

changed in the interim. As a result, OIG is withdrawing the following Proposed Rule to eliminate any confusion that could result from their presence in the public domain:

The Proposed Rule, Health Care Programs: Fraud and Abuse; Civil Money Penalties for Hospital Physician Incentive Plans (59 FR 61571, December 1, 1994), would have codified in regulations OIG's authority to levy CMPs when a hospital knowingly makes incentive payments to a physician as an inducement for reducing services to Medicare or Medicaid beneficiaries).

## II. Regulatory Impact

We expect minimal regulatory impact and reaction because of the passage of time since the Proposed Rule was published and because, to our knowledge, the public is not currently relying on, and may be unaware of, it.

Joanne M. Chiedi,

Acting Inspector General.

Dated: July 25, 2019.

Alex M. Azar II,

Secretary.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

RIN 0648-XX003

#### Atlantic Large Whale Take Reduction Plan Modifications To Reduce Serious Injury and Mortality of Large Whales in Commercial Trap/Pot Fisheries Along the U.S. East Coast

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare environmental impact statement, request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) intends to begin a rulemaking process that will amend the Atlantic Large Whale Take Reduction Plan (Plan) to reduce the risk of serious injuries and mortalities to North Atlantic right whales (*Eubalaena glacialis*) and other large whales caused by entanglement in commercial trap/pot fisheries along the U.S. East Coast. An Environmental Impact Statement (EIS) will be prepared in accordance with the National Environmental Policy Act (NEPA) to analyze the impacts to the

environment of alternatives to amend the Plan.

This notice informs the public of upcoming scoping meetings to solicit public comments on ways to reduce the risk of entanglement in trap and pot fisheries for right, humpback, and finback whales.

NMFS requests comments on management options for this action, particularly including information about 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. Team recommendations and additional risk reduction measures identified during Team discussions and during this scoping period will form the basis of the alternatives that will be analyzed through the EIS process.

**DATES:** Written or electronic scoping comments must be received at the appropriate address or email mailbox (see **ADDRESSES**) September 16, 2019.

**ADDRESSES:** You may submit comments on this document by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments by sending an email to [nmfs.gar.ALWTRT2019@noaa.gov](mailto:nmfs.gar.ALWTRT2019@noaa.gov) using the subject line "Comments on Atlantic Large Whale Take Reduction Plan Scoping."

- **Mail:** Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Comments on Atlantic Large Whale Take Reduction Plan Scoping."

Comments can also be provided in person during scoping meetings, listed below.

**FOR FURTHER INFORMATION CONTACT:** Colleen Coogan, Take Reduction Team Coordinator, Greater Atlantic Region. Telephone: 978 281-9181. Address: 55 Great Republic Drive, Gloucester, MA 01930. Email: [colleen.coogan@noaa.gov](mailto:colleen.coogan@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

#### Dates, Times and Locations

The dates, times, and locations of scoping meetings are scheduled as follows:

1. Thursday, August 8, 2019—  
Narragansett, RI, 6 p.m. to 9 p.m.  
URI Graduate School of Oceanography,  
Corless Auditorium, 215 South  
Ferry Road, Narragansett, RI 02882
2. Monday, August 12, 2019—Machias,  
ME, 6 p.m. to 9 p.m.

- University of Maine at Machias,  
Performing Arts Center, 116 O'Brien  
Avenue, Machias, ME 04654
3. Tuesday, August 13, 2019—  
Ellsworth, ME, 6 p.m. to 9 p.m.  
Ellsworth High School Performing Arts  
Center, 24 Lejok Street, Ellsworth,  
ME 04605
4. Wednesday, August 14, 2019—  
Waldoboro, ME, 6 p.m. to 9 p.m.  
Medomak Valley High School, 320  
Manktown Road, Waldoboro, Maine  
04572
5. Thursday, August 15, 2019—  
Portland, ME, 6 p.m. to 9 p.m.  
South Portland High School, 637  
Highland Ave., South Portland ME,  
04106
6. Monday, August 19, 2019—  
Portsmouth, NH, 6 p.m. to 9 p.m.  
Urban Forestry Center, 45 Elwyn Road,  
Portsmouth, NH 03801
7. Tuesday, August 20, 2019—  
Gloucester, MA, 6 p.m. to 9 p.m.  
NOAA Fisheries Greater Atlantic  
Region, 55 Great Republic Drive,  
Gloucester, MA 01930
8. Wednesday, August 21, 2019—  
Bourne, MA, 6 p.m. to 9 p.m.  
Upper Cape Cod Regional Technical  
School, 220 Sandwich Rd., Bourne,  
MA 02352

## Background

The North Atlantic right whale population has been declining since 2010, and the most recent estimate indicates a population of no more than 411 individuals at the end of 2017. The decline has been exacerbated by an Unusual Mortality Event in 2017, following a calving season (2016-2017) with only five documented births and coinciding with the first calving season since monitoring began in 1990 with no new births documented (2017-2018). While climate change and the availability and redistribution of prey appear to be contributing to the population's declining fitness, a primary cause of significant injury and mortality of North Atlantic right whales is entanglement in fishing gear. With mortalities continuing to outpace births, the population decline is continuing, and further mitigation of entanglements that cause serious injury or mortality is needed.

The Marine Mammal Protection Act (MMPA) mandates that NMFS develop and implement Take Reduction Plans for preventing the depletion and assisting in the recovery of certain marine mammal stocks that are seriously injured or killed in commercial fisheries. Pursuant to the MMPA, NMFS convenes Take Reduction Teams, composed of stakeholders that make

recommendations for reducing serious injuries and deaths to acceptable levels. The teams design each plan to reduce bycatch within a specific timeframe through a combination of voluntary and regulatory measures implemented by NMFS.

Right whales are listed as endangered under the Endangered Species Act and considered depleted under the MMPA. NMFS formed the Team in 1997 to consider serious injuries and mortalities caused by incidental take in commercial fisheries of right whales as well as humpback and fin whales. The Team develops and recommends measures to reduce the impact of commercial fisheries on large whales in the Atlantic to achieve the Potential Biological Removal (PBR) level. This level is defined by the MMPA as the maximum

number of animals, not including natural mortalities that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.

The Team has previously implemented several regulations to reduce the impacts of fishing gear on large whales in the region, such as area closures, gear configuration requirements, and gear marking rules. The most recent rule in 2014, amended in 2015, was implemented to reduce the risk of entanglement by decreasing the number of buoy lines, vertical lines in the water column that identify where fishing gear is set and allow fishermen to retrieve the gear.

During a meeting in April 2019, the Team provided near-consensus recommendations to NMFS to reduce

entanglements that cause right whale serious injuries and mortalities in trap/pot gear in New England waters by more than half to achieve the PBR level of less than one right whale per year in New England trap/pot fisheries. At the 2019 meeting, the Team discussed several management options to decrease the risk and severity of entanglements in these fisheries including: Vertical line reduction through trap or line limits and ropeless fishing technologies, gear modifications to reduce the breaking strength of ropes so entangled whales could break free, and area closures where right whales can be predicted to aggregate seasonally. Ultimately, all but one Team member present recommended jurisdiction-specific vertical line reductions and gear modifications.

TABLE 1—APRIL 2019 TAKE REDUCTION FRAMEWORK

April 2019 take reduction framework			
State/jurisdiction	Vertical line reduction	Gear modification	Est. % risk reduction
Maine permitted vessels through LMA1.	50% vertical line reduction through LMA1 (50% risk reduction).	LMA 1—Weak rope outside of 3 miles on ¾ length of buoy line (toppers) (11.6% risk reduction).	61.6.
NH LMA1 .....	30% vertical line reduction (30% risk reduction) ..	1700 lb. breaking strength or sleeves (28.5% risk reduction).	58.5.
Massachusetts LMA1 and Outer Cape.	Mass Bay Restricted Area Closure (24% risk reduction).	Sleeves or 1700 lb. breaking strength or equivalent. (11% risk reduction).	60.
LMA 2—Massachusetts and Rhode Island.	30% vertical line reduction, not including MBRA fishermen (–5%) (25% risk reduction).	1700 lb. or equivalent .....	60.
LMA ¾ Overlap—Massachusetts, Rhode Island.	18% (2018–2020) vertical line reduction (18% risk reduction).	(42% risk reduction).	
LMA 3 .....	Trawling up to 30 traps (from 20) (30% risk reduction for that area). Accelerate planned line reduction (18% risk reduction).	Rapid research on alternatives to introduce weak rope or weak link elements in to offshore line.	18% + TBD Commit to 60%.

In addition to changes in line numbers and strength, the Team strongly supported amplification of gear marking requirements to reduce uncertainty about where and in what fisheries large whales are entangled. During a June 2019 teleconference, the Team supported consideration of expanding the markings on buoy lines to all U.S. fixed gear fisheries including previously exempted waters, increasing spatial resolution in nearshore New England fisheries (“red” areas), adding a three-foot long mark within one fathom of the surface buoy system, and increasing the frequency of marks on buoy lines. Further information regarding that discussion can be found here: <https://go.usa.gov/xmSS3>.

Further information about the Atlantic Large Whale Take Reduction Plan can be found at the website: <https://go.usa.gov/xmSKh>. Further

information about the April 2019 Team meeting that resulted in the recommendations to modify the Take Reduction Plan can be found here: <https://go.usa.gov/xmSk3>.

**Environmental Impact Statement**

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. NMFS has determined that an EIS should be prepared under NEPA for the purpose of informing rulemaking to modify the Atlantic Large Whale Take Reduction Plan. We will prepare an EIS in accordance with NEPA requirements, as amended (42 U.S.C. 4321 *et seq.*); NEPA implementing regulations (40 CFR 1500–1508); and other Federal laws, regulations, and policies.

The Proposed Action for analysis in the Final EIS is NMFS rulemaking to modify the Atlantic Large Whale Take Reduction Plan. NMFS’ purpose for the proposed action is to fulfill the mandates of the MMPA to reduce impacts of fisheries on large whale species below their PBR level.

The EIS will consider the Team’s recommendations to reduce vertical lines by changing gear reconfigurations and/or trap allocations to reduce buoy lines and to modify gear to require rope that whales can break. Additional buoy line marking will likely also be considered as part of this rulemaking. Additions or modifications to areas closed to trap/pot fishing may also be considered. Measures to be considered will respect the framework adopted by the Team to include area-specific measures that are operationally feasible for the varying gear configurations and

lobster fishing conditions across New England. Measures will be created in collaboration with New England states and will take into account any measures states propose as they respond to Team recommendations.

#### Public Comments

Everyone potentially impacted by or interested in changes to the Atlantic Large Whale Take Reduction Plan, and particularly, management of trap/pot fisheries in New England, is invited to participate in the public scoping process by submitting written comments or attending public scoping meetings. This scoping process aims to gather input

regarding the scope of actions to be proposed for rulemaking, the development of alternatives to analyze in the EIS, and the potential impact of management actions. NMFS particularly requests comments and input on the operational challenges of gear modifications likely to be considered. In addition to direct costs of replacing new gear, input is requested on indirect cost of gear modification measure alternatives, such as costs in time required to install sleeves, install weak rope, and mark gear and costs related to fewer vertical lines or seasonal closures.

Comments and suggestions that are within the scope of the proposed actions

to reduce risk of serious injury and mortality of large whales due to entanglements and to improve gear marking to reduce uncertainty about where entanglements occur will be considered when developing the alternatives for analysis in the draft EIS. Previous comments that have already been received regarding a proposed rule are already being considered and do not need to be resubmitted.

Dated: July 29, 2019.

**Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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