GARDEN STATE SEAFOOD ASSOCIATION

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Mary Colligan
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Northeast Region
1 Blackburn Drive
Gloucester, MA 01930
(sent by fax 978-281-9394)

RE: COMMENTS ON THE PROPOSED RULE TO AMEND ALANTIC LARGE WHALE TAKE REDUCTION PLAN (70 FR 35894-35944)

Dear Ms. Colligan:

Please accept these comments on behalf of the Garden State Seafood Association (GSSA); GSSA is comprised of commercial fishermen, shore-based processors, commercial dock facilities, seafood markets, restaurants, and various industry support businesses from New Jersey. Members and staff of GSSA participate on the ALWTRP, HPTRP, as well as BNDTRP and continue to participate in cooperative research activities to address these complex issues.

Justification of regulatory burden compared with the relative risk of entanglement

While the MMPA provides significant protection for whales, it also provides consideration for the human element that is impacted. Section 118 of the MMPA allows consideration for the economics of the fishery and availability of existing technology as well as current regulations implemented through State and Regional FMP's. We respectfully request that the Agency clearly justify the regulatory burden of any and all new gear requirements in the Mid-Atlantic and provide a rationale as to why the impacts of any new requirements are necessary to achieve the specific goals of the TRP.

This analysis must be completed by the Agency when considering the best available information regarding the Mid-Atlantic region, which includes the following: (1) that the Mid-Atlantic contains no critical habitat for large whales; (2) that the National Right Whale Survey does not extend

below Long Island; (3) that only 6% of the Large Whale Survey is conducted between Long Island and South Carolina; (4) that sightings of large whales in the Mid-Atlantic account for only 1.7% of the total of the East Coast whale sightings on a yearly basis; (5) that there were 18 entanglements in the Mid-Atlantic from 1997 – 2002, which accounts for only 5% of the large whale entanglements for the East Coast; and (6) that pot/trap density in the Mid-Atlantic region is significantly less than compared to the rest of the East Coast.

Furthermore, it is important that the Agency considers that there is no research being conducted in the Mid – Atlantic region to assess the feeding behavior of large whales due to the fact that there is little or no evidence suggesting that right whales forage in this region -- a position made quite clear by Agency officials at the recent ALWTRT meeting in Baltimore (Dr. Richard Merrick, public communication, 4/26/2005). Clearly, this region is not a serious concern for whale entanglements and should not be elevated to such a status in the proposed rule for purposes of convenience.

We have also provided you with a cursory review of the North Atlantic Right Whale (NARW) Sightings Database. You will find the sightings information for the Mid-Atlantic region **(attachment 2)** and for the inshore and offshore areas of New Jersey **(attachment 3).** The database clearly indicates the small number of sightings in the New Jersey inshore and offshore region as well as the entire Mid-Atlantic. In fact there are only approximately 14 sightings of right whales in coastal New Jersey that occurred from as early as 1976 to the present, some of which are the same whale. Furthermore, the database indicates a few sightings of humpback whales off the New Jersey coast all of which occur in depths along the 100 fathom contour line and deeper. These charts have been assembled from NARW sightings database **(attachment 4),** which includes sightings occurring from as early as 1966 for humpback whales and 1762 for right whales. Sightings occur from many different sources as explained in two e-mail responses from Dr. Robert Kenney **(see attachment 5)**. This data clearly indicates the low risk of entanglement in the Mid–Atlantic and questions the regulatory burden of the gear modifications contained in the proposed rule.

When you consider these statistics clearly illustrate the low risk of entanglement in the Mid-Atlantic region, the lack of entanglement data for this region, the poor understanding of the dynamics of entanglement events and the absence of foraging behavior in this region and the vague understanding of whale behavior, it remains unclear how the agency can justify the regulatory burden of a prohibition on floating polypropylene line for all groundlines on fixed gear in the Mid-Atlantic region.

Reducing the Risk of Entanglements Associated With Groundlines

While NMFS has indicated it is unable to support an alternative for "low profile" groundlines at this time, it is important that NMFS consider the concept of lowering the profile of groundlines as part of a comprehensive effort to reduce the risk of entanglements to large whales. The agency must maintain a clear, articulated sense of urgency for the development and commercial application of a low profile alternative prior to implementation of the Final Rule. This low cost option is consistent with the MMPA which requires the agency to consider options that are both technologically and economically feasible.

We respectfully request the Agency examine available whale behavior data for the Mid-Atlantic region and implement a low profile alternative and (or) a clear commitment to develop an alternative that is reasonable, cost effective, and defensible based on the fact that it will substantially reduce the amount of line in the water column above the ocean bottom.

Reducing the Risk of Entanglements Associated With Vertical Lines

We strongly support the Agency's decision to address more vertical line issues associated with fixed gear in a future amendment. NMFS indicated that further research and discussions with the ALWTRT are needed to address risks associated with vertical lines and GSSA agrees with that position.

It is important to note here that the current proposed alternatives are addressing some elements of vertical line issues through such measures as mandating weak links on buoy lines and net panels and other proposed gear requirements. It is our opinion that the implementation of fishing gear mitigation requirements via the proposed rule will provide a significant reduction in the risk and potential mortality of large whales due to both groundline and vertical line entanglements. The pending rule will also help clarify the origin and circumstances of future entanglement events thereby providing more data upon which the Agency can base responsible future action.

Preferred Alternatives

Changes Proposed for the ALWTRP for Boundaries and Seasons

We cannot support the current Alternative that imposes regulations from September 1st through May 1st. Any modifications to groundlines should be imposed seasonally instead of on a year round basis and specifically for the Mid-Atlantic region -- the regulatory season should begin on September 1st and remain in effect until March 31st. Requiring gear modifications for part of the year will reduce risks associated with sinking groundlines such as an increase in lost gear and difficulty in the retrieval of lost trap/pots.

The agency cites the North Atlantic Right Whale (NARW) Sightings Database as the rationale for seasons and boundaries for gear modifications. GSSA has yet to see the spatial and temporal assessment of whale sightings that serves as the agency's justification for the proposed rule as it is currently drafted. Here again, we respectfully request the agency to provide the proper justification and data for the regulatory burden that will be precipitated by implementation of the proposed rule.

Changes Proposed for ALWTRP for Lobster Trap/Pot Gear

Offshore Trap/Pot Waters Area and Great South Channel Restricted Area

We support the extension of the southern boundary of the Offshore Trap/Pot Waters Area and the lowering of the maximum breaking strength of weak links on all floatation devices attached to the buoy line, from 2000 pounds to 1500 pounds.

Southern Nearshore Trap/Pot Waters

We support the extension of the southern boundary of the Southern Nearshore Trap/Pot Waters Area as contained in the proposed rule.

Changes Proposed for ALWTRP for all Trap/Pot Gear

Broad-based Gear Modifications

ALWTRP Regulated Trap/Pot Waters:

We support the designation change of ALWTRP Lobster Waters to be changed to ALWTRP-regulated Trap/Pot Waters to capture the additional trap/pot fisheries as well as the changes to the term "lobster trap/pot" with "trap/pot" as it appears in the regulations.

Seasons and Boundaries:

We support the area boundary created by this proposed rule, that runs from the Rhode Island/Connecticut border south to 40 degrees North, and east to the eastern edge of the EEZ.

We cannot support the part of the proposed rule that requires any gear fished in the area south of this line to be required to comply with gear modifications from September to May.

We request that the proposed rule enact gear modifications for this area that would be effective September through March.

Sinking/Neutrally Buoyant Groundlines:

We cannot support the broad-based sinking/neutrally buoyant groundline requirements for trap/pot fisheries in the Mid-Atlantic as recommended in the proposed rule. When one considers the best available scientific data which clearly illustrates the low risk of entanglement in the Mid-Atlantic region, the lack of entanglement data for this region, the poor understanding of the dynamics of entanglement events and the absence of foraging behavior in this region and the vague understanding of whale behavior, it remains unclear why the regulatory burden of prohibiting floating polypropylene line for groundlines should rest on the fixed gear fishermen in the Mid-Atlantic region. As such,

- Any mandatory requirements to switch to a sinking and/or neutrally buoyant groundline by 2008 should be extended until 2009 to lessen the burden on affected fishermen. GSSA had originally requested the extension until 2010. Currently there are two ongoing line testing experiments being conducted through cooperative research between industry and NMFS; the results of which will determine the usable life of alternative sinking groundlines as well as the practical commercial application of these new materials. It is imperative that the Agency provide as much time as possible to allow these initiatives to proceed to conclusion.

- The industry could support, if necessary, the Agency's goal of reducing groundline profile for pot and traps. We believe that a technologically simple and cost effective modification to existing floating rope by adding sections of standard leadline at precise intervals along the

entire length of the groundline is an appropriate and enforceable alternative to a complete prohibition on all sinking groundline.

This alternative was discussed and supported by the regional subgroup from the Mid-Atlantic, during the ALWTRP Meeting that took place on April 25th –27th, 2005, in Baltimore, Maryland. Our subgroup was comprised of TRT members all of whom were representing the cetacean science, academic, fishing and animal rights interests. We feel strongly that a total prohibition on polypropylene groundlines for all trap or pot gear in this region is unnecessary.

Changes Proposed for the ALWTRP for Gillnet Gear

Mid/South Atlantic Gillnet Waters –

We support expanding and re-naming the Mid-Atlantic Coastal Gillnet Waters to include waters south of 72 degrees 30 minutes West, south to the Virginia/North Carolina border, South Carolina/Georgia border and to the eastern edge of the EEZ.

Anchored Gillnet:

We cannot support the definition as defined under CFR 229.2 that a set gillnet should be considered an anchored gillnet.

A set gillnet should be considered as any gillnet that is weighted but do not have an anchor(s) on either end and are nets that return to port with the vessel.

We can support the following gear modification for anchored gillnets fished in the Mid-Atlantic. These changes in the proposed rule will achieve the goals of the ALWTRP and will significantly reduce the risk of entanglements or mortality associated with Mid-Atlantic anchored gillnet fisheries while not having a significant impact on the fisheries or its participants;

- Appropriate weak link requirements on flotation devices as specified, including a 1,100 pound weak link on all floatation and or weighted devices, including buoys, toggles and leaded lines attached to the buoy line.

- Requirements that would have all anchored gillnets anchored at each end with an anchor capable of a holding power of at least a 22-lb Danforth-style anchor.

We cannot support the requirement in the proposed rule that would have all anchored gillnets that do not return to port contain five or more weak links with a maximum breaking strength of no more than 1,100 pounds for each net panel. As requested in the Proposed Rule we offer significant comments on those proposed weak link configurations and are confident they will provide the necessary conservation benefits to large whales.

The following recommendations for weak link requirements will achieve the same dynamics as observed in the simulated testing referred to in the DEIS. (5-23/27) Due to the anchoring requirements, the float line weak link will break with very little net attached and will separate from the sinking line due to the light breastlines and the fact the gill net is the only thing holding to the groundline. This

alternative weak link configuration is considered to be a low cost alternative that can be applied to gill net fisheries with results that lessen the impact to the industry while still achieving the goals of the ALWTRP and reducing the risk of entanglement is supportable and consistent with the Agency's position on many of the issues contained in the DEIS.

- Anchored gillnets that do not return to port with the vessel, will be required to use a 1,100 pound weak link that would be added to the floatline between any two gillnet panels and an additional 1,100 pound weak link must be added to the float line and will be required to be in the center of each gill net panel, resulting in a gillnet that is structurally vulnerable. The net will also be required to have one weak link along the floatline at either end of the net, before the anchor and buoy system.

- Any line of appropriate breaking strength shall be considered to serve as a weak link. For gillnet net panels with up and down line (breastlines) that have a breaking strength that is less than 1,100 pounds no weak link is needed. Any line running from the float line to the leadline at the end or along any portion of the net must have a breaking strength of less than 1,100 pounds.

This weak link configuration was presented to, discussed and supported by the regional subgroup from the Mid-Atlantic, during the ALWTRP Meeting that took place on April 25th –27^{th,} 2005, in Baltimore, Maryland and appears in the Draft Meeting Summary of the Atlantic Large Whale Take Reduction Team Meeting. Our subgroup was comprised of TRT members all of whom were representing the cetacean science, academic, fishing and animal rights interests. **(A diagram is provided for you refer to Attachment 1)**

Exceptions to the rule

Anchored Gillnets:

We support an exception for those fisheries in the North Carolina/South Carolina coastal fisheries that would allow for a smaller anchor to be used in the surf zone to allow for the safe retrieval of gillnets deployed and retrieved in the surf zone. (See Draft Meeting Summary of the Atlantic Large Whale Take Reduction Team Meeting, April 25-27, 2005).

We oppose the weak link requirements of one 1,100 lb. weak link per net panel for anchored gillnets that return with the vessel to port in the croaker strike net fishery off New Jersey. This fishery targets Atlantic croaker in close proximity to our beaches, chiefly inside NJ State waters. It is a unique fishery that occurs only from August through November. During the last 4 years there were 72 observed trips in this fishery and there were zero reports of entanglement events. The best information indicates that due to the regional aspects associated in these fixed gear fisheries, the migratory patterns of large whales, and the lack of a single entanglement, should allow for the Agency to take a flexible management approach and lessen the socioeconomic impact on affected fishermen that participate in this fishery.

Drift Gillnets:

We oppose the weak link requirements that would add one 1,100 lb. weak link per net panel for drift nets deployed at night. This gear modification remains untested and its fishery application is completely unknown. Our NJ driftnet fishery uses a net that is 50-60 feet deep (measured from the corkline to the leadline), and often catches bluefish and small albacore in great quantities that will likely break the 1,100 pound weak link while it is being hauled aboard. Any modification to these gillnets may cause the loss of mesh, resulting in the needless waste of fish and possibly increasing the possibility of a derelict net, is unacceptable.

Furthermore, this fishery exists only in the months of May, June and July, which are outside of the months when large whales are known to concentrate in the Mid-Atlantic. This fishery has also experienced extensive Federal observer coverage during the last 4 years, 36 trips to be exact, during which there were zero entanglements observed. Based on the best available information this fishery should be exempted from the proposed rule.

Changes Proposed for All Gillnet Gear

Broad Based Gear Modifications:

We can support a requirement for sinking and/or neutrally buoyant groundline by 2008. This would apply to all groundlines found in anchored gillnets that are part of the anchoring components found at the end of each net string where the net is attached to the anchor.

Seasons Boundaries:

We support the area boundary created by this proposed rule, that runs from the Rhode Island/Connecticut border south to 40 degrees North, and east to the eastern edge of the EEZ.

We cannot support the component of the proposed rule that requires any gear fished in the area south of this line should be required to comply with gear modifications from September to May.

We request that the proposed rule enact gear modifications for this area that would be effective September through March.

Sinking/Neutrally Buoyant Groundlines:

We can support sinking and/or neutrally buoyant groundline by 2008. This would apply to all groundlines found in anchored gillnets that are part of the anchoring components found at the end of each net string where the net is attached to the anchor.

Weak Links:

We can support appropriate weak link requirements on flotation devices as specified, including a 1,100 pound weak link on all floatation and or weighted devices, including buoys, toggles and leaded lines attached to the buoy line.

Other changes Proposed for All Trap/Pot and Gillnet Marking:

We can support the proposed gear marking scheme which includes marking surface buoys with vessel or permit number for identification purposes.

We cannot support the marking of buoy lines every 10 fathoms. Many fishermen use the same gear in different locations. This would cause confusion when fishermen are trying to comply with regional regulations and would not be useful or accurate when trying to confirm the location (source) of an entanglement event. We request the Agency disapprove this gear marking component of the proposed rule and remand the issue to the ATLWTRT for further discussion and development.

Trap/Pot gear marking colors:

We cannot support the marking requirements as stated in this propose rule. The industry can only support gear specific marking requirements that are consistent with current State/Federal FMP requirements and for the other TRT's including the final rule to the BDTRP that will be implemented in the near term. During the last ALWTRT meeting there was significant concern that the current gear marking requirements in the DEIS would achieve very little in the way of new information but would be a burden to the industry. It was agreed that any additional gear marking requirements would be remanded to a gear group comprised of members from the TRT. This could possibly be included in the same amendment to address vertical lines.

Gillnet gear marking colors:

We cannot support any gillnet gear marking requirements, that use different colors to determine the origin or region where this gear might be fished, as an identifier. Many fishermen use the same gear in different locations. This would cause confusion when a fisherman was trying to comply with regional regulations and would not be useful or accurate when trying to confirm the location of any entanglement event.

Critical Habitat:

We support the Agency's continued analysis of the critical habitat for the conservation of right whales.

Exempted Waters

Coastal exempted waters:

We support this provision of the proposed rule that would exempt all marine and tidal waters landward of the 72 COLREGS demarcation lines.

The Agency's consideration of the low probability that whales would be present in these waters is a crucial point that we feel should also apply to address the relative risk of whale entanglements in state waters off the coast of New Jersey.

Alternatives to address additional sources of entanglement events

There are two known large whale entanglement events that involve "vessel anchoring systems". It is widely known that the origin of this anchoring system has been identified as the system used extensively by recreational anglers which has already been removed from two large whales in past entanglements. This anchoring system is typically composed of a large stainless steel ring attached to an inflatable poly-ball, which is attached to the anchor line to help in the retrieval of the anchor by using the forward motion of the boat.

It is also a standard practice in popular areas like the Canyons and Stellwagon Bank that these recreational vessel anchoring systems are left in place for unknown periods of time to mark a recreational fishing spot for use at a later date. Based on the best available scientific information, issues of fairness and equitability, and considering the fact that these devices are also "vertical lines", we recommend the Agency include the following information in the final rule and include the recreational sector's impacts on large whales in the TRT vertical line mitigation process as follows:

1) Regulations must be considered to prohibit recreational boats from using these anchoring systems.

2) Some method of enforcement needs to be considered that would prohibit recreational boats from leaving these anchoring systems as a method of occupying a fishing spot without actually fishing there.

3) Some enforcement needs to be pursued to prohibit recreational vessels from tying up to our high flyers, which mark the location and serve as the only way to retrieve our fixed gear. It is standard practice for recreational boats to tie up to our gear, often the line is simply cut and thrown overboard, it is also doubtful that a 1,500 weak link will hold a pleasure boat and will increase lost gear and associated risk to large whales. Making this practice a violation of the law would be helpful.

Areas to be Exempt from Low Profile Requirements

We support the establishment of "Exempted Areas" to be determined prior to implementation of the Final Rule that will be exempted from the use of mandatory "low profile" groundlines. These areas could include the "17 – Fathom Rocks" and other fishing areas that contain wrecks or artificial habitat. Due to the high bottom relief and artificial structure found in theses areas it will not be practical to use sinking groundlines in these areas. The groundlines between each pot/trap would become tangled in the structure and could cause many pots/trap top be lost.

Proposed Rule as it pertains to NEPA Requirements

While not in total agreement with all the proposed management measures contained in the Proposed Rule, the GSSA is of the opinion that the Proposed Rule sufficiently addresses the requirements of NEPA. The Act requires decision makers to take into account environmental factors and consideration of a suite of management alternatives using a through public process. The Proposed Rule and the regulatory alternatives contained in it, do take into consideration environmental factors as well as concerns and suggestions raised during public meetings along with the ALWTRT process collectively provide information that is sufficient to meet NEPA requirements.

Thank you for the opportunity to comment on the Proposed Rule. We look forward to working with NMFS throughout the ALWTRT process to find solutions that are reasonable and effective.

Sincerely,

Gregory P. DiDomenico
Executive Director
Garden State Seafood Association

cc: Dan Furlong, Executive Director MAFMC