



GEORGIA
DEPARTMENT OF NATURAL RESOURCES

WILDLIFE RESOURCES DIVISION

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October 31, 2022

Samuel D. Rauch, III
Deputy Assistant Administrator
NOAA Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Re: Right Whale Vessel Speed Regulations, NMFS-2022-0022

Dear Mr. Rauch:

The Georgia Department of Natural Resources (GDNR) Wildlife Resources Division appreciates the opportunity to comment on NOAA's proposed amendment to right whale vessel speed regulations, which were published in the Federal Register on August 1, 2022 (docket no. 220722-0162). Georgia's coast lies at the heart of the only calving ground for the critically endangered North Atlantic right whale (NARW). For over 30 years, GDNR has worked closely with NOAA and other partners to recover right whales. Those efforts contributed to two decades of slow but steady population increase in the 1990s and 2000s, giving us much hope for the future of the species. But over the past decade, the species has experienced a rapid and unsustainable decline, due to a combination of low reproduction and high anthropogenic mortality. The underlying causes of low reproduction are complex, along with the adaptive challenges NOAA faces with reducing mortality and injury from fishing rope entanglements. We agree that additional measures are needed to decrease the likelihood of a NARW vessel strikes, but we cannot fully support the proposed rule as written.

We have enclosed a document that outlines several elements of the proposal that merit further consideration, including (1) evaluation of impacts from deep vs. shallow draft vessels, (2) regional consistency measures, and (3) enforcement and compliance. We respectfully request that NOAA consider these comments while developing the final rule and recognize that a collaborative process will ultimately lead to successful compliance and a long-term reduction in NARW vessel strikes. If you have any questions, please contact Clay George at 912-262-3336 or clay.george@dnr.ga.gov.

Sincerely,



Ted Will

Enclosure

cc: Doug Haymans
Dr. Jon Ambrose

Georgia DNR Wildlife Resources Division Comments on NOAA's Proposed Amendments to the Right Whale Vessel Strike Reduction Rule

Introduction

NOAA is proposing to amend the 2008 right whale vessel strike reduction rule to further reduce risk of vessel collisions with North Atlantic right whales (NARWs). Proposed changes include (1) expanding the boundaries of 10-knot seasonal speed zones (SSZs), primarily in the Mid-Atlantic and Northeast U.S., (2) making 10-knot dynamic speed zones (DSZs) mandatory (they are currently voluntary), (3) reducing the vessel length threshold from 65 ft to 35 ft, and (4) modifying the criteria and reporting requirements when vessel operators deviate from the rule to maintain vessel safety. Several elements of the proposal are justifiable:

- Vessel strikes are the second most common cause of anthropogenic NARW mortality, after entanglement in commercial fishing rope.
- Lethal collisions attributed to vessels >65ft long appears to have decreased in U.S. waters since the 2008 rule, but lethal collisions with vessels <65 ft long have not (Fig. 1).
- More lethal strikes have been observed in the Southeast U.S. than other regions, and most of these have involved vessels <65 ft (Fig. 2).
- The NARW species has declined 24% since 2011 (Hayes et al. 2022); the number of breeding females declined by 36% during the same period to an estimated 72 breeding females as of 2018 (Reed et al. 2022).
- Significant reductions in anthropogenic mortality will be required to stabilize the species and prevent functional extinction (Hayes et al. 2018, Linden 2021, Reed et al. 2022)

NOAA estimates that the proposed rule could reduce NARW vessel strike mortality by 27.5% (Garrison et al. 2022). Unfortunately, speed and track data are not available for most vessels <65 ft in length, so these results are probably biased. Therefore, the actual risk reduction this proposal would achieve is uncertain. That said, the number of mortalities and serious injuries (MSIs) from vessel strikes in U.S. waters currently exceed the legal threshold allowable under the Marine Mammal Protection Act (0.7/year, Hayes et al. 2008). And the actual number of MSIs is certainly higher: Observed MSIs only account for about 36% of total mortalities (Pace et al. 2021).

There are currently no technological solutions to prevent vessel strikes. That leaves speed reduction and vessel routing measures as the primary tools to manage whale/vessel collision risk. Because NARWs are widely distributed along the U.S. east coast during many seasons, rerouting measures are generally not practical. We generally support NOAA's proposal to require 10-knot speed for some classes of vessels <65ft including yachts, large sport fishing vessels and most commercial vessels. However, NOAA has not made a strong case for a 10-knot limit for all vessels in the 35-65 ft size range. Below we identify several additional areas where the proposal could be modified to increase right whale protections and/or reduce unnecessary impacts to the boating community.

Deep vs. Shallow Draft Vessels

NOAA and GDNR records indicate there have been 9 collisions between vessels <65ft and known or suspected NARWs that likely resulted in MSIs (Table 1). Information about the vessel is known for 8 of those cases. One case involved a calf with lethal propeller cuts that were consistent with a vessel 40-65 ft long. To summarize:

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- All known or suspected lethal collisions involved vessels that were likely >40 ft,
- Three collisions involved vessels less than 40 ft but the outcome for the whale was unknown in each case,
- All known vessels had inboard engines and through-hull propellers, except for one 48 ft vessel that apparently had hull-mounted IPS drives,
- No cases involved vessels with outboard, inboard/outboard or jet propulsion, and
- Of the 6 vessels we have been able to find data for, their drafts ranged 3.3-7.4 ft.

The lack of MSIs involving shallow draft outboard powered vessels is surprising because most of the vessels that operate in the Southeast U.S. during the NARW calving season are shallow draft, outboard powered vessels (e.g., center console, walkaround console and runabout boats; Montes 2016). Many of these vessels have static drafts less than 2 ft, even in the 35-45 ft length range (Fig. 3). It is possible that vessels with drafts <2 ft deep would have a lower risk of collision because (1) anytime whales are deeper than 2 ft below the surface, they would be unavailable to be struck, and (2) when whales are within 1-2 ft of the surface, some portion of the whale may be visible to the oncoming boat operator *during daylight hours when sea conditions are good*. We are not aware of any analyses or publications that have addressed this specific question in NARWs or other large whales.

We strongly recommend that NOAA investigate the relationship of vessel length, draft, speed, mass and population type for vessels in the <65 ft class prior to implementing the new rule. In particular, NOAA should assess if a higher (e.g., 20-knot) speed limit for outboard and water jet powered vessels would reduce collision risk compared to the status quo. The 10-knot speed limit in the current rule was derived using data on whale collisions with ships and large vessels (Laist et al. 2001, Vanderlaan and Taggart 2007) and may not accurately characterize the risk from smaller, shallow draft vessels. There are also practical considerations:

- Vessels with planing hulls typically require speeds of ~20 knots to operate efficiently. A 20-knot speed limit would allow these vessels to continue operating at efficient speeds.
- A 20-knot speed limit would achieve significant reduction in top-end speeds, as many outboard boats are designed to operate at speeds upward of 30-40 knots.
- We suspect compliance would be higher with a speed limit that allows vessels to operate efficiently.

Regional Consistency Measures

Speed Zone Boundaries, Dates and Triggers

We recommend that NOAA consolidate the Southeast SSZ, South Carolina SSZ and the portions of the North Carolina SSZ south of Cape Hatteras into a single contiguous "Southeast SSZ." We also recommend that the "Southeast SSZ" be active from November 15 to March 31. The occurrence of NARWs south of Cape Hatteras in early November and in April is extremely low (Roberts et al. 2022; GDNR, unpublished data). In the rare occasions that NARWs are present in early November and April, the collision risk could be managed with temporary Dynamic Speed Zones (DSZs). Note this would require modifying the DSZ trigger to include mother/calf pairs for waters south of Cape Hatteras. This is justifiable given the slow swim speeds and long residency times of mother/calf pairs in Southeast U.S. waters (Hain et al. 2013, Krzystan 2018).

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Shallow Waters in Georgia and South Carolina

The western boundaries of the proposed SSZs are formed by the shoreline and COLREGs lines. These boundaries do not accurately reflect the distribution of NARWs in Georgia and South Carolina. Most waters within 1-2 nautical miles of the immediate Georgia and South Carolina coastline are shallow and are not good NARW habitat (Gowan and Ortega-Ortiz 2014, Roberts et al. 2022). As such, we recommend that NOAA align the western (shoreward) boundary of the SSZ with the 3 fathom (18 ft) depth contour in Georgia and South Carolina, including adjacent portions of dredged channels, since NARWs rarely occur in these areas (see Figures 4-6).

Safety Deviations for Poor Weather

We recommend that NOAA add Special Marine Warnings (SMWs) to the list of weather warnings that operators of vessels <65 ft can use to deviate from speed restrictions. NOAA's National Weather Service defines SMWs as:

"A warning of potentially hazardous weather conditions usually of short duration (less than 2 hours) producing wind speeds of 34 kt or more, and/or waterspouts affecting areas included in a coastal waters forecast" (NOAA 2022).

SMWs occur unpredictably in Southeast coastal waters throughout the winter months.

Enforcement and Compliance

We have significant concerns about the ability of NOAA or other law enforcement agencies to enforce the proposed rule. At the current time, NOAA uses Automatic Identification System (AIS) data to monitor compliance of vessels >65 ft remotely and retroactively. However, most vessels <65 ft are not required to carry AIS. Those that carry AIS can turn their AIS on or off at any time. The Coast Guard's official stance on changing AIS carriage requirements is:

"Notwithstanding that the Coast Guard strongly encourages the use of AIS, we have no plans to expand AIS carriage beyond our current regulation" (USCG 2022).

Without remote enforcement options, successful enforcement will depend on real-time enforcement by law enforcement vessels operating on the water. It is unclear how this will work given the limited resources available, numerous constraints and the expansive area involved. We strongly recommend that NOAA work with federal and state law enforcement agencies to develop a realistic enforcement plan and craft the final rule accordingly. If enforcement is limited, compliance will be poor and NARW collision risk will not be reduced.

We request clarification and supporting data regarding proposed exemptions for all federal and federally contracted vessels under the proposed rule. Finally, we would like to state our position, supported by biological data, that implementation of additional vessel speed regulations in the Southeast will be insufficient for recovery of NARW in the absence of meaningful reductions in rope entanglement elsewhere in the range of this critically endangered species.

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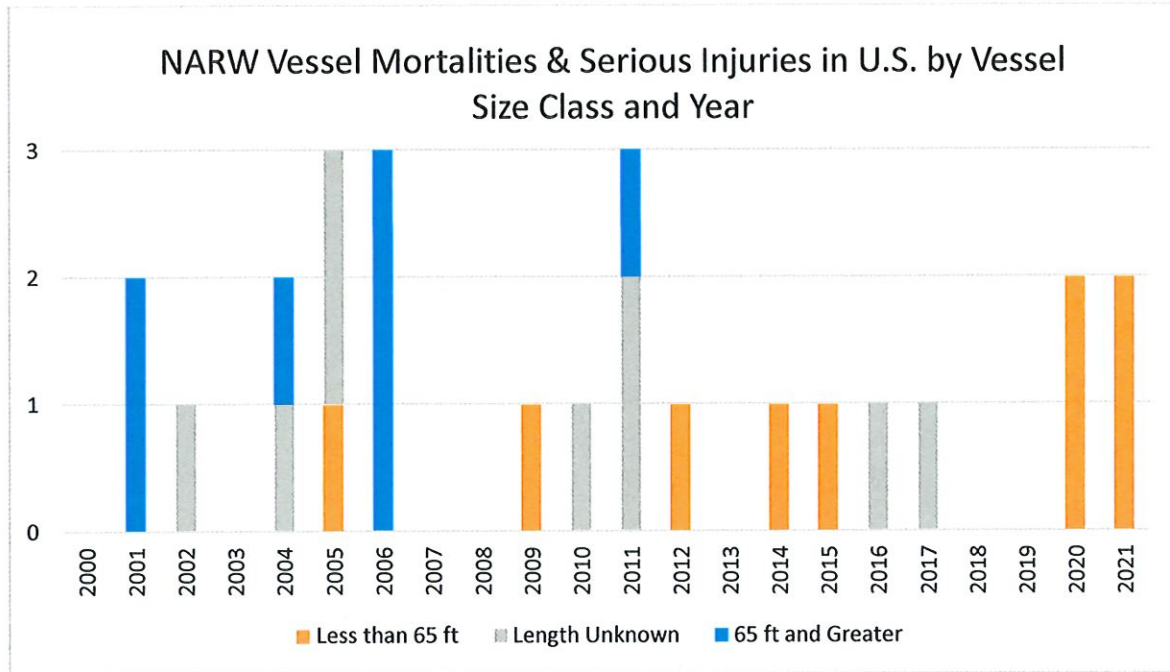


Figure 1. Observed NARW mortalities and serious injuries by vessel size class and year (NMFS and GDNR data).

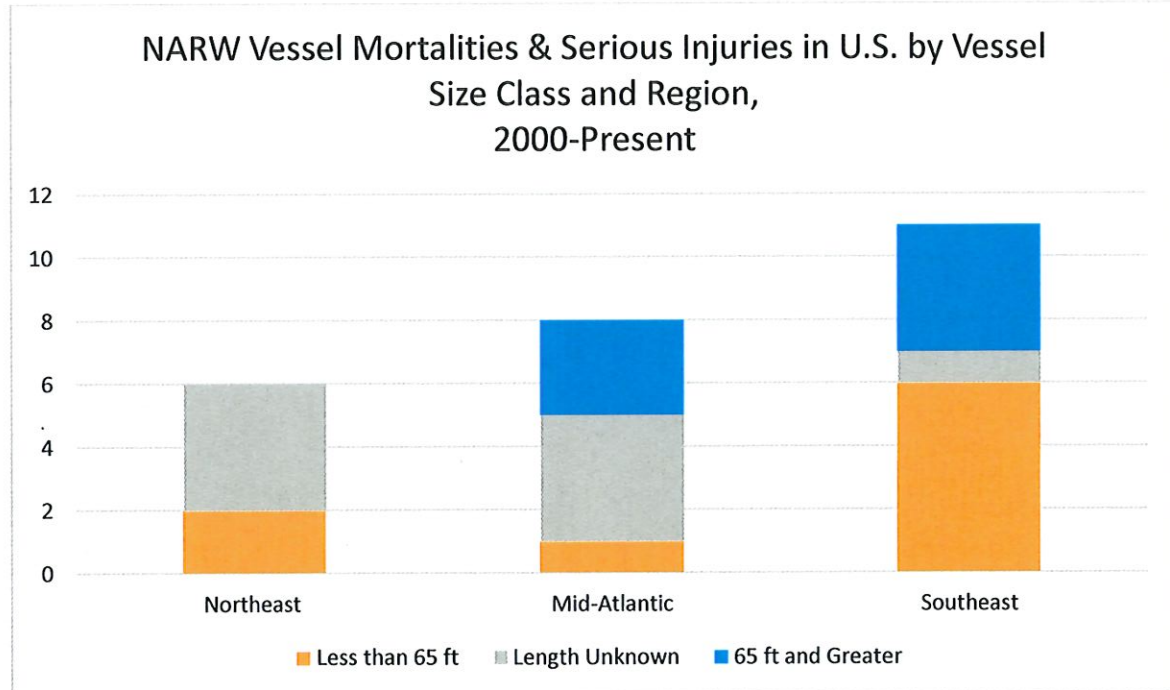


Figure 2. Observed NARW mortalities and serious injuries by vessel size class and region (NMFS and GDNR data).

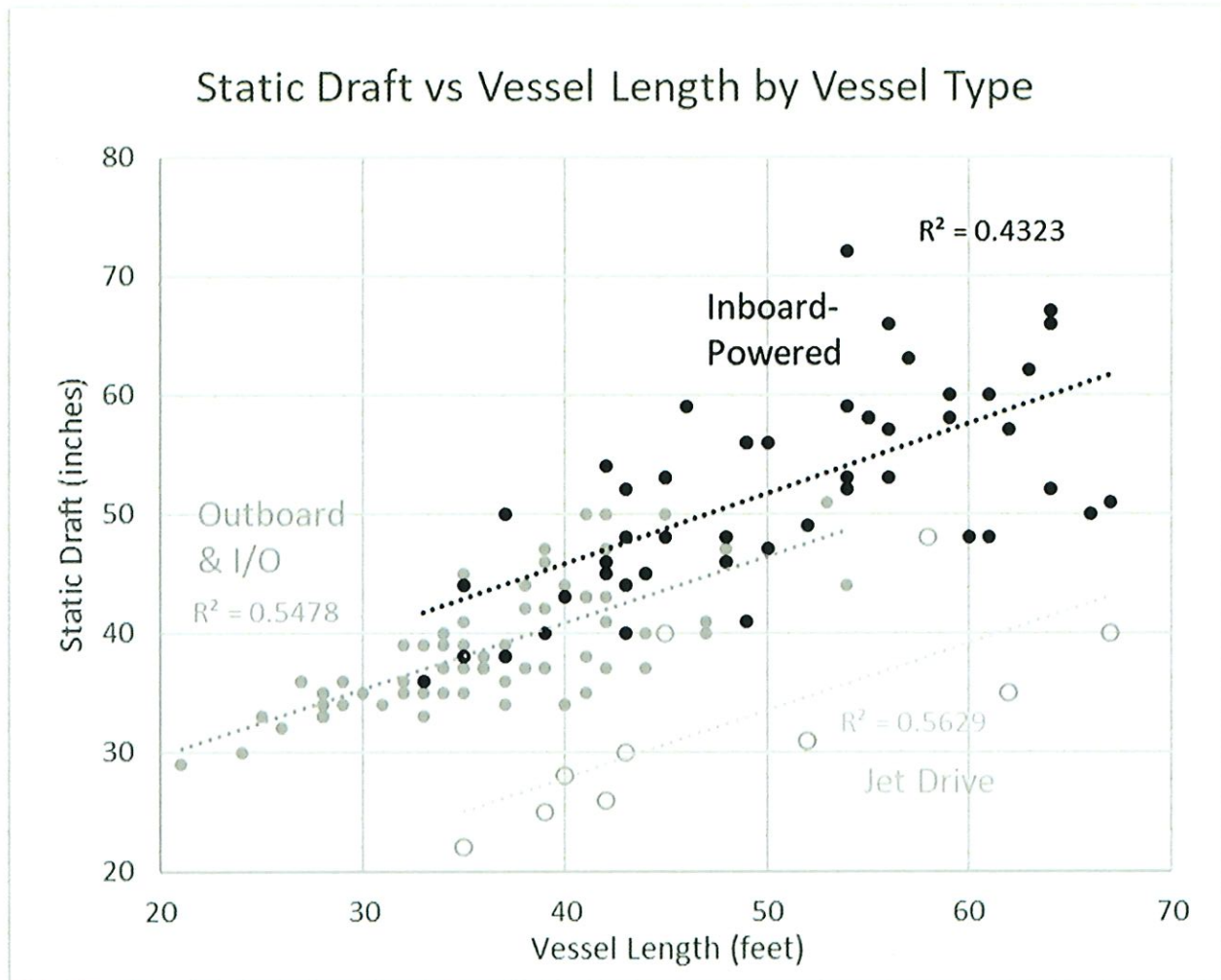


Figure 3. Static draft (including propellers and lower units) for (1) inboard powered, (2) outboard and inboard/outboard powered, and (3) jet drive vessels, 20-65 ft in length. Data compiled by GDNR from specifications listed on 37 vessel manufacturers websites (Table 2). The draft of most outboard powered vessels was listed by hull draft; 13 inches was added to account for the added depth of the outboard lower unit.

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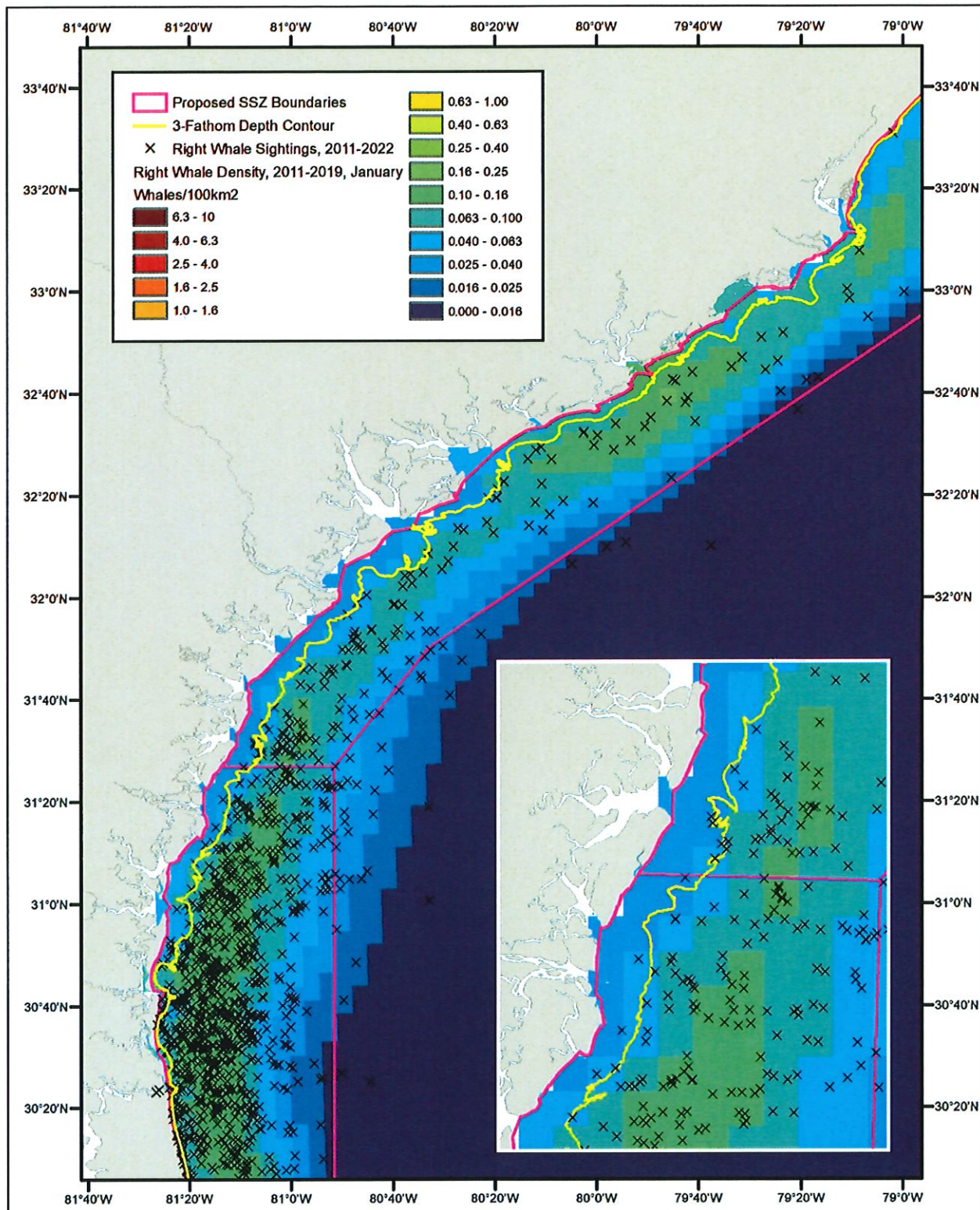


Figure 4. Density and sightings of NARWs are low west of the 3 fathom (18ft) depth contour. Whale density is for January 2011-2019 (Roberts et al. 2022). Whale sightings are from aerial survey platforms across all months, 2011-2022 (NARW Consortium data).

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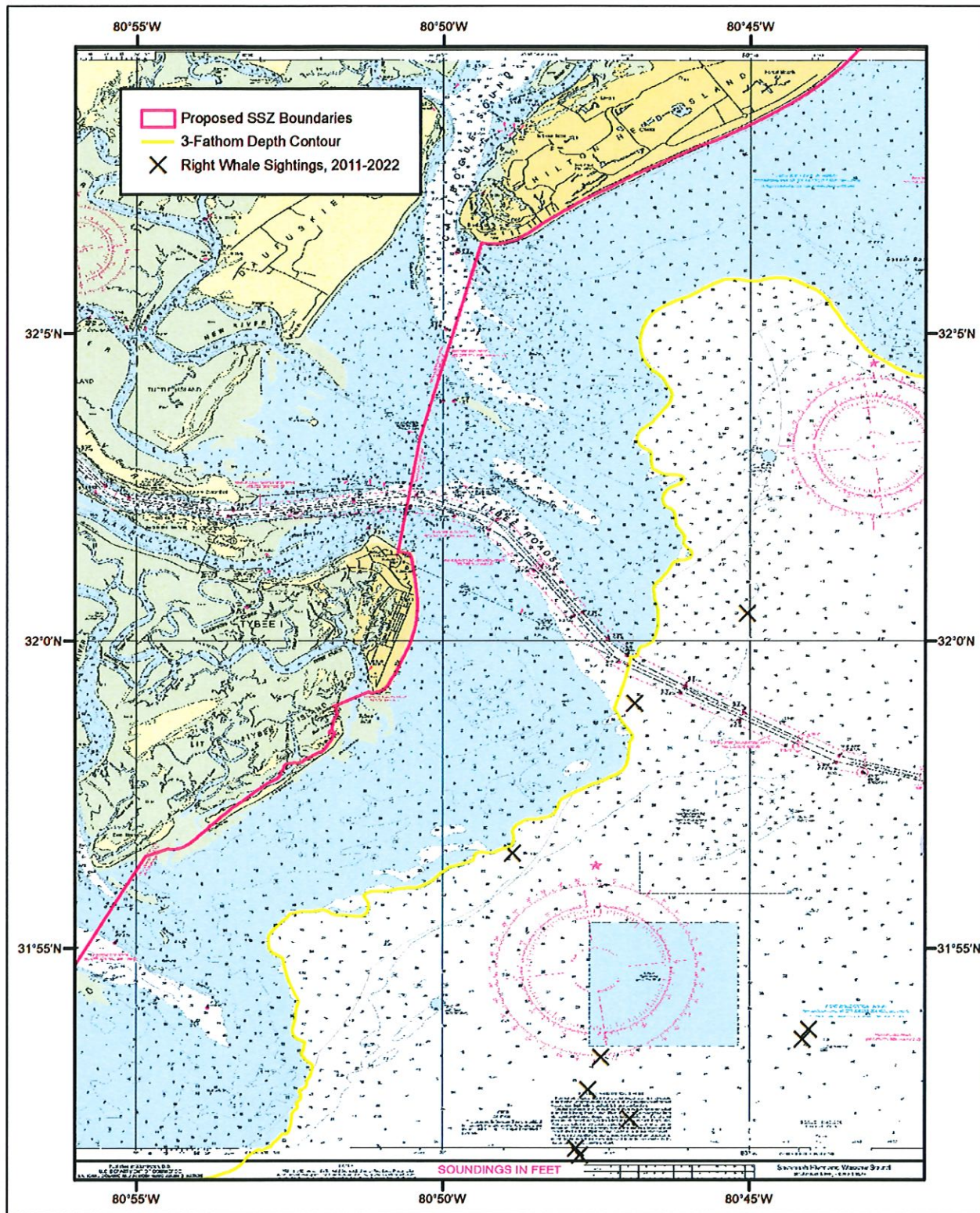


Figure 5. NOAA's proposed SSZ boundary (magenta) and GDNR's requested modification (yellow) around the Savannah River entrance.

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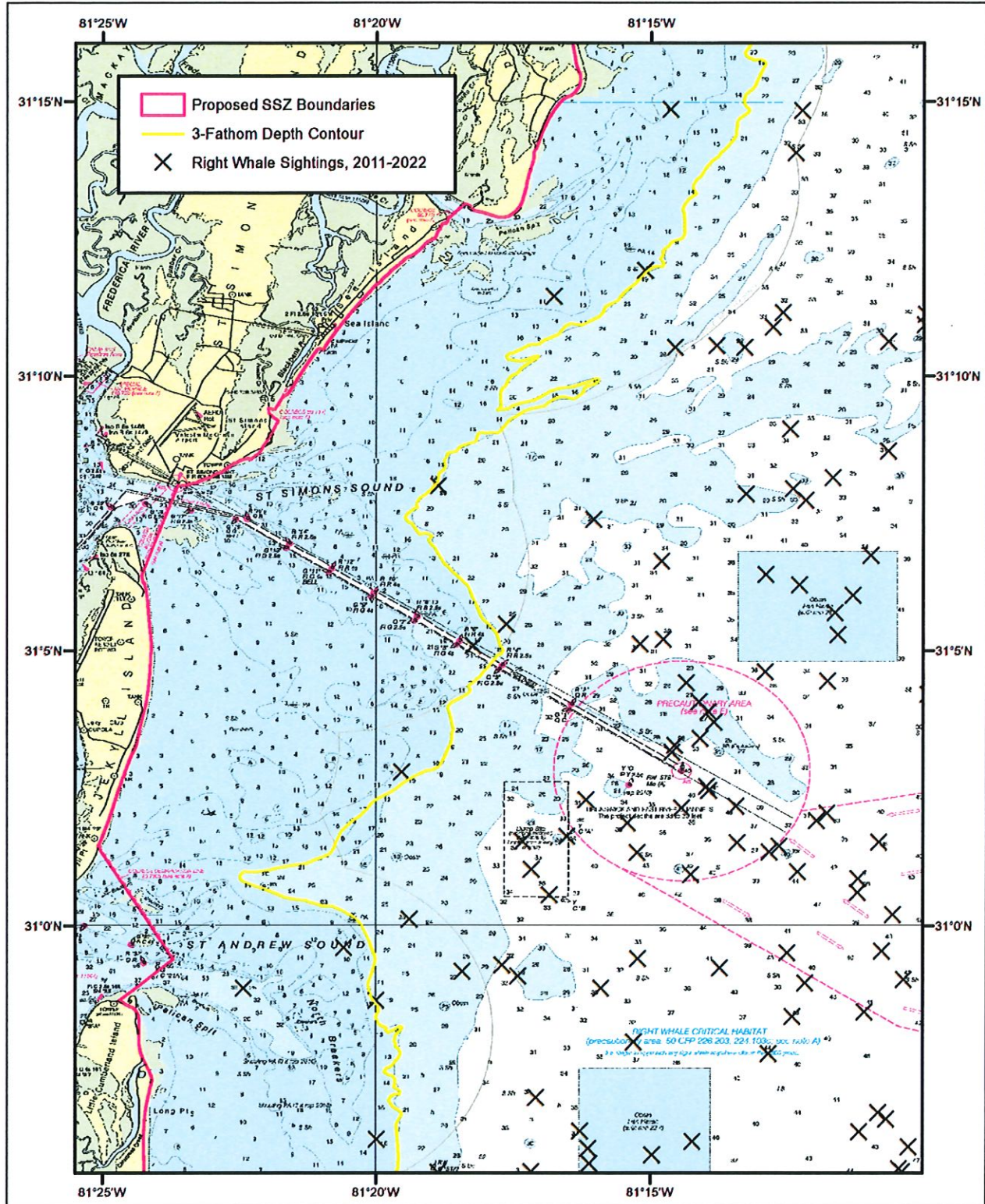


Figure 6. NOAA's proposed SSZ boundary (magenta) and GDNR's requested modification (yellow) around the Brunswick channel entrance. The greater number of whale sightings near Brunswick compared to Savannah is due to higher survey area in the Brunswick area.

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Table 1. Collisions with known or suspected right whales (NARW) involving vessels less than 65 ft long that resulted in mortality or serious injuries. Data from the NOAA Vessel Speed Environmental Assessment, with some data added by GDNR.

In NOAA EA Appendix A	Date	Location	Region	Species/ID	Outcome	Vessel Description	Vessel Length (ft)	Vessel Draft (ft)	Vessel Speed (knots)
Yes	03/10/05	Cumberland Island, GA	SEUS	#2425	Probable mortality	Grand Banks Eastbay 43 twin screw inboard	43	3.6	~20
No	03/31/09	E of Hilton Head Is., SC	SEUS	Suspected NARW	Serious Injury	30 Pursuit Express twin screw inboard	30	3.3	22-23
Yes	12/07/12	E of Ossabaw Island, GA	SEUS	Suspected NARW	Serious Injury	Carver 466 twin screw inboard	46	3.5	12-13
Yes	04/09/14	Cape Cod Bay, MA	NEUS	Suspected NARW	Serious Injury	Jarvis Newman inboard single screw	38.9	7.4	9
No	05/03/15	E of Ellisville, MA	NEUS	Suspected NARW, maybe #3999	Serious Injury	"Twin Screw Recreational Vessel" per Mass DMF	33	Unk	15
Yes	01/08/20	E of Altamaha Sound, GA	SEUS	2020 calf of 2360	Probable mortality	Unknown, props cuts consistent with >40 ft	>40?	Unk	Unk
Yes	06/24/20	E of Elberon, NJ	MAUS	2020 calf of 3560	Mortality	Motoryacht with IPS propulsion	48	Unk	~28
Yes	02/12/21	St. Augustine, FL	SEUS	2021 calf of 3230	Mortality	Jarrett Bay 54 inboard twin screw	54	4	22
Yes	02/12/21	St. Augustine, FL	SEUS	#3230 Infinity	Possible mortality	Jarrett Bay 54 inboard twin screw	54	4	22