

Congress of the United States
Washington, DC 20515

December 16, 2020

The Honorable Wilbur L. Ross, Jr.
Secretary
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Ross:

We write to express our strong opposition to the petition for rulemaking that was recently submitted by the Center for Biological Diversity, Conservation Law Foundation, Defenders of Wildlife, and the Humane Society of the United States (petitioners) for emergency interim regulations regarding the North Atlantic right whale. As you know, significant work to develop and implement new right whale regulations is currently underway between the National Marine Fisheries Service (NMFS) and the lobster industry. This petition would undermine years-long cooperative efforts, which are now in the final stages of approval, and set a dangerous precedent of bypassing the regulatory process and excluding the input of lobstermen and seafood harvesters whose lives and livelihoods would be most impacted.

The petitioners have requested NMFS to find that deaths and serious injuries of North Atlantic right whales from commercial fisheries are having, or are likely to have, an immediate and significant adverse impact on the species. Additionally, the petitioners seek the issuance of emergency regulations that prohibit trap/pot and gillnet fishing using static vertical lines in particular areas, as well as the expansion of two existing closures—both geographically and temporally. The petitioners' argument that prohibiting the use of vertical lines would still allow for fishing to take place through the use of ropeless gear completely disregards the fact that no such technology is currently commercially available, let alone proven to be safe, effective or financially viable for lobstermen.

It is troubling and misleading that the petitioners fail to mention the outsized role of ship strikes and entanglements in Canadian waters or other fisheries outside of New England on right whale injuries and mortalities. Since 2010, when new sinking groundline and trawling-up rules were put in place, confirmed U.S. lobster gear entanglements have decreased 90 percent, compared to the thirteen years prior. To be clear, since 2004, there has been no direct evidence that a single right whale serious injury or mortality is attributable to the Gulf of Maine or Georges Bank lobster fishery. During that same time period, however, 16 entanglements have been documented and attributed to Canadian fisheries.

Moreover, Canadian entanglements and vessel strikes have significantly hampered the recovery of right whales in the past five years; 23 of the 31 known right whale deaths since 2017 are attributed to Canada, zero to the Gulf of Maine and Georges Bank lobster fisheries. This trend is particularly worrisome as right whales continue to migrate through Canadian waters that include

shipping lanes, as well as through lobster and snow crab fisheries that are not subject to the same level of whale protection measures as they would be in the U.S.

In an immense collaborative effort, Maine's Department of Marine Resources and fishermen are voluntarily testing thousands of vertical line weak point samples, dozens of time tension line cutter prototypes, sampling hundreds of gear hauls with load cells, and stationing acoustic devices to listen for whales and detect their presence and migratory patterns. These projects are taking place in conjunction with a court order that established a May 31, 2021, deadline for NMFS to complete a new Biological Opinion and new right whale rules for the lobster industry. While there have been and likely will continue to be areas of disagreement between lobstermen and the agency on these new rules, they are the product of a public process that has, up to this point, included input from the industry. Indeed, in a June 15, 2020, court filing, NMFS declined to pursue an emergency rulemaking of this sort, stating "it is not an area where we are aware of persistent entanglements that would warrant such an action in an expedited time frame with limited public involvement."

The short-sighted petition undermines our shared goal of protecting both the North Atlantic right whale and the New England lobster industry by ignoring the impacts of ship strikes and entanglements in Canadian waters and other fisheries, while pushing ropeless gear technology that the petitioners know is not viable and would effectively shut down the lobster fishery. When lives, livelihoods, and the survival of an endangered species are in jeopardy, it is unfortunate to see this effort that could result in the reallocation of agency staff resources whose time is best utilized working on the development of the current proposed rule.

We urge you to reject this petition and thank you for your prompt attention to this important matter.

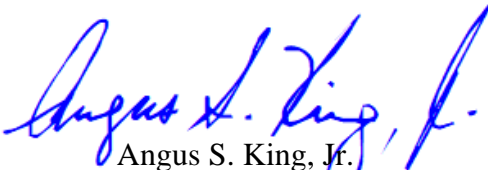
Sincerely,



Jared Golden
Member of Congress



Chellie Pingree
Member of Congress



Angus S. King, Jr.
United States Senator



Susan M. Collins
United States Senator