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## Joint letter to Congress requests NMFS funding to address impacts of offshore wind energy

### The Honorable Jeanne Shaheen Chair

Subcommittee on Commerce, Justice,  
Science, and Related Agencies  
Committee on Appropriations  
125 Hart Senate Office Building  
Washington, DC 20510

### The Honorable Jerry Moran Ranking Member

Subcommittee on Commerce, Justice,  
Science, and Related Agencies  
Committee on Appropriations  
125 Hart Senate Office Building  
Washington, DC 20510

### The Honorable Matt Cartwright Chair

Subcommittee on Commerce, Justice,  
Science, and Related Agencies  
Committee on Appropriations  
H-310, The Capitol  
Washington, DC 20515

### The Honorable Robert Aderholt Ranking Member

Subcommittee on Commerce, Justice,  
Science, and Related Agencies  
Committee on Appropriations  
H-310, The Capitol  
Washington, DC 20515

June 21, 2002

Dear Chair Shaheen, Ranking Member Moran, Chair Cartwright, and Ranking Member Aderholt:

We write today to express the urgent need for providing the National Marine Fisheries Service ("NMFS") with robust funding to address the impacts of offshore wind energy development ("OSW") on federal fisheries surveys and to support cooperative research efforts led by NMFS that uses the expertise and skills of the commercial fishing industry to address the impacts of OSW.

We represent a diverse group of commercial fishermen, seafood processors, and shoreside support businesses who depend on access to healthy fish stocks and marine environment. While the species we target, gear we use, and vessel sizes may differ, we all firmly believe in robust federal investments to address the impacts of OSW on our ocean and fishery resources to ensure we can

continue to both be a global leader in ocean sustainability and provide consumers with sustainable seafood.

To date, the Bureau of Ocean Energy Management ("BOEM") has issued 28 federal OSW leases, with construction already underway for the first two major commercial wind energy facilities in the Northeast. Over 23 million acres of public trust resources on the Northeast Shelf, 30 million acres in the Gulf of Mexico, and one and a half million acres off the West Coast are in various stages of planning for offshore wind energy development. The enormous size of these areas and their direct overlap with key grounds for seafood production and protected resource conservation underscore the critical need for funding to address the impacts of this burgeoning industry.

We appreciate the FY23 President's Budget request that includes the following investments relative to offshore wind energy development:

FUNDING, Page 24







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# Marine Fisheries Advisory Commission Celebrates its 60th Anniversary



On June 16, the Marine Fisheries Advisory Commission (MFAC) celebrated its 60th anniversary with a social gathering on the grounds of the Division's New Bedford facility. With DMF staff and current and former Commission members in attendance, the event commemorated the six-decade history of the MFAC. To top of the event, the Commission bestowed the David L. Belding Award to former MFAC Chair, Mark Amorello.

The Commission was first formed in 1960 when then-Governor Foster Furcolo created through Executive Order an ad-hoc group called the Marine Fisheries Advisory Commission to address problems in marine fisheries. After holding a series of public hearings to gather stakeholder input, the Commission presented an extensive report to the Governor outlining the challenges of the day and including a suite of well-recommendations. This report is historic in its depiction of the marine fisheries landscape of the time. Problems of foreign vessels fishing three miles from shore were highlighted along with familiar group conflicts (e.g., recreational vs. commercial, draggers vs. lobstermen, and lobstermen vs. "skin divers"), need for fish and shellfish conservation and improved management approaches.

One of the most important recommendations was to make the Commission a permanent body to continue its work. The MFAC also recommended more administrative control over fisheries rules. (Legislative amendments to fishing rules was considered too slow and unpredictable.) Subsequently, the Commission was created

by the state legislature as a permanent entity in 1962 and was tasked with approval authority for rule changes made by the Director as well as overseeing the hiring and removal of the Director. The Commission's vision for an unpaid "nonpolitical body whereby the different interests on the salt water could get together in advance on matters affecting their sport and livelihood" has succeeded for the past 60 years.

Today's Commission spends substantial time assisting DMF to address conservation and management issues that involve co-management with NOAA Fisheries through the New England and Mid-Atlantic Fishery Management Councils and the Atlantic States Marine Fisheries Commission. There are management plans and committees for so many species that were completely unmanaged back in 1960s, and many were labeled "trash fish" due to a lack of commercial markets. Just as the original Commission consisted of various interests involved with fisheries, today's Commission also reflects a balanced and varied cross-section of stakeholders. Each brings their experience and perspective to the table and contribute their views to Commission debates that in the end help make DMF a more responsive and aware agency.

The Anniversary event featured short tributes from former MFAC Chairs: Elizabeth Stromeyer who served in the 1970s and 80s; Frank Mirarchi, who served in the 1970s through early 1990s; and Mark Amorello who served for 25 years from 1992 through 2016. Mark was also

awarded the David L. Belding Award for his years of service to the Commission and for his outstanding work restoring river herring populations in his role as Superintendent of the Pembroke Herring Fisheries Commission.

During his decade of leadership in his home community, Mark worked with DMF to accomplish extensive brook-wide maintenance and fishway improvement efforts, as well as the installation of electronic fish counters. Mark can rightfully take credit for helping to improve the run counts in Herring Brook in Pembroke, because as a result of these efforts, Herring Brook has been able to witness and document fish passage increases from tens of thousands per year to hundreds of thousands per year. His most recent efforts in the Herring Brook watershed involved the rehabilitation of Herring Brook Park,

with associated improvements to fish passage incorporating a historic look with a replica water wheel and granite block walls that has been attracting the public for viewing ever since.

It was extremely rewarding for all involved to recognize the Commission's contributions to fisheries management. While the issues have evolved over six decades, the function of this Commission as a set of diverse experts advising DMF is as relevant today as it was in 1962. And recognizing Mark Amorello for being one of its most dedicated members for his 25 years of service—almost half of the history of the Commission—was a perfect ending to the celebration.

*By Dan McKiernan, DMF Director*  
[https://www.mass.gov/news/marine-fisheries-advisory-commission-celebrates-its-60th-anniversary?utm\\_medium=email&utm\\_source=govdelivery](https://www.mass.gov/news/marine-fisheries-advisory-commission-celebrates-its-60th-anniversary?utm_medium=email&utm_source=govdelivery)



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# As the HAULER TURNS

**The Massachusetts Lobstermen's Association** would like to welcome the following new members to the Association. Your Association will continue its efforts on your behalf to conserve the resource, protect your livelihood, keep you informed, promote the industry and provide you with increasing benefits as they are developed. MLA stands ready to help you in anyway, at anytime — just let us know how! Safe on the water and good fishing!

## NEW MLA MEMBERS:

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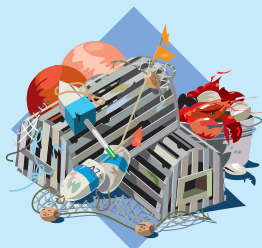
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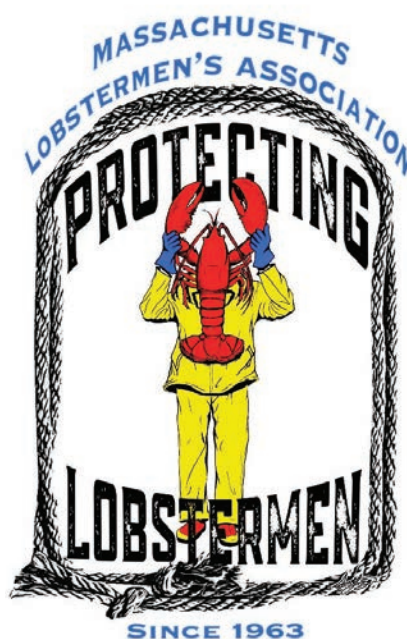
The heat is on, and the lobster industry is definitely feeling charred. The commercial lobstermen here in the Commonwealth are under siege yet again by MS who has been on a downward spiral over the last several months. Unfortunately, it looks like he wants to take the commercial lobstermen here in the Commonwealth down with him and the MLAs attorneys are fighting him at every step and turn he makes.

The MLAs attorneys have been working tirelessly on getting the Vexatious Litigant motion updated in DC and also filed in Boston. These filings really have MS desperately pleading the MLA to stop with our Vexatious Litigant efforts and the updates we have been getting from the attorneys is that MS knows that he is in a corner and the last thing he wants is to be labeled a Vexatious Litigant as this would apply to ALL of his future federal filings. If you are interested in reading the MLAs Vexatious Litigant Motion please visit [www.lobstermen.com](http://www.lobstermen.com) and look on the Right Whale Litigation and Management Updates page.

MS does not just harass the commercial lobster industry with threats and lawsuits, he is a serial litigant and harasses and sues municipalities along with other industries in hopes of a financial settlement. All that MS really wants is money, and unfortunately he has found an avenue to repeatedly fund

himself for over 30 years. I do believe his spiteful, self-serving litigious ways are coming to an end.

Over the last month or so, I have talked, texted and emailed with numerous MLA members as we have received over 200 plus Notice of Intent to be sued by MS from you and, if you have not yet sent it along please send it to [beth.casoni@lobstermen.com](mailto:beth.casoni@lobstermen.com) and we will share it with our attorneys. The attorneys said “DO NOT ENGAGE WITH MS AT ALL”. If you do receive anything else from MS please send it along as well as our attorneys are standing by.



His belligerent use of the judicial system is deplorable and costing not only the MLA hundreds of thousands of dollars since 2019, but also the taxpayers of the Commonwealth millions of dollars too. When will

the government step in and make these unsubstantiated suits and outlandishly vulgar threats of being sued stop? Enough is enough!



Thank you to ALL of you who have made generous donations to the MLA Legal Defense Fund. Unfortunately, these dollars are already spent as the MLA is in a legal battle like no other for you and your business. We are grateful to have attorneys that understand our efforts are not in vain and every dollar matters.

I am always humbled when asking for any kind of help as you all continually step up to support the MLA Legal Defense Fund. I do believe we are so close to putting the final nail in the coffin for MS and he knows it. We cannot back down now.

The MLA will be sending out a new Legal Defense Fund t-shirt (artwork depicted to the left) for donations that are made of \$250 or more. All donations made as of 7/1/22 and monthly donations will receive a t-shirt as well. We cannot do this alone and need your help today!

Safe on the water,

**Beth Casoni**

Executive Director

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****Region 1****5 Post Office Square, Suite 100****Boston, MA 02109-3912**

June 17, 2022

Kelly Trice, President  
Holtec Decommissioning International  
Kristina P. Singh Technology Campus  
1 Holtec Blvd.  
Camden, NJ 08104

Dear Mr. Trice:

I write in response to your letter of May 24, 2022, in which you present a new alternative interpretation of Part I.B.2 of National Pollutant Discharge Elimination System (NPDES) Permit No. MA0003557, issued by EPA Region 1 for the Pilgrim Nuclear Power Station (PNPS) in Plymouth, Massachusetts.<sup>1</sup> In your letter, you state for the first time that you now believe that the discharge of “treated” wastewater from the spent fuel pool “complies with” the current NPDES permit and assert that this interpretation is “well within the plain language of the NPDES permit and would be consistent with the MOU and past discharge practices.” EPA does not agree with your position, as detailed below. First, your novel interpretation—through which you attempt to narrow the permit’s prohibition of wastewater discharges to “untreated” effluent—directly conflicts with the “plain language” of the permit. The provision at Part I.B.2 is clear on its face and provides in full that, “The discharge of pollutants in spent fuel pool water (including, but not limited to, boron) is not authorized by this permit.” NPDES Permit at Part I.B.2. Notably, to overcome the express terms of the permit and reach your new interpretation of Part I.B.2, you must insert the word “untreated” into this provision, but neither Part I.B.2 nor any other provision of the Permit specifies that Part I.B.2 only applies to “untreated” spent fuel pool water. Accordingly, for these reasons your reading of the permit is, in fact, *plainly inconsistent* with the unambiguous provisions of the permit.

Second, even if the provision were facially ambiguous and susceptible to differing interpretations, your interpretation contradicts the contemporaneous Response to Comments document (RTC) that accompanied EPA’s issuance of the Final Permit and that explained the bases for additions EPA made to the January 2020 Final Permit. The Draft Permit, which EPA issued in May 2015, did not include a provision comparable to Part I.B.2, *see* Draft Permit at Part I.E, but several commenters raised concerns during the public comment period about

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<sup>1</sup> The NPDES permittee of record is Holtec Pilgrim, LLC. EPA understands that Holtec Decommissioning International, LLC, is the current holder of licenses issued by the Nuclear Regulatory Commission and that both Holtec Pilgrim and HDI are ultimately owned by the same parent company.



environmental impacts of discharges that could occur during decommissioning, including the potential for discharge of spent fuel pool water. *See* RTC at 272-77. In response to these comments, EPA added the provisions at Part I.B.2 through .4 and explained the reason for doing so. As EPA noted, Entergy had informed EPA of anticipated changes in cooling water usage due to the shutdown of PNPS, but had not informed EPA about other expected discharges, such as how and when it intended to dispose of spent fuel pool water and other wastewater related to decommissioning.<sup>2</sup> *Id.* In addition, in 2018, Entergy announced that it intended to sell PNPS to Holtec, who subsequently revealed that it would accelerate the decommissioning of PNPS but likewise did not provide EPA with detailed information about these discharges that might occur as a result. *Id.* EPA explained that, because neither Entergy nor Holtec had provided information to EPA to quantify or characterize discharges related to decommissioning activities, including decontamination, dismantlement, demolition of plant systems and structures, and disposal of spent fuel pool water, EPA could not evaluate at that time the potential impacts of such discharges and, consequently, could not develop appropriate permit limits and conditions. *Id.* EPA clarified, therefore, that the Final Permit only authorizes the post-shutdown discharges specified in Part I.A and “does not authorize the discharge of pollutants associated with the spent fuel pool water,” among other sources. *Id.* All the foregoing affirms EPA’s straightforward reading of the permit and constitutes evidence of EPA’s intent in fashioning the categorical prohibition against the discharge of spent fuel water, whether treated or untreated. The distinction Holtec attempts to draw now—between spent fuel pool water that has been treated and that which has not—is simply not reflected in the agency’s explanation for adding Part I.B.2 to the Final Permit. Nor does Holtec’s new interpretation recognize or address EPA’s authoritative interpretation in the Response to Comments. Moreover, Holtec appealed several provisions of the NPDES Permit to EPA’s Environmental Appeals Board in March 2020 but did not challenge Part I.B.2 or dispute in any way EPA’s statements in the Response to Comments regarding the provision. The opportunity for challenging Part I.B.2 has long passed, and EPA stands by, and reiterates, its interpretation in the permit record, which is consistent with EPA’s position repeated in our February 17, 2022, letter to you.

The 1975 Memorandum of Understanding (MOU) likewise does not provide support for your new interpretation. You selectively quote from the MOU but take the language out of context and entirely mischaracterize its applicability to the 2020 Permit. The statement you quote from the MOU addressed a period near the initial startup of a new nuclear power reactor, not one constructed almost 50 years ago. In addition, “past discharge practices” occurred under a different NPDES Permit, specifically a Permit issued in 1990 when the facility was operational and generating electricity, not when it was being decommissioned.

The 2020 Permit’s meaning is clear on its face and that meaning is expressly corroborated by the Response to Comments: discharges of pollutants in water stored in the spent fuel pool, dryer/separator pit, torus, or reactor cavity are *not* authorized by the current NPDES permit. As EPA has explained, Holtec Pilgrim may choose to seek authorization for such discharges of

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<sup>2</sup> EPA now understands that Holtec intends to dispose of roughly 1.1 million gallons of water currently in the torus, the dryer/separator pit, and the spent fuel pool, which is considerably more than the radwaste system has traditionally discharged.

pollutants; EPA would analyze any such request in accordance with the CWA and NPDES regulations and may, if appropriate, authorize such a discharge via a permit modification or coverage under an applicable general permit. Any request must be accompanied by a sufficiently detailed characterization of the types of activities, effluent characteristics (including analytical data for all priority pollutants), treatment, and outfalls that the request for authorization covers. Although you shared some limited sampling results (pH, conductivity, total organic carbon, total suspended solids, and chlorides) with us during our virtual meeting on May 18, 2022, please be advised this information is not sufficient for EPA to make any regulatory decisions. While your letter presupposes that EPA authorization to discharge pollutants in this water would require the facility to make “significant changes in the plant design and add significant costs to the operation of PNPS,” EPA (and the public) has not had an opportunity to examine the pollutants and pollutant concentrations present in this water. Thus, neither you nor EPA can say with any degree of certainty at this time what treatment may be required or at what cost. EPA has not prejudged the outcome of any permit modification proceeding. Rather, if presented with a modification request and an appropriate characterization of the proposed discharges, EPA would analyze the submission in accordance with applicable Clean Water Act requirements, including that discharges must meet technology-based effluent limits or any more stringent limits necessary to meet state water quality standards. Any permit limits and conditions EPA develops would then be publicly noticed and made available for public comment prior to issuance of any final modification.

In summary, Holtec Pilgrim is not authorized under the current NPDES Permit to discharge pollutants in spent fuel pool water. If Holtec Pilgrim wishes to seek authorization from EPA for such discharges, Holtec must provide the information necessary for EPA to analyze the request and determine whether such a discharge would be in accordance with the CWA, NPDES regulations, and any other applicable federal law. *See, e.g.*, 40 CFR § 122.49. I hope this letter clarifies your options for ensuring compliance with the Clean Water Act. If you have any questions, feel free to contact Damien Houlihan at (617) 918-1586.

Sincerely,

Ken Moraff, Director  
Water Division

cc: Lealdon Langley, MassDEP



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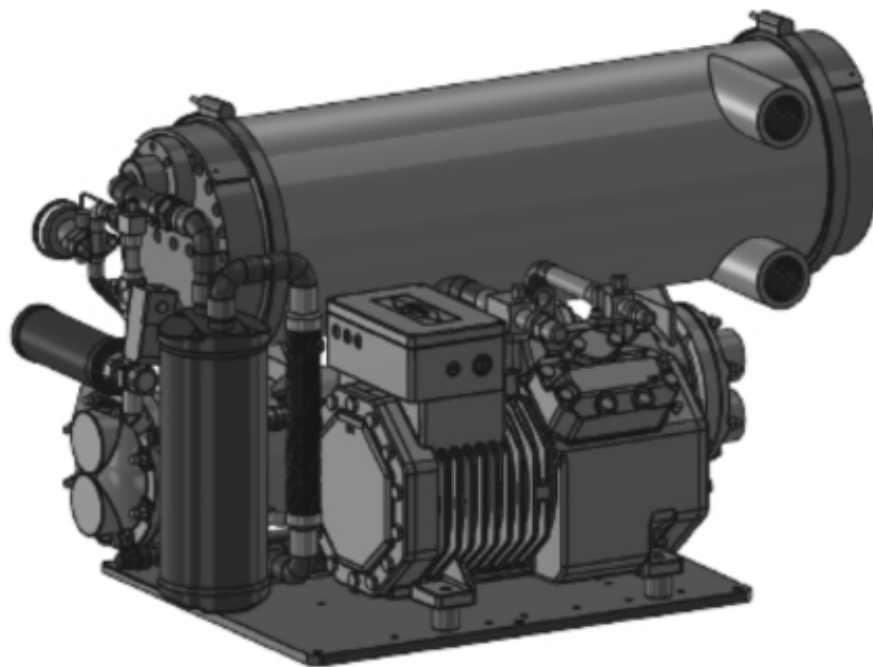
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# DMF Pilots New Abandoned Gear Retrieval Program

DMF has initiated a new joint program with the Massachusetts Environmental Police (MEP) to identify and remove all lost and abandoned fixed fishing gear within the portion of Massachusetts state waters that are seasonally closed to protect right whales. Beginning this February, we utilized a combination of aerial surveillance provided by the Center for Coastal Studies and MEP vessel patrols to identify and mark the location of lost/abandoned fixed fishing gear in the closure. DMF then utilized six contracted commercial lobster vessels working with our staff and MEP officers to haul and remove all gear. Between February 9 and March 17, we conducted a total of 49 sea-days in which we hauled more than 2,000 traps and roughly 500 buoy lines from the closure.

This effort not only ensures that our seasonal state waters closure is as effective as intended at reducing entanglement risk, but it also provided us with an opportunity to monitor compliance with the closure and requirements for weak rope/contrivances, maximum rope diameter, and gear marking. The vast majority (~80%) of buoy lines that we removed were from gear that was deemed “lost”. In these cases, the buoys, ropes, and traps were heavily fouled and typically consisted of a few traps or a lone trawl that belonged to a single individual. Within

that population of lost gear, compliance with 1,700-lb ‘weak rope,’ maximum rope diameter, and gear marking rules was >90%. This represents a good random sample of what we would expect compliance with these regulations to be and is consistent with observations of MEP during routine inspections at other times of year. Non-compliant permit holders in these cases were issued a non-criminal citation given the modest scale of the violation.

The remaining 20% of gear hauled in this program consisted of gear that appeared to be intentionally left behind in the closure. This typically consisted of multiple traps or trawls belonging to a single individual in a fairly discrete area. The gear in question did not have any fouling and was consistent with gear that had been



recently hauled (in one instance the gear was freshly baited). Compliance with 1,700-lb weak rope, maximum rope diameter, and gear marking rules among this subset of gear was very poor. In total, there was gear from six different permit holders that fall into this category. Given the serious nature of the violations and the clear intent to ignore the closure, DMF will pursue enforcement of these cases administratively through our adjudicatory process, whereby we will seek permit suspension or revocation depending on the seriousness of the violation.

There was a definitive regional trend in compliance with the closure.

In Cape Cod Bay and down the backside of Cape Cod, where the seasonal closure has been in effect since 2015, compliance rates were exceptionally high (~99%). Compliance rates in Massachusetts Bay north to the Cape Ann region however were lower, and this is where we observed all the major violations. The seasonal closure in this portion of state waters started in 2021. We expect that compliance in this area will improve in subsequent years as it has in Cape Cod Bay where fishers have dealt with the closure for a longer time.

We offer this program as a new compliance monitoring and mitigation program that we will conduct

annually as part of our Right Whale Habitat Conservation Plan. It is our expectation that aggressive enforcement through this program will enhance overall compliance with our protected species regulations and ensure that there is no entanglement risk to right whales when they are seasonally abundant in Massachusetts state waters.

*By Robert Glenn, Chief Marine Fisheries Biologist, and Julia Kaplan, Communications Specialist*

[https://www.mass.gov/news/dmf-pilots-new-abandoned-gear-retrieval-program?utm\\_medium=email&utm\\_source=govdelivery](https://www.mass.gov/news/dmf-pilots-new-abandoned-gear-retrieval-program?utm_medium=email&utm_source=govdelivery)





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# The Commonwealth of Massachusetts Division of Marine Fisheries

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p: (617) 626-1520 | f: (617) 626-1509

[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



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Secretary

**RONALD S. AMIDON**  
Commissioner

**DANIEL J. MCKIERNAN**  
Director

July 22, 2022

Fixed Gear Fishermen of Massachusetts,

*MarineFisheries* will be conducting its annual fall trawl survey throughout state coastal waters beginning September 6, 2022. Surveys have been conducted each May and September since 1978 to provide a consistent sampling of benthic fishes and mobile invertebrates. Survey data is used to monitor the condition of various marine stocks. The data is also used to inform the environmental review process, which advises on ways to minimize construction impacts on fisheries resources. Maintaining access to the planned sampling sites is critical to the integrity of the survey.

Please review either the live map on our website or the attached tables and maps of station locations. The live map displays all remaining tow locations, the map can be found on our website (<https://www.mass.gov/service-details/review-trawl-survey-updates>). **We kindly ask for your cooperation and insist that all fixed gear be kept clear of the shaded station tow circles by the dates listed in the table.** The coordinates of each selected point are provided in the attached table. The live map and attached figures show the station with a 1.5 n. mi. diameter circle around the selected point. All station circles are trimmed to the appropriate stratum which represents actual station outline. A list of station location information can also be accessed on our website (<https://www.mass.gov/service-details/review-trawl-survey-updates>). We will make every attempt to complete stations as timely as possible to minimize inconvenience to fixed gear fishermen. Completed stations will be updated and announced daily to notify fishermen that gear can be returned to the area. *MarineFisheries* is prepared to attach restrictions to permit renewals (under 322 CMR 7.01 (7)), mandating that fixed gear is not set on designated trawl survey sites between the announced date and notification of station completion. It remains our hope that this action will be unnecessary.

Each day the MLA will be notified of survey progress and all completed stations will be removed from the live map. The Massachusetts Lobstermen's Association will also post survey information on their webpage (<http://www.lobstermen.com>), as well as on Facebook (username: lobstermensassoc) and Twitter (handle: @masslobstermens).

In the event of a delay due to weather, the schedule will be resumed as soon as working conditions permit. Fishermen can contact the R/V *Gloria Michelle* on VHF channels 13 or 16 to determine the updated daily schedule.

Personnel aboard the NOAA R/V *Gloria Michelle*, a 65' western rigged steel stern trawler with a blue hull and white deckhouse, will carefully check each site for marked gear by cruising along a selected tow path before the net is set. Twenty-minute tows undertaken at 2.5 knots cover approximately 0.8 nautical miles. We encourage communicating helpful information to the R/V officers (via channels 13 or 16).

Your cooperation is greatly appreciated and is vital to the effective monitoring of marine resources in the Commonwealth. If you have any questions about the survey, please contact me ([steve.wilcox@mass.gov](mailto:steve.wilcox@mass.gov), (508) 742-9731). **If you have any questions about the MarineFisheries website, or Facebook, please contact Story Reed** ([story.reed@mass.gov](mailto:story.reed@mass.gov), 617- 626-1524).

Sincerely,

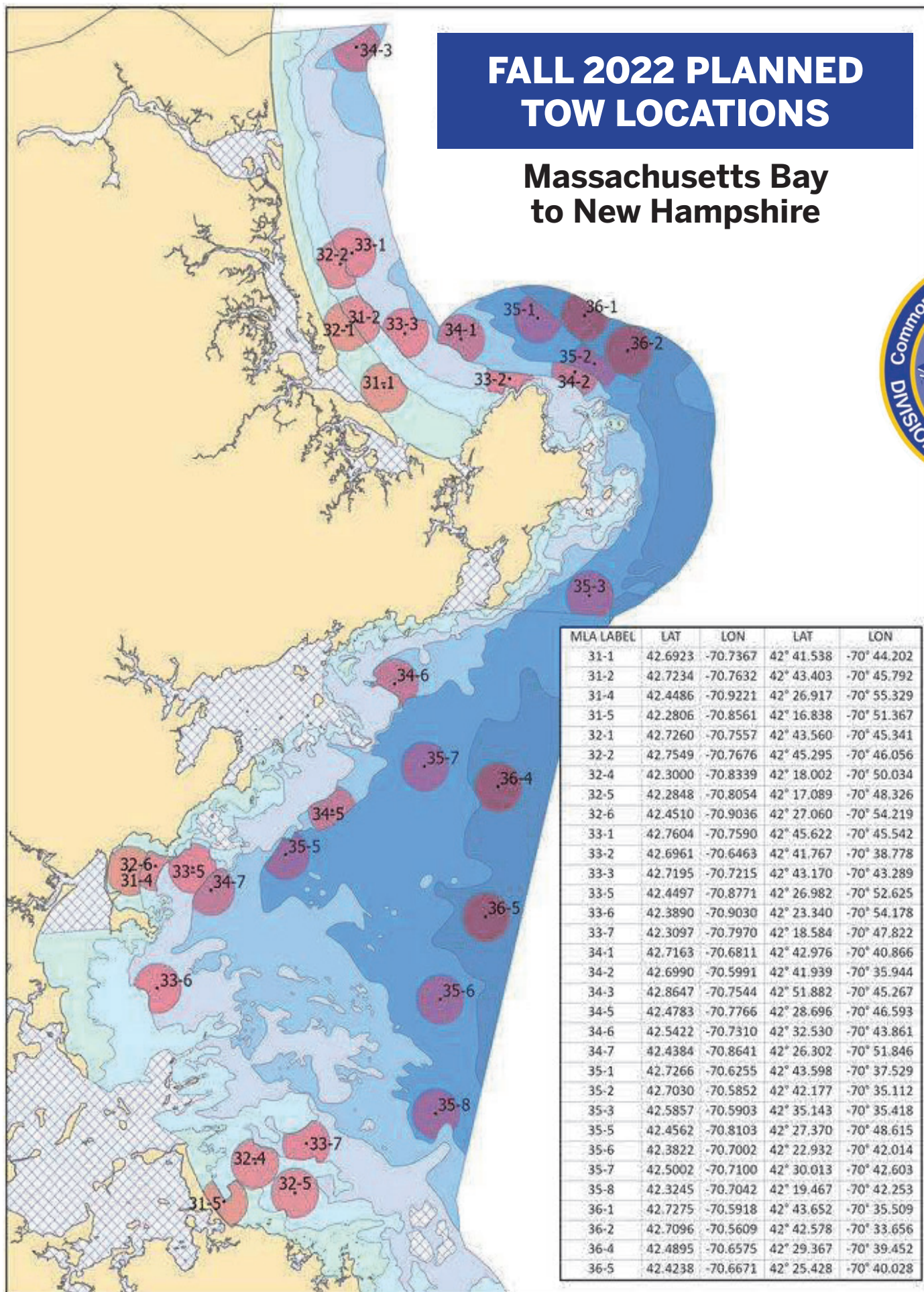
Steven Wilcox  
Senior Marine Fisheries Biologist  
Cc. Dan McKiernan, Director





# FALL 2022 PLANNED TOW LOCATIONS

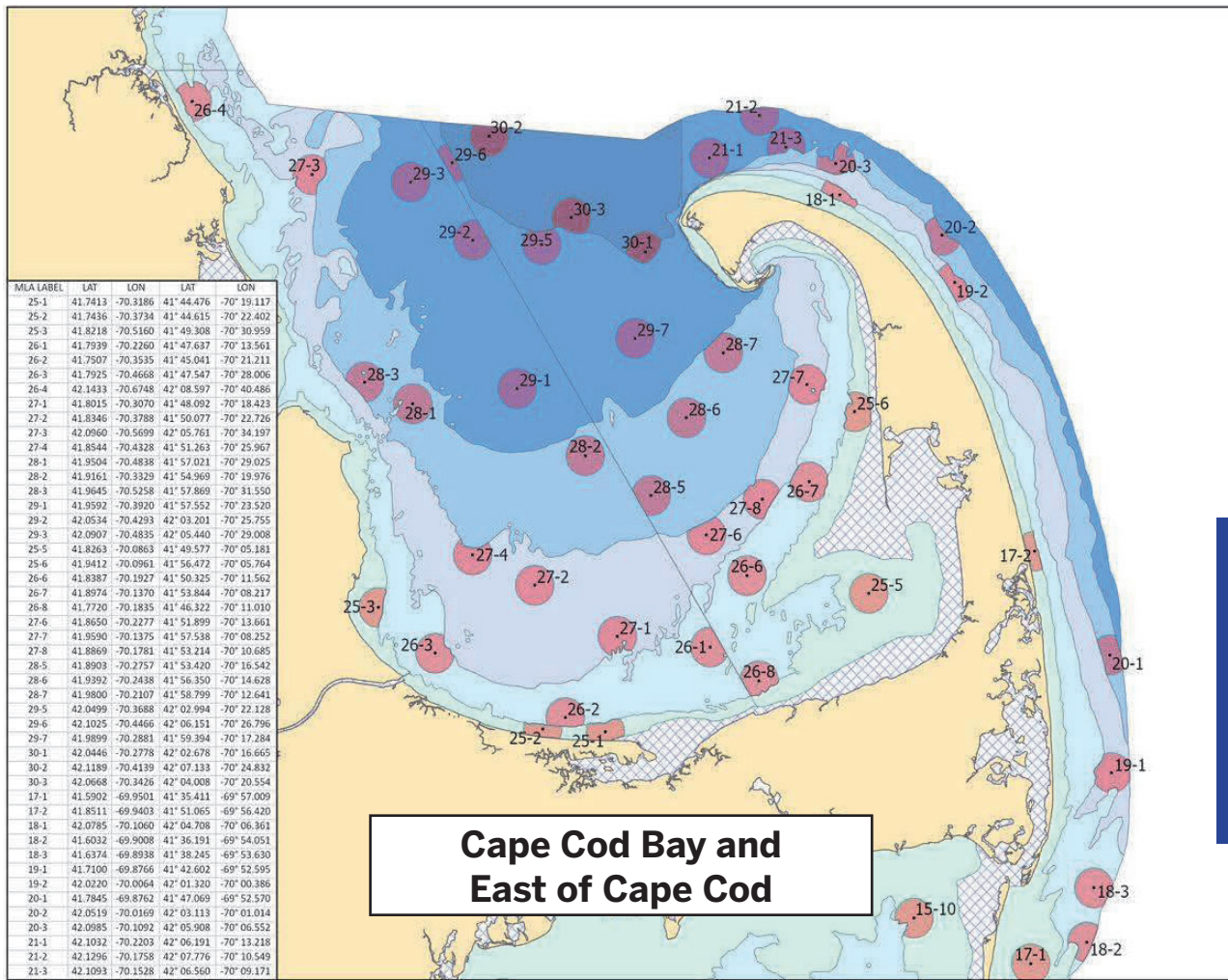
## Massachusetts Bay to New Hampshire



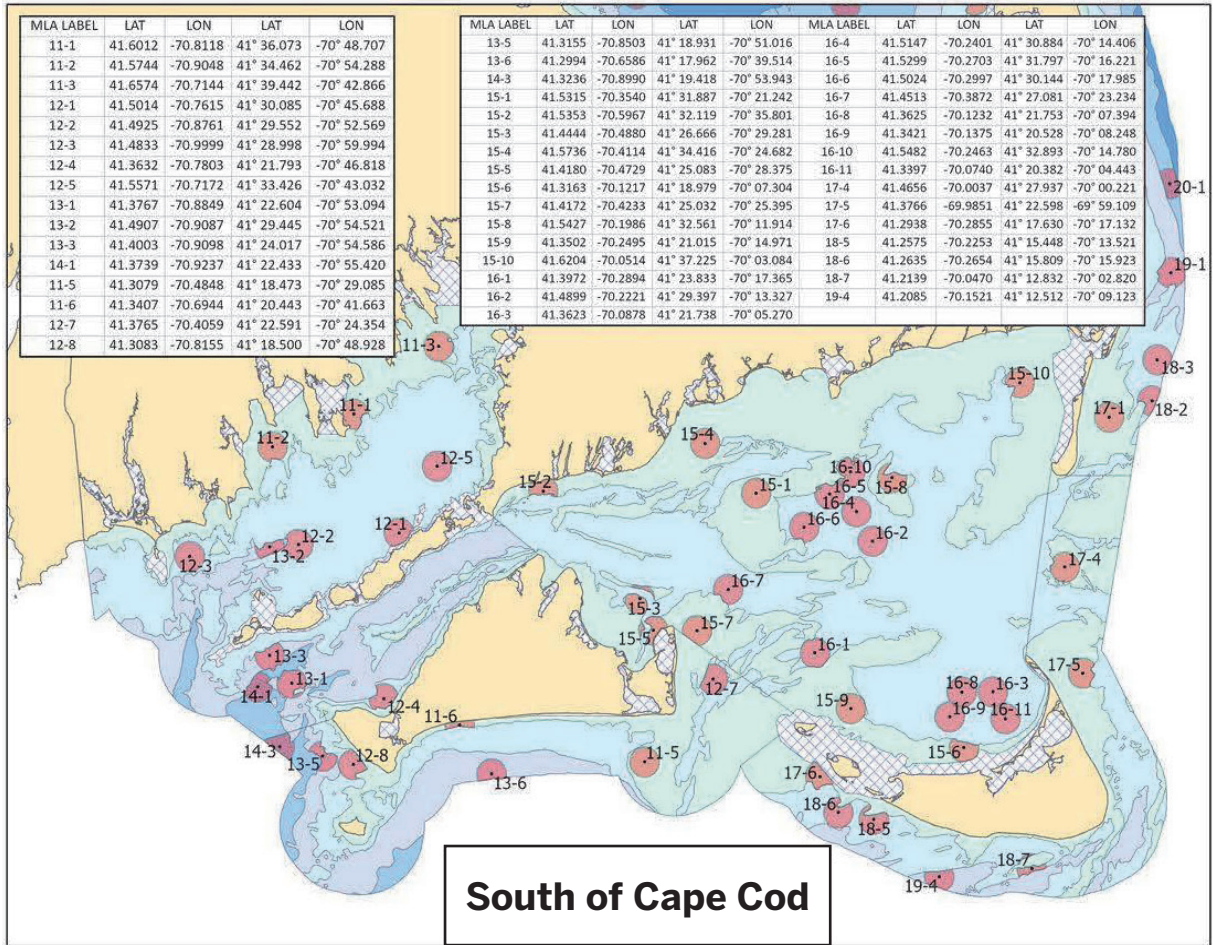




# FALL 2022 PLANNED TOW LOCATIONS



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## CABLE CORRIDOR FAQs

Vineyard Wind is in the process of building the nation's first utility-scale offshore wind energy project over 15 miles off the coast of Massachusetts. Vineyard Wind has received state permits necessary for 2 cables for the Vineyard Wind 1 project.

**Why do you need multiple offshore export cables?**

Each 800 megawatt (MW) wind farm requires two cables to transmit power and to ensure uninterrupted transmission.

**What type of cables are used?**

Offshore export cables are 220 – 275 kv AC cables. Inter-array cables are 66 kv AC cables.

**What is the diameter of the cables?**

The offshore export cables are 10-11 inches in diameter. The inter-array cables are 5-6 inches in diameter.

**Why can't they be buried together?**

Offshore export cables will be buried in the same corridor but a reasonable distance must be maintained so cables don't impact each other and in case any repairs are necessary.

**How wide an area will be disturbed during burial?**

Trench width is expected to be approximately 3.5 feet for each cable. Cable installation equipment can temporarily disturb a 3.5-6.5 foot wide area on the seafloor.

**How deep will they be buried?**

The offshore export cables and the inter-array cables will be buried beneath the seafloor at a target depth of 5-8 feet.

**What happens if it cannot be buried?**

Cable burial is a top priority, however if sufficient depth cannot be reached there are different cable protection methods that can be used:

**Rock placement** - Laying rocks on top of the cable to provide protection.

**Concrete mattresses** - Prefabricated flexible concrete coverings that are laid on top of the cable.

**Half-shell pipes** - Two halves are fixed around the cable to provide mechanical protection.

**What effect will the cables have with respect to electromagnetic (EMF) fields?**

AC subsea power cables have the potential to emit a low-level (less than a common magnet) localized EMF, within a few feet of a buried cable. At the target depth of 5-8 feet, EMF levels are greatly reduced. Find studies and research about EMF at BOEM.gov.

**How fast do the cable laying vessels move?**

Typical cable vessel installation speeds are expected to range from approximately 330ft – 650ft per hour (equivalent to 1-2 nautical miles in 18 hours) along the offshore export cable corridor with similar or faster speeds for the inter array cables between the turbines.

**When will the cables be installed?**

Export cables will be installed in accordance with state and federal time of year restrictions to reduce conflict with commercial fishing activity and sensitive spawning seasons.

**How do I stay informed about survey and installation vessels offshore?**

Sign up for Vineyard Wind's Offshore Wind Mariner Updates. We provide timely bulletins by email and text message about where and when vessels are deployed, what they will be doing and contact information for the vessels. Sign up here: [vineyardwind.com/fisheries](http://vineyardwind.com/fisheries).

Please contact Vineyard Wind Fisheries Liaisons for latest information.  
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Geophysical and geotechnical data has been collected along the cable corridor during the summers of 2017-2020.

The width of the cable corridor sampled is 3,100-5,100 feet. The cables will be monitored after installation and at regular intervals over the life of the project.

### GEOPHYSICAL SURVEYS

Geophysical surveys collect data using remote sensing systems that include:

**Side scan sonar** – high frequency sonar to obtain acoustic images of the seafloor only

**Bathymetry** – multibeam sonar - provides a swath of water depth (bathymetry) data

**Magnetometer** – sensor that detects ferrous (iron) objects on and below the seafloor

**Sub bottom profilers** – lower frequency sonar that penetrates below the seafloor to look at sediment layers in the upper 30-250 feet

### GEOTECHNICAL SURVEYS

Geotechnical surveys collect data from physical sampling devices that include:

**Cone penetration testing (CPT)** – a 1.6 inch diameter probe that measures sediment properties as it is pushed into the sub-surface at 10-16 feet, or up to 115 feet

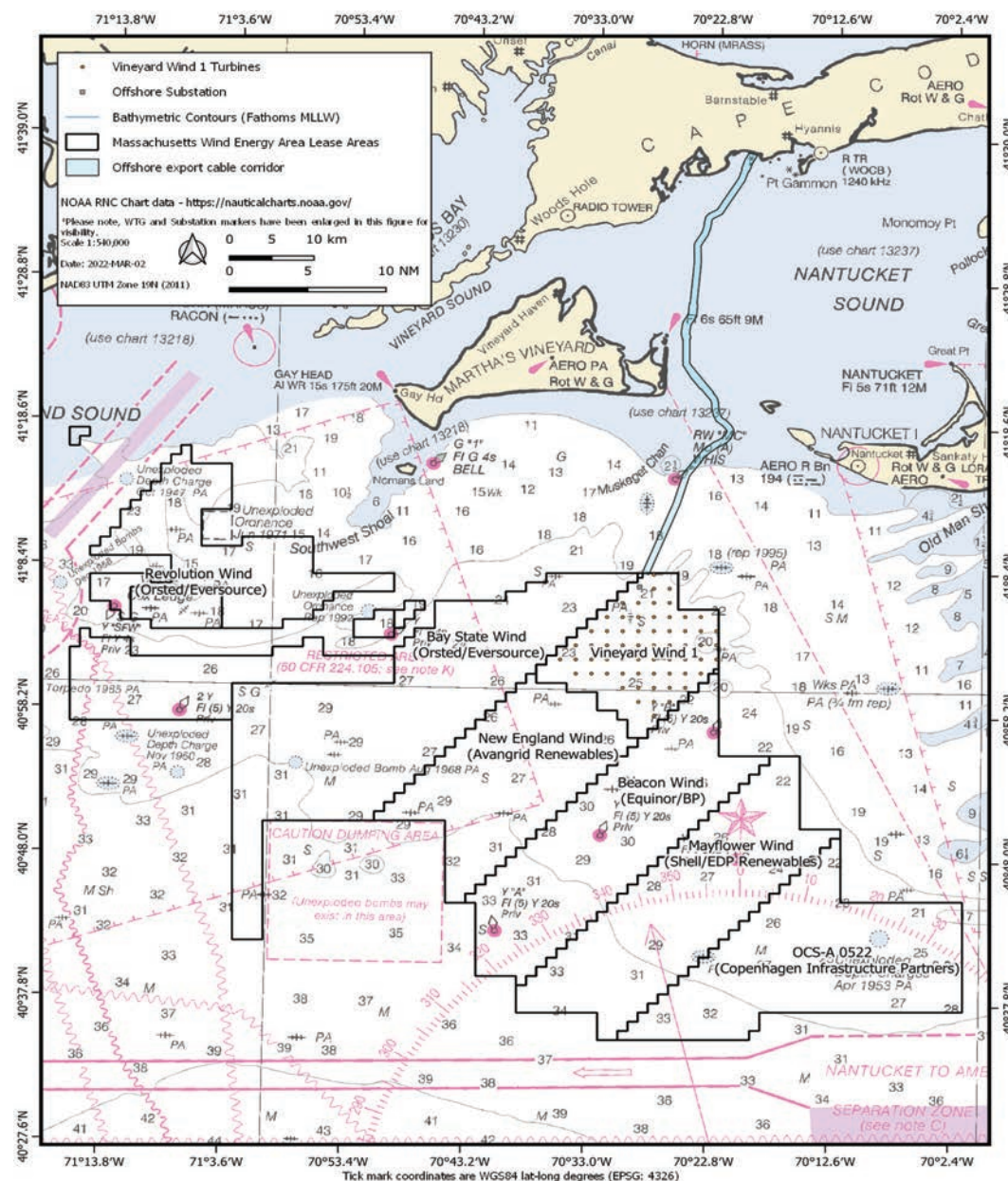
**Benthic grabs** – a small bucket that retrieves sediment from the surface layer of the seafloor and is used to analyze sediment grain size and benthic organisms

**Vibracore** – takes a core sample 3-4 inches in diameter through sediment up to 15 feet

### VISUAL IMAGERY

Visual Imagery is also collected along the cable corridor and includes:

**Underwater cameras** – records continuous video transects and/or still photos of the seafloor













# Funding

FROM PAGE 1

- **\$17,380,000** for ORF NMFS Wind Energy: Scientific Survey Mitigation;
- **\$8,669,000** for ORF NMFS Wind Energy: Fisheries Science & Technical Reviews;
- **\$6,155,000** for ORF NMFS Wind Energy: Fisheries Management;
- **\$4,476,000** for ORF NMFS Wind Energy: Protected Species Environmental Reviews and Science; and
- **\$8,719,000** for ORF NOS Foundational Information for Expansion of Offshore Wind Energy.

We have serious concerns, however, that these investments will not adequately fund the activities and personnel (FTEs) necessary to appropriately minimize and mitigate the environmental and economic impacts of OSW. Specifically, we are concerned that the dollar amount requested for the Scientific Survey Mitigation work is far too low given the rapid pace of OSW leasing and the additional scientific surveys that will be impacted. Furthermore, we request the Committee to consider appropriating additional funding specifically for cooperative research projects aimed at evaluating and mitigating the impacts of OSW.

## ORF NMFS WIND ENERGY: SCIENTIFIC SURVEY MITIGATION

We respectfully request no less than \$43.75 million for NMFS Scientific Survey Mitigation.

Fisheries data collection, surveys, and assessments are crucial to our understanding of our ocean and fishery resources. Specifically, the data collected through annual federal scientific surveys is an integral piece of the stock assessment and catch limit setting process, foundational pillars of our nation's sustainable fisheries management. NMFS currently conducts more than 50 such long-term standardized surveys, many of which have been ongoing for more than 30 years. These surveys provide a long-term time series data set, essentially a time lapse of the status of fish stocks; their scientific value lies in their consistency over time.

NMFS has made it clear that impacts to scientific surveys will occur and will need to be mitigated due to: preclusion, statistical design, habitat alteration, and loss of sampling efficiency. NMFS must also mitigate the impacts on fisheries dependent data, which supplement and improve survey data for many major U.S. fisheries. This mitigation work is a significant undertaking for a single scientific survey and yet we are now looking at no fewer than 25 known surveys across the Atlantic and Pacific coasts that will be disrupted by OSW. At \$1.75 million per affected survey to adjust scientific methodologies and calibrations in the face of large-scale OSW installations, this request is both reasonable and necessary.

Scientific survey mitigation has resulted in, and will continue to cause, increased demand for staff time and resources from NMFS Science Centers, Regional Offices, and Office of Protected Resources. As noted in the BOEM/NMFS Draft Survey Mitigation Implementation Strategy and underscored by both agencies, the fishing industry, and the public for years, NMFS has yet to receive any dedicated funding for scientific survey mitigation. Simply put, this is unacceptable.

Furthermore, as current and historical users of the marine environment whose livelihoods will be impacted by disruptions to surveys and fishing grounds, this funding will be critical to ensuring the agency can begin to address survey impacts so that we understand and secure our future fishing opportunities.

To execute NMFS' statutory mandate to manage, conserve, and protect living marine resources using the best available science, and to protect the billions of dollars worth of investments in our fisheries management, science, and fishing business operations, it is paramount that Congress increase scientific investments aimed at understanding the impacts of OSW, deliver critical scientific data, and ensure that domestic sustainable seafood production is supported in the process.

## NMFS COOPERATIVE RESEARCH

We respectfully request no less than \$30 million for NMFS Cooperative Research projects specific

to addressing the impacts of OSW, equivalent to \$5 million per Fisheries Science Center.

NMFS Cooperative Research efforts give commercial fishermen and processors a role in building the industry's resilience to climate change while building trust in management outcomes and decisions. Additionally Cooperative Research helps address existing and emerging data gaps, rebuilds trust between managers and the seafood industry, helps incorporate local and traditional knowledge in science, and encourages buy-in to management decisions.

Specifically with respect to OSW, cooperative research will allow fishermen and processors to participate in improving our collective understanding of impacts and how best to sustain the viability of both industries. Fishermen develop important hypotheses based on observed environmental changes and collect data that improve understanding of local conditions and inform climate and fisheries sciences. More cooperative research would assist in understanding fisheries behavior and operational needs in relation to OSW. Cooperative Research projects specific to OSW may also provide an alternative source of income for those fishermen who are displaced from their fishing grounds and present an opportunity for fishermen to assist NMFS in collecting data in/ around OSW arrays where larger NOAA research vessels may not be able to access.

Currently, there is a gross disparity in federal research funding available to OSW proponents, with extraordinarily little available to those without a financial interest in its deployment. Yet, despite the vast importance of cooperative research toward achieving equitable participation in ocean planning, we are concerned that its funding is often the first item on the chopping block when cuts are necessary. We strongly urge the Committee to resist reducing or cutting funding for Cooperative Research, particularly as we face significant hurdles with respect to addressing the impacts of OSW.

## CONCLUSION

The scale of OSW proposed in the U.S. is staggering. So too, are the fi-

nancial resources already invested and required to develop effective strategies for its deployment. Notably, one recent lease alone sold for over \$1 billion in the New York Bight. Other federal agencies have received billions of dollars to support OSW permitting and transmission needs; we feel the development of appropriate environmental impact mitigation strategies are equally important, if not more so. Additionally, given the pace of OSW and the lack of consideration of development on fisheries impacts, this funding is important now; securing funding after surveys are impacted will be too late.

While we acknowledge the need to take action on climate change, our government must ensure that it does everything in its power to avoid, minimize, and mitigate the impacts of OSW on our marine environment, fishing businesses, and fishing communities. Adequately funding Scientific Survey Mitigation and additional Cooperative Research would be a productive place to start and we implore you to take seriously our requests outlined above.

We are glad to see President Biden's FY23 Budget Request include investments across NOAA to address the impacts of OSW. However, we strongly support additional investments in NMFS Scientific Survey Mitigation and Cooperative Research initiatives and urge Congress to direct federal appropriations to these two critical NMFS programs.

We appreciate your consideration of these requests. Please don't hesitate to reach out to Leigh Habegger ([leigh@seafoodharvesters.org](mailto:leigh@seafoodharvesters.org)) or Annie Hawkins ([annie@rodafisheries.org](mailto:annie@rodafisheries.org)).

*Respectfully,*

**Leigh Habegger**  
**Executive Director**

Seafood Harvesters of America  
*National*

**Annie Hawkins**  
**Executive Director**

Responsible Offshore  
Development Alliance  
*National*

SEE NEXT PAGE FOR ADDITIONAL SIGNATORIES



## **FISHING ASSOCIATIONS**

### **Alliance of Communities for Sustainable Fisheries**

Alan Alward  
Co-Chair  
*Pacific*

### **California Wetfish Producers Association**

Mark Fina  
Executive Director  
*Pacific*

### **Cape Cod Commercial Fishermen's Alliance**

John Pappalardo  
Chief Executive Officer  
*New England*

### **East Farm Commercial Fisheries Center of Rhode Island**

Fred Mattera  
Executive Director  
*New England*

### **Fisheries Survival Fund**

David Frulla  
Counsel  
*Mid-Atlantic, New England*

### **Fishing Partnership Support Services**

Dan Orchard  
Executive Vice President  
*New England*

### **Garden State Seafood Association**

Scot Mackey  
Executive Director  
*Mid-Atlantic*

### **Gulf of Mexico Reef Fish Shareholders' Alliance**

Buddy Guindon  
Executive Director  
*Gulf of Mexico*

### **Long Island Commercial Fishing Association**

Bonnie Brady  
Executive Director  
*Mid-Atlantic*

### **Maine Coast Fishermen's Association**

Ben Martens  
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*New England*

### **Maine Lobstermen's Association**

Patrice McCarron  
Executive Director  
*New England*

### **Massachusetts Lobstermen's Association**

Beth Casoni  
Executive Director  
*New England*

### **Massachusetts Fishermen's Partnership**

Ed Barrett, President  
Angela Sanfilippo, Exec. Director  
*New England*

### **Massachusetts Seafood Collaborative**

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*New England*

### **Midwater Trawlers Cooperative**

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Executive Director  
*Pacific, North Pacific*

### **New England Young Fishermen's Alliance**

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Founder & Executive Director  
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### **New Hampshire Commercial Fishermen's Association**

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*New England*

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Executive Director  
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### **Northeast Sector Service Network, Inc.**

Elizabeth Etrie  
Program Director  
*New England*

### **Oregon Dungeness Crab Commission**

Hugh Link  
Executive Director  
*Pacific*

### **Oregon Trawl Commission**

Yelena Nowak  
Executive Director  
*Pacific*

### **Pacific Coast Federation of Fishermen's Associations**

George Bradshaw  
President  
*Pacific*

### **Pacific Whiting Conservation Cooperative**

Daniel Waldeck  
Executive Director  
*Pacific*

### **Purse Seine Vessel Owners Association**

Robert F. Kehoe  
Executive Director  
*Pacific, North Pacific*

### **Rhode Island Commercial Fishermen's Association**

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President  
*New England*

### **Rhode Island Party and Charter Boat Association**

Captain Rick Bellavance  
President  
*New England*

### **Shrimp Producers Marketing Cooperative**

Nick Edwards  
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### **Southern Oregon Ocean Resource Coalition**

Susan Chambers  
Chair  
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### **United Catcher Boats**

Brent Paine  
Executive Director  
*Pacific, North Pacific*

### **West Coast Pelagic Conservation Group**

Michael Okoniewski  
Secretary  
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### **West Coast Seafood Processors Association**

Lori L. Steele  
Executive Director  
*Pacific*

### **II Northeast Fishery Sector, Inc.**

Joseph Orlando  
President  
*New England*

### **X Northeast Fishery Sector, Inc. & XIII Northeast Fishery Sector, Inc.**

John Haran  
Sector Manager  
*Mid-Atlantic, New England*

## **FISHING BUSINESSES**

### **Atlantic Cape Fisheries, Inc.,**

**Galilean Seafood, Inc.,**  
**IQF Custom Packing, LLC,**  
**Point Pleasant Packing, LLC,**  
**Sea Harvest, Inc.,**  
**Atlantic Harvesters, LLC,**  
**Martin Fish Co., LLC,**  
Barry Cohen  
Chairman  
*Mid-Atlantic, New England*

### **Bernadette Fisheries, Inc.,**

**Pacific Trawlers, Inc.,**  
**Stormie C, LLC**  
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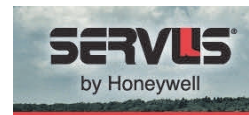
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# Lobster Vessel Trackers to be Required in 2023



Beginning in 2023, one of the biggest blind spots in the assessment and management of commercial fisheries will be resolved. Precise location of lobster fishing effort, especially in federal waters, has been absent from the collection of statistics for this important fishery. Over the past two decades nearly all other important offshore commercial fisheries (such as scallops, groundfish, and surf clams) have been required under federal regulations to deploy vessel monitoring systems that reveal and archive fishing locations. A new coastwide requirement for tracking devices to be placed on lobster vessels operating in federal waters will soon address this deficiency.

Why is it critical for lobster fishery vessels to reveal more specific fishing locations? The lobster fishery must establish its footprint in the face of competing uses of the ocean: offshore wind development, aquaculture, and divergent conservation objectives including protection of North Atlantic right whales. These challenges require detailed data that can show which fishing grounds are vitally important to the commercial lobster fishery. Zoning of the ocean is a new management challenge for fishery managers as these new users and interconnected management objectives might impinge on lobstermen's ability to fish their traditional fishing grounds.

This rule change will not affect commercially permitted vessels that only have a state permit and are therefore eligible to fish only in state waters. Lobster fishing activity in state waters close to shore has been sufficiently documented through DMF's historic and current catch reporting requirements. Trip-level reporting with state level statistical

sub-areas (i.e., state waters divided into 14 smaller geographical zones) has been required since 2010, and for many decades prior to that, lobstermen submitted an annual catch report summarizing catch and landings by state statistical area as well.

The Atlantic States Marine Fisheries Commission approved the management plan (Addendum XXIX) in March that mandates all states—by the end of 2023—require vessels in their state with federal lobster permits to deploy an electronic tracker to collect and transmit spatial data. ASMFC staff working with DMF and other states' staff biologists have successfully tested trackers over the past few years. Vessel location will be collected every minute when not docked or moored; this will allow for the distinction between fishing activity and transit. Additionally, in the future, data analysts hope to use the data collected by trackers to estimate the number of traps fished per trawl.

The addendum allows for the use of cellular-based tracking systems which are likely to incur lower costs than the satellite-based units used in many federal fisheries. Cellular-based trackers remain in operation and collecting spatial data regardless of cellular service availability; while these devices will only transmit those data when in cellular service range, they otherwise store them for upload when the vessel returns to within range. This makes cellular-based trackers distinct from satellite-based vessel monitoring systems, which are truly real-time monitors. Data for an individual vessel will be kept strictly confidential—just as all catch and effort data have been kept confidential. Aggregated data will be used by state and federal government officials to understand the times and places lobster fishing occurs.

The collection of enhanced spatial and temporal data through these electronic tracking devices in the offshore lobster fishery will help managers address a number of challenges facing the fishery. Electronic tracking data will greatly aid the scientists who work on periodic stock assessments to estimate exploitation and abundance of American lobster, because the trackers will allow size composition data to be linked to harvest at a

much finer spatial resolution than what is currently possible. Additionally, the data will improve the models used to assess the location of vertical lines in the fishery and their associated risk to endangered North Atlantic right whales which could impact federal risk reduction requirements for the fishery. Ocean planning efforts require detailed spatial usage data to minimize conflicts among all activities such as fishing, aquaculture, marine protected areas, and offshore energy development; these data will provide fishery managers information needed to help maintain industry fishing grounds. Last, the efficiency of law enforcement efforts to examine lobster gear in the water for compliance will be improved by helping enforcement officials locate widely dispersed gear in the offshore fishery.

Before being approved by the ASMFC, there was some hesitancy among Lobster Management Board

members to approve the new Addendum due to the cost burden to be placed on fishermen. To alleviate that problem, Congress approved an appropriation that will allow states to financially support vessel owners for the purchase, installation, and annual data costs of the devices (for several years). DMF expects to receive grant funds from ASMFC and be able to re-grant those funds to eligible vessel owners in the months ahead. DMF hopes to have the federally-permitted lobster fleet fully functional with trackers by this time next year.

*By Dan McKiernan, Director, and  
Story Reed, Permitting and Statistics  
Program Manager*

[https://www.mass.gov/news/lobster-vessel-trackers-to-be-required-in-2023?utm\\_medium=email&utm\\_source=govdelivery](https://www.mass.gov/news/lobster-vessel-trackers-to-be-required-in-2023?utm_medium=email&utm_source=govdelivery)

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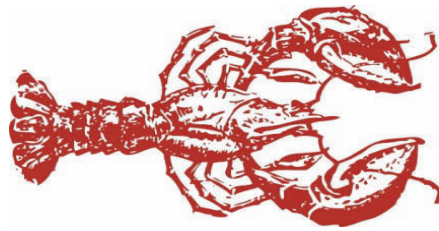
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# New England Fishery Management Council

FOR IMMEDIATE RELEASE  
July 18, 2022

PRESS CONTACT: Janice Plante  
(607) 592-4817, [jplante@nefmc.org](mailto:jplante@nefmc.org)

## Council Approves HAPC for Southern New England; Previews Northeast Regional Habitat Assessment Data Explorer

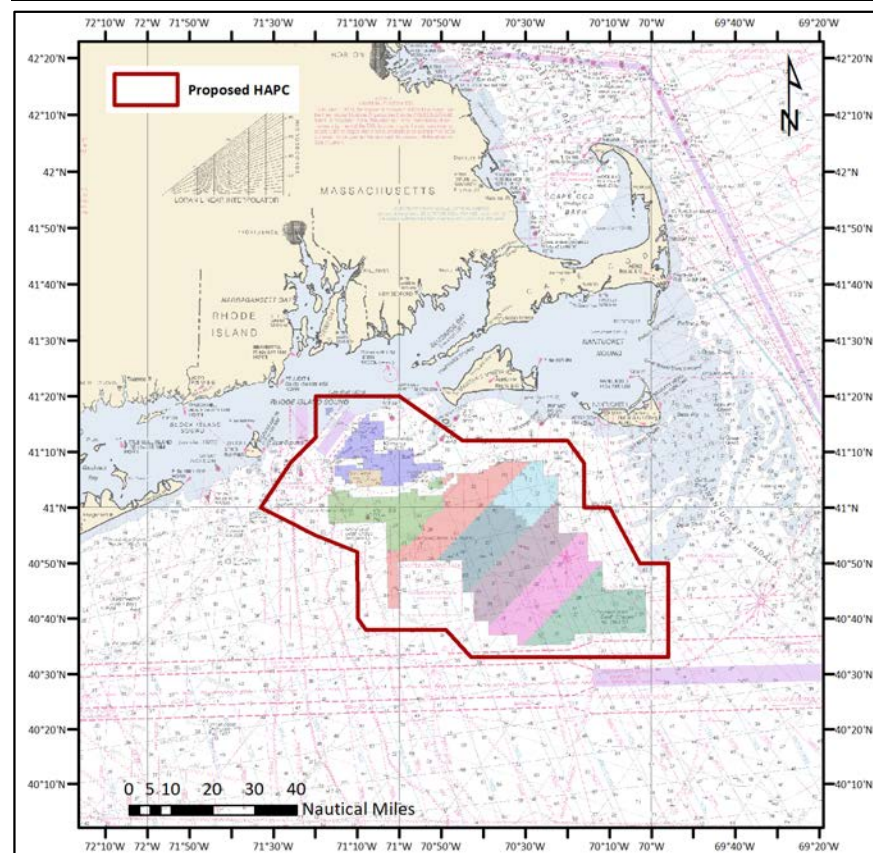
The New England Fishery Management Council voted in late June to establish a new Habitat Area of Particular Concern (HAPC) that overlaps offshore wind-energy lease sites in Southern New England and includes a 10-kilometer buffer on all sides of the sites (see map below).

The Council selected this area to highlight its concerns over potential adverse impacts from offshore wind development on: (1) sensitive hard-bottom habitats; and (2) cod spawning activity. If approved by NOAA Fisheries, the HAPC designation would be applied during the essential fish habitat (EFH) consultation process for offshore wind projects in the area. Some projects are already permitted, while others are currently undergoing environmental review or are within the site assessment phase.

HAPCs are a subset of EFH. The proposed Southern New England HAPC overlaps designated EFH for several Council-managed species that rely on complex habitats. Furthermore, there has been recent evidence of cod spawning activity on Cox Ledge within the proposed HAPC. The boundaries cover the footprint of the wind-energy leases plus a buffer on all sides, recognizing that some aspects of offshore development may have impacts that extend out to at least 10 kilometers, such as acoustic impacts from pile driving.

The Council reviewed four other HAPC alternatives before selecting this fifth option, which combines the conservation objectives of the other alternatives and emphasizes the importance of complex habitat on the egg, juvenile, and adult life stages of species ranging from herring and scallops to monkfish, skates, winter flounder, and red hake in addition to cod. The Council initiated the framework for this

### Habitat Area of Particular Concern (HAPC) Proposed for Southern New England



*Above, outlined in red, is the Council's proposed HAPC. The area encompasses offshore wind-energy lease sites in Southern New England and adds a surrounding buffer zone. – New England Council graphic*





# New England Fishery Management Council

HAPC in February 2022, postponed action in [April](#) pending further development, and took final action in June. View the latest HAPC [presentation](#) and other June meeting materials [here](#).

**NORTHEAST REGIONAL HABITAT ASSESSMENT (NRHA) DATA EXPLORER:** The Council received a preview of the new [data explorer](#) developed by the Northeast Regional Habitat Assessment [leads](#) working with the Steering Committee, teams, and partners. The Council expressed enthusiastic support during the June demonstration. The tool will continue to be refined with additional data and reports.

The goal of this three-year project was to describe and characterize estuarine, coastal, and offshore fish habitat distribution, abundance, and quality in the Northeast for more than 65 species with four action-areas in mind:

1. Fish abundance and trends in habitat types in the inshore area;
2. Habitat vulnerability, including responses to changes in climate;
3. Spatial descriptions of species habitat use in the offshore area; and
4. Habitat data visualization and decision support tools.

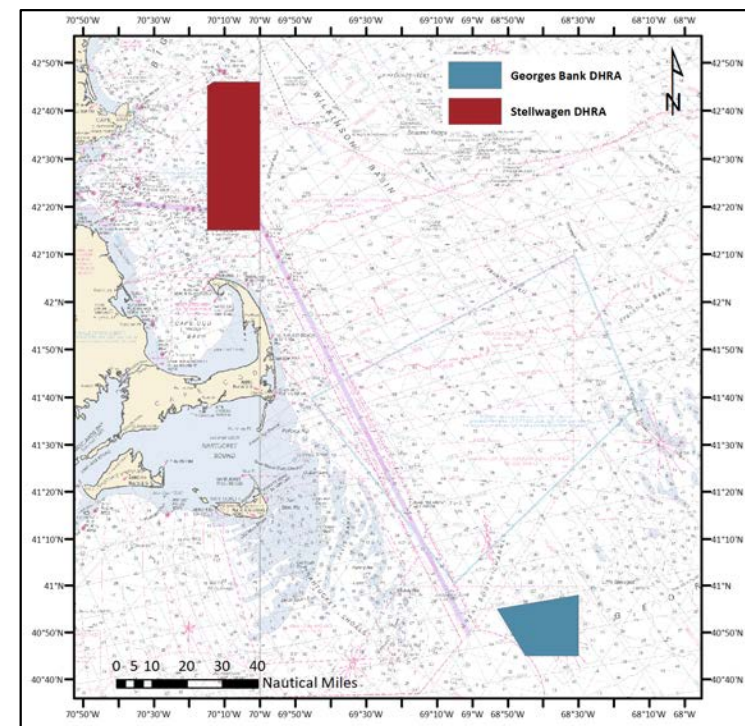
The data explorer [shares products](#) and provides tools to learn more about fish habitats. It includes survey data summaries, habitat distribution models, and reports.

**Stay Tuned!** The NRHA team, in conjunction with the New England and Mid-Atlantic Councils, will be developing outreach and communications materials over the summer and fall to help everyone [learn how to navigate the data explorer](#) and make the most of its extensive repository of information.

Welcome to the Northeast Regional Habitat Assessment Data Explorer

Survey View	Species View	Model View	Reports
Northeast regional and inshore bay/estuary view of fishery independent survey data including top 20 species abundance and biomass, similarity clusters, and survey temperature and salinity data.	Species view of fishery independent survey data, including distributions, relative abundance, and reports on habitat use and vulnerability to climate change.	Outputs from spatiotemporal models that describe species distributions as a function of dynamic environmental factors, species interactions and predicted change in habitat use under various climate scenarios.	Reports, publications, metadata summaries, trawl and seine survey comparisons and more.

## Dedicated Habitat Research Areas



*The New England Council developed two Dedicated Habitat Research Areas (DHRAs) – one on Stellwagen Bank and one on Georges Bank as shown above – under Omnibus Habitat Amendment 2 (OHA2). The amendment included a three-year review of the DHRAs and the ability for the Regional Administrator of the Greater Atlantic Regional Fisheries Office (GARFO) to remove the areas if no research is being conducted. GARFO is working on the review and will soon publish a notice soliciting information about ongoing research within the DHRAs. The Council created a flow chart (see pages 115-117 in [this document](#)) to evaluate whether the established criteria for maintaining the DHRAs has been met. The Council identified four categories of habitat research priorities in OHA2 that focused on: (1) gear impacts; (2) habitat recovery; (3) natural disturbance; and (4) productivity.*



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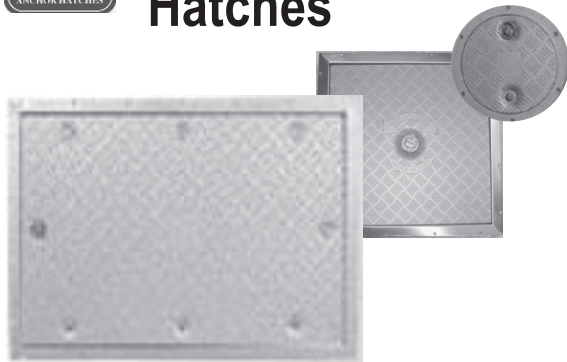
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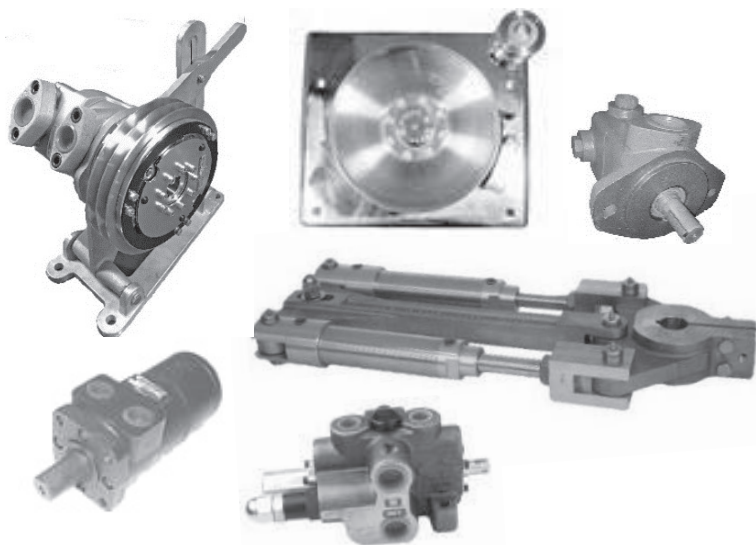
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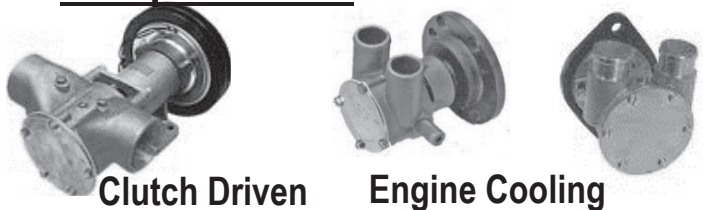
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The Massachusetts Lobstermen's Association (MLA) Legal Defense Fund (LDF) needs your support now more than ever. This dedicated fund is for the purpose of defending the Massachusetts commercial lobster fishermen from legal and fisheries management actions that could seriously impact our commercial lobstermen's ability to conduct their businesses and earn a living.

Currently, the MLA is actively engaged in three separate lawsuits that could have negative impacts on the commercial lobster industry and is working with multiple lawyers in Washington D.C. and here in the Commonwealth to fight for you and your industry.

**UPDATE JULY 26, 2022** — (Washington D.C.) Case 1:18-cv-00112-JEB - CENTER FOR BIOLOGICAL DIVERSITY et al v. ROSS et al, United States District Judge Boasberg issued a 43-pg. memorandum opinion on 7/8 in Center for Biological Diversity et al. v. Raimondo, C.A. No. 18-112. In that opinion, Judge Boasberg concluded that NMFS violated its obligations under the ESA and the MMPA by issuing the 2021 BiOp and 2021 Final Rule. The Court's ruling was narrow: it declined the NGO's offer to issue a remedy decision, and based its liability ruling on two findings: (1) the 2021 BiOp's incidental take statement, which authorized zero lethal takes, despite recognizing the likelihood of multiple lethal takes, did not satisfy NMFS' obligations under the ESA and the MMPA to reach a negligible impact of takes, and (2) the 2021 Final Rule amending the ALWTRP failed to comply with certain MMPA timing requirements.

While the decision represents a setback for NMFS and the industry, portions of Judge Boasberg's opinion show that His Honor is keenly aware of the economic toll that a closure would cause and has not reached the conclusion that a closure is necessary. As a preliminary matter, Judge Boasberg declined the NGO's invitation to issue a remedy decision based on the briefing presented to date. Instead, on page 42 of the decision, Judge Boasberg states (with regard to remedy): "The Court's findings at this juncture do not dictate that it must immediately shutter the American lobster fishery; indeed, it is cognizant of what a weighty blow that would inflict. Instead, the Court will order

additional briefing as to potential remedies, which may include remand with or without vacatur. CBD I, 2020 WL 1809465, at \*10 (doing same); see also Fed. Dfts. Cross-MSJ at 44-45 (requesting supplemental briefing). On such a remand, moreover, the Service may find that other measures exist to reduce lethal take, or that projected take is in fact lower than originally estimated. Remand thus need not be equivalent to a shutdown. For now, however, the Court reaches no determination on this question without the benefit of further briefing."

Other portions of the decision contain similar cautionary language regarding the potential impact on the industry:

- Page 3: "Cognizant of the potential effects of this ruling on the lobster industry — and on the economies of Maine and Massachusetts — and given the highly complex statutory and regulatory environment that this case involves, the Court orders no remedy here. Instead, it will offer the parties the opportunity for further briefing to articulate alternatives the Court may select."

- Page 15: "This new Rule comes into play against the backdrop of the importance of lobster fishing to the economies of several states along the Atlantic seaboard. In particular, in coastal Maine, "the lobster supply chain has an economic impact . . . of \$1 billion annually" and benefits numerous fishermen and their families. See Maine Cross-MSJ at 11; see also ECF No. 206 (Massachusetts Lobstermen's Association's Opposition (MALA Opp.)) at 9-11 (discussing economic and labor effects of trap/pot fishing on coastal Massachusetts communities)."

Regarding remedy briefing, the MLA and all of the other Defendants in (Washington D.C.) Case 1:18-cv-00112-JEB - CENTER FOR BIOLOGICAL DIVERSITY et al v. ROSS et al, requested that Judge Boasberg stay remedy briefing pending the decision in (Washington, D.C.) Case 1:21-cv-02509-JEB MAINE LOBSTERMEN'S ASSOCIATION, INC. v. NATIONAL MARINE FISHERIES SERVICE et al., in which the MLA and other Maine parties are intervening Plaintiffs. In that case, the MLA and Maine-based Plaintiffs are requesting that the Court find that NMFS's most recent BiOp, and therefore Take Reduction Rule, violate the ESA and the APA.

# Legal Defense Fund Updates

For those reasons, in that case, we asked the Court to remand the BiOp and Take Reduction Rule to NMFS for reevaluation based on lawful standards and rational assumptions. Given Judge Boasberg's comments at the hearing, we are not confident that His Honor will stay remedy briefing pending His Honor's decision in (Washington, D.C.) Case 1:21-cv-02509-JEB MAINE LOBSTERMEN'S ASSOCIATION, INC. v. NATIONAL MARINE FISHERIES SERVICE et al. While we are hopeful we are wrong in this regard, we believe the briefing schedule for remedies will be that: 1) the NGO's file their brief by August 12, 2022; 2) the Government file their brief by September 19, 2022; 3) Intervenor-Defendants, including the MLA, file their briefs by October 7, 2022; and, 4) the NGO's file reply briefs by October 21, 2022. After this briefing schedule, we expect oral argument. For these reasons, it will likely be many months before any decision is made.

**UPDATE JULY 26, 2022** — MAX Cases. Richard Strahan, who fashions himself as "Man Against Xctinction" or MAX, has continued his vendetta against Arthur Sawyer, the MLA, and the MLA members. As most of our members are well aware, MAX is intending to bring an ESA Section 9 Takings Claim against 800 commercial lobstermen on the false claim that Vertical Buoy Ropes (VBR) kills whales. We all know this is not true and United States District Judge Talwani already dismissed this type of claim against Arthur Sawyer in one of MAX's earlier cases, MAX v. MEOEEA, cv-22-1225-IT (D. Mass. 2019). We are confident that, if MAX brings these claims, we can secure dismissal with prejudice for our MLA members. If you have received a notice of an ESA Section 9 Takings Claim, please contact Sam Blatchley ([sblatchley@ecklandblando.com](mailto:sblatchley@ecklandblando.com)) as soon as possible, as Sam and his firm, Eckland & Blando, are leading the defense of our members against MAX.

We are also taking the offensive against MAX to stop this behavior in two different cases. First, in MAX v. Pentony, No. 1:21-cv-01131-TJK, (D.D.C. 2021), a federal case in Washington D.C., we have filed a motion for pre-filing injunction that, if granted, would prohibit MAX from filing claims against Sawyer or the MLA around the country without prior approval or at least limit him

from doing so in D.C. and the First Circuit courts (including Massachusetts, New Hampshire, Maine, Rhode Island, and Puerto Rico). We are also seeking the same relief in MAX v. McKiernan, No. 1:22-cv-10364-IT, a federal case in Massachusetts. MAX has used vile and disgusting language against the Courts, Sawyer, the MLA, its members, and its attorneys. We believe his seeming abuse of the legal system will result in either the D.C. Court or the Massachusetts Court granting the pre-filing injunction which will substantially curb MAX's ability to harass the MLA and its members using the court system

The commercial lobstermen's businesses are at stake as well as the thousands of jobs and shore side businesses that depend upon the continued success of the commercial lobster industry. The commercial lobstermen in Massachusetts are NOT to the problem and have done everything asked of them by National Marine Fisheries Service and have been working under the strictest conservation rules for the right whales anywhere in the world since 2014. Yet here we are, still fighting these lawsuits to keep the Massachusetts commercial lobstermen fishing.

The Massachusetts Lobstermen's Association has been actively involved in these lawsuits since 2018 and we need your generous support today to continue our fight to keep the commercial lobstermen fishing. As we all know, any legal action costs lots of money and over the last 5 years the Massachusetts Lobstermen's Association Legal Defense Fund has spent over \$300,000 fighting these legal battles. These are real threats to the historic and iconic commercial lobster industry and we are doing everything to keep the Massachusetts commercial lobstermen fishing.

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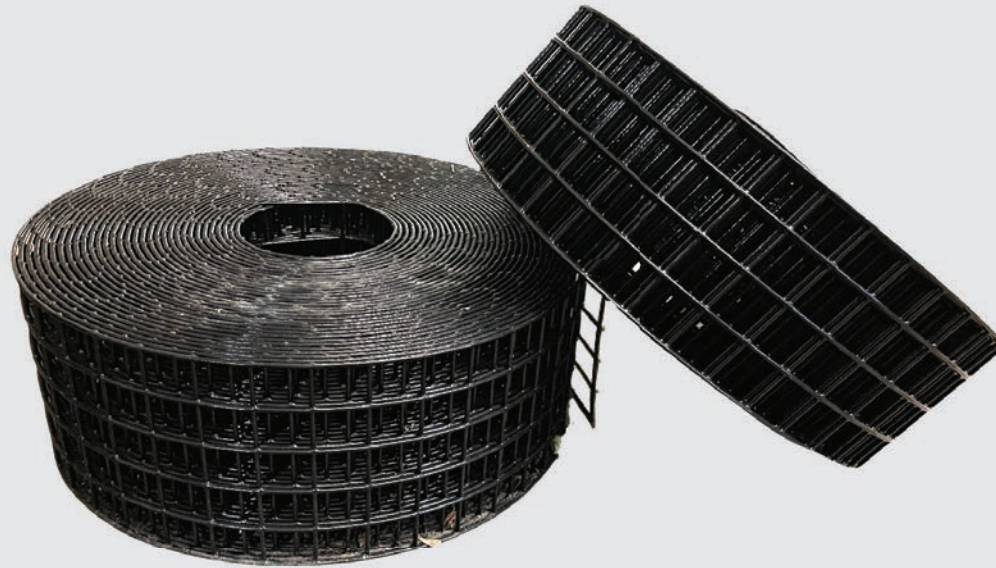
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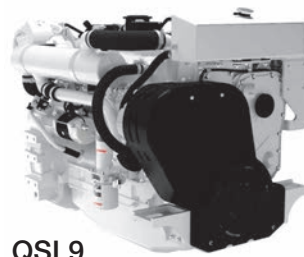
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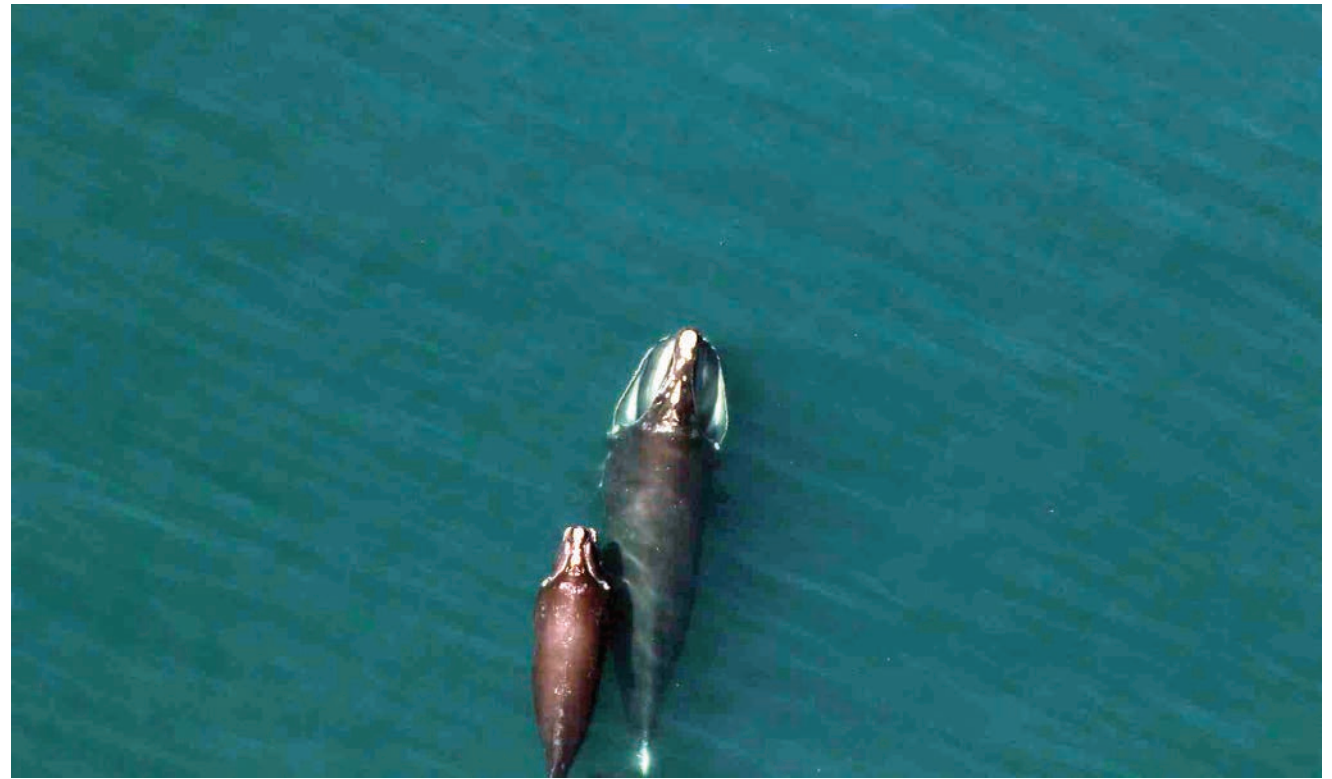
# Right Whales Visited Massachusetts Waters Again in Large Numbers

In spring 2022, the Massachusetts coast once again played host to large aggregations of North Atlantic right whales. Seasonal feeding aggregations were observed in both traditional right whale habitats like Cape Cod Bay and in newly utilized areas like Massachusetts Bay and the North Shore. The Massachusetts Restricted Area (MRA), a seasonal trap gear closure, was geographically expanded in 2021 to state waters portions of Mass Bay and the North Shore to protect right whales that have recently extended their distribution to those areas. The importance of that expanded closure was demonstrated in 2022, as the Center for Coastal Studies (CCS) aerial surveillance team observed aggregations of right whales in Massachusetts Bay, Salem Sound, and off Gloucester. Since 2021, DMF and CCS has broadened aerial survey coverage to include the northern portions of the MRA.

Right whales were also present in large numbers in Cape Cod Bay in 2022, as is typical of their distribution. A season high of 99 individual whales was documented in CCB at the end of February. The seasonal trap gear closure in MA state waters runs through May 15 to protect right whale aggregations that now linger into mid-May.

Over the course of the 2022 season, at least 73% (n=247) of the known right whale population was documented in Massachusetts state waters and adjacent federal waters, including 10 of the 15 calves born in 2022. The CCS team is continuing to analyze photos from the season and the number of whales observed is likely to increase.

To ensure the expanded MRA is free of any derelict gear that might pose an entanglement risk, DMF partners with the Massachusetts Environmental Police (MEP) and commercial fishermen to remove any gear that is lost or abandoned in the closed area. In 2022, these efforts removed approximately 2,000 traps and 500 buoy lines, mainly from Mass Bay and the North Shore where the closure is still rela-



tively new. Enforcement actions related to these violations are likely to assist in improved compliance in the future and DMF will continue to monitor for and remove derelict gear during the closed season. The accompanying article on page 1 provides more details on this gear removal program.

With a large portion of the right whale population aggregating in Massachusetts, it is critical to protect them from entanglement and vessel collision while in our waters. In addition to the expanded MRA, DMF recently implemented other protected species regulations affecting trap/pot fisheries in Massachusetts, including the requirement to modify buoy lines to break under 1,700 pounds of tension, expanded gear marking, and buoy line diameter restrictions. The purpose of the closure is to protect seasonal aggregations of feeding right whales from entanglement in fishing gear, while weaker buoy lines will reduce the potential for injury or

mortality caused by entanglements, should they occur, and expanded buoy line marking and diameter restrictions will allow researchers to more clearly detect or eliminate the possibility that Massachusetts gear was involved in an entanglement.

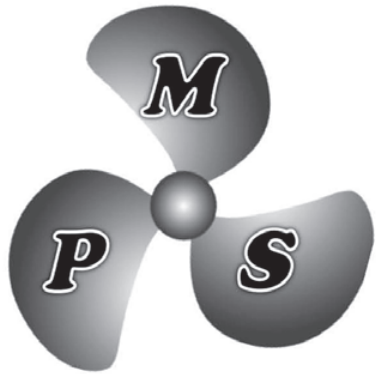
The new regulations were necessary because of amendments to the Atlantic Large Whale Take Reduction Plan, ongoing litigation against the Commonwealth of Massachusetts regarding endangered species, and the vulnerable state of the right whale population. DMF has been ordered by a federal judge to apply for an Incidental Take Permit (ITP) under the Endangered Species Act and these new regulations will be incorporated into the Habitat Conservation Plan (HCP), a key component of the ITP which must detail steps DMF is taking to minimize and mitigate impacts the fishery would have on endangered species. These measures represent significant action by DMF

and the industry to reduce the risk of right whale entanglements in fixed gear. DMF has worked with NOAA Fisheries to evaluate the risk reduction associated with the regulations and found these measures reduce risk in Massachusetts state waters by over 90%. Based on these important conservation measures, which are unique to Massachusetts, NOAA Fisheries reclassified the MA trap/pot fishery as separate from the larger Northeast lobster fishery under the List of Fisheries, giving it a Category II designation. DMF is in the process of finalizing its Habitat Conservation Plan and Incidental Take Permit and will submit a draft to NOAA Fisheries in July 2022.

*By Erin Burke,  
Protected Species Specialist*  
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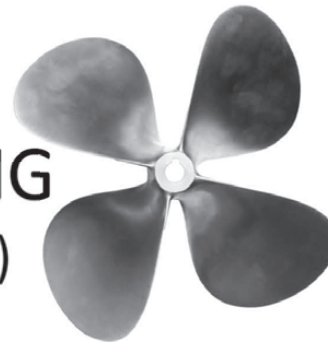
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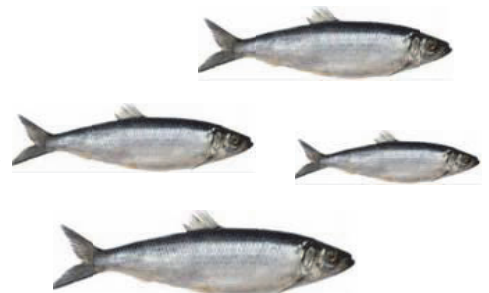
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Classified ads are a free benefit to MLA Members and Non-members are a flat \$25.00. Ads run for 5 months & will be automatically deleted unless you call the MLA office to renew. 781-545-6984 or email ads to: [tracey.abboud@lobstermen.com](mailto:tracey.abboud@lobstermen.com)

\*All ads are subject to review prior to placement

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AD#6 (3/22) **LOOKING TO BUY** - MA Coastal Lobster Permit-David at 781-775-5569

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