

# Congress of the United States

Washington, DC 20515

February 3, 2020

Mr. Chris Oliver  
Assistant Administrator  
NOAA Fisheries  
National Oceanic and Atmospheric Administration  
1401 Constitution Avenue NW, Room 5128  
Washington, DC 20230

Mr. Michael Pentony  
Regional Administrator  
Greater Atlantic Regional Fisheries Office  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear Mr. Oliver and Mr. Pentony:

In light of the recent *Boston Globe* report that a North Atlantic right whale calf has been seriously injured by a vessel propeller, we are writing to request information as to how the National Oceanic and Atmospheric Administration (NOAA) intends to account for right whale serious injury and mortality from ship strikes in both United States and Canadian waters as your agency moves forward with regulatory actions to protect this species. Given the enormous impact upcoming regulations are poised to have on Maine's lobstermen and the coastal communities they support, it is unfortunate and ineffective that NOAA appears to be moving forward with a rulemaking process addressing the risk from fishing practices while improvements to regulations on the outsized role of ship strikes on right whale mortality languish.

Earlier this month a newborn right whale was identified off the coast of Georgia with large gashes that were likely inflicted by a boat's propeller.<sup>1</sup> Aerial photos taken by the National Marine Fisheries Service (NMFS) revealed that the calf suffered cuts to both sides of its head, likely impairing its ability to nurse.<sup>2</sup> This incident raises serious questions about the effectiveness and enforcement of federal laws and guidelines intended to protect marine mammals from vessel strikes that date back to 2004. The draft 2019 stock assessment for the North Atlantic right whale further elucidates this concern, stating that between 1970 and 2018, of the 124 whale mortalities recorded, vessel strikes and gear entanglements account for the same percentage – 21 percent each – of known causes for mortality.<sup>3</sup>

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<sup>1</sup> Russ Bynam, "Critically Endangered Baby Right Whale Spotted Off Georgia Coast With Deep Wounds," *Time*, January 10, 2020, <https://time.com/5762587/right-whale-georgia-hurt/>.

<sup>2</sup> *Ibid.*

<sup>3</sup> NOAA Fisheries, "Draft 2019 Marine Mammal Stock Assessment Reports," <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-report>.

Under U.S. law, vessels are required to stay 500 yards away from right whales at all times. Additionally, under the *Right Whale Ship Strike Reduction Rule* (50 CFR 244.105), all vessels greater than or equal to 65 feet in length are required to adhere to mandatory speed restrictions of 10 knots or less in Seasonal Management Areas along the east coast.<sup>4</sup> Despite these efforts, human-caused serious injury and mortality continue to exceed the level allowed under the Marine Mammal Protection Act (MMPA). The draft 2019 North Atlantic right whale stock assessment establishes the Potential Biological Removal (PBR) level for the species at 0.8 per year. From 2013 to 2017, the most recent period to compare serious injury and mortality to PBR, records indicate an average serious injury and mortality rate for U.S. vessel strikes of 0.5 animals per year; over that same period of time, the average annual entanglements positively attributed to trap or pot gear was 0.2.<sup>5</sup> These U.S. vessel strikes include one serious injury (pro-rated at .52) and two mortalities – including one female. Based on NOAA’s own data, it is clear that the risk from U.S. ship strikes, alone, over the last five years has grown increasingly close to the total allowable PBR for the species.<sup>6</sup>

The threat to right whales posed by ship strikes, however, is not confined to U.S. waters. In fact, the risk of serious injury and mortality from blunt force trauma from vessels has become far more pronounced in Canadian waters, where right whales have been found in concentrated numbers in the Gulf of St. Lawrence.<sup>7</sup> As one of the busiest shipping lanes in the world, it is no coincidence that during the Unusual Mortality Event from 2017-2019, it was determined that blunt force trauma from ship strikes resulted in the deaths of seven of the eighteen dead whales found in the Gulf of St. Lawrence.<sup>8</sup> It is unfortunate that despite the clear correlation between ship strikes and right whale serious injuries and mortality, this past year Transport Canada removed a vessel speed reduction zone around the Magdalen Islands and allowed vessels, in the absence of right whale sightings, to travel at higher speeds in a larger area north of Anticosti Island.<sup>9</sup> These measures are included as part of Canada’s reactive dynamic shipping closure approach to mitigating ship strikes, which has so far proven ineffective.

As NOAA prepares to require Maine’s lobster industry to make significant changes that could have serious economic and safety repercussions, we believe that your agency should do more to also acknowledge and account for the impact of U.S. ship strikes on right whale mortality. Additionally, without comprehensive corrective actions from Canada, we will continue to see more right whale deaths by ship strikes in that country’s waters, which will inevitably and adversely impact the severity of mitigation measures required of U.S. fisheries. Efforts to protect

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<sup>4</sup> NOAA Fisheries, “North Atlantic Right Whale,” <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale#conservation-management>.

<sup>5</sup> NOAA Fisheries, “Draft 2019 Marine Mammal Stock Assessment Reports,”: Unknown right whale struck in April 2014, pro-rated serious injury of .52; right whale 4681 (calf) struck in May 2016, mortality; right whale 4694 struck in April 2017, mortality.

<sup>6</sup> “Draft Marine Mammal Stock Assessment Reports.”

<sup>7</sup> Holly Lake, “Federal government revises right whale protections,” *iPOLITICS*, February 7, 2019, <https://ipolitics.ca/2019/02/07/federal-government-revises-right-whale-protections/>.

<sup>8</sup> NOAA Fisheries, “2017-2019 North Atlantic Right Whale Unusual Mortality Event,” <https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event>.

<sup>9</sup> Fisheries and Oceans Canada, “Backgrounder: Protecting North Atlantic Right Whales,” <https://www.canada.ca/en/fisheries-oceans/news/2019/02/backgrounder-protecting-north-atlantic-right-whales.html>.


this critically endangered species must be grounded in data, which clearly shows that shipping, cruises, and other non-fishing activities pose a serious threat to the future survival of the North Atlantic right whale. Therefore, we request that your agency provide answers to the following questions:

1. NOAA is moving forward with new regulations intended to reduce the number of vertical lines used in the Maine lobster fishery by as much as 50 percent. Given that the long-term data shows that ship strikes and gear entanglements pose a comparable amount of risk, what actions is NOAA taking to reduce the risk to right whales from U.S. ship strikes?
2. It is our understanding that NOAA is engaged in a review of the effectiveness of the current ship speed rule. When will the results of that review be released to the public?
3. What right whale data is NOAA utilizing for setting vessel speed reductions? Is the information based solely on sightings or are you using other methods such as acoustic monitoring?
4. In a January 27, 2020 press release, NOAA announced that it had recently concluded a bilateral dialogue with its Canadian counterparts focusing on right whale conservation.<sup>10</sup> What commitments did NOAA secure from Canada to address the high level of right whale mortalities due to ship strikes in the Gulf of St. Lawrence?

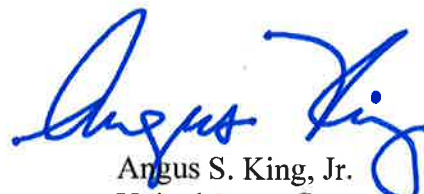
Thank you for your attention to this important matter, and we look forward to your prompt response to these questions.

Sincerely,

  
Jared Golden  
Member of Congress

  
Chellie Pingree  
Member of Congress

  
Susan M. Collins  
United States Senator

  
Angus S. King, Jr.  
United States Senator

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<sup>10</sup> NOAA Fisheries, "United States and Canada Must Sustain Additional Efforts to Reduce North Atlantic Right Whale Mortalities, Serious Injuries," <https://www.fisheries.noaa.gov/leadership-message/united-states-and-canada-must-sustain-additional-efforts-reduce-north-atlantic-right>.