

Via Email

April 27, 2012

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Dear Kate, Mary, and Dave,

The Atlantic Large Whale Take Reduction Team's (TRT) conservation representatives, Center for Biological Diversity, The Humane Society of the United States, Whale and Dolphin Conservation Society, Defenders of Wildlife, Caroline Good, and the International Fund for Animal Welfare, submit the following comments on the proposals presented during the TRT's April 11, 2012 conference calls. At this point, we are only able to endorse the closures proposal submitted by our groups on February 3, 2012 and the proposal by Kraus *et al.* for Jordan Basin. We believe additional risk reduction measures are required beyond these closures, but for the reasons described below, including outstanding questions regarding the Industrial Economics (IEc) model and serious concerns regarding the adequacy of the proposals in reducing risk, we are unable to support any of the other individual proposals as they are currently structured.

Our primary concerns with the current alternatives and analysis are:

- 1) NMFS still has not identified a target level of risk reduction necessary to reach PBR.
- 2) The model results continue to entirely exclude consideration of previously exempted areas, over-inflating the percentage of vertical line that will be removed from the water under various scenarios.
- 3) The geographic and temporal scale of the model, as well as the combined consideration of right whales and humpbacks, swamp the results, making it impossible to determine when and where the greatest risk reduction is necessary and can be achieved.
- 4) Under NEPA, the agency is required to consider a range of alternatives rather than pre-determining the outcome it will select. Under the analysis to date, the IEc model has identified only minimal differences in risk reduction between the various proposals. To remedy this situation and have any hope of meeting the requirements of the MMPA, NMFS must also consider alternatives that will have a substantially greater risk reduction than those currently being evaluated.

A. NMFS's Scoping Process and the MMPA's Mandate

We once again raise a central concern with the ongoing TRT revision process – NMFS has not identified what level of vertical line reduction or reduced co-occurrence score is necessary to reduce right whale and humpback whale mortality and serious injury to below their respective Potential Biological Removal (PBR) levels. As you are aware, the MMPA requires that the Atlantic Large Whale Take Reduction Plan (TRP) “shall include measures the Secretary expects will reduce . . . mortality and serious injury to a level below the potential biological removal level.” 16 U.S.C. § 1387(f)(5)(A). Until the TRT is given a specific mandate to meet this level of mortality and serious injury reduction, the Plan will continue to fail to meet the command of the MMPA.

We appreciate the agency's efforts to provide the team with its estimates of both the percent vertical line reduction and the change in co-occurrence score for each proposal, though as discussed below, we have concerns with the modeling approach and the way the results have been presented. The agency has now asked us to choose among various proposals, which, according to the IEc analysis, range from reducing the number of vertical lines by 24 to 37 percent in the Northeast, and reducing the co-occurrence score by 27 to 37 percent, not including consideration of the substantial exempted areas. Given the current state of the analysis, we are unable to fully endorse any of the specific proposals because we lack a basis for determining whether the vertical line changes in these proposals will meet the requirements of the MMPA.

As we noted in our previous comments, based on the most recent final Stock Assessment Report (SAR), right whale serious injury and mortality is double PBR (serious injury and mortality is 0.8, while PBR is 0.4) and serious injury and mortality for humpbacks is nearly triple PBR (serious injury and mortality is 3.0, while PBR is 1.1). As not all carcasses are detected or retrieved for necropsy, the SARs acknowledge that this represents a minimal record of mortality and serious injury to these species. However, even these numbers suggest that, at a minimum, a 50% reduction in entanglement risk may be necessary to sufficiently reduce serious injury and mortality for right whales due to entanglements alone to within PBR. While a 50% reduction in risk does not necessarily equate to 50% reduction in endlines, the agency's rule must rationally explain why NMFS “expects” the endline reduction measures it proposes “will reduce, within 6 months of the plan's implementation,” serious injury and mortality to below PBR. 16 U.S.C. § 1387(f)(5)(A).

We further note that the range of both co-occurrence score reduction and vertical line resulting from the current proposals is quite limited (i.e., between a 24 and 37 percent reduction in lines and a 27 and 37 percent co-occurrence score reduction for the Northeast). These reductions do not come close to the PBR target just discussed, let alone address the serious injuries and mortalities that admittedly go unaccounted for in the SARs. In order to meet the requirements of the MMPA as well as NEPA's mandate to consider a reasonable range of alternatives, NMFS must develop at least one additional proposal that meets this standard.

B. Comments on the Vertical Line Assessment Model

While we fully agree that NMFS must expedite the TRP revision process, and indeed that vertical line risk reduction is long overdue, we remain seriously concerned with several aspects of the IEC Vertical Line Assessment Model. The Vertical Line Assessment Model was ostensibly developed to provide a tool to evaluate different proposals for reducing the number of vertical lines in the water and thus the entanglement of large whales. The IEC team tasked to develop this model focused on basic metrics of gear and whale occurrence to evaluate both changes in vertical lines under different management scenarios and co-occurrence index scores to rank the spatio-temporal overlap of whales and gear. It is clear that a great deal of work has gone into the model especially assembling the fisheries data, and we greatly appreciate this effort.

Unfortunately, the model and presentation of the model results remain inadequate to reasonably assess the impact of different management scenarios and it is clear that more work is required. Below, we discuss several ongoing problems with the model and, where possible, offer specific suggestions for improvement. Until these problems are rectified, we are simply unable to evaluate the impact of the various proposals, or support any proposal or combination of proposals outside of the clearly risk-adverse seasonal closures that we and Scott Kraus have proposed. Notably, we do not believe that resolution of these problems would require undue delay and we therefore urge NMFS to maintain its current schedule for completion of proposed and final rules despite the need for modifications described below.

Reporting of Model Results

Despite various refinements, IEC has presented all of the vertical line assessment results in a manner that precludes team members from seeing sufficiently detailed spatial and temporal information to allow an appropriate in-depth review of the material. At no time has IEC or NMFS provided an updated spreadsheet showing specific model baseline figures or model results in the unit of analysis (i.e. monthly for each analysis cell). Results have always been provided in a summarized format.

When IEC averages results across space and time this obscures the details needed for team members to effectively assess different proposals. For example, vertical line reduction results have been provided on the spatial scale of the lobster management zones which obfuscates the individual values of actual units of analysis (5 minute cells). As a result, it is impossible to deduce the fine scale variability in the Outer Cape zone with a 51.2% reduction in vertical lines under the NMFS plan. Was the value of every analysis cell 51.2%? Would reductions in vertical lines be spread evenly across the whole zone? Are there analysis cells with a 5% reduction and others with a 90% reduction? There is not even a basic histogram documenting the frequency and spread of the data. In the case of the co-occurrence scores, the model documentation indicates that the index scores range from “zero to 1 million” yet the highest category on the presentation legends is > 1000 which again masks the presence of extremely high co-occurrence cells that would seem obvious targets for enhanced management.

In addition, the density of vertical lines changes by many orders of magnitude across seasons and areas. In particular, the estimated number of vertical lines in the Maine exempt area is more than 50% of the estimated average baseline for the entire northeast region. Due to the sheer size of the inshore Maine fishery, all results should be reported for the Maine exemption area even if this is a pro-forma assessment that may, or may not, involve proposing management changes. When reporting the percent change across the northeast for the different proposal assessments, IEC should have included the percent decline inclusive of the exempted area to accurately capture the actual in-water percentage reduction. Finally, by reporting only percentage declines and not total lines to be removed team members are unable to easily evaluate the changes in the total number of lines that would occur under the different proposals.

Further, in the analysis, the “seasons” chosen for evaluation are artificial and do not reflect the time in which measures being proposed would be in effect. Although IEC attempted to achieve a more fine scale analysis in its April 20, 2012, report to the team, in that assessment, the co-occurrence scores for the Northeast proposals are evaluated by four artificially defined seasons: January-March (winter), April-June (spring), July-September (summer) and October-December (fall). The seasons reported do not necessarily match the time frames proposed for management measures, thus making it difficult to determine the reduction obtained from the proposed measure. For example, Scott Kraus’ proposal for Jordan Basin has a closure effective during the months contained both in the fall and winter “seasons” (i.e., November/December are fall and January is winter). But the closure is not in effect in September (fall) or February and March (winter) so the gain reported from the closure during part of the season is masked by lumping it with the months in which the closure is not in effect. To fully understand the impact of any proposal (and thus whether or not to support it based on risk reduction), NMFS must report risk reduction in the months or within seasons in which the measures take place.

Even with regard to the proposals we support (i.e., the conservation proposal and that of Kraus *et al.*, for Jordan Basin), we note a significant lack of clarity in the analysis. In the material of April 20th, (at slide 8) we note that the co-occurrence score for the Kraus proposal for a seasonal closure in Jordan Basin from November 1 to January 31 shows a change in co-occurrence score for humpback whales that indicates it is *more* protective in the seasons in which closures do not apply than it is in the season when closures apply (e.g., a 37.7 percent change in co-occurrence in the summer when the closure is not in effect but only a 29.8 percent reduction in the “fall” when it is in effect). This difference is not explained. If it presumes the substitution of one plan (e.g., NMFS) for another (e.g., the Kraus proposal to NMFS) then this is not clear. These sorts of inconsistencies make it difficult to reasonably provide any quantitative rationale for preferring one proposal over another.

Further, for the mid-Atlantic and southeast, which are discussed below, there are only 3 periods of analysis: December-March, November-April and September-May. These seasons neither match the times in which risk reduction is required, nor do they comport with seasons evaluated elsewhere. There is no explanation provided for these choices and no opportunity to see analyses utilizing different time periods that might better match management approaches. Our ability to reasonably judge the efficacy of one proposal over another (and support some but not others) is thus compromised.

The lack of more detailed reporting of the assessment results is a major impediment to team members' ability to assess impacts of proposed management schemes in each area and in each month of the year. Focusing on overall reductions in vertical lines or overall co-occurrence scores conceals the inherent variability in the results that that team members must understand before advising NMFS on the different proposals. It is critical to pay close attention to localized co-occurrence scores or vertical line reduction percentages since they may result in highly variable impacts to both fishers and whales. Finally, IEC's general failure to provide some basic updated of documentation (even a quick cheat sheet) explaining the methods used to assess the different proposals caused a great deal of confusion and served to undermine confidence in the reliability or robustness of the analysis.

Comments on the Assessment Methodology Used to Evaluate Proposals

When assessing the closure proposals, IEC made assumptions regarding the fate of fishing activity in the proposed closure zones, assuming either zero, partial, or full relocation of effort inside the closures. We appreciate that some assumptions need to be made to complete the analysis but we feel that assuming an omni-directional relocation of gear out of these zones is not realistic. In addition, it seems unrealistic that the expanded Cape Cod Bay closures would result in a total removal of gear. Perhaps more in-depth conversations with fisheries managers and fishermen from these areas could provide more detail as to what reaction vessels would have to these seasonal closures and thus present a more reliable picture of the likely fate of gear and reductions in risk that may be likely.

Further, NMFS and IEC must apply more consistent methodology to properly account for changes that Rhode Island and Massachusetts indicated are likely in the wake of the ASMFC proposed trap allocation reductions. As an initial matter, these proposals are occurring outside the TRT process and therefore must be considered as part of the environmental baseline in any NEPA analysis, not as part of the proposed action. If they occur, they will occur under any alternative considered to meet the requirements of the MMPA, whether it be the NMFS proposal, state proposals, or closure proposals. Furthermore, to the extent they are considered, the agency must recognize that the reductions are proposed, not final, and they would be phased in over a number of years and possibly include some latent effort. These details need to be better fleshed out in the DEIS. As currently analyzed, the basis for risk projections based on Addendum XVIII to the fishery management plan seems arbitrary. For example, the Rhode Island proposal states that this Addendum would result in an eventual reduction in vertical line use of 50 percent in LMA 2 over 6 years. At the same time, the Massachusetts proposal projects a 25 percent reduction in lines over a 6 year period in the LMA 2. Both are clearly not correct (*i.e.*, the same area in the same time frame can't have a reduction that is both 25 percent *and* 50 percent; it is parsimoniously one or the other).

Finally, co-occurrence is a useful first step in identifying areas where entanglements can occur. It is fair to assume that the opportunity for entanglement is greater in times/areas when whales encounter more gear. However, the co-occurrence score described by IEC as "a measure of the relative risk of whale entanglement" greatly overstates the actual information the score can provide. While the co-occurrence score is useful, it falls far short of offering a proxy for risk assessment since there are too many uncertain variables that are not included (as IEC indicates in

the model documentation). Right and humpback whales are well known to cluster during feeding and social events and some well studied habitats can be clearly identified as hotspots for such activity at certain times of year. Yet, these behavioral considerations are not taken into account even though they have the potential to dramatically influence “relative risk” of entanglement.

Uncertainty and Sensitivity Analyses

IEc does not provide information regarding the underlying uncertainties in the model and makes no attempt to place confidence bounds on the results. This is a major hurdle in trying to understand when a reduction or increase in vertical lines or co-occurrence score is real (significant) or within some measure of error/uncertainty. In addition, one straightforward method to consider for assessing the model’s sensitivity is an individual parameter perturbation (IPP) analysis. This technique allows you to evaluate the impact of shifts in parameter inputs and identify those inputs with the greatest influence on model output. Usually, you perturb (artificially adjust) input parameters by an amount equal to their range of error – although 10% has been used as a default in some analyses (Essington, 2003). IPP assumes no significant interaction effects between input parameters which would make it appropriate here. Further, it would be prudent to evaluate the sensitivity of low whale effort cells explicitly since these areas are hypothetically highly sensitive to the sighting of even a single whale. It is important to bear in mind that the sighting of a single whale in a low effort cell would not increase SPUE by a small amount but instead SPUE would increase quite dramatically in that cell due to low search effort.

Data Used in the Model

As we have repeatedly noted, the model fails to incorporate the most comprehensive or up to date data for either fishing effort or whale occurrence. With regard to the whale sightings data, there are areas in the Gulf of Maine and in the mid-Atlantic with little to no search effort leaving many areas with “zero” values for whale occurrences. Without additional effort or data it is impossible to determine which are false and which are true zeros. However, given that large whales rank amongst most mobile species on earth, it is illogical to maintain an underlying assumption of zero whale areas in the Gulf of Maine. A number of options are available to IEC to address this issue including the adoption of the proposal by Bob Kenney for using a non-zero background level and the inclusion of existing opportunistic data. Opportunistic data could be added to the model by using proxy effort either derived from the analysis cell the sighting was made in or “borrowing” generic SPUE from environmentally similar nearby areas (Kaschner et al, 2006 http://www.int-res.com/articles/meps_oa/m316p285.pdf). Or, an interpolated whale surface could be created using both on-effort and opportunistic data sets. These may not offer the most elegant solution but they would provide a much richer dataset for analysis and it would be possible to explicitly evaluate the sensitivity of the model to the addition of this data.

Finally, the model does not include the most up to date survey data from fisherman in the state of Maine with regard to their lobster fishing effort and gear configurations. This is an especially important data set since nearly 2/3 of all vertical lines are found off the Maine coast.

Resolution of the Analysis

The 10-minute grid cell chosen for analysis is much too coarse in some coastal areas such as nearshore Cape Cod. Both fishing activity and whale movements exhibit extreme patchiness when examined on fine scales. In offshore areas with more dispersed fishing and whale activity this grid size might be more appropriate but inshore the resolution could both overstate co-occurrence in some areas and understate it others. This is especially important since coastal areas contain orders of magnitude more gear than offshore waters.

Due to the problems with the current model identified above, we lack confidence that the analysis of the proposals presented during the April 11, 2012 TRT conference call fairly and accurately reflect the proposals' impacts. Accordingly, we are unable at this time to support any of the various proposals, outside of the requested closures.

C. Availability of a More Accurate Model of Risk

Recently, Dr. Hauke Kite-Powell presented our groups and others with an alternative model of risk undertaken for the Maine Lobstermen's Association (MLA) that we believe will soon be provided to the agency. Dr. Kite-Powell gave a brief synopsis of his approach to the TRT at its 2012 meeting. The model that has been further developed provides a very transparent means of assessing risk. It uses data supplied by the state of Maine and its fishermen, and incorporates both systematic and non-systematic data sources (*e.g.*, incorporating telemetry data and data from more opportunistic sources to reflect presence/absence). His model does not yield no-risk (zero) areas and appears to provide a more meaningful and reliable way of considering risk at a finer temporal and geographic scale. Notably, the model yielded a much lower projection of risk reduction from the Maine proposal than that calculated by NMFS. We say this not to cast additional aspersions on the Maine proposal (indeed the MLA is to be commended for asking for an honest review); but rather to point out that this model has assumptions that are clear, readily understandable and able to incorporate data that the IEC model will not. This indicates to us that the IEC model that NMFS is using is not the best one to consider.

Should the model used by Dr. Kite-Powell be applied in other areas along the east coast, we believe a much more robust and reliable picture of risk would emerge and thus allow for more appropriate targeting of management measures. As the agency is well aware, both the MMPA and the ESA require the use of the best scientific data available. *See Brower v. Evans*, 257 F.3d 1058, 1070 (9th Cir. 2001) (applying the "best available evidence" standard to MMPA decisions); 16 U.S.C. § 1536(a)(2) (ESA requiring the use of "best scientific and commercial data available" in consultations). We support examination of the Kite-Powell model for these reasons, and as stated above, do not believe it should substantially delay NMFS's progress on its DEIS or proposed rule.

D. Comments on Proposed Management Measures

Our groups provided NMFS with a proposal on February 3, 2012 that has been subjected to analysis under the co-occurrence model developed by Industrial Economics (IEC). We continue to support this proposal as well as the proposal by Kraus *et al.* for Jordan Basin. While

we continue to have concerns with the validity of the projections of reductions in vertical lines and co-occurrence scores as described above, the analysis provided to the TRT for our April 11, 2012 conference call clearly shows that our proposal provides the greatest measure of risk reduction (see slide 41, April 11, 2012 presentation). Additional materials provided to the TRT on April 20th analyze effects by season. This analysis further illustrates the greater risk reduction realized in our proposal for the seasons in which right whales are most likely to be present in the areas covered by our proposed closures of key high-use habitats.

We also note that the NMFS did not consider combinations of proposals (*e.g.*, our various proposals for seasonal closures combined with the Kraus proposal for Jordan Basin, which we supported). This also leaves wanting the analysis of possible risk reduction scenarios. We specifically request that, in its alternatives analysis, NMFS evaluate our closures and the Kraus proposal for Jordan Basin together to be overlaid on top of the most risk adverse options. Further, as noted above, due to the very limited range of co-occurrence score reduction resulting from the current proposals, we request that NMFS develop at least one additional proposal that much more substantially reduces vertical line/co-occurrence score, to provide a sufficient range of alternatives and to meet MMPA standards for reducing serious injury and mortality.

We now also offer additional comments on proposals submitted by other parties on the TRT and point out times and areas where there are either no, or insufficient, risk reduction proposals.

Comments on State Proposals for the Northeast

We cannot support providing states with additional exemptions from risk reduction measures. The status quo is clearly inadequate and further risk reduction is necessary. We have long disputed NMFS's proposal to exempt Maine state waters from vertical line risk reduction requirements simply because these waters were exempted from sinking groundline requirements in the prior rulemaking. Any exemption must be fully supported by a biologically-based rationale, and we have seen no such rationale for any proposed exemptions related to vertical line reductions. While one may argue that a groundline exemption may be justified on the grounds that transiting whales may not be diving to the bottom in rocky areas and thus would not encounter groundline in the water column; vertical line goes to the surface and can be encountered by any whale swimming through the gear field, regardless of the depth of the whale's travel. As such, all waters in which there is a dense gear field should be regulated under risk reduction rule.

The problem with exempting waters of Maine in new rulemaking is clearly illustrated by the April 11, 2012 presentation to the TRT ("ALWTRP Vertical Line Model: Analysis of Current Proposals"). Slide 4, entitled "Updated Baseline Results," shows that there are actually more vertical lines in the currently exempted waters than there are in the area immediately adjacent (*i.e.*, 246,000 vertical lines in the exempt waters—largely in the state of Maine—and 205,000 vertical lines in Lobster Management Area 1). This means that any whale entering these waters has a substantial likelihood of becoming entangled, with some percentage of those entanglements likely leading to serious injury or mortality. We continue to maintain that this area should not be exempted from vertical line risk reduction measures and again request that the

agency analyze the reduction in risk from extending management measures proposed by NMFS further inshore in Maine. We believe NMFS must analyze the imposition of requirements for vertical line risk reduction in currently exempted waters of Maine in order to evaluate a reasonable range of alternatives in its NEPA analysis.

As noted above, the weaknesses in the model confound efforts to understand risk reduction that is realistic to expect from any single state proposal or even the proposals combine with the NMFS proposal. In addition to the examples above, we note that the comparison of line reduction and co-occurrence score reductions are lower for the combined state proposals than for any individual state (*e.g.*, slide 40 of the PowerPoint from the March call shows a 27 percent change in co-occurrence score from the “NMFS + All State” analysis but it a 34.5 percent reduction for New Hampshire alone, and a 37.2 percent reduction for Rhode Island alone). This may be due to the NMFS substituting its own proposal for any state not being individually analyzed, but this sort of rationale is never explained. Failure to explain the basis for conclusions regarding purported risk reduction undermines any confidence in the reliability or robustness of the analysis and removes any concrete basis for supporting these proposals.

Comments on the Mid-Atlantic

We must once again raise the issue that humpbacks face a much higher risk from gillnets; and gillnet risk is virtually unaddressed in any of the NMFS proposals, including omission of consideration of LMA 4. In a 2012 presentation to the TRT (“ALWTRP Vertical Line Model: Analysis of Current Proposals” at slide 6), NMFS calculated that there are 9,500 vertical lines in the non-exempt waters of the mid-Atlantic. While it is not clear whether this includes both gillnet and trap/pot lines, this is a considerable number, given the extremely limited, to virtually non-existent, sighting effort in that area. The only plan for risk reduction in the mid-Atlantic is to improve gear marking so that the source of entangling gear can be traced to area and fishery, and to consider increasing visual sightings or passive acoustic monitoring in the mid-Atlantic. Certainly we support this as a bare minimum. This past winter, the Virginia Aquarium documented an increased number of young humpbacks in the waters off Virginia, according to NMFS data bases, this age class is more likely to suffer entanglement. Yet despite the reliable annual sightings of 58 unique individual humpbacks reported from 46 whale watch cruises and 11 dedicated research surveys, this effort is not reflected in the SPUE model or any data base used to assess risk in this area where gillnet effort is heavy. This inability of the model to properly reflect habitat use undermines the value of co-occurrence.

We also believe that the NMFS should propose risk reduction for gillnets and should consider requiring increased trawl lengths for trap/pot gear similar to requirements in the northeast. This seems particularly important considering the likely increase in gillnet effort resulting from increases proposed for the dogfish quota and the inability of the NMFS proposed plan to address sudden shifts in effort as happened in the southeast with blue crab effort.

Comments on Risk-Reduction in the Southeast

In January 2012, the TRT discussed both a cap and a trigger to address fishing effort creep in the Southeast. However, discussion was limited in part due to the extant seasonal

closure to gillnets that is in place and assertions that risk-prone vertical lines used in crab pot gear were few in number and not likely to proliferate. However, this no longer seems to be the case. The TRT was provided with updated material in a summary entitled “Atlantic Blue Crab Fishery Update – Northeast Florida: March 2012.” The material presented to the TRT in this presentation during the January meeting indicates that there were 2,900 lines in the non-exempt areas in the southeast. Material provided in this update states that between January and the end of March of 2012, “trap/pot fishing effort in the near shore waters of northeast Florida increased approximately four-fold over last levels.” This makes it appear that there are now closer to 12,000 lines in the non-exempt area during the right whale high use period rather than the 2,900 estimated previously. This is an alarming increase in potential risk, particularly for young calves. This increase also means that the co-occurrence model that was presented to the TRT grossly underestimates risk and should be re-calculated.

An update on the blue crab fishery provided to the TRT in March 2012 also indicates that there was poor or questionable compliance with required risk reduction measures, including improper marking, improper use of buoys and weights and use of floating line at or near the surface. Although NMFS states that it held workshops in March and intends to increase outreach efforts, we must insist that there be additional measures. For example, enforcement in areas where workshops and outreach were provided must be strong and public to ensure better compliance. Further, NMFS must consider consequences to widespread non-compliance for the fishery as a whole should death or serious injury occur as a result of this risk-prone use of gear in critical habitat.

We recommend a cap be set at levels equal to 2011 fishing effort to exclude the increased effort seen this season. We support a proposal to prohibit this gear in Federal waters and believe NMFS should consider requiring gear tending in state waters of the Atlantic to assure that animals cannot be entangled without assistance being immediately available. These measures should be considered for adoption earlier than the NMFS protected time table, which is still several years off—at a time that risk of encountering entangling gear is increasing each year.

Further, a multi-level trigger for trap/pot fisheries should be evaluated as a pre-determined response to entanglement events in the Southeast. Because the current restricted area already requires management action be taken at the first serious injury or mortality that occurs within the restricted management area, we continue to support that approach and address only the need for additional action. We would support a trigger for the Southeast ALWTRT members to reconvene to discuss and make determinations about specific actions to take to reduce entanglement risk in the face of either a first non-serious injury entanglement inside the current restricted area or the serious injury or mortality of a right whale in the Southeast outside the restricted management area. A second event would trigger full TRT discussion and action items. These alternatives should be considered as additions to the gear marking, reporting and 100lb weak link items agreed upon at the January meeting. Without these additional measures, the critically important Southeast calving area and the vulnerable members of the species that use the area will likely be left without important protections.

Comments Specific to Humpback Whales

We wish to remind NMFS that humpback whales remain largely ignored by measures in the plan. While most of the TRT has agreed that addressing the risk to right whales is a priority, we do not wish to imply that we are comfortable ignoring the risk to humpback whales. As noted in virtually every NMFS report addressing entanglement of large whales, gillnets are a primary source of risk to humpbacks whales. According to a 2009 report to the International Whaling Commission it is likely that up to 30 humpbacks die in the Gulf of Maine each year from entanglements, this would be 30 times the current PBR. These losses are not acceptable and should not be casually dismissed by NMFS.

Conclusion

We appreciate the agency's consideration of these comments as it moves forward with rule development. Please contact any of us if you have questions regarding these comments.

Sincerely,



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