



October 2, 2026

Via Electronic Mail

Samuel D. Rauch III
Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Re: Executive Order 14430 and Rescission of the North Atlantic Right Whale Vessel Speed Rule (50 C.F.R. § 224.105)

Dear Administrator Rauch:

Under President Trump’s leadership, the regulatory tide has finally turned back out to sea, and the wave of restrictions burdening everyday Americans and their businesses has begun to subside. SLF writes to urge you to continue unleashing the American economy by rescinding the North Atlantic Right Whale Vessel Speed Rule, 50 C.F.R. § 224.105 (the Rule). The Rule does nothing to help the whales it is named after and much to harm ordinary Americans. The Rule harms everyone from recreational boaters and fishermen to commercial fishermen to boat makers and their employees. And the President just directed you, in no uncertain terms, to rescind it.

On September 17, 2026, the President signed Executive Order 14430, directing the Secretary of Commerce, within 30 days, to “take steps to initiate action to suspend, revise, or rescind regulations that overly burden boaters, anglers, and outdoor businesses.”¹ Few regulations fit that description better than the Rule, which exposes owners and captains of boats 65 feet and longer to steep fines—and even criminal prosecution—for traveling faster than a golf cart along large stretches of the Atlantic coast for months at a time. [Southeastern Legal Foundation](#) (SLF) urges the National Marine Fisheries Service (NMFS) to answer the President’s call by promptly rescinding the Rule in full, because Congress never gave NMFS the power to issue it.

This is not a new request. SLF petitioned NMFS to rescind the Rule in November 2024, renewed that request in its June 2026 comments on the agency’s advance notice of proposed rulemaking (ANPRM), and is still awaiting a response.² SLF welcomes the ANPRM’s

¹ Exec. Order No. 14430, *Restoring American Saltwater Angling and Recreation*, § 5(a), 91 Fed. Reg. 60,293, 60,294 (Sept. 22, 2026).

² SLF’s November 1, 2024, petition is available at <https://perma.cc/G5N2-CFFG>. Our June 2, 2026, comments are in Docket ID No. NOAA-NMFS-2026-0364.

deregulatory aims. But the Rule's fundamental defect is not its boundaries, its seasons, or its 65-foot threshold; it is that NMFS never had the authority to issue it. No amendment can cure that defect and so the Rule must be rescinded.

SLF urges you to fully rescind the Vessel Speed Rule for five key reasons:

- First, the Rule is unlawful. It exceeds the scope of the delegated powers and answers a major question without clear congressional authorization. The single best meaning of the statutes the National Oceanic and Atmospheric Administration (NOAA) and NMFS relied upon when enacting the Rule—the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA)³—does not authorize it. And even if they did, that delegation would violate the nondelegation doctrine.
- Second, the Rule's foundational assumptions about the effectiveness of technology are no longer correct, if they ever were. Technology is now capable of doing much more to protect right whales than this heavy-handed speed limit ever did.
- Third, the Rule's benefits are far outweighed by its costs. NMFS's own assessment of the Rule in 2020 concluded that it does next to nothing, perhaps nothing at all, to prevent vessel strikes. Yet it imposes serious costs—both economic and noneconomic—that outweigh whatever negligible benefits exist.
- Fourth, rescission is consistent with the President's directives to eliminate unlawful regulation in an expedited fashion.
- Fifth, rescission promotes NOAA's priorities.

Congress Never Authorized NMFS to Set Speed Limits at Sea

In 2008, NMFS relied on two broad provisions of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), both of which authorize regulations “appropriate” to the Acts. Neither says a word about speed limits for boats. As the Fifth Circuit told NMFS when rejecting the agency's attempt to build an aquaculture program on statutory silence, “Congress does not delegate authority merely by not withholding it.” *Gulf Fishermens Assoc. v. NMFS*, 968 F.3d 454, 456 (5th Cir. 2020), *as revised* (Aug. 4, 2020) (Duncan, J.).

The MMPA confirms as much. When Congress wanted to regulate conduct that harms marine mammals, it said so. An entirely different section of the MMPA than was used authorizes regulations on the “taking” of marine mammals—that is, to “harass, hunt, capture, or kill” them. Setting aside that operating a boat at eleven knots cannot be a taking, reading the general language to take “appropriate” action confer a broader, unconstrained power over accidental harm would

³ See *Endangered Fish and Wildlife; Final Rule To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales*, 73 Fed. Reg. 60,173, 60,182 (Oct. 10, 2008) (citing 16 U.S.C. § 1382(a) of the MMPA and 16 U.S.C. § 1540(f) of the ESA).

render the section on takings meaningless. Put simply, the general power to write “appropriate” regulations is not a power to invent new prohibitions on otherwise lawful conduct.

History removes any doubt. In 2003, NMFS asked Congress for legislation authorizing it to use MMPA authorities “to reduce the occurrence of ship strikes of whales,” and the Marine Mammal Commission acknowledged “a lack of agreement concerning the existing legal authorities that can be brought to bear on the issue.” Congress did nothing. In 2021, H.R. 5957 would have directed NMFS to establish “seasonal or year-round mandatory vessel speed restrictions.” H.R. 5957 never left subcommittee. The next year, Congress enacted versions of that bill’s vessel-strike grant and real-time whale-monitoring provisions but conspicuously omitted the speed-limit authority. Congress chose to fund studies of technology, not impose speed limits. As *West Virginia v. EPA* explains, when an agency claims a power Congress has “conspicuously and repeatedly declined to enact itself,” there is “every reason to ‘hesitate’” before finding it in general, decades-old text.

Nor does the Rule’s age save it; an agency cannot acquire power by adverse possession. Lastly, if sections 112(a) and 11(f) truly let NMFS criminalize ordinary navigation whenever it deems doing so “necessary and appropriate,” they would supply no intelligible principle at all—creating a serious nondelegation problem that the best reading of the statutes avoids.

Executive Order 14430 Supports Prompt Rescission

Executive Order 14430 directs agencies to “eliminate unnecessary restrictions that harm our coastal economies” and instructs the Secretary to “make use of technological advancements for marine mammal avoidance.” That is the path Congress chose in 2022, and the one SLF has urged NMFS to take since 2024: give mariners real-time information about where whales are, and they will steer clear. No mariner wants to strike a whale and NMFS lacks authority to create and enforce a high-seas speed limit in the first place.

The Office of Information and Regulatory Affairs’ April 9, 2025, memorandum on unlawful regulations directs agencies to “immediately take steps to effectuate the repeal of any regulation . . . that clearly exceeds the agency’s statutory authority,” without notice and comment where the good-cause exception applies, because “[r]etaining and enforcing facially unlawful regulations is clearly contrary to the public interest.” Because the Rule’s invalidity turns on a pure question of statutory authority, NMFS may rescind it by interim final rule, effective immediately. NMFS should promptly propose full rescission—not a redrawing of the Rule’s zones and seasons—and move swiftly to a final rule. Either course would grant the relief SLF requested in its 2024 petition. If NMFS is unwilling to do that, it must at minimum greatly curtail the Rule to account for the vast improvements in marine technology that allow boaters to consistently avoid collisions with Right Whales.

Congress wrote no authority to impose a speed limit into the MMPA or the ESA. The President’s recent Executive Order has charted a course; NMFS need only set and follow it. SLF respectfully urges NMFS to rescind the Rule in full and without delay, and we would welcome the opportunity to help.

Samuel D. Rauch III
October 2, 2026
Page 4 of 4

Yours in Freedom,



Southeastern Legal Foundation

cc: The Honorable Neil A. Jacobs, NOAA Administrator
Eugenio Piñeiro Soler, Assistant Administrator for Fisheries, NMFS