

United States House of Representatives
House Natural Resources Committee
Subcommittee on Water, Wildlife, and Fisheries

“Examining the Impacts of the National Oceanic and Atmospheric Administration's Proposed Changes to the North Atlantic Right Whale Vessel Strike Reduction Rule”

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1325 Longworth House Office Building
Washington, DC 20515

Written Testimony for Captain Fred Gamboa
Owner/Operator, Andreas' Toy Charters

INTRODUCTION

Chairman Bentz, Ranking Member Huffman and Members of the Subcommittee, it is an honor to appear before you today and a privilege to speak to the subcommittee on the proposed rule that would limit the speed of vessels 35' and larger to 10 knots or less along the Atlantic coast for up to 7 months of the year.

My name is Captain Fred Gamboa and I am the owner and operator of Andreas' Toy Charters, a charter boat operation based out of Point Pleasant, NJ. I have been in operation for 17 years and my business consists of 3 Contender boats, 4 licensed captains and support crew. I have run over 1,000 fishing trips in that time and taken countless people fishing. I have also served as an advisor to the International Commission for the Conservation of Atlantic Tunas (ICCAT). I am a top tagging boat for the Gray's FishTag Research Northeast Striped Bass Tagging Program. I am committed to being an active partner in conservation management and have a vested interest in the health and future of the recreational fishing industry and the marine resources.

I am not an outsider speculating on how the proposed rule may impact charter boat operations like mine and many others up and down the coast. I know how I operate my business and what my customers want from a trip on one of my boats. Both my livelihood and the future of my business depend on how we approach this conservation challenge.

It is my intention today to discuss how the proposed vessel speed rule would impact my business and the public, and offer some suggestions for a more balanced approach. It is important to note that I make my living on the water. Catching fish and bringing home something for dinner is an important part of what I do and why customers pay to go on my boat, but it is not the only reason. I take my customers fishing in waters adjacent to the most densely populated region of the country. Despite that, we fish in some of the most beautiful and productive waters. We share those waters with marine mammals including whales and when we see one, it makes a good trip a great trip. Myself and others who enjoy or make a living on the water are the true conservationists when it comes to marine resources. Without well managed and productive oceans, I don't have a job. I view this issue as one where we don't have to pick a side, boats versus whales. I am committed to protecting whales. I am also for my business and the workers I employ. The proposed rule, as written, does not accommodate those two opinions. I will propose several recommendations that seek to achieve this balance.

My testimony focuses on four areas of concern with the proposed rule.

SAFETY

Vessel speed plays a crucial role in ensuring the safety of recreational boats. While Contender builds boats that are renowned for their seaworthiness, being open boats, they are not specifically designed to operate comfortably in conditions above a strong breeze (31mph+) and a developed

sea. Therefore, their usage, especially for charter trips, is limited by weather and sea conditions. Speed enables us to take advantage of favorable weather conditions and escape from inclement weather. Under the proposed rules, our boats over 35 feet would essentially be unusable for approximately seven months of the year. I simply can't cover the ground to access the targeted fisheries when limited to 10 knots. This would amount to the loss of no less than 70 trips with an estimated economic cost of \$140,000.

As a licensed United States Coast Guard Mariner, safety is of paramount importance to my operation. Not only does my United States Coast Guard Mariner license require me to pass strict safety and physical training, but I also take pride in running an extremely safe operation and maintaining a loyal base of returning customers because of my safety record. Throughout my many years on the water, I have never collided with a whale. While I may not be an expert in marine mammals, spending extensive time on the water has granted me a keen understanding of the oceans and the waters in which I fish. Whales are not the sole threat on the water; there are a variety of floating objects that can cause catastrophic damage to a boat of my size, from shipping containers to floating wood debris that can easily puncture a fiberglass boat. Contrary to what the National Oceanic and Atmospheric Administration (NOAA) may believe, I can operate my vessel most safely when it is traveling at speeds above 10 knots and on a plane. My 17-year track record speaks to this fact. Line of sight and maneuverability are optimized when my boats are on a plane.

I can provide two examples where the proposed rule would compromise safety on my boats. First, speed provides me with the ability to monitor approaching weather conditions and react by returning to the dock before conditions become hazardous. Weather in New Jersey can change rapidly, and even on the clearest days, thunderstorms can develop within a few hours, posing significant risks to boaters even with informed weather forecasting. However, it would be impractical and challenging to run a business if we had to cancel trips every time there is a chance of thunderstorms. Speed allows me to avoid being caught in storms should they develop. If I observe the development of storms, I can make the decision to run at high speeds while conditions are still favorable and return to port before severe weather strikes. Likewise, I can chart a course to avoid the most intense areas of the storms. Imposing a 10-knot vessel speed restriction would strip away this ability, potentially endangering my boat, crew, and passengers. In preparation for this hearing, I reviewed the National Weather Service database and found that three out of the top five tornado outbreaks in New Jersey occurred between November 1 and May 30. Severe weather does occur often during the fall, winter, and spring months in New Jersey. Limiting my speed to 10 knots would force me to subject my boat and passengers to being caught at sea in unfavorable and dangerous weather conditions.

Secondly, speed allows me to operate my boat during ideal weather windows. I often schedule my charters to align with these favorable conditions. If my boats are restricted to a maximum speed of 10 knots, my ability to take advantage of such weather windows becomes severely

limited. I would be compelled to run trips in less than desirable conditions, potentially compromising safety. Again, operating at higher speeds also allows for optimized visibility on the water and provides greater opportunity to see and avoid whales.

Enforcing such a low-speed limit would force me to prolong journeys, significantly increasing the time spent on the water. This would expose my passengers, crew, and vessels to various other risks besides adverse weather including fatigue leading to higher risks of accidents and emergencies. Furthermore, the extended duration at sea would necessitate additional safety precautions and resources, placing a strain on the overall safety infrastructure of my business.

PRIVACY

I have concerns regarding NOAA's intended use of Automated Information Systems (AIS) to enforce the vessel speed rule on recreational boats. As a charter boat operator in the recreational fishing industry, our industry does not fall within the realm of "highly or closely regulated industries" necessitating constant government surveillance. This distinction has already been recognized by the courts, making it highly unlikely that operating a recreational boat exceeds the threshold warranting continuous NOAA surveillance for boats of certain sizes. This highlights yet another instance where the proposed rule lacks careful consideration.

AIS is internationally acknowledged by the International Maritime Organization (IMO) and domestically by the US Coast Guard as an invaluable tool for enhancing safety at sea and mitigating vessel collisions. Its intended purpose should not be compromised to enforce an unrelated statute such as the vessel speed rule. Even though my boats do not meet the criteria requiring Class A AIS, I have voluntarily equipped them with AIS to prioritize the safety of my passengers and crew and using AIS has contributed to my longstanding safety record.

Employing AIS as a means to enforce the vessel speed rule raises significant concerns regarding the protection of fourth amendment rights against warrantless searches. The courts have acknowledged the presence of "serious constitutional problems" when it comes to warrantless government surveillance and the reasonable expectation of privacy in individuals' movements. Given that charter boats do not fall under the category of highly regulated industries, we should be entitled to this expectation of privacy. The collection of time-stamped position information on individuals for enforcement purposes without a warrant constitutes unwarranted government surveillance, conflicting with the principles established in landmark cases such as *Carpenter v. U.S.*

When my customers and I embark on recreational fishing trips, we should rightfully possess a reasonable expectation of privacy as we enjoy our time on the water. Utilizing AIS, a navigational and safety tool, for enforcement purposes undermines this expectation.

ECONOMIC IMPACTS

In a typical offshore charter, my primary objective is to cover a substantial distance, often exceeding 200 miles. These trips are marketed as expansive and thrilling adventures, and I

achieve such coverage by operating at high speeds. Unfortunately, the imposition of a 10-knot vessel speed limit would render these trips impossible to conduct.

NOAA has conducted a technical analysis, estimating the economic impacts of this rule by factoring in additional transit time for affected boats. That additional transit time would result in an average of \$3,000 in economic impacts per vessel per year. However, this analysis fails to acknowledge a critical point: I cannot take people fishing at a speed of 10 knots. It is simply not feasible, and as a result, these trips would have to be canceled. NOAA did not consider the cancellation of trips in their analysis. As mentioned previously, the proposed rule would force the cancellation of the charter trips booked on my boats which would amount to \$140,000 in lost income. The figures that I present are not speculation, these are actual figures based on what I charge and the number of trips that I conduct during the months that would be affected by the proposed rule. The discrepancy between my actual losses and what NOAA projects to be losses must be corrected.

Speed is not only essential for the safety of myself and my customers, but it is also what provides value to my trips. Running a trip that covers a distance of 200 miles at 10 knots would require a staggering 20 hours of run time. I must emphasize that spending such a prolonged period in an open center console boat is not safe or marketable. The repercussions would be the cancellation of these trips and a substantial loss of income.

To illustrate the gravity of the situation, I would like to highlight that two out of my three boats would become unusable from November 1 through May 30 every year. This period accounts for a minimum of 70 trips or two-thirds of my total income. However, my situation is not unique. According to NOAA, upwards of 25% of New Jersey's recreational fishing trips conducted on a boat and take place within this time frame. It is also important to recognize that the months from November to May have become increasingly more important to my business and for fishermen as peak seasons are lasting longer into the fall and starting early in the spring.

If these regulations were to be enacted, the ripple effect would be felt throughout the entire community. Local businesses heavily reliant on the influx of visitors and tourists, including restaurants, tackle shops, and hotels, would suffer a substantial decline in revenue. Consequently, the economic vitality of the entire region would be compromised, leading to job losses and a decline in the quality of life for many residents.

ACCESS

A substantial portion of my customer base consists of individuals who do not own their own boats. These individuals rely on my charter services to access the diverse fish species found off our coast. Recreational fishing holds numerous values, but one crucial aspect is its role in providing the public with sustainably caught, domestic seafood.

Allow me to focus on the impact this rule would have on fishing for highly migratory species, such as tuna. Fishing for these species constitutes a significant portion of my business. Under the current regulations, targeting or harvesting these fish is only permitted on a boat that holds an HMS Angling permit. Consequently, for individuals who do not own a boat, my charter operation represents their sole opportunity to access these important fisheries.

If the ability to operate my boat at speeds above 10 knots is taken away, I would no longer be able to provide access to the highly migratory species fisheries. This, in turn, means that a portion of the public will be excluded from benefiting from these sustainable U.S. fisheries. The consequences of such exclusion extend beyond the immediate loss of recreational opportunities; it affects the societal values of our marine resources and our ability to enjoy the benefits of sustainable, domestically sourced seafood.

In considering the proposed rule, it is crucial to recognize the significant role charter operators like myself play in facilitating public access to our marine resources. By providing the opportunity to individuals who do not own boats to participate in recreational fishing, we contribute to the broader goal of promoting sustainability, supporting local economies, and reducing reliance on imported seafood.

ALTERNATIVES

I find it unfortunate that the development of this rule occurred without any prior engagement or consultation with stakeholders within our industry, particularly considering that we are an inherently conservation-minded industry and community. Had we been given the opportunity to participate in the process, we would have gladly offered to collaborate with the NOAA to find effective ways of mitigating the risks associated with vessel strikes.

Engagement between NOAA and our industry would have allowed for a meaningful exchange of ideas and perspectives. We possess valuable expertise and insights gained from years of firsthand experience on the water. Regulating us without our input is unamerican. By working together, we could have explored various alternatives and strategies that would address the concerns at hand while ensuring the continued viability of my business.

I offer the following possible solutions as a demonstration of my willingness to work with NOAA fisheries to advance marine mammal conservation while also allowing my business to succeed.

1. **Public Outreach and Education:** Launch a comprehensive public outreach campaign to raise awareness among all mariners about the importance of conservation and the potential impact of vessel speeds on North Atlantic Right Whales with the intention of improving compliance with existing regulations.

2. Collaboration with Stakeholders: Foster collaboration between government agencies, charter boat operators, and the marine industry to explore and share ideas to mitigate risk of vessel strikes and other sources of mortality on North Atlantic Right Whales. This collaborative approach ensures that all perspectives are considered, and the resulting guidelines are practical, enforceable, and effective.
3. Technology and Innovation: Invest in research and development of technological solutions that can assist in monitoring and tracking whales and then push that information out to vessel operators. Public and private partnerships are the best approach.
4. Reporting and Feedback Mechanisms: Establish a user-friendly reporting system that allows boaters to report observations of North Atlantic Right Whales. This feedback loop provides valuable data for assessing the effectiveness of conservation measures and making necessary adjustments.

As I have previously explained, the proposed rule, in its current form, would impose an overwhelming burden on my operations. Its implementation would have a crushing impact on not only my livelihood but also the clients that rely on my services. Therefore, I strongly believe that additional time is needed to thoroughly evaluate the potential impacts and explore alternative approaches that can effectively achieve conservation objectives while minimizing adverse effects on boaters and the public who cherish America's well managed fishery resources.

I firmly believe that there are alternative approaches that can effectively address the challenge at hand. The government needs to work with its people to generate sophisticated solutions to these marine mammal conservation challenges. One such approach is to harness the power of commercial innovation using a public/private partnership hackathon, which would bring together industry and government stakeholders, including not only NOAA but also the Department of Defense and other relevant agencies to work on innovative solutions together.

By pooling our collective resources and expertise, we can foster an environment of collaboration and creativity to develop solutions that protect endangered whales while minimizing adverse impacts on boaters. This is not a binary problem where we must choose one side over the other.

In conclusion, I urge you to recognize the gravity of this issue and grant us the necessary time to develop comprehensive solutions. The consequences of the proposed rule demand thoughtful evaluation and exploration of alternative approaches. By doing so, we can protect our marine ecosystems, support our economy, and ensure the long-term sustainability of recreational boating and fishing through businesses like mine.

Thank you for affording me the opportunity to address this critical matter. I am happy to answer any questions.