

Congress of the United States
Washington, DC 20510

November 15, 2022

The Honorable Gina M. Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Raimondo:

We write regarding the Proposed Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule, NOAA-NMFS-2022-0022. While we appreciate that NOAA is taking action to reduce vessel strike risk for the North Atlantic Right Whale (NARW), this rule imposes different requirements on vessel traffic than it does commercial fisheries. Through this proposed rule, it is clear that the National Marine Fisheries Service (NMFS) is holding Maine's lobster industry to a much more stringent standard than other sectors.

Maine's lobstering community has demonstrated their long-standing commitment to protecting right whales. They have used weak links since 1997 and gear marking since 2002; implemented sinking ground lines in 2009; and reduced vertical lines since 2015, with further reductions in 2021. There has not been a known right whale entanglement with Maine lobster gear since 2004, and right whale deaths or serious injuries have never been attributed to Maine lobster gear. While implementing these wide-ranging measures over the past decade, which have removed an estimated 30,000 miles of line from the ocean and have been costly and labor-intensive for fishermen, trends in whale population recovery have been disrupted by recent mortalities definitively linked to climate change, ship strikes in both the U.S. and in Canada, and entanglements in Canadian waters.

Despite these facts, NMFS continues to impose additional regulatory restrictions on our lobster industry in Maine. NMFS is moving forward with another rulemaking seeking to reduce the lobster fishery's risk to right whales by 88 percent, despite having just implemented a rule that reduced its risk by 60 percent (which NMFS then post-hoc downwardly revised to 50%). In contrast, despite NMFS recording five known U.S. right whale mortalities in the past five years, under NMFS' proposed Vessel Strike Reduction Rule NMFS recommends reducing the current vessel strike risk by only 27.5 percent. This stark difference in actions asked of these two sectors is because NMFS holds commercial fisheries responsible for whale deaths from "cryptic" mortality, while for vessel strikes NMFS is basing regulations only on observed serious injuries and mortality. To ensure consistency, NMFS must apply cryptic mortality to all potential causes, not just commercial fisheries.

Similarly, NMFS' proposed rule does not put forth any measures that would reduce the spatial overlap between right whales and vessels. Again, this is wildly different from how the lobster fishery is treated, as NMFS' most recent final rule institutes large closures in Lobster Management Area 1, off the coast of Maine, despite being an area of very low documented sightings of NARWs. It is noteworthy that the proposed vessel speed rule does not include measures for the Maine portion of the Gulf of Maine due to the low occurrence of NARW. Not including proposals to reduce spatial overlap is also inconsistent with one of NMFS' stated goals of the proposed rule: "reducing the spatial overlap of right whales and vessels."

Finally, the U.S. must engage with Canada to hold it accountable for NARW serious injuries and mortalities from entanglement and vessel strikes that continue to occur there. There have been two documented entanglements resulting in a death and serious injury from Canadian fishing gear in 2020 and 2021. Since 2010, there has been a shift in NARW habitat that has, according to scientists, "increased the risk from anthropogenic threats as the whales moved into habitats with fewer protections in Canadian waters" (Meyer-Gutbrod et al. 2018). Given the clear presence of NARW in Canadian waters, the U.S. must ensure that Canada strengthens its regulations surrounding ship strikes with NARW. While Canada currently has some restrictions for vessels, including mandatory Dynamic Management Areas, Canada has not yet expanded its program to waters outside the Gulf of St. Lawrence. The U.S. must engage directly with Canada to ensure that Canada strengthens its regulations to fully address vessel strike risk to the NARW.

Given these inconsistencies, we ask the following questions:

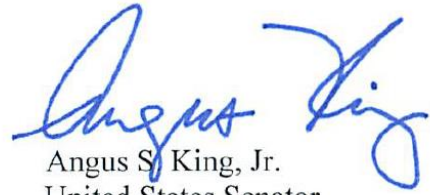
1. What level of risk reduction is necessary to reduce U.S. vessel strikes below the potential biological removal (PBR)?
2. What explains NMFS' inconsistent application of cryptic mortality between the lobster fishery and vessels?
3. If the stated goal in NMFS' proposed rule to reduce vessel strike risk is to "reduce the spatial overlap of right whales and vessels," why did NMFS only examine vessel speed restrictions of 10 knots and fail to include proposals that reduce the spatial overlap between NARWs and vessels?
4. What is NMFS currently doing to improve compliance with and expand its vessel speed regulations?

We appreciate your attention to this matter and ask for a timely response to our above questions. We encourage NMFS to take a hard look at the disparate regulatory treatment of vessel traffic and commercial fisheries before moving forward with additional rules for both sectors. Please do not hesitate to contact us or our staffs with additional questions.

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

CC: Dr. Caroline Good, NMFS Office of Protected Resources