

The Honorable Cliff Bentz
Chair, House Natural Resources Subcommittee
on Water, Wildlife, and Fisheries
U.S. House of Representatives
Washington, DC 20515

The Honorable Jared Huffman
Ranking Member, House Natural Resources
Subcommittee on Water, Wildlife, and Fisheries
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Washington, DC 20515

Thursday, June 27, 2024

Regarding Legislative Hearing on H.R. 8704 (Rep. Carter of GA), "To require the Secretary of Commerce to establish a grant program to foster enhanced coexistence between ocean users and North Atlantic right whales and other large cetacean species and other bills"

Dear Members of the Subcommittee on Water, Wildlife, and Fisheries,

We write to you with serious concerns about H.R. 8704 and the impact it would have on North Atlantic right whales by blocking agency action on vessel speed rules for multiple years. Ship strikes and fishing gear entanglement are the two leading causes for the ongoing rapid collapse of the North Atlantic right whale population.¹ Over the past eight years, a documented 23 North Atlantic right whales have fallen victim to ship strikes that led either to death, serious injuries, or sublethal injuries; these strikes occurred in both U.S. and Canadian waters and were caused by boats of all sizes.²

With respect to H.R. 8704, this bill would stop the National Oceanic and Atmospheric Administration (NOAA) from being able to amend, modify, update, or replace the current vessel speed rule regardless of the best available science and harm caused to the species. This bill would undermine the federal rulemaking process as well as the scientific basis on which the agency operates. Further, this bill would keep the agency from complying with species-saving statutes like the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), among other relevant authorities. Additionally, the grant program this bill would create already exists and was passed into law at the end of the 117th congress. Creating a separate fund would be both redundant and potentially harmful for previously enacted legislation, including section 201 of division JJ of the Consolidated Appropriations Act 2023 (16 U.S.C. 1393) and section 11303 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (16 U.S.C. 1391). We oppose H.R. 8704 for these reasons and encourage you to do the same.

The below provides background on NOAA's proposed rule and emphasizes the dire threat ship strikes pose to North Atlantic right whales. The 2022 proposed rule is based on the best available science and evidence, as well as the agency's Congressionally-mandated authority to protect species under its jurisdiction from injury, death, and potentially extinction. When finalized, the rule will give this species a fighting chance for survival.

The species has been in decline for over a decade, with only about 356 individual right whales remaining

¹ Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, 87 Fed. Reg. 46,921 at 46,928 (August 1, 2022); S.M. Sharp *et al.*, *Gross and Histopathologic Diagnoses From North Atlantic Right Whale *Eubalaena glacialis* Mortalities Between 2003 and 2018*, 135 *Diseases of Aquatic Organisms* 1, at 1. ³ 16 U.S.C. § 1531(c)(1); 16 U.S.C. § 1361(6)

² 2017–2024 North Atlantic Right Whale Unusual Mortality Event, Detailed Tables on Mortality, Serious Injury and Morbidity Cases available at <https://www.fisheries.noaa.gov/s3/2024-05/North-Atlantic-Right-Whale-Causes-of-Death-for-Confirmed-Carcasses-SI-and-Morbidity-Tables-Combined-02May2024-1-.pdf> (Last accessed June 27, 2024).

today.³ Collisions with vessels are one of the two leading causes of injury and death for right whales. Because they do not have a dorsal fin, and they spend much of their time at shallow depths, right whales (especially mothers and calves) are particularly susceptible to collisions with vessels. And the true impact of ship strikes on right whales may be much higher, as scientists estimate that observed deaths only represent around one third of total right whale mortalities.¹⁰ With so few whales left, every ship strike is detrimental to the potential recovery of this species. In fact, NMFS has determined that less than one right whale can die from anthropogenic causes per year for the species to reach its optimum sustainable population.⁴

Slowing vessels down in key areas and times is currently the most effective management tool for reducing ship strikes. At high speeds, vessels cannot safely maneuver to avoid right whales, leaving insufficient time for vessel operators and whales to avoid a collision. Should a collision occur, studies have found that slowing vessel speeds to 10 knots reduces their risk of death from ship strikes by 80% to 90%. NMFS recognizes that mariner safety is extremely important and has included safety deviation provisions since the initial rule in 2008. Overall, the proposed regulatory changes continue to emphasize mariner safety as well as preventing right whale injury and mortality.

It is absolutely vital to slow down vessels when mothers and calves are nursing in the Southeast and migrating through the Mid-Atlantic during calving season, and when the whales are aggregating in New England during the foraging season. And many of these seasonal slow zones fall outside of the heart of boating and recreational fishing seasons.

In January of this year, a calf experienced severe propeller cuts to the head and mouth after a ship strike, eventually succumbing to a slow, painful death two months later. The vessel in question was determined to likely be between 35-57 feet in length and thus not subject to the current speed limits. In February 2021, another right whale calf died from propeller wounds, broken ribs, and a fractured skull, and the mother was seriously injured, after a collision with a 54-foot recreational fishing vessel. Although these captains were not operating illegally, these collisions caused the tragic loss of a mother and calf, which are vital to the future of the population. Further, the 2021 collision resulted in the sinking of the \$1.2 million vessel, endangering all passengers on board.

Saving this species from extinction will take a collective effort from the fishing, boating, and shipping industries to effectively reduce the risk of deadly collisions. The federal government has an obligation to protect these whales from this clear threat by implementing stronger regulations and enforcement procedures. H.R.8704 would hamstring the federal government's ability and responsibility to protect the North Atlantic right whale and we ask you to oppose this latest attempt to gut bedrock environmental laws.

Sincerely,

Animal Legal Defense Fund
Animal Welfare Institute (AWI)
Center for Biological Diversity
Cetacean Society International
Conservation Law Foundation
Defenders of Wildlife

³ With a slight stabilization, the overall North Atlantic right whales' downward trend is still troubling as updated population numbers released (October 23, 2023), *New England Aquarium*.

⁴ National Marine Fisheries Service (NMFS) 2024. Draft U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment available at <https://www.federalregister.gov/documents/2024/01/29/2024-01653/draft-2023-marine-mammal-stock-assessment-reports#:~:text=updated%20abundance%20estimates,-North%20Atlantic%20Right%20Whale%2C%20Western%20North%20Atlantic,individuals%20as%20of%20December%202021> (Last accessed June 27, 2024).

Earthjustice
Endangered Habitats League
Endangered Species Coalition
Environment America
Environment Massachusetts
Environmental Investigation Agency (EIA)
Georgia Interfaith Power and Light
Great Old Broads for Wilderness
Healthy Ocean Coalition
International Fund for Animal Welfare (IFAW)
International Marine Mammal Project of Earth Island Institute
Kettle Range Conservation Group
League of Conservation Voters
Mystic Aquarium
Nevada Wildlife Federation Inc.
NRDC (Natural Resources Defense Council)
NY4WHALES
Ocean Conservancy
Ocean Conservation Research
Ocean Defense Initiative
Oceana
One Hundred Miles
Predator Defense
Resource Renewal Institute
Sanctuary Education Advisory Specialists SEAS
Save Animals Facing Extinction
Save the Manatee Club
Seattle Aquarium
Shedd Aquarium
Sierra Club
Southern Environmental Law Center
The Maritime Aquarium at Norwalk
Whale and Dolphin Conservation
Wildlife Conservation Society
World Wildlife Fund
Zoo New England: Franklin Park Zoo & Stone Zoo