

# Public Hearing: Buoy Line Marking Rules for 2022

**6PM**

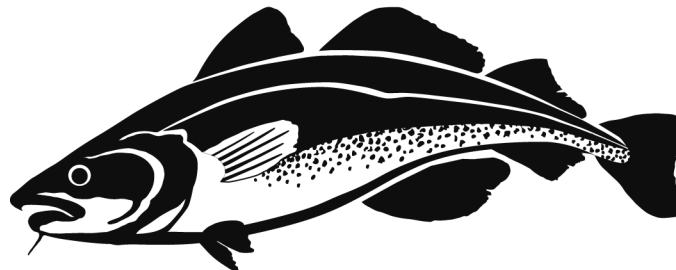
**May 11, 2021**

**Virtually Via Zoom**

**<https://bit.ly/3cfb1tH>**

**MarineFisheries**

Commonwealth of Massachusetts



# Public Hearing and Comment

Under the provisions of M.G.L. c. 30A, and pursuant to the authorities found at M.G.L. c. 130 §§ 17A and 104, the Division of Marine Fisheries (DMF) is taking public comment and holding public hearings on proposed amendments to regulations at 322 CMR 4.00 and 12.00 affecting buoy line marking in the commercial lobster and crab trap fishery.

Written public comment will be accepted through Thursday, May 20, 2021. Please send written public comment via e-mail to [marine.fish@mass.gov](mailto:marine.fish@mass.gov) or by post to the attention of Director McKiernan at 251 Causeway Street, Suite 400, Boston, MA 02114.



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# Virtual Rules of Engagement

- Purpose of the hearing is to afford interested parties an opportunity to submit data, opinions, comments, or arguments on the specific amendments being proposed, or to offer how the proposed amendment can be changed to minimize the impact on those affected while still achieving goals.
- Comments on matters outside of the scope of the specific amendments being proposed (e.g., ropeless fishing) will be accommodated upon the conclusion of the hearing if time permits.
- All members of the public will be muted throughout the presentation. At the conclusion of the presentation, DMF will first accept clarifying questions regarding the proposals, and then once all the questions are addressed, DMF will invite public comment on the various proposals.
- The written “chat” and “question and answer” functions have been disabled. DMF will respond to verbal questions at the end of the hearing. Additionally, you can follow up with DMF staff after the hearing by e-mail ([marine.fish@mass.gov](mailto:marine.fish@mass.gov)).
- When participating in the question and comment forums, the public is required to use the raise hand function. This creates a queue and DMF will recognize and unmute individuals when it is their turn to speak. Individuals will be provided two (2) minutes for questions and comments per hearing item. Follow-up comments may be allowed after all other persons have had an opportunity to speak.
- It is not necessary for you to provide verbal comment during this public hearing. You may use this virtual hearing for informational purposes and submit written comments later. In fact, submitting written public comment is recommended.
- Given our remote working status, DMF prefers that written comment be submitted by e-mail ([marine.fish@mass.gov](mailto:marine.fish@mass.gov)). All written comment is to be submitted by May 20, 2021. Written comment will be shared with the MFAC in advance of the June 3, 2021 business meeting.
- This public hearing will be recorded, and questions and comments are part of the public record. The recording of the public hearing will also be posted to [DMF's YouTube Channel](#).



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# Overview of Proposal

## Proposal:

- Implement new buoy line marking requirements for commercial lobster and crab trap gear fished by Massachusetts fishermen in state and federal waters.
- New marking scheme:
  - Makes Massachusetts gear definitively identifiable to allow for more precise management of the entanglement risk posed by commercial lobster and crab trap gear to protected species.
  - Ensures MA gear is not misattributed to an entanglement occurring in another jurisdiction.
- Responds to two challenges:
  - US District Court order for DMF to obtain an Incidental Take Permit for its fixed gear fisheries to cover potential takes of right whales and sea turtles.
  - Ongoing ALWTRP rule making to address management of Northeast/Mid-Atlantic American Lobster Pot/Trap Fishery at federal level.

## Timeline for Rule Making

- May 11, 2021: Hold virtual public hearing
- May 20, 2021: Conclude public comment period
- May 28, 2021: Provide recommendation to MFAC
  - June 3, 2021: MFAC vote on recommendation
    - June 25, 2021: File final regulations
    - February 1, 2022: Effective date



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# Status of DMF's ITP Application

- DMF is seeking currently in the process of applying for an Incidental Take Permit for right whales from NOAA Fisheries for its fixed gear fisheries for 2022.
- MA lobster fishery currently classified as part of Northeast/Mid-Atlantic American Lobster Pot/Trap Fishery on NOAA's List of Fisheries (LOF). This includes federal waters fishery and state fisheries from NY to ME.
- For ITP application to be successful:
  - DMF must distinguish our fishery from the Northeast/Mid-Atlantic American Lobster Pot/Trap Fishery.
  - DMF must minimize and mitigate for all potential sources of risk to right whales.
- These proposed regulations, as well as recently adopted fixed gear closure and buoy line modification regulations, are designed to provide additional conservation to endangered right whales when compared to other jurisdictions to help achieve both requirements.
- DMF will apply to NOAA Fisheries this summer to have state lobster/crab trap fishery classified separately on NOAA's LOF.
- NOAA reviews LOF annually and is expected to release the proposed 2022 LOF in September or October.
- Enacting these buoy line marking rules in July 2021 allows NOAA to consider them in 2022 LOF classification.
- Paves way for DMF to apply for a potentially successful ITP application for right whales in 2022.



# ALTRP Buoy Line Marking Proposal

- In December 2020, NOAA Fisheries released draft ALWTRP regulations affecting Northeast Crab and Lobster Trap fishery.
- This included proposed buoy line marking requirements.
- DMF anticipates federal rules will be promulgated during the late spring or early summer for implementation in 2022.
- DMF is working concurrently to adopt state-specific buoy line marking rules to 2022 LOF classification.
- DMF has ongoing conversations with NOAA Fisheries in an attempt to achieve cohesion between federal and state rule making processes.

**TABLE 4—PROPOSED REGULATORY CHANGES TO GEAR MARKING ON NORTHEAST CRAB AND LOBSTER TRAP/POT BUOY LINES**

Area	Proposed gear marking measure
Entire Northeast Management Area (see figure 1) except Maine exemption area.	3-ft long state-specific mark (see color below) within 2 fathoms of the buoy. In Federal waters, an additional 6-inch green mark within 1 ft. of 3-ft mark.
Maine Exemption Area .....	3-ft long mark within 2 fathoms of the buoy. One or two additional 1-ft marks (depth dependent) through state regulation only.
Maine Non-Exempt .....	Purple. Three 1-ft marks: At top, middle and bottom of line. In Federal waters, an additional 6-inch green buoy line mark within 2 fathoms of buoy.
New Hampshire .....	Yellow. In state waters: Two 1-ft marks in the top half and bottom half of buoy line. Beyond state waters, three 1-ft marks: At top, middle and bottom of line. In Federal waters, an additional 6-inch green mark within 1 ft. of 3-ft mark within 2 fathoms of buoy.
Massachusetts .....	Red. In state waters: Two 1-ft marks in the top half and bottom half of buoy line. Beyond state waters three 1-ft marks: At top, middle and bottom of line. In Federal waters, an additional 6-inch green mark within 1 ft. of 3-ft mark within 2 fathoms of buoy.
Rhode Island .....	Silver/Gray. In state waters: Two 1-ft marks in the top half and bottom half of buoy line. Beyond state waters three 1-ft marks at top, middle and bottom of line. In Federal waters, an additional 6-inch green mark within 1 ft. of 3-ft mark within 2 fathoms of buoy.
LMA 3 .....	Retain Black. In Federal waters add a 3-ft long mark within 2 fathoms of the buoy, and an additional 6-inch green mark within 1 ft. of 3-ft mark within 2 fathoms of buoy.



# NOAA Buoy Line Marking Proposal

## DMF's Comments and Concerns

- Draft Biop indicates federal Incidental Take Statement applies only to fisheries under NOAA's jurisdiction.
- Critical for every single right whale take to be attributed to the jurisdiction that authorized the activity.
- Entanglements usually only involve a segment of the buoy line and surface system is not present.
- NOAA does not adequately differentiate between gear fished in MA state waters and federal waters.
- State waters fishery highly vulnerable if misidentification were to occur.

ALWTRP Proposal for  
MA Fishermen in EEZ  
of LCMA 1, 2 and OCC



ALWTRP Proposal for MA  
Fishermen in State  
Waters of LCMA 1, 2 and  
OCC



# DMF Proposal

## State Waters (LCMA 1, 2 and OCC):

- One 3' solid red mark in surface system (first 12' from buoy)
- At least four 2' solid or non-solid red marks in body of buoy line. White marks if red rope used.
- Two marks to occur in top half and two in bottom half.
- No more than 60' between red marks.
- Buoy line inserts (e.g., red rope) may serve dual purpose of weak contrivance and buoy line marking.

## Federal Waters (LCMA 1, 2 and OCC)

- One 3' solid red mark followed by a 1' solid green mark in surface system (first 12' from buoy).
- At least three 2' solid or non-solid marks in body of buoy line.
- Marks are to be comprised of a 1' red mark and 1' green mark.
- Marks to occur in top third, middle third, and bottom third.

## Federal Waters (LCMA 3)

- One 3' solid black mark followed by a 1' solid green mark in surface system (first 12' from buoy).
- At least three 2' solid or non-solid black marks in body of buoy line.
- Marks to occur in top third, middle third, and bottom third.

DMF Proposal  
EEZ in LCMA 1, 2 and  
Outer Cape Cod



DMF Proposal  
State Waters in LCMA  
1, 2 and Outer Cape  
Cod



DMF Proposal  
EEZ in LCMA 3





# Proposal Comparison for LMA1, 2, and OCC

DMF Proposal  
EEZ in LCMA 1, 2 and  
OCC



DMF Proposal  
State Waters in LCMA  
1, 2 and OCC



ALWTRP Proposal for  
MA Fishermen in EEZ  
of LCMA 1, 2 and OCC



ALWTRP Proposal for MA  
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# Next Steps & Challenges

## **Next Steps**

- DMF will continue to work with NOAA Fisheries to ensure there is cohesion between final state and federal rules.
- DMF will propose final recommendations to the MFAC for review at their June 3, 2021 business meeting.
- If approved by MFAC, DMF will file final regulations during summer of 2021 for implementation on February 1, 2022.
- DMF will apply to NOAA Fisheries to have its lobster/crab trap fishery listed separately on 2022 LOF.

## **Challenges**

- Dual state-federal permit holders will be challenged by having different buoy line marking requirements depending on the jurisdiction where the gear is set.
- DMF is open to work with industry to develop and publicize best practices for compliance. This may include inserting/removing green tracers when moving gear in and out of EEZ.



# Questions and Comments

1. Meeting moderator will now recognize members of the public.
2. DMF will first recognize individuals with questions regarding the presentation and proposals.
3. Upon conclusion of the question period, DMF will accept verbal public comment.
4. To ask a question or submit a verbal comment, please use the “raise hand” function. This will create a queue of participants.
5. Please keep comments focused on specific proposals. If you want to provide comment or feedback on other management matters (e.g., ropeless fishing), DMF may entertain additional discussion upon the conclusion of this hearing if time permits.
6. DMF may move on from public comment if comments become redundant and no new comments are being made.



# DMF Proposal

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- Two marks to occur in top half and two in bottom half.
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- Buoy line inserts (e.g., red rope) may serve dual purpose of weak contrivance and buoy line marking.

## Federal Waters (LCMA 1, 2 and OCC)

- One 3' solid red mark followed by a 1' solid green mark in surface system (first 12' from buoy).
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- Marks are to be comprised of a 1' red mark and 1' green mark.
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## Federal Waters (LCMA 1, 2 and OCC)

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DMF Proposal  
EEZ in LCMA 1, 2 and  
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DMF Proposal  
State Waters in LCMA  
1, 2 and Outer Cape  
Cod



DMF Proposal  
EEZ in LCMA 3



# Written Public Comment

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