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MLA's Public Comment to NMFS on the Proposed Illegal Permanent Closure of the Massachusetts Restricted Area Wedge

October 18, 2023

Janet Coit – Assistant Administrator for Fisheries
National Marine Fisheries Services
1315 East-West Highway
Silver Spring, MD 20910

Re: Public Comment to NMFS re: Docket No. 230912-0217

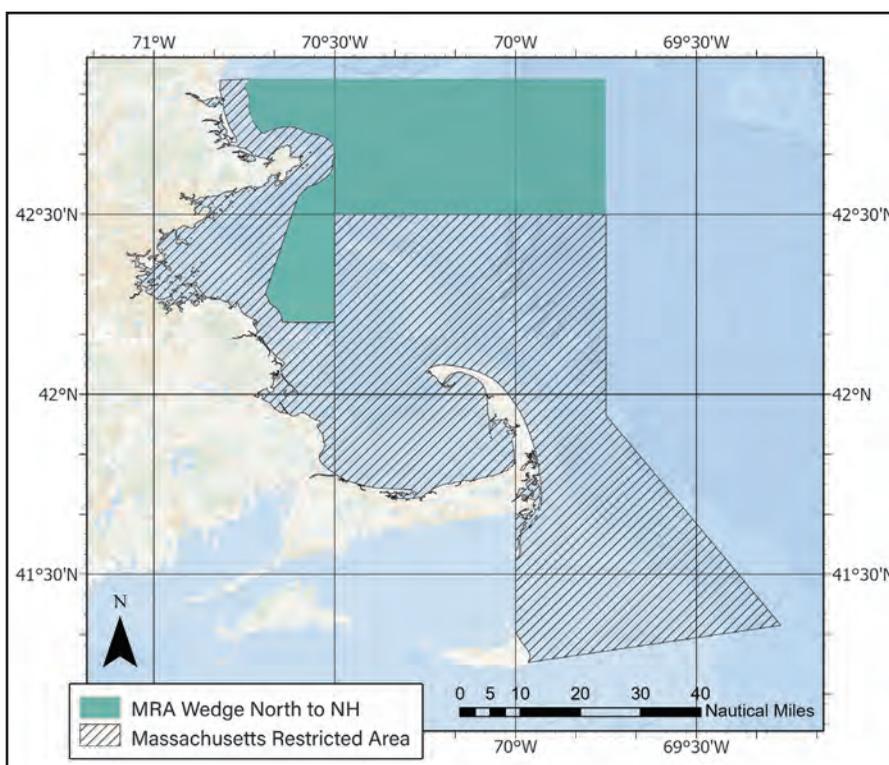
Assistant Administrator Coit,

My law firm, Eckland & Blando LLP, represents the Massachusetts Lobstermen's Association. I am writing this letter in response to NOAA's proposed illegal permanent closure of the Massachusetts Restricted Area Wedge ("Wedge"). NOAA's proposed permanent Wedge Closure is a clear violation of the Consolidated Appropriations Act of 2023 ("CAA") § 101 and the D.C. Circuit's recent decision in *Maine Lobstermen Association v. Raimondo*, 70 F.4th 582 (D.C. Circuit 2023). We expect, after you have reviewed this letter, NMFS will withdraw its planned illegal regulation.

THE PROPOSED RULE IS ILLEGAL UNDER THE CAA

As you may recall, on March 1, 2022, NOAA, through NMFS, issued an "Emergency Closure for Lobster and Jonah Crab Trap/Pot Fishery Area Between Massachusetts Restricted Area and Massachusetts Restricted Area North for April 2022" ("2022 Wedge Closure") for the Wedge. NMFS stated that it was executing the 2022 Wedge Closure pursuant to its authority under the Marine Mammal Protection Act § 118(g) and that "[i]mplementing an emergency restriction to fishing with buoy lines in this area will address a critical gap in an area with a particularly high chance of entanglement in 2022 that was not address in recent modifications to the ALWTRP while long-term measures are being developed." (See <https://www.fisheries.noaa.gov/action/emergency-closure-lobster-and-jonah-crab-trap-pot-fishery-area-between-massachusetts>); 50 C.F.R. 229. The 2022 Wedge Closure lasted from April 1, 2022, to April 30, 2022. *Id.* at 11590. The waters reopened on May 1, 2022.

While this was ongoing, NOAA attempted to place severe and illegal restrictions on the lobster industry, justified by a 2021 Biological Opinion. These restrictions were challenged in *Maine Lobstermen's Association, et*



al. v. NMFS, et al., No. 1:21-cv-02509-JEB (D.D.C. 2021). The District of D.C. issued an opinion ruling the 2021 Biological Opinion valid and enforcing the regulations against the lobster industry; that decision was appealed. The case recently resolved with the D.C. Circuit *Maine Lobstermen Association v. Raimondo*, 70 F.4th 582 (D.C. Circuit 2023) unanimously ruling that the 2021 Biological Opinion was illegal and invalid as overly harsh and burdensome on the lobster industry. Thus, any regulations promulgated on the basis of the 2021 Biological Opinion and the underlying science supporting it, such as the proposed permanent wedge closure, are also illegal.



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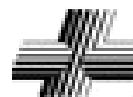


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The Massachusetts Lobstermen's Association

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!

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As the HAULER TURNS

November is a time of year when we give thanks for all that we have and as I sit here and think about just that, I am forever thankful to be working for ALL of you, even the salty ones. I know deep down they are not as salty as they want others to believe. We are all in the same boat trying to row in the same direction and one day we will figure it out. Until that day comes, I will continue to put my head down and carry on regardless of how dire it feels some days.

The last couple of months there have been several developments coming down from the Atlantic States Marine Fisheries Commission (ASMFC) regarding the lobster stock assessment and the future management action that will be effective on January 1, 2025.

The ASMFC Lobster Board met last month, voted on and passed the implementation of Addendum XXVII due to the decline in the lobster recruitment into the lobster stock. Addendum XXVII will set in motion a series of gauge increases along with the other conservation measures to increase recruitment into the lobster stock. Please take the time to read the ASMFC notice included in this newspaper.

Last month the Massachusetts Lobstermen's Association (MLA), through our attorneys, submitted a letter of comment opposing the closure of the wedge off Cape Anne as this was considered a "new" closure and was not under the previous emergency action taken by the federal government.

Should this wedge closure be allowed, it would set a legal precedence that would allow the federal government to enact any closures anytime without just cause. Remember, the initial MA Restricted Area closure included the month of January, and this could easily be taken back should this rule be passed. We are holding the frontline so that the federal government doesn't try to move it.....again.

While it feels like we are blowing through these months, the Bureau of Ocean and Energy Management (BOEM) is blowing through a yearlong series of meetings, Public Hearings and more on the Gulf of Maine's (GOM) Wind Energy Areas (WEA) being established. The current draft WEA is out, and it appears to be three times larger than necessary to accommodate the states of Massachusetts, New Hampshire and Maine's renewable goals of 13 Gigawatts.

The MLA continues to be deeply involved in all things offshore wind and will continue to be at the table for you. The MLA will also submit comments on draft GOM WEA as it is out for Public Comments. From the 30,000' view it is looking yet again, that Massachusetts will be at the epicenter of this WEA in the GOM. Stay tuned!

Finally, last month the commercial lobster industry had an opportunity to comment on S552 An Act relative to lobstering closure mitigation (Act) and let me tell you the comments came in in droves to the Joint AG-



Committee has never seen. The comments on the passage of the Act are now being reviewed by the legislature. The MLA has been working hard on this Act for over two years now and after having talked to several legislators about the importance of this Act, they are all giving us good feedback on how they can help make this happen.

Rest assured, whether it is whales, wind, or whatever is coming at you, the MLA will continue to do everything it can to help keep you fishing and has dedicated tens of thousands of hours and hundreds of thousands of dollars, being at the table for you and fighting for you even if there is no end in sight. As long as you are fishing, we will keep fighting.

Safe on the water,

Beth Casoni

Executive Director
Massachusetts Lobstermen's
Association



Atlantic States Marine Fisheries Commission NEWS RELEASE

FOR IMMEDIATE RELEASE: October 18, 2023 | PRESS CONTACT: Tina Berger, 703.842.0749

American Lobster Board Extends Addendum XXVII Implementation Date to January 1, 2025

BEAUFORT, NC – The Commission’s American Lobster Management Board modified the implementation date for measures under Addendum XXVII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster to January 1, 2025 (see table for specific dates). Addendum XXVII was adopted in May 2023, and established a trigger mechanism to automatically implement management measures to provide additional protection of the Gulf of Maine/Georges Bank (GOM/GBK) spawning stock biomass.

Under Addendum XXVII, changes to gauge and escape vent sizes in Lobster Conservation Management Areas (LCMA) 1 (Gulf of Maine), 3 (offshore federal waters) and Outer Cape Cod (OCC) would be initiated based on an observed decline in recruit abundance indices of 35% from the reference level (equal to the three-year average from 2016-2018). With the inclusion of recently released 2022 data in the time series, the trigger index has declined by 39%, surpassing the trigger point of a 35% decline. The measures triggered include two increases to the minimum gauge size in LCMA 1, a corresponding change in the LCMA 1 escape vent size, and a single decrease to the maximum gauge size in LCMA 3 and OCC.

“Because the trigger was tripped much more quickly than we anticipated, the delay

in implementing the gauge size increase will provide the Gulf of Maine states the opportunity to coordinate with Canada regarding possible trade implications, and give the industry and gauge makers additional time to prepare for these changes,” stated Pat Keliher from Maine.

Addendum XXVII also implements a standard v-notch definition of 1/8” with or without setal hairs in LCMA 3 and OCC, and a standard maximum gauge size of 6 3/4” for state and federal permit holders in LCMA 3 and OCC. Additionally, for LCMA 1 and 3 permit holders, states must limit the issuance of trap tags to equal the harvester trap tag allocations unless trap losses are documented. The implementation date for these measures is now January 1, 2025.



Photo by Derek Keats

The table specifies the timing of management changes for each of the three LCMA’s addressed under Addendum XXVII as modified.

For more information, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org or 703.842.0740.

When change(s) will be implemented	What change will be implemented		
	LCMA 1	LCMA 3	Outer Cape Cod
January 1, 2025	Trap tags issuance limited to harvester allocation		v-notch definition: 1/8” with or without setal hairs; Maximum gauge size: 6 3/4”
January 1, 2025	Minimum gauge size: 3 5/16”		
January 1, 2027	Minimum gauge size: 3 3/8”		
January 1, 2028	Escape vent size: 2 x 5 3/4” rectangular; 2 5/8” circular		
January 1, 2029		Maximum gauge size: 6 1/2”	Maximum gauge size: 6 1/2”



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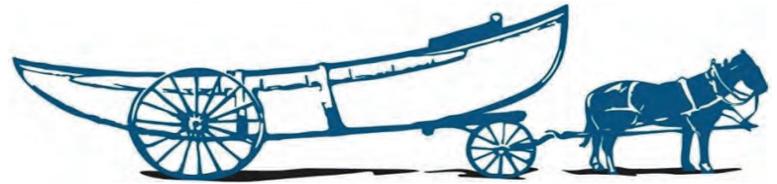
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Cate O'Keefe, Executive Director - New England Fishery Management Council



Join us in welcoming Cate O'Keefe, Executive Director of the New England Fishery Management Council. Established by federal legislation in 1976 along with 7 other regions, this Council is charged with conserving and managing fishery resources within our EEZ (exclusive economic zone) that ranges from three to 200 miles off the coasts of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut.

Learn more about why and how management plans are developed, research priorities, how annual catch limits are set, the development and implementation of rebuilding plans, and ways that we can help support sustainable U.S. fisheries and the seafood industry.

In addition to managing a staff of eighteen that supports the decisions of appointed Council members, she also works with the other seven regional management councils and international organizations. Prior to assuming her current role, Cate served as the Principal Consultant at her woman-owned small business, Fishery Applications Consulting Team, as the Marine Science and Policy Analyst for the Massachusetts Division of Marine Fisheries, and as a Research Professor at the University of Massachusetts Dartmouth's School for Marine Science and Technology (SMAST). Cate will also provide some personal/professional background and talk about how the field has changed over time for the positive for girls and women.



Date:

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BOEM Releases Draft Wind Energy Area in the Gulf of Maine for Public Review and Comment

As part of the Biden-Harris administration's goal of deploying 30 gigawatts of offshore wind energy capacity by 2030 and 15 gigawatts (GW) of floating offshore wind by 2035, the Bureau of Ocean Energy Management (BOEM) today identified a Draft Wind Energy Area (WEA) in the Gulf of Maine, opening a 30-day public review and comment period.

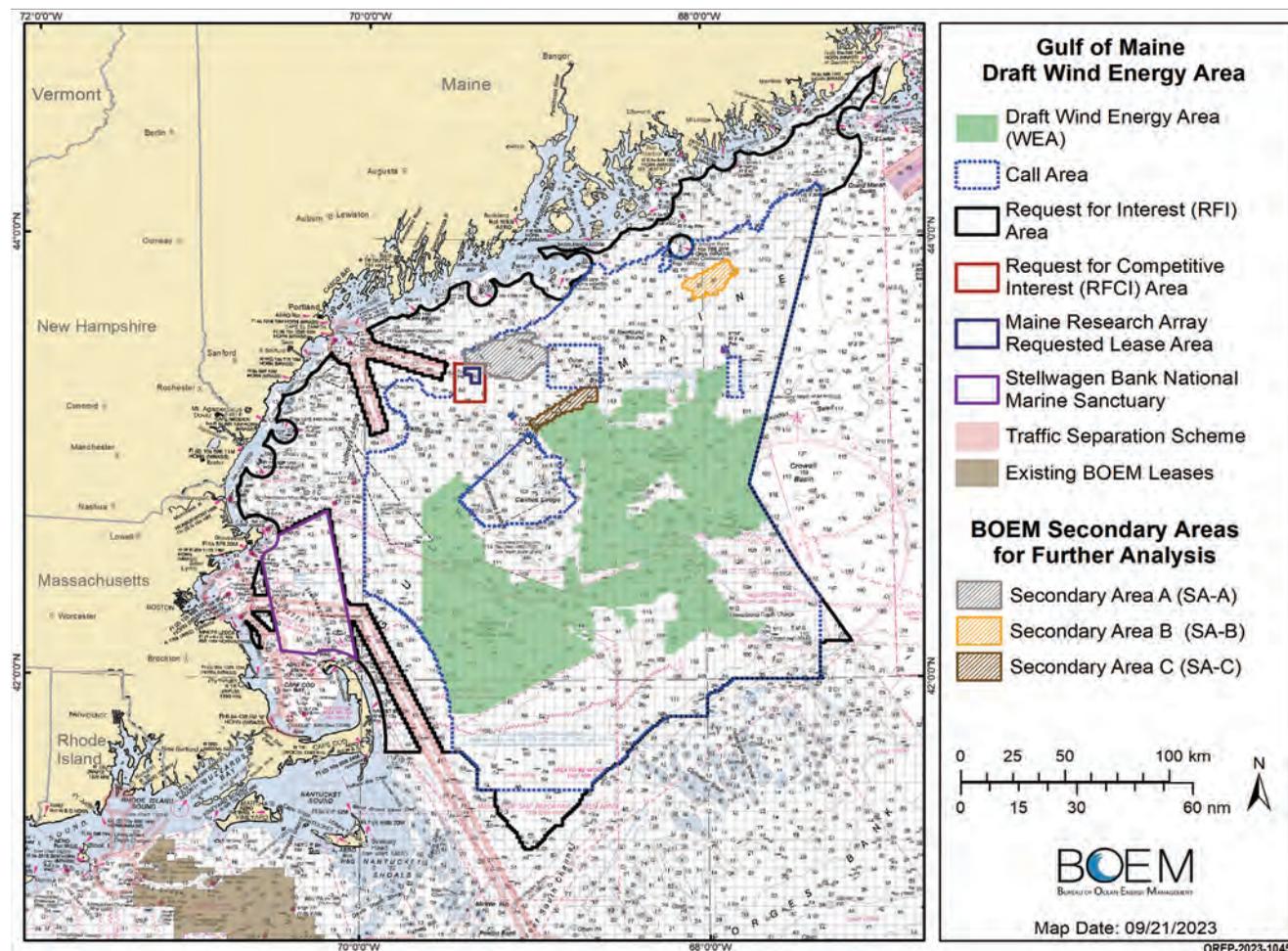
The Draft WEA covers approximately 3,519,067 acres offshore Maine, Massachusetts and New Hampshire, ranging from approximately 23 - 120 miles off the coast. A map of the Draft WEA can be found on BOEM's Gulf of Maine webpage. www.boem.gov

"BOEM will continue to prioritize a robust and transparent planning process, including engagement with Tribal governments, federal and state agencies, the fishing community and other ocean users," said **BOEM Director Elizabeth Klein**. "BOEM strives to minimize potential impacts and will continue working hard to finalize offshore areas that have strong resource potential and the fewest environmental and user conflicts."

President Biden's Investing in America agenda is growing the American economy from the middle out and bottom up – from rebuilding our nation's infrastructure, to driving over \$500 billion in private sector manufacturing and clean energy investments in the United States, to creating good paying jobs and building a clean energy economy that will combat the climate crisis and make our communities more resilient.

The Gulf of Maine has significant opportunities for offshore wind energy development, which will create good-paying jobs and new economic activity. Due to the deep waters within the Gulf of Maine, these areas are also an opportunity to accelerate U.S. leadership in floating technologies.

Since the start of the Biden-Harris administration, BOEM has approved the nation's first four commercial scale offshore wind projects, held four offshore wind lease auctions – including a record-breaking sale offshore New York and the first-ever sale offshore the Pacific and Gulf Coasts, initiated environmental review of 10 offshore wind projects, and advanced



the process to explore additional Wind Energy Areas in Oregon, Gulf of Maine and Central Atlantic. The Department has also taken steps to evolve its approach to offshore wind to drive towards union-built projects and a domestic based supply chain.

The Draft WEA announced today has a capacity of over 40 GW, which exceeds the current combined offshore wind energy planning goals for the Gulf of Maine states: 10 GW for Massachusetts and 3 GW for Maine. Future adjustments to the Draft WEA will likely be made after incorporating feedback during the comment period, while striving to retain sufficient area to meet the Gulf of Maine states' planning goals.

To identify the Draft WEA, BOEM worked collaboratively with the National Oceanic and Atmospheric Administration's National Centers for Coastal Ocean Science to develop an ocean planning model that identifies and minimizes conflicts with coastal and marine resources and ocean us-

ers. BOEM also met with and incorporated feedback from Tribes, fishers, and the public to refine the model and inform the potential offshore locations that appear most suitable for floating offshore wind energy development.

The Draft WEA avoids Lobster Management Area 1 and all North Atlantic Right Whale Restricted Areas. The Draft WEA also avoids other important fishing areas and habitats, including important groundfish areas east of the Western Gulf of Maine Closure and within the 10-kilometer buffer from Georges Bank, Platts Bank, Parker Ridge, and Three Dory Ridge. In response to initial conversations with Tribal Nations located within Maine, the Draft WEA strives to avoid a majority of the historic and present fishing grounds of those Tribes. BOEM will continue to consult with all Tribal Nations and other stakeholders who have an interest in the region to understand their concerns with poten-

tial offshore wind energy development and minimize conflicts.

BOEM also seeks comments on whether to add all or parts of three secondary areas that were identified for additional analysis but not part of the Draft WEA.

PUBLIC MEETINGS AND COMMENTS

During the 30-day public comment period starting on Oct. 19, 2023, BOEM will hold a series of public meetings to outline data and information used to inform the Draft WEA and to discuss next steps. Additional information on the public meetings will be available on BOEM's Gulf of Maine webpage: www.boem.gov

To comment on the Draft WEA please go to regulations.gov and search for docket number **BOEM-2023-54**.

BOEM will accept comments through 11:59 pm ET on Nov. 20, 2023.

Contact - Lissa Eng; Phone (202) 531-0667

Gulf of Maine | Bureau of Ocean Energy Management (boem.gov)

Hypoxia in CAPE COD BAY

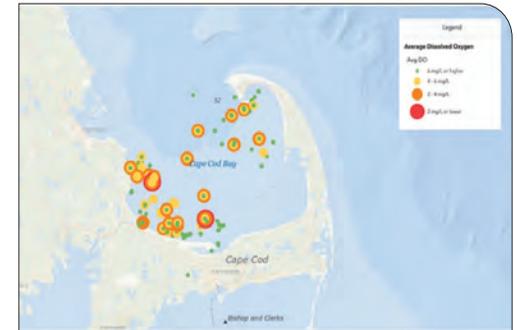
Simonne Dodge, Jennie Rheuban, & Stephanie Murphy | WHOI Sea Grant

A research team works with local fishing community to understand die-off events.



In 2019 and 2020, Cape Cod Bay, Massachusetts, experienced very low dissolved oxygen levels, or hypoxic conditions, which led to large die-offs of marine life and caused financial losses to many lobstermen.

Dead lobsters photographed by a lobsterman in 2019. Photo courtesy Tracy Pugh, MA DMF



A screenshot of 2022 data. As oxygen lessens, circles grow larger.

EXPLORE the PROJECT

To better understand these hypoxic events, the Lobster Foundation of MA facilitated a group of local lobstermen, the Cape Cod Bay Study Fleet to collaborate with the research team to monitor the Bay. The Study Fleet lobstermen added Bluetooth-enabled sensors to their traps to collect data while lobster pots are on the seafloor. These data are shared to a real-time public dashboard, where lobstermen can view current dissolved oxygen and temperature conditions of the Bay.

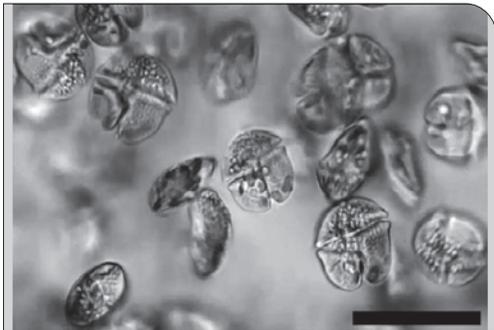
A large focus of the research team's work went into analyzing water conditions and historical environmental data to gain insight into the conditions that may have led to the 2019 hypoxia event.

To explore more research stories from American Lobster Initiative, visit our StoryMap collection:

<https://arcg.is/1CHT1j>



RESEARCH FROM AMERICAN LOBSTER INITIATIVE



Karenia mikimotoi photographed under a microscope.

Photo: H. Shimada, Kushiro Fish. Res. Inst



Captain and crew of the Study Fleet vessel F/V Miss Lilly.

Photo: © Lowell Instruments

READ the RESULTS

In recent years, Cape Cod Bay's environmental conditions have changed, with significantly warmer surface waters and a general shift in summer winds from the southwest to the northeast. These changes have led to increased layering of warmer water on top of colder water. This not only prevents the mixing of oxygen into bottom waters but also provides an ideal environment for blooms of a newly-arrived species of algae, *Karenia mikimotoi*. As these phytoplankton die or are eaten by microscopic organisms, the available oxygen is used up, creating a hypoxic layer at the sea floor.

UNDERSTAND the IMPORTANCE

Understanding the cause of hypoxic conditions in Cape Cod Bay is critical for forecasting future hypoxic events. Given that larger climate patterns are a major contributing factor to these hypoxic events, mitigating actions are not feasible. However, this information can help both managers and fishermen prepare for changes in the Bay's dissolved oxygen levels. Additionally, this project's creation of the public dashboard gives lobstermen the ability to track and monitor oxygen conditions at any time so that they can choose where to fish based on the locations of the most favorable conditions.



Photo: Pien Huang, WCAI

Tracy Pugh, PhD PRINCIPAL INVESTIGATOR

Tracy Pugh is a senior marine fisheries biologist at the Massachusetts Division of Marine Fisheries (DMF).



We welcome your feedback.
Email us at lobster@whoi.edu

RESEARCHER HIGHLIGHT



Photo: Woods Hole Oceanographic Institution

Malcolm Scully – Woods Hole Oceanographic Institution

After receiving his undergraduate degree, Malcolm spent five years exploring different paths -- traveling, living and surfing at the beach, and working as a ski lift operator -- before pursuing a research career. He had always been interested in ocean science, especially coastal processes like

waves and tides and returned to school to obtain both a master's degree and PhD from the College of William and Mary. Malcolm is now an associate scientist with tenure at Woods Hole Oceanographic Institution (WHOI).



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MLA Letter of Comment on S552 an Act Relative to Lobstering Closure Mitigation



October 16, 2023

The Commonwealth of
Massachusetts Joint
Committee on Agriculture
State House, Boston, MA 02133

Sent to:
jointcmte-Agriculture@malegislature.gov

RE: S552 AN ACT RELATIVE TO LOBSTERING CLOSURE MITIGATION

Dear Joint Committee
on Agriculture,

The Massachusetts Lobstermen's Association (MLA) respectfully submits this letter of comment on behalf of its 1800 members in support of *S552 An Act relative to lobster closure mitigation* (Act).

Commercial lobstering is one of the most historic and iconic fisheries, employs thousands of people and now more than ever, the commercial lobstermen of the Commonwealth need your help to survive.

Over the last several years the commercial lobstermen, here in the Commonwealth, have been at the forefront of conservation for Right Whales. Over 11,000 square miles of closed waters and with no State waters left open in February, March, April up until May 15th.

These closed months are not the only time commercial lobstermen are restricted from earning a living because it takes them one month to set gear and one month to remove that same gear. This extends the loss of lobster harvesting to five months.

750 active commercial lobstermen in Massachusetts landed 14,608,443 pounds of American Lobster with an ex-vessel value of \$81,793,467 in 2022. Given that the cost of doing business today has increased an estimated 300% and, the average price per pound in 2022 was comparable to the price received in the 1990's.

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 Massachusetts Division of Marine Fisheries (DMF), Atlantic States Marine Fisheries, New England Fisheries Management Council, Bureau of Ocean Energy Management and, the National Oceanic Atmospheric Administration to ensure the continued sustainability and profitability of the resources in which our fishermen are engaged in.

This Act will establish a program that will be administered by the Department of Unemployment Assistance (DUA). This program would be a similar program to the Pandemic Unemployment Assistance program. The MLA will be available to assist and answer any questions with this program in anyway possible to ensure the programs success.

The MLA does not see this Act relative to lobstering closure mitigation as a forever fund.

This Act is meant to help those commercial lobstermen who are not yet incorporated to, become incorporated. The MLA will work with commercial lobstermen over a three-year period to become incorporated through a series of seminars once the Act is passed.

Now, more than ever the commercial lobstermen of the Commonwealth need the passage of

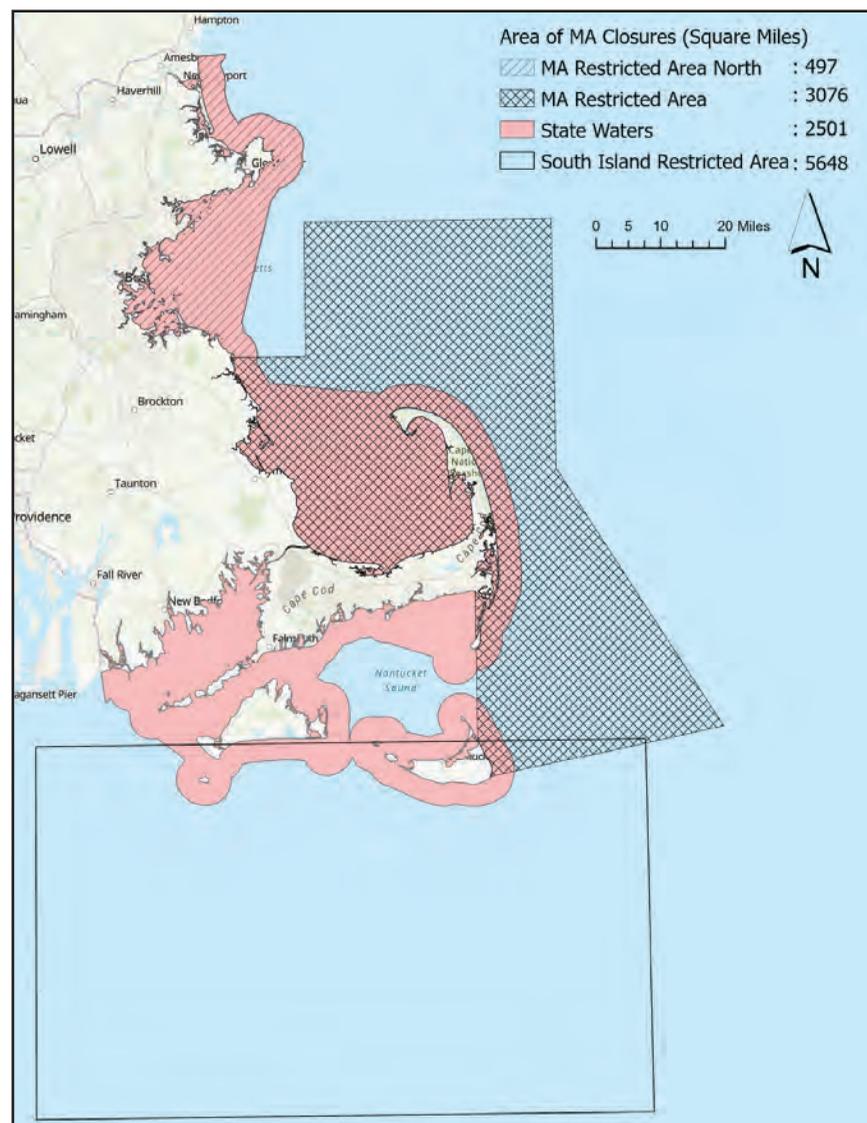
S552 An Act relative to lobstering closure mitigation. The passage of this Act is an investment in the survival of the survival of the commercial lobster fishery to ensure it will be here for generations to come.

Thank you for your thoughtful deliberation and support for the Commonwealth's commercial lobstermen.

Kind regards,

Beth Casoni

Director





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- **Marine Spatial Planning - Offshore Wind Development**
- **Impacts of Climate Change on the Lobster Sector**
- **Innovative Gear**

Registration is open exclusively to commercial fishers until **November 15**, after which registration will open to the public. Reserve early to guarantee your spot, as tickets are expected to sell out.

\$75 USD / \$102 CAD registration fee includes: conference materials, meals, and the popular seafood reception.

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The Saga of Decommissioning the Pilgrim Power Station Continues

When Holtec International took over the Pilgrim Nuclear Power Station in Plymouth in June of 2019, they came to town promising openness and transparency. We soon learned, never having decommissioned a nuclear plant before, Holtec's business plan was to walk away with as much profit no matter what was important to the community.

All that changed in November 2021, when a Nuclear Regulatory Commission letter to Representative Bill Keating revealed Holtec's plan to dump the contaminated industrial wastewater into Cape Cod Bay. An uproar ensued, led by the fishing industry. Our communities were built upon the marine economy. How could such environmental damage be allowed? There were four options for disposal approved by the Nuclear Regulatory Commission. But as a lapdog for the nuclear industry, the NRC supports industry profit over public safety. Dumping into the bay was the easiest and cheapest option. More profit for Holtec! The irreparable damage to the vital lifeline for our communities was under threat. Our response was loud and clear: No One Drop!

In February 2022, the federal Environmental Protection Agency [EPA] informed Holtec that the planned dumping was not allowed under the current permit. The state Department of Environmental Protection agreed. Holtec disagreed and continued to insist they could dump.

On May 6 of 2022, Senator Edward Markey conducted a Special Senate Field Hearing in Plymouth on the Holtec plan and summoned Holtec CEO Kris Singh. Singh promised that Holtec would not

dump without stakeholder approval. But Singh's definition of 'stakeholder' does not include us. Despite widespread community opposition, Holtec continues to insist discharge is a harmless option. The company brushed aside the multiple EPA warnings until December 2022 when EPA mentioned potential jail time for violations of the current permit.

Subsequently in March 2023, Holtec applied for amended water discharge permits with the EPA and MassDEP. On July 25, the MassDEP tentatively denied Holtec's application for the permit and initiated a 30 day public comment period, inspiring hundreds of comments in support of denial. We now await their final determination.

But in the meantime, the plot has thickened. Uncertain if they'll be allowed to dump, Holtec started experimenting with another method of water discharge: *forced evaporation*. This started in February, but we only learned it belatedly, on August 4, when the Nuclear Regulatory Commission (NRC) issued their Pilgrim inspection report for April and May and noted an unapproved engineering change supporting the use of immersion heaters. Holtec gave two reasons for the change: (1) to dry irradiated hardware boxes and (2) to raise the ambient temperature for 'worker comfort'. The NRC determined that the violation was of low significance and retroactively approved the use of the heaters. That same report noted that radiation monitors and alarms on the vents were shut off and problems with radiation level measurements via failed calibrations and data. Certainly, the fox is guarding the henhouse.



Then, on August 21, came a whistleblower letter. It went to Cape Downwinders and to Mass Department of Public Health (MADPH). The writer wanted to "inform you of a breach of trust". Holtec had promised not to discharge without stakeholder approval at the Markey hearing. The writer alleged Holtec's "forced evaporation" of contaminated wastewater. S/he raised concern for worker health in the vicinity of the heaters; and for public health safety given the airborne releases of tritium and other toxins into the environment. Unlike water discharged into the bay, the water to be evaporated is neither filtered, treated, nor diluted. There are no monitors in the ventilation system, no way to know what's coming out of the vents. It is borne on the wind and released as vapor, rain, dew. The evaporation of contaminated water into the air is just as dangerous, if not more so, as is discharge into the bay. Both are contrary to our health and welfare. Now contamination is land, sea, and air.

But our state agencies are not seriously considering the whistleblower allegations. After reviewing the letter, MassDEP and Mass-

DPH both found the "heaters are not subject to air permits and do not require Holtec to apply for a permit" because Holtec says it's for "worker comfort". They are relying on Holtec information to make their determination to not pursue application of our air quality laws or monitor radioactive releases at the site. Haven't we already seen the history of Holtec's disregard for public concerns?

Today, Holtec remains aggressive to dumping their industrial wastewater into our environment by water and/or air. We need to step up our resistance to Holtec's plan to contaminate our communities.

We ask Governor Maura Healey to initiate an independent investigation of the whistleblower allegations. We call for Holtec to remove forced evaporation from their business plan.

Come to the next Nuclear Decommissioning Citizens Advisory Panel Meeting to speak out to protect our resources. Together, we can halt Holtec!

Plymouth Town Hall, Monday, November 27 at 6:30. Go to www.saveourbayma.com for updates.





Wedge

FROM PAGE 1

In response to the District of D.C.'s order, on December 29, 2022, the Consolidated Appropriations Act, 2023, H.R. 2617 ("CAA") was signed into law by President Joseph R. Biden. (*Bill Signed: H.R. 2617*, The White House, Dec. 29, 2022, <https://www.whitehouse.gov/briefing-room/legislation/2022/12/29/bill-signed-h-r-2617/>.) The Consolidated Appropriations Act of 2023, H.R. 2617, ("CAA") included a mandate that the 2021 Atlantic Large Whale Take Reduction Plan ("ALWTRP") amendments "shall be deemed sufficient to ensure that the continued Federal and State authorizations of the American lobster and Jonah crab fisheries are in full compliance" with the Endangered Species Act and Marine Mammal Protection Act until December 31, 2028. H.R. 2617 §110(a). However, the CAA provided that § 110(a) "shall not apply to an existing emergency rule, or any action taken to extend or make final an emergency that is in place on the date of enactment of this Act, affecting lobster and Jonah crab." *Id.* § 101(b). Therefore, the CAA limited NMFS from issuing any new regulations except for extending or finalizing emergency rules in place as of December 29, 2023. *Id.*

Despite the 2022 Wedge Closure ending on May 1, 2022, on NMFS announced on January 31, 2023, that it would be initiating a new closure to begin on February 1, 2023, and ending on April 30, 2023 ("2023 Wedge Closure"). Officially titled the "Emergency Restricted Area for the Trap/Pot Fishery: Massachusetts Restricted Area Wedge", the 2023 Wedge restricts the *identical* areas as the 2022 Wedge. FR Docket No. FR-230130-0030. No doubt anticipating a challenge to its unlawful rule-making, NMFS preemptively attempted to explain why it was allowed to issue the 2023 Wedge Closure despite the CAA explicitly banning it from issuing new rules. In effect, NMFS argued that the 2022 Wedge Closure, despite ending on May 1, 2022, never actually ended because the emergency situation for the North Atlantic Right Whale never ended, and thus the 2023 Wedge Closure was just an extension of the 2022 Wedge Closure.

To wit, NMFS asserted first that MMPA § 118(g)'s emergency rule-making provision "allow[s] for an extension of existing emergency rules when conditions warrant, and the statutory language does not require an extension to follow immediately upon the expiration of the *original* emergency action." FR Docket No. FR-230130-0030 at pdf pg. 9. It then stated that "the 2022 30-day emergency rule [2022 Wedge Closure] was not in effect longer than 270 days (the statute's temporal limit), *but the same conditions exist this year to warrant an extension.*". NMFS sought shelter in MMPA § 118(g) because it believed that this allows it to use CAA §101(b)'s emergency rule exception. It was wrong.

Without citing to any legislative history or other grounds of support, NMFS determined that CAA § 101(b) "can only refer to the 2022 MRA Wedge Rule, because that is the only emergency rulemaking implemented under the MMPA, ESA, and other relevant statutes, affecting lobster and Jonah crab, to occur in the past decade.". NMFS doubled down on this assertion, further extrapolating that "the exception at § 101(b) is a specific reference to the 2022 emergency rule closing the MRA Wedge." There is no reference to the 2022 emergency rule closing the MRA Wedge anywhere in the CAA, let alone § 101. Notwithstanding, NMFS connected the non-existent dots to conclude that "the continued existence of the emergency, *as opposed to the operability of the emergency rule*, is what matters for an extension of an emergency rule" (*Id.*) (emphasis added). In other words, NMFS concluded that, so long as an emergency exists, it can continue to issue emergency rules without falling afoul of the CAA. This absurd contention is clearly illegal.

Statutory interpretation shows NMFS to be wrong. Beginning, as all statutory interpretation must, with the text, CAA § 101 specifically prohibits NMFS from promulgating new regulations regulating the

lobster and Jonah crab industry until 2028. CAA § 101(a); *City of Clarksville v. FERC*, 888 F.3d 477, 482 (D.C. Cir. 2018) ("In addressing a question of statutory interpretation, we begin with the text."). It then provides a narrow exception for "existing emergency rules" or "extensions" of the same that existed at the time of CAA's passage. CAA § 101(b). Thus, NMFS may only issue a new regulation if it is an extension of an emergency rule that existed as of December 29, 2023. *Janko v. Gates*, 741 F.3d 136, 139–40 (D.C. Cir. 2014) ("Indeed, "[t]he preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'").

It is unquestionable that the 2023 Wedge Closure is not an extension of the 2022 Wedge Closure. NMFS's itself revealed this to be untrue when Ms. Trego stated that the 2023 Wedge Closure is "similar" to the 2022 Wedge Closure. Similar is not the same. In *re Sienega*, 18 F.4th 1164, 1169 (9th Cir. 2021) ("Similar does not mean the same."); *United States v. Bezmalinovic*, No. S3 96 CR. 97 MGC, 1996 WL 737037, at *2 (S.D.N.Y. Dec. 26, 1996) ("It is true that 'similar' does not mean 'the same.'") (citing *United States v. Werner*, 620 F.2d 922, 926 (2d Cir. 1980)); *Hearts With Haiti, Inc. v. Kendrick*, No. 2:13-CV-00039-JAW, 2015 WL 3649592, at *8 (D. Me. June 9, 2015) ("Finally, 'similar' does not mean 'the same.'"). CAA § 101(b) does not contain an exception for "similar" emergency rules, only for extensions of the exact same emergency rule. NMFS, by its own words, has admitted that the 2023 Wedge Closure is a different closure than the 2022 Wedge Closure, and thus the 2023 Wedge Closure violates the CAA.

Further, the 2022 Wedge Closure definitively ended on May 1, 2022, and federal waters were open until February 2023. This clear temporal break showed the 2023 Wedge Closure was not the same as the 2022 Wedge Closure. Once the expressly promulgated timeline of the emergency order expires, so too must the emergency rule. *See, e.g., Starbound, LLC v. Gutierrez*, No. C07-0910-JCC, 2008 WL 1752219, at *4 (W.D. Wash. Apr. 15, 2008) (acknowledging NMFS's concession that an emergency rule's effect only lasts as long as specified in the rule itself.) Indeed, NMFS expressly assumed the position that so long as the "emergency" which prompted the emergency rule continues to exist, then so too does the emergency rule. In so doing, NMFS has rewritten CAA § 101(b) to the following: "shall not apply to an existing emergency rule, or any action taken to extend or make final an emergency rule that is in place on the date of enactment of this Act, affecting lobster and Jonah crab." And it is no surprise that NMFS would prefer that CAA § 101(b) had been written as such, given that the North Atlantic Right Whale has been an endangered species for fifty-three years, meaning that the alleged "emergency" has been ongoing for over five decades. (<https://www.fisheries.noaa.gov/species/north-atlantic-right-whale#:~:text=North%20Atlantic%20right%20whales%20have,years%20has%20been%20below%20average.>)

If an extension of an emergency rule is predicated on the continued existence of the emergency, then NMFS will be empowered to "extend" its 2022 Wedge Closure through to 2028; indeed, nothing is stopping it from "extending" the 2022 Wedge Closure for 269 days each year, effectively shutting down the lobster industry. Thus, despite Congress' clear mandate that NMFS stop regulating the lobster and Jonah crab industry for MMPA purposes until 2028, NMFS has effectively read the statute as allowing it to emergency regulate the lobster industry to its heart's content, because it happened to issue a long-expired emergency rule in April 2022. But NMFS is not permitted to rewrite a plainly written statute to suit its whims. *Bostock v. Clayton Cnty., Georgia*, 207 L. Ed. 2d 218, 140 S. Ct. 1731, 1749 (2020) ("The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration.") (citing *Carri-eri v. Salazar*, 555 U.S. 379, 387 (2009); *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–254 (1992); *Rubin v. United States*, 449 U.S. 424, 430 (1981)). Doing so is arbitrary and capricious and grounds for the 2023 Wedge Closure to fail.

Knowing that it cannot stand on the actual wording of CAA § 101(b), NMFS hypothesized that Congress must have meant the 2022 Wedge Closure when referring to “emergency rule”.¹ Of course, NMFS cites no legislative history to support this position. *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 593, n. 10 (1980) (“But neither the language of the statute nor its legislative history supports either of these proposed readings of § [the statute]”); *Cf. Hays v. Leavitt*, 583 F. Supp. 2d 62, 72 (D.D.C. 2008), *aff’d sub nom. Hays v. Sebelius*, 589 F.3d 1279 (D.C. Cir. 2009) (“However, the legislative history does provide support for Hays’ construction of the statutory text.”). This is because it cannot. The only legislative history goes the exact opposite way, as the Honorable Senator Angus King specifically stated that the purpose of §101(a)-(b) is to “pause the economic death sentence” caused by the District of D.C.’s prior rulings and NMFS’s regulations against the lobster industry.” 168 Cong. Rec. S9591, S9607–08 (daily ed. Dec. 20, 2022).

Even if NMFS did have legislative history to support it, its construction of CAA § 110(a)-(b) ignored the reality that, if Congress meant the 2022 Wedge closure when it wrote “emergency rule,” it could have written so. But “Congress didn’t choose those other words.” *Murphy v. Smith*, 138 S. Ct. 784, 787–88 (2018). “And respect for Congress’s prerogatives as policymaker means carefully attending to the words it chose rather than replacing them with others of our own.” *Id.*; *see also United States v. BCCI Holdings (Luxembourg), S.A.*, 833 F. Supp. 17, 21 (D.D.C. 1993) (“a judge must presume that Congress chose its words with as much care as the judge himself brings to bear on the task of statutory interpretation[.]”). As the United States Supreme Court cannot rewrite statutes passed by Congress, neither can NMFS. CAA § 101(b) makes mention only of emergency rules existing as of December 29, 2023, it makes no mention of the 2022 Wedge Closure and it is arbitrary and capricious for NMFS to rewrite CAA § 101(b) to fit what it assumes Congress must have meant.

In sum, NMFS’ attempt to issue the 2023 Wedge Closure was illegal. In fact, District of D.C. Judge Boasberg agreed, warning NMFS that he believed MLA was right on the legal argument that NMFS was not allowed to issue the 2023 Wedge Closure. (TRO Hr’g Tr. 30:6- 12 (“I think that the plaintiffs may well have a better argument on the merits than the government. It’s a close question and one that I probably need to think about more. But in the time that I have had, I think that Mr. Cragg has probably got a better reading of the way -- a better interpretation of the exception.”)). Therefore, NMFS is on notice that a court of law has already said it is violating the law. Its efforts to double down on that illegality now can only be arbitrary and capricious.

THE PROPOSED RULE IS ILLEGAL UNDER MAINE LOBSTERMEN ASSOCIATION V. RAIMONDO, 70 F.4TH 582 (D.C. CIRCUIT 2023)

Further, this Proposed Rule cannot possibly be legal under *Maine Lobstermen Association v. Raimondo*, 70 F.4th 582 (D.C. Circuit 2023). As you are no doubt aware, the Court determined that NMFS was not allowed to use worst case scenarios, that the ESA does not permit a presumption in favor of endangered species, but rather requires outcomes reasonably certain to occur. The Court was especially harsh against NMFS arguments that because the ESA does not say how to handle uncertain data, it could use worst case scenarios. It said NMFS “legal reasoning was not just wrong; it was egregiously wrong”. *Id.* at 598. In other words, the Court completely rejected NMFS’ argument against

worst case scenarios that forms the underlying basis for justifying this Proposed Rule.

In breaking down this argument, the Court noted that NMFS was “inconsistent” (a legally nice word for lying) about the facts. *Id.* at 597. First, it noted that NMFS had said repeatedly that nothing required it to use worst case scenarios, and then it suddenly decided that it had to use worst case scenarios. *Id.* Second, it noted NMFS relied on one line of legislative history not the actual text of the statute, and that was entirely unacceptable. *Id.* at 598. Third, it noted that the cases cited by NMFS do not actually support what NMFS claimed it did. *Id.* For these reasons, it found that NMFS acted arbitrary and capriciously such as to make the 2021 Biological Opinion illegal. *See generally, id.*

The Court, attacking the idea it had to defer to agencies, noted that its first duty is to interpret the law, and it cannot uphold an agency action contrary to law. *Id.* at 596-97. Nothing in the ESA requires worst case scenarios, the Court determined, and thus, even though NMFS tried to claim that the Court had to defer on scientific questions (and that, it didn’t really use worst case scenarios because the result would be the same), NMFS was wrong. *Id.* The Court also noted that NMFS completely failed to consider the severe economic damage that could befall the lobster industry, not consider the other worst-case scenario that none of the new technology it wants to mandate would actually help. *Id.* at 596. And yet, NMFS marches forward repeating the same mistake.

Finally, the Court determined that the error was not harmless because the use of worst-case scenarios tainted the entire Biological Opinion. It especially noted how absurd it was for NMFS to allocate entanglements 50/50, when substantially more entanglements occurred in Canada and the Canadian data was outdated. *Id.* at 601.

Despite the clear and complete rebuke by the D.C. Circuit, NMFS is proceeding with this Proposed Rule as if nothing has changed. But the D.C. Circuit has removed any doubt as to the validity of the science underlying NMFS’ illegal actions and, as NMFS is relying on the same science here, its Proposed Rule is illegal, arbitrary, and capricious.

CONCLUSION

Because the 2023 Wedge Closure was illegal, the attempt to permanently close the Wedge is unquestionably illegal as well. Further, because NMFS cannot rely on the 2021 Biological Opinion, it has no scientific basis to issue the Wedge Closure.

Let me be clear. If NMFS proceeds with its efforts to issue a permanent Wedge Closure, we will sue them and we will win. NMFS is charging forward with a illegal proposed action and a court of law will hold NMFS to account. As such, we expect that you will withdraw this proposed illegal rule.

Your time and attention to this matter is appreciated.

Kindest regards,

Samuel P. Blatchley, Esq.

cc: Daniel Cragg, Esq.

Robby Dube, Esq.

Arthur Sawyer

Beth Casoni

¹ This ignores the actual context in which CAA §101 was passed. CAA § 101 was passed at a time when NMFS was seeking to promulgate regulations in accordance with the 2021 Biological Opinion it had produced, with those regulations seeking to reduce the alleged contribution of the lobster and Jonah crab pot fisheries to North Atlantic Right Whale mortalities from allegedly 7.57 to 2.69, then 2.61, then 1.04, and finally to 0.136. This prompted a flurry of litigation that warned that such regulations would obliterate the lobster industry. It is within that cauldron of concerns that Congress passed CAA § 101, declaring the lobster industry to be in compliance with the ESA and MMPA until 2028, to provide time to evaluate the use of existing gear technologies, for scientific research, and for the development of new technologies. CAA § 101(a)(1). Thus, the clear purpose of CAA § 101 was to limit NMFS’s ability to promulgate new regulations against the lobster industry under the MMPA and ESA. And this purpose is supported by the actual language of CAA § 101.

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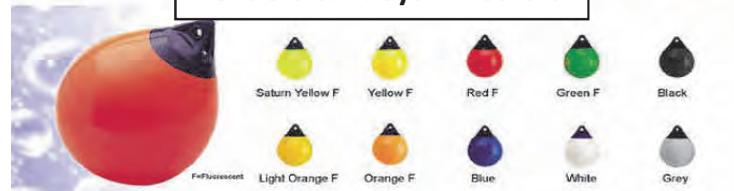
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Responsible Offshore Development Alliance

As RODA members, we are very appreciative to MLA for the opportunity to provide a brief update on the wild world of offshore wind development. For those unfamiliar with the organization, RODA is a fishing industry association committed to protecting fishing businesses in light of new offshore development. MLA has been a dedicated member of RODA since our inception in 2018. Our members are vessel owners and operators, seafood dealers, processors and seafood associations based in every East Coast state from Maine to North Carolina, and in Washington, Oregon and California. Learn more at: www.rodafisheries.org

Offshore wind development on the Outer Continental Shelf is happening at a fast and furious pace. By the numbers:

- The Biden Administration has set a goal of deploying **30 gigawatts (GW)** of offshore wind energy by 2030, and **15 GW** of floating offshore wind by 2035;
- BOEM has **34** active offshore wind leases at some stage of environmental review across the nation (<https://www.boem.gov/renewable-energy/lease-and-grant-information>)
- **Four** offshore wind projects have been approved for construction: Vineyard Wind 1, South Fork Wind, Ocean Wind 1 and Revolution Wind; and
- **Three** regions have identified (draft) Wind Energy Areas for potential future leasing: Gulf of Maine, Central Atlantic and Oregon.

GULF OF MAINE DRAFT WIND ENERGY AREA

BOEM is currently soliciting feedback on the Gulf of Maine draft Wind Energy Area (<https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>). The area covers approximately 3,519,067 acres offshore Maine, Massachusetts and New Hampshire, ranging from approximately 23 - 120 miles off the coast. Under the anticipated timeline for the Gulf of Maine, BOEM will identify lease areas in their Proposed Sale Notice (PSN) in Q1 2024 and hold a lease auction in Q3 2024.

RODA is in the process of developing recommendations to submit on behalf of our members. In particular, we are hoping to identify thresholds that should constitute no-development, key fishing grounds that must be avoided, and other minimization and mitigation strategies that should be considered if BOEM moves forward. Please reach out to RODA if you would like us to echo your concerns about development in the Gulf of Maine.



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Massachusetts officials send letter of support for Senate Bill 552 to the Joint Committee on Agriculture

October 20, 2023

*Joanne M. Comerford,
Senate Vice Chair
Joint Committee on Agriculture
State House, Room 410
Boston, MA 02133*

*Paul A. Schmid III, House Chair
Joint Committee on Agriculture
State House, Room 473F
Boston, MA 02133*

Dear Chair Schmid and Vice Chair Comerford,

We write in full support of **Senate Bill 552, An Act relative to lobstering closure mitigation**. This bill would establish a fund to provide financial assistance to lobstermen to mitigate the financial impacts of fishing area closures due to protection of endangered marine species.

This bill is supported by a wide range of organizations, including the Massachusetts Lobstermen's Association and the Massachusetts Fishermen's Partnership.

Since 2014, Massachusetts has engaged in expanded fixed gear closures from February through April to help protect the endangered North Atlantic Right Whale. Although these closures are supposed to end in April, they are often extended because of the presence of North Atlantic Right Whales in the waterways.

Research shows that periodically closing waterways to fixed gear is a necessary endeavor to protect one of the world's most endangered large whale species.

Unfortunately, these closures also present an existential threat to the lobstering industry. These closures eliminate lobstermen and women's ability to fish for months. These closures take place from Buzzards Bay and the Nantucket Sound through Cape Cod Bay, up and down the South Shore, and extending up to Cape Ann. These closures, which are the most extensive any coastal state, impact over 9,000 square miles of open

water, accounting for about 95% of Massachusetts waters.

While these closures are important for the protection of marine life, we also need to consider how we as a Commonwealth can protect the lobstermen and women that suffer severe economic loss due to these closures.

This bill creates a fund, administered by the Department of Unemployment Assistance (DUA), that would allow for weekly payments to lobstermen and women of \$1 per trap, per week. With the maximum of 800 traps per permit holder, the maximum weekly payment would be \$800. With the average four-month closure annually, and the number of lobstermen and women we have in the Commonwealth, we can estimate that this project will have a fiscal impact of \$12 million – a miniscule percentage of our revenues.

Lobstermen and women are the foundation of the lobstering industry, which supplies restaurants, markets, and distributors. Lobstermen and women earn over \$93 million dollars annually, making them the second largest part of our seafood industry. Massachusetts has the second largest fishery of American Lobster in the world, constituting the most valuable commercial marine resource within our waters. If these lobstermen and women are unable to prosper, the lobster industry and subsequently our seafood industry will eventually collapse.

Hard data aside, the lobstering industry is a cherished cornerstone of our economy, culture, and history. Our iconic lobstering industry not only drives consumption in our restaurants and food stores, but it also inspires tourists from all over the world to see our beautiful state.

Lobstermen and women have lined our shores with their boats and traps for centuries. They have weathered their fair share of hardships, yet they have stayed resilient. They are a symbol of our strong marine economy, economic prosperity, and the idea that hard work is rewarded with a better life.

We have signed onto this letter because we represent coastal cities and towns, and many of our constituents are lobstermen and women themselves. We have seen firsthand the harm that these closures have done to their livelihood and our communities. These closures, while justified in the name of environmental protection, still present a grave economic threat to our lobstermen and women. If we are going to take away their opportunity to make an honest living, we must do our part to ensure that they are financially protected.

It is for these important reasons that we respectfully urge the Joint Committee on Agriculture to act favorably on this bill.

Thank you in advance for your consideration of this request.

Sincerely,

Patrick M. O'Connor
*State Senator
First Plymouth & Norfolk District*

Bruce E. Tarr
*State Senator
First Essex & Middlesex District*

Matthew Muratore
*State Representative
First Plymouth District*

David F. DeCoste
*State Representative
Fifth Plymouth District*

Jennifer Armini
*State Representative
Eighth Essex District*

Josh S. Cutler
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Joan Meschino
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*State Senator
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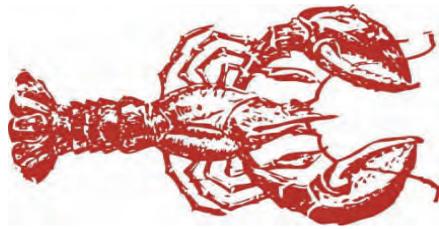
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The Commercial Fisheries Research Foundation - Removing Ghost Fishing Gear from Rhode Island Waters



Lost fishing gear, or ghost gear, can greatly impact our marine environment, from ecological damage to safety hazards, economic losses, and more. Rhode Island has a thriving fishing industry with both commercial and recreational fisheries that use stationary and mobile gear types. This makes gear highly susceptible to damage and loss due to marine traffic, and tidal and storm events, and commercial fishermen have identified this as a high-priority

issue. As a result, the Commercial Fisheries Research Foundation (CFRF) has been working with stakeholders and experts to map, develop a removal plan, and remove ghost gear from Rhode Island waters.

Commercial fishermen's knowledge was first used in 2021 to produce a map of known ghost gear locations and target areas for removal. These 'hotspots' were then confirmed using underwater video cameras. Next, the CFRF col-

laborated with local stakeholders and other organizations to create a cohesive planning document to remove ghost gear from Rhode Island waters in 2022. In 2023, the CFRF partnered with local fishermen to implement this plan and began removing ghost gear from Narragansett Bay.

All location and retrieval activities were conducted on local commercial fishing vessels and in partnership with regulatory officials. Removal activities were

conducted in January-March to reduce interactions with active fishing gear, initially using a single commercial grapple technique on confirmed targets. In this first pilot removal effort, the CFRF removed and recycled 4,000 lbs. of steel and 700 lbs. of rope from Narragansett Bay. Data was collected on the gear that was removed, including gear type, location, depth, substrate, tag numbers, species in gear (alive or dead), amount and type of biofouling, and status of escape vents. Fishing traps were the major source of ghost gear in the Bay, with some traps over 20 years old and most containing low to no bycatch. Following initial removal activities, a side scan sonar survey was conducted in the Bay to increase target areas and aid in assigning appropriate retrieval methods for next year. In early 2024, we will continue removal efforts in Narragansett Bay and will also begin preparing for the identification and removal of ghost gear targets offshore.

Thanks to 11th Hour Racing, the Southeast New England Program (SNEP), and the National Oceanic and Atmospheric Administration for funding this work!





Atlantic States Marine Fisheries Commission NEWS RELEASE

FOR IMMEDIATE RELEASE: October 18, 2023 | PRESS CONTACT: Tina Berger, 703.842.0749

Jonah Crab Benchmark Stock Assessment and Peer Review Finds Population Abundance Remains Above Historic Lows but Needs to be Closely Monitored

BEAUFORT, NC – The 2023 Jonah Crab Benchmark Stock Assessment and Peer Review Report indicates the range-wide population of Jonah crab remains above historic lows of the 1980s and 1990s. However, evidence of declining catch per unit effort (CPUE) in the fishery presents substantial concern and uncertainty for the status of the stock.

Based on life history and fishery characteristics, the assessment divided the population into four stocks: offshore Gulf of Maine (OGOM), inshore GOM (IGOM); offshore Southern New England (OSNE) and inshore SNE (ISNE). According to the stock indicators, IGOM, OGOM, and OSNE recruit, exploitable, and spawning abundance conditions from 2019-2021 were neutral or positive relative to historical periods. Indicators generally agree across these stocks that abundance has not been depleted compared to the historic low abundance observed in the 1980s and 1990s. There are no reliable abundance indicators for the ISNE stock so no determination about the condition of this stock's abundance could be made at this time. Young-of-the-year settlement indicators generally show neutral conditions and do not indicate that recruitment in the GOM stocks will decline to historical lows in the near future. Settlement conditions are unknown for SNE stocks.

“As the first range-wide assessment of Jonah crab along the Atlantic coast, this assessment represents a significant advancement in our understanding of the species, its life history characteristics, and distinct fisheries by stock unit,” stated Board Chair Jason McNamee of Rhode Island. “I commend the members of the Stock Assessment Subcommittee and Technical Committee for their successful completion of a challenging, data poor assessment.”

According to the Peer Review Panel, “Despite the limited availability of

current data, there is considerable urgency for the assessment due to a very steep, three-year, decline in landings. Commercial landings have declined 51% in three years, after an unprecedented 30-fold rise in landings. Although the recent decline is not well-detected in fishery-independent stock indicators, there is some evidence of declining CPUE in the fishery, creating substantial concern and uncertainty for the status of the stock. Given the mixed signals, the status of the Jonah crab stock is highly uncertain.

Current conditions closely resemble early stages of the collapse of the Canada Jonah crab fishery in the early 2000s. In the first three years of the crash, Canada landings dropped 58%. Within five years, landings fell 97%, and stock biomass could no longer support a fishery. Fishery-independent trawl indicators had not fully captured the signals of a rapidly declining stock. However, declining fishery CPUE was observable preceding and during the landings crash.

Given the high level of uncertainty in the status of the Jonah crab stock, the Panel strongly recommends close monitoring of annual stock indicators in the next few years. Annual indicators can determine whether sharply declining recent landings are signaling the start of a ‘bust’ phase of a boom-and-bust arc, or are due to fishery and market-related factors uncoupled with Jonah crab abundance.”

There are notable differences between the fisheries that operate in each of the stock areas. The vast majority of coastwide landings have come from the OSNE stock, accounting for 70-85% of annual coastwide landings from 2010-2021. The IGOM stock has supported the second largest fishery, accounting for 9-24% of annual coastwide landings from 2010-2021. Both the ISNE and OGOM have supported smaller fisheries, never accounting for more than 5% of annual coastwide landings from 2010-2021.

The high proportion of participants contributing to Jonah crab landings indicates a directed fishery in the OSNE stock that targets Jonah crab, yet only a small number of participants account for the large magnitude of landings from this stock. The other three stocks have fisheries that are characteristic of bycatch fisheries that are targeting American lobster. These fisheries have low proportions of participants that land Jonah crabs from pot/trap gears. In the case of the IGOM stock, there is a relatively high number of participants targeting lobsters and not landing Jonah crabs. This represents considerable capacity for growth in a Jonah crab fishery if these participants were to switch to targeting Jonah crab.

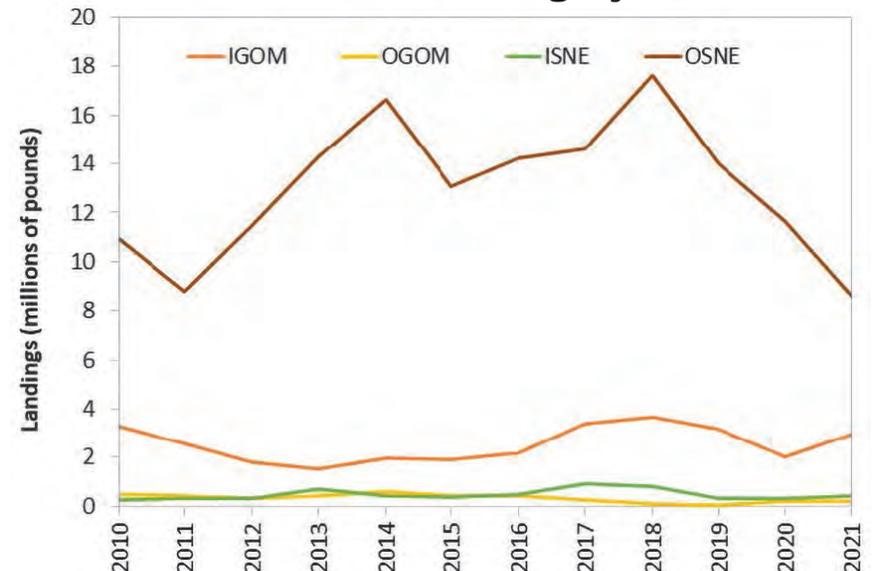
Landings have shown different trends across stocks, but the landings from OSNE declined steadily from the time series high in 2018 (17.6 million pounds) in the last three years of the time series (2019-2021). This trend is believed to be influenced by factors other than available abundance but should continue to be monitored closely. There was insufficient infor-

mation to describe fishing mortality or exploitation with confidence and these population parameters remain major uncertainties.

In response to the assessment findings and peer review panel recommendations, the American Lobster Management Board accepted the Benchmark Stock Assessment and Peer Review Report for management use and tasked the Technical Committee with recommending possible measures or actions to address the concerns about stock status and recent fishery trends.

A stock assessment overview, which provides a more detailed description of assessment results, as well as the stock assessment and peer review report will be available on the Commission's website at <https://asmfc.org/species/jonah-crab> under Stock Assessment Reports. For more info on the stock assessment, please contact Jeff Kipp, Senior Stock Assessment Scientist, at jkipp@asmfc.org; and for more info on Jonah crab management, please contact Caitlin Starks, Senior Fishery Management Plan Coordinator, at cstarks@asmfc.org.

Jonah Crab Commercial Landings by Stock Area





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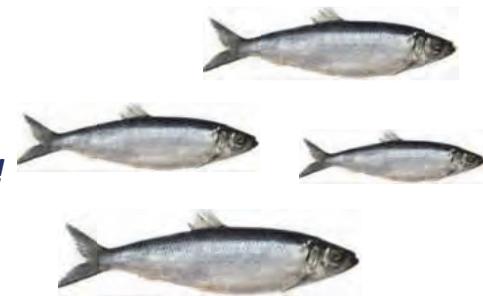
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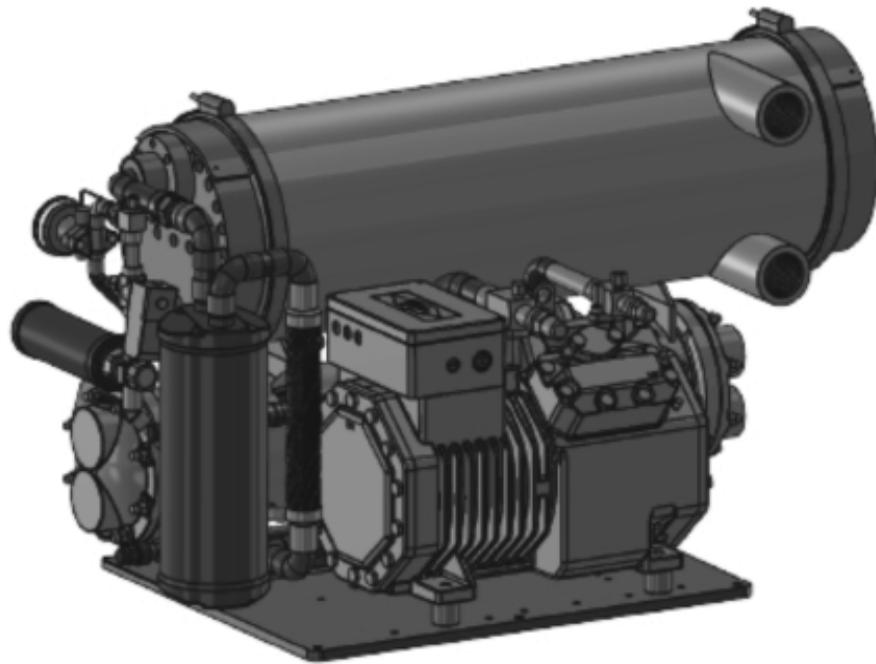




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2023 TRANS TASMAN ROCK LOBSTER CONFERENCE

Back in July, Deckhand's very own Founder Simon Dick spoke at the 2023 Trans Tasman Rock Lobster Conference in Adelaide, South Australia. This was the first of this conference since 2017. Over 250 lobstermen in Australia and New Zealand are actively using Deckhand. A key conference highlight was that the 'spatial squeeze' limiting commercial fishermen's resource access will only continue to worsen.

Simon's presentation was entitled Harvesting Insights: Unleashing the Power of Deckhand Data for Sustainable Profits in Rock Lobster Fisheries. Simon articulated the transformative potential of Deckhand as an innovative data-collection tool and how it harnesses essential fishery data to optimize operations, boost profitability, and promote sustainable practices in Rock Lobster fisheries. A goal of Simon's presentation was to communicate the importance of seeking smart ways to leverage technology for the future of profitable and responsible fishing.

The Deckhand team is very appreciative of those who attended Simon's presentation and otherwise participated at the 2023 Trans Tasman Rock Lobster Conference. Our ongoing collaboration and partnership with the rock lobster industry is a cornerstone of our organization!



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To find out more about Deckhand please contact Lange Solberg our North America Business Development Lead located in Bellingham, Washington.

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RESEARCH FROM AMERICAN LOBSTER INITIATIVE

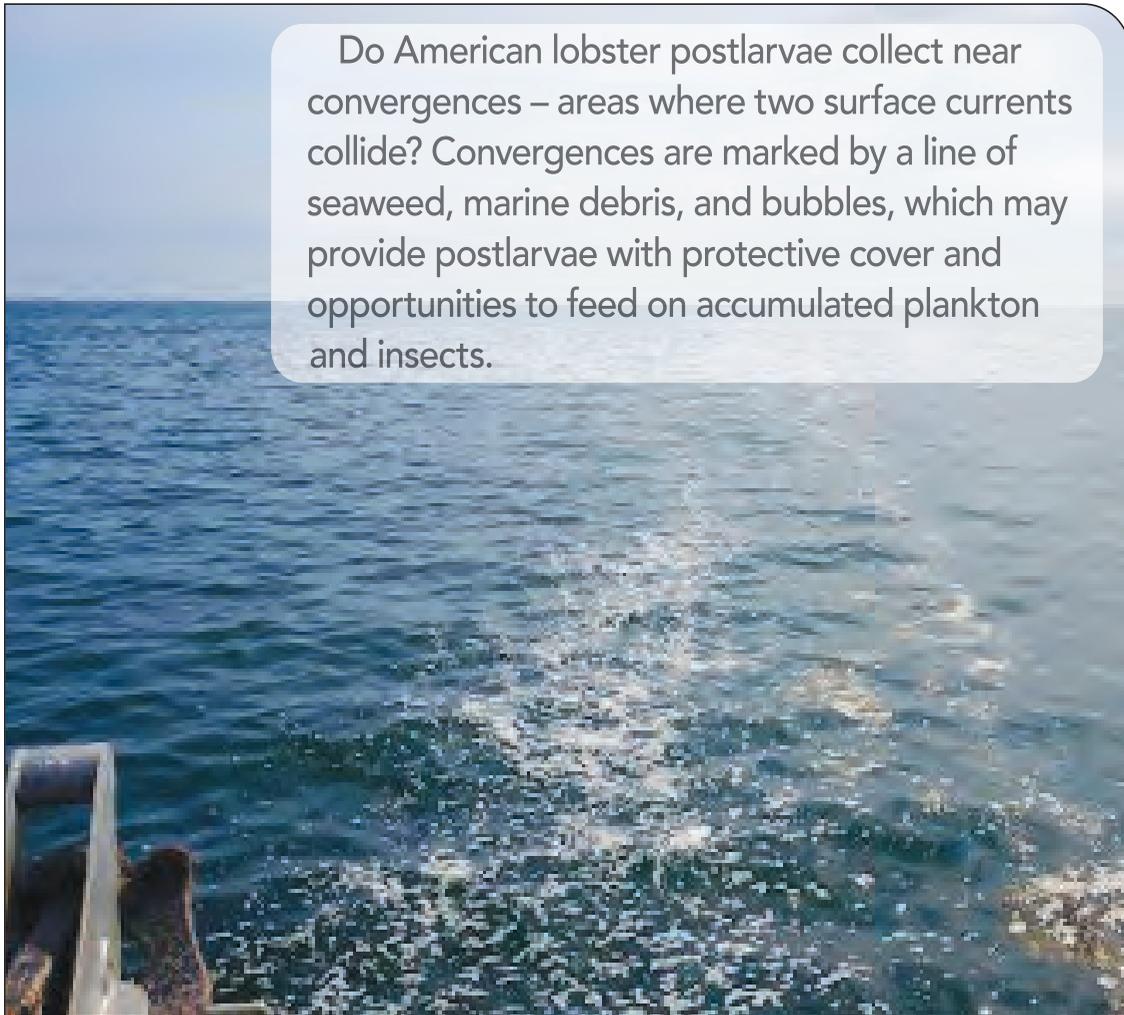
Surface convergences as **LARVAL HABITATS**

Simonne Dodge, Jennie Rheuban, & Stephanie Murphy | WHOI Sea Grant

October 10/2023

A research team investigates whether postlarval lobsters are undercounted where two surface currents collide

Do American lobster postlarvae collect near convergences – areas where two surface currents collide? Convergences are marked by a line of seaweed, marine debris, and bubbles, which may provide postlarvae with protective cover and opportunities to feed on accumulated plankton and insects.



A convergence sampled by the research team. Photo by Carolyn Tepolt, WHOI

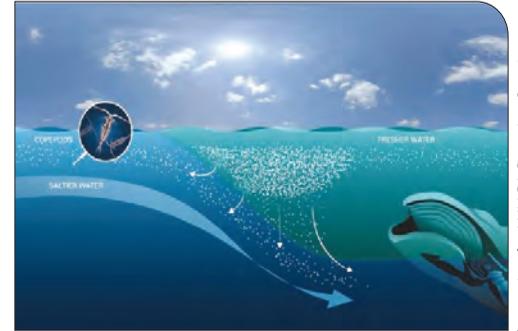


Illustration by WHOI Creative Services

Colliding surface currents create a convergence.

EXPLORE the PROJECT

At convergence sites, two surface currents push against each other. The colder and saltier current will be denser and sink, while the warmer and less salty one will be lighter and stay higher in the water column.

Scientists often avoid convergences when sampling for postlarvae because the large amounts of seaweed and other materials that collect there can make sampling challenging.

The research team hypothesized that lobster larvae are collecting at convergences. They sampled 15 potential convergences for postlarvae and compared their findings to 15 sites where convergences were not present.

To explore more research stories from American Lobster Initiative, visit our StoryMap collection:

<https://arcg.is/1CHT1j>



RESEARCH FROM AMERICAN LOBSTER INITIATIVE



Photo by Jesús Pineda, WHOI

Shipboard sampling at a convergence site.



Photo by Carolyn Tepoit, WHOI

Lobster postlarvae in a series of collection wells.

READ the RESULTS

Preliminary analyses suggest that postlarvae are more abundant at sites of convergence than sites without convergence. At two convergences where postlarvae were exceedingly abundant, the research team is further examining differences in location, salinity, temperature, and other factors. They are also investigating the differences in other species found among the convergences, and differences in postlarval health (swimming strength, fat storage levels, etc.) between those sampled at convergences and those found elsewhere. (These results are subject to change with peer review.)

UNDERSTAND the IMPORTANCE

Assessing the abundance and distribution of American lobster postlarvae can serve as an important indicator for where adult lobsters are and how they're moving.

If convergences are sites where postlarval lobsters collect, researchers should consider sampling them more broadly. Because assessments of postlarval abundance and distribution feed into evaluations of the lobster population as a whole, a better understanding of the role of convergences in the American lobster life cycle is needed.

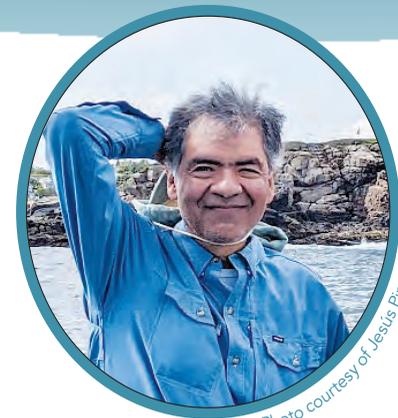


Photo courtesy of Jesús Pineda, WHOI

Jesús Pineda, PhD PRINCIPAL INVESTIGATOR

Jesús Pineda is a senior scientist in the Biology Department at Woods Hole Oceanographic Institution (WHOI).



We welcome your feedback.
Email us at lobster@whoi.edu

RESEARCHER HIGHLIGHT



Photo courtesy of Jesús Pineda, WHOI

Jesús Pineda – Woods Hole Oceanographic Institution (WHOI)

When Jesús was a child, he loved fishing in the river near his grandmother's ranch in central Mexico. Fascinated by the marine environment from a young age, he pursued a higher education in Mexico before venturing to the U.S. to complete a PhD in oceanography at Scripps Institution of

Oceanography. His career has focused on how larvae of different species are transported through the ocean, and their fate after they settle. In 1994, he went to work at WHOI, where he has remained ever since.



Opportunity Energy Efficient Fisheries Partners



Background: Gloucester Fishermen's Wives Development Fund (GFWDP) was awarded CDS funding in 2023 to explore ways to measure and improve energy efficiency in MA commercial fisheries.

Goal of Sea Trials: We're looking for partners to trial a suite of NEMA 2K sensors connected to an onboard, cloud-based/4G computer to collect data about Fleet Energy Usage--important for finding ways to reduce costs. **Spots open for 15 vessels throughout MA. 12-month test period. All costs of HW, installation, data transmission, are covered. Equipment is yours to keep.*

Objective:

- To provide fishing vessel owners information on their vessel's fuel energy use (current and historic) along with the energy consumption of each vessel component and activity (steaming, trawling, setting, etc).
- To help the owners identify feasible and cost-effective energy conservation measures, including an App where they can track their energy usage in real-time, from trip to trip, and analyze trends.

Sensors (NEMA 2k)

- Fuel Flow Sensor
- Hydraulic Pressure Sensor
- Amp Meter
- GPS
- Other Sensors can also be considered depending on vessel needs

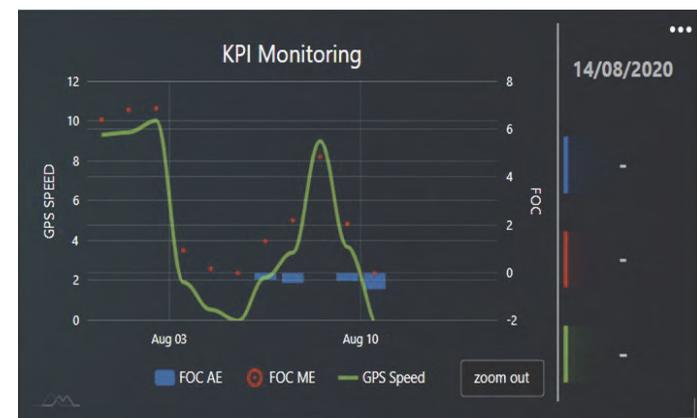
All sensors connected with onboard server with built in 4G/Wifi for automatic data uploads.



Other Opportunity

Strain Guage Partners

- Attach Strain Gauge to Propeller to assess efficiency of propulsion system under different scenarios
- \$1500 per day (1-2 days per vessel)



Contact

Josh Wiersma (603-682-6116) josh.wiersma@gmail.com
 Angela Sanfilippo (978-282-4847) asanfilippo@mass-fish.org

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AD#8 (5/23) **FOR SALE** – Wooden conch pots & repair stock made to order -774-201-0712

AD#9 (5/23) **FOR SALE** – 1977 Dyer Fiberglass 29ft lobster boat, currently on dry dock until May 20 in E. Boston. Engine is a 5-year-old 351 Ford gas engine w/new overhauled gear by Nopper Marine. Currently, the engine & gear were removed from the boat. Recently rebuilt hydraulic steering pump & new stern bearing as well as one new fuel tank. Good deck room for a smaller boat. 15 4 ft trawls or 45 4ft take home capacity. Could be used as lobster or sports fishing boat. 2 fuel tanks approx. 60 gal. total. Two hauler stations (electric & or hydraulic option) Private showings only. Tom 617-504-4153. BRO.

AD#10 (8/23) **FOR SALE – SIZE CORRECTION** - Warp–Used & some new, mostly knot free. 76 lbs. 5/16, 33 lbs. 3/8 \$99 takes all 508-269-1406 Plymouth.

AD#11(10/23) **FOR SALE**- In Boston. 60 new yellow cavatorta wire 43.5 x 22.5 x15 lobster traps. Kitchen haul, double parlor hand knit head in rear, 10 gauges ends, bridges & front corner braces. 12-gauge body, side brace, skid plate & side chaffing pieces. Has plastic coated steel runners, plastic corners & plastic runner bumpers. These are quality made traps that you will absolutely love to haul! \$182 each. Call Ed 617-680 -4096

AD#12 (5/23) **TAKING OFFERS** on TRAPS located in GLOUCESTER, 100, 40 1/2" X 24" X 15" Single parlor traps, Color RED, Jungle wood runners, 70 of them were fished 5 months on soft bottom, 30 of them never in the water. 50, 48" X 22 1/2" X 15" Double parlor traps. Color YELLOW, Jungle wood runners, 40 of them fished one season, 10 of them never in water. Line & buoys available. Pictures available by text. Bob@ 508-284-5896

AD#13 (5/23) **FOR SALE** – 12" hauler stainless steel plates 10 gal., hydraulic tank aluminum Davit which hauler can be mounted on \$1000. Tom 781-831-1609

AD#14 (10/23) **FOR SALE** – Turnkey Outer Cape Lobster Business: 1981 31ft. BHM Volvo 63P–370 HP, 2 1/2:1Twin Disc, spare wheels, many spare engine parts. OC State permit w/270 tags+ 10%, many endorsements, 400+ traps, ground lines, end lines, flags, Go-Deeps, 200 totes, lids, + trap building tools & equipment. Boat also setup for Dogfish & Mackerel w/all gear, 8x16 tra0 trailer, 5'x7' walk in bait cooler, 6000#mooring in Chatham Harbor, fiberglass skiff with 10HP Suzuki 4 stroke & trailer. \$200k Or BRO Steve 978-257-1062

AD#15 (10/23) **FOR SALE** - 31 ft., BHM Lobster boat. 300 hp- John Deere, 2-VHF radios, chart plotter, Furuno fish finder, built in live tank, radar, 3 swivel rod holders. \$65,000.00 Call 508-280-3038

AD#16 (6/23) **FOR SALE** – 200 used traps 13 1/2 x 21 1/2 x 39" \$25. per trap -401-635-4371

AD#17 (5/23) **FOR SALE** – 3/32 7x7 Bottom Longline galvanized cable, 20,000 ft (2spools) new w/ electric reels. \$600. 2 Hydro Slave Standard Boom Winches, 400- 20 3ft x 22in Shrimp Mesh Lobster Pots \$35. each – Bill @ 508-264-1076

AD#18 (8/23) **FOR SALE** – 1980 Bob Rich 40 wooden lobster boat. 471 Detroit diesel, twin disc gear, hydro-slave pot hauler w/diverter valve for other fisheries. Two 75-gal fuel tanks (fiberglass) under deck, full cabin, GPS, Furuno depth sounder, VHF radio, MA coastal Area 1 lobster permit, 800 trap. Federal Area 1 lobster permit w/endorsements (groundfish/dogfish) 800 pot limit. 140 wire lobster traps, some never used (brand new) 60-70 buoys, extra ropes, safety equipment, sea anchor, 12 fiberglass skiff misc; lobster related equipment, spare propeller (never used) trap related repair equipment. \$65,000. firm. Bill @ 781-834-7418

AD#19 (5/23) **FOR SALE** – 30 4' Traps 48x24x13 1/2 Color White - Call 508-577-4868

AD#20 (5/23) **FOR SALE** – MA Conch pot license w/ history. Best offer over 30K -Call 774-775-2827

AD#21 (5/23) **FOR SALE** – 38 ft fiberglass Atkinson NOVI, Gloucester Ma., alum/glass windows, rebuilt by Downeast Diesel 6081 JD 375 hp/1500 hrs., ZF trans, 2 steer stations, 14" ss pot hauler, ss davit, gear locker, 4 bunks, life raft, EPERB, 295 Furuno color machine, Furuno radar, Northstar GPS 952, Sinrad auto pilot, wash down, 2 ss fuel tanks – 200 gallons – 1000 lb lobster tank very well maintained, motivated seller \$130,000. OBO Cell 781-424-6946

AD#22 (10/23) **FOR SALE**-Federal Area 1 Permit: Offers over \$35,000 will be considered. IHsea@aol.com 781-639-0001

AD#23 (10/23) **FOR SALE** – Airsep- air-cleaner 5" \$100.00 Joel at 781-581-0324 or E-mail joel.w.marie@gmail.com

AD#24 (10/23) **FOR SALE** – 5" Superior hauling block-Aluminum construction with stainless sheave \$250. Joel @ 781-581- 0324 or E-mail joel.w.marie@gmail.com

AD#25 (10/23) **FOR SALE** – Spare new stainless sheave for 5" Superior block-\$150. Call Joel at 781-581-0324-E-mail joel.w.marie@gmail.com

AD#26 (6/23) **FOR SALE** – 1990 42 ft PEI lobster boat in excellent condition. Cummins 8.3L -6 CTA w/ ZF gear. 1700 hours on each. Electronics, safety gear, very well equipped.700 Brooks Trap Mill custom traps. 3/8 Everson ground line, & whale safe compliant end lines, Hi flyers & tide balls. State & federal licenses. As of June 1st, all gear in the water. Baited, tagged & fishing. Buy today & fish tomorrow Complete package \$290,000. Will separate Boat \$210,000, traps \$75,000. state license \$30,000. & fed license \$40,000. Call 978-745-6182, leave message. Serious inquiries only.

AD#27 (10/23) **FOR SALE** – In Boston. 60 new black cavatorta wire 43.5 x 22.5 x 15 lobster traps. Parlor haul, double parlor, shrimp mesh,10 gauge ends, bridges & front corner braces. 12-gauge body, side brace, kitchen brace, skid plate & side chaffing pieces. Has plastic coated steel runners, plastic corners & plastic runner bumpers. These are quality made traps that you will absolutely love to haul! \$180 each. Call Ed 617-680-4096

AD#28 (10/23) **REDUCED - FOR SALE** – Complete lobster business. Area 1 MA State license 800 trap allocation with long history. Dog & shellfish endorsement. 1987 Gummond 31' w/12' beam enclosed cabin w/ "bus" heater 12kts cruise w/20+top end Cummings re-manufactured "Diamond" version 370 HP with 3500 hours. 300+ traps w/ ropes & buoys. 14ft tender w/ 3yr old Suzuki 4s 15 hp w/electric start. GPS/bottom sounder, life jackets, fish totes, etc. Would like to sell as a package but will accept separate offers on boat, license & fishing gear. \$70,000. OBRO Call Bob- 508-224-1664 or e-mail @ roalward@comcast.net Pictures available.

AD#29 (9/23) **FOR SALE** – 1 24X24 Freeman Hatch. Used. In good condition. \$500.00; 1 36 foot shear \$300.00; 1 4' by 8' trailer \$200.00; Call Ted 401-842-8165.

AD#30 (10/23) **FOR SALE** – Lobster business peripherals: OCLMA permit for 645 tags, dingy, tank, freezer, mixture of wood & wire traps in excellent condition, totes, etc. Serious inquiries only: 774-313-6287 or joneSeven@aol.com

AD#31 (10/23) **FOR SALE** – Hook gear for sale 5 totes 125 hooks per tote all brand new.5 totes of used gear. Brand new Danforth anchors included. \$1000.00 Call 781-831-1609

AD#32 (6/23) **FOR SALE** – Lobster Business- 28.2ft boat, built in 1976 engine cat 3208, 265HP trans 2.1 twin disk fiberglass JC hull. Area 1 Coastal lobster permit 800 trap allocation, 700 3ft lobster traps with rope and buoys. 80,000. Joe at 978-239-5927

AD#33 (6/23) **FOR SALE Price Reduction** -36.5' Wayne Beal Lobster Boat. 3208 CAT 375 hp Turbo w/7600hrs. Motor was completely overhauled prior to 2022 fishing season. Furuno chart plotter, depth, radar & radio. 2nd Simrad below. Switlik life raft, survival suits & Epirb. Small galley w/sink, insulated icebox & 2500-watt inverter for coffee. 4 bunks w/ mattresses. Working head. Pacer pump & separate washdown pump. Redundant spare equipment (all new in box), Inc. Pacer pump w/hydraulic hoses, belts, starter motor, 2 alternators, windshield wiper arms & motors, bilge pumps, deck hoses, etc. The boat is clean & in excellent, fishable condition. \$205,000.00 Traps & Permits available. Ben@ 978-578-8882

AD#34 (11/23) **FOR SALE** – 2-506 twin disc transmissions 4k for both- priced to sell. Call/text Elaine 339-832-2493

AD#35 (6/23) **FOR SALE** – 35' Novi, 1989 Atwood solid fiberglass hull, Cummins 6BT (~4,000hr since reman.), rigged for pot fishing, needs a lot of work – \$16k or best offer. Currently in dry dock on Cape Cod. Call 508-737-1052

AD#36 (9/23) **FOR SALE** – Gill Nets (10 assorted, some new or recent rehangs (Hercules). Gill net reel, 48" diameter, 42" width. Holds average 4 + panels (1200'). Excellent condition, chain drive, full hydraulics. Complete tub trawl system equipped with 10" hydraulic hauler for retrieving Tub Trawls mounted on net reel. "Jamestown" / Chatham gravity baiter (3-bushel size). Four totes set up with stainless magazine hook storage 125 hooks (500 total), 300 additional hooks storage system (four totes), fast and simple to use. Over half mile, set up for Cod, blue fish, Spiny Dog fish, or what have you. Loads of extra clips, gangions, boxes of Brand-new Mustad E-Z Baiter hooks. Two survival suits (like new 3 years old). Still mounted on boat, can demonstrate until mid-September. Located in Freeport, Long Island, New York. Hoping to get \$1500.00 – 2000.00. We can talk. Call or text Captain Rich Hunter. 347-836-5382. I will most likely get back to you after 6:00 pm that evening. Be glad to answer any questions.

AD#37 (7/23) **FOR SALE** – 2001 Sea Pride Lobster Boat w/2016 Evinrude E-tec 90hp 2 stroke w/ low hours (under 1000) well maintained & perfect running condition. Commercially fished last 2 years. Boat is ready to fish. New in 2021: Transom Deck & stringers 27 gal; gas tank under deck 2 bilge pumps & washdown pump, Trap Table, Hydraulic Steering, hauling motor, Hauling block, Deck hatches, Scuppers. All hardware for EZ Loader trailer including u bolts, bunk slides, guideposts w/trailer lights elevated, recently replaced winch, trailer jack & rewired w/new lights, 2 new tires 20mph @ 4600 rpm \$18,000 call/text Tony 774-239-1599

AD#38 (10/23) **FOR SALE** – 50ft., Jersey boat 2-671 Detroit engines-twin disc transmissions-wiring needs to be finished, frame upbuild for lobstering. 30k or best offer. For more info, call-text Elaine 339-832-2493

AD#39(5/23) **FOR SALE** - 80 brand new Casco Bay traps 1/2 hoops & 1/2 hake mouths. Call 508-843-8614

CLASSIFIEDS continue on Page 38

AD#40 (6/23) **FOR SALE** – 22' Sisu Lobster Boat w/150 HP Evinrude OB needs work-12" hydraulics hauler runs off Honda hydraulics power pack. Comes w/ bunk trailer. Asking \$13,000.00 or B.O. Robert after 5:00 p.m. 617-846-3714 or 617-650-3842

AD#41 (7/23) **FOR SALE** -120 Green & Yellow lobster traps 36x24x14 – Some hoop heads & some shark heads. In good shape. Call 508-951-6400

AD#42 (6/23) **HELP WANTED** – Stern-man inshore- 46' lobster boat -North River -Call Bob 508-510-7792

AD#43 (6/23) **FOR SALE** – 200 45" Friendship lobster traps 8-6 years old \$25.00 each Call 508-510-7792

AD#44 (6/23) **FOR SALE** – 32" – 4 blade Dyna Quad Prop-21/2" bore, left hand \$2,500.00 Call 508-510-7792

AD#45 (6/23) **FOR SALE** – 1-34" Hytorg prop 2 1/2" bore, left hand \$1,000.00 Call 508-510-7792

AD#46 (7/23) **FOR SALE** -1982 34' Makou Mahogany built lobster boat built in Mattapoisett Ma. area. Was repowered about 10 years ago with a Cat 3208 210 hp natural. Approx 3600 hours. Hull and bottom in very good condition. No need to glass it. In the water and currently fishing. Older basic electronics. Located in Scituate Ma. Pictures can be seen on craigslist or some of the Facebook sites. \$12,500. No permits. Call or text 617 984 9965

AD#47 (7/23) **FOR SALE** -400 36x21 1/2x15 good to brand new condition shrimp mesh ss bait spike \$60-\$135- 978 774 4074 for more info.

AD#48 (7/23) **FOR SALE** -Commercial Worthington Air compressor. 80 gal. tank, 175 PSI, 7 hp 220 single phase motor w/ magnetic switch. Cost new \$ 7000. Asking \$3000 or B.O. Call Bill 978-594-4258

AD#49 (7/23) **FOR SALE** – Outer Cape Lobster Permit-511 trap allocation. \$150,000. Traps available will send pictures upon request, most are 1-3 years old. Call Eric @ 508-255-8526

AD#50 (8/23) **FOR SALE** -2002 40 hp Johnson Outboard motor long shaft, tiller steering, trim/tilt Electric and manual start Extra parts and manuals Been in storage for past 3-4 yrs. \$1,500. Call 508-246-4009

AD#51 (8/23) **FOR SALE** -1985 25ft., Privateer Lobster Boat. Fresh water cooled Mercruiser v8 engine-260 hp. Runs great-spare re-built engine. An IO spare re-built prop-hydraulics steering new in box. Re-built 4-wheel trailer. Gantry system to lift-boat off trailer. Garmen chart plotter GPS Map Garmen depth sounder-fish finder. VHF radio. The engine has stainless steel heat exchanger. Stainless steel exhaust risers. 50-30" lobster pots ready to fish. 100 spare buoys 2- coils rope-440-gal refrigerator lobster tank-platform scale for weighing. Ice chipper. 3- 28" scallop drags-system is ready to fish. X-actic polar box 48x44x36- 5-boat stands. 8' Pram- Many other items- Call between 4-7 p.m. \$22,000.00 508-979-0568

AD#52 (10/23) **FOR SALE** -Complete business - 31' BHM, rebuilt engine and transmission 2021, New shaft and propeller, Area 1 State only lobster permit, 700 wire traps and all the rope, buoys and more. Sold as a complete package Asking \$100,000 or best reasonable offer. Call Steve at 508-224-6610

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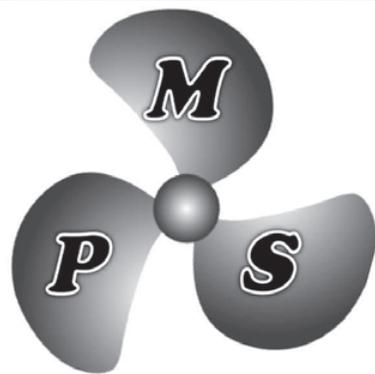
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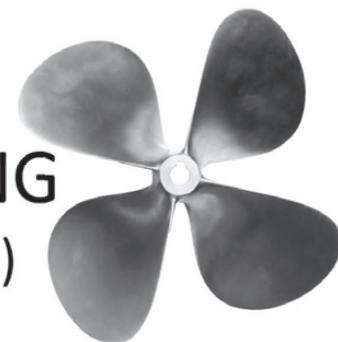
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