

Fact Sheet on S.1833 to Prohibit Issuance of an Amended North Atlantic Right Whale Vessel Speed Rule

Waiting for technological solutions would jeopardize the survival of the species

The *Protecting Whales, Human Safety, and Economy Act of 2023*, introduced by Senators Joe Manchin (D-WV) and John Boozman (R-AR), would prohibit the National Oceanic and Atmospheric Administration (NOAA) from issuing urgently needed amendments to the North Atlantic right whale vessel strike reduction rule to protect the species from extinction. Currently, vessels 65 feet in length or greater must travel at 10 knots or less in specific areas and during specific times of year to avoid lethal vessel strikes of highly endangered North Atlantic right whales. NOAA is proposing to amend this rule to cover broader geographic areas and times when North Atlantic right whales are known to be most at risk, and to apply the rule to vessels 35 feet in length or greater. Three of the four known vessel strike events that involved mothers and calves since 2020 involved vessels between 35 and 65 feet in length. These amendments are supported by science and necessary if the species is to avoid extinction.

S.1833 would prohibit NOAA from issuing an amended rule until monitoring technologies are available that would help to reduce vessel strike risk in near-real time, which presumably would lessen the need for speed restrictions. Unfortunately, the technologies and related protocols capable of mitigating vessel strike risk to a level approaching zero—as is required to save the species—do not yet exist. Moreover, last year’s authorization by Congress to advance the types of technologies cited by the bill went unfunded, meaning we are still years away from implementation. We cannot wait for technological solutions to take action to protect this imperiled population. Vessel strikes of North Atlantic right whales are currently occurring in much greater numbers than the species can withstand. The only proven way to reduce the risk of mortality or fatal injury from a vessel strike is to reduce the speed of a vessel to 10 knots or less.

By delaying NOAA’s rulemaking – and circumventing the Endangered Species Act and the Marine Mammal Protection Act – potentially indefinitely, the bill jeopardizes the survival of the North Atlantic right whale, as well as the laws that protect our nation’s most treasured species. We oppose S.1833.

What would the bill do?

- **Undermine our nation’s bedrock wildlife protection laws.** The bill directly undermines the ability of NOAA to issue amended regulations—rooted in best available science—to protect North Atlantic right whales from extinction, as required by the Endangered Species Act and Marine Mammal Protection Act. The bill is yet another example in a worrying trend of Congress using legislation to exempt industry from regulatory requirements.
- **Threaten the existence of the highly endangered North Atlantic right whale.** North Atlantic right whales are rapidly declining towards extinction. Fewer than 350 individuals remain and, of those, fewer than 70 are reproductive females. At the current rate, experts predict the species will become functionally extinct within 15 years. We cannot lose even one whale per year to human causes if right whales are to begin to recover. This means that the risk of vessel strikes must be reduced to close to zero. Six documented mortalities and fatal injuries have occurred in U.S. waters because of vessel strikes since 2017, and two more right whales are known to have been struck and injured. Only approximately one third of right whale deaths from vessel strikes

or other human causes are detected, meaning the actual numbers of deaths in U.S. waters are likely far greater. Without amended regulations to reduce the speed of vessels 35 feet and greater in length to 10 knots or less in areas and at times of greatest risk, unsustainable numbers of vessel strikes will undoubtedly continue, risking the species' survival.

- **Mislead Congress and the public on the status of technological solutions to mitigate vessel strike risks.** The bill text states that the near real-time monitoring and mitigation protocols under section 11303(e) of the Don Young Coast Guard Authorization Act 2022 (16 U.S.C. 1391) would need to be fully developed and deployed before any form of rulemaking can take place. But Congress did not appropriate any funds to advance the near real-time monitoring pilot program described in section 11303(e) to determine the feasibility of such technologies. While there are currently a range of technologies in development to track whales and alert boaters, and some are being tested and used, to date no technologies or mitigation protocols have been proven effective in reducing the risk of a single strike in real time as a substitute for vessel speed restrictions. North Atlantic right whales do not have time to wait to determine whether it is possible to develop these types of measures. Extending the 2008 vessel speed rule to apply the 10-knot speed restriction more widely is urgently needed to prevent further vessel strike deaths. Only if near real-time monitoring technologies are proven to work as well as or better than the vessel speed rule could NOAA consider amending the vessel speed regulation to reflect technological progress.
- **Risk vessel safety by not implementing rules that would reduce the likelihood of vessel strikes.** Vessel strikes also pose a serious risk to the vessel involved in the strike. In February 2021, a sport fishing vessel accidentally struck a right whale mother and calf, killing the calf and seriously injuring the mother. The vessel was damaged beyond repair, resulting in a \$1.2 million total loss. The proposed amendments to the vessel strike risk reduction rule would reduce the likelihood of a strike and improve vessel safety. The vessel strike risk reduction rule does not create additional safety concerns for vessels. The current and proposed vessel strike risk reduction rule include the ability to deviate from the rules for safety. State and federal vessels engaged in law enforcement or search and rescue activities, as well as all U.S. Coast Guard and U.S. Navy vessels, are also among several categories of vessels that are exempt from the rule.

Contact Information

Valerie Cleland, Senior Ocean Advocate, NRDC, vcleland@nrdc.org

Erica Fuller, Senior Attorney, CLF, efuller@clf.org

Melissa Edmonds, Science and Policy Analyst, SELC, medmonds@selcnc.org



