



Janet T. Mills
GOVERNOR

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AUGUSTA, MAINE
04333-0001

June 25, 2020

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

Dear Secretary Ross,

I write to you today to strongly urge you, and the National Oceanic and Atmospheric Administration (NOAA) to deny the petition for rulemaking recently submitted by the Pew Charitable Trusts ("Pew"). This proposal not only fails to provide additional protections for right whales, but contrary to Pew's assertions, it will also cause significant economic impact to Maine's iconic lobster fishery.

At present, NOAA staff are nearing completion of the regulatory process designed to achieve improved protection of North Atlantic Right Whales. It is critically important that this work remains their priority, and that NOAA staff are not diverted by this erroneous proposal. Given the potential impact of this rulemaking process on Maine's lobster fishery, you might be surprised that I am asking you to see it through to its conclusion in a thoughtful and expedient manner. However, the proposed rule has had the benefit of a lengthy stakeholder process, while the Pew proposal is a distraction that achieves nothing but to put right whales at additional risk.

Despite the assertions from the environmental community that they want to expedite protections for whales, their actions have only hindered the process established in federal statute to do just that. Petitions such as this one, and litigation brought by organizations such as the Center for Biological Diversity and Conservation Law Foundation, have required NOAA Fisheries' technical staff to be diverted from the development of the regulations in order to respond. It is my sincere hope that you will ensure that NOAA Fisheries continues to pursue development of this rule, which has been developed through the input of a diverse body, the Take Reduction Team (TRT). The TRT includes fishermen who understand the operational realities posed by various measures and are working side by side with the conversation community to identify practical, safe solutions to protect right whales.

As troubling as I find the potential for further delays, even more infuriating is the notion that this proposal would protect whales. Pew has cherry-picked data to suit its case, but the peer-reviewed literature and the methodology developed by NOAA Fisheries to evaluate measures for the Atlantic Large Whale Take Reduction plan rule do not support the proposal. Using NOAA



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Fisheries' own Decision Support Tool (DST), the Pew proposal actually increases risk, likely due to the well-known potential for closed areas to create what is known as a "curtain effect," where gear is moved to the open waters around the closure, increasing density of vertical lines and therefore, increasing risk in those areas. The DST indicates this risk increase is as much as 12% in June for the proposed Western Gulf of Maine ("WGOM") closed area. Additionally, the sources of data and methodologies used by Pew to determine the location and timing of the proposed closures are in some cases undisclosed and often inconsistent. When they are provided, they often do not support the proposed areas or timing. For example, the WGOM closure proposed appears to be based on a paper that discusses an increase in plankton in the spring (Record *et al.* 2019) as a justification that right whales may use that area as an important feeding ground in the future. However, Record *et al.* 2019 does not present any predictive modelling for right whales based on its discussion of seasonal copepod trends, and the timing of the closure proposed does not logically follow from the sightings record presented through other sources used in other parts of the proposal.

Pew also asserts that these closures will have minimal impact on fishing activity as most lobster fishing occurs inside state waters. While it is true that the majority of endlines are within an area currently exempt from the Take Reduction Plan because of the very limited presence of whales in these inshore waters, it is patently untrue to state that these closures would not cause economic harm to Maine's fishermen. The two areas proposed in Lobster Management Area 1, the WGOM and Downeast seasonal closures, are both areas and seasons that provide critical opportunity to our harvesters and represent 15 to 24% of the area-accessible to Maine fishermen during the impacted months. Landings revenues from the two proposed closures within Lobster Management Area-1 are estimated to be \$18.8M from May through October, representing 4% of the 2019 value of Maine lobster fishery (\$482.9M).

Maine's lobster harvesters are concerned about the status of North Atlantic Right Whales. My Commissioner of Marine Resources, Patrick Keliher, has been working closely with the industry to develop a plan that provides meaningful protections in the areas of greatest risk to whales, while also ensuring our fishery can continue to operate safely. We remain committed to working toward these objectives.

Thank you for your attention, and please contact Commissioner Keliher for any additional information related to this matter.

Sincerely,



Janet T. Mills
Governor
State of Maine