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Document 1

October 7, 2022

Chief, Marine Mammal Conservation Division
Office of Protected Resources, NMFS
1315 East West Highway
Silver Spring MD 20910

RE: NOAA-NMFS-2022-0022

To Whom it May Concern,

Our company, Bay State Cruise Company, has operated the Boston-Provincetown Ferry route for 50 years. Starting with 16 knot vessels, we introduced high speed vessels to Provincetown 24 years ago. We are a small entity under federal standards established by the U.S. Small Business Administration; an entity providing "Water Transportation – Coastal Passenger Service (Census Bureau NAICS Doc. 483114)

Ferries have traveled on the 55 mile route between Boston and Provincetown since the 1840s. The speed of the ferries has been in excess of 10 knots for well over 100 years.

We are one of three ferry companies that serve Provincetown which carry, in total, roughly 300,000 passengers per year.

In addition to bringing passengers to their homes, flights, and vacations, we are part of the Town's critical infrastructure. We bring passengers to doctors' appointments, surgeries, funerals, flights, trains, and jobs. We serve as a means of emergency evacuation and critical traffic mitigation.

Although your economic study mentions our services by name on page 3-23, "the analysis presented does not consider the potential impact of the Rule on the seasonal operation of high-speed ferries". I will, therefore, provide that impact here:

Not only do the proposed regulations put at risk the viability of the ferries themselves and the combined three companies' annual Provincetown ferry revenues of roughly \$15,000,000, the

Town itself would face a staggering impact should 150,000 individual round trippers not spend, on average, \$450 per day. An annual loss of revenue to the Town's shops, restaurants, and inns would be roughly \$100,000,000 per year. A thousand jobs would be lost and businesses shuttered.

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As your economic study points out, slowing to 10 mph on a 55 mile will not allow for us to operate at all. Passengers will not endure an 11 hour round trip. We currently operate this 55 mile route for six legs per day at 90 minutes per leg.

Slowing to 10mph would make a round trip 11 hours. Passengers will not purchase tickets for an 11 hour round trip ferry ride. Traveling 55 miles cannot take the same time as a round trip flight to Europe.

While we were able to sustain the loss of the May 1 – May 15 closures imposed on us from 2008 to now, to additionally lose the last two weeks of May would have us lose Memorial Day weekend, and, in total, roughly 50% of our year's annual profits on the route. The profits lost in that two week period are the equivalent to 50% of what our last pre-Covid season delivered in profit. The greater challenge of this loss is that we would not have sufficient cash on hand to then make it through the next Winter and through a proposed two week longer off-season. We'd run out of money.

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DOC 6, 1x2

DOC 7 summer
NOT here

Worse than this, however, is the challenge of a Mandatory DMA/DSZ.

Any two week period beyond May 30th generates far more ferry income after expenses than we deliver in annual profits. One DSZ, let alone the potential for multiples, would end our ferries forever.

While past DMAs, based on sightings, have only barely crept into our season's calendar, the newly proposed acoustic triggers risk a DSZ at any time during the calendar year. The scientific paper, *Mean phenology for acoustically detected presence of right whales in Massachusetts Bay* show there to be right whales present at end-of-May levels all Summer long as well (Charif et al. 2019, figure 2). However, the Center for Coastal Studies, the group charged with sighting whales reports that no whales are present.

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There is a way, however, that NOAA can deliver the highest impact benefit from the proposed regulations while allowing our ferries and the Town to survive.

Including Vessels Between 35' and 65' in Speed Regulations

- **Yes**, this is the single most effective measure that can be taken, and, one that has been in place in Massachusetts already
 - o **Five of the Eight** whale strike deaths since 2005, nationally, were a result of vessels < 65' in length during SMA periods (to be renamed Seasonal Slow Zones).
 - o Removing these events, would have decreased deaths from .44 deaths per year since 2005 to .17 deaths per year
 - This is single highest impact measure of those proposed, apart from entanglement issues not addressed

Extending the SMAs (to be renamed SSZs) to May 30th

- **No**, we are opposed to losing two weeks of ferry service, including Memorial Day Weekend, when:
 - o There have been no whale sightings on Cape Cod Bay past May 15th
 - See attached whale sightings from 2018-2022
 - o There have been no whale strikes in CCB past May 15th
 - o The recent study, mentioned in the media this Summer (Decadal-Scale Phenology and Seasonal Climate Drivers of Migratory Baleen Whales in a Rapidly Warming Ecosystem) (Pendleton et al. 2021) does NOT support extending speed restrictions past May 15th as reported, but, rather, states: "Our results support the extension of vessel speed restriction to 15 May" (page 5001)
 - Further, the report states that due to warming waters, "[whales] may reduce their use of the Cape Cod habitat in the future" (page 5000)
 - o The **Jan 1 – May 15th** period is supported by the Whale and Dolphin Conservation, Center for Biological Diversity, Conservation Law Foundation, Defenders of Wildlife, Humane Society of the United States, and Humane Society Legislative Fund (page 3 of their August 6th, 2020 letter to NOAA and the Secretary of Commerce)

BEFORE WE CONSIDER ELIMINATING AN INDUSTRY AND HARM A LOCAL ENONOMY, WE SHOULD WAIT UNTIL REAL OBSERVED DATA SUPPORTS ANY MEASURES SUCH AS THESE IN CAPE COD AND MASSACHUSETTS BAY

Making Voluntary DMAs Mandatory DSZs

- **No**, we are opposed to this as this would shutter our business and ferries to Provincetown

- One two week slow down period could remove more than the entire profit made in one season
- Acoustic triggers are proposed for establishing DSZs and published works state that acoustically detected up calls are detected in Mass Bay every month of the year (Charif et al. 2019 Figure 2)
- NO whale strikes have ever occurred in Cape Cod Bay after SMAs (SSZs) May 15th end.
- **VISUAL** sightings, and **not acoustic** triggers are supported by the Whale and Dolphin Conservation, Center for Biological Diversity, Conservation Law Foundation, Defenders of Wildlife, Humane Society of the United States, and Humane Society Legislative Fund (page 3 of their August 6th , 2020 letter to NOAA and the Secretary of Commerce)
- The Center for Coastal Studies, the group primarily responsible for providing whale sighting data reports that NO whales are present after May 15th on Cape Cod Bay, raising the question of the efficacy of acoustic mechanisms as the trigger by which an industry could be shuttered.
- The DMAs (DSZs) are overly large.
 - 1,600 sq nautical miles, despite NOAA reporting that they are 400 sq miles
 - The equivalent of 20% of the entire area of the State of Massachusetts
 - So large as to preclude ferry service even if the whale detection was well away from the ferry route
 - ALTERNATIVELY, we could co-exist with a 100 sq mile DSZ around which we could navigate
- In 2006, NOAA correctly labeled DMAs as the least effective measure, that “relying on this measure would only have a minor positive effect on right whale population”
 - That being the case, why then make it the most damaging measure to our industry?

The good news is that since NOAA first introduced the first version of these proposed regulations, the right whale populations, as recorded in the Federal Register by NOAA, has increased from 2006's “at or less than 300” (Vol 71 No. 122) to 2022's “fewer than 350” (87 FR 46821).

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Further, what was reported as 20 right whale deaths due to ship strikes in the 27 year period preceding 2002 (Federal Register Vol 71 No 122) dropped to eight deaths in 18 years since 2005 (87 FR 46821) A decrease from .74 ship strike deaths per year to .44 deaths per year.

With this good progress being made, and with the significant decrease in whale strikes that can be achieved **by including vessel lengths between 35' and 65'**, both the whales and the commerce that our region's ferry services represent can be protected.

Thank you for your consideration.

Respectfully,

A handwritten signature in cursive script, appearing to read "Michael Glasfeld". The signature is written in dark ink and is positioned above the printed name and title.

Michael Glasfeld
Managing Member
Bay State Cruise Company



To: National Marine Fisheries Service, National Oceanic and Atmospheric Administration

Re: Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule NOAA-NMFS-2022-2022. As published in the *Federal Register*, August 1, 2022, pages 46921-46936

Date: October 31, 2022

Ladies and Gentlemen:

The Passenger Vessel Association (PVA) is the national trade association representing owners and operators of U.S.-flagged passenger vessels of all types. PVA respectfully submits this comment to the regulatory docket for amending the current rule on speed limits for certain vessels to protect North Atlantic Right Whales.

The existing rule has been successful

More than 15 years ago, NOAA put into effect the current rule imposing 10-knot speed limits for most vessels of 65 feet or more in length in designated places and times along the U.S. East Coast. According to NOAA's own statistics, the rule has proven to be successful. Vessel strikes of right whales are down considerably, although they have not been eliminated.

During the 15 years since the inception of the rule, NOAA says that there have been 10 confirmed or assumed instances of vessel strikes that resulted in deaths of or serious injuries to a North Atlantic right whale. See the Draft Environmental Assessment at 9.1 Appendix A Table 1 (pages 1-2). The table lists 12 whales struck but NOAA's explanation reveals that in two separate instances, a single vessel strike killed a mother and young whale in the same incident. Thus, in the 15-year period, there have been 10 vessel strikes causing death or serious injury.

Of these 10 vessel strike incidents, four involved a vessel determined to be of less than 65 feet in length. In other words, the existing rule did not apply to these four vessels.

Of the remaining six vessel strike incidents, five involved vessels of unknown length, and only one involved a vessel known to be 65 feet or more in length (thereby subject to the rule). Thus, no more than six, and perhaps as few as one, vessel strikes involved a vessel of 65 feet or more in length.

Of these six strikes, it appears likely that three of them took place in a location and time during which a Seasonal Management Area was in effect, and three took place in a location and time when neither a Seasonal Management Area nor a Dynamic Management Area was active.

During the 15-year period of the existing rule, there have been but three documented or assumed instances of a vessel of 65 feet in length or more striking a right whale in an active Seasonal Management Area. There seems to be no indication of a covered vessel striking a right whale in a declared Dynamic Management Area.

One can draw the reasonable conclusion that the existing rule, coupled with other protective management measures, education, and vigilance by mariners, has been highly successful in preventing ship strikes of right whales. It has targeted the places and seasons that ship strikes are most likely to occur. It has accomplished this success without imposing an unreasonable burden on maritime interests or the general public.

The proposed rule will impose dramatic impacts for diminishing returns

The proposed rule dramatically expands the geographic reach of the mandatory 10-knot speed limit. Speed zones will be put in place, either seasonally or temporarily, from Maine to Florida. They will extend from the coastal shoreline to perhaps 75 miles offshore. They will affect thousands of vessels not currently covered by the mandatory speed limits.

Accepting the estimates of the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis, the proposed rule will affect nearly 16,000 vessels and have an annual economic impact of over \$46 million. Not only will the proposed rule directly impact thousands of additional vessels, it will also indirectly affect many more individuals. Recreational boaters by the thousands will have to adjust their behavior. Members of the public who recreate by patronizing the many small business that offer charter fishing opportunities and whalewatching cruises will likely find their recreational experiences degraded. The vessel operators engaged in these businesses face the distinct possibility that their customers, confronted with longer and more inconvenient voyages, will take their business and dollars elsewhere. Island communities that depend on reliable and predictable ferry services could see difficulties imposed on their residents and visitors alike.

To achieve very incremental progress regarding potential vessel strikes, the proposed rule imposes sweeping changes on the East Coast maritime sector and the customers and communities that the vessel operators serve.

NOAA should undertake a full Environmental Impact Statement

To accompany the proposed rule, NOAA has posted a Draft Environmental Assessment. That document states that the National Marine Fisheries Service “considers this action to be a major federal action subject to NEPA [the National Environment Policy Act].” Section 1500.1 of title 40 *Code of Federal Regulations* reads: “Purpose and policy. (a) The National Environmental Policy Act (NEPA) is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their actions in the decision-making process.... Section 102(2) of NEPA ... requires Federal agencies to provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment.”

Section 1501.6 of title 40 *Code of Federal Regulations* states that the purpose of an Environmental Assessment is to enable the federal agency to decide whether to prepare an Environmental Impact Statement or to issue a FONSI (Finding of No Significant Impact).

The Draft Environmental Assessment states: “The purpose of developing an environmental assessment is to determine if the impacts of the proposed action are likely to be significant.” It further says that the provisions of the proposed rule “are expected to affect thousands of mariners along the U.S. East Coast, and thus NMFS considers this action to be a major federal action subject to NEPA. Therefore, NMFS is assessing the environmental effects associated with this proposed action to determine if the impacts of this action are likely to be significant.”

Prior to issuing the current vessel speed limit rule in 2008, NOAA prepared and published a full Environmental Impact Statement, preceded by at least one public hearing. With regard to the proposed amendment to the existing rule, NOAA has produced only a more limited Draft Environmental Assessment and has conducted no public hearing, even though the proposed rule will cover a vastly larger geographic area along the East Coast from Maine to Florida and even though it will affect a far larger population of recreational and commercial vessel operators, as well as the persons and communities that they serve.

At no point in the various documents filed to accompany the proposed rule is there any discussion of the likely impact that longer-duration trips will have on ferry passengers or the communities served by the ferries. Nor is there any

examination of how customers of charter fishing vessels or whalewatching vessels will react to trips of longer duration or last-minute schedule disruptions because of the declaration of a Dynamic Speed Zone. These are significant impacts affecting the quality of the human environment. These are glaring omissions from the Draft Environmental Assessment. They should be addressed before NOAA finalizes the proposed rule.

For a proposal of this impact and significance, it is not acceptable for the agency to figuratively “throw up its hands” and weakly say, “It is challenging to predict how different marine groups might respond, adjust, or otherwise modify operations to accommodate measures in the proposed rule. Further, it is unclear how these measures may impact vessel passengers or clients. The proposed changes to the measures may impact vessel passengers or clients. The proposed changes to the speed rule will impact a wide variety of vessel types and operators, and we anticipate decisions regarding changes to vessel operations will vary depending on the unique nature of a vessel’s operations, needs, schedule, flexibility, and cost.” Under NEPA, it is the agency’s job to analyze these aspects of the proposed rule’s impacts more fully.

Given that the Draft Environmental Assessment has already characterized the proposed rule as “a major Federal action subject to NEPA” and that the agency prepared a full Environmental Impact Statement on the current rule, which is more limited in scope and impact than is the proposed rule, the agency would be hard-pressed to issue a Finding of No Significant Impact (FONSI).

The Passenger Vessel Association urges NOAA to comply with the letter and spirit of the National Environmental Policy Act and its associated regulations by preparing and submitting for public comment a full Environmental Impact Statement. The EIS should more carefully analyze impacts on vessel passengers and on communities and islands served by ferries. Once a Draft Environmental Impact Statement is prepared, NOAA should convene at least two public hearings in the Northeast and Southeast.

PVA vessel members are affected by the current rule and will be even more impacted by the proposed rule

The current vessel speed limit rule affects PVA members that operate vessels of 65 feet or more in length. The PVA vessel operators primarily affected have routes in the waters of Cape Cod Bay and in and around the waters of the Stellwagen Bank National Marine Sanctuary. Three PVA members provide ferry service across Cape Cod Bay to Provincetown. Several PVA members offer commercial whalewatching cruises from various ports in Massachusetts to the waters of the nearby national marine sanctuary. Since the existing Seasonal

Management Area speed limit in these waters is lifted as of May 15 of each year, the speed limit is not in effect during the bulk of these operators' seasons. As for Dynamic Management Areas, very few have been imposed on routes served by PVA vessel members.

In contrast, the proposed rule will more dramatically impact PVA vessel operators. The proposed Atlantic Speed Zone will for the first-time cover routes served by operators providing ferry service to locations such as Fire Island, Martha's Vineyard, Nantucket Island, Block Island, and more. The extension of the Atlantic Speed Zone to May 30 will more severely impact PVA members offering ferry service across Cape Cod Bay, as well as whalewatching vessels transiting this body of water to reach the Stellwagen Bank National Marine Sanctuary. The establishment of Dynamic Speed Zones with a mandatory speed limit of 10 knots with a duration of at least 10 days could affect operators in the Atlantic Speed Zone at times of the year when the Seasonal Speed Limit is not in effect and could also affect operators in waters outside that zone (in Maine, for example). PVA members that operate offshore charter fishing trips from New Jersey and elsewhere will be affected by the Atlantic Speed Zone and potentially by Dynamic Speed Zones.

Commercial whalewatching vessels should be exempted from the speed limit if they undertake alternative measures to protect whales

PVA includes within its membership 12 companies that operate commercial whalewatching voyages on the U.S. East Coast. These include three in Maine, five in Massachusetts, two in New York, and two in New Jersey. There are other commercial whalewatching operators on the East Coast that are not members of the Passenger Vessel Association.

All commercial whalewatching companies on the East Coast fall within the category of a small business as set by the U.S. Small Business Administration. Nevertheless, they are important economically. A November study issued by NOAA's Office of Marine Sanctuaries (entitled "Whale Watching in Stellwagen Bank National Marine Sanctuary: Understanding Passengers and their Economic Contributions") found that six commercial whalewatching companies reported carrying more than 347,000 passengers each year to the national marine sanctuary and adjacent waters. It further stated, "Whale watching contributes \$182 million in output, \$107 million in value added, \$76 million in income, and 1,400 full- and part-time jobs to the local economy." Also, NOAA has posted on a website a Socioeconomic Fact Sheet for the national marine sanctuary that states: "Virtually all of Massachusetts whale watching occurs in Stellwagen Bank National Marine Sanctuary, one of the top-ten premiere whale watching locations in the world, as identified by *USA Today*. A study² completed in 2000 [note – more than 20 years ago!] estimated that Massachusetts alone

accounted for nearly 80 percent of New England whale watching tour totals in passengers and revenues, generating \$24 million per year.

Whalewatching vessel operators differ from all other vessel operators (commercial and recreational) in one critical aspect – their business model and reason for existence is to seek out marine mammals of all species, thereby enabling their passengers to observe and learn about them. On a commercial whalewatching vessel, not only are the captain and members of the crew actively looking for whales, so are the dozens or hundreds of passengers! Furthermore, crew members are trained to know the characteristics of whale so as to identify the species by sight and behavior. The chances of a commercial whalewatching vessel failing to observe a right whale and unknowingly striking it are infinitesimally small. In fact, examining NOAA's data, it doesn't appear that a commercial whalewatching vessel has ever struck a right whale since the inception of the 2008 vessel speed limit rule.

Whalewatching vessels attract many customers that book their trips days or even weeks in advance. If a Dynamic Speed Zone is imposed on a vessel's route with little or no advance notice, the impact of the vessel's operations can be severe. Rather than accept a voyage of considerably longer duration, passengers may wish to be re-booked to a future beyond the period of the DSZ (assuming that it fits their schedule) or they may cancel altogether and demand refunds of any funds paid in advance.

Given these facts, the Passenger Vessel Association urges that NOAA amend the proposed rule to exempt from the 10-knot speed limit requirement a commercial whalewatching vessel under the following circumstances:

- the vessel must be actively participating in NOAA's WhaleSense program;
- the vessel must at all times have one or more knowledgeable crew members actively serving as observers to look out for right whales. Perhaps NOAA or its designee could implement a training and certification program for such observers – if so, the presence of a certified observer would be required;
- the vessel must adhere to the existing requirement to stay at least 500 yards away from the right whale; and
- if the vessel's crew identifies or suspect the presence of a right whale, the vessel would be required to slow to 10 knots for an appropriate period of time.

The proposed rule will degrade the experience of charter fishing and may jeopardize the viability of charter fishing vessel operators

If the rule as proposed goes into effect, there are hundreds, if not thousands, of operators of vessels of between 35 and 65 feet in length that will be subject to 10-knot speed limits for the first time. Many of them offer ocean charter fishing cruises. All of these entities are small businesses. In many cases, the owner of the business serves as the vessel master and hires a single employee to serve as mate. These charter vessel operators may belong to a local or state fishing association, if they belong to any organized group at all (and many don't). PVA counts within its membership fewer than a dozen such vessel operators along the East Coast.

Patrons of charter fishing vessels wish to catch fish. They don't engage a vessel simply for taking a scenic cruise. The customers wish for the vessel operator to take them where the target fish species congregate, and they wish to be able to fish in that location for as much time as possible. Along many parts of the East Coast, the fishing locations may be many miles offshore. Longer-duration trips to and from the fishing grounds caused by a 10-knot speed limit will degrade the fishing charter and make it more difficult for the vessel operator to attract and retain customers.

NOAA must engage further with the charter fishing community to develop a strategy that preserves commercial charter fishing as a viable business while enhancing protection of right whales.

Changes to the proposed rule can greatly ease adverse impacts on ferry vessels, their passengers, and the communities and islands that they serve

PVA's membership includes operators of ferry vessels from North Carolina to Maine. Some ferry systems are operated by state and other governmental agencies. Other ferry routes (for example, across Long Island Sound and Cape Cod Bay) are served by private companies.

It is disappointing that NOAA failed to consult the Bureau of Transportation Statistic's National Census of Ferry Operators. See <https://www.bts.gov/NCFO>. None of the documents associated with the proposed rule make reference to this valuable resource. Updated regularly after a census performed every two years, it is the most comprehensive source of information about the nation's ferry companies, vessels, routes, and characteristics.

NOAA's materials have no suggestion that a ferry vessel of 65 feet or more in length has struck a right whale during the 15 years during which the existing vessel speed limit rule has been in force. However, the Atlantic Speed Zone of the proposed rule will definitely impose 10-knot speed limits on ferry vessels for more than half of the year. It is also possible that Dynamic Speed Zones could be declared on ferry routes from Maine to Florida.

Some ferry operators operate specialized high-speed passenger vessels, traveling at 25 knots or more. Imposition of a 10-knot speed limit will eliminate a high-speed ferry's competitive advantage compared to a ferry vessel of more traditional speed.

Even a traditional-speed ferry typically sails at more than 10 knots. If it must adhere to a 10-knot speed limit, whether because it operates within the Atlantic Seasonal Speed Zone or because a Dynamic Speed Zone has been imposed on its route, its travel time per trip will increase, often dramatically. The ferry operator will either have to reduce the number of daily trips or incur substantially higher labor and other costs in order to operate more hours of the day to maintain their expected number of voyages.

Incidentally, at no point in the various documents filed to accompany the proposed rule is there any discussion of the likely impact that longer-duration trips will have on ferry passengers or the communities served by the ferries. This is a glaring omission in NOAA's examination of the effect of the proposed rule. Most (but not all) negative impacts on ferries can be eased by:

- adjusting the Atlantic Seasonal Speed Zone so that it does not embrace bays and estuaries on the mainland side of offshore island and instead having it begin on the seaward sides of the islands;
- altering the Dynamic Speed Zone provision so that DMZs would not be declared in these nearshore waters (see further discussion below);
- as discussed later, lifting the speed limit in Cape Cod Bay on May 15, as in the current rule.

The Atlantic Speed Zone should not include certain nearshore bodies of water

The proposed rule, if approved, will establish several Seasonal Speed Zones. The Atlantic Speed Zone is the area of vessel operations for nearly all of the affected members of the Passenger Vessel Association. The South Carolina Speed Zone (and perhaps the North Carolina Speed Zone) is the area of vessel

operation of a single member of the PVA (a company that offers gaming cruises in international waters three miles from shore).

Island communities from Maine to North Carolina depend upon ferries operated by public and private operators. Not only are these ferries the primary method by which residents and visitors (and their vehicles) travel between the islands and the mainland, they also transport essentials such as food, fuel, medical supplies, etc. Nearly all of these ferries operate pursuant to fixed schedules, and the vessels typically travel at speeds above 10 knots. However, with the exception of ferries traveling across Cape Cod Bay to Provincetown, Massachusetts, the existing rule's Seasonal Management Areas do not overlap with the ferry routes to Fire Island, Martha's Vineyard, Nantucket Island, Block Island, and more. Even in Cape Cod Bay, the lifting of the SMA and its 10-knot speed limit as of May 15 each year means that the bulk of the season for ferry traffic is not affected by the speed limit.

This situation would change dramatically should the proposed rule be approved in its current form. The proposed Atlantic Speed Zone would impact nearly all of the ferry routes described above.

PVA ferry operators serving these routes report that they know of no instances of right whales being observed, much less being struck. PVA's review of NOAA's data showing right whale occurrences leads to the conclusion that the animals are not typically found in these locations.

To address the negative impact on essential ferry routes and the passengers and communities served by them, the proposed rule should be amended to ensure that the Atlantic Speed Zone does not include Raritan Bay, Upper and Lower New York Bay, Jamaica Bay, the Great South Bay out to Fire Island, Long Island Sound, Fishers Island Sound, Rhode Island Sound, Narragansett Bay, Vineyard Sound, Nantucket Sound, and Buzzards Bay.

Dynamic Speed Zones should not be declared in certain nearshore bodies of water, nor should they extend onto and across landmasses

NOAA should amend the proposed rule to eliminate the possibility that a Dynamic Speed Zone Albemarle, Pamlico, and other North Carolina Sounds; Chesapeake Bay and Hampton Roads; Delaware Bay; Raritan Bay; Upper and Lower New York Bay; Jamaica Bay; Great South Bay out to Fire Island; Long Island Sound; Fishers Island Sound; Rhode Island Sound; Narragansett Bay; Vineyard Sound; Nantucket Sound; Buzzards Bay; Casco Bay; and other waters out to offshore islands served by ferries in Maine.

A review of the map of the Dynamic Management Areas and Slow Zones declared in 2021 (Figure 2 of Appendix 9.B of the Draft Environmental Assessment at page 10) makes clear that only a few of the DMAs covered these nearshore bodies of water. It is highly improbable that right whales will enter these waters, thereby making the declaration of a Dynamic Speed Zone in them a rare event. Nonetheless, even if such a possibility is remote, the consequences for the ferry operators and the island communities that they serve would be severe. Please refer to the comments filed by the Steamship Authority and Interstate Navigation of Rhode Island for a fuller description of these detrimental disruptions of ferry schedules.

The proposed rule should be amended so that only those waters seaward of the North Carolina Outer Banks, the mouth of Delaware Bay, New York Harbor, Fire Island, Block Island, Martha's Vineyard, Nantucket Island, and certain Maine islands will be potentially subject to the declaration of a Dynamic Speed Zone. The final rule should be amended to make clear that a Dynamic Speed Zone does not embrace islands, peninsulas, or other land bodies, and does not extend into waters on the other side of these land masses from which the right whales have been located.

The map of the Dynamic Management Areas and Slow Zones declared in 2021 (Figure 2 of Appendix 9.B of the Draft Environmental Assessment) shows that a few of them appear to have covered land masses (North Carolina Outer Banks, Fire Island, Cape Cod) and then intrude upon waters on the other side of the land masses. This makes no sense, as the whales cannot travel across the land into the opposite side waters.

In Cape Cod Bay, the 10-knot speed limit should be lifted on May 15, as in the current rule

Ferry operators that traverse Cape Cod Bay serving Provincetown, Massachusetts, conformed to the existing vessel speed limit rule when it went into effect by simply eliminating their prior service that occurred before May 15. This compliance came with a financial cost to the companies. For example, see the description of this impact in the comment filed by Bay State Cruise Company. The proposed rule will extend the temporal period for the 10-knot speed limit in all of the Atlantic Speed Zone, including in Cape Code Bay, from May 15 to May 31. This change will cover the extended Memorial Day weekend. It will be infeasible for a ferry operator to offer service during this extended time because the travel time will increase so much that passengers will not patronize the ferry. See the explanation filed by Bay State Cruise Company. Not only will this deprive the passengers of the option of ferry service, it will also impact the business and tourist industries of Provincetown during this important holiday. It will also financially harm the ferry companies.

As there is no or little evidence that right whales remain in Cape Cod Bay past May 15, the proposed rule should be amended so that the May 15 termination date for the 10-knot speed limit should be retained, as least for Cape Cod Bay.

Recommendations by the Passenger Vessel Association

- Before finalizing the proposed rule, prepare a full Environmental Impact Statement and conduct at least two public hearings;
- Provide an exemption from the 10-knot vessel speed limit requirement for a commercial whalewatching vessel that adheres to certain mandates;
- Remove from the Atlantic Speed Zone waters of certain bays and estuaries between the mainland and certain islands such as Fire Island, Block Island, Martha's Vineyard, Nantucket, etc.;
- Retain the existing May 15 date for lifting the 10-knot vessel speed in Cape Cod Bay, Stellwagen Bank National Marine Sanctuary, and adjacent waters;
- Alter the provisions for Dynamic Speed Zones so that they cannot be declared for bodies of water such as North Carolina's sounds, Delaware Bay, Long Island Sound, Fire Island Sound, etc.;
- Change the proposed language for Dynamic Speed Zones so that they do not extend over landmasses and the waters opposite from where right whales are identified;
- Amend the proposed language for Dynamic Speed Zones to enable NOAA to lift the designation more quickly than the proposed 10 days minimum duration if the agency determines that the whales have moved away;
- Create a program overseen by NOAA or its designee whereby vessel crew members can be instructed in right whale identification, detection, and avoidance with the issuance of a certification upon completion; and
- Create a program whereby NOAA can communicate directly with participating mariners and companies regarding the location right whales by means of email, text, apps, etc.

The Passenger Vessel Association appreciates the opportunity to submit this comment to the proposed rule on vessel speed limits to protect against strikes of right whales. PVA stands ready to consult with NOAA as desired to elaborate on any of the points of this document and to devise solutions that protect right whales while preserving passenger vessel operations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Bob Bijur', with a stylized flourish at the end.

Bob Bijur
PVA President, 2022