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NGO in general consultative status  
with the Economic and Social Council  
of the United Nations

March 9, 2000

The Honorable William M. Daley  
Secretary, Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Notice of Intent to File Civil Action Pursuant to The Endangered Species Act and The Marine Mammal Protection Act in Connection With North Atlantic Right Whales

Dear Secretary Daley and Administrator Dalton:

The Humane Society of the United States ("HSUS") hereby notifies you that the U.S. National Marine Fisheries Service ("NMFS") is in violation of various provisions of the Endangered Species Act, 16 U.S.C. §1531, et seq. ("ESA") and the Marine Mammal Protection Act, 16 U.S.C. §1361, et seq. ("MMPA"), with regard to the NMFS's acts and omissions concerning the North Atlantic Right Whale. To the extent that formal notice of these violations is required under any of the applicable statutes, this letter is intended to provide that notice.

The NMFS is in violation of the ESA for failing to develop and implement plans for the conservation and survival of the endangered North Atlantic Right Whale. The biological opinion ("B.O.") upon which the NMFS relies under Section 7 of the ESA states that incidental take of North Atlantic Right Whales cannot be authorized. The B.O. relies upon the NMFS' take reduction plan for "reasonable and prudent measures" to avoid jeopardy. However, the current take reduction plan has not met its mandate, as at least one North Atlantic Right Whale has died and several others have been seriously injured in commercial fishing gear since its implementation. The NMFS is also in violation of the ESA for failing to initiate interagency and international cooperation to assist in the development of programs to protect this species, and by otherwise failing to carry out its statutory responsibilities under the ESA to conserve and recover the North Atlantic Right Whale.

The NMFS is also in violation of the MMPA for failing to develop and implement regulations to insure that any taking of North Atlantic Right Whales will not be to the disadvantage of the species and population stocks and will be consistent with the purposes and policies of the MMPA. The NMFS has failed to issue regulations to reduce the incidental taking of North Atlantic Right Whales in commercial fishing operations. This failure includes, but is not limited to: the failure to close portions of Right Whale critical habitat to gillnet and/or lobster fishing; allowing the use of high risk types of fishing gear in designated critical habitat at known times of high use by the whales; relying on current best fishing practice to reduce mortality and serious injury when such practices have been demonstrably unsuccessful; and failing to develop take reduction plans that would mitigate bycatch of all strategic stocks of marine mammals in commercial fisheries. The NMFS is also in violation of the MMPA for failing to undertake an adequate program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of North Atlantic Right Whales in connection with commercial fishing, and by otherwise failing to carry out its statutory responsibilities under the MMPA to conserve and recover the North Atlantic Right Whale.

**Promoting the protection of all animals**

**2100 L Street, NW, Washington, DC 20037 ■ 202-452-1100 ■ Fax: 202-778-6132 ■ www.hsus.org**

The HSUS would appreciate the opportunity to discuss with you:

- Additional closure of Critical Habitat areas for this species;
- The schedule and strategy for short and long-term research and implementation of additional risk reduction measures including gear modification strategies; and
- The schedule and strategy for initiation of consultation and cooperation with Canada related to the serious risk posed to the North Atlantic Right Whale.

To the extent that these issues are not satisfactorily resolved, The HSUS will initiate legal action. Please contact me if you have any questions.

Sincerely,

John W. Grandy, Ph.D.  
Senior Vice President  
Wildlife Programs

CC: Linda E. Benfield, Esq.  
Sharon Young