

**IMPACTS OF THE ATLANTIC LARGE WHALE TAKE
REDUCTION PLAN ON MAINE'S LOBSTER FISHERY**

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANS, ATMOSPHERE,
FISHERIES, AND COAST GUARD

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

—————
FEBRUARY 19, 2008
—————

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

75-344 PDF

WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

DANIEL K. INOUE, Hawaii, *Chairman*

JOHN D. ROCKEFELLER IV, West Virginia	TED STEVENS, Alaska, <i>Vice Chairman</i>
JOHN F. KERRY, Massachusetts	JOHN McCAIN, Arizona
BYRON L. DORGAN, North Dakota	KAY BAILEY HUTCHISON, Texas
BARBARA BOXER, California	OLYMPIA J. SNOWE, Maine
BILL NELSON, Florida	GORDON H. SMITH, Oregon
MARIA CANTWELL, Washington	JOHN ENSIGN, Nevada
FRANK R. LAUTENBERG, New Jersey	JOHN E. SUNUNU, New Hampshire
MARK PRYOR, Arkansas	JIM DEMINT, South Carolina
THOMAS R. CARPER, Delaware	DAVID VITTER, Louisiana
CLAIRE McCASKILL, Missouri	JOHN THUNE, South Dakota
AMY KLOBUCHAR, Minnesota	ROGER F. WICKER, Mississippi

MARGARET L. CUMMISKY, *Democratic Staff Director and Chief Counsel*
LILA HARPER HELMS, *Democratic Deputy Staff Director and Policy Director*
CHRISTINE D. KURTH, *Republican Staff Director and General Counsel*
PAUL NAGLE, *Republican Chief Counsel*

SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND COAST
GUARD

MARIA CANTWELL, Washington, <i>Chairman</i>	OLYMPIA J. SNOWE, Maine, <i>Ranking</i>
JOHN F. KERRY, Massachusetts	GORDON H. SMITH, Oregon
BARBARA BOXER, California	JOHN E. SUNUNU, New Hampshire
BILL NELSON, Florida	JIM DEMINT, South Carolina
FRANK R. LAUTENBERG, New Jersey	DAVID VITTER, Louisiana
THOMAS R. CARPER, Delaware	ROGER F. WICKER, Mississippi
AMY KLOBUCHAR, Minnesota	

CONTENTS

	Page
Hearing held on February 19, 2008	1
Statement of Senator Snowe	1

WITNESSES

Baines, Robert S., President, Spruce Head Co-Op; Chairman, Advisory Council, Department of Marine Resources, State of Maine; Lobsterman	64
Beaulieu, Terry, Lobsterman	63
Bishop, Lewis, Lobsterman	50
Cates, Brian, Lobsterman	52
Cornish, Vicki, Vice President, Marine Wildlife Conservation, The Ocean Conservancy	25
Prepared statement	28
Cousens, David, President, Maine Lobstermen's Association	54
Dassatt, Mike, Secretary/Treasurer and Board Member, Downeast Lobstermen's Association	43
Dassatt, Sheila H., Executive Director, Downeast Lobstermen's Association	41
Drouin, John, Chairman, Zone A Lobster Management Council; Lobsterman ..	48
Gray, Robbie, Lobster Fisherman, Deer Isle, Maine	71
Joint prepared statement of Travis Dennison, Arthur Pettegrow, and Norbert Lemieux	73
Letter, dated February 16, 2008, from Robbie Gray, President, Island Pantry to Hon. Olympia Snowe	72
Prepared statement	71
Henderson, Jim, President, Southern Lobstermen's Association	46
Holmquist, Alison, Manager, Downeast Fishing Gear	73
Houghton, Meredith, Member, The CALVIN Project, Adams School	57
Johnson, Clifford, Lobsterman	66
Joyce, Spencer, Lobsterman	62
Klyver, Zach, Naturalist, Bay Harbor Whale Watch Company	60
Lapointe, George D., Commissioner, Department of Marine Resources, State of Maine	8
Prepared statement	11
Larrabee, Sr., Hon. Richard K., Selectman, Town of Stonington, Maine	54
Lecky, James H., Director, Office of Protected Resources, National Marine Fisheries Service, NOAA, U.S. Department of Commerce	5
Prepared statement	6
Lemieux, Nick, Vice President, Downeast Lobstermen's Association	66
Prepared statement	66
Lemieux, Norbert, Lobsterman	47
McCarron, Patrice, Executive Director, Maine Lobstermen's Association	14
Prepared statement	17
McWeeny, Bill, Member, The CALVIN Project; and Teacher, Grades 6-8, Adams School	58
Olivari, Meredith, Member, The CALVIN Project, Adams School	58
Robbins III, Hon. Steve, Manager, Stonington Lobster Co-Op; Selectman, Town of Stonington, Maine	67
Sergeant, Stanley, Lobsterman	76
Smith, Jay, Lobsterman	69

APPENDIX

Collins, Hon. Susan M., U.S. Senator from Maine, prepared statement	81
Downeast Lobstermen's Association, prepared statement	83

IV

	Page
Jones, Donald J., Lobster Fisherman, Stonington, Maine, prepared statement	84
Lenfestey, Jr., Myron, Lobsterman, Frenchboro, Maine, prepared statement ...	83
Letter dated February 18, 2008 from Kyra Alex to Hon. Olympia J. Snowe	89
Letter dated February 18, 2008 from Trevor Jessiman and Dan Hadley to Hon. Olympia J. Snowe	86
Letter dated February 18, 2008 from the Community Fisheries Action Roundtable to the Senate Committee on Commerce, Science, and Transportation and the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard	88
Letter dated February 19, 2008 from Richard Larrabee, Jr. to Hon. Olympia J. Snowe	85
Letter dated February 19, 2008 from Richard K. Larrabee, Sr. to Hon. Olympia J. Snowe	85
Merchant, Tonia, Sternman, Jonesport, Maine, prepared statement	84
Motycka, Evan, Member, The CALVIN Project, Adams School, prepared statement	82
Olivari, Ben, Member, The CALVIN Project, Adams School, prepared statement	82

**IMPACTS OF THE ATLANTIC LARGE WHALE
TAKE REDUCTION PLAN ON MAINE'S
LOBSTER FISHERY**

TUESDAY, FEBRUARY 19, 2008

U.S. SENATE,
SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES,
AND COAST GUARD,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Brewer, ME.

The Subcommittee met, pursuant to notice, at 10 a.m. at Jeff's Catering and Convention Center, Hon. Olympia J. Snowe, presiding.

**OPENING STATEMENT OF HON. OLYMPIA J. SNOWE,
U.S. SENATOR FROM MAINE**

Senator SNOWE. Good morning everybody. Thank you and welcome to this hearing. I want to call this hearing to order. This is a Senate hearing, and I appreciate everybody being here. I know the last one in January was postponed because of bad weather. I can attest to the bad weather. I ended up getting a broken wrist on that day.

I truly appreciate the fact that you are all here today to examine a very critical issue, as you all well know, that is confronting Maine's vital lobster industry.

As Ranking Member of the Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, I am deeply troubled by the regulations that have been issued by the National Marine Fisheries Service and the impact they will have on our lobstermen.

Indeed it's no exaggeration to say that these rules will likely compromise the viability of the industry, an industry that is critically important in many sections of our state and predominantly throughout our state.

I understand and I share the profound concerns I know so many have here today. That's why I believe it's imperative to hold this hearing to provide a platform for discussion among our witnesses and the general public, all of you who are here, so we can develop solutions that provide adequate protection to both our threatened whales and the industry so integral to Maine's coastal communities and heritage.

We must come to a reasoned, equitable solution to this issue, and I'm certainly going to fight to ensure all that I can do with those here at the table and all of you here in the audience and beyond.

Before we begin an in-depth analysis, I'd like to thank our witnesses who have made the trip to Brewer this morning: Mr. Lecky, Mr. Lapointe, Ms. McCarron, and Ms. Cornish. We appreciate the time that you've taken to be here and look forward to hear your insights on this matter.

I would also like to thank all members of the public and the industry for attending. I look forward to hearing from you directly, as you are the ones who are clearly on the front lines and living the consequences of these regulations day in and day out.

Our agenda this morning will begin with opening statements from our panel, after which I will question the witnesses on their testimony. Following that there will be at least an hour-long open mike period during which the floor will be open for comments and questions from any of you.

If you wish to participate, please add your name to the list of speakers at the back of the room. You will be called to the microphone in that order.

We'll certainly strive to accommodate as many comments as possible, and to those who are unable to make a statement here today, you're more than welcome to submit your comments in writing for inclusion in the record because this is an official Senate hearing, and therefore there will be an official Senate record.

As you're aware, in October of 2007 National Marine Fisheries Service issued new regulations that will require fixed gear fisherman along the Atlantic seaboard, including lobstermen, to use sinking groundline to connect their traps in large areas in the Gulf of Maine beginning next fall.

But as we understand all too well, more than 90 percent of the economic burden of this plan will fall on our in-shore lobstermen.

Given such a disproportionate impact upon our state's lobstermen and that these rules would take effect on October 5, 2008, right in the middle of the peak lobster season, there's no question we must ensure that we have taken every possible step to minimize these impacts, even to the point of amending existing law, if that's what it takes to resolve this unacceptable situation.

To that point, hopefully we can concur that a deferral of implementation of this rule passed in the 2008 season can also be achieved.

We are all aware of the difficulty, the safety concerns, and affiliated economic hardship these rules will impose upon our lobster industry as experience tells us that sink rope will abrade far more readily on Maine's rocky coastline than the floating rope that our lobstermen traditionally use.

While the National Marine Fisheries Service rightly listened to the Congress, industry, and the State of Maine, and in the final rule will move the exemption line further from shore than they had initially proposed, I frankly still find the outcome of this process to impose an unacceptable and unnecessary burden on our fishermen.

Furthermore, neither I nor the lobster industry have yet to receive any information about what sanctions may be imposed for such violations of these rules or even simple assurance effective enforcement is even possible.

We recognize the challenges confronting our endangered large whales, and I have had a long record of supporting reasonable and

responsible policies to protect them; but we have no direct evidence that these regulations will actually lower that risk in the areas where those rules will prove most harmful, notably in areas with rocky bottom and relatively shallow water where whale sightings are extremely rare.

I think it's telling that while the National Marine Fisheries Service has completed its work on a rule to reduce ship strike incidents, the Office of Management and Budget has held that rule for review for over a year.

Moreover, when the National Marine Fisheries Service issued its proposed rule in 2005, I was deeply troubled by the lack of rigor and assumptions in its economic analyses; therefore, I requested that the Government Accountability Office conduct a review of the underlying research that NMFS used to formulate its proposed regulations.

That study, released in July 2007, found that the agency could not estimate the extent to which these rules would protect whales and that its economic analysis did not fully account for the impact of the rules on our fishing communities.

Yet despite the GAO's findings and my own comments to the Administration, these issues remain unresolved in this final rule, and I find that, as well, objectionable and hopefully some of the issues that we can resolve here today and beyond.

Those damaging omissions are particularly concerning given that the additional hardships that our fishing industry currently confronts, especially Down East where fishing plays such an integral role in our economy.

The groundfish industry, once the lifeblood of this region, is now virtually nonexistent with just one active permit remaining east of Penobscot Bay. Lobster has been the lone bright spot in recent years, with annual landings throughout the state in the neighborhood of \$300 million. Unfortunately, early returns for 2007 appear to have declined from record highs of 2005 and 2006, and with fuel and bait prices increasing, the harvest numbers already are leading to tightening budgets and dwindling profits.

Then along come these regulations with an estimate from the Maine Lobsterman's Association that the costs to the lobstermen to convert their gear, including up to 800 traps, would be \$10,000 to \$15,000 and annual replacement costs would run as high as \$9,000.

The bottom line is it's no exaggeration to say that these rules could put many lobstermen out of business. The effect on fishing families and even on entire fishing communities could be devastating.

The path forward must include comprehensive solutions that don't simply apply a sledgehammer to a vital segment of our economy and our livelihood. First, we require additional funding to address multiple aspects of this issue. But while the costs of these regulations are visited on the fishing industry alone, the benefits are felt nationwide, and therefore the government must help shoulder the economic burden.

Financial assistance, such as a gear exchange program, for which I first acquired funding in 2004, will be critical to ensuring the survival of the fishery. NMFS and our independent scientists also re-

quire funding for research so that we can better understand the behavior of whales and develop improved whale-safe fishing gear.

Together with many of my colleagues, the New England Senate delegation and Maine Congressional delegation, I have requested additional funding for Fiscal Years 2008 and 2009, and I'll continue to work to ensure that we receive it.

Because the ultimate goals of these regulations is the protection of the endangered species of whales, I would be remiss if I did not also mention two additional steps that must be taken to ensure that the burden of this protection is equitably distributed.

I have long supported stronger regulations to reduce the number of whales killed by ship strikes, and last week I introduced a resolution calling for bilateral negotiations with Canada to develop transboundary whale management practices.

Because while Canadian fishermen ply the same bottom for the same lobsters and interact with the same whales as the U.S. fishermen, the Canadian government has applied no similar regulations to their fisherman as we face today giving them, as we well know, a competitive advantage and that hardly makes sense.

These are both issues of equity. If Maine's lobstermen are being asked to dig deep in the interest of protecting endangered species, I'll continue fighting to ensure that others are making appropriate, equitable sacrifices. That is only right and fair.

Furthermore, I expect that the National Marine Fisheries Service would not only be open to suggestions and recommendations and actions here today but will actively engage in seeking and implementing a solution that is a win-win for everyone.

The fact is, these regulations are not acceptable in their current form, and until we have a set of rules all parties can agree to, we must continue to pursue an adequate result.

To that end, I understand that the Commissioner of the Maine Department of Marine Resources, George Lapointe is here today. He has worked very hard and will be discussing his meetings with nongovernmental organizations and NMFS to seek alternative scenarios to the blanket groundline requirements.

The Department of Marine Resources has sent its proposal to the Take Reduction Team in advance of its next meeting, and I'd like to hear from them what steps would be necessary to implement this plan or other appropriate changes that may come to light in our discussion today or in the weeks to come.

Whatever form the final solution takes, this rulemaking process is far from over. We all share the goal of giving our endangered species the best possible opportunity to recover their populations without unduly and unnecessarily burdening the fishing industry that has played such a vital role in our state's economy and heritage for centuries. I, for one, am not ready to give up the possibility of achieving that goal.

At this time I would like to begin to hear the testimony from our witnesses here today, and I would like to introduce them, beginning to my right. I would like to go through who we have here representing us today, and also, I'm sure you're very familiar with all of the participants.

Mr. Jim Lecky, Director of the Office of Protected Resources at the National Marine Fisheries Service. Mr. Lecky is ultimately re-

sponsible for the development and implementation of regulations that impact marine species protected by law and will provide perspective on the new rules, and the feasibility of future development.

Mr. George Lapointe, Commissioner of Maine's Department of Marine Resources. Mr. Lapointe has been instrumental in presenting Maine's perspective to NMFS and the Take Reduction Team throughout this regulatory process, particularly the development of the exemption line. He will also be discussing a proposal that his department plans to present to NMFS about possible amendments to these regulations.

Ms. Patrice McCarron, Executive Director of the Maine Lobstermen's Association. I would be remiss if I did not begin her introduction with congratulations on the birth of her daughter, Anna Fallon McCarron, introducing her early to the industry by bringing her here at only 2 months old. Congratulations. It's wonderful news, Patrice.

She's been tireless, as we all know, as an advocate for the lobster industry in the state as evidenced by her presence here today in light of her blessed event, and she'll provide a perspective on the socioeconomic impacts the regulations will have on Maine's fishing industry and fishing communities.

And finally, Ms. Vicki Cornish, thank you for being here, Vice President for Marine Wildlife Conservation with The Ocean Conservancy. Ms. Cornish is here representing the environmental community and to speak to the reasons underlying these regulations, their ability to protect our critically endangered large whale species, and to add her organization's perspective about possible means of improving the rules to protect both the whales and the lobstermen.

With that we'll begin with you, Mr. Lecky. Thank you again for taking the time to be here this morning.

STATEMENT OF JAMES H. LECKY, DIRECTOR, OFFICE OF PROTECTED RESOURCES, NATIONAL MARINE FISHERIES SERVICE, NOAA, U.S. DEPARTMENT OF COMMERCE

Mr. LECKY. Thank you. Good morning. I am Jim Lecky, Director of Office of Protected Resources at NOAA's National Marine Fisheries Service. Thank you, Senator Snowe, for the opportunity to testify on this important issue today.

Before I begin I'd like to commend you for your leadership on the critical issues facing New England and our Nation's fisheries.

NOAA's National Marine Fisheries Service, or NMFS, their acronym is pronounced, is mandated to protect endangered whales under both the Endangered Species Act and the Marine Mammal Protection Act. Among other things, these laws require NOAA to reduce injury and mortality of mammals from incidental interactions with commercial fishing gear.

To meet our legal mandates and protect the critically endangered right whale, NOAA, together with the Atlantic Large Whale Take Reduction Team, began a process to modify the Atlantic Large Whale Take Reduction Plan.

The process began with publication of notice in 2003; public scoping meetings in 2003 further defined the action and resulted

in publication of a draft and environmental impact statement in 2005, publication of a final environmental statement and final rule, which we're discussing today, followed in October of 2007.

The Atlantic Large Whale Take Reduction Plan, final rule, needed to include significant measures to achieve statutorily required protection for right whales. The rule implements fishing gear modifications throughout the range of right whales and fin whales from Maine to Florida and up to the eastern edge of the Exclusive Economic Zone for trap, pot, and gillnet fisheries. The broad based mark modifications include a requirement for sinking groundline beginning in October of 2008 for trap, pot, and gillnet fisheries. Expanded weak link requirements for trap, pot and gillnet gear that will allow the link to break when encountered by whales.

Primary and management measures that take into account predictable movements of whales' migrations along the coast, identification of exempted waters where whales typically are not found, and therefore these modifications would not apply and additional gear marking requirements to help identify sources when entangled whales are unaccounted for.

Most of the trap, pot, gear modifications will be effective this April. Also beginning in April, the final rule eliminates the Dynamic Area Management Program, which requires temporary gear modifications and closures in certain areas to protect unexpected aggravations of feeding right whales.

The rule expands the seasonal Area Management Program temporarily, which requires gear modifications on a seasonal basis until October of 2008, and after October of 2008 that provision, likewise, will expire.

The rule was developed over many years with broad public input. While the rule remains controversial, NMFS believes that overall the measures implemented in the rule represent the best available and balanced environmental and economic considerations related to the conservation of right whales and are consistent with the requirement of the Marine Mammal Protection Act and the Endangered Species Act.

Thank you again for the opportunity to testify. I look forward to working with you, the public, and the fishing industry on implementing the rule. I'd be happy to answer your questions.

[The prepared statement of Mr. Lecky follows:]

PREPARED STATEMENT OF JAMES H. LECKY, DIRECTOR, OFFICE OF PROTECTED RESOURCES, NATIONAL MARINE FISHERIES SERVICE, NOAA, U.S. DEPARTMENT OF COMMERCE

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

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

To achieve its goals, the MMPA requires the establishment of teams of experts, called Take Reduction Teams, to work in concert with NOAA to evaluate current

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

The Atlantic Large Whale Take Reduction Plan Rule

This final rule needed to include significant measures in order to achieve the statutorily-required protection for right whales. This rule implements fishing gear modifications throughout the range of right, humpback and fin whales from Maine to Florida and out to the eastern edge of the Exclusive Economic Zone for trap/pot and gillnet fisheries. The broad-based gear modifications include:

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

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

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

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

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

The proposed rule also included a nearshore exemption line, shoreward of which large whales are not typically found and therefore the gear modifications would not

apply. In comments on the proposed rule, the State of Maine recommended an exemption line further offshore than the one that NMFS proposed, citing safety, economic and gear loss issues. In response to public comments, the final rule moved the exemption line in several areas further offshore, bringing it closer to what the State of Maine requested.

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

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

Conclusion

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

Senator SNOWE. Thank you, Mr. Lecky. George Lapointe. Thank you.

STATEMENT OF GEORGE D. LAPOINTE, COMMISSIONER, DEPARTMENT OF MARINE RESOURCES, STATE OF MAINE

Mr. LAPOINTE. Thank you, Senator. My name is George Lapointe. I'm Commissioner of Marine Resources for the State of Maine, and very much appreciate the opportunity to testify before you on this issue of critical importance to Maine, and I also want to thank you broadly for your continued support of Maine's fishing industry, and just from this morning's discussion, your help on the transboundary issue and ship strikes issue as well, because that's an issue that everybody in this room will agree with.

The issue of lobster gear/whale interactions has been with us for a long time and will remain an issue for the foreseeable future.

As Jim mentioned, the Marine Mammal Protection Act and the Endangered Species Act are powerful laws written to make sure that we protect vulnerable species from human impacts. We have all come to learn how powerful they are.

The Governor has stated with respect to salmon that extinction is not an option, and I know that he feels the same way about the lobster/whale issue as well. In the interest of time, my testimony has a couple of pages talking about what the department has done over the course of the last decade with NMFS, with the conservation industry, and the lobster industry trying to make the rules under the Atlantic Take Reduction Plan as workable as possible. We have continued that work.

One of the main things we have done with the industry is work on different groundline configurations to reduce the profiles in the water column. After much work, these efforts have focused on low profile groundline, which, as you mentioned, is in our plan, and this row [indicates] has a specific gravity. Just above that is sea water, which allows the groundline to float about a meter above the ocean floor as opposed to floating groundlines, where it floats larger, and it reduces the profile in the water column some 90 percent.

In our continued work on working on whale protection, we've done a number of things that are worth noting, and they're in my testimony as well. One is, we've conducted a vertical line survey because that's important, baseline numbers, for seasonal changes in the density and location of lobster gear throughout the state.

We worked with people on a sightings network so that in fact we know when and where whales are observed. We have worked with the industry, NMFS, and conservation interests on a disentanglement network, and we have worked, again, with the industry and NMFS on the large whale foraging research so that in fact we can tell if and where whales forage over rocky bottom, because that's so important for our state.

When the rule was published in August our comments included a number of things we supported which are important to mention. We supported the exemption line because it was an exemption line we proposed because it exempted 71 percent of state waters; we supported the elimination of the Dynamic Area Management, the dams, and the Seasonal Area of Management, the SAMs, because of the impact those had had on our fisherman; we supported the elimination for all sinking line requirements for in-lines; we supported the required weak link for flotation and sinking devices; surface rule marking requirements; and provision for no expanded gear marking.

I mention these because they do show that we have made some progress. We also had some concerns: One was concern for the availability of sufficient sinking groundline to comply with the regulation; concern over the implementation date; and importantly, concern that a process wasn't identified for the timely implementation of emerging reduction technologies.

One of the things that we worked on is trying to continue to tinker with new technologies to try to make this as workable as possible, and that's got to continue through the future.

One of the other things, in terms of our comments, there's been much discussion about the availability of sinking groundline to meet the October deadline, and those discussions continue to this date.

There was some early information that showed that the demand for sinking groundline could be met, but the issues of timing and availability remain. It will be, as the months go on, the opportunity, rather, for people to place orders in time to have them in place for October will wind down, and I suspect we may get jammed up toward the end of the period going toward October because the orders won't be placed in time for people to switch over. Manufacturers have told me personally that they cannot afford to hold a lot of inventory, so they will not produce rope without or-

ders, and as I mentioned before, the consequence of this is we may get jammed up on this issue as the year progresses.

One thing that has helped some portions of Maine in getting fishermen to switch their groundline is the rope buy back program that had been established.

Another issue that will make it hard to switch over by 5 October is that late summer and fall are the best part of our fishing year. To ask fishermen to switch their groundline at the busiest time of the year will be problematic as you have already heard.

Following the publication of the rules and a lot of discussions, there are a couple things worth mentioning. First is, our industry held a number of meetings to tell people what was in the rules and what the impact on people would be.

Again, to show Maine's commitment to moving forward, the idea was broached about increasing lobster trap tag fees, specifically to fund research in the lobster/whale interaction area; and while not universally supported, people begrudgingly support it because they said, if we don't have our oar in this water, we are going to be in trouble. I think that is really important.

This is money that is coming from the pocket of all the lobstermen in this room, and it will help us to add to the research that is needed as this issue moves forward. So I think that is important to mention.

We also, in the course of these meetings, one of the things that came to me and came to others was separating the groundline and the endline issue frankly didn't make sense to me, and as we had discussions, it didn't make sense to other people as well.

One of the issues in talking to industry and working with my staff was realizing that the requirement for sinking groundline may actually result in a very significant increase in the vertical lines, up to 63 percent in the area proposed for low profile groundline, and this counteracts the very purpose of the sink line regulation.

So with my staff, with people in industry, we developed the alternative proposal, which has been submitted to NMFS. There is a chart at the back of the testimony we provided, which I would like to refer to.

The broad outlines of the plan is a universal requirement to maintain the current technology listed in Maine exempted waters. That is the weak links, et cetera, that are currently in place, and the decision was made that we should keep those in place as well.

And in Maine, the state waters, I had a chart, a big one so people could see, somewhere between January and now it is no longer with me. The yellow area, which is the state waters, sliver areas we call it, we would obviously maintain the current exemption line. There would be implementation of low profile groundlines, and that has a specific gravity of 1.02 and a maximum 5 fathom tailer length on groundlines. It would require a unique mark for low profile groundlines. It would contain sinking groundline exemptions in the Mount Desert Rock state waters area. That is identified in the chart because there is a bucket full of whale sightings around there.

It would contain a requirement for no single traps, no more than one buoy for five traps or less, and adopting these regulations in state rulemaking.

In Federal waters, the proposal is for implementation the low profile groundlines in specific rocky tidal habitat areas be analyzed for low risk of interaction with large whales and a maximum of 25 fathom length.

We shared this concept, actually, this was written in January, so I apologize. We shared this concept with Down East Lobstermen's Association and Maine Lobstermen's Association and through our lobster zones, and both boards of the associations and people have approved moving forward with the plan, although the support certainly hasn't been unanimous.

To be completely honest, they see the groundline plan as bad, and this is less bad; but it gives us an alternative to work with, and so that is where the support has come from.

But what it does give is Maine lobstermen an opportunity to use low profile groundline in the colored areas, yellow for state waters and pink for Federal areas in the charts. In exchange for this, it prevents a huge buildup, potential buildup, of vertical lines in those areas and provides for a real reduction in vertical lines from current levels.

It would do this in a timely way as compared to the slower pace that is involved in the Take Reduction Team process because, as I mentioned earlier, we would implement through state regulations, and we have recently submitted this proposal to the National Marine Fisheries Service for peer review and for submission to the Take Reduction Team meeting this spring.

We believe the proposed amendment credibly and more holistically addresses this reduction to large whales, while concurrently allowing lobstermen the opportunity to operationally fish the rocky and tidal habitats that are low risk to large whales.

We intend to work this proposal through the team, the Take Reduction Team process for adoption and implementation, and we appreciate the help and support for these efforts.

That concludes my comments. At the right time I'd be happy to answer questions.

[The prepared statement of Mr. Lapointe follows:]

PREPARED STATEMENT OF GEORGE D. LAPOINTE, COMMISSIONER,
DEPARTMENT OF MARINE RESOURCES, STATE OF MAINE

My name is George Lapointe; I am Commissioner of Marine Resources for the State of Maine. I very much appreciate the opportunity to testify before you this morning on an issue that is of great importance to Maine, the development of lobster/whale rules that protect endangered and protected large whales while at the same time allowing the lobster industry to survive and thrive. As you know, this issue is of vital importance to Maine's coastal communities, and Maine's lobster industry. I also want to express Maine's appreciation of your continued support of Maine's fishing industry.

The issue of lobster gear/whale interactions has been with us for a long time, and will remain an issue into the foreseeable future. The Marine Mammal Protection Act and Endangered Species Act are powerful laws written to make sure that we protect vulnerable species from human impacts. Maine supports the cooperative implementation of these laws that will both protect large whales and allow the lobster industry to continue to thrive. Governor Baldacci has stated with respect to salmon "extinction is not an option" and I know that he feels the same way about the lobster/whale issue. The Department has had a decade long effort to work on the At-

atlantic Large Whale Take Reduction Team to provide for real, logical protection for whales in a way that makes sense in terms of impacts on the lobster industry. In this effort, the Department has worked with NOAA Fisheries, the lobster industry, and conservation groups because we know that this is the only way that we will all move forward with meaningful whale protection. Within this decade of work, the Department has concentrated on the development and implementation of new technologies that work for whale protection and the lobster industry. With the help that you have given us in securing funding, support of the lobster industry and NOAA Fisheries, we have experimented with a number of groundline configurations to reduce the profile of rope in the water column. After much work, these efforts have focused in on low profile groundline. This rope has a specific gravity just above that of seawater, allowing the groundline to float less than a meter (about 3ft.) off the ocean floor. By comparison, the currently used floating groundline can float up to 8 meters (about 25 ft.) off the bottom. Floating groundline has historically been safer and more efficient to use around Maine's rocky coast because it provides the lift needed to avoid rocks and hard bottom in tidal currents. However, the arc in the water column created by this floatation poses risk of entanglement to large whales in the region. Alternatively, sinking groundline, which will be required by the current rules on 5 October 2008, is harder to use and less durable because it rests on the hard bottom and is subject to excessive chafing and getting hung down. This is an issue that is unique to Maine due to the rocky and tidal habitats that exist along our coastline. In terms of whale protection, sinking groundlines provide a reduced entanglement risk because of the complete removal of rope from the water column. The low profile line currently being proposed is, in the Department's opinion, a great compromise because it reduces the height to which groundlines will float in the water column by about 92 percent. The floatation this provides allows the groundline to float slightly off the bottom in some portions of the tidal cycle, making the wear and hang down issues much more manageable. Unfortunately, the use of low profile rope is not part of the current regulations because of the timing with getting this new technology of rope tested. The reason for mentioning this information is to demonstrate that the State of Maine and lobster industry have been working diligently and cooperatively to come up with workable solutions to the lobster/whale issue.

In addition to the testing of alternative groundline, the Department has done the following things for whale protection:

- Vertical line survey—provided baseline numbers for seasonal changes in the densities and location of lobster gear throughout the state.
- Sightings network—maintain a web-based application for locations of large whales in the region that is contributed to by whale watch boats, scientific surveys, industry and the public.
- Disentanglement network—provide 24 hour, 7 days a week coverage for response to entangled whales in Maine waters. Trained Marine Patrol officers and industry members respond to, assist in or perform disentanglements with authorization through NOAA.
- Large whale foraging research—to understand the behavior of large whales and their prey in an effort to make informed decisions for the management of these species and the fishing industries affected.
 - State-wide survey and right whale tagging effort that occurred in 2007.
 - Set-up monitoring stations in known right whale habitat in 2007 and will continue through 2008.
 - Conducted state-wide CTD/plankton survey to assess availability of prey.
 - Moving ahead with modeling whale and gear overlaps spatially and temporally using sightings, gear densities, and other variables such as prey, depth and temperature.
 - Additional grants have been submitted to conduct statewide aerial surveys, tagging right, fin and humpback whales, and a collaborative grant for gear testing with the New England Aquarium, the State of Massachusetts, Gulf of Maine Lobster Foundation, the Maine Lobstermen's Association, Woods Hole Oceanographic Institute, University of New Hampshire and others.

The FEIS was published on 10 August 2007. A brief summary of Maine's comments includes:

- Support for the exemption line that exempts 71 percent of Maine state waters;
- Support for elimination of Dynamic Area Management (DAM) and Seasonal Area Management (SAM) areas;

- Support for the elimination of the all sinking line requirement for endlines;
- Support for the required weak link on all flotation and sinking devices;
- Support the surface buoy marking requirement;
- Support the provision for no expanded gear marking;
- Concern for the availability of sufficient sinking groundline to comply with the regulation;
- Concern that the 1 October implementation date is in the middle of the fall lobster season;
- Concern that a process wasn't identified for the timely implementation of emerging risk reduction technologies.

I think it's important to make a few comments on this list. First, the number of issues that the Department supported demonstrates the progress that has been made on working cooperatively. It shows that we listen to one another, as it should be. This cooperation is critical to the future work on lobster/whales rules.

Our comments expressed a concern about the availability of sinking groundline to meet the October 5 deadline. Since these comments were written, we've learned that the demand for sinking groundline can be met but issues of timing and availability remain. My understanding is that the need for rope can be met if orders for rope are placed early enough to allow an orderly production and delivery process. If people wait until the end of summer to place their orders, there will not be sufficient time to switch over. Another issue that is worth mentioning is the concern of rope manufacturers that they can't afford to hold a lot of inventory without orders for sinking groundline. The consequence of all of this is that we may get jammed up on this issue as the year progresses. One thing that has helped in getting lobstermen to switch their groundline is the rope buy back programs that have been established, including that of the Gulf of Maine Lobster Foundation, with the help of Maine's Congressional delegation.

Another issue that will make it hard to switch over by 5 October is that the late summer and fall is the best part of the year for Maine's lobstermen. To ask them to take the time to switch out their groundline in the busiest part of the year will be problematic.

Since the draft rules were published, various interests in Maine have been involved in a number of efforts that are worth mentioning. Industry meetings let folks know what was in the rule and what options there were to move forward. The idea of increasing the Maine lobster trap tag fee was broached at these meetings to add significantly to the funding available for lobster/whale research.

The Department has increased the trap tag fee from \$0.30 to \$0.40 to provide additional funding for research needed to help Maine continue the work on developing the information and technologies that are needed to balance whale protection with lobster fishery operations. Maine currently sells about 3 million tags a year so this \$0.10 increase will generate something in the vicinity of \$300,000 annually to help answer important research questions and position Maine to better address the upcoming endline risk reduction component of the Take Reduction Plan.

Following the publication of the final rule, a meeting was arranged between the Department, lobster industry, and conservation industry to discuss opportunities to connect the groundline/vertical line issue. I met first with some of the leaders from The Ocean Conservancy to reiterate Maine's commitment to finding workable solutions to the lobster/whale issue and to see if there was any interest in further discussions on combining the groundline and vertical line issues. My sense is that this was a positive meeting with a commitment to further discussions. It was also a realistic meeting in that all participants knew that possible solutions would be difficult to put together and would require discussion and understanding by all parties. A follow up meeting was held in October with some lobster representatives and some folks from The Ocean Conservancy where we discussed the idea of combining the groundline and vertical line issues. Again, it was a frank but good discussion.

We followed up with conversations with NMFS to see if there was any opportunity for the concept we were discussing. They said that it was possible but that it would be very difficult which I believe is an honest assessment.

So, we went ahead in developing what the Department believes is a viable alternative that gives some flexibility on the groundline issue but makes real and timely progress with vertical lines. Although there are many aspects of the Final Rule that amend the Atlantic Large Whale Take Reduction Plan that the Department supports including Maine's exemption line, the removal of the requirement to fish all sink endlines and the removal of Dynamic Area Management. The requirement for mandatory sinking groundlines is both problematic for logistical and risk reduction reasons. One very important unintended consequence of the mandatory sinkrope re-

quirement is that many fishermen will switch from multiple traps connected to one groundline to singles or pairs resulting in a significant increase in vertical lines in the water column. Preliminary analyses done by the Department suggest there could be up to a 63 percent increase in vertical lines within the area proposed for use of low profile groundline. Obviously, this counteracts the very purpose of the sink line regulation; getting rope out of the water.

The outline of the plan is:

Universal Requirement:

- Maintain current technology list in Maine exempted waters.

Maine State Waters Sliver—Outside the Exemption Area (See attached chart):

- Maintain current exemption line.
- Implementation of low-profile groundlines (specific gravity of 1.02)—maximum 10 fathom length.
- Uniquely mark low-profile groundlines.
- Sinkrope groundlines in Mt. Desert Rock state waters area.
- No singles.
- No more than 1 buoy for 5 traps or less.
- Adopt sliver waters measures in Maine state rulemaking.

Maine Federal Waters:

- Implementation of low-profile groundlines in specific rocky/tidal habitat areas within (LZs A–D) analyzed to be of lower risk to ALWs—maximum 25 fathom length.

We have recently shared this concept with the Maine Lobstermen's and Down East Lobstermen's Associations to get their reaction on the idea. Both Boards approved moving forward with this plan but support wasn't unanimous. Their comments reflect the fact that it's an alternative that has significant impacts on how lobster fishing is conducted in Maine, it's a tough proposal.

What it gives to Maine lobstermen is the opportunity to use low profile groundline in colored areas (yellow in state waters and pink in Federal waters) identified on the attached chart. In exchange for this, it first prevents a huge buildup in vertical lines and provides for a real reduction (21 percent statewide) from current levels. It would do this in a timely way as compared with the slow pace that has occurred with the groundline discussions. Additionally, the current conservation measures to protect whales will remain intact in state waters.

Later this week the Department will be submitting the full low-profile proposal and all supporting data to NOAA Fisheries for distribution to the Large Whale Take Reduction Team and for external peer review prior to this spring's Take Reduction Team meeting. We believe that the proposed amendment credibly and more holistically addresses risk reduction to large whales while concurrently allowing Maine lobstermen to operationally fish in rocky and tidal habitats that are of low risk to large whales. We intend to work this proposal through the Team process for adoption and implementation by October 5, 2008. I appreciate your help and support with these efforts.

Again, thank you for the opportunity to provide testimony on these important issues today.

Senator SNOWE. Thank you very much, Commissioner Lapointe.
Ms. McCarron?

**STATEMENT OF PATRICE McCARRON, EXECUTIVE DIRECTOR,
MAINE LOBSTERMEN'S ASSOCIATION**

Ms. McCARRON. Senator Snowe, good morning. My name is Patrice McCarron, and I am the Executive Director of the Maine Lobstermen's Association, which is the largest commercial fishing industry group on the East Coast representing the interests of about 1,200 lobstermen.

Lobster fishing is vital to the Maine economy, and Maine lobstermen have for generations been leaders in conserving our marine resources, including large whales. On behalf of the MLA, I

would like to thank you for providing this opportunity to speak for our members about our common objective of protecting large whales and maintaining the viability of the Maine lobster fishing industry. I will be sharing our thoughts on how the new Federal regulations implementing the Atlantic Large Whale Take Reduction Plan can better serve those goals.

I want to emphasize at the start that MLA and its members fully support conservation and protection of large whales, including the endangered northern right whale. Although encounters between endangered whales and lobster fishing gear in Maine are extremely rare, we believe it is important to minimize these rare incidents and eliminate mortality while doing so in a practical way that recognizes the operational realities faced by Maine lobstermen, and it does not threaten the viability of the Maine lobster industry.

However, the MLA believes that the new regulations will have serious and unwarranted impacts on Maine lobstermen. NMFS has established an exemption line that does not reflect a thorough scientific analysis of large whale behavior and their interactions with lobster fishing. As a result, the sinking groundline requirement will apply more broadly than is necessary to protect large whales both geographically and temporally, and will impose substantially greater costs on Maine lobstermen than are necessary to protect whales.

In addition, we continue to have serious doubts concerning the ability of Maine lobstermen to fish safely and efficiently using sinking groundline because the rocky bottom conditions and the strong currents that prevail off the Maine coast.

We believe that NMFS is going forward with implementation of the sinking groundline requirement without adequately analyzing the costs associated with compliance or the potentially catastrophic impact that the new regulations on Maine lobstermen, their communities, and the lobster fishing industry in general.

The MLA is particularly concerned that the sinking groundline requirements are scheduled to be implemented in October of 2008 during the peak fishing season. Maine lobstermen are now preparing their gear for the upcoming season, and it is imperative that they be able to gear up for the entire season rather than be forced to bear the additional expense and burden of switching gear in October.

Right now Maine lobstermen face a serious dilemma. Because the new NMFS regulations place Maine lobstermen in an untenable position regarding the deployment of compliant groundline, because NMFS has not yet developed adequate specifications that can be used in the fishery. It is specified in a practical implementation date that would not allow Maine lobstermen to come into compliance for the upcoming season even assuming that a workable standard for compliant groundline were immediately specified.

They lack procedures for certified compliant rope and for identifying laboratories that are qualified to provide an independent certification, and they place lobstermen in jeopardy of unspecified enforcement consequences for failure to comply with vague and unenforceable standards.

The new rules are proposed to be implemented without adequate coordination between Federal and state enforcement authorities.

To address these concerns, the MLA intends to request that NMFS exercise its discretion to defer enforcement of the sinking groundline requirement with respect to Maine lobstermen until after the 2008 lobster fishing season.

Taking this step would ensure that Maine lobstermen are able to order gear without facing the compliance dilemma that I have outlined. It would also provide NMFS with an opportunity to develop groundline specifications and enforcement guidelines and procedure that will be clearer and more easily enforced.

In connection with the development of such specifications and guidelines, we call on NMFS to develop a test procedure to be used by rope manufacturers so that lobstermen can actually purchase groundline that is certified to meet the NMFS standards and that would be recognized by NMFS as meeting those standards, that would require the rope manufacturers to actually mark compliant rope similar to what was proposed with the DMR plan, and to work with the industry to put in place third-party certification procedures that will facilitate the availability of compliant groundline.

We further believe that this deferral would give NMFS and interested parties time to conduct the necessary further analyses to determine where the sinking groundline requirement is truly appropriate based on the most up-to-date research and how to ensure that Maine lobstermen and those who depend on them are not left to bear the lion's share of the burden associated with protecting large whales.

I would now like to take a few moments to comment on the Maine DMR Low-Profile Groundline Area Proposal which was submitted to the TRT at the end of January of this year.

In many respects the new proposal does represent a substantial improvement. It recognizes that the rocky coastal terrain and strong currents present off the Maine coast require some degree of groundline flotation to permit Maine lobstermen to fish both safely and efficiently.

The proposal provides for compliant rope to be uniquely marked for use in Maine and in Federal waters by Maine lobstermen, which would result in many of the enforcement difficulties that are present under the NMFS procedures.

However, the proposal also contemplates implementation in October of 2008, which is just unrealistic. In addition to the numerous political and administrative hurdles that we feel would need to be overcome, I have already noted that lobstermen should not be required to switch gear during the peak fishing season. Moreover, the rope proposed by Maine DMR is not currently available commercially and thus cannot be purchased in time for the upcoming season.

The MLA appreciates Maine DMR's work in developing the low-profile proposal and believes that it does warrant further review and analysis; however, we also believe that these efforts should go forward hand in hand with the continued efforts of the MLA that we're supporting in order to refine the scientific analysis of large whale behavior and their interactions with lobster fishing.

If enforcement of the sinking groundline requirement is deferred, this would provide a window of opportunity for further study of the

low-profile groundline proposal, as well as additional scientific and economic analysis that we believe are needed.

Thank you.

[The prepared statement of Ms. McCarron follows:]

PREPARED STATEMENT OF PATRICE MCCARRON, EXECUTIVE DIRECTOR,
MAINE LOBSTERMEN'S ASSOCIATION*

Good morning. My name is Patrice McCarron. I am the Executive Director of the Maine Lobstermen's Association (MLA). MLA is the largest commercial fishing industry group on the East Coast, representing the interests of 1,200 lobstermen. Lobster fishing is vital to the Maine economy, and Maine lobstermen have for generations been leaders in conserving our marine resources, including large whales. On behalf of MLA, I would like to thank you for providing this opportunity to speak for our members about the impacts on the Maine lobster fishing industry of the new Federal regulations implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP).

I. Introduction

On October 5, 2007, the National Marine Fisheries Service (NMFS)¹ issued a Final Rule amending the regulations that implement the ALWTRP.² The Final Rule revises existing measures for the protection of certain large whale species in Atlantic commercial fisheries to meet the goals of the Marine Mammal Protection Act and the Endangered Species Act (ESA). Among other requirements, the Final Rule establishes an exemption line off the coast of Maine and requires that lobstermen fishing outside of the exemption line use sinking and/or neutrally buoyant groundline,³ in order to reduce the risk of entanglement with large whales. These requirements are to become effective on October 6, 2008, during an important part of the Maine lobster fishing season.

I want to emphasize at the start that MLA and its members fully support conservation and protection of large whales, including the endangered Northern right whale. To that end, MLA has been an active member of the Atlantic Large Whale Take Reduction Team (ALWTRT) since 1997, and has collaborated with NMFS, the New England Aquarium, and the Maine Department of Marine Resources (Maine DMR) in the development and testing of new gear designed to reduce the potential for large whale entanglement. Many Maine lobstermen have participated in workshops to assist in reporting whale sightings and disentangling whales, and strategically located lobstermen are equipped with disentanglement tools and have successfully intervened in the instances where minke whales have become entangled.⁴ MLA also has urged that further study be given to large whale foraging activities, to determine the extent to which Northern right whales are at risk in Maine waters. MLA and its members are proud of our record of compliance with existing conservation standards, and are committed to maintaining that record in the future.

However, MLA is deeply concerned about several aspects of the Final Rule as it applies to Maine lobstermen. We continue to have serious doubts concerning the ability of Maine lobstermen to fish using sinking groundline, because of the rocky bottom conditions that prevail off the coast of Maine. MLA is concerned that NMFS is going forward with implementation of the sinking groundline requirement without adequately considering the operational and economic burdens associated with increased gear loss and the shorter lifespan of sinking groundline. Nor has NMFS adequately addressed the serious safety hazards to lobstermen associated with the use of sinking groundline in rocky bottom areas.

We are particularly concerned about the current schedule for implementation of the sinking groundline requirements, because the Final Rule:

1. Lacks adequate enforcement guidelines that will enable Maine lobstermen to procure and deploy compliant gear in time for the upcoming 2008 lobster fishing season;

* Exhibits referred to in footnotes can be found at www.maine.gov/dmr/rm/whale/lowprofileproposal2008figs.pdf.

¹ NMFS is a line office of the National Oceanic and Atmospheric Administration.

² *Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations*, 72 Fed. Reg. 57,104 (Oct. 5, 2007) (Final Rule).

³ Subsequent references in this testimony to sinking groundline are intended to encompass neutrally buoyant groundline, as well.

⁴ Minke whales are not listed as endangered or threatened under the ESA. A summary of the Maine lobster industry's efforts to protect large whales is included as Exhibit 1.

2. Specifies an impractical implementation date that would not allow Maine lobstermen to come into compliance for the upcoming season, even assuming that adequate standards for compliant gear were immediately specified;
3. Places Maine lobstermen in an untenable position regarding the deployment of compliant gear, because without further specifications from NMFS concerning compliant groundline, lobstermen do not know how they should proceed in ordering rope for the coming season, which for many lobstermen begins in April;
4. Lacks procedures for certifying compliant rope and for identifying laboratories that are qualified to provide independent certification;
5. Places Maine lobstermen in jeopardy of unspecified enforcement consequences under Federal fishing permits for failure to comply with vague and unenforceable standards; and
6. Is proposed to be implemented without adequate coordination between Federal and state enforcement authorities.

Maine lobstermen need to place orders for gear for the upcoming fishing season in the very near future, and it is imperative that they be able to purchase appropriate gear to last the entire season, rather than be forced to bear the expense and burden of switching gear in October, during the peak fishing season. Right now, however, lobstermen have no assurance that the gear they purchase will be compliant, because clear standards have not been developed and communicated by NMFS.

In addition to those immediate concerns regarding enforcement of the Final Rule, MLA has more general concerns regarding the scientific and economic analyses that led to the determination of where the exemption line was drawn and where the sinking groundline requirement will be imposed. First, the Final Rule is not based on scientific evidence demonstrating that the geographic restrictions on fishing activities will protect large whales. The exemption line is not optimally located to maximize protection of large whales while minimizing the impact on lobstermen, and the restrictions are imposed year-round, failing to address both the seasonality of the large whale presence off the Maine coast and the seasonal nature of the lobster fishery. Second, the Final Rule will have potentially catastrophic impacts on the livelihoods of Maine lobstermen, affecting families and communities by imposing greatly underestimated costs and burdens—costs and burdens that, in many instances, may prove unnecessary for the protection of large whales because the scope of the restrictions are overly broad. It is unfair to impose nearly all of the economic burden of protecting large whales—approximately 90 percent of the costs identified in the FEIS—on Maine lobstermen, and it is unjust to do so without evidence to demonstrate that the affected lobstermen are fishing when large whales are present.

MLA raised many of these concerns in comments on the Final Environmental Impact Statement (FEIS) that it filed with NMFS on September 17, 2007. Similar comments were submitted to the agency by Maine officials, including Senators Snowe and Collins, Congressmen Allen and Michaud, Governor Baldacci, and Commissioner Lapointe of Maine DMR. These comments requested that NMFS delay implementation of the Final Rule as it affects Maine lobstermen until at least June 2010. However, NMFS has not adequately responded to these comments on the FEIS.⁵ Furthermore, NMFS did not respond substantively to the June 2007 report prepared by the Government Accountability Office (GAO) at Senator Snowe's request,⁶ which identified deficiencies in the scientific and economic analyses in the Draft Environmental Impact Statement (DEIS) and recommended further study.⁷

MLA is interested in any efforts to identify known areas of Northern right whale aggregations, and fully supports affirmative steps to protect them. MLA believes that data are being developed that will provide a better understanding of the interaction between Northern right whales and lobster fishing activities, and these data will provide a better scientific basis for drawing the exemption line. We are not asking that the exemption line be redrawn in its entirety, but do believe that there is a need to refine the line based on a more thorough analysis of the data. MLA is aware that there are ongoing whale surveillance efforts, new research on oceanography and whale foraging, and planned scientific studies to better understand lobster fishing efforts, and we look forward to seeing the results that are being pre-

⁵ NMFS' responses to these comments were contained in the Record of Decision (ROD), which was issued on September 21, 2007—four days after MLA and others submitted their comments on the FEIS.

⁶ Government Accountability Office, *Improved Economic Analysis and Evaluation Strategies Needed for Proposed Changes to Atlantic Large Whale Reduction Plan* (June 2007) (GAO Report).

⁷ NMFS merely added a "sensitivity analysis" to the FEIS to reflect ranges of possible costs associated with compliance with the sinking groundline requirement.

pared for the Spring 2008 ALTWRT meeting. We wish to point out that MLA was responsible for working with the State of Maine to raise new revenue directly from lobstermen to continue this type of research via an increase in trap tag fees. In addition, MLA is aware that recent collaboration among a number of groups in the United States and Canada resulted in moving shipping lanes by four nautical miles to reduce encounters between Northern right whales and surface ships in routes into Canadian seaports, to avoid areas that were clearly known for aggregations of Northern right whales. This effort resulted from a probability analysis using Northern right whale sightings and mortality data, including evidence that five were killed by ship strike in 2006. We hope to see a similar tool developed to further reduce the rare encounters of large whales with Maine lobster gear and eliminate mortality from these encounters.

Given the substantial interests that are at stake, MLA believes that it is critical that NMFS take four steps to ensure that Maine lobstermen are not subjected to the risk of arbitrary enforcement action during the upcoming lobster fishing season and that the exemption line is properly located. NMFS should:

1. Exercise discretion to defer enforcement of the sinking groundline requirement of the Final Rule with respect to Maine lobstermen until after the upcoming lobster fishing season;
2. Develop enforcement guidelines that provide certainty as to the gear standards to be implemented to enable lobstermen to comply in a manner consistent with the operational realities of the fishing season;
3. Refine and expand scientific analysis to determine the optimal location for, and possible seasonal implementation of, the exemption line; and
4. Conduct a rigorous analysis of the operational, economic, and safety consequences for Maine lobstermen if the sinking groundline requirement is maintained.

Discretionary deferral of enforcement of the sinking groundline requirement would give NMFS and interested parties time to conduct necessary further analyses to determine where the sinking groundline requirement is truly appropriate, and how to ensure that Maine lobstermen and those who depend upon them are not left to bear the lion's share of the burdens associated with protecting an endangered species.

II. NMFS Should Exercise Discretion to Defer Enforcement of the Final Rule until after the Upcoming 2008 Lobster Fishing Season

Under the Final Rule, the sinking groundline requirement is scheduled to be implemented on October 6, 2008. Unfortunately, this date falls during peak landings of the Maine lobster fishing season. It would be more realistic, less burdensome, and more economical for implementation of the sinking groundline requirement to coincide with the start of the lobster fishing season and the time when trap tags are renewed. If the sinking groundline requirement is to be enforced during any portion of the upcoming lobster fishing season, Maine lobstermen should be able to purchase and deploy the gear necessary to be compliant during the entire season, rather than being forced to incur the unnecessary burden of switching gear over during a key portion of the season. However, neither NMFS nor Maine DMR has provided adequate guidelines to enable lobstermen to purchase compliant gear at this time. For this reason, MLA intends in the near future to request that enforcement of the sinking groundline requirement for Maine lobstermen be deferred, as an exercise of agency discretion, until after the upcoming lobster fishing season.

In Maine, many lobstermen set gear as early as April and fish through December.⁸ Within the next few weeks, lobstermen need to place orders for rope and other gear for the upcoming season. Lobstermen who want to receive economic assistance by exchanging rope under the Gulf of Maine Lobster Foundation's (GOMLF) federally funded Bottom Line Project must register now for one of the three rope exchanges scheduled over the next few months. MLA is confident that, given sufficient lead time, rope manufacturers can manufacture ample quantities of compliant sinking groundline to serve the needs of the Maine lobster industry, once orders are placed for line that can be certified to conform to compliance protocols. However, lobstermen cannot make the necessary business decisions and place orders until they know the specifications for compliant groundline, and these specifications have

⁸Exhibit 2 contains seasonal landing data demonstrating the duration of the lobster fishing season. These data are for the calendar year 2005, and reflect landings for each calendar quarter of that year. They were compiled for the Gulf of Maine Research Institute by the Market Research, LLC research firm.

not been developed in sufficient detail and clarity, or agreed to by NMFS and Maine DMR. If lobstermen are to comply with the sinking groundline requirement, and to make the decision to take advantage of the rope exchange program, they need to be able to have assurance that the rope they purchase will be compliant, and to have that assurance soon.

NMFS has defined “sinking and/or neutrally buoyant groundline” as having a specific gravity of 1.03 or greater, and has developed a complicated procedure for determining the specific gravity of a sample of line.⁹ The NMFS standard is based on density data taken from 384 locations from the Gulf of Maine to Key West, Florida, and thus does not reflect local water conditions. It is possible that seawater density data compiled from waters in the Gulf of Maine would indicate that rope with a specific gravity of less than 1.03 would sink in Maine waters.

The procedure for determining the specific gravity of a sample of line is of greater concern, however, since this is what enforcement agents¹⁰ will be using to determine whether lobstermen are fishing with non-compliant line. There is no accurate way for an enforcement agent or lobsterman to verify compliance in the field; the procedure would require that a sample of line be confiscated and sent to NMFS, which would test it. The NMFS test procedure requires the line sample to be submerged for 7 days and weighed each day. The weight from the seventh day would then be used for the final specific gravity calculation, which involves dividing the submerged weight of the sample by the difference between the sample’s submerged weight and its dry weight.¹¹ The NMFS test procedure is not the only (or best) means for determining the specific gravity of rope; MLA has been made aware of another procedure involving far less time, but which nevertheless is complex, would require a trained technician to perform, and is not suitable for testing in the field.¹²

Moreover, the NMFS procedure appears to be applicable to line that has been fished, and on its face does not appear to provide any means for lobstermen to determine *in advance* that line they have purchased will meet the NMFS specific gravity standard. NMFS has not specified a procedure to be used for fresh, dry line after it has been manufactured but before it has been fished. Nor is it clear whether the specific gravity of line is subject to change after a period of use, so that groundline that may be compliant initially could become non-compliant over time. Again, there is no evident way for a lobsterman to determine whether line that may have been compliant initially has become non-compliant over a period of use.

We do not believe that NMFS is trying to subject lobstermen to a “gotcha” enforcement mechanism, but right now our members are at a complete loss as to how to be sure that they are complying with the requirements of the Final Rule. Clearly, if lobstermen are to be subject to sanctions for fishing with noncompliant groundline, it is imperative that there be a procedure to determine that their rope is compliant with the NMFS standard before they purchase and use it. To this end, MLA believes that NMFS should develop a test procedure to be used by rope manufacturers so that lobstermen could purchase groundline certified to meet the NMFS standards and that would be recognized by NMFS as meeting those standards. We also believe that NMFS should require rope manufacturers to mark the rope with a tracer to indicate that it meets the NMFS standard. This would enable Maine lobstermen to be confident that the groundline they are deploying is compliant with NMFS guidelines. At present, lobstermen must rely on the manufacturer’s claim that rope is “sinking groundline” or “neutrally buoyant groundline,” claims which have been shown by experience to sometimes be inaccurate.

MLA also supports development of a list of independent laboratories that would be able to certify the specific gravity of groundline prior to deployment, and to conduct tests if questions are raised regarding compliance after the groundline has been fished. NMFS should develop a process to certify the results of tests conducted by manufacturers or independent laboratories, to ensure that those entities are not subject to liability because their test results may vary from results produced by tests conducted by NMFS. Because of our questions regarding the testing procedures specified by NMFS, we also would support and participate in a study using

⁹The NMFS density standard and procedure for determining the specific gravity of line is included as Exhibit 3.

¹⁰NMFS has its own Office of Law Enforcement, and also partners with the United States Coast Guard, other Federal agencies, and state agencies, including Maine DMR through a Joint Enforcement Agreement.

¹¹The NMFS protocol does not provide a procedure for determining the submerged weight of a sample. Nor does it explain the purpose of weighing on a daily basis, if the final calculation depends only on the sample’s weight on the seventh day. MLA has a number of technical questions concerning the test procedure, which are included in Exhibit 4.

¹²A description of this procedure is included in Exhibit 5.

the NMFS procedures to test groundline that has been fished, to analyze how line is performing in relation to the NMFS sinking groundline standard.

Given the concerns that I have discussed, MLA believes that NMFS should exercise its discretion to defer enforcement of the sinking groundline requirement with respect to Maine lobstermen until after the 2008 lobster fishing season. This would provide time for NMFS and Maine DMR to address enforcement issues, and to provide clear specifications that will enable Maine lobstermen to order compliant gear for the 2009 lobster fishing season. The alternative is to subject lobstermen to a set of unacceptable options: (1) Tie up and forego their livelihoods until they can be assured of purchasing compliant groundline; (2) limit their fishing activities to areas within the exemption zone; (3) break gear down into singles, with increased use of vertical line resulting in increased risk to whales; or (4) fish with rope that may or may not be compliant, and thereby subject themselves to possible penalties and license sanctions for non-compliance under enforcement rules that have not yet been determined.

Finally, we would suggest that if enforcement is to be undertaken at all beginning in October 2008, as contemplated by the Final Rule, it should be done without penalty to lobstermen. Under this approach, enforcement agents would conduct tests, identify non-compliant groundline, and notify lobstermen of any deficiencies, but no sanctions would be imposed against those found non-compliant during a transition period long enough to ensure that the scope of the Final Rule, and procedures for its implementation, have been resolved. Given the current dilemma confronting lobstermen due to the need to purchase gear in the absence of clear enforcement guidelines, lobstermen should not be subject to sanctions for failure to comply with the current vague and unspecific guidelines.

III. NMFS Should Refine the Exemption Line Based on a Thorough Analysis of Large Whale Interactions with Lobster Fishing Activities

Discretionary deferral of enforcement of the sinking groundline requirement would also provide a window of opportunity to refine the exemption line for Maine based on a thorough scientific analysis of large whale interactions with lobstermen. NMFS has stated that the information it used to develop the state exemption areas “was the best scientific information available.”¹³ NMFS relied upon a number of sources, including large whale sightings data compiled over several decades and satellite tracking information reported in published papers. MLA has reviewed the data relied upon by NMFS, as well as the analysis presented in the FEIS and the Final Rule, and one thing is clear: The exemption line drawn by NMFS was not based on a thorough analysis of large whale interactions with lobstermen, and thus has not been drawn—as it should be—to minimize compliance costs that will be incurred by lobstermen by imposing gear restrictions in areas where their fishing effort is known to coincide with the presence of large whales.

The exemption line drawn by NMFS is based on an analysis of large whale sightings and tracking data compiled over a number of decades. The NMFS analysis does not take into consideration *when* the sightings took place—what year, what month, what season—or their interaction with lobster fishing activity. MLA engaged a team of researchers at the University of Buffalo to analyze the large whale sightings database, which is maintained by Maine DMR and other institutions and which compiles sightings data for Northern right, humpback, and finback whales. The researchers prepared a series of maps for each large whale species that breaks down the number of large whales sighted by decade of sighting, number of whales per sighting, and season of sighting.¹⁴ They also prepared a series of maps showing whale sightings over the period 1990–2005, focusing on the number of large whales sighted within the three-mile line and the 50-fathom curve along the Maine coast.¹⁵ The data show that protected large whales very rarely appear inside the 50-fathom curve: There were only seven sightings of Northern right whales, seven sightings of humpback whales, and 33 sightings of finback whales—with 27 of the finback sightings occurring in a concentrated area known as The Kettles. This strongly suggests that depth should be a factor in drawing the exemption line, whether at the 50-fathom curve or elsewhere.

The researchers also analyzed the data to identify areas where Northern right whales have been known to aggregate for feeding, with a cluster of three or more

¹³ Final Rule, 72 Fed. Reg. at 57,126.

¹⁴ These maps are included as Exhibit 6.

¹⁵ These maps are included as Exhibit 7.

whales considered an “aggregation.” Using the methodology developed by NMFS,¹⁶ they prepared a map that shows that almost all aggregations of Northern right whales during the period 1972–2000 occurred beyond the 50-fathom curve, and were concentrated in certain areas.¹⁷ Finally, the researchers analyzed the relationship between whale sightings data and lobster fishing activities. For the period 2000–2005, they estimated trap density by month for the period April–November, the months in which the majority of lobster fishing in Maine takes place. They developed maps that show no Northern right whales were sighted in state waters during any of Maine’s prime lobster fishing months, and only three were sighted in Federal waters inside the 50-fathom curve—two in April, when fishing activity is still comparatively light, and one in September, when activity is more intense.¹⁸ This suggests that there is virtually no interaction between Northern right whales and Maine lobstermen within the 50-fathom curve, and thus there is a negligible risk of entanglement.

MLA recognizes that the results of this research are not definitive, but does believe that it represents an approach that is superior to the analysis presented by NMFS. At various points in the Final Rule, NMFS acknowledges that it may be appropriate to revisit the exemption line in the future, based on information that becomes available. Our concern is that the Final Rule exemption line does not accurately reflect the potential for interaction between large whales and lobster fishing activities, and is not based on the same level of analysis that NMFS has employed in identifying critical habits and determining appropriate changes to key shipping lanes for the protection of large whales. Maine lobstermen will bear significant costs and be subjected to increased safety risks in complying with the sinking groundline requirement, and it is important that the line be drawn in such a way as to impose the fewest costs while still protecting large whales from potential harm.

We agree that in areas where whales have been known to aggregate, such as Jeffreys Ledge and Mount Desert Rock, it is appropriate to set sinking groundline requirements. In addition, where there is evidence indicating that whales may be present in particular areas where lobster fishing takes place, and at particular times during the lobster fishing season, MLA would support imposition of sinking groundline requirements in those places at those times. MLA supports a risk analysis approach, but does not support the methodology that has been employed in the past to determine Dynamic Area Management (DAM) zones, which has resulted in gear modifications being required in vast areas where whales are not present. We are aware that the methodology for identifying DAM zones has also been questioned by other bodies.

MLA fully supports further scientific analysis to determine other ways to protect large whales without imposing undue burdens on lobstermen and the economy of Maine. In the meantime, however, NMFS should immediately begin analyzing the interaction between large whales and lobster fishing, both geographically and temporally, to determine where new gear requirements are warranted for the protection of large whales off the coast of Maine, and during what portions of the lobster fishing season. NMFS should work in collaboration with Maine DMR, and with the benefit of the funds supplied by the industry through increased trap tag fees, to conduct this analysis. This will enable the agency to refine the exemption line, to ensure that it permits lobstermen to fish with floating groundline in those areas where there is no reasonable risk of large whale entanglement.

IV. NMFS Should Conduct a Full Analysis of the Operational, Economic and Safety Impacts of the Final Rule on Maine Lobstermen

MLA believes that, as it currently stands, the Final Rule will have significant, and potentially catastrophic, effects on the livelihoods of Maine lobstermen, with cascading effects on their families and the communities that support their work. NMFS attempted to analyze the economic and social impacts of the ALWTRP amendments on those affected by it, but its analysis was far from rigorous, and although the deficiencies in the analysis were identified, both in the GAO Report and comments on the FEIS, the agency failed to provide a substantive response to these concerns in the Final Rule or in the ROD. NMFS largely brushed aside evidence concerning operational and safety impacts of the sinking groundline requirement. The unacknowledged impacts of the Final Rule on Maine lobstermen highlight the

¹⁶This methodology is described in Phillip J. Clapham and Richard M. Pace III, “Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options” (April 2001), available at <http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0106/crd0106.htm> (last accessed Feb. 13, 2008).

¹⁷This map is included as Exhibit 8.

¹⁸These maps are included in Exhibit 9.

need to draw the exemption line scientifically, based on the latest data and most sophisticated analysis.

The sinking groundline requirement imposed by the Final Rule represents a “one-size-fits-all” approach to large whale protection that is ill-suited to the operational realities faced by Maine lobstermen. The bottom areas along Maine’s coast are very rocky, and are subject to extreme tidal currents.¹⁹ These conditions are different from those faced by fishermen operating in other lobster fishing states. The use of sinking groundline in these areas is highly impractical, as gear will chafe along the rocks and barnacles and break off, causing loss of ropes and traps. Where sinking groundline is required, Maine lobstermen will incur significantly higher costs associated with the increased cost of rope and with gear loss, and also will incur additional expenditures of time in attempting to fish so as to avoid gear loss.

More troubling is the very real danger associated with gear becoming hung down beneath rocks. When this happens, and the gear is hauled, the rope may snap, or it may cause serious damage to the boat. Either way, there is a serious threat to the safety of the persons aboard. An incident of this type occurred in 2007, in an area off the coast of Massachusetts where the conditions are far less rocky than those found off the Maine coast.²⁰ NMFS has indicated that it will continue to monitor safety concerns related to sinking groundline, but its generic response to operational and safety issues related to the use of sinking groundline off the Maine coast is to simply state that sinking groundline is currently being used by some fishermen in Maine, even in rocky bottom areas.

As I will explain later in my testimony, Maine DMR has tested a low-profile groundline that it believes will protect whales while permitting lobster fishing in rocky bottom areas. However, time will be needed to assess whether this will work. Maine DMR has proposed an amendment to the ALWTRP based on its proposal, and this will need to be evaluated through the ALWTRT process. MLA hopes that this will help alleviate some of the operational and safety concerns presented by the Final Rule, but if that does occur, it will be at some point in the future. That process will not assist Maine lobstermen in dealing with the immediate operational impacts and safety hazards occasioned by the Final Rule.

In addition, the Final Rule imposes a significant level of additional costs on the Maine lobster fishing industry. The Final Rule estimates that the additional costs associated with compliance with the sinking groundline requirement will be approximately \$13.4 million per year. The Final Rule attributes 91 percent of these costs to the United States lobster industry, the majority of which is located in Maine. However, the cost estimate is based on an incorrect understanding of the seasonal inshore/offshore nature of the lobster fishery, and of the number of individual lobstermen who fish outside the exemption line.

The GAO report highlighted the numerous uncertainties and defects in the NMFS cost estimate as reflected in the DEIS. Among other matters, GAO determined that NMFS lacked documentation for its estimate of the lifespan of sinking groundline, and did not make the estimate based on field tests.²¹ Thus, NMFS could not adequately estimate added costs associated with the need to replace groundline more frequently. NMFS did not use a range of prices for its estimate of the costs of purchasing sinking groundline; GAO noted that it contacted suppliers and dealers and found that costs could be as much as 34 percent higher than the price relied upon by NMFS in its analysis.²² The federally funded rope exchange program, which I noted earlier in my testimony, will assist in ameliorating these costs to a degree, but the initial funding level of approximately \$2 million remains relatively small compared to the overall purchase costs that we anticipate. Furthermore, those funds currently are available only through 2009, so that unless guidelines for compliant rope are specified prior to the 2009 fishing season, even that amelioration of the costs of compliance may disappear.

GAO also noted that NMFS essentially guessed at the cost of gear loss by Maine lobstermen,²³ and that the NMFS estimates of affected Maine lobstermen were based on unsupported assumptions regarding the nature of lobster fishing in Maine, and particularly the assumption that lobstermen operate in only one area through-

¹⁹ Included as Exhibit 10 are maps prepared by Maine DMR, showing the prevalence of rocky bottom terrain off the coast of Maine. GOMLF is currently conducting research to document the severity of tidal currents Down East.

²⁰ A published report concerning this incident is included as Exhibit 11.

²¹ GAO Report at 26.

²² *Id.* at 26-27.

²³ *Id.* at 27.

out the year.²⁴ Although NMFS added a “sensitivity analysis” to the FEIS in response to the GAO critique, this analysis is extremely superficial, consisting of a series of calculations for moderate increases (or decreases) associated with each variable in isolation. It does not consider a wide range of scenarios involving substantial increases over the NMFS cost estimates and the NMFS estimates of the number of lobstermen affected by the Final Rule.

In addition, GAO noted that NMFS lacked data to support an analysis of the ability of Maine lobstermen to absorb additional costs imposed by the Final Rule and remain in business, and thus could not adequately gauge the impact of the Final Rule on lobstermen and lobster fishing communities.²⁵ NMFS estimated lobstermen’s annual revenues based on a limited sample of lobstermen, because comprehensive revenue data do not exist. NMFS then arbitrarily assumed that if gear modification costs were greater than 15 percent of a lobsterman’s estimated annual revenue, the lobsterman would go out of business. NMFS could not provide a basis for this assumption, and so its estimate is without foundation.

MLA conducted its own analysis of the effect of compliance with the sinking groundline requirement, including cost and lifespan of sinking groundline, trap costs, gear loss costs, and the overall number of Maine lobstermen affected, which our evidence shows to be a substantially larger segment of the Maine lobster fishing community than assumed by NMFS. Our analysis, which was included in our comments on the FEIS, indicates that the cost of compliance with the sinking groundline requirement could amount to approximately \$134 million annually, or approximately ten times the NMFS estimate.²⁶ By comparison, the value of the Maine lobster industry in 2006 was approximately \$300 million. We have also estimated that, contrary to NMFS estimates that there will be a total of 173 vessels for which compliance costs amount to 15 percent or more of mean annual revenues, there will be more than 4,400 vessels that will be “heavily affected” in this manner. Given the importance of the lobster fishing industry to Maine’s coastal communities, this impact could be catastrophic to employment, associated businesses, and the regional economy.

In the ROD, NMFS brushed aside the MLA analysis in the same manner that it responded to other criticisms of its compliance cost estimates, by claiming that its own assumptions were reasonable and referring to its cursory sensitivity analysis. Whether or not our analysis is correct, there is no basis for placing confidence in the NMFS analysis, in light of the methodological flaws identified by GAO. There is no reason why NMFS cannot conduct a more rigorous analysis, given the importance of these issues to the Maine lobster industry, and NMFS should take the time to determine a better estimate of the operational, safety, and economic impacts upon Maine lobstermen of imposing the sinking groundline requirement.

V. Maine DMR’S Low-profile Groundline Proposal, While an Improvement, Fails to Address Important Concerns

On January 28, 2008, Maine DMR submitted to ALWTRT a proposal for use of low-profile groundline in certain areas in the Northern Gulf of Maine.²⁷ Maine DMR recognizes that the rocky coastal terrain and the strong currents present in the Northern Gulf of Maine require that there be some degree of groundline flotation, to permit Maine lobstermen to fish safely and efficiently. In addition, Maine DMR is concerned that lobstermen seeking to comply with the sinking groundline requirement will break down their gear and use more vertical line, which may cause additional danger to whales. Maine DMR believes that rope manufacturers can now produce groundline that will float near the bottom, but that is also resistant to abrasion resulting from scraping along the rocky bottoms of Maine coastal waters.

MLA has reviewed the Maine DMR low-profile groundline proposal, and appreciates the work that Maine DMR has done in developing this alternative to the Final Rule. While MLA has not yet taken a final position regarding the proposal, we have some initial observations to present at this time. First, the Maine DMR proposal represents an improvement for lobstermen by allowing a more operationally feasible rope to be fished outside the exemption line contained in the Final Rule, in the so-called “sliver waters” that are within the three-mile limit, and in some portions of Federal waters. This should reduce the amount of vertical line used in lobster fishing off of the Maine coast. The proposal includes Geographical Information System plots showing the distribution of substrate type along the Maine coast, clearly demonstrating the high percentage of rock and hard bottom sub-

²⁴ *Id.* at 28.

²⁵ *Id.* at 29–31.

²⁶ A summary of the MLA analysis is included as Exhibit 12.

²⁷ A copy of this proposal is included as Exhibit 13.

strates. However, the proposal does not suggest consideration of establishing seasonally-based exemption lines based on the data MLA has presented concerning large whale interactions with lobster fishing activities. Moreover, the large whale sightings data presented in the proposal do not show seasonal patterns and are not corrected for level of effort required to obtain sighting.

The low-profile groundline proposal provides for compliant rope to be uniquely marked for use in Maine and Federal waters by Maine lobstermen. Assuming that manufacturers can produce rope to the proposed specifications, this should enable enforcement agents to distinguish between compliant and noncompliant groundline. This is a significant improvement on the approach NMFS has taken under the Final Rule, where line would have to be confiscated and subjected to a convoluted and questionable testing procedure before a determination could be made.

Finally, the Maine DMR proposal calls for implementation in October 2008. This date is unrealistic. Before the Maine DMR proposal could be implemented, NMFS would need to approve low-profile groundline for use in the proposed areas and establish physical standards for low-profile groundline. The state rulemaking process also will need to be completed. As I have already discussed, Maine lobstermen must know as soon as possible what line they can use and what rules they are to follow so they can order gear and be ready for the upcoming fishing season, which begins in April for many. The rope proposed by Maine DMR is not currently available commercially, and thus cannot be purchased in time for the upcoming season.

Again, MLA appreciates the work Maine DMR has done in preparing the low-profile groundline proposal, and we look forward to continuing to work with Maine DMR and others in improving gear technology to further decrease the risk to large whales. This effort should go forward hand-in-hand with the continued efforts MLA is supporting to refine the scientific analysis of large whale behavior and their interactions with lobster fishing in Maine.

VI. Conclusion

To sum up, I want to again emphasize that MLA and its members fully support whale conservation efforts, and are anxious to work to achieve a plan to protect the Northern right whale that is scientifically sound and that will not impose disproportionate and unjustified costs and burdens on Maine lobstermen. We believe that the Final Rule does not meet these criteria. It is unsound in its scientific and economic analyses and imposes severe safety hazards, and NMFS has not shown that the heavy burdens the Final Rule will impose on Maine lobstermen are necessary to protect the whales it seeks to protect.

Right now, MLA and its members are most concerned about purchasing gear for the upcoming lobster fishing season. Maine lobstermen are committed to complying with clear enforcement guidelines, when those guidelines are developed. As I have explained, however, the procedures that NMFS has outlined for determining compliance with the sinking groundline requirement are far from sufficient to enable lobstermen to fish with confidence that they are complying with the Final Rule. For that reason, we intend to request that NMFS exercise its discretion to defer enforcement of the sinking groundline requirement of the Final Rule with respect to Maine lobstermen until after the 2008 lobster fishing season. We hope that this will enable NMFS and Maine DMR to develop the necessary guidelines, and will also provide time for further analysis of the scientific and economic issues I have described, so that the exemption line can be refined and the sinking groundline requirement will be imposed in those areas where it is truly necessary to protect large whales.

Thank you.

Senator SNOWE. Thank you. Ms. Cornish?

STATEMENT OF VICKI CORNISH, VICE PRESIDENT, MARINE WILDLIFE CONSERVATION, THE OCEAN CONSERVANCY

Ms. CORNISH. Thank you, Senator Snowe, for inviting me to speak today. My name is Vicky Cornish, and I'm the Vice President for Marine Wildlife Conservation for Ocean Conservancy.

The Ocean Conservancy is a science-based advocacy research and public educational organization that informs, empowers people to speak on behalf of the world's oceans. I work in our Washington, D.C. office. We also have offices around the country.

With me today are Susan Farady, the Director of our New England office in Portland, Maine; and John Williamson, the Manager

of Fish Conservation for New England, also from our Portland office.

Ocean Conservancy greatly appreciates the invitation to testify before the Subcommittee on an issue of great importance to the conservation of endangered large whales, as well as to the Maine lobster industry. We are here because we care about whales, healthy oceans, and sustainable fisheries; and we believe Maine fishermen share this strong conservation ethic.

None of us wants to see whales entangled in lobster gear. We are actively engaged in working with the Federal Government, the State of Maine, and lobster fishermen from Maine to help solve the problem of whale entanglement for the long term.

Those are collective responsibilities to find solutions that protect whales while maintaining a strong lobster fishery in Maine.

Whales are a symbol of New England's unique natural and cultural heritage. Driven to near extinction by whalers, they have yet to recover after decades of protection. North Atlantic right whales, in particular, are extremely vulnerable to entanglements in fishing gear and ship strikes.

I commend the Senator and several Maine lobstermen for their leadership in calling for the immediate implementation of measures to protect right whales from the threat of ship strikes, and thank you for the letters that have been written urging the government to move quickly on a comprehensive ship strike rule.

Ship strike regulations have yet to be finalized, and it is now coming up on the 1-year anniversary that those regulations have been stalled at the Office of Management and Budget. But when they are issued, they will help to address this major source of mortality of right whales. Thank you, Senator Snowe, for your recognition of this delay.

However, with only 350 North Atlantic right whales remaining, we must ensure that we reduce all known sources of mortality. Scientists at the New England Aquarium estimate that nearly 3 out of 4 right whales show signs of entanglement in fishing gear.

The Marine Mammal Protection Act directs the National Marine Fisheries Service to reduce fishery-related mortalities and serious injuries of any of the large whales, including right whales, humpback whales, and fin whales, to levels that will allow them to recover to their optimal sustainable population size.

The Act has established a process to bring together fishermen, scientists, fishery managers, and conservation groups to form Take Reduction teams to develop consensus-based Take Reduction plans to guide the government's rulemaking process.

Ocean Conservancy has been a member of the Atlantic Large Whale Take Reduction Team since it was first convened in 1996. We believe that the collaborative problem-solving approach outlined in the Marine Mammal Protection Act represents the best opportunity for protecting large whales from entanglement in fishing gear, while minimizing economic impacts on affected fishermen.

The Take Reduction Team is charged with finding solutions for whales throughout their range, from Maine to Florida. Lobstermen, gillnetters, crab fishermen have all been involved in developing these recommendations, and they affect all of these fisheries.

Unfortunately, the regulations implemented to date have not reduced entanglements, and we have seen mortalities continue to rise.

The National Marine Fisheries Service was mandated by law to amend the regulations when a right whale was first found dead in compliant gear in 2002, and that means gear that had the weak links that were required by the plan, and the weak links were intact, signifying that those weak links were not effective in reducing mortality levels.

We believe the agency's recent rule represents a positive step forward in addressing one of the biggest threats to large whales: Entanglements from floating groundlines.

Research shows that sinking lines greatly reduce the probability of whales becoming entangled in groundlines. Behavioral studies have shown that right whales routinely dive to the ocean bottom, and a high percentage of right whale mortalities are caused by fishing line that pulls through the mouth and wraps around the body.

We recognize that transition to sinking line may be difficult for lobster fishermen and represents a significant financial investment; we also understand concerns over whether such investment is justified when Maine lobstermen rarely see right whales.

Nonetheless, recognizing the probability of individual fishermen seeing a right whale in Maine may not be as high as for other areas of New England, encounters with fishing gear are a daily occurrence for whales in New England waters and in Maine.

While additional survey effort and better data on fishing effort are critical to accurately characterizing risks to whales in fishing gear, even limited survey efforts in Maine has shown that the threat of fishing lines to whales that traverse these waters is real.

Are there solutions we haven't explored that can reduce risks to whales while minimizing economic impacts on fishermen? Therein lies our greatest challenge and our greatest opportunity. We believe that Maine lobstermen are up to the challenge.

Maine has a long history of adopting fishing practices that sustain a healthy lobster population. These measures were adopted by the lobstermen because the people of Maine realize that a healthy lobster fishery is vital to the cultural and economic well-being of all who live here.

We are confident that Maine lobstermen can build on this reputation for innovation and conservation by applying the same mind-set to the challenge of protecting whales.

We believe that lobstermen have not only the ability but the responsibility to find long-term solutions to the threat of whale entanglement. Such innovation and leadership can make this generation of lobstermen save the right whale from extinction.

There is no time for further delay. We must work together proactively to find solutions. If there is a better way to save whales, let's put it out for consideration.

As we consider alternatives, we must ensure that the process and statutory deadlines outlined in the Marine Mammal Protection Act are followed. We must also ensure that any solutions put forward are based on good science, are quantifiable and measurable, incorporate the best available information about whales and fishing

practices and environmental conditions, and are implemented as soon as possible. We cannot waste another day or lose another whale because we dawdled.

The Take Reduction Team process has not always been timely or effective in developing viable solutions for whales, but its future effectiveness depends on the active and consistent engagement of all interests, ourselves and you included, combined with a firm commitment by the National Marine Fisheries Service to improve the process.

Our success will require adequate funding for gear research, whale surveys, and behavioral studies, plus additional funding for planned development, implementation, monitoring, and enforcement.

We would appreciate the Senator's leadership in helping to identify adequate funding for this process. We challenge the National Marine Fisheries Service to work with the Take Reduction Team to streamline this process and find better ways to address regional differences in fishing practices and gear use.

We are encouraged by what we have seen in the state's proposal as a first step, as it goes beyond identifying what can't be done, to focus instead on ways to turn this problem around.

We encourage the further development of ideas to address the greater challenge of entanglements and lines. One example of a promising solution stems from experiments conducted by the state at Monhegan Island. These experiments have shown that reducing the number of lobster traps fished in an area has little or no impact on lobster catch rates. Fewer traps result in less gear in the water, which is definitely a step in the right direction for right whales.

Lobsters and right whales are both an integral part of Maine's coastal heritage and a critical part of a balanced ecosystem in the Gulf of Maine. Ensuring adequate protections for all ocean species is vital to ensuring sustainable fisheries for future generations.

We have heard Maine lobstermen call their fishery sustainable, but true sustainability is about more than just conserving lobsters. True sustainability cannot be achieved unless we figure out how to catch lobsters without harming whales. Ocean Conservancy is committed to working at all levels to make that happen.

Thank you for the opportunity to provide our testimony.

[The prepared statement of Ms. Cornish follows:]

PREPARED STATEMENT OF VICKI CORNISH, VICE PRESIDENT,
MARINE WILDLIFE CONSERVATION, THE OCEAN CONSERVANCY

Thank you, Senator Snowe, for inviting me to speak today. My name is Vicki Cornish, and I am the Vice President for Marine Wildlife Conservation for Ocean Conservancy. Ocean Conservancy is a science-based advocacy, research, and public education organization that informs and empowers people to conserve our oceans. I work in our Washington, D.C. office, and we also have offices in New England, Florida, Texas, the Pacific, and the Caribbean. With me today are Susan Farady, Director of our New England office in Portland, Maine, and John Williamson, Manager of Fish Conservation for New England, also from our Portland office.

Ocean Conservancy greatly appreciates the invitation to testify before the Subcommittee on an issue of great importance to the conservation of endangered large whales, as well as to the Maine lobster industry. We are here because we care about whales, healthy oceans, and sustainable fisheries, and we believe Maine fishermen share this strong conservation ethic. None of us wants to see whales entangled in lobster gear. We are actively engaged in working with the Federal Government, the

State of Maine, and Maine lobstermen to help solve the problem of whale entanglements for the long term. It is our collective responsibility to find solutions that protect whales while maintaining a strong lobster fishery in Maine.

Whales are a symbol of New England's natural and cultural heritage. Hunted to near extinction by whalers, they have yet to recover after decades of protection. North Atlantic right whales, in particular, are extremely vulnerable to entanglements in fishing gear and ship strikes. I commend the Senator and several Maine lobstermen for their leadership in calling for the immediate implementation of measures to protect right whales from the threat of ship strikes, and thank you for the letters that have been written urging the government to move quickly on a comprehensive ship strike rule. Ship strike regulations have yet to be finalized, but when they are they will help address this major source of mortality of right whales.

However, with only about 350 North Atlantic right whales remaining, we must ensure that we reduce all known sources of mortality. Scientists at the New England Aquarium estimate that nearly 3 out of 4 right whales show signs of entanglement in fishing gear. The Marine Mammal Protection Act directs the National Marine Fisheries Service to reduce fishery-related mortalities and serious injuries of endangered large whales, including right whales, humpbacks, and fin whales, to levels that will allow them to recover to their optimum sustainable population size. The Act has established a process that brings together fishermen, scientists, fishery managers, and conservation groups to form Take Reduction Teams to develop consensus-based Take Reduction Plans to guide the government's rulemaking process.

Ocean Conservancy has been a member of the Atlantic Large Whale Take Reduction Team since it was first convened in 1996. We believe that the collaborative, problem-solving approach outlined in the Marine Mammal Protection Act represents the best opportunity for protecting large whales from entanglement in fishing gear while minimizing economic impacts on affected fishermen. The Take Reduction Team is charged with finding solutions for whales throughout their range, from Maine to Florida. Lobstermen, gillnetters, and crab trap fishermen have all been involved in developing recommendations. Unfortunately, the regulations implemented to date have not reduced entanglements, and we have seen mortalities continue to rise.

The National Marine Fisheries Service was mandated by law to amend the regulations when a right whale was first found dead in compliant gear in 2002. We believe the agency's recent rule represents a positive step forward in addressing one of the biggest threats to large whales—entanglements in floating groundlines. Research shows that sinking lines greatly reduce the probability of whales becoming entangled in groundlines. Behavioral studies have shown that right whales routinely dive to the ocean bottom, and a high percentage of right whale mortalities are caused by fishing line that pulls through the mouth and/or wraps around the body.

We recognize that transition to sinking line may be difficult for lobster fishermen and represents a significant financial investment. We also understand concerns over whether such investment is justified when Maine lobstermen rarely see right whales. Nonetheless, recognizing the probability of individual lobstermen seeing a right whale in Maine may not be as high as for other areas of New England, encounters with fishing gear are a daily occurrence for whales in Maine waters. While additional survey effort and better data on fishing effort are critical to accurately characterizing risks to whales from fishing gear, even limited survey effort in Maine has shown that the threat of fishing lines to whales that traverse these waters is real.

Are there solutions we haven't explored that can reduce risks to whales while minimizing economic impacts on fishermen? Therein lies our greatest challenge and our greatest opportunity. We believe that Maine lobstermen are up to the challenge. Maine has a long history of adopting fishing practices that sustain a healthy lobster population. Maine has implemented minimum-maximum size requirements for harvested lobsters and banned the harvest of reproductive age female lobsters—both are forward looking initiatives. Maine has put in place a region-based lobster management zone system that gives individual lobstermen a voice in regulations that address local needs. Maine has even adopted statewide maximum trap limits. These measures were adopted by the state because the people of Maine realize that a healthy lobster fishery is vital to the cultural and economic well-being of all who live here.

We are confident that Maine lobstermen can build on this reputation for innovation and conservation by applying the same mindset to the challenge of protecting whales. We believe that lobstermen have not only the ability, but the responsibility to find long-term solutions to the threat of whale entanglement. Such innovation and leadership can make this the generation of lobstermen who saved the right

whale from extinction. There is no time for further delay, we must work together proactively to find solutions. If there is a better way to save whales, let's put it out there for consideration.

As we consider alternatives, we must ensure that the process and statutory deadlines outlined in the Marine Mammal Protection Act are followed. We must also ensure that any solutions put forward are based on good science; are quantifiable and measurable; incorporate the best available information about whales and fishing practices; and are implemented as soon as possible. We cannot waste another day, or another whale, because we dawdled.

The Take Reduction Team process has not always been timely or effective in developing viable solutions for whales. But its future effectiveness depends on the active and consistent engagement of all interests, ourselves and Maine lobstermen included, combined with a firm commitment by the National Marine Fisheries Service to improve the process. Our success will require adequate funding for gear research, whale surveys, and behavioral studies, plus additional funding for plan development, implementation, monitoring, and enforcement. We would appreciate the Senator's leadership in helping to identify adequate funding for this process. We challenge the National Marine Fisheries Service to work with the Take Reduction Team to streamline the process and find ways to better address regional differences in fishing practices and gear use.

We are encouraged by what we have seen of the state's proposal as a first step, as it goes beyond identifying what can't be done to focus instead on ways to turn this problem around. We encourage the further development of ideas to address the greater challenge of entanglements in endlines. One example of a promising solution stems from experiments conducted by the state at Monhegan Island. These experiments have shown that reducing the number of lobster traps fished in an area has little or no impact on lobster catch rates. Fewer traps result in less gear in the water, which is definitely a step in the right direction for whales.

Lobsters and right whales are both an integral part of Maine's coastal heritage and a critical part of a balanced ecosystem in the Gulf of Maine. Ensuring adequate protections for all ocean species is vital to ensuring sustainable fisheries for future generations. We have heard Maine lobstermen call their fishery sustainable, but true sustainability is about more than just conserving lobsters. True sustainability cannot be achieved unless we figure out how to catch lobster without harming whales. And Ocean Conservancy is committed to working at all levels to make that happen.

Thank you for the opportunity to provide testimony today on this important issue.

Senator SNOWE. Thank you, Ms. Cornish. I just want to question the panelists, and you can all jump in on some of these questions.

I think, Mr. Lecky, in analyzing this situation, obviously it does have a profound impact on the industry, certainly economically, and as I said in my testimony the Government Accountability Office underscored that. There were several issues that they raised that have a significant effect on the industry. One is that NMFS didn't adequately represent uncertainties, and I'll put it up here on the chart, associated with proposed gear modifications and could not fully assess impacts on fishing communities. NMFS could not estimate the extent to which risks to whales would be reduced by these regulations, and third, NMFS had not developed strategies for evaluating the effectiveness of this proposed gear modification.

There are huge discrepancies in the estimates of what the impact will be on the industry, and I know that your agency has significantly underestimated the costs compared to what the Maine's Lobstermen Association has indicated.

By all estimates, according to the Maine Lobstermen's Association, it would be \$10,000 to \$15,000 per lobsterman, and that does not include the annual replacement costs. Even in your own economic impact statement, I was reviewing it last night, Maine further underscored that fact, that there are going to be very high replacement costs on an annual basis, so that also represents a serious threat to those who are in the industry.

So let's start with these questions because I think that they weave the picture here as to whether or not we can come up with a viable solution that works to protect the whales as is required by law and at the same time protects the industry.

Given the fact that there are some serious issues with the economic impact, I don't think you can ignore it. That's the point here.

What can we do to solve these issues to try to achieve the overall goal without decimating the industry? The GAO has underscored, I think some of those issues, and I don't know if you developed the economic analysis in terms of the impacts.

I'd like to hear from you, what was the background, where was the information, what data did you use to determine the economic impact to Maine's lobster industry?

Mr. LECKY. Well, we utilized all the information that we did gain access to. There are areas where information is lacking, we don't have good information on distribution and effort in state waters, for example, so we had to make some assumptions.

We don't have information available on individual fishermen practices or successes, and so we had to develop some models and analytical frameworks that we formed by collecting information from the known sources, the fisheries statistics, through interviews with experienced fishermen, through our own expertise in gear development, modification, and research, our expert gear panel, for example, and we think we did a credible job of estimating what the economic impacts of this rule are going to be.

The GAO did not criticize any of our methodologies or the models that we constructed or the way that we went about doing the analysis. They were mostly critical of the fact that given the uncertainty and the available data that we represented our findings as single-point estimates rather than ranges of estimates. We addressed that concern by doing a hind cast to look at where the variability and that uncertainly might actually influence the outcome of the analysis.

Senator SNOWE. So what's your estimate of the net impact on the industry here? Is it \$13 million?

Mr. LECKY. \$13 million for the total impact, and I think as you mentioned in your statement, most of that does land in this area.

Senator SNOWE. And yet the estimate by the industry may be ten times that?

Mr. LECKY. Right. I think the estimate in the industry in our view is at every point in their analysis they chose the worse-case example and multiply quite rapidly to produce a dire condition.

Senator SNOWE. Did you submit any information, Commissioner Lapointe, on this issue?

Mr. LAPOINTE. We didn't submit any specific information, although we thought the NMFS number was low and actually just got the lobster landings from last year, and they were 55 million pounds down considerably from the year before.

If you look at an average cost of \$4.50 a pound, that results in about \$250 million in landings for the lobster industry.

If you use the \$10,000 estimate per fisherman, and we've got 6,800 lobstermen, and if you think only 4,000 of them have to convert, that results in \$40 million cost, that is about 16 percent of last year's growth.

So just rather than arguing about the specific number, that is a huge impact on the net revenue from the industry.

Senator SNOWE. Again, it gets back to the issue of uncertainty, Mr. Lecky, and Ms. Cornish, I invite your comments on this as well, because the final analysis is going to try to bridge this divide with respect to these issues.

The uncertainty in terms of the gear even working, as we all know and what the documentation provided by the industry; second, the tremendous impact, whether or not the gear will actually even work, whether or not it is even sustainable. The production of it through the manufacturers, the timing of all of this.

And so in all combinations it seems to me extremely unrealistic to proceed within this year given that the season is upon us. They're going to begin their lobstering in May, getting ready for it now, and the rule takes effect in October.

So just all of the realities of what they're grappling with and having to make an investment a \$10,000 or \$15,000 is very tough to make. To put that step forward, make an investment in something you don't even know has been determined to be certified by NMFS, is compliant by that standard, or would even work, let alone all of the other issues.

So it gets to really, the fundamental issue here: is there ability to defer this implementation process in any way given so many outstanding questions?

Mr. LECKY. Let me start off with an a little bit of background that goes back to 1994 when Congress passed the Marine Mammal Protection Act amendments to put in place this new provision to reduce mortality.

We're over a decade late in achieving the goals laid out in the 1994 amendments to the Marine Mammal Protection Act. It required us within 10 years, or within 5 years of that plan, to reduce mortality, to raise approaching a zero serious injury mortality rate.

The Atlantic Large Whale Take Reduction Team is one of the examples of a process put in place by that statute to engage the public in ways to find solutions to serious injury and mortality, and it relied on that team to come up with these procedures.

We started in 1997 with the plan that under which we thought would work, but whales continued to be entangled in 2001. We modified that with the Seasonal Area Management. We still are finding whales entangled in compliant gear, so we're onto the next step, this is the next step.

We had hoped to have a longer lead-in time. We published our proposal in 2005. We had expected to have it finalized by 2006, a longer lead-in time; but we had to wait on some initial analyses between the proposed and final rules that delayed that until October of 2007.

The rule is published, it is final as of October 2007; and I heard Mr. Lapointe indicate concerns about dealers and distributors not buying gear for distribution because they need orders in order to help them maintain inventory.

I think those are serious concerns that we need to take into account, and so I don't want to create any expectations that we will defer implementation or enforcement of this today. I think we are

planning to proceed with implementation of this provision on schedule.

Senator SNOWE. Well, a couple of things on that point.

First of all, getting back to the ship strikes, because that rule has been pending for a year now, as I mentioned, at the Office of Management and Budget, and we know the preponderance of the threat in killing right whales has been ship strikes, and that rule has been pending for more than a year, so we're dealing with one issue in the lobster industry now, and they're bearing and shouldering the disproportionate burden in addressing this question, when in fact the outstanding issue is the question of ship strikes.

So I think that the totality of the problem should have been addressed with a complete solution by all of the stakeholders, not just this industry bearing the burden, and going forward with the less than viable proposal that obviously is, I think, everybody all acknowledges is going to have a tremendous impact and represent economic consequences for those who are in the industry.

So I think the question is whether or not the Take Reduction Team will have the ability to address these issues and when. Is that next month? When is there a meeting?

Mr. LECKY. I don't believe the date or the location of that meeting has been set. It's spring of this year, so probably April or May.

Senator SNOWE. So how would that process unfold? I guess the question is, we're facing these wide ranging problems with this particular set of rules with a great deal of uncertainty, unanswered questions, and the season begins in May. How is that process going to unfold with the Take Reduction Team? Do the lobstermen begin the season without being compliant?

Mr. LECKY. Again, I would encourage the industry—

Senator SNOWE. Do they wait and hope that we resolve this question I would gather?

Mr. LECKY.—the issue of low-profile gear has been discussed at the Atlantic Large Whale Take Reduction Team in the past.

We have cooperated with the state to continue to investigate the development of that gear; but in the past the team has not been enthusiastic about it because, as Jay Oakes pointed out, it's very difficult to discern and quantify the biological benefit to the whales and its strategies.

We do know that whales get tangled in floating groundline. We don't know where or how high or how low is enough to protect whales. We know the lowest you can get them is on the bottom, so that's the groundline proposal.

We have research under way that the team will consider and look forward to additional results on foraging behavior of whales. Also, prey distribution of their primary resources and how that's distributed throughout the water column, form our understanding of the biology of that predator/prey relationship.

All of that is information that will be discussed and considered as a team, and, again, I cannot project how they will come out on this proposal, but my guess is they will probably want more information.

If they do find it favorable, then we would have to go through the same kind of rulemaking process we went through to put this rule into place, which is not quick, it requires compliance with

NEPA and other statutes, it requires public review and comment, and so it's not something to could be done by October of 2008.

Senator SNOWE. Why was October chosen given the fact that it is the peak of the season for the industry?

Mr. LECKY. We provided a year for fishermen to come in compliance with the provisions of the statutes from final actual publication of the final rule and actual implementation of the measures.

Senator SNOWE. Let me just add to that. I understand that, but knowing the obvious concerns that there would be with this rule and the direct impact it would have on the industry, it certainly could have been planned so that it had gone beyond the season so we would have an opportunity to respond, to make their comments to the rulemaking process, and then of course have time for implementation, manufacturing of the gear, and all the problems that are associated with adjusting to this major modification that's going to be very costly to the individual lobstermen.

I think it's all of those issues that raise the spectrum of serious issues here with being compliant during this season, this upcoming season, given the enormity of the challenge that is facing the industry. I don't think it can be ignored or overlooked.

It is nice to put out a rule, but it is also very difficult to those who are on the ground having to comply, and I think we all want to achieve the same goal in protecting the whales.

I think it can be a win/win situation in the final analysis if we are working together with a realistic timetable. Yes, it has been long overdue, but even the proposed strategy of the ship strikes was due back in 2004 and we are now in 2008 and nothing has happened with that rule as well. That is also languishing in the Office of Management and Budget.

I think we have a number of issues here that need to be resolved, and hopefully that process can take place.

Ms. Cornish, would your organization, I know you are a member of the Take Reduction Team, be open to being flexible on the question of implementation and deferring implementation if they have to work through some of these issues so they can be more adaptable and workable to the lobster industry?

Ms. CORNISH. Well, certainly we don't want to come out publicly and say that we would like to defer any rule from being enforced because we believe the intention of that rule, is to protect whales. It is a long overdue rule and, unfortunately, it took a long time to be put in place.

But the effective date, a year from the issuance of the rule, hopefully was designed to give folks plenty of notice that they would need in order to convert their gear over.

Now, recognizing that the state is the primary enforcement body behind any enforcement of National Marine Fisheries Service regulations, we would like to encourage the state to continue to work with lobstermen to ease the transition over to sinking line.

The state has been very forthcoming in the information and very collaborative in its approach with lobstermen to try and identify ways to work within the sinking line requirement.

We certainly recognize, also, the importance of the buy back and gear exchange programs for helping to ease some of the financial burden.

We understand what this financial burden is doing to lobster fishermen, and we would like to find ways to help transition. Certainly the state's ability to enforce that rule is going to take into account where some of the difficulties are.

Senator SNOWE. Commissioner Lapointe, to your plan, as you mentioned, is it your goal would be to implement to state regulation? And how would that dovetail with the current implementation process?

Mr. LAPOINTE. Our plan is for 1 October deadline. We put that in because that is what the NMFS deadline is. We tried to be flexible in those sorts of dates, but we don't have a stake to put in the ground, so that is why we picked 1 October.

The reason we said we would, first of all, our plan moving forward does require approval by NMFS and the TRT, otherwise we are not going to do it on our own. And moving through the state regulatory process, I think shows the commitment on the part of Maine to do things quickly.

One of the things that I think drives everybody crazy is the glacial speed with which the Take Reduction Team process works. If people have questions, they go back to more discussion.

So we said, if this plan is approved, if it gives people a viable option, again, a less worse option than the current plan, that we would put a state regulatory process in place. That takes at best 60 days and maybe a little bit more as compared to a much longer date.

So that is what our intention was.

Senator SNOWE. Ms. Cornish, have you had an opportunity to review this plan?

Ms. CORNISH. Yes, we have. We have read the state's proposal, and there are definitely some encouraging aspects of the proposal, for example, the prohibition against single traps.

We are concerned that the sinking line requirement will cause some lobstermen to rig their gear such that they're single traps, and obviously that defeats the whole purpose of the rule.

We need less gear in the water, not more, and so even independently going forward with the prohibition against single traps would help to alleviate any concerns about moving to single traps, stringing up.

Another way the proposal, in terms of addressing gear concerns, is minimizing or shortening the length of the groundlines. That is certainly a step in the right direction. If we can get less gear in the water, shortened groundlines, less gear is good for whales.

We have some concerns about the low-profile line being put on fast track without being vetted through the process. Our scientific experts have raised concerns about the use of low-profile line.

The behavior of whales in the water is such that they are divers. They come up with mud on their heads. We know that they dive down deep, and we do not have a lot of information about what they do in Maine, but we certainly see them very close to shore down in Florida when they are giving birth to their calves. We know that they are a very coastal species.

It is not unlikely that they would be coming inshore, that they would be diving down into the water, and any line that is up above the water column in any kind of a floating way is likely to get en-

tangled when whales are diving and using the waters in New England.

So the low-profile line also constitutes a challenge just in terms of rope manufacturing. We have all seen that the rope manufacturers are having difficulty supplying lines or making the transition to providing enough lines for the sinking line requirement; and to provide a very fast track alternative line that now folks have to go out and get when it has not been fully vetted or tested is probably not the right approach.

So that aspect of the proposal needs some more work. But there are certainly elements of the proposal that go a long way toward addressing the problem of entanglement, and I encourage the state to bring their proposal forward to the Take Reduction Team, allow them to vet it.

If need be, have some regional meetings here in Maine that really focus on the problems so that we can understand how these impacts are affecting lobstermen but also how they are addressing what whales do here in Maine. We do not have a lot of information about that. We certainly would love to see some more surveys and more research that is specific to what whales are doing in Maine State waters.

Senator SNOWE. I appreciate that, and I think that speaks to the point, is the lack of scientific data to buttress this regulation.

Ms. McCarron referred to it in her testimony, but the lack of information about whale behavior and interaction with the lobstermen. That is a huge issue, and that it is tailored to this industry, to this area, to our waters, which, of course, it is not.

It is all of that and more that raises serious concerns, understandably, because of the impact it is going to have on the industry and communities involved in the lobster industry. That is the point. There is a lack of scientific data to buttress these issues.

The thing you mentioned about low-profile lines, I have to think about the sink line issue. If you have sinking groundlines and we really do not have any certification for any specific line, then the question is whether or not it is going to be sustainable, the question is how do you enforce it.

I do not know that there is even an ability of the part of NMFS to even force this. I do not think you have done it in any other areas, the Seasonal or Dynamic Area Management, so there has been no enforcement there.

How are you going to enforce it in this instance, and it raises all of those issue again as to whether or not it is really practical, realistic, and reasonable to go forward with this regulation given all of that.

So you raise the question about the low profile. The same is true with the sinking groundline. It is the same issue. We do not have any certification. Would NMFS certify a line at this point?

Mr. LECKY. We do have a process that is available on our web page that describes what Ms. McCarron referred to in her statement. It describes how we test line for compliance.

We do not have a mechanism to pre-certify line, but there have been regulations for several years to use sinking groundline, particularly off Massachusetts, and some folks, and I believe in south-

ern Maine, as a result of the more frequent occurrence of Dynamic Management Areas, have also employed that gear.

We have enforced the Seasonal Area Management requirements for sinking groundline. We have made several cases. We have investigated five cases: One was resolved with a warning, three were resolved with prosecution and fines, and one is still being processed.

Senator SNOWE. Commissioner Lapointe, how have you conducted your research on low-profile rope?

Mr. LAPOINTE. There are other people who are better qualified, Senator, but through the course of the last number of years there has been a collaborative effort to try different rope configurations, different densities, and I am way out of my league here.

Just different types of rope, and they have given it out to fisherman, and they have looked at durability and how it floats in the water column, and the like with a lot of processes trying to move forward, we found out a lot of stuff that does not work.

And so this summer, and the reason it was not included in the discussions on the rule is, it was just finished up this summer and analyzed this fall. They ended up with what we call low-profile line, which has a density of 1.02. The idea is that the low-density line in conjunction with a maximum groundline link between traps would reduce the profile.

Again, we do not have the exact numbers, but our staff estimates that it would reduce the profile in the water column by some 90 percent.

If I may, when we talk about how people will react to the rules as they move forward and the potential for a lot of extra groundlines, I believe my staff has estimated that if at the worse-case scenario we would have some 24,000 miles, I see their heads shaking yes, which is good, in vertical lines. That's enough rope to circle the world.

Again, if you are paying attention to doing the best things we can for getting rope out of the water.

Senator SNOWE. Ms. McCarron, I know you have mentioned the concerns about this plan and so on.

How would the Lobstermen's Association view this going forward?

Ms. MCCARRON. Well, we are fully intending to approach National Marine Fisheries Service and make a formal request that this rule be deferred.

In preparing some educational seminars for the Maine Fishermen's Forum, we really started looking into the enforcement issues.

We were not flying the white flag on this rule, but we were feeling that it looks like this thing is moving forward, it looks like we are out of options, how can we as an association help our lobstermen comply in the best way possible.

Many, many lobstermen have said, we cannot fish it, and we are going to switch to singles. There are some folks in the audience who probably will be testifying they fish at some of the islands, they do not have either singles or sinking groundlines, they will go out of business, their 51 communities will go out of business.

It was not until we really started looking into the enforcement of the rule and reading the standards that NMFS put out, which

are based on specific gravity of 1.03, a very complicated laboratory procedure that involves coiling rope and getting it wet and drying it and weighing it that we really started to scratch our heads to say, does a lobsterman even know if he goes into a rope distributor that he is purchasing compliant rope?

No, specific gravity is not really a term that we are familiar with. It is not something that lobstermen would know about. Because National Marine Fisheries Services has the ability to regulate lobstermen who are of course fishing for the public resource, the onus is on us; but truly the power lies with the rope manufacturers.

We have had a few negative experiences along the way. The lobstermen have been heavily invested in a lot of testing of the experimental lines, and we had an experience with rope that we received through a project, actually federally funded, Consortium for Wildlife Fly Catch Reduction, in cooperation with the New England Aquarium where we tested sinking line that actually floated.

So from where we sit we have got some serious concerns and issues about the manufacturer's ability to provide a consistent product, especially when we are the ones that are going to get fined or potentially have a license sanctioned, and they can go about their business.

I know when DMR had some of the low-profile ropes filled for specified for this year, they had asked for specific gravity of X, and it was off not by a lot but with the standard of 1.03, if it is off by a little bit in the wrong direction, does our lobsterman lose his license? Does he lose his ability to earn a living?

These are very serious concerns, and I called around, the state was not really sure how they were going to enforce it. I was only informed by both NMFS and Maine DMR enforcement officials that no one has been trained to do the specific gravities in the field, which made me laugh because we are a day-trip fishery and it is a 7-day test. So there is just really so much up in the air.

The other concern is, what if we do get compliant groundline, is there any knowledge of how the rope changes over time once it has been saturated with water, once it has been fished? Is the specific gravity of the rope going to change?

There is a lot on the line, and it was in lieu of these questions coming up that we felt that, OK, we really have to recircle and go back to NMFS and say we cannot reasonably be encouraging our guys to go out and purchase this good when they may do so in good faith and turn out to be in violation of the rule. It just does not make sense.

I did want to address something that Ms. Cornish mentioned, which was that the right whale species is known to be, and I think she said, a very coastal species, and it just strikes me every time I hear that, we are a very coastal fishery. I am sure a show of hands in this room, every lobsterman would raise their hand and say, I've seen a minke whale, also a very coastal species, but nobody would raise their hand that they have seen a right whale because they transit offshore between critical habitats in Cape Cod Bay and in the Bay of Fundy, and I think everybody in their heart of hearts does not believe that this species is swimming inshore or

interacting with our gear. That is what makes us all so incredibly frustrated.

Senator SNOWE. Mr. Lecky, so how do you respond to those issues regarding compliant gear? How does NMFS address those questions in examining those issues?

How would somebody in the industry be certain that they were purchasing compliant gear? That is a significant investment on their part, obviously, but, second, the question is, enforcing. Enforcement and sanctions and penalties, if they fail to purchase gear that's not compliant with the law.

Mr. LECKY. Well, I think manufacturers have experience in manufacturing groundline because it's been required off Massachusetts and it is being purchased by fishermen in other areas, so we are comfortable that there is a capability to manufacture that line and that fishermen can find sources of compliant lines and incorporate in their gear.

I think that enforcement of this provision is it is not going to be can we go out and find groundline that is $\frac{1}{10}$ of a percent over the standard; it is going to be practical enforcement.

Unfortunately, we are out there looking for folks who are not complying with the law in relatively substantial ways. So if someone has not put groundlines or not purchased groundline with their gear, then I am sure they would follow up with something like that.

That is about all I can say at this point.

Senator SNOWE. Considering the Take Reduction Team process, you have to elaborate on that for the audience, as well, exactly how that will happen and the consideration of the state's plan with changes possibly, deferral, implementation, and so on.

Will all of these issues come to the forefront with respect to the concerns of the industry, and obviously the inability of the industry to conform to this implementation process given the fact that it is going to be in the midst of the peak season and the final analysis by the time October 1st comes.

Mr. LECKY. I would look to the industry to bring these issues to the Take Reduction Team. I think they participate on the team.

The Take Reduction Team process was set up to be a public process. There is actually a formula in the statute for how you can convene a Take Reduction Team.

It is designed to have strong science background, so we include scientists from not only within our agency but academics and state experts. Scientists that are familiar with the marine mammal species oftentimes, prey species that are involved in the target fishery, as well as fishermen.

We include members of the state and include environmental organizations. So the Take Reduction Team is designed to be a very balanced team to present, consider all of the variable viewpoints on a particular issue.

Ideally, they would come to consensus on a recommendation. Some of our teams across the country have been able to do that. This team has not been able to come to consensus on a recommendation, but it does thoroughly debate the issues so that we understand what the concerns and weaknesses are.

Irrespective of whether the team comes to consensus on a recommendation, the Service has an obligation to proceed with the Take Reduction Program.

Senator SNOWE. So how long would that process take?

Mr. LECKY. Well, it is an ongoing process, and we rely on the team to look at it. The next meeting, as we mentioned, is in April or May.

They conceivably could look at this proposal and decide that it is great stuff and they want to proceed with it. My guess is that it will be more complicated than that and that they probably will identify additional concerns and issues that will need further analysis and research and follow up with subsequent meetings. So I cannot predict how long that process will take.

Senator SNOWE. Well, hopefully they will recognize the sense of urgency given the anxiety that everybody in the industry is feeling, and rightfully so and understandably so, and recognize that they are going to be in the middle of the season. It is going to be very difficult to shift gears, literally and figuratively with respect to modifications in the middle of the season and to prepare for October 1st.

I hope they can reach some consensus on this very question as industry comes forward with more data and facts and also whether or not it really is realistic to address the central question, is it going to be effective in protecting the whales?

I think that we have a responsibility obviously to come up with a solution to protect the whales, but we also have a responsibility to come up with a solution to protect the industry.

I think that we can do that simultaneously. It does not have to be all or nothing. Frankly, they are not mutually exclusive. I think that in combination we can come up with a program that is not a one-size-fits-all, which some have suggested, and I think it is very difficult given the industry, given all of the issues and the fact of where these right whales are sighted, given the sea bed and how rocky it is, and suggest using the sinking groundlines is going to be very costly and whether or not it is really workable in the final analysis.

There has to be some combination that we have to work through, and I think it is going to have to require a different timetable. I do not think there is anybody here that is suggesting we should not try to work this out. It is a question of how we work it out and when we work it out in the final analysis. That is why I appreciate you all being here today because I do think it is so critical for us to have this conversation to see if we can move it forward more than anything else.

We are all bound by laws and understand that, but how can we do it in the confines of the law and recognize the livelihoods that are at stake and an industry that is so central to our state for centuries.

Commissioner Lapointe?

Mr. LAPOINTE. A couple of things, Senator, thank you, on the Take Reduction Team process. I think Vicki mentioned earlier, if I think about the timing and with our proposal, and Jim mentioned the difficulty in trying to reach consensus, if you do not reach con-

sensus at that April/May meeting, it will not happen before the 1st of October, so people will have the dilemma of the October 1 rule.

So it is kind of an on or an off switch in terms of that April/May meeting. We understood that when we came into the process of submitting this, but that is important for people to recognize.

The other thing that I think has been discussed, and I think there is tension on the Take Reduction Team process with the idea of splitting up the team into dealing with more regional issues, because of my understanding from those fishermen and staff members who have gone to the Take Reduction Team process. The people in Florida say, how come you all are bringing this to us? You do what you need to do, and we will do what we need to do.

So there is some merit. And I am completely ignoring Jim's staff time and his budget, but in breaking those meetings up into smaller components so that in fact we can do it in a Gulf of Maine or in a New England way as opposed to the entire coast.

Senator SNOWE. Excellent suggestion. I know there are a number of speakers, so I would like to open it up. We have at least 28 people, and I ask you to please keep it to 3 minutes apiece. Coming from a Senator I know that is hard.

I would like to begin this process, and I would ask the panelists if they would comment or ask questions, answer. I think the more conversation we can have about all of this and hearing our respective thoughts, I think the more helpful it would be to moving the goal post here on the ultimate solution.

So, I guess I am supposed to call people by numbers.

We will start with 1 and 2.

**STATEMENT OF SHEILA H. DASSATT, EXECUTIVE DIRECTOR,
DOWNEAST LOBSTERMEN'S ASSOCIATION**

Ms. DASSATT. Good morning, Senator Snowe. Thank you for the opportunity to allow us to speak this morning. I appreciate it.

My name is Sheila Dassatt. I am the Executive Director for the Downeast Lobstermen's Association. I have a statement here. I tried to condense it as best that I could in one page.

Senator SNOWE. Your full statement will go into the record.

Ms. DASSATT. OK, thank you.

Thank you for the opportunity to express concerns to you about the future of the lobstering industry with the present situation of preserving whales and the banning of float rope outside the exemption line that has been established by the National Marine Fisheries Service.

At this point I am sure that you have heard all of the arguments and statistics. A few weeks ago we were pleased to share our concerns with your assistant, Mike Conathan. One of the first things that we told him is that the fisherman is one of the whale's best friends. When a whale is discovered entangled in line or in any form of danger, it is quickly reported. This is the first and most important step to helping save the endangered whales.

The lobstermen have been experimenting with low-profile rope as replacement for float rope for several years. Each type of experimental rope that has been tried has failed to the standards that are required for fishing along Maine's rocky coast.

These failures have raised many concerns about the safety for the fishermen and the amount of catastrophic gear lost that would result in ghost gear on the bottom. The fishermen have a rope that does not endanger themselves, they must have a rope that does not endanger themselves and the environment in which they fish. They must have a rope that is capable of lasting at least 8 years, which is approximately the amount of time that they get now out of their rope.

At this point in time we cannot seem to get one season out of the rope. Some of the rope failures include excessive wear, chafing at many deep places in the line.

The biggest concern that many fishermen have is feeding habits of the whales. There is very little scientific proof that shows copepods on rocky or hard bottom, which is primarily the food for the right whales.

We would like to have research done to see if copepods are on hard bottom areas inside the 50-fathom curve. We would also like to see more physical proof, such as pictures with latitude and longitude, date and time of the whale sightings.

With the logistics involved with manufacturing this new rope, the rope manufacturers do not have the physical or capital resources to make enough rope before October 2008 to fulfill the demand.

With the situation and the law as it stands, the lobster fishery will be devastated. Who is going to be responsible for a lost life and the legal ramifications involving it? Please help us save our fishery, lobstermen, and their families, which are also considered the endangered species. Thank you very much.

Senator SNOWE. Thank you. Would anyone like to comment on the safety of the gear? That's an important issue as well that's been raised by a number of those in the industry about the safety of the gear.

Mr. LECKY. I understand the issue is with gear hanging up. On the West Coast we call them hang-ups, not hang-downs, sorry.

We are aware that that happens. We are aware that, again, there is experience with this gear in other areas, not as rocky as Down East, but nevertheless there are fishermen that have fished this gear in rocky areas, and we think that fisherman can figure out how to fish this gear.

But we are sensitive to this issue.

Senator SNOWE. On the economic impact statement it raised a number of issues about—you mentioned 8 years, you expect it to last 8 years, correct? And may I ask, in talking about these gear modifications, it talks about the fact that a shorter useful life will result in fishermen having to replace more fishing line each year can be expected with the sinking groundline that there would be an expected useful life of 6 years and the replacement rate would be accelerated to 17 percent a year, which is substantial.

That is in the economic impact statement.

Mr. LECKY. Yes, ma'am.

Senator SNOWE. So, it obviously would have a serious economic effect with the type of line that they would be required to use.

Commissioner Lapointe?

Mr. LAPOINTE. I think it is important to give some perspective on this.

When we were testing some groundline, it was early in my tenure as Commissioner, there was a Stonington fisherman who put some of the line up, I don't remember which version it was, it did not last 6 years, it did not last 8 years, it lasted 4 weeks I think.

So I mention that, and we have moved beyond that rope, but it shows people's concerns about how this is going to fish.

When we put new rope together, we hope we know how long it is going to last, and people are working on it for durability; but I think certainly my operating assumption has been that the useful life of whatever rope we come up with will be much less than currently with floating groundline.

Senator SNOWE. Thank you. Speaker No. 2?

STATEMENT OF MIKE DASSATT, SECRETARY/TREASURER AND BOARD MEMBER, DOWNEAST LOBSTERMEN'S ASSOCIATION

Mr. DASSATT. Thank you, Olympia Snowe, for allowing us to speak.

Senator SNOWE. Thank you.

Mr. DASSATT. My name is Mike Dassatt. I am on the Board of Directors for the Downeast Lobstermen's Association. I am also the Secretary/Treasurer for that association.

Some of the information I'm going to give basically comes from my point of view as a fisherman. Some of the concerns that my wife just brought up are the scientific proof of where the whales are feeding.

There have been some reports already brought out that coastal Maine is not in a direct route of where they feed as reported out by Patrice McCarron.

Another issue with the low-profile ropes, I, myself, have participated in the experiments. The first year that I used this rope, within 3 weeks I had lost 70 traps. I only fish 400 total. Now, the fellows that are fishing 800, I would say you can double that immediately.

I spend between \$3,000 to \$5,000 a year now replacing traps and ropes as an every-year maintenance. If I have to switch over, I am done. That is the bought line there.

The other thing, too, with this rope one of the biggest safety factors is not the hang-downs. It's the rope itself on the vessels.

I fish three-trap trawls, which is all I am allowed to fish in my area. What I do if my rope goes into a box and I separate when the traps go out on the rail, but all my rope stay coiled in the box, the low-profile rope that I was using, I would get 10 to 15 parts of increment of rope coming out in one big heap.

I have heard other reports of fishermen who have had to throw their rope overboard because of this issue. It is not a very easy handling rope.

What I have had to do is actually lay the rope out on the platform, which now becomes a tangle issue if you step into the rope. So you take adverse conditions with sea, wind, rain, and all this. It is more than just a hang-down issue.

We already know that sea currents, tide currents, full moon tides, and all of this already plays a fact with our float ropes,

which can get hung up on the bottoms as it is. This particular rope will just compound those probably 10, 15 times over automatically.

When the rope buyback issue was brought forth a couple of years ago, the Down East Lobstermen's Association did not support this issue. The number one reason why we did not support the issue was there was not a rope, and there still is not a rope, that will work to replace the float ropes.

We felt that by supporting the rope exchange was saying that we would support giving up our float rope, which at this time we do not. It is kind of like say you are willing to do something whether there is no cure.

My addressing with NMFS and The Ocean Conservancy, number one, sustainability was brought up from the lobster industry. Yes, we do believe in sustainability for our fishery. Using a rope that is going to put thousands upon thousands of traps on the bottom that we are trying to retrieve over here to clean up the ocean environment, now you are asking us to basically litter up our environment again.

I do not see the reasoning there. When it comes down to picking on, I am going to say picking on the fisherman, which in this case is what it is, NMFS, Humane Society, Ocean Conservancy, the whale activists are all the bullies on the block here.

The are not going after the tankers, because the tankers have revenue to fight them. The lobstermen here in this room do not have the revenue to fight these situations.

So I am going call them the bullies on the block picking on the little guys. We are 1 percent of the problem for the right whales. 1 percent. The other 99 percent goes somewhere else.

So do not come at us in this situation with an absurd proposal that puts everybody's lives on the boat in jeopardy along with the economy for the State of Maine.

If the lobster industry goes out in the State of Maine, especially Down East Maine or a lot of the island areas like Vinalhaven, Matinicus, Monhegan, Jonesport-Beals, Cutler, that is their whole industry, the fishing community.

The economy in Down East Maine is already so bad that many of the boat builders have gone out of business or are going out of business because the revenue is getting stressed out now as far as it can go.

You add on of cost of living for the families, heating, the cost of fishing, the bait, the fuel, the boats, it is just adding another compounded fracture to the situation.

The environmental impacts, like I just said, a lot of areas like Casco Bay, the bay that I fish in, we have been trying to retrieve the ghost gear to get it off the bottom to clean up.

I have spent days out there grappling, bringing in 50, 60, 80 traps a day that have been out there for years. Most traps now will last many years. If you have got fishermen that are putting out traps that are two, 3 years old, unless they can get them back, those traps will be there for a very, very long time.

I guess that's pretty much all I've got here. My only really concern here is that NMFS really take a look, and if they really want to know how the ropes are actually working, get out on the boats. Testing in a tank is one thing; going out in a real environment is

what counts here. Get out on a boat. I would be glad to take them out.

Senator SNOWE. Thank you very much for those comments. Thank you. Anyone care to comment on that?

I think you illustrated the point very well about the underlying concerns that are real, and so hopefully that can be considered in this whole process as well. Thank you very much.

Ms. CORNISH. I would like to just comment on a couple of things. There were some comments raised about the behavior of whales and the occurrence of whales in Maine waters.

We certainly do not know everything that we would like to know about what whales do in Maine State waters or in the Gulf of Maine. We do not have enough survey effort. It is just trying to figure out what is going on in an area that we do not have enough eyes on the water.

We certainly appreciate the observations that are made by Maine lobstermen, but we do not have enough scientists on the water to help validate what is going on in the water with respect to whales. So we would like to see some additional work in that area. But the bottom line is that we know whales get entangled.

Like I said in my testimony, 75 percent of the whales out there have signs of entanglement. Did that entanglement occur in Maine? We do not know. We do not know where the entanglements are occurring.

There is a severely entangled whale right now off of Florida with really horrendous marks all along its body, obviously from entanglement. Where did that entanglement occur? We do not know. We cannot narrow down the point of origin of a lot of these entanglement events, but we know it occurs.

So we need to make lobster fishing, fishing with gillnets, tankers, we go after the tankers, they are pretty well funded, but we are equal opportunity when it comes to going after all of the various threats to whales.

What we would like to be able to promote with you, I see a vision in the future, it is not something that we may be able to reach in the next year or two, it certainly has not occurred in the 10 years since we have been working on this issue, but I do see a future where we can fish sustainably. When I say sustainably I think about all species, and I think it really comes down to engagement in the process.

You guys know what gear works, what does not; you need to be fully engaged in how we formulate these proposals, because we need to figure this problem out.

We, at Ocean Conservancy, our main business is sustainable fishing, and we work to promote fisheries that are sustainable. In D.C., actually, where I live, seafood that comes with an environmentally friendly certification is much coveted by folks. They recognize the value and are willing to pay more for seafood that has been caught sustainably. That equates to more money for the lobstermen that you catch. We would like to promote the lobster fishery as a sustainable fishery and help you gain that advantage in the marketplace. That's our specialty, not my specialty, but the fish program that works for Ocean Conservancy, and John Williamson

can speak to that as well. It is about promoting sustainable seafood.

And so I hope that we can work toward that goal. I think we can reach it.

**STATEMENT OF JIM HENDERSON, PRESIDENT,
SOUTHERN MAINE LOBSTERMEN'S ASSOCIATION**

Mr. HENDERSON. My name is Jim Henderson. I am the President of Southern Maine Lobstermen's Association. We are opposed to where the exemption line is.

We believe it should be brought out to 3 miles due to the sightings of whales. I don't think it has an impact. Where you drew the line, goes from whistle buoy to another whistle buoy. The Coast Guard took whistle buoys away, they are no longer there so it is kind of hard to look up and find out if you are on the right side of the line or not.

They do not get to the area around Boone Island and Isle of Shoales, they are going to go to singles. With the new state proposal, they will not be able to do that and there is going to be a lot less gear in the water.

Senator SNOWE. I appreciate that. Does your proposal address that about going further on the exemption line?

Mr. LAPOINTE. Our proposal uses the exemption line that was proposed in the Federal rules because it was our line.

Senator SNOWE. Originally?

Mr. LAPOINTE. Yes.

Senator SNOWE. If there are now some concerns and want to extend it out to the 50 fathom?

Ms. MCCARRON. The Maine Lobstermen's Association, we are not necessarily suggesting that we know where the line should be. What we really, really want to see are the government agencies looking at the best available data, and the data is kind of set in stone, it is not our data, it is the whale sighting database, but there are far more sophisticated analyses that could be taking place.

Nobody has looked at it in terms of seasons or broken it down by decades. We get punished for a sighting that is 35 years old. The last 5 years the surveillance has greatly increased.

So we think that there needs to be some perspective to that data and then let the line be where it should be. The other piece that has not been looked at all is nobody has looked at where the whales are in relation to where fishing is taking place.

MLA's effort was the first to be put forward, and that precedent is there. That is how the ship strike rules and moving the shipping lanes were done. It is a basic probability analysis.

We only ask that we get the fair treatment and a full look at all of the data.

Senator SNOWE. The bottom line is you have to have good information, reliable scientific data, to reinforce whatever rules that are brought forward to give confidence and credence and trust in the implementation.

Who is next? I hope you are all keeping count.

STATEMENT OF NORBERT LEMIEUX, LOBSTERMAN

Mr. LEMIEUX. I am Norbert Lemieux. I am from Cutler, Maine. We are pleased to have you here, Senator Snowe, to fight for us hopefully.

Some of the comments that I have got, deal with the safety issue for the fisherman. The thing is whether they call it hang-ups or hang-downs, you can get a fairly rough sea going, and fishing with groundline, any of the sinks or caught on any obstruction on the bottom, this will become tight really fast, and the lines could either pop out or flop, hurt the operators or the crew, as well as damaging some of the gear on the boat.

Of course, in the experience I have had, quite often you end up parting off the line and losing the gear altogether. Of course, replacing line is one thing, but you are going to lose a lot of gear.

I have been involved in this low-profile since they started testing it and have not found anything that I would trust more than a year, and some of it, the first haul back, you are parting it off and losing gear, so you have to replace it after that first haul.

They have not come up with a suitable solution to replace the line that we are presently using right now. The expense is like everyone has said, is way out of reach for a lot of the fishermen. There is a lot of fishing bottom that through the spring, early summer, is the only time we can catch lobsters and survive.

We have just gone through quite a tough winter. If you take all the hard bottom away from the fishermen on the coast of Maine, you are really going to put them in hard shape as far as work. You cannot catch lobsters on a smooth bottom, enough to actually pay the bills, let us put it that way, in the early part of the season.

So if you take that hard bottom away, you are crippling them. With all the other expenses that we are having to endure, this right here will drive the final nails in. The expense of the rope and not being able to land lobsters, plus you are losing a lot of gear that you have to pay so much for.

Lobster fishermen are whale friendly. They are the eyes and ears for the fisheries. They are the ones that spot an endangered whale, and many of the lobster fishermen on the coast of Maine have gone through whale training, disentanglement training.

I do not think there is any emphasis being put on how friendly the fishermen are toward these whales, and I know that a lot of them that are entangled, it is quite possible they could have been hit by a ship and are weakened, and in the process of rolling, and whatever happened to them, when they are weakened, may have entangled with a whale where normally they would have never had any interaction with lines.

Also the boundary line that they have set up for the implementation where you can fish as far out, the 50-fathom curve that MLA has proposed, I think was a pretty good idea.

You know, find out where these whales are feeding. Where are they going to react?

I've only fished for 32 years but I have never seen a right whale yet. I know if you go up in the Bay of Fundy in the summer you will probably see them, or if you go down off the Cape this time of year you would probably see them, but we are talking about Maine waters and especially hard bottom.

I am quite sure from speaking to some of the biologists that these right whales feed on copepods. Whether or not they actually feed on hard bottom, I have heard that a right whale has to flip upside-down and thump on the bottom to get these copepods to come up into the water column so that they can feed on them.

Well, they are not going to be thumping on hard bottom. And if you see mud on their head, that is further proof they are not feeding on hard bottom.

We want to fight the battle for Maine right here. We do not want to put the lobster fishermen out of business.

Thank you.

Senator SNOWE. I appreciate your comments. Thank you very much. Next speaker. I think we will have them lined up on both microphones.

STATEMENT OF JOHN DROUIN, CHAIRMAN, ZONE A LOBSTER MANAGEMENT COUNCIL; LOBSTERMAN

Mr. DROUIN. Thank you, Senator Snowe. Thank you for the opportunity to speak today.

My name is John Drouin. I am a lobster fisherman from Cutler, and I am Chairman of the Zone A Lobster Management Council. Maine has seven lobster management zones, and Zone A extends from Schoodic peninsula to east of the Canadian border. This will be the entire coastline of Washington County, Maine, the true Down East Maine. Zone A has over 1,200 licensed lobster fishermen.

NMFS's decision to ban floating rope from most coastal waters will have a severe financial impact to the fishermen, the coastal communities of Washington County, and have a major impact to all businesses in the state.

Besides financial impacts, there are safety issues, compliance problems, and equipment confusion. Hopefully I can explain some of these issues.

NMFS has grossly underestimated the average cost to fishermen to switch from floating groundlines to sinking ones and the yearly costs associated to maintain those groundlines.

In my situation I will need a minimum of 95 coils of rope for the initial switch. At today's price, that is about \$14,000. In a year when my catch decreased 39 percent and my expenses increased by a third, diesel fuel started the season at \$2.14 and finished at \$3.24. Six years ago fuel was only \$1.00 a gallon, bait was \$6 a bushel, now it is \$22 a bushel. But the price of a lobster has not increased at that same pace.

That is not mentioning that overall living expenses have increased. There just are not any funds left to switch over all my gear in 1 year. It is my belief that I should not have to borrow money, go into debt, to comply with a regulation that arguably will not provide a noticeable benefit to the whale population.

How many businesses can afford to buy equipment 1 year just to throw it away the next and replace it with a more expensive type of equipment?

By requiring us to switch over our ropes in only a 1-year time-frame, any extra money that some may have would be spent on rope. That means that Maine business, especially coastal commu-

nities, will see less spending in their stores and less money available for fishermen. That cycle will continue and possibly get worse and trickle down the entire economy of the state.

Also at issue are hopes that the Department of Marine Resources' proposed amendment to NMFS ruling. Fishermen are waiting to see if the proposed low-profile rope will be an acceptable alternative to NMFS; however, we probably will not have an answer on that until very late summer/early fall timeframe.

This brings me to the issue of fishermen going out with sink rope today. We all know that some products work better than others and the same is true with rope.

We know that current sink ropes available do not hold up well for use as groundlines. What may work in a critical habitat area, Cape Cod Bay, does not mean it will work on the rocky gravelly bottom of Down East Maine.

Fishermen have spent years working to find and develop gear that worked for them, and it cannot be expected that fishermen start over from square one.

This takes me to the safety issue. Sinking groundlines get caught on bottom. We have already had a lobster boat have the hauling side torn off the boat while hauling gear with sinking groundlines. Put a smaller size boat in that situation, add some rough seas, and you have just spelled disaster.

Even though I commend the DMR for putting together an alternative plan, there are safety concerns with that plan also. Calling for a 10-fathom limit on spacers for the groundline in some proposed areas will put boats off Cutler and many other areas in danger. In the Cutler area, water depth of the DMR's proposed alternative plan averages 45 fathoms.

A small-type boat trying to fish a five- or six-trap trawl in this depth with only 10 fathoms separating the traps would mean that at a minimum four of those traps would be off the bottom and hanging from a boat. That is a lot of string for a small boat to deal with.

If I had the time I would tell you the story of how a lobster fisherman had his thumb literally ripped off his hand this past fall due to the unbelievable strain of trawl he was dealing with. Although the DMR alternative is helpful to fisherman, that plan, along with the NMFS ruling, shows that one-size-fits-all rule just does not work.

Also along with that thought is the fact that I fish 100 percent of my gear in what is known as the "gray zone." The gray zone is an area of disputed waters between the United States and Canada off Cutler. My gear is alongside, or more like their gear is on top of ours, and I have to fish with gear that is not a requirement to the Canadians. As a matter of fact, the Canadian fishermen fish with float rope to the surface along with floating groundlines. What benefit is that to the whale population?

So what would I like to see? First, I would like to see the exemption line moved farther from shore. A 50-fathom curve has been discussed, but even using a distance line such as we use the 3-mile line, we could push the exemption out 10, 15, 20 miles. To my knowledge there is data to help support the move.

If that is not in the offing, then without a question, we need the implementation date pushed back, and we also need a phase-in period for time to make the switch over.

I really need to express my concerns that the funds just aren't there for the fishermen to make a switch in just 1 year. There are many types of sink ropes available, but we need testing done that will show which ropes work best for what we are now asking them to do.

Thank you for coming here today and listening to us.

We are in hopes that there will be some relief.

I do have one more comment, which, if I may, on either end of the panel here earlier when it was discussed how NMFS was looking for data as far as what the costs were going to be to the fishermen and industry, and also on the other end as far as how the whales behave, we as an industry have been participants throughout this whole process, and it seems like every time that we give this information to NMFS, to whoever, we are not believed.

So we feel that any input that we have been trying to give is just a waste of time because there is information and data out there.

It is not theirs, it is ours. They do not believe us.

Senator SNOWE. I appreciate that. I want to make sure that your voices are heard. Thank you.

STATEMENT OF LEWIS BISHOP, LOBSTERMAN

Mr. BISHOP. My name is Lewis Bishop. I fish out of Frenchboro. My question today, actually, I have a couple questions, but the first one, would be to Jim.

I know in last month's commercial paper I was reading an article in there on the sinking groundlines, and right at the very end of it Max Strahan stepped in and said, NMFS's mission is missing the point. He said, it's not the groundlines that are the problem. It is the vertical lines.

OK, so today we are sitting here fighting over groundlines. What is the point? Is it our vertical lines or is it our groundlines? I guess that would be the main question I have today.

Another one to Mrs. Cornish, on the singles versus the pairs and the trawls, if we can have something poly on our groundlines, that would get rid of the vertical lines that you are talking about and that is going to increase.

You have got to work with the fisherman. Shorter groundlines, something that we can work with. What is on the board right now, we cannot work with it at all. I guess that is about it.

Senator SNOWE. I appreciate that. Ms. Cornish, were you prepared to respond, or Mr. Lecky?

Ms. CORNISH. I can only say that the research shows that the sinking line keeps the line out of the water column, and basically that is the point of trying to avoid whale entanglements, is keeping line away from whales.

So if there are other solutions out there to do that, to reduce the amount of gear in the water, we would love to be able to entertain them in a way that we can actually implement them and that works.

There has certainly been a lot of research around, for instance, traps without endlines or slow release endlines or other things.

You guys need to test that out and figure what is going to work and what isn't. The whole idea is to get lines out of the water, and sinking lines do that.

Sinking lines get the lines down to the ground so that they are out of harm's way. Endlines are definitely a problem, just as Max Strahan said. Endlines are a big problem, and that is going to be the focus of Take Reduction Team as they move forward.

So we have to be prepared for that. It is a major problem, and Maine has a lot of endlines. So, again, the scrutiny is going to come here to figure out and to tap you guys in terms of how can we reduce the threat of endlines.

Mr. BISHOP. One other thing. On your little comment there on the whale that is entangled down in Florida, we do not know where the gear came from. I know the fishermen sitting in this room, guess what, our gear is marked. Red tracers in it, we are all marked.

I believe last year there was a guy down in Massachusetts, his gear was all marked, met the requirements. It was entangled in a whale. Guess what, he got sued.

Are you going to tell these guys that there is no guarantee that they're not going to get sued if they are putting the sinking groundlines in and all these specifications that are being thrown at them?

Senator SNOWE. Mr. Lecky?

Mr. LECKY. A comment on the endline issue. I think the endline issue is one that folks are concerned about. We have heard it brought up a couple of times today.

The TRT decided that it was a pretty complicated issue and that they would tackle groundlines first before proceeding on ways to work with endlines.

So it is an issue that is out there, we are aware of it; it is not an either/or choice.

I am not quite sure what lawsuit you are talking about. If you are talking about an enforcement action from the National Marine Fisheries Service.

Ms. MCCARRON. The suit was brought forward by Max Strahan against an individual lobsterman, Daniel Holmes, for \$4 million.

Mr. BISHOP. That's what I mean.

Mr. LECKY. I understand that. The law does provide for third party lawsuits, and I cannot guarantee you how some third party is going to behave. All I can do is talk about our experience with enforcement and how we approach enforcement.

Senator SNOWE. I think that is why it is so important to have certification by NMFS with respect to the gear based on what I'm hearing, is determined to be suitable. I think that is the key here.

We are dealing with a lot of unknowns. That has been sort of obvious to us today, we lack the data. So we lack the data and the unknowns, are they at risk?

If there is something that goes wrong, are fishermen liable because they had to comply with the law, but yet you could not certify that that would work?

I think those are the issues. Hopefully the Take Reduction Team is going to be looking at very carefully here. I think some of the issues you are bringing are practical because they are out there each and every day.

Thank you.

Ms. MCCARRON. Senator, if I could.

Senator SNOWE. Yes, Ms. McCarron.

Ms. MCCARRON. Just briefly to Lewis's statement, I think another strong argument to be deferring the enforcement is that a lot of the research is ongoing right now.

Currently there is a bottom current study being conducted east of Schoodic Point, which is basically showing that floating rope does not really float Down East. The tides of the current are so strong that it lays over at most points except for slack tides, so you really have to wonder for the investment that folks in that area are going to make, is there an actual conservation benefit.

With regard to sinking the lines altogether, DMR has preliminary data that was gathered not at the actual research point but through pressure sensors that shows the height of the line in the water, and issued an ROV study that shows that shorter strings of rope between groundlines greatly reduces the profile.

So from where the industry sits, there are some other more creative, more operationally feasible alternatives; but because we are the industry, we do not have the big bucks, we have not been able to go out and do the controlled experiments. See these sorts of things tend to fall on deaf ears.

But it is within reach, and it is so much more workable, and I think would provide true benefit to the whales.

Senator SNOWE. Thank you. Again, it is about collaboration. Even in industry they do that today. They bring people together with the best ideas because it is the people on the front lines each and every day that have great ideas but they have to be out there.

I think that is an interesting point even for government. The Take Reduction Team, it is an internal process, but it is interesting. It seems like sometimes you put the cart before the horse, and not working with people to get the ideas and blending it and figuring out, "OK, here is the goal, how do we get there," that is workable.

STATEMENT OF BRIAN CATES, LOBSTERMAN

Mr. CATES. Senator Snowe, distinguished panel members, and fellow fishermen, my name is Brian Cates from Cutler. I have fished for lobsters for 44 years.

For this many years in the industry, you can well imagine that I have seen many changes in the way we do business, some for better, some for worse. In my opinion the reason we are here today is yet another example of change that we have seen in the recent years that signals an end to a time-honored tradition and a very valuable industry that has served so many so well.

That change is quite frankly government intrusion and overregulation forced on fishermen that is totally unwarranted and completely unnecessary.

Because of pressure from a very few special interests, the NMFS is attempting to pass on rules and regulations to the lobster industry that will have absolutely no positive benefits in trying to resolve any conflicts involving whales and fishing gear.

The reason they will not work is because 99 percent of the area affected by the proposed rule change are areas where right whales

are never seen. Why target areas and large numbers of fishermen with regs that will cost individuals thousands of dollars to comply with, and in many cases, such as mine, these rules will effectively put me out of business.

The reason for this is that neutral or sinking rope cannot be used in areas where rough bottom exists or where the tide causes much chafing and tangling of endlines.

Both of these conditions exist where I fish 100 percent of my gear. As a result, applying these rules will be devastating. In other words, the gear loss will be catastrophic and replacement expense too great to allow for a profit.

If you add to these facts the fact that the right whale has never been seen in the 100- or 125-square-mile area where I fish, it makes one wonder why we are facing such ridiculous and downright scary threats to our cherished way of life and our ability to feed and care for our families.

Perhaps our legislative branch could better serve its constituents by enacting legislation to prevent special interest groups from being able to tie up our court systems with groundless and erroneous lawsuits.

Or perhaps our legislative branch could better serve its constituents by enacting legislation to dismantle and remove ineffective and over-burdensome governmental agencies, such as NMFS, ASMFC that do nothing more than provide jobs for thousands of workers at the expense of the people who truly have to work for a living, especially since the fishing industry would be much better served by an agency offering common sense and more localized control.

Please make no mistake about it. Try to understand the very real danger this proposed rule change poses to our industry. It will cause me to change my fishing technique to the point where it will harm many people's income levels, from the two sternmen I employ to the people who supply my bait, traps, maintenance, fuels, et cetera, et cetera.

I have no place else to go. I cannot just move my traps to another place that I can fish and be in compliance with the regs. I could possibly downsize my business to where it could be a semi-retirement job, but what about my sternmen who depend on their income?

Also remember that I am just one of many who will also will be forced out of business. This is very serious. If these rules are enacted, I will be faced with a big decision. Do I continue to fish as always but with the threat of being out of compliance and facing criminal charges if caught, or do I downsize and tell my sternmen, good luck, "see ya," or perhaps I will just retire.

I do not like any of these options. Most of the fishermen I know do not have any other options, so please be very careful in consideration of these rules.

That ends my written comments, but one area that I think might be worthwhile for this panel to look into, certainly define the goals of what you want to try to accomplish, but then put the responsibility on a more localized enforcement agency, one that can work with people in certain areas, as the State of Maine is already divided up into areas and zones that makes much more sense in my

mind to work with these individual areas and zones to come up with way to reduce entanglement issues.

Not a blanket policy. Blanket policies usually do not work for many people. Thank you.

Senator SNOWE. Thank you. It was very helpful. Thank you.

**STATEMENT OF RICHARD K. LARRABEE, SR., SELECTMAN,
TOWN OF STONINGTON, MAINE**

Mr. LARRABEE. Thank you, Senator Snowe, for letting us speak. My name is Richard Larrabee. I am a Selectman for the Town of Stonington.

Stonington Harbor has approximately 300 boats moored that depend on lobstering and crabbing. In addition, the captains of these boats employ one or two sternmen.

We have five lobster buying stations employing anywhere between two and ten people, and several crab picking stations. We have two marine supply stores, a boatyard that employs anywhere between 40 and 50 people. We have three fuel companies that supply fuel for the boats.

As a selectman in the Town of Stonington, I have seen the increase of general assistance and the need for affordable housing and jobs. It is difficult to try to address the needs of our islanders, especially when fishing on the island is the main support. These changes will affect us very deeply.

Thank you.

Senator SNOWE. Thank you.

**STATEMENT OF DAVID COUSENS, PRESIDENT,
MAINE LOBSTERMEN'S ASSOCIATION**

Mr. COUSENS. Senator Snowe, members of the panel, my name is David Cousens. I am President of Maine Lobstermen's Association. I have been fishing for over 40 years. It has been a while.

I would like to just focus on one part of this plan, and I know everyone is upset about the whole plan, but I think the plan is here, and the only thing we can do now is effectively put out what needs to be addressed, the flaws in the plan, and try to take the plan, at least delay implementation of the plan, and point out areas that need to be addressed. My area here is enforcement.

I really have concerns about the enforcement of this. For one thing, NMFS sinking rope guidelines are pretty much impossible to understand for fishermen. They are just not easy to work with.

How will a lobsterman know if he is buying rope of a specific gravity of 1.03 or greater? Specific gravity has never been put on rope. We have a standard now, but the standard is not labeled on the rope.

Will the rope maintain a consistent specific gravity over time? No one knows that. I mean, no one has an idea if rope, 6 months after you have purchased it, is going to have the same specific gravity.

Also, NMFS, in their economics, has given a four- to six-year plan for the rope. That rope is not going to last a year. If it does last a year, we are going to consider that success.

So their economic policy, you wonder why there is a \$10 million gap to \$100 million gap. For one thing, they didn't take into account that rope has to be replaced every year, and for another

thing, anyone that fished inside the line at any given time you excluded from the whole process.

You only had about 979 fishermen from the State of Maine that were going to have to buy rope. That is why we have a little problem with the economics of this proposal. There is more like 4,000 people that are going to have to buy rope, because we move outside the line and inside the line.

The other assumption that you made was, if we fish any time inside the line, we will choose to stay inside the line and not have to buy the rope. That is impossible for us. We cannot make money inside the line.

I fish 95 percent of my traps outside the exemption line, so that is not going to work. That's just flawed thinking, and that is why we have such a disparity from \$10 million to \$100 million, and I will bet, George, it is closer to \$100 million. I know, that is good, you took \$40,000 and that is fair. But it is more than \$40,000. That does not take into account lost traps.

Can manufacturers consistently make rope? No, they cannot. For the last 5 years, we have been testing rope. We have been asking for specific gravity rope to see that happens. If we are within .2, that is good. Well, .2 is too much for the enforcement. We are supposed to be at 1.03 or above.

It can go to .2 on either side of this. You can be buying rope you think would be .4 and it can be .02. So that is a definite problem.

DMR asked, for this year's low-profile rope, to be made to a certain specific gravity, and none of them were an exact value that were asked for. A few of them were illegal and would break the law. So in just the latest low-profile ground experiment, the rope was not what we asked for.

So can rope manufacturers certify that the rope is legal? They can put a tracer in, but is it legal? That is a question that NMFS has not answered.

This is the protocol for all you people that have not looked at it to test the rope. It is based on Archimedes' principle, which is a solid mathematical principle. It works.

What it is, is specific gravity can be calculated by using the equation A , dry sample weight/dry sample weight and B , submerged sample weight.

So in order to test this, this is the protocol that they are going to have to go through. To determine the specific gravity of a line, obtain a sample of a length approximately 18 inches by cutting with a cold knife.

A minimum sample weight of 30/30 grams is recommended. Steel wire of a known weight and density is used to bind the ends of the sample to keep them from fraying as necessary. It is also used to hold the sample in a coiled shape to provide weight to assure that the sample will be fully submerged when placed in water.

The dry weight and submerged weight of the wire must be known in order to allow the effect to be removed from the calculation of specific gravity of the rope sample.

Submerge a sample in water of known specific gravity to the fourth decimal place with a hydrometer. Water is maintained at 65 degrees Fahrenheit and a final specific gravity calculation is corrected to 60 degrees Fahrenheit.

The submerged sample is then agitated and weighed on a daily basis of 7 days. The submerged sample weight on the seventh day is used for the final calculation.

The dry sample weight is then obtained after the sample is removed from the water and held at 135 degrees Fahrenheit for a 36-hour period. Note that A and B must be corrected to exclude any material attached to the sample as described in the above purposes for binding, sinking, et cetera.

Care must be exercised to ensure that no outside influences adversely affect these weights and measurements. Last, corrections for temperatures of water used in the above procedure need to be performed.

Now, that is the mathematical part of it. Now, come on, guys, are we going to do that for every sample of rope?

The DMR does not have the money to do that; the State of Maine definitely does not have the money to do it; I do not think you have the money to do it. I mean, that is unbelievable. I have another comment but we are in public.

Implementation date. Maine lobster industry cannot comply by October. For one thing, we do not know what to buy. You go to any rope store on the coast of Maine, and I know you guys have not been there, or if you have sent a representative there, no one has got anything in stock right now.

Times are tough. No one is buying anything. You could not get a truckload of sink rope in two stores probably right now unless you ordered it.

No one knows what to order. We have tried sink rope. It does not work. It frays. So what we went looking for is sink rope that is the most durable. So what are we going to do? We are probably going to jump in diameter. We are going to go from 3/8-inch rope to maybe 1/2-inch rope and try to get a year out of it. That is expensive. That is another thing that wasn't figured into the economic analysis, too.

We need to do it in the spring time. Whatever operational procedures we need to do, we cannot do it in October. That is ludicrous. It is the height of the fishing season, the weather is getting bad. We cannot be out there switching out rope. It is just not feasible. Ignorant to be more precise.

The rules should be phased in so that lobstermen can change a portion of their gear each year, as it normally would, to spread out the costs.

As Mr. Drouin just said, he hit it right on the head. You know, some people last year put a hell of an outlay on new rope. Do they throw it all away and start over? We have the buyback program, which is a good thing, and I would encourage people to use that.

But, there is only \$2 million there. The state is going to be liable for \$100 million. We have got to absorb that cost.

So I would just caution everyone to try. There are ways that we can do this. The MLA has put together proposals that will definitely help. If we could use the floating line that we have got and go to 10-fathom trailers, we have solved the problem.

If you could do that, we could eliminate singles. But no one is going to eliminate singles without the proposal of having workable

gear, because 50 percent of the area that I fish, I cannot fish under your new proposals without singles. It is my only option.

I am not one to give up my only option unless I have another option that works.

So if we want to get real about saving whales, what we need to do is look at the whole picture, not piecemeal. And I know vertical lines, you guys are going to ask for 50 percent reduction in vertical lines starting in April. That is huge.

Now, I have talked to Scott Kraus and a lot of other people around. Groundlines aren't the problem, they are not the major problem. Vertical lines are the real problem.

Well, why did we not tackle this as one thing? Instead of having a 10-year protracted battle on groundlines, and now we are going to have in another year, a battle on vertical lines.

So I would suggest that everyone try to get together and come up with a common sense approach or litigation is going to be coming very quickly.

Senator SNOWE. I appreciate it, Dave. Thank you.

**STATEMENT OF MEREDITH HOUGHTON, MEMBER,
THE CALVIN PROJECT, ADAMS SCHOOL**

Ms. HOUGHTON. My name is Meredith Houghton and I am member of The CALVIN Project. I have been looking into the prices of rope and the costs to lobstermen.

I must admit that I did not get very far with the issue, as it is very complex and most figures are not explained.

So today I would like to tell you about the research two of my fellow student scientists have been doing.

Tess Lameyer and Truman Forbes looked at the data of sightings of right whales in the inshore zone of Maine. The Maine Lobstermen's Association has a very good chart of the sightings.

The sightings have been made by many organizations and people over the years. They indicate a low frequency of right whales inshore. Other places in the Gulf of Maine show a lot more sightings offshore than inshore, but those sightings were done a different way.

The offshore sightings are from systematic surveys. It is a fact that the scientific community had no idea dozens of right whales visited the Bay of Fundy every year until Scott Kraus started doing systematic surveys in 1980.

Tess and Truman could not find any systematic surveys of Maine's inshore waters for right whales. The data on the Maine Lobstermen's Association website is what scientists call opportunistic. It is a random sampling at random times.

Their conclusion is that decisions should not depend too much on the current inshore sighting data. They recommend the government and scientists do a systematic inshore survey so better decisions can be made about inshore gear.

Senator SNOWE. Thank you. Thank you very much for your statement.

**STATEMENT OF MEREDITH OLIVARI, MEMBER,
THE CALVIN PROJECT, ADAMS SCHOOL**

Ms. OLIVARI. My name is Meredith Olivari, and I am also a member of The CALVIN Project.

Senator SNOWE. Where do you go to school?

Ms. OLIVARI. The Adams School.

I heard researcher Regina Campbell-Malone speak at the Consortium meeting about how whales can be injured by ship strikes.

I was inspired by her talk and to think about models of whales and fishing gear. My simple model is about the risk of whale entanglement inshore and offshore along the Maine coast. I have collected my data from the Maine Lobstermen's Association, the Association website.

In the newspapers it is often said that the risk of whales getting entangled inshore is much less than offshore because there are fewer whales sighted inshore.

My model disagrees with this statement, because I added the factor of how many lobster pots there are per square nautical mile. Offshore there are five lobster traps per square mile, and inshore there are 100 lobster pots per square mile.

In my model the risk factor is the number of whales *times* the number of pots per square nautical mile. If there are 20 whales swimming offshore, their risk factor is 20 *times* 5 pots per square mile, or a risk factor of 100.

For just *one* whale swimming inshore, its risk factor is 1 times 100, or the same risk factor of 100. When density of lobster pots is used, whales might have just as much risk inshore as offshore, and we cannot afford any more deaths or even injuries to right whales. Thank you.

Senator SNOWE. Thank you. I appreciate your statement. Thank you.

**STATEMENT OF BILL McWEENY, MEMBER, THE CALVIN
PROJECT; AND TEACHER, GRADES 6-8, ADAMS SCHOOL**

Mr. McWEENY. Hi, my name is Bill McWeeny. I have been involved in the study of right whales since 1983. I am also the facilitator to The CALVIN Project.

The CALVIN Project's motto is "Endangered Species Recovery Through Education." I want to share a perspective from my role as this project facilitator. Teachers often learn as much as their students when engaged in research like this.

Not only did we discuss and research just about everything there is to know about right whales, but we also discussed other endangered species and their recovery was or was not being met. Over time I began to see a larger picture of the endangered species problem in general. That picture exhibited some patterns that are alarming. Most endangered species situations include poor and/or incomplete press coverage, a lack of understanding of the problem facing the endangered species, a lack of understanding for the people being affected by the recovery efforts, too small, and sometimes too late funding of research necessary to make good decisions, and therefore, often poor decisions being made.

In addition, sometimes the dialogue is just plain mean and off base. Political decisions based on squeaking wheels are substituted for sound decisions based on facts.

Helping endangered species recover is as complex as the ecosystems they live in and the human social systems affecting them. There are a couple of patterns from a few stories of success. One is to act sooner rather than later. The longer actions that could help a species are put off, the more likely the species will disappear. From the passenger pigeon extinction to the latest marine mammal extinction of the Baiji Yangtze Dolphin in China, putting off decisions is a bad policy.

Act now and adjust later is what one major scientist at the latest International Marine Mammal Conference loudly reported. There is no second chance; but another and perhaps more important pattern behind endangered species success stories is collaboration among groups involved in the process.

It is never one group exerting power over another, but rather cooperation that saved the wolf from the lower 48 states and dolphin habitats in the South Pacific most recently.

I know the groups represented here today have tried to work together, but it is my personal observation that they are hard pressed to call the current efforts collaboration.

Requiring sinking groundline will bring us closer to that goal, but this plan in itself will not succeed in helping right whales recover because it does not include the collaboration factor.

The various groups are working against each other rather than with each other, and I can see why. I compliment the Senator for insisting on looking at the bigger picture. I think that is part of the problem. Very little discussion centers on the big picture and relates to the actual goal of recovery, that again, the Senator has often referred to that today. Thank you.

The process is bogged down in little corners of details, so the forest cannot be seen through the trees. Not only are we myopic when looking at whale recovery, but also when we are looking at fishermen. We are here today talking about a replacement issue and the economic burden on lobster fishermen, but we cannot see beyond the coils of rope.

The lobster industry needs to collaborate with other groups, and other groups need to support the whole industry. What I am suggesting here is that this little step of going to sinking groundline is just one of many to come, for instance, the vertical lines are coming up next.

If we step back and look at the lobster industry and see why they are having such a problem with the economics of sinking groundline, we can see that they have no control. They are pawns in a game. It is the middlemen and the marketers that need to be addressed. The fishermen should be able to pass their costs on to the marketplace directly just like air carriers do with fuel charges, but the system ties their hands. Not only that, the even bigger picture leaves the consumer out all together. The consumer should be paying for this recovery. After all the product is a luxury. No one runs down to the store for a lobster when they don't have anything for dinner.

We tax alcohol and we tax cigarettes. We use taxes to support programs to help problems created by the use of those products. Why not do the same for whales and their injuries caused by the lobstermen? Let the consumer step up to the plate. I doubt there will be any lobsters left rotting on the docks.

I think we need a big-picture approach and a bold plan. I suggest we put a surcharge on each lobster sold, say 25 cents or 50 cents, that way the consumers all over the world will be funding the research and the extra costs to fishermen divvied out all different ways, and the charge should be universal throughout the region from Block Island to Prince Edward Island so that no one locale has advantage over another. I kind of agree with what Ms. Cornish was saying earlier.

Thank you very much.

Senator SNOWE. Thank you. Thank you very much for your comments. The key is collaboration. I think it is critically important.

**STATEMENT OF ZACH KLYVER, NATURALIST,
BAR HARBOR WHALE WATCH COMPANY**

Mr. KLYVER. Hi, Senator Snowe. Thank you for this opportunity to speak. My name is Zach Klyver and I work as a naturalist on a whale watch boat out of Bar Harbor for Bar Harbor Whale Watch Company. This will be my 18th year of guiding whale watching trips.

I have led about 3,500 whale watching trips and taken about 600,000 people whale watching here. I have also worked for 9 years with the right whale observer program down off of Florida and Georgia. I attended the College of the Atlantic. I'm from Eastport.

Senator SNOWE. I think you've got all the credentials.

Mr. KLYVER. My family was a fishing family in Eastport, and we still have Ray's Mustard only in our house.

Senator SNOWE. Very good judgment.

Mr. KLYVER. I want to talk about the public comment that has been submitted. I have taken the time to read your comments and George's comments and all the comments and the new DMR alternative, and I really appreciate all the effort that went into it.

It was really obvious to me, and I know you know this, but the whale sighting data is so insufficient, the information that we have, and it bothered me because there is information, for example, the whale watch, we have our information over all this period for 18 years, and I commend the DMR and George and others who have been working with Allied Whale to get our information into a database so that you can have it to help with this.

I think that is going to help with the fine scale. We have thousands of sightings of finback whales and humpback whales, and we have 70 sightings of right whale over this about 20-year period. So there is an effort to get that done. It is close to being done.

I did pull the right whale data and presented it to the right whale consortium this fall in New Bedford at the right whale meeting, and we had 70 sightings of right whale. We also looked at tower data from Mount Desert Rock that Allied Whale maintained in the period right before the whale watch data, so that was another 15-year data set, and there were 59 right whale sightings around Mount Desert Rock.

So we had 129 right whale sightings. I will get that detailed information to you. There were 211 individual right whales seen on those days. That is over a 30-year time span, so it is a big time scale.

I think this is really critical that we have more information, and I feel like there is information. Ours is not the only information from our whale watch. Allied Whale has a lot of information, there are other whale watch boats that run out of the coast of Maine.

So I wondered why is it that more information has not entered this process sooner. One thing I did look at was the make-up of the Atlantic Large Whale Take Reduction Team, and there are roughly 60 members, and there is a broad sweep of stakeholders, I agree, but looking at the scientific make-up, there are seven scientists from Massachusetts that are part of that process. There are no Maine whale scientists that are part of that process.

It is surprising to me also because we are world renown for whale research, especially at the College. You have the finback whale catalog that was founded there. The director of the finback whale research is there. The humpback whale catalog, the first humpback whales identified, that catalog is kept there.

There are a lot of local scientists that can really, especially at Allied Whale, but at other institutions here that I think could really contribute to this. I know there is interest in this.

I think there is really an opportunity for Maine whale scientists to work with Maine fishermen to try to address some of these issues in a smaller setting that is not as big as the Atlantic Large Whale Take Reduction Team.

So if that is something that you are interested in, I think there is a great opportunity there that really reiterates what Bill's talking about, taking control of this on a local level and really coming up with a lot of solutions.

I know we want to help and I think many do. I hope that that might be a consideration.

Senator SNOWE. Thank you. Care to respond on that, Mr. Lecky? How are those decisions made in terms of representation in the Take Reduction Team?

Mr. LECKY. A good part of it is voluntary. We do not really have resources to pay for people to participate.

But I would point out, there is one element of folks in this equation that collaborate, it is the scientists. And I wouldn't color a scientist just because he works at a university in Massachusetts as not interested in Maine.

Our scientists collaborate or participate in and contribute to the databases that were referred to today. So I think we have got scientists that represent and understand the data that is available on whales and fisheries.

Senator SNOWE. Just given the fact that it has an enormous impact on the state, Maine, involved scientists from this state, people representative of this state given the direct impact it has?

Mr. LECKY. If there are Maine scientists that would like to serve on the team.

Senator SNOWE. That's important. And also how do they gather data? That is another issue.

Mr. LECKY. A number of scientists that are involved in this actually do original research and provide their information. They are mostly familiar with published literature, the information that is available in these various databases like the sighting records.

There is a lot of outreach, a lot of collaboration among scientists to share data and to bring that to the table.

I would point out a comment, I guess one comment we heard earlier, though, that we need to consider all of the available information. We are required to rely on the best available information, so we do weight information that we consider so something that is a well designed, peer-reviewed, published in a scientific journal study, gets more weight and consideration than an anecdotal observation does.

But nevertheless, as some scientists will tell you, one anecdote is a story, a thousand anecdotes is data, and so we do consider that kind of information as well.

Senator SNOWE. So that information would be useful.

STATEMENT OF SPENCER JOYCE, LOBSTERMAN

Mr. JOYCE. Senator Snowe, thank you for being here today. My name is Spencer Joyce. I fish out of Swan's Island.

We have been at this, what, 12, 14 years now since it started way back with whatever. It is kind of discouraging for the fishermen of this state when really, I do not really feel there is a problem. I bought my first fishing license in 1961. Figure it up, 40 some years I have been fishing, and I have never seen a right whale. I certainly have never seen one tangled up.

You take a show of hands here this morning or this afternoon, it is just not a problem. It is like telling the crew in Ft. Lauderdale to sand and salt the roads every day but there is no snowstorm.

The problem I see is we keep coming to these meetings and we comply. We first started out with a whale break away, and then we went to the toggle float break away, and then we put the red tracer in the rope so they could identify what rope it was. It is on and on.

I have gone from singles to pairs and triples just to get rid of vertical lines, and all the fishermen in this room have done the same thing.

I used to fish 150 singles in the summertime, and now I am doubled up, tripled up. There are thousands and thousands of vertical lines that have already been taken out of the water along with the trap limits that we have had to endure, and all this stuff. It gets discouraging because you think, well, we will do this and maybe they will go away, but they do not.

You start reading in the paper. This and that is taking place, we are going to have another meeting. You feel like the dog that stole the apple pie off the window sill. You come in here with your tail between your legs, hoping that you are going to be able to solve something.

But this sinking rope on the groundlines is not going to work. Now floating rope has only been out 50 years, 50 years tops, floating rope.

What did the old duffers do? I will tell you what they did, because I used to go with one. They had to have two toggles on your

vertical line, one about 4 fathom off the trap another one about 8 fathoms from the buoy. They had to have two floats on the vertical line, and in the middle of the groundline they had to have, of course, they did not have Styrofoam back then, we had glass jugs or little cedar wooden buoys between the groundlines on the sinking rope.

Now, that was before float rope ever came into existence, so it did not work for those guys back then. How is it going to work for us?

Every boat represented in this room here today has got a \$500 to \$700 expense before he even takes the rope off the bow in the morning. Before that boat goes out around the head, you have got at least \$500 to \$700 in bait and fuel and a sternman before he even gaffs his first buoy.

This is just way too expensive, and it is not going to work. You are going to have accidents, it is going to be a mess.

Like I say, we get all psyched up thinking, ah, well, we have complied, and then here we are again, what has it been, since The Grand Auditorium, how many years? Before Governor Baldacci was the Governor he told the Feds that day, you are in the State of Maine now. You go home.

Thanks.

Senator SNOWE. Thank you.

STATEMENT OF TERRY BEAULIEU, LOBSTERMAN

Mr. BEAULIEU. Hello. Thank you for the opportunity to speak. I'm Terry Beaulieu. I fish over at Matinicus Island.

I cite a lot of the things that you have already heard about the sinking rope. It is going to be a problem, a real problem out there. The further east you go, it is going to become more of a problem.

I have been on draggers all up and down the coast, and the further you go to the east, the sharper the bottom gets.

One of my big concerns is for our community. We are the furthest offshore community in the State of Maine. We are totally outside of that exemption line that is crossed off there. So no matter whether the state plan goes through, if the state plan goes through, I have got no more singles. If the neutral buoyant rope doesn't work, I cannot fish singles, I cannot fish neutral buoyant rope. Guess what? That is the only industry we have got on that island. It will cease to exist as it is. That's the death of our community right there. You are holding it your hands right now. So that is my number one reason for being here and speaking. A couple other.

The other thing is expense-wise, this is going to be expensive for everybody. Anybody that is involved with an island knows that there is a lot more expense to living on an island, so this is just one more thing heaped on to us in an already bad time. I know you have already heard it, the fishing is down, the expenses are up. When it comes to the island, the expenses are really up. It costs us more for heating oil. Every facet of living out there costs. Now they are going to throw one more thing.

Just everything you are doing with this is going in the wrong direction. I feel like the whole thing started right off with a knee-jerk reaction on the fishermen because that was the easiest place to start. Instead, they talk about a collaborative effort, it has never

been a collaborative effort because they have never given any real weight to what we had to say. You want collaborative effort, you come in, you meet me partway. Partway isn't saying, well, I will never say vertical lines, that we want to eliminate vertical lines.

There is an understanding there but that is not collaborative effort. That is not working with somebody. Working with somebody is meeting them partway and finding that place.

I don't think that the effort has been made in that direction. I think that the fishermen have done things. I think the fishermen are willing to use common sense, but you are asking us to go fix something that is not broken to begin with, in the process it is going to cost us our livelihoods, our communities, our families. I do not know if I am going to go to work, if this goes through the way it is.

Senator SNOWE. How many on Matinicus are involved in the lobster industry?

Mr. BEAULIEU. There are probably about 35 full-time boats there, something like that.

Senator SNOWE. Thank you. Thank you. Next.

STATEMENT OF ROBERT S. BAINES, PRESIDENT, SPRUCE HEAD CO-OP; CHAIRMAN, ADVISORY COUNCIL, DEPARTMENT OF MARINE RESOURCES, STATE OF MAINE; LOBSTERMAN

Mr. BAINES. Senator Snowe, good morning, good afternoon. I do not know where we are right now.

My name is Bob Baines. I am a lobsterman from Spruce Head. I chair DMR's advisory council, as well as president of Spruce Head Co-Op.

I have been a commercial fisherman for over 30 years, and I, like just about everyone, every fisherman in this room, has never seen a right whale.

Earlier it was mentioned, I heard the word collaboration. Last year Ms. Cornish had the opportunity to go out and haul with me, and I believe it was a fairly nice summer day, and she had a glimpse of what the lobster fishery looks like, and it was only a glimpse, but I give her credit for wanting to come out.

I think the environmental community really needs to do more of that to really understand the working realities involved in the lobster industry.

Mr. Lecky said earlier that he seems to think that sinking rope will work on hard bottom. He might see that in his office, but from my office it will not work on hard bottom. That is understood.

National Marine Fisheries Service did not use the most up-to-date analysis to locate the exemption line. There is more information available to them; for whatever reason they chose not to use it.

MLA presented maps, which look at where the whales are by year and by month and in relation to where lobster fishery takes place.

There are very few whales inside the 50 fathom curve. The step curve marks a change in bottom along the coast of Maine. Vicky mentioned earlier that close to the shore of Florida they see right whales. We do not see right whales inshore on the coast of Maine. I think there is a disconnect there.

They are seen down there. Why are they not seen here? I think the answer probably is because they do not come close to the shore in the State of Maine.

The lobster industry feels so strongly about the exemption line and where it is located. We have asked DMR to raise the trap tag fees, which they have, 10 cents to further research, and hopefully that will help show where the line should be.

The exemption line goes through the bottom that I fish, as well as probably a lot of the guys in this room. If you are a full-time lobsterman, you are probably fishing on both sides of that line. There is a lot of shoal, hard bottom outside the exemption line in mid-coast Maine.

The only way you can fish that bottom if this rule goes into effect is with single traps, more vertical lines in the water. I do not think that is what anyone really wants to see.

Bottom line project, the rope buyback. Only \$2 million was funded. You heard earlier that we are going to need a whole lot more money than that.

Lobstermen are nervous to participate in this program, let me tell you why. Many believe that participation is an endorsement of the whale rule and the exemption line. The first time they sent out a flyer, I did not sign up for that very reason. I still held out hope that we might be able to do something, and I did not want to support a program that went against my beliefs.

Many do not know what rope to purchase and whether it will meet NMFS guidelines. You heard about that earlier. My choice would be, if I do get money from this project, I would like to buy some low-profile rope, not sink rope, but how are we going to do that?

Where I fish, as most guys, I fish on both sides of the line. So I want to keep my float rope when I fish inside the line. So I will have no rope to trade in, so that means totally out of my pocket. I won't have the ability to trade in float rope because I am going to need it still.

Many guys are missing out on the program because there is still too much up in the air, so they are not participating. The cost, you heard earlier, John Drouin spoke very well, it is big. We are talking thousands of tens of thousands of dollars per fisherman per year. Our bottom line is going down. To ask the lobster community to buy into this, it is a very tough pill to swallow.

My overall frustration in complying with the rule is not only the huge costs, but it will have a negligible benefit to the right whale in the inshore area. The offshore area where the whales transit the Gulf of Maine, is gear out there? Things need to be done out there. But the inshore/near shore area, that is a different story, and I think more research needs to be done, more data has to be brought into the picture so we can really put the exemption line where it will do some good for both the fisherman and the whales both. Thank you.

Senator SNOWE. Thank you.

**STATEMENT OF NICK LEMIEUX, VICE PRESIDENT,
DOWNEAST LOBSTERMEN'S ASSOCIATION**

Mr. LEMIEUX. Senator Snowe, thank you. Nick Lemieux from Cutler, Maine. I am the Vice President of Downeast Lobstermen's Association.

I issued you a statement, so it is in your folder.

Just to touch on a few key points, in Down East Maine we deal with a great deal of tide. We need a rope that is the same as what we have right now, or has the same characteristics.

Many people before me touched on a lot of the issues that are going to be brought up with the rope and such, but the fishermen and myself, we have made a lot of sacrifices up to this point, and we are willing to make more; but we need a usable product that is going work and is going to hold up.

We are whale friendly. We want to be. That is our goal; but we also want to be able to maintain an industry which we have strived and really worked to uphold.

John Drouin alluded to messes and entanglement that we deal with. I recovered that fisherman's thumb the next day. We have seen how things can happen, and we just want—we want to work together but it is not a two-sided street. It seems like it is awful one-sided, so, I just hope that you consider that. Thank you.

[The prepared statement of Mr. Lemieux follows:]

PREPARED STATEMENT OF NICK LEMIEUX, VICE PRESIDENT,
DOWNEAST LOBSTERMEN'S ASSOCIATION

I would like to introduce myself. I'm Nick Lemieux, Vice President of the Down East Lobstermen's Association. Thank you for taking the time out of your busy schedule to come and listen to the Maine lobster fisherman on this proposed sinking groundline rule.

This proposed rule will devastate my ability to fish and support my family. Speaking for myself and my association, we fish along the most rugged bottom on the eastern seaboard, more specifically Down East Maine. Due to the strong tides and sharp rocky bottom that I fish, it is necessary to continue to use the float rope. I have participated in every type of rope testing projects in my area. All of the ropes used do not last, are unsafe, chafe, and get caught on the bottom. We need more time and better products to use before we are forced to use sink rope that was never designed to be on the bottom.

The Maine lobster fishermen are the best protection for the whales—not the enemy. Think of the millions of hours we spend on the ocean. Fisherman from each harbor have taken disentanglement training to better protect these whales, yet I have never had to go use my training to assist in an entanglement.

In closing, I want to touch on a few key points. Float rope should remain used inside the 50-fathom curve. I have fished for 26 years and have never seen a right whale. The sink rope won't work because it has not had enough time to be tested to achieve a good balance when compared to the current float rope. More time is needed before we are pushed into investing in a product that can not stand the harsh environment that exists Down East. The up front cost and annual rope replacement cost will put many of my fellow fisherman out of business. Lobstering for me has been a long standing tradition. I'm a fourth-generation lobsterman with two boys who someday may choose to become lobstermen. Our small communities along the coast depend on lobstering and this needed support from yourself.

Senator SNOWE. Thank you. I appreciate it. Thank you.

STATEMENT OF CLIFFORD JOHNSON, LOBSTERMAN

Mr. JOHNSON. Clifford Johnson from Jonesport. I remember back in, I don't know, a year or two we went to Ellsworth at this same

meeting about all the float rope and this and that. One point was brought up about the red tracer.

We live in Maine; we don't live in Florida. We are bound by the same mark as Florida's got. She comments on whales diving off the shore. I have only been in this business for 15 years. I never want to do nothing else, but you are pushing all the young people into another, into something, what are we going to do?

We go back to school for what? Sit on the board like this gentleman and take people's livelihoods away from them? What do we do?

Have you got an answer for that? Because I don't. Or do you care? Because your paycheck is going to be the same no matter what you do, right?

The only ones that are going to suffer are the fishermen, nobody else.

These whales have not been hunted for a hundred years. They are not reproducing. Is that our fault? You talk about scientific, scientific this, that. You are not going to save Mother Nature. She is going to do what she wants to do.

Thanks.

**STATEMENT OF HON. STEVE ROBBINS III,
MANAGER, STONINGTON LOBSTER CO-OP;
SELECTMAN, TOWN OF STONINGTON, MAINE**

Mr. ROBBINS. Senator Snowe, my name is Steve Robbins III. I am from Stonington, Maine, and I am presently Manager of the Stonington Lobster Co-Op and also a selectman for the Town of Stonington.

I strongly concur with the comments you heard today from Mr. Cousens, Mr. Larrabee before. Stonington/Deer Isle and the island of Deer Isle houses probably roughly 300 fishermen. The economic impact which has been outlined in great detail here really is a death knell to a lot of people.

It is the upfront costs, it is the initial cost of the gear, it is all the hidden costs, I think, that cannot really be estimated or put to paper. I'm a fifth-generation fisherman. Those types of things, those hidden costs, those things that cannot be accounted for, that is what really scares people to death.

In my area, it is the geography of the bottom on which people fish, and it is highly dynamic. It varies so greatly from bay to bay up and down the coast. You really cannot alter the way people rig their gear, in which area they fish, without having some type of resource that is negative to them. That is just an operational feature.

I have been involved with the process for a long, long time; often-times it is hard to find the words, but really the people rig their gear, fish the way they do, it is highly variable. They do it for a reason now because it works to the greatest extent possible. That should not be confused with the fact that it works all the time.

Cost, if it was not a marine mammal issue, just the cost of doing business alone is really going to cripple people. It really is because you look at all these self-employed people that are involved along the coast, their operating expenses alone are up by more than a third.

I think it is safe to assume probably in the next couple of years you are really not going to be able to see people along the coast being able to sustain it. And we, in Stonington and on Deer Isle, we don't have the alternative opportunities for employment. We really do not.

I do have a couple pointed suggestions. I have attended several of the Atlantic Large Whale Take Reduction team meetings over the years. The ones that I have been to, probably the closest one was in Portsmouth at one time. I have also been to Baltimore, Virginia, on and on and on.

It would seem to me, and I think these folks here in the audience would concur, for the spring meeting of the Take Reduction Team upcoming, my suggestion to you would be if we could make a formal request to the agency to have this spring's meeting here if you want to, or at least somewhere's along the coast of Maine where at least it is a somewhat reasonable chance for these people to attend.

I would say the Take Reduction Team is dysfunctional at best. I do not want to point out the negatives involved, but you think of it, 60 individuals at a table and all varying interests. Over the years, I think a very large group of self-employed individuals, it is hard to get them to agree on anything outside of this issue.

So I just hope you take that into account. We look forward to participating the best we can.

Senator SNOWE. How are the decisions made with respect to where these meetings are located?

That's an interesting point he makes.

Mr. LECKY. He does, and I will definitely relay that. I think it is basically up to the team and coordinators to decide what is best. It is a huge team; we try to cover the range.

Senator SNOWE. Given the enormity of this issue to this industry and to this state, that might be very useful to make it more accessible to have a chance to see, to observe this process and to have the ability to speak or whatever to be part of it. That might be an interesting solution as well.

Would you put it forward? I just think it is a very good idea.

Mr. ROBBINS. Follow-up comment, if I could.

I believe it was Ms. Cornish who said, made the statement earlier, that there are currently 350 North Atlantic right whales in existence today. My understanding is that figure is not correct.

I have also attended the Consortium meetings down in New Bedford over the years from time to time, not the most recent one, but my understanding is the current population figures are closer to like 429 or something like that. Anybody can correct me. It has been a while since I paid attention.

The only reason I bring it up is because in more recent years, in the past 10 years, you have seen calving rates in North Atlantic right whales, years go by, and 22, 17, 32. I understand that there is a 5-year waiting period for them to be re-sighted and reintroduced into the populations.

My comments really do not apply too much in a sense because you work under a PBR of zero or a level approaching zero in terms of mortality. It would be helpful to me if somebody could clarify that, the population status.

Senator SNOWE. Ms. Cornish?

Ms. CORNISH. Thank you. I tried to nail down that number as well, but I think there is a lot of uncertainty around the population numbers and the population range. I probably should have said about 350 because that is what we talk about in our work. The range goes from 300, 290 or so I believe is the minimum estimate, up to 400 or more as you noted.

If we step back from that for a moment, I think the basic issue is that there are not that many whales out there, whether it is 350 or 400. It is an abysmally low number when you think about a whale that needs much larger numbers in order to really recover.

The models that have been prepared look at an extinction rate of about 200 years. So 200 years from now there is a pretty high likelihood that this whale species will go extinct unless we take some action to reverse the course of its demise.

So whether it is 300 or 400, I think we need to look long term and say, what actions do we need to take now to prevent that extinction.

Mr. ROBBINS. Could I follow up to that?

Senator SNOWE. Yes.

Mr. ROBBINS. So earlier on in the testimony when it was stated that there is 75 percent of those in existence, that clarification is consistent with gear entanglement. Well, that would fluctuate quite a lot depending on whether there were 300 animals or 429 animals. I am all done.

Senator SNOWE. Yes, Mr. Lecky, do you want to respond?

Mr. LECKY. I believe it is 75 percent of the known animals, not 75 percent of all of the animals. If you look at the photo identification databases that were mentioned earlier, it is a high proportion.

This is an area where we need to invest. I think the proof is in the pudding for all of conservation measures, whether they be ship-strike reduction strategies or fishery interaction, what is the population response?

We really do not have good metrics on how fast the population grows. These are slow-growing animals. It takes a long time for the population to respond. I think to your question about 350 or 429, those aren't statistically different estimates; and so without better, more precise information on abundance and trends over time, it is hard to distinguish that. That is a priority research area.

Senator SNOWE. Thank you. Thank you very much.

Anybody else?

STATEMENT OF JAY SMITH, LOBSTERMAN

Mr. SMITH. Thank you, Senator Snowe, for being here. It is very informative. One thing that I would like to point out, my name is Jay Smith, and I fish in the mid-coast area.

The study, I have never seen much on it, but from what I have observed and people have talked, a lot of these entanglements, it is not gear that is fished by people in this room; it is gear from either Canada or outside by the looks of the ropes and the buoys and the gear that is on there. I think that is something that really has to be taken into consideration.

Thank you.

Senator SNOWE. Do they ever make any determinations in terms of when they find a whale entangled as to the source of that gear?

Ms. CORNISH. I can just say that a lot more effort needs to go into the area of really trying to bring some of that gear out and have folks to look at it and try to identify it.

Senator SNOWE. Exactly. I think that is very important.

Yes.

Mr. LECKY. We do try and identify gear when it is recovered. Oftentimes it is difficult to discern what fishery it is from. It is just a length of rope. It is hard to tell whether it was even from a pot fishery or a gillnet fishery.

So we do make efforts. That is the rationale behind the marking requirement to give us better information. You have a chance to recover gear and hopefully find some distinguishing marks to help us with that.

Senator SNOWE. Commissioner Lapointe?

Mr. LAPOINTE. Senator, we met with some folks in the lobster industry and with Vicki and Scott Kraus, and this came up as an issue, and as part of the department's effort, we volunteered to sponsor a meeting.

Apparently a gear warehouse, is it in Rhode Island, so they get gear from entangled animals and they put it in a cardboard box and they label it.

They have not gone down, my understanding is, gotten a bunch of people together and said, let's sit down and tease it apart as best you can. If it is a hunk of rope 4 feet long, they will not be able to, but that is one of the things we had intended to do just so we can get more specific information.

Senator SNOWE. I think it is a great idea. It is like *Cold Case*. Let's figure it out. At least it is a great start to get to the source of the problem and just see who you can identify and who may be responsible.

It is very important. Can that take place sooner rather than later?

Mr. LECKY. Well, we actually have a gear technology program at the National Marine Fisheries Service, and we have a fair number of folks that are familiar with all kinds of different fishing gear and jobs are developed, new fishing technologies to protect species. They look at this gear when it comes in. We try very hard to define what fishery it is from. There is an abundance of effort, if you will, to do that already.

Mr. ROBBINS. I think they could do more by traveling up and down the coast and talking to people in different harbors in Maine, and you cannot tell us what is not our gear. Maine people can tell you. It would be pretty easy to do.

Senator SNOWE. You have distinguishing marks? Someone mentioned that earlier.

Mr. ROBBINS. Well, distinguishing gear type compared to like Canadian gear or offshore gear. I do not know how much of that stuff, but what I have seen of pictures and people I have talked to and pictures I have seen, I would like to see what is on that whale in Florida. A lot of it you can determine that it is not our gear.

Senator SNOWE. So you would need a lot of it to determine?

Mr. ROBBINS. No, you would not. You could go to Cutler. I know they use a bigger line down there than the rest of the state, but I am pretty familiar with a good part of the state, and it is a lot different than what is used outside or even outside Cape Cod and so forth.

Thank you.

Senator SNOWE. Thank you. Anybody else before we adjourn this hearing? Yes, sir.

I want to give people an opportunity. I know you have been very patient and I appreciate it, but this is so critical. The more participation out here, the better.

**STATEMENT OF ROBBIE GRAY, LOBSTER FISHERMAN,
DEER ISLE, MAINE**

Mr. GRAY. Thank you, Senator Snowe. I have given you three documents that I brought, one for myself as a lobster fisherman. I know these ropes will not work, I have tried them myself. You have heard a lot of the issues.

One issue that I would like to have you think about, the Federal Government, I am also President of the Island Food Pantry in Stonington, Maine.

A lot of our donations come from fishermen. If you wipe out the community, are you going to help us supply these communities with food? I think it needs to be looked into.

The other one was from a business that my wife works for and somewhat same concerns. What is going to happen to the community? If these regulations go through, it is going to be devastating. What is it going to do, not just to the lobster fisheries, but a lot of people like the restaurants, the gas stations. We are all just little businesses, and we are all connected. I think that is what we need to do with this whale issue and the fishing community.

They have not got the data. They say they have not. Not accurate data, but yet they are forcing it on to us.

Thank you.

[The prepared statement of Mr. Gray follows:]

PREPARED STATEMENT OF ROBBIE GRAY, LOBSTER FISHERMAN, DEER ISLE, MAINE

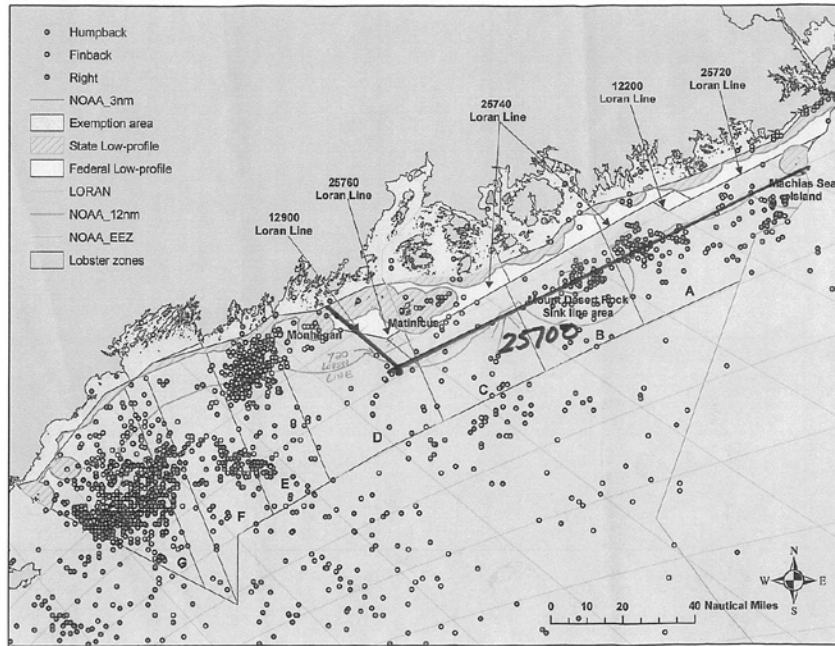
The whaling issue is going to be very hard on the State of Maine lobster fisheries. With the new Large Whale Take Reduction Plan ruling we will have to use rope that does not work on our rocky, jagged bottom. The tides will make the rope in such a way that it snags onto our rocky bottom which will result in a loss of gear. I have tried some of this proposed rope in years past and have lost several traps. And the reason this rope snags down is that the tide works it around the rocks.

So, I have thought of a new idea on the issue. Put a new set of lines further out than the ruling does, (see Exhibit A). North of the red line will be exempt. South of the red line will be the federally mandated whale rules. Also, use the existing Dynamic Area Management (DAM) zones.

This will give the state and Federal Government time to do the necessary research to find out that we may not need such hard regulations.

Thank you.

EXHIBIT A



ISLAND PANTRY,
Deer Isle, ME, February 16, 2008

Hon. OLYMPIA SNOWE,
U.S. Senate Committee on Commerce, Science, and Transportation,
Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard,
Washington, DC.

Dear Senator Snowe,

I wish to write to you concerning the impact that the Large Whale Take Reduction Plan will have on our Island community and specifically how it will affect what we do here at the local food pantry. Because we serve those who need help feeding their families, we personally see every week people who have been affected by tough times. Due in part to the greatly increased fuel prices we all have seen, which affect more than just fuel, our local fishermen have had a very tough time making any kind of profit. This is reflected in the increase of people we serve each month over last year. This new Whale Take rule will cause an even greater hardship on the fishing industry and because it is the main driving force behind our whole Island economy, it will negatively affect virtually everyone who lives here. For us at the Pantry, it will mean more families to try to feed and that translates into having to buy more food, more often. We run strictly on donations from our neighbors and with difficult economic times those donations will dwindle. Can the Federal Government step up and fill that gap for us, in a time when it seems to be the norm to slash programs that help those truly in need? Our community is full of proud, hard working people who want nothing more than to work at an honest livelihood for an honest wage with a chance to make a living for their families. Please consider this as you deliberate on this new ruling and give us a chance to maintain our Island community.

ROBBIE GRAY,
President.

JOINT PREPARED STATEMENT OF TRAVIS DENNISON, ARTHUR PETTEGROW,
AND NORBERT LEMIEUX

Maine lobster fisherman have been whale friendly. They are the eyes, and ears for endangered whales. Many of the Maine lobstermen have taken whale disentanglement courses to assist in case of an entangled whale.

Maine commercial lobster fishermen have been using the best types of floating lines for groundlines between their traps for over 35 years. These floating lines help reduce catching on rocks or obstructions on hard bottom, and help reduce chafing on these groundlines.

These are some of the reasons that we oppose ASMFC mandated change to low profile, or sink rope for groundlines in October of 2008.

Safety is one of the main reasons that the proposed lines won't work in Down East Maine. These lines will catch under rocks, or obstructions, because they lie on the bottom instead of floating up when the tide slacks up. When the traps are hauled up to the boat, the lines that are caught will cause higher strains on the lines than usual, which can cause damage to the equipment, or injury to the operator.

Another reason that these lines don't work is that they chafe while sliding along the hard bottom. There have been many different types of low profile groundlines, and sink rope tried by many lobstermen over the past few years, and there has not been any one of these that can replace the types of groundlines that we are using presently.

The expense of changing to these new lines has been estimated from \$8,000 to \$12,000 per fisherman. These lines will probably have to be changed each year where the floating lines used in the past were good for 5 to 8 years.

There are lots of good areas on hard bottom that have been fished for years which won't be able to be fished anymore if we are forced to change the lines that we are using presently. These areas are where most of the spring and early summer lobsters are caught.

There would be a large increase in gear loss due to chafed off, or parted off groundlines as a result of these new lines. This increased cost will certainly be enough to put some of the lobster fisherman out of business.

Please help us to delay the implementation date until a suitable line has been developed and tested. Thank you.

Senator SNOWE. It effects many communities, individuals, and families, and it is obvious from all those who have traveled here far and wide in the state today to present this information I think demonstrates the breadth of concerns.

Anyone else before we adjourn? I want to make sure everybody has an opportunity to say anything before we conclude.

**STATEMENT OF ALISON HOLMQUIST, MANAGER,
DOWNEAST FISHING GEAR**

Ms. HOLMQUIST. I wasn't going to speak today. My name is Alison Holmquist. I am the manager of my family's business. We sell lobster rope and lobster traps to many of these guys that you see here today.

One of the questions that I am getting from a lot of my customers right now is, what is the ASMFC rope? What do they need? I tell them, I don't have the answer. There is no answer.

I know what they cannot use, but I cannot tell them what they can use.

I am not seeing anything from my manufacturers, they are not getting answers as to what they need to make. They said there are various options, but they do not know what the various guys are going to need based on their geographic area.

Everybody is different. Every harbor will be different. These guys have a \$10,000 investment. What about me? I sell to 500 of these guys. I cannot guess what they are going to buy.

My manufacturer sells to ten people like me. He does not know what anybody is going to buy. So there may be some sort of certification that I have heard said from NMFS that would make this work for these guys.

There is nothing that can make these guys come in and buy or place an order with me right now because they don't have the answer. I have lots of stuff that I know does not work and it will work for this guy but not the next guy.

The only information I get comes from Patrice. She sends e-mails to me, and that is the only information that ever comes. It comes from Patrice doing the work.

There is nothing from the government at all that is coming into people like me who have to supply everybody, so the communication has to really open up with everyone involved, and I thank Patrice for the help that I get from the e-mails.

That is all I have to say.

Senator SNOWE. I appreciate it. So you have a lot of inquiries from your customers?

Ms. HOLMQUIST. Well, a lot come in and they expect me to be in the know, which I try to be in the know, but there is nothing that I can tell them that this is what you need.

I think somebody honestly would place an order if they knew what it was, or at least would buy a coil and try it out and see how it is going to work for them. There is nothing.

Senator SNOWE. The lack of information, no information in the communication.

Ms. HOLMQUIST. Correct.

Senator SNOWE. No certainty, that's clear.

Yes, Ms. McCarron.

Ms. MCCARRON. We have heard this concern obviously from so many people, and there is no real answer, but the Maine Lobstermen's Association is making an attempt to try to help educate fishermen.

At the Maine Fishermen's Forum, one of the seminars that we have organized is Sinking Rope 101, and we have invited an independent rope, sort of engineer, who is going to go through sort of basic rope construction and how durability relates to cost, and I just sort of lay that out.

We have also invited some of the major rope manufacturers to actually bring samples of the rope and talk about the process that they have used, and we have also asked them each to address, you know, "hey, Joe Rope Manufacturer, how are you going to ensure that a lobsterman purchasing your rope is purchasing compliant rope?"

So, it is just a scratch of the surface, but we have major concerns that our lobstermen are really not educated consumers, and they really do not know how to proceed with this.

So hopefully this will begin to lay it out.

Senator SNOWE. And that is government's responsibility, too, wouldn't you say, ultimately. The government is issuing these regulations, you need to know what is compliant and not compliant if you are subject to sanctions and penalties.

I think that is an issue here as well to be considered by the Take Reduction Team. I think all the mentions of this question is abundantly clear in all spheres.

But certainly, that is the case. Who would want to step forward and make that kind of investment not knowing whether or not it is going to be compliant or not, let alone whether it is workable and whether it is safe enough, whether it will achieve the goal of protecting the whales?

I think there are a lot of unanswered questions. I think they are obvious here today, and that is something that has got to be taken into account, I think by the agency and the Take Reduction Team and going back to the drawing board in some way to sketch this out. The kind of input that has been given here today is so useful because it is practical, they are on the front lines, and it certainly has to be regarded in going forward. And I hope some way we can find an effective cooperative, collaborative solution that does represent a win/win. Protecting the whale, protecting the industry.

It bothered me a little bit, the economic impact statement, to say the least, to suggest that somehow we are going to make assumptions that some people may quit the industry as a result of these regulations.

We should start to say, "how do we preserve the industry and the whale?" That is the goal, and I believe it is achievable just listening here today. It seems to draw from so many ideas and thoughts and going back and sketching this out how that will occur.

Anybody else? Do you want to say something, sir?

PARTICIPANT. I am not a speaker. Thank you, Senator Snowe, for coming. I would like to know what the red tracer in the rope is for.

Mr. LECKY. Are you talking about the red mark that is required in the rope?

PARTICIPANT. That is my question.

Mr. LECKY. The marking on the rope is designed to provide us with the capability of identifying the area the fishery rope comes from in the event we are able to recover it from an entangled animal.

PARTICIPANT. OK. How far does this requirement go? Where does it start? Where does it stop?

Mr. LECKY. Well, the provisions for marking are described in the rule. It covers the whole fisheries. Different areas have different colors.

PARTICIPANT. They do?

Mr. LECKY. Yes. I do not have them memorized.

PARTICIPANT. I asked the same question over in Machias one time, and the guy told me that it covered from the Canadian border to Florida.

Mr. LECKY. Well, the marking requirement for gear is widespread. It is one of the broad-based marking requirements; but there are different marking requirements for different fisheries so that we can better distinguish when we recover gear where it came from.

PARTICIPANT. You are not answering my question. I do not think you are answering a lot of people's questions.

We have a red tracer, and you get a whale that is wound up in rope, if he does not have a red tracer on him, where does it come from?

And if that tracer, the same color, is from Florida to the Canadian border, how are you going to tell where it came from?

Mr. LECKY. Well, it is not the same color from Florida to the Canadian border.

PARTICIPANT. Well, that is what I was told in Machias, so that is why I asked the question.

You said you could not tell where it came from or what fishery it came from. I will tell you this, too, the more whales you have out there, the more ship strikes you are going to have, so figure that one in, too.

Senator SNOWE. Certainly, the question on all of this as well is that both regulations at the end of the day to be going forward regarding ship strikes and hopefully resolving this regulation in a different way, but they both should be going forward, not just selecting the lobster industry to bear the disproportionate burden.

I think that is the issue here, the fairness of it all. They tell us it is at OMB, but the fact is, that is where it is regarding ship strikes, and we know that they bear tremendous responsibility as well as for the killing of the right whales if you look at the numbers over the years.

Mr. LECKY. I would like to thank you for your efforts to try and bust that rule.

Senator SNOWE. I will do everything I can.

Mr. LECKY. We do think that it is a very important rule to get out. We think it will save whales.

We have done a number of other things with ship strikes, so I thought it might be worth just to elucidate, we have modified the approach routes into Boston Harbor through areas that will have reduction in the risk and likewise, we have modified and put on charts corridors for approaching ports in the Southeast to reduce chances of encounters down there as well.

We have participated with the Coast Guard in the Port Access Route Study that will look at further modifications to the routes through the Great South Channels and considerations of Areas To Be Avoided.

Both of those are being reviewed now for the potential for presenting them to the International Maritime Organization for adoption. Canada is involved in some of our bilateral work on reducing ship strikes.

So we are paying attention to that issue as well and working very hard to reduce mortality there.

Senator SNOWE. Yes, sir, do you have a question before we adjourn? Yes, go ahead.

STATEMENT OF STANLEY SERGEANT, LOBSTERMAN

Mr. SERGEANT. Thank you for giving me a chance to speak. My name is Stanley Sergeant from Milbridge, Maine.

I fish trawls 9 months out of the year. I fish most of my gear in Federal waters.

The first thing is, I am going to be a little self-centered on this one, in this ruling on the rope alone is, financially where I fish and

how I fish, is a lot more than \$10,000. I would not be standing up and complaining if it was. I would just comply and that is it.

Where we fish trawls, the distance between the traps and the depth of the water we fish, we have had two gangs of rope. We come inside, we fish pairs, we have to shorten our spreaders up.

So we ultimately end up with two gangs of rope. I have enough rope to go from here to Milbridge, and all of it has got to be replaced.

We, on our groundlines, we use 1/2-inch rope. We use 1/2-inch poly steel; now we are going to have to convert to something else.

This rope is very heavy. The rope that we have to convert to is not neutrally buoyant or sink rope, it is 86 pounds a coil. To re-rig 800 traps on trawls, and this is only half of my gear, only half of the rope that I'm going to end up buying here, is 10,000 pounds.

I have sent letters to the National Marine Fisheries Service, Olympia Snowe's office, Mrs. Cornish and explained in great detail right to the dollar what this is going to cost.

At \$2.25 a pound it does not take a rocket scientist to come up, it is going to be \$22,000, \$23,000 just for the rope sitting in the coil. We have not put it together yet. We have not done anything to it yet.

This is going to be a huge expense, and you know we tried all kinds of rope, it is not going to last. This is going to be a never-ending thing.

It is an unbelievable financial burden. The economic impact is staggering. The environmental impact of this is just as bad because you are going to lose traps and the ever important now 40-cent tag is worth more than the \$100-trap that it is hooked to, is gone, it cannot be replaced. You are going to have all this gear on the bottom.

I know you never had the privilege of trying to grapple back lobster traps with sink rope, but it sucks. You have to have more than just patience, I can tell you that.

The environmental impact of this is going to be unbelievable with the lost gear. You are not going to fish it back.

In my case, where I fish two gangs of rope, we bring our gear in. That is another whole set of expenses because the rope diameter decreases in size. It is same set of problems all over again.

The time-frame of this is atrocious, and the physical demands on even building this stuff is unbelievable. You do not just whip this up in a couple of weeks.

So in my letters I have invited one of them down to my house, and you can work right with us. You want to do it, no problem. We will show you how it is done, and you can join the fun, and bring a blank check because you will end up buying the stuff that we end up losing and we will see how you like it.

That is my perspective on the environmental impact and the economic impact. The environmental impact, what this sink rope does to the bottom, is atrocious.

We have critical bottom habitat for everything. No matter where you are, anywhere on the coast of Maine, and when you drive sink rope on bottom and you, I do not care how good you are, eventually you are going to be pulling that gear toward you, and you are dragging that, and you are cutting ropes across bottom. You are going

to get a lot of things on that rope and in that rope you do not want, which destroys habitat, and nobody wants that.

I mean, you are creating a lot more problems by going forward with this as it is written. Down the road, as usual, down the road you are going to find out that, and there are going to be a bunch of us saying, told you so, but we are still footing the bill. We still have to deal with it. We still have to be in compliance with it, because it is our livelihoods and our communities that are once being held in the balance, and that balance is not level at all by far, it is just not level at all.

If there was this much interaction with whales where they were having a death of a lot of entanglements and stuff in the Down East area, there would be no whales. There would not be.

They would have been gone long before that. We have taken a lot of gear out of water from trap reductions, and we have reduced vertical lines by thousands. We are not going to get any credit for that. I have 800 traps, that is 400 pair of traps inside. They go on trawls. I am going to go from 400 vertical lines to 80 vertical lines. Do we get any credit for that? No.

You have to take traps out of the water so you can reduce vertical lines. Well, God, I went from 8 from that to 80, but that is not going to count on anybody's equation.

You save the whales in there, they are transversing from the Bay of Fundy down across, they go down by Jordan Basin right now. I think they are over toward Jeffrey's, there.

They go back and forth there every winter. There is gear there. There is gear there year-round. Have they been entangled? No.

They have flyovers every day, every day that is fit to fly over and track these whales, you have not seen any entanglement with the gear that has been fished there.

The same thing is up in our area. The entanglements are not there. If you have 10,000 vertical lanes and you have, we will just say, two entanglements, it is very unfortunate. Nobody wants to see that. Nobody does.

I see the whales are doing a hell of a job. They are doing a hell of a lot better job than we are getting around the gear sometimes, right?

Run the numbers. You guys love statistics. You like graphs and everything else, run the numbers. Look at the vertical lines, look at the entanglements. Look at the percentages. You have about as much.

Yes, it can happen. Yes, it can happen. Yes, and we can have gold bricks fall out right on the floor right here for everybody to take home, but I would not get ready to jump on that.

They do a really good job of getting around the gear, and we have made huge efforts in reducing our groundlines. As far as numbers of traps in the water, they have been taken away from us. All kinds of reductions have come down through from state and Federal things.

Just to add, and this is all about me, add insult to injury, this is one more thing piled on top of it.

Economically, financially, environmentally, it is a very unsound direction to go in. With what we have to work with right now, to

go to Alison and buy the rope that she has that is compliant, is really a foolish, foolish business venture right now.

Even if it did work and even if we got a magic 4 years out of this rope, in 4 years you are going to be facing tens of thousands, in my case it is going to be pushing almost 30, 40 grand, 38 thousand and change actually, I have to do it all over again, because this rope is going to wear out all at the same time.

It is not different than tires on your car. If you do not rotate them, even if you do rotate them, what do they do? They all go to pieces at once, don't they?

We are not talking about four tires; we are talking in my case, \$35,000 to \$40,000 worth of rope, and even if I can save one-third, three-quarters of that rope, and have it home to store in barrels, where are we going to put that rope?

That is another environmental disaster. What are we going to do? Dump it in a land fill? Line up the 55-gallon drums and burn them like we used to?

It has to go somewhere. Where is it going to go? There is no place to put it. I think this is a chain reaction that is going on. I am trying to look down the road, and I am trying to think ahead 6 months to a year, 2 years, and this is what I am seeing going down the road.

That is my opinion on this. I do not want to get involved in all the details. I have sent all you guys letters, and it spells it out exactly. Thank you very much.

Senator SNOWE. Thank you for being here. Thank you, and I want to thank all of you and thank our witnesses for taking time out of their busy schedules to be here, I think it represents the gravity of the situation, and to all of you, all of our speakers, for everyone being here today because I know how difficult it is to take the time to travel long distances as you have to be here today to listen and to participate; and I thank you for your thoughts.

It is a very critical question that is going to require considerable cooperation with all parties involved, and hopefully from this, the witnesses here today can take it back, especially Mr. Lecky, going back to the Take Reduction Team, Ms. Cornish, who is involved in that process as well, and I know that Commissioner Lapointe and Ms. McCarron are going to be part of it, and all of you.

Because it is evident, without a question, indisputably, that something has to change. The regulatory process on this question and also the content of the regulation.

Whether it is the question of the gear manufacturers, the testing of it, the standard of compliance, the workability, the costs. The list goes on.

Hopefully from this, you can devise a way to take this back to the Take Reduction Team. Maybe there is a way of working through this understanding at the end of the day that given the unrealistic timetable it is inconceivable that they would be able to comply with those requirements in the midst of peak season.

So I will be working with you, along with Ms. Cornish and Ms. McCarron, to see what we can do to move this process forward in a way that does ultimately become a win/win for the goals and for the industry that is so crucial to the future of this state and the future of their livelihoods and families and communities.

So again, I want to thank everybody for being here, and reiterate the assurance that we will do everything that we can to address the issues that you have raised understanding the enormity and the gravity of the consequences of this regulation as it stands today.

With that, and may I also say, I am including the statement of Senator Collins, who has also been a great ally in this fight. I will include her statement in the record, as well as any who would like to submit further statements or additional information in data, please know that you can do so for the Senate record.

With that, the hearing stands adjourned.

[Whereupon, at 1:23 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. SUSAN M. COLLINS, U.S. SENATOR FROM MAINE

I want to thank my colleague, Senator Snowe, Ranking Member of the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, for holding a field hearing to examine the impact of new regulations under the Atlantic Large Whale Take Reduction Plan (ALWTRP) on Maine's fishing industry. I have long believed that further economic analysis of the regulatory cost of this rule is required, and I am pleased the Subcommittee is giving Maine's fishing community an opportunity to help find a better way forward.

The National Marine Fisheries Service (NMFS) published regulations amending the ALWTRP in October of last year that will require fixed-gear fishermen in non-exempt areas to convert their gear from floating to sinking groundline. This initiative is designed to protect large whale populations in the Atlantic, and specifically to help ensure the survival of the endangered North Atlantic right whale. It is unclear that such regulation will achieve the worthy goal of reducing the number of whale entanglements, however, it is clear that sinking groundline between traps is not an economically viable option for many lobstermen in Maine. Where much of the sea floor along the Atlantic coast is sandy, Maine is unusual in that the seafloor along much of the coast is rocky. The problem is that sinking groundline wears down much faster over rocky surfaces than does floating line and needs to be replaced more often. Sinking line also has a greater tendency to snag, which raises safety concerns and often leads to lost traps.

With the final whale protection measures in place, I am disappointed that despite Senator Snowe's and my repeated requests for further analysis, NMFS failed to carefully consider the full economic impact to one of Maine's most important industries. In 2006, for example, this industry landed more than 66 million pounds of lobster in Maine totaling more than \$300 million. According to the Maine Lobster Promotion Council, this fishery provides a livelihood for nearly 7,500 lobstermen as well as boat makers, marine outfitters, processors and retailers.

As the final rule was being developed, I sent a letter to Dr. William Hogarth, National Oceanic and Atmospheric Administration's (NOAA) Assistant Administrator for Fisheries, outlining my concerns regarding the implementation of a sinking groundline requirement in Maine. While I appreciate that NOAA did incorporate some of the recommendations I made with regard to moving the exemption line further offshore as proposed by the Maine Department of Marine Resources, the sighting of the exemption line should correspond with the best available data on whale migration and foraging habits and be adjusted accordingly. I also support moving the implementation date from October 2008 to June 2010, to allow rope manufacturers enough time to supply sinking groundline to the industry. Moving the implementation date would also allow for a more sensible transition at the end of the fishing season rather than disrupting fishing efforts during the prime fishing period.

According to NMFS, the annual cost for a lobster vessel to comply with the sinking groundline requirement is just over \$10,000. It is very unlikely, however, this figure truly captures the impact this rule will have on Maine's fishing communities. By factoring in the cost of lost traps, the value of the lost catch, and the greater frequency that lobstermen will need to replace their coils of rope, the Maine Lobster Association (MLA) predicts the cost of compliance to be three times the NMFS estimate. A Government Accountability Office report examining the extent to which NMFS assessed the costs to the fishing industry supports the MLA's findings when it concluded that NMFS's economic assessment did not reflect significant uncertainties that remain about the impact of the gear modifications on fishing communities.

It is critical that Maine's lobstermen are not made to bear the full financial burden of this regulation. To assist this fishery, Senator Snowe and I have consistently supported the Gulf of Maine Lobster Foundation's groundline exchange program. Through this program, Maine lobstermen are able to trade their floating line for sinking line to help defray the initial cost of converting their gear. Since Fiscal Year 2006, Senator Snowe and I have secured nearly \$2.4 million for this important ef-

fort. This year, I am pleased to report that despite a tight fiscal climate, we secured \$376,000 to assist Maine's lobstermen with this difficult regulatory burden. While much more needs to be done to assist Maine's lobster industry, the rope buyback program is an important step in the right direction.

I also joined Senate colleagues in sending a letter to the Office of Management and Budget on December 12, 2007, urging the Administration to provide \$14 million in its Fiscal Year 2009 budget to help alleviate the economic hardship that the lobster line regulations will have on the lobster fishing industry. This assistance is so important for the hard-working fishing families who are being forced to deal with increasingly strict regulations.

In focusing on a way forward, it is critical that as new, more precise data and technologies become available, the regulatory process be able to implement these advances quickly as part of the management of this fishery. As previously noted, the sighting of the exemption line must correspond with the best scientific data available. Additionally, the development of low-profile groundline, which hovers a few feet off the sea floor, offers a promising alternative to sinking groundline that must be given serious attention. The Maine lobster industry is an environmentally responsive fishery that has worked hard to protect endangered whales. Supporting efforts to protect our endangered whale populations is critical, but in doing so we must make sure Federal regulations do not endanger a way of life that is important to Maine's heritage and economy.

PREPARED STATEMENT OF BEN OLIVARI, MEMBER, THE CALVIN PROJECT,
ADAMS SCHOOL

I have been a member of The CALVIN Project for the two past years. Last November, when I attended the North Atlantic Right Whale Consortium meeting in New Bedford, I learned just how endangered right whales are. Since then my project has been studying their population.

Of course, the North Atlantic right whale is listed as endangered, but now I know just how bad it is. Many people at the meeting said they were not sure the population could go any lower without the whales going extinct.

Humans cannot do much about the low numbers of right whales and we cannot do much about diseases and natural deaths of the whales. But we can do something about deaths and injuries caused by fishing gear. Our laws say we have to do something in two acts of Congress; The Endangered Species Act and the Marine Mammal Protection Act. We have no choice.

We can choose how to stop entanglements and also how to support the lobstermen. My friends and I have brainstormed many ways to get rid of lines in the water and to make whale-safe gear. We are glad that this committee is discussing alternatives to help the whales and the fishermen, *but* action must be taken now so that the population is not reduced by even one more right whale. Sinking groundline eliminates lots of rope in the water column. We cannot wait any longer.

Thank you.

PREPARED STATEMENT OF EVAN MOTYCKA, MEMBER, THE CALVIN PROJECT,
ADAMS SCHOOL

My name is Evan Motycka and I am a student at Adams School in Castine and a member of The CALVIN Project.

I heard a talk last fall about entanglements and rope strength. It seems that entanglements of right whales has become much worse since they were first studied back in the 1980s. In 1992, a new kind of rope called polysteel was manufactured. It is very strong rope. Today 76 percent of the right whales, 300 out of the 400 left, have entanglement scars.

I have pulled lobster pots with my father. It seems to me that pot rope does not need to be so strong. Lobster fishermen did fine with the weaker rope before polysteel and there seemed to be a lot fewer entanglements. I hope this Committee looks at using rope that right whales can break free of more easily when they do become entangled.

And, I would also like to say that I am working on a lobsterpot that has no vertical line until the lobsterman wants to haul it. I am doing this because of the brainstorm sessions we have had in the Project.

Thank you.

PREPARED STATEMENT OF THE DOWNEAST LOBSTERMEN'S ASSOCIATION

[This statement was signed by many members of the Association.]

Thank you for the opportunity to express concerns to you about the future of the lobstering industry with the present situation of preserving whales and the banning of float rope outside the exemption line that has been established by the National Marine Fisheries Service.

At this point in time, I'm sure that you've heard all of the arguments and statistics. A few weeks ago, we were pleased to share our concerns with your assistant, Mike Conathan. One of the first things that we told him is that the fisherman is one of the whale's best friends. When a whale is discovered entangled in line or in any form of danger, it is quickly reported. This is the first and most important step to helping save the endangered whales.

The lobstermen have been experimenting with low profile rope as a replacement for float rope for several years now. Each type of experimental rope that has been tried has failed to the standards that are required for fishing along Maine's rocky coast. These failures have raised many concerns about safety for the fishermen and the amount of catastrophic gear loss that would result in ghost gear on the bottom.

The fishermen must have a rope that does not endanger themselves and the environment in which they fish. They must also have a rope that is capable of lasting at least 8 years. At this point in time, we can't even get one season out of the rope. Some of the rope failures include excessive wear, chaffing and many weak places in the line.

The biggest concern that many fishermen have is the feeding habits of the whales. There's very little scientific proof that shows copepods on rocky or hard bottom, which is the primary food for right whales. We would like to have research done to see if copepods are on hard bottom areas inside the fifty fathom curve. We would also like to see more physical proof such as pictures with latitude and longitude, date and time for the whale sightings.

With the logistics involved with manufacturing this new rope, the rope manufacturers do not have the physical or capital resources to make enough rope before October, 2008 to fulfill the demand. With the situation and the law as it stands, the lobster fishery will be devastated. Who is going to be responsible for a lost life and the legal ramifications involving it?

Please help us to save our fishery, lobstermen and their families, which are also considered the "endangered species."

 PREPARED STATEMENT OF MYRON LENFESTEY, JR., FRENCHBORO, MAINE

I am a lobsterman from the town of Frenchboro. Frenchboro is an island 8 miles off the coast, we have a ferry boat that lands us in Bass Harbor ferry terminal on Sundays, Wednesdays, and Thursdays. To say the least I am unable to attend the hearing on Tuesday, Feb. 19th. I like many other fishermen strongly object to the whale rule that will force many to lose tens of thousands of dollars in replacing supposed "whale safe rope" not to mention the never ending of replacing of lost gear due to the hanging down of the rope to the rocky bottom of the ocean in which I fish. We already have enough of a financial burden living with the high cost of fuel, the high cost of health insurance for self employed, and the high cost of living. I am afraid for my family in which I have 3 young children under the age of 8 years, and a wife that is dealing with health problems. I can not afford to spend out any more money to protect a whale that is not even known to travel in the area in which I fish. This island is based on lobster fishing only, there are no alternatives for income, I fear that within 1 year of this ruling a lot of fishermen with families will be forced to quit fishing and pack up to the mainland to find other jobs. I can't understand why the government makes the Maine fishermen follow these strict rules before the other fishermen are not up to the compliances we have to face already. Canada for example uses float rope from the trap straight to the buoys! The economic impact of this ruling would impact everyone in the state not just the fishermen. Please make more considerations or changes to help us the fishermen along Maine's beautiful coastline. Help the billion dollar industry before the State of Maine realizes how much the coast of Maine impacts the economy for the whole State.

PREPARED STATEMENT OF TONIA MERCHANT, STERNMAN, JONESPORT, MAINE

The scheduling is not very good for the fishermen. Urchin harvesters have only 3 days per week to work. Today is one of them. Fishermen have to make a choice; give up their work day or come to this hearing.

 PREPARED STATEMENT OF DONALD J. JONES, LOBSTER FISHERMAN,
 STONINGTON, MAINE

My name is Donald Jones. I am a lobster fisherman from Stonington, ME. I have a 34 foot boat and a Maine state lobster license and an Area 1 Federal permit. I regularly fish traps on bottom both inside and outside the Maine Exemption Line laid out in the new requirements of the ALWTRP.

I am opposed to requiring the use of sinking rope for groundlines because:

- It won't work on the hard, rocky bottom where I fish;
- Its use will cause huge numbers of lobster traps to be parted off and pile up on bottom; and
- The annual cost of buying sink rope and replacing lost traps is an economic hardship for my small business.

However, since National Marine Fisheries Service (NMFS) has implemented the sink rope for groundlines requirement, I join with everyone who is asking for a delay in its enforcement because:

- There's no sink rope found to hold up to fishing on hard bottom despite years of experimenting and field trials;
- Rope manufacturers cannot make enough sink rope in time for that Oct. 5, 2008 deadline;
- The implementation date falls in the middle of the fishing season not during the time when gear work is done; and
- There's no way to know whether rope being sold is acceptable and how it will be certified and enforced.

Hard rocky bottom. The bottom is covered with ledges and boulders. It is not smooth and sandy, as portrayed in that drawing used everywhere to show the loop from floating groundline. Every boat uses bottom sounding machines to set traps, trying to position traps along the edges, with the main and tailer traps frequently at different depths. We also have tides that cause strong currents that affect the groundlines by keeping them from floating up. I can't avoid fishing on this kind of bottom because that's the way it is everywhere in my territory. I had DMR people aboard my boat when Maine was doing the ROV surveys. I have seen what the bottom looks like as well as knowing it from 40 years of fishing on it. On this bottom, sink rope is constantly chafed, gets hung down, and parts off, leaving the tailer traps on bottom.

Ghost gear. The use of sink rope for groundline will result in a huge accumulation of parted off lobster traps on bottom. In the FEIS, NMFS estimates there could be a 10 percent increase in the amount of lost gear. Experience here says that is an extremely conservative estimate averaged over a broad area. On hard rocky bottom the loss rate will increase by at least 40–50%, which means I could expect to lose at best only 50 traps a season, probably many more. I know of at least 100 other lobstermen in this harbor who fish outside of that exemption line. So the fishing grounds off Stonington are going to become covered by a pile up of ghost traps at the rate 5,000 a year resulting from the use of sink rope groundlines. Has anyone looked at the impact of that ghost gear increase on the marine ecosystem, including whales? And furthermore, the Federal Government spends million of dollars each year on the removal of marine debris, which includes lost traps. The results of the sink rope requirement run counter to that policy.

Economic impact. Since I fish on both sides of the proposed exemption line, I will have to rig over all of my gear to have sink rope for groundline. It is not practical for me to try to change the groundline from floating to sinking rope as I shift traps inside and outside of the exemption line as I try to follow the movements of lobsters, which is my normal fishing practice. And it certainly doesn't make sense to only fish shoreward of the exemption line. That bottom is already the most crowded with traps, and here you have to move outside that line in order to catch enough lobsters to stay in business if you fish full-time.

All of my gear is out of the water for a period of time in the winter. As I get it ready to set in this spring, I'll have to put on sink rope. I estimate that I'll need

to buy about 4,500 pounds of sink rope to replace my float rope groundlines. At a cost of \$2.12 a pound, which is a discounted price for buying in volume, it will cost me \$9,500 for an initial outlay, assuming I could find it.

NMFS estimates that 17 percent of the groundline will have to be replaced each year. I think that estimate was not based on fishing on hard, rocky bottom. The experience of people in this area participating in DMR rope testing who have tried sink and neutrally buoyant rope is that it won't last a single season. So I think that I'm looking at spending \$9,500 each year to fish with sinking rope groundlines.

The other huge annual expense for me will be the cost of replacing the traps that I will lose. I don't think NMFS put enough analysis into predicting what the trap loss will be on hard bottom. The estimate was based on averaging over the entire range of the ALWTRP. But Maine is going to feel that impact much greater than other areas, and the mid and Down East parts of the Maine coast are going to feel it most of all.

A new lobster trap with cement runners cost \$80. If I lose that minimum 50 a year, trap replacement will add \$4,000 to my cost of doing business. But what if the loss rate turns out to be a 100 percent increase? There is no answer because NMFS didn't look closely enough at this area. A one-size-fits-all approach simply doesn't work because the bottom is vastly different.

Between annual sink rope purchase and trap loss replacement, this requirement will add at least \$13,500 a year to my cost to do business. In my best year, when the boat price of lobsters averaged \$4.62 a pound, that expense would have taken about 30 percent of my lobster business net income. In fact, I would have to wonder if I would be able to stay in business.

The sink rope requirement will cost me and hundreds of other Maine lobstermen at best thousands of dollars a year, at worst some of us will be forced out of business. There will be huge accumulations of ghost year on bottom. And for all of this, there isn't enough information about the behavior of right whales to even know if they try to feed on hard bottom. I think the hard bottom in the relatively shallow depths we fish—20' to 200'—is not suitable for large whales. They are outside in the Gulf of Maine, 40 miles from shore or more. The bottom off there is very different than what we fish inside the 50-fathom curve.

We aren't harming whales now and it makes no sense to require these devastating changes.

RICHARD K. LARRABEE SR.
Stonington, ME

February 19, 2008

Dear Senator Snowe:

The Town of Stonington is extremely concerned about the sinking rope groundline issue.

The Stonington harbor has approximately 300 moored boats that depend on lobstering and crabbing. In addition to the captains/owners of these boats, almost every boat carries one to two sternmen. We have five lobster buying stations that employ anywhere from three to ten people and several crab picking stations. We have two marine supply stores, a boat yard that employees anywhere from 40 to 50 people at any given time, three fuel companies that supply fuel for the boats and general businesses that depend on the fishing trade.

By forcing the fishermen to change their rope from floating groundlines to sinking groundlines, this will deter fishermen from crossing the line that NMFS has drawn up because these fishermen will not be able to afford the astronomical cost of the change-over. This will mean more fishermen competing in a smaller area and fewer being able to fish where they once fished across the line. Many captains/owners of their boats will be unable to carry additional sternmen which will result in the loss of jobs and the safety of the owners and their crews.

As a selectman of the Town of Stonington, I have seen the increase in general assistance, the need for affordable housing, and jobs. It is difficult for us to try to address the needs of our islanders when fishing is our island's main support and these changes will not only affect the economics of our fishing industry, but will trickle down to all businesses within our community and beyond.

Thank you for taking the time to read this.

Sincerely,

RICHARD K. LARRABEE SR.

To whom it may concern,

This is written testimony that I, *Richard Larrabee Jr.* am opposed to the new whale regulations affecting lobster fisherman, their sternmen and their families. It is a financial hardship for us to have to buy the rope needed, but also to have to absorb up to a 30 percent gear loss. Now instead of fishing traditional hard bottom, we are now forced to fish the mud bottom. This makes absolutely no sense because the whales that ALWTRP are trying to protect, feed on the mud bottom . . . putting more lines where they feed. I have never seen a right whale, finback, or humpback and I have been fishing for 19 years. The better plan would be to move the lines to the fifty fathom edge, and leave up the DAM zones in the areas where whales are seen. *Floating rope is not the problem.*

Thanks,

RICHARD LARRABEE JR.,
Fisherman.

February 18, 2008

Dear Senator Snowe,

I am Trevor Jessiman of Cutler, Maine. I am a 19 year old fourth-generation fisherman and I would like to thank you for coming to meet with us over such a serious issue.

The recently proposed law on sinking groundlines I find to be huge threat to many livelihoods in this area including my own. In the area where many fisherman including myself fish there is hard rough bottom that would cause chafe in these sinking groundlines which in turn will turn into ghost gear. To me this would pose more possibilities for whale entanglement then having the floating groundlines used today. These floating groundlines have been successful in the past never having any entanglements with any Right whales. In a sense there would be a lot of litter covering the oceans bottom.

My whole family has been in the fishing industry since my great grandfather who passed away in 1965 to me being the youngest generation. I haven't ever heard of seeing any Right Whales not to mention having any entanglements with them from any of my past family nor have I had any encounters.

To be forced to use the sinking groundlines would be completely devastating for the fishermen, especially down east. In this area we have huge tides and hard bottom that is rough and sharp. I personally have used some of the new different kinds of sinking and neutral rope and it has all chafed and become entangled in the ocean floor. Not only would the up front cost of this change put fishermen in the hole but the constant repairing and changing of the rope, not to mention replacing lost gear, would kill the industry and the fishermen in it.

In conclusion there are many families and individuals that have been and still are reliant on the industry and would be put in severe financial hardship if this continues to go through. I find it unnecessary to make fishing a thing of the past due to trying to save something we have done nothing to harm and everything possible to protect.

Thank you for your consideration,

TREVOR JESSIMAN.

STONINGTON ECONOMIC DEVELOPMENT COMMITTEE
Stonington, ME

Hon. OLYMPIA J. SNOWE,
Ranking Member,
U.S. Senate Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard,
RE: IMPACTS OF THE ATLANTIC LARGE WHALE TAKE REDUCTION PLAN (ALWTRP)

Dear Senator Snowe:

The Stonington Economic Development Committee (SEDC) is an eight-member committee appointed by the town's governing body, the board of selectmen. Its composition includes a selectman, two members with close ties to the lobster industry, and local small business owners. Among its purposes is to create an economic climate that supports and sustains existing businesses and to attract businesses that bring year-round jobs.

Stonington, ME, located in Hancock County, is the southernmost town on the island of Deer Isle, which is located east of Penobscot Bay. Hancock County was identified by National Marine Fisheries Service in its analysis as an "at-risk" county, where there are over 100 active vessels that must comply with ALWTRP require-

ments. Further, Hancock is among the rural counties identified as having limited economic diversification and/or higher than average unemployment and poverty rates.

With a year-round population of about 1,150, the commercial fishing industry is the backbone of Stonington's economy. In 2006, \$34.3 million worth of seafood was landed in Stonington, ranking it as Maine's top port in terms of ex-vessel value, according to Maine Department of Marine Resources (DMR) statistics. By far and away, lobster is the single most important species. Stonington's lobster landings over the last 3 years were: 2006, 7.43 million pounds with an ex-vessel value of \$29.1 million; 2005, 6.71 million pounds with an ex-vessel value of \$30.8 million; and 2004, 5.22 million pounds with an ex-vessel value of \$21.2 million.

The dockside value of Stonington's catch provides the annual income of hundreds of year-round residents. Close to 300 lobster boats are moored in the town, each is its own small business supporting the owner and his family, and a majority also providing jobs for one or two sternmen. Five businesses, each with from two to 10 employees, exist in town to buy and market lobsters. Each of those dealers is located on valuable property that is critical to Stonington's working waterfront. The owners of two tidal ponds located in Stonington also buy lobsters.

Operation of the lobster fleet depends on a range of services including daily fuel and bait. Three oil companies supply diesel fuel, gas, and engine oil to the fleet and one local bait business supplies a portion of the lobster bait requirements. Billings Diesel and Marine, a full service boat yard and the town's largest employer, provides maintenance and repair services to the boats. There are two marine supply stores in town, both of which provide year-round jobs, selling predominately to commercial fishermen.

The SEDC's concern with the lobster gear rigging requirements in the ALWTRP is that their economic impact can undermine the lobster fleet here in a way that ultimately would reduce revenue and cause both direct and indirect job loss. We will focus our remarks on the requirement that Maine lobstermen use only sinking or neutrally buoyant rope for groundlines on all traps fished seaward of the Maine Exemption Line.

The cost for many of Stonington's lobstermen to comply with the sink rope requirement is substantially greater than the National Marine Fisheries Service (NMFS) economic estimates, both for the initial as well as the ongoing costs. The DMR estimates that conversion would require 5,000 pounds of sink rope for a lobsterman fishing the maximum allowable 800 traps. At a cost of approximately \$2.25 a pound, the initial cost for sink rope alone is \$11,250. That doesn't take into account any dollar value for the added time and labor to measure and cut up the 1,200 ft coils of sink rope and to take off the float rope currently used.

Furthermore, field testing of various brands and configurations of sink rope has shown that it doesn't hold up in real trap hauling conditions on hard rocky bottom. Rather than having to replace about 17 percent of sink rope every year due to wear and tear as NMFS estimates, Stonington lobstermen would be replacing a much higher percentage that will cause a substantial ongoing increase in expense for Stonington lobstermen.

The second part of the failure of sink rope to hold up in the fishing conditions in this area will be the huge increase in parted off and lost traps. NMFS estimated a 10 percent increase in lost traps per year from the use of sink rope. The cost to replace 80 traps, 10 percent for a lobsterman fishing the maximum 800 traps, would be from \$6,250 to \$8,000, depending on the fisherman's trap runner preference. But trap loss in field testing on hard rocky bottom has occurred at a much greater rate. Again, since rope trial participants in this area of the coast haven't tried sink rope alternatives for a single fishing season, it is not known how high the percentage of trap loss can actually become here. And, certainly more research is needed to assess the impact of such a pile up of ghost traps on bottom.

The SEDC's concern is that, even working with the minimum costs and anticipated trap losses, complying with the sink rope requirement could cost a Stonington lobsterman at least \$20,000 a year. NMFS considers heavily affected vessels as those for which annualized compliance costs exceed 15 percent of mean annual revenues, which at \$20,000 annually seems likely for a number of Stonington boats. Further, while qualifying it as a small number relative to the full set of ALWTRP vessels, NMFS expects that these costs are significant enough to drive some of the heavily affected and at-risk vessels out of business. Though that number may be small in NMFS's broad analysis, the SEDC believes it could be a significant problem for Stonington and other Midcoast and Down East coastal communities.

The impact of a lobsterman going out of business has a ripple effect throughout the other lobster-dependent businesses in the community. Any scaling down or loss of year-round jobs threatens the success and survivability of our community. Fur-

thermore, the shorefront property owned by lobster dealers is critical to maintaining Stonington's working waterfront. If any those businesses can't survive a decrease of lobster fishing activity, that highly valued real estate will be lost to working waterfront uses—most likely never to return.

Given the additional information on the location of whale sightings, the SEDC requests that the location of the Maine Exemption Line be moved farther offshore, along the 50-fathom curve. Such a change of location would not increase the entanglement risk to whales and would exempt many more Stonington lobstermen from the sinking rope for groundlines requirement.

The SEDC also requests that the Oct. 5, 2008 implementation date for the sink rope requirement be pushed back to allow more time to comply. It is unrealistic to expect small lobster businesses to finance the cost of rigging over to sink rope within that short period of time. We also question the availability of adequate amounts of sink rope in the marketplace to accommodate the demand from several hundred lobstermen.

Respectfully submitted,

DAN HADLEY,
Chairman,

Stonington Economic Development Committee.

COMMUNITY FISHERIES ACTION ROUNDTABLE
Stonington, ME, February 18, 2008

Senate Committee on Commerce, Science, and Transportation,
Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard,
Washington, DC.

To Members of the U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard:

The Community Fisheries Action Roundtable is a group of fishermen from island and coastal communities in Eastern Maine working together for a better fishing future. We have extensively discussed the final Atlantic Large Whale Take Reduction Plan (ALWTRP) and the Maine Department of Marine Resources (DMR) suggested alternatives. We are writing to you today requesting for further area-specific research in the fishing communities that this rule will directly effect. In Eastern Maine, the Final Rule sets the sink line area well inside the State of Maine three mile limit that comes in painfully close to our islands and coastal towns that depend on the lobster fishery. This rule will manifest itself in a major change in traditional fishing techniques: we will be forced out of our territories on the rocky bottom and onto the mud. When gear is relocated in higher density areas, it is more susceptible to overlap, and therefore lead to an increased danger to fishermen as tangled gear is hauled on board.

Further research with fishermen in towns throughout the Maine coast that will be affected by the ALWTRP will reveal concerns specific to their own styles of fishing, ecological, economic, and community issues. Once these concerns are identified better management will surely follow.

Please note that attached to this letter is a map with our revision to the DMR suggestion, with a new line that splits off from the 12900 Loran Line and follows the 25700 Loran Line to the Canadian border.

Thank you for your consideration,

Community Fisheries Action Roundtable

JASON BARTER
Isle Au Haut, ME 04645

ROBBIE GRAY
Deer Isle, ME 04627

NICHOLAS LOOK
Beals Island, ME 04681

TOM POTTLE
Perry, ME 04667

NATE CLARK
Isle Au Haut, ME 04645

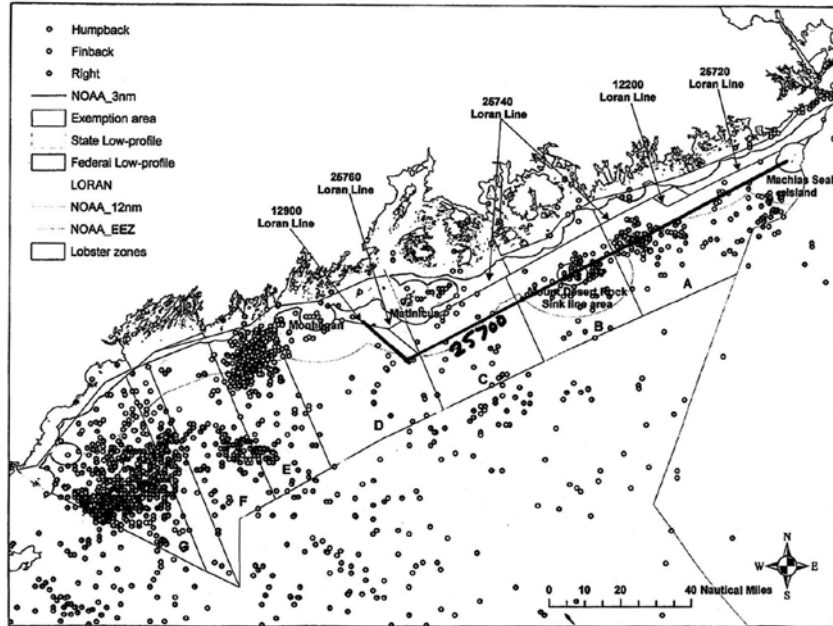
DICK LARRABEE, JR.
Stonington, ME 04681

DAN & SUE MACDONALD
Isle Au Haut, ME 04645

JOHN AND VICKY RENWICK
Birch Harbor, ME 04613

HARRY SHAIN
Perry, ME 04667

PATRICK SHEPARD
Stonington, ME 04681



LILY'S CAFÉ.
Stonington, ME, February 18, 2008

Hon. OLYMPIA SNOWE,
Senate Committee on Commerce, Science, and Transportation,
Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard,
Washington, DC.

Dear Senator Snowe:

I must admit that I often wonder if anyone reads the heartfelt letters sent to you by your constituents. The idea of living in Stonington without any lobsterman, has driven me to take a chance on being heard.

For the last eleven years I have owned and operated a café on Route 15 in Stonington Maine. I have become a part of a very special local community who's soul thrives on the daily routine of being a fishing village. My year round business depends heavily on the fisherman's success. My personal fulfillment depends heavily on living in a town with them as my neighbors, friends and customers.

It desperately frightens me that laws being passed to protect whales have not been thoroughly thought out to also protect our fisherman from extinction. The loss of the fisherman and their families in this community would mean the loss of both my business and the town's integrity.

Please listen to them and work at creating a plan that serves both sides.

KYRA ALEX,
Owner.

○