



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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Dr. Shannon Bettridge, Chief  
Marine Mammal and Sea Turtle Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service

Dear Dr. Bettridge,

The Massachusetts Division of Marine Fisheries (DMF) requests that the National Marine Fisheries Service, in its administration of the Marine Mammal Protection Act, reclassify the Massachusetts state waters lobster fishery as its own non-Category I fishery, rather than include it in the Northeast/Mid-Atlantic American lobster pot fishery. We request the re-categorization of the state waters portion of the Massachusetts lobster fishery based on the gear restrictions and large whale conservation programs that are unique to our jurisdiction. These programs combine to reduce risk to marine mammals such that the state waters portion of the Massachusetts lobster fishery should not be listed as a Category I fishery and should accordingly be separated. In these comments, we will support that request by describing the current and future actions taken by the Division of Marine Fisheries to protect large whales from entanglement in fishing gear.

Massachusetts has been and remains an important seasonal habitat for large whales on the US East Coast. Our geography and oceanography make Massachusetts coastal waters both a migratory catch point and a critical seasonal feeding area.

Right whales have been in decline since 2010, coinciding with a change in oceanographic conditions, a shift in their migration habits and a drop in calving rates. Despite this change in distribution, Cape Cod Bay in Massachusetts remains a critically important seasonal habitat for right whales, used for feeding and as a nursery area for young calves. During the winter and spring of each year, approximately 65% of the known right whale population frequents Cape Cod Bay and adjacent waters. This large population warrants a conservative approach to fixed gear management and large whale conservation measures in Massachusetts that distinguish it from the broader Northeast/Mid-Atlantic area.

The Division of Marine Fisheries has partnered with the Center for Coastal Studies since 1998 to conduct aerial surveillance and habitat monitoring of Cape Cod Bay during the right whale season. The surveillance work provides fine-scale information about the spatial-temporal distribution of right whales in our area, as well as data about right whale demographics, health and human impacts. The aerial surveillance, in conjunction with habitat monitoring, also provides information that is vital to the management and potential extension of the Massachusetts Bay Restricted Area seasonal fixed gear closure.

## **Seasonal Fixed Gear Closures and Small Vessel Speed Restrictions**

To protect seasonal aggregations of right whales from entanglement in fishing gear, the National Marine Fisheries Service implemented a prohibition on the setting of trap/pot gear from February 1 through April 30 in Cape Cod Bay and surrounding waters (Massachusetts Bay Restricted Area - MBRA). Given that 65% of the known right whale population visits the MBRA each year, the closure likely represents the single most important conservation measure to right whales in the United States. The Division of Marine Fisheries works closely with CCS's aerial surveillance team to monitor the presence of right whales and their food resource, as well as partnering with the Massachusetts Environmental Police and local fishermen to ensure the Bay is free of lost or abandoned fishing gear. The Division of Marine Fisheries (DMF) has been proactive in ensuring the effectiveness of the state waters portion of the MBRA closure. Since the implementation of the closure in 2015, the timing of the departure of right whale aggregations has occasionally extended beyond the opening date. We have responded to this flexible whale behavior by implementing a dynamic extension of the fixed gear closure in the state waters portions of the Mass Bay Restricted Area, if the presence of right whales extends past the closure end date. The size, location and duration of the closure extensions are selected by DMF through the director's authority using real-time data collection on whale distribution and abundance from the Provincetown Center for Coastal Studies (PCCS) aerial surveillance team. **Massachusetts is currently the only U.S lobster fishery with a closure that has a dynamically managed seasonal opening.**

The Division of Marine Fisheries has also implemented a yearly speed restriction in Cape Cod Bay to protect right whales from vessel collisions involving small vessels. The measure requires vessels less than 65 feet in length to go 10 knots or less during March and April and is meant to complement a similar federal speed restriction for vessels greater than 65 feet in length. In March and April in Cape Cod Bay, right whales begin to feed near and at the surface of the water. This behavior leaves them especially susceptible to vessel collisions, which is a significant source of mortality for right whales. However, the lethality of vessel collisions is greatly reduced at speeds of 10 knots or less.

In addition, unlike other areas of the Northeast/Mid-Atlantic American lobster pot fishery, Massachusetts has no areas in state waters that are exempted from the rules of the Atlantic Large Whale Take Reduction Plan (ALWTRP). Year-round sinking groundline and gear marking are required for all commercial pot fishermen in all portions of state waters. DMF has also extended the ALWTRP rules, including gear marking and weak link requirements, to recreational pot fishing gear to further protect large whales from entanglement. The Massachusetts lobster fishery is the most conservatively managed lobster fishery in the United States both in regards to fishery sustainability and especially in regards to our efforts to protect endangered marine species. While no marine activity can be conducted by humans without *some* risk to marine mammals, Massachusetts has adopted an approach that we believe allows for lobster fishing with minimal risk. That residual risk is being further reduced year over year, as explained in more detail below.

## **Further Reduction of Risk Through Reduction of Participation and Number of Buoy Lines**

With the exception of a small number of transient "student lobster permits," Massachusetts is the only state that has not issued a new lobster permit in over 25 years. We do allow the transfer of active coastal lobster permits (at least 1,000 lbs or 20 sales per year for 4 out of last 5 years) to qualified individuals (1-year full time or equivalent part-time experience in the lobster trap fishery or 2-years full-

time or equivalent part-time experience in other commercial fisheries). Under this management approach, we have controlled the amount of fishing effort in the MA lobster fishery (Table 1 and 2). **This trend is unique to the Massachusetts lobster fishery.**

All Massachusetts lobstermen who are authorized to fish in any of the three inshore lobster management areas (LMA1, LMA2, and LMAOCC) have been subject to a maximum trap limit of 800 since 1992. In addition, fishermen who hold permits to fish in LMAOCC and LMA2 have been subjected to further trap restriction through the imposition of a permit specific trap limit that is based on historical participation. These plans allocated individual transferable trap allocations also include a 10% trap tax on any trap allocation transfer.

**Table 1: MA Lobster-pot Fishery, Issued Permit Count by Permit type and Year, 2011-2018**

| Issued Permits   | 2011         | 2012         | 2013         | 2014         | 2015         | 2016         | 2017         | 2018         |
|------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Coastal Lobster  | 1,245        | 1,214        | 1,188        | 1,170        | 1,139        | 1,116        | 1,088        | 1,081        |
| Offshore Lobster | 189          | 175          | 161          | 163          | 159          | 154          | 171          | 156          |
| Seasonal Lobster | 98           | 78           | 79           | 76           | 86           | 88           | 96           | 100          |
| <b>Total</b>     | <b>1,532</b> | <b>1,467</b> | <b>1,428</b> | <b>1,409</b> | <b>1,384</b> | <b>1,358</b> | <b>1,355</b> | <b>1,337</b> |

Data Source: MA Permitting database

**Table 2: MA Lobster-pot Fishery, Active Permit Count by LMA and Year, 2011-2018**

| LMA          | 2011       | 2012       | 2013       | 2014       | 2015       | 2016       | 2017       | 2018*      |
|--------------|------------|------------|------------|------------|------------|------------|------------|------------|
| LMA1         | 669        | 650        | 628        | 624        | 627        | 627        | 634        | 651        |
| LMA2         | 77         | 78         | 73         | 64         | 71         | 78         | 73         | 71         |
| LMA3         | 21         | 26         | 25         | 28         | 25         | 26         | 26         | 27         |
| OCLMA        | 69         | 67         | 71         | 67         | 65         | 61         | 60         | 63         |
| <b>Total</b> | <b>836</b> | <b>821</b> | <b>797</b> | <b>783</b> | <b>788</b> | <b>792</b> | <b>793</b> | <b>812</b> |

Data Source: MA Trip-level reports and NOAA Fisheries VTRs

\*Preliminary, subject to change

DMF has required all fixed gear fishermen who land in MA ports to report the number of buoy lines they deploy since 2011. This includes federally permitted fishermen as well. We are one of only two jurisdictions in the U.S. that currently requires this. With these data we can look at trends over time and can judge the effectiveness of management measures we have put into place to control fishing effort – and risk of entanglement - with empirical data. Since 2011 we have observed declining trends in the number of buoy lines deployed in the lobster fishery by Massachusetts based fishermen (Table 3, Figures 1 – 4). This trend is apparent both statewide and in each individual lobster management area (LMA) within Massachusetts coastal waters. Buoy line trends from Massachusetts based LMA3

fishermen have increased in recent years, but the entirety of LMA3 is within federal, rather than state, jurisdiction. The implementation of the effort capping and effort reduction measures in Massachusetts have greatly contributed to the reduction in traps and the reduction of buoy lines we have observed.

**Massachusetts is the only jurisdiction that can demonstrate long term declines in the number of vertical lines deployed in our lobster fishery.**

Table 3: MA Lobster-pot Fishery, Total maximum buoy lines by LMA and Year, 2011-2018

| LMA          | 2011           | 2012          | 2013          | 2014          | 2015          | 2016          | 2017          | 2018          |
|--------------|----------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| LMA1         | 71,811         | 67,801        | 65,220        | 66,050        | 61,014        | 64,191        | 67,846        | 60,821        |
| LMA2         | 10,952         | 10,828        | 8,560         | 7,803         | 7,333         | 7,167         | 7,002         | 6,188         |
| LMA3         | 1,299          | 1,256         | 1,335         | 1,549         | 1,040         | 1,126         | 1,228         | 1,656         |
| OCLMA        | 18,430         | 15,027        | 16,773        | 15,009        | 15,037        | 13,669        | 13,518        | 13,474        |
| <b>Total</b> | <b>102,492</b> | <b>94,912</b> | <b>91,888</b> | <b>90,411</b> | <b>84,424</b> | <b>86,153</b> | <b>89,594</b> | <b>82,139</b> |

Data Source: MA Supplemental Reports and LMA permit declarations

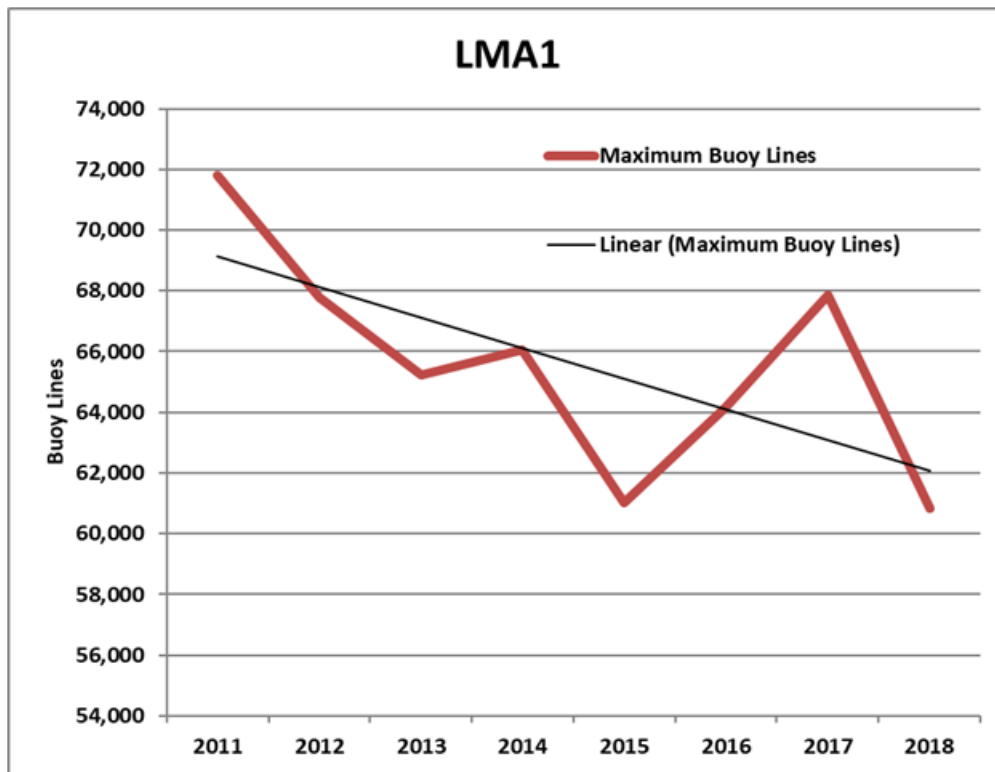


Figure 1. Total maximum buoy lines deployed in LMA 1 – 2011 - 2018

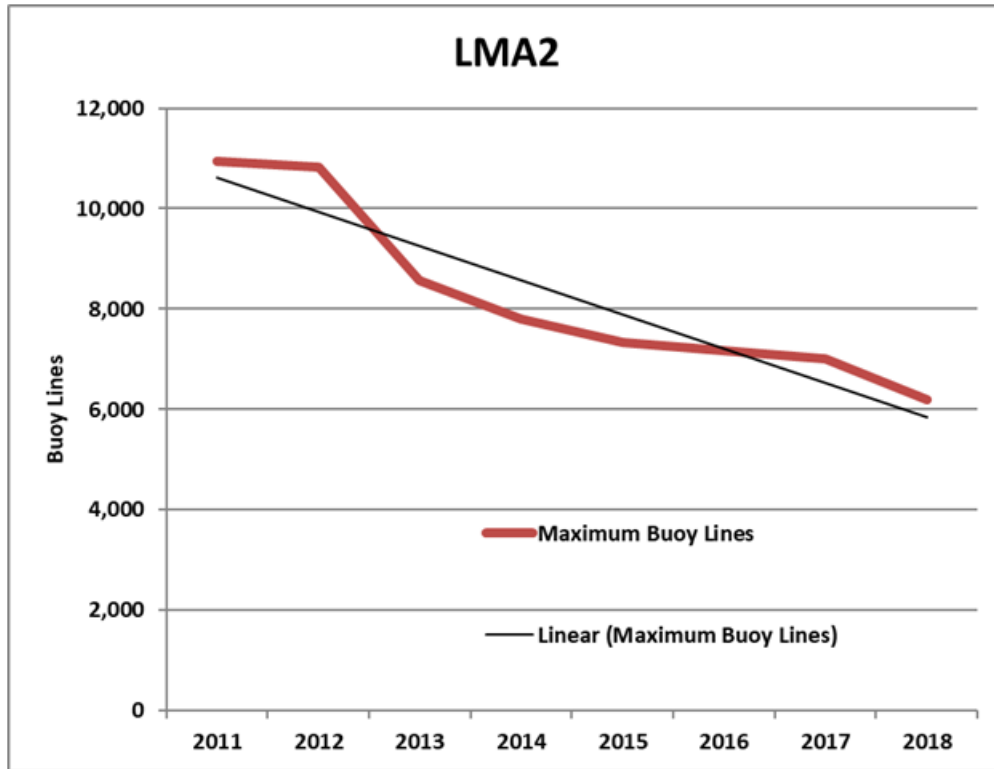


Figure 2. Total maximum buoy lines deployed in LMA 2 – 2011 - 2018

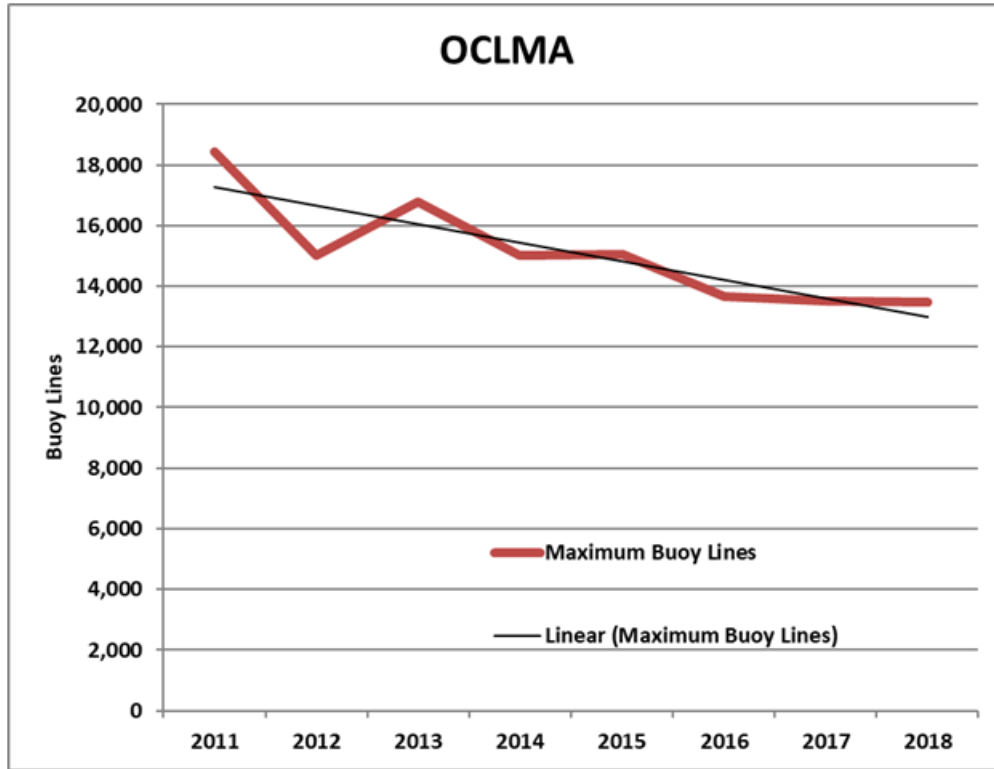


Figure 3. Total maximum buoy lines deployed in LMA OCC – 2011 – 2018

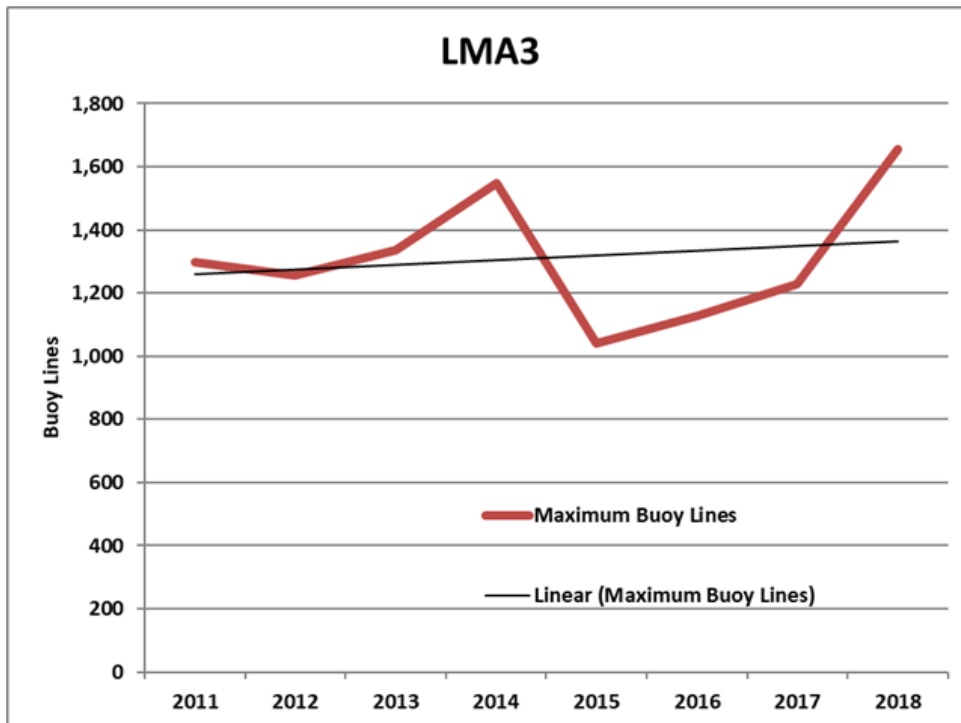


Figure 4. Total maximum buoy lines deployed in LMA 3 – 2011 – 2018

We anticipate that the declining trends in participation, traps, and buoy lines will continue. The median age of fishermen in Massachusetts has steadily increased over time and is rapidly approaching the age at which many fishermen retire or downscale their effort (Figure 5). As these fishermen reach retirement and leave the fishery, we expect that only a portion of their permits will be transferred. In LMA2 and LMAOCC this has and will continue to promote partial trap allocation transfers which are subject to a 10% trap tax. DMF will continue to monitor participation and efforts trends over time and is committed to making necessary adjustments to our management framework to ensure long term stability in participation in our lobster fishery with continued reductions in buoy lines.

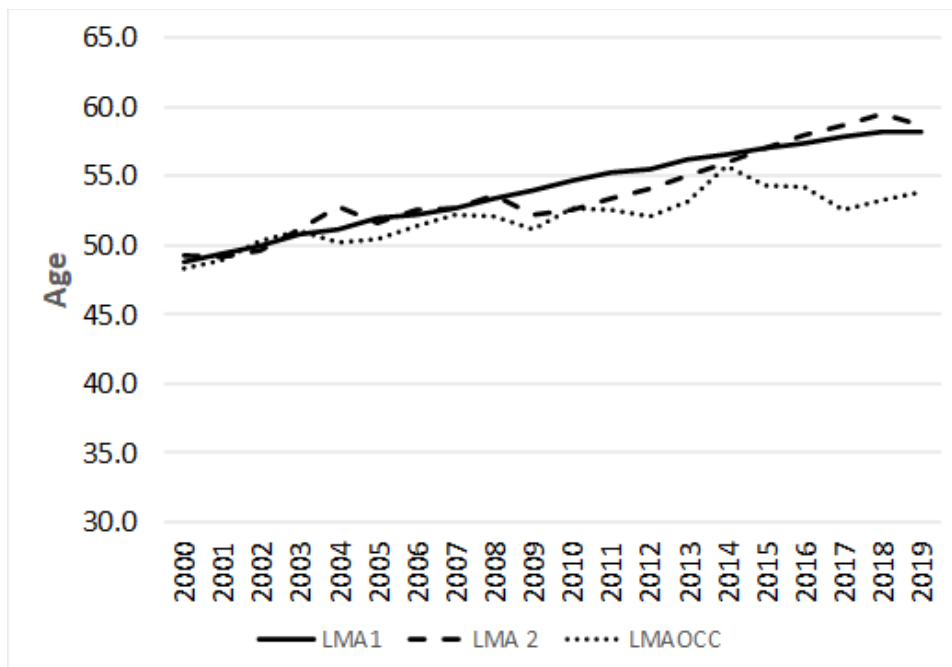


Figure 5. Median age of lobster permit holder in LMA1, LMA2, and LMAOCC – 2000 to 2019.

#### **Additional Conservation Measures Expected to Be in Place by February 1, 2021**

In addition to the conservation measures described above, DMF will be implementing further changes to the Massachusetts lobster pot fishery that warrant a categorization separate from the Northeast/Mid-Atlantic American lobster pot fishery. We have initiated rule making on the following measures and plan to have them in place by February 1, 2021:

##### **A closure of all Massachusetts state waters to lobster pot fishing from February 1 – April 30.**

The spatial distribution of right whales in the spring has occasionally expanded to nearby waters of Massachusetts Bay and the North Shore, particularly in late April when whales are departing the feeding areas around Cape Cod. By expanding the seasonal fixed gear closure to all state waters, we are ensuring that any right whales that wander outside of the Massachusetts Bay Restricted Area are protected from entanglement in state waters. In addition, DMF will expand

our dynamic management of the lifting the closure to all state waters through aerial surveillance of right whale presence.

**A prohibition on the use of buoylines greater than 3/8" in diameter in all state waters.** In recent years, the majority of rope retrieved from entangled right whales has been greater than 1/2" in diameter. While DMF does not believe that buoylines greater than 3/8" in diameter are used with any regularity in Massachusetts waters today, there is no legal impediment to their use. The prohibition on line greater than 3/8" diameter will eliminate Massachusetts state waters as a potential source of entanglements involving lines greater than the maximum allowable size.

**A requirement for all lobster pot buoylines in state waters be equipped with 1,700 pound breaking strength line or equivalent contrivances.** While this is consistent with measures that are likely to be implemented as part the federal rule making currently underway, we felt it was critical to implement these measures as soon as possible given the importance that Massachusetts coastal waters has to North Atlantic right whales. We anticipate that this measure will substantially reduce the risk of the serious injury or mortality in the unlikely event that an entanglement occurs in our waters.

#### **Additional Conservation Measures Expected to Be in Place by January 1, 2022**

**A ban on fishing single traps for all vessels >29'.** Banning single traps in the Massachusetts lobster fishery will reduce vertical buoy lines by 8% (this is a nominal estimate that assumes all fishers will switch from fishing single traps to doubles, the actual reduction in buoylines will likely be greater given that some portion of fishermen will fish multiple trap trawls). A fishery wide ban of fishing single traps is not possible given safety concerns related to space limitations of smaller fishing vessels. It is not possible to safely deploy multiple trap trawls off of most fishing vessels that are 29' or less. These vessels typically fish in shallow coastal waters within 1 mile of shore in the summer and early fall when right whales are very uncommon in our waters. Lobster permit holders fishing vessels 29' or less in length comprise only 34% of our state water lobster fleet of 1,082 permits and account for only 15% of the 77,457 buoylines deployed by the MA lobster fishery.

It is our belief that the Massachusetts lobster pot fishery has a number of attributes currently in place, as well as a number of attributes that will be in place for the 2021 fishing season, that truly distinguish the Massachusetts lobster pot fishery as unique from the rest of the Category I Northeast/Mid-Atlantic American lobster pot fishery. These include:

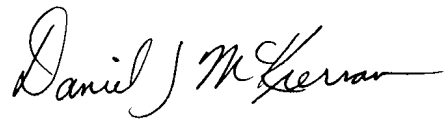
- The only jurisdiction to have a total lobster pot fishery closure from February 1<sup>st</sup> to April 30<sup>th</sup>
- The only jurisdiction to dynamically extend the lobster pot fishery closure to ensure safe passage of right whales from our waters prior to fixed gear being set.
- The only jurisdiction with a ban on vertical buoylines > 3/8" diameter
- The only jurisdiction with a ban on fishing single traps by the vast majority of its active fleet.
- The only jurisdiction with universal requirement of 1,700 lb or equivalent contrivance.
- A permitting and regulatory scheme designed to reduce participation and effort over time.



- The only jurisdiction with a demonstrated substantial decline in the number of participants and the number of buoylines deployed.

These measures have been implemented to substantially reduce the risk of entanglement, to reduce the risk of serious injury or mortality in the unlikely event of an entanglement in our waters, and to ensure that Massachusetts lobster pot fishery is not contributing to the decline of the North Atlantic right whale. Given the demonstrated difference between the Massachusetts lobster pot fishery and the rest of the Category I Northeast/Mid-Atlantic American lobster pot fishery, as well as the unique critical importance of Massachusetts coastal waters to North Atlantic right whales, we respectfully request that you designate the Massachusetts lobster pot fishery as a separate fishery.

Respectfully,

A handwritten signature in black ink, reading "Daniel J. McKiernan". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Daniel J. McKiernan, Director

Cc: Robert Glenn & Erin Burke (DMF)  
Department of Fish and Game Commissioner Ron Amidon  
Massachusetts Marine Fisheries Advisory Commission