

**WRITTEN TESTIMONY OF
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U.S. DEPARTMENT OF COMMERCE**

ATLANTIC LARGE WHALE TAKE REDUCTION PLAN

**BEFORE THE SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES AND
COAST GUARD**

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

U.S. SENATE

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Good morning. I am James H. Lecky, Director of the Office of Protected Resources, within the National Marine Fisheries Service (NMFS). Thank you, Senator Snowe, and members of the Subcommittee, for the opportunity to testify on this important issue. Before I begin I would like to thank you for your leadership and for the support you and this Committee have given NMFS. We appreciate your continued support for our programs as we work to improve our products and services for the American people.

NOAA's National Marine Fisheries Service, or NMFS, is mandated to protect endangered right whales under both the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). The ESA requires that federally authorized fisheries do not jeopardize the continued existence of right whales. The MMPA requires no serious injuries to, or mortalities of, right whales.

To achieve its goals, the MMPA requires the establishment of teams of experts, called Take Reduction Teams, to work in concert with NOAA to evaluate current population status and to develop Take Reduction Plans to reduce the serious injury and mortality to mammals from incidental interactions with commercial fishing gear. The Atlantic Large Whale Take Reduction Plan (Plan) covers right, humpback and fin whales. Routine assessment indicated that continued serious injury and mortality of right whales from entanglement in commercial fishing gear required additional modifications to the Plan to protect right whales and meet NOAA's legal mandates. The process to initiate this action began in 2003, with the publication of a Notice of Intent. Public scoping and meetings with the Plan in 2003 further helped define this action and resulted in the publication of a Draft Environmental Impact Statement and a proposed rule in 2005. Publication of the Final Environmental Impact Statement and final rule followed in 2007.

The Atlantic Large Whale Take Reduction Plan Rule

This final rule needed to include significant measures in order to achieve the statutorily-required protection for right whales. This rule implements fishing gear modifications throughout the range of right, humpback and fin whales from Maine to Florida and out to the eastern edge of the

Exclusive Economic Zone for trap/pot and gillnet fisheries. The broad-based gear modifications include:

- A requirement to use sinking groundlines (as opposed to floating groundlines) beginning in October 2008 for trap/pot and gillnet fisheries;
- Expanded weak link requirements for trap/pot and gillnet gear that allow the line to 'break' if entangling a whale;
- Time/area management measures that take into account the predictable movements of large whales;
- Identification of exempted waters where whales typically are not found and therefore these gear modifications will not apply; and
- Additional gear marking requirements to help identify the source of the entangled gear.

Most of the trap/pot gear modifications will be effective in April 2008. Also beginning in April 2008, the final rule eliminates the Dynamic Area Management program, which requires temporary gear modification or closures in certain areas to protect unexpected aggregations of right whales. The rule also expands the Seasonal Area Management program, which requires gear modifications on a seasonal basis, until October 2008. After October 2008, the Seasonal Area Management program will be replaced with the broad-based sinking groundline requirement, thus eliminating unpredictable, temporary modifications in favor of predictable, broad-based modifications.

While many comments were in support of the measures in the proposed rule and Draft Environmental Impact Statement, other comments provided negative feedback on specific aspects of these proposals. In response to public comment on the Draft Environmental Impact Statement and proposed rule, as well as new information obtained since the development of these documents, NMFS made a number of changes in the final rule and Final Environmental Impact Statement. These changes are intended to minimize potential economic impacts through various regulatory modifications without reducing protection to large whales. I would like to highlight some of the major modifications related to the State of Maine.

Traditionally, trap/pot fishermen use floating lines between their traps. The loops created from the float rope used between the traps create an entanglement risk for large whales. A significant measure in the final rule is a requirement to use sinking groundlines to reduce the entanglement risk to large whales. Public comments received on the proposed rule indicated that this is an issue of particular concern for some trap/pot fishermen. They commented that using this type of line in areas with rock/boulder and coral bottom topography may present operational feasibility issues. They also commented that the costs associated with converting from float groundline to sink groundline, coupled with the increased frequency in replacing line due to wear, would create economic hardship for them. In response to these comments and concerns, additional time for the conversion was provided.

In addition, NMFS has been actively working with commercial lobstermen to convert from floating groundline to sinking groundline and has created funding opportunities for this purpose. Since 2005, NMFS has promoted lobster gear buyback and recycling programs from Maine to North Carolina. This has been done with the assistance of industry and conservation organizations such as the Gulf of Maine Lobster Foundation, the National Fish and Wildlife Foundation and the International Fund for Animal Welfare.

The proposed rule also included a nearshore exemption line, shoreward of which large whales are not typically found and therefore the gear modifications would not apply. In comments on the proposed rule, the State of Maine recommended an exemption line further offshore than the one that NMFS proposed, citing safety, economic and gear loss issues. In response to public comments, the final rule moved the exemption line in several areas further offshore, bringing it closer to what the State of Maine requested.

The buoy line gear marking scheme was also modified in the final rule in response to public comments. Although many commenters support the concept of gear marking, NMFS received numerous comments opposing the proposed gear marking scheme on the grounds that it would be time-consuming, costly, and impractical to implement while at sea. In response to these comments, a gear marking scheme was finalized (i.e., one 4" mark midway on the buoy line) to make it easier to implement and use currently available technology.

NMFS received many comments on economic issues raised in the Draft Environmental Impact Statement. In response, the economic analysis presented in the Final Environmental Impact Statement incorporates updated information on labor and material costs. It also incorporates sensitivity analyses examining the impact of alternate assumptions on estimated compliance costs. This included analyzing the projected increase in gear loss that lobster trap/pot vessels fishing in Maine inshore waters may experience as a result of converting from floating groundline to sinking and/or neutrally buoyant groundline, the rate at which sinking and/or neutrally buoyant groundline will wear out and need to be replaced, the variation in the price of sinking and/or neutrally buoyant line relative to floating line, and the variation in the number of state-permitted vessels potentially subject to the Plan requirements. Each of these sensitivity analyses was performed independently to isolate the effects of altering each assumption on estimated compliance costs.

Conclusion

NMFS believes that, overall, the measures implemented in the final rule represent the best alternative to balance environmental and economic considerations related to the conservation of right whales and are consistent with the requirements of the MMPA and ESA. Thank you for the opportunity to testify. I look forward to working with you, the public, and the fishing industry on implementing this critical rule. I will be happy to answer any of your questions.