

ROBERT F. KENNEDY, JR.

(b) (6)

October 8, 2024

Mr. Todd J. Smith
Assistant Special Agent in Charge
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Law Enforcement
Northeast Enforcement Division - District 2
16 Station Road, Suite #3
Bellport, New York 11713

RE: Alleged Violation of the Marine Mammal Protection Act

Mr. Smith:

This is my response to your inquiry about the unsubstantiated allegation that my collection, in 1994 on a Massachusetts beach, of a specimen from a rotting carcass may have violated the Marine Mammal Protection Act. I never collected a whale specimen in Massachusetts or transported marine mammal specimens across state lines, nor do I have such a specimen in my collection.

While I am impressed with the alacrity with which the National Marine Fisheries Service (NMFS) launched its investigation of the fate of a 30-year-old specimen, the rapid reaction contrasts sharply with your stubborn intransigence in addressing the apparent massacre of marine mammals by the offshore wind industry. Recently approved offshore wind farms appear to be putting several protected dolphin and whale species, including the critically endangered North Atlantic right whale, in dire crisis.

Your agency has idly watched the approval of 30 offshore wind leases from Maine to North Carolina effectively privatizing 2.3 million acres of ocean bottom, mostly on extremely productive fishing grounds and critical habitat for migratory whales and other marine mammals, including the critically endangered North Atlantic right whale.

Many Americans suspect that your agency's anemic response to this serious emergency may be rooted in its reluctance to obstruct the profit ambitions of a politically powerful cabal of energy

titans including Dominion, Shell, and General Electric, and U.S. financial houses Goldman Sachs, BlackRock, Wells Fargo, Citibank, J.P. Morgan, and Blackstone. These firms either directly own or [are funding projects](#) by [foreign energy behemoths](#) including [Equinor \(Norwegian government\)](#), [Ørsted \(Danish state majority-owned\)](#), [Iberdrola \(Spain\)](#), and [TotalEnergies \(France\)](#). The backing by those U.S.-based financial houses allows foreign governments and foreign-owned wind developers to collect tens of billions of dollars in U.S. subsidies and tax credits. These subsidies are provided for by the Inflation Reduction Act, President Biden's signature "environmental" legislation. In the U.S., offshore wind is an environmentally destructive boondoggle. No financial institution will fund these projects in the absence of obscene government subsidies. Offshore wind farms produce energy 300% more expensive than cheap and abundant onshore wind, which I strongly support.

These companies, based on present offshore wind construction plans that [have been approved or are in the process](#) of being approved, will pile-drive 2,200 offshore wind turbines into the ocean floor at intervals of one mile or less across 5,816 square miles. Each turbine with blades will be approximately 1,000 feet tall, on par with the height of the Eiffel Tower.

The advent of the first wind project on Block Island and the arrival of seismic survey boats in 2016 and 2017 were coterminous with an alarming uptick in unexplained whale deaths so unusual that the NOAA Office of Protected Resources declared three Unusual Mortality Events (UMEs): one [for humpbacks](#), one [for minke](#), and one [for North Atlantic right whales](#). The North Atlantic right whale has a total population of fewer than 360 individuals, so every stranding poses a threat to its total extinction.

Prior to the inception of increased seismic survey and construction activity for the wind industry, ship strikes killed [1.4 humpbacks annually from Maine to Virginia](#). In 2016, as the offshore wind gold rush gathered steam, 26 humpbacks stranded from Maine to North Carolina. Fifteen more stranded from January to April of 2017. Of the 20 humpback whales that were necropsied from that time period, 10 of them were ship strikes. There was no increase in shipping during this period. The only thing that changed was a flurry of offshore wind survey boats, from Massachusetts to North Carolina.

Mass deaths have increased in lockstep with expanding exploration and construction activities. In the 13 months beginning in December of 2022, there were 85 large whale strandings on the East Coast with zero entanglements. A total of 109 large whale deaths occurred from December 1, 2022, through June 6, 2024, mostly within range of offshore wind survey and construction vessels. This amounts to an average of 5.7 dead whales a month for 19 months — a record number of dead whales the likes of which have not occurred in a lifetime. Hundreds of dolphins and porpoises have also died. Only last month, a dead humpback [washed ashore on Block Island](#) in the vicinity of the Revolution Wind wind farm, and a dead fin whale [landed on](#)

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[Cupsogue Beach](#) on Long Island after being seen the day before floating 12 miles south of Shinnecock, while a young minke whale was found alive [struggling in the surf in Montauk](#), only to die and then [to float out to sea](#).

In September of 2020, 17 environmental groups conveyed to NMFS their “[profound concerns](#)” about NMFS’s systematic coddling of the offshore wind farm industry. In that letter, they discussed the 12 previous comment letters they submitted to NMFS since 2018 [identifying your agency’s multiple failures in enforcing](#) the Marine Mammal Protection Act (MMPA). They [repeatedly urged](#) your agency to “[require even stronger protections](#) ... for marine site characterization surveys required for offshore wind development” in compliance with the MMPA. Despite their urgings, NMFS has taken no meaningful steps to mitigate the massacre.

Instead of calling an immediate moratorium on offshore wind development, government regulators continued [to permit](#) lethally deficient Incidental Harassment Authorizations (IHAs) that allow the wind farm industry to “take” Atlantic whales by the drove. [Your reckless dereliction of your statutory obligations to protect these magnificent creatures has resulted](#) in up to 108 vessels conducting geophysical survey activities over more than 10,000 survey days from 2017 to 2022. [Independent analysis](#) of your own data suggests that these activities have already resulted in more than 113,000 instances of “taking” of marine mammals, including 402 North Atlantic right whales, 647 endangered fin whales, 53 endangered sei whales, 93 endangered sperm whales, 494 humpback whales, 329 minke whales, and 12,493 harbor porpoises. These are all noise-vulnerable marine mammal species.

Newer analysis [conducted in 2023](#) predicted that when NOAA’s currently authorized offshore wind activities were combined with then-proposed and yet-to-be-authorized offshore wind activities, the impacted number of marine mammals would rise astronomically to over 630,000 animals. Industry proposals included up to [996 requests for Level B harassment takes](#) of critically endangered North Atlantic right whales. That number is now almost triple the population size of the species, suggesting that the species may go extinct as a result of your hand-sitting. NOAA has approved just one project off the coast of New England that, on its own, will [“take” 126 North Atlantic right whales](#).

On January 9, 2023, after six large whales had stranded on New Jersey and New York beaches in as many weeks, five grassroots environmental groups [demanded](#) a federal investigation into the whale deaths.

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They also [submitted a letter](#) to President Biden demanding:

“an immediate investigation into the marine mammal mortalities from Cape May, NJ, to Montauk Point, NY, and/or beyond, be conducted by qualified scientists including those of the National Marine Fisheries Service (NMFS) and a halt to all current lessees’ offshore wind energy development activity within the Atlantic Ocean from Cape May, NJ, to Montauk Point, NY, including assessment, characterization, and construction-related activities until an investigation has been conducted.”

Instead of vigorously investigating these mortalities and taking steps to end this massacre, your agency has bent over backwards to enable the slaughter to continue. NOAA has protected the offshore wind industry — with its strong connections to the Democratic Party — by refusing to conduct basic science that might link the slaughter to industry activities. This strategic lethargy in conducting vital and obvious studies allows your agency, and by extension, the wind industry, to conveniently [claim, as Benjamin Laws did on January of 2023, “There is no information supporting that any of the equipment that’s being used in support of wind development for these site characterization surveys could directly lead to the death of a whale.”](#)

I offer just one of many examples of this species of agency sandbagging: The fin, humpback, minke, sei, and right whales that are now dying in droves are all part of the Mysticetes family of whales that all hear in low frequency. Yet your agency has stubbornly refused to collect direct hearing data from large whales to determine whether offshore wind survey boats and seismic survey machinery are emitting sounds within this hearing profile.

Here is another example: In the Gulf of Mexico, NOAA requires immediate survey shutdowns in the event of live mammal strandings or [millings](#) within 50 km of oil and gas survey activity. In deference to powerhouse offshore wind titans, NOAA has ignored those long-standing IHA rules for offshore wind in the Atlantic, despite the fact that the [Gulf of Mexico surveys](#) use the same equipment as the [Atlantic surveys](#) and NOAA permits the same levels of marine mammal impacts for both.

Furthermore, only Atlantic offshore wind surveys are expected to impact multiple endangered whale populations, and only in the Atlantic have energy development activities coincided in time and space with unprecedented whale deaths. This suggests that federal agencies should be providing more protections for impacted marine mammals in the Atlantic, not less. Yet NOAA continues to turn a blind eye, inexplicably applying weaker Marine Mammal Protection Act standards for Atlantic wind farms than for identical High-Resolution Geophysical (HRG) surveys in the Gulf of Mexico. The Marine Mammal Protection Act does not allow for differential application to the same activity; it is designed to protect mammals, not foreign energy companies and their Wall Street financiers.

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Your agency has also stonewalled [the issuance of uniform necropsy protocols](#) that might point a finger at offshore wind. It's obvious that the standardized protocol should include early examination of ear damage in dead whales. Despite the pleadings of the environmental community, you have refused to recommend this procedure. This step is so fundamental that it suggests a deliberate dereliction. In fact, your agency actually allows what partial or full necropsies of dead whales do occur to be conducted by Marine Mammal Stranding Network [partners](#) that have been [funded](#) by [offshore wind](#) companies and even maintain offshore wind [executives, lobbyists, and third-party contractors on their board](#), ensuring that no "investigation" taken by such NOAA partners is objective.

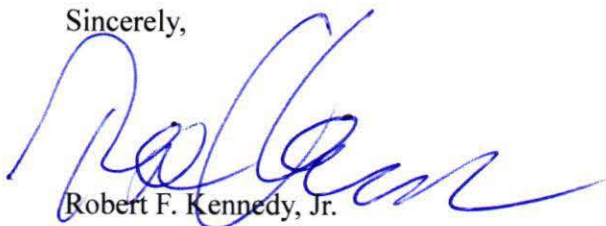
In addition, commercial fishermen complain that the areas around the turbines — the Atlantic cod's critical spawning grounds — have been emptied of fish. This outcome is consistent with your agency's [early warning](#) that the turbines may cause the collapse of the cod fishery.

You sent the investigatory letter to me on September 4, just twelve days after my August 23 endorsement of President Trump, raising the issue that this investigation is yet another salient in the systematic weaponization of federal enforcement agencies against White House critics.

You acknowledge that you launched your investigation publicly on August 26, at the urging of the Center for Biological Diversity, a formerly effective NGO that now [functions as a subsidiary of the DNC](#).

Your enthusiasm in launching an investigation based upon an unsubstantiated anecdote of a specimen collected from a rotting corpse three decades ago compares unfavorably with your abject failure to stop, much less investigate, the ongoing slaughter of whales by politically connected energy companies and financial houses that number among the Democratic Party's biggest patrons. Your agency's systematic insouciance is likely to result in the permanent extinction of the very species you are charged with protecting. Please let me know the steps that you plan to take to avert this agency-sanctioned calamity to Atlantic whale populations.

Sincerely,



Robert F. Kennedy, Jr.

Via FedEx and email (todd.smith@noaa.gov)
cc: Stefanie Spear



CENTER FOR BIOLOGICAL DIVERSITY ACTION FUND

August 26, 2024

Kim Damon-Randall
Director
Office of Protected Resources
National Oceanic & Atmospheric Admin.
1315 East-West Highway
Silver Spring, MD 20910
kimberly.damon-randall@noaa.gov

Everett Baxter
Acting Director
Office of Law Enforcement
National Oceanic & Atmospheric Admin
1315 East-West Highway
Silver Spring, MD 20910
everett.baxter@noaa.gov

Re: Investigation of Robert F. Kennedy Jr.'s Possible Violations of Endangered Species Act and Marine Mammal Protection Act

Dear Director Damon-Randall and Director Baxter,

On behalf of the Center for Biological Diversity Action Fund, I am writing to request that you open an investigation into whether Robert F. Kennedy Jr. violated the Marine Mammal Protection Act, and possibly the Endangered Species Act, by illegally cutting the head off of a dead whale in or around 1994 in Hyannis Point, Massachusetts and bringing it to his New York house. Under both the Marine Mammal Protection Act and Endangered Species Act, it is illegal to possess any part of an animal, dead or alive, that is protected under either statute. Continued possession of any whale skull represents a significant and ongoing violation of the law.

According to a direct account from Mr. Kennedy's daughter as recounted in Town & Country Magazine:

When she was six, word got out that a dead whale had washed up on Squaw Island in Hyannis Port. Bobby — who likes to study animal skulls and skeletons — ran down to the beach with a chainsaw, cut off the whale's head, and then bungee-corded it to the roof of the family minivan for the five-hour haul back to Mount Kisco, New York.¹

Normally, an unverified anecdote would not provide sufficient evidence as the basis for conducting an investigation. However, Mr. Kennedy has admitted that he has recklessly — and with no regard to legal requirements — taken other species of wildlife for his own personal benefit. For example, recently Mr. Kennedy admitted that approximately 10 years ago he observed a bear cub being struck and killed on the road. Apparently, without a permit or legal tag, Mr. Kennedy took the bear cub because he wanted to skin it and eat the meat. But in a bizarre series of decisions, Mr. Kennedy then dumped the bear cub in Central Park, creating a conservation mystery and wasting the time of the NY Department of Conservation trying to determine how a bear cub ended up inside New York City.

¹ Camelot Continued: Kick Kennedy's Private Tour of the Family Compound
<https://www.townandcountrymag.com/society/tradition/a924/kick-kennedy-interview/> (last accessed Aug. 25, 2024).

While the story told by Mr. Kennedy's daughter does not identify the species of whale from which Mr. Kennedy took its skull, under the Marine Mammal Protection Act's regulations, it is unlawful for "any person to possess any marine mammal, or product therefrom, taken in violation of the Act or these regulation."² Furthermore, in the Atlantic Ocean, the Endangered Species Act protects all individuals of Humpback Whale, Blue Whale, Fin Whale, Sei Whale, Sperm Whale, and North Atlantic Right Whale. And similar to the Marine Mammal Protection Act, the Endangered Species Act makes it illegal to collect any endangered wildlife species for any reason without a permit.³

Furthermore, Mr. Kennedy's apparent transport of the marine mammal skull from Massachusetts to New York, and therefore across state lines, also represented a felony violation of the Lacey Act, one of the earliest wildlife conservation laws enacted by United States in 1900, which prohibits the transportation of any wildlife, dead or alive, that was reduced to possession in violation of any state, federal, or international regulation or law.

There are good reasons why it is illegal for any person to collect or keep parts of any endangered species. Most importantly, vital research opportunities are lost when individuals scavenge a wildlife carcass and interfere with the work of scientists. This is particularly true of marine mammals, which are some of the most difficult wildlife species in the world to study. Indeed, some beaked whales are so difficult to observe that the *only* way scientists have learned about them is when dead ones wash ashore.

We hope that the NOAA Office of Law Enforcement, at a minimum, is able to ensure that Mr. Kennedy surrenders any and all illegally obtained wildlife that he continues to possess, including the whale skull he took from the Massachusetts beach in 1994. Given Mr. Kennedy's reckless disregard for the two most important marine conservation laws in the United States, we ask that NOAA consider all appropriate civil and criminal penalties as well.

Thank you for your consideration.

Sincerely,



Brett Hartl
National Political Director
Center for Biological Diversity Action Fund

² 50 C.F.R. § 18.13(b). See also, Protected Species Parts, <https://www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-parts> (last accessed Aug. 25, 2024).

³ See 16 U.S.C. § 1532(19) ("The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or *collect*, or to attempt to engage in any such conduct."); 16 U.S.C. § 1538(a)(1)(D).



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Law Enforcement
Northeast Enforcement Division-District 2
16 Station Road, Suite #3
Bellport, New York 11713

September 4, 2024

SUBJECT: Alleged Violation of the Marine Mammal Protection Act

Mr. Kennedy,

My name is Todd J. Smith. I am an Assistant Special Agent in Charge with the NOAA Office of Law Enforcement. I am investigating an alleged violation of the Marine Mammal Protection Act (MMPA), as reported in The Washington Post article dated August 26, 2024, which reads:

50 CFR § 216.13 Prohibited uses, possession, transportation, sales, and permits. It is unlawful for: (b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the MMPA or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

I would like to offer you the opportunity to provide a statement as it relates to this matter. I have included a statement form so that you may provide, should you so desire, a written statement detailing what occurred regarding the possession of a whale skull.

If you would like to schedule a time to discuss this situation further, I can be reached at 631-873-5651. A self-addressed envelope is provided if you wish to submit a written statement. I can also be reached by email: todd.smith@noaa.gov.

Sincerely,

Todd J. Smith
Assistant Special Agent in Charge
NOAA Office of Law Enforcement



Incident 2412035 | Closed

- Summary
- Tasks
- Action Log
- Review
- OLE Fines and Penalties
- Investigative Reports
- Documents
- Related Actions
- Audit Log

Action Log

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Category	Type	Action	Comments	Action Taken By	Action Date	Created On
—	Notes/Narrative	—	Case approved to close	James Cassin (Deputy Special Agent in Charge)	Oct 16, 2024	10/16/2024 2:51 PM EDT
—	Submit Incident for Review	Request to Close Incident Submitted	Based on the letter submitted by Mr. Kennedy on October 9, 2024, the investigation is closed.	Todd Smith (Assistant Special Agent in Charge)	Oct 15, 2024	10/15/2024 3:20 PM EDT
—	Notes/Narrative	—	Received responsive letter via FedEx and email from Robert F. Kennedy, Jr.	Todd Smith (Assistant Special Agent in Charge)	Oct 09, 2024	10/9/2024 1:36 PM EDT
—	Notes/Narrative	—	Confirmation of receipt by UPS.	Todd Smith (Assistant Special Agent in Charge)	Sep 05, 2024	9/11/2024 3:06 PM EDT
—	Notes/Narrative	—	Sent letter via UPS. Tracking #1ZW8090R2495059926	Todd Smith (Assistant Special Agent in Charge)	Sep 04, 2024	9/11/2024 3:05 PM EDT

5 items



Todd Smith - NOAA Federal <todd.smith@noaa.gov>

Statement re Alleged Violation of the Marine Mammal Protection Act

1 message

Robert F. Kennedy, Jr. (b) (6) >
To: "todd.smith@noaa.gov" <todd.smith@noaa.gov>

Wed, Oct 9, 2024 at 1:22 PM

Mr Smith:

Please see my attached statement in response to your letter dated September 4, 2024.

Robert F. Kennedy Jr



NOAA letter 10.8.2024.pdf
5069K



Todd Smith - NOAA Federal <todd.smith@noaa.gov>

Statement re Alleged Violation of the Marine Mammal Protection Act

Todd Smith - NOAA Federal <todd.smith@noaa.gov>

Tue, Oct 15, 2024 at 3:18 PM

To: "Robert F. Kennedy, Jr." (b) (6) >

Mr. Kennedy,

Thank you for your response.

Based on your response the investigation is closed.

Sincerely,

Todd J. Smith

[Quoted text hidden]

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Todd J. Smith

Assistant Special Agent in Charge

National Marine Fisheries Service

NED/District 2

16 Station Road, Suite 3

Bellport, New York 11713

Cell (631)873-5651

[Quoted text hidden]