

**Testimony of  
George D. Lapointe  
Commissioner of Marine Resources**

**before**

**Senator Olympia Snowe  
Subcommittee on Ocean, Atmosphere, Fisheries, and Coast Guard  
Committee on Commerce, Science, and Transportation**

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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 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 25ft.) 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%. 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% 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 end lines;
- 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 5 October 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 requirement 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% 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 Downeast 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 build up in vertical lines and provides for a real reduction (21% 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.