NMFS received 81 letters from commenters on the Draft Environmental Impact Statement (DEIS) via letter, fax, or email. Additionally, approximately 25,000 of one type of form letter (labeled "form letter A" in the below), and 73 of another type of form letter (labeled "form letter B" in the below) of similar content were received on the DEIS via letter or email. Modifications were made to the form letters; therefore, examples of each of these are included. A summary of all comments received on the DEIS (both written and aural) are included in Chapter 1. Copies of the written comments on the DEIS are included below. Transcripts on the public hearings are available upon request.

Subject: eastern Maine
Date: Tue, 5 Apr 2005 19:36:47 -0400
From: Benjamin Doliber <bdoliber@midmaine.com>
To: whaledeis.comments@noaa.gov

My name is Ben Doliber, a commercial fisherman for 45 years, who has fished from eastern Maine to Georges Bank. The ocean bottom in down east Maine is like an underwater mountain range as opposed to the flatter bottom in western Maine and Mass. Bay. The lobster fisherman in eastern Maine cannot fish without floating rope on the lobster gear! The last whale hunt for right-whales was back in 1933. In the years before the early 60's lobster ropes were primarily sisal that had a life expetantcy of one year (very weak) and the whales still did not multiply, so sure looks like the lobster industry had little effect on the right whales. We as lobster-fisherman feel as though we have done our part and now it's your responsibility to go after the ship owners and the ocean polluters. Thank You Ben Doliber Swans Island Maine

Subject: ALWTRP DEIS
Date: Thu, 7 Apr 2005 16:02:48 +0000
From: <joshuaj@tds.net>
To: <whaledeis.comments@noaa.gov>

As a lobsterman off the coast of downeast Maine
(Swans Island), I believe we should stay with current ALWTRP regulations (alternative 1). We absolutely can not fish in these particular fishing grounds without floating or poly rope due to the rocky, jagged bottom here in downeast Maine. I think we have been very cooperative and already made any necessary gear modifications to prevent any problems. The next step would be to look where the real problem lies. Lets start cracking down on tankers, freighters, large ships, ocean liners. Look at statistics. What is the leading cause of serious injury and death here.
Thank you for the opportunity to express my opinion,
JOSHUA APPLIN joshuaj@tds.net

Subject: "ALWTRP DEIS"
Date: Sat, 9 Apr 2005 07:57:58 -0400
From: "Ward Family" <djward@gwi.net>
To: <whaledeis.comments@noaa.gov>

I am against the proposal of lobstermen going to all sink rope. It will be near impossible for us to maintain our gear, not to mention the amount of "ghost" gear that it will create. As I read the May issue of National Fisherman, on page 15 there is an article about a bill (The Marine Debris and reduction Act ((S-362)). This says there will be ten million dollars set aside to research marine trash, of which lost lobster traps are considered. Also if you go to a maximum of four traps on a vertical line you will end up with more vertical lines in the water. I fish ten and twenty trap trawls in the EEZ, if I have to go to four trap trawls, the I would put approximately forty to sixty more vertical lines in myself.
Also the line of exemption should run along the three mile boundary.
Thank you for your time.

Duane Ward II
Cape Porpoise, Maine
F/V JADE 665324
Permit # 211442

Subject: "ALWTRP DEIS"
Date: Thu, 14 Apr 2005 14:52:00 -0700
From: "townofjonesport" <townofjonesport@acadia.net>
To: "Mary" <whaledeis.comments@noaa.gov>

Dear Mary & whom ever it may concern;

I am very concerned about the whale proofing measures that are being /or going to be required of Maine Lobster Fishermen. In my area of fishing whales are not seen inside the three mile limit. Before whale proofing is imposed on us, much more study needs to be done. Just east of Schoodic Point to the Canadian border whales have not been entangled in fishing gear. Matter of fact, whales have not been sited inside the 3 mile limit within that area.

I believe more whales are being hurt by ships outside the 3 miles running into them than by rope and bouys belonging to fishermen.

Milton R. Merchant Lobster License # 72063

Subject:
Date: Sun, 17 Apr 2005 13:52:10 -0400
From: "Kelley" <sea.bug1@verizon.net>
To: <whaledeis.comments@noaa.gov>

NMFS,

After fishing and lobstering for 35yrs. a few of us that fish inshore for lobsters would like to go out on a whale watch. Having spent considerable time and money to avoid a whale we've never seen we would like the National Marine Fisheries service to pay for the tickets.

I currently am in the process of switching all my buoy line and ground line to sink line. By the time the rest of the lobsterman change in 2008 I'll be replacing mine again. So much for being ahead of the game!! More like hurry up and wait. The bottom off Rockport is shoal with many obstacles; breakwater, dry salvages and several wrecks. Buoy lines are changed for different depths and often coiled under the buoy in shoal water.

If a whale comes in these waters his first problem will be that it will hit bottom!! These weak links in shoal water are not only unnecessary they are a problem when changing lines.

In the fall when gear is moved outside to 40-50 fathoms maybe, inside no!!

Are the recreational fisherman who haul traps in sailboats and canoe's exempt of these rules? If so why?

Surely these right whales don't discriminate!! Are the children safe?

Will the kayakers be swamped by breaching right whales?

Perhaps the beaches should be closed. Of course that would be ridiculous. That would be going to far.

You know what I mean?

(4) four tickets would be fine for now. If there are any changes we'll notify you by mail. If you are unable to comply we'll declare A; N.W.W. (no whale watch)

If it's a financial problem we'll declare A; U.T.P. (unable to pay)

Please send tickets or a brief explanation as to why tickets cannot be provided to:

Mike Anderson
F/V Sweden
Rockport, Ma. 01966
sea.bug1@verizon.net

Subject: ALWTRP DEIS
Date: Thu, 14 Apr 2005 17:36:45 -0400
From: elliott thomas <ethomas1@maine.rr.com>
To: whaledeis.comments@noaa.gov

My name is Elliott Thomas. I am a lobster fisherman from Yarmouth, Maine, and the Maine Lobster Management Policy Council (Zone Council) representative for District 5 of Zone F, representing fishermen from Yarmouth and Cousins and Little John Islands.

I would like to support the selection of Alternative 5 in the DEIS. I strongly support the concept of exempted areas, but would be in favor of modification of these areas to at least slightly increase them. In particular, the Casco Bay exempted area does not run from headland to headland, but follows the COLREGS line. A headland to headland line, from Cape Small to Cape Elizabeth and Two Lights rather than to Portland Head Light, would cover the same type of bottom and similar fishing patterns. Of course, if this line were pushed out even further to the lines proposed by the Maine Department of Marine Resources, it would be even better for the fisherman of my Zone.

Although marking pot warp every 10 fathoms appears to be an easy concept, it does not take into account the fact that lobster fishermen are constantly removing and replacing sections of their ground and end lines due to chafing and other damage (e.g., lines being cut off, lengthened or shortened as gear is moved, etc.). At sea, our ability to mark is severely limited by wet warp, temperature, sea state, etc. Marking lines under these conditions can be hazardous and very time consuming. If marking the lines had a direct effect saving the life of a whale, we would more likely put up with the hazards and time loss, but the marking does not do this.

One item that confuses us is the strength of the weak links. We understand that off-shore gear is heavier and the fishermen there use bigger flotation devices. However, we have to deal with heavy pleasure boat traffic, and the weak links are easily broken when a buoy gets tangled on a sailboat rudder and our straps are tangled with other fishermen's gear. It is often hard to know if other fishermen's gear is still marked at the surface when we get tangled, and it is illegal for us to take it aboard to figure it out. If a whale can break a 1600 pound link offshore, it can certainly break a 1600 pound link inshore.

I noticed in wading through the DEIS that there was some discussion regarding considering limiting the end lines to one per trawl, especially for four traps or less, to reduce vertical lines in the water column. In the area where we fish, the pleasure boat traffic is so dense that we regularly lose about 10% or more of our buoys. The trap density is high enough in some popular fishing areas that dragging for lost gear is impossible, and often sailboats will tow our trawls some distance before the warp parts. I think that should the number of end lines per trawl, especially those more than four traps in length, the number of end lines would increase in some areas as trawl lengths are shortened to minimize losses.

There are many inshore areas where fishing is nearly impossible without float rope due to bottom conditions. Sink rope gets tangled in the rocks and gear loss is high. Neutrally buoyant line chafes as it moves across the bottom with the tides and currents. The loss of ability to use float rope will seriously impact many fishermen in Maine.

If I interpret what I read correctly, right whale losses or serious injuries due to entanglements are split evenly between Canada and the United States. NMFS should work hard to get Canada to regulations that would protect whales in its waters, as the mortality and entanglement is similar in Canada, and the whales do not recognize boundaries, but are an international species.

We strongly support research into whale feeding habits (Do they feed on rocky bottom?), rope research (neutrally buoyant, low-profile), and location of feeding areas.

Respectfully Submitted

Elliott Thomas
F/V Tiffany T
45 Ledge Road
Yarmouth, Maine 04096

207.846.6201

Subject: public comment on federal register of 3/23/05 vol 70 no 55 pg l4656
Date: Sun, 27 Mar 2005 15:42:19 EST
From: Bk1492@aol.com
To: whaledeis.comments@noaa.gov, rodney.frelinghuysen@mail.house.gov
CC: info@wdc.greenpeace.org, legislation@hsus.org

usdoc noaa id 03l105F killing of marine mammals when commercial fishing
atlantic large whale take reduction plan regs

i have questions on the deis and want the lives of whales saved. what is the schedule of hearings where the public can comment on u.s. whale killing regulations?

i hope you will come to large cities to get views of those american cities, as well as commercial fishing villages in order to avoid biased opinions from commercial fishermen who have been killing whales with abandon.

b. sachau
15 elm st
florham park nj 07932

Subject: public comment on federal register of 3/14/05 vol 70 no 48 pg 12446
Date: Mon, 14 Mar 2005 18:51:07 EST
From: Bk1492@aol.com
To: whaledeis.comments@noaa.gov, rodney.frelinghuysen@mail.house.gov, cgutierrez@doc.gov
CC: info@peta.org, info@ddal.org

us doc noaa id 030205B
killing of whales

it is never "incidental" to kill a whale. never.

there is no need or inclination by the public to allow killing of whales.

i note that all meetings to take testimony from the public on this matter are held in commercial fishing villages. i guess that is so whale killers can be present and testify in a biased way. i think some of these meetings should be held in new york city or morristown nj so the majority population who want whales saved and alive can attend.

your choice of meeting sites is purposefully set to get a biased public out. that is absolutely wrong and certainly not democratic. it is a saddam hussein tactic.

b. sachau
15 elm st
florham park nj 07932

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18 Old Dover Road
Newington, NH 03801
(603) 431-3170
Fax (603) 431-3496

May 14, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
NOAA Fisheries, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan;

I am writing to comment on the Draft Environmental Impact Statement (DEIS) for the Large Whale Take Reduction Plan.

Given the Alternatives proposed in the DEIS, I believe Preferred Alternative 6 makes the most sense for continuing efforts to reduce large whale entanglements in fishing gear. While not a perfect solution, it addresses some of the industry's operational concerns and includes a larger SAM area for the environmentalists.

On the positive side, getting the second endline back in the SAM area is critical. It has been ludicrous to be limited to one endline for the entire three-month period while the supposedly higher-risk DAM areas allow two. As I've reiterated many times in the past, using only one endline is a real safety concern for the fishermen in our fleet so the sooner it stops the better.

The 1500 pound weak link on flotation devices has, for the most part, proven workable during periods of good weather. However, during winter testing we have lost considerably more surface gear due to high winds and seas, making the year-round proposal unrealistic. Leaving the requirement for 2000 pound weak links in place during the six months of hard weather typically encountered from September through March will reduce the amount of grapneling required to recover lost traps and line. Grapneling is always hazardous at best and becomes downright dangerous during the stormy weather encountered in winter months. Ghost gear and line will also be minimized if the stronger weak links stay in place.

The proposed phase-in period for all negatively buoyant groundline outside the SAM areas by 2008 is also unrealistic. It will be virtually impossible for the industry to comply with that requirement due to 1; the financial burden and 2; the lack of suitable line presently available. Rope is sold by the pound so negatively buoyant line is, by definition, more expensive per length than the floating line currently in use. A four-year phase-in period will allow fishermen to spread the cost of groundlines over a longer time frame, thus easing the considerable replacement expenditure. Furthermore, most manufacturers have been hesitant to begin production of the line until they are sure that fishermen will buy it. Fishermen won't buy it until they are sure that quality rope is being produced and that it will meet

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18 Old Dover Road
Newington, NH 03801
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NMFS standards for negative buoyancy. Additional time for these companies to set standards and ramp up production will ensure that the fishing industry will have adequate sources of quality line for their dollar. NMFS has only recently gone on record stating that line with a specific gravity of 1.03 or greater will be acceptable so this definition should be identified in future documents and disseminated to various rope manufacturers. Lastly, financial incentives such as used rope buyback programs or monetary aid to purchase 1.03 line will greatly enhance compliance with this proposal in a timely manner.

I appreciate the opportunity to comment on what has been, and will likely continue to be, a contentious issue. It appears that NMFS understands the frustration of fishermen being mandated to enact expensive changes to their gear and operations, with no real assurance of success, and seems willing to work with industry to minimize the inevitable hardship of those changes. I believe that a practical and common-sense approach from the fishing industry, environmentalists, and regulators, all working together, can be applied to meaningfully address the whale entanglement issue.

Regards,

Nick Jenkins
Fleet Operations

Subject: FW: whales.doc
Date: Mon, 16 May 2005 14:25:45 -0400
From: "Bob Colbert" <e.eaa3@verizon.net>
To: <Whaledeis.comments@noaa.gov>

-----Original Message-----
From: Bob Colbert [mailto:e.eaa3@verizon.net]
Sent: Monday, May 16, 2005 12:19 PM
To: whales
Subject: whales.doc

Robert Colbert

Dennis Colbert

F/V Miss Julie

F/V Virginia Marie

Po Box 1049

Manomet, Ma 02345

May 15, 2005

To whom it May Concern,

My brother Dennis and I are off-shore lobstermen fishing in Area 3, and we would like to make some comments on the Whale Deis.

First and foremost, as lobstermen in Area 3, you should know that our overall gear amount and fishing effort has been and will be reduced dramatically over the next couple of years. The number of lobstermen that were allowed to fish in Area 3 has been reduced from over 3000 to less than 150, due to the use and implementation of Historic Participation. We know that the amount of gear in the water will actually be reduced by over 40% !!! That is a great way to help reduce any potential whale problems.

As a group, it can be difficult for fishermen to come to any consensus, but we lobstermen in Area 3 have been able, with NMFS and ASMFC, to reduce our effort in Area 3.

As far as the thought of eliminating one of the end lines from a trawl is concerned, we don't believe this to be a good management measure for a couple of reasons. First, by using only one end line, if that particular line is lost and we are un-able to grapple the trawl back, we risk creating more "ghost gear". Second, we only have 2 end lines per 50 pots now resulting in less end lines per trap overall.

We ask that you consider exempting certain areas from sinking ground line as some of the area we fish are very rocky and sinking line would be more likely to get tangled and thus be harder to haul back. It would also possibly create more "ghost gear" and thus more of a threat to the whales as we mentioned

above, if we are un-able, due to the rocky bottom, grapple it back.

On the wink link item, we hope you can understand due to weather issues, why we would prefer the 2000 lbs weak link from Sept 1 through April 1st, as opposed to using the 1500 lbs link all year

Obviously, asking the fishermen to change their ground lines would create a huge financial strain on them. The expected cost of the new line, because of the weight difference is almost double the cost we pay for line now. We ask for assistance from the government to buy back the old ground lines. The supply house we now buy our line from estimates that the manufactures of this line will not have enough line for all that is needed until at least 2008.On the same note, we would like to have at least a 4 year period to change over these ground lines. There is a tremendous amount of work and time involved in doing this. Tremendous.

Fishermen are concerned about the environment and whales. Most of us passionately! But we (the industry and NMFS) have to be realistic in our approach and time frames to make things "better".

Thanks for your understanding and time.

Sincerely,

Bob Colbert

Dennis Colbert

F/V Miss Julie Capt. Mark Boulay

Jay Shwom

Rigoberto Martinez

Lee Wayne

F/V Virginia Marie Capt. Walter Silvia

Rolando Clotter

Jim Bryan

Andy McDougal

Subject: ALWTRP DEIS
Date: Mon, 16 May 2005 04:47:13 -0400
From: Stephen Robbins III <Stephen.Robbins@maine.edu>
To: whaledeis.comments@noaa.gov

To Whom it May Concern:

I am writing to provide comment on the Draft Environmental Impact Statement in reference to the Atlantic Large Whale Take Reduction Plan of 2005. I am a Commercial Fisherman with nearly twenty five years experience as an owner and operator of a small business harvesting lobster throughout the waters of the state of Maine and the offshore waters of the Gulf of Maine. I am married with two young children who reside in the community of Stonington Maine. At thirty five years of age I have lived here, in my hometown, nearly my entire life. My ability to provide for my family is dependent upon being as efficient and productive as possible as years pass. Factors such as increasing costs of doing business of diesel fuel, bait (and it's availability, or lack thereof), and vessel insurance are surpassing a stagnant price per pound for product. As dynamic a natural resource as lobsters are, my community is quickly losing its identity. That identity of family oriented small business that used to be the norm is now the exception to the rule. The transformation of small fishing village to bustling tourist vista places undue pressure on all coastal towns in Maine. This dynamic rivals that of these natural resources that we depend on. The pressures of lost access to working waterfront, inability for younger natives to find affordable house lots and land to raise their own families, and the fast rising property tax burden of my town and others like it all contribute to the loss of identity and extreme burdens upon a commercial fishing business. Communities such as Stonington, Winter Harbor, Bass Harbor, Jonesport, Beals Island, Cutler and Lubec are all experiencing these burdens and losses at a rapidly alarming rate. Understanding this, any alteration of fishing practices in the lobster and gillnet fisheries needs to be accompanied by a recognition of the severity of economic impacts upon commercial fishermen and their community. While lobstering has been strong for Gulf of Maine fishermen in recent years, the fact that we are essentially single species dependent causes many to be concerned for their children. The loss of access to groundfish in Eastern Maine especially gives many harvesters and natives pause as they look towards the future and see only obstacles and further restriction, versus the opportunity necessary to preserve and restore their own environment. The fragility of these coastal communities cannot be underestimated.

Having participated in and attended all of the four public hearings concerning the DEIS in Maine, I have heard the vast majority of the fishermen provide testimony that reflects their preference for Alternative #1. It should be noted that while NMFS had already singled out Alternatives #3 and #6 as preferred in meeting the goals of the ALWTRP, there are serious issues facing the Fishermen of Downeast Maine as they attempt to grasp and participate in this process that needs to provide protection for large whales and marine mammals, while still allowing for harvesters to operate their businesses in a manner that is conservation minded. For the vast majority, this process is so far removed from the reality that they experience on the water daily. The average age of the Maine Lobster Fisherman (according to most recent records of our Department of Marine Resources) is fifty four. I would dare estimate that better than 90% of these people either would, or already have provided comment that reflects their experience of not having even seen a Right Whale in or around the waters in which they work on a daily basis. While this does not diminish the gravity of the situation and the need to provide protection for these marine mammals, it does illustrate that there is an extraordinary need for more

education and research that is only successful if it is ongoing. Resources should be allocated to provide the necessary education to elaborate on the necessity of a long term program that allows for legitimate stakeholder comment and advisement to this process. This would be contrary to the present state of affairs whereby interest groups are pitted against each other and labels are either consciously or unconsciously applied to "those who want to save the whales" and "those that are only sources of the problem". This can only serve to be dysfunctional, and will result in many more problems rather than solutions.

Under a system that recognizes a Potential Biological Removal of zero, there is an unacceptable limit placed upon only the small, independent fishermen to be subject to more restrictions and blame for mortality and injury that they, indeed, may not be the source of the problem. I believe it unreasonable to assume that healthy whales with a navigation system that is unrivaled in modern technology find their way into entanglements of well maintained fishing gear that is intact. We are aware that evidence supplied at the most recent Take Reduction Team Meeting tell us that there has never been one case of an observed whale entanglement. This fact tells us that it is more likely than not that whales that are involved with entanglement may be suffering from some type of ailment that distorts or inhibits their ability to navigate safely out around lost gear that may pose a greater threat to them due to often "trailing" lines and refuse. I believe that from observing documented evidence of the surface feeding habits of both Right Whales and Humpbacks (as provided by the Center for Coastal Studies at the TRT Meeting in April) that there is little common sense to the notion that these marine mammals become entangled during the act of surface feeding, as the positioning of their heads and mouths agape are perpendicular to any vertical line that they might encounter during this behavior. Unfortunately, present day regulation prohibits the storage of lost rope or buoys that may have been recovered as lost gear aboard any vessel engaged in the act of commercial fishing when the gear in question is not property of the vessel owner or operator. This prevents fishermen from keeping their environment clean of any lost gear that they may be able to retrieve, and thereby preventing an actual reduction of potential for entanglement. Contrary to these existing regulations, I do make a practice of picking up any lost gear that I might find simply because it is the right thing to do in an effort to make a safer, cleaner work environment. Despite the aforementioned regulations, I have made a practice of this effort for nearly twenty five years.

It should be noted that the DEIS addresses the need for a reduction of the profiles of groundlines in the Gulf of Maine. Practically speaking, it is my experience that tells me that it is simply impossible for the fishermen of Downeast Maine to fish without the use of poly due to the rocky and variable bottom habitat that they work in. It is possible, however, to lower the profile of the poly used today through well developed research to produce a product that lowers the documented profile and still allows for operation that is safe, and does not create lost gear as a result of the use of inferior products (thereby increasing potential for entanglement to whales, and presenting an unreasonable economic burden to fishermen).

The need to document habitat that is workable for groundline modification should be prioritized, as well as the areas of Downeast Maine (especially) that cannot be without use of poly groundlines. The ability to document these facts will provide common sense solutions to the problems that are ongoing, and just concerns of our community.

I believe that the use of the Dynamic Area Management program is counterproductive to the goals of the ALWTRP. This program should be eliminated as it does not recognize the inability of fishermen to shift

gear in a manner that meets the demands of the program. Logic dictates that during these times gear will be shifted and reset in areas bordering the area in question, as it will be the shortest distance between points. Dangers of congestion and building "walls" of fixed gear around areas will only serve to increase potential for entanglement, and create another undue economic burden in terms of excess use of costly diesel fuel for a questionable benefit (at best).

I believe that the introduction of the Exemption Line as originally proposed by the State of Maine should be implemented.

Gear marking as proposed is unworkable and provides no documented benefit for risk reduction to whales in the Gulf of Maine.

I am writing in support of Alternative #5 with the caveats outlined above, along with the understanding that the appropriate financial resources be allocated to research and development and monitoring priorities as established within the TRT Working Group process.

Thank you for your attention.

Sincerely yours,

Stephen H. Robbins III
Downeast Lobstermen's Association

Stephen H. Robbins III
P.O. Box 649
34 North Main Street
Stonington ME 04681

email: stephen.robbins@maine.edu
Cellular: (207) 460-7415

email: lobstah@hypernet.com
Home phone: (207) 367-5517

Subject: Whale Regs
Date: Mon, 16 May 2005 14:45:24 -0400
From: "Gary Mataronas" <lobster@meganet.net>
To: <whaledeis.comments@noaa.gov>

To whom it may concern:

These whale regs are going to be not only a nightmare but financially devastating to fishermen that fish in rocky areas. Sinking line will continually hang down into the rocky crevices which will result in loss of line and traps. Neutrally buoyant line will roll back and forth across the rocks and get chaffed out causing lost traps and line. The same results holds true for the offshore canyons fishing areas.

Allow 4-year phase-in of neut. buoyant or sinking line from *the implementation date of the Final Rule,* **if implemented**
Exempt sinking line from rocky canyons deeper than 100 fathoms.
Enact a rope recycling program
allow 2,000 lb weak links from September 1 - March 31
Exempt sinking line within 3 mile limit

Mataronas Lobster Co., Inc.
Gary S Mataronas
22 California Road
Little Compton, RI 02837
401-635-2143

F/V X-Terminator Inshore lobster vessel
F/V Edna May Offshore lobster vessel

Subject: Whale Regs
Date: Mon, 16 May 2005 14:58:33 -0400
From: "Gary Mataronas" <lobster@meganet.net>
To: <whaledeis.comments@noaa.gov>

To whom it may concern:

These whale regs are going to be not only a nightmare but financially devastating to fishermen that fish in rocky areas. Sinking line will continually hang down into the rocky crevices which will result in loss of line and traps. Neutrally buoyant line will roll back and forth across the rocks and get chaffed out causing lost traps and line. The same results holds true for the offshore canyons fishing areas.

Allow 4-year phase-in of neut. buoyant or sinking line from *the implementation date of the Final Rule,* **if implemented**
Exempt sinking line from rocky canyons deeper than 100 fathoms.
Enact a rope recycling program
Allow 2,000 lb weak links in offshore areas
Exempt sinking line within 3 mile limit
Exempt top line on gillnets
Exempt bottom third on up and down lines

Sakonnet Point Fishermen's Association
Gary S Mataronas President
22 California Road
Little Compton, RI 02837
401-635-2143

Subject: ALTWRP DEIS
Date: Sun, 8 May 2005 10:57:13 -0400
From: "peter inniss" <inniss64@maine.rr.com>
To: <whaledeis.comments@noaa.gov>

A couple of comments. First I understand that the service must move ahead with regulation, but it must move ahead responsibly. It must balance the health of the industry with the ability of the service to defend itself in further lawsuits. I believe that by moving ahead at a reasonable rate will not only enable the service to defend itself it will also give the industry the time it needs to develope the applications that will save this whale. We are developing the science and I am confident the answer will be found I just don't know when. We need time. I wish that the "science community" involved would not be so concerned with the law and be more proactive in helping to find the solution. I thought that is why they are present at these meetings. They should rise to the occasion if they truly have a talent and passion for SCIENCE. Problems like this and the challenge of finding the solution should be exactly what academia and scientists are looking for. I would ask the service to perhaps balance this group for the need for this group to come through is vital to the industry and to be quite honest they are failing us now and I question their motives. I would not include Mr. Kraus in this statement. Although I do not always agree with him we need more like him. He has attempted to solve this problem through effort not lip service.

We did our best for you in Baltimore considering the circumstances. I believe better results could have been gained by attacking this regionally. I believe the key word now is responsibly. And hopefully that is how you move forward. Thank you for your time.

Peter Inniss

Subject: Alternative 2
Date: Mon, 9 May 2005 11:38:22 -0700
From: "Alison Beaumont" <alibeau@uclink.berkeley.edu>
To: <whaledeis.comments@noaa.gov>

Dear Ms. Colligan,
I am writing to express my support for Alternative 2 as presented in the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (henceforth referred to as the "DEIS"). I feel that this is the only option that truly affords large whales the protection from the risk of entanglement that the Marine Mammal Protection Act and the Endangered Species Act requires. One of the most important protections offered to whales in the DEIS is the use of sinking ground line between traps or pots in fixed fisheries. Since numerous entanglements have been documented using floating ground line, it is very important this risk be minimized. In the other Alternatives where this protection is offered, there are seasonal periods when floating ground line can be used. However, both humpback and right whales have been seen as far south as the Carolinas all year long, and little sighting effort outside the winter and early spring has taken place in more southerly areas. Hence, I would like to encourage the use of such fishing gear year-round. It is also important that NOAA Fisheries Service does not do away with protection for groups of right whales that appear in unusual areas under the Dynamic Area Management (DAM) program, as suggested in Alternatives 5 and 6. While DAM has its problems, it is the only way that whales feeding in unusual concentration areas can receive special protection until 2008. Thank you for your time and the opportunity to comment on the DEIS, and I hope that the NOAA Fisheries Service will take this important action to protect endangered whales from the risk of entanglements.
Sincerely,
Alison Beaumont

Subject: DEIS - Support for Alternative 2
Date: Mon, 9 May 2005 15:43:31 EDT
From: JRuth1962@aol.com
To: whaledeis.comments@noaa.gov

Dear Ms. Colligan,

I would like to take this opportunity to express my support for a particular alternative in the DEIS for Amending the Atlantic Large Whate Take Reduction Plan. I am in support of Alternative 2 as I feel that this is the single option that truly affords large whales the protection from the risk of entanglement that the Marine Mammal Protection Act and the Endangered Species Act requires. One of the most important protections offered to whales in the DEIS is the use of sinking ground line between traps or pots in fixed fisheries. I understand there to have been numerous documented entanglements using floating ground line and I think it is important this risk be minimized or even better, eliminated if possible. The other alternatives will allow seasonal periods where floating ground line can be used and therefore the protection of the whales is not available. Specific breeds of whales are sometimes seen as far south as the Carolinas, so therefore I beleive the use of such fishing gear should be year long (sinking ground line). None of the other options appear to provide for the appropriate control as Alternative 2.

Thank you for the opportunity to submit my comment on the DEIS Alternatives. I hope my comments and vote count!!! I am hopeful that the NOAA Fisheries Service will take the necessary steps to protect the endangered whales from the current and future risks of entanglements.

Sincerely,

Janet Ruth

Subject: Alternative 2
Date: Mon, 9 May 2005 16:08:43 -0400
From: "Martin Monnard" <mrfil7@earthlink.net>
To: <whaledeis.comments@noaa.gov>

Greetings,

I am Martin Monnard, I am 16 years old and live in the Washington D.C. area. I care deeply for our environment and hope that this letter will affect your decision on the plans for fixed fishing. These endangered whales need help to survive. I must remind you that it is fishing that has put them in danger in the first place. Now we are the only one that can save then. Please if not for us for them support alternative 2. I am really counting on you.

Thank you for your time!!

Best regards,

Martin Monnard

Subject:
Date: Mon, 9 May 2005 16:31:50 -0700
From: Roseann Ciesla <vvettraino@comcast.net>
To: whaledeis.comments@noaa.gov

Dear Ms. Colligan,

I am writing to express my support for Alternative 2 as presented in the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (henceforth referred to as the "DEIS"). I feel that this is the only option that truly affords large whales the protection from the risk of entanglement that the Marine Mammal Protection Act and the Endangered Species Act requires. One of the most important protections offered to whales in the DEIS is the use of sinking ground line between traps or pots in fixed fisheries. Since numerous entanglements have been documented using floating ground line, it is very important this risk be minimized. In the other Alternatives where this protection is offered, there are seasonal periods when floating ground line can be used. However, both humpback and right whales have been seen as far south as the Carolinas all year long, and little sighting effort outside the winter and early spring has taken place in more southerly areas. Hence, I would like to encourage the use of such fishing gear year-round. It is also important that NOAA Fisheries Service does not do away with protection for groups of right whales that appear in unusual areas under the Dynamic Area Management (DAM) program, as suggested in Alternatives 5 and 6. While DAM has its problems, it is the only way that whales feeding in unusual concentration areas can receive special protection until 2008. Thank you for your time and the opportunity to comment on the DEIS, and I hope that the NOAA Fisheries Service will take this important action to protect endangered whales from the risk of entanglements.

Sincerely,

Rose Ciesla

Subject: Re Whale Announce list
Date: Tue, 10 May 2005 13:23:49 +0100
From: "Sophie Graham" <sophgraham@btinternet.com>
To: <whaledeis.comments@noaa.gov>

Dear Sir, I am writing to say that after having read the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (DEIS), I feel the best solution for minimizing the risk of entanglement and thereby protecting the whales, is to support Alternative 2. This is because the best form of protection lies in the use of sinking ground line between traps or pots in fixed fisheries. As it has been consistently proved that the use of floating lines DOES cause entanglements! In the other Alternatives, although sinking ground lines is offered, there are still seasonal times when floating ground lines are allowed, and since we know that there have been sightings as far south as the Carolinas and these more southern areas are not properly covered for sightings all year round, the ONLY way to make sure the whales are properly and rightly protected, is to have the use of sunken ground lines ONLY. Also I would like to add that the work of DAM is extremely important too, as it protects whales feeding in unusual areas and is their only form of help.I do hope my comments will help make a difference and will help the whales to be properly protected, as their RIGHT.

Yours sincerely

Sophie Graham

Subject: DEIS Comments
Date: Tue, 10 May 2005 11:42:22 -0400
From: <sailsavage@adelphia.net>
To: whaledeis.comments@noaa.gov

Mary Colligan
Assistant Regional Administrator for Protected Resources

Dear Ms. Colligan:

I am writting to express my support for alternative 2 as presented in the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan. In the other alternatives where sinking line protection is offered, there are seasonal periods when floating ground line can be used. However, both humpback and right whales have been seen as far south as the Carolinas year round, and little sighting effort outside the winter and early spring has taken place in more southerly areas. Hence, I would like to encourage the use of sinking fishing gear year round.

It is also important that NOAA Fisheries Service does not eliminate protection for groups of right whales that appear in unusual areas under the Dynamic Area Management (DAM) program. It is the only way that whales feeding in unusual concentration areas can receive protection until 2008.

Thank you for your time and the chance to comment on the DEIS, and I hope the NOAA Fisheries Service will take these important steps to protect endangered whales from the risk of entanglements.

Sincerely,

William M. Savage
Sandwich, Massachusetts

Subject: Protect our whales
Date: Tue, 10 May 2005 17:33:00 -0400
From: "E Jaques" <ejaques@comcast.net>
To: <whaledeis.comments@noaa.gov>

From: "E Jaques" <ejaques@comcast.net>
To: <whaledeis.comments@moaa.gov>
Subject: Protect our whales
Date: Monday, May 09, 2005 8:53 PM

82 Cann Rd.
Newark, DE 19702

Dear Ms. Colligan;

I am writing you to share my concerns for one of the most magnificent creatures on Earth, the whale. I truly believe that each and every one deserves our best efforts to protect them. With that thought, I want you to know that I support Alternative 2 as presented in the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (DEIS). I believe that this is the only option that protects large whales from the risk of entanglement as required by the Marine Mammal Protection Act and the Endangered Species Act.

Sinking ground line used between traps and pots in fixed fisheries offers the best protection to the whale population. There have many documentations of entanglements with floating ground lines. We need to minimize risks to these animals. Can you imagine what it must be like to drown or to have netting cut through your skin?

It has been explained to me that the other Alternatives would not provide the protection that Alternative 2 will.

I'm not a scientist nor a marine biologist. I'm simply a person who loves whales. I have taught my seven year old grand-daughter about the beauty of these gentle giants. It is my hearts desire that she will be able to share with her children and grandchildren this love that we have for whales.
I want them to be able to have the opportunities to see whales in their natural environments, and not just read about how magnificent these creatures were in the beginning of the 21st century.

Please, I ask therefore that you choose Alternative 2.

Sincerely,
Carole Jaques

Subject: Support for Alternative 2 (Presented in the DEIS)
Date: Tue, 10 May 2005 19:08:46 EDT
From: ACOZMEL@aol.com
To: whaledeis.comments@noaa.gov

Mary Colligan
Assistant Regional Administrator for Protected Resources
Attn: ALWTRP DEIS NOAA FISHERIES SERVICE
Northeast Region 1 Blackburn Drive
Gloucester MA 01930

Dear Ms. Colligan:

While vacationing in Gloucester, MA, last year, we had the opportunity to see these magnificant animals on a Whale Watch. I am writing to express my support for Alternative 2 as presented in the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (henceforth referred to as the â€œDEISâ€□).

I feel that this is the only option that truly affords large whales the protection from the risk of entanglement that the Marine Mammal Protection Act and the Endangered Species Act requires. One of the most important protections offered to whales in the DEIS is the use of sinking ground line between traps or pots in fixed fisheries. Since numerous entanglements have been documented using floating ground line, it is very important this risk be minimized. In the other Alternatives where this protection is offered, there are seasonal periods when floating ground line can be used. However, both humpback and right whales have been seen as far south as the Carolinas all year long, and little sighting effort outside the winter and early spring has taken place in more southerly areas. Hence, I would like to encourage the use of such fishing gear year-round.

It is also important that NOAA Fisheries Service does not do away with protection for groups of right whales that appear in unusual areas under the Dynamic Area Management (DAM) program, as suggested in Alternatives 5 and 6. While DAM has its problems, it is the only way that whales feeding in unusual concentration areas can receive special protection until 2008.

Thank you for your time and the opportunity to comment on the DEIS, and I hope that the NOAA Fisheries Service will take this important action to protect endangered whales from the risk of entanglements so that future generations to come.

Sincerely,

Karen Akins
Max Akins

Mary M. Bechtold
5 Fallmeadow Court
Hampton, VA 23666
May 13, 2005

Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, Massachusetts 01930

ATTN: ALWTRP DEIS

Dear Ms. Colligan,

We all know that all whales are an endangered species because they are under stress because of hunting, loss of habitat, pollution, entanglement in fishing lines and by impact with large ships. At this time the sad case of the loss of right whales from the East Coast of the US is being considered in a Draft Environmental Impact Statement (DEIA). The aim of which is to consider matters which are controllable by the US and which will prevent activities which endanger the right whale. The number of right whales at this time is at a dangerously low level and these whales are being lost at a rate, particularly from impact with ships and entanglement in commercial fishing gear, which will doom the population to extinction. Wouldn't it be nice if the colorful Carolina parrot could still be enjoyed the South East? (Now we have to look at an Audubon painting to see the beauty of the bird.) Wouldn't it be nice if we still had the carrier pigeon to study and admire? the dodo? and other "lost" members of a world that existed not all that long ago?

I urge you to carefully address several items in the DEIS that is to be assembled. Please do consider the importance of this draft as you balance the survival of the right whale against development and commercial interests that can be modified and still be profitable. Development and commercial interests can be done in an environmentally friendly and commercially viable way. It is the North Atlantic right whale that may not survive without your strong protection.

Please consider the following items that need strengthening in the DEIS:

Modification of fishing gear should be sooner that 2008 and should be monitored and revised if necessary and put in force for the entire year. It is the obligation of the National Marine Fisheries Service to protect the right whale before their numbers become too small to exist as a reproducing population.

Vertical fishing lines should be designed so entanglement is not lethal to trapped whales. When the whales become entangled, the weak links on the buoy lines should be designed to break. In fact, fishing should be restricted in areas where a group of whales is sighted. If these actions cannot be initiated, I consider Option 2 as the most protective choice.

Thank you for your consideration of this matter.

Yours sincerely,
Mary M. Bechtold

Subject: deis for alert
Date: Sun, 15 May 2005 20:29:06 -0400
From: "James Violet" <jvjv89@msn.com>
To: <whaledeis.comments@noaa.gov>

I am writing in response to the DEIS for amending the ALWTRP, dated February 2005. Although I support Alternative 6, I do so with strong reservations which include, a four year phase in period for sinking or neutral buoyant line as well as gillnets. The cost of replacing ground lines for my offshore lobster business will approach $100 Thousand Dollars! In a already depressed state of business, included but not limited to large reductions in the number of traps I can fish, increase gauge size for lobsters, increased vent sizes, skyrocketing fuel cost and insurance costs, it could cause myself and many of my fellow fishermen out of business altogether.

It is not fair to impose such a large capital expenditure from fishermen in such a short time span. Some type of funding, government or otherwise, should be secured to minimize this enormous financial outlay to many small business.

There must be a final definitive decision of the definition of what is considered safe for ground line, either neutrally buoyant or sinking. This must be clearly stated and defined for rope manufacturers, fishermen and enforcement. A line recycling program is also the only acceptable solution to the miles of what will be useless polypropylene line.

It is also imperative to take into account that the recent Area 3 Lobster management plan, which through historical qualification process, effectively reduced the number of permits eligible to fish offshore area 3 from 968 to 133, thus reducing the number of traps from 400,000 to 160,000, not including a additional two-year reduction, with continue passive reductions through a proposed trap transferability plan recommended to NMFS by the ASMFC. Some type of trap buyback to reduce the number of traps further would also help the whales as well as the lobster resource. As always, continued collaboration between industry and regulators is a must.

Sincerely,

James M. Violet
Violet Fish and Trap Corporation
155 Wyndham Hill
Middletown R.I. 02842
401-714-3433

Subject: ALWTRP DEIS
Date: Sun, 15 May 2005 22:03:12 -0400
From: "Theiler, Janet O" <Janet.O.Theiler@pfizer.com>
To: "'whaledeis.comments@noaa.gov'" <whaledeis.comments@noaa.gov>

On behalf of myself and the Connecticut Commercial Lobstermen's Association, I would like to submit comment on the ALWTRP DEIS. Our preference would be Alternative 1 which would be basically no action. However, if there is to be some action, the lobstermen of Long Island Sound would like to see the exemption line moved from the COLREGS line to a line going from Watch Hill, Rhode Island to Montauk, New York. The fact is, we do not have whales in the Sound. The lobstermen in eastern Long Island Sound who lobster in the area called the Race would have a very difficult time with the gear modifications. The currents in this area run in excess of four knots and the depths are up to 400 feet. Our method of fishing is very specialized. It doesn't make much sense to split an area in half, where the gear rigging is consistent.

Michael Theiler
F/V Jeanette T
Vice President - Connecticut
Commercial Lobstermen's Association
860-235-5117

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Subject: ALWTRP DEIS
Date: Mon, 16 May 2005 09:03:04 -0400
From: "Jarrett Drake" <Jarrett@voyagerfisheries.com>
To: <whaledeis.comments@noaa.gov>, <diane.borggaard@noaa.gov>

Dear Diane,

I spoke at the Newport, RI meeting regarding the ALWTRP DEIS. I just want to send a reminder on the last day of public input.

I would like to see these regulations apply to the areas where the whales occupy, not the entire coast with the exception of a few very shallow bays. I fish Lobster Management Area 2 (LMA2) 120 days a year and have personally never seen a whale. The mandated sinking rope is a serious safety issue for smaller boats (<40 feet). We fish mostly on rock piles and sinking rope continuously catches on the rocks on the bottom posing a roll over hazard for these small boats. This is the only regulation that I oppose, I can accept the other restrictions of option six, but NOT the sinking ground lines.

How about making permanent DAM zones? Include all the areas of every DAM zone previously established in this new whale friendly area. Essentially, option six is a coastwise DAM zone. Let's apply option six only to the areas where we know the whales are as recognized by factual data in the past.

Please consider these ideas keeping fishermen's safety in mind.

Thank you,

Jarrett C. Drake

Ps. Please reply to me with your thoughts on what I've proposed. I feel they are valid and need consideration.

Subject: Important Comments on DEIS - Support for Alternative #2
Date: Mon, 9 May 2005 14:36:32 -0400
From: "Kristi K. Snyder" <ksnyder@cellpreservation.com>
Organization: Cell Preservation Services, Inc.
To: <whaledeis.comments@noaa.gov>

Mary Colligan

Assistant Regional Administrator for Protected Resources

Attn: ALWTRP DEIS NOAA FISHERIES SERVICE,

Northeast Region

1 Blackburn Drive

Gloucester MA 01930

Dear Ms. Colligan,

I am writing to express my support for Alternative 2 as presented in the Draft Environmental Impact Statement (DEIS) for Amending the Atlantic Large Whale Take Reduction Plan.

Having reviewed the proposal and all alternatives, I feel that this is the only option that truly affords large whales the protection from the risk of entanglement that the Marine Mammal Protection Act and the Endangered Species Act require. One of the most important protections offered to whales in the DEIS is the use of sinking ground line between traps or pots in fixed fisheries. Since numerous entanglements have been documented using floating ground line, it is very important this risk be minimized. In the other Alternatives where this protection is offered, there are seasonal periods when floating ground line can be used. However, both humpback and right whales have been seen as far south as the Carolinas *all year long*, and little sighting effort outside the winter and early spring has taken place in more southerly areas. Therefore, I would like to encourage the use of such fishing gear year-round.

I would also like to comment on those alternatives which would eliminate transitional programs which provide protections until more comprehensive statements can be approved. Thus, it is also important that NOAA Fisheries Service does not do away with protection for groups of right whales that appear in unusual areas under the Dynamic Area Management (DAM) program, as suggested in Alternatives 5 and 6. While the DAM program may have its problems, it is the only way to afford whales feeding in unusual concentration areas the special protection they require through 2008.

Thank you for your time and the opportunity to comment on the DEIS. I hope that the NOAA Fisheries Service will take this important action to protect endangered whales from the risk of entanglements.

Sincerely,

Kristi Snyder

****

Kristi K. Snyder, Ph.D.

Director of Operations

& Principal Scientist

Cell Preservation Services, Inc.

2 Court Street

Owego, NY 13827

(607) 687-0166

(607) 687-6683 ~ Fax

KSnyder@CellPreservation.com

Subject: ALWTRP DEIS Comments
Date: Sun, 15 May 2005 21:46:06 -0400
From: "Tora Johnson" <tora@entanglements.net>
To: <whaledeis.comments@noaa.gov>

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan,

I am writing to offer comments on the Draft Environmental Impact Statement for the proposed changes to the Atlantic Large Whale Take Reduction Plan. I am a human ecologist with College of the Atlantic in Bar Harbor, Maine, and have been studying the issue of whale entanglement from a variety of perspectives since 2001, with special attention to the geographic considerations of whale protection and disentanglement, as well as the social, political, and economic factors involved with the take reduction process. Please find attached the text (pdf) and tables (xls) of my paper published in *Proceedings of the International Conference on People and the Sea II: Conflicts, threats and opportunities (2001).*

First, let me commend you and your team for your efforts on such a difficult and contentious issue. The proposed changes to the plan show that you have taken seriously many of the concerns stated by whale advocates, fishermen and scientists on the Take Reduction Team (TRT) and in other stakeholder groups in comments, hearings and TRT meetings. The changes proposed in the preferred alternatives (3 and 6) are likely to decrease mortality and serious injury of large whales by fishing gear, and may improve trust and compliance among some of the fisheries.

Comments on specific proposed measures

The following are my comments on specific aspects of the proposed alternatives. While I believe Alternative 6 is the best of the alternatives, none of the alternatives is likely to achieve the mandates of the Marine Mammal Protection Act of reducing serious injury and mortality below the potential biological removal and then to levels approaching zero for any of the strategic species. Moreover, these goals were to have been reached by April, 2001, and yet we have reported mortalities and serious injuries in excess of the potential biological removal for at least two endangered species, right whales and humpbacks, since that deadline. This situation behooves the Fisheries Service to act quickly and efficiently to implement—and fully justify to the public—the best possible measures to protect whales from entanglement and to allow

trap/pot and gillnet fisheries to continue. Given the dire need for real take reduction, the Fisheries Service should consider stepping up the timeframe for implementing key measures and/or supporting a voluntary move toward early implementation.

In regard to the overall geographic range of the sinking groundline requirement, a variety of researchers have shown that right whales commonly roam beyond the boundaries of existing closures and gear modification areas. In my work studying the satellite telemetry tracks of entangled whales, I have found that many tagged whales crossed these boundaries many times. Moreover, I and one of my students recently looked at in-season movements of identified humpbacks in the Gulf of Maine and found that many whales in the study were sighted in distant parts of the Gulf of Maine in the same season, suggesting movements similar to those of right whales. In my interview research, many fishermen have reported complying with area closures by moving gear to the edges of the closed areas. Given the wide ranging movements of whales, such a practice would increase the likelihood of entanglements as whales come and go from the area. Therefore, gear modifications throughout the Gulf of Maine and nearby banks and channels are necessary. SAMs, even if expanded as proposed, would be of limited benefit because their geographic scale is smaller than that of whale movements. Comprehensive studies of gear density would help to refine our understanding of these issues.

Expanding requirements for sinking groundline both spatially and temporally will be feasible and effective in reducing entanglements, especially from southern Maine to Florida. It makes sense to exempt areas of the Maine coast from this requirement based on entanglement risk for right whales and humpbacks in that the whales rarely visit these areas. However, for non-exempted Maine waters where fishermen are currently using floating groundline over rocky bottom, requiring sinking groundline will likely lead to a vast increase in vertical buoy lines as fishermen abandon the use of multi-trap trawls for singles. Such an explosion in vertical lines may in fact outweigh benefits gained by removing floating groundline. Requiring sinking groundline in these areas without a plan in place to address the number of buoy lines would be a mistake.

This problem can be addressed by requiring multi-trap trawls, but that will likely make it impossible for many fishermen to continue to fish because of gear loss and the dangers of hauling gear hung down on rocks. A better approach may be a combination of refining and expanding exempted areas where possible, limiting the number of vertical lines, and including provisions that would allow fishermen to use "pre-approved" low-profile groundline configurations in specific areas. Then as the implementation date approaches, fishermen, whale scientists, and gear experts can work with the fisheries service to develop workable, enforceable, and effective low-profile gear configurations for approval. From a regulatory perspective, this would work in much the same way gear modifications were included in the Dynamic Area Management rule, with acceptable gear modifications developed and approved after the rule went into effect. In addition to avoiding a proliferation of buoy lines, such a provision in the upcoming rules would show good faith intentions on the part of the Fisheries Service to make the plan workable for Maine fishermen. It could also foster cooperation among stakeholders and the Fisheries Service.

As outlined in the DEIS, the requirements for the preferred alternatives would put a disproportionate

financial burden on New England's lobster fishery. The Fisheries Service should implement or at very least support and facilitate gear buy-back programs to help lobstermen comply with the new rules. Also, such assistance programs can be used to encourage fishermen to adopt sinking or low profile line earlier in the process.

Weak links have not been shown to be effective in preventing or mitigating entanglement. Since their widespread implementation with the last round of rule-making, there has been no documented decrease in serious injury and mortality. In at least two cases, according to the large whale entanglement report for 2003, at least two entangled whales have been reported with serious injuries from entangling gear that had weak links attached. This points to two important issues: first, the value of weak links is still in question and as such they should not be the primary method of gear modification in the plan until their value is more clearly assessed. Second, the Fisheries Service must implement comprehensive studies to assess the effectiveness of the Take Reduction Plan as it is implemented at any given time.

Assessment studies are needed to refine the plan and to clearly justify continuing measures to stakeholders, Congress and the courts. The Fisheries Service should work with scientists to devise an assessment program to determine how effective individual measures are for all whale species and to understand fishing practices and geography in order to adapt the plan accordingly.

Line marking would certainly help in assessing the causes of entanglement and the geographic scope of the problem. However, the line marking method proposed in the DEIS would be unnecessary and unduly difficult for fishermen to implement. Line manufactured with marking elements such as color or tracers, as suggested by some members of the TRT and by some comments submitted during scoping of this DEIS, would be more practical and would provide the same benefit. It would be particularly beneficial to require different types of marking on different parts of the gear to allow us to distinguish between, say, groundline and buoy line on an entangled whale.

The Dynamic Area Management rule is slated for phase-out in most proposed alternatives. I would encourage the Fisheries Service to expedite the phase-out of the DAM rule in whatever way possible. For a complete discussion of the DAM rule, please see Chapters 8 and 12 of my recent book, *Entanglements: The intertwined fates of whales and fishermen*. I will say here, however, that the DAM rule taps Fisheries Service resources, undermines trust among stakeholders, and offers—at best—no protection against whale entanglement. I see no value in retaining it as part of the plan in any form.

General comments

The DEIS states that the plan is intended to provide some protection for all stocks of large whales covered under the plan, in addition to the right whale. Clearly the measures will have some benefit for species other

than the right whale, but the Fisheries Service has not fully investigated the impacts on other species and has presented little basis for assuming humpbacks, minkes and finbacks would get adequate protection from any of the proposals. Right whales, the main target of conservation measures under the plan, have very different prey requirements from the other whales. This leads to important differences in feeding and distribution, and may therefore require different conservation strategies. For example, I and others have observed a large number of humpbacks off the eastern shore of Cape Cod in the summer, while CHA and SAM East are in effect primarily to protect right whales to the east. In some years, many of the entangled humpbacks are reported in this area. Relying on area closures and gear modifications targeting right whales will miss areas important to other whales like these.

Also, a great deal of attention has been paid to right whales and humpbacks, but the Fisheries Service has not updated stock assessments and entanglement studies for finbacks (listed under the ESA) or minkes (covered by the MMPA). Without this scientific information, we have no way of assessing the impacts of entanglement on these stocks or the benefits afforded by the Take Reduction Plan.

The proposed changes to the plan would take the necessary step of bringing new fisheries under the plan. However, recreational fisheries are currently not covered under the plan and in some areas, such as southern New England, they comprise a great deal of fixed gear. These fisheries need to be regulated under the plan. Also, the recent passage in Canada of the Species at Risk Act presents an important opportunity to open a dialog with Canada about joint efforts to protect whales from entanglement. The Fisheries Service, in association with the Department of State, must begin earnest dialog with Canadian authorities to develop a treaty for protecting whale stocks throughout their range.

Finally, as the Fisheries Service moves forward in choosing and refining an alternative, they should remain mindful of the role of trust and cooperation in the success or failure of the plan. I have attached my paper published in *Proceedings of the International Conference on People and the Sea II: Conflicts, threats and opportunities (2001)* which offers some insights into the beliefs and values of the people involved with the issue. I hope you find it useful.

Thank you for the opportunity to comment on the proposal.

Sincerely,

Tora Johnson

Tora Johnson

PO Box 93

Northeast Harbor, Maine 04662

(207) 266-2268

tora@entanglements.net

tjohnson@coa.edu

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Subject: ALWTRP DEIS
Date: Sun, 15 May 2005 23:00:40 -0400
From: "David Joyce" <mackerelcove@midmaine.com>
To: "Whale DEIS Comments" <whaledeis.comments@noaa.gov>

Hello,

My name is David J. Joyce and I fish for lobster out of Swan's Island, Maine. I hold Maine state license #6780 and Federal permit #222898. I have been fishing since 1967.

First, my compliments for the expanded exemption areas which you are proposing. This is a good step.

Of the proposed alternatives, alternative 5 seems the most suited for the waters of eastern Maine, since ***floating groundline is a must here*** for fishing anything but single traps. If alternative 3 is chosen, the prohibition on fishing single traps (outside three miles) now in effect would have to be lifted since a prohibition on floating groundline would make fishing pairs or trawls impossible in rocky areas.

I have attached a rough drawing showing a typical pair of traps sitting on rocky bottom. We generally fish the edges of shoals with one trap deeper than the other. We use floating groundline to clear the rocks and crevases. **Anything which does not float would be wrapped around, or under, rocks, ledges etc.**

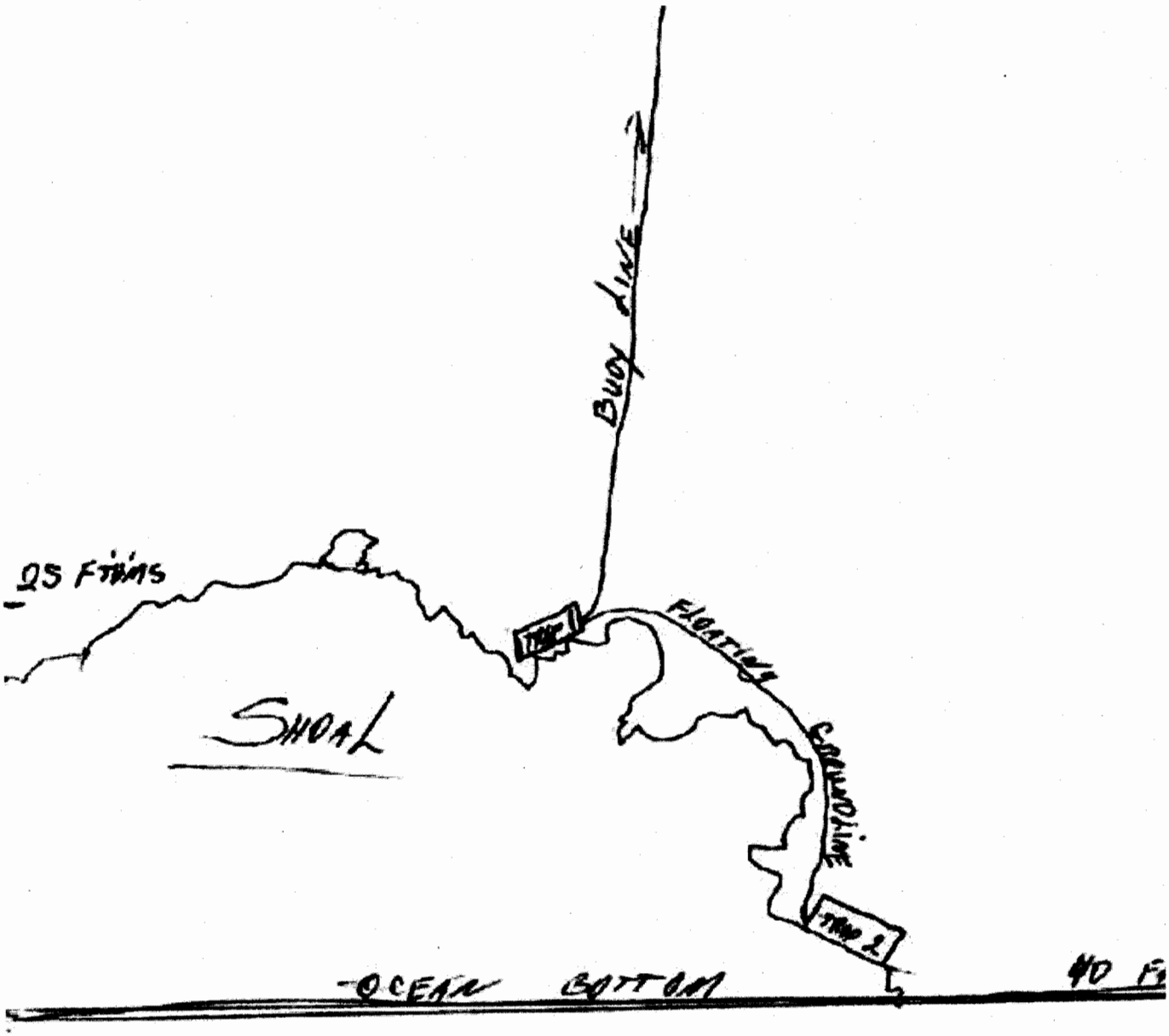
Thank you for considering these comments.

Sincerely,

David Joyce

Groundline-01.jpg	**Name:** Groundline-01.jpg **Type:** JPEG Image (image/jpeg) **Encoding:** base64

JPEG image 800x608 pixels



Subject: Comment On: ALWTRP DEIS
Date: 16 May 2005 11:53:24 -0700
From: <emeyers1@comcast.net>
To: whaledeis.comments@noaa.gov

Example of Form Letter A

Liz Meyers
8900 E Jefferson Ave, #513
Detroit, MI 48214

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Dr.
Gloucester, MA 01930

RE: ALWTRP DEIS

May 10, 2005

Dear Mary Colligan,

I am deeply concerned about the health of all ocean life, especially that of the large whales along our Atlantic Coast. I feel that whales are Deserving to live as much as humans! Fishing gear needs to be cleaned up. Identification on nets to know who is dumping what! Have EVERYONE ACCOUNTABLE!

For this reason, I am most troubled to learn that these creatures are becoming entangled, injured and sometimes killed in fishing gear placed in their habitat. It is especially troubling that this danger poses a threat the extremely endangered North Atlantic right whale when solutions exist that have yet to be fully implemented.

Therefore I urge you to strengthen the proposals contained in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to maximize protection for these whales. The preferred alternative in the DEIS must be strengthened in the following ways:

-Require year-round fishing gear modifications, including weak links in gill and drift nets effective enough to allow whales to escape entanglement;

-Maximize the use of sinking line in lobster trap fisheries including on vertical lines;

-Minimize the use of vertical lines in trap fisheries, such as requiring the use of a single vertical line at one end of a line of traps as opposed to one at each end;

-Be very cautious in maintaining areas of habitat closed to fishing gear along the East Coast on a seasonal basis, or when whales are known to be present until the necessary and proven gear modifications are in place.

With three of the species of whale affected by fishing gear listed as endangered, especially the extremely endangered North Atlantic right whale, we cannot afford anything less than a 100 percent effective plan to protect these magnificent animals from fishing gear encountered in their habitat.

Thank you for considering my views.

Sincerely,

Liz Meyers

Subject: Comment on ALWTRP DEIS
Date: Sat, 30 Apr 2005 15:09:12 -0500
From: Gib Chase <gib5@charter.net>
Organization: The Ocean Conservancy
To: whaledeis.comments@noaa.gov

Example of Form Letter A

Apr 30, 2005

Asst. Administrator Mary Colligan
National Marine Fisheries Service, Northeast Region
Gloucester, MA 01930

Dear Asst. Administrator Colligan,

I am deeply concerned about the health of all ocean life, including that of the large whales along our Atlantic Coast. I am most troubled to learn that these creatures are becoming entangled, injured and sometimes killed in fishing gear placed in their habitat. This is especially troubling that this danger poses a threat the extremely endangered North Atlantic right whale and solutions exist that have yet to be fully implemented.

Therefore I urge you to strengthen the proposals contained in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to maximize protection for these whales. The preferred alternative in the DEIS must be strengthened in the following ways:

-Prohibit gill nets from within the Stellwagen Bank National Marine Sanctuary

-Require year-round fishing gear modifications, including weak links in gill and drift nets effective enough to allow whales to escape entanglement;

-Maximize the use of sinking line in lobster trap fisheries including on vertical lines;and limit the number of lobster traps and lines from within the Stellwagen Bank National Marine Sanctuary

-Minimize the use of vertical lines in trap fisheries, such as requiring the use of a single vertical line at one end of a line of traps as opposed to one at each end;

-Maintain areas of habitat closed to fishing gear along the East Coast on a seasonal basis, or when whales known to be present.

With three of the species of whale affected by fishing gear listed as endangered, especially the extremely endangered North Atlantic right whale, we cannot afford anything less than a 100 percent effective plan to protect these magnificent animals from fishing gear encountered in their habitat. Knowing this,please take strong actions to prevent entanglements within the Stellwagen Bank National Marine Sanctuary and eleminate gill nets from the sanctuary boundaries,

Thank you for considering my views.

Sincerely,

Mr. Gib Chase
6 Kimball Ln
Northborough, MA 01532-2313

Subject: Comment on ALWTRP DEIS
Date: Thu, 28 Apr 2005 22:30:06 -0500
From: Nathaniel Bellinger <hitm12@hotmail.com>
Organization: The Ocean Conservancy
To: whaledeis.comments@noaa.gov

Example of Form Letter A

Apr 28, 2005

Asst. Administrator Mary Colligan
National Marine Fisheries Service, Northeast Region
Gloucester, MA 01930

Dear Asst. Administrator Colligan,

I am deeply concerned about the health of all ocean life, including that of the large whales along our Atlantic Coast. I am most troubled to learn that these creatures are becoming entangled, injured and sometimes killed in fishing gear placed in their habitat. This is especially troubling that this danger poses a threat the extremely endangered North Atlantic right whale and solutions exist that have yet to be fully implemented.

Therefore I urge you to strengthen the proposals contained in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to maximize protection for these whales. The preferred alternative in the DEIS must be strengthened in the following ways:

-Require year-round fishing gear modifications, including weak links in gill and drift nets effective enough to allow whales to escape entanglement;

-Maximize the use of sinking line in lobster trap fisheries including on vertical lines;

-Minimize the use of vertical lines in trap fisheries, such as requiring the use of a single vertical line at one end of a line of traps as opposed to one at each end;

-Be very cautious in maintaining areas of habitat closed to fishing gear along the East Coast on a seasonal basis, or when whales known to be present until the necessary and proven gear modifications are in place.

-Provide goverment issued grants which help the above fishermen maintain and purchase the most up-to-date equiment, which would, in turn decrease the overall cost of replacing the old, harmful fishing gear of the current fleet.

With three of the species of whale affected by fishing gear listed as endangered, especially the extremely endangered North Atlantic right whale, we cannot afford anything less than a 100 percent effective plan to protect these magnificent animals from fishing gear encountered in their habitat.

Thank you for considering my views.

Sincerely,

Mr. Nathaniel Bellinger
19 Fair Oaks Park
Needham, MA 02492-3101

Subject: Comment on ALWTRP DEIS
Date: Tue, 19 Apr 2005 18:11:30 -0500
From: Douglas Beckmann <dbeckmann1@cox.net>
Organization: The Ocean Conservancy
To: whaledeis.comments@noaa.gov

Apr 19, 2005

Asst. Administrator Mary Colligan
National Marine Fisheries Service, Northeast Region
Gloucester, MA 01930

Dear Asst. Administrator Colligan,

I wish to express my support for conservation measures to reduce entanglement of large whales, especially right whales, in the North Atlantic.
Specifically I would like to register my support for alternative 6 in the ALWTRP DEIS.
The following also should be considered:
-Continue gear and whale behavior research with the goal of reducing whale entanglements and allowing sustainable fisheries to be prosecuted;
-Given the uncertainty in the effectiveness of gear modifications to reduce entanglements, make more use of area closures if PBR for right whales continues to be exceeded.
-Strong enforcement of regulations.
-High levels of monitoring to determine the effectiveness of the implemented regulations.
Sustainable fisheries and the economic interests of the fisherman are valid considerations. However, with PBR of right whales at zero and HI deaths historically exceeding PBR (from entanglements and ship strikes) every benefit of the doubt when implementing regulatory measures should be given to the whales.
Thank you for your work in this difficult and complex area.

Sincerely,

Mr. Douglas Beckmann
722 Lesner Ave Apt 202
Norfolk, VA 23518-2552

Subject: Comment on ALWTRP DEIS
Date: Tue, 19 Apr 2005 20:32:25 -0500
From: Gerrit Crouse <gerritcrouse@netscape.net>
Organization: The Ocean Conservancy
To: whaledeis.comments@noaa.gov

Apr 19, 2005

Asst. Administrator Mary Colligan
National Marine Fisheries Service, Northeast Region
Gloucester, MA 01930

Dear Asst. Administrator Colligan,

The whales along our Atlantic Coast have been & continue to become entangled, injured & killed in fishing gear placed, & sometimes discarded, in their habitat. Existing protections for the the extremely endangered North Atlantic right whale (the "right whale" because it didn't sink when harpooned almost to extinction a century ago) have yet to be adaquately implemented. They remain on paper.

Strengthen proposals, now, in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to effectively protect these whales. The preferred alternative in the DEIS must require year-round fishing gear modifications, including weak links in gill & drift nets effective enough to allow whales to escape entanglement, maximize use of sinking line in lobster trap fisheries included on vertical lines, minimizing use of vertical lines in trap fisheries, (requiring use of a single vertical line at one end of a line of traps as opposed to one at each end), effectively (this means: effectively) maintain areas of habitat closed to all fishing gear along the East Coast on a seasonal basis, & when whales are known to be present, until proven-effective gear modifications are installed.

With 3 of the species of whale affected by fishing gear listed as endangered, not less than 100 % effective protection of these awesome marine mammals from in-use or discarded fishing gear encountered in their habitat is essential.

I write as an emeritus member of the American Institute of Biological Sciences (AIBS), which represents the National Association of Marine Laboratories, the American Society of Mammalogists, the Association of Ecosystem Research Centers, the National Association of Biology Teachers, the US Society for Ecological Economics, & 79 other American professional biological societies & associations.

Sincerely,

Dr. Gerrit Crouse
38 4th Ave
Nyack, NY 10960-2124

Subject: Comment on ALWTRP DEIS
Date: Tue, 19 Apr 2005 20:16:51 -0500
From: MARTA RAMIREZ <alazana@wn.com.au>
Organization: The Ocean Conservancy
To: whaledeis.comments@noaa.gov

Example of Form Letter A

Apr 19, 2005

Asst. Administrator Mary Colligan
National Marine Fisheries Service, Northeast Region
Gloucester, MA 01930

Dear Asst. Administrator Colligan,

How many times do we marvel at the efforts of volunteers to save stranded whales around the world? We all watch with tears in our eyes, wishing that we could save them all. By the same token, millions of dollars are spend every year by Coast Guards and Navy vessels sent to save people in trouble in the oceans. We can't even imagine leaving someone to drown or die in horrible circumstances. Why then do we close our eyes to those magnificent creatures of the sea, being whales or dolphins, dying the most torturous deaths trapped in HUMAN nets, lines, etc. What gives us the right to place these traps in their world, just to extend our gain and without any consideration for their existence? Isn't this as horrible and cruel as mine fields in war? Please, please, please, help save them! How can we allow this to happen and at the same time pretend that we honour them by promoting tourist tours for whale sightings? Or is it that this is also only a money making exercise, and whales and dolphins are just a commodity place in the oceans for our gain?
I urge you to strengthen the proposals contained in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to maximize protection for these whales. The preferred alternative in the DEIS must be strengthened in the following ways:
-Require year-round fishing gear modifications, including weak links in gill and drift nets effective enough to allow whales to escape entanglement;
-Maximize the use of sinking line in lobster trap fisheries including on vertical lines;
-Minimize the use of vertical lines in trap fisheries, such as requiring the use of a single vertical line at one end of a line of traps as opposed to one at each end;
-Be very cautious in maintaining areas of habitat closed to fishing gear along the East Coast on a seasonal basis, or when whales known to be present until the necessary and proven gear modifications are in place.
With three of the species of whale affected by fishing gear listed as endangered, especially the extremely endangered North Atlantic right whale, we cannot afford anything less than a 100 percent effective plan to protect these magnificent animals from fishing gear encountered in their habitat.
Thank you for considering my views.

Sincerely,

Mrs. MARTA RAMIREZ
PO BOX 82
KOJONUP, None 6395

Subject: Comment on ALWTRP DEIS
Date: Wed, 20 Apr 2005 06:48:39 -0500
From: Jody Norman <jody_norman@hotmail.com>
Organization: The Ocean Conservancy
To: whaledeis.comments@noaa.gov

Example of Form Letter A

Apr 20, 2005

Asst. Administrator Mary Colligan
National Marine Fisheries Service, Northeast Region
Gloucester, MA 01930

Dear Asst. Administrator Colligan,

The methods used to save the whales from entanglement sound as if they would also save fisherman the problems of replacing line that is tangled and lost. While my emphasis is on saving the whale, I'm glad that the fishermen will also benefit and hopefully won't be too inconvenienced. Please institute these changes! Every species lost is a loss for all of us, and for our children as well.
I am deeply concerned about the health of all ocean life, including that of the large whales along our Atlantic Coast. I am most troubled to learn that these creatures are becoming entangled, injured and sometimes killed in fishing gear placed in their habitat. This is especially troubling that this danger poses a threat the extremely endangered North Atlantic right whale and solutions exist that have yet to be fully implemented.
Therefore I urge you to strengthen the proposals contained in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to maximize protection for these whales. The preferred alternative in the DEIS must be strengthened in the following ways:
-Require year-round fishing gear modifications, including weak links in gill and drift nets effective enough to allow whales to escape entanglement;
-Maximize the use of sinking line in lobster trap fisheries including on vertical lines;
-Minimize the use of vertical lines in trap fisheries, such as requiring the use of a single vertical line at one end of a line of traps as opposed to one at each end;
-Be very cautious in maintaining areas of habitat closed to fishing gear along the East Coast on a seasonal basis, or when whales known to be present until the necessary and proven gear modifications are in place.
With three of the species of whale affected by fishing gear listed as endangered, especially the extremely endangered North Atlantic right whale, we cannot afford anything less than a 100 percent effective plan to protect these magnificent animals from fishing gear encountered in their habitat.
Thank you for considering my views.

Sincerely,

Jody Norman
PO Box 550647
Atlanta, GA 30355-3147

Subject: Comment on ALWTRP DEIS
Date: Tue, 26 Apr 2005 02:59:20 -0500
From: Evelyn Babb <eab813@rangebroadband.com>
Organization: The Ocean Conservancy
To: whaledeis.comments@noaa.gov

Example of Form Letter A

Apr 26, 2005

Asst. Administrator Mary Colligan
National Marine Fisheries Service, Northeast Region
Gloucester, MA 01930

Dear Asst. Administrator Colligan,

I am deeply concerned about the health of all ocean life, including that of the large whales along our Atlantic Coast. I am most troubled to learn that these creatures are becoming entangled, injured and sometimes killed in fishing gear placed in their habitat. This is especially troubling that this danger poses a threat the extremely endangered North Atlantic right whale and solutions exist that have yet to be fully implemented.

Therefore I urge you to strengthen the proposals contained in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to maximize protection for these whales. The preferred alternative in the DEIS must be strengthened in the following ways:

-Require year-round fishing gear modifications, including weak links in gill and drift nets effective enough to allow whales to escape entanglement;

-Maximize the use of sinking line in lobster trap fisheries including on vertical lines;

-Minimize the use of vertical lines in trap fisheries, such as requiring the use of a single vertical line at one end of a line of traps as opposed to one at each end;

-Be very cautious in maintaining areas of habitat closed to fishing gear along the East Coast on a seasonal basis, or when whales known to be present until the necessary and proven gear modifications are in place.

With three of the species of whale affected by fishing gear listed as endangered, especially the extremely endangered North Atlantic right whale, we cannot afford anything less than a 100 percent effective plan to protect these magnificent animals from fishing gear encountered in their habitat.

Imediately steps need to be taken to enact and strenghten the protection of the Right Whale which is close to extinction with the numbers that exist now any reduction in numbers even one will bring the Right Whale closer to extinction. Know habitats of these whales need to be closed to fishing to provide a safe place for the Right Whale. Marine Sancuaries need to be put in place and extending the already excisting ones to provide a greater area of protection also strong regulations of fishing nets and gear need to be put in place around these areas to prevent accidental entrapment in nets and to be enforced.

Thank you for considering my views.

Sincerely,

Ms. Evelyn Babb
1608 13th Ave E
Hibbing, MN 55746-1307

Subject: Comment on ALWTRP DEIS
Date: Sun, 8 May 2005 16:53:28 -0500
From: gina novak <zoinks768@care2.com>
Organization: The Ocean Conservancy
To: whaledeis.comments@noaa.gov

Example of Form Letter A

May 8, 2005

Asst. Administrator Mary Colligan
National Marine Fisheries Service, Northeast Region
Gloucester, MA 01930

Dear Asst. Administrator Colligan,

I am deeply concerned about the health of all ocean life, including that of the large whales along our Atlantic Coast. I am most troubled to learn that these creatures are becoming entangled, injured and sometimes killed in fishing gear placed in their habitat. This is especially troubling that this danger poses a threat the extremely endangered North Atlantic right whale and solutions exist that have yet to be fully implemented. If we have solutions to solve these problems, what are we waiting for? Many whales could be saved if these solutions are put in place. I would think that protecting an endangered species would be a top priority to all who care about the ocean.

Therefore I urge you to strengthen the proposals contained in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to maximize protection for these whales. The preferred alternative in the DEIS must be strengthened in the following ways:

-Require year-round fishing gear modifications, including weak links in gill and drift nets effective enough to allow whales to escape entanglement;

-Maximize the use of sinking line in lobster trap fisheries including on vertical lines;

-Minimize the use of vertical lines in trap fisheries, such as requiring the use of a single vertical line at one end of a line of traps as opposed to one at each end;

-Be very cautious in maintaining areas of habitat closed to fishing gear along the East Coast on a seasonal basis, or when whales known to be present until the necessary and proven gear modifications are in place.

With three of the species of whale affected by fishing gear listed as endangered, especially the extremely endangered North Atlantic right whale, we cannot afford anything less than a 100 percent effective plan to protect these magnificent animals from fishing gear encountered in their habitat. Perhaps educating fishing boats about these aniamls and how to protect them would be another idea to help with this process. However I feel that laws should also be inforced whereas if a fishing vessel breaks any laws put in place to protect these creatures, they are fined and possibly their license will be suspended.

Please consider these alternatives for these whales.

Thank you for considering my views.

Sincerely,

Miss gina novak
15028 Carter Rd
Philadelphia, PA 19116-1503

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

ONE SOUTHPARK CIRCLE, SUITE 306
CHARLESTON, SC 29407-4699
TEL: 843/571-4366 FAX: 843/769-4520
Toll Free: 866/SAFMC-10
E-mail: safmc@safmc.net Web site: www.safmc.net

Louis Daniel, Chairman
George Geiger, Vice-Chairman

Robert Mahood, Executive Director
Gregg T. Waugh, Deputy Executive Director

May 13, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

ATTN: ALWTRP DEIS.

Dear Ms. Colligan:

The South Atlantic Fishery Management Council, in consultation with several of its committees, has reviewed the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (ALWTRP DEIS). The Council offers the following comments and recommendations.

The Council recognizes and supports the need for reducing mortality and serious injury of large whales due to interactions with fisheries. To further this goal, the Council supports the continuation of research initiatives that explore fishing techniques designed to reduce the risk of entanglement, develop whale safe gear, and investigate whale behavior as it pertains to entanglement risk (e.g., how whales are utilizing the water column). We believe that such research is vital since currently there are many unknowns regarding how, where, when, and why whales become entangled.

We also believe that methods to monitor the effectiveness of the ALWTRP need to be fully addressed. Monitoring currently includes assessing the number of entanglements combined with gear type and the parts of gear involved. Four parts of fixed fishing gear are known to be regularly involved in entanglements: buoy line, groundline, floatline and surface system lines (includes buoys and high-flyers, as well as lines that connect these components to the buoy line). The Council recognizes that improved gear marking of these gear parts would facilitate better monitoring of interactions between fisheries and large whales. However, the Council recommends that any required gear marking be able

to provide adequate information about the nature of the entanglement (i.e., give insight concerning where, when, and how the entangling gear was set). As currently proposed, fishermen would be required to mark buoy lines with one 4-inch mark every 10 fathoms or one 4-inch mark in the center of the buoy lines 10 fathoms or less. While this would identify a buoy line and that it came from a fishery regulated under the ALWTRP, the proposed measure does not specify a unique identifier to a fishery or even to a region. Thus, it limits the amount of information that can be tracked and evaluated with regard to future risk reducing measures.

We recommend that the National Marine Fisheries Service (NOAA Fisheries) prioritize observer coverage in the ALWTRP regulated fisheries. Adequate observer coverage would assist in assessing the effectiveness of required gear modifications as well as seasonal closures. Such monitoring should also include assessments of other bycatch such as finfish, sea turtles, and sea birds to allow for maximum use of resources in assessing overall bycatch in the regulated fisheries.

The Council also recommends more flexibility regarding the requirements of non-floating line and weak links. For example, allowing fishermen to weave lead cores in the line to make it non-floating which alleviates the immediate burden of replacing their floating line with neutrally buoyant or sinking line. Also, the Council is concerned about the requirement to use non-floating groundline for trap/pot trawls (multiple pots connected by a groundline). Specifically, the Council is concerned about the potential for increased pot loss due to lines chafing along the rocky bottom. In addition, the Council is concerned that adverse impacts to habitat may occur due to lines rubbing against live bottom. We have adopted several regulations within our snapper grouper fishery to reduce adverse impacts to bottom habitat (e.g., prohibited the use of bottom tending (roller-rig) trawls, prohibited fish traps other than those for black sea bass, instituted closed areas where *Oculina* coral occur]. We recommend allowing for the use of short lengths of line between traps/pots fished in a trawl as an option that would reduce the groundline profile but keep the line off the bottom. Within our jurisdiction, less then 20% of black sea bass pot fishermen are known to fish with trawls.

Regarding weak links, the Council recommends that line of appropriate breaking strength be allowed as a method to create a weak link. The Council also recommends that a discussion on the effectiveness of weak links be included in the Final Environmental Impact Statement as weak links are treated as an important risk reducing element in the ALWTRP yet their effectiveness as such is still unclear.

Lastly, the Council recently commented on Amendment 2 of the Highly Migratory Species Fishery Management Plan (please see the attached letter). In our statement, the Council expressed its desire for a total prohibition on the use of drift gillnets in the shark fishery. We would like to take this opportunity to reinforce our position with respect to this plan.

The Council appreciates this opportunity to comment on the ALWTRP DEIS. As the Council moves toward ecosystem-based management, it is important to strengthen coordination with NOAA Fisheries in order to ensure that we compliment each other's management actions. The Council considers consistency among regulatory plans an essential component to successful management.

Thank you for your assistance in this matter. If you have any questions, please contact Bob Mahood, Executive Director.

Sincerely,

Louis Daniel by Rbm

Dr. Louis B. Daniel, III
Chairman

cc: Bill Hogarth, NMFS Headquarters
Council Members and Staff
Monica Smit-Brunello, NOAA GC SERO
Nancy Thompson, SEFSC
John Merriner, NMFS Beaufort Lab
Dave Bernhart, SERO Division of Protected Resources

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

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Louis Daniel, Chairman
George Geiger, Vice-Chairman

Robert K. Mahood, Executive Director
Gregg T. Waugh, Deputy Executive Director

April 5, 2005

Ms. Margo Schulze-Haugen
Highly Migratory Species Management Division
Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Schulze-Haugen:

The purpose of this letter is to specifically reiterate the Council's desire for a total prohibition on the use of drift gillnets in the shark fishery. The Vice-Chairman of our HMS Committee and I recently attended the joint meeting of the HMS and Billfish Advisory Panels where the issue of shark drift gillnets was discussed. At the meeting there was clear support for a buyout and/or total prohibition for the use of this gear. The Council also believes it is time for this indiscriminate gear to be removed from the fishery by any means necessary.

This is not a new position for the Council. The Council has long recognized the detrimental impacts of drift gillnets on fisheries resources and protected species. In 1989 the South Atlantic and Gulf Councils completed Amendment 3 to the Coastal Migratory Pelagic Resources (Mackerel) FMP. Amendment 3 prohibited the use of drift gillnet gear for all coastal migratory pelagic species (king mackerel, Spanish mackerel, cobia, cero mackerel, little tunny, dolphin and in the Gulf of Mexico bluefish). Not surprisingly, much of the rationale for prohibiting drift gillnets in the Coastal Pelagics fishery applies to the shark drift gillnet fishery. This includes: (1) Large net catches taken in a limited area within a short period of time can disrupt schooling behavior and result in localized overfishing, (2) Negative impacts on endangered and threatened sea turtles and other protected resources, (3) Wastage of incidentally caught fish (particularly gamefish), (4) Removals of bycatch affecting predator-prey relationships, (5) Lost drift gillnets continuing to ghost fish, (6) Damage due to nets becoming entangled on live bottoms and other sensitive reef habitat, and (7) Safety concerns relative to poorly marked, unattended and/or lost drift gillnet gear impeding navigation. The implementation of Amendment 3 to the Coastal Pelagics FMP resulted in the prohibition of drift gillnets in all fisheries under the Council's jurisdiction.

Consistent with the position of the joint HMS and Billfish Advisory Panels, the Council believes the take of marine mammals and sea turtles by the shark drift gillnet fishery is clearly an important issue for both state and federal management that must be resolved. Further, the Council continues to be concerned regarding the drift gillnet bycatch of highly valued gamefish

species that help provide the social and economic foundation for recreational and charter fisheries that generate millions of dollars for the national economy, as well as create jobs and support marine related businesses. Additional concerns include ongoing costs associated with incompatible state/federal management of drift gillnet gear and the excessive NMFS expenditures required to manage this fishery, especially in light of limited agency resources and other critical monitoring needs within the HMS fishery. All of this can best be addressed by removing drift gillnets from the shark fishery.

Thank you for the opportunity to express the Council's concerns relative to the shark drift gillnet fishery. If you have any questions, please contact me.

Sincerely,

Louis Byrd

Dr. Louis Daniel,
Chairman

Cc: Council Members and Staff
Nancy Thompson
Monica Smit-Brunello
MAFMC, NEFMC, GMFMC, CFMC
Jack Dunnigan

International Fund for Animal Welfare

FREDERICK M. O'REGAN, PRESIDENT

May 13, 2005

Mary Colligan
ATTN: ALWTRP DEIS
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Re: Comments on the Draft Environmental Impact Statement (DEIS) for Amending the Atlantic Large Whale Take Reduction Plan: Broad-Based Gear Modifications

www.ifaw.org

INTERNATIONAL HEADQUARTERS
411 Main Street
Yarmouth Port, MA 02675-1843
USA
Tel: 508 744 2121
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Australia
Belgium
Canada
China
France
Germany
India
Japan
Kenya
Mexico
Netherlands
Russia
South Africa
United Kingdom

Dear Ms. Colligan:

I write on behalf of the International Fund for Animal Welfare's (IFAW) two million supporters worldwide, to provide comments on NOAA Fisheries' (NMFS) DEIS for Amending the Atlantic Large Whale Take Reduction Plan (ALWTRP). Since 1996, IFAW has been actively engaged in efforts to improve protection for right whales from known anthropogenic threats, namely death and serious injury from ship strikes and entanglements in fishing gear, through a combination of focused scientific research, political advocacy, education, and on-the-ground projects with industry and the Agency.

Through its 15 country offices worldwide, IFAW works to improve the welfare of wild and domestic animals throughout the world by reducing commercial exploitation of animals, protecting wildlife habitats and assisting animals in distress. IFAW seeks to motivate the public to prevent cruelty to animals and to promote animal welfare and conservation policies that advance the well being of both animals and people

Our comments presented here address primarily the potential impacts of the proposed amendments on the North Atlantic right whale population, while recognizing the importance of protecting the other strategic stocks – humpback whales and fin whales.

The North Atlantic right whale is among the world's most critically endangered mammals. With only about 300 animals remaining, each human-caused death is pushing this population ever closer to extinction. Approximately half of all known North Atlantic right whale deaths are attributable to human activities. Since February 2004, a spate of unacceptable ship strikes and fishing gear

entanglements have killed eight right whales, six of which were females, in U.S. waters.

In addition, nearly three quarters of the North Atlantic right whale population shows scarring or other signs of injury from interactions with fishing gear. At this moment, we know of at least eight (8) right whales that are reported entangled in fishing gear and at least three (3) of them are reproductive females.

Clearly, this species is in dire straits. It is essential that the process now underway, beginning with this DEIS public comment period, proceed expeditiously toward promulgating regulations that effectively reduce the mortality and serious injury of North Atlantic right whales and other large whales (endangered and otherwise), due to entanglements, towards zero.

General Comments

One of the key areas of controversy that NMFS tries to address in the DEIS is the rate at which new requirements are phased-in. NMFS appears to be taking the approach of balancing interests of those that advocate for accelerated phase-in of gear modifications, with those that favor a longer phase-in period. Even though the Agency favors a more rapid phase-in period, it appears to be effectively placing the survival of the species on an equal plane with the wishes of the fishing industry. This approach runs directly counter to NMFS's obligations to both protect and take measures to assist the recovery of endangered species under the ESA and MMPA. Indeed, these obligations require that deaths attributable to human causes are within the estimated Potential Biological Removal for the species (which in the case of the North Atlantic right whale is 0), rather than just to reduce the risk of entanglements.

Moreover, modifying fishing gear is only a partial solution to addressing the threat of entanglements. Given the recent spate of right whale deaths, and the ongoing problems with serious entanglements of right whales in fishing gear, NMFS should consider fisheries closures for high-risk areas during peak right whale occurrence (in addition to the Great South Channel Restricted Area for trap/pot fisheries [April 1-June30], and Cape Cod Bay Restricted Area for anchored gillnetting [January 1-May15]). Gear removal from important feeding and calving habitat is the most effective risk reduction method that could be implemented. For example, in the northeast region, areas within CCB could be closed to trap/pot fishing during peak months based on the best available data at the time, including direct surveys of whale distribution and remote monitoring of habitat variables known to be related to the distribution of right whales, such as prey abundance.

For the mid-Atlantic northbound migration, a fishery closure could apply from the third week of February to the third week of March, based on current knowledge of right whale migration through the mid-Atlantic from the southeast calving grounds. A similar measure could be applied for the southbound migration from mid-December to mid-January. However, more information is needed to determine with more certainty the timeframe within which right whales migrate from northerly waters through the mid-Atlantic region to the Southeast region.

Proposed Alternatives

IFAW does not support in whole any one alternative in the DEIS. Rather, we believe that there are a number of changes that NMFS must consider in developing the proposed rule. No one alternative, and in particular NMFS's preferred alternatives 3 and 6, is sufficiently protective to warrant adoption as the basis for rulemaking. With this in mind, we offer the following specific comments on the various alternatives:

Alternative 2

Of the alternatives presented in the DEIS, alternative 2 is the most protective, but none of the alternatives as currently articulated would achieve a sufficient level of protection for large whales, and thus no one alternative justifiably could be selected as the basis for moving forward with proposed regulations. A simple modification in the DEIS in terms of potentially reducing risk is year-round use of sinking groundline in the trap/pot and gillnet fisheries. We believe that this requirement should apply from the northeast region to the SC/GA border year-round, immediately upon promulgation of the new rules[1]. For the Northern Monitoring & Restricted Area and the Southern Monitoring Area, we propose applying sinking groundline requirements from November 15 to April 15 for trap/pot fisheries and gillnets, as opposed to splitting the time periods between the two areas. A uniform restricted period would reduce risk for right whales and humpback whales given known, seasonal presence in these areas, without imposing a substantial burden on the industry.

In the northeast, many trap-pot fishermen already use sinking groundline in their trawls in order to comply with DAM/SAM requirements, so the economic burden on them to comply with a universal, year-round sinking line requirement would be minimal. Moreover, the majority of trap/pot fishermen who fish in the Stellwagen Bank National Marine Sanctuary (a known humpback and fin whale feeding area) and all of Massachusetts inshore lobster fishery have already switched over to sinking line in a recently completed rope buyback program sponsored by IFAW, the Massachusetts Division of Marine Fisheries, and the Massachusetts Lobstermen's Association. Therefore, there is no reason for this population of fishermen to not be ready now to comply with a sinking groundline requirement.

NMFS's analysis shows that alternative 2 would provide the highest degree of protection – 93 million area-days subject to broad-based gear modification requirements, followed by alternative 4 (79 million area-days), and alternatives 3,5, and 6 (48 million). For the mid-Atlantic region, NMFS argues that the actual risk-reduction would be minimal during summer months based on what is *currently* known about whale seasonal migration. This is presented as a key justification for selecting preferred alternatives 3 and 6. However, this logic suggests that greater survey effort (e.g., a variation of the Sighting Advisory System) is needed in the mid-Atlantic to define right whale presence year-round before seasonal regulations would be considered. Until adequate information is available for this region, year-round requirements (essentially 3 additional months to what is proposed in Alternatives 3 and 6) should be in place. If fishermen

[1] This could be as soon as 2006, but no later than 2007. We believe that in general, the fisheries targeted for these new rules are capable of switching over to sinking line within that timeframe. The offshore trap/pot fishery may need additional time for the development and production of suitable line products.

switch over for nine months of the year, we would expect that switching back for the other three months would be unlikely, and probably more costly to the industry. Thus, given NMFS's obligation under the ESA and MMPA to afford the highest level of protection possible to right whales, and the tenuous status of the population, NMFS must take a precautionary approach with regard to the mid-Atlantic region and require year-round modifications. Moreover, the comparative economic burden that would be placed on the industry is relatively the same regardless of the alternative employed.

Further, alternative 2 calls for eliminating the SAM and DAM requirements in 2008, when year-round sinking line requirements would go into effect. However, for NMFS's preferred alternative 6, DAM requirements would be eliminated six months after publication of the final rule. The rationale for this is based on NMFS's analysis of right whale sightings, and thus the proposed expanded SAM in alternatives 5 and 6. However, DAMs occur frequently in locations outside of the proposed expanded SAM areas. For alternative 2, NMFS should revisit its analysis of the expanded SAM in light of this information for the period 2003-2005, and adjust the boundaries until the SAM is eliminated when year-round gear requirements go into effect. Moreover, eliminating the DAM requirements before year-round sinking line requirements are in place is, apart from illegal, increasing entanglement risk in the interim period. We believe that the DAM requirements should remain in effect for the northeast and mid-Atlantic regions until the year-round sinking groundline requirement goes into effect. NMFS states in the DEIS that, "DAM provisions can be burdensome, requiring unanticipated gear removals that disrupt fishermen's schedules..." Economic burden and safety issues are one thing, but inconvenience seems irrelevant to the charge of the ALWTRP under the MMPA.

Alternative 3 (NMFS's preferred alternative)

The seasonal requirements for gear modifications that this alternative proposes for the mid-Atlantic and southern regions are not adequately justified in the DEIS. First, and as noted above, there is limited sightings data for the mid-Atlantic region throughout the year to justify a seasonal approach. Moreover, whale watching companies operate in the mid-Atlantic region from April 1 through November 30 – 3 months of which restrictions would not be in place under this alternative. If the number of whales were expected to be low in the region from May 31 to September 1, then we would expect that whale watching companies would not be operating during these months. Given the limited sightings data, it is important to protect year round this important migratory corridor for right whales as a precautionary measure.

Further, if fishermen have already switched over their gear to meet gear modification requirements for nine months of the year, it would seem costly for them to switch back over to traditional gear. Although NMFS is directed under the ESA to consider protection of the species as a priority, the economic analysis presented in the DEIS shows that the relative cost to fishermen of complying with gear modification requirements does not differ significantly between Alternative 2 and Alternative 3 for the Mid-Atlantic. From an economic perspective, the burden to fishermen of complying with gear modifications for the additional three months under alternative 3 is minor.

Alternative 4

This alternative mirrors alternative 2 with the exception of seasonal as opposed to year-round requirements for fisheries in the South Atlantic regions. We note that the timeframe for seasonal restrictions between the SC/GA border and 29^{0}00'N (November 15-April 15) ends at the same time as the survey effort. If seasonal requirements for the suggested timeframes were to go into effect for this region, then NMFS should extend the survey effort commensurately in order to ensure that the level of risk justifies lifting gear restrictions from April 15 to November 15 for all protected large whales (humpback, fin, right and Minke whales).

Alternative 5

We understand that the Agency is obligated to consider as many alternatives as possible for proposed regulations, but alternative 5 is clearly not sufficiently protective of the species, and excludes all areas outside of the expanded SAM from the sinking line requirement. We believe that all fisheries should be required to use sinking line year-round for the Northeast and mid-Atlantic regions, and seasonally for the Southern regions, for reasons stated in previous sections of this letter.

If the Agency decides in the end to phase-in the requirement for sinking groundline, as well as other gear modification requirements for weak links, buoy lines, gear marking, and exempted areas, then we believe that an expanded SAM should be established, and should include all of the DAM designations from 2003 – 2005, until universal gear modification requirements are in effect. For alternative 5, no such phase-in would be necessary because the alternative does not require the use of sinking ground line outside of the expanded SAM area. But, the Agency does not adequately justify this position by showing the level of risk reduction afforded by alternative 5 as compared to other alternatives, or how any deficiencies in risk reduction would be compensated elsewhere.

Further, this alternative would revert back to two end lines rather than one in SAM zones. NMFS has proposed this change without quantifying the net change in risk and offering any compensatory risk reduction measures. The most compelling reasons provided for this change is that with a single buoy line requirement, fishermen are more likely to split their trawls, which would result in more vertical lines in the water, or more ghost gear would result from storms and gear conflict with one end line configurations. If NMFS is concerned that ghost fishing gear is a potential risk, then it would be beneficial to quantify the extent to which this is the case and provide a strategy as to how the Agency could potentially address this problem. As an example, IFAW worked with the Massachusetts Division of Marine Fisheries, the Massachusetts Environmental Police, and local lobstermen in 2000 to establish a ghost gear removal program for Cape Cod Bay. DMF now administers the program each year during the month of March when fishing in the bay is minimal. Ghost gear is hauled out of the bay, identified, and either returned to the owners or discarded. A similar program could be established for other fishing areas.

Although we don't believe that the requirement for 2/3 sinking line and 1/3 floating line proposed in this alternative would result in an appreciable increase in risk, we do believe that the

two types of line should be connected using splices, rather than knots, and that this should be a requirement under any regulation with this change.

Alternative 5 calls for eliminating the DAM program within six months of promulgation. We do not believe that this is justified until a universal sinking line requirement is in place, which would not go into effect under this alternative. Rather, even with an expanded SAM, the DAM program should remain in place to address right whale occurrences throughout the range of its habitat; especially in the GoM during the fall where right whales are known to feed in Jeffries Ledge. The mid-Atlantic region should also be subject to the DAM program year-round when right whales are sighted in the vicinity of fishing gear.

Alternative 6 (NMFS's preferred alternative)

Our comments on this alternative are reflected above, under alternatives 3 and 5. However, we emphasize that the DAM program should not be eliminated six months after publication of the rule, and should be in effect until the universal sinking line requirement is in place, which would mean that the DAM program ends immediately if the sinking line requirement is adopted upon publication of the final rule. In addition, the expanded SAM zone and regulations described in alternative 5, and the modifications to this proposal that we've suggested in this document, should go into effect immediately upon publication of the rule. Fishermen that use most of the areas encompassed by the expanded SAM are already in the habit of using sinking line, and if not, are likely out of compliance under current rules. Therefore, there is no justifiable reason to delay the implementation of the expanded SAM measure.

Furthermore, alternatives 2, 3, 4, and 6 would fold in an additional 1000 vessels into the ALWTRP regulations (600 newly regulated gillnet vessels, and 400 newly regulated trap/pot vessels). This is a welcome proposal from IFAW's perspective for reducing entanglement risk from these vessels; especially for the hagfish industry, and gillnets vessels. However, we question the level of risk reduction in folding in the other, smaller fisheries – such as black sea bass and scup - which would have a minimal impact on risk reduction, and may be duplicative.

With the exception of Alternatives 1 and 5, the broad-based, year-round and/or seasonal gear modification requirements would extend direct and ancillary benefits to other protected species, including sea turtles, which if demonstrative, would be a welcome impact for the general protection of charismatic marine creatures.

Evaluation

There is no proposed monitoring and evaluation program articulated in the DEIS. In order to measure the relative effectiveness of any gear modification scheme, NMFS should develop and propose an evaluation method to identify those gear modifications that genuinely reduce risk, and those that do not make a difference in the occurrence and/or seriousness of large whale entanglements. This information is critical to assessing and revising, as needed, gear modifications under the ALWTRP.

Buoy Lines

Under the current ALWTRP, fishermen are encouraged, but not required, to maintain knot-free buoy lines, with splices preferable to knots because they are not considered to be an entanglement threat. In this DEIS, apart from the overview of current ALTWRP requirements, NMFS does not address knots in buoy lines in any substantive manner. Knots pose a particularly lethal threat to large baleen whales, because these knots can cause buoy lines to get stuck between baleen plates. NMFS should therefore require that fishermen maintain knot-free buoy lines to reduce this potentially lethal threat. The recent right whale found dead in Virginia due to entanglement supposedly had knotted line in its baleen.

Conspicuously, the issue of reducing the biological impacts of buoy lines is left relatively un-addressed in the DEIS for reasons that IFAW understands to be related to a lack of information to make concrete management decisions involving new vertical line modifications. However, it would give all stakeholders more confidence if NMFS could provide at least a suggested research plan and a timeline for moving the solution forward to proposed rulemaking. We understand that NMFS will soon complete a vertical line strategy, key elements of which we believe could have been articulated in the DEIS without committing at this time to specific alternatives.

Further, there is no way to measure the benefit of relaxing the single buoy requirement from trawls with five or fewer traps, to trawls with four or fewer traps. The argument is that by decreasing the number of traps in a trawl, fishermen will be less likely to split their trawls, which would cause increases in the number of buoy lines. In addition, alternatives 5 and 6 call for allowing two buoy lines for SAM gear requirements to address the issue of gear loss. NMFS has proposed these changes without adequately quantifying the biological impacts, and without offering any compensatory risk reduction measures. Therefore, there seems to be no justifiable basis for the proposed change, other than avoiding gear loss, which is an important, but not threshold criterion. How would this change in buoy line requirements decrease risk? Did the original requirement reduce risk of entanglement?

With regard to allowing floating line in the bottom third of the buoy line, beginning in 2008 under alternatives 2 – 4 and 6, recent modeling research conducted by the Massachusetts Division of Marine Fisheries suggests that the use of 1/3 float line at the bottom of a buoy line might not pose a significant increase in entanglement threat.

Gear Marking

The proposed expanded color scheme for vertical buoy lines is extremely important by fishery and region so that information is as specific as possible when gear is removed from entangled whales. However, gear marking by itself is not an entanglement risk reduction measure, even though it is presented as such in the DEIS.

The new gear-marking scheme in the DEIS does not include groundlines. Groundline does not have distinguishing characteristics to allow for easy identification, unless gangions are present. This calls for a marking scheme to allow for easier groundline identification on entangled

whales. NMFS's rationale for not requiring groundline marking is that the technology currently does not exist. This reasoning is difficult to understand; if you can mark buoy lines with one four-inch mark every ten fathoms, then why couldn't a similar marking scheme be put in place for groundlines?

If the purpose of gear marking is to gather more information about entanglement and the areas where entanglement may occur, it is reasonable to require that all portions of the gear be marked. However, there should be a periodic evaluation of the gear-marking program to determine whether or not sinking groundline is effective as a risk reduction measure. Based on this evaluation, gear modification requirements would be re-assessed, or marking schemes discontinued if modifications proved effective in reducing risk.

Further, there are no cost estimates for integrating color-coding into new line manufacturing. There would probably be insufficient time for manufacturers to produce enough product for fishermen to purchase the gear outright when the regulations go into effect; fishermen would need to make color coded marks on their existing or new line in the interim. NMFS should work with line manufacturers to work out how marked gear can be produced cost-effectively. This will increase compliance, and ultimately reduce costs to the industry as a whole over time.

Exempted Waters

We believe that the proposed demarcation for exempted waters (landward of the 72 COLREGS demarcation line) needs further justification, and NMFS should consider eliminating this exemption for some waters along the east coast. One concern is that this provision in a final rule would drive affected fishermen to place their gear within exempted waters, thereby concentrating fishing in these areas. Large whales that use portions of these coastal waters for feeding and other biological activities would face higher densities of fishing gear, and thus higher risk. For some regions, such as Massachusetts inshore waters including Cape Cod Canal and Buzzards Bay, we believe that universal requirements should apply to the shoreline given the recent buyback program that provided nearly $1 million dollars to the inshore lobster fishery to replace floating groundline with sinking line. In this case, there is no justifiable reason to delay gear modification requirements based on this subsidy program and no exemptions should be granted.

The proposed exempted areas in the DEIS are based on very limited sightings data in certain areas, such as much of the Maine coastline. What will NMFS do if a right whale is sighted in an exempted area? It is likely that any final rule would include the elimination at some point of the DAM program, so animals sighted in proximity to fishing activity in exempted areas would face higher risks of entanglement with no explicit recourse by the Agency to act in a timely manner. The DEIS states that NMFS may re-evaluate the exempted area demarcation if frequently reported right whale sightings occur. What does "frequently" mean in this case? It only takes one lethal entanglement to constitute jeopardy. For instance, on July 11, 2002, the SAS sighted a right whale 5NM northwest of Block Island, Rhode Island, clearly within the 72 COLREG demarcation. On July 29, 2002, a recreational boater sighted one (1) right whale in Buzzard's Bay, MA.

In addition, the 280fm exemption should remain flexible and be re-visited as more research, sightings data, and other information comes to light.

Economic and Social Impacts

As presented in the DEIS, the economic impacts to the industry are relatively the same across the alternatives. Much of the economic burden created by the proposed changes would be borne by the lobster industry (90% of the economic impact), the majority of which is based in the northeast region. Based on the economic analysis, and given what we know about the mid-Atlantic as an important migratory corridor for right whales, we do not see the Agency's justification for preferring alternatives 3 and 6 to more protective alternatives 2 and 4.

The comparison of vessel compliance costs analysis assumes that the upper and lower bounds of complying with new regulations are similar between vessel classes. For instance, lobster vessel size class I, Offshore shows an upper and lower bound compliance cost estimate of $10,969, with the same being the case for offshore vessel size classes III & IV. As noted in the DEIS, this problem could lead to underestimates of some vessel class revenue estimates, and thus over-estimates of compliance cost impacts. Likewise, small sample sizes of vessel revenues are insufficient in providing an accurate analysis of potential compliance cost estimates by vessel class. This deficiency in the economic and social impacts analyses should be corrected to be more representative.

Furthermore, the social impacts analysis fails to discuss the ethical values that some people hold in relation to whales and the marine environment; these intelligent, highly social, and complex species that share the planet with us deserve protection from human interference and threats. Earlier in chapter 7, social impacts were discussed relative to fishermen's quality of life in terms of the potential negative impacts of new regulations. While these considerations are important, the DEIS does not present the contrasting view that non-consumptive uses, such as spiritual or intellectual enjoyment of whales living free from entanglements, are important values to foster in building a society that embraces a conservation ethos, and respect for other forms of life in the world. Clearly there are balancing factors here, but my point is that there are equally important "value-based" reasons as to why society would choose to protect whales; reasons for which there are no economic metrics to define.

Finally, as our mission indicates, IFAW develops and implements solutions that benefit both animals and people. In the context of this DEIS, IFAW is calling for the most protective amendments possible, but we do so with the recognition that the financial burden to the industry, with a significant percentage being borne by the lobster fishery, will be difficult. IFAW has just completed a lobster rope buy-back program in Massachusetts to replace floating groundline with sinking line. To fund it, IFAW secured a $660,000 federal grant from the National Fish and Wildlife Foundation (NFWF) through a Congressional appropriation sponsored by Congressman Bill Delahunt (MA) and Senator Edward M. Kennedy (MA). This pilot project is a unique collaboration between IFAW, the Massachusetts Division of Marine Fisheries (DMF), the Massachusetts Lobstermen's Association (MLA), and the NFWF. About 300 Massachusetts lobstermen participated, with about 300,000 lbs. of floating groundline collected, a large proportion of which is now being recycled.

We hope that this program will provide a model for other states to pursue as new gear modifications come into effect. To this end, IFAW is committed to working with the industry and states as much as possible.

Thank you for considering our comments, and we look forward to our continued collaboration with you to save the North Atlantic right whale from extinction.

Sincerely,

Frederick M. O'Regan
President
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Center for Coastal Studies

May 9, 2005

RECEIVED MAY 11 2005

Mary Colligan
Assistant Regional Administrator
For Protected Resources
National Marine Fisheries Service, Northeast Region
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ATTN: ALWTRP /DEIS

Re: 2005 Proposed ALWTRP Modifications

Dear Ms. Colligan:

The Provincetown Center for Coastal Studies (PCCS) appreciates the opportunity to comment upon the Draft Environmental Impact Statement (DEIS) on proposed modifications to the Atlantic Large Whale Take Reduction Plan (ALWTRP).

We believe that the regulatory amendments recommended within the DEIS are likely to reduce the serious injury and mortality of North Atlantic right whales and, possibly, other protected marine mammal species. However, the DEIS does not provided sufficient evidence that the regulatory actions proposed by the National Marine Fisheries Service (NMFS) will achieve the goals of the Marine Mammal Protection Act (MMPA).

Zero Mortality

In the 1994 reauthorization of the MMPA, Congress declared that:

> "Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after the date of enactment..."

We appreciate the fact that the language of the Act is somewhat ambiguous. The phrase "insignificant levels" by itself could be interpreted relatively. On the other hand, "approaching zero," has a definite numerical connotation. From our perspective, which has been gained through extensive research and at-sea rescue operations over a period of more than twenty years, we firmly believe human-caused mortality and serious injury will continue to occur at alarming rates if the goal of zero mortality is not pursued more effectively. In this regard, we do not support NMFS's 2004 definition of the zero mortality rate goal (ZMRG) as

being 10 percent of Potential Biological Removal (PBR), a management number initially intended to trigger specific emergency action; namely, fisheries closures.

Linking the ZMRG to PBR fundamentally changed the commercial fisheries incidental take goal of the MMPA to one of increasing mortality and serious injury levels, numbers moving away from zero, rather than approaching zero, in recovering species. In essence, the ZMRG has now become a quota for the number of whales that may be killed by U.S. commercial fisheries based on a formula intended to represent population sustainability.

Protection of non-strategic species

Take reduction of minke whales has previously been included as a goal of the ALWTRP. The plan now suggests lowering the bar for this species under the argument that it is not considered "strategic." The status of minke whales is arguably less well-quantified and understood than the other whale species under consideration. Furthermore, recent Annual Large Whale Entanglement reports suggest a high entanglement-related mortality rate for this species. Minke whales with an indication of entanglement were reported dead 2.5 times more frequently than all other species combined. Dead minkes are not thought to be more likely to be detected, especially since they are believed to be less likely than other species to float after death.

Scientific basis for evaluation

The statistical relationship between human-caused mortalities that are observed and the true number of human-caused mortalities is not currently known. Without that relationship it should not be assumed that those serious injury and mortality cases which are witnessed, reported, and investigated provide a statistically reliable foundation for determining the serious injury or mortality rate, or trends in those rates, for any species of marine mammal.

Most data that were used in the DEIS to assess the large whale entanglement issue and the effectiveness of regulatory actions are artifacts of the very limited opportunity and effort to find and document whales with gear on them. At best this provides only minimum statistics of entanglement impact for those species recorded; but the full scope of the issue remains hidden. Every effort should be made to share such information in peer-reviewed publications to enhance uniformity in discussion for future management schemes.

We further recommend that NMFS develop and implement a statistically reliable methodology for measuring and reporting the serious injury and mortality rates of all species of marine mammals, as required by the MMPA.

Proposed ALWTRP Alternatives

There is no evidence that entanglement rates have diminished since the 1990s, and some data suggest the opposite. Arguments supporting several actions in the Plan, including

fishing closures in right whale Critical Habitat Areas and the deployment of weak links, are unsupported by evidence of success. In 2005, four years past the MMPA deadline for achieving the ZMRG, acceptable evidence of success should be measurable take reduction.

Significant reduction of serious injury and mortality of both strategic stocks of marine mammals as well as "non-strategic" stocks can be achieved by employing alternate fishing methods and equipment, including, possibly, some of those outlined in the Alternative Amendments of the ALWTRP. However, risk of serious injury or mortality by the fixed-gear fishery may not be completely removed for any species as long as rope is employed in buoy, ground line, and net systems within marine mammal habitats.

At this time the only convincing way to eliminate all serious injury and mortality of right whales, as required by the MMPA, is to employ the precautionary principle requiring the removal from the water column of all rope and net that might be encountered by a North Atlantic right whale. Therefore, with respect to achieving the specific goal of the Atlantic Large Whale Take Reduction Plan of achieving zero serious injury and mortality of right whales, we cannot fully support any of the six alternative amendments to the draft plan. Nevertheless, we acknowledge that reduction of rope from the water column throughout the habitat of whales will reduce the rate of entanglement and entanglement related serious injury and mortality and as such represents some progress.

Trap/Pot Alternative #2

In the regulated trap/pot fisheries any one of Alternative #2 though #6 will produce both reduction of the entanglement rate and reduction of serious injury and mortality. Of the alternative plans presented, #2 provides the most benefit to whales, because of its greater geographic scope and less seasonal nature. However, we remain concerned about the potential for increased risk of entanglement, serious injury and mortality in the northern Gulf of Maine near-shore lobster fishery that Alternative #2 will likely produce.

NMFS has stated its intention to address buoy lines at some future date. Such consideration should be given sooner rather than later. Every effort should be made to include management plans within the upcoming proposed rule that reduce buoy line entanglement rates and that reduce overall rope within the ocean environment.

In fact, a shift to sinking ground line with no further restrictions on buoy lines could, in some scenarios, increase the entanglement risk to large whales in the northern Gulf of Maine beyond its current level. For example a typical fisherman who now fishes pairs of traps with 80 fathom buoy lines and 10 fathom floating ground lines is fishing with 90 fathoms of rope in the water column for two traps. If he replaces the floating ground line in his pairs of traps with sinking line, as some options in the plan would require, the same amount of line remains in the ocean and only 11 percent of his line is removed from the water column (or stretched from ledge to ledge).

However, in practice, on hard, rough bottom as is found in much of eastern New England, it may be difficult or impossible to safely and successfully fish the habitat with sinking groundlines. Many fishermen in this region are expected to shift to single traps – nearly doubling the amount of rope in the water column in this example and nearly tripling the amount of rope for those going from triples to singles.

Trap/Pot Measures

If the fisherman in the above example re-rigged his pairs to six-trap trawls with one 80 fathom endline and five 10 fathom floating groundlines, it would remove 55 percent of the rope from the ocean completely for the same amount of fishing effort. Depending on the use of this habitat by whales, this might provide a much greater whale entanglement risk reduction with a more feasible working solution for many fishermen.

Modifying coastal lobster gear from single, pair or triple trap sets to longer trawls would significantly reduce the number of vertical lines and the overall amount of rope in the ocean. In areas such as eastern Maine where hard bottom creates an impossible situation for the use of sinking groundlines, the overall reduction of line by a shift to longer trawls where possible would provide a viable option for many fishermen, increasing their safety and efficiency, and giving better whale entanglement risk protection. A limited option for lobster trap trawls should be immediately evaluated as an emergency measure within this DEIS to protect whales from dramatic increases in rope potentially resulting from many of the alternative plans.

Gillnet Alternative #2

Since the sole purpose of fixed gillnets is to catch swimming animals, this gear will always pose an inherent risk to whales no matter what modifications are made to the line and net. Of these alternative plans #2 may provide the most benefit to whales because of its greater geographic scope and less seasonal nature.

Weak Links

Gear modifications required by the plan have primarily focused on the concept of so-called "weak links," which must be fitted to specific locations on the buoy lines in the lobster and gillnet fisheries and the horizontal lines of ground fish nets. The concept behind these links is that if the net or line encounters an unusual force, such as might occur if it were hit by a whale, the link would break before the whale became lethally entangled or injured.

The determination of ideal weak link breaking strengths was based on data collected during real and simulated fishing and field tests conducted collaboratively by members of the NMFS gear team and fishermen. Because the primary goal of these tests was to discover the minimum strength that could be used without gear loss if the gear was fished more or less as usual, the DEIS is incorrect in describing these tests as "simulated whale entanglements."

The potential placement of weak links is extremely important, if complicated. As shown in recent literature (Johnson 2003), entanglements may involve any part of gear and any body part of whales. This indicates that any possible usefulness of weak links will be related to their location within the gear system. For example, their use should take into account that weak links placed at the extremities of long lengths of rope may allow for entanglements that do not trigger a break in a weak link.

While the use of weak links may have potential to reduce mortality and serious injury, more research should be conducted to better determine the appropriate breaking strength for the species concerned, as well as the number and placement of such devices.

The benefit of weak links lies in their potential ability to reduce deaths through drowning for some species; to reduce the potential of rope to create wounds at the earliest stages of an entanglement; and/or their potential ability to weaken an entanglement by enhancing the shedding of smaller lengths of gear. However, lethal and life-threatening entanglements are known to have involved gear with weak links still attached.

Without further research, it cannot be assumed that the benefits of weak links to the survival of whales are greater than their dangers. The greatest danger is that our reliance on any untested method will result in the death and injury of many whales that could have and should have been protected by other means.

Fisheries Closures

In recent years, scientists using satellite telemetry and photographic identification have given closer scrutiny to the use of critical habitat areas by right whales off New England. This research has shown that instead of setting up seasonal residencies within the closed areas, individual right whales are continuously on the move, regularly passing through areas of high gear density surrounding the boundaries of the closure.

In 2001, one right whale that was radio-tagged east of Cape Cod crossed the boundaries of the Great South Channel Critical Habitat Area (CHA) a minimum of 18 times over the course of 36 days, during which its longest local residency was three-and-a-half days (outside the CHA). Only 32.48% of the distance traveled and 32.06% of the total time the whale was tagged was spent within the CHA. Another right whale, tagged that year within the Great South Channel Critical Habitat Area, crossed its boundaries at least 43 times. More recently, NMFS' aerial observers have reported very short local residencies of individual right whales in both the CHAs and DAMs. PCCS has reason to believe that this behavior is typical, and, if so, that whales in the area of the closure, including members of aggregations originally targeted for protection by the closure, may be regularly exposed to the same amount of gear but in increased density created by the rule.

The increased risk of entanglement to whales that behave in such ways is apparent, if difficult to quantify. There is no disagreement, however, that at any given time the vast majority of the North Atlantic right whale population is living outside these "protected"

boxes. These whales, as well as those originally targeted for protection inside the closure could face an increased risk of entanglement and death as a direct result of the closure due to the shift and concentration of fishing effort into the waters where they feed and travel.

Although closures may have a positive impact on entanglement rates, we are unaware of evidence of this or of the take-reduction effectiveness of current and proposed strategies that seasonally or reactively shift fishing effort from place to place in an attempt to avoid aggregations of feeding right whales. Furthermore, such management strategies may increase risk to whales traveling or feeding outside such closures. The implementation of a coast-wide gear management plan which reduces or eliminates the rope in the water year round is a much-preferred alternative to area closures. Such a plan must use the most practical and effective method of reducing rope and net within specific fisheries and regions.

Line Marking

Line marking per se, is not a take reduction measure; however, information gleaned from lines found on entangled whales is the most specific source of knowledge about the cause and effect of entanglement on whales. Therefore PCCS believes that line marking can be an effective research and monitoring tool.

Line marking schemes must be safe and practical for fishermen. We do not agree with the proposed scheme of using a four-inch mark every 10 fathoms and instead propose that ropes used for buoy lines, ground lines, and any other part of the system known from entanglements be produced in such way that they are identifiable as such throughout their length. This might be done by the inclusion of colored tracer fibers during manufacture. Because the recovery of gear from entangled whales is often not successful, a line marking scheme in which the rope is identifiable in aerial images of entangled whales would be especially useful.

Finally, we note that the DEIS does not outline a system for monitoring compliance or for enforcing the proposed modifications, which we urge be implemented sooner than 2008, as the agency has already exceeded the congressional deadline set in the MMPA by four years and the entanglement problem remains a critical issue.

Please call on us if we can be of any further assistance to you in this matter.

Sincerely,

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Executive Director

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May 16, 2005

VIA E-MAIL

Mary Colligan
Assistant Regional Administrator
For Protected Resources
National Marine Fisheries Service, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

ATTN: ALWTRP /DEIS

Dear Ms. Colligan:

Re: 2005 Proposed ALWTRP Modifications---Addendum

In addition to our letter dated May 9, we offer the following specific comments on background information included in the DEIS for humpback whales (Section 4.2.1). These comments focus on specific DEIS text, by subsection.

Overall, we recommend that background information include recently published literature as well as primary citations for all information presented. We also recommend taking advantage of the 2003 NMFS stock assessment report for Gulf of Maine humpback whales, as it contains additional background information that could be incorporated into the final document.

4.1.2.1. Range

1) "In the North Atlantic, humpback whales calve and mate in the West Indies . . . northwestern Atlantic during the summer months" As written, this sentence is incorrect; humpback whales occupy feeding grounds in the both the northwestern and northeastern North Atlantic. This sentence should either specify that it is referring to humpback whales in US waters (instead of "in the North Atlantic") or it should be corrected to indicate simply that animals occupy discrete high latitude feeding grounds (omit northwestern). A critical element that has been omitted is maternal philopatry—calves are recruited to the feeding grounds of their mothers. Proper references for this paragraph (including maternal philopatry) should ultimately be: Martin *et al.* (1984). Clapham and Mayo (1987) and Katona and Beard (1990).

2) "Most of the humpbacks that forage in the Gulf of Maine. . . " This un-referenced sentence is not strictly accurate. We recommend omitting it and starting the next sentence as, "In the US Gulf of Maine, sightings are most frequent from . . . ".

3) We recommend including reference to the fact that 27% of individuals on the Canadian Scotian Shelf were successfully matched to the cataloged Gulf of Maine population (Clapham *et al.* 2003) and that one cataloged Gulf of Maine whales was recaptured as far away as west Greenland (Katona and Beard 1990). Presumably the latter individuals were seasonal migrants to the Gulf of Maine. However, the stock identity of the former is not clearly defined.

4) "Small numbers of individuals may be present in this area all year round . . . " This sentence should include reference to Clapham *et al.* (1993).

5) Note that mackerel has also been reported as a prey item (Geraci *et al.* 1989), as also noted in a later section.

6) "a catalog of photographs of 643 individuals" This number is well out of date (PCCS has cataloged over 1,800 individual humpback whales in the Gulf of Maine), and the precise number also varied across the studies referenced.

4) Note that juvenile humpback whales have also been detected at low latitudes. We recommend removing "reproductively mature" from the second to last sentence in the second paragraph in order to be more inclusive.

5) Note that we have no specific data that prove that humpback whales use the mid-Atlantic as a migratory pathway to the mating grounds. They may simply over-winter there without actually travelling to the breeding ground. Data are presently inconclusive.

6) "Biologists theorize that non-reproductive animals may be establishing . . . " this should reference Barco *et al.* (2002).

7) "Identified whales using the mid-Atlantic area were found to be residents . . . " this should reference Barco *et al.* (2002).

4.1.2.2 Life History and Reproductive Success:

1) The text states that "Females reach sexual maturity at approximately four to six years of age and males at 7 to 15 years of age". This is incorrect; males and females are thought to mature sexually at around the same age. The source of these data was not referenced in the text, but we suspect that it comes from the difference between the age at sexual maturity and the age of physical maturity (for both sexes). Proper reference for the age at sexual maturity of both sexes would be Chittleborough (1965) and Clapham (1992). According to Chittleborough (1965), age at physical maturity for both sexes is 8-12 years.

2) The second sentence states that "copulation and calving takes place in the Antilles, Virgin Islands and Puerto Rico". However, the Virgin Islands and Puerto Rico are also part of the Antilles. It would be better to describe the breeding ground as "the Greater and Lesser Antilles."

3) In the last sentence, the gestation period and calving rates are correctly identified, but should reference the original sources of those data (not the stock assessment report, which did not derive them). Note that Clapham *et al.* (2003) reported higher average calving intervals (slower reproduction) after the 1980s.

4) Note that Robbins and Mattila (2001, already cited in Chapter 2 of the DEIS) found preliminary evidence for entanglement impacts on reproduction in this species.

4.1.2.3 Abundance

1) "Researchers have used three approaches in their attempt to estimate . . . " This sentence should specifically reference the source, Clapham *et al.* (2003).

2) "Modelling using data obtained from photographic mark-recapture . . . ." This paragraph should incorporate data from Clapham *et al.* (2003) in which the growth rate was recently re-calculated and found to have slowed.

3) "However, trend and abundance data are lacking for the western North Pacific stock . . . likely to affect the overall survival and recovery of the species". This does not make sense, as trends in the North Atlantic have no relationship to trends in other oceans.

4.1.2.4 Factors affecting survival

1) "Likewise, there are strong indications that a mass mortality . . . ." This statement should reference Geraci *et al.* (1987).

2) It is worth noting that Volgenau *et al.* (1995) specifically examined the potential effects of entanglement mortality on humpback whale populations in the western North Atlantic. However, there is no discussion of that study in the DEIS.

4.1.2.5 Behavior and susceptibility to entanglement

"Humpback whales employ a variety of foraging techniques . . . " This paragraph should reference the original studies, such as Hain *et al.* (1982) and Weinrich *et al.* (1992). Volgenau and Kraus (1990) is not a proper reference for this paragraph.

5.2.1.7 Seasonal regulation of southeast and mid-Atlantic waters

It is unclear what is meant by the sentence: "Humpback whales are common in the Northeast year-round, but the northern feeding grounds are primarily occupied from June through August." Humpback whales sightings are rare in the Northeast in January and February, although sporadic sightings occur. By contrast, this species can be found

consistently in the Gulf of Maine between April and December (a much longer period than indicated in this section of the DEIS).

The data presented in this section of the DEIS were obtained by analysis of a right whale sightings database with opportunistic data for other large whale species. However, humpback (and fin) whales are known not to have the same ecological characteristics as right whales, and so generally do not use the same feeding habitats concurrently. Opportunistic sightings during right whale research are therefore unlikely to paint a representative picture of the spatial and temporal elements of humpback whale distribution.

This comment also applies to information presented in Exhibit 5-9.

Recommended additional references:

Barco, S. G., McLellan, W. A., Allen, J. M., Asmutis-Silvia, R. A., Mallon-Day, R., Meagher, E. M., Pabst, D. A., Robbins, J., Seton, R. E., Swingle, W. M., Weinrich, M. T. and Clapham, P. J. 2002. Population identity of humpback whales (*Megaptera novaeangliae*) in the waters of the US mid-Atlantic states. *J. Cetacean Res. Manage.* 4(2): 135-141.

Chittleborough, R. G. 1965. Dynamics of two populations of the humpback whale, *Megaptera novaeangliae* (Borowski). *Aust. J. Mar. Freshwater Res.* 16: 33-128.

Clapham, P., Barlow, J., Bessinger, M., Cole, T., Mattila, D., Pace, R., Palka, D., Robbins, J. and Seton, R. 2003. Abundance and demographic parameters of humpback whales from the Gulf of Maine, and stock definition relative to the Scotian Shelf. *J. Cetacean Res. Manage.* 5(1): 13-22.

Clapham, P. J. and Mayo, C. A. 1987. Reproduction and recruitment of individually identified humpback whales, *Megaptera novaeangliae*, observed in Massachusetts Bay, 1979-1985. *Can. J. Zool.* 65(12): 2853-2863.

Clapham, P. J. 1992. Age at attainment of sexual maturity in humpback whales, *Megaptera novaeangliae. Can. J. Zool.* 70: 1470-1472.

Clapham, P. J., Baraff, L. S., Carlson, C. A., Christian, M. A., Mattila, D. K., Mayo, C. A., Murphy, M. A. and Pittman, S. 1993. Seasonal occurrence and annual return of

humpback whales, *Megaptera novaeangliae*, in the southern Gulf of Maine. *Can. J. Zool.* 71: 440-443.

Geraci, J. R., Anderson, D. M., Timperi, R. J., St. Aubin, D. J., Early, G. A., Prescott, J. H. and Mayo, C. A. 1989. Humpback whales *Megaptera novaeangliae* fatally poisoned by dinoflagellate toxin. *Can. J. Fish. Aquat. Sci.* 46(11): 1895-1898.

Hain, J. H. W., Carter, G. R., Kraus, S. D., Mayo, C. A. and Winn, H. E. 1982. Feeding behavior of the humpback whale, *Megaptera novaeangliae*, in the western North Atlantic. *Fish. B.-NOAA* 80: 259-268.

Katona, S. K. and Beard, J. A. 1990. Population size, migrations and feeding aggregations of the humpback whale *Megaptera novaeangliae* in the western North Atlantic Ocean. *Rep. int. Whal. Commn* (special issue) 12: 295-305.

Martin, A. R., Katona, S. K., Mattila, D., Hembree, D. and Waters, T. D. 1984. Migration of humpback whales between the Caribbean and Iceland. *J. Mammal.* 65(2): 330-333.

Volgenau, L., Kraus, S., and Lien, J. 1993. The impact of entanglements on two substocks of the western North Atlantic humpback whale, *Megaptera novaeangliae*. Canadian Journal of Zoology 73: 1689-1698.

Weinrich, M. T., Schilling, M. R. and Belt, C. R. 1992. Evidence of acquisition of a novel feeding behaviour: lobtail feeding in humpback whales, *Megaptera novaeangliae*. *Anim. Behav.* 44: 1059-1072.

Thank you again for this opportunity to comment on the DEIS.

Sincerely,

Peter Borrelli
Executive Director

ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION

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May 13, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan,

I am writing on behalf of the Atlantic Offshore Lobstermen's Association (AOLA) in response to the agency's request for comments on the Draft Environmental Impact Statement (DEIS)for amending the Atlantic Large Whale Take Reduction Plan (ALWTRP), dated February 2005.

AOLA has gone on record as supporting the preferred Alternative 6, with a few caveats. We supported Alternative 6 specifically because we were told the environmental community favored the expanded SAM Area due to supposed enhanced protection for the whales. While we would have gladly supported alternatives that provided the option for "status-quo," or the ability to continue using predominantly floating groundlines, we considered it an unrealistic outlook; therefore we chose to support a preferred alternative together with practicable and viable alternatives.

TRT recommendations in 2004 for the offshore lobster fishery included a four-year phase-in period for sinking or neutrally buoyant line, since the DEIS specifies 2008 for implementation of the new line, it seems the agency considered the four-year time frame (from 2004, when the DEIS was expected to be published); however, we are requesting the implementation date be changed to reflect a four-year phase-in period *from publication date of the Final Rule*. If NMFS does not change that requirement, it will be requesting the impossible. Another caveat is an exemption for line that is fished deeper than 100 fathoms along the rocky canyons; this is necessary due to the jagged topography. And finally, an exclusion of the 1,500 lb. weak link, which would allow for a 2,000 lb. breakaway from September 1 – March 31, to cope with weather, wind and tides throughout the fall and winter months.

As I know you are aware, the cost to replace ground lines on an offshore lobster vessel is nearing $100K. Since petroleum is used in the manufacturing of the line, we can safely assume the price will continue to rise. Testing has been ongoing by AOLA members, in conjunction with the MA Department of Marine Fisheries, to identify a line that will equally endure the rigors of the offshore resource as the line which is currently being used; unfortunately, nothing has yet come close. Should the industry need to compromise longevity in order to be compliant with whale regulations, more frequent replacement of line will contribute to the exorbitant cost factors that lie ahead.

Even with a four-year phase-in in place, it is likely that many fishermen will be replacing old sinking line with new at the same time they are working through the conversion of their original trawls. Unfortunately, this issue may force many to make the difficult decision of exiting the fishery all together.

NMFS must also reconsider its 2008 decision due to the limited availability of the line from the manufacturers and, therefore, the likelihood of price gouging. Rope manufacturers have been hesitant to produce large quantities of sinking or neutrally buoyant groundline for offshore vessels, as they are aware of the testing that is in progress and have been using our test results to make slight changes to the composition of the line in order to find a product that works. They are well aware that fishermen will not buy an inferior product; one that will degrade within a short period of time, therefore the process to generate a respectable line is ongoing.

It is important to realize that since this line is a new product, no one is aware of its actual breaking strength in relation to its use, or its actual schedule of degradation. Weak line is a safety hazard; it is extremely dangerous to haul traps with a line that may break. Therefore, a longer phase in period will stop the *rush* to begin the immediate process of changing over to an inferior line. The four-year phase in period *from the published date of the Final Rule* will allow time for continued research, as well as for financial planning, thus allowing fishermen time to design a strategy to manage this monumental expense.

Finally, it is wrong to require a huge capital expenditure from individuals in the fishing industry over what will likely be only a two-year time span. Even with the requested four-years, we are hopeful to work with either the Federal Government or environmental groups to secure funding in order to minimize the excruciating pain that will surely result from this financial outlay. Frankly, fishermen are appalled and livid with the very thought of this excessive federal mandate being imposed upon individuals and small business, when federal assistance is granted when the very same types of mandates are imposed upon states, cities, and towns.

As noted above, we continue to request an exemption for gear fished below the 100 fathom curve in the rocky canyons. Rocky ledge has been deemed an unlikely habitat for the right whale, and it is clearly an impossible habitat for the use of sinking line. The description alone lends itself to the realization that the line will snag, chafe and degrade more quickly. This degradation is cause for concern for both safety of the crew, as well as continual cost for replacement of the line. Further, additional ghost gear is also probable in a situation where a ground line may snap and, due to the depths in the canyons, may be impossible to retrieve. Finally, as stated at the recent public hearings, it is imperative that NMFS officials coordinate the Protected Species regulations with those being considered by other divisions within the agency. Presently, the New England Fishery Management Council is considering options for the protection of deep sea coral in the deep-water canyons. If, indeed there *is* coral in the canyons, sinking line will surely snag on their jagged surfaces. Since closure of the canyons is **not** a viable option to the offshore lobster industry, continued use of floating line, *only* in the rocky canyons, thus, protecting the coral and avoiding right whale habitat, seems to be a solution that may satisfy the concerns of many.

The bulleted items, below, are in response to the agency's request for comments on additional issues:

Groundline Definition

- The definition of sinking or neutrally buoyant groundline should be "line with a specific gravity of 1.03." This definition was determined by NMFS and was therefore, the foundation on which significant testing was developed. This definition should be incorporated into the regulations to clarify for manufacturers, fishermen, and enforcement, the legal parameters and specifications for fishable groundline.

Low Profile Line

- Since the cost of new line with a specific gravity of 1.03 is obviously a huge financial burden, modified line that meets the criteria of whale-safe line, or that sinks to acceptable levels in the water column must be deemed acceptable for used by the fishing industry. This may have to be done on a case-by-case basis and deemed acceptable, in each case, by the NMFS gear team.

Line Recycling Program

- Disposal of polypropylene line is burdensome and expensive; unfortunately some may seek to dispose of the line in ways that may be considered unacceptable to the government and environmental community. In other cases, when the line is disposed of properly, the cost will be layered on top of the exorbitant financial outlay of the earlier costs to purchase new line. In any case, a program **must** be put in place to dispose of the line properly, at no or low cost to the fishermen.

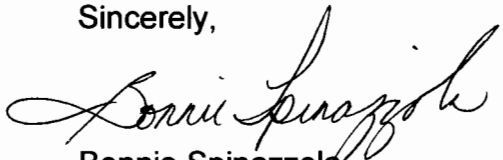
Vertical lines

- As I am sure you are aware, AOLA will not consider the removal of end lines, or the use of "pop-up" buoys that remain submerged until manually triggered to "pop-up." We are seriously concerned about the agency's interest in end lines and believe that further testing should be funded on neon or colored line that may divert whales from lines in the water column. AOLA applied for a NFWF grant to test 10 release links which, if successful, would have severed an end line when the device was triggered by a continual strain on the line, thus indicating the possible entanglement of a whale. The grant was denied; we were told the device was undergoing renovations to its original design. We will be willing to test the devices once they are deemed acceptable, and would also be willing to work with researchers to find other solutions for issues associated with end lines.

Finally, it is imperative the upcoming Final Rule take into consideration the recent Area 3, offshore historical qualification process which reduced the number of permits eligible to fish offshore from 968 to 133, and the number of traps from ~400,000 to ~160,000.* It is important to note the aforementioned figures, do not include an additional two-year gear reduction along with continual passive reductions through a proposed trap transferability plan that have been recommended to NMFS by the ASMFC. (*current available NMFS data)

On behalf of the Atlantic Offshore Lobstermen's Association, I appreciate the opportunity to comment on these extremely important and serious issues. I cannot stress enough the severe financial burden that is being placed upon the industry. The agency and environmental groups should rejoice in that the industry, while not pleased, understands and is a willing participant in the to process protect endangered whales; however, the agency and environmental groups must also realize that the industry seeks a reciprocal attitude by the agency's *practical* consideration and implementation of upcoming regulations. There is a fine line that we, as industry leaders and regulators, must walk to foster continued collaboration. I hope that, through careful consideration of the DEIS comments by the industry, we may continue to move forward in a cooperative effort to protect marine mammals from future entanglements.

Sincerely,



Bonnie Spinazzola
Executive Director

Cc: Senator Snowe
Senator Gregg
Senator Sununu
Senator Reed
Senator Chafee
Senator Kennedy
Senator Kerry
Congressman Frank
Congressman Kennedy

Subject: ALWTRP DEIS
Date: Mon, 16 May 2005 15:17:53 -0400
From: "rasmutis@iwc.org" <rasmutis@iwc.org>
To: whaledeis.comments@noaa.gov

Please find, attached, comments for the Altantic Large Whale Take Reduction Plan DEIS.
thanks,
Regina

--
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DEIS CommentsMay2005.doc	**Name:** DEIS CommentsMay2005.doc **Type:** Microsoft Word Document (application/msword) **Encoding:** base64

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
One Blackburn Drive
Gloucester, MA 01930

16 May 2005

Dear Ms.Colligan:

On behalf of the 100,000 members and constituents of the International Wildlife Coalition (IWC) and the Whale and Dolphin Conservation Society (WDCS) I thank you for the opportunity to provide comments regarding the Draft Environmental Impact for amending the Large Whale Take Reduction Plan. We believe it is critical that the Plan be revised as entanglements in fishing gear continue to be a source of mortality and serious injury to large whales. In fact, according to the most recent Stock Assessment Reports (2003) both Gulf of Maine humpback whale and North Atlantic Right whale populations exceed the Potential Biological Removal (PBR) rate set by the National Marine Fisheries Service (NMFS). Additionally, entanglements of all large whale species continue to occur including, at least, 17 large whales entanglement reports in 2004 (8 humpback, 3 right whales, 3 finback whales, 1 minke and 2 unknown species of whales). This includes right whale #2301, a reproductively mature female found dead in Virginia in March of this year, her death, a direct result of entanglement. These entanglements represent a minimum number of incidents as many entangled animals likely go unreported. According to Robbins and Mattila (2000), at least 65% of humpback whales have scars consistent with entanglements resulting in as few as 3% of entanglements reported annually. While many of these animals may have survived the initial event, long term impacts should not be discounted. Studies indicate that female humpbacks showing evidence of prior entanglements produced significantly fewer calves, suggesting that entanglement may significantly impact reproductive success (Robbins and Mattila 2000).

As mandated by both the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973, it is the obligation of the NMFS to reduce mortality and serious injury to large endangered whales. Yet, both humpback and right whales exceed PBR with finback and minke whale entanglements reported as well. The current plan has not reduced entanglement incidents to insignificant levels and, therefore, is insufficient as enacted. However, while we appreciate the efforts of NMFS to include broad based gear modifications by including a number of additional fisheries and requiring the use of non-floating ground line, we are troubled that the proposed Plan, as presented, is inadequate and will not sufficiently reduce the risk of entanglement to large whales or the hardship to fishermen who are being asked to change over to gear that may not fully address the risk. Of all the alternatives presented in the DEIS, we feel that Alternative 2, is the most conservative and is the alternative that NMFS must select. Additionally, we believe that the expansion of SAM, as outlined in Alternative 5, should be incorporated with Alternative 2 as a more protective measure. However, we have a number of concerns

which we will address as follows: 1) our general concerns; and 2) concerns regarding each alternative individually.

General Concerns:

Time Frame:

We are concerned that the Proposed Plan does not require any action prior to 2008. As stated previously, incidental takes in commercial fishing gear continue at levels exceeding PBR in some populations, including the critically endangered North Atlantic Right whale. However, the proposed plan does not require a change over to sinking line, the only substantive modification required in the plan, until 2008. Furthermore, some of the proposed alternatives would reduce protective measures, such as Dynamic Area Management (DAM), within six months of the Plan, prior to requiring the conversion to sinking line. The result is less protective measures in effect than what is now required which is already insufficient.

Areas where the proposed plan is less restrictive than the current plan:

As stated previously, the current version of the Plan has not sufficiently reduced mortality and serious injury to insignificant levels. And again, long term impacts of entanglement should not be discounted. However, we are concerned that, in a number of areas, the DEIS offers less protection than the current Plan. For example, the DEIS proposes to require only one buoy line for four or few or traps, a reduction from the five or fewer traps currently required. In the DEIS, the buoy line is not required to be made of entirely of sinking line, there is no mention of minimizing the use of knots in lines, no means to require modifications if habitat use changes, or if fisheries expand to >280fathom (i.e. there is no DAM option in a number of the alternatives), and new exemptions exist for night tended gear. All of these reduce levels of protection below what is currently available.

End Lines:

Buoy Lines are a known point of entanglement but are inadequately addressed in the DEIS. According to Johnson *et al.* (2005) more than half of entanglements reported were known to be in end lines. While it is true that the sample size is low, it is also true that the lack of the NMFS to develop gear marking strategies or adequately develop a means to distinguish line type has resulted in the low sample size. While the plan states that NMFS will consider further management options to reduce risk associated with vertical line, it does not give a time frame in which this will be addressed. The current plan requires a single buoy line for five or fewer traps while the proposed plan reduces the number to four, or fewer traps, ostensibly increasing the amount of vertical line in the water. We are also concerned that NMFS, in the proposed plan, no longer acknowledges knots in the buoy lines as an issue. In the current plan, fishermen are asked to voluntarily

restrict the use of knots in their lines. We understand that it may be impossible to have all lines free of knots, however, we believe that NMFS must continue to address this issue. In fact, right whale #2301, found dead earlier this month in Virginia due to her entanglement, was found to have a knotted line pressing against her gum inside her mouth, preventing the line from sliding through the baleen.

Weak Links and Anchoring Systems:

We feel the NMFS relies too heavily, in this proposed plan, on the value of weak links and anchoring systems. There is little to no scientific evidence that entangled whales break free when a weak link is used. In fact, disentanglement team members have indicated that whales will often roll into the gear while to relieve tension when the team is applying resistance to a line (Morin, pers. comm). Additionally, a number of whales including, at least two right whales and one humpback, that were disentangled were found to be entangled in gear equipped with weak links (RW#2427-July 01; RW#3107-2002; HW -Aug 03). Furthermore, two disentangled humpbacks had anchors removed with the gear. One was known to be from a gillnet, while the other was likely part of an anchoring system, something that NMFS does not consider as a risk in their plan (Aug and Sept 03).

Exempted Areas:

The current plan addresses this issue of so-called out of season/out of habitat risk through DAMs. We have repeatedly been concerned that this strategy has taken an average of two weeks to implement when it is triggered for fisheries closures and some of these DAM situations have merely requested voluntary compliance. Furthermore, out of season/out of habitat sightings are typically based on opportunistic reports. For example, in August of 2004, more than half of the right whale sightings (19/36) reported by NMFS were opportunistic (see: NMFSwww2004). In 2003, 63 sightings of right whales were reported by commercial whale watching vessels between April and October, with 24 sightings reported in July, a time when dedicated surveys are not conducted (ibid).

However, the DEIS proposes to eliminate DAMS by 2008, and, in some alternatives presented, within six months of the proposed Plan being enacted. Once DAMs are eliminated, NMFS does not address any means to reduce risk in exempted waters when, and if, right whales right whales utilize these areas. Furthermore, the exempted areas do not appear to take new satellite tracking evidence into consideration and rely on limited sightings data.

We are troubled that NMFS has appeared to, with little evidence, exempt almost all waters inland of the COLREGS, including Buzzards Bay. There are numerous cases of right whales transiting the Cape Cod Canal including: 15 June 1957; mid-1980's (two distinct sets of photographs that appear to be from the mid-80s from USACE CC Canal Field Station); April 16 1999; April 18 1999 (two right whales off the east end of the canal); April 15 2002; and May 17 2002 (Nichols, pers. comm). On one occasion, it is clear that the whale entered the canal from the Buzzards Bay side. Additionally, there is evidence that right whales are substantially more mobile than previously considered. Researchers have found, from satellite-tracking studies, that right whales can

circumnavigate the Gulf of Maine (GOM) in just over two weeks. In another case, they documented an individual right whale moving from the Great South Channel to a Norwegian fjord in four months, clearly moving through the 280fathom exemption area (Baumgartner 2003)

Furthermore, in at least two recent right whale entanglements, gear is believed to have originated from inshore fixed gear fisheries (exempted areas in the DEIS). In January of 2004, a right whale ("Kingfisher") was spotted off of Cumberland Island, Georgia. He was next sighted off of St. Augustine, Florida on March 17th entangled in fishing gear. At least some of the gear removed from the animal was inshore lobster gear from Maine. It is entirely possible that, between January 30 and March 17th, "Kingfisher" traveled to Maine and back to Florida. Except for the current DAM actions which will be eliminated in all alternatives of the DEIS by 2008 (and in some alternatives, even sooner), there are no protective measures to account for this type of movement.

The fact that NMFS, proposes seasonal restrictions throughout the DEIS and, in alternatives 3 and 6 (preferred alternatives) allows seasonal, summer, exemptions south of Cape Cod is also alarming. In July and August of 2002, two right whales were reported entangled off of New Jersey and Long Island. Additionally, whale watch operations out of Cape May indicate that large endangered whales are periodically seen thought out the summer within a 20 mile radius of Cape May New Jersey (Davis, pers. comm).

The DEIS also does not allow for potential distributional shifts due to potential climactic changes. Since right whales, in the GOM, are drawn to food resources and *Centropages typicus* (Copepoda: Calenoida) density is believed to be dependent on water salinity and temperature(Fransz *et al.*, 1991), shifts in food supply will likely result in shifts in right whale habitat use temporally and spatially. This is further supported by the May 6, 2004 testimony of William Curry (Ocean and Climage Change Institute Director at the Woods Hole Oceanographic Institution) to the Senate Committee on Commerce, Science and Transportation. In his testimony, Dr. Curry stated that there have been "*intriguing changes in the ocean that have (been) detected in only the last two years*" and that "*these rapid climate shifts are linked to changes in ocean circulation-in particular, to changes in the North Atlantic that make waters there less salty.*" (see: WHOIwww2004b)

This type of shift may increase what is now considered to be out of season and out of habitat sightings of right whales or result in whales utilizing areas that are currently exempted in the DEIS. For example, historical sightings demonstrate that in August, the majority of right whales are found in Canadian waters, particularly in the Bay of Fundy and Roseway Basin. This is supported by the August 2001 and 2002 data set. The August 2001 reports include only a single right whale sighted in the southern GOM in 4 out of the 16 reports (25%). In August of 2002, an individual right whale, sighted in the southern GOM, was noted in only 9% (1/11) of the reports. However, 50% (5/10) of the 2003 reports indicated multiple right whales sighted in the southern GOM and, in 2004, 100% (11/11) of the reports mentioned multiple right whales in the area, including a group of 8-15 that were reported repeatedly, in the Great South Channel, throughout the month (see: NMFSwww2004).

Additionally, ship-strike and stranding data further confirm that large whales utilize areas south of Rhode Island during the proposed summer exempted months. More than 10% (14/118) of the large whale strikes reported by Jensen and Silber (2003) occurred south of Rhode Island during the summer months (June, July, August), a time when NMFS proposes fishing exemptions in alternatives 3 through 6. This data includes strikes of two right whales, one of which occurred in Florida in August, a time where all alternatives propose exemptions. Stranding data collected by the Northeast Regional Stranding Network (2002-2004) report seven incidents of large whale (finback, humpback, minke and right whale) strandings in New York, New Jersey, Maryland and Virginia during June and August. At least three of these animals displayed signs of fishery interactions including a North Atlantic Right whale which was located on August 22, 2002, 23 miles East/Northeast of Ocean City, Maryland.

Furthermore, we are deeply concerned that seasonally exempted areas appear to be solely linked to survey effort. Opportunistic sightings indicate that whales are active in these areas throughout the year. For example, in June of 2004, a humpback whale was seen feeding off of Duck, NC for approximately one and a half weeks (Mallon-Day, pers. comm.). Every proposed alternative in the DEIS reduces Southeast US gear modification requirements on April 15th in South Carolina and northern Florida, and on March 31 in mid-Florida. However, these exemption times appear to coincide with reduction in survey effort, not in potential whale sightings. In fact, in April of 2004, a cow/calf right whale pair were spotted in the Gulf of Mexico, indicating they had traveled through areas either not included in the proposed Plan, or at a time when regulations were not in effect. In April of 2005, a cow/calf right whale pair was opportunistically sighted off of Florida after survey effort had been completed. The sighting was the first of this pair for the season indicating that survey effort and times may be inadequate. Furthermore, sightings of humpbacks along the east, and west, coasts of Florida in the spring are not uncommon and, in at least one case, an entanglement in crab-pot gear was suspected (Pitchford, pers. comm.). The DEIS does not address south eastern Florida or the Gulf coast.

We believe that to be protective, risk reduction must be required year round along the east coast. However, we note that some alternatives in the DEIS propose only seasonal restrictions, and some areas are exempted year round. In the DEIS, there is no means to reduce risk if, and when, whales move into these areas. Eliminating the DAM strategy entirely, without some other compensatory measure in place, will be costly to whales and to fishermen, who may be required to switch gear, yet again, if entanglements continue in exempted areas.

Minke whales:

The plan currently does not consider minke whales yet, according to the stranded data collected by the Northeast Regional Stranding Network between 2002 and 2004, at least 50 minke whales stranded between Maine and Virginia and almost half of those animals (24/50) showed some sign of fishery interaction. Currently, PBR for this population is set at 35 and it is entirely possible that, given the minimal effort from stranding data, takes may be exceeding PBR and the stock should be designated as strategic. Furthermore, the State of Maine has actively trained, and equipped fishermen to

disentangle minkes in state waters. For the state of Maine to go to such lengths indicates that these protected species do become entangled at a significant rate and those waters should be included under this plan. We are also concerned that the scope of the problem is not clear, nor is it clear that all entangled whales in Maine state waters are minkes, as the State of Maine has not mandated compliance with the reporting protocols currently used by the Atlantic Large Whale Disentanglement Network. We believe that NMFS must address this issue immediately.

Gear Marking:

We feel the gear marking proposal must be addressed more thoroughly. To require fishermen to switch over to gear that may, or may not, reduce the risk of entanglement without a means of determining the effectiveness is unfair to both the animals and the fishermen. We believe it is necessary for the NMFS to periodically evaluate the effectiveness of these measures, and that without adequate gear marking, this is not possible.

Enforcement:

The DEIS does not identify the mechanism or time frame in which enforcement will take place or how violations will be handled. Any measures put forward by NMFS must be enforceable to ensure that risk reduction can be accomplished.

Specific Comments Addressing Individual Alternatives:

Alternative 1:

We acknowledge that Alternative 1, or the status quo, is inadequate and simply addressed in the DEIS as required by NEPA and is not considered as a reasonable alternative by the NMFS.

Alternative 2:

Of all the alternatives presented in the DEIS, we feel that alternative 2 is the most conservative and has the most potential to reduce the risk of entanglement and serious injury to large whales. However, we do not believe that any of the alternatives adequately address risk and, while we support alternative 2 over the others proposed, we would like to express what we feel are inadequacies in this alternative.

First, we commend the NMFS for including a number of new fisheries including black sea bass, scup, conch/whelk, shrimp, red crab, hagfish and jonah crab and fully support the year round, coast-wide requirements for trap/pot fisheries. However, as in all alternatives, we are concerned that endlines are not addressed; there is no means to address right whales in exempted waters; weak links are relied upon too heavily as a risk reduction measure; and gear marking is insufficient. We believe that, as in the case of trap/pot fisheries, gillnet requirements should also be year round and coast-wide and

seasonal exemptions for this fishery should not exist in the southeast. As mentioned previously, large endangered whales have been sighted in these areas during the proposed times of exemption. We do not believe that gillnet restrictions should be reduced from five or more weak links per panel to only one weak link per panel as indicated on page 3-6 of the DEIS. Furthermore, we do not support the use of Vessel Monitoring Systems (VMS) in place of observers relying on fishermen to self-report takes. While VMS systems can determine whether vessels are fishing in closed areas, they can not determine the rate of incidental take and evidence exists that self-reports of incidental takes in commercial fisheries were found to be underreports of actual takes (Credle *et al.* 1994). Furthermore, the proposed Plan indicates that strike-nets would be required to be removed if a finback, humpback or right whale moved within three miles of the gear. However, it appears that NMFS is planning on preventing aircraft use in this fishery and the Plan does not address how sightings will be relayed.

Alternative 3 (NMFS preferred):

We do not support alternative 3 and, although it is a preferred alternative by the NMFS, we do not believe it adequately addresses risk reduction. As alternative three is similar to alternative two with the exception of the seasonal zones in the mid-Atlantic and southern zones, we wish to refer NMFS to the previous concerns as expressed in alternative 2 (above). Additionally, we wish to remind the NMFS that, as stated previously in these comments (under Exempted Areas) seasonal restrictions south of Rhode Island are insufficient. Based on the evidence we presented earlier, large endangered whales are known to occur year round throughout the coast. This is of particular concern regarding right whales given the fact that right whales appear to be more mobile than previously believed and one animal, with indications of a fishery interaction was found off of Ocean City, Maryland in August. The NMFS acknowledges the death of a single rate whale annually can jeopardize the existence of the species (PBR =0), yet this preferred alternative would reduce protection spatially and temporally when evidence indicates that takes have occurred.

Alternative 4:

We do not support alternative 4. As it is similar to alternative 2, with the exception of seasonal restrictions in the southeast, we ask the NMFS to refer to the previous concerns expressed in alternative 2. Additionally, we support year round/coast wide regulations and, as in alternative 3, we do not support seasonal exemptions. As stated previously in these comments (under Exempted Areas) seasonal restrictions are insufficient. The time of these exemptions coincides only with the end of dedicated survey effort and is not based on reliable data. In fact, based on the evidence presented earlier, a previously unreported cow/calf right whale was opportunistically spotted off of Florida in April of 2005, after the dedicated surveys had ended. These exemptions do not adequately address the risk to right whales which the NMFS acknowledges the death of a single rate whale annually can jeopardize the existence of the species (PBR =0).

Alternative 5:

As mentioned in our previous concerns, we do not support seasonal restrictions and believe that only year round/coast wide restrictions will come closer to adequately addressing risk. Furthermore, we do not feel that alternative 5 addresses risk to humpback whales, a species with a take currently exceeding its PBR. As such, we cannot support alternative 5 in its entirety. However, we do support the extension of SAM spatially as proposed in this alternative. As an economic analysis has been conducted for the expansion of SAM, we believe an additional EA would not be required in order to incorporate alternative 5 with alternative 2 and would not require additional time to include this measure. We would, however, request that the NMFS extend the SAM requirements temporally, specifically we request these requirements be year round. According to alternative 5, SAM requirements would end in July but, as stated previously, right whales have been routinely sighted in the SAM area during August of 2003 and 2004. The temporal expansion would also ensure protection to right whales as they enter and exit Cape Cod Bay.

Alternative 6 (NMFS preferred):

While the NMFS has indicated this is a preferred alternative incorporating elements of alternative 3 and 5, we cannot support this alternative for the reasons we stated in alternatives 3 and 5. Furthermore, the elimination of DAM within six months without some compensatory measure of risk aversion further reduces the conservation goal of this alternative.

In summary, we feel that: of the proposed alternatives, Alternative 2 is the most conservative and should be the NMFS preferred alternative; a year round expansion of SAM, as proposed in alternative 5 should be incorporated in alternative 2; buoy lines are a continued point of risk and should be addressed immediately; all gear modification requirements must be year round and coast wide; DAMs, or some similar measure must be maintained to address situations when animals utilize exempted areas; weak links are not a sufficient risk aversion tool; minke whale and gear marking issues are inadequately addressed by the DEIS.

The NMFS is obligated, through the MMPA and ESA to provide protection to large whales. Currently, takes in both humpback and North Atlantic right whales are known to exceed PBR.

The role of megafauna in the ecosystem is not fully understood, however, the continual loss individuals, populations, and, in the case of right whales, the entire species is inappropriate and a criminal way to discover their true importance.

Sincerely,
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Nov. 13 2004

The Whale Center of New England

Formerly the Cetacean Research Unit

A NON-PROFIT ORGANIZATION EMPHASIZING WHALE RESEARCH, CONSERVATION AND EDUCATION

Mary Colligan
Assistant Regional Administrator for Protected Resources
NMFS, Northeast Region
1 Blackburn Drive
Gloucester MA 01930

Dear Ms. Colligan,

I am writing on behalf of The Whale Center of New England to submit comments on the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (henceforth referred to as the "DEIS"). We thank you for taking the time to prepare what is clearly a detailed and carefully prepared document, and for the opportunity to present our comments on it.

As you may know, The Whale Center has been involved in the issue of whale entanglements, and solutions to the problem, for decades. We have been on-scene for the discovery of many entangled whales, have assisted in disentanglements, and have provided data to help document the extent of the problem. We have published peer-reviewed papers on entanglements of cetaceans in the northeast region numerous times. On the policy level, we have been involved in discussions of the issue since the Atlantic Large Whale Take Reduction Team was formed in 1996, as well as other forums including the Northeast Recovery Plan Implementation Team, the Stellwagen Bank National Marine Sanctuary Advisory Council, and other similar teams. We were one of the few science and conservation groups that participated in many of the NMFS-organized "stake-holder meetings" following the 2003 TRT meeting that fleshed out many of the proposals and options presented in the DEIS. Hence, I feel we approach the DEIS with a full understanding of the issues and the potential range of actions and solutions.

As NMFS realizes, this is a critical time for action to protect large whales, especially North Atlantic right whales. The calf productivity of the population for the past several years gives hope that there are young animals which can mature and eventually start to produce calves of their own. The low calf productivity of the 1990's appears to be at least temporarily reversed, indicating that there was likely some environmental cause behind the paucity of newborn whales. It is possible, therefore, that environmental fluctuation can lead us back to such a period at any time. This makes the next several years, as these young whales that grow and mature, so critical and deserving of protective measures. The recent deaths of right whale number 3107 (a young female) and 2301 (a recently matured female), both involving serious entanglement injuries, as well as the presence of gear on several other young right whales, demonstrate the current risk. In both humpbacks and right whales, juveniles are most vulnerable to gear encounters

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(Knowlton and Kraus 2001; Robbins and Mattila 2000), although entanglements of adults are also known to take place. Combined with the recent ship strike mortalities, it is clear that NMFS must take decisive action to protect right whales in every way they can and prevent the downward spiral projected for the population.

While the DEIS presents many options for action, clearly one of the most important is the widespread requirement of sinking ground line for trap/pot fisheries throughout the east coast. We agree with the general consensus that sinking and/or neutrally buoyant line is likely to be an important part of reducing the risk of entanglement to endangered whales, especially right whales. The documentation of floating ground line in entanglements of both right and humpback whales by Johnson et al (in press, Marine Mammal Science) shows the risk that exists when ground line is allowed to loop in the water column. By taking that line out of the whale's swimming path, it reduces the risk of entanglement to the maximum extent possible. However, we also need to note that it still may not prevent entanglements, especially in juvenile humpback whales. Humpback whales have been shown to feed in some habitats by scraping the bottom substrate while turned sideways, presumably to scare prey (e.g. sand lance (*Ammodytes* spp.)) out of the bottom (Hain et al. 1995; D. Wiley, pers. comm.). Both adult humpback and right whales have been observed with mud on top of their heads, also indicating that they were inverted (likely while feeding) at the sea floor. These are also likely to be times when the whale's mouth is opened, and the animal may be unusually vulnerable to entanglement. Hence, it will be critical to monitor whether this modification is working as well as we all hope and anticipate that it will.

We also note that while the DEIS does not deal extensively with the idea of "low-profile" line, page 3-42 contains the note that "NMFS is soliciting comments and information on any of the issues noted above that are related to 'low-profile' groundline." We feel that at this point there are too many uncertainties to consider allowing anything but neutrally-buoyant or sinking line. While there may be some areas where it is unlikely that line kept very low in the water column, but not along the bottom, may represent a lowered risk to whales, the is a paucity of knowledge about both whales and fishing gear configuration prevent any confidence in the technology at this point. Until we can be reasonably assured that setting such gear would be low-risk, we concur with the NMFS decision not to allow it instead of the proposed measure at this time.

We agree with NMFS in requiring additional weak links throughout anchored gill net panels as a risk reduction strategy. According to the data presented in Johnson et al (in press), anchored gill nets represent a substantial risk to humpback whales in particular. We are hopeful that the additional weak links in net panels of a sufficiently anchored net will allow a whale that contacts the gear to break free. However, we do question whether the weak links need to be 1,100 pounds throughout the coast. While we do appreciate that there are some areas where currents and tides do require breakaways of this strength to resist environmental conditions, work that has been done by David Wiley of the Stellwagen Bank National Marine Sanctuary, in cooperation with several fishermen, has shown that a 600-pound breakaway is likely to be feasible in at least the Stellwagen Bank/Jeffreys Ledge area, and likely many other inshore areas as well. A 600-pound

tractable force is much more likely to be generated against a net by a young whale than a 1,100 pound force, and would represent to us a more comfortable assurance of the whale breaking free. We encourage NMFS explore the feasibility of using a 600-pound breakaway in anchored gill nets for certain high use areas before implementing a more universal, and more potentially more dangerous, 1,100 pound weak link. In either event, we suggest that the effectiveness of the measure be reviewed regularly.

While we generally agree with a number of measures being proposed in the DEIS, there is one that we can not support. In exploring the six alternatives presented, at least two of them (5 and 6) include the abandonment of DAM (dynamic area management) actions within six months of enacting the proposed rule, and expanding the SAM area to encompass the Great South Channel critical habitat. We fail to see how this strategy represents a risk reduction for entanglement. By leaving the possibility for DAM actions in place, if there are any aggregations of right whales in the proposed expanded SAM, they could receive protection through a DAM action. However, we are concerned about the lack of an option to protect aggregations of whales in the Gulf of Maine outside the SAM area between now and 2008. On-going data collection through the NMFS aerial survey program at the Northeast Fishery Science Center, and our own fall boat-based surveys on Jeffreys Ledge, suggest that substantial aggregations of whales can be found throughout the Gulf of Maine in the fall and winter. However, none of these areas are protected by critical habitat status, and they do not generally fall within the SAM areas or periods (either the existing or the proposed expanded SAM). Hence, if DAMs are eliminated there would be no measure in place to protect right whale aggregations for almost two years from the publication of the proposed rule. Unless the agency can present an alternate strategy other than those currently proposed in the DEIS, we can not support abandoning DAMs until the areas in which such aggregations can occur are protected by the more wide-sweeping gear modifications.

One of the most controversial parts of the proposed measures for the trap/pot fisheries is the exemption line in the Northeast, especially off the Maine coast. While we generally agree with where NMFS has drawn the line, we would like to see some consideration of additional data to help inform where the exemption line should be. On page 3B-12 the DEIS suggests that some of the rationale for the current line was drawn from the satellite-monitored radio tracks of right whales published in Mate et al. (1997). However, the same researchers did a second round of satellite tracking in 2000, the results of which have yet to be published in peer-reviewed papers. However, in the presentations of the data that we have seen, at least two of the whales tagged in this latter group made forays inshore to the Maine coast, although they did not reside for long (see attached plots, courtesy of Dr. Mark Baumgartner). However, whales moving into areas with extensive fixed gear for any period of time must be considered at elevated risk, especially if the gear is not modified to be whale-safe. Since these tracks represent the best available data on inshore movements, we would ask NMFS to consider whether these whales moved into any areas that are inside the currently proposed exemption line. While we realize that NMFS can not leave all waters in which whales have been sighted outside the exemption line, the movements of two out of a small number of tagged animals into waters that are currently exempted would suggest that they are used more frequently than

current data would suggest. The gear removed from "Kingfisher" was in part originally set inside of what is currently the Maine exemption line, and may be the most suggestive of this risk. At the very least, we ask that NMFS require this inshore gear to be sufficiently marked so that we will be able to tell in the future whether this gear is, in fact, a risk to whales.

One of the primary differences between alternatives 2-4 is the seasonality of the measures proposed, although the gear modifications required are similar for each measure. Of the proposed alternatives, we favor alternative 2. While there is not strong sighting data off of the southern area outside of the winter right whale calving season, there has been little sighting effort in other seasons. We also question how much sighting effort has gone into looking for humpback and right whales during the late spring and summer seasons off the mid-Atlantic coasts. We do know that both strandings and entanglements of humpback whales have taken place off Virginia Beach and North Carolina during the summer. There are numerous sightings of both right and humpback whales off of New York and New Jersey waters during the summer months. One of the tag tracks considered in Mate et al (1997), on which the exemption line was partly based, showed a right whale mother-calf pair venturing to New Jersey before returning to the Bay of Fundy during August. Perhaps most importantly, there is considerable uncertainty about the distribution of many individual whales throughout the year. Given what we know of sightings south of the 40° line during the summer, the paucity of effort that has taken place in many of these areas, and the uncertainty of our general knowledge of distribution, keeping the coast-wide modifications in place year-round is clearly the most precautionary choice of those presented from the perspective of conserving endangered species and reaching PBR.

Finally, we note that there is nothing in the DEIS about enforcement of or monitoring the proposed rule that enacts the changes that NMFS proposes to make. Enforcement of any regulations has been an issue for the TRT for several years, and we are disappointed to see a lack of discussion about the subject. In order for us to be fully supportive of the plan, we would want to see an enforcement plan that details which agency (or agencies) has enforcement authority; if there is more than one authority involved, what the role of each is; and, if possible, letters of agreement among the named authorities to insure that the enforcement can be carried out in a timely and efficient manner. Finally, monitoring the plan is critical to determine its success or failure, and the potential need for future actions. Lack of such a pre-defined plan in the past has made it hard to evaluate the effectiveness of previous actions (the effectiveness of weak links at surface buoys comes to mind). We must avoid that in the current situation. We understand that NMFS will be convening a sub-group of the TRT to discuss monitoring the plan shortly. We both encourage this action, and encourage NMFS to make monitoring and enforcement plans a formal part of the TRP.

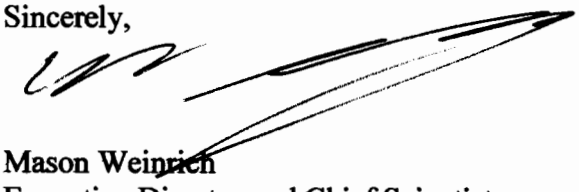
In summary then, we:

- Agree with requirements for sinking ground line coast-wide, but would like to see details on how and when its effectiveness will be measured;

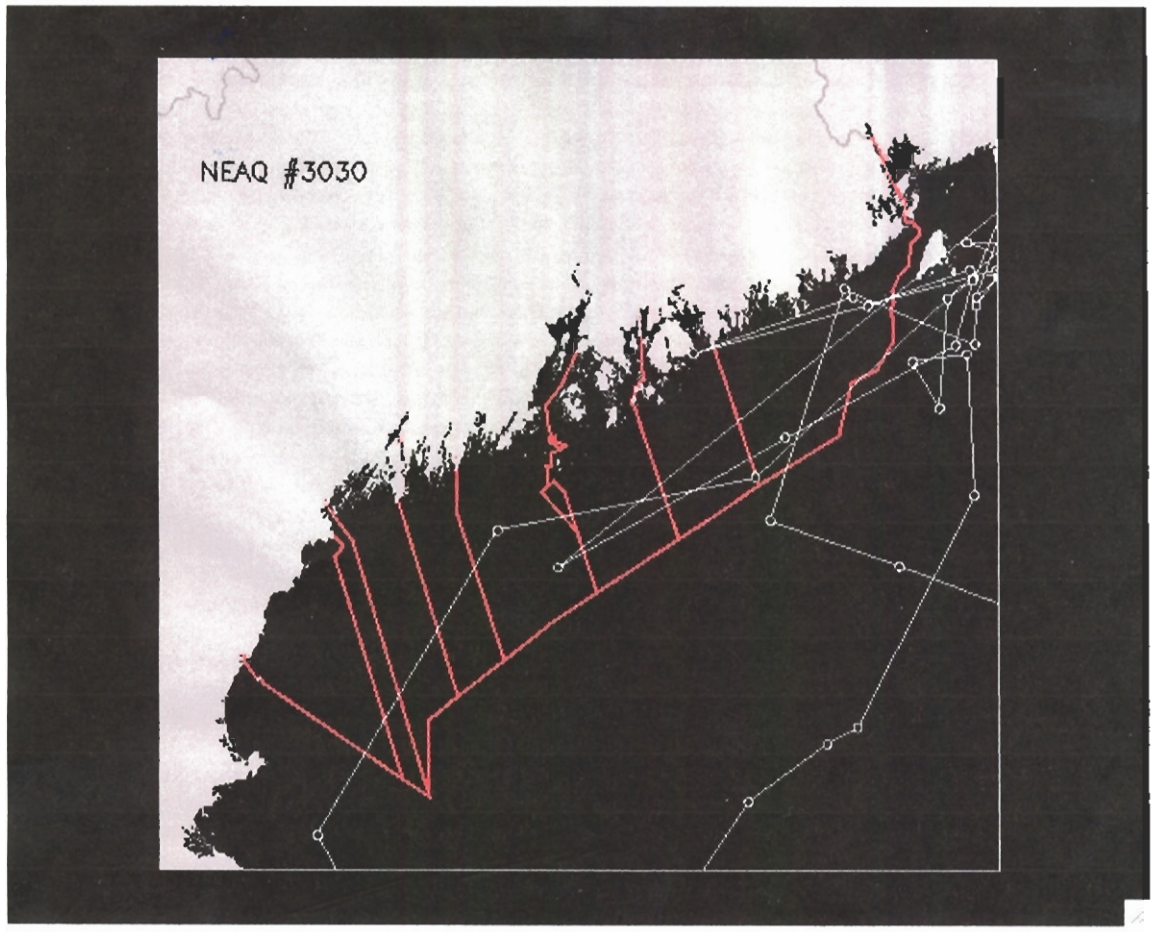
- Feel that until there is better knowledge of whale habits, especially in regard to sub-surface feeding, that "low profile" ground line not be considered as an alternative to the currently suggested "neutrally-buoyant or sinking" line;
- Agree with requiring additional weak links on anchored gill nets as described in the DEIS, but are willing to consider moving two of the weak links in the float rope to the bridles between net panels;
- Feel that replacing the DAM program with an expanded SAM until 2008 is not an effective risk reduction strategy, as it can leave other aggregations, especially fall and winter right whale aggregations in the Gulf of Maine, unprotected;
- Agree with the current exemption line pending its consideration with 2000 right whale satellite tracking data;
- Support Alternative 2 due to the number of known stranding, entanglements, and sightings south of 40° during summer, and in consideration of the lack of information about the distribution of humpback and right whales coast-wide throughout the year;
- Add an enforcement ad monitoring component to the TRP.

We thank you again for the opportunity to comment on the DEIS, and look forward to the NMFS responses to our comments and the rationales behind them. Further we look forward to working with the TRT and the agency to insure protection for these endangered and protected species.

Sincerely,



Mason Weinrich
Executive Director and Chief Scientist



Satellite telemetry plot of right whale # 3030, summer 2000 (courtesy of Dr. Mark Baumgartner, WHOI). Note the movement in coastal Maine.

Satellite telemetry plot of right whale # 2320, summer 2000 (courtesy of Dr. Mark Baumgartner, WHOI). Note the movement in coastal Maine.

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Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
NMFS, Northeast Region
1 Blackburn Drive
Gloucester MA 01930

16 May 2005

Dear ~~Ms. Colligan~~ Mary-

On behalf of the eight million members and constituents of The Humane Society of the United States (The HSUS), The National Environmental Trust (NET) and the Natural Resources Defense Council (NRDC), I am submitting the following comments on the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (DEIS) proposing alternatives to reduce risk to endangered large whales from commercial fishing gear [70 FR 9306, EIS#050076]. This represents the first proposed modification of the Large Whale Take Reduction Plan since 2001. The proposal by the National Marine Fisheries Service (NMFS) to require the use of sinking or neutrally buoyant line to reduce risk to large whales is the most meaningful of the risk reduction measures proposed in the DEIS. Having said that, we feel that the delay in the implementation schedule for this requirement is unacceptable, and we find that none of the six alternatives presented is adequate to reduce risk to right whales to the extent required by the Endangered Species Act (ESA).

The Need to Amend the Take Reduction Plan and Reasonable and Prudent Alternatives to Jeopardy

As the NMFS points out in the DEIS, the situation for North Atlantic right whales (*Eubalaena glacialis*) is dire. Additionally, the fisheries-related incidental mortality of humpback whales (*Megaptera novaeangliae*) exceeds the Potential Biological Removal (PBR) level of this stock. Although the PBR for humpbacks is 1.3 animals per year, the NMFS stock assessment (Waring et al 2004) estimates a minimum of 2.6 average annual mortality, with 2.2 of these attributable to U.S. fisheries. In 2004, there were eight humpbacks entangled according to the entanglement website maintained by the Center for Coastal Studies and NMFS. This does not count animals who have sustained injuries, have not been seen since, but cannot yet be presumed dead. Most entanglement-related humpback whale mortalities occurred as a result of entanglement in gillnet gear.

In all of the Biological Opinions accompanying fisheries interacting with North Atlantic right whales, the NMFS has found that "the serious injury or death of even one right whale will appreciably reduce the ability of this species to survive and recover in the wild." (see for example 2001 Biological Opinion on the multi-species gillnet fishery).

According to the NMFS stock assessment (ibid) an average of 2.0 right whales each year die as a result of anthropogenic causes. At least 1.2 per year are killed in commercial fishing gear, although NMFS acknowledges that this number is likely to be an underestimate.

In November 2002, right whale #3107 died in lobster gear that met the specifications of the previous take reduction plan. In fact, as NMFS notes (at page 2.39), nine fatal entanglements and 22 live entanglements of large whales were observed in 2002 after the most recent revisions of the Atlantic Large Whale Take Reduction Plan (TRP). Since the old take reduction plan had clearly failed, NMFS was mandated to re-consult under the ESA and develop a new plan for reducing entanglements and eliminating mortality. It has not yet completed a consultation and deaths continue to jeopardize the continued existence of this stock.

In the 12 months preceding these comments, six right whales have died (#1909, #1160, #2143, #2301, #2617 and an unidentified right whale observed floating in December 2004). At least one (#2301) appears to have died as a result of entanglement. Two others were not retrieved for necropsy and thus entanglement cannot be ruled out as a cause of death. Additionally, at least one other right whale (#3314) has been seen severely entangled, but NMFS has not yet made a determination as to whether it is considered seriously injured.

The DEIS outlines a number of alternatives that the NMFS is considering to reduce risk. We find that none of these alternatives is sufficient, and all of them will significantly delay risk reduction that is needed to ensure the survival of endangered large whales.

Unacceptable Delays in Implementing New Reasonable and Prudent Alternatives

In 2002, it became clear that the measures outlined in the TRP—which constituted the Reasonable and Prudent Alternatives to Jeopardy (RPA) for right whales—were inadequate. In April 2003, the NMFS convened the TRT to consider new measures. In materials given to the TRT in the April meeting, NMFS stated that "in 2003 NOAA was advised that the death of right whales #3107 was considered to be an entanglement-related mortality, and that the entangling gear was consistent with gear approved for use in the Federal lobster fishery. Based on the RPA monitoring criteria, NOAA fisheries concluded that the death of #3107 provided evidence that the RPAs provided in the 2001 lobster opinion had failed. Section 7 consultation was reinitiated and is in progress." In June of 2003 the NMFS opened scoping on an Advance Notice of Intent to prepare an EIS [68 FR 38676]. There was no proposed plan or draft EIS issued in 2003. During

2003, at least four right whales were entangled but none of the entanglements were apparently fatal.

The TRT met again in February of 2004. The official meeting summary contains NMFS' stated intent to issue proposed regulations by May of 2004, with public hearings in the summer of 2004 and a final rule issued by February of 2005. The NMFS staff also informed the team that, although 135 days is the normal time frame for a section 7 consultation under the ESA, this can be extended. In June of 2004, NMFS staff responded to an inquiry from HSUS that "[t]his is a priority issue for us and we are working diligently to finalize documents." Based on statements made to the TRT, the NMFS apparently re-initiated consultation sometime prior to the April 2003 meeting of the TRT; however as of this date (more than 2 years later) consultation has not been completed.

Entanglement of endangered large whales continues unabated. The DEIS outlines a number of entanglement related deaths and serious injuries and the website maintained by the Center for Coastal Studies and NMFS documents others who were last seen entangled and in poor condition. As recently as March of this year yet another female right whale (#2301) was found dead as a result of entanglement, her body found offshore of Virginia still wrapped in gear.

The NMFS published the DEIS in February 2005 and proposes that measures to reduce risk to large whales will not go into effect until 2008. Thus, six years will have passed between the death of the right whale that triggered need for new RPA and the implementation of any new RPA. Even the NMFS agrees that this is not adequate, stating "[i]n general, conservationists and *NMFS have recommended a more rapid phase-in*, while fishing interests have recommended a longer phase-in."[emphasis added][DEIS page 1-23] We are baffled that the action agency, which has both legal authority and responsibility for protecting the species, would ignore the needs of the endangered species, and indeed its *own* recommendations, and instead choose to accommodate the interests of the group responsible for jeopardizing the species. This is inappropriate and arguably illegal. We find that the alternatives offered in this plan are too little and definitely too late.

Measures in the DEIS Will Not Result in Necessary Reduction of Risk

The DEIS proposes six alternatives. With the exception of Alternative 1 (the no action alternative), the other 5 alternatives require the use of sinking or neutrally buoyant ground and bottom lines at various times and places along the U.S. east coast and mandate changes to requirements for weak links in fixed fishing gear. They also propose changes to the practices used by fisheries in Florida that pose risk to large whales, and suggest changes to the Seasonal Area Management (SAM) and Dynamic Area Management (DAM) requirements that are currently in place. Although alternative 2 is the most protective of the alternatives presented, it too is insufficient to reduce risk to the level stipulated in all previous biological opinions. While we provide comments on each

Alternative below, the assumptions underlying risk reduction in most of measures are similar and similarly flawed. As such, we address these common concerns first.

Risk Reduction and the Use of Weak links

At this time most gillnets are required to have weak links with a maximum breaking strength of 1,100 pounds at the top of the buoy line and at the center of the floatline in each panel. All net strings of less than 20 panels are required to be anchored with at least the holding power of a 22-pound Danforth style anchor or other comparable measures to provide resistance such that a weak link might fail if strained. Within the SAM areas, gillnets are further required to have 5 weak links in the center, each end, and sides of each net.

The proposed alternatives would keep the breaking strength of weak links in gillnets the same but require (for varying portions of time) that gillnets outside of the "Other Southeast Gillnet Waters" use five weak links per net as is currently required in the SAM area.

Lobster and other pot gear are currently required to use weak links on the vuoy line and surface systems with a maximum breaking strength of 600 pounds in Northern nearshore and inshore areas, 500 pounds in the Cape Cod Bay Restricted Area, and 1,100 pounds in the Southern nearshore waters. Trap and pot gear in the Great South Channel and Offshore waters is allowed up to a 2,000 pound breaking strength on weak links which are required in all trap and pot gear at the buoys and surface systems.

The proposed alternatives would keep the status quo for inshore and nearshore and Cape Cod waters and would reduce the maximum breaking strength in the southern near shore to 600 pounds. For gear set in offshore waters and the Great South Channel (with some exception), the breaking strength on weak links is to be no greater than 1,500 pounds.

These breaking strengths are arbitrary and have no basis in risk reduction to whales. They are established solely to address operational needs stated by the fishery. There is no rational basis for believing that a whale in some areas can break a weak link of 1,500 pounds but in other areas with shallow water needs a lower breaking strength of 500 or 600 pounds. In fact, the degree to which weak links are effective is entirely unknown, and there is some basis for believing that they are not effective as a risk reduction measure.

When the TRT was established, the prevailing thought was that a weak link that left a "bitter end" would allow rope to slide through the baleen or off the whale and allow it to swim free. In fact, whales appear to thrash and wind themselves in gear that they encounter (see examples on the entanglement website maintained by the Center for Coastal Studies and NMFS). Furthermore, they have been found with gear entangling them that has unbroken weak links. We note, for example, that a humpback (numbered E26-03 in the NMFS Entanglement reports) had not one but *two* separate unbroken 600

pound weak links on the entangling gear and was judged be in poor condition as a result of its entanglement (ie., thin, covered with cyamid crustaceans). The whale has not been seen since. Additionally, the aforementioned dead right whale #3107 had a weak link on it that had failed to free the animal from its entanglement. There are other examples as well.

The NMFS has also relented on recommendations for lines to be as knotless as possible. The risk from knots is significant, and we note that the right whale found dead this spring in Virginia (#2301) had a knot snugly against her baleen that could not be pulled through.

While it may seem intuitive that weak links will protect whales, we believe that it naïve to assume that they provide any more than the most minimal risk reduction. There are observations that demonstrate that large whales to wrap in gear before reaching a weak link that might break and there is irrefutable evidence that animals have become fatally entangled in gear with weak links. Simply requiring more of them at arbitrary breaking strengths which appear to be based more on the needs of the various fishing industries than on risk reduction for whales is inadequate. As discussed below, NMFS needs to find other strategies to reduce risk.

Risk Reduction and the Requirement of Sinking or Neutrally Buoyant Line

Underwater observation of gear floating well off the bottom, and evidence from whales that have been disentangled, provides clear evidence of the risk from floating bottom lines (Johnson 2005). We commend the NMFS for requiring fishing industries to adopt the use of sinking or neutrally buoyant line (known hereafter as non-buoyant line) as a means of keeping gear out of the water column and thus out of the way of most large whales. While there is no guarantee that requiring non-buoyant line will eliminate all risk from ground lines, it is reasonable to assume that its use will dramatically reduce risk from entanglement in ground lines.

We believe that this sort of line should be required throughout the range of right whales and that it should be used year round in all areas, although there is little evidence of their use of the southern waters of Florida during the summer months and exemption of this area may be reasonable.

Fin whale range widely and can be seen throughout the east coast in at least small numbers during most of the months of the year. (Waring et al 2004) In general, right whales and humpback whales migrate between wintering areas in the south to feeding areas in the northern part of New England and Canada. For example, the NMFS has documented the fairly predictable times of greatest concentration of right whales in their critical habitats. It is true, however, that the sighting record and stranding data base are rife with examples of both species occurring in waters where they might not be expected. For example, the right whale known as Kingfisher was sighted free of gear in SE critical habitat and then sighted there only a few weeks later entangled in gear that apparently came from the waters of Maine. He apparently traveled from the SE to Maine and back

again within a few weeks during the winter, when this would not normally be expected. Additionally, in August of 1980, a right whale was hit by a ship near Mayport, Florida, indicating that they may occasionally be found in this area at unexpected times. Similarly, humpbacks are regularly seen off New Jersey in the summer time, so much so that there is a whale watching industry to take advantage of the sightings (e.g., Cape May whale watching advertises that they see between 4-15 large whales between June and September, with more sightings in the fall (R.Asmutis pers com). Additionally stranding data for the years of 2002-2004 document six dead stranded whales south of Cape Cod in June, July and August; and an additional five in April, May and September. In addition, satellite telemetry work by Mate et al (1997), documented the movements of a mother and calf right whale in New Jersey in August before returning to the Bay of Fundy. Records of collisions with ships also document deaths of both humpback and right whales in times and areas other than the so-called high use times. Yet in most of the alternatives, use of non-buoyant line would not be required year round. This is entirely unacceptable. Because the movements of large endangered whales are unpredictable, their protection needs to be assured wherever they may wander.

We are also concerned that implementation of this vital protective measure will not occur until 2008 under any of the alternatives proposed.

Risk Reduction and the Exemption of Areas from Risk Reduction Measures

We are concerned that a number of areas that NMFS proposes to exempt from risk reduction measures are inappropriate. Exempted areas are generally those inside of the COLREGS line, and include substantial portions of the Maine coast and areas south of Massachusetts. The rationale for exempting these areas is that right whales are not generally sighted here and thus the cost to fishermen of adopting risk-reduction measures outweighs the risk to whales. First of all, we wish to point out that the Endangered Species Act is relatively blind to cost of RPA if species are in jeopardy and these measures are necessary to avert jeopardy to the species. Secondly, we question the basis of the determination that these areas are areas without significant risk.

The NMFS proposes to exempt Buzzards Bay Massachusetts from risk reduction measures despite the fact that right whales have been sighted four times in the Cape Cod Canal just in the past 6 years. Right whales cannot enter the Canal without passing through Buzzards Bay. Furthermore, on April 15, 1998 twenty three right whales were seen just outside of this proposed exempted area. The next day, as the size of the aggregation began to shrink, one was seen at the east end of the Cape Cod Canal, indicating that one or more animals may have gone through Buzzards Bay and into the Canal. On the 21st one of the right whales was also seen just east of Martha's Vineyard on the edge of the exempted area. Given the amount of fishing effort that occurs in this area, we do not believe that Buzzards Bay should be exempted.

The NMFS also proposes to exempt large areas of the coast of Maine from complying with gear modifications, this is ostensibly because of reduced risk in the area. This is a conclusion that is absolutely without basis. Satellite telemetry work by Mate (ibid) and by Baumgartner (in press) show right whales traveling through the area that would be exempted. Given number of times that transmitter data show whales in this area, and in light of a very small sample size of tagged animals, it is parsimonious to presume that a great many more right whales were in this area. Furthermore a number of animals have become entangled and seriously injured or killed in gear set in this area. We note that one humpback died in June of 2002, entangled in multiple lobster traps set in inshore Maine waters. We have been told by reliable sources that the right whales known as "Kingfisher" and "Yellowfin" were both entangled in Maine gear.

Dr. Charles "Stormy" Mayo has stated in numerous take reduction team meetings that there are two situations of grave risk to right whales. One is when there are a lot of whales in an area even if it has only a small amount of risky types of gear. The other is when there is a lot of risky gear even if there are only a small number of whales. Given the very limited degree of sightings effort, we believe that Maine state waters may be more heavily used than is stipulated. A map passed out during the TRT meeting of April 2005 (MDMR 2005) shows six sightings of right whales in the exempted area where there is virtually no sighting effort. We believe that it is inappropriate to exempt these waters from requirements for using non-buoyant gear.

We would also like to address a proposal that was raised in the TRT meeting in April 2005 to consider expanding the exempted area to the 50-fathom countour east of Casco Bay in order to explore the use of "low profile" line ("low profile" line is discussed further below). We are adamantly opposed to this proposal. Not only would this effectively expand an already exempted area that we questioned above, but it would result in putting a large number of whales at risk. We again refer to the map passed out at the TRT (ibid). This map shows a significant number of right whale sightings clustered around the Mt. Desert Rock area, which is the only area with concerted sightings effort. In other areas where there is sightings effort near the 50-fathom contour (e.g., whale watch boats around Jeffrey's Ledge and near the Canadian Border) there is also a significant number of sightings. This type of edge habitat appears important to right whales, and it is likely that, when along these edges, they will roam both in and out of "the line." Furthermore, as cited above, Baumgartner and Mate have documented a number of satellite tagged whales using this area. Exempting the area inside the 50-fathom contour or allowing an experiment to test "low profile" line is inappropriate.

We believe that if fishing is not possible with non-buoyant line in rocky areas then fishermen need to adapt and move to areas where it is possible. Such mandates are not without precedent and often have significant benefits. For example, actions by the Fisheries Management Council [70 FR 21927] that changed the size of rollers allowed on trawl gear resulted in fishermen being precluded from fishing in certain areas where they might formerly have fished. This provided a significant benefit to essential fish habitat and reduced fish mortality. Requiring that fishermen use non-buoyant line will either

result in their finding that it is not impossible after all or will result in their moving to other areas. If they are forced to move, this not only benefits right whales who need not be exposed to line in the water column, but it provides a functional refugia for over-exploited species such as lobsters and other target species reliant on rocky bottom.

The strongest argument against adopting new gear modifications, whether it be non-buoyant line or other altered practices is that fishermen have found that the manner in which they are fishing is the one that is the most successful and any changes will appreciably reduce their fishing success and force them to stop fishing. While fishermen often claim that they cannot change the traditional manner in which they fish, we wish to quote Rear Admiral Grace Hopper who stated: ""The most damaging phrase in the language is, 'It's always been done that way.'" Indeed, for right whales it is not only damaging to continue traditional fishing practices, but calamitous.

Risk Reduction and Reliance on Seasonal and Dynamic Area Management

In the past, We have pointed out the limitations of the use of Seasonal Area Management (SAM) and Dynamic Area Management (DAM). Specifically, The HSUS has expressed concerns that the boundaries of the SAM regions are too small to be adequately protective, and that the time frames are too limited. With regard to the use of DAM, we have expressed concern that the NMFS has been tardy in the notification of the need for DAM and that enforcement of its provisions appears to be largely lacking. Alternatives 1-4 of the DEIS would continue the use of SAM and DAM until 2008 and alternatives 5 and 6 would expand the SAM area and eliminate the DAM program.

While the expansion of SAM may appear to address some of our earlier concerns that it boundaries are inadequate to capture risk, the proposed boundary changes do virtually nothing to increase risk reduction. The small expansion of the boundaries of SAM west is still intended only to address risk to out-migrating whales who have been feeding in Cape Cod Bay and would do nothing to protect whales entering the area in the late winter (December-February). The overlap of the SAM east and SAM west boundaries that is proposed is helpful in assuring an overlap in protection, but the area that is covered is still too small. The changes to SAM west involve adding a wedge-shaped area in the southeastern portion of SAM east but narrowing the area of protection in the far eastern portion. The time frames for both SAM west and SAM east remain unchanged. We do not believe that these changes add appreciably to the protection of whales, and if combined with elimination of the DAM program, will result in a net loss of protection to right whales.

The greatest failing of the current DAM program is the fact that, since its inception, the average time between the sighting that triggers the need for DAM and the actual implementation of the DAM measures is approximately 11 days. Thus the program, which was designed to protect aggregations of right whales that are likely to persist for at least 2 weeks, doesn't even start protecting them until almost two weeks after the first sighting of the group. Furthermore, representatives of NMFS and the USCG have stated

that have generally not enforced its restrictions, since enforcement to assure that the gear is compliant with DAM mandates would involve pulling up gear and the USCG will not do this without a NMFS enforcement agent on board. NMFS enforcement agents have stated that much of their work is dockside inspection and they do not go out on USCG vessels as a rule. However, these failings are readily remedied by streamlining the process of filing a notice with the federal register (much as happens with management of closures related to fish quotas) and increasing on-the-water enforcement presence.

Because it is difficult to predict when a DAM action may be declared, the DAM program has the potential to provide incentive for fishermen to convert gear to lower risk gear (e.g., using non-buoyant rope) prior to the NMFS mandates elsewhere in order to keep from having to remove non-compliant gear.

Since its inception, a number of DAM notices have been published. Because NMFS proposes to replace DAM with and expanded SAM, it is reasonable to presume that the NMFS believes that the expanded SAM would cover areas most likely to pose risk out side of critical habitat. In fact, if one looks at the areas that have been subjected to DAM, this is not the case. Between 2003 and 2005, there have been at least 17 DAM actions declared. With the exception of two of the DAM actions in 2003, none of them would have been covered by the SAM expansion. Indeed many of them occur in an area just to the north of the northern boundary of both the current and "expanded" SAM. Stellwagen Bank and Jeffreys Ledge are not covered in the SAM program, and these are areas of common sightings of right whales. In particular, Jeffrey's Ledge has been a high use habitat in the fall (Weinrich, 2000 and 2004), and elimination of the DAM program would do nothing to protect whales in that area and at that time. Furthermore, DAM actions have been declared as a result sightings off Chatham Massachusetts, to the west of the boundaries of both Critical Habitat and the SAM west area. The most recent DAM action in this area occurred just this month (May 2005). Loss off the DAM program leaves whales vulnerable in this commonly used area as well. There is little, in any, risk reduction gained in expanding the SAM boundary and eliminating the DAM program.

All of the alternatives propose eliminating the DAM program after 2008. This is inappropriate. Since there are a number of areas proposed to be exempt from gear modifications, it is important that the NMFS have at its disposal the ability to declare DAM zones if whales wander into high risk areas such as Delaware Bay or Chesapeake Bay where gear modifications would not be required.

We are adamantly opposed to eliminating Dynamic Area Management.

Risk Reduction Associated With the Inclusion of New Fisheries

The DEIS proposes to extend risk reduction measures to a number of other net and trap/pot fisheries. The inclusion of the hagfish fishery seems to provide the greatest likelihood of risk reduction. This fishery has been implicated in the entanglement of large endangered whales including a humpback whale in April of 2002. Other fisheries that

would be required to comply with gear modifications and time/area restrictions do not have the same degree of effort as does the hagfish fishery, though their inclusion is likely to provide some benefit to risk reduction.

Comments on the Alternatives Presented in the DEIS

The DEIS presents 6 alternatives. Alternative one is the "no action" or "status quo" alternative. Because the NMFS has acknowledged that the RPA failed, this alternative cannot be chosen. Thus we will devote our comments to the other five alternatives.

Alternative Two

The NMFS states in the DEIS that this is the most protective of the alternatives presented, and we agree. That said, however; we do not feel that even this alternative is sufficiently protective. As stated above in our general comments, it fails to address to any significant degree the risk posed by vertical line and, in fact, will now allow fishermen to use two buoy lines in the SAM area, rather than the single end line that is currently mandated. As we have also stated, we do not agree with the arbitrary breaking strengths for weak links in trap/pot gear (500 pounds; 600 pounds; 1,100 pounds; 1,500 pounds or 2,000 pounds depending on the fishery and area). Breaking strengths have been set based on the industry's concerns rather than based on research indicating that these various breaking strengths are justifiable for actual risk reduction. In fact, information on load testing that was presented to the TRT in 2003 and 2004 does not seem to support the need for breaking strengths as strong as most of those proposed in this alternative for many of the trap/pot fisheries, including the deep-water offshore fisheries.

We believe that the requirement in this alternative that all gear modification be used year-round and out to the EEZ is imperative to gain any significant risk reduction from the use of non-buoyant line, since whales wander with great regularity into areas that would fall outside of the scope of protection offered in other alternatives. Year-round use of gear modifications also facilitates enforcement. NMFS enforcement agents have stated that they rely primarily on dock-side inspections. If NMFS requires gear to be modified year round, then an inspection in any month can determine whether gear is appropriately modified.

Although there is some evidence that right whales may wander into the southeast in the summer (see above), it may be possible to allow a only a seasonal restriction of gillnets in the southeast waters south of the Geogia/South Carolina border but feel that the season of restrictions should be November 15 through April 15 in the regions south of this border, as we discuss in our comments in Alternative 4 below. However, if the season in this area cannot be defined from mid-November through mid-April, then we prefer to have year-round restrictions as described in alternative 2 rather than an inadequately short season as proposed in Alternative 4.

With regard to gear marking, we believe that this is not a risk reduction measure. It is simply a means of identifying gear that is entangling whales such that management

decisions can be based on additional information on where and how risk of entanglement occurs. Gear marking should be required in both the vertical line and the groundline of trap/pot fisheries. Though we believe that it is important to have gear marking to inform managers or the areas and gear types of greatest risk, this should not be confused with a risk reduction measure in and of itself.

Alternative Three

Although this alternative has been designated a NMFS preferred alternative, we cannot not support this alternative. It has all of the weak points of Alternative 2 plus it would only require seasonal use of gear modifications, thus leaving whale vulnerable if they are in areas at times that gear modifications are not required. As stated above, satellite telemetry, survey effort, whale watch sightings and other sources provide ampe evidence that large whales travel in and out of their expected ranges. In particular, as noted above, commercial whale watching operates in the mid-Atlantic after April 1 and through the summer because sightings of large whales (primarily humpback and fin whales) in this area are regular and predicable. Thus the use of seasonal restrictions is insufficient to protect large endangered whales. Furthermore, seasonal use makes enforcement more difficult, as dockside inspections can only be done during the times when gear modifications are required. This puts a greater strain on the resources for enforcement; since large areas would need to be inspected in a relatively short time frame and any fisherman out of compliance could falsely claim that any non-compliant gear at the dock is only used at times when it is not required.

We are opposed to Alternative Three.

Alternative Four

This alternative requires year round modification of gear in some places and is thus preferable to the seasonal approach taken in Alternative 3 but its inadequacies for addressing the need for risk reduction are as outlined in Alternative 2 above.

This alternative would allow imposition of only seasonal requirements on gillnet gear in the areas designated in the DEIS as "other southeast gillnet waters" and as "southern monitoring area." We believe that there is evidence to support the notion that protection in this area could be seasonal rather than year round. That is, there are few historic documented sightings of right whales in these waters during the summer. However, we believe if there are seasonal exemptions for the further southeastern waters, that the season that is proposed for both areas should be November 15-April 15, rather than the shorter season proposed for the "southern monitoring area." We also note for this alternative and others that are differentiating the southeastern US areas that continual name changes and boundary shifts make it difficult to follow the morphing of requirements.

Alternative Five

This alternative is the least protective of whales and is thus the least acceptable of the alternatives. It is has only very limited seasonal requirements for gear modification, and thus any purported risk reduction is wholly inadequate. It would expand the SAM program, which we have stated above is not an adequate expansion to significantly reduce risk and it allows the use of additional end lines in the SAM area. This is little by way of protection for right whales and does nothing to protect humpback and fin whales. Furthermore, and even more unacceptably, it would eliminate the DAM program for right whales. Additionally, the expanded SAM area exists only off the coast of Massachusetts, which does not acknowledge the very real risk to whales in other waters to the north and south.

As stated above, we believe that the DAM program provides incentive for fisherman to modify gear in order that it not have to be removed if a DAM is declared and it provide protection for whales in the areas and seasons when other protections are not available. This alternative does not require broad-based gear modification, including adoption of non-buoyant line and as such does nothing to reduce risk to whales.

We are adamantly opposed to this alternative

Alternative Six

Like Alternative three, this is identified as a preferred alternative. We also oppose this alternative. It has only seasonal requirements for adoption of gear modification measures intended to reduce rather than requiring them year round. It provides an inadequate expansion of the SAM areas, which it would substitute for the elimination of the DAM program. Eliminating the DAM program is not acceptable, as it provides no means for protecting whales in areas and times when broad based gear modifications are not in place. This alternative does little to protect right whales, let alone other large endangered whale species.

We strongly oppose this alternative.

Additional Comments

In the DEIS, NMFS seeks comments on so-called "low profile" line and on the risk posed by vertical lines. We also wish to address proposals that were made during the April 2005 TRT meeting in the event that they are being considered by NMFS for rulemaking.

Low Profile Line

In the DEIS, the NMFS requested comments on the definition of and utility of so-called low profile line. This term simply implies the design of line under the surface that will not float as highly in the water column as regular, unmodified floating rope. Ideas that

have been suggested to reduce the profile of bottom lines include weaving in non-buoyant rope; putting weights on the line; pulling the line taut between traps and anchorage points; and altering the specific gravity of the rope to something greater than floating rope but not as great as non-buoyant rope. We believe that the latter two of these suggestions are not likely to be successful. As was demonstrated by presentations in the TRT meeting in April 2005, traps may "walk" toward one another in changing tides and thus make even a taut rope more likely to float as the traps move toward one another. Changing the specific gravity seems likely to result in variable heights of rope that will still float off the bottom.

It is clear that we need to know more about the use of the ocean bottom by large whales. Both right whales and humpback whales have been observed to surface with sand and mud on the tops and sides of their heads, and with scuff marks on their heads and jaws. These observations indicate that they may be deliberately disturbing the bottom with their heads to increase prey availability. If this is true, then any rope that is above the bottom will put the whale at risk and even rope on the bottom may be risky on occasion. The NMFS should not allow the use of "low profile" rope until it can establish the degree to which whales may be using the bottom of the ocean as a foraging area.

There have been some promising experiments to help address this informational need. The Geo-Zui-3D program that was demonstrated by David Wiley at the April 2005 TRT meeting shows promise as a means of using data from so-called D-tags to help visualize water column use. Because there are so few right whales, there may be both legal and logistic reasons that it may be difficult to tag a sufficient number of animals to obtain the desired information. We believe that humpback whales, which also suffer from entanglement rates above PBR, can be used to some extent as surrogates for right whales to assess potential use of the bottom, particularly in rocky areas, where fishermen feel that the use of non-buoyant rope may be more problematic. If the NMFS can determine that use of the bottom for foraging is very limited, particularly in rocky areas, then it may be possible to substitute the use of "low profile" line. This line would need to be weighted in some fashion to assure that it floats much closer to the bottom, but need not lie on the bottom, in areas where whales are not as likely to forage. But low profile rope is not, at this point in time, demonstrably as risk averse as non-buoyant rope and we know that, of the rope taken from entangled whales, ground line accounts for 28% of the gear (Johnson, 2005). So-called low profile line should not be approved for use in any area as a substitute for non-buoyant line until such time as it can be demonstrated to offer equivalent risk reduction.

As we stated above, we believe that if fishermen are precluded from fishing in rocky bottom habitats by the requirement that they use non-buoyant rope, then this will provide a refugia for over-fished species of crustaceans and finfish while affording the needed protection to right whales. The use of low profile rope should not be allowed until such time as it can be determined to be risk averse; something that has *not* been shown to date.

Risk From Vertical Lines

The DEIS also requests comments on risk posed by vertical line and requests suggestions for reducing this risk. Clearly vertical line is a significant risk (ibid). Even though the sample size is small and there are caveats to its interpretation (e.g., the greater likelihood of buoys remaining to identify rope that could be either ground line or vertical line and the large amount of rope on whales from "unknown" portions of gear) it is clear that NMFS needs to implement measures to reduce risk to large whales from vertical lines in the water column.

As previously stated, it seems clear from observations of entangled whales and descriptions of the manner in which line is wrapped on whales who are entangled that they thrash when encountering line in the water and become wrapped in the line. It is for this reason that weak links at the buoy may be of minimal value as a risk reduction measure. It may be that a sufficiently weak link at the bottom of the vertical line would allow an animal to pull free with greater ease, though this does not obviate the possibility that a whale will be able to wrap in gear.

It is our belief that until there are no lines in the water column, whales will face risk. Thus we suggest that the NMFS focus efforts on ways to eliminate as many lines as possible. For example, "pop up" buoys are successfully used elsewhere (e.g., Alaska). Though their use on the east coast may entail changes in fishery management policy but provide hope for significantly reduced risk. At the NMFS gear workshop in the fall of 2004, a number of ideas were presented for rope that is "stiff" and would not wrap on a whale that encountered it. This too seems a promising avenue for research. NMFS should focus its efforts on eliminating lines from the water and spend fewer resources looking for a "better weak link" or exploring measures that are or pre-suppose that whales will/must become entangled (e.g, disentanglement research, lipid soluble rope).

In materials provided to the take reduction team in April 2005, we can see the NMFS priorities for research into risk reduction. We wish to point out that the various research listed under the category "entanglement research—gear" in "Whale Research Needs and the Atlantic Large Whale Take Reduction Plan" April 2005 Working Draft Matrix" has virtually nothing to do with actual research on risk reduction and gear modification and instead deals largely with how gear injures whales. Many of the highest priorities for research presume that whales *are* entangled rather than seeking to reduce the risk of entanglement. This seems inappropriately prioritized.

In addition, the matrix that is entitled "Gear Research Needs and the Atlantic Large Whale Take Reduction Plan." discusses risk from vertical lines in two sections: "Buoy Line" and "Reducing the Number of Vertical Lines". As we analyze the priorities assigned to research in these categories we note that, despite the obvious benefit of having no vertical lines, none of the items under "reducing the number of Vertical Lines" is prioritized higher than 6 out of ten. Under the category dealing with buoy line risk, the highest priority (10) is to investigate the use of a combination of floating and sinking

rope. This is *not* for the purpose of reducing risk to whales, but it will facilitate ease of fishing for fishermen who do not wish to use all sinking rope. It seems odd that it is the highest priority for research. Behind that in priority there are three items are priority "8." Two of them deal with weak links in the bottom of the line and one would investigate lipid soluble rope—a highly speculative concept that relies on whales becoming entangled rather than preventing them from becoming entangled. Again, we question the NMFS research priorities with regard to solving risk from vertical lines.

Comment on Proposals Raised in the April 2005 TRT Meeting

During the TRT meeting, a number of proposals were raised, some of them agreed to by consensus of the regional sub-groups and some simply raised by interest groups at the TRT. We wish to offer support for one of the proposals but reiterate opposition to another.

During the sub-group meeting that discussed risk reduction measures that would or could be used in areas south of Rhode Island through Florida, proposals were made to address concerns of fishermen with alternative risk reduction measures that were not made part of any of the Alternatives proposed by NMFS in the DEIA. Among the items that were discuss, and for which we wish to offer support, are changes in the location of and type of weak links for use in gillnets. Fishermen demonstrated the utility of substituting use of weak links in the line connecting net panels instead of requiring a weak link at the end of each net. Because nets are closely strung together, a single weak link at the bridle between net panels appears to provide the same risk reduction as two closely spaced links at the ends of each pane. However, weak links should still be required at the ends of each string of nets a the end connects to the bridle at the terminus of the string. Additionally, fishermen in the mid-Atlantic proposed that a very weak twine be substituted for weak links on the sides of each net panel in the string. They asserted, and demonstrated for the group, that this twine (which they called a "breast line") broke very easily and could be substituted for a weak link with less cost and no apparent loss of risk reduction.

Some of the mid-Atlantic fishermen (with Dave Beresoff as spokesperson) described fishing with nets that are virtually on the beach at one end, and fished in shallow water. They suggested that use of the Danforth-style anchor was impractical in the high-energy surf/current within 300 yards of shore and requested that they be allowed to use an 8 pound anchor with a weaker strength link in the net($\leq$600 pounds). This also appears reasonable.

As stated above, we are opposed to proposals to allow the experimental or "test" use of low profile line in the waters off the state of Maine inside of the 50 fathom contour and east of Casco, Maine. This would be a virtual extension of the exempted area and appears to result in increased risk to whales who would otherwise benefit from the use of non-buoyant line. We are strongly opposed to this proposal.

We are also opposed to proposals to change or reduce areas and times of restrictions in the various fisheries in Florida who wish greater latitude to fish in times and places that we believe pose elevated risk for whales. Instead, We generally support the proposal described in Alternative 2 for fisheries in the area described as "Other Southeast Gillnet Waters" and the "Southern Monitoring Area."

Fishermen from both the northeast subgroup and the southeast subgroup requested additional time for implementation of any required gear modification. We are adamantly opposed to granting any additional time. Modification of the TRP is long overdue. Fishermen have been aware for some time that the use of non-buoyant rope was likely to be required in expanded areas. We believe that even waiting until 2008 is too long for endangered large whales to wait for increased protection. They certainly should not wait longer.

In Summary

Alternative 2 is the most protective of the alternatives presented, but we have serious concerns regarding its ultimate efficacy in reducing risk. It fails to address the risk from vertical lines in any substantive manner. Alternative 2 proposes arbitrary breaking strengths for weak links based on industry preference rather than actual risk reduction and it presumes that surface weak links are in fact likely to reduce risk, despite a lack of evidence for this. It proposes to eliminate the DAM program after 2008 even for exempted waters. Many of the proposed exempted waters appear inappropriate. Required risk reduction measures should be year-round and coast-wide. Despite the failings of alternative 2, it is preferable to the others and if any other alternative is selected, given the state of our knowledge, this would appear arbitrary and capricious.

Use of "low profile" line is premature and inappropriate. Waiting until 2008 to put in place further risk reduction measures means delaying protection for a species that is teetering on the brink of extinction. Proposals by the industry to extent implementation times even further are unacceptable. Furthermore, it is vital that the NMFS strengthen its enforcement program to assure that risk reduction measures are used as required and that violators be prosecuted to the fullest extent of the law.

Endangered humpback and fin back whales are needlessly killed and injured by commercial fishing gear. The survival of right whales as a species is imperiled by the continuation of current fishing practices. The NMFS must act expeditiously to modify gear and expand gear research to find ways to keep lines from entangling whales or remove them from the water entirely. There is both a legal and ethical imperative for the NMFS to continue to require gear modification without waiting for additional deaths. Endangered whale species cannot afford the ongoing death toll that commercial fisheries are exacting.

Thank you for the opportunity to comment on the DEIS. We look forward to the NMFS taking meaningful action to protect endangered whales.

Sincerely,

Sharon B. Young
Marine Issues Field Director

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Contract # NA03NMF4720494.

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May 13, 2005

Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
NOAA Fisheries Service
1 Blackburn Drive
Gloucester, MA 01930-2298

Dear Ms. Colligan:

This letter constitutes the comments of the Maine Lobstermen's Association (MLA) on the Draft Environmental Impact Statement (DEIS) for amending the Atlantic Large Whale Take Reduction Plan (ALWTRP).

The Maine lobster fishery is extremely diverse, with nearly 6500 independently owned fishing operations covering over 5,000 miles of coastline. Management of the lobster fishery both within the state and federally is broken down by geographic areas in recognition that the fishery varies greatly in both fishing practices and economic stability.

The MLA recognizes the level of controversy associated with the six alternatives proposed in the DEIS. Maine lobstermen are rightly concerned about NMFS' two "preferred alternatives", as they would significantly affect fishing practices and pose a financial hardship that many would not be able to overcome. We also understand the need to protect endangered whales. The MLA has tried to reflect the views of the majority of MLA members in our comments and believe our approach to be both proactive and realistic.

The MLA believes that Alternative 5 in the DEIS is the best option for Maine lobstermen, but with a few modifications. We can not support any of the other proposed alternatives.

Groundline

Foremost, the MLA supports Alternative 5 because it does not prohibit the use of floating groundlines. The MLA can not support a ban on the use of floating groundline and have serious concerns about the industry's ability and willingness to comply with such a measure until a suitable low profile line is developed. As we have stated in the

past, a ban on floating groundline is unworkable because the majority of Maine's lobstermen set gear in rocky bottom areas and require some flotation in their groundline.

Sinking groundline in rocky bottom areas poses a significant safety risk to lobstermen due to the hang down of gear. It also significantly increases operational costs, both in the initial investment of rope (replacing existing floating groundline with more costly sinking line) and the ongoing expense incurred (sinking groundline must be replaced more often than floating line due to significant abrasion and weaking of the rope on the rocks.) Fishermen will also incur expense due to increased gear loss from degraded rope parting off due to handowns.

Recognizing that new action is required, the MLA proposes implementation of uniquely marked, low-profile groundline beginning in 2007 and concluding in 2009. This will greatly reduce risks to large whales while allowing Maine fishermen to safely haul their gear. Much progress has already been made in understanding how rope behaves on bottom, and in developing new ropes with low profiles. NMFS must continue to support ongoing research to develop and test low-profile groundlines so that this approach is feasible. This new technology will serve both the risk reduction needs of the DEIS and the operational realities of Maine.

Additionally, the foraging habits of whales are a key consideration in assessing the potential for entanglement risk. NMFS must consider the recommendations of the recent Northern Gulf of Maine Foraging Workshop which sought expert opinions on the incidence of plankton aggregations in Northern Gulf of Maine. We must understand if, in fact, large whales forage in rocky bottom areas and are therefore at risk of entanglement before requiring a major investment in new gear to prevent entanglement.

Any proposal requiring a significant rope replacement will require economic assistance. Many in Maine's fleet of small owner operated businesses will not survive if they must bear the full economic burden of replacing rope. The Gulf of Maine Lobster Foundation (GOMLF) has requested a Congressional earmark to fund a multi-year poly rope buyback and rope exchange program for Maine to coincide with the low profile implementation dates proposed above.

Exemption Area

The MLA supports the inclusion of an exemption line in the new whale rules in order to minimize impacts on fishermen in areas with little or no history of whale interactions. We therefore support eliminating the lobster take reduction technology list within the exempted area. However, we believe that the proposed exemption area needs to be expanded to reflect the area originally proposed by Maine DMR in the scoping/public comment period. DMR's proposed exemption area is based upon an analysis of the best available sightings data from the North East Fishery Science Center. The low number of sightings of strategic stock whales within this area over more than thirty years, coupled with the known feeding patterns of right whales supports this proposal.

Adoption of the original proposed exemption line will result in an increased acceptance of the whale rules by the lobster industry as it allows them to utilize traditional gear in areas that pose little or no risk to whales. MLA is committed to working with NMFS and the state of Maine to monitor for whale activity within the exempted area to ensure that whales are not at risk.

Additional Gear Modifications and Configuration

The MLA supports a buoy line marking system to help identify the origin of gear if entanglement occurs. However, we can not support the proposed gear marking requirement of a 4" colored mark every 10 fathoms on the endline. This poses a hardship for the fishing industry with no perceivable benefit for the whales.

Rather, the MLA proposes that all endlines less than 50 fathoms have one 4" colored mark and those greater than 50 fathoms have two 4" colored marks unique to each fishery and State. This marking scheme will provide the necessary gear identification without becoming an unnecessary burden on the fishing industry.

The MLA supports the use of weak links on all flotation and or weighted devices attached to the buoy line with a maximum breaking strength of 600 pounds. The breakaways appear to have proven effective on buoy lines, therefore it makes sense to implement a comprehensive breakaway strategy. The MLA also supports allowing only one endline for trawls of four or fewer traps in Federal waters and we support the marking of all surface buoys. Maine currently requires all buoys and traps be marked with the lobstermen's license number.

Area Management Concepts

Since the inception of the concept of DAM, the MLA has and continues to strongly support its elimination as soon as possible. DAM is unreasonable and unworkable for the fishing industry and offers very little credible protection for whales.

Recognizing that new action is required in order to eliminate DAM, the MLA can support an expansion of the Seasonal Area Management (SAM) in time and place if it is based on the level of risk of whale entanglement. This must include a review of recent large whale entanglements, whale foraging data (including expanded research) and whale mortality data.

The MLA recommends that NMFS also consider fishery closed areas in decisions regarding the expansion of SAM areas. There may be a justification for creating year-round SAM areas using current SAM modified gear requirements (2 buoy lines, 1/3-2/3 poly/sink endlines and sinking groundline). For example, the existing Western Gulf of Maine Closure, which encompasses most of Jeffreys Ledge, might be a candidate for a year round modified gear area. This is a high use area for both fishermen and large whales. A year-round SAM would protect large whales while allowing Maine lobstermen continued access.

NMFS must base the need for expanded gear modifications on the level of risk of whale entanglement. The MLA proposes that NMFS analyze the potential for using the 50 fathom curve as a line to delineate between different gear modification areas. Utilization of this boundary may provide additional protection for right whales migrating to and from the Bay of Fundy, while at the same time, allow for operationally realistic, risk reduction gear modifications.

The MLA is committed to taking responsibility and helping to protect right whales, as reflected in our comments in support of Alternative 5. As we move forward in developing a new whale plan, there are several overarching issues that still need to be addressed.

Undue Burden on Lobster Fishery

Fisheries are highly regulated industries in which government has an unusual amount of control because they are public resources. Therefore, we are concerned about the level of regulation proposed for the fishing industry relative to other industries implicated in large whale mortalities, i.e. shipping (ship strikes) and land based activities (water quality issues). As the work on large whale/fishing gear interactions moves forward, it is essential that we not apply management measures to the fishing industry that are out of proportion with the industry's relative impact on the large whale population. All industries must equally share this burden.

The MLA is also concerned with the complete lack of large whale take reduction efforts in Canada. As trans-boundary species, large whales can not be protected unless fishermen on both sides of the border are participating. Currently, Canadian fishermen are not required to modify their gear to reduce the risk of whale entanglements. NMFS must step up efforts to work with the Department of Fisheries and Oceans to implement equal take reduction measures for Canadian fishermen.

New Research is Essential

The MLA is extremely concerned about the economic impacts and changes to traditional fishing methods which will result from the proposals in the DEIS, given that the scientific basis for these changes is weak. There are significant data needs in relation to improving the new whale plan. If we do not better understand where and when whales are most at risk of entanglement, the new management plan could prove ineffective in protecting whales while creating significant economic hardship for fishermen. If the fishing industry is required to make significant financial investment in new gear modifications to protect whales, new funds must be allocated for research. NMFS must commit to basing new rules on the most current data, and build in the flexibility to generate new data for consideration in refining management measures as data emerges.

The research needs in relation to large whales are extensive and include:

- The need to understand the feeding habits of large whales in both rocky and tidal habitats in order to understand the risk of whale entanglement in these areas.

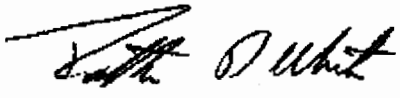
- The need to understand the relative role of fishing gear entanglements in the overall large whale mortality estimates.
- The need to vastly increase research in order to develop new gear
    - Operationally feasible low profile groundline must be developed for use in Maine's rocky and tidal habitats.
    - New innovations in ropes must be developed to incorporate other management requirements, for example, a manufacturing process that could include an internal tracer or uniquely coded micro-chips in order to identify gear.

Flexibility

The MLA urges NMFS to strive to develop new whale rules with as much flexibility as possible. This is important in order to allow important new innovations to be implemented as they are developed, as well as allowing the industry ample time to respond to and implement new requirements. The MLA is extremely concerned about the rate at which new gear requirements are implemented. New gear requirements are costly and fishermen need time to adjust fishing practices, amend their business plans to deal with the financial burden, and time to do the gear work as new requirements are put in place. It is nearly impossible for fishermen to implement any new gear modifications once the lobster season is underway. Finally, NMFS must develop a way to assess the impact of the modified gear both in protecting large whales and its impact on fishing practices.

The MLA is committed to protecting large whales while maintaining an economically viable commercial lobster industry. We appreciate the opportunity to comment and would be pleased to discuss any issues your may have with our comments. Please feel free to contact me by phone at 207-363-6783 or email at pwhite3@maine.rr.com. You may also contact Patrice McCarron at the MLA office at 207-985-4544.

Sincerely,



Pat White
Chief Executive Officer

Cc: Governor John E. Baldacci
William Hogarth, NMFS
Senator Olympia Snowe
Senator Susan Collins
Representative Thomas H. Allen
Representative Michael H. Michaud
Commissioner George Lapointe, Maine Dept of Marine Resources

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TO: MARY COLLIGAN

FROM: GREG DIDOMENICO

DATE: MAY16TH, 2005

RE: COMMENTS ON THE ALANTIC LARGE WHALE TAKE REDUCTION PLAN DRAFT ENVIRONMNMETAL IMPACT STATEMENT (DEIS)

THANK YOU

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May 16, 2005

Mary Colligan
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(sent by fax 978-281-9394 and email)

COMMENTS ON THE ALANTIC LARGE WHALE TAKE REDUCTION PLAN DRAFT ENVIRONMNMETAL IMPACT STATEMENT (DEIS)

Dear Ms. Colligan:

Please accept these comments on behalf of the Garden State Seafood Association (GSSA); GSSA is comprised of commercial fishermen, shore-based processors, commercial dock facilities, seafood markets, restaurants, and various industry support businesses from New Jersey. Members of GSSA have participated in both ALWTRP as well as BNDTRP from their beginning and have participated in cooperative research to address these complex issues. Our comments will specifically address the commercial fixed gear fisheries that are prosecuted in the Mid – Atlantic region.

Support for NMFS actions as specified in the DEIS

We support the decision of the NMFS to exempt all waters landward of the 72 COLREGS demarcation line. The Agency's consideration of the low probability that whales would be present in these waters is a crucial point that we feel should also apply to address the relative risk of whale entanglement in the Mid – Atlantic region.

We appreciate that the Agency is considering solutions that can be implemented regionally and seasonally. It is our firm opinion that the current scientific knowledge of the seasonality of whale movements throughout their range must be reflected in the

flexibility of the gear requirements. Furthermore, it is important that the Agency considers that there is no research being conducted in the Mid – Atlantic region to assess the feeding behavior of large whales due to the fact that there is no evidence that Right Whales forage in this region -- a position made quite clear by Agency officials at the recent ALWTRT meeting in Baltimore (Dr. Richard Merrick, public communication, 4/26/2005).

The Agency's acknowledgement that requiring one buoy line may increase the risk of gear loss due to difficulties in retrieving gear without end buoys and specifically providing the allowance of two buoy lines per trawl in some areas is crucial to the efficient operation of all of our fixed gear fisheries.

We strongly support the Agency's decision to address more vertical line issues associated with fixed gear in a future amendment. NMFS believes that further research and discussions with the ALWTRT are needed to address risks associated with vertical lines and we agree. However, it is important to note here regarding the vertical line issue that the best available scientific information provided to the TRT by NMFS (see Johnson et al., 2004, "Fishing Gear Involved in Entanglements of Right and Humpback Whales", in press for Marine Mammal Science) provides no scientific basis that vertical lines present a more dangerous threat to whales than do groundlines. In fact, the research indicates that more generically, line in the water may present a problem for whales and that several actions designed to reduce these risks may be helpful. These actions include exactly what the Agency is proposing in the DEIS, namely reducing the occurrence of line in the water column (i.e. lowering groundline profile) and requiring weak links in vertical lines and groundlines and in gillnet panels (see Johnson et at. pp. 12-13).

It is important to remember that current proposed alternatives are addressing some elements of vertical line issues through such measures as mandating weak links on buoy lines and net panels as well as the proposed gear requirements. It is our opinion that the implementation of fishing gear mitigation requirements through this process will provide a significant reduction in the risk and potential mortality of large whales and will provide further information on the origin and circumstances of future entanglement events.

Regulatory burden associated with the relative risk of entanglement

While the MMPA provides significant protection for whales, it also provides consideration for the human element that is impacted. Section 118 of the MMPA allows consideration for the economics of the fishery and availability of existing technology as well as current regulations implemented through State and Regional FMP's. We respectfully request that the Agency clearly justify the regulatory burden of any and all new gear requirements in the Mid-Atlantic and provide a rationale as to why the impacts of any new requirements are necessary to achieve the specific goals of the TRP.

This analysis must be completed by the Agency when considering the best available information regarding the Mid-Atlantic region, which includes; that the Mid-Atlantic contains no critical habitat for large whales. That the National Right Whale

Survey does not extend below Long Island and that only 6% of the Large Whale Survey is conducted between Long Island and South Carolina. Sightings of large whales in the Mid-Atlantic account for only 1.7% of the total of the East Coast whale sightings on a yearly basis. There were 18 entanglements in the Mid-Atlantic from 1997 – 2002, which accounts for only 5% of the large whale entanglements for the East Coast, and given that pot/trap density in the Mid-Atlantic region is significantly less than compared to the rest of the coast.

Support for the following regulatory alternatives for Mid-Atlantic gillnet fisheries

Due to the many components in the alternatives that are found in the DEIS we cannot identify and support any one alternative but have decided to identify specific components of the regulatory alternatives that we can support and request that they be included in the final rule for Mid-Atlantic gillnet fisheries. The following gear modification will achieve the goals of the ALWTRP and will significantly reduce the risk of entanglements or mortality associated with Mid-Atlantic gillnet fisheries while not having a significant impact on the fisheries or its participants;

1) Sinking and/or neutrally buoyant groundline by 2008. This would apply to all groundlines found in anchored gillnets that are part of the anchoring components found at the end of each net string.
2) Appropriate weak link requirements on flotation devices as specified for each fishery.
3) The marking surface buoys with vessel or permit number.
4) Net requirements that would anchor each end of net string with an anchor having the holding power of a 22-lb Danforth-style anchor.
5) The industry can also support gear specific marking requirements that are consistent with current State/Federal FMP requirements and for the other TRT's including the final rule to the BDTRP that will be implemented in the near term. During the last ALWTRT meeting there was significant concern that the current gear marking requirements in the DEIS would achieve very little in the way of new information but would be a burden to the industry. It was agreed that any additional gear marking requirements would be remanded to a gear group comprised of members from the TRT. This could possibly be included in the same amendment to address vertical lines.

Opposition to the following regulatory alternatives specifically for weak link requirements in gillnets contained in the DEIS

The following weak link requirements found in the regulatory alternatives contained in the DEIS are unnecessary due to the low risk associated with these fisheries and are not supported by the best available science. They will create a significant burden on the fishermen in this region due to the extensive and repetitive modifications that would have to be made to existing gill nets. We oppose the following specific components of the regulatory alternatives for Mid-Atlantic gillnet fisheries;

1) We oppose the weak link requirements for anchored nets that do not return to port and would be required to have the addition of five, 1,100 lb. weak links per net panel. Although, we are prepared to offer and support a complimentary alternative that would compromise the structural integrity of the gillnet. This modification can be found in the next section of our comments, **Modifications to gillnet alternatives contained in the DEIS.**

2) We oppose the weak link requirements that would add one 1,100 lb. weak link per net panel for drift nets deployed at night. This modification remains untested and its fishery application is unknown. Our NJ driftnet fishery uses a net that is 50-60 feet deep, from the corkline to the leadline, and often catches bluefish and small albacore in great quantities that will likely break the 1,100 pound weak link while it is being hauled aboard. Any modification to a gillnet that could cause the loss of mesh, resulting in the needless waste of fish and possibly being lost thereby increasing the possibility of a derelict net, is unacceptable. Furthermore, this fishery exists in the months of May, June and July, which are outside of the months when large whales are known to concentrate in the Mid-Atlantic. This fishery has had extensive observer coverage over the last 4 years, 36 trips to be exact (a direct result of the cooperative nature of the fishermen in our area). During those trips there were no entanglements observed. It has been practice to convince our members that observer coverage can be advantageous and can provide useful information where no data often exits and it often proves our claims. This is clearly one of those situations and we hope these data are considered when making a final decision.

3) We oppose the weak link requirements of one; 1,100 lb. weak link per net panel for anchored gillnets that return with the vessel to port. This fishery is referred to as a "strike net" and is often used to catch croaker in close proximity to our beaches, chiefly inside NJ State waters. It is a unique fishery that occurs from August through November and has extensive observer coverage over the last 4 years. In fact, the best available science indicates there were 72 observed trips for this fishery and there were no reports of any entanglement events.

It is important that the Agency considers local fishing practices and regional fishery conditions when implementing the final rule for the ALWTRP. The fisheries described above occur off the coast of New Jersey and often the vessel is in close proximity of a string of net and in some cases the net is actively tended and many vessels are from the same port and total no more than 30 vessels. These factors allow for significant communication among vessels to alert any of the fleet if whales are present. The best information indicates that due to the regional aspects associated in these fixed gear fisheries, the migratory patterns of large whales, the entanglement data allows for flexible management and gear modifications that reduce the risk of entanglement but lessens the socioeconomic impact on affected fishermen.

Modifications to gillnet alternatives contained in the DEIS

The following recommendations for weak link requirements will achieve the same dynamics as observed in the simulated testing referred to in the DEIS. (5-23/27) Due to the anchoring requirements the float line weak link will break with very little net attached and will separate from the sinking line due to the light breastlines and the fact that gill net is the only thing holding to groundline. This alternative weak link configuration is considered to be a low cost alternative that can be applied to gill net fisheries with results that lessen the impact to the industry while still achieving the goals of the ALWTRP and reducing the risk of entanglement is supportable and consistent with the Agency's position on many of the issues contained in the DEIS.

1) Anchored gillnets that do not return to port with the vessel, will be required to use a 1,100 pound weak link that would be added to the floatline between any two gillnet panels and an additional 1,100 pound weak link must be added to the float line and will be required to be in the center of each gill net panel, resulting in a gillnet that is structurally vulnerable. The net will also be required to have one weak link along the floatline at either end of the net, before the anchor and buoy system.

2) Any line of appropriate breaking strength shall be considered to serve as a weak link. For gillnet net panels with up and down line (breastlines) that have a breaking strength that is less than 1,100 pounds no weak link is needed. Any line running from the float line to the leadline at the end or along any portion of the net must have a breaking strength of less than 1,100 pounds.

This weak link configuration was presented to, discussed and supported by the regional subgroup from the Mid-Atlantic, during the ALWTRP Meeting that took place on April 25th –27th, 2005, in Baltimore, Maryland. Our subgroup was comprised of TRT members all of whom were representing the cetacean science, academic, fishing and animal rights interests.

3) It is our opinion that all states waters should be exempt from all weak link requirements. Just as COLREG exemption areas have been expanded due to low risk of whale entanglements, our inshore gillnet (strike net) fishery should be given the same consideration.

Support for the following regulatory alternatives for Mid-Atlantic Pot/Trap Requirements Mid-Atlantic

1) Buoy line weak link strength of 1,500 lbs for fisheries in Offshore waters; 600-lb weak links for fisheries in other areas.

2) The marking surface buoys with vessel or permit number

3) The industry can also support gear specific marking requirements that are consistent with current State/Federal FMP requirements and for other TRT's including the final rule to the BDTRP that will be implemented in the near term. During the last TRT meeting there was significant concern that the current gear marking requirements would achieve very little but would be a burden to the industry. It was decided that any additional gear marking requirements would be decided by selected group comprised of members from the TRT.

Modifications to pot/trap alternatives contained in the DEIS specifically the seasonality of regulatory measures

1) Any modifications to groundlines should be imposed seasonally instead of on a year round basis and specifically for the Mid-Atlantic region that the regulatory season begins on September 1st and remain in effect until March 31st, not the current Alternative that imposes regulations through May, 1st. Requiring these modifications for only part of the year would reduce the risks associated with sinking groundlines such as an increase in lost gear and difficulty in the retrieval of lost gear.

Alternatives to reducing groundline profiles Pot/Traps and appropriate phase in periods

As stated in the DEIS the Agency believes that addressing the risk associated with floating groundline by requiring the use of sinking and/or neutrally buoyant groundline will reduce serious injury and mortality of large whales due to incidental entanglement in commercial fishing gear (4-47). We look for Agency guidance and support from the NERO to develop an administrative procedure that would allow for the exploration and implementation of this low cost alternative in the final rule prior to the phase in period.

1) Any mandatory requirements to switch to a sinking and/or neutrally buoyant groundline by 2008 needs to be extended until 2009 to lessen the burden on affected fishermen. GSSA had originally requested the extension until 2010. Currently there are two ongoing line testing experiments being conducted through cooperative research between industry and NMFS the results of which will determine the usable life of alternative sinking groundlines as well as the practical commercial application of these new materials.

2) The industry supports the goal of reducing groundline profile for pot and traps and believes that a technologically simple and cost effective modification to existing floating rope by the addition of sections of standard leadline at precise interval along the entire length of the groundline is a appropriate alternative to sinking groundlines. This modification has shown to reduce bottom profile to within 2-3 feet off the bottom and is supported by fieldwork conducted by NMFS staff to reduce the bottom profile of groundlines using this simple modification. Applying this premise to gear mitigation alternatives will allow for the development of cost effective options that achieves the Agency's goals of reducing groundline profile.

This alternative was discussed and supported by the regional subgroup from the Mid-Atlantic, during the ALWTRP Meeting that took place on April 25th –27th, 2005, in Baltimore, Maryland. Our subgroup was comprised of TRT members all of whom were representing the cetacean science, academic, fishing and animal rights interests.

Considering this research is ongoing, involves both industry and NMFS staff, and may provide for a cost effective solution that achieves the goals of the ALWTRP we believe that it should have been explored as an alternative and addressed appropriately in the DEIS in order to be part of the final rule.

In sum, GSSA requests the addition of a low cost alternative to reduce groundline profile based on the scientific research conducted by NMFS NERO Gear Research Team. If this is determined not possible to provide in the final EIS -- ***it is imperative that the preamble to the final EIS clearly indicate the Agency's firm commitment to develop and implement low cost gear alternative(s) prior to the beginning of the gear mitigation phase in period.***

Alternatives Considered but Rejected

The DIES Exhibit 3-12 (p.3-41) includes a list of "ALWTRP Regulatory Language Changes" alternatives considered by rejected. These alternatives involve lowering groundline profile. As specified in the above section, a low cost alternative for reducing groundline profile is extremely important for NJ fishermen and is wholly consistent with the MMPA, which requires the agency to consider options that are both technologically and economically feasible.

The DIES Exhibit 3-12 (p.3-38) contains a list of "ALWTRP Exempted Areas" alternatives considered but rejected. These areas, including the 17 – fathom rocks and fishing areas that utilize areas such a wrecks or artificial habitat, should be exempt from low- profile groundline requirements. Due to the high bottom relief and the artificial structure found in theses areas it would not be practical to use sinking groundlines. The groundlines between each pot/trap would become tangled in the structure and could cause many pots/trap top be lost.

NERO staff is conducting groundline experiments to lower line profile by adding sections of lead line at specified intervals along groundlines. This work has already proven to be effective in reducing line loops to a depth of 2-3 feet off the bottom. Clearly, this approach reduces the amount of line in the water column and is therefore consistent with the Agency's philosophy that less line in the water protects whales. GSSA fully supports the addition of a low cost alternative to significantly reduce ground line profile and believes the data to support/implement this alternative are already available.

GSSA also supports a conceptual definition of "low profile" *as "some acceptable level above the ocean bottom"* keeping with the concept that less line in the water column equates to reduced potential for interactions. The GSSA is very concerned that the

Agency will, lacking the necessary data, either attempt to gerrymander some specific determination of what is an acceptable level above the ocean bottom, or not allow for implementation of this alternative. We respectfully request the Agency examine available whale behavior data for the Mid-Atlantic region and implement a low profile alternative that is reasonable, cost effective, and defensible based on the fact that it will substantially reduce the amount of line in the water column.

Alternatives to address additional sources of entanglement events

There are two known large whale entanglement events that involve "vessel anchoring systems". It is widely known that the origin of this anchoring system has been identified as used extensively by recreational anglers and that this gear was removed from two large whales. This anchoring system is composed of a large stainless steel ring attached to an inflatable poly-ball, which is attached to the anchor line to help in the retrieval of the anchor by using the forward motion of the boat. It is also a standard practice in popular areas like the Canyons and Stellwagon Bank that these are left in place for unknown periods of time to mark a recreational fishing spot for use at a later date. Based on the best available scientific information, issues of fairness and equitability, and considering the fact that these devices are also "vertical lines", we recommend the Agency include the following information in the final rule and endeavor to include the recreational sector's impacts on large whales in the TRT vertical line mitigation process:

1) Regulations must be considered to prohibit recreational boats from using these anchoring systems.

2) Some method of enforcement needs to be considered that would prohibit recreational boats from leaving these anchoring systems as a method of occupying a fishing spot without actually fishing there.

3) Some enforcement needs to be pursued to prohibit recreational vessels from tying up to our high flyers, which mark the location and serve as the only way to retrieve our fixed gear. It is standard practice for recreational boats to tie up to our gear, often the line is simply cut and thrown overboard, it is also doubtful that a 1,500 weak link will hold a pleasure boat and will increase lost gear and associated risk to large whales. Making this practice a violation of the law would be helpful.

NEPA Requirements

While not in total agreement with all the proposed management measures contained in the DEIS, the GSSA is of the opinion that the DEIS sufficiently addresses the requirements of NEPA. The Act requires decision makers to take into account environmental factors and consideration of a suite of management alternatives using a through public process. Various chapters of the DEIS are pertinent to the NEPA requirements, these include discussion for purpose and need (see Chapter 2), the suite of alternative considered (see Chapter 3), the environmental impacts of both the proposed actions and all alternatives (see Chapter 5), and the list of authors and contributors (see Chapter 13). Clearly, this document, along with associated public meetings and the

ALWTRT process collectively provide information that is sufficient to meet NEPA requirements.

Thank you for the opportunity to comment on the DEIS. We look forward to working with NMFS throughout the ALWTRT process to find solutions that are reasonable and effective.

Respectfully submitted,

Gregory DiDomenico
Executive Director
Garden State Seafood Association

RECEIVED MAY - 9 2005

P.O. Box 994
Northeast Harbor, ME 04662
May 2, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
1Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan,

For the record, the following is a written copy of oral comments given at the Ellsworth, Maine public hearing on the 2005 Proposed ALWTRP Modifications.

Sincerely,

Jack Merrill
Vice President
Maine Lobstermen's Association

It's been estimated recently that the economic impact of the lobster fishery in Maine is $500,000,000 (half a billion dollars). How ironic is it that here we are a week away from filing taxes, having the same government that we support, come to us with alternatives that would severely impact, if not end, our way of life. Coastal Maine and coastal communities depend on the lobster fishery as part of their heritage and culture as well as an economic base. There is nothing that could take its place.

We're here to discuss the alternatives, but some things should be made clear first. To my knowledge, to date there has never been a Northern Right Whale or a Humpback death directly attributed to Maine lobster gear in the history of the fishery. Improved surveillance over the last several years has confirmed what we already knew, that these whales appear in state waters extremely rarely. In the two or three occasions where whales have been seen in my area in the last 25 years they have been swimming free, no entanglement, no threat of injury. In 35 years of fishing I've never seen one. Jacques Cousteau in a book called, The Whale, Mighty Monarch of the Sea, said in 1972, "Right Whales will probably become extinct because of the way they were hunted early in this century." In an effort to prove Jacques wrong, Maine lobstermen have worked with the NMFS and instituted changes in the last few years to help in the challenge of rebuilding the species. It's been costly and time consuming, but a necessary effort.

So let's get to today's so called alternatives. Right off the bat alternatives 2, 3, 4, and 6 can be eliminated with a straight face test, because of the call for a ban on poly rope ground lines. Impossible. Simply put, we cannot fish without poly ground lines in most of the areas we fish. The development of low-profile rope that the State of Maine is working on could provide an alternative in many places, but probably not everywhere. I don't think those who proposed alternatives 2, 3, 4, and 6 have any idea how extremely dangerous fishing sinking or neutrally buoyant ground line on hard bottom is. Line that "hangs down" on the bottom provides immediate danger to the captain, the crew, and the boat itself and requires an instantaneous response to prevent injury. With poly rope, "hang downs" may occur several times a year; with sinking or neutrally buoyant line it would happen every few minutes.

Another consequence of these four alternatives would be this: because sinking ground lines are too dangerous to employ, lobstermen would be forced to fish single traps in areas where they normally fish pairs, triples or small trawls. Besides being an incredible economic burden of the fisherman it would double the amount of surface lines and buoys. Isn't this exactly what we wanted to get away from? Alternatives 2, 3, 4, and 6 are not acceptable. So that leaves two alternatives. Alternative 1 is status quo, which I doubt is even being considered. Why would we have to be here if it was? So even though it has some appeal, and would be preferred by many of us, it doesn't warrant much discussion.

That leaves alternative 5. Alternative 5 allows the continued use of poly, but expands the use of SAMs. Like all the rejected alternatives, it requires a red marker every ten fathoms, which is ludicrous. Talk about costly, time consuming, and overkill. The current marking system is more than adequate. If ropes taken from entangled whales do

not have identifying markers on them, it's because they don't come from U.S. waters or identified fisheries. A perfect example is the blue polypropylene of at least 5/8 inch diameter that's been found on some recently entangled whales. I can't say for sure where the rope came from, but I can say unequivocally that it didn't come from Maine lobster gear. So alternative 5 is not really a preferred option either, only less offensive than 2, 3, 4, and 6.

So what have we learned over the past few years...First, that ship strikes occur more often than previously thought. There are other as yet unqualified threats: pollution, sonar use, killer whales, and the current use of pair trawlers to harvest herring must all be considered. Entanglement occurs, but when and where and in what kind of gear? Right whales spend much of the year in Canadian waters, where numerous fisheries offer no protection, and they fish float line to the surface. In the U.S. there are gill net fisheries, drift net fisheries, crab trap fisheries (red rock, jonah, and blue), fish trap fisheries, for hogfish, finfish (black sea bass, scup, tautog, cod, haddock, Pollack, redfish, and white hake), conch/whelk fisheries and shrimp trapping. There are long line fisheries, off shore lobster fisheries, draggers, purse seiners and pair trawlers. Many fisheries take place along the Northern Right Whale travel paths extending from Florida to Canada and even Iceland and Greenland. The Maine Lobster fishery accounts for a tiny percentage of the gear Northern Right Whales might face. Almost all our gear is well inside their natural habitats. Is there overwhelming evidence that ground lines have caused those few entanglements? Has NMFS tested the use of sinking or neutrally buoyant ground line on Maine's rocky sea floor to determine that it is not economically devastating? Have they considered the number of ghost traps that will be created by parted lines? Have they determined that hauling without poly is safe? Have they considered the additional vertical lines they'll be adding to the ocean? Have the economics and technological feasibility of implementation been considered? I don't think so.

Clearly it is not the intent of Congress for untested modifications, especially those of questionable value, to be forced on fishermen at considerable personal cost.

What can we do? The steps NMFS and ALWRT should take are these:

1. Support a poly buyback program. By giving fishermen a chance and time to eliminate poly and replace it with alternative ropes wherever possible, and supporting the development of new ropes like lo-pro, a voluntary program could well take 50% or more of the poly out of the water.
2. Support additional surveillance efforts, in the process identifying real areas of risk. If whales travel and feed almost exclusively in waters well off shore, then let's protect our broodstock and leaves these areas free of gear. At the same time expand exempted areas where there is no reasonable risk.
3. Support continued disentanglement efforts. Strides have been made by a courageous group of people, but techniques and technologies will only get better. We can subdue and could disentangle bears, lions, or elephants, but the water poses a different challenge. To keep a subdued whale afloat poses an engineering challenge, but not impossibility. Why not design floating forklifts

or extend hydraulic slings between two boats, or design an inflatable blanket? I believe there are engineers who could find a way to keep a subdued whale afloat.

4. Find a way to reduce the number of surface lines, i.e. encourage more traps per buoy line wherever possible.
5. Do away with inefficient SAMs and DAMs.
6. Continue to look at feeding habits and look at ways to protect foodstocks.
7. Monitor water quality – controlling levels of heavy metals, plastics, and pesticides or chemicals. Monitor industrial carbon dioxide which threatens the ocean as well.
8. Look at specific fisheries, one at a time, to find accountability and push politically to get more Canadian involvement.

In conclusion, I want to say that there are over twelve thousand endangered species currently identified in the world, with another six thousand species living on them that also may be endangered. Since new species are still being discovered, there's undoubtedly many more we don't know about. Of course Darwinian evolution and science teach us that species have always gone in and out of existence. Long before humans existed for example, in a period known as the Permian extinction more than 90 to 95% of the ocean species died off. This was before the dinosaurs and we don't see them walking around either. Today more than 1800 species of amphibians or 1/3 of the worlds population are considered endangered and threatened with immediate extinction, and the termination of these frogs, toads, and salamanders is largely due to human pollution. This is all the more reason to attempt to help the Northern Right Whale whenever we can. Maine lobstermen, more than any other group I can think of, are in tune with the natural world. We have a great reverence for marine mammals. We live and breathe in an ocean environment with them. It's sad that government pushed by unknowing environmentalists have decided to pick on a fishery well ahead of its time in conservation and self-sustainability. To lump us in with all the other fisheries and Canada is wrong. To destroy an industry because entanglements do occur somewhere, somehow is at the least morally reprehensible. If the environmental groups were to use the Endangered Species Act to protect the other thousands of endangered species in the same way, humans would have to exit the earth en masse.

The plan according to NMFS is supposed "to achieve its goals" while "minimizing the economic impact on small entities" and states that the effective implementation of the Atlantic Large Whale Take Reduction Team' plan "will require the active participation of the majority the fishing community".

Alternatives 2, 3, 4, and 6 clearly do not do this; in fact, they could put and end to a fishery that serves as a model for other fisheries throughout the world.

Alternative 1 would be preferred if it was a realistic option, but shouldn't mean that we stay at a stand still. I've named 8 specific directions the plan could go in to be improved.

Alternative 5 is a preferred option only because it allows us to use poly. Asking lobsterman to fish without poly is the equivalent of asking people to drive cars without wheels. Does that make any sense?

At some point Congress has to decide if the demands of the ESA are realistic. If they can't be applied universally, how can they be applied at all? Rebuilding the stocks may be possible. Zero takes, whether from shipping, pollution, or whatever, are not realistic. Twenty-seven whales were observed being born in 2004, over 80 in the last four years. None were killed by Maine lobster gear. If the lobster fishery in Maine had never existed, would Northern Right Whales have noticed the difference? I don't think so. Without us would they be more likely to rebuild? I don't think so. How often do we forget that man, himself, is an animal, the only one with a brain large enough to care about the welfare of other animals in an otherwise "survival of the fittest" world. I'm telling you we can save whales without endangering the nation's most successful fishery.

RECEIVED MAY 13 2005

SAVE OUR SOUND
alliance to protect nantucket sound

May 11, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Dr.
Gloucester, MA 01930

Re: Atlantic Large Whale Take Reduction Plan DEIS

Dear Ms. Colligan:

The Alliance to Protect Nantucket Sound is a nonprofit environmental organization dedicated to the long-term preservation of Nantucket Sound. One of the significant features of the Sound is its wildlife habitat, including marine species. It is known that different types of whales pass through Nantucket Sound on their migratory routes, including right whales. Additionally, North Atlantic right whales regularly occur to the south and east of Nantucket, they have been sighted in the Sound, and satellite telemetry studies have shown that they use the waters of the Sound more than previously expected

While we applaud NMFS for their development of a take reduction plan for reducing mortality to large whales, we have serious concerns with the DEIS amending the Atlantic Large Whale Take Reduction Plan (ALWTRP); none of the alternatives considered in the DEIS is sufficiently protective.

Specifically, while each alternative requires fishermen to use risk-averse sinking or neutrally buoyant line, there is no mention in the DEIS of the risk to whales from buoy lines. Furthermore, any line change is delayed until 2008. As NMFS itself acknowledges, the death of a single female right whale poses jeopardy to the existence of the species. Immediate action is required for the protection of the species.

Furthermore, many of the gear modifications proposed in the DEIS would only be required during portions of the year. Gear modifications need to be implemented coast-wide and year-round since right whales often roam up and down the coast, even in seasons when such activity would not be expected. Similarly, the DEIS should address the fact that weak links in the vertical line of fishing gear have never been proven to reduce risk. Endangered whales have had to be disentangled from gear that has unbroken weak links. A take reduction plan must provide a means to reduce risk to right whales from vertical lines. Finally, some alternatives would do away with a requirement for Dynamic Management. NMFS should keep the dynamic management system in place so it can restrict fishing gear in areas where there are aggregations of whales.

We hope that NMFS will address these critical issues when it releases its proposed rule later this summer. Thank you for considering these comments.

Sincerely,

Susan L. Nickerson

Susan L. Nickerson
Executive Director

396 Main Street, Hyannis, Massachusetts 02601 · 508-775-9767 · Fax 508-775-9725

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May 16, 2005

Dr. William Hogarth
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, MD 20910

Dear Dr. Hogarth:

I am pleased to have the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for amending the Atlantic Large Whale Take Reduction Plan (Plan). As you know, the alternative that is ultimately selected from the six presented in the DEIS would not only affect large whale conservation efforts; it would also have profound economic and social impacts on Maine's lobster fishermen and coastal communities.

The alternatives presented in the DEIS would span the entire Atlantic seaboard, covering numerous and diverse habitats and affecting dozens of different fixed gear fisheries. I appreciate the effort that the National Marine Fisheries Service (NMFS) has made to develop region- and fisheries-specific approaches in its proposed alternatives, because a "one size fits all" approach would fail to recognize the inherent ecological and economic differences that define each region. Considering the unique characteristics of the Maine coastline and our fixed gear fisheries, upon careful review it is apparent to me that only Alternative 5 contains provisions that may work for fishermen in the Gulf of Maine.

First and foremost, the Plan must recognize that using sinking groundline is simply not a viable option for the vast majority of Maine's lobstermen. The underwater bathymetry of large portions of the inshore Gulf of Maine is exceptionally rugged and rocky, and experiments show that sinking groundline, as proposed in Alternatives 2, 3, 4, and 6, under the force of significant tidal currents quickly chafes and breaks or becomes tangled on underwater structures. Therefore, it is essential that fixed gear fishermen in the Gulf of Maine be allowed to continue using rope with some flotation on the groundlines that run between traps, and that the research and development of low-profile groundlines remains a top priority. Not only would requirements for sinking line increase the occurrence of "ghost gear" and excess line lost in the water, but it would impose significant gear replacement costs on fishermen – in addition to the estimated $100 million up front that it would cost the industry to convert to sinking line. To counter these economic and operational consequences, fishermen may seek to put a minimum number of traps on each line, thereby increasing the overall number of vertical lines in the water – a counterproductive outcome that would ultimately expose right whales to more line.

Second, the area management systems now in place, Dynamic Area Management (DAM) and Seasonal Area Management (SAM), have had mixed results and warrant modification as suggested in Alternative 5. Most fishermen and right whale scientists in Maine agree that the DAM system has proven costly and has had minimal effect in actually reducing the number of gear entanglements, and I encourage NMFS to move toward eliminating the DAM system. The expanded SAM zones proposed in Alternative 5 may be a more realistic way to strike the balance between fishing activity and whale protection. Many fishermen have adapted to the existing gear requirements for fishing in SAM areas, and I am seeking funds for a

rope buy-back program to help other fishermen transition to the "whale safer" gear that would enable them to fish in SAM areas. The success of this approach, however, is ultimately dependent on the location of the SAM boundary lines and the degree to which large whales frequent the area and become fatally entangled in fishing gear; therefore, ongoing studies of large whale foraging and distribution and impacts of other sources of mortality must remain a top priority. I encourage NMFS to work with the Maine Department of Marine Resources (DMR) to periodically review and, as necessary, adjust the SAM boundary lines and gear requirements as our knowledge of large whale distribution and mortality increases.

Third, I am pleased to see that NMFS is proposing to incorporate exemption boundary lines in the Plan, which would establish areas in which its provisions would not apply. Considering that many areas have no history of whale sightings or whales becoming entangled in fishing gear, this is a reasonable and practical proposal. Similar to the SAM system, however, it is clear that the success of any boundary-based approaches rests on the assumption that the boundaries are placed in the most appropriate locations, considering the risks to whales and the costs of compliance to fishermen. Alternatives 2 through 6 each contain the same exemption boundary lines, which differ from those that the Maine DMR proposed in the initial scoping period. I encourage NMFS to re-evaluate the location of the exemption boundary lines based on Maine DMR's recommendation.

Finally, as this Plan process moves forward, I ask that NMFS gives deep consideration to two key principles that should guide large whale protection efforts. First, populations of large whales are significantly affected by factors beyond the presence of fishing gear, including ship strikes and water quality. In the Gulf of Maine, these impacts occur in both U.S. and Canadian waters as whales traverse the international boundary. Nevertheless, it is U.S. fishermen who have so far undertaken measures to protect whales, while their counterparts in other industries and in Canada operate free of whale take reduction measures, and this Plan would ask our fishermen to do even more while continuing to leave other responsible parties unregulated. A comprehensive whale protection strategy must take these other impacts into account, both domestically and internationally, and seek greater equity in the shared responsibility of whale conservation efforts. Second, our knowledge of large whale ecology – including their distribution, foraging, and reproductive success – has increased over time, but it still suffers from critical information gaps. It is imperative that research on large, especially endangered, whales remains a top priority for NMFS and its scientific partners, and that the agency works with fishermen in pursuit of newer, safer fishing gear technologies that would be less costly and impractical for fishermen than those in the current proposal. I am confident that our knowledge of whale populations and safer fishing practices will continue to expand; therefore, NMFS should construct the Plan with some degree of flexibility so that the agency can adjust its provisions over time.

I thank you for considering my comments, and I look forward to working with you as action on this Plan proceeds.

Sincerely,

Olympia J. Snowe
Chair, Subcommittee on Fisheries
and Coast Guard

cc: Mary Colligan, Assistant Regional Administrator for Protected Resources

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United States of America
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RECEIVED APR 1 8 2005

April 12, 2005

Mary Colligan
Assistant Regional Administrator For Protected Resources
National Marine Fisheries Service
Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan

I am responding to your Draft Environmental Impact statement for Amending the Atlantic Large Whale Take Reduction Plan proposing broad based gear modifications for the Maine Lobster fishery which I am a participant in holding of both a state and federal permit. My first comments will be general in nature and then I will comment on each individual alternative you are proposing.

Back around 1996 you began talking about wanting to do something about decreasing the danger of entanglements of whales. When this discussion first began in the state of Maine some of us immediately asked if the State of Maine should consider further limiting or reducing gear or at least hold effort where it was? They decided to propose gear modifications only. The regulations they proposed have long since been replaced.

Now at the time I thought that at least there was some limit on the number of federal permits that could be fished in Maine because you were not issuing any more new federal permits. Well the number of federal permits in Maine has gone form 800 then to 1400 today. In 1996 there was room so a person could fish without much entanglement with other fishermen. You could move gear and find a slot to set in without setting on someone else. Today it is nothing but a big tangled mess out there and if there were any whales left I can not see how they could swim without becoming entangled on a regular basis. Every stock assessment of the lobster fishery talks of increasing effort, larger boats, more traps, greater spacial expansion. Right off into the areas where the endangered right whale travels.

The reason we never see any whales, there are no herring left so there is no reason for them to come. Today even the weirs that always caught herring are no longer even dressed. We used to see many whales in a year. Today if I see one in a years time, I am lucky. As pressure on herring expanded using mobile gear the abundance has been declining. With the conversion to mid-water trawling and then to pair trawling, this was the beginning of the end of herring for us down here there has been a steady decline in the amount of herring and the size of the schools sense Mid-water and pair trawling took over. The abundance was already at very low levels though biologists claimed that there was a great abundance of herring. Many fishermen disagreed with these stock assessments. How you plan to rebuild the whale populations if you are going to take out the herring their feed on is beyond my comprehension. You are also planing to rebuild the groundfish stocks so what are they supposed to feed on? The herring always showed up first, the whales and groundfish came behind them and then eventually the herring broke up and moved on to gather somewhere else.

Maine fishermen have already made a lot of changes while the Canadian fishermen to this point have done nothing. They have always used 100% floating rope right to the buoy and including the tag buoy. This stuff is awful to have to fish around the tangles are awful compared to fishing around U. S. fishermen who are all now using all the sinking rope they dare to in their buoy lines. There is to much gear out there today to fish any other way. We rig in ways which will create the least entanglement and trouble between fishermen. When we do become entangled it is much easier to get clear of each other. When fishing around Canadians using all floating rope the tangles are much worse and much more difficult to clear.

There are many other sources that loose floating rope can come form. It will drift around the ocean until it becomes entangled in something or it goes ashore somewhere. Rope on deck on any vessel can easily be washed over board if it is not attached to something, when a vessel encounters heavy weather and decks become awash, this comes very unexpectedly at times. Heavy weather can pull rope from other sources as well. Some times things are not secured well and it only takes time for it to slip away. All of this has the possibility of becoming a threat to a swimming and diving whale. All a whale has to do is hook it on himself somewhere, dive and thrash around a little and he would be all wrapped up. Just the drag of the rope will cut into the whale if it stays with them long. I realize we have had some entanglements which were directly linked to Maine lobster gear but some of your other entanglements may be from other sources. I think a whale can only swim in one direction. I do not believe they are designed so they can back out of a piece of rope.

Maybe you should look at limiting who can purchase floating rope. It is cheaper so it is what anyone would tend to buy, floating rope over more expensive sinking rope, be that other marine industries, or the recreational community. Recreational boating has grown significantly they can use sinking rope just as well as floating rope. Limiting the availability of floating rope might be worth looking at.

I see where you designate Cape Cod Bay as critical habitat and I know that Massachusetts has a new out fall pipe that discharges right into the middle of Cape Cod Bay. It would seem to me that you would keep a very close eye on what comes out of that pipe. While what comes out of that pipe could be nutrients that could make certain marine growth and creatures flourish what I am hearing from fishermen is that these out fall pipes generally are tending to kill marine growth in the areas around the out fall pipe and down stream from them. This would indicate that they are using too many chemicals in their treatment plants. Fishermen are telling me that since the out fall pipe started discharging in Cape Cod Bay the marine life has been declining. You are constantly monitoring the movements of large whales. You should look at your data before the pipe started discharging and the data after the pipe started discharging. Has there been any change in numbers or where they are and where they may not going any more? It is not just this out fall pipe that I have heard complaints about. I mention this one because it is in the middle of your critical habitat for the endangered Right Whale. Someone told me that there is a problem in Plymouth harbor if you float lobsters over night they are dead in the morning. The harbor is to clean. Others told me there are no Whales coming into the bay any more? Is this true?

I have heard similar stories in Maine not of lobsters dying but how clean the area is and the decline in catch around out fell pipes. Around Portland there is some new development close to the water with a new sewage treatment plant and the area being to clean and declining catches. Who watches what they are doing to the marine environment?.

My general comments have ended and I will now comment on each proposed alternative.

Alternative one would be OK, I am already in compliance with those rules and have 100% sinking ground line and like it very well. I have been looking at how to build a better buoy line. I have been experimenting I will comment later. I do not like either your SAM or your DAM program. I would prefer that you do away with both SAM and DAM. I would not choose this program because floating rope in ground lines should be eliminated because they are a danger to whales especially the way some use it. I am successfully using sinking ground lines so I have no reason to favor this program except that it does not require marking of the buoy lines every 10 fathoms and I see many problems for a fisherman who is required to maintain that much marking of their buoy lines. It is to much to ask of a fisherman. I am favoring alternative 6 if you would change the buoy line marking requirements.

On the changes common to all in alternative 2 through 6, I am currently using 600-lb weak links on all my buoys, am using sinking ground lines and really like it. I would never go back to floating rope. I already mark all my buoys with vessel number or my permit number and most buoys have my vessel name as well except in the very near shore waters closer than one mile from shore. These buoys are painted a specific color pattern stated on my state license and marked with my state license number.

It is your proposal to require the marking of buoy lines every 10 fathoms that I have a real problem with. This would be extremely time consuming and difficult to properly maintain and I do not feel that marking every ten fathoms necessary to identify a buoy line. I even think it could possibly lead to early cases of arthritis of other types of debilitating injuries to fishermen's hands similar to carpal tunnel.

While I would be willing to place a few more marks on my longer buoy lines I feel that marking every ten fathoms is not necessary and is asking to much of any fisherman. I realize that you have been having trouble identifying much of the rope you find on whales. I wonder where some of it is coming from myself. What I have been shown samples of is not even similar to what most Maine lobster fishermen are using.

Now when I lose a buoy line or part of one, the buoy or the buoys are always attached if it is returned.

First just the breakaway or the buoy itself will fail, here I only loose the buoys or a buoy. The rest of the buoy line is still there just tie on another buoy or set of buoys.

Second will be the buoy or buoys with some piece of the buoy line attached. At some point where the buoy line is severed or cut but it is not cut up into pieces. It is a rare occasion a piece of the buoy line is missing. Most of the time it just fits back together. I can tell easily because I use different sizes of rope in my buoy lines and often the different sizes are of different colors as well. I have had a fisherman cut me several times and tie it back together before he cuts it off for some reason and lets it go adrift.

Occasionally I have lost a whole buoy line. It gets under a trap and is chafed off by the trap. Over the years I have had a lot of gear returned to me and almost all the time the rope and buoys returned match right up to where it was cut or chafed off. There has been the occasion that I have lost a whole end line and only had a buoy or the buoys returned. It is my suspicion that this person is using my end line. The reason I can give you this information is I fish trawls with buoys on each end, if one end disappears you just haul from the other end. If both ends disappear you drag for it and usually can retrieve it. So my argument is all my lost buoy lines are identifiable because the buoy or the buoys are still attached and it is clearly marked so it can be identified as mine. My Styrofoam buoys are branded with my initials and my state license number, then painted my yellow and orange color pattern as stated on my state license. The larger buoys, inflammables, or new ridged ones are identified by painting the vessel name, vessel number or federal permit number, state license number, a number or letter indicating which trawl it is from and E or W indicating east or west end of said trawl. I have also started using two orange buoys on the east end and a yellow and an orange buoy on the west end with about 7 fathoms of neutrally buoyant line between them. This makes it easier to see and identify the ends. Example X? E would be from the east end of X? trawl. If I was asked to I could provide the exact location of that gear when the loss occurred. I cover them with markings making it difficult for another fishermen to cover my identification and use them on his gear. There are fishermen who do a very poor job of identifying their gear to almost not marking their buoys at all. Something scribbled on with a magic marker which fades off in a short period of time.

Now if I was to loose part of the sinking rope it would simply sink to the bottom and be not much of a threat to whales at all. On the other hand if a hunk of floating rope is lost because a piece gets cut out it would float away and be likely to entangle with something else. I pick up a fair amount or floating rope just drifting around. I wonder where some of it comes form. Some has been of fairly large diameter, larger than what fishermen commonly use. Loosing pieces of a buoy line is rare or having someone cut up a buoy line without tying it back together some is rare as well. I think they get frustrated if they have trouble getting clear of the buoy line so they get mad and finally cut me off.

So when a buoy line is lost it is identifiable first by the buoy. It may make some sense to require some additional marking like once in the sinking portion and once in the floating portion. I would also consider the length of the buoy line, maybe anything over 20 fathom be marked once in the float rope and once in the sinking rope. In buoy lines over 100 fathoms marking every 50 fathoms. A minimum of a mark once in the middle of the float rope and once in the middle of the sink rope. Judging from all my past losses, this would provide enough marking to identify any rope coming from a U. S. fisherman's gear. My buoy lines consist of 1/2 to a maximum of 3/2 floating rope and the rest sinking rope. I have been working to reduce the amount of floating rope that I use in my buoy lines since we started talking about whale entanglement. I was hoping to get a grant to work on buoy lines, work with rope manufactures, share information with the industry and work on some other things. I was excited about this and started experimenting right away. The people looking at my grant application told me I did not know how to write and said they would write the grant for me. I guess they thought I was desperate for money and could not read either. I refused their grant. It took them a long time to get me a written proposal. By that time I was in the middle of a fishing season after reading what they wrote I had no interest in talking with them further, a waist of time. I felt it was best that I simply move on. I have done nothing more. I have never found the rope I was hoping to find or develop. So I just kept on fishing. I will include some diagrams of rope configurations I have tried with rope I was given by NMFS through John Kennedy and Glenn Salvador. I have not seen anything I would call neutrally buoyant line. It has all had the properties of sinking rope once it has been in the water for a while. It soaks up and gets heavy. I have also purchased some so called neutrally buoyant line I have used it between my buoys and it has all acted more like sinking rope.

This 1/2 to 3/2 floating rope has been an industry standard for a long time. This is used by most successful fishermen up and down the coast. If I was only allowed to use 1/3 float rope I would be forced to use toggles which I consider a hazard to the crew both when hauling and setting out. Fishermen have used the 1/2 to 2/3 floating rope for many years and this goes back to before I was in this business. It was what I was taught when I entered the business. Before floating rope fishermen used toggles but these presented a safety hazard to the fishermen themselves. One person I knew called them brain smasher's because they would not have felt very good if you got

hit in the side of the head by one. All a person has to do is be distracted at the wrong moment or be getting tired close to the end of the day. I have seen many close calls and I no longer use them. It is very easy to get distracted for a minute or forget they were coming at the wrong time. In the tide they will go deep when the tide is running. So it takes a substantial buoy to withstand the pressure down there. Styrofoam will just shrivel up and eventually have very little flotation. Many used to use glass bottles which I hated and considered very dangerous. They would hit the side of the boat and break or hit the block and smash, glass going every where. A very jagged, sharp, dangerous looking piece would be left tied to the short piece of rope attaching it to usually a piece of hose which was supposed to slide down the buoy line as you hauled until your trap came out of the water. Of course if there was a knot of snarl in the buoy line the bottle would suddenly stop sliding. Look out. Today what works best down here in all this tide is the hard plastic trawl floats. They are what my friend called brain smasher's. If you ever eliminate the use of floating rope or significantly reduce the amount of floating rope we are allowed to use in the buoy lines I will be forced to go back to using toggles which I considered very dangerous and have stopped using for reasons mentioned above. Using some floating rope in buoy lines is much safer for the fishermen, less of a chance of injury while hauling.

I like the exempted near shore areas though I do not see much advantage for any full time commercial fishermen Anyone who is making a full time living in this industry will see little advantage in these limited areas. I am using whale proof gear in there now anyway, breakaways, sinking groundlines. etc. I have already made the investment. I would gladly trade this near shore area exemption for a simpler more user friendly buoy line marking plan everywhere. Marking a buoy line every 10 fathoms is to much to ask for many reasons.

Your plan now includes all U. S. fixed gear fisheries which is good. Why should one fishery have to worry about reducing the risk of entanglement when another fishery using the same gear and fishing the same area not have to participate.

Now to further comment on the different proposals and I must say that at times I found it confusing and difficult to be certain of the exact differences between proposals. I hope I got my facts straight. If I do I am leaning towards Alternative 6 as my preferred alternative. I like six because if I understand it properly it eliminates DAM's almost immediately and eliminates SAM,s eventually, allows for the use of floating rope in part of your buoy line in a SAM and also allows a fisherman to use two buoy lines on trawls in a SAM

I could live with Alternative 2. As I stated above I feel that marking a buoy line every 10 fathoms is overkill and would probably increase the incidence of arthritis in fishermen's hands. Marking the sinking rope once and floating line once would be sufficient and very 50 fathoms or at least once midway in the sinking rope and once midway in the float rope in buoy lines over 100 fathoms in length. I feel this would be sufficient with buoy and trap identification. The Area Management in this proposal is year around from Florida to Maine but does not recognize seasonal movement of the whales. So I do not feel this is a good proposal because of year around management everywhere and it does not recognize seasonal movement.

I could live with Alternative 3 as well. Once again the buoy line marking at every 10 fathoms is too much to ask it would take a huge amount of time and add to killing a fisherman's hands and is really not necessary. Having proper identification on the buoys and marking every 50 fathoms or once midway in the sink rope and once midway in the float rope would be sufficient for reasons mentioned earlier. This Alternative does a better job of recognizing seasonal movement of whales and also does away with SAM and DAM in 2008 when everyone is using sinking ground line. I would prefer this one over Alternative 2 because it does a better job of recognizing seasonal movement of whales.

Alternative 4 recognizes seasonal movement better than Alternative 2 but not as well as Alternative 3 so I would prefer 3 over this one. I am once again opposed to marking my buoy lines every 10 fathoms. I feel this is unnecessary and to much to ask. Marking the rope once midway in the sink rope and once midway in the float rope and every 50 fathoms in buoy lines over 100 fathoms long would be more acceptable. And would be a better marking system than we are currently using.

I think that Alternative 5 would be my last choice you are expanding the size of SAM and I prefer to do away with both SAM and DAM. Once again I do not feel that asking fishermen to mark buoy lines every 10 fathoms is a fair and necessary thing to require of fishermen. Marking once in the floating rope and once in the sinking rope along with proper buoy and trap identification should be sufficient. I do not like Alternative 5 because I am

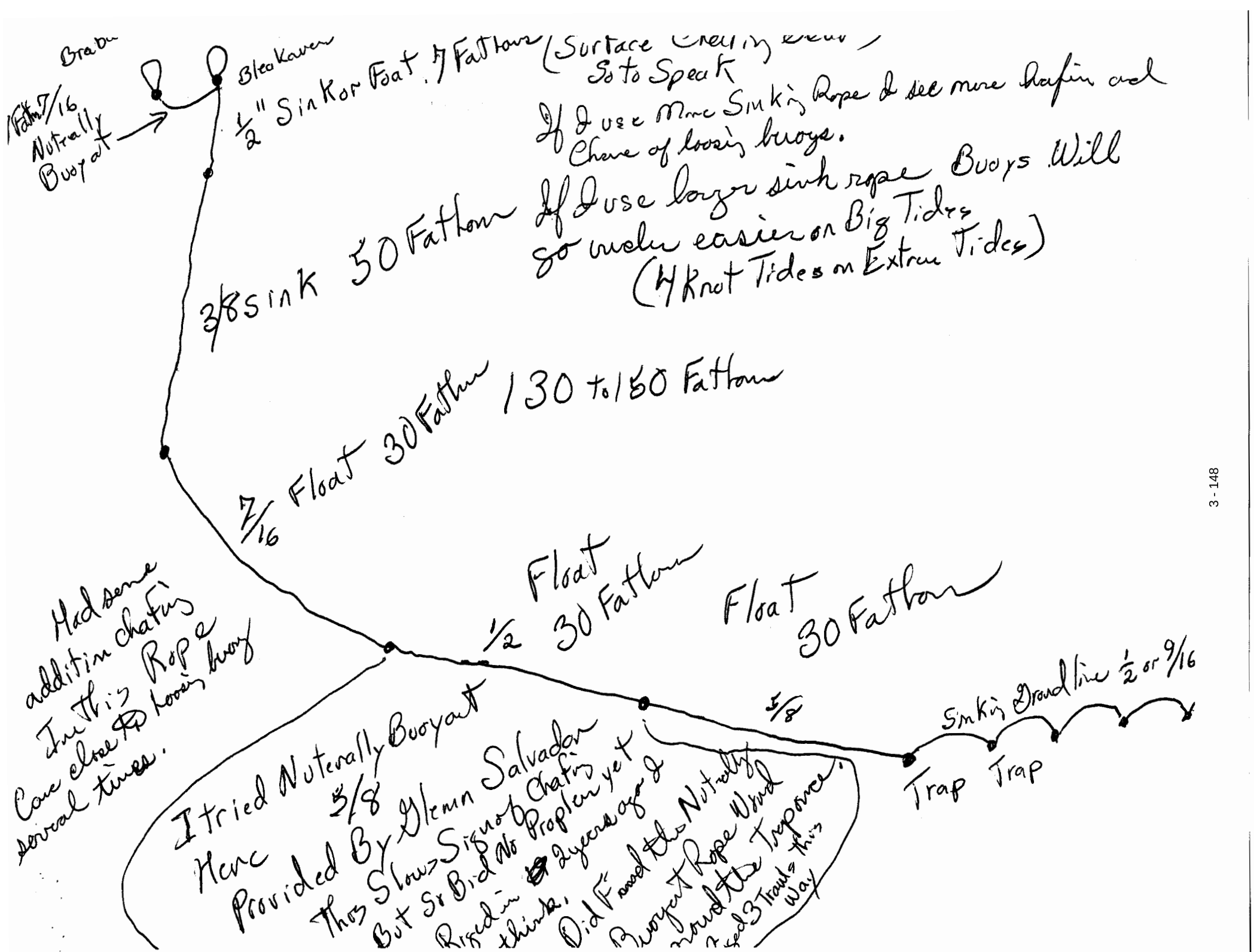
concerned it could lead to further expansion of SAM and I would rather SAM,s and DAM,s be eliminated all together.

I like Alternative 6 best for the following reasons it does away with the DAM program soon after publication of the rule. It does away with SAM in 2008 and allows two buoy lines in SAM and also allows up to one third of the buoy line to have floating rope in it. I feel that allowing two buoy lines and the use of some floating line in the buoy line are both very important needs to be able to fish successfully. My only real problem is the requirement of marking of a buoy line every ten fathoms. This is to much to ask of a fisherman it would be very difficult to track and maintain. It would be very time consuming and hard on fishermen's hands possibly leading to a much higher incidence of arthritis or other hand problems at younger ages. Marking a buoy line once midway in the sink rope and once mid way in the floating rope should be sufficient for buoy lines over 20 fathoms. For buoy lines over 100 fathoms in length once midway in the sink rope and once midway in the float rope and marking not more than 50 fathoms apart. Proper marking of the buoys, traps or possibly anchors would assist in identifying the rope as well. I addressed this issue in detail earlier.

Thank you for this opportunity to comment on the new Large Whale Take Reduction Plan. I hope I understood each plan correctly if I did not you should be able to see what I like and do not like. I hope you will look at my concern about your buoy line marking proposal. I certainly feel marking buoy lines every ten fathoms is too much to ask and would be difficult for a fisherman to maintain. The chance of many fishermen being out of compliance without even knowing it would be great.

Sincerely,

W. William Anderson


Bra
Bleakaven
1/2" Sink or Foat 7 Fathoms (Surface Chafing Dear)
So to Speak
If I use More Sinking Rope I see more chafing and
Chance of loosing buoys.
If I use larger sink rope Buoys Will
go under easier on Big Tides
(4 Knot Tides on Extreme Tides)
7/16 Nutrally Buoyant
3/8 sink 50 Fathom
7/16 Float 30 Fathom
130 to 150 Fathom
Float 30 Fathom
1/2
Float 30 Fathom
5/8
Sinking Groundline 1/2 or 9/16
Trap
Trap
Had some addition chafing In this Rope Came close to loosing buoy several times.
I tried Nutrally Buoyant 5/8
Here
Provided By Glenn Salvador
This Slows Sign of Chafing
But So Bid No Proplem yet
Riged in 2 years ago I think.
Did Find the Nutrally Buoyant Rope Wound
around the Trap once.
Riged 3 Trawls this Way

See *LNG At Perry A Bust* on page 11.

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Where Have All The Herring Gone?

By Laurie Schreiber

Bob Bowman

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In the mid and late 1990s there were almost daily displays of surface feedings on herring. During the last two years we have seen virtually none, the abundant schools of herring have not been visible.

— Zach Klyver, Whalewatch Naturalist

There is plenty of evidence, which indicates that herring stocks are being wiped out by overfishing, according to folks who attended the first meeting last week of the new MDI Healthy Herring Management Group.

About 20 people attended the meeting. Among them, fishermen said that huge schools of herring, once collecting in weirs or being chased by tuna, aren't showing up in recent years. Fishery managers said there is anecdotal evidence that new fishing practices are disrupting stocks. And whale watch naturalist Zack Klyver, who hosted the meeting, said the frenzied

> *"When we do see fish, we see the trawls hit them really hard . . . and then there's an absence of life."*
>
> *— Zack Klyver, Whalewatch Naturalist*

See HERRING on page 2

HERRING from page 1

feeding of predator species upon prey, which characterizes an ocean abundant with life, is no longer happening.

Under the New England Fishery Management Council's herring management plan, the inshore Gulf of Maine comprises Area 1A, adjoined by Area 1B offshore and Areas 2 and 3 to the south.

Quotas in the form of total allowable catches have never been reached in Areas 1B, 2, or 3, but there is concern that Area 1A is at risk of being over fished. But National Marine Fisheries Service scientists say the available data show a level of abundance in the entire stock complex, including Area 1A, that supports existing fishing levels.

Amendment 1 to the plan, which is now being developed by the council, includes alternatives that could limit or control access and control the type of gear that can be used in Area 1A. Public hearings on the alternatives are expected to begin this May. Implementation of the new plan is expected at the end of 2005.

The consensus of last week's meeting was two-fold: more research is essential in order to determine where spawning stocks are so they aren't wiped out; and something needs to be done about midwater trawlers.

Area 1A is routinely fished out the fastest of the four management areas.

Klyver said he has seen a drastic difference in his 14 years leading whale watch trips around an 800-square-mile area.

Especially over the last three years, he said, there has been a dramatic decrease in the number of bluefin tuna, which are one of the interesting sights to see as they surface-feed and lunge for herring.

"Area 1A is a disaster waiting to happen . . . and there's no doubt in my mind that midwater trawls are going to kill the whole fishery."

— Dana Rice

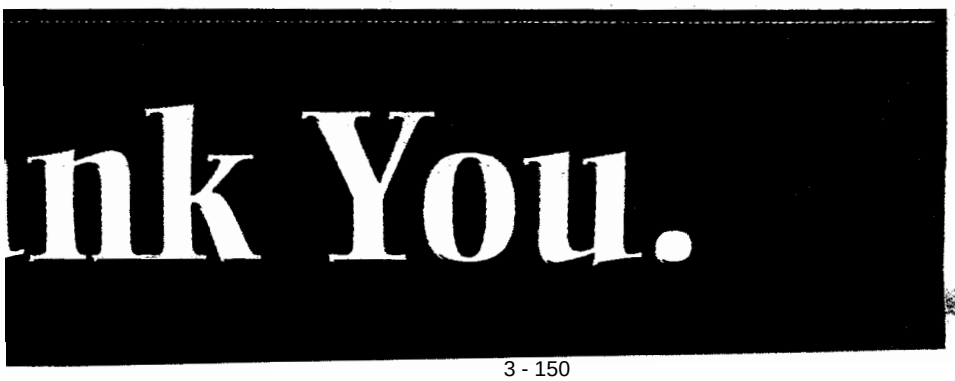
"It's dropped tremendously," Klyver said. "If you're missing these large pelagic species, something's wrong."

Likewise, feeding whales are a far less-common sight these days, he said.

"When we do see fish, we see the trawls hit them really hard," he said. "And then there's an absence of life....so I think there's a connection."

Klyver stressed the point of the meeting was not to foment opposition to trawlers, but simply to come up with a common vision for the future.

In a letter to NMFS regional administrator Pat Kurkul, Klyver



and other naturalists with the Bar Harbor Whalewatch Co. asked NMFS to reduce the quota for Atlantic herring in Area 1A by 33 percent, to 40,000 metric tons.

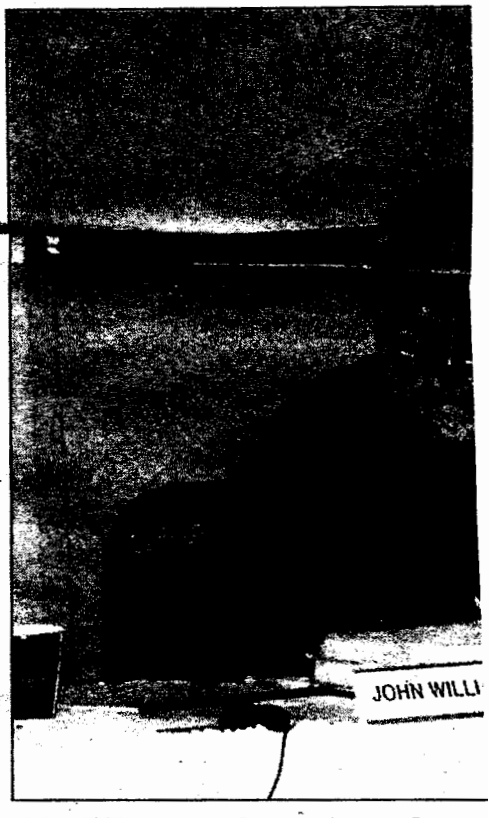
Klyver cited scientific uncertainty in biomass estimates and the amount of fishing effort that would be sustainable, combined with the predominance of midwater and pair trawl gear and its capacity and efficiency to take whole "assemblages" of herring.

Klyver also cited specific instances that, he said, indicated a marked decrease of herring.

Sometimes our search efforts for whales take us fifty miles up the coast or down the coast. During recent years (especially during the last two) years, we have witnessed a marked decrease of fish school abundance on our fish-finders and fish schools on the surface of the ocean. Through direct communication with fishermen and whale watch companies up and down the coast of Maine, we have found that this is a common story."

There has also been a concurrent decrease in the abundance of large whales, he said.

"During the two previous years, we have observed a dramatic drop in the abundance of large baleen whales, specifically humpback, finback, and minke whales," he wrote. "We have also seen a decrease in their site tenacity and observable-feeding behaviour throughout our coverage area. This is a shift from the mid and late 1990s when we were able to



John Williamson, NEFMC member sa looking to the definition of habitat to he

witness almost daily displays of surface feeding on herring including bubble cloud feeding, lunge feeding, and cooperative lunge feeding. During the last two years we have seen virtually none. While we have observed whales feeding on krill, the abundant schools of herring have not been visible."

Gear Conflict or Vanishing Resource?

Council member Dana Rice characterized the problem as a

id he and other council members are lp the herring situation.

resource, not gear conflict, issue. Area 1A played an essential role in the recovery of the resource after it was wiped out by foreign fishing in the 1970s. Any new problems with Area 1A, he said, will mean problems for the entire stock.

Ted Ames of Stonington said over the past year, for the first time, there were no britt, or minute marine organisms, including herring, around the docks, where they usually teem.

John Stanley, of Pretty Marsh, said he's been setting weirs since 1964 and still has eight dories. Last year, he and his crew caught nothing.

"We're just not seeing anything worthwhile," he said. "We're basically waiting for another collapsed-stock assessment."

Rice said he also would like to see trawling stopped in Area 1A. If spawning stock is wiped out, he said, herring will never come back.

Area 1A, he said, is "a disaster waiting to happen . . . and there's no doubt in my mind that midwater trawls are going to kill the whole fishery."

According to council member John Williamson, the scientists see only the consistency of removal levels; who catches the herring doesn't matter to many. Processors, he said, are also predisposed to industrial-style fishing because it gets the product to them in large, predictable batches.

Williamson said he and other council members are looking to the definition of habitat to help the situation; prey species may be defined as habitat.

Ames noted there are more midwater trawls today than there were at the peak of foreign fishing in the 1970s.

"Apparently it's okay for us to wipe out [herring] and not for the foreign fleet," he said. ⚓

F/V KRISTIN & MICHAEL, INC.
STEVE "RED" NIPPERT
38 WITHAM STREET
GLOUCESTER, MA 01930

May 13, 2005

Dear NOAA Fisheries,

This is in response to proposed changes to the ALWTRP as laid out in the DEIS, specifically how it affects my industry, the hagfish fishery.

I am a member of the ALWTRT and was asked to join that team to represent the hagfish fishery, which was and is being considered for inclusion in the TRP. As a new member, I was asked to explain about the hagfish gear, and my answer was "It's like lobster gear". That was something everyone could visualize easily. However, in retrospect, I feel I may have done my fishery a disservice by not pointing out the differences. Under Alternatives 2-6 we are regulated like lobster gear. There are major differences that I feel NMFS is not aware of between lobster fishing and hagfishing, and these should be considered. when figuring their final rule.

The first is the weight of the traps. Second is the frequency in which the gear is hauled. Third is consideration of the areas we have historically fished .Fourth is the size of the fishery. I will elaborate on how these differences tie in with the proposals, and adversely affect this fishery.

The sink line requirement for ground lines by 2008 is a requirement that is not economically feasible, not because of the date, but the fact is that we don't yet have a rope that works. I have tested rope for John Higgans and the gear research team. The best quality sink rope lasted me one fifth the time I get out of my regular rope. One would hope that industry will produce sink rope with the wear qualities that make it usable, but I haven't seen it yet. A big difference between hagfishing and lobstering is the weight of the traps and the frequency the gear is tended. Traps dry and out of the water weigh about 20 to 30 lbs., but when fishing they come out of the water full of eels and mud and weigh between 3 and 5 hundred lbs. Each. The traps are hauled every 12 to 18 hours. They get hauled about 5 to 6 times as much as lobster gear. I usually get about a year out of my rope, but only got two months out of the sink-line.

Under the proposed rules the hagfish boats would be banned from fishing the Great South Channel Critical Habitat Area between April first and June thirtieth, a time which traditionally we have fished in this area. We try to fish areas that are closed to draggers to avoid getting towed up and losing gear. May 1st we aways move to the Georges Bank Seasonal Closed Area and when that area opens up to the draggers on June 1st we move south to Closed Area 1. There is an abundance of hagfish there at these times, and these are our most productive months of the year. Closure of this area at these times would have devastating effects on this fishery.

Which brings up the size of the fishery. Throughout last winter there were two boats fishing which had a total of ten endlines each. In the whole fishery. Now that the weather has moderated there is another four or five boats that are planning to enter the fishery. Each boat probably has five trawls with two endlines each. That is a total of seven or eight boats with a total of seventy to eighty endlines on forty trawls in the whole fishery. There is no comparison with the lobster fishery with it's tens of thousands of trawls and endlines, yet the proposed rules make no difference between the two. Surely the hagfish industry poses less risk than the lobster fishery.

Gear marking for lobster pots is divided between inshore and offshore. Hagfishing is a moving fishery. In April I've been fishing sixty to seventy miles out,

but in May I'll be only four to twelve miles off the beach. Then in June I'll be about eighty miles out. I feel gear marking across the board is vital to finding out where the entanglements are happening, but would want a specific fishery color scheme. One we would not have to change everytime we move between the Nearshore Lobster and Offshore LobsterWaters.

I hope I have made it clear that there are major differences between lobstering and hagfishing, and it would be wrong to lump us in the same category with the same rules. .

Sincerely,
Steve Nippert
Owner/operator F/V Kristin &Michael

8 Otis Place
Scituate, MA 02066-1323
(781) 545-6984 Fax (781) 545-7837
mla@lobstermen.com

Massachusetts Lobstermen's Association, Inc.

Fax

To : **Mary Colligan**

From : William A. Adler
Phone : 781-545-6984

Fax : **1-978-281-9394**

Pages : : ___4___including cover sheet)

Date : **5/16/2005**

Re : **ALWTRP DEIS**

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply

1

Massachusetts Lobstermen's Association, Inc.
8 Otis Place
Scituate, MA 02066-1323
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May 16, 2005

ATTN: ALWTRP DEIS
Mary Colligan
Assistant Regional Administrator for
Protected Resources
National Marine Fisheries Service
Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan:

The Massachusetts Lobstermen's Association would like to submit the following comments with regard to the NMFS' DEIS to change the **Atlantic Large Whale Take Reduction Plan**. As you may recall, we did give oral comments at the public hearings in Plymouth and Gloucester.

GEAR MARKING: The MLA **opposes** the proposal to require the marking of buoy lines every ten fathoms. Fishermen frequently must replace part of a buoy line when a buoy may be broken off and along with it part of the line. Tugs and barges as well as boaters are the usual cause for this. Fishermen also add lengtheners to their buoy lines when moving gear into deeper water. Requiring a mark every "ten fathoms" would be a problem in trying to figure out whether the space between marks is ten fathoms exactly. The marking itself is also a problem in that tape won't stick to wet rope, nor will paint and while these markings could be applied when the rope is dry, adjusting the marks at sea is impossible. Both marking techniques also lose their visibility within a few weeks when in the water as growth accumulates on the ropes making it hard to discern. This provision, if adopted, would also tempt fishermen to use a different color code or no marking at all to divert suspicion away from their sector. No fisherman in his or her right mind would want his line to be identified if it happened to end up on a whale. For our fishermen, the fear of prosecution or fines as well as peer resentment would be too great. We recommend that the Service drop this proposal for now and search for a better way remembering that the buoy and the traps are already marked under current lobster fishing rules.

FLOATING GROUNDLINES: We do feel that we can **support** this proposal if the phase out is by 2008. We also would support allowing more time in the offshore fishery and also some allowances for a low profile alternative where needed. We support this proposal in general in

that most of the rope in the ocean consists of groundlines and not buoy lines. By far, most of the rope found on whales over the past decade has been identified as "poly" rope, which is floating rope. By phasing out this rope for groundlines, the industry, we feel, has reduced or eliminated the major risk to whales from lobster gear. Our industry feels that it has done all it can to prevent whale interactions. It should also be noted that most of the poly float line found on the few whales that have had such interactions, have had poly line much thicker then what is used by our inshore fleet.

EXEMPTION LINE: Although we understand that the proposed lines are further out in most cases than what is currently in place (inside the first bridge) we can **support** the proposals with reservations. The reasons we feel that the lines should be further out are that under the current rule, beyond such exemption lines, an option list out to federal water was allowed. Now the proposal is to eliminate that option list. This makes it more difficult for the fishermen who are beyond the line. We also expect that enforcement of this rule will be impossible given the current enforcement capabilities when dealing with 8,000 Massachusetts recreational lobster fishermen who will be fishing in among so many commercial lobster fishermen in the inshore and close to shore areas that would be technically, beyond the exemption line particularly in Massachusetts coastal waters. Considering that, this whole issue is judged to be absurd by most fishermen, it will tend to breed resentment and non-compliance and this could spread. Don't make rules that you can't enforce and that will only serve to hurt the Services credibility. We would recommend that you adopt a line further off the coastline then what has been proposed (i.e. one mile). Failing that idea, the proposed lines should be considered as a minimum.

DAMS: We **support** the eliminations of the Dynamic Area Management (DAM) program as soon as possible. This, as we've indicated before, is an exercise in futility. No one knows where these DAM's will be next and while fishermen try their best to conform, it's like a "Chinese fire drill".

FLOATING LINE ON THE BOTTOM OF A BUOY LINE: We **support** the proposal to allow 1/3 poly rope on the bottom end of a buoy line. This has been determined not to be a risk to whales and is needed to keep the buoy line from becoming entangled on bottom surfaces. The tides and currents tend to wrap these lines around bottom habitat making it difficult to retrieve ones gear. We recommend that the Service eliminate the restriction wherever it exists (SAM's?).

TWO BUOY LINES PER TRAWL: We **support** the proposal to allow each end of a pot trawl to be equipped with a buoy line. Fishermen need to be able to haul their gear from either end depending on tide, wind and current conditions. This is a safety issue. It is also a matter of retrieval of gear. If the one buoy line is lost, fishermen must be able to go to the other end to get their gear back so it won't be lost. The fact that poly float goundlines will be eliminated would make it very difficult to "grapple" back the gear should the one end line provision be kept in place. Allowing a buoy line at each end of a trawl will also cut down on vertical buoy lines in the water. Currently, were only one buoy line is allowed, fishermen are cutting down on how many traps they put in a trawl since only one buoy line is allowed. Traps cost a lot of money and the loss can be significant. Instead of, for example, two buoy lines for a 10-pot trawl, fishermen are putting only 2 traps on one buoy line. (The result is 10-pot trawl = 2 buoy lines or 10 posts = 5 buoy lines, 20-pot trawl = 2 buoy lines or 20 pots = 10 buoy lines). We recommend that 2 buoy lines be allowed on any trawl of 5 traps or more (SAM's?)

OTHER: We understand that the DEIS does not propose to move nearshore rules into inshore waters. This is reasonable. There should not be restrictions such as "no single traps" or "one buoy line for less than 5-trap trawls" in the inshore waters. The recreational and very small commercial fishermen fish in the inshore waters and while we have agreed to these rules in "nearshore" federal waters, we would not agree to these rules being brought into inshore state waters.

We would be happy to discuss any of these issues further if you feel there is a need. While we have supported any reasonable effort to protect and save these magnificent creatures, we do still believe that in the end, our fishermen's livelihoods and safety are more important then the whales. We stand willing to do what we can to help in the effort to ensure that the whale populations will survive but we must note that we are not willing to sacrifice our fishermen in that effort. Thank you for the opportunity to comment on this DEIS.

Respectfully submitted,

William A. Adler
Executive Director

WAA/med

Mailed via fax to 978-281-9394

RECEIVED MAY 13 2005

Poplar Ridge
Elevated Living

May 9, 2005

Ms. Mary Colligan

Assistant Regional Administrator for Protected Resources

Attn: ALWTRP DEIS NOAA FISHERIES SERVICE,
Northeast Region
1 Blackburn Drive Gloucester, MA. 01930

Dear Ms. Colligan,

I am writing to express my support for Alternative 2 as presented in the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (henceforth referred to as the "DEIS"). I feel that this is the only option that truly affords large whales the protection from the risk of entanglement that the Marine Mammal Protection Act and the Endangered Species Act requires. One of the most important protections offered to whales in the DEIS is the use of sinking ground line between traps or pots in fixed fisheries. Since numerous entanglements have been documented using floating ground line, it is very important this risk be minimized. In the other Alternatives where this protection is offered, there are seasonal periods when floating ground line can be used. However, both humpback and right whales have been seen as far south as the Carolinas all year long, and little sighting effort outside the winter and early spring has taken place in more southerly areas. Hence, I would like to encourage the use of such fishing gear year-round. It is also important that NOAA Fisheries Service does not do away with protection for groups of right whales that appear in unusual areas under the Dynamic Area Management (DAM) program, as suggested in Alternatives 5 and 6. While DAM has its problems, it is the only way that whales feeding in unusual concentration areas can receive special protection until 2008. Thank you for your time and the opportunity to comment on the DEIS, and I hope that the NOAA Fisheries Service will take this important action to protect endangered whales from the risk of entanglements.

Sincerely,

Stephen D. Rice
Poplar Ridge, LLC

Poplar Ridge, LLC 99 Windover Drive Asheville, North Carolina 28803 828.681.0100 Fax: 828.681.8090

NATIONAL MARINE SANCTUARIES

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
MARINE SANCTUARIES DIVISION
Stellwagen Bank National Marine Sanctuary
175 Edward Foster Road
Scituate, MA 02066
Phone: (781) 545-8026 FAX: (781) 545-8036

FAX TRANSMISSION COVER SHEET

DATE: 5/16/05 Pages: 3 (Not including cover)

TO: Mary Colligan

TELEPHONE NO: _____ **FAX NO.** 978-281-9394

FROM: Craig MacDonald

TELEPHONE NO.: 781-545-8026 **FAX NO.** 781-545-8036

SUBJECT: ALWTRP Comments

MESSAGE:

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
MARINE SANCTUARIES DIVISION
Stellwagen Bank National Marine Sanctuary
175 Edward Foster Rd.
Scituate, MA 02055
(781) 545-8026 phone 545-8036 fax

16 May 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Thank you for the opportunity to comment on modifications to the NOAA Fisheries' Atlantic Large Whale Take Reduction Plan (FR 38676). This plan is extremely important to the Stellwagen Bank National Marine Sanctuary (SBNMS). The SBNMS is the only federally designated national marine sanctuary in the northeast region. The sanctuary is a seasonal home to some of the largest aggregations of baleen whales along the eastern seaboard of the United States, including endangered right, humpback and fin whales. It is also home to large and important fixed gear fisheries targeting crustaceans and groundfish. As a result, the SBNMS has a relatively high sightings rate of entangled whales and an important responsibility of the sanctuary is to protect these animals from the risk and consequences of entanglement.

As part of that responsibility, the SBNMS convened the Marine Mammal Entanglement Working Group (MMEWG) under the auspices of its current Management Plan Review Process. The MMEWG was comprised of 20 sanctuary stakeholders ranging from commercial fishermen to conservationists and including personnel from state and federal agencies. This working group met numerous times over a six month period in 2004, culminating in a Marine Mammal Entanglement Action Plan. Among other things, this action plan recommended the following consensus actions:

Trap/Pot Fisheries –

Within five years, all current and future trap/pot fisheries shall use sinking ground line within the SBNMS or comply with NOAA Fisheries regulation (whichever is more stringent)

The breaking strength of buoy weak links in trap and pot fisheries throughout the SBNMS should be 600 lbs.

Gillnet Fisheries –

Within five years, all gillnets within the sanctuary should be compliant with gillnet modifications as required in NOAA Fisheries DAM or SAM areas (there was not consensus in the MMWEG as to whether DAM or SAM requirements should be met).

A key consensus item in the MMEWG was that fishing gear modifications to protect whales in the sanctuary should occur year-round. As such, the sanctuary supports Alternatives 2, 3, and 4, which require year-round modifications for sanctuary waters. The sanctuary does not support Alternatives 1 and 5, which do not contain a requirement for year-round gear modification within the sanctuary. We also do not support Alternative 6 because the expanded SAM areas do not cover the entire sanctuary and the elimination of DAM areas would leave substantial areas of the sanctuary unprotected.

The sanctuary is particularly supportive of the requirement for the use of sinking ground line for trap/pot gear within the sanctuary. Humpback whale research conducted by the sanctuary and presented to the Atlantic Large Whale Take Reduction Team's 2005 meeting clearly demonstrated that humpback whales forage along the ocean floor and that lines floating above the seabed are an entanglement risk. The sanctuary has calculated that a conversion from floating line to sinking line could remove over 300 km of line from the water column (Wiley et al. 2003a) with much of that being eliminated from areas the sanctuary has identified as at high risk for whale entanglement (Wiley et al. 2003b).

The sanctuary remains concerned that the breaking strengths required for gill net weak links might be higher than that which can be broken by whales before entanglement or serious injury can occur. This past year, Dr. David Wiley of our staff worked with gillnet fishermen off the southeastern Massachusetts coast using gillnets with five 600 lb weak links incorporated into the net panels. No failures were recorded in ~3,600 net hauls, indicating that, at least in some areas, the breaking strength for weak links used in gillnets can be considerably less than that being required (1,100 lbs) by NOAA Fisheries. This might be particularly true for relatively shallow water, low current areas such as those that make up most of the SBNMS. We also would like NOAA Fisheries to further investigate the degree to which vessel anchoring systems might pose an entanglement risk to whales. In August 2003 a humpback whale was sighted in the sanctuary entangled in what appeared to be an anchoring system from a small boat. In some years, large numbers of tuna boats and whales co-occur in the sanctuary and additional consideration of this threat might be appropriate.

During the most recent ALWTRT meeting, considerable time was spent discussing the need for sinking versus low profile ground line. The question was particularly germane

for some areas along the coast of Maine, where extensive areas of extremely large boulders occur. Pending further investigation into habitat use by whales in that area, a temporary exemption from the sinking ground line provision of the ALWTRP might be appropriate. However, we note that boulder fields within the SBNMS are far smaller in scale and should not be considered for an exemption from the sinking ground line requirement of the Plan.

Thank you for the opportunity to comment on the proposed Atlantic Large Whale Take Reduction Plan. We appreciate the tremendous effort NOAA Fisheries has put into the Plan and look forward to working with NOAA Fisheries to implement and enforce it within the SBNMS.

Sincerely,

Craig MacDonald, Ph.D.
Superintendent

Literature cited:

2003a Wiley D.N., J. Moller, K.A. Zilinskas, and M. Thompson. Quantifying the spatial and temporal risk of baleen whale entanglement within the Stellwagen Bank National Marine Sanctuary. 15th Biennial Conference on the Biology of Marine Mammals. Greensboro, N.C.

2003b Wiley, D.N., J.C. Moller and K. Zilinskas. The distribution and density of commercial fisheries and baleen whales within the Stellwagen Bank National Marine Sanctuary: July 2001-June 2002. Marine Technology Society Journal 37(1):35-53.

WEST COVE LOBSTER

FACSIMILE

To: Mary Colligan 5/16/05

From: _____

GEORGE MAIN
25 Cove Street
Noank, CT 06340-5700
Phone: 860-536-2096 Cell: 860-625-0744
Fax: 860-536-3481

Number of pages (Including cover sheet): 2

Cover message: _____

WEST COVE LOBSTER LLC
George Main – 860-625-0744 George Main II – 860-625-0743
25 Cove Street Noank, CT 06340-5700
Home 860-536-2096 Fax 860-536-3481

5/16/05

ALWTRP DEIS

I have been fishing 45 years in Long Island Sound, the "Race" and south of Fishers Island, NY. I have never had any whale problems where I fish for lobsters. The line should be from Watch Hill, RI to Montauk Point, NY. I hope you take this into consideration.

Sincerely,

Capt. George Main

May 11,2005 _____

Example of Form Letter B

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, Massachusetts 01930

ATTN: ALWTRP DEIS

Dear Ms. Colligan,

I wish to submit comments on the six options for reducing risk to the endangered North Atlantic right whale. None of the proposed options in the draft Environmental Impact Statement is sufficient to protect the whale. I ask that you strengthen the proposed regulations, as is your mandate under the Endangered Species Act. However, in the event that you cannot do this, I believe Option 2 is the most protective choice.

The right whale is one of the world's most endangered species, and its potential biological removal number is now set a zero, meaning that no animals may be removed, in order to allow the species to regain a sustainable population.

Therefore, the timeline proposed for the year 2008 for fishermen to implement new fishing gear regulations is not acceptable. Rather, immediate action is required. Since the whales do not adhere to a strict route, mandatory gear modifications must be set up coast wide and year round.

Dynamic management which requires modification or removal of fishing gear when a group of whales is sighted in a fishing area must be in the plan. The issue of vertical lines needs to be addressed, so when the whales become entangled, the weak links on the buoy lines will break.

Thank you for your attention to these requests, which are essential for the recovery of the North Atlantic right whale. Any delay will imperil the survival of this unique species.

Yours truly,

(Ms.) Sherley Redding

109 Stratford Road
West Hempstead, New York 11552
May 11, 2005

Mary Colligan, Assistant Regional Administrator for Protected Resources
Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan:

I am writing to express my support for Alternative 2 as presented in the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (DEIS). I feel that this is the only option that truly affords large whales the protection from the risk of entanglement that the Marine Mammal Protection Act and the Endangered Species Act requires. One of the most important protections offered to whales in the DEIS is the use of sinking ground line between traps or pots in fixed fisheries. Because there have been a great deal of entanglements from floating ground line, it is extremely important that this risk be minimized. In the other Alternatives where this protection is offered, there are seasonal periods when floating ground line can be used. Since both humpback and right whales have been seen as far south as the Carolinas all year long, and little sighting effort outside the winter and early spring as taken place in more southerly areas, I believe such fishing gear should be used year-round.

It is also important that NOAA Fisheries Service does not do away with protection for groups of right whales that appear in unusual areas under the Dynamic Area Management (DAM) program, as suggested in Alternatives 5 and 6. While DAM has its problems, it is the only way that whales feeding in unusual concentration areas can receive special protection until 2008.

As a frequent visitor to Massachusetts and an avid whale watcher and whale enthusiast, I thank you for your time and the opportunity to comment on the DEIS, and I hope that the NOAA Fisheries Service will take this important action to protect endangered whales from the risk of entanglements.

Sincerely,

Eve Lucano

(Mrs.) Eve Lucano

Dear Ms. Colligan,

I am sure you will be receiving many of these same exact lettesr. I would of written my own but this letter saves me a lot of time and expresses my opinions and concerns on this matter perfectly. I am copying and sending this letter to express my support for Alternative 2 as presented in the Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (henceforth referred to as the "DEIS"). I feel that this is the only option that truly affords large whales the protection from the risk of entanglement that the Marine Mammal Protection Act and the Endangered Species Act requires. One of the most important protections offered to whales in the DEIS is the use of sinking ground line between traps or pots in fixed fisheries. Since numerous entanglements have been documented using floating ground line, it is very important this risk be minimized. In the other Alternatives where this protection is offered, there are seasonal periods when floating ground line can be used. However, both humpback and right whales have been seen as far south as the Carolinas all year long, and little sighting effort outside the winter and early spring has taken place in more southerly areas. Hence, I would like to encourage the use of such fishing gear year-round. It is also important that NOAA Fisheries Service does not do away with protection for groups of right whales that appear in unusual areas under the Dynamic Area Management (DAM) program, as suggested in Alternatives 5 and 6. While DAM has its problems, it is the only way that whales feeding in unusual concentration areas can receive special protection until 2008. Thank you for your time and the opportunity to comment on the DEIS and I hope that the NOAA Fisheries Service will take this important action.

Comment on the DEIS and I hope that NOAA Fisheries will take this important action to protect endangered whales from the risk of entanglements. I think saving marine life and the environment should take precedence ~~of~~ over everything else.

Sincerely,

Amanda Neal

I am writing regarding DEIS and the new proposed whale regulations. I am a Lobsterman from Islesford, ME currently fishing 700 traps. I consider myself a Conservationist with the highest regard for the enviroment, however I do not feel that the proposed regulations are an adequate way to solve the problem. Please take a look at the shipping and cruise industries and research this further before prohibiting the use of floating groundline. These new regulations will seriously jeopardize our ability to make a living as fishermen. We depend on the ocean and a well balanced echosystem, we want what's best. Let's work together on this one.

Thank you for your time.

Captain - Richard Howland

F/V Georgia Peach

Islesford, ME

SIERRA CLUB
FOUNDED 1892
Massachusetts Chapter

May 16, 2005

Mary Colligan
Assistant Regional Administrator of Protected Resources
NMFS/Northeast Region
One Blackburn Drive
Gloucester, MA 01930
Fax: 978– 281– 9394

Sierra Club Comments on ALWTRP DEIS

Dear Ms. Colligan:

On behalf of the Massachusetts Sierra Club and our 27,000 members throughout the commonwealth, we submit the following comments on the Draft EIS for the Atlantic Large Whale Take Reduction Plan (ALWTRP). The Sierra Club has been an active voice for the need to increase preservation efforts for species impacted by this federal action, including Humpback, North Atlantic Right, and Fin whale species. We feel the preferred alternatives fall significantly short of the efforts necessary to protect species effected by the proposed actions.

NMFS' approach to preventing or reducing whale mortalities caused by human interaction remains fundamentally flawed. We are particularly concerned about efforts to protect the world's most endangered large whale, the North Atlantic right whale. NMFS has dramatically failed to offer a viable solution to the problems of vessel strikes and fishing gear entanglement, the two most obvious causes of North Atlantic right whale mortality. With more than 70 percent of Northern Right Whales showing scars from interaction with fishing gear, and with at least six dead northern right whales since November 2004 (from various causes, but all likely from human-induced deaths), there is no clearer indication that federal and state governments are on exactly the wrong path to save these whale species.

The Sierra Club requested that the DEIS comprehensively assess the success of efforts thus far to protect endangered large whales. The DEIS fails to adequately do so, and continues on the same program, albeit with some modifications, of DAM and SAM management measures, and continued over-reliance on weak link and buoy modifications and disentanglement efforts. It is our opinion that by failing to establish workable measures to meet the Potential Biological Removal (PBR) goal of zero as established for Northern Right whales, NMFS continued reliance on programs of this nature are establishing a clear and credible record that the federal government is violating numerous federal laws including the Endangered Species Act and the Marine Mammal Protection Act.. Throughout the report NMFS has either failed to analyze, or rejected outright, potentially credible measures to protect large whales, by siting either "excessive economic/compliance burden" or stating that measures are "too difficult to enforce". Under the endangered species act, however, it is not NMFS role to decide what is too costly to

implement or enforce, but rather it is your duty to meet the goals of the Act by achieving the established PBR goal for each listed species.

It is our emerging view that NMFS' continued development of elaborate, yet ineffectual, programs to protect the listed species, is little more than a complex scheme to avoid regulatory compliance, as well as to avoid litigation, by adopting the "something anything" approach in an effort to demonstrate that NMFS is "doing the best it can" to protect endangered large whales. However, as more dead whales wash up on our shores and in our harbors, the evidence is mounting to demonstrate otherwise. NMFS is failing in its regulatory and statutory responsibilities.

Fishing efforts will only increase as more and more boats chase fewer and fewer fish. The continuing entanglement of large whales in a variety of fishing gear types indicates that current efforts, including but not limited to Dynamic Area Management (DAM), Seasonal Area Management (SAM), and disentanglement remain inadequate. The DEIS does not provide an analysis of the effectiveness of these programs, or how NMFS has reached its conclusions regarding each programs' effectiveness. Moreover, background documents sited by NMFS are not provided to the public to allow us to assess the credibility of your data. We formally request that all information used in the formulation of proposed alternatives and the effectiveness (or not) of existing programs be provided to the public. This data is necessary to determine whether such programs are in fact helping, or as some claim, hurting whale protection efforts.

The time has arrived for NMFS to develop a program - now, not later - to get vertical lines and vessels out of the way of whales. We urge NMFS to intensively pursue options for the retooling of the fishing industry to allow the substantial reduction or complete elimination of vertical lines which are the primary threat to large whales. This should be done regardless of cost, or NMFS, through the activities it sanctions and licenses, will continue to operate in violation of the Endangered Species Act and the Marine Mammal Protection Act.

Finally, we would like to note for the record the failure of NMFS to hold hearings in jurisdictions or locations that would allow NMFS to hear public comment from those other than the fishing industry. By holding public hearings in fishing communities, NMFS is arbitrarily "loading" the public comment process with commentary from the fishing industry. We object to this strategy, and request that the public comment process on the DEIS be extended even further, or a supplemental EIS be issued, and additional hearings held in metropolitan areas that are easily accessible by public transportation to enable the interested public and members of the advocacy and scientific community to also have input into the process.

Thank you for the opportunity to comment on the DEIS for large whale species.

Very truly Yours,

James Bryan McCaffrey
Director

Mary M. Bechtold
5 Fallmeadow Court
Hampton, VA 23666
May 13, 2005

Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, Massachusetts 01930

ATTN: ALWTRP DEIS

Dear Ms. Colligan,

We all know that all whales are an endangered species because they are under stress because of hunting, loss of habitat, pollution, entanglement in fishing lines and by impact with large ships. At this time the sad case of the loss of right whales from the East Coast of the US is being considered in a Draft Environmental Impact Statement (DEIA). The aim of which is to consider matters which are controllable by the US and which will prevent activities which endanger the right whale. The number of right whales at this time is at a dangerously low level and these whales are being lost at a rate, particularly from impact with ships and entanglement in commercial fishing gear, which will doom the population to extinction. Wouldn't it be nice if the colorful Carolina parrot could still be enjoyed the South East? (Now we have to look at an Audubon painting to see the beauty of the bird.) Wouldn't it be nice if we still had the carrier pigeon to study and admire? the dodo? and other "lost" members of a world that existed not all that long ago?

I urge you to carefully address several items in the DEIS that is to be assembled. Please do consider the importance of this draft as you balance the survival of the right whale against development and commercial interests that can be modified and still be profitable. Development and commercial interests can be done in an environmentally friendly and commercially viable way. It is the North Atlantic right whale that may not survive without your strong protection.

Please consider the following items that need strengthening in the DEIS:

Modification of fishing gear should be sooner that 2008 and should be monitored and revised if necessary and put in force for the entire year. It is the obligation of the National Marine Fisheries Service to protect the right whale before their numbers become to small to exist as a reproducing population.

Vertical fishing lines should be designed so entanglement is not lethal to trapped whales. When the whales become entangled, the weak links on the buoy lines should be designed to break. In fact, fishing should be restricted in areas where a group of whales is sighted. If these actions cannot be initiated, I consider Option 2 as the most protective choice

Thank you for your consideration of this matter.

Yours sincerely,

Mary M. Bechtold

Whistler LLC
37 Spring St.
Noank, CT 06340

Telephone/Fax: 860-536-7668

FACSIMILE COVER SHEET

TO: MARY COLLIGAN **DATE:** 5/16/05

FAX NUMBER: 1-978-281-9394

FROM: Capt. John WHITTAKER

NUMBER OF PAGES TO FOLLOW: one (1)

COMMENTS/MESSAGES

"ALWTRP DEIS"

Comments

Whistler LLC
37 Spring St.
Noank, CT 06340
Tel./Fax (860) 536-7668

ALWTRP DEIS

I urge you to consider the following questions. Have there recently been any whale entanglements in Eastern Long Island Sound or Western Block Island Sound? Is there verifiable evidence that whale activity is on the increase in Eastern LIS or Western BIS?

As a lobsterman for some 25 plus years, approximately 230 days at sea per year, I have not observed any increase in whale activity in Eastern LIS or Western BIS. In fact, I have not seen any whales at all! Therefore it is my opinion that the current whale regulations for these areas are adequate. All the waters west of a straight line drawn from Montauk Point, L.I. to Watch Hill, R.I. should be excluded from the proposed amended ALWTRP. It makes no sense to place an unrealistic financial burden on Eastern Connecticut Lobstermen in an effort to protect nonexistent whales.

Sincerely,

Capt. John Whittaker

5/16/05

(1)

V

RECEIVED APR 18 2005

1997

April 2005

Dear Mary Colligan,

I am writing in regard to the proposed protection of right whales. I feel that the Maine lobstermen are very careful and considerate of all water life. I have talked to the community fishermen and have not been able to find one fisherman that has even spotted a right whale or any other type of whale. All of them said they are more then willing to protect them. But they don't see how enforcing such rules could be any better then now. With only one entanglement in 26 years and that one being released unharmed I don't see why you are bothering Maine lobstermen. In all the statistics I can find ~~all~~ most all the right whales killed have been by big ships hitting them and cutting into them. So please if you could relay the importance of targeting the shipping industry would you please look into. None would to see a right whale or anyother mammal destroyed. But

When you talk about one of the only industries [redacted] in Maine that could be shut down because of more federal laws that I don't feel could benefit the right whale or anyother living creature then there sould be a lot more consideration for. You people making all these laws have you ever been on a lobster boat and seen the hard work and care that the men and women put into their industry. They don't take their work lightly. Even when the fishing is at a slow they are still putting in long hard hours. Lobster fishing and all other fishing industries have been around a lot longer than most of you I'm sure and it is probably one of the most enviromentally safe industries in the world. You should be looking at the forgien boats that fishing our federal waters the big fish factory boats that set off

in federal waters catching and taking everything that floats. Maybe they are your culprits. I think that when you people realize that someday all these federally imposed laws are only going to make one species (human) extinct then you might wake-up and see that you need more information than you have now, ~~do~~ on the lobstering + fishing industry. After you have ruined the fishing industry across ~~the~~ New England, then what? The loss of federal income tax and license fees and what everelse goes with fishing would probably put a big hole in our financial future as a nation. Please don't make anymore laws that will sink a way of life that has been around for so many generations. The fishermen are not out to destroy any whale or other mammals. all they want is a chance to make an honest living.

Sincerely,
Jane Johnson
Lobster-Fisherman

P.S. (on back)

(41)

I attended a local meeting with you just last week. And like in 1997 you still didn't show beyond a reasonable doubt that the whales are being entangled in Maine fishing gear. From all the talk you should be getting in contact with our Canadian government. And also in the Daily newspaper a large ship docked somewhere in Virginia with a Right Whale with calf splattered on the front of it. Just for further information on the killing of Right Whales.

The fishermen in Maine have spent long hours and hard work and money in complying with your last rules and regulations. Please let it work for awhile and see what happens. I bet Right Whales will be taken but not by fishing gear.

RECEIVED MAY - 6 2005

May 4, 2005

Example of Form Letter B

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, Massachusetts 01930

ATTN: ALWTRP DEIS

Dear Ms. Colligan,

I wish to submit comments on the six options for reducing risk to the endangered North Atlantic right whale. None of the proposed options in the draft Environmental Impact Statement is sufficient to protect the whale. I ask that you strengthen the proposed regulations, as is your mandate under the Endangered Species Act. The right whale is one of the world's most endangered species, and its potential biological removal number is now set a zero, meaning that no animals may be removed, in order to allow the species to regain a sustainable population.

Therefore, the timeline proposed for the year 2008 for fishermen to implement new fishing gear regulations is not acceptable. Rather, immediate action is required. Since the whales do not adhere to a strict route, mandatory gear modifications must be set up coast wide and year round.

Dynamic management which requires modification or removal of fishing gear when a group of whales is sighted in a fishing area must be in the plan. The issue of vertical lines needs to be strictly addressed, as when the whales become entangled, the weak links on the buoy lines do not break.

Thank you for your attention to these requests, which are essential for the recovery of the North Atlantic right whale. Any delay will imperil the survival of this unique species.

Yours truly,

Tyla Matteson
4896 Barnham Rd.
Richmond, VA 23234
E: tmatteson1@mindspring.com
phone: 804-275-6476

Note: Please accept these 30 letters from informed individuals who care deeply about protecting the right whale. Tyla Matteson

MARY COLLIGAN
Assistant Regional Administrator
for Protected Resources
NMFS Northeast Region
ONE BLACKBURN DRIVE
GLOUCESTER, MA. 01930

STEFANIE ALLEY
BOX 289
ISLESFORD, ME. 04646

5/1/05

ATTN: ALWTRP DEIS

TO WHOM IT MAY CONCERN,

I HOLD A CURRENT MAINE LOBSTER LICENSE, I LOBSTER IN ZONE B.

I AM FOR ALTERNATE 1 OR ALTERNATE 5 OF THE AMMENDENT PROPOSALS.

THE U.S. COAST GUARD, MARINE SAFETY OFFICE, PORTLAND, ME., ISSUED A SAFETY ALERT ON 5/28/98, #98-03, TITLED 'SMALL VESSEL STABILITY WARNING.'

IT STATES "GEAR HUNG DOWN ON THE SEABED" IS A DANGEROUS CONDITION TO FISHERMEN.

I BELIEVE EVEN LARGER VESSELS, UP TO 50' WILL BE PUT AT SEVERE RISK IF FLOATING ROPE IS BANNED. DUE TO THE ROCKY SEABED, THE ROPE WILL GET STUCK UNDER ROCKS & LEDGES.

FISHERMEN FACE MANY DANGERS, NMFS IS PUTTING THEIR LIVES AT EVEN MORE RISK BY ADDING A DANGEROUS COMPONET TO AN ALREADY RISKY FORMULA, IF FLOATING ROPE IS BANNED.

ONE PLAN DOES NOT FIT ALL AREAS.

SINCERELY,

Stefanie Alley

Subject: **[Fwd: whales]**
Date: Fri, 01 Apr 2005 10:23:35 -0500
From: "Marcia Hobbs" <Marcia.Hobbs@noaa.gov>
Organization: NOAA
To: Diane Borggaard <Diane.Borggaard@noaa.gov>

-------- Original Message --------
Subject: whales
Date: Tue, 29 Mar 2005 05:30:08 -0800 (PST)
From: steve carter <spiffrepco@yahoo.com>
To: Marcia.Hobbs@noaa.gov

Dear Mary, I am a concerned Maine fisherman that just wants my, and many other fishermans voices to be herd. I understand the need to potect not just right whales, but all marine mamals, but the fact is these large whales never enter the waters I fish. The waters I fish are inside the three miles from shore line, infact, I can't legally fish outside that line. I have spoken to many other fisherman and pleasure boaters that have never seen any whale larger than a harbor porpus inside the three mile line, and believe me, I have talked to alot of ocean goers. I implore you to help us inshore fisherman stay out of this mess, we have enough trouble as it is.
sincerely,
Steve L. Carter

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STATE OF CONNECTICUT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

79 ELM STREET HARTFORD, CT 06106-5127

PHONE: 860-424-3001

Gina McCarthy
Commissioner

May 13, 2005

RECEIVED

MAY 1 8 2005

DEP OFFICE OF
LONG ISLAND SOUND PROGRAMS

Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
NMFS Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

ATTN: ALWTRP DEIS

Dear Ms. Colligan:

The Department's Marine Fisheries Division has reviewed the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (ALWTRP, DEIS) and is committed to working with the NOAA Fisheries Service (the Service) to find ways that protect large whales from negative interactions with fishing gear. However, it is also very important that the alternatives approved to protect large whales do not unnecessarily burden members of the regulated fishing community with potentially costly measures that do not demonstrably improve prospects for recovery of whale populations.

Upon review of the DEIS, the Department supports the proposed gear marking requirements and Alternative 5, with the modifications discussed below, as the preferred strategy to protect and restore Atlantic large whale populations.

In addition, the Department strongly urges the Service to adopt one of the non-preferred Alternatives, described as follows on page 3-38 of the DEIS: "Exempt the portion of Lobster Management Area 6 that is not included in the exempted waters (i.e., Long Island Sound) and is presently not regulated." If the entire LMA 6 cannot be exempted, then we propose a slight modification that will address the problems identified below.

Background

The current exemption line for the waters of Long Island Sound is a line from Watch Hill Light, RI to East Point on Fishers Island, NY and from Race Point on the western end of Fishers Island to Race Rock Light, then to Little Gull Light, then to East Point on Plum Island, NY (Appendix 1). The waters of Gardiners Bay, NY are further exempted by a line from Plum Island, NY to Montauk Point, NY. The line from Fishers Island to Plum Island bisects an active lobster fishing ground known as the "Race." Connecticut and New York lobstermen fish the Race with multiple pot trawls (3-5 pots per trawl) and, on any given day, might set them literally on the boundary line. However, it is important to understand that the current exemption line has no effect on the operation of these lobstermen since there are no ALWTRP season- or area-specific gear restrictions in effect in this area. Under any of the proposed alternatives, this would change.

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http://dep.state.ct.us

Connecticut has a compelling interest in the location of the ALWTRP exemption line for the waters of Long Island Sound even though the line (either the current line or the one proposed herein) does not occur in Connecticut waters. Connecticut lobstermen do not fish only in Connecticut waters.[1] For this reason, the assumption in Exhibit 6H-1 of the DEIS (that vessel activity for state-permitted vessels is equally distributed only within state waters) is not accurate as it pertains to Connecticut vessels. Although all of Connecticut state waters are in the exempted portion of Long Island Sound, there are vessels that would be affected by the proposed gear requirements and they are not included in Exhibit 6G-2 of the DEIS.

Reasons for Adjusting the Long Island Sound Exempted Waters Line

There are three reasons for adjusting the location of the exemption line for Long Island Sound.

First, large whales do not appear to frequent the currently non-exempted waters of Lobster Management Area 6 (the area between Fishers Island and Gardiners Bay). Based on Section 2 of the DEIS, the Department does not believe there have been any documented interactions of large whales with commercial fishing gear in the boundary waters between northeastern Long Island, NY and the Connecticut-Rhode Island border since the current take reduction plan was implemented. In our view, this raises the question of whether the substantial gear modifications proposed in most of the alternatives under consideration will enhance the effectiveness of the plan to reduce entanglements.

Second, the Race is a dynamic waterway at the entry to Long Island Sound. It is an area with exceptional tidal currents (maximum of 5 knots) and very large fluctuations in rocky bottom contours in depths that rapidly change from 19 to 290 feet on either side of the current exemption line. It is our understanding that this is not the type of habitat that one would expect large whales to frequent while feeding.

Third, the area is heavily trafficked by vessels entering and leaving the Sound (e.g. for purposes of shipping, transportation, military operations, fishing and boating) and buoys are often cut off by these vessels. Because of both the strong currents and high traffic levels, the area is noted for high levels of gear loss. As a consequence, multi-trap trawls are buoyed at either end to ensure their recovery when one of the end buoys is lost, and floating line is used to ensure that ground lines do not hang on the heavily-contoured bottom structure. In addition, lobstermen use buoy lines of 3/8" and greater in diameter in order to be able to haul the gear given the current and depth regime just described. In many respects, the fishery is conducted more like the offshore fishery. The proposed gear modification requirements (specifically, requiring 600 lb. weak links and the use of sinking groundlines) would result in the potential for much greater gear loss, an unnecessary economic burden and one that would very likely be of no consequence to the protection of large whales.

The Department recognizes that protection of large whales and eventual restoration of stock abundance is a principal requirement of the Endangered Species Act and the Marine Mammal Protection Act. Therefore, the following gear modifications, a slight relocation of the exempted waters line in the vicinity of eastern Long Island Sound and Gardiners Bay, NY, and the proposed gear marking requirements are

[1] Connecticut lobstermen are required to report commercial fishing activities to the Department. These reports document that commercial fishing by Connecticut residents takes place outside of Connecticut state waters, and specifically, they do so in the Race under New York non-resident commercial lobster licenses.

recommended to protect and better understand the effects of fishing gear on Atlantic large whales while still preserving an important local fishery.

Gear Modification Alternatives

1. Approval of Alternative 5 is recommended as long as the gear modification requirements do not extend west of what is proposed below to be the relocated exemption line for Long Island Sound. If the proposed relocation of the exemption line is not approved, the Department recommends that weak links with a breaking strength of 1,500 lbs. and "low profile rope" for groundlines (buoyant, floating or neutral groundlines) as proposed for use in some Maine state waters be authorized for use in the non-exempt waters of Lobster Management Area 6; or

2. If Alternative 5 is not chosen, we recommend approval of Alternative 6, with the same conditions identified in the previous paragraph.

For both alternatives, the Department recommends that fishermen be granted a reasonable period of time to comply with the requirements. If compliance is required immediately, we would hope that the Service would find the means to fund some form of floating line buyback program similar to that done in Massachusetts last year.

Proposed Alternative Locations of the Line Exempting the Waters of Long Island Sound.

1. The Department proposes that the current Lobster Management Area 6 line (Watch Hill, RI to Montauk Point, NY, Appendix 1) be employed to define the exempted waters of Long Island Sound in the Atlantic Large Whale Take Reduction Plan. This line is the boundary line between New York and Rhode Island waters and, because of past legislative actions, the fishing activities of residents of the three adjoining states in this area are distinct based on the location of this line. This will provide for consistency among residents of the three states based on where they are authorized to fish.

2. If this is not possible, the Department proposes that the existing Gardiners Bay exemption line be shifted slightly northward to a line drawn from Wilderness Point on Fishers Island at 41.26°N/72.00°W to Montauk Point (Appendix 1). Locating the exemption line from Wilderness Point to Montauk Point would simply represent a repositioning of an existing, non-COLREGS exemption line and it would maximize the amount of Block Island Sound in which the proposed measures would be applicable while exempting the deep water, high tidal velocity, high relief bottom type of habitat as exists in the Race.

Justification for Relocating the Long Island Sound Exemption Line

There are other exemptions from the COLREGS lines currently in effect and proposed to be continued and, in fact, one is contiguous with the Long Island Sound COLREG line (Gardiners Bay, NY was previously exempted from use of the COLREGS lines to establish the exempted waters of the embayment). The Department believes that decision was appropriately justified, even though there was a report of a right whale at the mouth of the Bay in 1993 (DEIS Page 3B-11). Moreover, even though Page 3B-11 does not indicate that there have been any reports of right whales in the non-exempt waters of LMA6 since implementation of the current ALWTRP, the COLREGS line is used to define the exempt waters of Long

Island Sound. Therefore, the rationale stated for rejecting the proposal to exempt the portion of LMA6 that is not included in the exempted waters (i.e., Long Island Sound), that is, "...Not adequately protective of large whales..." (DEIS Page 3-38) is difficult to justify. The rationale for originally choosing a different exemption line for Gardiners Bay (Page 3B-12) is the same rationale that should be used for slightly repositioning that line to include the entryway to Long Island Sound.

Gear Marking Requirements

The Department supports universal gear marking requirements for buoys and buoy lines used in non-exempt waters to identify different fisheries, as long as the plan is not so complicated as to impair its effectiveness and provided that fishermen have a reasonable period of time to comply. These markings may allow identification of fisheries that impact marine mammal stocks and may enhance our understanding of these interactions. Given the large geographic scale of the pot fishing areas identified in the DEIS, the Department is concerned that an area-specific marking strategy would complicate the marking system and may not substantively improve our understanding of where fishery-specific entanglements originate.

In summary, while protection of Atlantic large whales is a goal we strongly support, the Department opposes imposition of fishing gear restrictions of the kind proposed in the Southern Nearshore Trap/Pot Waters as defined in the DEIS unless the modifications proposed herein are adopted.

Thank you for the opportunity to comment. We very much appreciate the efforts of the NOAA Fisheries Service to accommodate the disparate views of all interested parties on this important issue. If you have any questions, please feel free to contact my Director of Marine Fisheries, Eric Smith, at 860-434-6043.

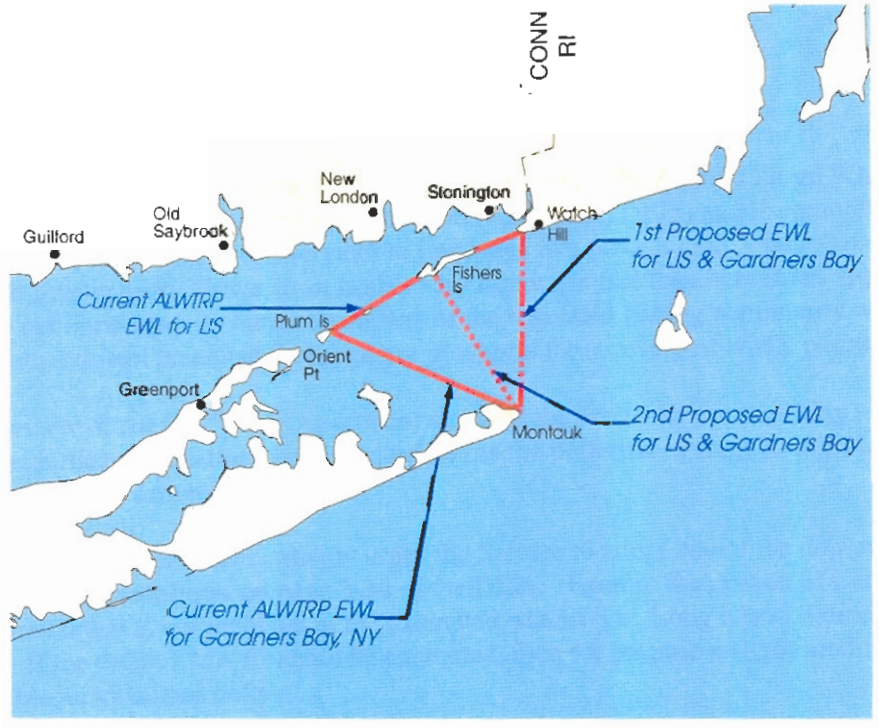
Yours truly,

Gina McCarthy,
Commissioner

GM/EMS/lvf

cc: Eric Smith

Appendix 1. Current and Proposed Exempted Waters Lines for Long Island Sound and Gardiners Bay, NY.



The spot fishery is a tradional fishery of Southeastern N.C.

Starts around Labor Day ends around Thanksgiving

Net sets in the surf zone is where we commonly fish for spots over night and unattended set are done.

Common Net length are generally 100', 150' and 200' yd nets greater than 200' are used but only by a few.

Depth of the net or Net Height are from 25 mD to 50 mD with 40 or less more common.

the Stretch mesh size is on average 2 7/8 to 3 1/4 str mesh

Water Depth range on the beach 2 to 3 feet to 12' to 17 on the off shore and, at 200 yds

the 22 lb Danforth anchor requirement causes a safety issue.
Even with a trip line it is impossible to remove an anchor of this type from the surf zone

I generally use a 13 lb. Danforth with chain ~ 3' ~~on~~ a 25 lb Navy anchor on the off shore end.

My Inshore anchors are 40 lb of lead weights. If sea conditions are bad the lead weights allow me to drag my Net fish and all off shore to safer conditions,

Most vessels in our area are small less 24' in length with the average being 18' to 20'.

Placing the 22 lb Danforth on the inshore is an unsafe requirement

Where this fishery occurs Is it that important of an Issue? the Net that close to the beach be a problem to whale movements along the coast?

I Don't mind using the 22 lb Danforth on the off shore end of my Net. this with weak-links should this fishery Whale safe.

Thank you

David K Bennett
511 Mulligan Way
Bolivia, N.C. 28422

PHONE DIRECTORY

ATLANTIC TELEPHONE MEMBERSHIP CORP.

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Including Listings For:

WRIGHTSVILLE BEACH AND WILMINGTON BUSINESSES

New England Fishery Management Council
50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Frank Blount, *Chairman* | Paul J. Howard, *Executive Director*

May 16, 2005

Ms. Mary Colligan
Assistant Regional Administrator for Protected Species
National Marine Fisheries, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

ATTN: ALWTRP DEIS

Dear Ms. Colligan:

The New England Fishery Management Council appreciates the opportunity to comment on the Atlantic Large Whale Take Reduction Plan measures proposed in the February 2005 DEIS. Our remarks do not include details about specific gear requirements because we believe those are best left to fishermen who are far more familiar with the equipment needs of their fisheries and the conditions under which they must safely operate.

We are confident, however, that your intent is to give their recommendations serious consideration with respect to issues such as the practicability and effectiveness of additional gear modifications, as well as phasing in new measures and taking into account the additional expenses that will be associated with such changes. That said, we agree additional measures are necessary to address the ongoing problem of entanglements of endangered species in fishing gear and remain concerned about right whales in particular.

While it is not the subject of the DEIS, we offer a comment about the recent spate of right whale fatalities that appear to be the result of ship strikes and remind NOAA Fisheries that efforts to address this source of mortality lag well behind those of the fishing community. We encourage the agency to take action on this problem as soon as possible.

Based on previous Council comments encouraging expansion of the list of fisheries subject to the ALWTRP rules, we support the inclusion of the additional trap/pot and gillnet fisheries. It is our understanding that fishermen engaged in the red crab fishery are working with the agency to specifically address their needs while maintaining the goal of reducing takes of endangered species and support that approach.

We further support the revised gear marking requirements to distinguish fisheries that may interact with protected species. More effective and efficient use of this tool should eventually provide better information about entanglements and enhance development of mitigation measures. The same is true of the exempted waters proposals. It is an element that will improve the program and allow resources to be targeted in problem areas while reducing restrictions in

areas where there is a remote likelihood of fishery interactions. SAM and DAM requirements have always been a matter of controversy in relation to effectiveness and enforceability. The agency has proposed their elimination and the Council agrees. Several more effective scenarios have been proposed.

The element of overall enforcement of ALWTRP measures was brought up at our March Council meeting and is reiterated in these comments. Specifically, there was a general concern over a perceived lack of enforcement in the Gulf of Maine. Accordingly, Council members were briefed about the ongoing efforts by NOAA Fisheries staff. We encourage the good work of the agency and the states in this arena and hope that their past cooperation continues so that those who comply with the ALWTRP measures can be assured that others are held to the same standards.

The Council will continue to track the process to improve the ALWTRP program. At the same time we encourage the agency to address all sources of endangered whale mortality. If you have any questions about our comments, please feel free to contact me or staff member Patricia Fiorelli at the Council office.

Sincerely

Paul J. Howard, Executive Director

Advocates for Wild, Healthy Oceans

2029 K St, NW
Washington, DC 20006

Formerly the Center for
Marine Conservation

202.429.5609 Telephone
202.872.0619 Facsimile
www.oceanconservancy.org

The Ocean Conservancy

FACSIMILE TRANSMISSION SHEET

Note: the contents of this transmission are intended solely for the addressee. If you are not the intended recipient, please return this facsimile unread to the address above.

To: __ Mary Colligan, Assistant Regional Administrator for Protected Resources ___

__ National Marine Fisheries Service Northeast Region_____

Fax number: __ (978) 281-9394 _____

From: Sierra Weaver
(202) 351-0478
sweaver@oceanconservancy.org

Date: __May 16, 2005_____

Message: _ALWTRP DEIS COMMENTS _____

Total pages: _____19_____

MAY 16 '05 18:41 FR TO 19782819394-2120 P.01/19

Advocates for Wild, Healthy Oceans

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Washington, DC 20006

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The Ocean Conservancy

May 16, 2004

Mary Colligan
Assistant Regional Administrator
For Protected Resources
NMFS/Northeast Region
One Blackburn Drive
Gloucester, MA 01930

RE: Comments on the Draft Environmental Impact Statement for the Atlantic Large Whale Take Reduction Plan (ALWTRP DEIS)

Dear Ms. Colligan:

The Ocean Conservancy ("TOC") appreciates the opportunity to comment on the National Marine Fisheries Service's ("NMFS") "Draft Environmental Impact Statement for Amending The Atlantic Large Whale Take Reduction Plan" ("DEIS"). We are extremely concerned that the Atlantic Large Whale Take Reduction Plan ("ALWTRP") has yet to achieve reduction of the incidental take of large whales to the Potential Biological Removal ("PBR") level, as required by the Marine Mammal Protection Act ("MMPA"), 16 U.S.C. § 1387(f)(2). PBR is zero for right whales and 1.3 for humpbacks.

We concur with NMFS that modifications to the ALWTRP should further reduce the potential for entanglements, minimize adverse impacts if entanglements occur, and mitigate the effects of any unavoidable entanglements. ***However, we do not believe that any one alternative, including the preferred alternatives will achieve PBR or avoid jeopardy to the continued existence of the species.*** Below you will find both general comments on the DEIS, recommendations for The Ocean Conservancy's preferred alternative, and specific comments on key elements of the various alternatives.

The Ocean Conservancy strives to be the world's foremost advocate for the oceans. Through research, education and science-based advocacy, The Ocean Conservancy informs, inspires and empowers people to speak and act on behalf of the oceans.

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1.0 GENERAL COMMENTS

1.1 The DEIS Does Not Comply with NEPA

As you are well aware, the primary purpose of an EIS "is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government." 40 C.F.R. § 1502.1. Accordingly, an EIS "is more than a disclosure document" and is to "be used by Federal officials in conjunction with other relevant materials to plan actions and make decisions." Id. Indeed, the alternatives analysis is the "heart" of an EIS and seeks to "ensure that each agency decision maker has before him and takes into proper account all possible approaches to a particular project..." Calvert Cliffs' Coordinating Comm., Inc. v. Atomic Energy Comm'n., 449 F.2d 1109 (D.C. Cir. 1971).

In this case, despite the incredible length and detail of the DEIS, NMFS has not considered a full range of alternatives, but rather only a narrow menu of relatively minor technical gear modifications. In order to satisfy the requirements of NEPA, NMFS must consider significantly more stringent measures such as closures of critical habitat and other areas of high use. Consideration of these types of alternatives is especially appropriate given the highly endangered status of the North Atlantic right whale and the fact that NMFS has made clear in numerous public documents that the loss of even one animal increases the species risk of extinction. Fishing activities authorized pursuant to the ALWTRP undoubtedly increase this risk and the consideration of alternatives must reflect the potential consequences of various fishery management measures.

Furthermore, a DEIS must present alternatives in such a way that they serve to inform both the decisionmaker and the public of management options and allow for a meaningful comparison of the environmental consequences of those options. The length and extremely technical nature of the DEIS makes it incredibly difficult for either of these important audiences to make this comparison and fulfill this fundamental purpose of NEPA. Indeed, because the decisionmaker is asked to essentially compile a suite of management measures to address the full range of impacts from commercial fishing on large whales, a comprehensive assessment of the effects of any suite is missing from the assessment.

In our comments below, we combine the alternatives presented in the DEIS into a new proposed preferred alternative that includes a number of the proposed options and modifications in the various alternatives. We encourage NMFS to consider this proposal as the preferred alternative in the final EIS as we believe this alternative will achieve true risk reduction and will result in the ALWTRP meeting its statutory obligations.

1.2 Alternatives Considered in the DEIS Fail to Comply with MMPA and ESA

As noted above, The Ocean Conservancy does not believe that any of NMFS' proposed alternatives, including the preferred alternatives, meet the MMPA's requirement to reduce the take of large whales incidental to commercial fishing activities to PBR. 16 U.S.C. §

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1387(f)(2). Moreover, we do not believe that any of the proposed alternatives comply with NMFS' duty pursuant to the Endangered Species Act to "insure" that fishing activity authorized by the ALWTRP "is not likely to jeopardize the continued existence of" threatened and endangered large whales, "or result in the destruction or adverse modification" of right whale critical habitat. 16 U.S.C. § 1536(a)(2). NMFS is unable to authorize the take of right whales pursuant to either of these statutes due to the precarious state of the species, and therefore management measures must truly "insure" protection of the species. The current alternatives do not satisfy this requirement, and therefore The Ocean Conservancy encourages consideration of the alternative presented below in the Final EIS.

2.0 THE OCEAN CONSERVANCY'S ANALYSIS OF ALTERNATIVE 2 AND PROPOSAL FOR OUR PREFERRED ALTERNATIVE

2.1 Alternative 2 Provides The Greatest Level of Protection

Alternative 2, while not optimal, is the most restrictive alternative presented and has the best chance to reduce entanglement to levels approaching PBR. The strengths of Alternative 2 are that it mandates: 1) sinking groundline over a wide area; 2) gear modification year-round except south of SC/GA Border; and 3) gear modifications and restrictions for the widest range of trap/pot and gillnet fisheries.

Our primary concerns with Alternative 2 are: 1) it does not expand SAM zones to include all Dynamic Area Management ("DAM") zones that have been implemented through 2004; 2) the period of phase-in for sinking groundline is too long; 3) with the proposed elimination of DAMs there is no mechanism to provide aggregations of right whales with additional protection to further reduce the risk of entanglement; 4) there is too great a reliance on weak links as a risk reduction measure; 5) proposed gear marking is insufficient to provide useful information regarding the type of gear, the portion of the gear, and the area where the entanglement may have occurred; 6) the proposed risk reduction measures for buoy lines (also referred to as end lines or vertical lines) are inadequate; and 7) there is no monitoring plan to evaluate the effectiveness of the risk reduction measures. As discussed below, many of these concerns extend to the other alternatives, including those that NMFS has highlighted as its preferred alternatives. We provide a more detailed discussion and the basis for our concerns in Section 3.0.

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2.2 The Ocean Conservancy's Preferred Alternative

2.2.1 Proposed restriction for All Trap/Pot Fisheries

For all trap/pot fisheries[1] The Ocean Conservancy proposes the following modification requirements and restrictions by area:

Cape Cod Bay Restricted Area (Federal waters)	Cape Cod Bay Restricted Area (State waters)	Stellwagen Bank/Jeffreys Ledge Restricted Area	Northern Inshore State Lobster Waters Area	Northern Nearshore Lobster Waters Area	SAM Area West

• Maintain ALWTRP universal requirement and require that buoy lines be knotless;
• Maintain current restrictions in Cape Cod Restricted Area (January 1 through May 15);
• Eliminate existing take reduction technology list;
• Require multi-trap trawls, no single traps;
• Adopt the below specified regulations by Dec. 31, 2006:
  o Year-round requirements;
  o Weak links on all flotation devices and/or weighted devices attached to the buoy line with a breaking strength of less than 600 lbs;
  o Require sinking or neutrally buoyant groundline;
  o One buoy line for trawls of five or fewer traps; and
  o Allow one-third floating line on the bottom third and sinking or neutrally buoyant line on the top two-thirds of the buoy line.
• Maintain the existing SAM program requirements and modify to require that they be implemented year-round; expand the SAM waters to include all DAM waters through 2004;
• Require gear marking;
• Establish survey programs for areas outside the expanded SAM of sufficient magnitude to trigger a DAM if whales are sighted; and
• Establish a groundline buy-back program and ghost gear removal program.					

[1] For purposes of The Ocean Conservancy's proposal, this includes lobster trap/pot as well as trap/pot fisheries for black sea bass, scup, conch/whelk, shrimp, hagfish, and Jonah crab. The Ocean Conservancy proposes these fisheries be regulated according to the areas where they fish.

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Offshore Lobster Waters Area 3	Offshore Lobster Waters Area SAM	Great South Channel Restricted Area

- Maintain ALWTRP universal requirements and require that buoy lines be knotless;
- Prohibit coils of rope (i.e. shanks, wraps of excess buoy line just below the buoy which act as storage) on the buoy line and toggles;
- Maintain trap/pot fishing closure in Great South Channel (including the Sliver Area) Critical Habitat (April 1 through June 30);
- Adopt the below specified regulations by Dec. 31, 2006:
    - Year-round requirements;
    - Weak links on all flotation devices and/or weighted devices attached to the buoy line with a maximum breaking strength of 1,500 lbs;
    - Require sinking or neutrally buoyant groundline;
    - Require one buoy line for trawls of ten or fewer traps; and
    - Allow one-third floating line on the bottom third and sinking or neutrally buoyant line on the top two-thirds of the buoy line.
- Maintain the existing SAM program requirements and modify to require that they be implemented year-round; expand the SAM waters to include all DAM waters through 2004;
- Require gear marking;
- Establish survey programs for areas outside the expanded SAM of sufficient magnitude to trigger a DAM if whales are sighted;
- Establish a groundline buy-back program and ghost gear removal program; and
- Extend southern boundary by following the 100 fathom line from 35°30'N to 27°51'N, and then extend out to EEZ.

Southern Nearshore Lobster Waters Area

- Maintain ALWTRP universal requirements and require that buoy lines be knotless;
- Multi-trap trawls, no single traps;
- Prohibit coils of rope (i.e. shanks, wraps of excess buoy line just below the buoy which act as storage) on the buoy line and toggles;
- Adopt the below specified regulations for Southern Nearshore Lobster Waters by December 31, 2006:
    - Year-round requirements;
    - Weak links on all flotation devices and/or weighted devices attached to the buoy line with a breaking strength of less than 600 lbs;
    - Require sinking or neutrally buoyant groundline;
    - One buoy line for trawls of five or fewer traps; and
    - Allow one-third floating line on the bottom third and sinking or neutrally buoyant line on the top two-thirds of the buoy line.
- Require gear marking;
- Establish survey programs for areas outside the expanded SAM of sufficient magnitude to trigger a DAM if whales are sighted;
- Establish a groundline buy-back program and ghost gear removal program; and
- Extend southern boundary by following the 100 fathom line from 35°30'N to 27°51'N, and then inshore to coast or exempted areas; area south of 35°30'N would use 100 fathom line to define Southern Nearshore Lobster Waters.

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2.2.2 Proposed restriction for Gillnet Fisheries

For gillnet fisheries The Ocean Conservancy proposes the following modification requirements and restrictions by area:

Cape Cod Bay Restricted Area (Federal waters)	Great South Channel Restricted Area	Great South Channel Sliver Restricted Area; Stellwagen Bank/Jeffreys Ledge Restricted Area; and Other Northeast Gillnet Waters Area	Other Northeast Gillnet Waters Area SAM

- Maintain ALWTRP universal requirements and require that buoy lines be knotless;
- Prohibit coils of rope (i.e. shanks, wraps of excess buoy line just below the buoy which act as storage) on the buoy line and toggles;
- Maintain Gillnet Closure at Cod Bay Restricted Area (January 1 to May 15);
- Maintain gillnet Closure at Great South Channel Restricted Area (April 1-June 30);
- Adopt the below specified regulations by Dec. 31, 2006:
    - Year-round requirements;
    - Ground lines and buoy lines must be made entirely of either sinking or neutrally buoyant line;
    - Weak links on all flotation devices and/or weighted devices must be attached to the buoy line with a maximum breaking strength of 1,100 lbs;
    - Require one buoy line;
    - Allow one-third floating line on the bottom third and sinking or neutrally buoyant line on the top two-thirds of the buoy line;
    - All anchored gillnets, regardless of the number of panels, must be securely anchored with the holding power of at least a 22lb (10.0 kg) Danforth style anchor at each end of the net string; and
    - Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements apply to all variations in panel size.
- Maintain the existing SAM program requirements and modify to require that they be implemented year-round; expand the SAM waters to include all DAM waters established through 2004;
- Require gear marking;
- Establish survey programs for areas outside the expanded SAM of sufficient magnitude to trigger a DAM if whales are sighted; and
- Establish a groundline buy-back program and ghost gear removal program.

Gillnet – Northeast, Driftnet

Weak links

- Require weak links on all flotation devices and/or weighted devices attached to the buoy line with a breaking strength of less than 600 lbs;
- Require one 1,100-lb weak link per panel when fishing tended gear at night

General

- Fold in and regulate same as Mid-Atlantic driftnet.

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Mid-Atlantic Coastal Waters Area	Mid-Atlantic Coastal Waters Area (Drift gillnets /driftnets)

- Maintain ALWTRP universal requirements and require that buoy lines be knotless;
- Prohibit coils of rope (i.e. shanks, wraps of excess buoy line just below the buoy which act as storage) on the buoy line and toggles;
- Require gear marking; and
- Establish survey programs for Mid-Atlantic of sufficient magnitude to trigger a DAM if whales are sighted.

Gillnet-Mid-Atlantic Anchored

- Adopt the below specified regulations by Dec. 31, 2006:
  - Year-round requirements;
  - Ground lines and buoy lines must be made entirely of either sinking or neutrally buoyant line;
  - Weak links on all flotation devices and/or weighted devices attached to the buoy line with a maximum breaking strength of 1,100 lbs;
  - Require one buoy line;
  - Allow one-third floating line on the bottom third and sinking or neutrally buoyant line on the top two-thirds of the buoy line;
  - All anchored gillnets, regardless of the number of panels, must be securely anchored with the holding power of at least a 22lb (10.0 kg) Danforth style anchor at each end of the net string;
  - Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements apply to all variations in panel size;
  - All gillnets must return to port with the vessel or contain the five weak links and anchoring system; and
  - Waters between 72°30'W and EEZ that are south of VA/NC border and north of SC/GA border must be folded into Mid-Atlantic anchored gillnet regulations.

Mid-Atlantic Drift Gillnet

- No fishing with driftnet gear at night unless that gear is tended;
- All driftnet gear set by a vessel must be removed from the water and stowed on board the vessel before returning to port;
- Expand requirements to year-round.
  - One 1,100-lb weak link per panel when fishing tended gear at night; and
- Waters between 72°30'W and EEZ that are south of VA/NC border and north of SC/GA border folded into Mid-Atlantic anchored gillnet regulations.

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Southeast U.S. Restricted Area	Southeast U.S. Observer Area *(includes the Southeast U.S. Restricted Area)*
Shark Gillnet Southeast **General** • Extend 80°00' W longitude boundary and associated requirements to EEZ; • Apply restrictions November 1 through April 30; • Apply from SC/GA border to 26°46.5'N; • Close area to shark gillnet fishing; • Prohibit straight sets of gillnet gear at night; • Fishing for sharks with strikenet gear (strikenetting) is exempt from the first two provisions only if: - no nets are set at night or when visibility is less than 500 yards; - each set is made under the observation of a spotter plane; - no net is set within 3 nautical miles of a right, humpback, or fin whale; and - if a right, humpback, or fin whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water. • Require use of vessel monitoring system; • Require gear marking; and • If fishing with shark gillnet gear, the vessel operator must call NMFS' SE Regional Office not less than 48 hours prior to departure to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel, no person may fish aboard that vessel with shark gillnet gear unless an observer is on board. **Coastal Gillnet-Southeast** **General** • Extend 80°00' W longitude boundary and associated requirements to EEZ; • Implement gillnet restrictions (similar to Mid-Atlantic anchored gillnet fisheries) between SC/GA border and the NC/SC border; • Apply restrictions November 1 through April 30; • Apply restrictions from SC/GA border to 26°46.5'N; • If fishing with shark gillnet gear, the vessel operator must call NMFS' SE Regional Office not less than 48 hours prior to departure to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel, no person may fish aboard that vessel with shark gillnet gear unless an observer is on board. • Require gear modification similar to Mid-Atlantic gillnets: o Ground lines and buoy lines must be made entirely of either sinking or neutrally buoyant line; o Weak links on all flotation devices and/or weighted devices must be attached to the buoy line with a maximum breaking strength of 1,100 lbs; o One buoy line; o Allow one-third floating line on the bottom third and sinking or neutrally buoyant line on the top two-thirds of the buoy line; o All anchored gillnets, regardless of the number of panels, must be securely anchored with the holding power of at least a 22lb (10.0 kg) Danforth style anchor at each end of the net string; and o Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements apply to all variations in panel size. o All gillnets must return to port with the vessel or contain the five weak links and anchoring system.	

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2.2.3 Exempted Areas

The Ocean Conservancy supports NMFS proposal to exempt areas landward of the 72 COLREGS demarcation line ((International Regulations for Preventing Collisions at Sea, 1972, as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 C.F.R. part 80)), bridges, and headland to headland areas including sheltered harbors, and inland waters. However, we believe that NMFS should review sighting data for large whales and reconsider the placement of the exemption line in areas such as Buzzards Bay and Long Island Sound where there have been whale sightings. Additionally, Maine Department of Marine Resources (MEDMR) has proposed its own exemption line. We encourage NMFS to review the exempted areas proposed by the MEDMR and only exempt those areas for which there have been no whale sightings.

Finally, NMFS proposes to exempt the use of sinking or neutrally buoyant groundlines in depths greater than 280 fathoms. The Ocean Conservancy supports this provision provided the gear is marked and NMFS has a formal mechanism to promptly reconsider this exemption if data shows that whales feed at these depths or have become entangled in gear fished at these depths.

2.2.4 Other Sources of Entanglement

Between 2001 and 2003, anchoring systems have resulted in several large whales entanglements. The Ocean Conservancy believes that any alternative selected must address this entanglement source. We propose that NMFS require that all anchoring systems be brought back to the dock and that such systems cannot be left unattended.

2.2.5 Designation of Critical Habitat

The Ocean Conservancy further urges NMFS to consider revising right whale critical habitat pursuant to 16 U.S.C. § 1533(1)(3)(B) to include all SAM and DAM areas activated through 2004. The increasing aggregations of right whales using these areas demonstrate that existing critical habitat does not encompass all high value habitat used by these animals. Although NMFS rejected The Ocean Conservancy's July 9, 2002 petition to expand right whale critical habitat in both the Northeast and Southeast, 68 Fed. Reg. 51758 (Aug. 28, 2003), the agency noted that it would continue to investigate the issue "and evaluate new information to determine whether a proposed rule to revise critical habitat is appropriate." Id. at 51763. Although The Ocean Conservancy does not here petition the agency to expand critical habitat at this time, we believe the agency is well within its authority under the Endangered Species Act to review existing information and determine on its own initiative whether modification would be in the interest of this highly imperiled species.

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3.0 ANALYSES OF MEASURES WITHIN THE ALTERNATIVES

3.1 Groundline Requirements

The Ocean Conservancy believes that the ALWTRP and regulations must, as a matter of priority: 1) reduce risk associated with vertical lines; and 2) reduce profiles of all groundlines. The Ocean Conservancy also believes that PBR can only be achieved by requiring the large-scale use of sinking groundline in gillnet and trap/pot fisheries throughout the Atlantic. Therefore, in order to meet the mandates of both the MMPA and the ESA, NMFS has a legal obligation to implement sinking groundline prior to 2008. Alternatives 2, 3, 4, and 6 require trap/pot and gillnet fisheries to use sinking or neutrally buoyant groundlines by 2008 in areas where such requirements are not already mandated.

According to Johnson et al., 16% of right and humpback whale entanglements involved groundline and 85.7% of groundline entanglements involved floating line. Studies in Cape Cod indicate that right whales often feed by skimming dense microlayers of zooplankton within 30 cm of the bottom. They also indicate that feeding right whales in Cape Cod Bay spent 17 to 31 percent of their time in the lower third of the water column and non-feeding whales spent 27 to 40 percent in the lower third of the water column (Wiley and Goodyear, 1998). Seventy-seven percent of right whale entanglements and 52% of humpback whale entanglements involved line through the mouth or baleen. Because several studies have shown that floating groundline can form an arc 15 to 20 feet into the water column (McKiernan et al., 2002), floating groundline between lobster traps clearly creates an entanglement risk, which may be mitigated by requiring the use of sinking groundline. As recognized in the DEIS: "An analysis of conducted for the lobster industry determined that requiring the use of sinking and/or neutrally buoyant groundline would eliminate approximately 85 percent of the line within the water column." (66 FR 59394)

Many fishermen in Massachusetts, as well as those who fish in SAM and SAM zones, have successfully transitioned to sinking groundline. The DEIS indicates that the Massachusetts Division of Marine Fisheries reports that "the majority of their inshore lobstermen are switching over to sinking and/or neutrally buoyant groundline" and that Northeast fishermen have changed to sinking groundline to respond to gear modifications required by the implementation of the SAM and DAM programs. The Ocean Conservancy believes that it is feasible for other fishermen to do the same, especially those that fish in areas with high whale density. We are aware of the difficulties and the challenges this mandate poses to some fisheries, especially those that fish in rocky bottom habitat (e.g., increased gear loss and greater difficulty grappling for lost gear). For that reason, The Ocean Conservancy strongly supports efforts to develop "low profile" groundline.

Also, we are sympathetic to the economic burden this will create for the fishing industry. For this reason, we call upon NMFS to work with the industry, states, and the conservation community to develop a groundline recycling and/or buy-back/assistance program to replace floating groundline with non-floating groundline. Securing funds for and establishing such a program will accelerate the transition from floating line to non-floating

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line. This program must contain incentives to facilitate a quick transition and must be verifiable to ensure that fishermen who benefit from the program actually convert their gear to non-floating line (e.g., voucher programs; swap-out events organized by the fishing industry and conservation groups). One possible incentive would be to implement an "Early Bird Special" format, whereby a lobsterman could convert all of his line, at no cost, if he took advantage of the program within the first three months. Fishermen who wait to convert their gear would receive less assistance that would be scaled by timeframe (e.g., six months = 75% of total gear need; greater than six months = 50% of total gear need; etc.).

3.2 Buoy Line Requirements

According to Johnson et al., "Fifty-six percent of the entanglements for both species [right and humpback whales] involved buoy line, providing evidence that buoy lines present entanglement risk regardless of line type. Sinking (all or part) buoy line was found on more entangled animals than floating buoy line, which may indicate that sinking buoy line creates more entanglement risk than floating buoy line."[2] "For both species combined, 64.3% (nine of 14) of buoy line entanglements involved floating and sinking line spliced together, 28.6% (four of 14) involved only sinking line..."

This information calls into question the risk reduction attributed to the use of sinking and/or neutrally buoyant line on the upper two-thirds of all buoy lines in Alternatives 2 through 4, and 6. While NMFS claims that universal gear modifications and the extension of those modifications to other fisheries may reduce the frequency or severity of entanglement in buoy lines, there is not data to support this assertion, making this proposed risk reduction measure difficult to quantify.

In The Ocean Conservancy's opinion, the issue is not whether the buoy line is comprised entirely of sinking and/or neutrally buoyant line or just the upper two-thirds. We accept the studies that indicate that "using polypropylene (floating) line on the bottom third of the buoy line typically produces a similar profile to that of 100% sink and 100% neutrally buoyant configured lines (Lyman and McKiernan, 2004)." The problem is that buoy line poses a significant entanglement risk to large whales, the threat of which is not reduced by the use of a particular line type.

Alternatives 2 through 4 would prohibit the use of more than one buoy line on trawls of four or fewer traps in Northern Nearshore waters, Stellwagen Bank/Jeffrey's Ledge, and in Federal waters of Cape Cod Bay from May 16 to December 31 and set a limit of one buoy line per trawl in SAM restricted waters until 2008, after which two buoy lines per trawl could be used. Alternatives 5 and 6 would set similar requirements, except that trawls set in SAM restricted waters would be allowed two buoy lines per trawl, except where SAM

[2] Johnson et al note that: "However, it is possible that the gear observed on or removed from an animal may not accurately reflect the entire history of an entanglement, since some or all gear can be shed by the whale, lost during disentanglement, or change position over time."

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restricted waters overlap with Northern Nearshore waters and Stellwagen Bank/Jeffrey's Ledge. This appears to be a step backward on two fronts.

First, the current regulations for Northern Nearshore waters, Stellwagen Bank/Jeffrey's Ledge lobster fishery, and in Federal waters of Cape Cod Bay (May 16 to December 31) allow only one buoy line on trawls of five or fewer traps. Therefore, the change in Alternatives 2 through 6 reducing that requirement to four or fewer traps is a relaxation of the requirements. NMFS claims that this change is prompted by fishermen's claims that they will split their trawls, thus increasing the number of buoy lines in the water. However, NMFS does not indicate the threshold (5,8,10 or more traps) at which fishermen who are required to use one buoy line will split their trawls. It is also unclear how much of a guarantee against fishermen splitting their trawls this concession will provide. Without this information, it is impossible to substantiate the claim. In any case, NMFS has failed to quantify the net change in risk this proposal represents. The Ocean Conservancy opposes reducing the number of traps allowed from only one buoy line from five to four.

Second, Alternatives 2 through 6 would eliminate the existing requirement that lobster trawls or gillnet strings in SAM waters use no more than one buoy line. The Ocean Conservancy prefers the single buoy line requirement in SAM waters. In offshore waters where the numbers of traps on a trawl is significantly greater, we believe there is likely a greater tendency for fishermen to split one trawl into several smaller trawls, resulting in an equal or greater number of vertical lines. While we share NMFS' concern that the requirement to have only one vertical line may increase the amount of gear lost to vessel traffic, bad weather, or gear conflicts, the question remains whether the amount of gear lost is offset by the benefit of reducing the number of vertical lines in the water column. Again, NMFS has failed to quantify the net change in risk of either increasing the number of buoy lines or ghost gear and has failed to offer any compensatory risk reduction measures for the apparent increase in risk.

In both the groundline and buoy line sections of the DEIS, NMFS raises concerns related to the potential for increased gear loss or ghost gear as a result of required gear modifications under several alternatives. Yet the agency has done little to either remove or develop a strategy to remove and reduce the amount of ghost fishing gear in the regulated areas. If NMFS raises these concerns, it must also offer a strategy to reduce the entanglement threat that ghost gear poses now and in the future.

The Ocean Conservancy believes that none of the Alternatives reduce the entanglement risk posed by buoy lines. Each alternative merely perpetuates the status quo, and in some cases even relaxes current regulations. To achieve PBR, NMFS must reduce either the number of vertical lines in the water, the risk that these lines pose, or both. While it is critical that NMFS have a definitive plan to undertake research and reduce the risk associated with vertical lines, it is even more critical that effective mitigation measures are adopted immediately. NMFS cannot wait two or more years to research, test, and then require vertical line risk reduction technologies.

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3.3. Weak Links Modification

In the DEIS, NMFS maintains that "[t]he weak link requirement is specifically designed to reduce entanglements and serious injury due to entanglements in, and around, the mouth, and in buoy lines and surface systems." DEIS at 5-23. Consequently, all alternatives require the use of weak links in the surface systems. The Ocean Conservancy believes that NMFS relies too heavily on weak links as a risk reduction measure.

Between 2001 and 2003, four whales were entangled with gear containing weak links–one weak link parted, two failed to part. Three of five right whales disentangled included gear with weak links. (Large Whale Entanglement Reports 2001, 2002, 2003.) This information calls into question whether and how much risk reduction weak links actually provide.

Weak links in the surface system or buoy lines, in particular, are likely to part only under those circumstances where the whale becomes entangled close to the buoy line and exerts sufficient force to part the weak link. There is ample evidence in NMFS' Large Whale Entanglement Reports that whales are often entangled in the mid-portion of the buoy line–not at the buoy itself. In this situation, the whale is usually entangled in the buoy line and tethered to or dragging the gear that it is attached to, or often wrapped only in large amounts of line. The findings of Johnson et al. seem to support that whales are often found with buoys and high flyers and that entanglement likely occurs below the surface.[3] In the discussion of weak links in the DEIS, NMFS fails to account for this information, the fact that weak links have been removed from entangled whales, and it fails to quantify the expected risk reduction associated with weak links as well as determine whether the proposed breaking strengths are appropriate or sufficient to offer real risk reduction. Consequently, we question the conservation benefit of weak links in the buoy lines and surface systems.

Similarly, NMFS claims that weak links in gillnets will allow nets to break when a whale exerts pressure in opposition to the resistance provided by the net's weight and anchoring system. NMFS also states: "The incorporation of additional weak links into each net panel could further increase the likelihood that a whale would be able to free itself from being entangled in a gillnet without sustaining serious injury." DEIS at 5-23. The Ocean Conservancy agrees that the conservation benefit of weak links in gillnets is potentially greater than in buoy lines. Increasing the number of weak links in gillnets will likely decrease the breaking strength of those nets, reducing the entanglement risk. Nevertheless, NMFS has not proven that 1100 pound weak links are sufficiently risk adverse, and some studies indicate that inshore gillnet gear can be fished with weak links of 500 or 600 pounds.

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[3] "Out of 14 entanglement events involving buoy line, nine (64.3%) involved the presence of buoys and/or high flyers.... Interestingly, only two whales (both right whales) were documented with surface system entanglements, which may indicate that entanglements commonly occur below the surface." In "Fishing Gear Involved in Entanglements of Right and Humpback Whales." Amanda Johnson, Glenn Salvador, John Kenney, Jooke Robbins, Scott Kraus, Scott Landry, and Phil Clapham. In Press for Marine Mammal Science.

In conclusion, we are not advocating that NMFS reject weak links as a risk reduction measure, but that the agency recognize that weak links provide an interim measure that offers only marginal risk reduction in pot gear and unknown conservation benefits in gillnet gear.

3.4 Gear Marking Modifications

Alternatives 2 through 6 remove current ALWTRP gear marking schemes and require all vessels to identify buoy lines with a four inch mark every ten fathoms, and to mark all surface buoys with either their vessel number or permit number. Again, the proposed measures are insufficient. In the various gear marking systems proposed throughout the history of the ALWTRP, NMFS has routinely failed to: 1) incorporate and capitalize on gear marking already required in the fishery under existing take reduction regulations or fishery management plans; 2) augment the existing gear marking system with more frequent marking requirements to increase the probability of identifying gear type and parts (e.g. buoy line from groundline); and 3) devise a marking system that is easy, safe, and technologically feasible to implement.[4]

The ALWTRP gear marking system should require that fishermen mark buoy lines and surface buoys to in such a way as to identify the fishery and the area fished. Only when this type gear marking is implemented will NMFS begin to consistently gather information that will help identify fisheries and areas that pose the greatest risk. It is equally important to know what part of the gear is involved in entangling large whales. A specific color should be used to identify sinking/neutrally buoyant ground line from floating ground lines or buoy lines. NMFS should work with rope manufactures to designate such color codes. This would allow a quick visual cue as to in what part of the gear an animal is entangled. Additionally, all new manufactured neutrally buoyant line should be marked to identify it as such to determine if this line is indeed successful in reducing the number of entanglements.

NMFS must expand on the proposed gear marking requirements in the DEIS to require a specific color-code by fishery, state, and area fished; require the frequent marking of groundline; and the more frequent marking of buoy lines (e.g., every 5 fathoms). Over time, NMFS should develop stainless steel or nylon type bands that can be crimped around a line, or chips that can be inserted into the line, coded with fishermen identification or fishery/gear/area information for all fixed gear fisheries and waters along eastern seaboard. NMFS also should require that all surface buoy systems in federal and state waters are marked in a manner that identifies the owner/vessel such as vessel name and/or license/permit number and/or fishery.

[4] The Ocean Conservancy notes that gear marking is not a risk reduction measure, but as NMFS states, gear marking may "improve NMFS' ability to identify the gear involved in an entanglement." DEIS at 5-27. Gear marking generates information on the nature of the gear involved and in some cases provide information on where, when, and how the gear was set.

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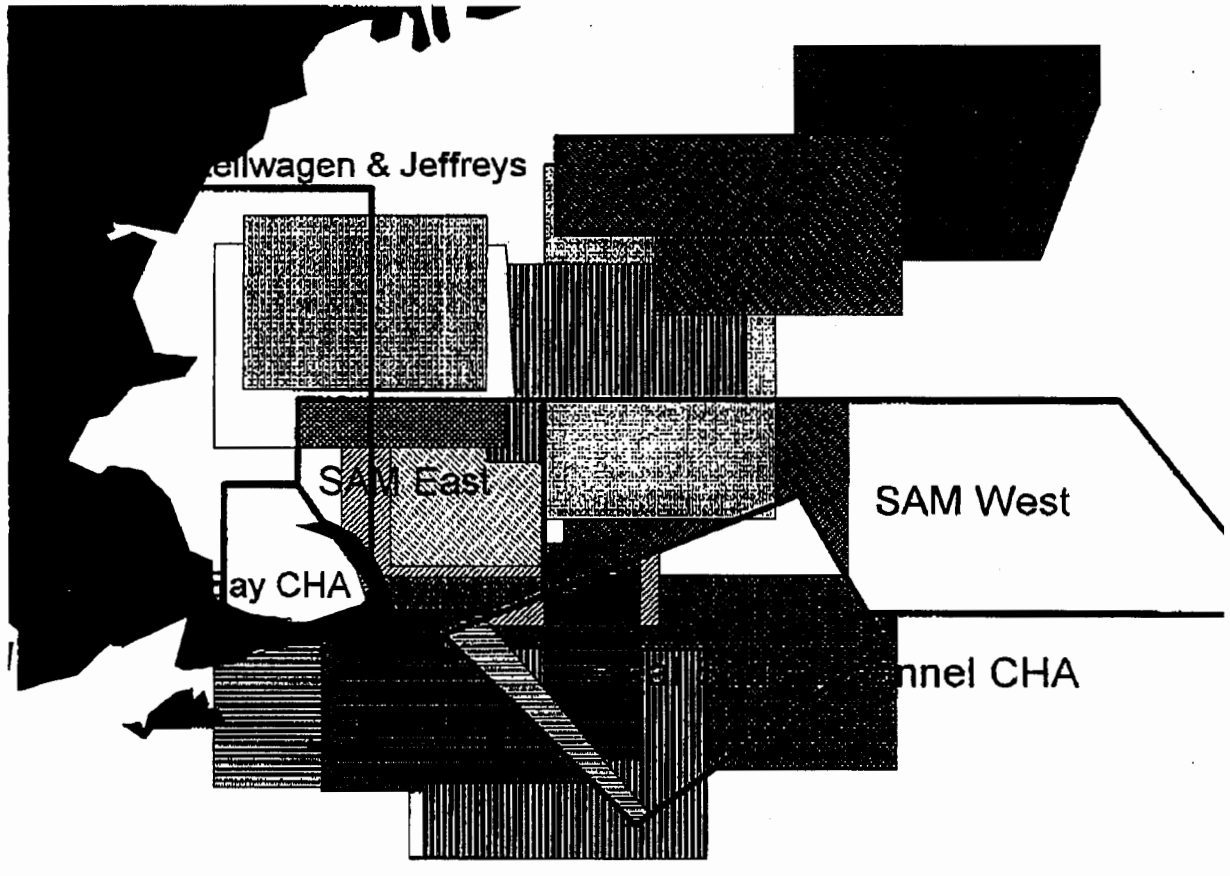
3.5 Expanded SAM Under Alternative 5 and 6.

It is clear from the number of DAMs that the existing SAM areas and critical habitat do not encompass all seasonal aggregations of North Atlantic right whales. Indeed, both the growing number of DAMs and increased survey efforts in the Mid-Atlantic demonstrate that right whale habitat use is much broader than originally thought when critical habitat was designated. Furthermore, the both the DAM and SAM systems are inherently underprotective as they rely heavily on sighting surveys and the location of those surveys, and they are exclusively focused on right whales and ignore the distribution of other large whales.

NMFS' proposed expansion of the SAM is insufficient. It represents only an incremental adjustment that fails to include a number of DAMs that have been triggered in 2003 and 2004. The map below shows the location of DAMs in 2003 and 2004. Of particular interest is the number of DAMs that have occurred north and southwest of the existing SAM. The expanded SAM fails to capture important habitat on Jeffrey's Ledge, Cashes Ledge, and waters north of the SAM and east of Maine. It also does not include DAMs that have been triggered west of the Great South Channel critical habitat (see map).



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NMFS' failure to encompass these DAM areas is even more problematic due to its proposal under Alternatives 5 and 6 to eliminate the DAM program within six months of publication of the final rule. The rationale used is: "The area to be incorporated into the expanded SAM zone would encompass many of the areas that previously have been designated DAM zones, as well as other areas that have a high potential to receive such designations." DEIS at 5-31. This statement appears to be false, as NMFS did not include several key DAMs triggered in 2003 and 2004 or areas such as Jeffrey's or Cashes Ledge which would clearly qualify as areas that have a high potential to receive (and have received) a DAM designation. The Ocean Conservancy strongly urges NMFS to: 1) expand the SAM area to include ***all*** DAMs that have been triggered to date; and 2) maintain the DAM system to provide a mechanism to provide aggregations of right whales with additional protection to further reduce the risk of entanglement.

The Ocean Conservancy recognizes that DAMs have three primary problems: (1) they are based on survey effort; (2) they are difficult to enforce; and (3) delays between the time a DAM is triggered and notification in the Federal Register, and then to action by the fishing industry, may reduce any potential risk reduction associated with this measure.[5] To trigger a DAM, NMFS needs daily aerial or shipboard effort over long periods in a single area. The weather patterns in New England from December through May make getting this type of consistent effort extremely difficult. Furthermore, NMFS acknowledges that the effectiveness of this management measure depends on resources to carry out survey efforts. For DAMs to increase in effectiveness NMFS must conduct surveys over a broader spatial and temporal scale. Adjustments to SAM areas and large-scale gear modifications may allow the agency to conduct surveys in areas that have historically received little effort. NMFS also may be able to speed response times by working with the ALWTRT and industry to develop mechanisms such as early email notification.

Furthermore, enforcement of gear modifications required during a DAM is difficult, as it requires enforcement officials to actually haul the gear to verify that it has been modified. The Ocean Conservancy contends that the only way for DAMs to be truly effective is for NMFS to require the removal of all gillnet and lobster trap gear from the DAM zone. This may not be feasible in all situations; therefore, NMFS must develop a more effective enforcement strategy for DAMs.

In summary, The Ocean Conservancy is well aware of the flaws in the DAM program. However, until gear modifications are proven effective and additional vertical line risk reduction measures are in place, NMFS must retain the DAM program as a mechanism to provide aggregations of right whales with additional protection to further reduce the risk of entanglement.

[5] The trigger for the DAM is a "single reliable report from a qualified individual of 3 or more right whales within an area (75 nautical miles (nm^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2." (Clapham and Pace 2001.)

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Finally, NMFS' temporal proposal for the expanded SAM is entirely inadequate. While in all other areas in the Northeast, NMFS eventually requires year-round gear modifications, the agency is proposing only seasonal restrictions in the areas mostly heavily used by large whales, the agency is only proposing seasonal restrictions. There are two justifications to mandate year-round restrictions in both SAM and critical habitat. First, humpback and fin whales frequent these areas during most of the year. Second, once fishermen modify buoy lines, groundlines, and gillnets, they will not remove those modifications during times when these requirements are not in place. The labor and costs involved in modifying the gear make it highly unlikely that fishermen will seasonally modify their gear or have a second set of unmodified gear. Therefore, The Ocean Conservancy urges NMFS to require that the gear modifications mandated in the expanded SAM be required year-round.

3.6 Changes to Southeast Restricted Areas and Times

According to the DEIS, "Alternatives 2 through 6 would extend the eastern boundary of the Southeast U.S. Restricted Area to the limits of the EEZ and modify the periods during which this area is closed to shark gillnet fishing. Under the revised regulations, the closure would extend from November 15 through April 15 in waters between South Carolina/Georgia border and 29°00'N, and from December 1 through March 31 in waters between 29°00'N and 27°51'N." DEIS at 5-33. In addition, Alternatives 2 through 6 would remove the requirements for observer coverage with the Southeast U.S. Observer area, (including the Southeast U.S. Restricted Area). These proposals are unacceptable.

First, the demarcation of the two areas appears to be arbitrary. There is little scientific rationale for the two zones; furthermore, maintaining the two zones only undermines the closures by allowing fishermen to move out of one zone and into the one immediately adjacent. Second, the change in dates is also without scientific basis and the duration does not include the entire time North Atlantic right whales and humpback whales are in this area. NMFS states in the DEIS that "[a] review of right whale sightings data from the North Atlantic Right Whale (NARW) Sightings Database indicates that some individuals remain longer in the Southeast than others." Indeed, the data show that whales are sighted throughout April and into May. The Ocean Conservancy urges NMFS to merge the two zones into one and manage this single zone from November 1 through April 30.

Regarding the removal of the observer requirement, vessel monitoring systems ("VMS") will not lead to greater risk reduction. While VMS may be an effective means to track a vessel's activity and enforce time and area closures, it is no substitute for an observer when it comes to both documenting and minimizing interactions with protected species. Fishermen are often more conservative and change their fishing practices in the presence of an observer.

The Ocean Conservancy is sympathetic that observer coverage, for a relatively few number of vessels, costs a minimum of $100,000.00 annually. We accordingly support an alternative that would consider a buyout of the shark gillnet fishery. The conservation gains for both sharks and large whales would be clear and significant.

3.7 Seasonal Regulation of Mid-Atlantic Waters

As the DEIS acknowledges, "A fundamental difference among Alternatives 2 through 6 is the extent to which broad-based gear modification requirements...would be imposed on fisheries in the Mid-Atlantic..." Alternatives 2 and 4 would impose these requirements year-round, while Alternatives 3 and 6 would only require them seasonally in the Mid-Atlantic from September 1 through May 31. The Ocean Conservancy opposes the proposed seasonal approach and believes that NMFS should require gear modifications year- round in the Mid-Atlantic. The DEIS clearly states: "Right whales can be found in the Mid-Atlantic year-round...[and] Humpback whales are present in the Mid-Atlantic year-round" DEIS at 5-40, 41. Furthermore, NMFS acknowledges that: "...the implementation of year-round rather than seasonal requirements would offer the most risk adverse approach." DEIS at 5-41. NMFS then contradicts itself, however, stating: "...year-round requirements would likely offer little incremental risk reduction relative to seasonal requirements." DEIS at 5-42. As already stated, once fishermen modify buoy lines, groundlines, and gillnets, they will not remove those modifications during times when these requirements are not in place. The labor and costs involved in modifying the gear make it highly unlikely that fishermen will seasonally modify their gear or have a second set of unmodified gear. Therefore, The Ocean Conservancy urges NMFS to require that the gear modifications be required year-round in the Mid-Atlantic to provide larges whales with an approach that will truly ensure risk reduction.

In summary, we believe that the DEIS is insufficient and that none of the proposed alternatives will achieve PBR or avoid jeopardy to the species. We strongly urge NMFS to reconsider developing an alternative that will require wide-ranging year-round gear modifications, the immediate phase-in of sinking groundline, a significant expansion of the current SAM area to include all DAMs, and requiring aggressive and immediate gear modification within that revise SAM area. As always, we appreciate the opportunity to comment on this issue and look forward to working with NMFS and the ALWTRT to finalize new regulations to protect large whales.

Sincerely,

Nina M. Young
Director Marine Wildlife Conservation

Sierra B. Weaver
Staff Attorney

TO 19782819394-2120 P.19/19
MAY 16 '05 18:43 FR

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814-4447

12 May 2005

Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
Attention: ALWTRP DEIS
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, MA 01930

Dear ~~Ms. Colligan:~~ Mary,

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors, has reviewed and provides the following comments and recommendations on the "Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan."

The Commission is particularly disappointed that the Service decided summarily to discard the comments we provided during the scoping process for this draft environmental impact statement (DEIS). At that time, we recommended consideration of alternative time/area fishing closures for areas where right whales and other large whales are known to concentrate, such as designated critical habitat. By dismissing evaluation of such closures as an alternative, the Service failed to follow the Council on Environmental Quality's regulations implementing the National Environmental Policy Act. In part, those regulations require agencies to "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated" (40 C.F.R. §1502.14). Furthermore, the Marine Mammal Protection Act requires agencies to provide a "detailed explanation of the reasons why those recommendations [of the Commission] were not followed or adopted" (16 U.S.C. §1402 (7)(d)).

For various reasons described in this letter, the Commission finds the analysis provided in the DEIS to be inadequate. A major purpose of an environmental impact statement is to inform decision-makers about the environmental impacts of their decisions. In this case, the preferred alternative relies far too heavily on measures that have not proved adequate for meeting the standards of the Marine Mammal Protection Act or the Endangered Species Act. The most significant features of the existing plan—weak links and limited time/area closures—have been in place for nearly five years without reducing the rate at which large whales are entangled in fishing gear. The most significant feature of the proposed plan is expanded use of sinking line in lieu of floating line for trap and gillnets. However, because the proposed measure would not be fully required until 2008, it will be very difficult, if not impossible, to review the effectiveness of implementing this plan before 2012. Given the critical population level of right whales, they cannot sustain the current rate of serious injury and mortality resulting from entanglement. In the one-and-three-quarters-inch stack of paper comprising the DEIS, we cannot find an assessment of the biological benefit to large whales that is likely to occur as a result of implementing this plan. As much as it pains us to recommend further analysis, the Marine Mammal Commission recommends

PHONE: (301) 504-0087
FAX: (301) 504-0099

PRINTED ON RECYCLED PAPER

that the Service prepare a supplement to the DEIS that analyzes the establishment of time/area closures and clearly assesses how the proposed measures will reduce entanglements sufficiently to meet the standards of the Marine Mammal Protection Act and the Endangered Species Act.

The Marine Mammal Protection Act requires that agencies develop take reduction plans that will reduce the take of strategic stocks of marine mammals to levels at or below the potential biological removal (PBR) level within six months of a plan's implementation. Although the PBR level for North Atlantic right whales has been set at zero because of the species' critically endangered status, several animals have been killed or seriously injured each year over the past decade as the result of incidental entanglement in gear used in East Coast trap and gillnet fisheries. Most of these entanglements have involved either buoy lines (i.e., lines from gear on the bottom to surface buoys) or ground lines (i.e., lines between traps strung together on the bottom), and most have involved lines caught in the animal's mouth. Annual levels of lethal and serious entanglement injuries for Gulf of Maine humpback whales have exceeded the PBR level (i.e., 4.7) for that population as well. As cited in the DEIS, a new analysis (Johnson 2005) of entanglements for which gear parts could be identified found that 28 percent of right whale and humpback whale entanglements involved ground lines, 16 percent involved gillnet float lines, and 64 percent involved either buoy or surface system lines. Since 1999, when the Service first implemented an Atlantic Large Whale Take Reduction Plan, various measures have been adopted to reduce such entanglements. To date, none has resulted in any apparent reduction.

To reduce entanglements in buoy lines and gillnets, past plans have relied almost exclusively on requirements for using weak links with breaking strengths ranging from 600 to 2,000 lbs., depending on the fishery. The rationale for this approach, as described in the DEIS, is that a line caught in a whale's mouth will be pulled through baleen until the weak link is reached, at which point drag from attached gear will snap the weak link and allow the whale to swim free. Although this may have occurred in some cases, the breaking strength of the links has been determined by fishing needs, not whale protection needs, and we are aware of no evidence that weak links have worked as hypothesized. Moreover, of the five right whales disentangled between 2000 and 2003 for which it was possible to inspect the gear, three were entangled in gear equipped with weak links. Two of those had unbroken 600-lb. weak links of the type proposed for use in this plan, and one had gear with a weak link no longer deemed acceptable. Fourteen other right whales were documented as entangled during that period, but it is not known how many of those whales may have been caught in gear equipped with weak links because no gear was recovered for inspection. In addition to these right whale entanglements, we understand that, between 2000 and 2003, at least one humpback whale was entangled in fishing gear with an unbroken 600-lb. weak link. To the best of our knowledge, information on gear removed from disentangled whales since 2003 is not yet available.

With regard to the effectiveness of weak links, the DEIS describes how the Service believes weak links might work, but it provides no data or analysis on how frequently weak links have failed to prevent entanglements in cases for which gear was examined. As a result, the DEIS leaves the false impression that weak links are known to be effective in reducing entanglements and that use of such devices would reduce take to required PBR levels. Based on this limited analysis, all options

identified in the DEIS continue to rely almost exclusively on expanded requirements for deploying weak links to prevent entanglements in buoy lines, surface system lines, and gillnet float lines to reduce take below PBR levels. The considered alternatives include different sets of provisions for at least eight different fisheries, with three different weak link breaking strengths that are applicable in some areas but not others, depending on what fish species are being targeted. In our opinion, these complex sets of restrictions and exceptions are too complicated to be readily implemented throughout the fisheries or to be effectively enforced by the Service and the Coast Guard.

To reduce entanglement in trap fishery ground lines, the DEIS identifies options for requiring the replacement of floating ground line with either sinking line or neutrally buoyant line. Unlike weak links, there is a solid basis for concluding that this approach would substantially reduce entanglement risks with trap fishery ground lines because it will reduce the amount of line in the water column. However, all options considered in the DEIS delay the effective date of this requirement until 2008, and none establishes a mandated phase-in. That is, instead of requiring certain percentages of traps to be rerigged with sinking or neutrally buoyant ground line by predetermined dates in advance of 2008, the alternatives rely on incentives of unknown effectiveness to encourage—but not require—increased use of sinking or neutrally buoyant ground lines before 2008. Those incentives are provided by allowing vessels to enter areas otherwise closed to fishing because of large aggregations of right whales. There is no information or analysis in the DEIS on how many fishermen currently fish in those areas or how many, if any, additional fishermen might convert to sinking or neutrally buoyant line before 2008 as a result of being given access to those areas. There also is no information on how requirements for using sinking or neutrally buoyant ground lines will be enforced, either before or after 2008. Because most entanglements occur in buoy lines, this incentive to use improved ground lines comes at the cost of exposing concentrations of right whales to increased entanglement risks in buoy and surface system lines. As a result, there is no basis for estimating whether or to what extent the use of sinking ground lines might increase prior to 2008. By disregarding or discounting the entanglement risks posed by buoy lines on the gear of fishermen that choose to fish with neutral or sinking lines in right whale critical habitat and other high-use right whale habitat, all of the alternatives identified in the plan could actually increase entanglement risks for right whales by encouraging additional buoy line fishing in areas otherwise closed. The Marine Mammal Commission strongly opposes the use of this incentive and recommends that permission to fish in closed areas with sinking ground line not be part of any alternative unless accompanied by an additional measure that requires gear to include no vertical buoy lines (e.g., gear equipped with pop-up buoy systems that eliminate vertical lines in the water column).

Given the limitations of available technology to reduce entanglement risks, particularly in vertical lines, the Commission has recommended in numerous letters to the Service—including its comments during the scoping process for preparing this DEIS—that it develop and adopt measures to prohibit all gillnets and lobster gear with vertical lines in designated right whale critical habitat when right whales are known to be using the area until gear modifications are developed that provide reasonable assurance they will prevent right whale entanglements. This option, however, is not considered in the DEIS other than in a brief note in a table stating that it was rejected and will not be considered until some unspecified date when the Service reassesses boundaries for right

whale critical habitat. This is the same open-ended statement provided by the Service in response to Commission comments on a 9 July 2002 petition to expand right whale critical habitat boundaries. The Commission's recommendations at that time called on the Service to immediately undertake an analysis of right whale sightings in and around right whale critical habitat so as not to delay action to modify boundaries.

In view of the points made in this letter, the Marine Mammal Commission concludes that the DEIS is inadequate in two fundamental ways. First, it fails to analyze available data on the failure of weak links to prevent right whale entanglements in buoy lines and surface system lines, including entanglements that have resulted in lethal and serious injuries. The Marine Mammal Commission therefore recommends that a supplemental DEIS be prepared to provide a thorough discussion of available information on the frequency of whale entanglements in vertical lines that were equipped with weak links. The analysis should document, to the extent possible, why weak links have failed to break in the past. Results of this analysis should then be used to estimate whether, and to what extent, weak links will reduce the number of entanglements under each of the alternatives being analyzed.

Second, the DEIS does not identify or consider feasible options other than weak links for reducing entanglement risks in vertical lines. Therefore the Marine Mammal Commission again recommends that the Service identify and analyze an option to (1) seasonally close right whale critical habitats to all trap fisheries and gillnets with vertical buoy lines until gear modifications are developed that provide assurance that right whale entanglement risks in such lines would be substantially reduced, and (2) require all trap fisheries along the U.S. East Coast to use sinking or neutrally buoyant ground line within one year of adopting the new plan.

Finally, the Marine Mammal Commission again recommends that the Service immediately analyze all available right whale sighting data to reassess appropriate critical habitat boundaries that encompass high-use feeding and calving habitat.

In closing, the Commission points out that the PBR level established by the Service for North Atlantic right whales is zero. The 1999 biological opinions on four fisheries conclude that the entanglement of right whales by lines in the fisheries is likely to jeopardize the continued existence of the species. The opinions recommend reasonable and prudent alternatives that required the measures being analyzed in this DEIS. They also set incidental take levels at zero. Since the opinions were written and implemented, at least 24 entangled right whales have been documented, many of which died or sustained serious injuries. The continuing entanglements, injuries, and deaths of right whales in gear deployed by fishermen along the U.S. East Coast constitute a major, ongoing failure of management with significant conservation ramifications. We urge the Service to use this DEIS to consider the full range of management options that will bring lethal and serious injury takes of all Atlantic large whales to levels that meet the statutory standards of the Marine Mammal Protection Act and the Endangered Species Act.

If you or your staff have questions, please call.

Sincerely,

David

David Cottingham
Executive Director

cc: Mr. John E. Hansel
Ms. Rebecca Lent
Mr. P. Michael Payne

Subject: "ALWTRP DEIS"
Date: Sat, 14 May 2005 10:28:46 -0400
From: Clive Farrin <cfarrin@gwi.net>
To: whaledeis.comments@noaa.gov

Mary Colligan
Assistant Regional Administrator for Protected Resources
NOAA Fisheries Service

Dear Ms. Colligan

I am writing on behalf of the Downeast Lobstermen's Association (D.E.L.A.) to provide comment on the Draft Environmental Impact Statement (DEIS) for the amendment for the Atlantic Large Whale Take Reduction Plan (ALWTRP).

The Board of Directors for the D.E.L.A. have had discussions about the DEIS at our monthly meetings recently and feel that the National Marine Fisheries Service (NMFS) has not provided the data to prove there's a problem that warrants the amendment. We also feel the regulations in place have not been given enough time to tell whether their working or not. We question the wisdom of making decisions and changing regulations ,that effect people's livelihood, and community and state economies, without the data required to support such changes. Therefore the D.E.L.A. Board of Directors voted unanimously to support Option 1 DO NOTHING of the DEIS.

Sincerely,

Clive Farrin

Clive Farrin
President
Downeast Lobstermen's Association

April 23, 2005

RECEIVED APR 27 2005

Asst. Administrator Mary Colligan
NOAA Northeast Regional Office
One Blackburn Drive
Gloucester, MA 01930-2298

Dear Administrator Colligan:

Re: Comment on ALWTRP DEIS

I am writing to ask your help because I am deeply concerned about the health of ocean life.

It is deeply disturbing to learn that ocean whales are becoming entangled, injured, and sometimes killed in fishing gear placed in their habitat. This is especially troubling because this danger poses a threat to the extremely endangered North Atlantic right whale, and solutions exist to protect these whales from being entangled, injured or killed, in fishing gear, but they need to be more aggressively implemented.

I urgently and respectfully ask that the NOAA strengthen the proposals contained in the Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement (DEIS) to maximize protection for these whales.

Some of the proposals involve modifications to fishing gear, to make the gear whale safe. For example, both right and humpback whales easily get tangled in lobster gear lines that connect traps and can float up to 20 feet off the ocean floor. That is an entanglement just waiting to happen. We must take action now to require the removal of this line from whale habitat where the animals have been sighted or are likely to be present and substitute line that will sink to the bottom.

The preferred alternative in the DEIS would wisely be strengthened in the following ways

- Require year-round fishing gear modifications, including weak links in gill and drift nets effective enough to allow whales to escape entanglement,
- Maximize the use of sinking line in lobster trap fisheries including on vertical lines.
- Minimize the use of vertical lines in trap fisheries, such as requiring the use of a single vertical line at one end of a line of traps as opposed to one at each end.
- Be very cautious in maintaining areas of habitat closed to fishing gear along the East Coast on a seasonal basis, or when whales are known to be present, until the necessary and proven gear modifications are in place.

With three of the species of whale affected by fishing gear listed as endangered, especially the extremely endangered North Atlantic right whale, we cannot afford anything less than a 100 percent effective plan to protect these magnificent animals from fishing gear encountered in their habitat.

The North Atlantic right whale is the most endangered large whale in the world, with only about 300 individuals left of the species. We cannot afford to lose a single whale because of human causes. I have read that during 2004, 17 whales, including six North Atlantic right whales, were entangled when they encountered fishing gear in their ocean habitat along the U.S. East Coast. From 1997 through 2002 three right whales were killed after becoming entangled in fishing gear placed in the areas of ocean the whales frequent. About 72 percent of all North Atlantic right whales carry scars from fishing gear, a testament to the hazards they encounter regularly throughout their habitat.

We share this earth with many other species.

It is urgent for our own survival that we safeguard the survival of the earth. The destruction of our environment and other species will eventually lead to our own destruction.

Thank you for your consideration and help in this urgent matter.

Respectfully,

J. Capozzelli

J. Capozzelli
315 West 90th Street
New York, NY 10024

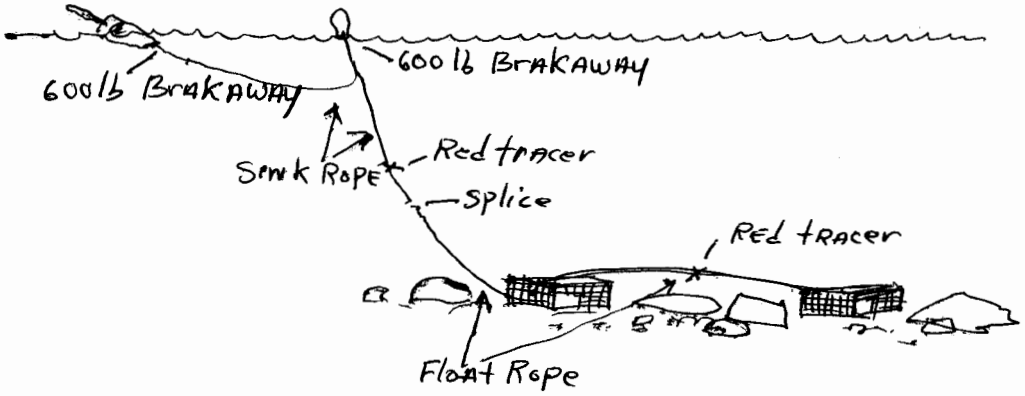
Islesford, Maine
4/25/05

RECEIVED APR 28 2005

Dear Sirs;

In My opinion the ban on floating Rope is to Radical.

Most groundlines are from 10-20 fathoms long. Maybe we should, (for my area + fishery) put a Red tracer in the floating Groundline. Mid-way between each trap. Lets find out where the whales are getting the Gear.



Also, I think that the Exemtion Line is to close to shore. It should be moved offshore to what the ME. department of Marine Resources Proposed.

- NEXT PAGE -

CANADIAN FISHERMEN USE MOSTLY FLOAT ROPE, VERY LITTLE SINK ROPE. WE CANNOT TELL THEM WHAT TO DO. BUT, EVERY WHALE ENTANGLED, NO MATTER WHERE ENTANGLED, COUNTS AGAINST THE U.S. FISHERMEN.

IF THIS BAN ON FLOAT ROPE GOES THROUGH, WE IN THIS AREA WILL HAVE TO FISH SINGLE TRAPS.

ONE BOUY, ONE LINE, ONE TRAP. I HAVE HEARD THAT NOAA DOES NOT LIKE THIS OPTION EATHER.

WERE BEING FORCED INTO A TIGHT CORNER, THAT SOME OF US WILL NOT SURVIVE.

RESPECTFULY YOURS

RICHARD A. ALLEY JR.

Fax To: 978-281-9394

Re: ALWTRP DEIS

From: Joan Berko, Michael Scott

Phone + Fax: 732-899-7390

e-mail: fishthewizard@aol.com

1 page following this cover sheet

Joan Berko
Michael Scott
174 Park Ave.
Bay Head, NJ 08742

April 26, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930

ATTN: ALWTRP DEIS

To Whom It May Concern:

The only acceptable alternative is 1 (no action). New Jersey fishermen should not be lumped together with New England fishermen. We don't have nearly the number of sightings or interactions that they do. It doesn't help us to have seasonal use of the sink rope. We fish for many more months than just the summer, and it is impossible to be switching between ropes once the traps are in the water.

We already lose gear because of the required weak links. It is inequitable to allow gillnet fishermen fishing alongside of us use 1100 pound weak links, while we use 600 pound ones.

Sink rope will get hung in wrecks and rocks, causing lost gear. Our rope is normally full of hooks from recreational fishermen, and sink rope is not durable enough to take pulling these hooks out. This will cause us to replace this costly rope even more frequently. There is no evidence of whales being present at the wrecks where we fish for lobster and sea bass. These regulations will cause unnecessary economic hardship and risk our safety.

Sincerely,

Joan Berko

Michael Scott

4/14/2005

ATT. ALWTRP DEIS

Dear Mary & whom ever it may concern;

I am very concerned about the whale proofing measures that are being /or going to be required of Maine Lobster Fishermen.

In my area of fishing whales are not seen inside the three-mile limit. Before whale proofing is imposed on us, much more study needs to be done. Just east of Schoodic Point to the Canadian border whales have not been entangled in fishing gear. Matter of fact, whales have not been sited inside the 3 mile limit within that area.

I believe more whales are being hurt by ships outside the 3 miles running into them than by rope and buoys belonging to fishermen.

Sincerely, Milton R Merchant

Milton R. Merchant Lobster License # 72063

RECEIVED APR 26 2005

20 April 2005
330 Old Main St
Bass River, MA.
02664

To Whom it may consern,

Inclosed please find two a single Lobster buoy lines. One is composed of 2/3 sinkey line spliced to 1/3 floatey line. The other is composed of all sinkey line - Please note the knot on the sinkey line and the middle buoy (or toggle buoy) on the sinkey Line! The knot keeps the middle buoy suspended about 30 feet above the trap - this keeps the sinkey line off the ocean floor so that it won't get hung down. I don't think that the whale people realize that everybody that use sinkey line use this systerm.

I feel that the buoy line with the 1/3 floatey line is more whale friendly, therefore should not be eliminated! -thankyou!

Bill Sharkey

Lobsterman in Cape Cod bay from 16 May → 31 Dec.

STATE OF MAINE
DEPARTMENT OF
MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

ANGUS S. KING, JR.
GOVERNOR

GEORGE D. LAPOINTE
COMMISSIONER

April 4, 2005

Ms. Mary Colligan
NOAA Fisheries Service
1 Blackburn Drive
Gloucester, MA 01930-2298

Dear Ms. Colligan:

This letter represents the preliminary comments of the State of Maine on the Draft Environmental Impact Statement (DEIS) for amending the Atlantic Large Whale Take Reduction Plan (ALWTRP). The State may submit other comments as we continue to examine the DEIS and discuss the document with fishermen in Maine.

I am pleased with the progress that has been made in the last few years between the State of Maine and NOAA Fisheries Service in finding solutions to whale / fishing gear interactions that protect whales, are enforceable and operationally feasible for fishermen. I am committed to continuing this partnership in the future because it is the only alternative that makes sense in the tough work of whale conservation and managing fisheries.

In commenting on the DEIS and thinking about our future work together, a number of points are worth reiterating. These include:

- The relative role of fishing gear entanglements in the overall large whale mortality estimates. Ship strikes and water pollution / quality issues are other factors that have been identified as sources of mortality. As the work on large whale / fishing gear interactions moves forward, we need to ensure that the fishing gear component is not treated as "low hanging fruit" as compared to the other issues; the consequence being that we apply management measures to the fishing industry that are out of proportion with the industry's relative impact.
- Elimination of the Dynamic Area Management (DAM). This program must be abolished as soon as possible. DAM is unreasonable and unworkable for the fishing industry and offers very little credible protection for the whales.
- Requirements to use sinking / neutrally buoyant rope in areas of rocky/tidal habitat. Abrasion and hang downs with increased operational costs and gear loss are a major issue that must be addressed. Additionally, we need to make sure that data exists showing that whales feed in areas of rocky / tidal habitats.
- The rate at which new gear requirements are implemented. New gear requirements are costly and fishermen must adapt their fishing practices as new requirements are put in place. It is also important to get feedback on how the gear modifications are working in regard to whale protection and fishing practices.

OFFICES AT STEVENS SCHOOL COMPLEX, HALLOWELL
PHONE: (207) 624-6550 FAX: (207) 624-6024

Maine concurs with the DEIS that more research and analysis is needed as we move ahead with whale protection strategies. Maine remains committed to working with NOAA Fisheries Service in refining and working on these questions which include:

- How large whales use the water column for foraging and diving;
- How to effectively reduce the risk associated with the profile of vertical lines;
- Prey distribution of Atlantic large whales;
- Whale foraging areas;
- Effective gear marking;

Given these views, Maine believes that Alternative 5 provides the best vehicle to move forward. Importantly, Alternative 5 does not prohibit the use of floating groundline, which is critical to lobstering on Maine's rocky and tidal coastline. However, further research and analysis is needed on whether lowering the profile of groundline to depths other than on the ocean bottom reduces the potential for entanglement. Risk reduction and operational realities must be balanced to protect both the large whales and the fishing industry. Secondly, Alternative 5's proposal to expand current SAM areas must be made with respect to other fishery closures, a review of recent large whale entanglements, as well as other mortality and foraging data.

Maine is pleased that NOAA Fisheries Service has incorporated exemption lines in the proposed rules. This will minimize impacts on fishermen in areas with no history of interactions. However, we believe that the proposed lines need to be expanded to the lines originally provided by the Department of Marine Resources in the scoping/public comment period. These lines were based upon an analysis of the best available sightings data from the North East Fishery Science Center. The low number of sightings of strategic stock whales within this area over the past thirty-plus years, coupled with the known feeding patterns of right whales supports this proposal. Adoption of these exemption lines will result in a greatly increased acceptance of the Plan by industry by allowing fixed gear fishermen to utilize traditional gear in areas that pose little risk to whales and through modified gear in areas that pose risk to whales. Maine is committed to working with NOAA Fisheries Service to make sure the exemption lines are in the correct locations.

In summary, Maine supports NOAA Fisheries Service's expressed need for additional research and analysis so that we can all address future management actions with better information.

I appreciate the opportunity to comment and would be pleased to follow up with you on these issues as needed. Please contact me or Terry Stockwell if you have any questions.

Sincerely,

George D. Lapointe
Commissioner

cc: Governor John E. Baldacci
William Hogarth
Senator Olympia Snowe
Senator Susan Collins
Representative Thomas H. Allen
Representative Michael H. Michaud
Maine Lobster Advisory Council
Maine Lobstermen's Association
Down East Lobstermen's Association

OFFICES AT STEVENS SCHOOL COMPLEX, HALLOWELL
PHONE: (207) 624-6550 FAX: (207) 624-6024

Obviously fishermen would like to endorse alternative1 - maintainingthe status quo. But, with occasional entanglements, it is necessary to seriously consider the other alternatives or to create a hybrid proposal that will serve both whales and fishermen well.

I find parts of alternative 2 to be acceptable. But I cannot accept the elimination of the Lobster Take Reduction Technology List. I feel that these tools serve a useful function. I support the use of 600 pound weak links on all flotation or weighted devices attached to end lines. I also support the use of sinking or neutrally buoyant ground lines in Lobster Zone F & G in Maine. But as the bottom topography changes east of Casco Bay, it will be necessary to do further rope profile research studies by zone to determine what groundline configuration is best suited for their fishing methods and that will have the least chance of interacting with whales.

We have always marked our buoys with our lobster license number and will continue to do so. I do not see any merit in marking our end lines every ten fathoms. I would not be opposed to marking the end lines twice if this would help in determining where the line originated from. However, rope diameter is usually a good clue as to where the rope came from.

I support the concept of one buoy for trawls of four traps or less.

I find the concept of exemption lines to be acceptable. However, I do not believe that the exemption lines as presented are acceptable. The lines should be further out to sea. Some compromise should be worked out from where the lines are drawn now to the 3 nautical mile line as shown on NOAA charts.

We must remember that whales only show near shore when their preferred food is present. With mid-water herring boats working near shore, my personal whale sightings have been extremely rare.

2. Alternative 5 is preferred by me. Being from southern Maine I do not have a problem with an expanded SAM. So long as it is a reaonable expansion. I do not believe that a SAM should ever come any closer to shore than the 3 mile line. If the SAM is expanded I support the elimination of the DAM.

Also, with trawls greater than 5 traps, two buoy lines should be allowed using the current buoyline recomendations. By combining specific parts of Alternatives 2 & 5 and eliminating other parts, I believe that whales and lobstermen can both peacefully coexist.

I would further state that it is imperative to obtain funding to do further resarch in 3 areas.

1. The seasonal distribution of bouy lines and the number of traps fished per buoy.
2. The seasonal distribution of whale sightings.
3. The seasonal distribution of whale food.

Finally," you will" look at "the probability " of " how the above three factors will overlap in real time.

John Butler

Directed Shark Fisheries, Inc.
(DSF)
A Consulting Company

Comment from a shark fishing vessel operator who wished to remain anonymous.
Copied and edited by
Russell H. Hudson
President / DSF

Comments: On Right Whale closed area to nighttime gillnetting.

I, _____ have fished the waters of the US East coast from Florida to Maine for 30 years longlining, gillnetting and rod & reel fishing. The only interaction I had with whales and fishing gear was twice whales swam thru my 200 pound line on a tuna fishing rod & reel and the line broke both times instantly, releasing those marine mammals unharmed. This was in an area where hundreds of whales were present in New England waters.

I now fish exclusively in Florida waters and have since 1993 been bottom longlining and sink gillnetting for small coastal sharks and have never interacted with a whale or even saw one and my eyes are very good on the sea. I finally was informed why! The whales are migrating way inside my fishing area. See page 254 in Predraft HMS FMP, titled Gillnet fishery.

My comments & proposals:

Open Florida Whale area to nighttime fishing. According to Whale team, whales travel shoreline of Florida, inside three miles. So have buffer zone of 5 miles from beach open to sink gillnets with anchors, strobe light, breakaway links and require boat to stay with gear.

Limit entry of gillnetting sharks to vessels with landing history with both sink gillnets and drift nets.

Make distinction between driftnets, strike nets and finally small mesh sink nets.

Name of captain withheld due to fear of reprisal.

PO Box 11604
Daytona Beach, Florida 32120-1604
(386) 239-0948 Voice (386) 253-2843 Fax
DirectedShark@aol.com
1/1

03/30/2005 14:18 3862532843 DIRECTEDSHARK INCORP PAGE 01

April 5, 2005

Mike Myrick
Zone D Representative
Cushing, Maine 04563

Dear Mike,

I am writing this letter to express my concerns regarding the proposal to place even more restrictions on the lobstering industry by prohibiting the use of float rope.

This recommendation is being made in part as the result of a study conducted by NMFS, in which more than 90 whales were reported as having been killed in the period from the early 90's until 2002. In order for this information to be credibly linked to lobstering, it is important for this study identify not only the total number of whales killed but also the cause of deaths. Since large tankers and fishing vessels are largely responsible for whale deaths it would be important to know how many deaths were caused by this means. It would also be important to have a breakdown by year to determine if there has been an upward or downward trend during the reporting period. Providing current information is also very important before implementing costly and significant changes to the lobstering industry. Since there is no data provided for 2003 or 2004, it is difficult to determine if the current steps being taken by lobstermen have been effective. In my opinion, NMFS has not allowed enough time to elapse or provided enough current data to make such a change.

It is important to note, that the restrictions currently in place and being proposed are being applied in areas in which the whales have already migrated from during our fishing season. I have fished the waters off of Cushing for more than 40 years and have never seen a whale in these fishing grounds while lobstering.

However, in response to the concerns voiced by NMFS, a reasonable solution may be to require 10 fathom tailers on traps which would lessen the amount of rope in which the whales could become entangled. This, coupled with the current restrictions, may provide a reasonable solution to this problem.

Signed,

Dennis Young Jr.

Dennis Young, Jr.

Mike Mynick

1.Research and analysis

There's information that has been gathered since these proposals were made that needs to be looked at before anything definitive is decided. The state has been doing research on lowering the profile of rope. The work that has been done with the underground camera has not been taken into consideration in the proposals. We realize that there is a lot more research that needs to be done, but we feel as though lowering the profile is a good and viable way to accomplish something that will meet the needs of the fishermen and meet the approval of NMFS. What has been brought up to me by a number of fishermen is that shortening the tailer rope would lower the profile even if straight float rope were used. This is something that was supported by the work done with the ROV. One thing that NMFS should take into consideration is that all Maine fishermen do not fish the same. In the Mid-coast area, we fish predominantly singles, pairs, or triples. By state law, we cannot fish trawls except beyond the three-mile line.

will the profile at some point be taken into consideration?

2. Exemption lines

I feel as though the presently drawn lines are not helping the inshore fishermen the way they were intended. I feel they should be moved back to how the state proposed them two years ago. The reason the state had placed them the way they did was because of information provided by NMFS.

3. Marking of ropes

I feel that one mark in the middle of the rope is sufficient for identification of where the rope originates. It doesn't make any difference if there is one mark or ten. Bouy Lines-

Over the last ten years, Maine fishermen have made a lot of concessions both to the State and Federal governments. In some cases, we've had to adapt to a whole new way of fishing with the implementation of new laws, rules, and regulations. I feel as though it's time for government to give the fishermen a little break, let us fish, and give these new laws a chance to work. In short, I'm against banning float rope and I strongly support the extension of the exemption lines. I cautiously support Alternative 5.

Bouy Lines

Extend 2008 dead line

How many Ghost traps do you want on Bottom?

Mike Myrick

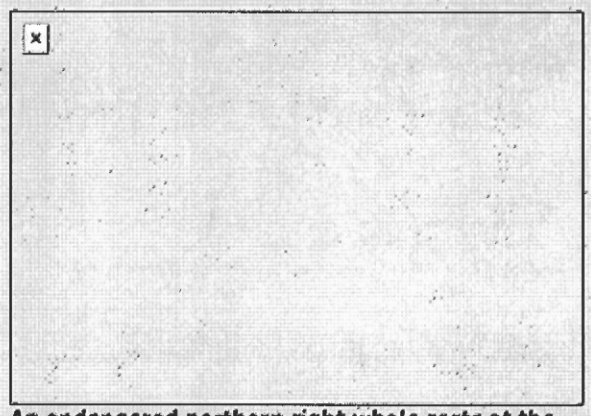
the news@
ellsworthamerican.com

New Whale Protection Rules Up for a Hearing in Ellsworth

By Aaron Porter

ELLSWORTH — National Marine Fisheries Service personnel will be hauling into town Monday evening to gather reaction to a slate of six alternatives for changes to the Large Whale Take Reduction Plan.

If past performance is any guide, they'll get a boatload. The last time they were here gathering testimony to help draft the latest round of alternatives in 2003, a crowd of fishermen, whale researchers and state fisheries managers packed the room.



An endangered northern right whale rests at the surface on the Stellwagen Bank National Marine Sanctuary just north of Cape Cod.

PHOTO COURTESY OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

They criticized many of the existing rules intended to reduce the frequency of whale entanglements in fishing gear, and they called for, among other things, an exclusion area along the coast where endangered right whales are unlikely to travel and the rules shouldn't apply.

David Gouveia, a marine mammal coordinator with the fisheries service, recalled that Ellsworth meeting as one of the best when it came to getting public input.

Although the fisheries service was more than a year later than expected coming out with the new alternatives, many of the issues and ideas raised two years ago are recognizable in them.

The April 4 public hearing at 6 p.m. at the Holiday Inn will be the primary opportunity for Downeast fishermen to comment directly to the fisheries service on the details of the proposed alternatives.

Since the rule options were published in early March, fishermen and state fisheries regulators have been digesting the 800-page document. They found a variety of subjects for praise and blame.

Terry Stockwell, coordinator for the Maine Department of Marine Resources, said he's pleased the fisheries service included the coastal exclusion lines in nearly all

the options. He noted that the areas identified by the lines on the chart in the option aren't in the best place. However, "we need to be supportive of the concept of the lines," he said.

If fishermen don't see that the exclusion areas identified by those lines will benefit them individually, they should advise where they should be redrawn, Stockwell advised.

Gouveia echoed Stockwell's advice on exemption areas.

"If they want more, say so," he said. That's what the hearing is for.

David Tarr, chairman of the Zone C Lobster Zone Council, is lucky enough to be in one of the more generous exemption areas. Under most of the proposed alternatives, fishing gear set inside the islands that guard the mouths of Penobscot and Blue Hill bays wouldn't have to comply with required gear modifications intended to reduce the chance of whale entanglement.

"If you're an inshore fisherman, you're happy with whatever comes out of the meeting as long as it doesn't stay the same," he said of lobstermen in his zone.

But for lobstermen at the extreme eastern and western ends of the coast, the exemption areas as drawn just don't seem to offer much.

"It's Cutler Bay and Little Machias Bay," said Cutler lobsterman John Drouin, looking at the exemption line. "It doesn't do anything great for us down here."

The other ominous proposal, especially for Downeast lobstermen, is the phasing out of floating rope commonly used for the ground lines that attach one trap to another on the bottom.

"To ban float rope for us, we just don't know how we're going to fish," said Drouin, chairman of the Zone A Lobster Zone Council.

With that in mind, Stockwell is advising lobstermen to "cautiously support" alternative five of the six alternatives presented by the federal service. That's because nearly all the others call for the phasing out of floating rope by 2008.

Drouin and Stockwell agree that fishing with sinking line on a lot of the rocky Downeast bottom is not practical. Drouin said the only way around it would be to eliminate ground lines altogether by setting single traps on each buoy and end line. So far the end lines, which run from the traps to the buoys, are not required to be made entirely of sinking line.

Stockwell said he's backing alternative five because it doesn't close the door on float rope. But at the same time, he is leery of a provision in the alternative that

would allow for the expansion of seasonal closure areas. Currently, such regular closed areas are intended to remove gear from areas where right whales congregate during the seasons they tend to gather there. Stockwell observed that a seasonal closed area along the Maine coast could really play havoc with lobstermen.

If alternative five isn't selected, Stockwell is poised to continue work researching the feasibility of fishing with ground lines formulated to be of specific buoyancy. That would keep the loops of line between traps lower in the water where they would be less likely to snag passing whales, but would also keep the line off the rocky bottom where it is vulnerable to snags and chafe.

Gouveia, who has completed the public hearings in the Southern and Mid-Atlantic states, said he expects the New England component of the hearings to be more active with a group of well-informed fishermen weighing in on the alternatives.

He said the meeting will start with a quick recap of what the alternatives are and how they came into being before moving on to how they might affect fishermen.

Gouveia said the fisheries service wants to hear if timelines are too ambitious, if some provisions are too strict or if others aren't workable. Whatever the outcome, he said, the service is aiming to have a single proposed final rule published in the fall of 2005 with the possibility of implementation in 2006.

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Division of Marine Fisheries

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Paul J. Diodati
Director

May 16, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
Northeast Region,
1 Blackburn Drive
Gloucester, MA 01930.

Re: ALWTRP DEIS

Dear Ms. Colligan:

The Massachusetts Division of Marine Fisheries (*MarineFisheries*) offers the following comments on the DEIS for proposed alternatives to the Atlantic Large Whale Take Reduction Plan. The Commonwealth supports federal efforts to protect and recover endangered whales, and our track record to protect North Atlantic right whales is well-established through the highly successful Right Whale Conservation Program funded primarily by National Marine Fisheries Service (NMFS). We are pleased with the overall strategy NMFS has proposed to reduce entanglement risk for large whales, as many of the specific alternatives are consistent with *MarineFisheries'* positions.

Background: Since 2002, *MarineFisheries* has advocated for broad-based gear modifications and a shift away from small-scale management areas and short-term closures. You may recall that on March 8, 2002 we met with Dr. Bill Hogarth, NMFS staff, and congressional representatives to discuss these very issues. At that meeting, and in written correspondence, we urged NMFS to abandon Dynamic Area Management (DAM) and Seasonal Area Management (SAM) strategies and instead adopt universal year-round gear modifications throughout the right whale range. We felt this would result in far more protection of whales than the current plan without the instability of overnight closures and gear modifications destined to result in gear conflicts and losses.

The six-point plan we submitted in 2002 to NMFS included:

- Abandon the SAM and DAM approach to gear restrictions;
- Replace SAM and DAM with as universal as possible year-round gear measures in all large whale habitats;
- Pledge to industry to drop SAM and DAM strategies in exchange for the universal gear rules;
- Seek congressional support to provide financial relief to fishermen through loans, grants, or tax benefits to assist them in their purchase of replacement gears;

- Keep the rules static to allow time to assess them; and
- Urge Canadian regulators to adopt similar rules to protect right whales.

We urged NMFS to retain certain SAM rules for gear modifications that are practical, and instead of requiring them in relatively small areas and seasons, make them year-round and widespread – much of the Gulf of Maine and Southern New England.

***MarineFisheries* Comments on the DEIS**: Overall, we support broad-based gear measures as outlined in Alternatives 2,3,4, and 6.

(1) Preferred Alternative: We support Alternative 6. This suite of measures would institute broad-based gear modifications year-round by 2008, except in the Mid-Atlantic and South-Atlantic where seasonal requirements would apply. In our view the start date should be earlier than 2008 in certain large-whale habitats, e.g. Great South Channel, Stellwagen Bank and Jeffreys Ledge, if there is government support for the industry to replace their gear. For example, a buy-back program recently accomplished in Massachusetts for inshore lobstermen has resulted in nearly full compliance now with proposed rules that if enacted would be three years away (under the alternatives 2,3,4,and 6). We favor the elimination of the DAM rules as soon as possible, but we are concerned that under Alternative #6, fishermen may lose some incentive to replace their current gear (e.g. trawls with floating groundlines) during the next three years. Fear of being regulated by DAMs has resulted in much of the Massachusetts fleet switching over to gear configurations that are allowed in DAM closures, specifically sinking groundlines, buoy lines with no more than 1/3 poly, and additional gillnet breakaways.

We oppose alternative #5 because the gear modifications do not extend beyond the so-called "Expanded SAM" which is only a broadening of the current SAM area off Cape Cod to include Stellwagen Bank for the two-month period: March and April. This minor broadening of the SAM area and lack of increase of the SAM season will not significantly enhance protection of large whales. Gear restrictions need to be extended to all waters where large whales frequent.

(2) Considerations for other trap/pot fisheries: We support folding other trap fisheries into the LWTRP, as long as those fisheries are prosecuted in known large whale habitats.

(3) Exemption Areas within Massachusetts. At this time we do not favor exempting the areas proposed for the Commonwealth. The areas proposed are too small to provide meaningful relief for fishermen. Moreover, the Commonwealth has few areas within our jurisdiction that are free of any large whales (right, humpback, fin and minke) on an annual basis. We are concerned that if exemption areas are approved, the rules would be more difficult to explain, defend and enforce. We prefer the rules be enforceable as possession rules at-sea or on-the-dock.

If the rules are enacted as proposed, we do not feel there will be substantial impact on the state's fixed gear fishermen beyond gear changes already accomplished by the fleet, so carving out areas where the rules would not apply does not seem justified. The rules that are likely to impact the Massachusetts pot/trap fisheries include the prohibition on floating groundline, 1/3 floating line at the base of the buoy line, and a 600 lbs. breakaway below the buoy. Nearly all commercial pot/trap fishermen have received a 75% subsidy to replace their floating groundline and comply with these rules already.

Moreover, the ban on floating groundlines has benefits to other inshore maritime users, especially close to shore. If lines between traps are required to lie on the ocean floor, we expect fewer interactions with recreational and commercial hook-and-line fishermen, SCUBA divers, and vessel operators whose propellers may get snagged in buoyant loops of line that can rise close to the surface.

Recreational fishermen are not expected to be affected because they are limited to just 10 traps and typically fish single traps – each with a buoy line, not multiple trap trawls. This leaves the buoy line configuration with 1/3 floating line at the bottom and the 600 lbs. breakaway as the measure requiring compliance. We believe these rules can be applied to our non-commercial sector with out undue burden, negating the need for an exemption area. *MarineFisheries* would like to reserve the opportunity for future rulemaking on exemption areas if gear modifications enacted under the plan are more onerous and warrant carving out some of the less frequented inshore whale habitats as areas where these rules need not apply.

(4) Gear Marking. We are opposed to the proposal to require marking of buoy lines every 10 fathom. The requirement is just not credible as a means to learn more about the origin of the gear. We recognize that identification of gear: its composition, configuration, set location, and origin, is crucial to solving the key questions of where, when, and how large whales are becoming entangled. Unfortunately, this requirement will have no risk reduction benefits and its impracticality makes fishermen skeptical and reluctant to comply.

Moreover, NMFS needs to be more strategic in its gear marking requirements. Too many areas will have no line marking requirements: e.g., various states exempted areas, non-commercial gear, and all gear in Canadian waters. Also, there needs to be a complementary rule that prohibits fishermen from fishing marked gear outside of the areas where it is required.

We are in favor of a line marking technique that is reliable and would provide fisherman-specific data. However, this rule as proposed simply does not deliver the needed information on gear origin. Given the inconvenience and associated cost, it should be withdrawn until NMFS gear specialists and fishermen can devise better strategies and techniques.

(5) Gillnet Breakaways: *MarineFisheries'* long-held view has been to require maximum break-away devices in gillnets throughout the range of large whales, instead of the patchwork of seasonal and DAM closures. However, based on the recent discussions at the LWTRT meeting on April 25-27, there may be a more palatable alternative than the five breakaways per net panel. Fishermen and industry representatives suggested four per panel with a single weak link in the center of the panel's headrope, and one at each end of the headrope within the bridles. Also fishermen should be allowed to rig their nets with weak lines that meet the breakaway standards instead of multiple weak links.

(6) Vertical Line Issues. We agree with the NMFS strategy in this DEIS to focus primarily on groundlines in fixed gear and address vertical lines in future rulemaking. The impacts on fishermen replacing their vertical line will be substantial in terms of cost and altered fishing practices. Much remains to be learned about buoy line to determine if we can devise a whale-safe configuration. Until we devise dependable buoy line modifications, NMFS is wise to address the portion of the gear that can be successfully modified.

To a fisherman, the buoy line is the connection between him and his fixed gear investment that is

valued in excess of $50,000 for a typical full-time lobsterman. Reliable vertical lines will be crucial for fishermen to prevent gear losses, because the standard industry practice of dragging a grapnel hook (known as "grappling") to retrieve multiple pot trawls will be more difficult if the groundlines are resting on the ocean floor. If NMFS requires unproven modifications to buoy lines, and the buoy lines fail on a routine basis, gear will be difficult to locate and even more difficult to retrieve resulting in widespread gear losses and possible personal bankruptcies.

Sincerely,

Paul Diodati

Paul J. Diodati
Director

Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE
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FAX 401 423-1925
3 Fort Wetherill Rd
Jamestown, RI 02835

May 16, 2005

Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
NOAA Fisheries Service
1 Blackburn Drive
Gloucester, MA 01930-2298

Dear Ms. Colligan:

Rhode Island's Department of Environmental Management, Division of Fish and Wildlife (DFW) offers the following comments on the Atlantic Large Whale Take Reduction Plan (ALWTRP) Draft Environmental Impact Statement (DEIS). DFW has partnered with NOAA Fisheries Service since the inception of the Atlantic Large Whale Take Reduction Team (TRT) to address protection of endangered large whales from harmful interactions with fishing gear. We are committed to continuing a partnership that researches alternative, safe fishing methods while allowing for a viable fishing industry.

After careful review of the six alternatives proposed in the DEIS, Rhode Island supports a modified version of Alternative 5. Specifically,

- We **support** the TRT's central principle of reducing the groundline profiles as low as possible. Significant progress has been made in this area, and continuing research should be a priority to address this issue.
- We **do not think** it is feasible to require either sinking or neutrally buoy line by 2008 in all areas. There are compelling reasons to delay this requirement, both in product development and regional operational needs. DFW has received considerable feedback from industry that has experimented with neutrally buoyant line and reported that the line wore out too quickly, filled with sand and was difficult to work with. In the offshore deep-water lobster fishery, sinking line would not be a sensible alternative. Trawls are often moved and end lines may be down due to tidal conditions, storms and eddy events. Consequently, vessels routinely grapple for downed gear. Sinking line would burrow into the substrate and be unrecoverable. We suggest that the requirement for a low-profile or neutrally buoyant line demonstrated as operationally feasible be delayed until 2009 at the earliest.

- We **support** the expansion of the current SAM zones as a reasonable approach for fishermen working in that area with modified gear which provides additional safeguards to seasonal aggregations of whales.
- We believe the expansion of the SAM areas should prompt the **elimination** of DAM zones ASAP. DAMs have proven to be an unworkable approach which puts fishermen at risk and provides little protection for the whales. Additionally, it prompts a huge administrative burden and cost to the agency.
- We **do not support** the five weak links or more on gillnet panels without further research. There is no evidence to suggest how gillnets set in deep water areas would function and whether the nets would be recoverable intact. Again, depth, tidal conditions and storms all impact the nets, and fishermen need to adapt their operations to meet the challenges posed by the area they set in, along with environmental variables.
- While we understand the agencies desire to include other pot and trap fisheries into the ALWTRP, we would point out that the scup, sea bass and conch pot fisheries occur primarily between the early summer and fall months, a time when endangered right whales are highly unlikely to reside in state waters. We would **request** that the agency analyze the available sightings data, and exempt RI state waters from current and proposed requirements.
- We support the gear marking concept. Rhode Island currently requires surface buoys to be marked, and we believe this requirement should be extended coastwide. We suggest that gear marking requirements be specified by gear type and State where vessel is licensed. Rhode Island believes that if gear marking is universal, critical information on where entanglements have actually occurred will be lost.
- We **suggest** the proposed gear-marking requirement of on 4" mark every 10 fathoms on the end line is overly burdensome, and that marking at lesser increments would likely encourage more compliance. Alternative gear marking technology was encouraged by the TRT, such as the "Vet microchip" or line tracers, and while the technology is not yet available, more advanced technology techniques when available, will provide better data for analysis on the nature and occurrence of whale entanglements
- Rhode Island **does not support** the exempted waters proposed in Alternative 3, which specifically exempts Mid-Atlantic waters. The Northern zone proposed (Exhibit 3-7) draws what appears to be an arbitrarily chosen line at the Rhode Island /Connecticut border. NMFS explains that the zone was established by sightings data, however none of this data was provided in the DEIS. Rhode Island has 35 years of sightings data provided by the NEFSC, thru 2002, with relatively few humpback whales sightings west of 72 degrees, however there are a substantial number of right whale sightings. The line drawn does not appear to afford adequate protection for right whales, and we would suggest the agency analyze the most recent sightings data available. We suggest that the seasonal restrictions pose potentially higher risks to large whales. First, fishermen are unlikely to modify gear seasonally due to operational burdens, time and costs and more importantly, fishing effort could shift into the exempted area. We also suggest that the 3-month exemption would be more problematic for enforcement

purposes. We believe that a more regional management approach would be prudent, and suggest that the agency analyze incorporating the "Middle Zone" boundary, as described in Section 3.1.3.

Recent right whale mortalities have clearly demonstrated a threat to the right whale population. Rhode Island is committed to a continuing partnership with the agency to address a delicate balance in whale conservation while maintaining viable fishing communities. While forward movement continues to address fishing gear interactions, we note that there has been little accomplished to deal with ship strikes, a major cause of right whale mortality. We encourage the agency to pursue parallel conservation measures with the shipping industry and military vessels, as well as with our Canadian counterparts for these trans-boundary species.

Rhode Island commends the agency for their tireless efforts in the preparation of the DEIS, and consideration of the fishing industry overall in management measures designed to protect large whales. We look forward to continued cooperation and ongoing research efforts for better whale conservation efforts.

Thank you for the opportunity to comment, should you have questions please contact myself or April Valliere.

Sincerely,

Mark R. Gibson
Deputy Chief Marine, F&W

Kevin L. Beal
P.O. Box 64
Beals, ME 04611
May 15, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Attention: Mary Colligan

Since its implementation in 1997 the ALWTRP has required Maine fishermen to waste countless hours and dollars on gear modifications that do not solve the problem of large whale deaths. We cannot control ship strikes or entanglements with fishing gear that is obviously not from Northern Nearshore Lobster Waters Area. Maine fishermen are told to compromise to fix a problem that they are not the cause. Alternate 1 is our only choice of the 6 alternatives given, but the exempted area should be all Maine waters. We should have been given an alternative of the pre-1997 Status Quo.

sincerely,
Kevin L. Beal
Kevin L. Beal

STATE OF MAINE
DEPARTMENT OF
MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

JOHN ELIAS BALDACCI
GOVERNOR

GEORGE D. LAPOINTE
COMMISSIONER

May 11, 2005

Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
NOAA Fisheries Service
1 Blackburn Drive
Gloucester, MA 01930-2298

Dear Ms Colligan:

This letter constitutes the comments of the State of Maine on the Draft Environmental Impact Statement (DEIS) for amending the Atlantic Large Whale Take Reduction Plan (ALWTRP).

I am pleased with the progress that has been made in the last few years between the State of Maine and NOAA Fisheries Service in finding solutions to whale/fishing gear interactions that protect whales, are enforceable and operationally feasible for fishermen. I am committed to continuing this partnership in the future because it is the only alternative that makes sense in the tough work of whale conservation and managing fisheries.

In commenting on the DEIS and thinking about our future work together, a number of points are worth reiterating. These include:

- The relative role of fishing gear entanglements in the overall large whale mortality estimates. Ship strikes and water pollution/water quality issues are other factors that have been identified as sources of mortality. As the work on large whale/fishing gear interactions moves forward, we need to ensure that the fishing gear component is not treated as "low hanging fruit" as compared to the other issues; the consequence being that we apply management measures to the fishing industry that are out of proportion with the industry's relative impact.
- Elimination of the Dynamic Area Management (DAM). This program must be abolished as soon as possible. DAM is unreasonable and unworkable for the fishing industry and offers very little credible protection for the whales.
- Strong concern for requirements to use sinking/neutrally buoyant groundlines in areas of rocky/tidal habitat. Abrasion and hang downs with increased operational costs and gear loss are a major issue that must be addressed. Additionally, we need scientific data demonstrating the feeding habits of large whales on rocky/tidal habitats to help determine future risk reduction measures.

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- Concern for the rate at which new gear requirements are implemented. New gear requirements are costly and fishermen must adapt their fishing practices as new requirements are put in place. It is also important to get feedback on how the gear modifications are working in regard to whale protection and fishing practices.
- Concern for the complete lack of Canadian large whale take reduction efforts. Large whales are a trans-boundary species and at this point Canadian fishermen are not required to modify their gear with any risk reducing gear modifications. NOAA Fisheries must continue to encourage DFO to implement equal take reduction measures through US/Canadian bilateral discussions or within their new Species at Risk Act.

Given these views, Maine supports Alternative 5 for both the trap/pot and gillnet fisheries and offers the following specific comments.

- Maine concurs with the proposed elimination of the lobster take reduction technology list in the northern near shore waters.
- Maine concurs with the proposed weak link on all flotation and or weighted devices attached to the buoy line with a maximum breaking strength of 600 pounds. However, for enforcement reasons, Maine requests that NOAA Fisheries define weighted device.
- Maine concurs that trawls of four or fewer traps in Federal waters be allowed only one endline.
- Maine concurs that all surface buoys be marked.
- Maine concurs that Seasonal Area Management (SAM) be expanded in time and place. However, expansion of current SAM must be made with respect to other fishery closures, a review of recent large whale entanglements, as well as other mortality and foraging data. To this point Maine requests that NOAA Fisheries analyze the existing Western Gulf of Maine Closure, which encompasses most of Jeffreys Ledge, for potential inclusion as a year round modified gear area. This is a high use area for both fishermen and large whales. Future implementation of year round gear modifications, using current SAM modified gear requirements (2 buoy lines, 1/3-2/3 poly/sink endlines and sinking groundline), might further protect the large whales while allowing Maine fishermen continued year-round access.
- Maine disagrees with the proposed gear marking requirements; a 4" colored mark every 10 fathoms on the endline. This is an ineffective and unnecessary requirement that poses a hardship for the fishing industry with no perceivable benefit for the whales. Maine proposes that all endlines less than 50 fathoms have one 4" colored mark unique to each fishery and State, and all endlines greater than 50 fathoms have two 4" colored marks unique to each fishery and State. This marking scheme might benefit scientific efforts to better determine where entanglements occur and will not be an unnecessary burden on the fishing industry. In addition, Maine supports inclusion of new technologies in the development of rope modifications such as line that might be manufactured with an internal tracer or uniquely coded using micro-chips.

- Maine is pleased that NOAA Fisheries has incorporated exemption lines in the proposed rules. This will minimize impacts on fishermen in areas with no history of interactions. However, we believe that the proposed lines need to be expanded to the lines originally provided by DMR in the scoping/public comment period. These lines were based upon an analysis of the best available sightings data from the North East Fishery Science Center. The low number of sightings of strategic stock whales within this area over the past thirty-plus years, coupled with the known feeding patterns of right whales supports this proposal. Adoption of these exemption lines will result in a greatly increased acceptance of the ALWTRP by industry by allowing fixed gear fishermen to utilize traditional gear in areas that pose little risk to whales and through modified gear in areas that pose risk to whales. Maine is committed to working with NOAA Fisheries to make sure that the exemption lines are in the correct locations. DMR staff have initiated discussions with Center scientists to design and seek funding for aerial surveys within the proposed exemption line. These surveys will supplement existing sighting data to determine, monitor and potentially adjust the exemption line boundaries. In the event of an observed entanglement, Maine's trained industry and Marine Patrol disentanglement network will rapidly respond.
- Maine strongly supports the continued use of floating groundline, which is critical to lobstering on Maine's rocky and tidal coastline. Operationally, Maine fishermen require some flotation in groundlines and much research has been undertaken to develop and test low-profile groundlines. This new technology will serve both the risk reduction needs of the DEIS and the operational realities of Maine fishermen. Maine requests that NOAA Fisheries consider the recent Northern Gulf of Maine Foraging Workshop which sought opinions of plankton experts as to where and or if plankton aggregate in the Northern Gulf of Maine. The full report will be sent to NOAA Fisheries as soon as it has been peer reviewed in June. Preliminary results presented at the recent ALWTRT meeting support the continued research and development of low-profile groundlines for Maine's rocky and tidal habitats. Low-profile groundlines will greatly reduce risks to large whales and allow Maine fishermen to safely haul their gear. Maine has requested Congressional funding for a multi-year poly rope buyback and rope exchange. With funding, Maine proposes implementation of low-profile groundline beginning in 2007 and concluding in 2009. Maine will require that all low-profile groundline be uniquely marked.
- Maine strongly supports the elimination of DAM. However, Maine supports the continuation of DAMs in the northern Gulf of Maine until full implementation of low- profile groundlines in 2009.
- Maine does not support the use of five or more weak links per panel having a maximum breaking strength of 1100 pounds. Further research must be conducted to determine whether this proposal is operationally feasible for Maine's offshore gillnet fishery that, due to ongoing sustainable fishery management measures, must fish in deeper waters (greater than 100 fathoms) with strong tides.

- Maine proposes that NOAA Fisheries analyze the potential for using the 50 fathom curve as a line to delineate between different gear modifications. Utilization of this boundary may provide additional protection for right whales migrating to and from the Bay of Fundy, while at the same time, allow for operationally realistic, risk reduction gear modifications.

In summary, Maine strongly supports NOAA Fisheries expressed intent to protect both the large whales and the commercial fishing industry. Maine further supports and appreciates NOAA Fisheries continued efforts to fund and conduct additional research and analysis so that we can all address future management actions with better information.

I appreciate the opportunity to comment and would be pleased to follow up with you on these issues as needed. Please contact me or Terry Stockwell if you have any questions.

Sincerely,

George D. Lapointe
Commissioner

cc: Governor John E. Baldacci
William Hogarth
Senator Olympia Snowe
Senator Susan Collins
Representative Thomas H. Allen
Representative Michael H. Michaud
Maine Lobster Advisory Council
Maine Lobstermen's Association
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Maryland Chapter, Anne Arundel Group

May 13, 2005

Mary Colligan, Assistant Regional Administrator for Protected Resources
NMFS
1 Blackburn Drive
Gloucester, MA. 01930
ATTN: ALWTRP DEIS

Dear Ms. Colligan:

We urge you to adopt stringent regulations to protect right whales from entanglement in fishing gear. Another female died this March from entanglement in fishing gear off the coast of Virginia. We believe that mandatory gear modifications need to be implemented within the next year and applied along the entire coast and year round because the whales often show up during seasons in which they would not be ordinarily expected.

The proposed plan must include a means to reduce risk from vertical lines and keep dynamic management so that NMFS can restrict fishing gear in areas where there are aggregations of whales. We urge you to strengthen the proposed alternatives to ensure adequate protection to the right whale.

Sincerely,

Ann Wolfe, Chair
Anne Arundel Group, Sierra Club

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Cetacean Society International

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May 12, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
1 Blackburn Drive, Gloucester, MA 01930

Re: 2005 DEIS: Proposed ALWTRP Modification

Dear Ms. Colligan:

Cetacean Society International (CSI) is grateful for the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for proposed modifications to the Atlantic Large Whale Take Reduction Plan (ALWTRP).

CSI's primary concern is that the goals of the Marine Mammal Protection Act (MMPA) will not be met by any regulatory actions or amendments as recommended by the DEIS or proposed by the National Marine Fisheries Service (NMFS), and that while NMFS has a legal obligation to take immediate action to prevent jeopardy to right whales, NMFS instead proposes to make no changes to fishing gear until 2008. This is not acceptable. Immediate action is required. We also note that the DEIS does not present an adequate system for monitoring or enforcement.

Protection of non-strategic species

CSI urges NMFS not to reduce the status and protection of minke whales within the goals of the ALWTRP. Whatever value is achieved by deciding that takes of minke whales are not "strategic", the reality is that the status of minke whales within this region is poorly known, and Annual Large Whale Entanglement reports suggest a high entanglement-related mortality rate for this species, minkes with signs of entanglement were found dead 2.5 times more than all other species combined, and dead minkes may be less likely to float after death and thus are less likely to be documented.

Scientific basis for evaluation

CSI urges NMFS to use this DEIS process to take the lead to develop or foster a methodology for measuring the true rates and trends of serious injury and mortality for all marine mammals, as the MMPA requires. Without this methodology there can be no reliable statistical relationship between non-human and human related events, an uncertainty extending far beyond the realm of the ALWTRP. Without these statistics there can be no certain basis for regulatory actions, and no certainty of defensible enforcement. Without far better knowledge of the extent of the entanglement problem, or effectiveness of "solutions", the ALWTRP will continue to be based on best-guess efforts. Previous well-intended "solutions" have not been proven to work, some may have had deleterious effects, and focusing on them may have limited the development of better solutions. Another problem with the science is the failure to communicate data and statistics in peer-reviewed formats, and perhaps even incorporate some non-peer-reviewed material, to inform, unify and stimulate discussion by all concerned.

Proposed ALWTRP Alternatives

CSI does not support any of the six alternative amendments to the draft plan, because they are not likely to achieve the ALWTRP's specific goal of achieving zero serious injury and mortality of right whales in particular. We concede that, with the

present state of knowledge, the only way to stop right whale entanglements is to stop all gear fishing, which is impossible. But the goal must remain at zero.

Alternatives that depend upon fisheries closures or weak links only support well-intentioned "solutions" that have not been demonstrated to have been successful. CSI acknowledges the superb effort by all concerned, but the truth is that, in spite of closures and weak links, entanglement rates have not been shown to have diminished in the last decade. The MMPA deadline for achieving the ZMRG is long past, but it's never too late to seek additional if not better solutions.

Although some alternate fishing methods and equipment outlined in the Alternative Amendments of the ALWTRP may help to reduce serious injury and mortality of strategic and non-strategic stocks of marine mammals, CSI supports the opinions of professionals involved with the fixed-gear fishery, specifically that entanglement risk is related to how much rope is deployed within marine mammal habitats, as buoy, ground line, and net systems. Reducing the total amount of rope, particularly vertical lines, is an option that must receive priority attention.

NMFS has stated the specific intention to consider buoy lines at some future date. CSI urges NMFS to use this DEIS to present a management plan not just to reduce buoy line entanglement rates now, rather than later, but to reduce the total quantity of rope used in fisheries.

Trap/Pot: Alternative 2

While Alternatives 2 though 6 should reduce the entanglement rate and serious injury and mortality from the regulated trap/pot fisheries, Alternative 2 is better for whales, because it is less seasonal and covers a wider area. However, professionals believe that Alternative 2 may produce an increased risk of entanglement in the northern Gulf of Maine near-shore lobster fishery. We urge NMFS to consider real-time examples of rope and gear changes to reduce entanglement opportunities, before fishermen shift to single traps. Single traps will significantly increase the total rope in the water. Some examples CSI has reviewed, primarily by setting more traps per trawl, include reductions of over 50% of the total rope currently used. CSI urges that the DEIS consider the option for lobster trap trawls as an emergency measure, to preclude increases in whale entanglements likely with other Alternatives.

Gillnet: Alternative 2

Alternative 2 is better for whales because it is less seasonal and covers a wider area. But CSI cannot see how gillnet use can ever be made risk-free to free-swimming whales, unless a pinger modification is found that actually works, with no adverse effects.

Weak Links

Weak link gear modifications required by the plan are fitted to specific locations on the buoy lines of the lobster and gillnet fisheries and the horizontal lines of ground fish nets. They are supposed to break when a whale strikes the gear enough to initiate an entanglement, so as to reduce the potential for an injurious or lethal event. By shedding some of the gear, weak links may reduce the amount of gear burdening the whale, reduce rope wounds early in an entanglement, and ultimately reduce deaths through suffocation. CSI acknowledges that the use of weak links can have the potential to reduce mortality and serious injury, that fishermen have been cooperative about installing links on their gear, and that considerable research has already been accomplished.

However, disentanglement and stranding teams have noted that lethal and life-threatening entanglements have involved gear with weak links that never broke. Several right whales currently carry gear with unbroken links, which may affect the whales' survival potential.

Why did these links not break? CSI suggests that the break-strength calculation is not appropriate. It is based on the minimum strength that could be used without gear loss when the gear was fished normally, in a series of collaborative field tests conducted by fishermen and the NMFS gear team. Because the break-strength of weak links was primarily dictated by fishing practices, not for their direct effectiveness for protecting whales, the DEIS is incorrect to describe these tests as "simulated whale entanglements", but the greater issue is that too many whales have been entangled in gear where the weak links never broke.

Another reason for unbroken links may be their placement within the gear. It makes sense, for example, that weak links placed near the ends of a long rope may not be triggered by contact near the middle. Research demonstrates that entanglements may involve any part of the gear or the whales, and more work needs to be done to place weak links more strategically.

For these reasons, CSI strongly supports better research, prior to any Final EIS, to determine species-appropriate break-strengths and the best number and placement of weak links according to the gear type and use. CSI also asserts that it is inappropriate to rely on weak links, to any detriment of trying other methods, as they have not been proven effective as currently designed.

Fisheries Closures

Fisheries closures may reduce entanglement potentials, but CSI is not aware of supportive evidence that current and proposed closure strategies work as hoped. If the philosophy is to avoid aggregations of feeding right whales, specifically by denying fishing effort in that area, seasonal or dynamic closures may actually increase entanglement risks, because research now demonstrates unequivocally that individual whales often move in and out of closure areas. In one 2001 example a tagged right whale moved in and out of the Great South Channel Critical Habitat Area (CHA) at least 18 times in 36 days, and another was documented crossing a CHA boundry at least 43 times. NMFS' aerial observers have reported whales staying within CHAs and DAMs only for very short periods. Fishing effort, on the other hand, is likely to focus on the edge of those historically productive areas, unintentionally creating a wall of entanglement potential with the increased density of gear.

The current view of experts is that the transient nature of right whales makes area closures less effective than we had all hoped they would be, and that gear density around closed areas may present a significant threat. Therefore, CSI supports the view that any gear management plan that reduces or eliminates the total amount of rope in the water, year round, is certainly preferred to area closures.

Line Marking

Line marking is not a take reduction measure, but it provides essential data that may help answer many questions that in turn may allow us to truly lower entanglement potentials. CSI strongly supports line marking as an effective research tool, however, line marking must be safe and practical for fishermen.

CSI cannot support the proposed scheme of a four-inch mark every 10 fathoms, because such generic and limited marks are unlikely to give adequate information. CSI agrees with those who propose that buoy lines, ground lines, and any other parts known to be part of real entanglements be marked specifically, perhaps with colored tracer fibers, throughout that rope's length within the gear. There is no question that this increases the cost and complexity of line marking, but at least it will be an investment bound to pay off, where the proposed scheme is a waste of money and time. CSI also agrees with the experts requesting that ropes should be identifiable in aerial images of entangled whales.

Even while finding fault with the DEIS CSI is eager to thank all who have worked so hard to find solutions to the entanglement problem. We are aware of some of the sacrifices and other costs, and the impressive cooperation and collaboration between many who have taken this problem on almost as a personal challenge. We acknowledge that the costs of perfect solutions, or even more productive efforts to find solutions, may be a factor in future success or failure. But efforts must be true to the MMPA and sense of Congress, and accept that the loss of a species is just one of the issues at stake, mandating a continued maximum effort to stop entanglements. We may not have the solutions to the DEIS's problems, but we are willing to help in any way that we can. Thank you for the opportunity to comment.

Sincerely,

William W. Rossiter
President

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Ms. Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, Massachusetts 01930

VIA FACSIMILE: (978) 281-9394

RE: Atlantic Large Whale Take Reduction Plan Draft Environmental Impact Statement, 70 Fed. Reg. 9306 (February 25, 2005)

Oceana submits these comments on the Draft Environmental Impact Statement (DEIS) for the Atlantic Large Whale Take Reduction Plan ("Plan") and its proposed alternatives. Oceana, Inc., is a non-profit international advocacy organization dedicated to protecting and restoring the world's oceans. In the coastal states from the Canadian border to North Carolina, Oceana has over 12,800 dues-paying members and more than 46,400 supporters. Oceana has been a prominent advocate for protecting endangered and threatened species, avoiding bycatch, and minimizing bycatch mortality.

Right whales are critically endangered. The right whale population is so vulnerable that the 2001 Biological Opinion found that even one right whale death might jeopardize the continued existence of the species. Shockingly, the Government has allowed numerous deaths each year since 2001 – in violation of the Endangered Species Act and the Marine Mammal Protection Act (MMPA). The DEIS simply fails to come to terms with the grave inadequacies of the existing measures and the need to consider alternatives to eliminate all takes of right whales.

Commercial fishing gear injures and kills North Atlantic right whales each and every year, yet the Plan and its DEIS fail to propose adequate alternatives to protect the few remaining right whales from this serious threat. Instead, the DEIS' proposed alternatives merely make minor modifications to the existing, failed management scheme. These changes *will not* protect endangered right whales from jeopardy under the Endangered Species Act. For this reason, the National Marine Fisheries Service (NMFS) must immediately develop new approaches, such as real-time tracking of right whale locations, improved reporting of the location and amount of fishing gear in the water, mandatory gear marking, and effective area closures for pot/trap and gillnet gear, that are sufficient to eliminate *all* take of right whales. Additionally, NMFS must immediately address the take and mortality of North Atlantic right whales by ship strikes – something it has failed to do for years, with devastating consequences.

PRINTED WITH SOY INK

North Atlantic Right Whales are a Critically Endangered Species Protected Under the Endangered Species Act and the Marine Mammal Protection Act.

The North Atlantic right whale is the most endangered large cetacean in the world. With approximately 300 remaining, the survival of each whale and the recovery of the population are critical. Because of its endangered status, the right whale is protected by both the Endangered Species Act and the Marine Mammal Protection Act (MMPA).

The Endangered Species Act embodies Congress' "plain intent" to "halt and reverse the trend toward species extinction, *whatever the cost*." *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 184 (1978) (emphasis added). Indeed, "[t]he language, history, and structure of the [ESA] indicates beyond doubt that Congress intended endangered species to be afforded the highest of priorities." *Id.* at 174. Federal agencies must put endangered species conservation ahead of their primary missions, and must use all methods necessary to protect listed species. *Id.* at 185. In determining whether a proposed federal action might jeopardize the continued existence of an endangered species, the agency must use the best available science to ensure that jeopardy will be avoided. If this cannot be shown, it must implement measures that give the benefit of the doubt to the endangered species. *See, e.g., Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir.1988); *Roosevelt Campobello Intl Park Comm'n v. EPA*, 684 F.2d 1041, 1049 (1st Cir. 1982). If the agency determines that a proposed federal action will not cause jeopardy, and that takes of the species are authorized under section 101 of the MMPA, 16 U.S.C. § 1371(a)(5), the agency may issue a statement, authorizing incidental take and specifying terms and conditions necessary to comply with the Endangered Species Act and the MMPA.

The MMPA embodies Congressional intent that marine mammals be

> protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem.

16 U.S.C. §1361(6). The MMPA carries out this policy by establishing a general moratorium on taking marine mammals, *id.* § 1371, and creating a system for rebuilding depleted populations, *id.* §1383b. To achieve these goals, the North Atlantic right whale was made subject to the Atlantic Large Whale Take Reduction Plan ("Plan) in 1997. Take reduction plans have the immediate goal of reducing take in commercial fisheries to levels less than potential biological removal ("PBR") within 6 months and to insignificant levels approaching zero within 5 years. *Id.* § 1387(f)(2). If the agency determines that take levels in a commercial fishery will have a "negligible impact" on the population it may authorize incidental take under section 101 of the MMPA. 16 U.S.C. § 1371(a)(5).

If the Agency does not authorize incidental take, and incidental take occurs pursuant to an activity authorized by the Agency, both the Agency and the individual directly responsible for the take are liable under the Endangered Species Act and the Marine

Mammal Protection Act. Furthermore, if the Agency knowingly authorizes an activity that is reasonably anticipated to incur unauthorized takes, the Agency is liable under the Endangered Species Act and the MMPA at the time of authorization. Therefore, the Agency does not solve any legal problems for itself or for individual fishermen when it knowingly proposes arbitrary regulations that are unaccompanied by an incidental take permit and fly in the face of the Endangered Species Act.

The Atlantic Large Whale Take Reduction Team was convened in 1996 and developed a Take Reduction Plan in 1997. Under the ESA, the June 14, 2001 Biological Opinion on the multispecies, monkfish, and spiny dogfish fishery management plans incorporated the Plan as a RPA to avoid jeopardy to the species and a series of final rule and amendments were passed between January 2002 to August 2003 to implement the measures (DEIS at 2-6). Nevertheless, these measures have again proven insufficient, and "due to the continuing risk of serious injury and mortality of large whales since the most recent revisions of the ALWTRP have gone into effect, NMFS believes that additional modifications to the ALWTRP are needed to meet" the statutory goals (DEIS at 2-40).

The DEIS Does Not Take a Hard Look at the Impacts of Human Activities on Right Whales

The National Environmental Policy Act ("NEPA") requires that NMFS take a hard look at the impacts of human activities on right whales. In defiance of this requirement, it cannot fairly be said that the DEIS considers the impacts at all. Notwithstanding its great length, it fails to provide any history or context concerning the status of right whales or Government efforts to protect them. It fails to consider the cumulative effects of all sources of take on right whales. And most devastatingly, it fails to clearly state the fundamental and crucial information the decisionmaker and the public must have to evaluate the Plan: namely, how many lethal takes are anticipated to occur under the status quo and how many lethal takes are anticipated to occur under each alternative.

NEPA is the "basic national charter for protection of the environment," 40 C.F.R. § 1500.1. It "declares a broad national commitment to protecting and promoting environmental quality." *Robertson v. Methow Valley Citizens*, 490 U.S. 332, 348 (1989); 42 U.S.C. § 4331. To that end, NEPA directs that all agencies of the federal government must prepare an EIS whenever they propose "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); *Robertson*, 490 U.S. at 348.

NEPA's primary purpose is to ensure that federal agencies carefully consider the environmental effects of their actions and make relevant information available to the public. *See Robertson*, 490 U.S. at 349; accord *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983). "NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action." *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (1978). It is intended to "insure that environmental information is available to public officials and citizens before decisions are made and actions are taken," and to "help

public officials make decisions that are based on understanding of environmental consequences . . . ." 40 C.F.R. § 1500.1(b), (c); *Robertson*, 490 U.S. at 349; *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998) (NEPA ensures that "the agency will not act on incomplete information, only to regret its decision after it is too late to correct.").

By focusing the agency's attention on the environmental consequences of its proposed action, NEPA "ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast." *Robertson*, 490 U.S. at 349. In short, NEPA promotes an "across-the-board adjustment in federal agency decision making so as to make the quality of the environment a concern of every federal agency." *Scientists' Institute for Public Information v. Atomic Energy Comm'n,* 481 F.2d 1079, 1088 (D.C. Cir. 1973). The defendants' actions in this case show that they have not adjusted their decisionmaking process in the manner NEPA requires.

The heart of an EIS is the agency's presentation of "the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14. Public review of and comment on a draft EIS are cornerstones of the NEPA process. *Id.* §§ 1502.19, 1503.1(a)(4). An adequate NEPA process results in (1) the careful consideration by the agency of detailed information concerning significant environmental impacts of proposed alternatives; and (2) a guarantee that the relevant information is made available to the larger public audience. *Robertson,* 490 U.S. at 349.

An EIS must discuss "the environmental impact of the proposed action" and "any adverse environmental effects." 42 U.S.C. §§ 4332 (2)(C)(i), (ii). An EIS must also consider cumulative impacts. *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 347 (D.C. Cir. 2002); *Ctr. for Biological Diversity v. Fed. Highway Admin.*, 290 F. Supp. 2d 1175, 1187 (S.D. Cal. 2003). A "'cumulative impact' is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such other actions." 40 C.F.R. §1508.7. The cumulative impacts analysis must be sufficiently detailed so as to be "useful to the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts." *Natural Res. Def. Council v. Hodel*, 865 F.2d 288, 298 (D.C. Cir. 1988). *See also City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1160 (9th Cir.1997); *Sierra Club v. Bosworth*, 199 F. Supp. 2d 971 (N.D. Cal. 2001). NMFS was required to consider all impacts on right whales from all sources "regardless of what agency (Federal or non-Federal) or person undertakes such other action." 40 C.F.R. § 1508.7.

The Plan and its DEIS further fail to explain how the proposed measures meet the legal requirements of the Endangered Species Act and MMPA to ensure no jeopardy or reduce take levels, considering all sources of take, to the designated PBR level of zero. Deciphering the measures in the Alternatives is hard enough, but it is even harder to determine what measures are better or worse for large whales. Simply put, the DEIS'

explanation of what the Alternatives require does not fulfill National Environmental Policy Act requirements.

As written in the DEIS, none of the alternatives listed describe how the proposed gear modifications or closed area changes will reduce the entanglement of large whales to levels that meet statutory requirements.

In the DEIS, the Agency does not even mention the equal or greater threat to right whale survival, which is mortality from ship strikes. Although not part of the take reduction plan, this mortality must be addressed and accounted for immediately. Scientists, fishermen, and conservationists have repeatedly urged the Agency to undertake a process to address this threat, but the response has been flaccid. Oceana urges the Agency to implement emergency measures to address ship strikes immediately.

The Proposed Alternatives in the DEIS are Arbitrary and Fail to Address the Impacts to North Atlantic Right Whales under the Endangered Species Act or the Marine Mammal Protection Act.

The alternatives that NMFS has proposed in the DEIS are insufficient to prevent jeopardy to right whales. In the DEIS, the Agency admitted that the most recent Endangered Species Act Section 7 Consultation in the form of a Biological Opinion was written 4 years ago, on June 14, 2001 (DEIS at 2-6), even though takes above the incidental take statement and PBR levels of zero, as well as changes to the fishery, have occurred. Specifically, in 2002 alone, nine fatal entanglements and 22 live entanglements of Atlantic large whales were observed after the Plan's revisions were in effect (DEIS at 2-39). The Endangered Species Act requires that the Agency give the benefit of the doubt to the species, but the Agency has repeatedly authorized federal activities without ensuring that the takes would be held below the required levels. In fact, the Agency has a history of failed measures and revisions to those measures culminating in this DEIS (DEIS at 2-39 and 2-40). This history does not lead one to believe that the incremental measures proposed in this DEIS will remove jeopardy from the species. The DEIS offers no rational basis on which to conclude what effect the alternatives would have or whether they would succeed. Despite this absence of scientific evidence to support the effectiveness of the proposed measures to reduce large whale takes, the Agency concludes that the measures will reduce entanglement. Why the Agency believes this is true, or what evidence the Agency is relying on, is never discussed. Furthermore, the agency's conclusion, unsupported as it is, is not pertinent. The 2001 Biological Opinion makes clear that unless the agency concludes that an alternative would *eliminate entanglement and ship strikes*, the alternative is unlawful.

Secondly, under the DEIS' preferred Alternatives, NMFS proposes to eliminate measures, like seasonal area management (SAM) and dynamic area management (DAM) programs, that may reduce takes of right whales. The DEIS admits that these measures are "likely to have a direct effect on the protection and restoration of Atlantic large whales, providing measures to reduce the risk of entanglement when aggregations of whales are known or likely to be present" DEIS at 5-39. Removing protections from

large whales is going in the wrong direction. Because of government bureaucracy, DAM implementation has not worked as well as we would have hoped, but closed areas should be expanded, not eliminated.

Even more disturbing is that NMFS proposes to allow the fisheries to operate in violation of the law by refusing to take immediate regulatory action and instead waiting until 2008 to require changes to fishing gears. Delaying implementation of conservation regulations continues to jeopardize the species and subject individuals and the agency to liability for unlawful takes.

Lastly, NMFS asserts that more discussions are needed before addressing the entanglement risk associated with vertical lines, DEIS at 1-5, but no plan is sufficient to reduce risk to right whales if it does not provide a means to reduce all risk, as no animals are allowed to be taken. NMFS must address vertical lines and remember that weak links in the vertical line of fishing gear have never been proven to reduce risk. In fact, whales have had to be disentangled from gear that has unbroken weak links. Specifically, two right whales and one humpback whale have been found wrapped in line with 600 pound weak links unbroken. NMFS can not ensure that weak links work because in three documented cases, they have not worked, and these breaking weights are equal to or less than what NMFS is currently proposing (DEIS 5-19 to 5-22). This should be the end of the analysis. It is illegal for NMFS to rely on gear modifications that repeatedly prove ineffective.

The Agency Must Immediately Implement Measures that Ensure "No Jeopardy" to North Atlantic Right Whales.

According to the agency, 89 percent of the entanglement cases for which gear is recovered involve trap/pot and gillnet gear (DEIS at 2-28). Because there is no authorization for *any* incidental takes, NMFS cannot allow these fishing gears in designated critical habitat during times of year that right whales are present. If the agency can show that modifications of trap/pot and gillnet gear will completely eliminate entanglements, such modified gear should be allowed. On the other hand, mere speculation that modifications may *reduce* entanglements is an insufficient basis for concluding that the goal of avoiding takes completely will be met. Additionally, mandatory gear modifications that prevent jeopardy to the species must be implemented coast wide and year round because right whales often roam up and down the coast even when it is not seasonally expected.

Although the current implementation of dynamic area management (DAM) closures is too slow to be effective, Oceana believes that this type of adaptive management would be effective if the regulations 1) moved more quickly that the Federal Register process can allow; 2) included buffer zones around the DAMs to account for the whales' unpredictable travel; and 3) mandated increased enforcement when DAM closures take effect.

In addition to the proposed alternatives, the following points must be considered and implemented.

- In addition to documenting where whales are located, NMFS must mandate new reporting programs that require fishermen to report in real-time where they are placing fishing gear and where fishing gear is being lost. Since 60% of right whales exhibit entanglement scars from fishing gear (DEIS at 2-30), it is clear we are unaware of most of the entanglements. We must know both where the whales are traveling and where they are in danger of entanglement.

- As discussed by the Atlantic Large Whale Take Reduction Team, all gear must be marked with colors to indicate the type and location of fishing gear. These measures would not only identify which fisheries are entangling whales, but would eliminate fisheries that do not interact with the whales from further restrictions.

- Within the Agency's Protected Species scientific research permitting office, the Agency must develop a prioritization in the granting of scientific research permits. Conservation research addressing critical bycatch, entanglement, or other conservation needs must be placed above permits that do not fit this intent. This prioritization will be increasingly important as new gear technologies are developed to prevent large whale entanglements, and other bycatch problems.

Thank you for the opportunity to submit comments on the Draft Environmental Impact Statement. I am happy to further discuss these points at your convenience and can be reached at (202) 833 3900.

Sincerely,

Charlotte Gray Hudson
Marine Wildlife Scientist

16 May, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, Massachusetts 01930

ATTN: ALWTRP DEIS

Dear Ms. Colligan,

The Northern Right Whale is on the brink of extinction and the world facing an unimaginable loss if we lose this species. Given the whale's status, the next few years could determine the fate of the entire species as could the decisions made regarding the six options in the draft Environmental Impact Statement. If the options presented in the DEIS are not significantly strengthened than there will be little if any protections to the Northern Right Whale. We, as a society, cannot afford to test options or determine effectiveness through trial and error. The Northern Right Whales biological removal number is now set a zero, and these animals cannot serve as guinea pigs for a fishing method that may or may not be suitably protective. There can be no further losses due to fishing gear is whales hope to regain a sustainable population.

Given the dire situation the delay in implementation to 2008 is not only unwise it is counter to the intent of the Endangered Species Act to put in place measures that will protect our most threatened species. Action must occur now to stave off any further losses and preventive measure extended through all probably and possible coastal waters since the migratory routes and feeding areas of these large animals is not completely documented. Protection measures need to be pro-active and flexible to respond to the needs of the threatened species. Actions such as the removal of all fishing gear and other threatening activities needs to be removed or curtailed when whales are present or nearby. Gear needs to have gear modifications that err on the side of protection for the Northern Right Whale after all we are dealing with the extinction of one of our most threatened species.

Thank you for providing this opportunity to comment on this most important issue, It is my hope actions can be expedited that will bring meaningful protection to the Northern Right Whale.

Kind regards,

Cindy Delpapa
339 Lincoln Street
Lowell, MA 01952

DAN MILLER - ZONE D CHAIRMAN - DISTRICT 6 REP (DELIVERED IN HAND)

WE SUPPORT THE ~~IDEA~~ CONCEPT OF AN EXEMPTION LINE AND ADD THAT WE FEEL THE LINE ~~IT~~ SHOULD BE MOVED SEAWARD PENDING FURTHER RESEARCH ESTABLISHING RIGHT WHALE MIGRATION PATTERNS AND FORAGING AREAS.

SIGNED APRIL 3, 2005

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[illegible]	PO Box 185 Tenants Harbor		372-6228
[illegible]	18 Atlantic Quarry Rd., Spruce Head	D	594-5952
Dennis Rockcliff	40 Rockcliff Rd Spruce Head	D	594-7359
Ryan Miller	44 Deer Run Rd, ME	D	594-0184
Mark Miller	38 Fuller Rd ME	D	594-2602
Larry Baum	33 BAUM Rd ME	D	594-2326
Mike Hyvarinen	35 Spring Lane M	D	372 8596

Pg II

Name	Address	Zone	phone
Steve Miller	459 Seal Harbor Rd	D	594-2630
Bradley Radcliff	65 weir Pt Rd Spruce Head	D	596-0104
[illegible]	P.O Box 309 Spruce Head ME 04859		594-9062
[illegible]	P.O Box 354 Spruce Head, ME 04859	D	594-0836
[illegible]	14 Fuller Rd Spruce Head	D	596-7137
Lisa Miller	83 Ridge Rd. Tenants Harbor	C	372-6941
Preston D Ames	matinicus Island	C	366-3937
Douglas Radcliff	143 Cline Rd Spruce Head	D	594-1909
[illegible]	11 Eagle Quarry Rd. Spruce Head		593-9170

Advocates for Wild, Healthy Oceans

New England Regional Office
371 Fore Street #301
Portland, ME 04101

207.879.5444 Telephone
207.879.5445 Facsimile
www.oceanconservancy.org

Formerly the Center for
Marine Conservation

Comments on the whale hearing in Portland, April 7, 2005

The Ocean Conservancy

Presented by John Phillips, New England Regional Director for The Ocean Conservancy with offices here in Portland. TOC has nearly 1000 members in Maine and over 10,000 in New England as a whole.

TOC has been involved in this issue for many years and our Director of Marine Wildlife, Nina Young, serves on the Atlantic Large Whale Take Reduction Team. As a marine conservation organization and Take Reduction Team member, we are committed to doing as much as we can to ensure the long term survival of these magnificent animals.

I will highlight a few of our concerns tonight. In addition, TOC will be providing detailed written comments on the DEIS.

The DEIS contains 6 alternatives, and although we are not completely satisfied with any of them, # 2 comes the closest to what we think is needed to provide the strongest possible protection.

In the new regulations, NMFS should use all the tools available to develop a clear strategy to reduce entanglement. For example, the effectiveness of weak links needs to be closely examined, vertical lines should be reduced, and sinking line should be increasingly used.

We are committed to positive solutions to whale entanglement. We are very encouraged by the Maine lobster industry's interest and commitment to a pilot program designed to replace traditional floating line with whale safe sinking groundline and have high hopes that this effort will help to diminish the entanglement threat. We are working in close cooperation with the State, the Maine Lobstermen's Association, and the Southern Maine Lobstermen's Association to secure funding, both private and government, to assist fishermen with line replacement.

Thank you for the opportunity to comment on this important plan for large whale conservation and protection.

The Ocean Conservancy strives to be the world's foremost advocate for the oceans. Through science-based advocacy, research, and public education, we inform, inspire and empower people to speak and act for the oceans.

Printed using soy-based ink on recycled paper

APRIL 6, 2005

Derrick Beal – Alternative 1
No Float Rope

HANDWRITTEN COMMENT
FROM MATHIAS, MAINE

Directed Shark Fisheries, Inc.
(DSF)
A Consulting Company

Comment from a shark fishing vessel operator who wished to remain anonymous.
Copied and edited by
Russell H. Hudson
President / DSF
March 30, 2005
Complete version

Comments: On Right Whale closed area to nighttime gillnetting.

I, _____ have fished the waters of the US East coast from Florida to Maine for 30 years longlining, gillnetting and rod & reel fishing. The only interaction I had with whales and fishing gear was twice whales swam thru my 200 pound line on a tuna fishing rod & reel and the line broke both times instantly, releasing those marine mammals unharmed. This was in an area where hundreds of whales were present in New England waters.

I now fish exclusively in Florida waters and have since 1993 been bottom longlining and sink gillnetting for small coastal sharks and have never interacted with a whale or even saw one and my eyes are very good on the sea. I finally was informed why! The whales are migrating way inside my fishing area. See page 254 in Predraft HMS FMP, titled Gillnet fishery.

My comments & proposals:

Open Florida Whale area to nighttime fishing. According to Whale team, whales travel shoreline of Florida, inside three miles. So have buffer zone of 5 miles from beach open to sink gillnets with anchors, strobe light, breakaway links and require boat to stay with gear.

Limit entry of gillnetting sharks to vessels with landing history with both sink gillnets and drift nets.

Make distinction between driftnets, strike nets and finally small mesh sink nets.

Open night time fishing for sharks in closed whale area at area greater than 5 miles from shore for shallow sink gillnets. Same as used in NE Region area for shallow nets not more than 8 feet high with breakaway links. Require VMS and vessel to stay with gear and strobe light.

PO Box 11604
Daytona Beach, Florida 32120-1604
(386) 239-0948 Voice (386) 253-2843 Fax
DirectedShark@aol.com

Finally, make a distinquished definitiion between relationship of sink gillnet with anchors on ends, with shallow meshes and drifting deep gillnets.

Limit entry of gillnetting for sharks to vessels with history of landings with both driftnets and sink gillnets.

Name of captain withheld due to fear of reprisal.

PO Box 11604
Daytona Beach, Florida 32120-1604
(386) 239-0948 Voice (386) 253-2843 Fax
DirectedShark@aol.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 13 2005

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Ms. Mary Colligan
Assistant Administrator for Protected Resources
National Marine Fisheries Service- Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

Dear Ms. Colligan:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA) and the National Environmental Policy Act (NEPA), the Environmental Protection Agency (EPA) has reviewed the "Draft Environmental Impact Statement for Amending the Atlantic Large Whale Take Reduction Plan (ALWTRP): Broad Based Gear Modifications" (DEIS) (CEQ# 050076).

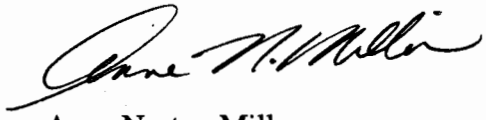
The National Marine Fisheries Service (NMFS) is proposing changes to the ALWTRP to further reduce the risk posed by commercial fishing gear. Specifically, the purpose and need for action is "to provide additional conservation and protection to Atlantic large whales, including North Atlantic right whales, North Atlantic humpback whales, and fin whales." Further, the "need for the (proposed) revisions under consideration is demonstrated by the continuing risk of serious injury and mortality of Atlantic large whales due to entanglement in commercial fishing gear." The alternatives under consideration seek to reduce large whale entanglement by implementing measures that would bring other trap/pot fisheries not currently regulated under the ALWTRP under the plan; reducing the profile of groundlines; and mandating gear modifications to vertical lines.

The DEIS identifies Alternatives 3 and 6 as the preferred alternatives, and states that NMFS will be choosing one preferred alternative in the FEIS. In accordance with our policy on reviewing and rating of EIS documents, we have reviewed and rated the document an LO- Lack of Objections for both Alternatives 3 and 6. However, there is an issue that should be further clarified and addressed in the Final EIS (FEIS).

The DEIS states reasonable and prudent measures were developed and incorporated into the current ALTWRP that avoid the likelihood of jeopardy to right whales. It is not clear whether the proposed changes to the ALWTRP as described in the alternatives would alter these previously consulted upon reasonable and prudent measures. Accordingly, the FEIS should discuss the need for additional consultation to address the potential impacts of the revised ALTWRP on right whales and other listed species.

We appreciate the opportunity to review this DEIS. We also look forward to reviewing future documents related to this project. The staff contact for this review is Matthew Harrington and he can be reached at (202) 564-7148.

Sincerely,



Anne Norton Miller
Director
Office of Federal Activities

cc: Steve Kokkinakis; NOAA Office of Strategic Planning
John Hansel; NMFS Office of Sustainable Fisheries
David Keys; NMFS Regional Administrator Office

NORTH CAROLINA MARINE FISHERIES COMMISSION
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

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RUSTY RUSS
Shallotte

May 16, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
Northeast Region
1 Blackburn Drive
Gloucester, MA 01930

ATTN: ALWTRP DEIS

Dear Ms. Colligan:

The North Carolina Marine Fisheries Commission (NCMFC) appreciates the opportunity to comment on the National Marine Fisheries Service (NMFS) Atlantic Large Whale Take Reduction Plan (ALWRP) draft environmental impact statement (DEIS). First, the NCMFC would like to express our appreciation to the NMFS for holding two public scoping meetings in North Carolina. We also support the intent of NMFS to minimize the serious injury and mortality of large whales (right, humpback, and fin) from entanglement in commercial fishing gear. The NMFS preferred rules would have a substantial impact on North Carolina fishermen and their businesses. The two North Carolina commercial fisheries that would be most impacted by the proposed rules are the gill net fisheries and the black sea bass pot fisheries.

The proposed rules would drastically affect two nearshore gill net fisheries. A fall fishery for spot and a spring fishery for sea mullet (kingfish) and weakfish have existed for numerous years and are very important for small-scale fishermen. The nets used are generally short length, 150 to 200 yds, and utilize small mesh webbing (less than 3 inch stretched mesh). Boats participating in the fisheries generally range in size from 16 to 25 ft. Nets are set as close to the beach as possible, anchored by a dead weight on the

inshore end, then set with anchors on the offshore end. Nets are set late in the evenings and fished early in the mornings. If the wind increases and/or the surf becomes rough before net retrieval, the use of a dead weight on the inshore end allows nets to be pulled out of the surf zone into safer waters for retrieval. Requiring the use of an anchor of any type on the inshore end jeopardizes the safety of the fishermen.

The current NMFS rule requiring a 22 lb Danforth-style anchor is excessive and unnecessary for these fisheries. Since the nets fishermen operate are within approximately 200 yds of the surf zone and since North Carolina has shallow waters adjacent to our shoreline, the chances of an encounter with a large whale are remote. Also, the fisheries primarily utilize light webbing in short lengths, which would decrease the likelihood of a serious injury or mortality to large whales. Since the DEIS, published in February 2005, references and cites the 22 lb anchor requirement, the NCMFC recommends that NMFS utilize this opportunity to modify their current rules for these fisheries.

The NCMFC also believes the 1,100 lb weak link for these shallow water fisheries are unnecessary. North Carolina fishermen, who serve on the Atlantic Large Whale Take Reduction Team (TRT), have performed their own testing of breaking strengths for anchor lines. We believe that the 1,100 lb tension is excessive, and recommend instead 600 lb weak links for these two shallow water fisheries.

The NCMFC recommends that NMFS exempt the North Carolina spot and sea mullet/weakfish shallow water Atlantic ocean gill net fisheries from the 22 lb Danforth-style anchor requirement, especially on the inshore end, and the 1,100 weak link requirement. We recommend that these fisheries be allowed to operate from the beach out to 300 yds with 600 lb weak links and be allowed to use a dead weight on the inshore end of the net and an anchor less than 22 lbs on the offshore end.

The other North Carolina fishery that will be heavily impacted by NMFS' preferred options is the black sea bass pot fishery. There are currently 25-30 sea bass pot fishermen in North Carolina. They generally fish three to six months out of the year. The pots they use are smaller than those used from Virginia northward, which try to stimulate bass habitat to attract fish. Instead North Carolina fishermen use bait to attract bass into pots. Generally about one-half of North Carolina's fishermen use ground lines and fish overnight sets. The rest use one pot per buoy line, use fewer pots, and do not leave the pots in the water overnight. Depending on the number of pots, North Carolina day fishermen will fish their pots up to three times per day before retrieving them. The North Carolina fishermen that use groundlines in the bass pot fishery make them very short (less than 30 ft).

The NMFS preferred option of requiring a sinking groundline for the pot fishery will have a tremendous negative effect on North Carolina's black sea bass fishermen that use groundlines. The black sea bass pots are set over live rock and the sinking groundlines will have a high likelihood of becoming entangled on coral or live rock. A large proportion also will likely be cut off, producing ghost pots.

The NCMFC strongly opposes the proposed sinking groundline measure. North Carolina fishermen cannot operate on black sea bass fishing grounds using a sinking groundline. Those that presently use groundlines will have to shift to a one pot per buoy technique, replacing a relatively short ground line with 100 to 150 feet of vertical line in the water column.

The NCMFC knows of no whale interaction with North Carolina black sea bass pot fishery gear. As with the bottlenose dolphin take reduction measures, North Carolina fisheries appear to be grouped with other fisheries for management purposes, but yet are distinctly different from the fisheries for which the measures were intended. Instead of sinking groundlines, the NMFS should consider requiring North Carolina bass pot fishermen to use lower profile lines. These lower profile lines could be created at a relatively low cost by weaving lead into polypropylene lines, which would keep the lines approximately 2 ft or so off the live bottom.

The NCMFC hopes the NMFS will give serious consideration to these comments. Thank you again for the opportunity to comment.

Sincerely,

James A. Johnson, Jr.
Chairman
North Carolina Marine Fisheries Commission

/lr

Cc: Senator Elizabeth Dole
Senator Richard Burr
Representative Walter B. Jones, Jr.
Representative Mike McIntyre
Representative G.J. Butterfield
Bill Hogarth – Assistant Administrator, for Fisheries
NCMFC
Preston Pate – Director, Division of Marine Fisheries
Frank Crawley – NC Attorney General
Jess Hawkins – NCMFC Liaison

Mary Colligan, NMFS
ATTN: ALWTRP DEIS,

May 16, 2005

Dear Mary,

Please accept the enclosed 33 letters from 34 individuals who are in favor of stricter regulations on fishing gear, in order to avoid any further harm to the endangered right whale.

they have been faxed on May 16, 2005, and this is the hard copy, with a May 16, 2005, postmark.

Please keep me informed on any further actions by the NMFS concerning the right whale, including future comment periods, regulation proposals and regulation decisions.

Yours truly,

Tyla Matteson
4896 Burnham Rd.
Richmond, VA 23234
phone: 804-275-6476
email: tmatteson1@mindspring.com

May 15, 2005

Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, Massachusetts 01930

Example of Form Letter B

ATTN: ALWTRP DEIS

Dear Ms. Colligan,

I wish to submit comments on the six options for reducing risk to the endangered North Atlantic right whale. None of the proposed options in the draft Environmental Impact Statement is sufficient to protect the whale. I ask that you strengthen the proposed regulations, as is your mandate under the Endangered Species Act. However, in the event that you cannot do this, I believe Option 2 is the most protective choice.

The right whale is one of the world's most endangered species, and its potential biological removal number is now set a zero, meaning that no animals may be removed, in order to allow the species to regain a sustainable population.

Therefore, the timeline proposed for the year 2008 for fishermen to implement new fishing gear regulations is not acceptable. Rather, immediate action is required. Since the whales do not adhere to a strict route, mandatory gear modifications must be set up coast wide and year round.

Dynamic management which requires modification or removal of fishing gear when a group of whales is sighted in a fishing area must be in the plan. The issue of vertical lines needs to be addressed, so when the whales become entangled, the weak links on the buoy lines will break.

Thank you for your attention to these requests, which are essential for the recovery of the North Atlantic right whale. Any delay will imperil the survival of this unique species.

Yours truly,

Thomas D. Ellis
327 Brightwood Avenue
Hampton, VA 23661

I encourage you to act on this matter quickly, as the fate of this magnificent animal depends on the decisions you make today! Tomorrow will be too late. Best wishes, T.E.

The following is a list of signatures of concerned citizens who are in agreement with these attempts to help the North Atlantic right whale's survival.

Name: Kathy Erskine
Address: 1016 Blackburn Bluff
Charlottesville, VA 22901

Name: Diane Boyer
Address: 2513 Woodland Dr
Charlottesville, VA 22903

Name: Carolyn Merrick
Address: 3145 Beaumont Farm Rd
C'ville, VA 22901

Address: Jay Fennell
P.O Box 250
Free Union, VA 22940

Name: McKenzie Inigo
Address: 4219 Free Union Rd
Charlottesville, VA 22901

Name: Leslie Scholz
Address: 1617 Inglewood Dr.
Charlottesville, VA 22901

Name: Bethany W Robinson
Address: 4471 Rockfish Gap Trpk.
Charlottesville, VA 22903

Name: Claire Culver
Address: 1338 Dunlora Dr
Charlottesville VA 22901

Name: J. Horn
Address: 2704 Jefferson Pk Ave
C'ville, VA 22903

Name: Kathy Smyth
Address: 1673 England Oak Cir
Cville VA 22911

The following is a list of signatures of concerned citizens who are in agreement with these attempts to help the North Atlantic right whale's survival.

Name: Susan Wheeler
Address: 840 Welsh Run Rd
Ruckersville, VA 22968

Name: Melissa Ronayne
Address: 1301 McCauley St
Crozet VA 22932

Name: Maureen Hegarty
Address: 624 C Ridge St.
Charlottesville Va. 22902

Address: 360 ARDWOOD RD
Earlysville, VA 22936

Name: Anne DeVault
Address: 2230 Brandywine Dr.
Charlottesville, VA 22901

Name: [illegible]
Address: 1189 BUCK MTN RD
EARLYSVILLE, VA 22936

Name: Marie C Steele
Address: 2572 Holkham Dr
Charlottesville VA 22901

Name: Scott Nunnally
Address: 3762 Clark Rd.
Crozet, VA 22932

Name: Donna Frye
Address: 146 Tanglewood Dr.
Barboursville VA 22923

Name: Suzanne Nesbit
Address: P.O. Box 364
Ivy, Va. 22945

[illegible]
2541 Taylors Gap Dr.
North Garden Va 22959

[illegible]
140 Lenox Hill Rd.
Charlottesville, 22903

Martha [illegible]
4543 GARTH ROAD
CHARLOTTESVILLE, VA. 22901

Liz Hanson
1450 Old Ballard Rd
Charlottesville VA 22901