



STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF CLIMATE, COASTAL AND ENERGY

STATE STREET COMMONS

100 W. WATER STREET, SUITE 7B

DOVER, DELAWARE 19904

**COASTAL
PROGRAMS**

PHONE
(302) 739-9283

September 6, 2024

Shannon Bettridge
Division Chief
Marine Mammal and Sea Turtle Conservation District
NOAA Fisheries Office of Protected Resources

**RE: Delaware Coastal Management Program — Federal Consistency Determination
Concurrence for NMFS Whale Collision Speed Reduction (FC 2024.0036)**

Dear Division Chief Bettridge,

The Delaware Department of Natural Resources and Environmental Control (DNREC) Coastal Management Program (DCMP) has completed its review of the above referenced project, dated, and received by this office on June 18, 2024. The review request was submitted on behalf of the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS).

PROPOSED ACTION

NMFS is proposing amendments to the existing North Atlantic right whale (*Eubalaena glacialis*) vessel speed rule to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel strikes. The proposed rule would modify the boundaries and timing of seasonal speed restrictions, create a Dynamic Speed Zone program, extend the size threshold of regulated vessels, and update the speed rule's safety deviation provision.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act (CZMA) of 1972 administered by NOAA, as amended, each federal agency activity within or outside the coastal zone that can have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of the NOAA-approved state coastal management program. Under the

CZMA implementing regulations, *Federal Consistency with Approved Coastal Management Programs* (15 CFR 930), subpart C, federal agencies are advised to provide state agencies with a consistency determination at the earliest practicable time in the planning or reassessment of an activity, and before the federal agency reaches a significant point of decision-making in its review process. The term “consistent to the maximum extent practicable” in 15 CFR 930.32 means fully consistent with the enforceable policies of a management program unless full consistency is prohibited by existing law applicable to the federal agency.

PUBLIC PARTICIPATION

In accordance with 15 CFR 930.42, the public was invited to participate in the review of the NMFS Whale Collision Speed Reduction proposed rule changes. Public notice of this proposed action was published in the Delaware State News, The Wilmington News Journal, and DNREC public notices list service on July 10, 2024. The public was given 20 days to comment on this notice. Six public comment submissions were received.

FEDERAL CONSISTENCY ANALYSIS

The DCMP coordinates the review of consistency determinations with agencies administering the enforceable and advisory policies of the program. The following agencies participated in this review:

- DNREC, Division of Air Quality
- DNREC, Division of Fish and Wildlife
- DNREC, Division of Watershed Stewardship
- DNREC, Natural Resources Police

The proposed activity is to be implemented in a manner consistent with the enforceable policies of the DCMP Federal Consistency Policies and Procedures Document Section 5.0.

RECOMMENDATION

The DCMP strongly recommends that NOAA NMFS coordinate with vessel pilots, pilot associations, committees, and affected ports to address concerns regarding pilot operations and safety and economic impacts pursuant to DCMP 5.8 Port of Wilmington advisory policies.

CONCURRENCE

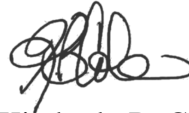
Based on its review and pursuant to 15 CFR 930, the DCMP concurs that the NMFS Whale Collision Speed Reduction rule changes as proposed is consistent to the maximum extent practicable.

Pursuant to 15 CFR 930.46, NMFS shall notify the DCMP of any proposed modifications to activities after receiving a decision from the DCMP. Modifications will be subject to supplemental federal consistency review if effects to any coastal use or resource will be substantially different than originally described.

Please be advised that this federal consistency review does not negate the need for other authorizations that may be required.

Thank you for the opportunity to evaluate this federal agency activity. If you have any questions, please contact me or Eddie Meade of my staff at (302) 739-9283.

Sincerely,

A handwritten signature in black ink, appearing to read 'KBC', with a stylized flourish extending to the right.

Kimberly B. Cole, Administrator
Delaware Coastal Management Program

KBC/EM

cc: File FC 2024.0036
Danielle Minter, DFW
Tina Merrill, DAQ
Elaine Webb, DWS
Cpt. John McDerby, NRP