

United States Senate

WASHINGTON, DC 20510

November 13, 2019

Dr. Neil Jacobs
Acting Administrator
National Oceanic and Atmospheric Association
1401 Constitution Avenue, NW
Washington, D.C. 20230

Dr. Neil Jacobs:

Ten of the estimated 411 North Atlantic right whales that remain on the planet were killed this year. These deaths compel us to write and reiterate a request that the National Oceanic and Atmospheric Administration (NOAA) immediately determine the adequacy of Canada's Atlantic Fisheries marine mammal conservation standards, and whether those standards are doing enough to protect this endangered species. For while U.S. fishermen have significantly changed their practices to reduce whale mortality, right whales continue to die in Canadian waters. We must ensure that U.S. and Canadian regulations both impose the same high standards that will help save the right whale.

On April 25, 2018 — in light of 17 right whale deaths in 2017, 12 of which were in Canadian waters¹ — eleven U.S. Senators wrote to then-Assistant Secretary RDML Timothy Gallaudet requesting this U.S.-Canada comparability analysis.² On April 25, 2018, at a Senate Commerce Committee hearing on the Marine Mammal Protection Act, Assistant Administrator Chris Oliver committed to Senator Markey that NOAA would review the request quickly, and further, that NOAA would not “want to unnecessarily impose additional restrictions on our fishermen until we see comparable restrictions on the Canadian side.”³ Despite this assurance, NOAA has neither conducted the comparability analysis nor even responded to the written request for it. More troublingly, in response to a similar request from eight House members on July 11, 2018, Secretary of Commerce Wilbur Ross declined to fast-track an evaluation of Canada's regulations, citing ongoing negotiations and evolving U.S. regulatory standards.

The urgency of the right whale situation demands expedited action, not delay. The plight of the right whale changed dramatically since our 2018 letter. Just this year, more than 2% of the estimated population was killed,⁴ pushing the species further toward extinction. And while NOAA is developing additional restrictions for U.S. fishermen — despite Assistant Administrator Oliver's testimony — Canada has rolled back right whale protections. In fact, in April 2019, the Atlantic Large Whale Take Reduction Team outlined a plan to reduce U.S. right whale entanglement risk by 60% by removing up to

¹ NOAA Fisheries. *2017-2019 North Atlantic Right Whale Unusual Mortality Event*.

<https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event> (last visited Nov. 11, 2019).

² Press Release, Senator Markey. Senators Call for Study on the Critically Endangered Right Whale (April 26, 2018), <https://www.markey.senate.gov/news/press-releases/senators-call-for-study-on-the-critically-endangered-right-whale>

³ Senate Commerce Committee Hearings. Enhancing the Marine Mammal Protection Act, <https://www.commerce.senate.gov/2018/4/enhancing-the-marine-mammal-protection-act> (last visited November 12, 2019).

⁴ Amanda Coletta. *Two percent of the world's North Atlantic right whales have died in the last two months*, Wash. Post (August 1, 2019), https://www.washingtonpost.com/world/the_americas/two-percent-of-the-worlds-north-atlantic-right-whales-have-died-in-the-last-two-months/2019/07/31/d3de7d1e-ae31-11e9-9411-a608f9d0c2d3_story.html.

50% of the vertical lines in the water and mandating the use of weak lines.⁵ Although this plan — which NOAA is drafting regulations to implement — would entail major sacrifices by Massachusetts commercial lobstermen, they remain committed to protecting right whales, a testament to their stewardship of this species.

Indeed, Massachusetts fishermen continue to lead the industry with their efforts to protect right whales. Massachusetts lobstermen have adopted sinking ground lines, follow seasonal closures of over 3,000 square miles in Cape Cod Bay, and routinely fish far more traps per line than the minimum requirements, helping to reduce entangling lines in the water. Through collaborative research, Massachusetts lobstermen developed methods to insert weak links in rope so whales can break free, and have partnered with scientists to develop and test innovative gear that reduces risk to whales.

Although Canada took regulatory action in 2017 to protect right whales, it appears that some of these measures have since been modified or removed. This year, Canadian regulators removed or modified protections, including reducing the season-long snow crab closure area by 63%; removing a vessel speed restriction zone; and converting several closures or speed restriction areas to dynamic management that is triggered only after right whales are observed.⁶ Consequently, of the ten right whale mortalities documented in 2019, nine occurred in Canadian waters.⁷

If this alarming trend continues, experts believe that, with the next few decades, the right whale population may no longer be viable.⁸ Both the United States and Canada must make rigorous and concerted efforts to save this important species. Because the burden of reducing risk to right whales falls substantially on fishermen, it is essential that we understand whether U.S. and Canadian fishermen are being held to the same high standards.

The severity of the right whale crisis calls for urgent action. As a G7 economy with demonstrated strong potential for implementing effective fisheries management, Canada does not require the full five-year exemption period for developing reciprocal marine mammal conservation standards under the Marine Mammal Protection Act (MMPA) Import Provisions Rule⁹ We therefore urge NOAA to expedite the requested comparability analysis and complete it before the right whale breeding season starts again next spring. If NOAA finds that Canada's conservation standards are not equivalent to ours, then NOAA Fisheries, under the authority of the MMPA, should consider taking action to prohibit imports of fishery and fishery products from the pertinent Canadian fisheries into the United States.

⁵ <https://www.fisheries.noaa.gov/feature-story/team-reaches-nearly-unanimous-consensus-right-whale-survival-measures>.

⁶ Fisheries and Ocean Canada. Backgrounder: Protecting North Atlantic Right Whales, <https://www.canada.ca/en/fisheries-oceans/news/2019/02/backgrounder-protecting-north-atlantic-right-whales.html> (last visited Nov 12, 2019).

⁷ NOAA Fisheries. *2017-2019 North Atlantic Right Whale Unusual Mortality Event*, <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event> (last visited Nov. 11, 2019).


⁸ Sarah Kaplan, *These whales will be extinct in 25 years, scientists say – unless we act now to save them*. Wash. Post (April 20, 2018), https://www.washingtonpost.com/national/health-science/these-whales-will-be-extinct-in-25-years-scientists-say--unless-we-act-now-to-save-them/2018/04/20/57bf89b2-4320-11e8-8569-26fda6b404c7_story.html.

⁹ Fish and Fish Product Import Provisions of the Marine Mammal Protection Act, 81 F.R. 54389 (Aug. 15, 2016) (to be codified at 15 C.F.R. 902 and 50 C.F.R. 216).

We will closely follow your progress on this critical matter and look forward to your prompt response. If you have any questions on this request, please call Julia Mason or Claire Richer on Senator Markey's staff at (202)-224-2742.

Sincerely,


Edward J. Markey
United States Senator


Elizabeth Warren
United States Senator