

Congress of the United States
Washington, DC 20515

April 29, 2020

The Honorable Wilbur Ross
Secretary
U.S. Department of Commerce
Room 5421
Fourteenth Street and Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Ross,

We write to express our frustration and concern over the extensive delay in the issuance of guidance for the assistance to fisheries participants included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act was signed into law over a month ago, but the Commerce Department has yet to provide any instructions to the fishing or seafood industries on the application process for the \$300 million in available emergency funds under the law, or how that money will be allocated. This inaction leaves these industries in dire financial straits. We ask that you immediately take the necessary steps to ensure that the Commerce Department issues guidance as soon as possible so that this fisheries aid can reach those who desperately need it.

The fishing and seafood industries are essential to the American economy, with \$5.6 billion worth of fisheries products landed and \$11.6 billion worth of fisheries products processed in 2018.¹ The coronavirus outbreak has caused restaurants across the United States to shutter, eliminating a key customer base. The pandemic has also disrupted large export markets in countries such as China, which the coronavirus has hit hard. As a result, the U.S. fishing and seafood industries are under serious financial duress.²

Since Congress passed the CARES Act on March 25, 2020, the Commerce Department has made only one public statement on the assistance to fisheries participants. On April 2, NOAA published on its website six sentences about CARES Act fisheries aid, along with a link to an email address for stakeholders interested in sharing information about the effects of COVID-19 on their businesses.³ Nearly five weeks later, the lack of any further public announcements relating to CARES Act relief is simply unacceptable.

This silence and delay poses a particular problem because fishery participants do not know how to determine whether they will be eligible for the CARES Act assistance. The law provides that fishing industry participants can qualify for funding if they lose at least 35 percent of their revenue compared to a previous five-year average.⁴ But without guidance on how to calculate these losses, fisheries in need of

¹ NOAA Fisheries, *Fisheries of the United States, 2018* (Feb. 21, 2020), <https://www.fisheries.noaa.gov/feature-story/fisheries-united-states-2018>.

² Laura Reiley, *Commercial fishing industry in free fall as restaurants close, consumers hunker down and vessels tie up*, Wash. Post (Apr. 8, 2020), <https://www.washingtonpost.com/business/2020/04/08/commercial-fishing-coronavirus/>.

³ NOAA Fisheries, *NOAA Fisheries Coronavirus (COVID-19) Update* (Apr. 22, 2020), <https://www.fisheries.noaa.gov/national/noaa-fisheries-coronavirus-covid-19-update>.

⁴ Public Law 116-136, Title II, Sec. 12005(b)(1).

aid have been left hanging. Past allocations of fisheries disaster assistance have required at least a 35-percent annual revenue loss, calculated after a fishing season is over.⁵ Under the CARES Act, however, the 35-percent revenue loss may be calculated on a rolling basis within a fishing season.⁶ Therefore, among other badly needed guidance is the applicable timespan for calculation of the 35-percent revenue loss.

This silence from NOAA is also troubling because of the lack of a transparent process for establishing CARES Act guidance on the assistance to fishery participants. Industry input usually informs the allocation and distribution of fishery disaster assistance, including providing the details surrounding a disaster-aid request.⁷ But here, the Commerce Department has not meaningfully sought industry views. It must better engage industry to ensure an equitable allocation of assistance.

Our engagement with the Commerce Department and the Office of Management and Budget suggests that bureaucratic inefficiencies are behind the failure to timely issue guidance. Within the Commerce Department, the National Oceanic and Atmospheric Administration (NOAA) and its National Marine Fisheries Service (NMFS) play a role in formulating this guidance, as well as the Office of Management and Budget (OMB) on the outside. Conversations with relevant staff yielded contradictory expectations of responsibilities, including confusion over whether the Commerce Department or NOAA would send work products to OMB for final approval.

In short, the guidance delay appears to have resulted from an unclear chain of command marked by finger-pointing. Unfortunately, this is not entirely unsurprising. The Senate is well aware of longstanding difficulties in allocating fisheries disaster assistance, which was the subject of a September 25, 2019 hearing before the Committee on Commerce, Science, and Transportation. However, we would expect that during this pandemic, the Commerce Department and its bureaus would make concerted efforts to address these shortcomings.

In order for us to better understand why CARES Act fisheries disaster guidance has been so delayed, please respond to the following questions by May 6, 2020:

- 1) What is the status of guidance for CARES Act assistance to fishery participants? Which Commerce Department entity is principally responsible for the preparation and promulgation of this guidance?
- 2) When will the guidance be finalized and published? What issues remain to be resolved before this can happen?
- 3) Will the guidance be open for public comment before it is finalized or will it be issued in final form?
- 4) Has the guidance been transmitted to OMB?
 - a) If so, by whom and when?
 - b) If not, why not?
- 5) After guidance is issued, when does the Commerce Department expect to begin distributing CARES Act assistance to fishery participants?

⁵ National Marine Fisheries Service (NMFS), Policy on Disaster Assistance under the Magnuson-Stevens Act 312(a) and 315 and Interjurisdictional Fisheries Act 308(b) and 308(d), National Marine Fisheries Service Policy 01-122, June 16, 2011. <https://www.fisheries.noaa.gov/national/laws-and-policies/fisheries-management-policy-directives>.

⁶ Public Law 116-136, Title II, Sec. 12005(c).

⁷ NOAA Fisheries, *Frequent Questions: Fishery Disaster Assistance*, <https://www.fisheries.noaa.gov/resources-fishing/frequent-questions-fishery-disaster-assistance>.

The Honorable Wilbur Ross
April 29, 2020
Page 3

Thank you for your attention to this important matter. If you have questions about this request, please reach out to Claire Richer on Senator Markey's staff at Claire_richer@markey.senate.gov.

Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator



Seth Moulton
Member of Congress



William R. Keating
Member of Congress

CC:

Neil Jacobs, Acting Under Secretary of Commerce for Oceans and Atmosphere
Chris Oliver, Assistant Administrator for NOAA Fisheries
Russell Vought, Acting Director of the Office of Management and Budget