NEW ANALYSIS SHOWS NOAA MUST LOOK BEYOND THE LOBSTER FISHERY TO PROTECT RIGHT WHALES

By Melissa Waterman

In late August, the Maine Lobstermen’s Association (MLA) sent a pointed letter to NOAA Chief Chris Oliver officially withdrawing support for the National Marine Fisheries Service (NMFS) 60% risk reduction target and the assignment of responsibility for reducing entanglement risk to right whales solely to the lobster fishery.

The action came about as a result of the MLA’s analysis of right whale entanglements, serious injuries and mortalities which revealed that NMFS data contained errors that significantly impact the understanding of human causes for these events. MLAs findings reveal the Canadian snow crab fishery accounts for 31% of right whale serious injury and mortality, gillnet and netting gear represents 13%, unknown trap/pot gear represents 4%, and U.S. trap/pot gear represents just 4%. U.S. and Canadian vessel strikes account for the remaining 48%.

"NMFS’ own data show that the lobster fishery is the least significant cause of right whale serious injury or mortality, while ship strikes, gillnets and the Canadian snow crab fishery pose much greater risks. The MLA cannot responsibly recommend its members act alone to undertake changes in fishing practices when whales continue to be killed by ships or entangled in other fishing gears which are not included in the current rulemaking," Patrice McCarron, executive director of the MLA, said.

The MLA undertook its examination of NMFS data following the April 2019 Atlantic Large Whale Take Reduction Team (TRT) meeting due to unresolved concerns with the timeliness and accuracy of information provided to TRT members. The MLA concluded that the data NMFS presented to the TRT to serve as the basis for recommendations contained serious flaws.

The MLA’s analysis shows that the NMFS’ stipulated risk reduction target is unsupported by the best available data. NMFS incorrectly allocated the full responsibility for U.S. risk reduction to the Northeast lobster fishery, ignoring the role of other fisheries known to entangle right whales. It under-represented the role of Canadian fisheries in its calculations by ignoring the most recent entanglement data. NMFS also did not investigate trends in right whale entanglement in unknown gear.

As a result, the data presented to the TRT overstated the share of risk attributable to the Northeast lobster fishery and downplayed the role of other gears and Canada.

"Drafting regulations that only affect lobstermen does not scratch the surface of responsibility for reducing entanglement risk to right whales. It under-represented the role of Canadian fisheries in its calculations by ignoring the most recent entanglement data. NMFS also did not investigate trends in right whale entanglement in unknown gear. As a result, the data presented to the TRT overstated the share of risk attributable to the Northeast lobster fishery and downplayed the role of other gears and Canada."

The MLA letter to NOAA Chief Chris Oliver officially withdrawing support for the National Marine Fisheries Service (NMFS) 60% risk reduction target and the assignment of responsibility for reducing entanglement risk to right whales solely to the lobster fishery.

"Drafting regulations that only affect lobstermen does not scratch the surface of addressing known human causes of right whale decline and guarantees that the rules will be insufficient to reverse the downward trend," McCarron said. "Maine lobstermen stand ready to do our part to help save right whales, but NMFS must ensure that the Canadians, the shipping industry and other fishing gear sectors join us in taking responsibility for their role in the crisis."

To read the full text of MLA’s letter to NMFS, go to the MLA Update on page 6.

EPA RESPONDS TO MAINE’S CONCERNS OVER TIER 4 ENGINE STANDARDS

By MLA staff

In late August, the Environmental Protection Agency (EPA) announced that it would delay implementation of Tier 4 emission standards for commercial marine engines for three years. The delay would provide relief to boatbuilders and manufacturers of lightweight and high-power marine diesel engines used in the lobster fishery. In addition, EPA will institute a new waiver process, which would allow for continued installation of Tier 3 engines for certain vessels if suitable Tier 4 engines continue to be unavailable and streamline the engine certification process to promote certification of engines with high power density.

"This proposed rule will give boat builders and Maine’s lobster fishermen regulatory certainty and encourage continued progress for cleaner diesel engines," EPA New England Acting Regional Administrator Deborah Szaro said in a press release. "This action is a win-win for builders and lobstermen and allows Maine’s vibrant fishing economy to continue."

In 2017, when Tier 4 emissions rules for engines of 803 hp and greater went into effect, the rules hit lobstermen who fish offshore hard. Most offshore vessels use engines above the 803-hp threshold, but the specialized hull designs and deck layout of those boats left little space below for the selective catalytic reduction (SCR) technology used to meet particulate emission standards. Offshore lobster boats require more deck space to carry traps, and more speed to complete their trips in a reasonable time.

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Whales, whales, whales. This has been the summer of right whales.

The Maine Department of Marine Resources (DMR) and the National Marine Fisheries Service (NMFS) each held a series of meetings with lobstermen to discuss a proposed 50% reduction in the vertical lines used by lobstermen to attach their traps to a surface buoy. Needless to say, lobstermen are extremely concerned over the proposal. Reducing vertical lines by that percentage would require many more traps to be attached to any one buoy line, and potential trap reductions, posing serious safety, economic and operational issues to lobstermen.

As we note in this issue, the information presented by NMFS at the August meetings met with a good deal of skepticism. Lobstermen noted time and again that right whales are not found in Maine waters, that Maine gear is not causing right whale injuries or death, and that the rules proposed by NMFS will do little or nothing to prevent future deaths among the right whales. Hundreds of right whales now migrate to the Gulf of St. Lawrence in search of food.

The Maine Lobstermen’s Association (MLA) took the initiative to analyze NMFS data on whale entanglements, serious injuries and mortalities. The MLA’s analysis revealed that the Canadian snow crab fishery accounts for 31% of right whale serious injury and mortality, gillnet and netting gear represent 13%, unknown trap/pot gear represents 4% and U.S. trap/pot gear represents just 4%. U.S. and Canadian vessel strikes account for the remaining 48% of serious injuries and mortalities.

As a result, in late August the MLA sent a letter to NOAA Chief Chris Oliver officially withdrawing support for NMFS proposed rules concerning right whales. ‘The MLA cannot responsibly recommend its members act alone in undertaking changes in fishing practices when whales may continue to become entangled in fishing gear, such as gillnets, which are not included in the current rulemaking,’ McCarron continued. DMR Commissioner Patrick Keliher also postponed a series of meetings with lobstermen to discuss a proposed NMFS response to NMFS proposed rules. In July Governor Janet Mills had directed DMR to evaluate a risk reduction target for Maine that would be commensurate with any actual risk posed by the lobster fishery.

While the question of how best to protect endangered right whales occupied many this month, other things in fact were happening on the coast of Maine. Aquaculture continues to be a hot topic, provoking strong opinions both for and against the growing industry. Landings continues its series on aquaculture in the state with a look at private support for the sector from two organizations, Coastal Enterprises Inc. and the nonprofit Island Institute in Rockland.

We also hear from Noah Oppenheim, executive director of the Pacific Coast Federation of Fishermen’s Associations. Although the East and the West Coasts lie many thousands of miles apart, issues facing fishermen on both coasts are uncomfortably similar, Oppenheim writes. Burgeoning offshore wind power projects are one such common issue. In this month’s Landings, Oppenheim argues that Maine lobstermen must remain vigilant as the federal Bureau of Ocean Energy Management continues to entertain lease proposals. ‘Make no mistake: commercial fishermen are right now entering into direct competition with multitudinous energy conglomerates for some of the best real estate on the ocean,’ writes Oppenheim.

On a different topic entirely, lobstermen often face dangers from such things as the weather, the ocean and, of course, tangled gear. But how many have considered blood poisoning as a possible threat? Bait poisoning is a serious infection that too many lobstermen disregard, as Elisabeth Maxwell points out this month. Being aware of the symptoms of bait poisoning, which can occur when handling both bait and well-armored lobsters, and knowing what to do when it occurs can prevent serious consequences. As one lobsterman who ended up at the hospital with bait poisoning said, ‘Don’t waste any time.’

Landings also continues its series on artists and the lobster fishery with a profile of Melissa Post van der Burg. Van der Burg grew up in Salt Lake City, Utah, but, after moving to Maine 25 years ago, began painting the state’s coast and the men and women who work on the water there. Her strong colors and compositions reflect the strength she sees on Maine’s working waterfronts.

That quality caught the eye of Senator Angus King, who selected one of van der Burg’s paintings — of a woman lobsterman ascending a wharf ladder — to hang in his Washington, D.C., office. ‘It’s such a privilege to be able to paint. Whenever I hang out on the waterfront I’m never disappointed. It’s full of life, not romantic,’ van der Burg said.

We hope you enjoy this issue of Landings and look forward to your suggestions for future articles.
AQUACULTURE IN MAINE: TWO ORGANIZATIONS HELP AQUACULTURE VENTURES GROW

By Melissa Waterman

Little or big? On land or in the ocean? Locally owned or owned by outsiders? The debate about aquaculture in Maine is intensifying as more people enter the industry.

It’s important to remember, however, that aquaculture is not new to Maine. Aquaculture ventures began many years ago, when Herb Hidu, a University of Maine professor at the Darling Marine Center in Walpole, nurtured a generation of shellfish aquaculturists located largely on the Damariscotta River. Since that time various public and private entities have become involved in the industry, among them Coastal Enterprises Inc. (CEI), a community development corporation, and the Island Institute, a nonprofit organization in Rockland.

“We’ve been in this sector since the ’70s, it’s not a new thing for CEI,” commented Hugh Cowperthwaite, CEI’s director of sustainable fisheries and aquaculture. CEI provided financial and other support to fledgling aquaculturists working with oysters through its Aquaculture Development Workshop during the 1980s. It also offered loans to commercial groundfishermen and processors until that industry, once the backbone of Maine’s working waterfronts, began to decline in the 1990s as new regulations constrained the number of days fishermen could work and groundfish stocks slowly ebbed.

“CEI began to transition away from finfish, Commercial fishermen moved into lobstering,” said Nick Branchina, CEI associate director of fisheries and aquaculture. “Then there was the advent of culinary interest in Maine shellfish, particularly oysters. Maine oysters are coveted.”

CEI teamed up with Maine Sea Grant, the Maine Aquaculture Association and the Maine Aquaculture Innovation Center to offer a program called Aquaculture in Shared Waters [see August 2019 Landings]. “The purpose of the program is to help entrepreneurs enter the business or continue it in a smart way,” Cowperthwaite said. “It’s a multi-generational opportunity. We encourage people to bring their children to the trainings.” The program, which began in 2013, is offered free to participants; it is funded until 2022.

But CEI also has helped foster the growth of a different shellfish species than the traditional clam, mussel and oysters for which Maine has become well-known: scallops.

“In 1997 a group from Maine went to Japan to learn about their aquaculture industry. When they returned some fishermen started collecting and releasing scallop spat as a stock enhancement technique,” explained Cowperthwaite. “I visited Aomori [prefecture in Japan] in 2010 and thought that we needed to take this beyond just spat collection. In 2016 I went back with a few commercial fishermen and aquaculturists. The focus was technology transfer.”

The ten-person group met with staff at Mutsu Kaden Tokki Co., an equipment manufacturer that develops and builds machines that mechanize several labor-intensive steps in scallop farming, as well as with marine scientists, private businesses, fishing cooperatives and government officials. What Cowperthwaite and others brought back from Japan was a better understanding of how to successfully grow a wild and mobile species as a premium farmed product.

In 2018 CEI was awarded a $300,000 grant (matched 1:1 by CEI) from the Foundation for Food and Agriculture Research to test the viability of scallop cultivation in Maine. With funding support from the Maine Technology Institute, CEI purchased three Japanese scallop aquaculture machines (a grader, drilling machine and a scallop washer) which were tested by Bangs Island Mussels in Portland and Pine Point Oyster in Cape Elizabeth to grow and harvest ear-hung scallops. Ear-hung scallops have a small hole drilled in the hinge into which a specialized pin is inserted, which allows them to be hung vertically on lines in the water. The technique, used extensively in Japan, yields faster-growing scallops with lower mortality and larger meat yields than those typically grown in bottom cages or trays.

“Seeing is believing,” Cowperthwaite said in reference to that 2016 trip to Japan. Marsden Brewer, a Stonington lobsterman and scallop fisherman, had been collecting and releasing scallop spat for more than fifteen years and was feel-

Continued on page 4

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ing a bit discouraged. “Once he saw the industry in Japan, he was galvanized,” Cowperthwaite said. Brewer and his son Bob decided to raise scallops in the waters off Stonington using Japanese lantern nets. When the shellfish reach 1.5 to 2 inches in diameter, rather than the 4 inches required of wild-harvested scallops, they can be sold. Brewer has been able to sell different size scallops into different markets depending on consumer preference. Other participants are working with long lines and ear-hung scallops to perfect grow-out techniques for Maine waters.

From CEI’s perspective, this sort of “homegrown” development of aquaculture ventures is key to maintaining a strong working waterfront and helping fishermen, particularly lobstermen, diversify their sources of income. “Our mission is to help underserved communities, those who are small communities, with fishing families who want to stay on the water,” Branchina said. “These are Maine-based companies.”

Many people are involved in aquaculture development at the Island Institute in Rockland. Craig Olson is the nonprofit organization’s community development officer. In July the Island Institute introduced its Tom Glenn Community Impact Fund, a new iteration of the Institute’s Island and Coastal Infrastructure Fund, which provides loans and equity investment in coastal and island businesses. The family of Tom Glenn, a longtime Island Institute supporter, has donated $2.5 million to the fund, which will be matched by the Institute for a $5 million total.

“Businesses come to us because they know us and are comfortable with us. We will find the best vehicle [for financial support] for whomever comes to us,” Olson explained. The first applicant to the Tom Glenn Fund was an aquaculturist who wanted to expand her oyster farm to four acres and needed a $25,000 infusion of capital to do so. Others may need help with a business plan, or advice on business structure, or other forms of assistance to make their businesses successful. The Institute currently has four loans out to coastal and island businesses and an equity investment in two companies, one of which is an aquaculture business. “We are here through the whole process,” Olson said. “We understand the seasonality of life on islands.”

Peter Piconi is the marine business specialist at the Island Institute and oversees its Aquaculture Business Development (ABD) program, begun in 2016. The program shepherds participants through the process of deciding if aquaculture is for them and then putting their toes in the water, so to speak.

One goal of the program, according to Piconi, is to create a critical mass of aquaculturists who can then help and support each other. Another is to support fishing families and the state’s working waterfront in the face of a changing marine environment. “The people coming through the program now are well prepared and have done research on their own,” Piconi noted. “There’s something that Mainers bring to everything, a ‘can do’ attitude. I’ve had people tell me, ‘I built this upweller myself.’”

During the past four years more than 100 people have gone through the program; 34 businesses have been established as a result. More than 70 people applied to be one of the 25 selected for the ABD program this year. “Fishermen know that things are shifting [in the Gulf of Maine]. They know that this makes sense for them,” Piconi said.

Those taking part in the ABD program receive a truly hands-on education in aquaculture for one year, followed by assistance as needed for the next two or three years. Piconi and colleagues help them research species, develop business and marketing plans, conduct fiscal analyses of their chosen species, and introduce them to the processors, distributors and retail companies that might buy their end product. Participants also receive technical help in the aquaculture lease application process, often one of the more complex elements of establishing an aquaculture business. And they receive a lot of coaching on community involvement.

“How are you going to integrate with your neighbors? We want good actors in the aquaculture sector who will represent Maine well,” Piconi said.

To judge by the numbers, more and more Maine residents are taking advantage of programs like those offered by CEI and the Island Institute to learn the ropes of the aquaculture business, a trend that seems likely to continue. Olson sees only progress ahead. “The next level of aquaculture in the state is process-based,” he said.

### Aquaculture continued from page 3

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**Source:** DMR

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**Source:** DMR

### Finfish Leases

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**Source:** DMR
In August, representatives from the National Marine Fisheries Service (NMFS) held four public hearings with lobstermen in Machias, Ellsworth, Waldoboro and South Portland. The focus of the hearings was to solicit comments on management options under consideration to reduce the risk of harm to right whales from fishing gear by 60%. NMFS is seeking information from lobstermen on operational challenges, time, and costs required to modify gear by changing configurations such as traps per trawl to reduce endline numbers, installing new line or sleeves and by expanding gear marking requirements.

These scoping meetings mark the start of the federal rulemaking process. Recommendations to guide the development of these rules were the product of the April meeting of the Atlantic Large Whale Take Reduction Team (TRT). At that meeting, the TRT members agreed to seek ways to reduce the risk of serious injury or mortality to right whales from lobster or crab fishing gear by between 60% and 80%.

At each of the meetings Michael Asaro, marine mammal and sea turtle branch chief of NMFS’ Greater Atlantic Regional Fisheries Office, noted that the right whale population is in decline with an estimated 411 whales. He noted the agency’s urgency in addressing the risk of entanglement to right whales to aid in the species’ recovery.

Beginning around 2010, biologists noticed significant shifts in right whale distributions as sightings in traditional habitats such as the Southeastern U.S. and the Bay of Fundy declined. By 2015, the whales’ northern range had expanded to the Gulf of St. Lawrence where copepods are now found in dense patches. Consequently, a number of right whales have been killed in that area: 12 whales in 2017 and eight thus far in 2019.

Asaro said that there continues to be much uncertainty about the future distribution of right whales as well as uncertainty about where the whales become entangled. The exact location of where the entanglements occur has been difficult to identify where the entangling ropes actually originated.

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Asaro said that there continues to be much uncertainty about the future distribution of right whales as well as uncertainty about where the whales become entangled. The exact location of where the entanglements occur has been difficult to identify where the entangling ropes actually originated.
On August 30, the MLA notified the National Marine Fisheries Service (NMFS) that we would not be a part of their effort to put the full responsibility for the right whale decline on the lobster fishery. I know that there has been confusion about how this issue unfolded, so I will provide some background here.

First, the MLA has been leading the fight against rules that unfairly target Maine lobstermen for more than 20 years. The MLA has full access to a talented legal team, state and federal political leaders and government agency staff. The MLA is by far the most experienced and knowledgeable organization on the right whale issue in Maine. Though not widely publicized, the MLA regularly meets and talks with NMFS, Maine’s Congressional delegation, our legal team, scientists and others substantively involved in the right whale problem. We know what’s going on because we make it our business to talk to senior decision makers as well those who are in the trenches on this important issue.

The MLA’s action is a result of careful analysis of the facts, the law, and the political environment against which the recent spike in right whale deaths will be judged. Armed with the knowledge that, we’ve been working to ensure that Maine lobstermen are treated fairly in the management process. I know many lobstermen have called on the MLA to fight for the sake of fighting, not just NMFS. “No” and simply refuse to work with regulators. While tempting and certainly much easier than the work we actually do, the MLA is a goal to take actions that will improve things for Maine lobstermen. Let’s do this. I’m under the impression, with the understanding of a lodge framework that sets the parameters for discussion. We can complain all you want about how ridiculous the process is or how out of touch various proposals seem to you. In reality, if you aren’t on top of the facts and don’t understand how they influence the legal process and don’t lay the groundwork to make a case based on science and fact, your efforts will result in little more than letting off some steam.

The reality is that the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) are both very protective of marine mammals and act as a visor grip on federal and state agencies. Advocates for right whales know this, which is why they brought suit early in 2018 against NMFS to declare its 2014 non-jeopardy finding for the American lobster fishery to be illegal under the ESA, just so we are clear, a finding of jeopardy would mean that NMFS either ceases to permit the lobster fishery or mandates draconian regulatory measures. This is why the MLA has intervened to represent Maine lobstermen in that case. I have no doubt that the current rule-making underway by NMFS to reduce risk to right whales from the lobster fishery is a direct result of this legal action.

In its quest to identify management options for the lobster fishery that would avert a new jeopardy finding, NMFS hurried the Atlantic Large Whale Take Reduction Team (TTR) with new information in the two weeks leading up to a critical meeting in April. Some of the new information NMFS presented was irrelevant to us, but NMFS refused to discuss its methodologies to explain why it set a risk reduction goal that assumed the Maine lobster fishery presented the high-risk right whales of all human causes. The MLA wrote a letter to NMFS before the meeting to express our strong concerns over this goal and the management process. NMFS ignored our protest and instead moved forward with the stringent risk reduction goal it established, or lose the only opportunity to weigh in on management options that would avert a jeopardy finding in the new biological opinion for the lobster fishery planned for publication this fall. Against this backdrop, Maine’s TTR representatives worked hard to ensure that ropeless fishing and trap reductions (which the environmental caucus favored) would not be mandated as part of the agreement NMFS demanded. We understood that Maine ultimately would have to further reduce vertical lines and consider options to deploy weakened rope. The bigger question was how to right size those measures to address the actual risk posed by our fishery — not the arbitrary 60% reduction stipulated by NMFS. While right whales are extremely rare in Maine, we know that they congregate in the waters of the Gulf of Maine to get to their favorite places such as Cape Cod Bay and the Gulf of St. Lawrence, and we cannot argue that whales are at no risk of entanglement in Maine waters.

We fully agree with our members who have been adamant that the rules contemplated by NMFS are over-reaching and could have devastating impacts on our fishery and communities. We have challenged NMFS on the 60% risk reduction target since it was first announced because it doesn’t make sense. But no one was listening. So we went back to the data. The MLA drew on NMFS’s own data to figure out what was really going on with right whale entanglements. Specifically, we wanted to know more about the entanglement cases for which a fishery, gear type or country could not be identified. Since these cases comprise the majority of right whale entanglements, gaining a deeper understanding might shed some insight on the type of fishing gear involved — and on whether NMFS’s assumption that due to Maine’s stature as the biggest fishery, it must pose the greatest risk to right whales. To our surprise, our results revealed significant errors in NMFS data. Furthermore, NMFS’s failure to present its data fully and accurately misled the TRT during the crucial April meeting. As a result, the TRT reached a “near-consensus” agreement that is in conflict with NMFS’s own data.

NMFS is required to use the best available information, and we do not believe these new findings are substantive information with which to challenge NMFS’s actions. We have already presented our findings at public meetings held by NMFS on the scope of its proposed rulemaking, and we will submit them in writing for the official administrative record on which NMFS must base its decision.

This new information does not mean that Maine is off the hook in identifying management measures to help right whales recover. The species is in decline and Maine must take responsibility for our role. However, the lobster fishery alone cannot solve this issue. Our decision to withdraw from the April TRT agreement was not taken lightly. It reflects many hours of meetings and research, the advice of an amazing legal team, and a whole lot of piss and vinegar. Don’t believe the hook in identifying management measures to help right whales recover. The species is in decline and Maine must take responsibility for our role. However, the lobster fishery alone cannot solve this issue. NMFS’s decision that the Canadian’s, the shipping industry and other fishing gear sectors join us in taking steps to correct this decline.

The MLA has been hard at work on this for a very long time. Our decision to withdraw from the April TRT agreement was not taken lightly. It reflects many hours of meetings and research, the advice of an amazing legal team, and a whole lot of piss and vinegar. Don’t believe the hook in identifying management measures to help right whales recover. The species is in decline and Maine must take responsibility for our role. However, the lobster fishery alone cannot solve this issue. NMFS’s decision that the Canadian’s, the shipping industry and other fishing gear sectors join us in taking steps to correct this decline.

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MAINE LOBSTERMEN’S ASSOCIATION UPDATE

MAINE LOBSTERMEN’S ASSOCIATION LETTER TO NOAA

Chris Oliver, Assistant Administrator for NOAA Fisheries
National Oceanic and Atmospheric Administration
1401 Constitution Ave NW, Room 5128
Washington, DC 20230
August 30, 2019

Dear Mr. Oliver:

I am writing to inform you that Maine’s five lobster industry members of the Atlantic Large Whale Take Reduction Team (TRT) are forced to withdraw support for the near-consensus agreement reached during the April 2019 TRT meeting due to serious flaws in the data presented to the TRT and in how the process was conducted. NMFS’ failure to present data fully and accurately led the TRT to an outcome that is in conflict with available data.

Substantive errors in NOAA Fisheries’ (NMFS or the Agency) data and its last-minute announcement of a U.S. risk-reduction target that was fully assigned to the Northeast lobster fishery led the TRT to work with an erroneous assumption about the relative risk to North Atlantic right whales from that fishery and discount the relative risk posed by other sources. As a result, the Agency’s current rulemaking does not address the full scope of known human causes of decline in the species and will be insufficient to reverse the right whale population’s downward trend.

Following the TRT meeting, MLA undertook a careful review of data available from the Agency, due to unresolved concerns with the timeliness and accuracy of the data provided to TRT members. Our review revealed substantive errors in NMFS data and the omission of critical information that shows a “distinctly different understanding of relative risk” posed by Northeast lobster fishing gear to right whales.

Specifically, and as discussed in more detail below, the NMFS data contained errors that significantly impact our understanding of human causes of serious injury and mortality to right whales. The corrected data show that gillnet gear and netting play a much larger role in entanglement cases than was previously understood. Further, NMFS’ failure to investigate a pronounced increase in observations of unknown unknown, particularly the increase in cases since 2015 with no gear present, leaves significant unanswered questions about the responsibility of Canadian fisheries for these entanglements. As a result, the data presented to the TRT and fishing industry erroneously overstate the share properly attributable to the Northeast lobster fishery and downplay the role of other gears in right whale serious injury and mortality.

The MLA’s analysis found that gillnet and netting gear were the most prevalent gear (other than Canadian snow crab gear), and the Northeast lobster fishery (and the Maine lobster fishery in particular) were the least prevalent in right whale entanglements from known causes. This finding means the 60% conservation target stipulated by the Agency and allocated solely to the Northeast lobster fishery is unsupported by the best available data, and any package of remedial measures designed to meet it cannot credibly generate the conservation benefits anticipated. At a minimum, the U.S. risk reduction target must be shared amongst the fisheries contributing to entanglement.

Furthermore, the MLA’s findings reveal evidence — also not presented to the TRT — that the current Take Reduction Plan is working. Since the plan was amended in 2009 and 2014, there has been a strong downward trend in the incidence of entanglement cases involving U.S. lobster gear, from seven cases prior to 2010 to only one case — a non-serious injury in Massachusetts lobster gear — since then. The data show only one confirmed right whale entanglement in Maine lobster gear, which dates back to 2002, with no known serious injuries or mortalities attributable to that gear. NMFS’ data also show that ropes removed from right whales in recent years are not representative of ropes used in Maine’s lobster fishery.

Based on these findings, the MLA has grown even more concerned that the TRT deliberations were conducted without sufficient data from the agency to inform its efforts to select appropriate mitigation measures that address risk. In short, the rules proposed are misaligned and too narrow in scope to effectively protect right whales.

MLA’s findings further reinforce our agreement with Governor Mills’ expressed concern over the “disturbing lack of evidence connecting the Maine lobster industry to recent right whale deaths” and her directive to Commissioner Kilheimer “to evaluate a risk reduction target for Maine that is commensurate to any actual risk posed by the Maine lobster industry.”

Given the significance of the deficiencies identified, the MLA and Maine’s five lobster industry members can no longer adhere to the outcome of the April 2019 TRT meeting. The MLA cannot responsibly recommend its members undertake changes in fishing practices when whales may continue to become entangled in fishing gear, such as gillnets, which are not included in the current rulemaking. The MLA stands ready to implement new conservation measures in the Maine lobster fishery to protect right whales but must have assurances that the Agency is adequately addressing all known human-caused threats to right whales and that the science indicates proposed conservation measures are likely to further the goal of species recovery.

The MLA calls for the Agency to publish a thorough analysis of its own data regarding known sources of entanglement risk to right whales and conduct a new analysis of the risk reduction target, including the new information identified by the MLA. The Agency should then re-convene the TRT so it can appropriately advise the Agency on effective management approaches to aid in the species recovery based on a comprehensive understanding of known entanglement threats.

The remainder of this letter will identify specific concerns that need to be addressed in order to achieve that goal.

NMFS’ Technical Memorandum Erroneously Assumed the Northeast Lobster Fishery is the Most Significant Human Cause of Serious Injury and Mortality

In September 2018, NMFS issued a Technical Memorandum entitled “North Atlantic Right Whales – Evaluating their Recovery Challenges in 2018”. As MLA articulated during the October 2018 TRT meeting, the memo wrongly forced TRT members to prepare, for purposes of their deliberations, that the Northeast lobster fishery presents the most significant human cause of right whale serious injury and mortality without evidence that assumed otherwise.

NMFS’ reliance on the September 2018 Technical Memo distracted the Agency from fully considering the best available data from its entanglement database. NMFS did not adequately analyze its data on human-caused serious injury and mortality so the TRT did not have the benefit of reliable information to accomplish its task. NMFS’ failure to present data fully and accurately led the TRT to an outcome that is in conflict with available data.

Maine DMR wrote to the Northeast Fisheries Science Center (NEFSC) on October 3, 2018 stating its concern that the memo is “based on conjecture, without sound scientific basis” and that “the net result of the oversimplified picture painted by this Memo is likely to be regulations imposed on a fishery or in an area that will result in very little conservation benefit for the right whale.” To date, the memo has not been withdrawn or substantively updated and thus remains a source of misinformation on the challenges facing North Atlantic right whales. The MLA urges NMFS to withdraw the technical memo and conduct a thorough, accurate review of data on known human causes of serious injury and mortality.

NMFS must also correct its presentation of data on entangled right whales. Since the release of the technical memo, NMFS has consistently implied that serious injury and mortality from the Northeast lobster fishery exceeds Potential Biological Removal (PBR), even though this assertion is not supported by the data. The Agency has repeatedly — at the TRT and elsewhere — presented a graph of entanglements first sighted in U.S. waters as de facto evidence that U.S. fishing entanglements exceed PBR. Given that the rulemaking process addresses only the Northeast lobster fishery, the public assumes these entanglements result from that fishery. Further, it is well understood that the initial sighting location of an entangled whale is not indicative of where an entanglement occurred. For example, of the 16 entanglements confirmed in Canadian fishing gear since 2014, four were first sighted in U.S. waters. NMFS also continues to present a misleading map from the technical memo depicting cases where the location of the entangling fishing gear is known. This includes 10 entanglement cases in U.S. lobster gear, eight of which occurred prior to the 2009 and 2014 amendments to the Take Reduction Plan. The two cases since then were in Massachusetts lobster gear and were successfully disentangled. In fact, other than two cases from Canada, none of the entanglements depicted resulted in right whale serious injuries or mortalities.

The cumulative result of misinformation in the technical memo and NMFS’ other presentations was to create the erroneous inference that the Northeast lobster fishery is the most significant threat to right whales as the basis for the TRT deliberations. Because of this error, the TRT decision-making process was not based on data most relevant to the task of selecting management measures appropriate to address risk.

NMFS’ Stipulated 60% Risk Reduction Target is Inconsistent with its Own Data and was Imposed Without Consultation with the TRT

The MLA supports the development of a risk reduction target because it is necessary to gauge the effectiveness of proposed management measures intended to aid in the recovery of right whales. Given the high level of uncertainty about the surrounding sources of human-caused right whale serious injury and mortality, an effective risk reduction target must be informed by the best available data. NMFS has not acted in accordance with these principles.

Continued on page 8
On April 5, 2018, NOAA Fisheries issued a press release to TRT members stating "we believe that to achieve this goal [to reduce right whale serious injury and mortality to below PBR], mortalities and serious injuries in U.S. fisheries will likely need to be reduced by 60 to 80% from current levels. The Agency provided neither explanation of the data and methodology used to calculate the risk reduction goal nor an opportunity for the TRT to offer input on the target.

The MLA — and other members of the TRT — raised questions with the Agency on the assumptions used to set this risk reduction target. Despite its initial statement that "mortalities and serious injuries in U.S. fisheries will likely need to be reduced by 60 to 80% from current levels" (emphasis added), the Agency declined to engage in dialogue or enter input to revise the target. NMFS’s only explanation of the goal appears in an email responding to MLA’s questions, which NMFS then sent to the TRT.

In order for whale conservation measures to be effective, the risk reduction target must be derived from review of data showing the impact of all fisheries known to contribute to risk and must accurately reflect the risk posed by each fishery. The best way to establish such a target is not to adopt it by fiat and press release, but rather to develop it through a collaborative process with the Agency and members of the TRT using the best available data on all involved fisheries.

Based on NMFS review of the data, the Agency’s designated risk reduction target has several significant flaws:

1. NMFS inappropriately assigned the full responsibility for the U.S. risk reduction to the Northeast lobster fishery, ignoring the risk posed by other U.S. fixed gear fisheries, including gillnets and trap/pot fisheries in the mid-Atlantic and South Atlantic.

2. NMFS incongruously assigns serious injury and mortality from unknown gear equally between the U.S. and Canada. The Agency ignores known serious injury and mortality rates for U.S. and Canadian fisheries when apportioning these to each country. Further, NMFS assigns full responsibility for the U.S. portion of these to the Northeast lobster fishery, ignoring the risk posed by other U.S. fixed gear fisheries.

3. NMFS did not conduct an analysis of trends in serious injury and mortality from unknown gear, such as the recent increase in cases with no gear present, to inform its allocation of these to each fishery and country. If risk is not effectively addressed where it occurs, the U.S. management plan cannot effectively recover the species.

In order to establish a target based on the best available data and evidence, NMFS must evaluate the relative risk from all known causes of harm, taking into account what is known about entanglement. MLA’s analysis of NMFS’s data (2010-2018) reveals a striking hierarchy of serious injury and mortality to right whales from known human causes, with Canadian snow crab gear accounting for 31%, gillnet and netting gear representing 13%, unknown trap/pot gear representing 4% and U.S. trap/pot gear representing 4%. U.S. and Canadian vessel strikes account for the remaining 48%. There are no known cases involving Northeast lobster gear.

A significant challenge in reducing entanglement risk is how to address the many entanglement cases where the origin of the gear is not known. While reliance on assumptions is sometimes necessary, these assumptions must be informed by the best available data. Consideration of known causes of serious injury and mortality and deeper analysis of trends in unknown gear must be paramount considerations.

The MLA identified a pronounced and increasing trend in NMFS’s data on gear of unknown origin, with the proportion of cases with no gear present increasing significantly beginning in 2015. This is coincident with the shift in large numbers of right whales to the Gulf of St. Lawrence and the significant increase in the incidence of right whale entanglements in Canadian snow crab gear.

Under NMFS’s approach, this significant spike in unknown gear incidents remains unexplained and is arbitrarily split equally between the U.S. and Canada, with the U.S. portion attributed exclusively to the lobster fishery. NMFS has failed to provide a rational explanation for this split, which over-weights the contribution of U.S. gear during a time when whales are known to have spent increasing periods in Canadian waters and virtually all entanglements were known to be from Canadian gear.

The result is that NMFS’s risk reduction target will not achieve its intended result to reverse the right whale population decline. The Agency must reconsider this goal to address its flawed assumptions and omission of consideration of risk posed by other U.S. fixed gear fisheries.

The MLA understands there are data challenges that complicate assignment of risk to specific gears. To help close the knowledge gap, the MLA proposes, for its part, to expand and uniquely mark Maine lobster fishing gear for Maine’s lobster fishery and to introduce gear marking in Maine’s exempted waters. The MLA urges NMFS to pursue a similar strategy in other fisheries so the Agency and the TRT will have the benefit of best available information on the origin of unknown gear.

NMFS data contained substantive errors which render the Agency’s management priorities flawed

In its review of NMFS’s data, MLA noted two cases with substantive errors that led the TRT to conduct its work without an accurate understanding of the role of Northeast lobster fishery and other gears in right whale serious injury and mortality.

Right whale 3405 (NMFS E22-14), which was found entangled in 2016, was determined to have been entangled in monofilament mesh and line of unknown origin. However, the pro-rated serious injury (0.575) was attributed in the 2018 right whale stock assessment to unknown gear and, therefore, is not accurately represented in NMFS’s data. After persistent requests by MLA, this error was acknowledged by the Northeast Fisheries Science Center (NEFSC) on August 15, 2019, nearly four months after the TRT meeting.

NMFS’s data also incorrectly categorizes a mortality case involving the floating carcass of an unknown right whale (NMFS E22-14) found in 2014. The whale was determined to have died due to entanglement in fishing gear. Investigation of this case revealed that the stationary position of the whale, 36 nm south of Nantucket, and the fresh nature of the carcass led NMFS to determine that it was entangled in unknown U.S. fishing gear. Questioning by MLA confirmed that these circumstances rule out Maine as a source of the entangling gear. The necropsy findings recently published in Diseases of Aquatic Organisms concluded that “[b]ased on the presence of the line with float buoys along the body of the whale, the entanglement gear type was most likely gillnet”.

This means that the only documented serious injury or mortality known to have occurred in U.S. fishing gear did not originate from Maine and likely resulted from gillnet gear, not lobster gear. In view of these findings, the MLA asked NMFS to re-examine the gear classification and provide relevant supporting documentation.

Under NMFS’ approach, this significant spike in unknown gear incidents resulted from gillnet gear, not lobster gear. In view of these findings, the MLA concurs with the Agency’s designation of the gear responsible for the increased mortality counts from gillnet gear. The MLAs concurs with the necropsy team, based on the photos of the right whale and the gear located at the entanglement site, that the entanglement gear was most likely gillnet.

These findings fundamentally change our understanding of the relative role of gillnet and trap/pot gear in right whale serious injury and mortality and demonstrate that the TRT's advice does not address the primary cause of documented risk arising from U.S. fishing gear.

NMFS Used a ‘Decision Support Tool,’ Still in Development and Not Peer-Reviewed, as the Basis of the TRT’s Recommendations

The MLA fully supports the use of a model to assess the risk of right whale entanglement, spatially and temporally, to guide the development of effective management approaches to protect right whales. Such a tool must adequately characterize fisheries that have the potential to interact with right whales, the unique threat posed by varying gear types and configurations, and whale density and behavior. The NEFSC has done admirable job in developing a decision support tool, however, the tool is still under development and is not yet ready to be used for reliable quantitative assessment of the effectiveness of proposed management measures.

NMFS announced its nascent decision support tool just one week before the April 2019 TRT meeting. This resulted in confusion among TRT members and inadequate time to understand the data and assumptions that serve as the basis for the tool. TRT members were required to use the tool to assess the effectiveness of management scenarios in achieving the stipulated minimum 60% risk reduction and, at the same time, were told to use the model’s output only as guidance.

During the TRT meeting, it became clear that while the tool holds promise to assess right whale management approaches, it has many limitations. The tool contains three inputs: fishing effort data, whale density data and an assessment of risk of varying gillnet gear, which are given equal weight. TRT members voiced many concerns with each of these components, which are contained in the draft meeting summary of the TRT meeting.

The MLA believes the data and design of the decision support tool must be significantly improved. The whale model portion of the tool was developed for U.S. Navy applications and does not adequately characterize whale density in important fishing areas. Since 2010, more than half the right whale population has been regularly sighted feeding in Massachusetts in and around Cape Cod Bay and in a significant new habitat south of Nantucket. As dense aggregations of right whales have increased in Massachusetts waters, the number of right whales detected along the Maine coast has declined, facts not adequately captured in the model’s inputs. In fact, the whale model does not include data on the newly identified habitat around Nantucket, contains limited whale data on the Gulf of Maine and does not include any whale density data for coastal Maine. The tool cannot accurately reflect the risk of various fisheries to right whales unless these data issues are resolved.

Furthermore, the whale model does not allow whale distribution patterns to be considered by year, particularly before and after 2010, when whale distribution patterns shifted significantly. This masks the risk to right whales in current
high use habitats where they did not have a significant presence prior to 2010. NMFS has stated that this issue will be addressed in October 2019, but it will not be available in time to analyze options in the Draft Environmental Impact Statement. The whale model also does not weight the risk of an entanglement based on the whale’s behavior, such as feeding versus transiting, an important consideration in assessing entanglement risk. The MLA is concerned that without addressing these deficiencies, the decision support tool cannot effectively assess proposed management approaches. Due to these and other concerns, the TRT has asked that the tool be peer-reviewed before it is used to assess options, and further that the TRT have input into the Terms of Reference. In developing the decision support tool, the NEFSC developed a gear “severity index” to determine the risk of various gear types that may be encountered by a right whale. The severity index used by the TRT members on the risk of certain lobster gear configurations. The index accounts for one-third of the assessment tool input. TRT members raised strong concerns with this approach, in part because the results of the exercise significantly impact the assessment of management approaches such as weak rope. The MLA is also concerned that the responses to the poll were analyzed by causus, resulting in a lower weight to votes from fishing industry members, who are the most knowledgeable about fishing gear, and higher weights to votes from other TRT members. While NOAA Fisheries has pledged to revisit this methodology, the TRT has not received any updates on its progress. The MLA is also concerned that the severity index considers only lobster gear. NMFS continues to publish broadly the preliminary results of the tool’s assessment of management scenarios presented to the TRT as the basis for developing rules, even though it has conceded that the tool remains under development and has not been peer reviewed. This has created confusion among industry members about the effectiveness of management measures proposed by various jurisdictions as the industry weighs in on the scope of rulemaking. MLA objects to the use of the model’s assessment results until the infirmities identified above have been resolved.

NOAA Fisheries Asserted Pressure to Reach Consensus to Avert Threat of a Jeopardy Finding in Pending Biological Opinion

TRT members were pressured to reach a consensus agreement for measures that address risk to the Northeast lobster fishery under a threat that the April 2019 TRT meeting would provide the only opportunity for members to guide right whale risk reduction measures due to the pending Biological Opinion for the American Lobster Fishery. Based on our data analysis, the gillnet fishery is a significant source of risk and should be required to identify management measures to avert a jeopardy finding in its pending Biological Opinion. The TRT did not discuss this because NMFS has effectively placed the full burden of the U.S. risk reduction on the Northeast lobster fishery. It has further failed to adequately review and discuss other human-based causes of right whale serious injury and mortality with the TRT. The MLA strongly urges NMFS’ Section 7 team undertaking the Biological Opinions for the American Lobster and Batched Fisheries to incorporate the new data discovered by MLA into the ongoing analysis.

The Right Whale Decline is Part of a Larger Problem

NMFS’ data and other recent scientific work indicate that the right whale population decline, including its deteriorating health and reproductive success, is driven by changing environmental conditions, resulting in a dramatic shift in right whale distribution and migratory patterns. The data are clear that Canadian entanglements and vessel strikes are now the most significant cause of right whale serious injury and death because right whales are spending significantly more time in Canada’s largely unregulated habitat. These threats must be considered if we hope to have success in achieving long-term recovery of the species. If they are not addressed, the actions taken by fishermen will have no chance of success.

Moving Forward

The MLA remains committed to do its part to aid in the recovery of right whales. Since NMFS formed the TRT in 1997, MLA has been a full partner in working to reduce harm to large whales from entanglement in U.S. fishing gear. The MLA strongly supports measures to further our understanding of right whales and the risks they face. These measures include expanded and unique gear marking for Maine, 100% harvester reporting, vessel monitoring in federal waters, investment in the development of a tagging device to improve data on right whale distribution, increased right whale surveillance in regulated waters, stable funding for long-term plankton monitoring and development of right whale habitat suitability models.

While the MLA supports requiring gear marking on vertical lines in Maine’s exempted waters, our support is conditional on it being implemented by the state of Maine. The MLA will not support including this measure as part of the Take Reduction Plan as we remain strongly opposed to the expansion of any Take Reduction Plan measures into Maine’s exempt waters.

The MLA stands ready to work with NMFS, the TRT, the state of Maine and our members to identify measures that address the actual risk that the Maine lobster fishery poses to right whales. For the amendments to the Take Reduction Plan to be effective, the process must be based on sound science and carefully vetted data analysis that identifies actual risk to endangered whales.

Maine cannot stem the decline of the right whale population on its own. Maine’s lobstermen believe it is past time for all stakeholders in the effort to ensure a thriving future for right whales to examine and address the multiple stressors and threats to the species that occur outside of our waters.

Thank you.

Sincerely,
Patrice McCarron, Executive Director

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Many thanks to these fine businesses, the MLA’s Keepers members!

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Maine Lobstermen’s Association Update

http://www.maine-lobster.org/
YOU HAVE 10 MINUTES.

In cold water, that’s how long you have to rescue your crewman before they lose the ability to keep their head above water.

Keep yourself safe, keep your crewmembers safe.

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MLA Legal Defense Fund:
Support the MLA in our fight to keep you fishing! We cannot save whales that are not in our waters.

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FALL PROMOTIONS FOR MAINE LOBSTER

September is a big month for lobster in Maine, and it’s an ideal time to show off our fishery.

This month, the MLMC is sponsoring ChefsFeed Indie Week, an event which brings twelve top chefs from around the country to Portland, where they will be paired up with local chefs to produce three dinners open to the public. The MLMC will take the opportunity to give the chefs an insiders’ tour of the Maine Lobster industry. Later in the month, the MLMC is bringing a group of journalists to Maine for their opportunity to see our industry first-hand and promote media coverage of Maine Lobster throughout the fall.

Finally, for the fifth consecutive year, the U.S. Senate has declared September 25 to be National Lobster Day. This national holiday provides a great opportunity to promote Maine Lobster through the fall and serves as a timely hook for the media to write stories highlighting Maine Lobster products.

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- **B & S Bait**
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- **Applied Refrigeration Services**
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- **Law Office of Crystal Tarjick**
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- **North Atlantic Power Products**
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- **Accutech Marine Propeller, Inc**
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## Winter Harbor Fishermen's Coop
- **Winter Harbor Fishermen's Coop**
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## Federal Agencies
- **National Fishermen, North Hollywood, CA**
  - Special annual subscription rate for $12 for 12 issues.

## New England Propeller Inc
- **New England Propeller Inc**
  - Plymouth, MA -- Discounts on marine propeller, shafting, and related items, sales & repairs.

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- **Nautilus Marine Fabrication, Inc.**
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Bait poisoning can be life-threatening

By Elisabeth Maxwell

Fish handler's disease, also known as bait poisoning, occurs when bacteria are introduced into the body through cuts in the skin. Handling and processing bait or lobsters can lead to scrapes, cuts, and punctures even when wearing gloves. The spines and fins of species such as redfish and horned sculpin or the shells of lobster are particularly dangerous. Normally, your skin provides a protective barrier to keep bacteria and pathogens from entering your body. But even the smallest scrape or cut on your hands can break this barrier. "These sea creatures can potentially harbor certain harmful bacteria and cause a serious skin infection," said Jordan Porter, a doctor of nursing practice and a family nurse practitioner at the Down East Community Hospital.

Bacterial infections should not be taken lightly. Left untreated, an infection might require hospitalization or even amputation of an extremity. General signs of infection include redness, pain, swelling, or drainage from a wound. In addition, a person may or may not have a fever. These signs indicate that your body's immune system is fighting against the foreign bacteria and that the situation could quickly deteriorate. Medical professionals can determine the severity of the infection and provide the correct course of treatment to ensure proper recovery.

Bob Baines, lobsterman out of Spruce Head, was flying back from an out-of-state fisheries meeting when he noticed something odd about his arm. "We were sitting on the tarmac and I looked down and there were red lines running up my arm," he recalled. "I got home late in the afternoon, grabbed a beer, and walked over to my mother-in-law's house next door. She is a registered nurse. I didn't even finish my sentence when she said, 'You get to the hospital now.' I had heard about [bait poisoning] but never experienced it myself and never knew how dangerous it was."

In the few hours that it took for Baines to get to the hospital and see a doctor, the red lines had already progressed past his elbow. Baines was treated with two rounds of IV antibiotics that were able to stop the infection, but he had already lost a good portion of his bicep. "Baines' advice to fellow lobstermen is blunter. "You can take steps to protect yourself and your crew from bait poisoning. Properly handling and washing after handling bait is an important step to reduce transmission of bacteria. Always wearing a thicker pair of gloves like blue vinyl gloves (not cotton gloves) while handling lobsters and spiny fish is the number one way to prevent bait poisoning," Porter said. "Good hand hygiene and regularly changing gloves are also important. If you get cut, promptly washing the site with mild soap and warm water helps reduce the likelihood of contracting bait poisoning."

Mesh gloves may provide additional protection from hard objects. You should also consider steps such as disinfecting gloves and work surfaces with a bleach solution on a regular basis to reduce the overall presence of bacteria. If you think you might have bait poisoning, Porter suggests several immediate steps. "Immediately cleanse the wound with fresh tap water and gently scrub the wound with mild soap and water, removing any foreign material. Once cleaned, applying an over-the-counter topical antibiotic like Bacitracin ointment and a Band-aid is helpful. Treatment from a healthcare provider is preferred."

"Early consultation with a healthcare provider is key to a good outcome. Since lobstermen frequently use their hands, early recognition and treatment is critical to preventing complications like loss of hand function, a deep bone infection, or bloodstream infection," Baines' advice to fellow lobstermen is blunt. "You know when it is infected. Just go spend the money [and see a doctor]."

Fall NH-Maine Trawl Survey begins September 23

The Fall ME-NH trawl survey conducted by the State of Maine, Department of Marine Resources is scheduled to begin September 23, 2019 in New Hampshire working east to Lubec. The more information we have regarding our fisheries, the better equipped we are to defend these resources and your livelihoods.

The ME-NH trawl survey provides valuable information for the management of important commercially harvested species. Failure to complete the proposed trawls could jeopardize the use of our data for state and federal lobster and finfish management. To address this, we will be increasing our efforts to move gear within the published trawls.

If weather does not permit us to work, we expect that lobstermen will not be fishing that day. Therefore, it is our hope that everyone, the travel survey and lobstermen, will slide the schedule one day forward. Marine Patrol will be on hand as well to assist with tow operations, including moving traps. You can avoid the need for our Marine Patrol to handle gear by clear-}

AQUACULTURE LEASE
PUBLIC NOTICE HEARING

The Department of Marine Resources (DMR) is holding a public hearing to take evidence on an aquaculture lease application for the following:

**Applicant Name and Lease Type:**
- Lauren and Joshua Gray
- Experimental Lease
- Standard Lease

**Culture Type:**
- Shellfish
- Marine algae
- Finfish
- Other
- Suspended culture (No gear)

**Species:**
- Bottom culture
- Suspend culture

**General Location, Town:**
- The Pool, Great Cranberry Island
- Great Cranberry Island, ME

**Acreage Requested:**
- 5.25 Acres

**Lease Term Requested:**
- 20 Years

The public hearing on this application has been scheduled as follows:
- September 24, 2019, 3:45 p.m., The Longellow School, 231 Cranberry Road, Great Cranberry Island, ME

If the public hearing listed above is postponed or cannot be concluded by a reasonable hour, an alternate public hearing will be held on September 25, 2019, at the same location.

**Applications to intervene need to be received by DMR no later than 4:00 p.m. on September 9, 2019.**
DMR will decide whether to grant intervenor applications five days before the hearing. Please review the notice below for more information.

**INFORMATION ON DMR WEBSITE:**
See DMR’s website, for the lease application and DMR site report; http://www.maine.gov/dmr/aquacultureleases/pending/index.html.

**PARTICIPATING AT THE HEARING:** Any interested person may attend the hearing and ask questions of the parties or testify under oath about the effect of the proposed lease. Aquaculture lease hearings are adjudicatory proceedings. If you intend to participate, please visit DMR’s website to learn more about these types of proceedings. On DMR’s website the following are posted: the lease criteria, hearing procedures, and suggestions for effective public participation during the hearing.

**INTERVENING:** If you apply for and are granted intervenor status, you become a legal party to the proceeding. See the contact information below to request an intervenor application from DMR.

**RELIEVANT LEGISLATION:** Chapter 2 of DMR regulations. The statutory provisions are: 5 M.R.S.A. §5951 et seq. & 12 M.R.S.A. §6072(1) et seq. Address questions to: Maine Department of Marine Resources, Attn: Aquaculture Division, 21 State House Station, Augusta, ME 04333-0021. (207) 624-6567. Send emails to DMRaquaculture@maine.gov.

For disability accommodations, contact Meredith Mendelson at: (207) 624-6579, Meredith.Mendelson@maine.gov.
By Noah Oppenheim

In my day-to-day work for commercial fishermen on the West Coast I often find the similarities between political issues facing Northern California fisheries and those facing Maine fisheries are striking. In my first column for Landings the subject was whale entanglement in the Dungeness crab and lobster fisheries. As I keep writing, I will continue to explore these similarities with the hope that our respective sectors of the fishing industry can learn from each other, strengthen our connections, and craft solutions together to guide us through our respective challenges.

Maine and Northern California have the dubious distinction of being the only regions in the country where floating offshore wind energy development is being contemplated by developers and the Bureau of Ocean Energy Management (BOEM). While New England fishermen are coping with massive leases south of Cape Cod, off Long Island and elsewhere, California fishermen have been watching those developments from a distance. The impacts to the commercial fishing industry resulting from the development of offshore wind resources are numerous and significant, from spatial displacement and gear concentration to impacts on safety and on shoreside operations. From the fishing industry’s perspective, offshore wind development is similar to eminent domain on land.

It’s clear to me, and to fishermen all over the country, that offshore wind areas equate to closed areas for commercial fishing. The beneficiaries of these closures will be corporate entities, foreign and domestic, who sell power to consumers. It’s a transfer of assets and resources from one space-intensive ocean users group to another. This set of tradeoffs, like any eminent domain process, is equated to closed areas for commercial fishing. The beneficiaries of these closures will be corporate entities, foreign and domestic, who sell power to consumers. It’s a transfer of assets and resources from one space-intensive ocean user group to another. This set of tradeoffs, like any eminent domain process, is a choice for society and our elected leaders to make.

Let’s make wise choices here.

What’s the status on the West Coast?

BOEM is currently considering leasing three Call Areas, totaling 1,073 square miles, within the Outer Continental Shelf of California. The Diablo Canyon and Morro Bay Call Areas lie off Morro Bay in California’s Central Coast in close proximity to the soon-to-be-decommissioned Diablo Canyon nuclear power plant. The Humboldt Call Area is offshore of Eureka in Northern California. Meanwhile, the agency leaves it to developers to make first contact with fishing communities and industry members. This of course leads to promises, deals, and offers, kept and not kept, rather than a genuine seat at the table where the big decisions are made. Rarely are genuine partnerships formed to discuss offshore wind siting and operational impacts, although some folks appear to be genuinely trying.

I believe that this general approach to leasing is incompatible with several of our procedural environmental review laws, including that National Environmental Policy Act. It should be changed. And until it is changed, Maine fishermen can expect more of the same.

What can Maine expect from the BOEM process?

The BOEM leasing process doesn’t take fishermen’s productivity into account at the beginning. Rather, the process exists in a vacuum; the top priority is putting wind energy development boundaries on a map. It’s pretty extraordinary actually: developers can submit unsolicited bids for wind development anywhere in the US Exclusive Economic Zone, including fishing grounds used for generations, and BOEM is bound to consider the proposal.

Meanwhile, the agency leaves it to developers to make first contact with fishing communities and industry members. This of course leads to promises, deals, and offers, kept and not kept, rather than a genuine seat at the table where the big decisions are made. Rarely are genuine partnerships formed to discuss offshore wind siting and operational impacts, although some folks appear to be genuinely trying.

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Continued on page 21
VINEYARD WIND PROJECT DEALT SETBACK; BOEM TO LOOK AT CUMULATIVE IMPACTS

By MLA staff

Vineyard Wind, the $2.8-billion, 800-megawatt offshore wind project planned for the waters off Martha’s Vineyard, has been delayed due to a Bureau of Ocean Energy Management (BOEM) decision in August to undertake a broad study of the potential impacts of offshore wind projects planned up and down the coast. The BOEM decision to launch a ‘cumulative impacts analysis’ and hold up approval of a key permit for Vineyard Wind until that analysis is complete will likely alter the schedule for construction of the project. Vineyard Wind officials stated publicly that the development remains workable and will move forward on a new timeline.

BOEM said it had received comments from stakeholders and other federal agencies requesting ‘a more robust cumulative analysis’ and decided to launch a more comprehensive look at offshore wind projects after federal officials ‘determined that a greater buildout of offshore wind capacity is reasonably foreseeable than was analyzed in the initial draft Environmental Impact Statement (EIS)’ for Vineyard Wind. In March, Michael Pentony, the Regional Administrator for GARFO, wrote to BOEM raising several concerns related to the project. BOEM officials say they are operating within a review window that extends into March 2020.

At the urging of Peter Emerson, New England dealer support specialist for Mack Boring and Parts Company [a business sponsor of Landings], in 2018, the Maine Lobstermen’s Association (MLA) board of directors voted to take the issue to Maine’s Congressional delegation to push for options to exclude lobster boat engines from Tier 4 requirements. Since the EPA had already been through the rulemaking process, the delegation urged the MLA to raise this issue with EPA. The MLA worked with Peter Emerson to send a letter to former EPA director Scott Pruitt explaining the mismatch of the Tier 4 requirement for Maine’s lobster fleet, but with little result.

The MLA, Emerson, and several Maine boatbuilders went back to the Congressional delegation to ask Representative Chellie Pingree and Senators Susan Collins and Angus King to intercede with the EPA. In November, three EPA staff from Ann Arbor, Michigan, met with Emerson and spoke with Maine Congressman Jared Golden in a joint statement. “This delay in the implementation of the Tier 4 emission standards for commercial lobster-style boats should provide engine manufacturers time to design and certify engines that will both comply with Tier 4 emission standards and work safely and efficiently in these boats.”

A public hearing will be held on September 20, 2019 at 9:30 a.m., at the Maine Maritime Museum in Bath, Maine.

“Considering such comments, and taking into account recent state offshore wind procurement announcements, BOEM is expanding its cumulative analysis of projects within its draft Environmental Impact Statement (EIS) to also include projects that have been awarded power purchase agreements, but may not have submitted Construction and Operations Plans (COPS), and potential scenarios based on state procurements that are expected to be awarded,” the agency said.

The delay raises the question of whether Vineyard Wind will still qualify for the federal 12% Investment Tax Credit (ITC) which is due to sunset at the end of the year. Vineyard Wind had been planning to financially close on its project and begin on-shore construction work this year, put the first turbine into the seabed in 2021 and have the 84-turbine wind farm generating electricity in 2022. The project is backed by Copenhagen Infrastructure Partners and Portland-based Avangrid Renewables.

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ROPELESS FISHING TESTS FRUSTRATE SNOW CRAB FISHERMEN

New Brunswick snow crab fishermen have been testing a ropeless trap system this season as one way to reduce the use of fishing rope, which has been blamed in deaths of endangered North Atlantic right whales. “The main problem with the ropeless gear... is that it was given way too much credit for what it can, at this time, achieve for the snow crab fishery,” Robert Haché, director general of the Acadian Crabbers Association, said in an interview. Haché said the ropeless trap system they’ve tested had a lot of practical issues — and it would take years of work to adapt it to fisherman’s needs. “Basically, the testing of the ropeless trap showed us that the contraption was far from being adequate to be used on a commercial basis now. We’re looking at some contraptions that will need a lot more work.” The ropeless traps, developed by California-based Desert Star System, are already used by fishermen in New Zealand and Australia.

P.E.I. COMPANY TESTS NEW BAIT WITH FISHERMEN

Bait Masters Inc. is testing a new bait product in the fall crab and lobster fishery on Prince Edward Island. “The new bait is a mix of fish and other organic matters in a biodegradable casing,” said Wally MacPhee, co-owner with Mark Prevost of the company. “It reduces the amount of pelagic fish used in the bait process. We’re hoping to reduce it by 50% per piece so it would be a help with the sustainability.”

Mackerel and herring, the traditional bait used by the lobster fishery on P.E.I., have become increasingly more expensive and difficult for fishermen to find. “It’s kind of a secret formula. We’ll just keep it at that for now,” MacPhee said. Nine lobstermen tried the bait in the spring lobster fishery while an employee tracked the catches, comparing the alternative bait to the traditional fish. “We found out that it fishes well, fishermen seem to like it,” MacPhee said.

RIGHT WHALES REMAIN THREATENED IN CANADA WATERS

Canadian conservationists are sounding an alarm over the survival of the North Atlantic right whale. Eight right whales were killed thus far this year. Necropsies on five whales show that three were killed by vessel strikes; two died of unknown causes. Four right whales have been sighted entangled. Changing feeding patterns have brought the whales into the Gulf of St. Lawrence. Recent losses to the population include a 40-year-old female named Punctuation that scientists have been tracking since 1981. She gave birth to eight calves, two of which had calves of their own. Scientists determined she died as a result of being hit by a ship.

PUFFINS THRIVING OFFSHORE

Maine puffins are having one of their most productive seasons in years on remote islands off the state’s coast. The birds are well on their way to setting a record for the number of breeding pairs, said National Audubon Society scientist Stephen Kress, who has studied the birds for years. Kress said nearly 750 pairs nested on Seal Island and Eastern Egg Rock in 2018, and this year’s number will likely be higher. The birds are thriving due to multiple factors, including an abundance of the type of fish they’re best suited to eat, such as young haddock and hake and herring. In some previous years, the birds have suffered because those fish were less available, replaced by fish that are more difficult for them to digest. The fish thrive in cold waters and the Gulf of Maine water temperatures have remained slightly cooler this year than last.

NMFS PROPOSES CONTROL RULE FOR LOBSTER FISHERY

NOAA Fisheries is seeking comments on a control date (a date that may be used to establish eligibility) of April 29, 2019 for the American lobster fishery, as the agency considers ways to reduce threats of entanglement by fixed-gear fisheries to North Atlantic right whales.

The Atlantic States Marine Fisheries Commission’s Lobster Management Board established a control date of April 29, 2019, and recommended that NOAA Fisheries do the same for federal waters. NMFS is notifying the public that the Agency may develop a future rulemaking to complement any actions taken by the Commission, and that future participation in the fishery may be based on participation as of April 29, 2019. All other changes would be completed through a separate, future rulemaking.

Oppenheim continued from page 18

with those who best understand this history and the impacts of off shore wind PCFFA and other West Coast fi shing organizations have begun coordinating could mean for commercial fi sheries that those same species constrain. on sensitive and Endangered Species Act-listed species, but what those impacts tools. We need to know not only about what impacts these projects could have these processes. We need to know about impacts to radar and other navigation population survey stations will mean for our stock assessments and what man-

ducing access and productivity. We need to know what the loss of federal fi sh be answered by agencies and developers before these facilities get installed. There are many scientifi c questions that remain unanswered that must

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been poured into purchasing leases and engineering studies. The farther along

What can we do to step up?

The potential footprint of wind energy on the West Coast and the Gulf of Maine is enormous. The problem, of course, is that these areas are virtually all situated in productive fi shing grounds. We need to know before leasing takes place if a wind energy project isn’t ap-

propriate for a given space. The Outer Continental Shelf Lands Act and the National Environmental Policy Act both require signifi cant analyses of wind de-

velopment impacts to commercial fi sheries. But because BOEM maintains that it is not foreseeable that wind energy development will result from wind energy leasing, the full environmental scoping process, including economic analyses of development, doesn’t take place until after tens of millions of dollars have been poured into purchasing leases and engineering studies. The farther along in the process we go, the greater the fi nancial investment — and the higher the

stakes — for the leaseholder. I believe that we need to reform BOEM's scoping and leasing process for off-

shore wind, and we should encourage our respective elected offi cials to start working on it. We also need to assess the indirect impacts to commercial fi sheries appropri-
ately. There are many scientifi c questions that remain unanswered that must be

answered by agencies and developers before these facilities get installed. We need to know whether floating wind structures aggregate fi sh stocks, re-
ducing access and productivity. We need to know what the loss of federal fi sh population survey stations will mean for our stock assessments and what man-
agement constraints we can expect from more uncertainty being injected into these processes. We need to know about impacts to radar and other navigation tools. We need to know not only about what impacts these projects could have on sensitive and Endangered Species Act-listed species, but what those impacts could mean for commercial fi sheries that those same species constrain. PCFFA and other West Coast fi shing organizations have begun coordinating with those who best understand this history and the impacts of offshore wind on fi sheries; the Responsible Off shore Development Alliance (RODA https://

rodafi sheries.org). RODA is a membership-based coalition of fi shing industry associations and fi shing companies focused on improving the compatibility of the offshore wind energy industry and ours. The group works to coordinate sci-
ence and policy to manage OCS development in a way that minimizes negative impacts to the fi shing industry, and they have been making incredible inroads and providing extraordinary support to fi shermen in southern New England and the mid-Atlantic.

Annie Hawkins, the executive director of RODA, came to the West Coast this year to testify with me on the fi shing industry panel at a California Joint Committee on Fisheries and Aquaculture hearing on the potential impacts of offshore wind energy on California's fi sheries and wildlife. The hearing aimed to address mitigating impacts on the environment and on fi sheries and fea-
tured speakers from BOEM, the California Energy Commission, the California Coastal Commission, the California Ocean Protection Council, environmental groups, and the fi shing industry. You can watch an archived video of the hearing here: www.boldi.ly/cawindhear-
ing. The fi shing industry panel begins at 1 hour 54 minutes.

Ms. Hawkins said it best: "Fishermen must never be seen as merely a stakehold-
er in the offshore wind leasing process. If anything, offshore wind developers are simply the newest stakeholders to enter into California's centuries-old fi sh-
ing industry, which provides the state with irreplaceable benefi ts: jobs, revenue, food security, tourism, recreation, actual meals on dinner plates, traditional ecological knowledge, and a signifi cant contribution to the state's very identity."

Neither California, nor Maine, nor any other state on either coast should throw away its renewable fi sheries resources, and their extraordinary heritage, away to make way for a new industry.
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| □ Retired Harvester (no longer a captain) | Boat Name:_______________________|
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Lobstering is not a glamorous occupation. There’s a lot of sweat, grime and, of course, bait juice involved. Yet some people, such as artist Melissa Post van der Burg, can focus on elements of beauty found in the lobstering world.

Van der Burg was not born to a lobstering family. In fact, she did not even grow up near the water. “I grew up in Salt Lake City, Utah,” she laughed. “I moved here 25 years ago. I always wanted to live in Maine.”

At age twelve, flipping through an issue of Life magazine, van der Burg read an article about artist Andrew Wyeth and Port Clyde, Maine. “It was life changing,” she recalled. “I knew that’s what I wanted to do.” Her life took her in other directions, however, although she continued to have a strong interest in art and artists. After moving to the state with her husband and children, van der Burg stepped down from her position as the ecumenical minister for three churches in the Turner area at age 50 and began to learn to be an artist.

“There were long periods of time when I was trying to learn something and then suddenly I’d realize that I got it! It was incredibly frustrating and satisfying,” she said. Bit by bit van der Burg developed the skills to portray in paint the things that interested her. Commercial success soon followed. “A friend took me to a sidewalk art show one day. I brought some of my watercolors and sold them, which was a surprise. It just built up from there,” she said. Although van der Burg lives in Augusta, she is a member of Art Space in Rockland and recently was accepted into the Copley Art Society of Boston, the oldest nonprofit art society in the U.S. Van der Burg’s work reflects the brilliant colors and strong shapes of Maine’s working waterfronts and the men and women found there. That combination of color and content drew the attention of Senator Angus King when he visited Art Space a few years ago. Sen. King was captivated by one of van der Burg’s large paintings of a female lobsterman coming up a wharf ladder. “He really liked it [“Ladder Up III”] and asked if I would lend it to him for his D.C. office,” she said. “And that’s where it is now.”

Every other year van der Burg and her husband spend a month on Monhegan during the summer. “I paint from morning to sunset. It’s a landscape where the orange and yellow [of lobstermen’s oilskins] really pop,” she said. Van der Burg’s style emphasizes realism but with a certain amount of stylization. She composes her paintings from pictures she takes on Monhegan or while visiting places such as Vinalhaven or Five Islands in Georgetown.

Van der Burg will soon open a new exhibit at the Landings gallery in Rockland, followed by a show of her work in, of all places, North Dakota. “It’s such a privilege to be able to paint. Whenever I hang out on the waterfront I’m never disappointed. It’s full of life, not romantic. It’s integrity and hard work, all the things that Maine can be and is,” van der Burg said.