

Congress of the United States  
Washington, DC 20515

April 19, 2023

Chair Brenda Mallory  
The White House  
Council on Environmental Quality  
730 Jackson Place, NW  
Washington, DC 20503

Dear Chair Mallory,

We write regarding the recent deaths of whales off the coast of New Jersey and to urge your office to propose evidence-based recommendations to Congress that will mitigate the threats facing marine mammals. While we greatly appreciate the Administration's close monitoring of individual whales' health and its investigation of deaths, more must be done to address the vessel strikes and entanglements that are the major causes of whale deaths.<sup>1</sup> We also urge you to keep in mind that there are unscientific efforts to blame recent offshore wind pre-construction activity for the ongoing humpback whale and critically endangered North Atlantic right whale Unusual Mortality Events that were first declared in 2016 and 2017.<sup>2</sup>

The climate crisis is the biggest threat to marine mammals and their habitats. As the temperature of the Atlantic Ocean rises due to greenhouse gas emissions from fossil fuel energy, marine mammals' prey has moved farther north<sup>3</sup> and closer to shore where they are more likely to be put at risk of human activity.<sup>4</sup> As whales move with their food source, they are entering an active area of significant commercial activity, including shipping superhighways servicing the Port of New York and New Jersey, which moves more cargo than any other container port in the country.<sup>5</sup> Whales are also dying from entanglements with fishing gear that are part of active fishing operations, such as lines attached to lobster traps and gillnets, or abandoned to become marine pollution.<sup>6</sup> Not surprisingly, the National Oceanic and Atmospheric Administration (NOAA) has determined that since 2017, more than 77 percent of deaths and injuries of the endangered North Atlantic right whale have been caused by vessel strikes and entanglements.<sup>7</sup>

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<sup>1</sup> National Oceanic and Atmospheric Administration (NOAA), "North Atlantic Right Whale Updates," Endangered Species Conservation, <https://www.fisheries.noaa.gov/national/endangered-species-conservation/north-atlantic-right-whale-updates>.

<sup>2</sup> National Oceanic and Atmospheric Administration (NOAA), "2016-2023 Humpback Whale Unusual Mortality Event Along Atlantic Coast," Marine Life Distress, <https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast>; National Oceanic and Atmospheric Administration (NOAA), "2017-2023 North Atlantic Right Whale Unusual Mortality Event," Marine Life Distress, <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event>.

<sup>3</sup> Catrin Einhorn, "Whale Strandings Spike in U.S. Gulf Coast, Prompting Investigation," *New York Times*, September 1, 2021, <https://www.nytimes.com/2021/09/01/climate/whales.html>.

<sup>4</sup> National Oceanic and Atmospheric Administration (NOAA) Fisheries, "Frequent Questions: Offshore Wind and Whales," <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/frequent-questions-offshore-wind-and-whales#why-is-there-currently-a-high-number-of-large-whales-in-the-waters-off-new-jersey>

<sup>5</sup> The Port Authority of New York and New Jersey (PANYNJ), "Port of New York and New Jersey Regains Top Spot as Busiest Port," press release, <https://www.panynj.gov/port-authority/en/press-room/press-release-archives/2022-press-releases/1/port-of-new-york-and-new-jersey-regains-top-spot-as-busiest-port.html>.

<sup>6</sup> National Oceanic and Atmospheric Administration (NOAA), "Protected Species Gear Research," New England/Mid-Atlantic, <https://www.fisheries.noaa.gov/new-england-mid-atlantic/science-data/protected-species-gear-research>.

<sup>7</sup> National Oceanic and Atmospheric Administration (NOAA), "Reducing Vessel Strikes on North Atlantic Right Whales," Endangered Species Conservation, <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>.

NOAA has long stated that boats and ships are striking, injuring, and killing marine mammals. Since 2008, large vessels have been required to travel at speeds determined by scientists to be safer for right whales.<sup>8</sup> Unfortunately, compliance has been a major issue with one report suggesting non-compliance as high as 90 percent.<sup>9</sup> NOAA is proposing to enhance the existing speed restriction rule to smaller vessels in certain zones and seasons to give the right whale population a better chance at recovering. We request an overview of enforcement measures used under current rules and an update on the enhanced rule, including when it will be finalized, its projected effectiveness in protecting whales, and how the Administration incorporated public comments from recreational and commercial fishing industries in New Jersey.

We also request an update on the work of the Interagency Marine Debris Coordinating Committee regarding the implementation of laws including the Marine Debris Act, the Microbead-Free Waters Act, the Save Our Seas Act and Save Our Seas 2.0 Act related to gear entanglements and marine pollution. Over 85 percent of right whales have been entangled in fishing gear at least once.<sup>10</sup> Plastics produced by the oil and gas industry are polluting our oceans and ending up in the stomachs of marine life. Humpback whales and the fish and krill they feed on are swallowing as many as one million pieces of microplastics per day.<sup>11</sup> Reducing entanglements and marine pollution would help address one of the top threats to marine mammals.

Opponents are funding attempts to blame offshore wind pre-construction activity for marine mammal deaths without scientific evidence.<sup>12</sup> This not only threatens our transition to emission-free clean energy sources that are necessary to help maintain healthy marine habitats and provide New Jerseyans with good-paying union jobs, but also distracts the public and policymakers from real solutions. In addition, these efforts cast doubt upon the years of hard work by federal, state, and local officials that are guiding the offshore wind industry through our nation's rigorous permitting, public comment, and oversight process that was built over decades to safeguard our environment. This is deeply hypocritical as the fossil fuel industry is the main proponent of weakening our bedrock environmental review laws to the advantage of industry.

We appreciate the effort the Administration is making to support marine mammals. We urge your office to provide us with the requested recommendations and continue to clearly call out disinformation. We are ready and willing to work together to help the Administration fulfill our shared goal of protecting marine mammals and coastal communities from the worst effects of the climate crisis.

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<sup>8</sup> National Oceanic and Atmospheric Administration (NOAA), "Reducing Vessel Strikes on North Atlantic Right Whales," Endangered Species Conservation, <https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales>.

<sup>9</sup> Mariah Pflieger et al., "Speeding Toward Extinction: Vessel Strikes Threaten North Atlantic Right Whales," Oceana, <https://usa.oceana.org/reports/speeding-toward-extinction-vessel-strikes-threaten-north-atlantic-right-whales/>.

<sup>10</sup> National Oceanic and Atmospheric Administration (NOAA), "North Atlantic Right Whale," Species Profiles, <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>.

<sup>11</sup> Josie Garthwaite, "Whales Eat Colossal Amounts of Microplastics," Stanford News, November 1, 2022, <https://news.stanford.edu/2022/11/01/whales-eat-colossal-amounts-microplastics/>.

<sup>12</sup> Adele Peters, "These groups fighting offshore wind say it's about whales – but they are funded by Big Oil," Fast Company, <https://www.fastcompany.com/90856401/these-groups-fighting-offshore-wind-say-its-about-whales-but-theyre-funded-by-big-oil>; Ted Macdonald, "Fox News is Rapidly Escalating Its Anti-Offshore Wind Campaign," Media Matters for America, <https://www.mediamatters.org/fox-news/fox-news-rapidly-escalating-its-anti-offshore-wind-campaign>; Alicia Sadowski "Jesse Watters Fails to Disguise Oil Industry-Funded Group as Grassroots Ocean Advocate," Media Matters for America, <https://www.mediamatters.org/jesse-watters/jesse-watters-fails-disguise-oil-industry-funded-group-grassroots-ocean-advocate>.

Thank you for your time and attention.

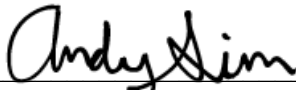
Sincerely,



FRANK PALLONE, JR.  
Member of Congress



DONALD PAYNE, JR.  
Member of Congress



ANDY KIM  
Member of Congress



BONNIE WATSON COLEMAN  
Member of Congress



DONALD NORCROSS  
Member of Congress



BILL PASCRELL, JR.  
Member of Congress



ROBERT J. MENENDEZ, JR.  
Member of Congress



JOSH GOTTHEIMER  
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MIKIE SHERRILL  
Member of Congress