



MAINE

Lobstermen's Association, Inc.

2 Storer St, Ste 203 * Kennebunk, ME 04043
207-967-4555 * 866-407-3770 * www.maine lobstermen.org

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

September 16, 2019

Dear Mr. Pentony:

The Maine Lobstermen's Association (MLA) appreciates the opportunity to submit written comments in response to the solicitation by the National Marine Fisheries Service (NMFS or the Agency) on Atlantic Large Whale Take Reduction Plan (ALWTRP) Modifications, 84 Fed. Reg. 37822 (August 2, 2019). The MLA is Maine's oldest and largest fishing industry association, dedicated to sustaining the lobster resource and the fishermen and communities that depend on it. The MLA is acutely aware that right whales are endangered and is committed to help the species recover. The MLA will support measures that are based on the best available science and appropriately designed to achieve the Potential Biological Removal (PBR) level to support the recovery of endangered right whales. To achieve this, the scope of management alternatives must accurately reflect the risk posed by each commercial fishery contributing to serious injury and mortality from entanglement.

Maine lobstermen are world leaders in conservation and stewardship. We take pride in our long-standing sustainable fishing practices which include specific measures that protect right whales. Since NMFS formed the Atlantic Large Whale Take Reduction Team (TRT) in 1997, MLA has been a full partner in working to reduce harm to large whales from entanglement in U.S. fishing gear.

While there remain many unknowns with regard to how, when and where right whales become entangled, the best available data point to clear and important facts that should drive NMFS' scoping priorities. NMFS has not utilized the best available data in setting its risk reduction target for U.S. commercial fisheries. The Agency has ignored its data on known causes of serious injury and mortality from entanglement including the significant increase in incidence of Canadian fishing gear and contribution of all commercial fisheries involved. This has resulted in an overstatement of the risk from U.S. fisheries and the erroneous assignment of responsibility for U.S. risk reduction solely to the Northeast lobster fishery. In doing so, the Agency fails to fulfill its mandate under the Marine Mammal Protection Act (MMPA) to address the entanglement risk of all commercial fisheries and will fail to achieve its mandate to recover the species. As a result, on August 30, 2019, the MLA informed NMFS that it could not support the agreement reached by the TRT.

The August 2019 Scoping Document states, "The purpose of scoping is to involve the public in developing ideas to reduce the risk of serious injury or mortality of large whales that interact with vertical lines (buoy lines) from commercial trap/pot and gillnet fishing gear." Yet the Agency has limited its proposed scope of modifications to the ALWTRP to the Northeast lobster fishery. The MLA stands ready to work with the Agency and our members

to identify measures to address the risk that the Maine lobster fishery poses to right whales. However, the MLA cannot support the Northeast lobster fishery being singled out as the sole source of entanglement risk and held accountable for the full burden of U.S. commercial fisheries risk reduction. The MLA urges NMFS to conduct further analysis of its data as outlined in MLA's August 30 letter and move forward with rules that address the full range of risk from fisheries where right whales are present.

The Role of the Maine Lobster Fishery

The right whale population increased from 295 whales in 1997 to more than 480 whales in 2010. During these years the Northeast lobster fishery has been subject to measures under the ALWTRP. The results have been positive, with a strong downward trend in the incidence of entanglement cases observed in U.S. lobster gear which decreased from eight cases prior to 2010 to only one case -- in Massachusetts lobster gear -- since then¹. Furthermore, from 2010 to 2018 larger diameter ropes, of ½" or greater, represented 79% of the gear removed from entangled right whales². According to a recent survey by Maine Department of Marine Resources (DMR), 92% of Maine lobstermen fish with smaller diameter ropes³.

Since 2009 the Maine lobster fishery has operated at its current size and scale, while reducing its footprint by removing nearly 30,000 miles of rope from the Gulf of Maine in addition to gear modifications required through the ALWTRP. Maine's coastal waters are intensely used during summer and fall not only by lobster harvesters, but by the U.S. Coast Guard, Maine Marine Patrol, recreational boaters, anglers, commercial fishermen, whale watchers, and researchers. Nevertheless, there has been only one confirmed right whale entanglement in Maine lobster gear dating back to 2002, and there are zero known serious injuries or mortalities. More than 22 years of research and observation have documented a downward trend in the presence of right whales in the waters where Maine lobstermen fish, and a reduction in documented interactions between right whales and Maine lobster gear.

The MLA undertook a careful review of entanglement data available from the Agency due to unresolved concerns with the timeliness and accuracy of information provided to TRT members and concerns over the methodology used to set the risk reduction target. Based on the MLA's review of entanglement data for the most recent five year period (2013-2017), we now understand that the only known serious injury or mortality to have occurred in U.S. fishing gear during this time did not originate from Maine.⁴ MLA's analysis revealed no known right whale serious injury or mortalities in trap/pot gear (other than Canadian snow crab gear), one known case in monofilament mesh and line (2016), and the only known U.S. mortality was likely in gillnet gear (2014).⁵

¹ Confirmed U.S. lobster entanglement cases: 1997 (1), 1998 (2), 1999 (1), 2001 (1), 2002 (2), 2009 (1), 2016 Mass (1)

² NMFS data available at

https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/19_april_2019_trt_meeting.html, link entitled "2000-2018 Right Whale Incident Data 03/19/2019"

³ Maine Department of Marine Resources

⁴ Average annual serious injury and mortality over five years are compared to PBR. The most recent five year period for which there are data is 2013-2017. E

⁵ Sharp, et al, Gross and histopathologic diagnoses from North Atlantic right whale *Eubalaena glacialis* mortalities between 2003 and 2018, *Diseases of Aquatic Organisms*, Vol 135, June 2019. See pages 9 and 20, and pages 4 and 49 in Supplement. The report states, "[b]ased on the presence of the line with float buoys along the body of the whale, the entanglement gear type was most likely gillnet".

Known Risks to Right Whales

There is strong evidence to reject NMFS' hypothesis that the Maine lobster fishery is the primary source of right whale serious injury and mortality from U.S. commercial fisheries. In fact, there is clear evidence of more significant threats facing right whales. Recent scientific work indicates that the right whale decline is driven by changing environmental conditions resulting in a dramatic shift in right whale distribution and migratory patterns.⁶ The data are clear that Canadian vessel strikes and entanglements are now the most significant cause of right whale serious injury and death because right whales are spending significantly more time in Canada's largely unregulated waters. There have been eight right whale deaths and three new entanglements in Canadian waters already in 2019. A complete shutdown of the Maine lobster fishery would not have prevented the spate of right whale deaths occurring primarily in Canada since 2016.

Recent scientific work also shows that while right whales continue to utilize U.S. waters, their distribution patterns have changed dramatically. More than half the population of right whales are now regularly sighted feeding in Massachusetts waters in and around Cape Cod Bay, and a significant new habitat has been identified south of Nantucket which has no additional protections in place. While dense aggregations of right whales continue to increase in Massachusetts waters, the number of right whales detected along the Maine coast has declined since 2010.⁷

The best available scientific evidence raises significant questions around the singular focus of NMFS' scoping priorities on the Northeast trap/pot fishery. MLA's analysis of NMFS' data from 2010 to 2018 reveals a striking hierarchy of serious injury and mortality to right whales from known human causes, with the Canadian snow crab fishery accounting for 31%, gillnet and netting gear representing 13%, unknown trap/pot gear representing 4% and U.S. trap/pot gear representing 4%. U.S. and Canadian vessel strikes account for the remaining 48%.⁸ The MLA used 2010 as the starting point for this analysis to reflect the risk to right whales since the implementation of the sinking line requirements under the ALWTRP.

NMFS did not present these and other significant data about actual risks to the right whale population to the TRT. Instead, NMFS relied on its flawed Technical Memo which singled out the Northeast lobster fishery as the most pressing risk to right whales and then assigned the full responsibility for U.S. risk reduction to this fishery.⁹ The Technical Memo misuses landings data to demonstrate an increase in effort in the Maine lobster fishery and as a proxy for increased entanglement risk. As Maine DMR noted in its October 3, 2018 letter to the Northeast Fisheries Science Center, "landings are not a proxy for effort, and have never been used as an accepted metric for increased risk of entanglement. Most importantly, the Memo cites Maine state landings data to demonstrate increased effort offshore without describing where the data apply in terms of fishing areas."

NMFS also appears to base this misplaced emphasis on the Northeast lobster fishery on a mechanistic tabulation of the amount of rope this fishery has in the water. This approach is arbitrary and not supported by scientific evidence that there is any correlation between rope volume – regardless of type or location – and harm to whales. Seeking to reduce right whale mortality and serious injury by forcing an overall reduction in the amount of rope used to deploy lobster gear, simply because it is there and can be counted, makes no more sense than searching for lost keys under a streetlamp because the light is better rather than in the parking lot where they were actually lost. Imposing overly harsh measures against lobster fishing gear that is not documented as the cause of the problem will not reduce real risk to right whales.

⁶ Meyer-Gutbrod, et al, *Global Change Biology*, 2018; Chust, et al, *ICES Journal of Marine Science*, 2013; Record, et al, *Oceanography*, 2019.

⁷ Davis et al, *Scientific Reports* 7, # 13460, 2017.

⁸ See Footnote 4.

⁹ NOAA Technical Memorandum NMFS-NE-247, September 2018.

If protecting every individual right whale is necessary in order to avoid species' extinction, NMFS must redefine its scoping priorities. MLA insists NMFS adopt a rational set of scoping priorities reflecting the decline in entanglement cases observed in U.S. lobster gear since 2010 and develop priorities that address the full range of risks to the species identified in its own data.

NMFS Must Reassess its Risk Reduction Goal

The MLA continues to reject NMFS' 60% risk reduction goal for the Maine lobster fishery because it is unsupported by documented evidence of interaction between right whales and Maine lobster gear. The MLA raised strong concerns over the basis for the risk reduction goal when NMFS pressed it on the TRT and objected to the inclusion of the Maine lobster fishery as a Category I fishery under the Marine Mammal Protection Act in the 2019 List of Fisheries.

The MLA's analysis showed that NMFS' stipulated risk reduction is unsupported by the best available data. First, NMFS incorrectly allocated the full responsibility for U.S. risk reduction to the Northeast lobster fishery, ignoring the role of other fisheries known to entangle right whales. Second, NMFS under-represented the role of Canadian fisheries in its calculations by ignoring the most recent entanglement data. Third, NMFS did not investigate trends in right whale entanglement in unknown gear. As a result, the data presented to the TRT and fishing industry overstated the share of risk attributable to the Northeast lobster fishery and downplayed the role of other gears and Canada. The consequence of NMFS' mistakes, if uncorrected, will be to ignore recent changes in the pattern of interactions between right whales and human-caused risk, which in turn will create a mismatch between risk-reduction efforts within the scope of this rulemaking and the best information available about the sources of risk to the species.

The MLA will only support risk reduction measures for the Maine lobster fishery that reflect the risk posed by this fishery, provided there is evidence that the measures likely will contribute to the goal of reducing PBR to less than 1 per year. A continued effort by NMFS to impose measures on the lobster fishery that are not supported by the best available science will not achieve the statutory goals and will be vulnerable to challenge as arbitrary and capricious.

NMFS Must Address Other Known Human Threats

Addressing the risk posed by one commercial fishery in one country will not achieve the desired result of reversing the right whale decline. In order for the right whale species to have any chance of recovery, NMFS must address all known significant threats to right whales. NMFS data show that since 2009, when the Take Reduction Plan required changes in lobster fishing practices and the U.S. ship strike plan was implemented, more right whales have been struck by U.S. ships than have been entangled in U.S. fishing gear.¹⁰ NMFS most recent report on causes of serious injury and mortality to right whales show that from 2011-2015, the average rate of serious injury and mortality in U.S. waters is 0.4 from entanglement and 0.81 from ship strikes.¹¹

NMFS must also reconsider its evaluation of other threats to right whales and their habitat such as seismic testing, offshore wind developments, and offshore aquaculture. These threats must be considered if we hope to have success in achieving long-term recovery of the species.

¹⁰ NMFS data available at

https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/19_april_2019_trt_meeting.html, link entitled "2000-2018 Right Whale Incident Data 03/19/2019"

¹¹ Serious Injury and Mortality Determinations for Baleen Whale Stocks along the Gulf of Mexico, United States East Coast, and Atlantic Canadian Provinces, 2011-2015

Social, Cultural, Operational, Safety and Economic Impacts

Maine's lobster industry has long been an integral part of Maine's culture and economy, supporting tens of thousands of jobs and hundreds of ancillary businesses. In 2018, Maine's lobster fishery generated more than \$485 million in ex-vessel revenue and was valued at nearly \$2 billion. Maine lobster represents more than 75% of the value of Maine's commercial fisheries. The future of Maine's coastal communities depend upon the continued success of the Maine lobster fishery.

The MLA rejects the management approach put forward in the Scoping Document to reduce Maine's vertical lines by 50% and require weak rope on the top half of vertical lines in Maine's federal waters. The MLA remains strongly opposed to the expansion of any Take Reduction Plan measures into Maine's exempt waters. NMFS' approach is based on a flawed risk reduction target and an arbitrary assumption that the Northeast lobster fishery is responsible for the full burden of the risk reduction.

If NMFS did move forward with the management approach described in the scoping document, it would have devastating impacts on the Maine lobster fishery and Maine's coastal economy. Given that there is no management alternative to respond to, it is impossible to identify the safety, economic and operational impacts on the fishery. The MLA will provide the initial feedback we have received from the industry and will provide more detailed feedback as the plan evolves.

In June 2019, Maine DMR held a series of industry meetings to discuss potential alternatives to achieve this goal. Such an approach would require Maine lobstermen to add significantly more traps to each trawl or increase trawl length by a lesser amount in combination with trap reductions. These meetings failed to identify a strategy to meet NMFS' goal without creating significant operational, economic, cultural and safety harms to fishermen.

Maine's diverse fleet is comprised of small vessels, many operated by students and older fishermen, typically with only the Captain aboard. Maine's medium-size vessels are fished by single operators or a small crew of up to two, while larger vessels typically operate with a small crew. The majority of Maine's lobster boats do not have the deck space or crew to handle safely the number of traps and rope necessary to fish longer trawls. Furthermore, requiring longer trawls will significantly reduce the efficiency of each lobster trap as it removes the lobsterman's ability to fish each trap strategically to achieve its full fishing potential. This translates into lower catches and lower earnings.

Our members expressed operational and safety concerns over the prospect of layering additional trawling up measures and potential trap reductions on top of the sinking line rules and trawling up measures we have already implemented. Maine lobstermen are already dealing with safety challenges, increased operational costs, increased trap loss, and fishing inefficiencies as a result of the existing sinking line rule and trawling up measures. If lobstermen are required, in addition, to deploy weak rope and add more traps to each trawl on Maine's hard bottom, each trap will become even less efficient and the risk of losing traps on Maine's hard bottom will increase. There are also significant enforcement issues that would need to be considered by Maine Marine Patrol.

The MLA supports measures to further our understanding of the species and the risks they face. These include expanded and unique gear marking for Maine, expanded harvester reporting, investment in the development of a long-term tagging device to improve data on right whale distribution, increased right whale surveillance in regulated waters, funding for long-term plankton monitoring and development of right whale habitat suitability models. The MLA does not support any whale conservation measures in Maine's exempted waters through the ALWTRP. The MLA will continue to support the state of Maine in requiring whale protection measures in Maine's exempted waters, including the addition of gear marking requirements for Maine's exempt gear.

As NOAA has stated on several occasions, given the critical status of the right whale population, protecting every individual is necessary in order to avoid extinction. NMFS is required to provide a timely and comprehensive response to address threats from all known human causes, including all commercial fisheries within the migratory range of right whales throughout the U.S. and Canada. The MLA is imploring the Agency to step up and do its job to address threats from all commercial fisheries that may threaten the recovery of right whales. In the absence of a comprehensive and timely response, the Agency cannot be successful in recovering the species.

Thank you for consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Patrice McCarron". The signature is written in a cursive, flowing style.

Patrice McCarron
Executive Director