

United States Senate

WASHINGTON, DC 20510

April 25, 2018

RDML Timothy Gallaudet, PhD, USN Ret.
Acting Administrator
National Oceanic and Atmospheric Association
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Assistant Secretary Gallaudet,

We write to request that the National Oceanic and Atmospheric Administration (NOAA) take immediate action to investigate whether Canada's Atlantic fisheries have the same marine mammal conservation standards as U.S. fisheries for reducing impacts to the critically endangered North Atlantic right whale. Fishermen in the United States have made significant sacrifices to reduce deadly interactions with this species, and we need to understand whether Canada's fishermen are being held to a similarly high standard in order to prevent the extinction of this species.

The North Atlantic right whale population is in crisis, and is thought to consist of only about 400-500 individuals, which includes less than 100 breeding females.¹ Alarming, there were only five calves sighted last season and none have been sighted this year.² A five-year review completed by NOAA Fisheries in October 2017 indicated that while the right whale population increased overall by 2.8% from 1990-2010, this trend reversed in recent years and the population is now declining.³ Last year was a particularly concerning year for the species, during which at least 17 North Atlantic right whales died prematurely. The significant majority of those dead whales were found in Canadian waters.⁴

The deaths of right whales during their annual migration in U.S. and Canadian waters have been primarily attributed to ship strikes and entanglements with fishing gear. From 2010-2015, fishing gear entanglements accounted for 85% of diagnosed right whale mortalities, and 83% of right whales have been entangled at least once.⁵ Even when right whales do not die as a result of

¹ Richard M. Pace III, Peter J. Corkerton, Scott D. Kraus. *State-space mark-recapture estimates reveal a recent decline in abundance of North Atlantic right whales*. 7:21 Ecology and Evolution 8730-8741. <https://onlinelibrary.wiley.com/doi/abs/10.1002/ece3.3406> (3/28/2018).

² David Abel. *After year of record deaths, right whales produce no new calves, which could be 'catastrophic.'* Boston Globe. (February 26, 2018). <https://www.bostonglobe.com/metro/2018/02/25/after-year-record-deaths-right-whales-produce-new-calves-which-could-catastrophic/wzPwtQSk9iRDIlvmaFp5nJ/story.html> (3/28/2018).

³ NOAA Fisheries. 2017. 5-Year Review: North Atlantic Right Whale (*Eubalaena glacialis*). https://www.greateratlantic.fisheries.noaa.gov/protected/final_narw_5-year_review_2017.pdf (3/28/2018).

⁴ NOAA Fisheries. 2017-2018 North Atlantic Right Whale Unusual Mortality Event. (2018). <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2018-north-atlantic-right-whale-unusual-mortality-event> (3/28/2018).

⁵ Scott D. Kraus, R. D. Kenney, C. A. Mayo, W. A. McLellan, M. J. Moore, and D. P. Nowacek. *Recent scientific publications cast doubt on North Atlantic right whale future*. (2016). 3:137 Frontiers in Marine Science

entanglement, significant sub-lethal effects, including chronic stress and reproductive failure, can still occur.⁶

The United States has taken these risks seriously and has made progress in efforts to reduce human impacts on right whales. For example, ten years ago, shipping lanes into Boston Harbor were narrowed and shifted away from a right whale feeding area to reduce ship strike mortalities.⁷ U.S. fishermen, in collaboration with scientists and conservation groups, have also taken strides toward reducing right whale entanglements through area closures and gear modifications.

We are proud of the conservation achievements of U.S. fishermen to reduce entanglements. For the past decade, U.S. fishermen have been required to use sinking groundlines, have weak links in buoy lines, mark their gear, use multiple traps per single buoy, and comply with area closures.⁸ The sinking groundline requirement removed approximately 27,000 miles of rope from the water column, reducing the risk of whale entanglements.⁹ Fishermen in the United States continue to be heavily involved in efforts to reduce their impacts on right whales, including the testing of lower-strength lines to allow entangled whales to break free.^{10,11} Further research and testing will need to continue to assess future steps.

But right whales do not only inhabit U.S. waters. Observations of right whales in Canada's Gulf of Saint Lawrence have increased in recent years, where they are vulnerable to entanglement in Canadian fishing gear. In 2017, the Canadian snow crab fishery was responsible for at least seven right whale entanglements, of which at least two died.¹² With the current rate of right whale deaths and lack of reproductive success, scientists have concluded that the species could go extinct in as few as twenty years if immediate action is not taken.¹³

<https://www.frontiersin.org/articles/10.3389/fmars.2016.00137/full> (3/28/18).

⁶ Scott D. Kraus et al. *Recent scientific publications cast doubt on North Atlantic right whale future*. (2016). 3:137 *Frontiers in Marine Science* <https://www.frontiersin.org/articles/10.3389/fmars.2016.00137/full> (3/28/18).

⁷ NOAA Fisheries. *Routeing of Ships, Ship Reporting and Related Matters*. (2008).

http://www.nmfs.noaa.gov/pr/pdfs/shipstrike/boston_tss_proposal.pdf; (3/28/18).

<https://archive.nytimes.com/www.nytimes.com/gwire/2009/05/29/29greenwire-noaa-shifts-mass-shipping-lanes-to-aid-right-w-72911.html>

⁸ Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Final Rule, 72 Fed. Reg. 57104 (October 5, 2007). *Federal Register: The Daily Journal of the United States*. <https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/plan/oct5.2007.alwtrp.final.rule.pdf> (April 11, 2018).

⁹ Diane L. Borggaard et al. *Managing U.S. Atlantic large whale entanglements: Four guiding principles*. 84:202 *Marine Policy*.

¹⁰ Doug Fraser. *New Fishing Lines Could Help Whales*. *Cape Cod Times*. (June 17, 2016).

<http://www.capecodtimes.com/news/20160617/new-fishing-lines-could-help-whales> (April 11, 2018).

¹¹ Peter O'Dowd. *Fishermen Test Weaker Ropes So Whales Can Break Through Them*. 90.9 *WBUR-FM*. (October 7, 2016). <http://www.wbur.org/hereandnow/2016/10/07/fishermen-weaker-ropes-whales> (April 11, 2018)

¹² P.-Y. Daoust, E.L. Couture, T. Wimmer, L. Bourque. *Incident Report: North Atlantic Right Whale Mortality Event in the Gulf of St. Lawrence, 2017*. (December 5, 2017). Collaborative Report Produced by: Canadian Wildlife Health Cooperative, Marine Animal Response Society, and Fisheries and Oceans Canada. http://www.cwhc-rscf.ca/right_whales.php (3/28/2018).

¹³ Elizabeth Pennisi. *The North Atlantic right whale faces extinction*. *Science*. (November 7, 2017).

<http://www.sciencemag.org/news/2017/11/north-atlantic-right-whale-faces-extinction> (3/28/2018).

Over the past several months, the Canadian Department of Fisheries and Oceans (DFO) has announced steps to reduce entanglements in its commercial fisheries and collisions with commercial vessels. On January 23, 2018, DFO Minister Dominic LeBlanc announced new management measures to reduce entanglements in Quebec commercial fisheries, including reducing the amount of rope in the water, mandatory color-coded marking of rope, and the requirement to report any lost gear.^{14,15,16} On March 28, 2018, LeBlanc announced that the southern Gulf of St. Lawrence snow crab season would be shifted to better avoid when right whales appeared last year, and could be subject to temporary closures should right whales be observed through increased aerial and at-sea surveillance. In addition, mandatory commercial shipping speed restrictions were implemented in the Gulf of St. Lawrence.¹⁷

While we applaud Canada's efforts to address this ongoing crisis, we remain concerned as to whether the measures enacted will sufficiently protect North Atlantic right whales. Specifically, the 2018 closure only applies to the Gulf of St. Lawrence snow crab fishery, and excludes several fisheries mentioned in the NOAA Fisheries List of Foreign Fisheries as having interactions with the North Atlantic right whale and other marine mammals, including certain lobster, whelk, and mackerel fisheries.¹⁸ In addition, Canada's announced efforts to reduce the amount of rope in the water across Quebec commercial fisheries do not include the requirement to use weak links and trawls (multiple traps/pots per vertical line), which are both required in U.S. east coast trap/pot fisheries.¹⁹

Section 101(a)(2) of the Marine Mammal Protection Act (MMPA) requires nations that export fishery products to the U.S. to be held to the same marine mammal protection standards as domestic commercial fisheries.²⁰ In August 2016, NOAA Fisheries issued a final rule implementing these fishery product import provisions and establishing conditions for evaluating the marine mammal conservation standards of foreign fisheries that export fishery products to the United States. While the rule came into effect on January 1, 2017, foreign nations have been granted a five-year exemption period to develop methods to ensure that their commercial fishing practices meet U.S. standards. At the end of the five-year period, each harvesting nation is required to apply for a comparability finding for its fisheries. To obtain a comparability finding,

¹⁴ Bobbi-Jean MacKinnon. *New snow crab fishing rules rein in use of ropes to protect North Atlantic right whales*. Canadian Broadcasting Corporation. (January 23, 2018). <http://www.cbc.ca/news/canada/new-brunswick/right-whales-gulf-protect-dominic-leblanc-1.4495198> (3/28/2018).

¹⁵ Fisheries and Oceans Canada. *Announcement of New Management Measures to Minimize the Risk of Interactions with Marine Mammals*. (March 15, 2018). https://inter-l01.dfo-mpo.gc.ca/applications/opti-opei/notice-avis-detail-eng.php?pub_id=1491&todo=view&type=1®ion_id=4&sub_type_id=5&species=700&area=1863 (3/28/18).

¹⁶ Fisheries and Oceans Canada. *Fishing Seasons and Gear*. (March 28, 2018). <http://www.dfo-mpo.gc.ca/species-especies/mammals-mammiferes/narightwhale-baleinenoirean/seasons-gears/index-eng.html> (March 29, 2018).

¹⁷ Bobbi-Jean MacKinnon. *Earlier snow crab season, ship speed limits announced to protect North Atlantic right whales*. Canadian Broadcasting Corporation. (March 28, 2018). <http://www.cbc.ca/news/canada/new-brunswick/north-atlantic-right-whale-1.4596446> (3/28/18).

¹⁸ NOAA Fisheries. *List of Foreign Fisheries*. (2018). <https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries> (March 28, 2018).

¹⁹ NOAA Fisheries. *Atlantic Large Whale Take Reduction Plan: Northeast Trap/Pot Fisheries Requirements and Management Areas*. (May 2015). https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrap/docs/Outreach%20Guides%20Updated%20May%202015/northeast_trap_pot_may2015_2.pdf (March 28, 2018).

²⁰ NOAA Fisheries. *Marine Mammal Protection Act*. <https://www.fisheries.noaa.gov/marine-mammal-protection-act> (April 10, 2018).

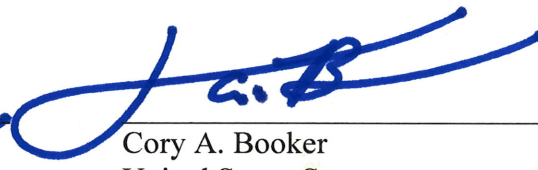
foreign nations are required to submit a variety of information to ensure that their conservation standards meet those of the United States, including estimates of marine mammal bycatch, reporting and monitoring requirements, and regulatory programs to reduce bycatch.²¹ In the interim, imports to the United States can continue even if fishing practices are harmful to marine mammals.²²

While Canada has made progress, a formal evaluation will help the United States assess its next steps. Given the urgency of the situation, we urge NOAA to use its statutory authority to immediately investigate whether Canada's fisheries have marine mammal protection standards that are as protective for the right whale as those in the United States. NOAA should determine whether or not these Canadian fisheries have equivalent conservation standards by September 15, 2018. If Canada's conservation standards are found to not be equivalent to those of the United States, then NOAA Fisheries, under the authority of the Marine Mammal Protection Act (MMPA), should consider taking action to prohibit imports of fishery and fishery products from the pertinent Canadian fisheries into the United States.

We will be closely following your progress on this critical matter and look forward to your prompt response.

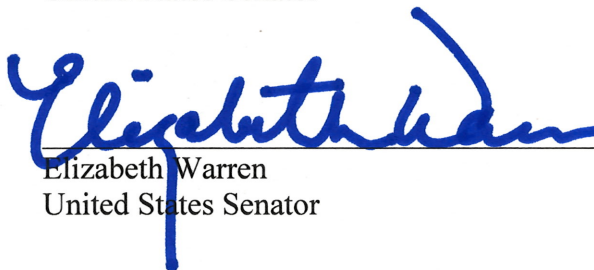
Sincerely,



Edward J. Markey
United States Senator


Cory A. Booker
United States Senator


Richard Blumenthal
United States Senator


Kirsten Gillibrand
United States Senator


Elizabeth Warren
United States Senator


Jeanne Shaheen
United States Senator

²¹ John Henderschedt, et al. *What is Newly Required to Import Seafood into the U.S.?* (March 2017).
<http://www.seafoodexpo.com/north-america/wp-content/uploads/sites/3/2017/03/What-is-newly-required-1.pdf>
(April 11, 2018).

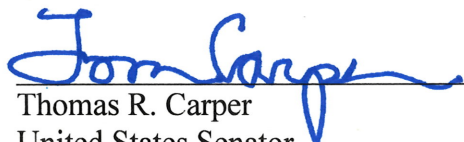
²²Fish and Fish Product Import Provisions of the Marine Mammal Protection Act, 81 Fed. Reg. 54389 (August 15, 2016). *Federal Register: The Daily Journal of the United States*.
<https://www.federalregister.gov/documents/2016/08/15/2016-19158/fish-and-fish-product-import-provisions-of-the-marine-mammal-protection-act> (April 10, 2018).



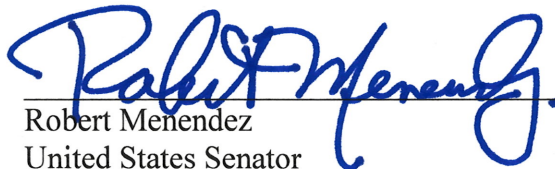
Margaret Wood Hassan
United States Senator



Sheldon Whitehouse
United States Senator



Thomas R. Carper
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Robert Menendez
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