



# MARINE MAMMAL COMMISSION

29 June 2010

Ms. Pat Kurkul  
Regional Administrator, Northeast Region  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930-2298

RE: Lobster Comments – Sustainable Fisheries Division

Dear Ms. Kurkul:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's draft environmental impact statement identifying several proposed alternatives for management of the American lobster fishery in federal waters (75 Fed. Reg. 23245). With regard to marine mammals of concern, the proposed action is most likely to cause entanglement risks for large endangered whales. The Commission is particularly concerned about possible effects of the proposed action on North Atlantic right whales because of their extremely small population size and demonstrated, ongoing entanglements. Based on its review, the Commission offers the following recommendations and rationale.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- initiate a new section 7 consultation and complete the associated biological opinion on the effects of lobster fishing on North Atlantic right whales before any new or amended American lobster management measures are approved;
- evaluate possible changes in fishing effort and fishing distribution as a result of the proposed and alternative management measures in a new section 7 consultation and then incorporate that information into the environmental impact statement so that decision makers and the public are fully informed about the implications of the various alternatives under consideration for recovery of right whales and other endangered whales; and
- expand all of the alternatives in the environmental impact statement to require that recipients of federal lobster fishing permits provide data and information on lobster fishing practices that are necessary and adequate to evaluate the risks of interactions with right whales and other large endangered whales and the effectiveness of related management actions.

## RATIONALE

The Marine Mammal Commission supports the National Marine Fisheries Service's efforts to update the management plan for the American lobster fishery in federal waters. The Commission

also appreciates the importance of limiting entry and facilitating efficient trap allocation systems. However, the Commission believes it would be premature to select any of the proposed alternatives until the potential effects of lobster fishing on North Atlantic right whales have been re-evaluated in a new section 7 consultation and biological opinion. The Endangered Species Act requires that the Service conduct such a consultation on any action that may jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify its critical habitat. Right whales are seriously injured and killed by entanglement in lobster gear, and the Service already has determined that any right whale death or serious injury would jeopardize the species' recovery. In October 2002 the Service issued a biological opinion on the effects of the lobster fishery, including reasonable and prudent alternatives that would avoid jeopardizing the species. Nonetheless, on 12 October 2002 a dead right whale was found on Nantucket; this whale had died from injuries caused by entanglement in U.S. lobster gear that included a weak link subsequently deemed consistent with approved fishing gear. Lobster gear also has been removed from several seriously entangled right whales since then, but the Service has not yet re-examined measures needed to prevent such incidents pursuant to its obligations under section 7.

Since 2002 the Service has made several changes to the Atlantic Large Whale Take Reduction Plan to reduce right whale entanglements in lobster traps. However, those changes have not adequately addressed entanglement risks in vertical lines. The Service has acknowledged that further regulatory changes are needed and announced plans to develop them, but any new measures will not become effective for several years. Given the new information available since the most recent biological opinion and the acknowledged need for new regulations, the Commission believes that the Service is required to reinstate consultations pursuant to section 7 of the Endangered Species Act. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service initiate a new section 7 consultation and complete the associated biological opinion on the effects of lobster fishing on North Atlantic right whales before any new or amended American lobster management measures are approved.

The alternatives identified in the draft environmental impact statement involve measures to limit lobster fishing effort. They also involve measures allowing the sale of lobster permits within the fishery. Such measures could alter not only the level of fishing effort, but also the geographic distribution of that effort. However, the draft statement does not provide a sufficient analysis of how possible changes in the overall level or distribution of fishing effort might affect entanglement risks for right whales within high-use right whale habitats in the Great South Channel and Cape Cod Bay and travel corridors in between those areas. In this regard, the Commission does not believe the proposed or alternative actions should proceed without controls that will assure trap end lines do not increase within those areas. The research on the effects of changes in effort and distribution should be included in the section 7 consultation, and the results of that should be incorporated into the analyses of alternatives in the environmental impact statement. To that end, the Marine Mammal Commission recommends that the National Marine Fisheries Service evaluate possible changes in fishing effort and fishing distribution as a result of proposed and alternative management measures in a new section 7 consultation and then incorporate that information into the environmental impact statement so that decision makers and the public are fully informed on the implications of the

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various alternatives under consideration for the recovery of right whales and other endangered whales. Among other things, the Service should use the section 7 consultation and the environmental impact statement to identify and describe all existing information about right whale entanglements in lobster fishing gear, evaluate the adequacy of existing prevention measures, provide the basis for new alternative measures, and explain why and how those alternatives are expected to avoid right whale entanglements.

At the Service's request, the Atlantic Large Whale Take Reduction Team is considering new regulatory measures to reduce right whale entanglement risks in vertical lines on lobster gear. At its most recent meeting, the team generally agreed that available information on the lobster fishery is not adequate to monitor or evaluate entanglement risks and that, at a minimum, additional information is needed on fishing practices. Such information would include the total number of trips fished, the total number of end lines, the number of traps per end line, and the depth at which traps are set. To ensure that such information is collected, the Marine Mammal Commission recommends that the National Marine Fisheries Service expand all of the alternatives in the environmental impact statement to require that recipients of federal lobster fishing permits provide data and information on lobster fishing practices that are necessary and adequate to evaluate the risks of interactions with right whales and other large endangered whales and the effectiveness of related management actions.

Please contact me if you have any questions about the Commission's recommendations and rationale.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a large, stylized 'T' and 'R'.

Timothy J. Ragen, Ph.D.  
Executive Director