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MLA Welcomes NOAA Fisheries' Response to Concerns
But More Work Remains to Be Done

October 11, 2019

The Maine Lobstermen's Association (MLA) welcomes the constructive response received from NOAA Fisheries (the Agency) to concerns raised in our August 30 letter to Assistant Administrator Chris Oliver (August 30 Letter).[1] MLA is pleased that NOAA has taken our concerns seriously and is committed to further review of several elements of the analysis. The MLA agrees with Mr. Oliver that all stakeholders must come together to help reverse the decline of the right whale population, with the Agency as the nexus to ensure this happens.[2]

MLA remains committed to the Take Reduction Team (TRT) process and a management response from the Maine fishery even though we were forced to withdraw from a risk allocation agreement reached at the April 2019 TRT meeting.[3] MLA's goal has been and will continue to be a right whale recovery plan built on the best available science that effectively addresses all known risks to right whales from U.S. commercial fisheries and all other human causes.

Going forward, MLA will continue to insist on a science-based process informed by best available data to ensure rigorous accountability for risk to endangered whales from across the spectrum of human interactions with them.[4] In particular, MLA expects to pursue the following critical points that emerged from its analysis of NOAA Fisheries data about known causes of harm to whales.[5]

- Address the outsized role of Canadian fisheries in recent right whale serious injury and mortality.
- Remedy the disproportionate focus on the Northeast lobster fishery by addressing all U.S. fisheries that contribute to right whale serious injury and mortality as required under the MMPA and supported by NMFS data.

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[1] Chris Oliver October 2, 2019 response to MLA's August 30, 2019 letter located at: https://www.fisheries.noaa.gov/webdam/download/97532046

[2] The Marine Mammal Protection act mandates NOAA reduce serious injury and mortality from commercial fisheries to below Potential Biological Removal in consultation with the TRT. NOAA has additional responsibility under the Endangered Species Act to protect endangered right whales and their habitat from a broad spectrum of human activities.

[3] The agreement was based on incomplete data and a faulty presentation of scientific evidence. It resulted in a disproportionate assignment of risk to the Northeast lobster fishery that is inconsistent with NOAA Fisheries data and at odds with the fishery's record of an 86% improvement since 2010 in adverse interactions between fishing gear and endangered whales. Confirmed entanglement incidents in lobster gear declined from seven cases prior to 2010 to one in the period since the Northeast lobster fishery implemented additional whale protection measures in 2009 and 2014.

[4] NMFS data from 2013 to 2017, the most recent period to compare SI/M to PBR, indicates that there was 1 serious injury (pro-rated at .52) and two mortalities (including one female) attributed to U.S. ship strikes. NMFS issued incidental take permits in November 2018 for seismic testing approved permits for seismic surveys along the Atlantic coast.

[5] *See* August 30 Letter at https://mainelobstermen.org/wp-content/uploads/2019/09/All-MLA-Aug-30_2019_letters.pdf?x44315.

- Utilize NOAA's gear/fishery determinations to: 1) inform the scope of the rulemaking process, 2) develop assumptions regarding which fisheries are responsible for unattributed serious injury and mortality and 3) make an appropriate allocation of unattributed serious injury and mortality between U.S. and Canadian fisheries, and among U.S. fisheries.[6]
- Assess the effectiveness of current Take Reduction Plan (TRP) measures before and after 2010 including trends in gear/fishery determinations for those included in the List of Fisheries and focus new measures on areas of greatest risk.
- Evaluate the significant geographical shift in right whale distribution since 2010 and adjust risk assessment and management measures as appropriate.
- Address immediately the risk from U.S. ship strikes which exceeds PBR.[7]

While the corrections MLA seeks do not change the stark reality of a troubling increase in right whale serious injury and mortality from entanglement in recent years, they indicate the need for substantive changes in the entanglement-related risks that should be within the scope of the proposed rule.

MLA commends NOAA Fisheries for taking steps to remedy a crucial gear determination error involving a 2016 serious injury from entanglement.[8] Such determinations are immensely important because they form the scientific basis for risk assessment and inform the development of management measures to eliminate future entanglement risk.[9] The Agency has made gear/fishery determinations for more than 30% of serious injury and mortality incidents since 2010. While these data are not comprehensive, known cases are the best available data on how to ascribe cases with unknown causes and must guide the focus of the current rulemaking process.

MLA is also encouraged that its data analysis and related recommendations will be reviewed and analyzed in the Draft Environmental Impact Statement. The MLA endorses the Agency's commitment to pursue alternative approaches to compare unattributed serious injury and mortality cases to the characteristics of incidents in which a cause has been attributed. MLA believes such approaches can be used to allocate risk across gear types and other causes to reflect current knowledge of where and how right whales face a probability of harm. MLA also urges NOAA Fisheries to prioritize needed work to refine and peer review its decision support tool so that the rulemaking process will benefit from the input of a robust model that can assess the risk resulting from interactions between whales and all of the various types of fishing gear they encounter across their range.

Despite this progress, MLA remains opposed to NOAA Fisheries' decision to focus the current rulemaking on the Northeast lobster fishery, because it rests solely on vertical line density and ignores data and analysis that (a) show reduced risk to whales from this fishery after gear configuration and fishing practices were altered and (b) document fishery interactions beyond the Northeast lobster

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[6] NOAA assigned 50% of the unattributed SI/M to the U.S. and 50% to Canada. NOAA gear determination data indicate that Canada accounts for 22% of these incidents and the U.S. 4% (the U.S. incident did not occur in Maine gear). NOAA assigned all U.S. unattributed SI/M to the Northeast lobster fishery even though NOAA data indicate the Northeast trap/pot fishery accounts for 0%, netting accounts for 4% and CN snow crab 22%.

[7] *See* footnote 4.

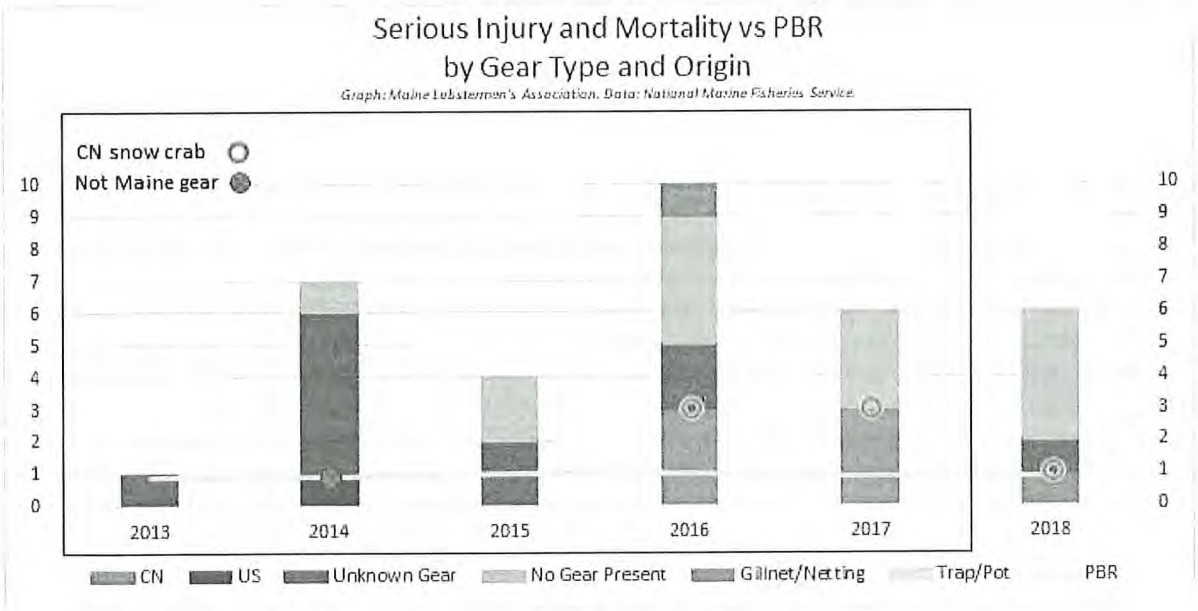
[8] *See* August 30 Letter at https://mainelobstermen.org/wp-content/uploads/2019/09/All-MLA-Aug-30_2019_letters.pdf?x44315.

[9] NMFS has used gear and fishery determinations as the basis of the MMPA's List of Fisheries and the scope of the Atlantic Large Whale Take Reduction Plan (TRP) since its inception. Serious injury and mortality data dictate the management mandate to reduce these cases to below PBR for each fishery.

fishery resulting in serious injury and mortality.[10] MLA's August 30 Letter explains that the Agency's data support expansion of the current rulemaking scope to encompass all fisheries where the risk factors have not yet been successfully mitigated.

MLA continues to work diligently with our members and in close collaboration with Maine's Department of Marine Resources (DMR) to identify management approaches that are both effective in minimizing risk to whales and proportionate to the risk from Maine fishery gear. The Maine fishery is deployed across highly variable topography and lobster habitat and is characterized by a diverse fleet and variable fishing practices across its seven zones, and between state and federal fishermen. These characteristics influence the range of management options that are practical within the fishery. MLA is dedicated to ensuring that a final rule will take account of the fishery's unique features and its ongoing conservation efforts.

MLA believes that NOAA Fisheries' willingness to address concerns related to underlying data and analysis lays the groundwork for progress that all stakeholders will welcome. MLA appreciates NOAA Fisheries' openness to the concerns we raised and willingness to conduct further analyses that address them. We are eager to contribute to genuine solutions for the recovery of right whales and look forward to an on-going constructive dialogue with the Agency and our fellow stakeholders on the TRT.



[10] The Agency's decision support tool defines risk to whales as a product of three factors: 1) whale density, 2) vertical line density, and 3) gear configuration. By altering the last two factors, the Northeast lobster fishery reduced documented incidents of harm to whales through successful implementation of TRP modifications in 2009 and 2014. By contrast, since 2014, dramatic increases have been documented in serious injury and mortality from interactions with commercial fisheries in Canada and other U.S. fisheries, as well as from causes other than entanglements.