



MAINE DEPARTMENT OF MARINE RESOURCES
NEW HAMPSHIRE DEPARTMENT OF FISH AND GAME



April 19, 2019

Michael Pentony
Regional Administrator
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, Massachusetts 01930

Dear Mr. Pentony,

Next week, the Atlantic Large Whale Take Reduction Team (ALWTRT) will be meeting with the goal of recommending a suite of measures to reduce the rate of serious injury and mortality (SI&M) of North Atlantic right whales to below Potential Biological Removal (PBR). The measures developed at this meeting have the potential to substantially impact several important fisheries, including the American lobster fishery which is an economic cornerstone of many New England communities. As a result, the states of Maine and New Hampshire have been actively engaged on the ALWTRT, its sub-groups, and in conversation with NOAA Fisheries. Our primary objective has been to provide the most relevant data possible so resulting measures can target areas of high risk and yield the greatest conservation benefit possible for right whales. Unfortunately, the weeks leading up to this meeting have raised serious concerns about the ability to thoughtfully make these recommendations. Specifically, NOAA Fisheries has been inconsistent in its message on the analysis that will be provided to the ALWTRT, executed poor time management in holding sub-group meetings and developing tools, provided insufficient time for stakeholders to review newly developed models, and compromised the thoughtfulness and thoroughness of the analysis needed to support important decisions. This has hindered the states' ability to prepare for the ALWTRT meeting, and solicit the participation and engagement of the fishing industry.

A key component of the upcoming ALWTRT meeting appears to be a new decision support tool, or Risk Reduction Model. While the two states agree the development of this type of tool is needed and applaud NOAA Fisheries for engaging a modeler familiar with the lobster fishery, the states have concerns about the components of this model, its documentation, and its lack of external review. As of the writing of this letter, no documentation on the model has been provided to the ALWTRT. Consequently, states are being asked to attend the ALWTRT meeting without an in-depth understanding of how the model works or how it translates management measures into a reduction of risk. In addition, conversations with NOAA Fisheries staff indicate this model has not been peer-reviewed. Given the model appears to have been developed a few weeks prior to the ALWTRT meeting, stakeholders are being asked to develop consensus management

measures based on a model which was developed under unreasonably tight deadlines, has no documentation, and has not been peer reviewed.

Known components of the Risk Reduction Model further raise concerns about the outputs of this product. On April 7th, just two weeks before the upcoming meeting, ALWTRT members were asked to complete a survey ranking the relative risk of different gear configurations and modifications. Communications with NOAA Fisheries indicate results of this survey are an important component of the model in determining “Severity” when evaluating the risk to whales ($\text{Risk} = \text{Whales} * \text{Gear Density} * \text{Severity}$). While the New England states are not opposed to the use of polling as a tool to capture the ALWTRT’s expertise, the states are opposed to the use of a survey which has not been developed or reviewed by a social scientist. As a result, the states believe the risk value for various gear configurations should also be informed by gear taken off entangled whales. We acknowledge only a subset of entanglements have gear that can be analyzed; however, there are relevant trends which can inform the risk that different gears pose, such as the decline in the prevalence of 3/8” rope in SI&M cases. In contrast, cases with rope diameter greater than 3/8” account for 88% of the total SI&M since 2010¹.

In addition, the states review of Jason Robert’s habitat model (Duke Habitat Model), another component of the new Risk Reduction Model, raises concerns about the utility of this data source in New England. While documentation provided on the Duke Habitat Model notes the model was updated with data through 2016, an in-depth look at the data elements shows much of the recent information is from the mid-Atlantic region. Specifically, data on the distribution of whales in New England (minus Cape Cod Bay, which is being updated for the ALWTRT) has only been updated through aerial surveys completed through 2013. In addition, standardized shipboard surveys are largely absent from the Gulf of Maine. This leaves much of the Gulf of Maine relying on the modeled distribution of right whales, which uses climatological data when there is little effort and low sightings. There are plans to update the Duke Habitat Model with more recent surveys, possibly find ways to incorporate opportunistic sightings, and split the time period to pre- and post-2010. However, none of these enhancements will be completed on a timeframe that is relevant for the upcoming ALWTRT meeting. Thus, due to the changing distribution of right whales since 2010 (Davis *et al.* 2017²), the current data elements in the Duke Habitat Model are no longer relevant in New England as they do not reflect current right whale habitat use.

The compilation of these concerns has resulted in the states questioning the Risk Reduction Model’s outputs. Our understanding of the model is that areas of high risk are determined by the presence of both right whales and fishing gear. NOAA Fisheries staff noted that the region south of Nantucket, which has recently been under much scrutiny due to the high number of whales in the region, is characterized as low risk in the model because of minimal fishing gear. Interestingly, the reverse does not seem to hold true;

¹ NMFS Large Whale Entanglement Reports; NMFS Mortality and Serious Injury Reports.

² Davis, G. E., Baumgartner, M. F. and S. M. Van Parijs. 2017. Long-term passive acoustic recordings track the changing distribution of North Atlantic right whales (*Eubalaena glacialis*) from 2004 to 2014. *Scientific Reports*, 7, Article number: 13460.

areas of high gear density but low whale presence, such as mid-coast Maine, are characterized as having a high level of risk in the model. Unfortunately, with less than a week to the ALWTRT meeting, there is no space in the current timeline to raise these anomalies and brainstorm ways to fix them prior to having to use the model for decision making purposes. As a result, team members are being asked to develop proposed measures based on a model that was not complete prior to the ALWTRT meeting and whose outputs prompt substantial questions. As a result, the states request the Risk Reduction Model be fully documented for members of the ALWTRT and an external peer review be conducted before final decisions based on the model are made.

In addition to questions about the development of the Risk Reduction Model, the states are also troubled by the risk reduction target outlined by NOAA Fisheries in an April 5th email to the ALWTRT. A description of the calculations for the risk reduction target indicate 50% of the unattributed cases of SI&M are assumed to be a result of US fisheries; however, recent entanglement data suggests Canadian fisheries are responsible for an increasing portion of SI&M. For example, 2013-2017 data suggests US fisheries were responsible for 0.2 of the SI&M to right whales while Canada was responsible for 1.4³. This trend continues in 2014-2018, where data suggests US fisheries were again responsible for 0.2 of the SI&M while Canada was responsible for 1.6⁴. Given this information, the states assert the current risk reduction target is inappropriate and should be reconsidered. An email sent to the ALWTRT on April 18th indicates other approaches to calculate the target risk reduction were considered; however, minimal rationale is provided in the email for the method ultimately chosen. If, as data suggests, Canada is now the primary source of SI&M for right whales, draconian measures in US fisheries will not ensure a successful reduction of SI&M below PBR for the range of North Atlantic right whales.

Inconsistency in NOAA Fisheries' communication regarding the upcoming ALWTRT meeting has also severely hampered the states' ability to interact with the fishing industry. On March 18th, the Regional Administrator announced NOAA Fisheries would be developing a strawman proposal ahead of the ALWTRT meeting to provide stakeholders with the scope of potential management changes. On April 4th, this course of action abruptly changed as, on an Atlantic States Marine Fisheries Commission Lobster Plan Development Team call, NOAA Fisheries stated they would not be providing a strawman proposal and would instead be relying solely on the new Risk Reduction Model. This unexpected change of direction was not only confusing to the state agencies but also disrupted planned preparations for the ALWTRT meeting. Due to inconsistent messaging from NOAA Fisheries, the state of Maine cancelled three industry meetings that had been planned to provide clear direction to, and solicit input from, the lobster fishing industry. Given the Risk Reduction Model is not available for review, these meetings will not be re-scheduled prior to the ALWTRT meeting because states do not have the tools needed to assess various management measures and hold productive industry conversations.

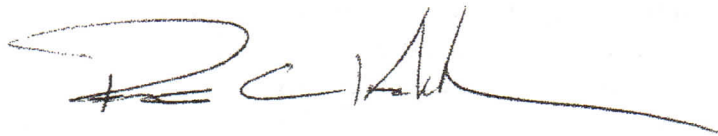
³ NMFS Large Whale Entanglement Reports; NMFS Mortality and Serious Injury Reports.

⁴ NMFS Large Whale Entanglement Reports; NMFS Mortality and Serious Injury Reports.

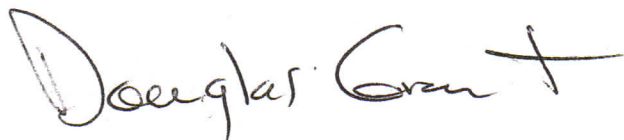
Finally, the two New England states raise serious concerns about NOAA Fisheries timeliness regarding preparations for the April ALWTRT meeting. The ALWTRT previously met in October 2018 and, at that meeting, developed a work plan for NOAA Fisheries to complete prior to the next meeting. The states recognize an extended federal government shut-down delayed progress on necessary analysis; however, the spring ALWTRT meeting was also postponed by over a month due to this shut-down. The states note the first sub-group meeting of the ALWTRT was not held until March 25th, a reduction target was not announced until April 5th, a presentation of the Risk Reduction Model was not given until April 16th, and a final working model was not available to the ALWTRT prior to the meeting. As a result, the states are concerned about the thoroughness and thoughtfulness of the analysis being conducted given the time constraints. In addition, NOAA Fisheries has commented that they intend to move straight into rulemaking following the ALWTRT meeting. This timeline perpetuates the states' concerns given if further truncates the time for appropriate review and ensures rushed and unreviewed analysis will be immediately used to promulgate regulations.

The states of Maine and New Hampshire recognize difficult decisions need to be made to ensure the conservation of North Atlantic right whales; however, the states have concerns about the analysis directing the conversations and consensus recommendations, and the timeliness of rulemaking. While the states have sought to be thoughtful contributors to this important discussion, the actions of NOAA Fisheries have undermined the state's ability to engage on this issue and severely dampened the voice of the fishing industry. The two states request the Risk Reduction Model be completely documented for review by the state's fisheries managers, and the full ALWTRT, and an external peer review be conducted before final decisions based on results of the Risk Reduction Model are made.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Pat Keliher', with a long horizontal flourish extending to the right.

Pat Keliher
Commissioner, Maine Department of Marine Resources

A handwritten signature in dark ink, appearing to read 'Doug Grout', with a long horizontal flourish extending to the right.

Doug Grout
Chief of Marine Fisheries, New Hampshire Department of Fish
and Game