



MAINE

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Chris Oliver, Assistant Administrator for NOAA Fisheries
National Oceanic and Atmospheric Administration
1401 Constitution Ave NW, Room 5128
Washington, DC 20230

August 30, 2019
Via Email

Dear Mr. Oliver:

I am writing to inform you that Maine's five lobster industry members of the Atlantic Large Whale Take Reduction Team (TRT) are forced to withdraw support for the near-consensus agreement reached during the April 2019 TRT meeting due to serious flaws in the data presented to the TRT and in how the process was conducted. NMFS' failure to present data fully and accurately led the TRT to an outcome that is in conflict with available data.

Substantive errors in NOAA Fisheries' (NMFS or the Agency) data and its last-minute announcement of a U.S. risk-reduction target that was fully assigned to the Northeast lobster fishery led the TRT to work with an erroneous assumption about the relative risk to North Atlantic right whales from that fishery and discount the relative risk posed by other sources.¹ As a result, the Agency's current rulemaking does not address the full scope of known human causes of decline in the species and will be insufficient to reverse the right whale population's downward trend.

Following the TRT meeting, MLA undertook a careful review of data available from the Agency, due to unresolved concerns with the timeliness and accuracy of information provided to TRT members.^{2 3} Our review revealed substantive errors in NMFS data and the omission of critical information that shows a

¹ Take Reduction Target Letter April 5, 2019, https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/06_take_reduction_target_letter_april52019.html

² MLA expressed significant concerns prior to, during and since the April 2019 meeting. *See, e.g.*, MLA letter to Michael Pentony, GARFO on 4/22/2019.

³ MLA analyzed data provided to the TRT, *2000-2018 Right Whale Incident Data*, located at https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/2000-2018_right_whale_incident_data_3_19_19v.xlsx

“distinctly different understanding of relative risk” posed by Northeast lobster fishing gear to right whales.⁴

Specifically, and as discussed in more detail below, the NMFS data contained errors that significantly impact our understanding of human causes of serious injury and mortality to right whales. The corrected data show that gillnet gear and netting play a much larger role in entanglement cases than was previously understood. Further, NMFS’ failure to investigate a pronounced increase in observations of unknown gear, particularly the increase in cases since 2015 with no gear present, leaves significant unanswered questions about the responsibility of Canadian fisheries for these entanglements. As a result, the data presented to the TRT and fishing industry erroneously overstate the share properly attributable to the Northeast lobster fishery and downplay the role of other gears in right whale serious injury and mortality.

The MLA’s analysis found that gillnet and netting gear were the most prevalent gear (other than Canadian snow crab gear), and the Northeast lobster fishery (and the Maine lobster fishery in particular) were the least prevalent in right whale entanglements from known causes. This finding means the 60% conservation target stipulated by the Agency and allocated solely to the Northeast lobster fishery is unsupported by the best available data, and any package of remedial measures designed to meet it cannot credibly generate the conservation benefits anticipated. At a minimum, the U.S. risk reduction target must be shared amongst the fisheries contributing to entanglement.

Furthermore, the MLA’s findings reveal evidence — also not presented to the TRT — that the current Take Reduction Plan is working. Since the plan was amended in 2009 and 2014, there has been a strong downward trend in the incidence of entanglement cases involving U.S. lobster gear, from seven cases prior to 2010 to only one case – a non-serious injury in Massachusetts lobster gear – since then. The data show only one confirmed right whale entanglement in Maine lobster gear, which dates back to 2002, with no known serious injuries or mortalities attributable to that gear. NMFS’ data also show that ropes removed from right whales in recent years are not representative of ropes used in Maine’s lobster fishery.⁵

Based on these findings, the MLA has grown even more concerned that the TRT deliberations were conducted without sufficient data from the agency to inform its efforts to select appropriate mitigation measures that address risk.⁶ In short, the rules proposed are misaligned and too narrow in scope to effectively protect right whales.

MLA’s findings further reinforce our agreement with Governor Mills’ expressed concern over the “disturbing lack of evidence connecting the Maine lobster industry to recent right whale deaths” and her directive to Commissioner Keliher “to evaluate a risk reduction target for Maine that is commensurate to any actual risk posed by the Maine lobster industry.”

⁴ Page 7 of the draft April 2019 TRT meeting summary states, “A broad-based recommendation that the Agency/Team revisit the Team’s recommendations if revisions to the model suggest: (1) a distinctly different understanding of relative risk....”

⁵ Since 2010, larger diameter ropes of ½” or greater represent 79% of the gear removed from entangled whales. Maine DMR research has determined that 92% of Maine lobstermen fish with smaller diameter ropes.

⁶ MLA scoping statement presented at NMFS Scoping Meetings on August 12, 13, 14 and 15.

Given the significance of the deficiencies identified, the MLA and Maine's five lobster industry TRT members can no longer adhere to the outcome of the April 2019 TRT meeting. The MLA cannot responsibly recommend its members undertake changes in fishing practices when whales may continue to become entangled in fishing gear, such as gillnets, which are not included in the current rulemaking. The MLA stands ready to implement new conservation measures in the Maine lobster fishery to protect right whales but must have assurances that the Agency is adequately addressing all known human-caused threats to right whales and that the science indicates proposed conservation measures are likely to further the goal of species recovery.

The MLA calls for the Agency to publish a thorough analysis of its own data regarding known sources of entanglement risk to right whales and conduct a new analysis of the risk reduction target, including the new information identified by the MLA. The Agency should then re-convene the TRT so it can appropriately advise the Agency on effective management approaches to aid in the species recovery based on a comprehensive understanding of known entanglement threats.

The remainder of this letter will identify specific concerns that need to be addressed in order to achieve that goal.

1. *NMFS' Technical Memorandum Erroneously Assumed the Northeast Lobster Fishery is the Most Significant Human Cause of Serious Injury and Mortality*

In September 2018, NMFS issued a Technical Memorandum entitled "North Atlantic Right Whales – Evaluating their Recovery Challenges in 2018".⁷ As MLA articulated during the October 2018 TRT meeting, the memo wrongly forced TRT members to presume, for purposes of their deliberations, that the Northeast lobster fishery presents the most significant human cause of right whale serious injury and mortality without evidence to support that assumption.

NMFS' reliance on the September 2018 Technical Memo distracted the Agency from fully considering the best available data from its entanglement database. NMFS did not adequately analyze its data on human-caused serious injury and mortality so the TRT did not have the benefit of reliable information to accomplish its task. NMFS' failure to present data fully and accurately led the TRT to an outcome that is in conflict with available data.

Maine DMR wrote to the Northeast Fisheries Science Center (NEFSC) on October 3, 2018 stating its concern that the memo is "based on conjecture, without sound scientific basis" and that "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".⁸ To date, the memo has not been withdrawn or substantively updated and thus remains a source of misinformation on the challenges facing North Atlantic right whales. The MLA urges NMFS to withdraw the technical memo and conduct a thorough, accurate review of data on known human causes of serious injury and mortality.

NMFS must also correct its presentation of data on entangled right whales. Since the release of the technical memo, NMFS has consistently implied that serious injury and mortality from the Northeast lobster fishery exceeds Potential Biological Removal (PBR), even though this assertion is not supported by the data. The Agency has repeatedly – at the TRT and elsewhere – presented a graph of

⁷ NOAA Technical Memorandum NMFS-NE-247, September 2018.

⁸ Maine DMR letter to Dr. Jon Hare, NEFSC on October 3, 2018.

entanglements first sighted in U.S. waters as *de facto* evidence that U.S. fishing entanglements exceed PBR.⁹ Given that the rulemaking process addresses only the Northeast lobster fishery, the public assumes these entanglements result from that fishery. Further, it is well understood that the initial sighting location of an entangled whale is not indicative of where an entanglement occurred. For example, of the 16 entanglements confirmed in Canadian fishing gear since 2014, four were first sighted in U.S. waters. NMFS also continues to present a misleading map from the technical memo depicting cases where the location of the entangling fishing gear is known.¹⁰ This includes 10 entanglement cases in U.S. lobster gear, eight of which occurred prior to the 2009 and 2014 amendments to the Take Reduction Plan. The two cases since then were in Massachusetts lobster gear and were successfully disentangled. In fact, other than two cases from Canada, none of the entanglements depicted resulted in right whale serious injuries or mortalities.

The cumulative result of misinformation in the technical memo and NMFS' other data presentations was to create the erroneous inference that the Northeast lobster fishery is the most significant threat to right whales as the basis for the TRT deliberations. Because of this error, the TRT decision-making process was not based on data most relevant to the task of selecting management measures appropriate to address risk.

2. *NMFS' Stipulated 60% Risk Reduction Target is Inconsistent with its Own Data and was Imposed Without Consultation with the TRT*

The MLA supports the development of a risk reduction target because it is necessary to gauge the effectiveness of proposed management measures intended to aid in the recovery of right whales. Given the high level of uncertainty surrounding sources of human-caused right whale serious injury and mortality, an effective risk reduction target must be informed by the best available data. NMFS has not acted in accordance with these principles.

On April 5, 2018, NOAA Fisheries issued a press release to TRT members stating “we believe that to achieve this goal [to reduce right whale serious injury and mortality to below PBR], mortalities and serious injuries in U.S. fisheries will likely need to be reduced by 60 to 80% from current levels.”¹¹ The Agency provided neither documentation on the data and methodology used to calculate the risk reduction goal nor an opportunity for the TRT to offer input on the target.

The MLA — and other members of the TRT — raised questions with the Agency on the assumptions used to set this risk reduction target.^{12 13} Despite its initial statement that “mortalities and serious injuries in U.S. fisheries will likely need to be reduced by 60 to 80% from current levels”(emphasis

⁹ NMFS has presented this information on multiple occasions to the New England Fishery Management Council, Atlantic States Marine Fisheries Commission, Take Reduction Team, August 2019 scoping meetings, and others. See e.g. in Appendix 9.

¹⁰ Ibid.

¹¹ *Take Reduction Target Letter April 5, 2019* is located at https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/06_take_reduction_target_letter_april52019.html

¹² MLA email to M Asaro and C Coogan, GARFO on 4/3 /2019; MLA email to M Asaro and C Coogan, GARFO on 4/4/2019 and response on 4/17/2019.

¹³ For similar reasons, the MLA also 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. See, e.g., MLA comments to Shannon Bettridge on 11/23/2018 in response to 83 FR 53422, October 23, 2018.

added), the Agency declined to engage in dialogue or entertain input to revise the target. NMFS' only explanation of the goal appears in an email responding to MLA's questions, which NMFS then sent to the TRT.¹⁴

In order for whale conservation measures to be effective, the risk reduction target must be derived from review of data showing the impact of all fisheries known to contribute to risk and must accurately reflect the risk posed by each fishery. The best way to establish such a target is not to adopt it by fiat and press release, but rather to develop it through a collaborative process with the Agency and members of the TRT using the best available data on all involved fisheries.

Based on MLA's review of the data, the Agency's designated risk reduction target has several significant flaws.

1. NMFS inappropriately assigned the full responsibility for the U.S. risk reduction to the Northeast lobster fishery, ignoring the risk posed by other U.S. fixed gear fisheries, including gillnets and trap/pot fisheries in the mid- Atlantic and south-Atlantic.
2. NMFS incongruously apportions serious injury and mortality from unknown gear equally between the U.S. and Canada. The Agency ignores known serious injury and mortality rates for U.S. and Canadian fisheries when apportioning these to each country. Further, NMFS assigns full responsibility for the U.S. portion of these to the Northeast lobster fishery, ignoring the risk posed by other U.S. fixed gear fisheries.
3. NMFS did not conduct an analysis of trends in serious injury and mortality from unknown gear, such as the recent increase in cases with no gear present, to inform its allocation of these to each fishery and country.

If risk is not effectively addressed where it occurs, the U.S. management plan cannot effectively recover the species.

In order to establish a target based on the best available data and evidence, NMFS must evaluate the relative risk from all known causes of harm, taking into account what is known about entanglement. MLA's analysis of NMFS' data (2010-2018) 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%. There are no known cases involving Northeast lobster gear.¹⁵

A significant challenge in reducing entanglement risk is how to address the many entanglement cases where the origin of the gear is not known. While reliance on assumptions remains necessary, these assumptions must be informed by the best available data. Consideration of known causes of serious injury and mortality and deeper analysis of trends in unknown gear must be paramount considerations. The MLA identified a pronounced and increasing trend in NMFS' data on gear of unknown origin, with the proportion of cases with no gear present increasing significantly beginning in 2015.¹⁶ This is

¹⁴ NMFS email to TRT on 4/18/2019.

¹⁵ See graph of all known human causes in Appendix 15.

¹⁶ See graph of Entanglement Serious Injury and Mortality, with unknown gear broken out to show cases with no gear present in Appendix 16.

coincident with the shift in large numbers of right whales to the Gulf of St. Lawrence and the significant increase in the incidence of right whale entanglements in Canadian snow crab gear.¹⁷

Under NMFS' approach, this significant spike in unknown gear incidents remains unexplained and is arbitrarily split equally between the U.S. and Canada, with the U. S. portion attributed exclusively to the lobster fishery. NMFS has failed to provide a rational explanation for this split, which over-weights the contribution of U.S. gear during a time when whales are known to have spent increasing periods in Canadian waters and virtually all entanglements were known to be from Canadian gear.

The result is that NMFS's risk reduction target will not achieve its intended result to reverse the right whale population decline. The Agency must reconsider this goal to address its flawed assumptions and omission of consideration of risk posed by other U.S. fixed gear fisheries.

The MLA understands there are data challenges that complicate assignment of risk associated with unknown gear. To help close the knowledge gap, the MLA proposes, for its part, to expand and uniquely mark Maine lobster fishing gear for Maine's lobster fishery and to introduce gear marking in Maine's exempted waters. The MLA urges NMFS to pursue a similar strategy in other fisheries so the Agency and the TRT will have the benefit of best available information on the origin of unknown gear.

3. NMFS data contained substantive errors which render the Agency's management priorities flawed

In its review of NMFS' data, MLA noted two cases with substantive errors that led the TRT to conduct its work without an accurate understanding of the role of Northeast lobster fishery and other gears in right whale serious injury and mortality.

Right whale 3405 (NMFS E44-16), which was found entangled in 2016, was determined to have been entangled in monofilament mesh and line of unknown origin. However, the pro-rated serious injury (0.75) was attributed in the 2018 right whale stock assessment to unknown gear and, therefore, is not accurately represented in NMFS' data. After persistent requests by MLA, this error was acknowledged by the Northeast Fisheries Science Center (NEFSC) on August 15, 2019, nearly four months after the TRT meeting.¹⁸

NMFS' data also incorrectly categorizes a mortality case involving the floating carcass of an unknown right whale (NMFS E22-14) found in 2014. The whale was determined to have perished due to entrapment in fishing gear. Investigation of this case revealed that the stationary position of the whale, 36 nm south of Nantucket, and the fresh nature of the carcass led NMFS to determine that it was entangled in unknown U.S. fishing gear. Questioning by MLA confirmed that these circumstances rule out Maine as a source of the entangling gear.¹⁹ The necropsy findings recently published in *Diseases of*

¹⁷ See <https://www.nefsc.noaa.gov/psb/surveys/MapperiframeWithText.html>; See table of increase in Canadian snow crab entanglements and 2014 to 2019 Gulf of St. Lawrence sightings charts in Appendix 17.

¹⁸ Emails from MLA to D Morin (GARFO) and A Henry (NEFSC) response to MLA on 8/15/2019.

¹⁹ Emails from D Morin (GARFO) to MLA on 8/15/2019 and A Henry (NEFSC) to MLA on 8/13/2019.

Aquatic Organisms concluded that “[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”.^{20 21}

This means that the only documented serious injury or mortality known to have occurred in U.S. fishing gear did not originate from Maine and likely resulted from gillnet gear, not lobster gear. In view of these findings, the MLA asks NMFS to reconsider the gear designation in this case due to the conflicting determinations between NMFS and the necropsy results on the entangling gear. The MLA concurs with the necropsy team, based on the photos of the right whale and the gear located at the entanglement site, that the entanglement gear was most likely gillnet.

These findings fundamentally change our understanding of the relative role of gillnet and trap/pot gear in right whale serious injury and mortality and demonstrate that the TRT’s advice does not address the primary cause of documented risk arising from U.S. fishing gear.

4. *NMFS Used a “Decision Support Tool,” Still in Development and Not Peer-reviewed, as the Basis of the TRT’s Recommendations*

The MLA fully supports the use of a model to assess the risk of right whale entanglement, spatially and temporally, to guide the development of effective management approaches to protect right whales. Such a tool must adequately characterize fisheries that have the potential to interact with right whales, the unique threat posed by varying gear types and configurations, and whale density and behavior. The NEFSC has done an admirable job in developing a decision support tool, however, the tool is still under development and is not yet ready to be used for reliable quantitative assessment of the effectiveness of proposed management measures.

NMFS announced its nascent decision support tool just one week before the April 2019 TRT meeting.²² This resulted in confusion among TRT members and inadequate time to understand the data and assumptions that serve as the basis for the tool. TRT members were required to use the tool to assess the effectiveness of management scenarios in achieving the stipulated minimum 60% risk reduction and, at the same time, were told to use the model’s output only as guidance.

During the TRT meeting, it became clear that while the tool holds promise to assess right whale management approaches, it has many limitations. The tool contains three inputs: fishing effort data, whale density data and an assessment of the risk of varying lobster gear, which are given equal weight. TRT members voiced many concerns with each of these components, which are contained in the draft meeting summary of the TRT meeting.

The MLA believes the data and design of the decision support tool must be significantly improved. The whale model portion of the tool was developed for U.S. Navy applications and does not adequately characterize whale density in important fishing areas. Since 2010, more than half the right whale

²⁰ 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.

²¹ See email from M Moore (WHOI) to MLA and necropsy timeline and information on 8/21/2019.

²² The decision support tool was introduced to the TRT on April 16, 2019 via a two hour webinar. Materials located at:

https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/02_presentation_on_risk_reduction_tool.html

population has been regularly sighted feeding in Massachusetts in and around Cape Cod Bay and in a significant new habitat south of Nantucket. As dense aggregations of right whales have increased in Massachusetts waters, the number of right whales detected along the Maine coast has declined, facts not adequately captured in the model's inputs. In fact, the whale model does not include data on the newly identified habitat around Nantucket, contains limited whale data on the Gulf of Maine and does not include any whale density data for coastal Maine. The tool cannot accurately reflect the risk of various fisheries to right whales unless these data issues are resolved.²³

Furthermore, the whale model does not allow whale distribution patterns to be considered by year, particularly before and after 2010, when whale distribution patterns shifted significantly. This masks the risk to right whales in current high use habitats where they did not have a significant presence prior to 2010. NMFS has stated that this issue will be addressed in October 2019, but it will not be available in time to analyze options in the Draft Environmental Impact Statement. The whale model also does not weight the risk of an entanglement based on the whale's behavior, such as feeding versus transiting, an important consideration in assessing entanglement risk. The MLA is concerned that without addressing these deficiencies, the decision support tool cannot effectively assess proposed management approaches. Due to these and other concerns, the TRT has asked that the tool be peer-reviewed before it is used to assess options, and further that the TRT have input into the Terms of Reference.

In developing the decision support tool, the NEFSC developed a gear "severity index" to determine the risk of various gear types that may be encountered by a right whale. NMFS developed this index by polling TRT members on the risk of certain lobster gear configurations.²⁴ The index accounts for one-third of the assessment tool input. TRT members raised strong concerns with this approach, in part because the results of the exercise significantly impact the assessment of management approaches such as weak rope.

The MLA remains concerned that the responses to the poll were analyzed by caucus, resulting in a lower weight to votes from fishing industry members, who are the most knowledgeable about fishing gear, and higher weights to votes from all other TRT members.²⁵ While NOAA Fisheries has pledged to revisit this methodology, the TRT has not received any updates on its progress. The MLA is also concerned that the severity index considers only lobster gear.

NMFS continues to publish broadly the preliminary results of the tool's assessment of management scenarios presented to the TRT as the basis for developing rules, even though it has conceded that the tool remains under development and has not been peer reviewed.²⁶ This has created confusion among industry members about the effectiveness of management measures proposed by various jurisdictions

²³ See

<https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/narwdensitymodel.mp4> and https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/17_model_documentation.html

²⁴ See email from C Coogan on 4/7/2019 regarding the development of the severity index.

²⁵ Maine's TRT members requested data on the number of respondents in each caucus. While data was not provided, S Hayes (NEFSC) stated during the TRT meeting that the fishing caucus had roughly double the number of respondents compared to all other caucuses which were equal. Also see slides 10 and 12 in https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/Meeting%20Materials/overview_of_relative_risk_reduction_decision_support_tool_04_23_2018.pdf.

²⁶ See e.g., NOAA Fisheries Navigator, June 2019 at http://fish-news.com/cfn/wp-content/uploads/2019/08/NOAA-Navigator-6_19-%C6%92.pdf

as the industry weighs in on the scope of rulemaking. MLA objects to the use of the model's assessment results until the infirmities identified above have been resolved.

5. NOAA Fisheries Asserted Pressure to Reach Consensus to Avert Threat of a Jeopardy Finding in Pending Biological Opinion

TRT members were pressured to reach a consensus agreement for measures that address risk to the Northeast lobster fishery under a threat that the April 2019 TRT meeting would provide the only opportunity for members to guide right whale risk reduction measures due to the pending Biological Opinion for the American Lobster Fishery. Based on our data analysis, the gillnet fishery is a significant source of risk and should be required to identify management measures to avert a jeopardy finding in its pending Biological Opinion.

The TRT did not discuss this because NMFS has effectively placed the full burden of the U.S. risk reduction on the Northeast lobster fishery. It has further failed to adequately review and discuss other human-based causes of right whale serious injury and mortality with the TRT. The MLA strongly urges NMFS' Section 7 team undertaking the Biological Opinions for the American Lobster and Batched Fisheries to incorporate the new data discovered by MLA into the ongoing analysis.

6. The Right Whale Decline is Part of a Larger Problem

NMFS' data and other recent scientific work indicate that the right whale population decline, including its deteriorating health and reproductive success, is driven by changing environmental conditions, resulting in a dramatic shift in right whale distribution and migratory patterns.²⁷

The data are clear that Canadian entanglements and vessel strikes 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 this year.²⁸

The MLA was disturbed to learn 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. According to the 2018 right whale stock assessment, serious injury and mortality from U.S. ship strikes was 0.81 and U.S. entanglement was 0.4. In fact, U.S. (31%) and Canadian (17%) vessel strikes now account for 48% of known human-caused serious injury and mortality (2010-2018).²⁹ NMFS has not acknowledged the ongoing contribution of ship strikes to right whale serious injury and mortality, but instead has brought attention only on the Northeast lobster fishery.³⁰ The MLA is not aware of any planned rulemaking to address the risk to right whales due to U.S. ship strikes and urges the Agency to address this issue promptly.

²⁷ Meyer-Gutbrod, et al, *Global Change Biology*, 2018; Chust, et al, *ICES Journal of Marine Science*, 2013; Record, et al, *Oceanography*, 2019.

²⁸ See 2019 Canadian Right Whale Incidents.

²⁹ See Summary of U.S. Ship Strike Incidents.

³⁰ See e.g., NMFS slide from 8/12/2019 Machias, ME scoping meeting.

The MLA is also concerned that NMFS is not objecting to other threats to right whales and their habitat such as seismic testing, offshore wind developments and offshore aquaculture.³¹ MLA believes it is arbitrary to focus conservation efforts so disproportionately on the lobster fishery, which has a demonstrated track record of implementing measures to protect endangered whales, while taking no action with respect to emerging threats to right whales and their habitat. These threats must be considered if we hope to have success in achieving long-term recovery of the species. If they are not addressed, the actions taken by fishermen will have no chance of success.

7. Moving Forward

The MLA remains committed to do its part to aid in the recovery of 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. The MLA strongly supports measures to further our understanding of right whales and the risks they face. These measures include expanded and unique gear marking for Maine, 100% harvester reporting, vessel monitoring in federal waters, investment in the development of a tagging device to improve data on right whale distribution, increased right whale surveillance in regulated waters, stable funding for long-term plankton monitoring and development of right whale habitat suitability models.

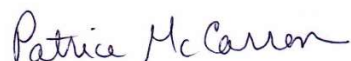
While the MLA supports requiring gear marking on vertical lines in Maine's exempted waters, our support is conditional on it being implemented by the state of Maine. The MLA will not support including this measure as part of the Take Reduction Plan as we remain strongly opposed to the expansion of any Take Reduction Plan measures into Maine's exempt waters.

The MLA stands ready to work with NMFS, the TRT, the state of Maine and our members to identify measures that address the actual risk that the Maine lobster fishery poses to right whales. For the amendments to the Take Reduction Plan to be effective, the process must be based on sound science and carefully vetted data analysis that identifies actual risk to endangered whales.

Maine cannot stem the decline of the right whale population on its own. Maine's lobstermen believe it is past time for all stakeholders in the effort to ensure a thriving future for right whales to examine and address the multiple stressors and threats to the species that occur outside of our waters.

Thank you.

Sincerely,



Patrice McCarron
Executive Director

Cc:

President Donald J. Trump (via Alexander Willette, Executive Office of the President)
Senator Susan Collins (via Cameron O'Brien)

³¹ See e.g., C Oliver testimony before Committee on Natural Resources, Subcommittee on Water, Oceans and Wildlife, U.S. House of Representatives on 3/19/2019.

Senator Angus King (via Peter Benoit)
Representative Chellie Pingree (via Kimber Colton and Rhiannon Hamson)
Representative Jared Golden (via Eric Kanter)
Governor Janet Mills (via Thomas Abello)
Patrick Keliher, Commissioner, Maine Department of Marine Resources
Stuart Levenbach, Chief of Staff, NOAA
Sam Rauch, Deputy Assistant Administrator for Regulatory Programs, NOAA Fisheries
Donna Wieting, Director, Office of Protected Resources, NOAA Fisheries
Catherine Marzin, Deputy Director, Office of Protected Resources, NOAA Fisheries
Shannon Bettridge, Chief, Marine Mammals and Sea Turtles, Office of Protected Resources, NOAA Fisheries
Angela Somma, Chief, Endangered Species Conservation, Office of Protected Resources, NOAA Fisheries
Michael Pentony, Regional Administrator, GARFO
Mark Murray-Brown, Section 7 Coordinator, GARFO
Michael Asaro, Marine Mammal and Sea Turtle Branch Chief, GARFO
Colleen Coogan, Marine Mammal Take Reduction Team Coordinator, GARFO
Atlantic Large Whale Take Reduction Team members (via Colleen Coogan, GARFO)