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The North Atlantic Right Whale: Conservation Trade-Offs with Selected Marine Sectors and Considerations for Congress

The North Atlantic right whale (NARW; *Eubalaena glacialis*; **Figure 1**) is an endangered large whale species found in the Atlantic Ocean near the United States and Western Europe. Due to historic whaling, this species was reduced to near extinction by the late 19th century. In 1970, the NARW was listed as endangered under the Endangered Species Act (ESA; 16 U.S.C. §§1531-1544). Contemporary threats to NARWs include mortalities and serious injuries from vessel strikes and commercial fishing gear entanglements, particularly during their seasonal migrations along the U.S. East Coast. Mortalities and injuries from these threats can significantly affect the NARW population, and its recovery and sustainability, given the species' low abundance, relatively low reproductive rates, long generation times, and slow population recovery periods.

Figure 1. North Atlantic Right Whale Female and Calf

Source: National Geographic Image Collection.

The NARW population has fluctuated over the past three decades. Although marginal increases in the number of NARWs were observed during 1990-2011, a general downward population trend followed from 2011 to 2020. After 2020, the population grew slightly. The current NARW population estimate is a median of 384 individuals, including 70 known breeding females, with an average of approximately 13 recorded calf births per year since 2010. Given these values, scientists estimate less than one whale (i.e., 0.73 whales) per year may be removed from the population for it to remain viable for the long term.

NARWs are protected by the ESA and the Marine Mammal Protection Act (MMPA; 16 U.S.C. §§1361-1423h), which aims to protect marine mammals from human-associated threats to their populations and to ensure their conservation. Efforts by the National Marine Fisheries Service (NMFS) to protect NARWs and their critical habitat have resulted in regulation of commercial fisheries and the marine transportation sector through fishing restrictions and seasonal vessel-speed limits. These actions have raised concerns among stakeholders and some Members of Congress regarding the economic and environmental trade-offs associated with the conservation of this species. Both the MMPA and the ESA prohibit the *take* (i.e., harassment, hunting, capture, killing, or the attempt of these activities) of NARWs with certain exceptions. Further, under the MMPA, NMFS can implement measures to prevent NARW mortality and serious injury.

ESA Protections

Under the ESA, NMFS created the NARW Recovery Plan to conserve and recover the species, with an interim goal of changing its status from endangered to threatened. The plan contains provisions that aim to reduce mortality and injury caused by vessel collisions and fishing gear, protect NARW habitat, and monitor the NARW population. NOAA also designated critical habitat for the NARW, which includes a foraging area in the U.S. Northeast region and a calving area in the Southeast region. Activities with a federal nexus (e.g., federal activities and activities that require a federal permit) that are likely to jeopardize the NARW or adversely modify its critical habitat will trigger Section 7 consultation under the ESA. Section 7 consultation of certain fishing operations has resulted in biological opinions that implement conservation activities for the NARW while allowing these fishing operations to continue.

MMPA Protections: Atlantic Large Whale Take Reduction Plan

NMFS, together with the Atlantic Large Whale Take Reduction Team, created the Atlantic Large Whale Take Reduction Plan (ALWTRP) in 1997 to prevent incidental entanglements of NARWs and two other *strategic stocks*, humpback and fin whales, in southeast commercial gillnet and northeast trap/pot fisheries. Section 118(f) of the MMPA authorizes *take reduction plans*, which may be created for any marine mammal that is classified as a strategic stock, such as the NARW. These plans, created by take reduction teams, address the incidental take of strategic marine mammals during commercial fishing operations. These plans attempt to minimize incidental mortality or serious injury of marine mammals to insignificant levels from classified commercial fisheries, aiming for a goal of zero impact.

The ALWTRP includes regulations for fishing gear and establishes seasonal closures to fishing practices in areas where whales are likely to inhabit during parts of the year. The plan also provides opportunities for research on whale population dynamics and fishing gear innovations. Further, the ALWTRP supports a large-whale disentanglement program and outreach to stakeholders. Regulations in the ALWTRP have been amended since 2021 to include additional requirements for fishing gear and modifications of gear closures in specific seasonal restricted areas. In all areas under the ALWTRP, the use of buoy lines on traps

and pots deployed to catch American lobster and Jonah crab is prohibited during particular seasons.

To reduce mortality and injury from specific fisheries, the Secretary of Commerce also may prescribe emergency regulations. For example, in 2022 and 2023, respectively, NMFS created and extended a temporary emergency rule under the ALWTRP to prohibit the use of buoy lines between federal and state waters within the Massachusetts Restricted Area. This action was taken to reduce the threat of incidental mortality and serious injury to NARWs from lobster and Jonah crab trap/pot fisheries, for which there is a high risk of overlap and entanglement. These actions align with targeted ALWTRP team efforts to reduce this risk by at least 60% by December 2028.

MMPA Protections: NARW Unusual Mortality Event

Title IV of the MMPA allows for the federal determination and response to an *unusual mortality event* (UME). A UME is an unexpected marine mammal stranding (i.e., death on a U.S. beach or in U.S. jurisdictional waters) that involves a significant population die-off and requires immediate response. The Secretary of Commerce, in consultation with the Secretary of the Interior and the UME working group, is to issue a detailed contingency plan for responding to any UME. The plan is to include procedures and requirements needed to minimize death and provide appropriate care for marine mammals, among other contents. Elevated mortalities of NARWs were documented in 2017, which led NMFS to declare a UME that is still in effect. The UME covers dead, injured, and sick whales, which in total have represented over 20% of the current NARW population. Since 2017, there have been 168 NARW mortalities, serious injuries, and morbidities (i.e., sublethal injuries or illnesses; see **Table 1**). The majority of documented NARW mortalities are associated with vessel strikes or unknown causes, whereas documented serious injuries and morbidities typically occur from entanglements with fishing gear (e.g., lobster traps or pots). Recent studies estimate that one-third of NARW deaths are documented (i.e., many deaths are likely not documented).

Table 1. Total North Atlantic Right Whale Mortalities, Serious Injuries, and Morbidities During the 2017-2025 Unusual Mortality Event

Impact to Whale	Source of Impact			
	Vessel Strike	Fishing Gear	Unlisted Cause	Total Impacts
Mortality	15	10	16	**41**
Serious Injury	3	36	1	**40**
Morbidity	9	60	18	**87**
Total	**27**	**106**	**35**	**168**

Source: National Marine Fisheries Service, "2017-2025 North Atlantic Right Whale Unusual Mortality Event."

Notes: *Morbidity* includes a sublethal injury or illness. *Unlisted cause* may include unknown, unexamined, or unattributed causes.

MMPA Protections: Vessel Speed Regulations

NMFS established a 2008 mandatory vessel speed rule to reduce the likelihood of NARW vessel strikes. During particular times of the year, all nonfederally associated vessels that are 65 feet or longer must travel at speeds of 10 knots or less in specific coastal and offshore locations (i.e., NARW Seasonal Management Areas). Smaller vessels also are encouraged to slow to 10 knots or less when in these active areas. NMFS additionally works with the U.S. Coast Guard to establish temporary precautionary zones, known as Dynamic Management Areas, around recently sighted or acoustically detected NARWs. Mariners are encouraged to avoid these areas or reduce speeds to 10 knots or less while transiting through them to reduce NARW collision risks.

In 2022, NOAA proposed amendments to its vessel speed rule that would require all nonfederally associated vessels that are 35 feet or longer to travel at speeds of 10 knots or less within NARW Seasonal Management Areas. Congress held a hearing in 2023 and bills were introduced related to this proposed rule (e.g., H.R. 4323 and S. 1833 in the 118th Congress). In January 2025, NMFS withdrew the proposed rule in light of public feedback.

Considerations for Congress

The trade-offs between conserving NARWs and regulating maritime operations are an issue for Congress, states, and various stakeholders. For example, some stakeholders assert that certain emergency actions, regulations, and closures that limit commercial fishing and aim to protect NARWs are unjustified and economically damaging. Further, some vessel operators and charter fishing business owners contend that the costs associated with vessel speed rules are not justified for conservation. Other stakeholders contend that regulations and actions that limit fishing are necessary to protect NARWs. They assert that vessel speed rules are effective and should be expanded.

Congress may consider addressing trade-offs between NARW conservation and marine activities, such as in H.R. 8704 (118th Congress), which would have required NOAA to create a grant program with the goal of reducing lethal and nonlethal interactions between ocean users and NARWs. Congress could amend the MMPA to require take reduction plans to also consider short-term implementation costs to balance conservation goals and potential economic impacts. The MMPA provided interim provisions, which mandated that the Secretary also account for economic factors in emergency fisheries regulations. Congress could specify these economic considerations further in the MMPA. Congress also could amend the MMPA to require plans to incorporate technologies that enable both conservation and fishing. Some stakeholders may oppose these changes, if they perceive the changes would reduce NARW conservation or decrease fishery yield. Congress may consider whether appropriations are sufficient to evaluate NARW management actions on marine sectors, to support technologies to monitor NARWs and minimize collision risks, and to assist fishers with costs for gear modifications (e.g., ropeless traps). Congress could encourage or require NMFS to include these considerations in new fishery regulations that NMFS is to promulgate by 2028 (as directed in P.L. 117-328).

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