



Massachusetts Lobstermen's Association, Inc.

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Via email: michael.pentony@noaa.gov &

Online: <https://www.regulations.gov/commenton/NOAA-NMFS-2022-0091-0001>

Michael Pentony, Regional Administrator
National Marine Fisheries Service,
Greater Atlantic Regional Fisheries Office
55 Great Republic Dr.
Gloucester, MA 01933

RE: NOAA-NMFS-2022-0091

Dear Mr. Pentony,

On behalf of its 1800 members, the Massachusetts Lobstermen's Association (MLA) respectfully submits this letter of comment with great concern and reservation to the National Oceanic Atmospheric and Administration (NOAA) and National Marine Fisheries Service (NMFS) regarding NOAA-NMFS-2022-0091, *Notice of Intent To Prepare and Environmental Impact Statement on Modifications to the Atlantic Large Whale Take Reductions Plan To Reduce Mortality and Serious Injury of Large Whales in Commercial Trap/Pot and Gillnet Fisheries Along the U.S. East Coast.*

Established in 1963, the MLA is a member-driven organization that accepts and supports the interdependence of species conservation and the members' collective economic interests. The MLA continues to work conscientiously through the management process with the MA Division of Marine Fisheries (MADMF), Atlantic States Marine Fisheries, National Marine Fisheries Service, and Atlantic Large Whale Take Reduction Team (ALWTRT) to ensure the continued sustainability and profitability of all the resources in which our members are engaged in.

Massachusetts commercial lobstermen are leading the way in reducing risk to the large whales along the U.S. East Coast. The collaboration put forth by these hardworking men and women, is a testament to their commitment in working together with fisheries managers to find reasonable ways to reduce the potential risk for the large whales while preserving a viable and historic commercial lobster fishery here in the Commonwealth.

Massachusetts Large Whale Conservation Timeline

1996- NOAA implements the Large Whale Take Reduction Plan

1997-MA requirement for "breakaway" features in gillnets and trap/pot buoy lines

Seasonal ban in Cape Cod Bay for gillnets and on use of floating rope between pots

1997-Dedicated aerial surveys begin in Cape Cod Bay

2000- Year-round gear marking is implemented

Massachusetts Large Whale Conservation Timeline Cont.

2004 – Year-round ban on floating rope between traps in Cape Cod Bay

2004- Year-round ban on singles in Southern Cape Cod Bay

2007 - Year-round ban on use of floating rope between traps statewide

2014- MA Restricted Area is created – A three-month closure Feb-April to 3,071 sq. miles

2015 - 3 month (Feb/Apr) closure to all pots/traps in the MA Restricted Area

2016 – 3 month (Feb/Apr) closure to all pots/traps in the MA Restricted Area

2017 – 3 month (Feb/Apr) closure to all pots/traps in the MA Restricted Area **PLUS** 4-day extension of the gear closure in Cape Cod Bay

2018 - 3 month (Feb/Apr) closure to all pots/traps in the MA Restricted Area **PLUS** a 15-day extension of the gear closure and speed restriction (10 mph) for small vessels in Cape Cod Bay

2019- 3 month (Feb/Apr) closure to all pots/traps in the MA Restricted Area

2020 - 3 month (Feb/Apr) closure to all pots/traps in the MA Restricted Area, MLA members deploy 700 coils of whale safe 1700lb weak red rope.

2021 – MFAC implements 73.6% risk reduction conservation measures, New North Shore closure to state waters and weak contrivances every 60' in state waters.

2022- MA State Waters lobster fishery listed as a CAT II

2021 – MFAC implemented 90% risk reduction conservation measures

2022 –North Shore State Waters closed area (Feb/Apr)

2022 – MA Restricted Area closed Feb.1st until May 16th

Massachusetts commercial Lobster Effort & Effort Reductions

The MADMF has decades of data to back up the ongoing reduction of the lobster fishery here in Massachusetts with a **100% MANDATORY** reporting. The MADMF can show the downward trend for the MA lobster fleet. Currently, in Massachusetts there are approximately 750 active commercial lobstermen fishing an average of 400 pots and most of them are fishing 5-30 pot trawls, along with an estimated 15-20 permits retiring every year.

Currently, the Massachusetts commercial lobster industry employs thousands of individuals who earn their living on the sea. In 2020, the 661 active MA commercial lobstermen in State Waters (0-3 miles) harvested 9,263,534 lbs. with an ex-vessel value of \$43,298,377 and an overall estimated economic impact to the local economy of 180 million dollars while only fishing approximately 259,368 lobster pots.

Furthermore, there are 65 active MA commercial lobstermen in Federal waters (3-200 miles) harvesting 7,489,941 lbs. with an ex-vessel value of \$35,008,487 and an overall economic impact to the local economy of 140 million dollars while only fishing 111,639 lobster pots. Based on the 2020 landings data, the estimated economic impact of the collective commercial lobster fleet in Massachusetts is upwards of 320 million dollars to the local economy. There may not be thousands of commercial lobstermen here in the Commonwealth but, they are as equally important to the overall economy.

Massachusetts commercial lobstermen are still reducing effort through the ongoing trap reductions in Lobster Management Area(LMA) 2 and LMA 3 and these real numbers in reduction that need to be quantified and given a conservation credit. Today, there are approximately 70 active lobstermen in MA LMA 2 and approximately 58 active lobstermen in Outer Cape Cod (OCC), how much further can they be reduced in effort to remain whole when they are continually paying a conservation tax every time a tag is transferred. Every transfer in LMA 2, LMA 3 and OCC there is also a 10% conservation trap tax which also equates to even a further reduction in effort equaling even more risk reduction for the large whales.

As the effort in Massachusetts commercial lobster fishery continues to decline, with ***NO NEW PERMITS*** being issued, we are greatly concerned that the Massachusetts fleet will be gutted beyond repair should NMFS implement any more risk reduction measures. Massachusetts commercial lobstermen are holding on by a very weak end line right now. There needs to be a collective limit on effort, traps, end lines, something has to give as one state cannot carry the risk reduction weight alone.

Weak Ropes & Weak Contrivances

In 2019 and 2021, the Lobster Foundation of Massachusetts (LFoM) was granted the Massachusetts Environmental Trust grants to develop a 1700lb weaker whale safer red rope that was deployed during the 2020 fishing season for field testing. The 2021 grant is to educate lobstermen on the splicing techniques that were developed by NOAA to incorporate the weak contrivances in the vertical lines.

The ropes 1700lb breaking strength basis came from the New England Aquariums Study *Effects of fishing rope strength on the severity of large whale entanglements* by Amy Knowlton et. al. where they “found entangled in tested rope strengths below 7.56 kN or 1700 lbs., implementation of RBS ropes would likely reduce the probability of mortality and suffering” Kowlton et.al.

We are happy to report that, over 1700 coils of the weak rope have been successfully distributed and deployed by several hundred commercial lobstermen in Massachusetts. MADMF has also distributed 400 plus coils of the weak red rope that will further help the commercial lobster industry here in Massachusetts.



We are pleased to report that; these weak ropes are now being made with a MASS LOBSTER tracer ribbon incorporated throughout the full coil. Earlier this year, this weak rope with the tracer ribbon was tested by NOAA Gear Specialist, Rob Martin, which were found to be within the acceptable breaking strength allowance.

7/5/22

Candy Cane 38 with IO RBS and Red (1783)

	Solid	Break	Qty
1) Solid		1566.4	14.7
2) 20% cycld		1711	192
3) 20% cycld		1803	156
4) 20% cycld		1668	12
5) 20% cycld		1592	12
6) 20% cycld		1635	15
7) 20% cycld		1652	14.5
8) 20% cycld		1721	15.7
9) 20% cycld		1661	15.6
10) 20% cycld		1681	16
11) 20% cycld		1798	16
202-813		Average 1692	

@ 14w lb → Ripe Shedd to 1/4 - 5/16

To the left is an image of his logbook with the test results of his testing earlier this year and are well below the 1700lbs. breaking strength threshold. The MLA is asking NMFS to accept the newest version of the 1700lbs. weak red and candy cane rope with the MASS LOBSTER tracer ribbon as an acceptable weak rope to be used in its entirety or as a weak contrivance.

The collective assortment of weak contrivances that have been developed over the last few years are working. Here in Massachusetts, the commercial lobstermen are mandated to incorporate a weak contrivance every 60' as the MFAC implemented a more restrictive rule for state waters.

The commercial lobstermen here in the Commonwealth are making these weak contrivances work to reduce risk to the large whales and should be required every 60' coast wide from 0' to 50 fathoms to help us get to the 90% risk reduction requirement. This would equate to at least 8 more risk reduction points just within the Gulf of Maine.

To further demonstrate our commitment in reducing risk, the MLA and LFoM remain committed to seek the necessary funding to help our members acquire as much of this weak rope as possible. In early 2024, the MLA and LFoM will be partnering with Net Your Problem and Avangrid on a five-year project that will distribute over 5000 coils of the weak red and candy cane ropes here in Massachusetts. Once the project is up and going we will be happy to share more information on our progress as it becomes available.

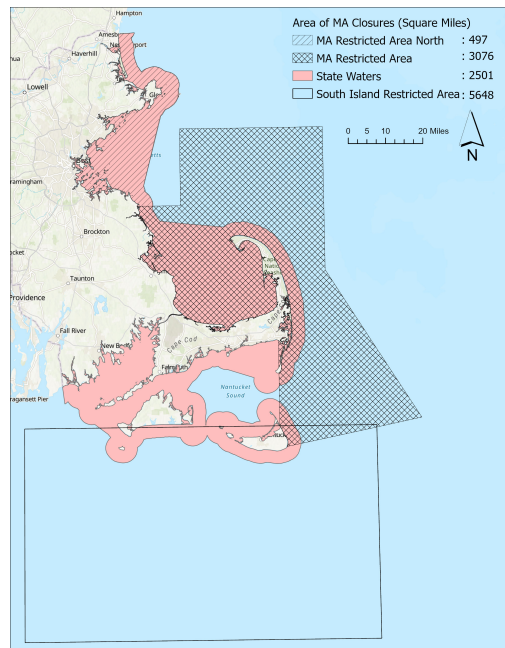
Massachusetts Marine Fisheries Advisory Commission (MFAC)

The MFAC at their January 28, 2021 voted on and passed an aggressive suite of additional conservation measures for a 73/6% risk reduction for right whale protection will be implemented in Massachusetts by March 5, 2021. These conservation measures are as follows;

Commercial Fixed Gear Closures

The MFAC voted to:

1. Expand the existing seasonal state waters commercial trap gear closure in both space and time. The existing closure occurs from February 1 – April 30 within Cape Cod Bay, Stellwagen Bank, and the Outer Cape Cod Lobster Management Area. The closure area will extend north in state waters from Scituate Harbor to the New Hampshire maritime border and the closure duration will extend through May 15. However, during the May 1 – May 15 period, the closure will occur on a dynamic basis allowing DMF to lift the closure (or parts thereof) if whales no longer remain in state waters. The closure will not extend into those southern state waters in Lobster Conservation Management Area 2. Geographically expand the existing January 1 – May 15 gillnet closure in Cape Cod Bay to include a discrete area along the South Shore between Plymouth and Scituate.



Massachusetts now has over 11,000 nautical square miles closed to reduce risk for the large whales. There is NO other state or region that has endured this draconian of measures to date. Until other states or regions come up with as much risk reduction to equal Massachusetts, there should be **NO MORE** closures implemented or expanded in Massachusetts.

Commercial Trap Gear Modifications. The MFAC voted to:

1. Require commercial trap fishermen to fish buoy lines that break when exposed to 1,700 pounds of tension beginning on May 1, 2021. This may be achieved by fishing specially manufactured buoy lines with a custom 1,700 pound breaking strength or by inserting NOAA Fisheries approved contrivances into the top 75% of the buoy line every 60'. At this time, the only approved contrivance is the so-called "South Shore Sleeve."

2. Require commercial trap fishermen fish buoy lines with a maximum diameter of 3/8”.

Recreational Lobster and Crab Trap Measures.

The MFAC voted to:

1. Establish a recreational lobster and crab trap haul-out period of November 1 – May 15 (beginning on November 1, 2021) throughout all of state waters. This haul-out period will not apply to unbuoyed recreational lobster trap gear fished in the Cape Cod Canal.

2. Require recreational trap fishermen fish buoy lines with a maximum diameter of 5/16”.

https://www.mass.gov/doc/january-28-2021-mfac-meeting-summary/download?utm_medium=email&utm_source=govdelivery

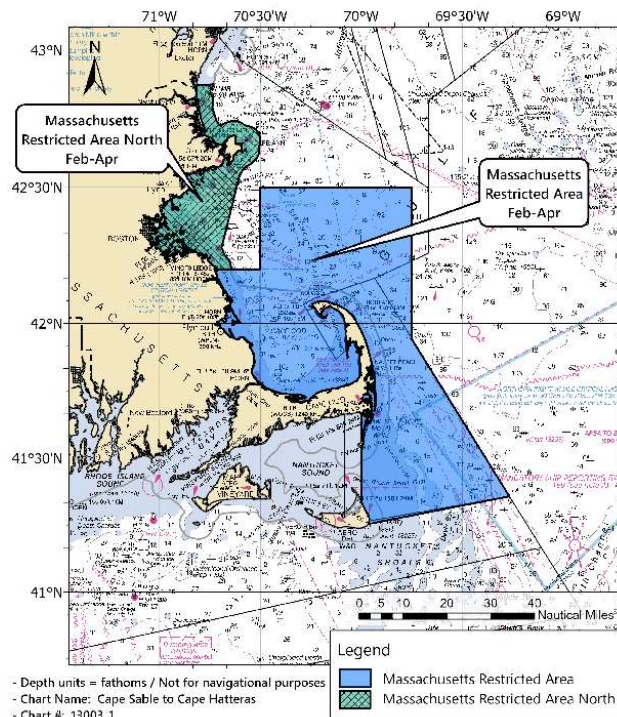
We have been hearing from several of our members over the last couple of years about the vast amount of time they are spending on configuring their end-line. We have heard that some lobstermen are spending upwards of a 100 hours laboring to comply with the weak contrivance regulations. This is two and a half weeks’ extra work that they have to work on their gear just to be compliant with one regulation.

MA Restricted Area Closure Risk Reduction Credit

After learning that the 24% MA Restricted Area Closure (2015) credit previously given during Phase 1 was eliminated from the “NEW” model runs because the date now being used is 2017 is disingenuous to the entire commercial lobster fleet here in Massachusetts. The MLA and Massachusetts commercial lobstermen alike, are astounded and completely horrified to learn that ZERO risk reduction points will be given as we are trying to reach our goal of now 90% risk reduction. We asked the modelers to run the MA Restricted Area risk reduction credit through the “NEW” model to see what risk reduction credit would be given, points.

Now, that NMFS is using points to measure risk instead of percentages and every risk reduction point matters more than ever. NMFS has taken away 8 very valuable points from the Massachusetts commercial lobstermen and without any notice through due process of redoing the model does not gain any support in continuing in this process. This is a very deceptive process as the Massachusetts commercial lobstermen were told that they were getting credit and now they’re not is wrong.

The data in the Decision Support Tool, we were told, contains information from 2010 through 2021 on various metrics to calculate risk and risk reduction etc. There is NO reason why the data from the MA Restricted Area Closure cannot be incorporated in the necessary risk reduction metric in the model so the Massachusetts Commercial lobstermen will be credited with 8 points of



8

risk reduction and validated for their efforts to help reduce risk for the large whales over the last eight years.

The MA Restricted Area Closure remains one of the most important risk reduction measures implemented to date to protect the large whales and ZERO credit is now being given. This is beyond wrong of NMFS; this is demoralizing to the entire commercial lobster fleet here in Massachusetts that has been affected by this closure for over eight years now. NMFS has yet again moved the goal post leaving the commercial lobstermen knowing that no matter what has, is or will be done, the goal post can easily be moved. The MLA is requesting that risk reduction credit be given back for the MA Restricted Area Closure.

Request to update the mortality estimates to include 2020 and 2021 data

The MLA strongly encourages NOAA Fisheries to update annual mortality estimates to be more inclusive of ALL the available and recent data. NOAA's use of the mortality period for mortality is based on the 2015-2019 average. This outdated data is over-estimating the present average mortality rate the population is undergoing. This outdated data is really influenced by extremely high mortality rates observed between 2015 and 2019. Starting in 2019 the annual observed mortality rates have significantly decreased. Modernizing the five-year average to include 2020 and 2021 would prospectively reduce the 5-year average mortality rate, as well as reducing the 90% risk reduction goal to attain below PBR levels. Every point is needed to help the US fisheries remain as whole as possible and if the "Best Available" science is available, then NOAA should be using it to give true and accurate depiction on what is truly needed to reduce risk for the large whales. Undoubtedly, if mortality observations in 2020 and 2021 were very high, there would be an outcry and a strong effort to update these mortality rates for immediate inclusion into the data.

Federal Waters Gear Marking

Now, more than ever the federal gear marking scheme needs to be a standalone gear marking in and of itself without state markings anywhere except the 3' mark in the first two fathoms with one, 1' green mark. The current federal gear marking scheme is time consuming and costly as the commercial lobstermen have to spend countless hours adding and removing green markings as they move between state and federal waters.

Some commercial lobstermen have bought enough end line to have two sets of end lines so they can swap them out as needed. This is all well and good until the markings show up in state waters or on a large whale. The State color in federal waters is erroneous and is more detrimental to the states as we are truly trying to demonstrate where the entanglements are occurring. Federal waters need to be a separate color that is not used in any other fishery like gillnetting and it should just be one color.

The MLA is asking NMFS to reconsider how the federal gear is marked and come up with one marking system for federal waters without state waters colors in the bottom of the end line. This would save hundreds of hours and thousands of dollars for many federally permitted commercial lobstermen.

Law Enforcement

Over the last couple of weeks, the MLA has been meeting with the DMF and industry members to discuss the 90% risk reduction goal set by NOAA for the East Coast and one thing kept coming up, who is going to enforce any and or all of these “ideas” being discussed. The lack of law enforcement on the water has become lacking in the commercial lobster industry, especially in federal waters. Several lobstermen noted that if they are boarded, they are never checked for any large whale related regulations and that the primary concerns are looking for permits, short lobsters or V-notched lobsters. Law enforcement needs to be trained in the plethora of risk reduction measures that NOAA has placed on the commercial lobster fishery to ensure compliance. Without compliance these risk reduction measures mean nothing.

Final Thoughts

As the Massachusetts Lobstermen’s Association remains engaged in the efforts to reduce risk to the large whales, we collectively are dismayed, as the Massachusetts commercial lobstermen are repeatedly burdened with economic hardships and the MOST restrictive risk reduction measures in the United States commercial lobster industry. Until other regions step up to the same level of risk reduction measures that are in place in the Commonwealth, the Massachusetts Lobstermen’s Associations 1800 members implore National Marine Fisheries Service to stop placing more risk reduction measures on them until that day.

The Massachusetts Lobstermen’s Association thanks you for the opportunity to comment and your thoughtful deliberation on our points of concern. Also, we respectfully ask you to please remember, that commercial fishermen are stewards of the sea and without a healthy marine ecosystem, collectively, they would not be able to continue earning a living in the historic and iconic commercial lobster fishery.

Sincerely,

Beth Casoni

MLA, Executive Director

cc.

Sen. E. Warren

Sen. E. Markey

Cong. W. Keating

Cong. S. Moulton

Gov. C. Baker

Lt. Gov. K. Polito

EEA, Sec. B. Card

FWE, Com. R. Amidon

DMF, Dir., D. McKiernan

MAFAC