

Save LBI
North Atlantic Right Whale Petition
For East Coast Migration Corridor



Critical Habitat

*What it actually means and
designation effect under the
Endangered Species Act*


North Atlantic right whale #4610 and her first calf swimming approximately 10 miles south of Cape Lookout, North Carolina. Credit: Clearwater Marine Aquarium Research Institute, taken under NOAA permit #26919. Aerial survey funded by the U.S. Army Corps of Engineers.

Who does critical habitat affect

Critical habitat designation does not close the area to fishing, boating, or other activities. It is not a marine protected area, refuge, or exclusive zone and does not prohibit use by the public.

Instead, the legal designation triggers environmental protection safeguards under the Endangered Species Act when federal actions are involved.

Fishing can and does continue within critical habitat areas today; a foraging area off the northeastern coast (Gulf of Maine/Georges Bank) and a calving and nursery area off the southeastern coast (North Carolina to Florida).



North Atlantic right whale #2642 (Echo) and her fourth calf swimming approximately 22 miles east of Little Saint Simons Island, Georgia. Credit: Clearwater Marine Aquarium Research Institute, taken under NOAA permit #26919. Aerial survey funded by NOAA Fisheries and the Georgia Department of Natural Resources.



Where North Atlantic right whales historically migrate

The North Atlantic right whale relies on a consistent historical migratory pathway along the East Coast. That pathway is defined in the petition in Table 2 on page 73 based on a number of observational studies.

Females and calves travel close to shore, calves surfacing frequently to breathe.

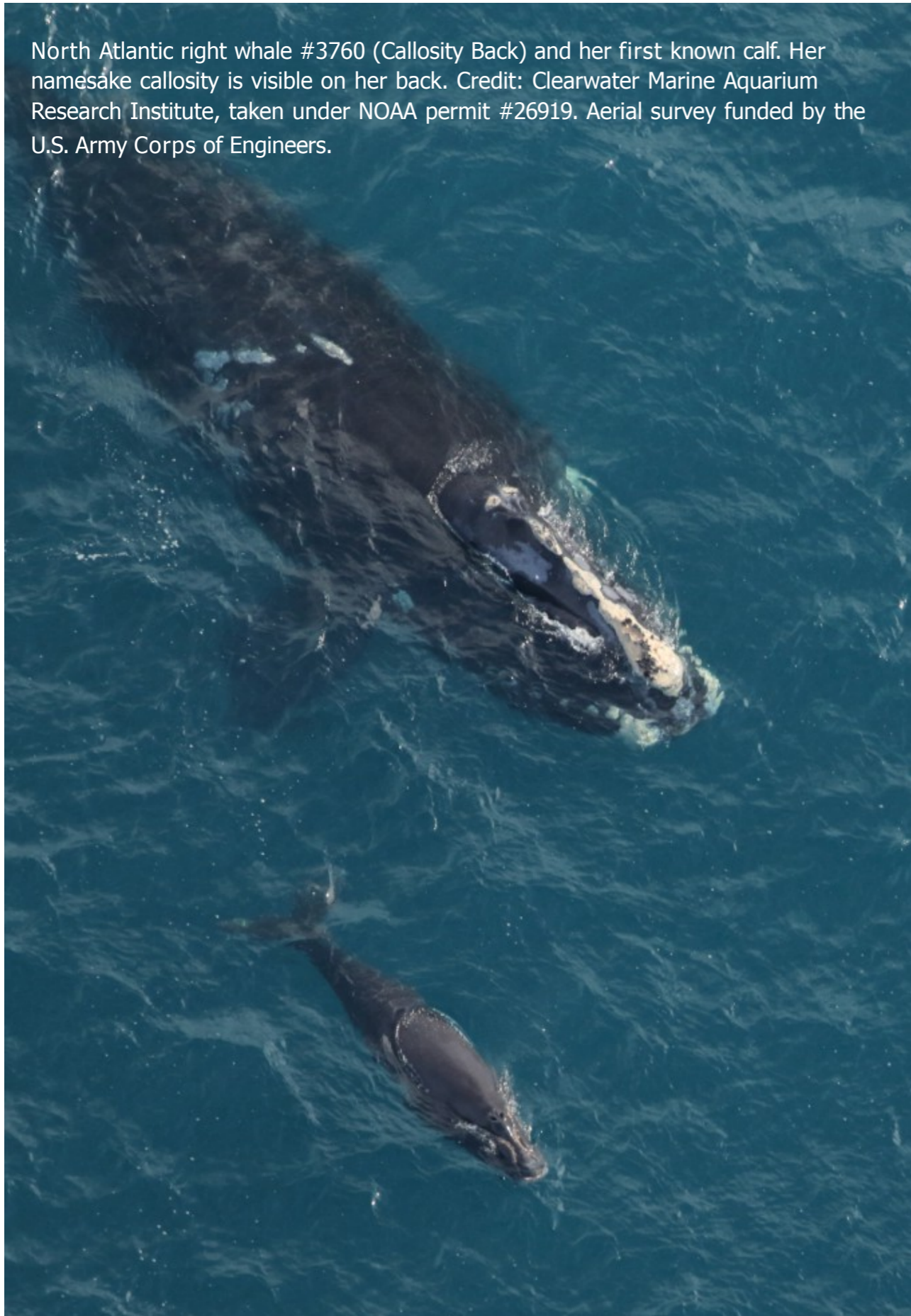
The nickname “the Urban Whale” was given to right whales because they spend most of their lives closer to the shore.

If this pathway is disrupted by turbine noise development, the entire life cycle of the right whale is at risk.



February 10, 2026 - A dead North Atlantic right whale stranded on a barrier island off Virginia. The whale has been identified as a 3-year-old female, the 2023 calf of right whale 3293 “Porcia.” Credit: Clearwater Marine Aquarium Research Institute, taken under NOAA permit 24359. Aerial survey funded by the U.S. Army Corps of Engineers.

North Atlantic right whale #3760 (Callosity Back) and her first known calf. Her namesake callosity is visible on her back. Credit: Clearwater Marine Aquarium Research Institute, taken under NOAA permit #26919. Aerial survey funded by the U.S. Army Corps of Engineers.



How operational wind turbines affect whales during migration

There is growing scientific concern about underwater noise and habitat disruption, especially at scale. Large offshore turbines (including 15 MW) introduce continuous low frequency operational noise and may function as a behavioral barrier.

Right whales depend heavily on sound for communication, navigation, and mother-calf contact. Disruption during migration can increase stress, energy expenditure, and separation risk.

When dealing with critically endangered species, uncertainty is a risk factor - not a justification for inaction.



Why critical habitat itself does not restrict vessel speeds and commercial fishing

The areas NOAA designates for lower vessel speeds are based solely on whale presence. Whether those areas are labeled critical habitat or not has no bearing on those restrictions.

Federal fishing gear regulations and related measures are governed through separate authorities (ie. Marine Mammal Protection Act) and other processes based on perceived impacts to the animal itself.

Adding fishing gear measures based on the critical habitat designation would require a determination that fishing is likely to destroy or adversely and appreciably modify the miles-wide migration corridor itself, which is not a plausible argument.

Critical habitat doesn't directly restrict navigation for recreational or commercial vessels, but whale-specific regulations do:

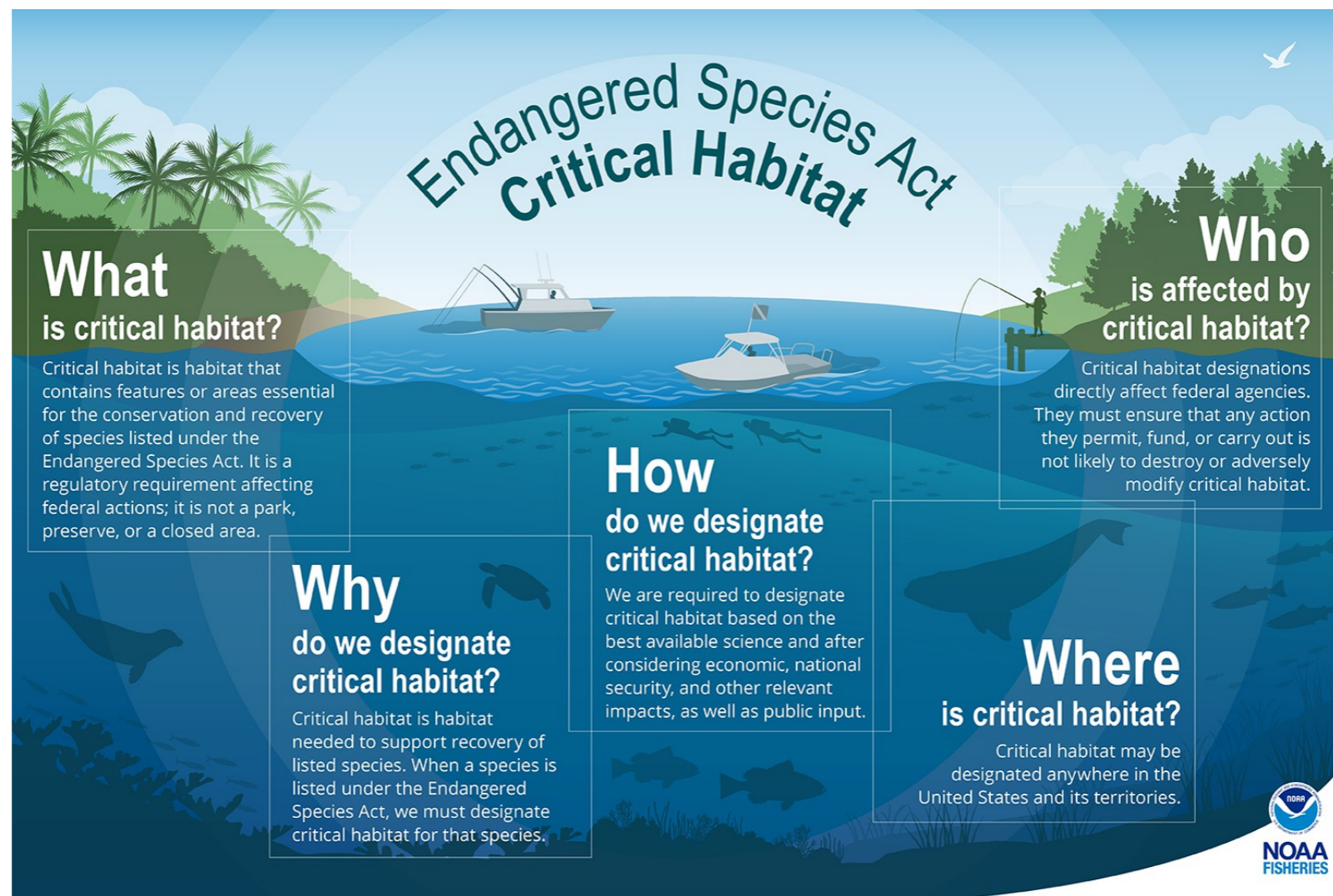


- Boaters and vessels must stay at least 500 yards from any sighted NARW
- Dynamic and Seasonal speed limits are not strictly part of the critical habitat designation but are tied to the broader regulatory framework protecting right whales under the Marine Mammal Protection Act and Endangered Species Act.

The Endangered Species Act Protections Work in Practice

Federal Agency Reviews (Section 7 Consultation)

- If any federal permit, funding, or action could affect critical habitat, the agency must consult with NOAA Fisheries
- The goal of consultation is to ensure that the activity is not likely to destroy or adversely modify the critical habitat itself.
- The legal question is whether the federal action would directly or indirectly alter the critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the species.



Critical Habitat is Designated Under The Endangered Species Act

In the 2016 Federal Register:: Endangered and Threatened Species; Critical Habitat for Endangered North Atlantic Right Whale the National Marine Fishery Services (NMFS) received over 20,000 letters stating their general support for the proposed designation of critical habitat and urging NMFS to include a migratory corridor in the final designation.

Public Comment 58: *While the the proposed rule does not include any new restrictions for commercial fishing commenters are concerned about waters being proposed for designation. The commenters stated that while we have determined "current fishing practices and techniques will not affect the essential foraging features" and we do not anticipate "fishery related activities that would trigger consultation on the basis of critical habitat designation," commenters feel it is not a guarantee.*

NMFS Response 58: *As part of its impact analysis, we concluded that commercial fishing activities, as currently conducted, are not expected to affect the essential features of right whale foraging habitat with the exception of a potential future directed copepod fishery. Gear restrictions currently in place to protect large whales, including right whales, were established by the regulations implementing the Marine Mammal Protection Act's Atlantic Large Whale Take Reduction Plan (ALWTRP). Changes to gear restrictions are beyond the scope of this rule making to designate critical habitat under the ESA. The Atlantic Large Whale Take Reduction Team process is the proper venue to consider the adequacy of gear restrictions. Consequently, we are not making any changes to the current gear restrictions as part of this critical habitat rule.*



NMFS Failed to Include the Migratory Corridor in the 2016 Final Ruling due to Uncertainty, Levels of Error, and Preliminary Data

Public Comment 20: A number of commenters stated that the agency must designate a migratory corridor for the North Atlantic right whale in the mid-Atlantic, asserting there is no other route between the southern calving and northern feeding grounds. They stated that the agency undervalued that data in the available studies and other data the agency has relied upon in other rule makings regarding protections for North Atlantic right whales.

NMFS Response 20: Given that large-scale migratory movements between feeding habitat in the northeast and calving habitat in the southeast are a necessary component in the life-history of the North Atlantic right whale, we agree with the commenters that facilitating successful migration by protecting the species' migratory area is a key conservation objective that could be supported by designation of critical habitat for the species.

The authors of these three publications expressed whale distribution in terms of distance from shore. For example, of the sightings used in support of the ship speed rule, NMFS found that approximately 83 percent of all observed right whale sightings occurred within 20 nm (37 km) of the coast, and approximately 90 percent of all right whale sightings occurred within 30 nm (33 miles or 55.6 km) of the coast (73 FR 60173). Schick *et al.* (2009) found that, based on telemetry data for two tagged whales, peak habitat suitability occurred in the range of 17 to 108 nm from shore for on tag whale (a mother-calf pair), and for the other, peak suitability occurred in the range of 8 to 40 nm from the shore.

Therefore, we determined that those data are preliminary and do not represent the best available information present at the time of this final rule. For the reasons stated above, we conclude it is not possible to designate migratory critical habitat at this time.



“As new information becomes available, (NMFS) will take appropriate action if warranted” Duke University Research Associate, Jason Roberts stated at the 2024 State of the Science Workshop, Stony Brook, NY that “the Whale Map team has a lot of information to potentially use.”

- Save LBI addressed concerns of the reliance on the methodology used to deal with uncertainty in Version 12.1 - Density Model for North Atlantic Right Whale for the U.S. East Coast: Supplementary Report (**Roberts et al. (2016, 2023)**) which says:
 - “Uncertainty statistics for the North Atlantic right whale mean density surface (Figure 126) predicted by the model for the region Great South Channel to La Have Basin for Summer. Variance was estimated with the analytic approach given by Miller et al. (2022), Appendix S1, and accounts both for uncertainty in model parameter estimates, the mean difference in density between the eras (via Era as a factor covariate), and for seasonal variability in dynamic covariates but not inter-annual variability in them, as these covariates were monthly climatological averages.”
 - “Survey effort and observations (top left), predicted density with observations (top right), predicted density without observations (bottom right), and coefficient of variation of predicted density (bottom left), for the month of January for the given era. Variance was estimated with the analytic approach given by Miller et al. (2022), Appendix S1, and accounts both for uncertainty in model parameter estimates and for temporal variability in dynamic covariates.”
- For the reasons stated by Roberts, management applications, such as agency rule-making and permitting, are based on an assumed future distribution of right whales. Given that explicit forecasts of future density are not yet available, managers usually opt to rely on the recent past as a proxy for the near future. Accordingly, we recommend our density maps for the 2010-2019 era (spanning 225 October 2010 through September 2020) be used for this purpose. These maps are given in Section 5.1.2 and available as GIS-compatible raster files that accompany this report. For those interested, rasters for the 2003-2009 era are also provided, but we do not recommend these as predictions of the near future.





Conclusion:

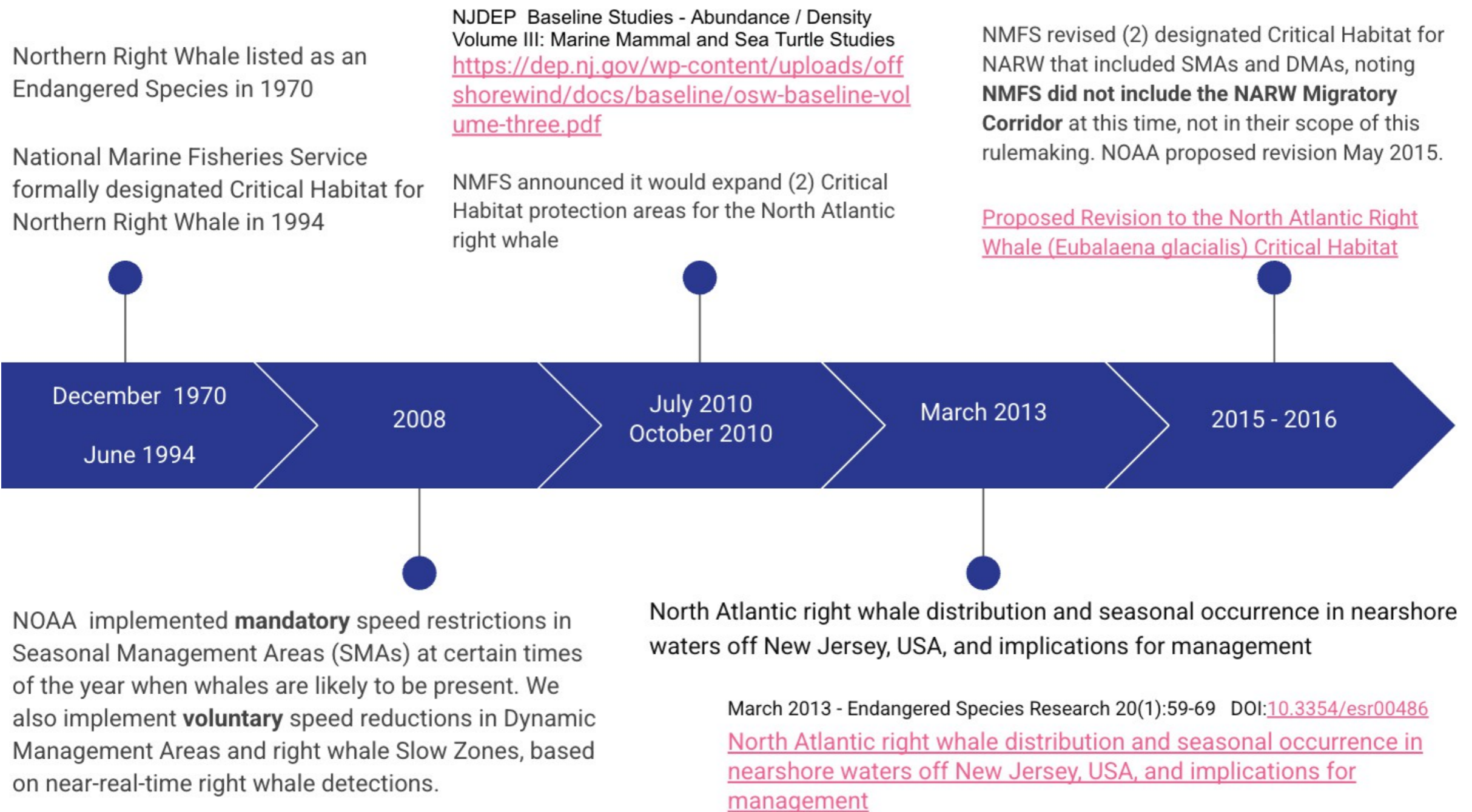
Designate The Migratory Corridor as Critical Habitat “It Makes Sense”

- The migration of the North Atlantic right whale, especially the females capable of bearing calves, is essential to the species reproduction and survival.
- Its primary migration corridor must therefore be protected through a critical habitat designation against large scale industrial development that would destroy or degrade that corridor.
- Such designation does not by itself incur additional vessel speed or fishing restrictions.
- In fact, it does the opposite and preserves millions of acres within the corridor for future boating, fishing and other uses.
- NOAA is required to evaluate the Save LBI petition under the ESA's critical habitat procedures and determine whether the best available science warrants designating the migratory corridor.
- A critical habitat designation would deter offshore wind development along the East Coast within and adjacent to the historic primary migration corridor to protect the right whale and other marine life by requiring rigorous ESA § 7 review of federally approved offshore wind development in the primary migration corridor and prevent or require modification of projects likely to destroy or adversely modify that habitat.



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North Atlantic Right Whale Timeline 1970 - present



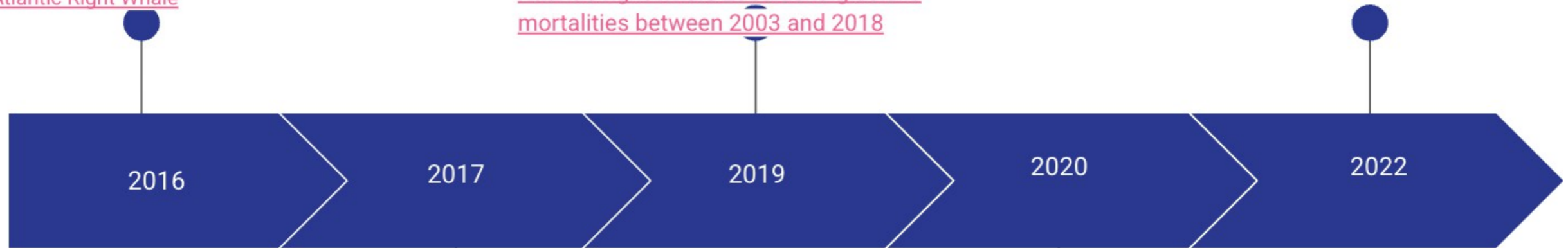
Federal Register: 20,325 form letters from an environmental advocacy group stating their general support for the proposed designation of Critical Habitat, SMAs, DMAs and urging NMFS to include a Migratory Corridor in the final designation.

[Federal Register :: Endangered and Threatened Species; Critical Habitat for Endangered North Atlantic Right Whale](#)

Gross and Histopathologic Diagnoses from NARW *Eubalaena glacialis* mortalities between 2003 and 2018 concluded “*If the recent trends presented here are not sufficient to instigate **meaningful change within NARW habitat**, their extinction is almost certain.*”

[Gross and histopathologic diagnoses from North Atlantic right whale *Eubalaena glacialis* mortalities between 2003 and 2018](#)

Acoustic presence and vocal activity of North Atlantic right whales in the New York Bight: Implications for protecting a critically endangered species in a human-dominated environment. *Conservation Science and Practice*, 4(11), e12798. <https://doi.org/10.1111/csp2.12798>



NMFS announces **UME** “unusual mortality event” for North Atlantic right whale from Maine to Florida

NOAA has a cooperative agreement with Duke University (\$245,000 in FY 2020) to enhance understanding of the distribution and density of right whales throughout the range.



Whale Deaths off New Jersey and New York exceed annual average in just one month.

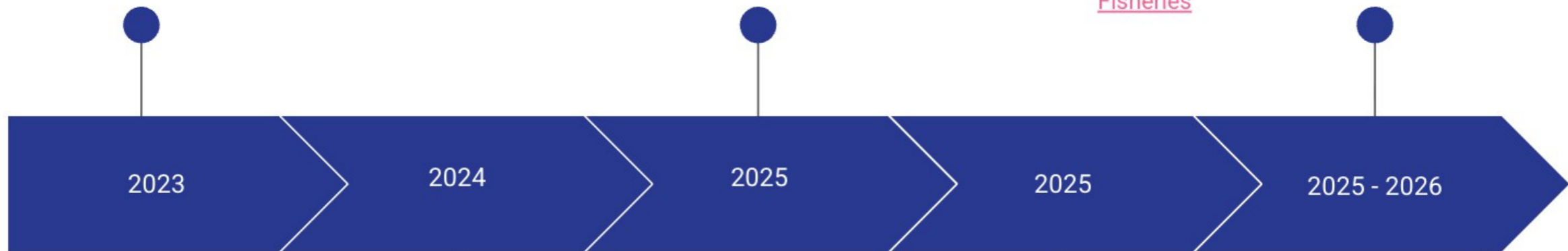
Atlantic Shores offshore wind air permit application considered final on 8/21/2023 ready for 30-day public comment review. Almost 1 year later, still no public comment.

Save LBI files a Federal lawsuit on 1/13/25

May 2025, EPA responds in a letter thanking Save LBI for their efforts and advises that Atlantic Shores South Project 1 and Project 2 air permit OCS-EPA-R2 NJ 02 has been remanded. **To date Atlantic Shores Project 1 & 2 DO NOT have all permits to move forward with COP, without the Air Permit the project is halted.**

On March 31, 2025, Save LBI filed a Petition to Revise the Critical Habitat Designation for the North Atlantic Right Whale (*Eubalaena glacialis*) under the Endangered Species Act to Include Its Primary Historical Migration Corridor and Other Actions.

[Petitions Awaiting 90-Day Findings | NOAA Fisheries](#)



Save LBI files litigation against Atlantic Shores Offshore Wind, LLC

June 2024, Save LBI researches Clean Air Act in accordance to Class I wildlife refuge, request sent to US Fish and Wildlife. BOEM implements public comment open as of July 12, 2024.

Save LBI files a petition on 10/15/24 to appeal an Air Permit for Atlantic Shores Offshore Wind, LLC and successfully remands the Air permit

On January 17, 2025 COUNCIL RESOLUTION: 25-01 was signed by the Government of Canada (M11) issuing instructions to the Secretariat of the Commission for Environmental Cooperation (CEC) regarding submission SEM 21-003 (North Atlantic right whale), which asserts that the **United States environmental authorities are failing to effectively enforce** (1) the Marine Mammal Protection Act (MMPA); (2) the Endangered Species Act (ESA); (3) the National Environmental Policy Act (NEPA), and 4) associated regulations, to protect the North Atlantic right whale (*Eubalaena glacialis*) (NARW).

[Council Resolution 25-01](#)

May 4, 2026 Save Long Beach Island (LBI) Sues NOAA for Failure to Protect the Migration Corridor of the Critically Endangered North Atlantic Right Whale

