

November 10, 2022

SUBMISSION TO THE HOUSE OF COMMONS STANDING COMMITTEE ON FISHERIES AND OCEANS



About Oceana Canada

Oceana Canada was established as an independent charity in 2015 and is part of the largest international advocacy group dedicated solely to ocean conservation. Oceana Canada has successfully campaigned to end the shark fin trade, make rebuilding depleted fish populations the law, improve the way fisheries are managed and protect marine habitat. We work with civil society, academics, fishers, Indigenous Peoples and the federal government to return Canada's formerly vibrant oceans to health and abundance. By restoring Canada's oceans, we can strengthen our communities, reap greater economic and nutritional benefits and protect our future.

Protecting North Atlantic Right Whales

Oceana Canada is calling on the government to take three important actions:

1. Transition to a management approach that is permanent, predictable, transparent and adaptable until such a time that right whales are no longer endangered.
2. Continue to work with stakeholders to identify ways to strengthen and improve protection measures.
3. Permanently fund all aspects of the right whale program. Science & research, monitoring & surveillance, ropeless gear, disentanglement efforts, necropsies and more.

Further to our recommendations the following provides an overview of a draft regulatory proposal that would allow the government to transition to the new management approach referenced in recommendation one.

As identified by witnesses that appeared before the Standing Committee on Fisheries and Oceans, the plight of critically endangered North Atlantic right whales (NARW) urgently demands the implementation of enduring measures that protect them from vessel strikes and entanglement in fishing gear, and which allow their population to recover while ensuring that Canadians can continue to make a living on the water.

- The government must build upon its current response to the issue, which is based on temporary measures, by moving to an approach that is **permanent** in nature, provides decision-making **certainty** and **inclusivity** for all stakeholders, features full **transparency** to promote a focus on conservation action and is fully **adaptable** to respond to changing whale behaviour, growth in our understanding of whales or any other changes in circumstances affecting the program.
- This brief builds on a previous Oceana Canada paper titled [Road to Recovery](#) and suggests the establishment of a program that government could apply to all whales in all oceans to address the specific threats to individual species. The initial deployment of this approach could be tailored to address the threats to NARW.
- These regulations would require the appropriate Minister (Fisheries and Oceans, Transport or other) to continue to develop and strengthen measures on an annual basis, building on the foundation of innovative and successful approaches that have been

created since 2017. Successive governments would be required to continue this work until the species has recovered, or the threats no longer exist.

The government needs to establish specifically designed regulations under the Canada Shipping Act that protect whales from vessel strikes rather than annually created interim orders.

- Section 136(1)(f) of the Canada Shipping Act authorizes the development of regulations for “regulating or prohibiting the navigation, anchoring, mooring or berthing of vessels for the purposes of promoting the safe and efficient navigation of vessels and protecting the public interest and the environment”. The protection and recovery of endangered whales falls clearly within this scope.
- Flowing from this mandate, the creation of a new **Whale Protection Regulation (WPR)** would require the Minister of Transport to develop and implement measures specifically designed to ensure that shipping traffic in areas frequented by any whale species listed under the Species at Risk Act (SARA) takes all reasonable measures available with the aim of reducing the risk of vessel collisions with whales. To achieve this goal, the WPR would authorize the Minister to issue Orders or Directions to establish any vessel traffic management zones needed to avoid whales, implement permanent or seasonal vessel speed and navigation restrictions within such zones or any other measures needed to reduce shipping traffic impacts on listed whale species. The WPR would require that the Minister maintain all such measures in place until such time as whales no longer frequent the area in question or when the species achieves a measurable healthy target such as delisting from SARA.
- With respect to NARW, the new regulation would be used to solidify the temporary measures Transport Canada has deployed annually in recent years. It would require the Minister to issue Orders establishing the current traffic management zones and speed restrictions under the new WPR and to ensure that these measures remain in place until NARW numbers rebound or until they are no longer found in the Gulf of St. Lawrence. The Orders could include provisions requiring the use of whale detection and avoidance technologies by vessel operators should they become widely available in a form suitable for installation on individual vessels. This approach would provide certainty and clarity to shippers regarding traffic restriction content and timing, and enhance efficiency for all departments involved by eliminating the annual process.

The government needs a fisheries management regime that ensures all possible reasonable measures are taken to minimize the impact of commercial fishing activities on listed whales.

- An amendment to the current **Marine Mammal Protection Regulations** under the Fisheries Act making it an offence to carry out fishing activities using fishing gear that could entangle or otherwise harm listed whales in zones that are closed. In keeping with the model described above, such a provision could be pan-Canadian in application with specific Orders used to address individual species, fisheries or areas.

- For NARW, this new regulatory provision could be deployed to address fishing activities in areas that whales are known, or are highly likely to be present in. It would require the Minister of Fisheries to identify NARW protection zones in which NARW are known to occur on an annual basis and establish mechanisms for closing such zones to fishing using gear with vertical lines to the surface on a dynamic basis as whales are sighted in the area much as is done today. The new provisions would stipulate that the number and precise boundaries of such zones could be varied annually. The provision would also establish the rules for fishing with ropeless or rope-on-demand gear within the protection zones.

Government must consider utilizing the regulatory tools available under the Species at Risk Act to protect and recover listed whales.

- Section 53 of the Species at Risk Act authorizes the Minister to establish regulations necessary to implement the terms of an action plan for an Endangered Species should the Minister reach a conclusion that such regulations are needed. No regulations have been promulgated under this section to date. Full implementation of Recovery Strategies and Action Plans for several listed whales has been impeded by lack of regulatory action in this regard.
- As a pilot approach to utilizing Section 53, a new NARW Protection and Recovery Regulation under SARA could be established to give legal support to those elements of the NARW Recovery Strategy and Action Plan not addressed by the measures described above. Most importantly, they would require the Minister to establish and operate a NARW monitoring and surveillance system of sufficient geographic coverage and featuring the real-time data reporting systems needed to support the two regulatory measures described above. As a companion to this requirement, the regulation would also authorize the Minister to enter into any partnership arrangements deemed necessary for the establishment and operation of a system of this nature. It would require the Minister to share all data acquired by this system within a suitable period of time.