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DEPARTMENT OF MARINE RESOURCES
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04333-0021

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October 3, 2018

Dear Dr. Hare,

I am writing in response to the recently released NOAA Technical Memorandum NMFS-NE-247, *North Atlantic Right Whales—Evaluating Their Recovery Challenges in 2018* ("Technical Memo" or "Memo"). Regrettably, I have significant concerns about the scientific merit of this document, which I have documented below in detail.

As I am sure you'll agree, any measures developed to protect right whales must be based on sound science in order to be effective. For this reason, it is imperative that the Technical Memo provide a comprehensive picture of the best available science to inform the critical decisions that the TRT is being asked to make. The title of the Memo implies a comprehensive look at all stressors across the right whale's range. While many category I and category II fisheries from Maine to Florida are regulated under the Atlantic Large Whale Take Reduction Plan, the content of the Memo is almost exclusively limited to the lobster fishery in the Gulf of Maine. There is little context offered for how right whales are utilizing expanded habitats in Canadian and Mid-Atlantic waters, and how that changing range and interactions with other fisheries affects risk of entanglement. Absent this information, any discussion on new regulations will be based on an incomplete picture, and provide uncertain benefit to whales. It is my sincere hope that you will endeavor to update and correct this document expeditiously, as we anticipate its use to inform the work of the Atlantic Large Whale Take Reduction Team (ALWTRT) at its upcoming meeting in Providence.

Overall, the Memo is inconsistent in its application and interpretation of various data sets and publications. In some cases, conclusions directly contradict statements and information previously presented by NOAA. In several instances, the paper lacks citations or cites inappropriate sources (i.e. industry documents instead of raw data; unpublished articles) and appears to be stating conclusions or opinions without any supporting data (i.e. that the 2015 vertical line regulations are making entanglements worse). Our most substantive concerns are addressed below but please note that this list does not represent an exhaustive list of the issues we identified, which range from minor technical points to omissions of core data sources.

First and most significantly, the Memo suggests that the 2015 vertical line regulations increased the strength of rope and therefore the severity of entanglements by altering fishing practices and encouraging the use of larger diameter ropes as vertical lines. There are no current data sets or analyses used to support this theory. The paper instead cites Knowlton et al. 2016. While the Knowlton paper accurately characterizes the change in rope strength through manufacturing processes over time, the data

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used encompass the years 1994-2010. This time period was largely before any of the substantial changes in gear due to regulations, such as the sinking groundline regulation in 2009 and the vertical line rule in 2015, and overlapped with a time period in which right whales actually saw population increases. There has been no recent assessment that states that fishermen have been using larger diameter rope in response to the vertical line regulations in 2015.

Additionally, to our knowledge, there is no published analysis of ropes taken from right whales that includes the time period since the vertical line regulations went into effect in 2015, nor any assessment of the efficacy of those regulations. The most recent publication that details current instances of entanglements that resulted in serious injuries or mortalities, NOAA's "Serious Injury and Mortality Determinations for Baleen Whale Stocks Along the Gulf of Mexico, United States East Coast, and Atlantic Canadian provinces, 2011—2015" (Ref Doc. 17-19) was published in 2017 and relies on data from 2011-2015 (prior to the implementation of the vertical line rule). Instead of using this most recent agency source, the Memo repeatedly cites Knowlton et al. 2012 to point out the increasing rate of entanglements and that 83% of the population has been entangled at least once. Knowlton et al. 2012 is a comprehensive 30-year retrospective of the right whale catalogue but does not provide an assessment of entanglements in the right whale population beyond 2009. While it is indisputable that entanglements are increasing, a more recent assessment would provide a more accurate picture of the current threats facing right whales, which are changing rapidly. In fact, due to the lack of data on this critical question, NOAA recently funded DMR's current research project to improve understanding of gear usage, hauling load and vertical line breaking strength. In sum, the Memo fails to take a comprehensive look at how entanglement rates and severity have changed since the implementation of the sinking groundline and vertical line regulations went into effect in 2009 and 2015, respectively, nor does it assess changes or trends in entangling gear during that time period. It is therefore an unreliable assessment of current regulations.

Second, the Memo cites increased Maine landings to indicate increased effort. Most importantly, landings are not a proxy for effort, and have never been used as an accepted metrc for increased risk of entanglement. The Memo cites Maine state landings data to demonstrate increased effort offshore without describing where the data apply in terms of fishing areas. It uses these landings to assert that there is an increased overlap and therefore level of risk "offshore." The data provided by DMR staff represents landings generated from logbooks from 10% of randomly selected harvesters licensed by the state. Contrary to the assertion made in Figure 2c, Maine logbook reported landings have increased both inshore (which we define from 0-12 miles) and offshore (from 12 miles to the Area 1 boundary), but, when comparing the two areas, the inshore portion has increased at five times the rate of the offshore area. It appeared, from the webinar held at the time of publication, that NOAA interpreted "offshore" as being out to the Hague Line (based on the webinar presenter's interpretation of heat map slides, which are not included in the Memo). These heat maps interpolate VTR data for lobster. While Area 3 has 50-100% of Federal licenses reporting through VTRs (ASMFC TC Memo July 2015), most Area 1 Federal lobster permit holders are exempt from VTR requirements and those with permits required to report represent less than 10% of Maine Federal permit holders and 3% of the total license holders in Maine (ASMFC TC Memo January 2017). Maine has only a handful of Area 3 license holders (permitted by NOAA), and the majority of effort that we categorize as being beyond 12 miles would end at the Area 1/3 boundary, approximately 40 miles from the coastline. Area 3 VTR data could characterize "offshore" effort but was not used in the Memo. It is unclear why NOAA would choose to use state landings records for only one state that is dominated by inshore effort if seeking to accurately characterize offshore effort, as the majority of the truly "offshore" effort (in Area 3) is from permitholders in other states.

While the State of Maine recognizes that the size of our fishery is the reason for the focus on our impact to right whales, effective management measures will require a clear picture of changing population distribution and abundance in recent years. The Memo repeatedly points to an expanding range and increasing overlap with fisheries as sources of increased risk. It notes decreased observations of right whales in the Gulf of Maine and Bay of Fundy during the summer months and southeast coast in the winter, and increased presence in the Gulf of St. Lawrence in the summer and off the mid-Atlantic in the winter. Despite the changes in distribution, the only fishery considered for "increased" overlap is the Gulf of Maine lobster fishery, despite the parallel assertion that the Gulf of Maine is an area of decreased presence and the fact that NOAA's own observation resources have been diverted to Canada because of this shift. There is also little assessment of the unregulated fisheries they encounter in the Bay of Fundy, on the Scotian Shelf and into the Gulf of St. Lawrence, or the devastating interactions that resulted when right whales overlapped with changes in the snow crab fishery in 2017.

Additionally, there is no discussion of the role of other US regions or fisheries despite the fact that the Memo states that right whales are increasingly using other areas, such as the mid-Atlantic. Furthermore, the Memo includes little discussion of the impact of other U.S. or Canadian fisheries on right whales. All vertical lines do not present the same level of risk; the location, the season, the type of gear, and whether it incorporates conservation regulations (e.g. the use of weak links and sinking line in surface systems) all factor into the level of risk posed by a given line. Additionally, lines that overlap with right whale feeding aggregations inherently pose more risk of entanglement. A shift in habitat use out of the Gulf of Maine and into Canadian waters does not double risk, but rather it shifts the spatial intensity of the risk that exists. The Memo does not cite evidence for the assertion that closures are regionally effective, nor does it cite any basis for Figure 4's assertion that vertical lines have increased in the Northeast since 2011. In fact, this claim directly contradicts a presentation made by Mark Murray-Brown to the New England Fishery Management Council in December 2017, pointing to the reduction of 2740 miles of vertical line achieved through implementation of the 2015 regulations.

There are additional instances where a more comprehensive data set is available but inexplicably not used. For example, Figure 5 seems to be trying to show the relevance of the lobster fishery in entanglements, but most of the entanglements shown are from years prior to when the sinking groundline and vertical line rules were implemented. This Figure shows only those entanglements where the set locations are known, and it is unclear whether it shows all entanglements or only those resulting in serious injury or mortality. Notably absent from the Memo is any reference to the much more robust dataset curated by NMFS that documents entanglements to confirmed fisheries, which would provide a much more comprehensive look at the causes of entanglements across the right whale's range. Use of this dataset would also allow a look at how entanglements have changed, either by the confirmed fishery to which the entanglements are attributed, or by characteristics of the rope (i.e. diameter) over time. Two of the entanglements in Maine shown on this map also fail to note that Maine lobster gear was the secondary cause of entanglement. The use of range-wide, recent fishery confirmed instances of entanglement would inform consideration of what measures would most effectively curtail the current entanglement problem. Focusing on only entanglements where the set location is known drastically limits an already small dataset and could result in the misalignment of new regulations with the current entanglement risk.

I strongly believe the Maine lobster industry takes the threats to right whales seriously and will work to identify a meaningful solution appropriate to the risk posed by their fishery under current biological and environmental conditions and considering past regulatory actions. However, conclusions

based on conjecture, without sound scientific basis, will alienate their critical participation in this process. The net result of the oversimplified picture painted by this Memo is likely to be regulations imposed on a fishery or in an area that will result in very little conservation benefit for the right whale but will come at a great cost to the fishermen in terms of money, time, and safety.

I look forward to working with you and your staff to improve the accuracy of the information which will inform the ALWTRT's work going forward. If you have any questions or would like to discuss this further, please contact Erin Summers, email: erin.l.summers@maine.gov; telephone: (207) 633-9556.

Sincerely,

Patrick C. Keliher
Commissioner

Cc: Mike Pentony, Regional Administrator, Greater Atlantic Regional Office
Mike Asaro, Protected Resource Division, Greater Atlantic Regional Office