

Congress of the United States

Washington, DC 20510

December 17, 2019

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue N.W.
Washington, D.C, 20230

Dear Secretary Ross:

Thank you for your continued interest in better understanding how the regulations currently being developed by the National Oceanic and Atmospheric Administration (NOAA) and as recommended by the North Atlantic Large Whale Take Reduction Team (TRT) stand to impact the safety of Maine lobstermen, as well as the Maine lobster fishery at large.

The North Atlantic right whale population is in a fragile state, but as you rightly pointed out in your October 30, 2019 letter to the Maine congressional delegation, the “population experienced steady population growth from approximately 270 right whales in 1990 to approximately 480 in 2010, during which time significant efforts were undertaken to reduce the risk of entanglement and ship strikes in U.S. waters.” The Maine lobster fishery has repeatedly made significant improvements to their practices and modifications to their gear to protect right whales, including the implementation of weak link mandates in 1997 and again in 2007. This is in addition to sinking ground line requirements in 2007, the replacement of 27,000 miles of floating ground line with whale-safe sinking line in 2009, and vertical line rules that removed 2,740 miles of buoy line by requiring minimum traps per buoy line in 2014. There has been a dramatic downward trend in the documented incidence of entanglement cases involving U.S. lobster gear, from seven cases prior to 2010 to only one case—a non-serious injury involving Massachusetts lobster gear—since. Notably, there have been no entanglements directly attributed to Maine lobster gear in more than 15 years. Further, National Marine Fisheries Service (NMFS) data demonstrates that ropes removed from right whales in recent years are not typical of those used in Maine’s lobster fishery.

The number of serious injuries and mortalities directly tied to Canadian shipping and fisheries activities, however, continues to mount. This past summer, alone, eight mortalities were observed in the Canadian Gulf of St. Lawrence, representing the deaths of roughly two percent of the remaining population. It has been incredibly frustrating for Maine lobstermen to see that, after implementing multiple effective mitigation measures over the past two decades, they continue to be the primary target of NOAA’s burdensome regulations. NOAA’s own data identify a number of other sources that contribute to North Atlantic right whale entanglements

and serious injury and mortality, including ship strikes and Canadian snow crab gear, the latter of which has entangled and killed at least 14 North Atlantic right whales.

Given these facts, there are a number of areas where actions by the Department would be very meaningful to the Maine lobster fishery:

1. Nowhere are the discrepancies between American and Canadian conservation measures more pronounced than in an area surrounding Machias Seal Island off the coast of Maine referred to as the “Gray Zone.” There is a long-running territorial dispute pertaining to these fishing grounds and, consequently, each country manages their fisheries in the area through separate and often contrasting regulations. At an April 2, 2019, Senate Commerce, Justice, and Science (CJS) Appropriations Subcommittee hearing, Sen. Collins raised this issue with Administrator Jacobs, who affirmed that NOAA would work with Maine and Canadian fisheries officials to explore the possibility of developing a fisheries agreement that provides for cooperative management of this area. Additionally, report language in the Senate-passed FY 2020 CJS appropriations bill encourages NOAA to do this critical work. We understand that NMFS’ Greater Atlantic Regional Fisheries Office has corresponded with Canada’s Department of Fisheries and Ocean Maritimes Region officials on this matter. We request an update on how those discussions are progressing and what specific actions the Department plans to take in regards to the Gray Zone.
2. Maine lobstermen continue to worry that increased entanglements and mortalities in Canadian waters will result in even more stringent regulation of the U.S. lobster fishery. The Marine Mammal Protection Act (MMPA) contains provisions to address the incidental mortality and serious injury of marine mammals in both domestic and foreign commercial fisheries. With respect to foreign fisheries, provisions of the MMPA provide for a process by which the U.S. can ban the importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of ocean mammals in excess of U.S. standards. Although Canadian snow crab fisheries are currently under the uniform five-year interim exemption, NMFS has the authority under the MMPA to consider emergency rulemaking to ban imports of fish and fish products from an export or exempt fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock. Given the data implicating Canadian snow crab fisheries as a chief contributor to entanglements and mortalities, we believe the Department should evaluate whether an emergency rulemaking is warranted.
3. Maine lobstermen have implored NOAA to take action in regard to its data on ship strikes and right whale mortalities. NMFS data shows that after the Take Reduction Team agreed on sinking ground line requirements on the U.S. lobster fishery in 2009, vessel strikes accounted for 48 percent of human-caused serious injury and mortality from 2010 to 2018, where cause could be attributed. Recognizing the substantial role that ship strikes continue to play in the population’s decline – and the limitations on the Take Reduction Team’s purview that may prevent it from taking urgently needed action in regard to activities other than commercial fisheries – the Department should prioritize actions to address ship strikes.

4. As noted previously, in 2014, NMFS implemented “trawling up” requirements on the Maine lobster fishery through the Atlantic Large Whale Take Reduction Plan that set minimums on the number of traps per buoy line. There has been discussion about requiring further trawling up as a component of the forthcoming TRT rulemaking, which has been met with serious safety concerns by lobstermen. Lobstermen have cautioned that on some vessels, imposing such increased minimums (particularly when combined with weaker ropes) could well result in the loss of life or limb by crewmembers due to increased hauling loads and large amounts of rope on deck. Some boats, even those operating offshore, do not have adequate deck space to accommodate the added rope or are simply not large enough to safely carry the additional traps that would be required on longer trawls.

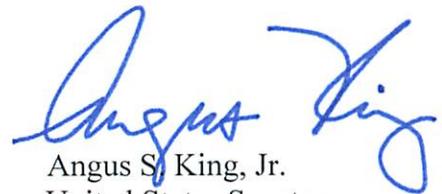
5. Lobstermen are also worried about the risks associated with the proposed placement of weak links in the endlines, which in their current proposed form would result in weak links routinely being stressed to or beyond their breaking points during typical fishing activity. Recently DMR Commissioner Keliher convened a group of offshore fishermen to his office to address these safety concerns. Among the changes they would like considered is the allowance of a 3/8-inch top rope, which would break under less than 1,700 lbs of tension, allowing lobstermen to bring the weaker rope on the boat before its breaking point is approached while hauling up the trawl. DMR is completing its process of soliciting concerns and recommendations for improvement from industry members, but it is clear that a weak point in the line greater than one third of the way down the endline will put fishermen at risk. We urge you to ensure that NMFS carefully considers DMR’s work and the severe safety risks to lobstermen that would result from requiring more traps per trawl and the placement of weak points at specific locations on endlines.

As NMFS endeavors to protect this unique marine species, we must do so without endangering human lives or livelihoods. We look forward to your response and to working with you to implement right whale conservation measures that are effective and that do not unfairly burden the Maine lobster fishery.

Sincerely,



Susan M. Collins
United States Senator



Angus S. King, Jr.
United States Senator



Chellie Pingree
Member of Congress



Jared F. Golden
Member of Congress