of active SSZs. NMFS anticipates that the combination of SSZs and DSZs will provide the spatial and temporal coverage necessary to significantly reduce the risk of lethal strike events attributable to vessel traffic transiting in excess of 10 knots (5.1 m/s).

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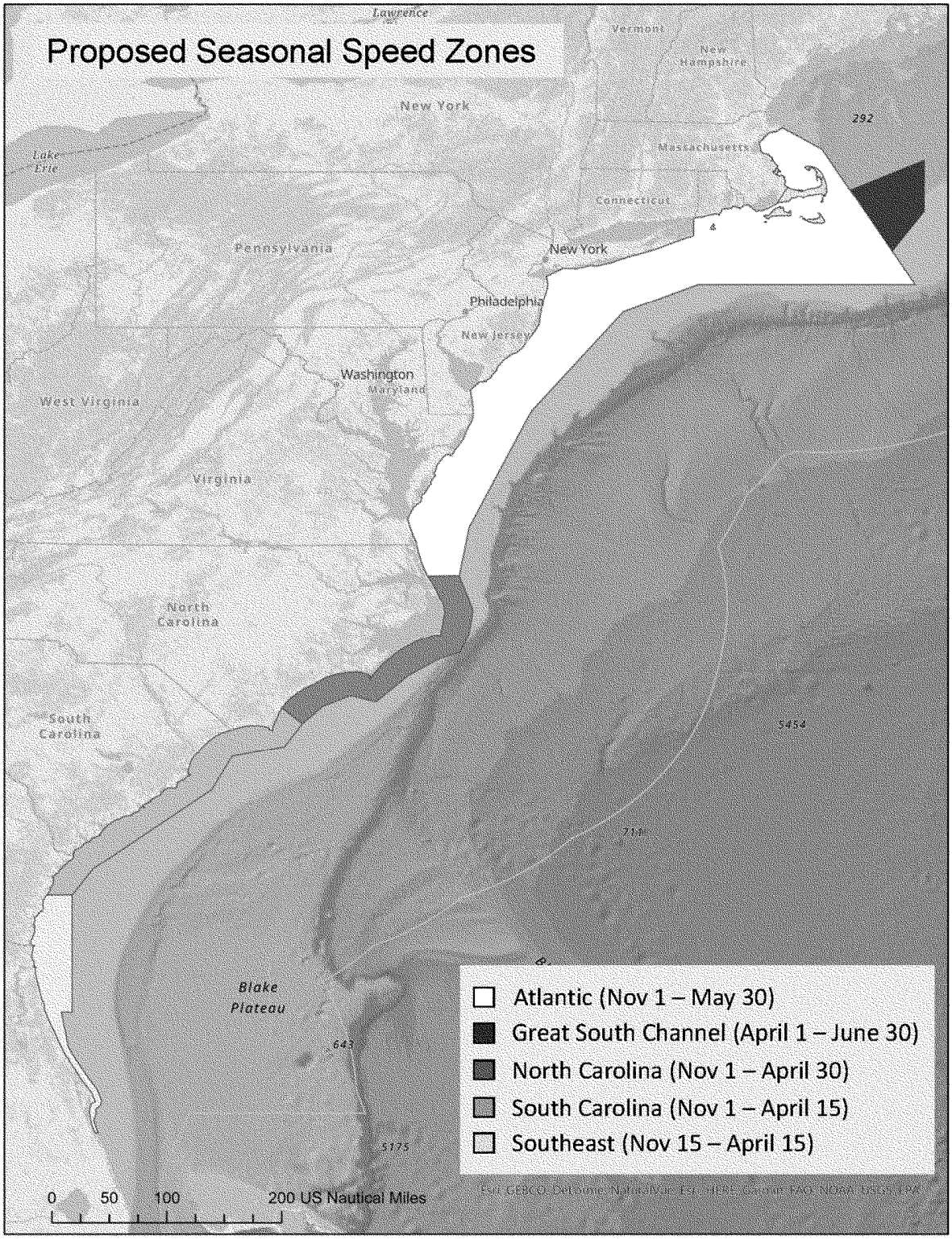


**Figure 1: Proposed Seasonal Speed Zones and Effective Dates Each Year**

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**Regulation of Most Vessels Greater Than or Equal to 35 ft (10.7 m) in Length**

The existing North Atlantic right whale vessel speed rule (50 CFR 224.105) does not address the threat of mortalities and serious injuries from strike events involving vessels less than 65 ft (19.8 m) in length. Recent vessel strike events have highlighted the lethality of collisions involving vessel

sizes not subject to the existing speed rule. Since 2020 alone, four right whale vessel strikes in U.S. waters resulted in mortalities and serious injuries: (1) a calf was seriously injured off Florida/Georgia in January 2020; (2) a calf was killed off New Jersey in June 2020; (3) a calf was killed off Florida in February 2021; and (4) its mother was seriously injured by the same vessel. For three of the four events, the vessels involved in the collisions were known to be between 35 (10.7 m) and 65 ft (19.8 m) in length and traveling in excess of 20 knots (10.3 m/s) at the time.

Since 2005, operators of vessels less than 65 ft (19.8 m) in length have reported eight right whale vessel strikes in U.S. waters. Six resulted in right whale serious injuries or mortalities. The reporting vessels ranged in length from 17–54 ft (5.2–16.5 m), with vessels involved in mortality and serious injury events ranging in size from 42–54 ft (12.8–16.5 m) in overall length. The vessel speeds at the time of the strike events ranged from less than 5 knots (2.6 m/s) to approximately 28 knots (14.4 m/s) (Henry *et al.* 2011, 2021; Wiley *et al.* 2016). Of the eight strike events involving vessels less than 65 ft (19.8 m) since 2005, five (including the recent strikes involving a mother/calf pair) occurred within active SMAs where most vessels 65 ft (19.8 m) and over are required to travel at 10 knots (5.1 m/s) or less.

In seven of the eight events involving vessels less than 65 ft (19.8 m) in length, mariners reported no sighting of the whales prior to impact with the vessel. Vessel strikes can occur even when circumstances are seemingly optimal for avoidance as illustrated by two right whale vessel strikes involving research vessels less than 65 ft (19.8 m) in length with trained observers aboard that occurred in Cape Cod Bay during daylight hours (Wiley *et al.* 2016). These events demonstrate that mariner experience and vigilance alone can be insufficient to protect against vessel collisions.

Furthermore, since 2009, operators of vessels less than 65 ft (19.8 m) in length have reported an additional six vessel collisions (including five serious injuries) with undetermined large whale species in U.S. waters that may have involved right whales based on the location and timing of the events (Henry *et al.* 2017). Documented vessel strike deaths of Southern right whales (*Eubalaena australis*) off Australia and South Africa involving a 34-ft (10.4-m) vessel and 44-ft (13.4-m) vessel respectively, further demonstrate the lethal risk vessels less than 65 ft (19.8 m) in length can pose to right whale species more broadly (Peel *et al.* 2016; Vermeulen *et al.* 2021).

Other jurisdictions have instituted speed restrictions for vessels less than 65 ft (19.8 m) in length to mitigate vessel strike risk for North Atlantic right whales. Following a series of right whale vessel strike events, Canada expanded the length of vessels covered by dynamic mandatory 10-knot (5.1 m/s) speed restrictions in the Gulf of St. Lawrence in 2019 to include vessels 13 m (42.7 ft) or greater in length. Also in 2019, the state of Massachusetts introduced regulations restricting the speed of most vessels less than 65 ft (19.8 m) in length to 10 knots (5.1 m/s) or less when transiting through waters within, and to the north of, Cape Cod Bay during the months of March and April each year to provide protection for foraging right whales following vessel strike events in the Bay (322 CMR 12.05). Massachusetts has received no reports of strikes involving vessels less than 65 ft (19.8 m) in length, nor reports of safety concerns from mariners in this area since implementation of the regulation. The State has extended these vessel speed restrictions into the month of May during years when right whales remained in the Bay.

Collisions with vessels less than 65 ft (19.8 m) in length pose a danger to both the whale and vessel occupants. There are numerous cases from around the world of vessels sustaining significant damage, and even sinking, following collisions with whales (Ritter 2012; Peel *et al.* 2018). For example, two vessel-whale collisions that occurred in March 2009 and February 2021 resulted in vessel damage significant enough to require passenger rescue by the U.S. Coast Guard. Sailing vessels can be at particular risk of substantial damage due to their deliberately light construction (Ritter 2012) even though most transit at speeds at or under 10 knots (5.1 m/s). Moreover, collisions with vessels less than 65 ft (19.8 m) in length with whales have resulted in injuries to vessel occupants (NMFS unpublished data).

For the reasons detailed above, NMFS proposes to expand the size class of vessels currently subject to speed restrictions to include most vessels greater than or equal to 35 ft (10.7 m) to less than 65 ft (19.8 m) in overall length. Most vessels within this size class are not subject to U.S. Coast Guard AIS carriage requirements, but based on limited available AIS data and U.S. Coast Guard vessel registration data (USCG 2021), this change may affect up to 8,500–10,000 vessels (albeit to varying degrees). Best estimates indicate that approximately 80 percent of these vessels are larger recreational boats, with commercial fishing (7 percent) and passenger vessels (6 percent) the next most common types. The remaining vessel types include work boats, pilot boats, tug and tow vessels, and other commercial vessels. The total number of affected vessels is likely substantially overestimated, particularly for recreational boats, since available data lack detail about where, when, and how frequently a boat operates within areas subject to speed regulation.

**Mandatory Dynamic Speed Zones**

Though NMFS' 2006 proposed speed rule included the concept of mandatory DMA speed restrictions that fall outside active SMAs (71 FR 36299, June 26, 2006), the 2008 final speed rule did not. Instead, the agency announced it would implement a voluntary DMA program creating short-term ''dynamic'' areas within which NMFS sought voluntary compliance with restricted speeds based on sightings of right whale aggregations. In 2020, NMFS modified the DMA program to include acoustically triggered Right Whale Slow Zones in the NMFS Greater Atlantic Region (Maine to Virginia), given the increasing availability of near-real time acoustic detectors able to accurately identify right whale presence. If followed, dynamic speed reduction areas provide vessel strike risk reduction to aggregations of right whales or areas with persistent right whale presence outside active SMAs in near-real time. The program was intended to provide protection for right whales in areas/times not covered by SMAs. As discussed above, shifts in right whale distribution and habitat use since the current SMAs were established in 2008 have resulted in a substantial number of DMA and Slow Zone declarations.

NMFS 2008 speed rule stated the agency would ''monitor voluntary compliance'' and if cooperation was not satisfactory would ''consider making them mandatory, through a subsequent rulemaking'' (73 FR 60173, October 10, 2008). Despite NMFS' best efforts to reach out to vessel operators about dynamic speed reduction areas and educate the maritime community about the need for right whale vessel strike mitigation, NMFS' speed rule assessment determined that vessel cooperation levels are low, and therefore, the reduction in risk provided by the voluntary DMAs is minimal (NMFS 2020).

As discussed above, the proposed SSZs boundaries/timing are designed to address most vessel strike risk attributable to vessels transiting in excess of 10 knots (5.1 m/s). Based on

an evaluation of recent voluntary DMAs and acoustically triggered Slow Zones, 54 of the 67 DMAs/Slow Zones triggered during 2021 (80.6 percent) would fall within the proposed SSZs. In other words, only 13 (19.4 percent) of 2021 DMAs/Slow Zones would have been triggered if the proposed SSZ boundaries were in effect. This indicates that the existing misalignment between the current SMA boundaries and elevated risk areas is substantially, but not wholly, captured by the proposed SSZs. Thus, even after adjusting the geographic boundaries and timing of the static SSZs to more accurately reflect the best available data on right whales and vessel strike risk, there is still a role for dynamic speed restrictions to protect other areas where right whales occur less predictably.

In examining the totality of information available to inform changes to the location and timing of SSZ boundaries, it became clear that for some areas and seasons, static speed management may not be sufficient as a sole strategy to reduce vessel strike risk. This is primarily the case in areas where right whale presence is less predictable or more ephemeral and/or where elevated strike risk is more moderate.

Static speed restrictions best serve areas with reliable right whale presence and elevated strike risk. For example, right whales reliably occur within the South Atlantic Bight calving ground each and every season (November through April). The total number of individuals present will vary from year to year (Krzystan *et al.* 2018), but this calving, and likely mating, habitat is an essential area for right whale reproduction and is designated (81 FR 4837, January 27, 2016) as critical habitat under the ESA. The consistency of right whale presence (especially vulnerable mothers/calf pairs) combined with high levels of vessel traffic along the Southeast coast are the primary reasons vessel strike risk in this region is best managed via a static SSZ.

In other times/areas, however, right whale presence may be less predictable and/or elevated vessel strike risk more moderate. For example, during late fall and winter, right whales have been documented over many years in the central Gulf of Maine, frequently engaged in foraging. Right whales have been visually or acoustically detected in this area during most, but not every fall/winter season, and vessel strike risk is lower in this area, relative to other parts of the U.S. East Coast, due to lower levels of vessel traffic transiting at high speeds. Vessel strike risk modeling indicates a benefit to right whales from vessel speed restriction in this area but to a lesser degree than other places/times. With adequate seasonal monitoring for right whale presence, a dynamic area speed restriction is ideally positioned to provide vessel strike protection in this area when and where it will be most beneficial to right whale conservation.

To address elevated vessel strike risk in areas outside SSZs, NMFS is proposing to implement a mandatory DSZ framework to replace the current voluntary DMA/Slow Zone program. Under this proposed framework protocol, as described below, a mandatory DSZ would be created for an area outside an active SSZ, within U.S. waters from Maine to Florida, based on (1) a confirmed visual sighting of a right whale aggregation (three or more whales in close proximity) or a confirmed right whale acoustic detection (since it is not possible to quantify the number of individual whales present) and (2) NMFS determination that the area to be designated as a DSZ has a greater than 50 percent likelihood of right whale presence during a minimum effective period of 10 days (periods shorter than this may present practical challenges for implementation).

Existing protocols for the current voluntary DMA/Slow Zone program are proposed as a minimum trigger threshold to inform a new DSZ. Under these protocols, NMFS establishes voluntary 15-day DMAs when three or more right whales are sighted within close proximity. Depending on the size and geographic spread of the right whale aggregation, the spatial extent of the DMA is determined based on a local density method as outlined in Clapham and Pace (2001), with most zones approximately 400 square nautical miles (sq nm; 1,372 sq kilometers (sq km)). NMFS declares voluntary Slow Zones in the NMFS Greater Atlantic Region when a right whale acoustic detection is confirmed. Acoustically triggered Slow Zones extend approximately 20 nm from the detection source and remain effective for 15 days. DMAs/Slow Zones may be extended if additional sightings or acoustic detections meeting the thresholds above are detected within the latter half of the 15 day effective period. Once the initial detection trigger has been met, NMFS would then determine whether the potential DSZ has a greater than 50 percent likelihood that right whales would continue to be present within the zone (not to exceed 2,500 sq nm (8,575 sq km) commensurate with the size of the aggregation for visual detections or 400 sq nm (1,372 sq km) for acoustic detections). As with the current voluntary DMA/Slow Zone program, DSZs may be extended if additional sightings or acoustic detections meeting the minimum thresholds occur within the effective period.

Drawing upon the agency's long-time expertise implementing voluntary dynamic areas over the last 13 years, NMFS' process for determining and implementing DSZs would follow an objective, rigorous and replicable protocol, informed by inputs such as the number of right whales detected, the dispersion of the aggregation, and whale behavior (if known). Furthermore, NMFS would provide details of the DSZ determination when providing public notice of a DSZ designation. Ensuring that DSZs meet a minimum trigger threshold and a greater than 50 percent likelihood of continued right whale presence standard would provide confidence that these zones will effectively achieve the goal of providing targeted protection to right whales (in areas not protected by static zones) from elevated vessel strike risk while avoiding unnecessary regulation of vessel speed.

The boundaries and timing of temporary DSZs for right whales are by their very nature uncertain until the conditions that trigger one are present. Once those conditions are determined to be in place, however, the need for those DSZs to be effective to protect right whales is immediate. Implementing DSZs through publication of **Federal Register** notices does not allow for timely implementation of a DSZ and could result in unnecessary avoidable risk of both vessel strikes of right whales and potentially mariner safety. The time normally required to file and publish a DSZ's boundaries and effective period in the **Federal Register** would delay implementation and diminish the value and effectiveness. Thus, this proposed rule allows NMFS to implement timely DSZs without prior publication in the **Federal Register** as follows.

When NMFS determines that the criteria for establishing a DSZ, or DSZ extension, have been met, NMFS will announce notice of the DSZ or DSZ extension through publication on the agency's website, via U.S. Coast Guard Notices to Mariners, NOAA Weather Radio announcements, and through other practicable appropriate means, as well as by Notice in the **Federal Register** as soon as practicable. NMFS requests public comment on other effective means for notifying the public, including social media, smartphone apps, email notifications and text alerts to which mariners, harbormasters, port officials, pilots, and the public can subscribe. As stated earlier, the proposed SSZs will accrue a net

expansion of vessel strike risk coverage compared to the areas in the current speed regulation, including many areas/times where voluntary DMAs and Slow Zones have been common. NMFS anticipates that under the proposed DSZs framework, the prevalence of these zones will be less frequent, given the more rigorous coverage provided by the proposed SSZ boundaries. Additionally, since 2008, nearly all voluntary DMAs and Slow Zones were triggered on the continental shelf, with 93 percent occurring in the NMFS Greater Atlantic Region (Maine to Virginia). Accordingly, NMFS anticipates that proposed DSZs would continue to be most common north of North Carolina and within coastal and shelf waters.

NMFS requests public comment on the proposed DSZ framework for the proposed mandatory DSZ program. NMFS particularly invites comment on: (1) the geographic areas that should be subject to mandatory DSZs; (2) the appropriate design of trigger thresholds using confirmed right whale acoustic and/or visual detections as well as the appropriate methodology for determining spatial extent as it relates to the greater than 50 percent likelihood standard for presence; and (3) the forms of notice mariners would find most practicable for receiving timely declarations of new DSZs.

The use of dynamic strategies to manage vessel speed for right whale protection is already customary, and employed in U.S. waters. The State of Massachusetts dynamically extends the effective period of its small vessel speed restrictions in Cape Cod Bay if the continued presence of right whales is detected in the Bay, as the State did in 2021 (Massachusetts Division of Marine Fisheries 2021). NMFS' long-time (since 1997) approach regulations also require mariners to modify their vessel operations (including speed and/or direction of travel) in real-time if they encounter right whales while transiting. Mariners must remain 500 yards (457.2 m) away from right whales unless compliance would create a serious threat to vessel safety. This strategy is also used in Canadian waters. Since 2018, Canada has implemented a seasonal system of mandatory dynamic right whale speed restrictions within the Gulf of St Lawrence shipping lanes and during the summer, creates a dynamic Restricted Area to further protect foraging aggregations, as needed, based on right whale detections, and announced through Transport Canada Ship Safety Bulletins (Transport Canada 2021a, 2021b).

Year-round visual and acoustic monitoring of right whale habitat outside proposed active SSZs will be essential to the effectiveness of the proposed mandatory DSZs. NMFS' coast-wide vessel strike mortality risk model indicates where and when elevated strike risk is present, and can serve as a resource for identifying monitoring needs (Garrison *et al.* 2022). In 2019, NMFS convened an expert working group to provide recommendations to enhance right whale monitoring along the U.S. East Coast. The effort culminated in a detailed report that included recommendations for monitoring right whale distribution (Oleson *et al.* 2020). NMFS continues to review recommendations from the monitoring report and is taking monitoring needs for proposed mandatory DSZs into consideration as it works with external partners to optimize right whale monitoring efforts.

**Updates to Safety Deviation Provisions**

NMFS established a safety deviation provision within the 2008 speed rule (50 CFR 224.105) to accommodate situations where transit at speeds of 10 knots (5.1 m/s) or less during severe conditions would threaten human or navigational safety. Following a review of vessel transit data and compliance information as part of the speed rule assessment (NMFS 2020), NMFS investigated options to better understand the extent of safety impacts from the speed rule and to monitor use of the safety deviation provision. Current regulations lack a mechanism by which the agency can efficiently identify which vessels are employing the safety deviation and when and where use of the safety deviation may be common. Existing information collection protocols lack sufficient detail to determine the circumstances surrounding a deviation and to assess situations where a vessel may lack reasonable grounds to employ the safety deviation. NMFS further recognizes that the current safety deviation language lacks recognition of emergency situations that do not involve a maneuverability issue, when a vessel may have immediate cause to exceed the 10-knot (5.1 m/s) speed restriction due to a medical or other emergency involving the health or life of a vessel passenger.

The proposed inclusion of vessels less than 65 ft (19.8 m) in length within the vessel size class subject to speed regulation presents a new safety issue unique to smaller and lighter boats. During severe weather conditions, vessels less than 65 ft (19.8 m) in length may face maneuverability and associated safety issues. While some vessel operators can easily avoid such conditions, others may need to be out on the water during severe weather events to provide essential maritime services, or as a part of other work obligations.

To address the issues stated above, NMFS proposes to retain the current safety deviation provision with several changes:

(1) Expansion of the safety deviation provision to include emergency situations that present a threat to the health, safety, or life of a person;

(2) Inclusion of a new provision, applicable only to vessels less than 65 ft (19.8 m) in length, which allows such vessels to transit at speeds greater than 10 knots (5.1 m/s) within areas where a National Weather Service Gale Warning, or other National Weather Service Warning (*e.g.,* Storm Warning, Hurricane Warning) for wind speeds exceeding those that trigger a Gale Warning is in effect. No reporting of these speed deviations would be required; and

(3) Modification of the safety deviation reporting protocols to eliminate the vessel logbook entry requirement in favor of a new requirement for vessels to submit an online report to NMFS within 48 hours of employing a safety deviation detailing the circumstances and need for the deviation.

The proposed regulations would require a vessel operator to submit, via a NMFS website, the same information currently contained in the logbook entry along with new information relevant to the deviation event, including:

(1) Vessel name, length overall, draft (at the time of the deviation) and where applicable, the vessel IMO number and Maritime Mobile Service Identity (MMSI) number;

(2) Reason for the deviation: (a) maneuverability constraints, or (b) emergency;

(3) Date, time, latitude, and longitude where deviation began;

(4) Date, time, latitude, and longitude where deviation ended;

(5) Speed or average speed at which the vessel transited during the deviation;

(6) Wind speed and direction at the time of the deviation;

(7) Information on water current speed and direction at the time of the deviation, including measurements from the vessel acoustic doppler current profiler (ADCP), if the vessel is equipment with this device;

(8) If the vessel was operating within a restricted/dredged channel, indicate

whether one-way or two-way vessel traffic was present within the channel at the time the deviation was employed;

(9) The vessel master, and, if the vessel was under pilotage, the pilot, must attest to the accuracy of the information contained within the Report. If the vessel was under pilotage, indicate the name of the harbor pilot;

(10) Opportunity to briefly provide additional narrative (300 word limit), if desired, to explain the circumstances of a safety deviation.

NMFS specifically invites comment on the proposed reporting requirements, including comments on whether a web-based reporting mechanism is practicable for mariners, who should be responsible for completing and attesting to reports (for example, whether pilots should be responsible for completing and attesting to reports when a vessel is under pilotage), and on requiring more robust logbook recordkeeping in lieu of the new reporting requirements proposed herein.

NMFS recognizes that under certain conditions, vessel maneuverability and/or navigational safety may be hampered by transiting at reduced speeds, especially within port entrance areas. NMFS' current and proposed speed regulations acknowledge this through the safety deviation provision that is available when vessel maneuverability is compromised by the speed restriction. Given the totality of changes proposed herein, particularly the expanded size class of vessels subject to regulation, most pilot vessels operating within port entrance areas will likely be newly subject to speed regulation. NMFS solicits comments on options for alternative speed reduction programs specifically within port entrance areas that best maintain navigational safety while providing comparable vessel strike protections to right whales. Alternative programs would be conducted and resourced by external partners, include comprehensive monitoring of right whale presence, and provide a level of vessel strike risk reduction equivalent to that achieved through the measures described in this rule.

**Additional Enforcement Clarifications**

NMFS is also clarifying that the prohibitions set forth in Section 9(g) of the ESA would apply to the speed restrictions and reporting requirements set forth in this rule. Additionally, consistent with Section 10(g) of the ESA, NMFS clarifies that any person claiming the benefit of an exception to this rule has the burden of proving that the exception applies. Sections 9(g) and 10(g) of the ESA would apply irrespective of these changes. However, NMFS believes it is appropriate to provide additional notice to the public of how these provisions would apply under the proposed rule. This clarification would also provide consistency with other rules designed to protect North Atlantic right whales. With limited exception, regulations at 50 CFR 224.103(c) currently provide that it is unlawful ''to commit, attempt to commit, to solicit another to commit, or cause to be committed'' an approach within 500 yard of a North Atlantic right whale. The approach regulation also makes clear that a person claiming the applicability of an exception has the burden of proving that the exception applies.

**Vessel Exemptions**

The proposed rule includes one change to the exemptions for certain vessels at 50 CFR 224.105(a). Currently the speed regulations exempt vessels that are owned or operated by, or under contract to, the Federal Government, and that exemption extends to foreign sovereign vessels when they are engaging in joint exercises with the U.S. Department of the Navy. This proposed rule would extend the exemption to foreign sovereign vessels engaging in joint exercises with the U.S. Coast Guard. All other exemptions remain unchanged. As stated earlier, an exemption from the speed regulations does not affect a federal agency's consultation requirement under section 7 of the ESA, and reduced speeds may be recommended or specified as part of a section 7 consultation to reduce the threat of vessels collisions with right whales. Federal action agencies should continue to monitor their actions to determine if reinitiation of a consultation is warranted based on triggers specified at 50 CFR 402.16. This proposed action, however, does not provide a basis for reinitiation.

**Stakeholder Considerations**

NMFS designed the proposed changes to provide necessary enhanced protection for endangered right whales while minimizing impacts on human use of ocean resources for commerce and recreation. NMFS recognizes that vessels regularly operating at speeds in excess of 10 knots within areas/times designated for speed restriction in this proposed rule will likely experience delayed transit times within these areas, although there will be no restrictions on when or where a vessel may transit.

In addition to considering public comments from stakeholders regarding impacts of the proposed rule, NMFS will continue to work with key federal partners, including the U.S. Coast Guard, Bureau of Ocean Energy Management, U.S. Army Corps of Engineers, and Marine Mammal Commission, to ensure mariner safety and address stakeholder concerns regarding the proposed changes. For example, NMFS is aware of the nascent offshore wind energy industry and the substantial overlap of likely future wind energy development with the proposed Seasonal Speed Zones, possible Dynamic Speed Zones, and right whale habitat generally. The proposed changes would provide a stable regulatory landscape for companies as they plan future vessel-based operations for offshore energy construction and long-term management, while providing necessary protection for right whales throughout the U.S. portions of their habitat.

NMFS anticipates the proposed rule will impact a larger number of recreational boaters and anglers than the current rule, due mostly to the inclusion of vessels equal to or greater than 35 ft in length. Recreational fishing is widely enjoyed and generates billions of dollars in overall economic contribution along the U.S. East Coast (Lovell *et al.* 2020). To better understand the impacts of the proposed rule on recreational angling, NMFS invites public comment on the degree to which the mandatory speed limit (for most vessels equal to or greater than 35 ft in length) may impact recreational angling within the active proposed Seasonal Speed Zones and Dynamic Speed Zones. NMFS anticipates that the seasonal nature of most speed restrictions will minimize the impacts of the proposed rule on recreational activities. In the Southeast and Mid-Atlantic, the proposed restrictions will be in effect during seasons with less recreational angler activity. In the greater New England area, most seasonal speed restrictions occur during periods of colder weather, when recreational activity is low, although this region is most likely to see Dynamic Speed Zones triggered during seasons of higher recreational activity based on right whale distribution data.

**Other Considerations**

In addition to the proposed vessel speed measures herein, NMFS plans to continue an ongoing review of vessel routing measures to examine the effectiveness of such measures and investigate opportunities to further reduce the spatial and temporal overlap of vessels and right whales through routing measures, if warranted. Effective outreach to the mariner community remains an important means of ensuring speed regulations are understood and

adhered to by the regulated community. NMFS is engaged in ongoing research to identify effective means to communicate with this community.

NMFS also recognizes the role whale avoidance technologies may one day play in preventing vessel collisions, and remains open to the future application of these technologies, if proven safe and effective. The use of onboard marine mammal observers is another strategy employed to reduce vessel strike events. For some activities and vessel types, the addition of marine mammal observers can provide an added mechanism to prevent vessel strikes in conjunction with other conservation measures; however, documented right whale vessel strikes involving vessels with trained observers demonstrate the inconsistency of this tool.

While the proposed rule is designed to address lethal right whale vessel strike risk, NMFS anticipates ancillary benefits, including reduced vessel strike risk, will accrue to other marine species. Endangered and protected cetaceans, pinnipeds, sea turtles, and certain fish species inhabit the regions/seasons covered by the proposed action. Vessel strikes are an ongoing threat to all large whale species and are contributing to two ongoing Unusual Mortality Events involving minke (*Balaenoptera acutorostrata*) and humpback whales (*Megaptera novaeangliae*). Researchers have found that the majority of large whale vessel strike mortalities involve vessels transiting at speeds greater than 10 knots (Laist et *al.* 2001; Jensen and Silber 2004; Vanderlaan and Taggart 2007; Conn and Silber 2013). NMFS expects both the spatial and temporal expansion of SSZs and inclusion of vessels equal to or greater than 35 ft in length will provide additional beneficial vessel strike risk reduction to other large whale species.

Numerous studies have linked reduced vessel transit speeds with a reduction in ocean noise (McKenna *et al.* 2012, 2013; Leaper *et al.* 2014; Gassmann *et al.* 2017; MacGillivray *et al.* 2019; Duarte *et al.* 2021). The proposed rule is expected to reduce radiated underwater ocean noise particularly in areas where substantial numbers of vessels would slow their speeds to 10 knots (5.1 m/s) or less. This change in speed would subsequently reduce noise disturbances, such as sound masking, for marine species occurring in overlapping areas/seasons. Additionally, for certain vessel types, the proposed rule is expected to result in reduced fuel use, and thus emissions, by slowing more vessels over a larger net spatial and temporal area compared to current conditions. NMFS anticipates these reductions would contribute to enhanced air quality, and support lower fossil fuel emissions, a priority for climate change mitigation, benefiting both human health and marine species.

As with the current speed regulation, NMFS recognizes that vessel compliance and effective enforcement is critical to the effectiveness of the proposed rule. Overall vessel compliance with the current speed rule is monitored based on protocols and procedures outlined in the 2020 vessel speed rule assessment (NMFS 2020). NMFS uses the distance weighted average vessel speed to identify sections of transits that exceed 10 knots and considers the total distance at or under 10 knots as the best metric of apparent compliance. NMFS has seen increasing levels of vessel compliance over time since the speed rule first went into effect in 2008.

NOAA has already taken steps to address ongoing enforcement challenges and prepare for new challenges resulting from the inclusion of vessels equal to or greater than 35 ft in length. Specifically, the Office of Law Enforcement has upgraded capabilities for tracking vessel speed at sea, initiated research of new vessel tracking technologies, and started investigating land-based and aerial monitoring options. NMFS has also commenced staff level discussions with the U.S. Coast Guard regarding possible modification of current AIS carriage requirements to include additional vessel types and sizes. Furthermore, as discussed above, NMFS is proposing changes to the speed rule specifically designed to enhance monitoring and enforcement.

The inclusion of vessels equal to or greater than 35 ft in length under the proposed rule will involve some increased enforcement costs since many vessels in this size class are not equipped with AIS and cannot be monitored in the same way as AIS-equipped vessels. Moving forward, NOAA believes a diversified enforcement approach is needed. This would involve expanding at-sea operations in appropriate locations, using additional technologies to monitor vessel speed, providing compliance assistance to the regulated community, including outreach, and bringing enforcement cases in appropriate circumstances.

These enhancements to NOAA's enforcement efforts are not expected to substantially raise costs. NOAA intends to efficiently and effectively enforce the proposed rule building upon ongoing at-sea enforcement efforts, and we anticipate receiving continued assistance from enforcement partners such as the U.S. Coast Guard and State law enforcement agencies. The increase in potentially affected vessels under the proposed rule is not necessarily commensurate with an increase in enforcement costs. While more vessels may be subject to speed regulation under the proposed rule, enforcement will focus on those vessels posing the greatest risk to right whales. Proposed changes to the safety deviation reporting protocols should also streamline enforcement.

NOAA brings civil administrative enforcement cases to achieve both specific and general deterrence. Violations of the current speed rule can result in significant monetary penalties, which serve as a deterrent to other potential violators. Outreach can also be an effective tool to improve compliance. This year, NOAA sent approximately 400 letters to vessels suspected of violating the speed limit to encourage compliance. NOAA is committed to continuing and expanding outreach efforts under the proposed rule.

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## Classification

NMFS is proposing this rule pursuant to its rulemaking authority under MMPA section 112(a) (16 U.S.C. 1382(a)), and ESA section 11(f) (16 U.S.C. 1540(f)).

A Draft Environmental Assessment for this proposed action was prepared and is available at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

An informal consultation under ESA section 7 is currently underway for this proposed action. Consultation will be completed before a final rule is issued.

This proposed rule has been determined to be significant under E.O. 12866 and NMFS has prepared a draft Regulatory Impact Review (RIR). NMFS estimates that approximately 15,899 vessels would be affected by the proposed revisions to the current speed rule at an estimated cost of just over $46 million per year. Affected vessels include those that are: (1) subject to speed regulation and (2) documented or estimated to transit in excess of 10 knots (5.1 m/s) within the proposed SSZs and potential DSZs. Of the 15,899 vessels identified, 9,220 (59 percent) are recreational/pleasure boats, 3,575 (22 percent) are ocean-going commercial ships, and 3,124 (19 percent) are commercial, industrial and other vessel types, although the number of affected vessels less than 65 ft (19.8 m) is likely overestimated. The largest proportion of the overall estimated cost of the proposed changes is borne by ocean-going commercial ships (35 percent) followed by passenger vessels (26 percent) and industrial work vessels (18 percent). NMFS invites public comment on potential economic, operational or safety impacts from the proposed changes.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. We anticipate a total of 2,524 small entities (individual vessels) would be affected by the proposed rule with an estimated annual cost, as a percentage of revenue, ranging from 0.06% to 2.09%, depending on the vessel type, with passenger and pilot vessels most impacted. Commercial fishing and passenger vessel entities make up a combined 60% of the total small entities affected by the rule, although as a proportion of revenue the cost of this impact is substantially lower for commercial fishing vessels. A full description of the proposed action, and the legal basis and objectives of the action, are discussed above and are not repeated here.

The proposed action includes no day-to-day reporting requirements. A vessel operator only needs to submit a brief electronic report to NMFS if they use the safety deviation provision due to limited maneuverability affecting vessel safety or an emergency. Since these safety/emergency situations are expected to be rare, the impact on small entities should be minimal. No special professional skills are needed to submit the report other than knowledge of the vessel and the conditions relevant to the safety deviation.

NMFS considered a number of alternatives in its Draft RIR and Draft Environmental Assessment but did not identify any significant alternatives which would accomplish the stated objective of this proposed rule. Alternatives considered included:

(1) Alternative 1 (No Action Alternative) would maintain the status quo. No action would be taken and vessel traffic along the U.S. East Coast would continue as is under 50 CFR 224.105.

(2) Alternative 2 would restrict the speed of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length to 10 knots (5.1 m/s) or less within existing SMAs.

(3) Alternative 3 would modify the spatial and temporal boundaries of the existing SMAs to create newly proposed SSZs. The size class of vessels subject to speed regulation would remain unchanged.

(4) Alternative 4 would restrict the speed of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length to 10 knots (5.1 m/s) or less within existing SMAs, and establish a mandatory DSZ program.

(5) Alternative 5 (Preferred Alternative) would modify the spatial and temporal boundaries of the existing SMAs to create newly proposed SSZs, add vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length to the vessel size class subject to speed regulation, and establish a mandatory DSZ program.

The changes proposed in this action are designed to significantly reduce the risk of lethal vessel strike events involving right whales in support of broader efforts to stabilize the rapid, unsustainable decline in population. Maintaining the status quo (Alternative 1) would not result in any additional reduction in strike risk. Alternative 2 would address strike risk from most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length but fails to fix the spatial and temporal misalignment of current SMAs, leaving right whales vulnerable to vessel collision in many areas. Alternative 4 partially addresses this issue by further extending mandatory protections through the DSZ framework, but given the broad spatial/temporal extent of the areas NMFS has identified as high risk outside the current SMAs, the use of a dynamic framework would be inadequate to mitigate the constant strike risk in certain areas/seasons, and would create a cumbersome and less predictable regulatory environment. Alternative 3 successfully addresses much of the spatial and temporal misalignment of current SMAs but fails to address the risk from vessels less than 65 ft (19.8 m) in length, which account for at least 42% of documented lethal strike events in U.S. waters since the speed rule was implemented in 2008. Only Alternative 5, (the action proposed herein) provides a high likelihood (>90%) of substantial reduction in lethal strike events involving most vessels greater than or equal to 35 ft (10.7 m) transiting at speeds greater than 10 knots (5.1 m/s), assuming full compliance with the proposed rule.

The proposed action is not expected to have a disproportionately high effect on minority populations or low-income populations under E.O. 12898.

The proposed action does not contain policies with federalism implications under E.O. 13132.

This proposed action contains a revision to the existing collection-of-information authorization (OMB Control number 0648–0580) for this rule under the Paperwork Reduction Act (PRA). The appropriate PRA documents will be submitted following publication of the proposed rule.

**List of Subjects in 50 CFR 224**

Administrative practice and procedure, Boats and boating safety, Endangered and threatened species, Marine mammals, Transportation, Vessels, Whales.

Dated: July 25, 2022,

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 50 CFR part 224 as follows:

## PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 2. Revise § 224.105 to read as follows:

**§ 224.105 Speed restrictions to protect North Atlantic Right Whales.**

(a) The following restrictions apply to: All vessels greater than or equal to 35 ft (10.7 m) in overall length and subject to the jurisdiction of the United States (U.S.), and all other vessels greater than or equal to 35 ft (10.7 m) in overall length entering or departing a port or place subject to the jurisdiction of the U.S. These restrictions shall not apply to U.S. vessels owned or operated by, or under contract to, the Federal Government. This exemption extends to foreign sovereign vessels when they are engaging in joint exercises with the U.S. Department of the Navy or the U.S. Coast Guard. In addition, these restrictions do not apply to law enforcement vessels of a State, or political subdivision thereof, when engaged in law enforcement or search and rescue duties. Vessels subject to the jurisdiction of the U.S. or entering or departing a port or place subject to the jurisdiction of the U.S. shall travel at a speed of 10 knots (5.1 m/s) or less over ground within Seasonal Speed Zones (SSZs) described in paragraphs (a)(1) through (5) of this section and Dynamic Speed Zones (DSZs) established under paragraph (a)(6) of this section:

(1) Atlantic Zone (north of Kill Devil Hills, NC, to north of Gloucester, MA): During the period of November 1 to May 30 each year, includes marine waters beginning at the charted mean high water line within the area bounded by straight lines connecting the following points in the table in the order stated from north to south;

TABLE 1 TO PARAGRAPH (A)(1)

| Latitude | Longitude |
|---|---|
| 42°38′23″ N | 070°34′21″ W. |
| 42°20′10″ N | 069°59′30″ W. |
| 40°21′0″ N | 068°38′54″ W. |
| 40°21′0″ N | 071°51′21″ W. |
| 39°56′53″ N | 072°52′28″ W. |
| 38°30′46″ N | 074°12′12″ W. |
| 36°50′21″ N | 075°6′15″ W. |
| 36°6′00″ N | 075°15′00″ W. |
| 36°6′00″ N | at shoreline. |

thence bounded on the west by the shoreline and the Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) Demarcation Lines, from 36°6′00″ N north to 40°21′0″ N; thence bounded by the following point 41°04′16″ N, 71°51′21″ W; thence to the shoreline at 71°51′21″ W; thence bounded on the north by the shoreline and the COLREGS Demarcation Lines to 70°39′23″ W, 41°30′54″ N; thence bounded by the shoreline to 70°52′54″ W, 42°18′37″ N; thence bounded by the

following point 70°54′3″W, 42°25′14″N; thence bounded by the shoreline and the COLREGS Demarcation Lines back to the starting point.

(2) Great South Channel Zone (east of Cape Cod, MA): During the period of April 1 to June 30 each year, in all waters bounded by straight lines connecting the following points in Table 2 in the order stated.

TABLE 2 TO PARAGRAPH (A)(2)

| Latitude | Longitude |
|---|---|
| 41°44′08″ N | 069°34′50″ W. |
| 42°10′00″ N | 068°31′00″ W. |
| 41°24′53″ N | 068°31′00″ W. |
| 40°50′28″ N | 068°58′40″ W. |

(3) North Carolina Zone (Wilmington, NC, to north of Kill Devil Hills, NC): During the period of November 1 to April 30 each year, includes marine waters beginning at the charted mean high water line within the area bounded on the west by the shoreline and the COLREGS Demarcation Lines, and on the east by straight lines connecting the following points in Table 3 in the order stated from north to south.

TABLE 3 TO PARAGRAPH (A)(3)

| Latitude | Longitude |
|---|---|
| 36°06′00″ N | at shoreline |
| 36°06′00″ N | 075°15′00″ W. |
| 35°36′30″ N | 075°03′00″ W. |
| 35°15′10″ N | 075°06′30″ W. |
| 34°59′10″ N | 075°14′40″ W. |
| 34°53′30″ N | 075°32′40″ W. |
| 34°39′00″ N | 075°59′10″ W. |
| 34°15′50″ N | 076°27′30″ W. |
| 34°21′25″ N | 076°49′15″ W. |
| 34°11′50″ N | 077°13′50″ W. |
| 33°56′40″ N | 077°31′30″ W. |
| 34°10′30″ N | at shoreline. |

(4) South Carolina Zone (north of Brunswick, GA, to Wilmington, NC): During the period of November 1 to April 15 each year, includes marine waters beginning at the charted mean high water line within the area bounded on the west by the shoreline and the COLREGS Demarcation Lines, and on the east by straight lines connecting the following points in Table 4 in the order stated from north to south.

TABLE 4 TO PARAGRAPH (A)(4)

| Latitude | Longitude |
|---|---|
| 34°10′30″ N | at shoreline |
| 33°56′40″ N | 077°31′30″ W. |
| 29°45′00″ N | 080°51′36″ W. |
| 33°36′30″ N | 077°47′06″ W. |
| 33°28′24″ N | 078°32′30″ W. |
| 32°59′06″ N | 078°50′18″ W. |
| 31°50′00″ N | 080°33′12″ W. |

TABLE 4 TO PARAGRAPH (A)(4)—Continued

| Latitude | Longitude |
|---|---|
| 31°27′00″ N | 080°51′36″ W. |
| 31°27′00″ N | at shoreline. |

(5) Southeast Zone (south of Cape Canaveral, FL, to north of Brunswick, GA): During the period of November 15 to April 15 each year, includes marine waters beginning at the charted mean high water line within the area bounded on the west by the shoreline and the COLREGS Demarcation Lines, and on the east by straight lines connecting the following points in Table 5 in the order stated from north to south.

TABLE 5 TO PARAGRAPH (A)(5)

| Latitude | Longitude |
|---|---|
| 31°27′00″ N | at shoreline. |
| 31°27′00″ N | 080°51′36″ W. |
| 29°45′00″ N | 080°51′36″ W. |
| 29°45′00″ N | 081°01′00″ W. |
| 29°15′00″ N | 080°55′00″ W. |
| 29°08′00″ N | 080°51′00″ W. |
| 28°50′00″ N | 080°39′00″ W. |
| 28°38′00″ N | 080°30′00″ W. |
| 28°28′00″ N | 080°26′00″ W. |
| 28°24′00″ N | 080°27′00″ W. |
| 28°21′00″ N | 080°31′00″ W. |
| 28°16′00″ N | 080°31′00″ W. |
| 28°11′00″ N | 080°33′00″ W. |
| 28°00′00″ N | 080°29′00″ W. |
| 28°00′00″ N | At shoreline. |

(6) Dynamic Speed Zones (DSZs):

(i) *Designation.* At all times of year and in all waters along the U.S. Atlantic seaboard, including the entire U.S. Exclusive Economic Zone, except SSZs specified in paragraphs (a)(1) through (5) of this section, a DSZ will be designated upon a determination by NMFS that there exists:

(A) At a minimum, a confirmed visual sighting of three or more North Atlantic right whales within close proximity or confirmed acoustic detection of a North Atlantic right whale; and

(B) A greater than 50 percent likelihood that North Atlantic right whales will remain within the designated DSZ while it is in effect.

(C) A DSZ shall have a minimum effective period of 10 days and shall not exceed 2500 sq nm (8575 sq km) in size for visually triggered DSZs and 400 sq nm (1372 sq km) for acoustically triggered DSZs. The DSZ may be extended for additional periods provided that NMFS makes the required determinations for designating a DSZ specified in this paragraph.

(ii) *Notice of DSZ.* Notice of a DSZ or DSZ extension will be posted at *https://www.fisheries.noaa.gov* and disseminated via U.S. Coast Guard Notice to Mariners, NOAA Weather Radio announcements, and through other practicable appropriate means, as well as by Notice in the **Federal Register** as soon as practicable.

(b) A vessel may operate at a speed in excess of 10 knots (5.1 m/s) in an active designated SSZ or DSZ only if:

(1) Justified because an emergency situation presents a threat to the health, safety, or life of a person;

(2) Necessary to maintain safe maneuvering speed and justified because 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; or

(3) A vessel less than 65 ft (19.8 m) in length is transiting within areas where a National Weather Service Gale Warning, or other National Weather Service Warning (*e.g.,* Storm Warning, Hurricane Warning) for wind speeds exceeding those that trigger a Gale Warning is in effect.

(c) If a deviation from the requirements in paragraph (a) of this section is necessary under paragraph (b)(1) or (2) of this section, the vessel operator must complete and electronically submit an accurate and complete Safety Deviation Report to NMFS at *https://www.fisheries.noaa.gov* within 48 hours of the deviation. The Safety Deviation Report shall describe, in detail, the circumstances surrounding the deviation and need for the deviation on forms provided by NMFS. The vessel operator and, if the vessel is under pilotage at the time of the deviation, the pilot on board shall attest to the accuracy of the information in the Safety Deviation Report before it is submitted.

(d) Except as provided under paragraph (b) of this section, it is unlawful for any person subject to the jurisdiction of the U.S. to commit, to attempt to commit, to solicit another to commit, or to cause to be committed any speed violation with a vessel subject to the restrictions established in paragraph (a) of this section or a reporting violation described in paragraph (c) of this section.

(e) Any person or vessel claiming the applicability of any exception under paragraph (b) of this section has the burden of proving that the exception applies.

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**BILLING CODE 3510–22–P**

# Unknown Title

: 7/31/2022

FEDERAL REGISTER
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**Published Document**

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Start Preamble

# AGENCY:

National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

Start Printed Page 46922

# ACTION:

Proposed rule.

# SUMMARY:

NMFS is proposing changes to the North Atlantic right whale ( *Eubalaena glacialis*) vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event. The proposed rule would: (1) modify the spatial and temporal boundaries of current speed restriction areas referred to as Seasonal Management Areas (SMAs), (2) include most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the size class subject to speed restriction,

(3) create a Dynamic Speed Zone framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs, and (4) update the speed rule's safety deviation provision. Changes to the speed regulations are proposed to reduce vessel strike risk based on a coast-wide collision mortality risk assessment and updated information on right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events. Changes to the existing vessel speed regulation are essential to stabilize the ongoing right whale population decline and prevent the species' extinction.

# DATES:

Submit comments on or before September 30, 2022.

# ADDRESSES:

You may submit comments on this document, identified by NOAA-NMFS-2022-0022, by electronic submission. Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA-NMFS-2022-0022 in the Search box. Click the “Comment” icon, complete the required fields and enter or attach your comments. You may submit comments on supporting materials via the same electronic submission process, identified by NOAA-NMFS-2022-0022.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information ( *e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). The Draft Environmental Assessment, and the Draft Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared in support of this proposed rule, are available via the internet at *https://www.regulations.gov/* or obtained via email from the persons listed below.

Start Further Info

# FOR FURTHER INFORMATION CONTACT:

Caroline Good, *caroline.good@noaa.gov,* 301-427-8402.

End Further Info End Preamble Start Supplemental Information

# SUPPLEMENTARY INFORMATION:

## Background

The North Atlantic right whale ( *Eubalaena glacialis*) was severely depleted by commercial whaling and, despite protection from commercial harvest since 1935, has not recovered. Following two decades of growth between 1990 and 2010, the species has been in decline over the past decade (Pace *et al.* 2017; Pace 2021), with a recent preliminary population estimate of fewer than 350 individuals remaining. North Atlantic right whale abundance began to decline in 2010 due to a combination of increased human-caused mortality and decreased reproductive output (Pace *et al.* 2017). The decline coincided with changes in whale habitat use patterns, characterized by the whales' increasing use of areas with few protections from anthropogenic harm (Davis *et al.* 2017; Meyer-Gutbrod and Greene 2018; Record *et al.* 2019). The species' decline has been exacerbated by an ongoing Unusual Mortality Event (UME) that NMFS declared in 2017, pursuant to section 404 of the Marine Mammal Protection Act (MMPA), and includes an unprecedented 51 known mortalities and serious injuries to date, impeding the species' recovery. NMFS interprets the regulatory definition of serious injury as any injury that is “more likely than not” to result in mortality, or any injury that presents a greater than 50 percent chance of death to a marine mammal (NMFS 2014). Thus, lethal strike events are those that have or are likely to result in a mortality.

Entanglement in fishing gear and vessel strikes are the two primary causes of right whale mortality and serious injury. Human-caused mortality to adult females, in particular, is limiting recovery of the species (Moore *et al.* 2005, 2021; Corkeron *et al.* 2018; Hayes *et al.* 2019; Sharp *et al.* 2019). Anthropogenic trauma was the sole source of mortality for right whale adults and juveniles for which a cause of death could be determined between 2003 and 2018 (Sharp *et al.* 2019). North Atlantic right whale calving rates dropped from 2017 to 2020, with zero births recorded during the 2017-2018 season. The 2020-2021 calving season had the first substantial calving increase in five years, with 20 calves born, followed by 15 calves during the 2021-2022 calving season. However, mortalities continue to outpace births, and best estimates indicate fewer than 100 reproductively active females remain in the population.

NMFS has determined that the Potential Biological Removal (PBR) for the species—defined by the MMPA as “the maximum number of individuals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population”—is 0.7 whales (NMFS 2021). This means that for the species to recover, the population cannot sustain, on average over the course of a year, the death or serious injury of a single individual due to human causes. Observed human caused mortality far exceeds this level and a recent assessment of total right whale mortality estimates range-wide indicates that observed deaths likely captured only about 36 percent of the actual total deaths between 1990 and 2017 (Pace *et al.* 2021). Right whale abundance will continue to decline, imperiling species recovery, unless human caused mortality is substantially reduced in the near term.

North Atlantic right whales inhabit U.S. waters year-round but predominate during late fall through early summer. Within U.S. waters, the whales primarily forage in the greater Gulf of Maine region (Pershing *et al.* 2009; Davies *et al.* 2014). The species' only known winter calving area lies within the South Atlantic Bight between northern Florida and North Carolina (Keller *et al.* 2012; Gowan and Ortega-Ortiz 2014). The Mid-Atlantic region serves both as a migratory habitat for whales moving between calving areas and northern foraging grounds, as well as a foraging habitat. Right whales can be highly mobile, traveling upwards of 40 nautical miles per day, or, when engaged in certain behaviors ( *e.g.,* foraging), relatively stationary, remaining

within several miles for days (Baumgartner and Mate 2005; Crowe et *al.* 2021). The whales' primary distribution includes seasonal coastal habitats characterized by extensive commercial and recreational vessel traffic.

North Atlantic right whales are vulnerable to vessel strike due to their coastal distribution and frequent occurrence at near-surface depths, and this is particularly true for females with calves. The proportion of known vessel strike events involving females, calves, Start Printed Page 46923 and juveniles is higher than their representation in the population (NMFS 2020). Mother/calf pairs are at high risk of vessel strike because they frequently rest and nurse in nearshore habitats at or near the water surface, particularly in the Southeast calving area (Cusano *et al.* 2018; Dombroski *et al.* 2021). Calving females have the longest residence time of any demographic group on the Southeast calving ground, staying on average about three months in the region before traveling with their nursing calves to northern foraging areas (Krzystan *et al.* 2018). Right whales nurse their calves for up to a year. This promotes rapid calf growth (Fortune *et al.* 2012) but also places mother/calf pairs at increased risk of vessel interactions, not only within the Southeast calving ground but also along the Mid-Atlantic and New England coasts, which are important migratory and foraging areas for right whales.

Numerous studies have indicated that slowing the speed of vessels reduces the risk of lethal vessel collisions, particularly in areas where right whales are abundant and vessel traffic is common and otherwise traveling at high speeds (Vanderlaan and Taggart 2007; Conn and Silber 2013; Van der Hoop *et al.* 2014; Martin *et al.* 2015; Crum *et al.* 2019). In 2008, NMFS implemented 10-knot (5.1 meters/second (m/s)) vessel speed restrictions for a five-year period for most vessels greater than or equal to 65 ft (19.8 m) in overall length within designated areas commonly referred to as Seasonal Management Areas (SMAs) along the U.S. East Coast to reduce the risk of mortality and serious injury from vessel strike (73 FR 60173, October 10, 2008 (50 CFR 224.105)). NMFS later removed the five-year “sunset” provision from the speed rule (78 FR 73726, December 9, 2013; 79 FR 34245, June 16, 2014), and the rule continues in effect today.

Reducing vessel speed is one of the most effective, feasible options available to reduce the likelihood of lethal outcomes from vessel collisions with right whales. Previous investigations indicate that NMFS' speed regulations at 50 CFR 224.105 for most vessels greater than or equal to 65 ft (19.8 m) in length reduced the risk of lethal vessel strikes to right whales (Conn and Silber 2013; Laist *et al.* 2014). In 2021, NMFS released the North Atlantic Right Whale Vessel Speed Rule Assessment (hereafter “speed rule assessment”) documenting a reduction in observed right whale serious injuries and mortalities resulting from vessel strikes since implementation of the speed rule in 2008 (50 CFR 224.105), but highlighting the need for additional action to more effectively address the risk of vessel strikes to right whales (NMFS 2020).

NMFS is addressing risk from fishing gear entanglement through separate regulatory actions from this proposed rule as informed by the Atlantic Large Whale Take Reduction Team (ALWTRT) and continues to work on additional measures to further reduce lethal entanglements. The MMPA directs NMFS to reduce incidental entanglements in commercial fisheries that cause mortalities and serious injuries of marine mammal stocks above a biological reference point ( *i.e.* PBR) through a consensus-based Take Reduction Process. The ALWTRT is a large stakeholder group NMFS has convened numerous times since 1996 to develop recommendations to reduce mortality and serious injury of right whales and other large whales

covered under the Atlantic Large Whale Take Reduction Plan. The ALWTRT continues to meet regularly to develop recommendations to further modify the Plan and reduce right whale entanglements in commercial fisheries.

## Summary of Current North Atlantic Right Whale Vessel Strike Reduction Measures

NMFS has implemented a combination of regulatory requirements and voluntary programs aimed at modifying mariner behavior and/or increasing mariner awareness of right whale presence to reduce vessel collision risk. Together, these efforts address two aspects of reducing strike risk: (1) reducing the spatial overlap of right whales and vessels, and (2) reducing the speed of vessels in areas and at times when right whales are likely to be present. Below is a summary of vessel strike reduction actions implemented by NMFS and other Federal partners to date.

### Statutory Protections

(1) “Take” Prohibitions. Both the Endangered Species Act (ESA) and the MMPA generally prohibit the unauthorized “take” of North Atlantic right whales. Under the ESA, “take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” (16 U.S.C. 1532(19)). Under the MMPA, “take means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill.” (16 U.S.C. 1362(13)).

(2) ESA Section 7 Consultations. As required by Section 7(a)(2) of the ESA, as amended (ESA; 16 U.S.C. 1531 *et seq.*), all U.S. Federal agencies must consult with NMFS to ensure that any actions they authorize, fund, or carry out that may affect ESA-listed species under NMFS jurisdiction are not likely to jeopardize the continued existence of those species or adversely modify or destroy their designated critical habitat. When Federal agencies authorize vessel activities potentially co-occurring with right whales and engage in consultations with NMFS, they often implement measures governing vessel speed designed to reduce the risk of right whale interactions.

### Regulatory Measures

(1) North Atlantic Right Whale Vessel Speed Rule. In 2008, NMFS implemented a rule requiring most vessels equal to or greater than 65 ft (19.8 m) in length to transit at speeds of 10 knots (5.1 m/s) or less in designated SMAs (73 FR 60173, October 10, 2008) pursuant to its authority under the MMPA and ESA. Some vessels are exempt from this requirement including military vessels, vessels owned, operated or contracted by the Federal government, and vessels engaged in enforcement or search and rescue activities (50 CFR 224.105(a)). Although these vessels are exempt from the speed rule, they are not exempt from consultation under section 7 of the ESA. During consultations, mitigation measures, including reduced speeds, may be recommended or specified to reduce the threat of vessels collisions with right whales. Regulatory requirements, such as those proposed here that contain a maximum vessel speed but no minimum, are separate from any requirements specified as part of ESA section 7 consultations and are not expected to result in the need to reinitiate existing consultations (50 CFR 402.16). In addition, subject to

specific requirements, vessels may deviate from the speed restriction ( *i.e.,* exceed the speed limit), under limited circumstances, to maintain safe maneuvering speeds (50 CFR 224.105(c)). Vessels employing this safety deviation must make a notation in the vessel logbook detailing the event. Ten SMAs were designated along the U.S. East Coast with seasonally active periods reflective of temporal trends in right whale habitat use. The locations of the SMAs were informed by vessel traffic ( *i.e.,* port entrances were assumed high traffic areas relative to other areas) and right whale distribution data at the time the rule was established. NMFS selected the 10-knot (5.1 m/s) speed limit based on analyses of large whale vessel strike events where the vessel speed at the time of impact was known. Researchers found the probability of whale mortality increased substantially Start Printed Page 46924 with vessel speed, with the greatest increase occurring between speed of 10 to 14 knots (5.1 to 7.2 m/s; Vanderlaan and Taggert 2007). Based on these findings, NMFS determined that the use of speed restrictions was an effective means to reduce the likelihood and severity of vessel collisions.

(2) 500 Yard (457.2 m) Minimum Approach Distance. In 1997, NMFS implemented a minimum approach distance for vessels in the vicinity of North Atlantic right whales in an effort to reduce harassment and risk of injury (62 FR 6729, February 13, 1997). It is illegal for a vessel to approach within 500 yards (457.2 m) of a right whale, and if a vessel finds itself within 500 yards (457.2 m) it “must steer a course away from the right whale and immediately leave the area at a slow safe speed” (50 CFR 224.103(c)(1-2)). Exceptions are made if “compliance would create an imminent or serious threat to a . . . vessel” (50 CFR 224.103(c)(3)).

## Non-Regulatory Measures

(1) Great South Channel Area To Be Avoided (ATBA). An ATBA is an International Maritime Organization (IMO)-established vessel routing measure within a specified area to avoid navigational hazards or environmentally sensitive areas. In June 2009, an ATBA was established in the Great South Channel to the east of Cape Cod, MA after gaining approval from the IMO. All vessels greater than or equal to 300 gross tons are recommended to avoid this area between April 1 and July 31.

(2) Recommended Routes. In 2006, a joint U.S. Coast Guard/NOAA effort established recommended routes for vessels transiting across Cape Cod Bay and into/out of ports in Florida and Georgia. The routes are recommended between January and May in Cape Cod Bay and between November and April off Florida and Georgia. Mariners are recommended to follow the routes to minimize their transit distance through important right whale habitat areas.

(3) Modification to the Boston Traffic Separation Scheme (TSS). In 2007, following a successful application to the IMO led by the Stellwagen Bank National Marine Sanctuary and NMFS, a modified TSS (commonly referred to as a shipping lane) was implemented to the north of Cape Cod, MA for vessel traffic navigating to and from the Port of Boston. The modification narrowed the TSS and shifted its route to the north around Cape Cod to reduce the overlap with large whale foraging grounds.

(4) Dynamic Management Areas (DMAs) and Right Whale Slow Zones. NMFS implemented a voluntary DMA program concurrently with the mandatory speed rule in 2008. A DMA is triggered when a group of three or more right whales are sighted in close proximity. Beginning in 2020, the NMFS Greater Atlantic Region

modified the DMA program to include acoustically triggered Slow Zones. Once the trigger is met, NMFS establishes a boundary around the whales for 15 days and encourages vessels either to avoid the area or transit through at speeds less than 10 knots (5.1 m/s). DMAs/Slow Zones may be extended if whales remain in the area. The agency alerts mariners to DMA and Slow Zone declarations through website postings, emails to lists of interested parties, U.S. Coast Guard Local Notices to Mariners, and U.S. Coast Guard Broadcast Notices to Mariners.

## Need for Additional Action

In January 2021, NMFS released an assessment evaluating the effectiveness of the North Atlantic right whale speed rule and associated voluntary DMA program (NMFS 2020) and invited the public to submit comments. The review found that the speed rule had made progress in reducing vessel strike risk to right whales but that additional action is warranted to further reduce the threat of vessel collisions. While it is not possible to establish a direct causal link between speed reduction efforts and the relative decline in observed right whale mortality and serious injury events following implementation of the speed rule, the preponderance of evidence suggests speed reductions, as implemented, have helped. NMFS' data on documented vessel strike events continues to affirm the role of high vessel speeds (> 10 knots (5.1 m/s)) in lethal collision events and supports existing studies implicating speed as a factor in lethal strikes events. NMFS has documented five right whale vessel strike cases in U.S. waters that resulted in *non-serious* injuries for which vessel speed is known. Only one of the five vessels involved was transiting in excess of 10 knots (5.1 m/s) at the time of the collision. In contrast, of the nine documented lethal right whale vessel collisions in U.S. waters since 1990 for which vessel speed is known, eight involved vessels transiting in excess of 10 knots (5.1 m/s).

Since the speed rule first went into effect, NMFS has documented 12 right whale mortality and serious injury events involving vessel collisions in U.S. waters, along with an additional five mortality and serious injury events involving unknown whale species, possibly right whales. These figures likely underestimate the total number of lethal right whale vessel strikes in U.S. waters. Strikes occurring farther offshore and/or involving large ocean-going vessels are likely underreported in the data because most large ships are not able to detect interactions with large whales, and whales that die well offshore are less likely to be detected overall. Based on estimates of total right whale deaths, documented mortalities from all sources represent approximately one-third of actual annual right whale mortality range-wide (Pace *et al.* 2021). Thus, in addition to the observed events, NMFS recognizes that additional lethal vessel strike events likely went undetected in U.S. waters.

A detailed examination of documented right whale vessel strike events in the U.S. further reveals the following:

(1) Vessels less than 65 ft (19.8 m) in length accounted for five of the 12 documented lethal strike events in U.S. waters since 2008, demonstrating the significant risk this unregulated vessel size class can present to right whales.

(2) Vessel strikes continue to occur all along the U.S. coast from the Gulf of Maine to the Florida coast. There is no indication that strike events only occur in “hot spots” or limited spatial/seasonal areas.

(3) Strikes occur both inside and outside active SMAs, but in many cases, the location of the strike event remains unknown. Four of the five collision events involving vessels less than 65 ft (19.8 m) in length occurred inside active SMAs, although the vessels involved were not subject to mandatory speed restrictions due to their size.

(4) Of the six lethal vessel strike cases documented in U.S. waters and involving right whales since 1999 where vessel speed is known, only one involved a vessel transiting at under 10 knots (5.1 m/s) (~9 knots (4.6 m/s)), although in most cases, we lack vessel speed data associated with collision events.

(5) Females, calves, and juveniles are disproportionately represented in the vessel strike data. This is concerning given the paucity of reproductively active females remaining in the population and their critical role in stabilizing the population decline.

(6) Non-lethal vessel collisions with right whales continue to occur. NMFS' best estimates indicate that vessel strikes (in U.S. waters or first seen in U.S. waters) have resulted in at least 26 non-serious right whale injuries since 2008, although these data do not account for the possibility of blunt force trauma injuries, which are not usually visibly detectable and make accurate Start Printed Page 46925 assessments of strike injuries challenging.

Despite NMFS' best efforts, the current speed rule and other vessel strike mitigation efforts are insufficient to reduce the level of lethal right whale vessel strikes to sustainable levels in U.S. waters. NMFS has determined that additional action is needed to address gaps in current management programs and better tailor mitigation efforts. In evaluating potential changes to the current speed rule NMFS considered up-to-date strike risk modeling, data on right whale strike events, species distribution, and vessel traffic characteristics in right whale habitat, and the extensive and informative comments received in response to the 2020 speed rule assessment.

## Summary of Proposed Changes

NMFS proposes changes to the existing North Atlantic right whale vessel speed regulations. The proposed measures detailed below seek to reduce the risk of mortality and serious injury from vessel strike events in U.S. waters and include the following:

(1) Changes to the spatial boundaries and timing of mandatory SMAs to better address areas and times where vessel strike risk is high;

(2) Inclusion of most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to the speed restriction;

(3) Implementation of a Dynamic Speed Zone (DSZ) framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs; and

(4) Updates to the speed rule's safety deviation provision.

# Modification of Seasonal Speed Zones (Currently Referred to as Seasonal Management Areas)

Since implementation of the speed rule in 2008, the distribution of right whales has shifted, resulting in a misalignment between areas of high vessel strike risk and current SMA spatial and temporal bounds. Improved data on vessel traffic and right whale distribution/habitat use further highlight this discrepancy and the need to adjust SMA boundaries to better address the risk of collisions. For example, after 2010, right whales began to frequent the region south of Martha's Vineyard and Nantucket, MA, and are now regularly observed in large aggregations foraging in the area (Leiter *et al.* 2017). Prior to this period, that region, while part of right whale habitat, was not identified as an important foraging area. In 2021 alone, 67 voluntary DMAs and Slow Zones were declared (28 of which were off Martha's Vineyard and Nantucket), demonstrating the ongoing spatial and temporal mismatch between whale aggregations and vessel strike protections.

The goal for vessel speed regulation remains unchanged—to reduce the likelihood of right whale serious injuries and mortalities from vessel collisions. To maximize the reduction of vessel strike risk, NMFS developed proposed modifications to the SMAs using a coast-wide vessel strike mortality risk model, North Atlantic right whale visual sighting (NARWC 2021) and acoustic detection (NEFSC 2022) data, recent vessel traffic Automatic Identification System (AIS) data, and information on other relevant planned ocean activities, including offshore wind development.

Additional factors were considered when developing proposed SMA spatial boundaries and timing to optimize effective right whale protection, including minimizing impacts on the regulated community:

(1) NMFS sought to provide robust protection for right whales over a 10 to 15 year time horizon, and design built-in adaptivity to climate change and other factors to ensure that the speed rule remains resilient to shifts in right whale distribution and habitat use over time. This timeframe also provides a stable and predictable long-term regulatory structure for the maritime community.

(2) NMFS aimed to identify the smallest spatial and temporal footprint possible for speed restricted areas to minimize the extent of regulatory action while achieving necessary conservation goals. This assumes a framework will be in place to implement mandatory speed restrictions dynamically to address right whales outside the proposed SMAs (see Mandatory Dynamic Speed Zones).

(3) Changes to speed regulation areas/boundaries focused on reducing vessel traffic operating at speeds in excess of 10 knots (5.1 m/s), since high transit speed is implicated in strike events, and we have the ability to modify this aspect of vessel operation in right whale habitats.

## Description of the Vessel Strike Mortality Risk Model

NMFS evaluated the risk of right whales being struck and killed by vessels in U.S. waters along the East Coast using an encounter risk model (Garrison *et al.* 2022). This model simulates the likelihood of a fatal

# TAB 7b
# Inflation Reduction Act


**Inflation Reduction Act of 2022**

On August 7th, the Senate passed the Inflation Reduction Act of 2022 through the budget reconciliation process which requires a simple majority vote in comparison to the typical 60-40 majority needed. Votes were split down the middle by party line with Vice President Kamala Harris providing the 51st vote and allowing for the bill's passage. The Inflation Reduction Act of 2022, or IRA 2022, stems from the Biden Administration's Build Back Better Agenda (BBB) which faced a tumultuous journey in the Senate when two key Senators withheld their support. IRA 2022 includes some key provisions from BBB such as the corporate minimum tax and an array of climate-based action but does not include measures involving childcare and the SALT cap that were prominent in the original. The legislation will now be sent to the House of Representatives with plans for a vote happening on August 12th where the bill will most likely pass. The following summary includes major provisions and revenue sourcing found in IRA 2022.

Business Tax

IRA 2022 includes business tax changes that will create tax revenue and make investments in deficit reduction. The largest of the measures is the **corporate minimum tax** which imposes a 15% minimum tax in tax years after 2022 on the income that billion-dollar corporations report on their financial statements, or "book income," according to Bloomberg Government. It is expected to increase revenue by $258 billion from fiscal 2022 through 2031. **Stock repurchases** would see a 1% excise tax for any repurchases made in a tax year by a publicly traded US corporation under IRA 2022. Exemptions to this tax include stock repurchases that are: less than $ 1 million; contributed to an employer-sponsored retirement plan, stock ownership plan, or similar plan; part of a reorganization with no gain or loss recognized; made by a regulated investment company or a real estate investment trust; or treated as a dividend. The final change made would be through the appropriation of **funds to the IRS** for tax enforcement activities, operations support, business system modernization, and taxpayer services. This funding seeks to crackdown on unlawful activity and make consumer experience easier when handling taxes.

Healthcare

IRA 2022 includes a few key measures relating to healthcare, mainly centered around drug pricing under Medicare. This legislation would extend the temporary expansion of the **Affordable Care Act** health insurance premium tax credit through 2025. It also establishes a "**Drug Price Negotiation Program**" for prescription drugs covered in Medicare Parts B and D. The goal of this program is to negotiate the maximum price of high-cost prescription drugs beginning in 2026. The bill includes a **price cap for insulin** of $35 for Medicare beneficiaries and would require private insurers to cover at least one of each

insulin price to cap cost-sharing at $35 a month beginning in 2023. Drug makers who raise the praise of a drug above inflation would have to repay the government the difference in profits above the cost of inflation on Part B and Part D drugs dispensed to beneficiaries. The measure would also cap the out-of-pocket cost of prescription drugs under Medicare Part D for beneficiaries at $2,000 a year starting in 2025.

Energy Tax Provisions and Spending

This legislation includes a series of tax incentives along with other energy-related provisions. According to Bloomberg Government, the measure would generally structure various **green energy tax credits** as tiered incentives, providing either a "base rate" or a "bonus rate" of five times the base amount for projects that meet certain prevailing wage and apprenticeship requirement. he structure would apply to several new and existing tax credits, including:

- The production tax credit for electricity generated from renewable energy sources, which would be extended for facilities that begin construction before Jan. 1, 2025.
- The investment tax credit for renewable energy property, which would be extended and modified for facilities that begin construction before Jan. 1, 2025.
- A new credit for qualifying zero-emission nuclear power produced by facilities placed in service before the measure's enactment.
- A new credit for the sale or use of a qualified mixture of sustainable aviation fuel through 2024.
- A new credit for the production of clean hydrogen — based on lifecycle greenhouse gas emission rates — for properties that begin construction before 2023.
- New production and investment tax credits related to clean electricity. The credits would be based on carbon emissions.
- A new credit for the domestic production of clean fuels that would be based on their carbon emissions. It would apply to fuels produced after 2024 and would phase out entirely after 2027.
- Credit for advanced energy projects beginning in 2023. The measure would provide as much as $10 billion in additional allocations for a program to award certifications for qualified investments in energy manufacturing facilities.

IRA 2022 would also extend the following incentives:

- Credit for carbon capture facilities that begin construction before Jan. 1, 2033.
- Credits for biodiesel and renewable diesel and alternative fuels and alternative fuel mixtures through 2024.
- Credit for qualified energy efficiency improvements for residential energy property through 2032. The credit would be increased to as much as $1,200 annually, from a $500 lifetime cap, for expenditures on windows, doors, heat pumps, and biomass stoves and boilers.
- Deduction for energy efficient commercial buildings beginning after 2022. A building would have to reduce its annual energy and power costs by more than 25%, instead of 50%. An increased deduction would be available for qualified retrofits.

The **Electric Vehicle (EV) tax credit** which provides as much as $7,500 to individuals purchasing a qualify vehicle would be modified to expand what vehicles fit the requirement. The measure would change the credit through 2032 so that it:

· Applies to "clean vehicles" such as electric and fuel cell vehicles.

- Applies to vehicles with final assembly occurring in the US.
- Equals $3,750 if a certain percentage of the critical minerals contained in the vehicle's battery is extracted or processed in the US or in any country with which the US has a free trade agreement or is recycled in North America. The applicable percentage would start at 40% for vehicles placed in service in 2023 and increase to 80% by 2027.
- Equals $3,750 if a certain percentage of the value of components in a vehicle's battery is manufactured or assembled in North America. The required percentage would start at 50% for vehicles placed in service in 2023 and increase to 100% by 2029.
- Phases out beginning at $300,000 for joint filers and $150,000 for single filers.

Credits would also be established for purchasing the following:

- Used clean vehicle. The credit would equal $4,000 or 30% of the vehicle's sale price, whichever is lower. It would phase out at $150,000 for joint filers and $75,000 for single filers.
- Commercial clean vehicle manufactured primarily for use on public streets, roads, and highways. Vehicles that operate exclusively on railroads would be excluded. The credit would equal 30% of the vehicle's sale price or the incremental cost of the vehicle, whichever is less.

This measure would also appropriate funds for the electrification of the U.S. Postal Service. Other provisions include allowing claimants to apply for tax refunds or payments equal to the value of their tax credits through 2032 for certain renewable energy projects. S corporations or partnerships that own qualifying facility property would be allowed to receive such payments, with rules for distributing shares to a partner or shareholder. Language for the following is also included in the legislation:

- Reinstate a tax on crude oil and imported petroleum products at 16.4 cents per barrel to fund Superfund cleanups of hazardous sites. It would be adjusted for inflation beginning in 2023.
- Make permanent the excise tax on coal from underground and surface mines that funds the Black Lung Disability Trust Fund.
- Provide $500 million in fiscal 2022 for the Treasury Department to implement the measure's energy-related tax credits.

Energy spending for offshore wind, oil and gas, home energy, and building codes is included in IRA 2022. The measure would allow Energy Department (DOE) to grant leases, easements, and rights-of-way for **offshore wind** projects in parts of the Outer Continental Shelf off the coasts of Georgia, Florida, North Carolina, and South Carolina, and to issue requests for information by Sept. 30, 2025, for proposed wind lease sales in those areas. The legislation would increase the royalty rate for new offshore **oil and gas** leases from 12.5% to a range from 16.6% and 18.7% and would reinstate oil and gas leases and direct DOE to accept the highest valid bid for multiple lease sales by the end of 2023. Funding would be provided to DOE for the creation of a "Home Owner Managing Energy Savings" or **HOMES rebate**

**program**. The HOMES program would provide rebates for homeowners and aggregators for energy savings retrofits beginning with the bill's implementation through Sept. 30, 2031. States would also be given funding for grants to implement a high-efficiency electric home rebate program. Grants would also be provided to states to help adopt residential and commercial **building energy codes** that meet or exceed the 2021 International Energy Conservation Code, the ASHRAE Standard 90.1-2019, or some combination of those codes.

Greenhouse Gas Emissions

The reduction of greenhouse gas (GHG) emissions from the atmosphere has been a resounding goal of the Biden Administration, and IRA 2022 makes quite a few investments in that goal. DOE would be allowed to make up $40 billion in **loan guarantees** for projects to reduce, avoid or sequester GHG emissions and air pollutants through fiscal 2026. It would also provide them $5.8 billion for fiscal 2022 to provide financial assistance for domestic, nonfederal, non-power industrial or manufacturing facilities engaged in energy intensive industrial processes to purchase, install, retrofit or upgrade advanced **industrial technology** to reach net-zero GHG emissions. Funds would also be provided to the department for **vehicle manufacturing** to provide direct loans for the advanced technology vehicles manufacturing incentive program and grants for domestic production of efficient hybrid, plug-in electric hybrid, plug-in electric drive, and hydrogen fuel cell electric vehicles.

$12 billion in funding for the Environmental Protection Agency (EPA) would be given to provide financial and technical assistance on projects to reduce greenhouse gas emissions as well as $22.8 billion in funding for a number of **grant programs** for fiscal 2022. Those programs include:

· Grants to offer assistance on GHG reduction projects in low-income and disadvantaged communities

· Grants to states, municipalities, tribes, and nonprofits to enable low-income and disadvantaged communities to adopt and benefit from zero-emission technologies

· Grants to states, air pollution control agencies, municipalities, and tribes to establish plans to reduce GHG pollution

· Environmental and climate justice grants for community-led projects to reduce GHG emissions and mitigate climate and health risks

The EPA would also be allowed to impose a charge on **methane** emissions for oil and gas facilities that report more than 25,000 metric tons of carbon dioxide equivalent GHGs per year if they exceed the amount of oil or gas they produce by a certain threshold, according to Bloomberg Government. Other provisions under this measure include:

· $2.25 billion for fiscal 2022 for grants and rebates for port authorities, air pollution control agencies, private entities, and governments with jurisdiction over ports to install zero-emission port equipment or technology

· $2 billion for fiscal 2022 for the Federal Highway Administration to reimburse or provide incentives to states, local governments, metropolitan planning organizations, and public authorities to use materials produced with lower-carbon emissions

· $600 million for fiscal 2022 to establish a clean heavy duty vehicle program providing grants and rebates to states, municipalities, tribes, and nonprofit school transportation associations to replace certain heavy duty vehicles with zero-emission vehicles.

· $297 million for the Transportation Department to provide grants to state and local governments and nonprofits to support sustainable aviation fuel and low-emission aviation technology projects

· $60 million for fiscal 2022, for grants, rebates, and loans identifying and reducing diesel emissions resulting from the transportation of goods and to address health effects on low-income and disadvantaged communities

· $4 billion for fiscal 2022, available through fiscal 2026, for grants, contracts, or financial assistance for projects to mitigate drought in the "Reclamation States"

Other provisions

The following chart includes other provisions funded through this measure for fiscal 2022, according to Bloomberg Government. Not included are the following two USDA programs that are provided funding past fiscal 2022: $18.1 billion from fiscal 2023 through fiscal 2026 for the Agriculture Department's Commodity Credit Corporation programs for environmental quality and stewardship incentives, and $2 billion from fiscal 2022 through fiscal 2027 for the Rural Energy in America Program to provide loans and grants to agricultural producers and rural businesses for renewable energy systems, including funding specifically for underutilized technologies.

| USDA | NOAA | DOT |
|---|---|---|

| | | |
|---|---|---|
| • $9.7 billion for assistance to rural electric cooperatives to promote resiliency, reliability, and affordability and for carbon capture and storage projects.<br>• $3.1 billion for loans to "distressed" borrowers whose agricultural operations are at financial risk as expeditiously as possible.<br>• $2.2 billion for competitive grants to promote conservation and tree planting by state, local, and tribal governments and nonprofit organizations, in addition to competitive grants for states through the Forest Legacy Program.<br>• $2.2 billion for financial assistance to farmers, ranchers, or forest landowners determined to have experienced discrimination in USDA farm lending programs before 2021. Assistance to recipients couldn't be more than $500,000. It would allow USDA financial assistance to socially disadvantaged farmers, ranchers, or forest land owners through the American Rescue Plan Act (Public Law 117-2) to be excluded from their gross income.<br>• $2.2 billion for the US Forest Service to implement hazardous fuels reduction, vegetation management, and other projects on national forest lands and for the agency to provide environmental assessments.<br>• $1.4 billion for the National Resources Conservation Service to provide technical assistance and implement a carbon sequestration and greenhouse gas emissions quantification program, among other efforts.<br>• $1 billion in additional funding for rural electrification loans, including for energy storage projects. As much as | • $2.6 billion for assistance to coastal state, tribal, and local governments for the conservation of coastal and marine habitats and resources.<br>• $490 million for weather and climate research and related equipment, including $100 million for a hurricane forecasting aircraft.<br>• $200 million for the construction of facilities to support national marine sanctuaries. | · $1.89 billion to provide grants to states, local governments, territories, or transportation authorities to increase neighborhood access and transportation equity, or reduce the negative effects of infrastructure projects in disadvantaged or underserved communities.<br><br>· $1.26 billion would be provided for additional grants to economically disadvantaged or underserved communities that adopt anti-displacement policies or community land trusts. |

| | | |
|---|---|---|
| half a loan could be forgiven if certain conditions are met.<br>● $550 million for assistance to nonfederal forest landowners for climate mitigation and forest resilience efforts.<br>● $500 million for a competitive grant program to increase the use of agricultural commodity-based fuels by strengthening biofuel infrastructure.<br>● $250 million for grants and loans to eligible entities to improve land access for underserved farmers, ranchers, and forest landowners, including those living in high poverty areas.<br>● $250 million for agricultural research, education, and scholarships at certain higher education institutions to provide internships and pathways to agricultural sector or federal employment. | | |

Bloomberg reports that Housing and Urban Development Department would receive $1 billion in funding of which $837.5 million would be for grants or loans to the owners and sponsors of **affordable housing** to implement or promote:

· Energy or water efficiency;

· Indoor air quality or sustainability;

· Zero-emission electricity generation or low-emission building materials or processes;

· Energy storage;

· Building electrification; and

· Climate resilience.

$500 million would be provided for activities under the **Defense Production Act**, which could be used for heat pumps and critical minerals processing, according to a summary of the package's energy provisions. The Homeland Security Department would receive $500 million for the Office of Chief Readiness Support Officer for sustainability and environmental programs. The measure would provide

$350 million for fiscal 2023 for the Environmental Review Improvement Fund established by the FAST Act.

We understand that this is a bill chock-full of information and ask that you please reach out to Jeffrey.Brooks@arlaw.com or Kate.Reitz@arlaw.com with any questions or comments that you may have. We'll be following along as this legislation makes its way through congress, and we'll keep you up to date with any relevant information as it's received.

August 10, 2022
Keyed to Senate Amendment as passed on August 7, 2022

# INFLATION REDUCTION ACT (H.R. 5376, as amended by the Senate)
# ENVIRONMENT AND PUBLIC WORKS COMMITTEE TITLE (Title VI)
# SECTION BY SECTION

## Subtitle A—Air Pollution

### Sec. 60101. Clean Heavy-Duty Vehicles.

This section provides a total of $1 billion to the Environmental Protection Agency (EPA) to award grants and rebates to help replace dirty medium and heavy-duty vehicles with zero-emitting vehicles. Class 6 and class 7 vehicles are vehicles weighing between 19,501 and 33,000 pounds, and include the millions of garbage trucks, beverage trucks, tow trucks, school buses, and single-axle trucks on the road today. Of that funding, $400 million is provided for eligible vehicles that would serve communities located in areas designated as nonattainment for air pollution. Of amounts made available in this section, 3 percent is reserved for administrative costs.

### Sec. 60102. Grants to Reduce Air Pollution at Ports.

This section provides $3 billion to EPA to award rebates and grants on a competitive basis for the purchase or installation of zero-emissions port equipment and technology and the development of climate action plans to reduce air pollutants at ports. Funding for zero-emission equipment or technology shall not be used for automation. Of that funding, $750 million is provided for ports located in areas designated as nonattainment for air pollution. Of amounts made available in this section, 2 percent is reserved for administrative costs.

### Sec. 60103. Greenhouse Gas Reduction Fund.

This section provides $27 billion in funding to EPA to help leverage private investments in projects that combat climate change. Over 40% of these investments will go to low-income and disadvantaged communities, who often struggle to find financing for clean energy projects that reduce greenhouse gas emissions. These funds are available until September 30, 2024. Funding is not technology specific. $30 million is designated for administrative costs.

### Sec. 60104. Diesel Emissions Reductions.

This section provides $60 million in funding to EPA to address diesel emissions through the Diesel Emissions Reduction Act (DERA) program. This money can be used for grants, rebates, and loans to identify and reduce diesel emissions resulting from goods movement facilities and vehicles servicing such facilities in low-income and disadvantaged communities to address the health impacts of these emissions in these communities. Of amounts made available in this section, 2 percent is reserved for administrative costs.

### Sec. 60105. Funding to Address Air Pollution.

This section provides $235.5 million to fund climate and clean air activities, including:

1. $117.5 million for grants and other activities for air toxics and community air quality monitoring systems pursuant to subsections (a) through (c) of section 103 of the Clean Air Act and section 105 of that Act.
2. $50 million for grants and other activities to expand, replace, repair, operate and maintain the national ambient air quality multipollutant monitoring network pursuant to

subsections (a) through (c) of section 103 of the Clean Air Act and section 105 of that Act.
3. $3 million for grants and other activities to deploy, integrate, and operate air quality sensors in low-income and disadvantaged communities, pursuant to subsections (a) through (c) of section 103 of the Clean Air Act and section 105 of that Act.
4. $15 million for grants and other activities for testing and other agency activities related to reducing pollution from wood heaters under subsections (a) through (c) of section 103 of the Clean Air Act and section 105 of that Act.
5. $20 million for grants and other activities for methane emissions monitoring pursuant to subsections (a) through (c) of section 103 of the Clean Air Act and section 105 of that Act.
6. $25 million for grants and other activities pursuant to subsections (a) through (c) of section 103 of the Clean Air Act and section 105 of that Act.
7. $5 million for grants to States to adopt and implement greenhouse gas and zero emission standards for mobile sources pursuant to section 177 of the Clean Air Act.

**Sec. 60106. Funding to Address Air Pollution at Schools.**

This section provides EPA with $50 million for grants and other activities to monitor and reduce air pollution and greenhouse gas emissions at schools pursuant to sections 103 and 105 of the Clean Air Act. Of those funds, $37.5 million is provided for grants to monitor and reduce air pollution and greenhouse gas emissions at schools in low-income and disadvantaged communities, and $12.5 million is provided for technical assistance to help schools address environmental issues, identify and mitigate ongoing air pollution hazards, and develop school environmental quality plans that include standards for school building design, construction, and renovation.

**Sec. 60107 Low Emissions Electricity Program.**

This section provides a total of $87 million for the establishment of an EPA low emissions electricity program. Two percent of amounts made available in this section is reserved for administrative costs. Of the funds in this section:

1. $17 million is provided for consumer-related education and partnerships;
2. $17 million is provided for education, technical assistance, and partnerships within low-income and disadvantaged communities;
3. $17 million is provided for industry-related outreach and technical assistance;
4. $17 million is provided for outreach and technical assistance to State and local governments;
5. $1 million is provided for assessing the anticipated reductions in greenhouse gas emissions that result from changes in domestic electricity generation and use through fiscal year 2031; and
6. $18 million is provided to ensure that reductions in greenhouse gas emissions are achieved through the authorities of the Act.

**Sec. 60108. Funding for Section 211(O) of the Clean Air Act.**

This section provides $15 million to EPA for alternative renewable fuels programs. Of these funds, $5 million is provided for the purpose of testing fuels and fuel additives with respect to

environmental and public health effects, and $10 million is provided for grants to support investments in advanced biofuels, which are fifty percent cleaner than traditional fuels.

**Sec. 60109. Funding for Implementation of the American Innovation and Manufacturing Act.**

This section provides $38.5 million to EPA to carry out the American Innovation and Manufacturing (AIM) Act (section 103 of division S of the Consolidated Appropriations Act, 2021 to phase down hydrofluorocarbons, or HFCs). Of these funds, $20 million is provided for general implementation of the AIM Act, $3.5 million is provided to fund the deployment of implementation and compliance tools, and $15 million is to fund competitive grants for reclaim and innovative HFC destruction technologies. Of amounts made available for competitive grants, 5 percent is reserved for administrative costs necessary to carry out the grant program.

**Sec. 60110. Funding for Enforcement Technology and Public Information.**

This section provides $25 million for EPA's enforcement technology and public information. Of these funds, this section provides $18 million to update the Integrated Compliance Information System and any associated systems, necessary information technology infrastructure, or public access software tools to ensure access to compliance data and related information. Second, the section provides $3 million for grants to States, Indian Tribes, and air pollution control agencies to update the systems of those entities to ensure communication with the EPA's Integrated Compliance Information System and any associated systems. Third, the section provides $4 million to acquire or update inspection software and related devices for use by the Agency, States, Indian Tribes, and air pollution control agencies.

**Sec. 60111. Greenhouse Gas Corporate Reporting.**

This section provides $5 million for EPA to carry out a program that helps enhance standardization and transparency of corporate climate action commitments and plans to reduce greenhouse gas emissions.

**Sec. 60112. Environmental Product Declaration Assistance.**

This section provides $250 million to EPA to support the development, standardization, and transparency of environmental product declarations for construction materials and products. With these funds, EPA will provide technical assistance and grants to businesses that manufacture these materials to develop and verify environmental product declarations. The funds can also be used to carry out other activities that assist in measuring and steadily reducing the quantity of embodied carbon of construction materials and products. Of amounts made available in this section, 5 percent is reserved for administrative costs.

**Sec. 60113. Methane Emissions Reduction Program.**

This section provides $1.55 billion to EPA to provide loans, rebates, contracts, and grants to help businesses subject to the methane emissions reduction program reduce methane emissions from petroleum and natural gas systems to better monitor methane emissions and to help address legacy pollution from the oil and gas sector. Starting in 2024, this program would implement a charge on the prior-year tons of methane emissions from oil and natural gas systems reported to the EPA Greenhouse Gas Registry that exceed industry-specific thresholds, determined by the amount of the natural gas or oil sent to sale. The charge is only on emissions above the set

thresholds, and any emissions due to delays in gathering line and transmission infrastructure environmental permitting are exempt. This section also requires EPA to update the Greenhouse Gas Registry.

**Sec. 60114. Climate Pollution Reduction Grants.**

This section provides $5 billion for a competitive grant program for state planning and implementation of greenhouse gas reduction programs. Specifically, this section provides EPA with $250 million for planning grants and $4.75 billion for implementation grants for programs, policies, measures, and other investments that will achieve or facilitate greenhouse gas emission reductions. Entities eligible to receive grants include States, air pollution control agencies, municipalities, Indian tribes, and groups of one or more such entities. Of amounts made available in this section, 3 percent is reserved for administrative costs. This provision is similar to the Carbon Reduction Program within the Bipartisan Infrastructure Law.

**Sec. 60115. Environmental Protection Agency Efficient, Accurate, and Timely Review.**

This section provides EPA with $40 million to improve the efficiency of environmental reviews, permitting and project approvals, including through the hiring and training of personnel, the development of environmental data or information systems and increased public engagement and transparency.

**Sec. 60116. Low-Embodied Carbon Labeling for Construction Materials.**

This section provides $100 million to EPA to carry out a program to identify and label low-embodied carbon construction materials and products. The materials would be identified based on environmental product declarations or determinations by State agencies. Determinations are made in consultation with the Administrators of the Federal Highway Administration and the General Services Administration. These funds may be used for administrative costs associated with conducting the activities under this section.

**Subtitle B—Hazardous Materials**

**Sec. 60201. Environmental and Climate Justice Block Grants.**

This section provides $3 billion to EPA to award grants and provide technical assistance for environmentally-related activities that benefit disadvantaged communities. Of these funds, $2.8 billion is provided for grants to support eligible activities, $200 million is provided for technical assistance grants, and 7 percent is reserved for administrative costs. Eligible activities fall into five categories:

1. pollution monitoring, prevention and environmental remediation; investments in low- and zero-emission and resilient technologies and related infrastructure; and workforce development that help reduce greenhouse gas emissions and other air pollutants;
2. mitigating climate and health risks from urban heat islands, extreme heat, wood heater emissions, and wildfire events;
3. climate resiliency and adaptation;
4. reducing indoor toxics and indoor air pollution; and
5. facilitating engagement of disadvantaged communities in State and Federal public processes, including facilitating such engagement in advisory groups, workshops, and rulemakings.

**Subtitle C—United States Fish and Wildlife Service**

**Sec. 60301. Endangered Species Act Recovery Plans.**

This section provides $125 million to the United States Fish and Wildlife Service (FWS) for the development and implementation of recovery plans under section 4 of the Endangered Species Act (ESA).

**Sec. 60302. Funding for the United States Fish and Wildlife Service to Address Climate-Induced Weather Events.**

This section provides $121.25 million to FWS for direct expenditures, grants, and contracts for rebuilding and restoring units of the National Wildlife Refuge System and state wildlife management areas, including by addressing the threat of invasive species and increasing the resiliency of habitats and infrastructure to withstand climate-induced weather events. This section also provides $3.75 million for administrative costs related to carrying out this provision.

**Subtitle D—Council on Environmental Quality**

**Sec. 60401. Environmental and Climate Data Collection.**

This section provides $32.5 million to the Chair of the Council on Environmental Quality (CEQ) to collect data and share information on cumulative impacts of pollution and temperature rise on communities, as well as to identify and map where those environmental harms and climate impacts are disproportionately burdensome.

**Sec. 60402. Council on Environmental Quality Efficient and Effective Environmental Reviews.**

This section provides $30 million to the Chair of the CEQ to train personnel, develop programmatic and environmental documents, and improve stakeholder and community engagement.

**Subtitle D—Transportation and Infrastructure**

**Sec. 60501. Neighborhood Access and Equity Grant Program.**

This section amends title 23 of the United States Code to provide $3 billion for a new program that provides competitive grants to States, local governments, Tribal governments, Territories and metropolitan planning organizations to improve transportation equity and accessibility and mitigate environmental impacts from transportation facilities. $1.893 billion is provided for grants in three categories.

1. Construction of projects to remove, improve, or replace a transportation facility that is an obstacle to neighborhood connectivity, or projects to restore walkability and access in disadvantaged communities, or to improve access for bicyclists and pedestrians.
2. Projects to mitigate the effects of existing surface transportation facilities on safety and the environment, including air pollution, noise pollution, and stormwater runoff, and;
3. Predevelopment projects to conduct transportation-related planning, monitoring, community engagement, technical assistance, and capacity building.

Additionally, $1.1 billion is provided for grants for economically disadvantaged communities, including communities located in areas of persistent poverty. This section would also provide $42 million for local technical assistance costs and administrative costs.

**Sec. 60502. Assistance for Federal Buildings.**

This section provides $250 million to the Federal Buildings Fund for converting and constructing federal facilities under the jurisdiction of the Administrator of General Services to high-performance green buildings.

**Sec. 60503. Use of Low-Carbon Materials**

This section includes $2.15 billion for the General Services Administration to acquire and install low-embodied carbon materials and products for use in the construction or alteration of GSA-owned and operated buildings.

**Sec. 60504. General Services Administration Emerging Technologies**

This section includes $975 million for the General Services Administration for emerging and sustainable technologies, and related sustainability and environmental programs.

**Sec. 60505. Environmental Review Implementation Funds.**

This section amends title 23 of the United States Code to provide $100 million to the Administrator of the Federal Highway Administration (FHWA) to support efficient and effective environmental reviews for surface transportation projects. Funds under this program will support the work of FHWA to complete environmental reviews, and will also be provided to state and local entities to support their preparation of environmental documents and public engagement activities.

**Sec. 60506. Low-Carbon Transportation Materials Grants.**

This section amends title 23 of the United States Code to provide $2 billion for the Administrator of the Federal Highway Administration to promote the use of innovative low-carbon construction materials on Federal-aid highways. The funding will enable the Administrator to provide incentives or reimbursements to bring innovative low-carbon construction materials and products to cost parity with traditional construction materials. Projects that receive a reimbursement under this grant program are also eligible for a Federal cost-share of up to 100 percent as an additional incentive for the use of innovative low-emission materials. Eligible materials under this program would be identified by the Administrator of the Environmental Protection Agency on the basis of their lower carbon emissions.

# TAB 7c
# Diesel Emission Reduction Program (DERA) & VW Grant Update

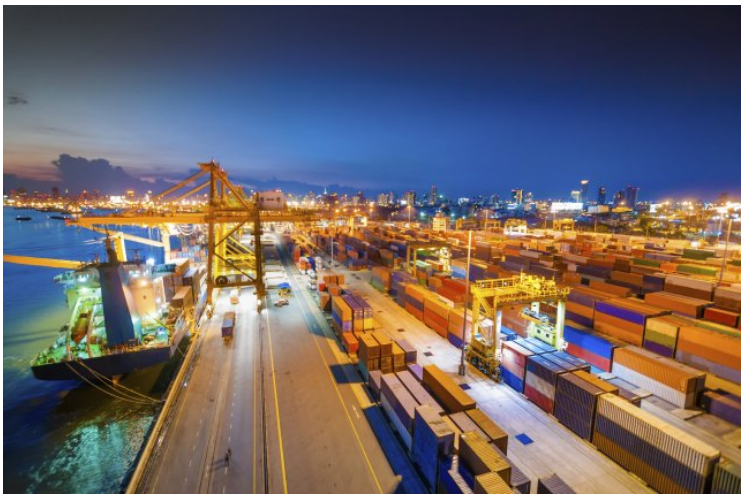
# TAB 7d
# Federal Updates (WOTUS, NEPA, PFAS, EPA Ports Initiative, etc.)

# About EPA Ports Initiative

: 4/28/2017


On this page:

Overview
Vision
Goal
Elements of initiative



## Overview

Ports are critical for commerce, a keystone for economic growth, and play a significant role in the goods movement supply chain. Investing in port infrastructure and operations is vital to America's economic prosperity. These investments also provide enormous opportunities for environmental gains. The many people who live near ports and work at ports can be exposed to levels of air pollution that contribute to significant health problems. Findings from the 2016 EPA National Port Strategy Assessment confirm that there are effective air quality improvement strategies available today for every type and size of port.

Through this ports partnership initiative, EPA supports efforts to improve efficiency, enhance energy security, save costs, and reduce harmful health impacts by advancing next-generation, clean technologies and practices at ports. We also facilitate collaboration between the port industry, communities, and all levels of government to help ensure timely and effective infrastructure development.

EPA's efforts are responsive to September 2016 recommendations from leading port industry, community, and government experts. These experts participated in a two-year public process to advise EPA on designing a voluntary program to improve air quality around ports.

## Vision

People living and working near ports across the country will breathe cleaner air and live better lives as a result of bold steps taken through a collaboration of industry, government and communities to improve environmental performance and increase economic prosperity.

## Goal

The long-term Ports Initiative goal is for U.S. ports to become global leaders in clean, efficient freight and passenger transportation. Ongoing actions outlined in the initiative elements are laying the groundwork for achieving both the long-term goal and the vision.

## Elements of Initiative

The Ports Initiative consists of five key elements noted below and depicted in the graphic below.


Funding – Helping Ports Capitalize on Funding for Clean Technologies

Assist port stakeholders in finding and capitalizing on funding opportunities throughout all levels of government. Funding types include the following: grants, cooperative agreements, bonds, apportionments, loans, rebates, incentives, and settlements.

Funding Sources Information

## Technical Resources – Providing Tools to Help Identify Smart Infrastructure Investments

Provide measurement tools, guidance, and technical assistance that can help identify the best clean air investments.

Technical Resources Information
Best Practices for Port Operations

Collaboration – Promoting Port-Community Collaboration for Effective Planning

Promote port-community collaboration to prioritize and advance clean air projects.

Community-Port Collaboration Information

Coordination – Increasing Efficiency in Federal Government and Port Operations

Align federal port-related activities to achieve efficiencies, reduce costs, and better assist port industry, communities, and state/local governments.

## Communications – Creating a Knowledge Clearinghouse

Create a one-stop web resource for the port industry, communities, and all levels of government on best practices, funding, and other resources.

# Funding Opportunities for Ports and Near-Port Communities

7/14/2017


| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
|---|---|---|---|---|---|
| Federal (Department of Commerce/ Economic Development Administration) | Planning Program & Local Technical Assistance Program FY21-23 | Grant<br><br>Federal matching rate dependent on region-specific information. | Applications accepted on an ongoing basis. | This program helps build capacity, guide economic prosperity and resiliency, and create and retain high-quality jobs. | • In ec<br>• Fe go<br>• St<br>• No |
| Federal (Department of Commerce/ Economic Development Administration) | FY20 Economic Development Assistance Programs/Public Works Program | Grant<br><br>Individual Awards: $100,000-$3 Million | Applications accepted on an ongoing basis. | This program helps distressed communities build, design, or construct infrastructure and facilities to advance bottom-up economic development goals. | • In ec<br>• Tr<br>• St<br>• No |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
|---|---|---|---|---|---|
| Federal (Department of Defense/ U.S. Army Corps of Engineers) | Broad Agency Announcement (BAA) | Grant<br><br>No Funding Level | Deadline passed. | This program funds research related to the Engineer Research and Development Center's (ERDC) mission (e.g., research on dredging, coastal engineering, oceanography, vehicle mobility, aquatic plants, water quality, infrastructure and environmental issues, energy, facilities maintenance, environmental processes, and ecological processes). | • Pu S. ar<br>• No<br>• Ec<br>• **NO** pr ar lis er at Co or (H |
| Federal (Department of Energy) | FY21 Vehicle Technologies Office Research Funding Opportunity Announcement | Cooperative Agreement<br><br>Total FY21 Funding: $60.2 Million<br><br>Average Individual Award $350,000-7,500,000 | Deadline passed for FY21. Notice of intent submitted for FY 2022 | This program funds a broad portfolio of research and proof-of-concept deployment to develop new affordable, efficient and clean transportation options to enable industry to accelerate the development and widespread use of a variety of innovative transportation technologies. The research pathways focus on electrification, fuel diversification, vehicle efficiency, energy storage, lightweight materials, and new mobility technologies to improve the overall energy efficiency and affordability of the transportation system. | • In<br>• Do<br>• In ur |
| Federal (Department of Energy) | FY19 Commercial Trucks and Off-road Applications FOA: Natural Gas, Hydrogen, Biopower, and Electrification Technologies | Total Funding FY19: Approximately $51.5 Million<br><br>22-43 awards are anticipated. | Deadline passed for FY19. | Seeks projects to address priorities in the following areas: batteries and electrification, including Congressional direction for EISA 131 support; Congressional direction for natural gas and off-road vehicles; technology integration, including Congressional direction for Clean Cities; hydrogen and fuel cell technologies, including Congressional direction for fuel cells; hydrogen generation, deliver, and storage systems research; and bioenergy technologies, including Congressional direction to support biopower. | • U. pe<br>• Fo ec nc in fo pa of ha bu Ur nc<br>• St go |
| Federal (Department of Transportation) | Private Activity Bonds (PABs) | Bond<br><br>Total Funding: $15 Billion | | PABs provide debt financing for private projects that are developed for a public purpose. | • Pr<br>• Pu ac a |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
|---|---|---|---|---|---|
| Federal (Department of Transportation) | Metropolitan Planning Program through the Fixing America's Surface Transportation (FAST) Act for the Metropolitan Transportation Plan (MTP) | Apportionment<br><br>Estimated Total FY21 Funding: $358 Million | | These funds are used by Metropolitan Planning Organizations (MPOs) for multimodal transportation planning and programming. | • St tra |
| Federal (Department of Transportation) | Congestion Mitigation & Air Quality (CMAQ) Improvement Program through Fixing America's Surface Transportation (FAST) Act | Apportionment<br><br>Estimated Total FY21 Funding: $2.444 Billion | | This program funds cost-effective reduction of congestion, ozone, carbon monoxide, or particulate matter emissions in non-attainment/maintenance areas. | • St go |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
|---|---|---|---|---|---|
| Federal (Department of Transportation) | Advanced Transportation and Congestion Management Technologies Deployment (ATCMTD) Initiative through Fixing America's Surface Transportation (FAST) Act | Grant<br>Total Funding FY21: $60 Million<br>Individual Award Ceiling: $12 Million<br>Expected Number of Awards: 5-10 | Deadline passed for FY21. | This program funds the development of model deployment sites for large scale installation and operation of advanced transportation technologies to improve safety, efficiency, system performance, and infrastructure return on investment. | • St go<br>• Tr<br>• M Or re m<br>• Ot of go pu au<br>• Co re in |
| Federal (Department of Transportation) | National Highway Freight Program (NHFP) through the Fixing America's Surface Transportation (FAST) Act | Apportionment<br>Estimated Total FY21 Funding: $1.458 Billion | | This program funds investments in infrastructure and operational improvements that strengthen economic competitiveness, reduce congestion, reduce the cost and environmental impacts of freight transportation, improve reliability and safety, and increase productivity. | • St |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
|---|---|---|---|---|---|
| Federal (Department of Transportation) | National Highway Performance Program (NHPP) through the Fixing America's Surface Transportation (FAST) Act | Apportionment<br><br>Estimated Total FY21 Funding: $23.357 Billion | | This program funds the improvement and construction of new facilities on the National Highway System (NHS) to help states achieve their Asset Management Plan performance targets. | • St<br>Tr |
| Federal (Department of Transportation) | Transportation Infrastructure Finance & Assistance (TIFIA) | Loan<br><br>Credit assistance limited to 33 percent of reasonably anticipated eligible project costs (unless the sponsor provides a compelling justification for up to 49 percent)<br><br>Minimum Anticipated Project Costs<br>• $10 million for Transit-Oriented Development, Local, and Rural Projects<br>• $15 million for Intelligent Transportation System Projects<br>• $50 million for all other eligible Surface Transportation Projects | Rolling application process. | The TIFIA loan program provides federal credit assistance to nationally/regionally significant surface transportation projects including highway, transit and rail, with some applicability to port intermodal projects. | • St<br>Pu<br>• Lo<br>• Ot<br>pr<br>pr<br>pu |
| Federal (Department of Transportation) | Infrastructure For Rebuilding America (INFRA) Grant Program (previously Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE)) | Grant<br><br>Total FY21 Funding: $889 Million<br><br>Individual Awards must be at least $5 Million for a small grant and at least $25 Million for a large grant | Deadline passed for FY21. | This program provides assistance to highway and freight projects of national/regional significance. | • St<br>go<br>• M<br>Or<br>• Sp<br>• Pu<br>tra<br>(ir<br>• Fe<br>ag<br>sta<br>• Mu<br>ju |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Federal (Department of Transportation) | Surface Transportation Block Grant (STBG) Program (previously the Surface Transportation Program) | Grant<br><br>Estimated Total FY21 Funding: $11.012 Billion | | This grant provides flexible funding to preserve and improve the condition and performance on any federal-aid highway, bridges on any public road, and transit capital projects. | • St |
| Federal (Department of Transportation) | Railroad Rehabilitation & Improvement Finance (RRIF) | Loan<br><br>Total Funding: Up to $35 Billion, $7 Billion is reserved for non-Class I freight railroads | | This funding is used to acquire, improve, or rehabilitate intermodal facilities, refinance outstanding debt incurred for the purposes listed above, and develop new intermodal facilities. | • Ra<br>• St go<br>• Ge au co<br>• Jo or<br>• Li sh co co |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Federal (Department of Transportation) | Passenger Ferry Grant Program | Grant<br><br>Total FY21 Funding: $38 Million | Deadline passed for FY21. | This program provides competitive funding for projects that support passenger ferry systems in urbanized areas.<br><br>Eligible activities include: support existing ferry service, establish new ferry service, and repair and modernize ferry boats, terminals, and related facilities and equipment. | • Fu to<br>• El Se<br>• St re op sy ar |
| Federal (Department of Transportation) | Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Transportation Discretionary Grants. Program was formerly known as BUILD and TIGER. | Grant<br><br>Total Funding FY21: $1 Billion<br><br>Maximum Award: $25 Million and no more than $100 million can be awarded to a single State. Up to $30 million will be awarded to planning grants, including at least $10 million to Areas of Persistent Poverty. | Deadline passed for FY21. | Program funds surface transportation projects that foster safety, maintain infrastructure in state of good repair, benefit the economy, advance environmental sustainability, and fosters improved quality of life. Eligible capital projects include port infrastructure investments (including inland port infrastructure and land ports of entry), intermodal projects, and passenger and freight rail transportation projects. Eligible planning projects include development of port and regional port planning grants, including State-wide or multi-port planning within a single jurisdiction or region. | • St go U.<br>• Tr<br>• Po<br>• M Or<br>• Ot of go |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Federal (Department of Transportation, Maritime Administration: MARAD) | Federal Ship Financing Program (Title XI) | Loan<br><br>Guarantees up to 87.5 percent of the actual cost of certain classes of vessels. | | To provide for a full faith and credit guarantee by the United States Government to promote the growth and modernization of the U.S. merchant marine and U.S. shipyards. The Federal Ship Financing Program (commonly referred to as "Title XI") promotes U.S. Merchant Marine fleet and U.S. shipyard growth and modernization. Through long term debt repayment guarantees, the Program encourages U.S. shipowners to obtain new vessels from U. S. shipyards cost effectively. It also assists U.S. shipyards with modernizing their facilities for building and repairing vessels. | • Ar pa bu U. ar cit *tra*<br>• Ve co as ca to oc flo of ve dr<br>• Se Re we re |
| Federal (Department of Transportation/ Maritime Administration) | Maritime Environmental and Technical Assistance (META) Program | Grant<br><br>Project Dependent | | META funds efforts to control aquatic invasive species transported by vessels and reduce vessel and port air emissions. | Project applicar<br>• In<br>• Ac<br>• No Or Gc Or |
| Federal (Environmental Protection Agency) | Pollution Prevention Grant Program | Grant<br><br>Total FY20-FY21 Funding: $9.38 Million<br><br>Individual Award Amount: $40,000-500,000 per award for two years | Deadline passed for FY20 & FY21. | This program funds grants/cooperative agreements that implement pollution prevention technical assistance services and/or training and support projects that reduce and/or eliminate pollution. | • St<br>• D.<br>• Ar of<br>• Ar ins (ir co<br>• Fe th fo si int |
| Federal (Environmental Protection Agency) | Targeted Air Shed Grant Program | Grant<br><br>Total FY21 Funding: Approximately $59 Million<br><br>Maximum Requested Funding: $8 Million | Deadline for FY21. | This program will assist local, state, and/or tribal air pollution control agencies to conduct emission reduction activities to reduce air pollution in nonattainment areas that EPA determines are the top five most polluted areas relative to ozone, annual average fine particulate matter (PM2.5), or 24-hour PM2.5 National Ambient Air Quality Standards. | • Ai ag |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Federal (Environmental Protection Agency) | Source Reduction Assistance (SRA) Grant Program | Grant<br>Total FY20-FY21 Funding: $1.3 Million<br>Individual Awards: $20,000 - $200,000 per award for 2 years | Deadline passed for FY20/21. | SRA grants support pollution prevention through source reduction and resource conservation work. | • St<br>• D.<br>• Ar of<br>• Lo<br>• So<br>• In ec<br>• No<br>• Co gr<br>• Fe ar |
| Federal (Environmental Protection Agency) | Diesel Emissions Reductions Act (DERA) Funding Program; National Grants | Grant<br>FY21 Funding: Approximately $46 Million | Deadline passed for FY21. | DERA grant funds support projects aimed at reducing emissions from the nation's existing fleet of older diesel engines. Under this competition, between 40 and 70 awards are anticipated. DERA aims to achieve significant reductions in diesel emissions through verified retrofit technologies; engine and vehicle replacements; idling reduction technologies; shorepower; and electrified parking spaces, to accelerate fleet turnover to cleaner next generation technologies. | • Re tri<br>• Po ju tra<br>• No in pr or pe ov ar or pu |
| Federal (Environmental Protection Agency) | Diesel Emissions Reductions Act (DERA) Funding Program; Tribal and Insular Area Grants | Grant<br>Approximately $5 Million<br>• $4.5 Million for Tribal Program<br>  ◦ Up to $800,000 per application<br>• $500,000 for Insular Area Program<br>  ◦ Up to $250,000 per application | Deadline passed for FY21. | Program implements projects which reduce emissions from the nation's existing fleet of older diesel engines. Eligible diesel emissions reduction solutions include verified retrofit technologies, verified idle reduction technologies, verified aerodynamic technologies, verified low rolling resistance tires, certified engine replacements and conversions, and certified vehicle or equipment replacement. | • Tr int Al wh tra<br>• In U. Ar Co No |
| Federal (Environmental Protection Agency) | Enhanced Air Quality Monitoring for Communities - American Rescue Plan (ARP) | Grant<br>Total Funding: $20 Million<br>Tribal Government Set-aside: $2 Million<br>Community-Based Organization Set-Aside: $2 Million | Deadline passed. | The purpose is to enhance ambient air quality monitoring of pollutants of greatest concern in communities across the United States, especially in underserved communities with environmental and health outcome disparities stemming from pollution and the COVID-19 pandemic. | • In<br>• Lo<br>• St<br>• U. pc<br>• Pu ar<br>• Pu or cc or |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Federal (Environmental Protection Agency) | Healthy Communities Grant Program | Grant<br><br>Total FY21 Funding Amount: $300,000<br><br>Maximum Award Amount: $30,000 | Deadline for FY21 passed. | This grant funds projects that:<br>• Target resources to benefit communities at risk<br>• Assess, understand, and reduce environmental and human health risks<br>• Increase collaboration through community-based projects<br>• Build institutional and community capacity to understand and solve environmental and human health problems<br>• Achieve measurable environmental and human health benefits<br>• Advance emergency preparedness and resilience | • C<br>R |
| Federal (Environmental Protection Agency) | The Environmental Justice Collaborative Problem-Solving (EJCPS) Cooperative Agreement Program | Cooperative Agreement<br><br>Total Funding FY21: Approximately $9.2 Million<br><br>EPA anticipates awarding approximately 46 grants of up to $200,000 each nationwide | Deadline for FY21 passed. | Provides funding to support community-based organizations in efforts to collaborate and partner with local stakeholder groups (e.g., local businesses and industry, local government, medical service providers, and academia) as they develop and implement community-driven solutions that address environmental and/or public health issues for underserved communities. | • In<br>or<br>bu<br>cc<br>or<br>or<br>er<br>ne<br>or<br>af<br>in<br>• U.<br>• Fe<br>re<br>gc<br>Al<br>• Tr<br>• Fr<br>(F |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Federal (Environmental Protection Agency) | Environmental Justice Small Grants (EJSG) Program | Grant<br><br>Total Funding FY21: Approximately $7.3 Million<br><br>EPA anticipates awarding approximately 100 grants of up to $75,000 each nationwide, including approximately 6 that address clean air issues at coastal and inland ports or rail yards | Deadline for FY21 passed. | Provides funding to community-based organizations to help residents of underserved communities understand and address local environmental and public health issues. | • In<br>or<br>bu<br>er<br>ne<br>or<br>af<br>in<br>• U.<br>• Fe<br>re<br>go<br>Al<br>• Tr<br>• Fr<br>(F |
| Federal (Maritime Administration: MARAD) | America's Marine Highway Projects | Grant<br><br>Total FY21 Funding: $12.6 Million | Deadline passed for FY21. | The purpose of the appropriation is to make grants available to previously designated Marine Highway Projects that support the development and expansion of documented vessels, or port and landside infrastructure. | • Or<br>a<br>ha<br>as<br>Pr<br>• A<br>eit<br>pr<br>ha<br>Pr<br>or<br>wi<br>as<br>• St<br>(ir<br>de<br>tra<br>m<br>or<br>au<br>go<br>se<br>hi<br>de<br>Pr |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Federal (Maritime Administration: MARAD) | Port Infrastructure Development Program | Grant<br><br>Total FY21 Funding: $230 Million<br><br>Minimum Amount Awarded: $1 Million | Deadline for FY21 passed. | The Department seeks projects that will: (1) advance technology-supported safety and design efficiency improvements; (2) bring facilities to a state of good repair and improve resiliency; (3) promote efficient trade in energy resources; (4) promote exports of manufacturing, agriculture, or other goods; and (5) for only the top 15 coastal ports, support the safe flow of agricultural and food products, free of pests and disease, domestically and internationally. | • Po<br>• A su ex<br>• St go<br>• A ch es St<br>• A wi fu<br>• A m er<br>• A ab er er |
| Federal (National Oceanic and Atmospheric Administration) | Coastal Resilience Grants | Grant<br><br>Total FY21 Funding: Approximately $34 Million | Deadline passed for FY21. | This grant funds projects<br><br>to create and restore natural systems in order to increase protection for communities from coastal storms, sea- and lake-level changes, inundation, and coastal erosion, while improving habitats for fish and wildlife species. NFWF will invest in projects in four priority areas:<br><br>• Community Capacity Building and Planning<br>• Site Assessment and Preliminary Design<br>• Final Design and Permitting<br>• Restoration and Monitoring | • El nc or te ag go go go or in (fc |
| Federal (U.S. Army Corps of Engineers: USACE) | Continuing Authorities Program (CAP) | Cooperative Agreement<br><br>Federal Project Limit: $10 Million (per sub-authorities within the program) | | The purpose of the CAP is to plan and implement projects of limited size, cost, scope and complexity regarding water resources projects | • St<br>• Tr |
| Local (Houston-Galveston Area Council) | Clean Vehicles Program | Grant<br><br>Up to 75% of the total eligible project costs. | Applications accepted on a rolling basis. | Funding to replace trucks or buses in order to improve the regional air quality, fulfill regional SIP and conformity requirements, reduce petroleum consumption, enhance energy independence and diversity, and help stimulate the local economy. | The pro private, organiza of opera Galvest region. |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Local (Houston-Galveston Area Council) | Heavy-Duty Replacement Program | Grant<br><br>50% of the incremental cost of new diesel equipment or 75% of the incremental cost of alternative fuel equipment. | Applications accepted on a rolling basis. | Replaced the Houston-Galveston Area Council's Drayage Program. The program provides a reimbursement grant for the replacement of heavy duty diesel powered equipment with newer, cleaner equipment. | Eligibilit<br>focus o<br>replace |
| Local (North Central Texas Council of Governments - NCTCOG) | North Texas Freight Terminal Electrification 2020 | Grant<br><br>FY20 Total Funding: $1 Million<br><br>Funding up to 30 percent of project costs for electrified parking spaces, power monitoring equipment, and electric power kits | Deadline passed. | Projects that reduce idling from transport refrigerated units (TRUs) of heavy-duty diesel trucks and trailers. Specifically, grant funding will be used to assist in construction and installation of EPA-verified electrified parking spaces (EPS) at truck terminals and distribution centers in the Dallas-Fort Worth (DFW) ten-county ozone nonattainment area that will we used to power TRUs while heavy-duty trucks and trailers are on stand-by or currently loading or unloading. | Any ent<br>operate<br>or distril<br>primaril<br>truck TF<br>located<br>currentl<br>nonattai<br>ozone. |
| Local (Sacramento Metropolitan Air Quality Management District and Sacramento Area Council of Governments) | Sacramento Emergency Clean Air & Transportation Grant Program (SECAT) | Grant<br><br>FY21: Approximately $4 Million<br><br>Individual Award: $100,000 per replacement zero emission heavy duty vehicle (up to $500,000 per applicant) | Deadline for FY21 passed. | This program provides funds the purchase of zero emission vehicles using battery-electric or hydrogen fuel cell technology. | • In<br>• Fi<br>• Pu |
| Local (San Joaquin Valley Air Pollution Control District) | Truck Replacement Program | Voucher<br><br>Funding determined by the weight classification of the existing or new truck, whichever is less. | Applications accepted on a rolling basis. | This program encourages the replacement of old, high-polluting, heavy-duty diesel trucks. | • Tr<br>Sa |
| Nonprofit (Propane Council of Texas) | Propane Vehicle Incentives | Maximum Amount Awarded: Up to $7,500 per propane vehicle<br>or conversion to propane with a $20,000 lifetime cap per fleet | Not currently providing incentives due to Texas being replete with opportunities for fleet funding. The Council has a grant writer that can assist Texas fleets with finding funding to switch to propane autogas. | This program offers incentives to buy a new factory-direct LPG engine, and/or an EPA or CARB certified after-market conversion to propane kit. Incentives will be available for the incremental cost between gas/diesel vehicles and a LPG vehicle. | • Pr<br>pr<br>• Lo<br>• St<br>• La<br>• Sc<br>• No |
| Port Authority (Port Authority of New York and New Jersey) | Truck Replacement Program | Grant<br><br>Covers up to 50 percent of the cost of a replacement truck or up to $25,000, whichever is less. | Applications accepted on a first come, first serve basis. | This program funds the replacement of older drayage trucks with newer, cleaner, Class 8 drayage trucks. | • In<br>op<br>ca |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Port Authority (Port Authority of New York and New Jersey) | Cargo Handling Equipment Program | Rebate<br><br>Covers up to 20 percent of the purchase price or up to $20,000 per unit replaced. | | This program incentivizes the purchase of new cargo handling equipment with Tier IV engines or alternative powered equipment. | • Al Te of ha |
| Port Authority (Port Authority of New York and New Jersey: PANYNJ) | Clean Vessel Incentive Program | Incentive<br><br>Annual Budget: $1.3 Million | The program is extended to December 31, 2023. | This program provides financial incentives to encourage operators of ocean-going vessels to make voluntary engine, fuel and technology enhancements that reduce emissions beyond the regulatory environmental standards. | • Al co ca M |
| Private | Commercial - Property Assessed Clean Energy (C-PACE) | Loan<br><br>PACE pays for 100% of a project's costs. Borrowers repay for up to 20 years with an assessment added to the property's tax bill. | Applications accepted on a rolling basis. | This program offers long-term private financing for renewable energy and energy efficiency upgrades to businesses. | • M wi leg • El au m co ar pr |
| Private (Port of Long Beach) | Community Grants Program | $3-$4 Million/year for next 12-15 years depending on budget | Facilities Improvement applications deadline passed. | This Community Grants Program (CGP) invests in community projects outside the Harbor District to minimize port impacts related to air, noise, water, and traffic. The CGP prioritizes projects in the neighborhoods and corridors where these impacts are most acutely felt. | Commu • N go he as<br>Facility • N go he pr pr cit re ail<br>Commu • N go |
| Private (Port of Los Angeles, Port of Long Beach) | San Pedro Bay Ports Technology Advancement Program | Grant<br><br>Up to 50% of project costs | Request for Information (RFI) is now open. | This program provides funding, guidance, and staff support to test promising air technologies in a real-world environment. | • Ar |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| Private/Nonprofit (National Academy of Sciences, Engineering, and Medicine) | Thriving Communities Grant 5 | Grant<br>Total Funding Amount: Up to $10 Million<br>Projects of any size considered. | Deadline passed. | This grant funds projects that increase our understanding of how community attributes and systems interact and influence a community's ability to adapt and projects that provide actionable information and strategies for implementing policies and practices that increase community resilience. | • Al ex or in |
| State (California Air Resources Board) | Goods Movement Emissions Reduction Program (GMERP) | Grant<br>Total Funding Amount: $1 Billion over multiple years | Application period closed. | Funds efforts to reduce air pollution emissions and health risks from freight movement along California's trade corridors. | • Fu lo of ov in up te |
| State (California Air Resources Board) | Carl Moyer Memorial Air Quality Standards Attainment Program | Grant<br>Generally awards about $60 Million per year. | These grants are issued locally by air districts. Contact your local air district for information on funding availability, project eligibility, applications, and a selection timeline. | This program provides grant funding to achieve or purchase cleaner-than-required engines and equipment. | • Fu di pr |
| State (California Air Resources Board) | Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP) | Incentive<br>FY20/21: $165 Million | Application period closed. | This program encourages the deployment of hybrid and/or zero-emission trucks and buses as well as vehicles using engines that meet the optional low NOx standards. | • Fl ve |
| State (California Department of Transportation: Caltrans) | Sustainable Transportation Planning (STP) Grants | Grant<br>Total FY22/23 Funding: $34 Million | Deadline Passed | Funds studies of multimodal transportation issues to help achieve the Caltrans Mission and overarching objectives. | • M<br>• Re Pl<br>• Tr<br>• Ci<br>• Tr |
| State (California Energy Commission) | Natural Gas Vehicle Incentive Project (NGVIP) | Incentive<br>No funds available for reservations. Waitlist applications are being accepted. | Applications accepted on a rolling basis. | This program provides incentives for new on-road natural gas vehicles registered and operated in California. | • In<br>• Fi<br>• Pu |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| State (California Environmental Protection Agency) | Environmental Justice Small Grants Program | Grant<br><br>Project Funding: $50,000 Maximum | Deadline for FY21 passed. | Provides funding to non-profit entities and federally recognized Tribal governments to improve a community's understanding of the environmental problems that affect it and amplify community voices in the political and decision-making processes that affect the local environment. | • No<br>• Fe<br>go |
| State (Indiana Department of Environmental Management - IDEM) | 2021 DIESELWISE INDIANA - DERA with Volkswagen DERA Option | Grant<br><br>Total Funding: $1.8 Million<br><br>Anticipation of cooperative agreements ranging from $50,000 to $1,000,000<br><br>Covers up from 25 to 100 percent of the total cost depending on project type. | Deadline Passed. | This action announces funding availability for projects designed to significantly reduce diesel emissions from nonroad vehicles and equipment across Indiana. Nonroad vehicles and equipment include vehicles, engines, and equipment used for construction, agriculture, cargo handling (port, airport, and others), rail transportation, marine transportation as well as others. | Open to entities powered entities, local, ci governr governr entities busines liability corpora sample represe eligible |
| State (Iowa Department of Transportation) | Zero-Emission Vehicle (ZEV) Supply Equipment | Grant<br><br>$1.1 Million<br><br>Funding up to $180,000 or 90 percent of project costs for direct current fast chargers<br><br>Funding up to $15,000 or 90 percent of project costs for Level 2 community charging | Deadline for FY21 passed. | Funding comes from the VW Environmental Mitigation Trust and will support publicly accessible charging sites. Direct Current Fast Charger Corridor sites and Level 2 Community Charging sites will be funded. | • Fo<br>• In<br>or<br>• Fe<br>Tr<br>• M<br>tra<br>or |
| State (Iowa Department of Transportation) | Replacement of Buses, Trucks, and Non-road Equipment | Grant<br><br>$4.9 Million | Deadline passed for FY21. | Funding comes from the VW Environmental Mitigation Trust and will support replacing or repowering older buses, freight trucks and port drayage trucks, freight switchers, and vessels with newer, cleaner vehicles and engines. Funds can also be used for shorepower projects. | • Pr<br>• Pu<br>op<br>• Ci<br>• Co<br>• So |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| State (Louisiana Department of Transportation) | Port Construction and Development Priority Program | Cooperative Agreement<br><br>The program may provide up to 90 percent of the cost of construction. | Submit an application to the Department of Transportation & Development by the 1st of March, June, September or December of each year for funding consideration in the following fiscal year. | This program encourages jobs and competitive transportation costs to move cargo, minimizes highway congestion, improves safety, and reduces maintenance costs by providing guidance and funds to build landside infrastructure. | • Ar<br>au |
| State (Maryland Department of Transportation) | Port of Baltimore Dray Truck Replacement Program (Dollars for Drays) | Grant<br><br>Individual Award: Up to $30,000 | | The program funds the retrofit, repower, or replacement of older vehicles with more emission-efficient engines or technologies. | • In<br>ar<br>cu<br>tru<br>Ba |
| State (Maryland Department of Transportation) | Port of Baltimore<br><br>Cargo Handling Equipment Replacement and Repower Program | Rebate<br><br>Cost-share dependent on repower or replacement and diesel or all-electric | | The program funds the retrofit, repower, or replacement of older equipment with more emission-efficient engines or technologies. | • Ec<br>se<br>Ba |
| State (Maryland Department of Transportation) | Port of Baltimore Marine Program | Grant<br><br>40 percent of the cost to replace a diesel engine.<br><br>60 percent of the cost of replacing a diesel engine with a zero emission power source. | | The purpose of this program is to reduce air pollution and emissions associated with the transport of goods to and from the Port of Baltimore. | • Ec<br>se<br>Ba |
| State (Massachusetts Department of Environmental Protection) | Massachusetts Electric Vehicle Incentive Program (MassEVIP): Fleets | Incentive<br><br>Individual Award Amount: Up to $7,500 depending on purchase | Applications are accepted on a first come, first serve basis. | This program provides incentives for the acquisition of electric vehicles (EVs) and the installation of Level 2 dual-port charging stations. | • Mi<br>• St<br>• Ma<br>ur |
| State (Massachusetts Seaport Economic Council) | Seaport Economic Council Grants | Grant<br><br>Maximum of $1 Million with matching funds of 20 percent. | Applications accepted on a rolling basis. Deadlines are Nov. 1, 2022 and May 1, 2023 depending on which meeting applicant wants consideration at. | Challenge coastal communities of Massachusetts to grow jobs and economy as well as prepare for the future to confront challenges posed by sea level rise and increasingly powerful coastal storms. | • Op<br>co<br>Ma<br>qu |
| State (Minnesota Department of Transportation) | Minnesota Port Development Assistance Program (PDAP) | Grant<br><br>FY20 Expected Funding: $14 Million | Deadline passed for FY20. | Program assistance is used to upgrade facilities and infrastructure, as well as to rehabilitate and expand port capacity. | • St<br>au |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| State (Minnesota Pollution Control Agency) | Small Business Environmental Loan Program | Loan<br><br>Individual Loan Amount: $1,000 - $75,000 | Applications accepted on a rolling basis. | This program provides zero-interest loans to small businesses for capital equipment purchases that meet or exceed environmental regulations and costs associated with the investigation and cleanup of contaminated sites. | • Sr cc<br>• Sc<br>• Pa as<br><br>Have le employe less tha |
| State (Minnesota Pollution Control Agency) | Environmental Assistance Loan Program | Loan<br><br>Maximum Participatory Loans: $250,000 at zero percent interest<br><br>Maximum Direct Loans: $50,000 at four percent interest or half the prime rate, whichever is greater. | Applications accepted throughout the year. | To help fund projects involving green chemistry, pollution prevention, source reduction, recycling, and/or source-separated composting. | • Mi m<br>• Pc Mi |
| State (Missouri Department of Transportation) | Freight Enhancement Program | Grant<br><br>Total FY21 Funding: $1 Million<br><br>Maximum Award Amount: $500,000 | Deadline passed for FY21. | This program aims to improve and maintain the high priority freight assets and corridors that are critical to the movement of freight into, out of, within, and through Missouri. | • Pu<br>• Pr<br>• Nc |
| State (New Jersey Department of Environmental Protection) | It Pay$ to Plug In | Grant<br><br>Covers up to $750 per Level 1 charging station, up to $5,000 per single-port Level 2 charging station, and $6,000 per dual-port Level 2 charging station. | Applications for Level 1 and 2 charging stations are being accepted and considered on a first-come, first-served basis. Applications for DC Fast Charging Stations have passed, but future solicitations are anticipated. | This program provides grants to offset the cost of purchasing and installing electric vehicle charging stations in order to support and encourage employees to purchase and drive electric vehicles to work. | • Pu<br>• Pr<br>• Fc<br>• Nc<br>• Ec<br>• Gc |
| State (New York State Department of Environmental Conservation) | Community Impact Grant Program | Grant<br><br>Total FY21 Funding: $4.1 Million<br><br>Minimum grant $50,000. Maximum grant $100,000 | Deadline passed for FY21. | Grants are for community-based organizations for projects that address exposure of communities to multiple environmental harms and risks | • Nc (N or cc or wi as |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
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| | | | | This program supports projects that focus on climate change adaptation and greenhouse gas mitigation, including planning and assessment projects that are part of a strategy to achieve Climate Smart Communities Certification. | |
| State (New York State Department of Environmental Conservation: DEC) | Climate Smart Communities Grant Program: Municipal Zero-emission Vehicle (ZEV) Program | Grant and Rebate Programs<br><br>Grants: ZEV Infrastructure Grants: Funds Available, $2.5 Million<br><br>Rebates: ZEV Rebates: Funds Available, $300,000 | Deadline passed for 2021. Applications are reviewed and awarded, on a rolling basis (first come, first served). | Funds are available for two broad project categories - implementation and certification. The first project category supports implementation projects related to the reduction of greenhouse gas emissions outside the power sector (transportation, methane, and refrigerants) and climate change adaptation (e.g. reducing flood-risk, increasing natural resiliency, extreme heat or event preparation, relocation or retrofit of critical infrastructure, and improving emergency preparedness). | Any cou borough the Stat to apply |
| State (Oregon Environmental Quality Commission) | Oregon Clean Vehicle Rebate Program | Rebate<br><br>Standard rebates: Range from $750-$2,500 depending on the vehicle purchased or leased<br><br>Charge Ahead rebate: $2,500 towards the purchase or lease of a new or used plug-in hybrid electric vehicle or battery electric vehicle.<br><br>Standard and Charge Ahead Rebates can be combined for up to $5,000 toward the purchase or lease of a new eligible vehicle. | Applicants must submit the application within six months of the date of purchase or lease. | Program provides rebates to purchase or lease electric vehicles. | Eligibilit focus or replace driver. |
| State (Pennsylvania Department of Environmental Protection) | Small Business Pollution Prevention Assistance Account (PPAA) Loan Program | Loan<br><br>Small business loans up to $100,000 to fund 75 percent of the project. | This program is always open. | The loan program provides low interest loans to small-businesses in Pennsylvania undertaking projects in Pennsylvania that reduce waste, pollution, or energy use | • Sr 10 er |
| State (Pennsylvania Department of Transportation) | Multimodal Transportation Fund | Grant<br><br>Individual Award Amount: $100,000 to $3,000,000 (can be over $3,000,000 if project will significantly leverage private investment and create jobs) | Deadline passed for FY20/21. | This program funds improvements to transportation assets that enhance communities, pedestrian safety, and transit revitalization. | • M • C • Bu • N • Ec O • Pu Ag • Pc |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
|---|---|---|---|---|---|
| State (State of New Jersey Department of Transportation) | Transportation Alternatives Grant Program | Grant<br><br>Project Funding: Projects with funding from $150,000 to $1,000,000 are requested | Deadline passed for FY20. | Provides federal funds for community based "non-traditional" projects designed to strengthen the cultural, aesthetic and environmental aspects of the nation's intermodal system. | • Lo<br>• Re au<br>• Tr<br>• Na la<br>• Tr<br>• Ar go re of a or ac<br>• No |
| State (Texas Commission on Environmental Quality) | New Technology Implementation Grant (NTIG) | Grant<br><br>Covers up to 50 percent of implementation costs | Deadline passed. | This program aims to offset the incremental cost of the implementation of existing technologies* that reduce the emission of pollutants from facilities and other stationary sources. *Currently only accepting energy storage project proposals | • Fa |
| State (Texas Commission on Environmental Quality) | Emissions Reduction Incentive Grants (ERIG) Program | Grant<br><br>Funding will depend upon the amount of revenue received into the TERP account. | Deadline passed for FY21. | This program provides incentives for activities that will reduce the emissions of nitrogen oxides (NOX) in designated eligible counties. | • Ir<br>• Co<br>• On<br>• Ge<br>• Bu<br>• Pa<br>• As<br>• Ar |
| State (Texas Commission on Environmental Quality) | Alternative Fueling Facilities Program (AFFP) | Grant<br><br>$12 Million<br><br>Funds up to $400,000 for CNG or LNG projects<br><br>Funds up to $600,000 for combined CNG and LNG projects<br><br>Funds 50 percent of the total eligible project cost up to a maximum of $600,000 for fuels other than natural gas | Deadline passed for FY20. | Funding for the construction and expansion of alternative fueling facilities. | Legal en busines |
| State (Texas Commission on Environmental Quality) | Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP) | Rebate<br><br>Up to $5,000 for CNG and LPG/propane vehicles<br><br>Up to $2,500 for electric and hydrogen fuel cell vehicles | Deadline passed. | The program will provide rebates to persons who have purchased or leased a light-duty CNG, LPG/propane, or hydrogen fuel cell motor vehicle. It is intended to encourage the greater use of these vehicles to stimulate the market for those vehicles and fuels in Texas. | • In<br>• Co<br>• On<br>• Ge go<br>• Bu<br>• Ar |
| State (Texas Commission on Environmental Quality) | Texas Natural Gas Vehicle Grant Program (TNGVGP) | Grant<br><br>$15 Million | Deadline passed. | This program provides funding for the replacement or repower of a heavy-duty or medium-duty motor vehicle to a natural gas engine/vehicle. | • In<br>• Co<br>• On<br>• Ge go<br>• Bu<br>• Ar |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
|---|---|---|---|---|---|
| State (Texas Department of Transportation) | State Infrastructure Bank (SIB) | Loan<br><br>Total Funding: $240 Million | | SIB aims to accelerate needed mobility improvements including planning, economical and environmental studies, appraisal and testing, utility relocation, engineering and design, and construction. | • Pu th to fin hi |
| State (Texas State Energy Conservation Office) | LoanSTAR Revolving Loan Program | Loan<br><br>Maximum Loan Size: $8 Million (per application)<br><br>Loan Interest Rate: 2 percent annually (1 percent for ARRA funds) | Applications reviewed on a first come, first served basis. Open enrollment through August 31, 2022. | This program helps finance energy-related, cost-reduction retrofits of facilities supported by the state, public school districts, public colleges and universities, and public hospital taxing districts. | • St co of ins ot • Pu co ar ec • A in to su Te • Pu or • Pu (e • Th ov fa pr wi |
| State (Washington Department of Ecology) | Washington State Clean Diesel Grants | Grant<br><br>FY22 Funding: $750,000 | 5 p.m. PST, September 8, 2022 | This program funds idle reduction for school and non-school bus fleets, engine repowers for port-related fleets, vehicle/equipment replacements for port-related fleets, marine shore power systems, and other port-related projects (on approval). | • Ci • Co • Pu op • Po • Tr • Sc • St • Tr • No • Lo • Pr |
| State (Wisconsin Department of Natural Resources) | Surface Water Grants | Grant<br><br>Maximum amount of grant funding is 75 percent of the total project costs, not to exceed $150,000. | FY22 deadlines: Eligibility application due May 1<br><br>Project pre-proposal due September 2<br><br>Application due November 1. | Funds educational programs about the threats posed by aquatic invasive species (AIS) and how to prevent and control them. These grants also help with projects that prevent new introductions, control existing populations, and restore habitat. There are also lake conservation grants under this program. | • Lo • Fe go • Pu Pr Di • To • La • Ri or • Sc • Pr ur • No • St re • Li co |

| Funding Source | Program Name | Funding Type[1] and Amount | Deadline | Purpose | |
|---|---|---|---|---|---|
| State (Wisconsin Department of Natural Resources) | Boating Infrastructure Grant (BIG) Program | Grant<br><br>Provides up to $200,000 per year to each state. Projects are competitively ranked within the state. | Submit application by June 1 to be considered for the current funding cycle. | The purpose of BIG is to construct, renovate, and maintain boating infrastructure facilities for transient recreational vessels at least 26 feet long. | • Pu ac<br>• M th (1 op re or |

# TAB 7e
# Other Issues

# TAB 8
# Adjourn