

**Congress of the United States**  
Washington, DC 20510

August 21, 2021

The Honorable Gina Raimondo  
U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, D.C. 20230

Dear Secretary Raimondo:

We are getting in touch with you once again about the National Marine Fisheries Service's (NMFS's) Atlantic Large Whale Take Reduction Rule (RIN: 0648-BJ09), the finalization of which we understand to be imminent. We are grateful for your previous engagement with us over our concerns about this new regulation's ability to meaningfully protect whales and its impact on those who depend on fishing, especially lobstering, for their livelihoods. We are now asking for your assistance to avoid hasty, late-breaking changes by NMFS to measures that have been extensively negotiated and carefully designed in consultation with Maine's Department of Marine Resources (DMR) and through broad outreach to stakeholders. These changes, as indicated by the Final Environmental Impact Statement (FEIS), add significant costs to the industry without corresponding gains in conservation and seriously undermine conservation partnerships at state and local levels.

As you know, this rule builds on over two decades of collaborative whale conservation efforts and is the specific product of massive stakeholder input and data analysis in recent months and years. Despite this long timeline and vast effort, we and many of our constituents are deeply concerned about three specific elements of the rule, which we have outlined below. We have also shared these views with Shalanda Young, Acting Director of the Office of Management and Budget (OMB), and we urge you to direct NMFS staff to engage with their counterparts at the Office of Information and Regulatory Affairs (OIRA) to ensure this opportunity for good public policy making and consideration of informed public comment is not squandered in the midnight hour.

**Gear Marking:** The proposed rule included a requirement for Maine fishing gear to have a 6-inch green mark that would indicate whether a specific piece of gear was set inside or outside of 'the exemption line'. While such marks do not directly protect whales, they can uniquely inform future management actions as they help investigators determine the origin of gear recovered from entangled whales. DMR, after consultation with NMFS, required Maine lobstermen to implement this measure

last fall in anticipation of the final rule. However, the FEIS selected a preferred alternative that requires several 12-inch green markings throughout vertical lines for gear set seaward of the state-federal waters boundary (comparable to, but different from the exemption line). Because many fishermen move their gear between the two areas over the course of the year, the removability of the green mark is important and valuable. A requirement of four green marks, each 12-inches in length, undermines the original intent as it would practically require lobstermen who fish in both state and federal waters to have two sets of gear—one for each side of the federal boundary line—a great expense, and an economic burden that was *not* analyzed in the FEIS. We strongly urge you to include the gear marking requirements for Maine as drafted in the proposed rule.

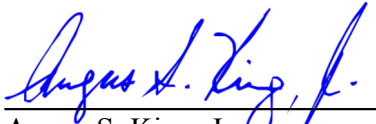
**Closed Areas:** The proposed seasonal restricted area off the coast of Maine remains deeply troubling due to its lack of strong scientific basis. Indeed, recent improvements to NMFS's model of entanglement risk show a declining value of the restricted area to whale conservation over time. In the draft rule, NOAA included alternatives where such a closure could be triggered in the future, if certain determinations about its value to whale conservation were to be made. An absolute closed area would be very costly, if not prohibitive, to the business models of numerous fishermen and, in many respects, would seemingly not provide much additional risk reduction. We strongly believe that fishermen should not lose access to fishing grounds unless whales are present. We urge you to revisit the trigger option, or alternatively, to include only areas identified as hotspots in the LMA 1 Seasonal Restricted Area.

**Conservation Equivalencies:** There is great diversity in the Maine fishing fleet and, in order for each harvester to safely and efficiently meet (or exceed) new whale protection standards, they should be allowed to utilize slight variations in gear configuration that provide equal or greater conservation value. For example, a lobsterman should be able to use one trawl of 20 traps with vertical buoy-lines on each end or (with conservation equivalency) two trawls of 10 traps each with just one buoy-line on each of those two trawls. The latter being safer for someone on a smaller vessel. A rigid one-size-fits-all approach will force dangerous and expensive actions upon fishermen with no benefit to whales. We were encouraged to see much of Maine's conservation equivalency proposal included in the FEIS, and we support full adoption of Maine's proposals in the final rule. Conservation equivalencies must be included in the final rule and include a structure for revisions and additions that allow for agility in responding to fishermen's safety concerns and changes in right whale distribution. Full formal rulemaking procedures will be an unproductive burden upon fishermen as well as federal and state regulators.

We appreciated your ongoing attending to this issue, and we urge you to ensure that these new federal regulations on fisheries critical to the Maine economy and definitive to its heritage are

reasonable, flexible, and founded on the best possible science and information. Please have your staff contact our offices if we can provide additional details.

Sincerely,



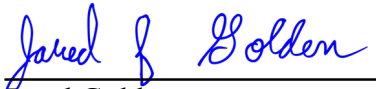
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Angus S. King, Jr.  
United States Senator



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Chellie Pingree  
Member of Congress



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Jared Golden  
Member of Congress



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Susan M. Collins  
United States Senator