



STATE OF MAINE  
DEPARTMENT OF  
MARINE RESOURCES  
21 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0021

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September 17, 2007

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 Final Environmental Impact Statement (FEIS) for amending the Atlantic Large Whale Take Reduction Plan (ALWTRP).

I remain pleased with the progress that has been made over the last few years between the State of Maine and NOAA Fisheries Service in finding solutions to whale/fishing gear interactions that protect whales and are operationally feasible for fishermen. The FEIS incorporates many of the State of Maine's comments on the Draft Environmental Impact Statement (DEIS) which underscore this partnership allowing for alternatives that make sense in the difficult work of whale conservation and managing fisheries. The Department remains committed to this cooperative relationship. However, a few significant changes are needed to make the proposed rules viable.

In commenting on the FEIS, there are a number of issues strongly worth supporting.

- Maine is pleased that NOAA Fisheries has incorporated an exemption line which exempts 71% of Maine State waters. This will minimize impacts on fishermen in areas with extremely low history of interactions. 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 support this proposal. Maine is committed to working with NOAA Fisheries to ensure that the exemption lines are in the correct locations. The Department believes that the exemption line should be positioned strategically to protect whales and minimize impacts on the lobster industry. Recent information compiled by the Maine Lobsterman's Association suggests that a line slightly further offshore should be considered based on an in-depth analysis of effort in the lobster fishery and whale sightings data. The Department strongly supports a rapid and



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independent review of these data and is willing to contribute to the financial costs of a review. Our goal is to ensure that an exemption line is located based on best available data; a review of this new information will ensure that we all work toward this end.

- Maine concurs with NOAA Fisheries and strongly supports the elimination of Dynamic Area Management and Seasonal Area Management. Maine believes that the proposed gear requirements in the SAM and historic DAM areas will greatly reduce the likelihood of large whale entanglements while fully allowing for commercial fishing to continue.
- Maine strongly supports the elimination of the requirement for all sink line endlines. Operationally this measure makes good sense and is risk neutral.
- Maine supports the required weak link on all flotation and sinking devices and 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.
- Maine supports that all surface buoys be marked.
- Maine supports the inclusion of other trap/pot fisheries. This measure will equitably ensure full geographic protection for all large whales.
- Maine supports the provision for no expanded gear marking. Maine disagreed with the gear marking requirements proposed in the DEIS; a 4" colored mark every 10 fathoms on the endline. This would have been an ineffective and unnecessary requirement that posed a hardship for the fishing industry with no perceivable benefit for the whales. However, 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.

While the FEIS proposes many benefits to the large whales in the Northern Gulf of Maine (NGOM), it imposes several potential catastrophic burdens on the Maine lobster fishery that has practiced proactive conservation for multiple generations. Maine categorically does not support the proposed one-year implementation date. This date is not viable for the following reasons:

- Market availability of sink rope. The manufacturers have stated in no uncertain terms that it will be impossible to provide the volume of rope necessary to serve the industry within that time period.
- The proposed October date is in the middle of the fishing season. Requiring the industry to retrofit their gear in the middle of a season is unreasonable, disruptive and a further economic burden. Maine supports using the implementation date of June 1 which is the date that both Maine and Federal trap tags are renewed and a time that most lobstermen are overhauling their gear.

- Timely implementation of low-profile groundline: Maine fishermen are currently fishing multiple variations of new experimental low-profile groundline this season. Results of this field-testing will be used to develop the final version of a low-profile groundline to bring to the 2008 ALWTRT meeting for review and to NOAA Fisheries for future rulemaking.
- Manufacturing alternative rope: Once low-profile groundline and applicable areas are reviewed by the ALWTRT and implemented through NOAA Fisheries rulemaking, manufacturers will need adequate time to mass produce this rope.

For the reasons described above, Maine proposes the following timetable with the revised implementation date of June 1, 2010. This date would also allow for a review of the sightings data analysis recently produced by the Maine Lobstermen's Association to ensure that any exemption line is based on best available science. In promoting a longer implementation period, the State of Maine in no way intends for whale conservation measures to be diminished. Therefore, current conservation measures should be kept in place during a longer implementation period.

- December 2007
  - Preliminary results of CTD and plankton surveys researching presence, distribution, abundance and depth of prey near the bottom. Goal to determine whether NGOM bottom conditions support the aggregation of prey.
  - Preliminary results of Data Loggers results on the 2007 experimental low-profile groundline.
- January 2008
  - Preliminary analysis of 2007 experimental rope logbooks.
  - Strength tests of 2007 experimental rope.
- 2008 ALWTRT meeting
  - Summary report operational feasibilities of 2007 low-profile groundline – incorporate strength and specific gravity testing and log sheet feedback into logger groundline report.
  - Propose to ALWTRT and NOAA Fisheries the final low-profile groundline specifications.
  - Designate and propose specific low-profile groundline areas seaward from the proposed exemption line. These areas would be allowed to fish with approved low-profile lines in place of the sinking groundline requirement. For enforcement purposes, manufacturers would include a solid color tracer cored into the entire length of

- rope. (These areas must be supported with data that supports significant lack of whale sightings, low forage and rocky/tidal habitat).
- The above data to be coupled with the Maine's inshore trawl survey.
  - Overlay distribution and abundance of large whales, with endline survey results, foraging study results and possibly bottom type.
  - Develop Contingency Plan for potential sightings and or entanglements in low-profile areas. Need to retain gear marking and perhaps other current technology measures within exempted area to allow for future determination of areas of risk.
- Spring - Fall 2008
    - Field test final low-profile groundline.
    - Conduct industry and rope manufacturers outreach.
  - January 2009
    - Develop and propose additional exemption areas using above research.
    - Submit final DMR endorsed low-profile groundline specifications to NOAA Fisheries.
    - DMR to adopt any proposed federal regulations into state regulations.
    - Comprehensive endline risk survey –Results of this survey will complement 2006 survey and demonstrate gear configurations by area, strata and season within Maine's territorial waters providing baseline data for upcoming endline risk reduction efforts.
    - Large Whale Tagging Study – Study diving and foraging behavior - maximum diving depth and overall orientation in rocky habitat. RW tagging study was done but was difficult due to the lack of an accessible population. Upcoming work will include humpbacks and finbacks in the survey.
    - Jaw scarring rates – Can provide assistance to increase sample size of jaw scarring rates of humpbacks in this area. This analysis could be used in addition to prey distribution data in lieu of tagging data to start to understand diving and feeding behavior over rocky habitats.
  - January 2010
    - Implementation of low-profile groundline gear in area specific low-profile groundline modification areas.
  - June 1, 2010

- Full implementation of the amended ALWTRP.

Maine highlights the huge economic burden placed upon the Maine lobster industry and refers to the recent Government Accountability Office (GAO) study "Improved Economic Analysis and Evaluation Strategies Needed for the Proposed Changes to the Atlantic Large Whale Take Reduction Plan" (GAO-07-881) which found that NOAA Fisheries economic analysis "did not adequately represent the economic uncertainties associated with the costs of the proposed gear modifications and could not fully assess impacts on fishing communities" Maine questions whether the proposed regulations meet the Marine Mammal Protection Act requirement that take reduction plans must "take into account the economics of the fishery."

Based on discussions with lobster industry representatives, and within the Department, the economic impact of the proposed action will be many times the amount contained in the FEIS. If implemented as proposed, these rules will have a very significant, negative impact on individual lobstermen and the industry overall. This is critical because the lobster industry contributes nearly \$1 Billion annually to Maine's economy.

Maine believes that the federal government has a responsibility to ensure that the financial burden of ALWTRP protection in the Northern Gulf of Maine must not be assumed solely by the lobster fishery. At the appropriate time, there must be provisions to include significant financial assistance to the fishery through grants such as the gear buyback program currently underway with the Gulf of Maine Lobster Foundation as well as greatly increased funding of research to strengthen the scientific foundation and credibility of the ALWTRP.

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  
Downeast Lobstermen's Association  
Maine Offshore Lobstermen's Association  
Southern Maine Lobstermen's Association