



Whales are dying off in the North Atlantic. (photo: AP)

A Legal Lifeline for Some of the World's Rarest Whales

By Mary Ann Bragg, The Cape Cod Times, 28 January 18

The National Marine Fisheries Service has not done enough to prevent North Atlantic right whale entanglements in lobster gear, a lawsuit filed Thursday in federal court by three conservation groups charges.

The lawsuit, filed in U.S. District Court for the District of Columbia, alleges violations of the Endangered Species Act and the Marine Mammal Protection Act.

“The law is clear,” said Jane Davenport, senior attorney for Defenders of Wildlife, one of the plaintiffs. “The federal government must act, and act immediately, to save the right whale from extinction.”

In addition to the Fisheries Service, the lawsuit names Wilbur Ross Jr., Secretary of Commerce, and Chris Oliver, assistant administrator of NOAA Fisheries. The Fisheries Service is an office of the National Oceanic and Atmospheric Administration, within the Department of Commerce.

The Humane Society of the United States and the Center for Biological Diversity are the other two plaintiffs.

Last year the global count of North Atlantic right whales dropped precipitously to an estimated 434 after the confirmed deaths of 16 in Canadian and U.S. waters, with only five new calves recorded to help replenish the population. A 17th possible death could be confirmed from genetic analysis of a carcass found in November on the shores of Martha’s Vineyard and Nantucket.

Primary causes of right whale deaths are ship strikes and entanglement in fishing gear, according to researchers.

As the animals return to Cape Cod Bay this month for their annual feeding and socializing activities, right whale researchers at the Center for Coastal Studies in Provincetown hope for record numbers. In total last season, 251 animals were in and around Cape Cod Bay, which is protected as state waters from commercial lobster fishing from Feb. 1 through April 30.

Mandatory ship slow-downs are in effect in the region from Jan. 1 to May 15 under federal laws.

“Scientists have warned that a continuation of the current rate of deaths will lead to the functional extinction of the species within about 20 years,” said Sharon Young, field director for marine wildlife protection for the Humane Society.

The conservation groups are calling for an examination of the American lobster fishery’s contribution to the “horrible death toll” and for better management of the fishery. The groups want effective and innovative solutions. The groups had notified the Fisheries Service in October of their intent to sue, focusing on entanglement and contending the agency has failed to protect right whales from American lobster fishing operations under existing federal laws.

At that time, the groups also sent a letter to Canadian government officials urging more protections for the animals.

In an entanglement, heavy fishing line wraps around the whale’s head, mouth, flippers or tail, preventing it from resurfacing, which results in drowning, according to the lawsuit. If the animal does not immediately drown, the entangling line impedes its movement, feeding and reproduction and causes chronic infection and damage to bone and muscle, the lawsuit says.

“The Trump administration has a legal and moral responsibility to prevent these amazing animals from suffering more deadly, painful entanglements,” Kristen Monsell, a senior attorney with the Center for Biological Diversity, said. “Federal officials have to act now.”

In response, Massachusetts Lobstermen’s Association president Arthur “Sooky” Sawyer said the right whale deaths last year have “everyone in a panic mode.”

“Naturally they’re going to lay it on the lobstermen,” Sawyer said. “We’re the low-hanging fruit.”

More answers are needed about the movement of right whales into new areas such as the Gulf of St. Lawrence in Canada and the effect on the whales of climate change and the acidification of the ocean, Sawyer said.

“The lobstermen (in Massachusetts) have done a lot,” he said, citing the coming seasonal closure in and around Cape Cod Bay. “We’re trying to work on the problem, but you can’t expect lobster fishing to go away.” The industry is one of the largest in the country, and largely concentrated in the Northeast, he said.

Katherine Brogan, a spokeswoman for NOAA Fisheries, said the agency “cannot discuss ongoing litigation.”

At a New England Fishery Management Council meeting in December, a top administrator in the Northeast for the Fisheries Service called the status of right whales “a crisis.”

“You do have to use the ‘extinction’ word,” John Bullard, the outgoing Greater Atlantic regional administrator for NOAA, said. “That’s what we’re looking at with the trend lines where they are.”

Although there is always a need for additional scientific studies, Bullard, who retired Jan. 5, said better marking of fishing gear, weaker rope and ropeless fishing need to be considered right away.

Of the 103 female North Atlantic right whales thought to be alive, based on data maintained by New England Aquarium’s Anderson Cabot Center for Ocean Life, 76 are considered able to reproduce because of their cycle of reproduction or their age, aquarium research scientist Amy Knowlton said.

In addition to deaths from entanglement, new research is exploring the “sublethal” effects of entanglement on right whales, such as females who are depleting their energy by carrying fishing gear on their bodies and thereby reducing their ability to gain enough weight to give birth.