



October 21, 2021

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

Dear Secretary Raimondo:

We are writing to bring to your attention a recent order by the U.S. District Court of Maine regarding the National Marine Fisheries Service's (NMFS) final rule to modify the Atlantic Large Whale Take Reduction Plan (ALWTRP). The District Court has enjoined NMFS from enforcing the closure in the Lobster Management Area (LMA) 1, and we support this decision. Throughout the rulemaking process, we have raised concerns expressed by Maine's lobstermen and women and other industry stakeholders about the flawed and incomplete data upon which the final rule ultimately relied. Moreover, NMFS's decision to impose a sudden fisheries closure will cause irreparable harm to the industry, while doing little to achieve meaningful protections for the right whale population. In light of the District Court's order and the many flaws with the rule, particularly with respect to the LMA 1 closure, we urge you rescind the rule and resolve these issues.

The federal government claims that the LMA 1 closure from October through January in perpetuity will reduce right whale mortalities and serious injuries. NMFS' predictive models, however, forecast very low-percentages of right whale presence during the closure period. Prior area closures imposed elsewhere by NMFS have been designed to coincide with the actual presence of right whales and have relied on predictable whale aggregations in specific areas and seasons. As the Court astutely observed: "In this case, NMFS imposed a substantial closure of the Maine lobster fishery, based on what appears to be a markedly thin statistical modeling methodology. Making matters more troublesome, this approach departs dramatically from the Agency's past practice of justifying closures based on known and predictable whale aggregations demonstrated by concrete evidence."

Furthermore, NMFS' own data—or lack thereof in some instances—support the conclusion that right whales are present in the Northern Gulf of Maine less and less frequently as waters warm and the species' primary food source moves further offshore and northward into colder Canadian waters. NMFS has acknowledged that, "given the lack of systemic surveys in this area, [the Agency was] concerned that whales might not be using this area after they shifted distributions in the last decade." The Court found that the record of known entanglements and

vessel strike cases between 2010 and 2019 includes zero known incidents in LMA 1, which means there is sparse evidence to support a preemptive closure of this area. As the order succinctly states: “while NMFS purports to base seasonal closures on a co-occurrence of whales and line densities, the question is whether the [methodology] substantiates the LMA 1 closure based on meaningful migratory data or simply uses math in a manner that makes a reduction in line density appear statistically meaningful even in the absence of passing whales.” The Agency’s own data, therefore, are insufficient.

We fully agree with the Court’s determination that “the record presented thus far does not indicate that right whales actually congregate in or pass through the LMA 1 Restricted Area with nearly enough frequency to render it a ‘hotspot’ for whale and buoy line co-occurrence, contrary to the agency’s characterization.” The District Court’s decision is a sound and welcome development, and underscores the many shortcomings with the Agency’s final rule. We urge you to withdraw this rule and to use whatever authorities you have to immediately resolve the LMA 1 restricted area closure component, which does not reflect the reality of the conditions in the Gulf of Maine.

Sincerely,



Susan M. Collins
United States Senator



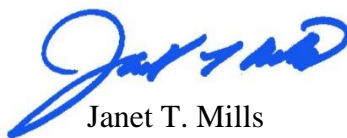
Angus S. King, Jr.
United States Senator



Chellie Pingree
Member of Congress



Jared Golden
Member of Congress



Janet T. Mills
Governor of Maine