



The Commonwealth of Massachusetts

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TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Dan McKiernan, Director 

DATE: October 22, 2021

SUBJECT: State Waters Groundfish Management – Proposed Rule Changes

Public Hearing Proposal Summary

For 2022 and beyond, I seek to amend several aspects of the state waters commercial groundfish management program. The following public hearing proposals are based (largely) on feedback provided by the MFAC's Sub-Committee on State Waters Groundfish¹ at their September 17, 2021 meeting and the full MFAC at their September 24, 2021 business meeting:

- (1) Gillnet closure. Expand the existing January 1 – May 15 sink gillnet closure to include all of state waters to reduce the risk of entanglements to the endangered North Atlantic right whale (“right whale”);
- (2) April cod spawning closure. Adopt an April 16 – April 30 commercial groundfish closure from Plymouth (42°00' N) to the MA/NH maritime border to protect spring aggregations of spawning cod;
- (3) Conditional April groundfish closure. Eliminate the existing conditional April 1 – April 30 commercial groundfish closure in Massachusetts Bay;
- (4) Trip limits. Increase the commercial trip limits for Gulf of Maine (GOM) cod from 200 pounds to 300 pounds and yellowtail flounder from 250 pounds to 350 pounds; and
- (5) Boston Harbor gillnet closure. Rescind a May 15 – October 31 sink gillnet closure off outer Boston Harbor.

The purpose of this recommendation is multi-faceted and is described in detail below. In summary, the Division of Marine Fisheries (DMF) seeks to enhance right whale protection and spawning cod conservation while augmenting access to available groundfish resources at times and in places that likely will not impact these critical conservation objectives. Additionally, some

¹ MFAC Sub-Committee on State-Water Groundfish is Chaired by Melanie Griffin and includes MFAC members Lou Williams, Bill Amaru, and Mike Pierdinock. Contributing staff include Michael Armstrong, Bob Glenn, Micah Dean, Story Reed, Jared Silva, and Anna Webb.

longstanding regulations that are less important in these modern times would be rescinded. These proposals principally affect the state-waters-only groundfish fishery (“GE fleet”). However, these proposals may also affect federal permit holders who are authorized to fish in state waters, as they will be subject to proposed time area closures and trip limits should they conduct regulated activities within state waters.

Gillnet Closure

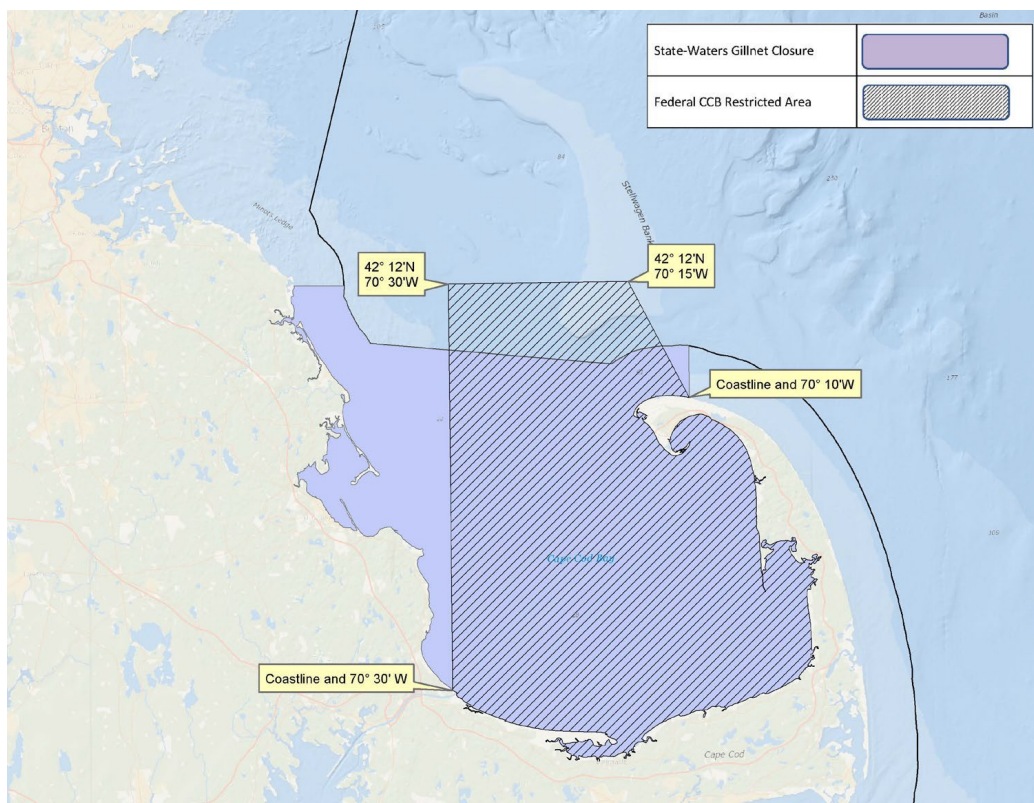
Proposal

Expand the existing January 1 – May 15 gillnet closure in Cape Cod Bay to include all of state waters to further minimize the risk of entanglements to the endangered North Atlantic right whale (“right whale”) [[322 CMR 12.04](#)].

Rationale

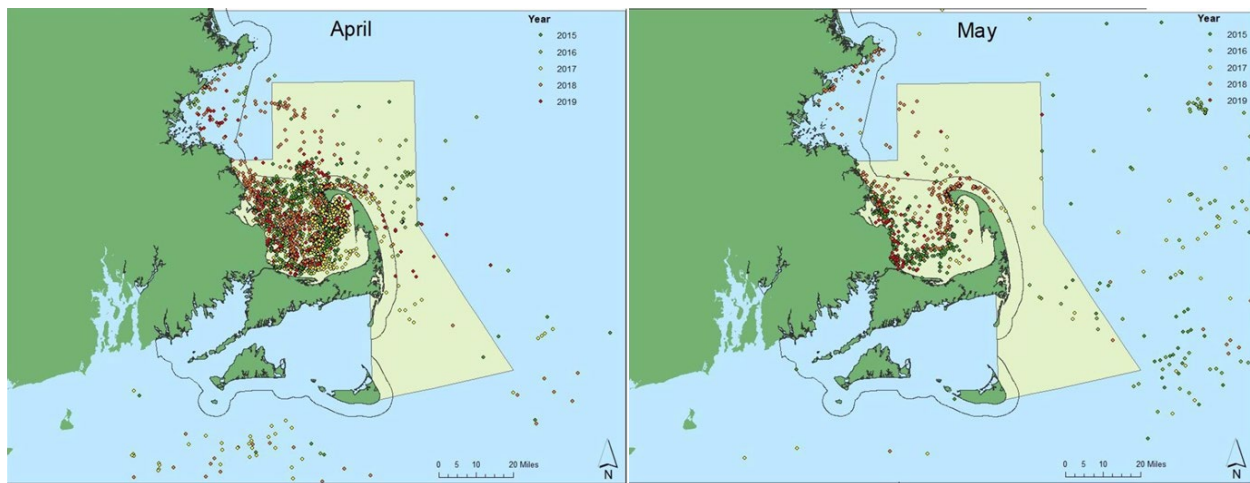
As part of the first right whale conservation regulations enacted by DMF in 1997, DMF seasonally (January 1 – May 15) closed waters within Cape Cod Bay to the use of gillnets. This was implemented to reduce the risk of right whale entanglements, recognizing that a majority of the known right whale population seasonally aggregates in the waters of Cape Cod Bay to feed on zooplankton. In 2020, DMF amended its protected species regulations [[322 CMR 12.00](#)] to expand the spatial extent of the seasonal gillnet closure north from Plymouth Harbor (42°00’ N) to Scituate Harbor (42°12’ N). This action was unanimously approved by the MFAC at their January 2020 business meeting and the amended January 1 – May 15 seasonal closure area was implemented for February 2021 (Figure 1).

Figure 1. Map of January 1 – May 15 Seasonal Gillnet Closures



At the time, I did not recommend extending the spatial extent of the seasonal gillnet closure to match that of the seasonal trap closure, which would have it apply north to the MA/NH maritime border and east down the backside of Cape Cod². Instead, I favored a spatially smaller gillnet closure in response to the relative size and scale of the state waters gillnet fleet. However, throughout the winter and early spring of 2021, I reconsidered this position. The state waters gillnet fishery occurs principally in Massachusetts Bay and off Cape Ann. In recent years, right whale sightings data during April and May show these whales utilizing these waters during these months (Figure 2). There is a potential for co-occurrence of gillnet gear and right whales that I seek to address.

Figure 2. Observations of Right Whales in April and May 2015 - 2019



Recall this past spring, I recommended maintaining the conditional April groundfish closure between Plymouth (42°00' N) and Marblehead (42°30' N) for gillnet gear only³ [322 CMR 8.05]. This effectively maintained a gillnet prohibition in those state waters between Scituate (42°12' N) and Marblehead (42°30' N) throughout April. Despite this action, those waters to the north around Cape Ann remained open to gillnet gear in April. Moreover, once the conditional April groundfish closure expired on May 1, the area of state waters between Scituate (42°12' N) and Boston Harbor (42°20' N) were open to gillnet fishing; the May groundfish mortality closure kept those waters from Boston Harbor (42°20' N) to the MA/NH maritime border closed to all groundfish fishing [322 CMR 8.05]. Note that applying this groundfish mortality closure to a single gear type to protect right whales was not my preferred management approach, but I felt compelled to minimize risk especially given the dynamic situation of the ongoing and increasing federal mandates of the Atlantic Large Whale Take Reduction Plan (ALWTRP).

This past spring, aerial surveillance indicated right whales remained in Massachusetts Bay throughout April and into mid-May⁴. The area off Boston Harbor saw notable for its right whale activity. Given how this past year played out—having the conditional April groundfish mortality closure apply to address a gear specific entanglement risk and having areas of Massachusetts Bay remain open in April and May when whales are present—a change in management is needed for

² See [January 22, 2021 Protected Species Recommendation Memo](#) (pages 7 and 8).

³ See [March 15, 2021 Recommendation to Lift Conditional April Groundfish Closure](#).

⁴ As a result of the continued presence of right whales in state waters in late April and early May, the seasonal trap gear closure and small vessel speed limit were extended beyond May 1 and stayed in effect until May 14. See [DMF Advisory](#).

2022. Accordingly, I propose closing all state waters to gillnet fishing from January 1 – May 15. Similar to the trap gear closure, this proposed regulation would allow the Director to rescind or extend this closure based on the presence or absence of right whales⁵. This will allow for DMF to more directly manage—and minimize—the seasonal entanglement risk to all the fixed gears. .

As you are aware, a federal court has ordered the DMF to apply for an Incidental Take Permit from NOAA Fisheries to address the potential entanglement of endangered whales and sea turtles in its fixed gear fisheries. Through this process, DMF is required to develop a Habitat Conservation Plan to detail the steps the applicant is taking to minimize and mitigate the impacts of the permitted activity on the endangered species. The proposed gillnet closure extension would support this effort, as it would restrict the ability to set a gear that may entangle a right whale at times and in places that right whales are expected. In addition, NOAA Fisheries is currently convening the Atlantic Large Whale Take Reduction Team (ALWTRT) to assess and address the risk posed by the broader northeast gillnet fishery to right whales. The ALWTRT has tasked every jurisdiction to reduce the risk of serious injury and mortality posed by gillnet fisheries to right whales by 60-80%. To date, efforts have focused on time-area closures and gear modifications. This proposed extended closure anticipates this new risk reduction requirement and allows Massachusetts to get out ahead of the federal rule making process.

Whereas a year ago, I felt the risk posed by the state waters gillnet fishery to right whales was sufficiently small due the relative scale of gillnet fishing in state waters and extending the closure throughout a greater portion of state waters—specifically Massachusetts Bay—was not warranted. I now suggest that maintaining such a small fishery in times and places where right whales are observed poses a small—yet unnecessary—risk to both right whales and the future of the state’s fixed gear fisheries. Keep in mind, that if an entanglement were to occur it may jeopardize the future of our fixed gear fisheries, particularly in the context of the state’s ongoing ITP application and ongoing efforts by the ALWTRP.

Anticipated Impacts

DMF established the regulated fishery gillnet permit endorsement (“gillnet permit”) in 1987. This gillnet permit allows fishermen to deploy sink gillnets in state waters, and the gear is typically used to target the multi-species groundfish complex and dogfish. The permit was made limited entry in 1992 and has never been transferable⁶. At present, there are 80 commercial fisherman permit holders with a gillnet permit, however, only a very small subset of this population is actively fishing gillnets. As of 2019⁷, only 14 permit holders appear to be active; only eight of these permit holders reported fishing in state waters with gillnets, the other six held gillnet permits but were fishing outside of state-waters and likely landing fish taken from federal

⁵ Note that DMF cannot rescind the gillnet closure within certain waters of Cape Cod Bay prior to May 15. This is because the overarching federal ALWTRP rule establishes a gillnet closure in the Cape Cod Bay Restricted Area from January 1 – May 15. This includes those state waters within the area bounded by 41° 46.8’N and 70° 30’ W, 42° 12’ N and 70° 30’ W, 42° 12’ N and 70° 15’ W, 42° 4.8’N and 70° 10’W, and the MA coastline. See pages 12 and 13 of the [ALWTRP Guide on Northeast Gillnet Fishery Requirements and Management Areas](#).

⁶ See [October 31, 2017 memorandum](#) from former Director Pierce on gillnet permit transferability.

⁷ Effort data is derived from fisherman catch reports. Due to fisherman reporting schedules, DMF is unable to query this data until the spring of the following year. Therefore, 2021 data will not be available until the spring of 2022. While 2020 data could be used, we know fishing effort was skewed by the COVID pandemic. Therefore, 2019 is the most recent and complete data set to describe effort in this fishery.

waters under the authority of their federal permits. Therefore, the affected population of active permit holders is likely fewer than 10 individuals. As this gear is typically deployed to target groundfish (as well as spiny dogfish), this population of active state waters gillnet fishermen also make up a portion of the GE fleet.

Tables 1 and 2 depict gillnet effort data by Statistical Reporting Area (SRA) on an annual basis from 2017 – 2019. Figure 3 shows the geographic location of the SRAs in state waters. The data from Tables 1 and 2 indicate effort by the GE gillnet fishery does not ramp up until April, seasonally peaks during the summertime, declines in the fall, with little to no activity occurring throughout the winter. These seasonal shifts in effort are attributable to several factors. This includes seasonal availability of groundfish in state waters, gillnet fishermen switching over to fish trap gear for lobsters in the fall, poor wintertime weather affecting access, and time-area closures to address groundfish mortality, groundfish spawning closures, and closures for protected species⁸. Note that those data withheld as confidential in Tables 1 and 2 because there were fewer than three permit holders active during that month.

Table 1. Active GE Gillnet Vessels and Trips by Month for 2017 - 2019

Active Vessel and Trip Count from Sink Gillnet Vessels by Month						
MONTH	2017		2018		2019	
	Active Vessels	Trip Count	Active Vessels	Trip Count	Active Vessels	Trip Count
JAN	*	*	0	0	0	0
FEB	*	*	*	*	0	0
MAR	0	0	0	0	0	0
APR	*	*	*	*	*	*
MAY	9	85	6	97	4	64
JUNE	11	182	8	160	8	163
JULY	9	179	8	158	8	171
AUG	*	*	*	*	*	*
SEP	5	62	5	33	3	39
OCT	*	*	0	0	0	0
NOV	*	*	0	0	0	0
DEC	*	*	*	*	0	0
Total	12	809	9	655	8	611

*Confidential

Data Source: MATL Reports and NMFS VTRs as of January 2021

⁸ From October 1 – January 31, those waters between 42°00' N and 42° 30' N west of 70° 24' W are closed to commercial groundfish fishing to control overall groundfish landings and mortality attributable to the state-waters groundfish fishery. From November 15 – January 31, waters between 42° 21' N and 42° 27.5' are closed to groundfish fishing to protect spawning cod aggregations. From February 1 – May 31, inshore waters from Provincetown to the MA/NH maritime border are closed to commercial groundfish fishing to protect winter flounder spawning. From March 1 – March 31, the use of gillnets is prohibited in the Massachusetts Bay Management Area under the federal Harbor Porpoise Take Reduction Plan (HPTRP). The HPTRP effects commercial fishing effort to the shoreline and this closure is inclusive of those Massachusetts state waters between 42°00' N and 42°30' N. See more details in [New England Guide to HPTRP](#).

Table 2. Average Number of Trips by Active GE Fishermen by Month and SRA for 2017 - 2019

2017-2019 Average Sink Gillnet Trip Count by Month and SRA						
	SRA					
MONTH	2	3	4	5	9	Total
JAN	*	0	0	0	0	*
FEB	*	*	*	0	0	*
MAR	0	0	0	0	0	0
APR	*	46	65	*	0	*
MAY	*	*	78	*	*	82
JUNE	*	81	136	16	*	168
JULY	20	70	141	*	*	169
AUG	12	53	118	*	0	*
SEPT	*	28	28	0	*	45
OCT	*	*	0	0	*	*
NOV	*	0	0	0	0	*
DEC	*	0	0	0	0	*
Total	79	289	*	76	*	692

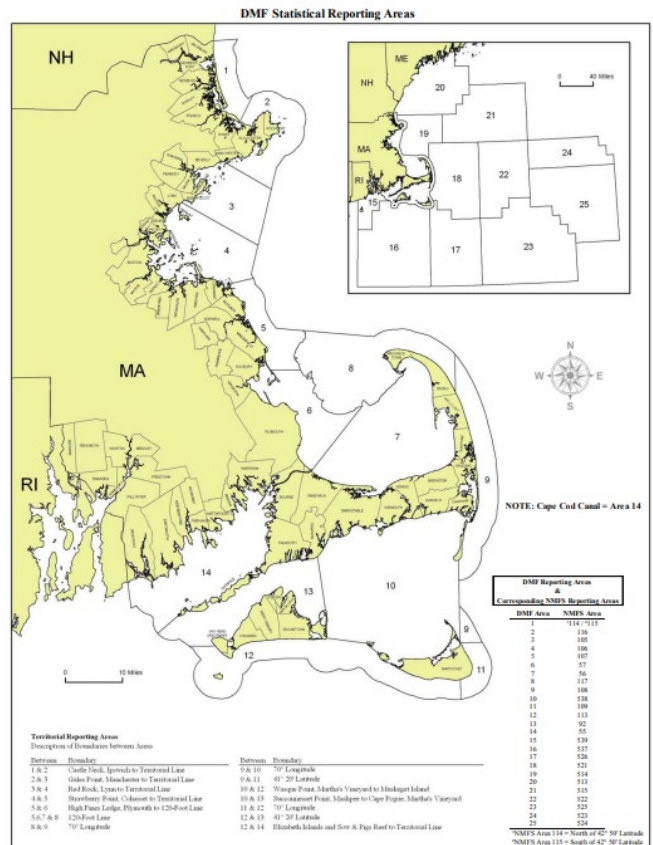
*Confidential

Data Source: MATL Reports and NMFS VTRs as of January 2021

As gillnet effort is non-existent during the winter, the January – March period of the proposed closure will have a no impact on the fishery. However, the data does show increasing gillnet fishing effort in April and May. During this period, effort principally occurs in Massachusetts Bay. While effort occurs throughout SRAs 2-5, it is concentrated in SRA 3 and 4. SRAs 3 and 4 spatially overlap with those areas where we have observed right whales during these months. This underscores the matter of co-occurrence.

Based on catch report information, this proposal will have minimal impact on fishing activity outside of SRAs 2-5. The Outer Cape is closed to all groundfish fishing during May by a groundfish mortality closure within those waters east of Cape Cod south of 42°00' N and east of 70°00' W [322 CMR 8.05]. Additionally, gillnet fishing is prohibited in Buzzards Bay and Mt. Hope Bay year-round [322

Figure 3. DMF Statistical Reporting Areas



[CMR 4.02](#)] and in the Sounds from April 1 – November 15 [[322 CMR 4.04](#)].

April 15 – April 30 Cod Spawning Closure

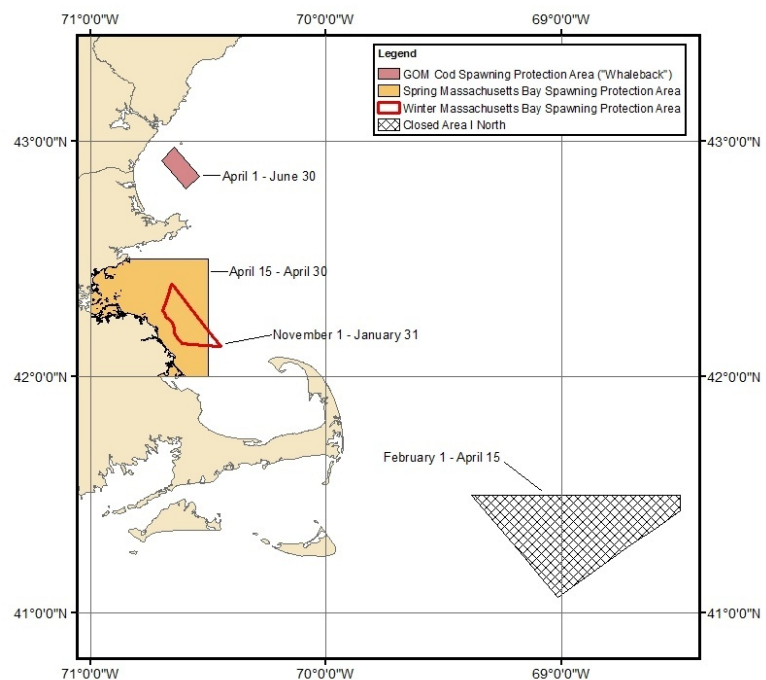
Proposal

Adopt an April 15 – April 30 commercial groundfish closure—to all commercial gears targeting multispecies groundfish—from Plymouth (42°00' N) to the MA/NH maritime border to protect spring aggregations of spawning cod [[322 CMR 8.05](#)]. Under the existing regulatory structure, this proposed April 15 – April 30 cod spawning closure will not apply to the use of hook and lines to catch dogfish, bluefish, striped bass, bluefin tuna, and mackerel; pots and traps; mid-water trawls; sea scallops, ocean quahog, and surf clam dredges; and cast nets, surface gillnets, and purse seines.

Rationale

NOAA Fisheries promulgated [Omnibus Habitat Amendment 2](#) in October 2017 for implementation in April 2018. This established the Spring Massachusetts Bay Spawning Protection Area (Figure 4) and closed those waters within federal Statistical Report Area 125—the 10-minute square between 42° 00' N to 42° 30' and 71° 00' W and 70° 30' W—to certain federally permitted fishing activities, including commercial groundfish fishing⁹, during the period of April 15 – April 30. The purpose of this closure is “to improve spawning protection for various groundfish species (including cod) in the Gulf of Maine” (NEFMC OHA2 DEIS). While this closure was implemented on the federal level, DMF did not apply it to the GE fleet.

Figure 4. Federal Groundfish Spawning Closures including Spring Massachusetts Bay Spawning Protection Area

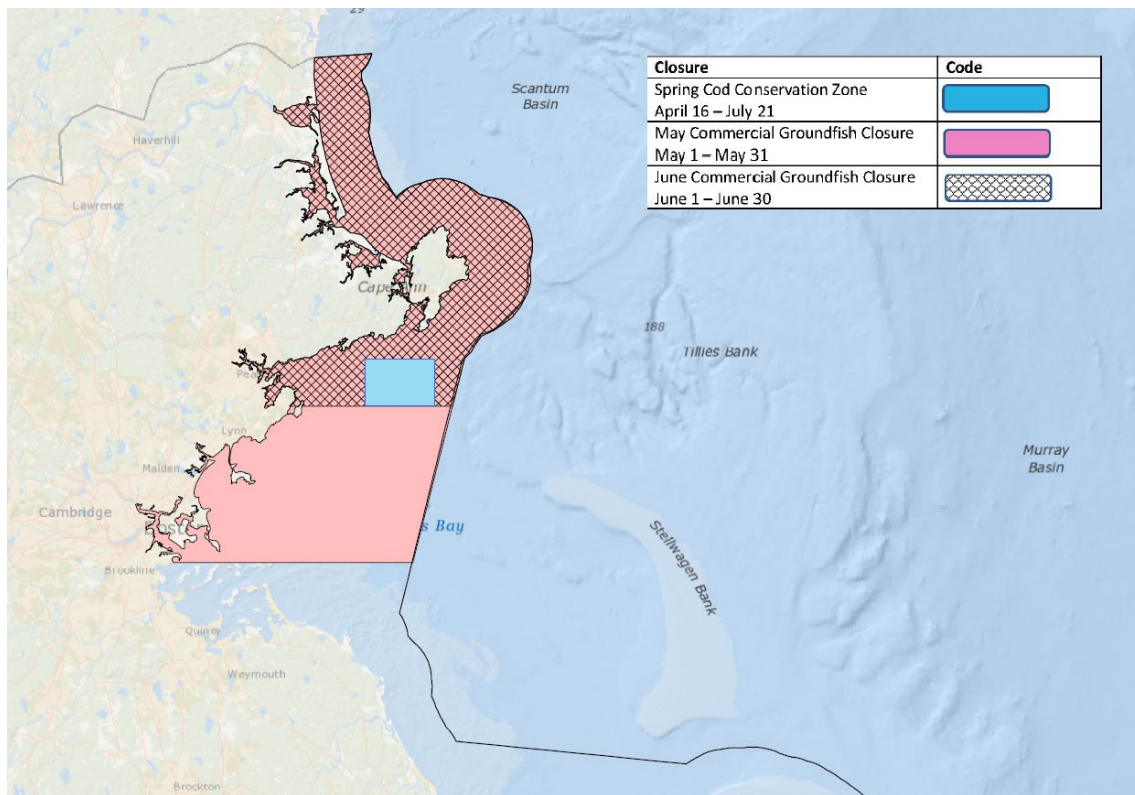


Source: [GARFO](#) 9/8/2021

⁹ Exempt fishing activities include: recreational fishing; charter and party boats with a Letter of Authorization; vessels fishing on a sector trip or under a Hand Gear A permit within the GOM Cod Protection Closures IV and V; vessels fishing with spears, rakes, dive gear, cast nets, tongs, harpoons, weirs, dip nets, stop nets, pound nets, pots and traps, purse seines; surf clam and ocean quahog dredges; pelagic hook and line, longline, single gillnets gear; shrimp trawls with a properly configured grate; midwater trawls; sea scallop dredges when fishing under a day-at sea or in an sea scallop dredge exemption area; and raised foot rope trawls in exempted whiting fisheries.

For most of the past fifteen years, DMF’s understanding of spawning cod behavior was driven by our first Industry Based Survey (IBS1), which occurred from 2003 – 2007, as well as our acoustic tagging work in Massachusetts Bay. These combined research efforts demonstrated peak spring spawning was occurring in May and June. While spawning was observed in April, the presence of spawning cod was less frequent than in May or June. Accordingly, DMF’s

Figure 5. Springtime State Waters Groundfish Closures Protecting Spawning Cod



commercial groundfish management strategy prioritized enhancing spawning protections during the peak spawning season (Figure 5) and providing access to the fishery during other periods.

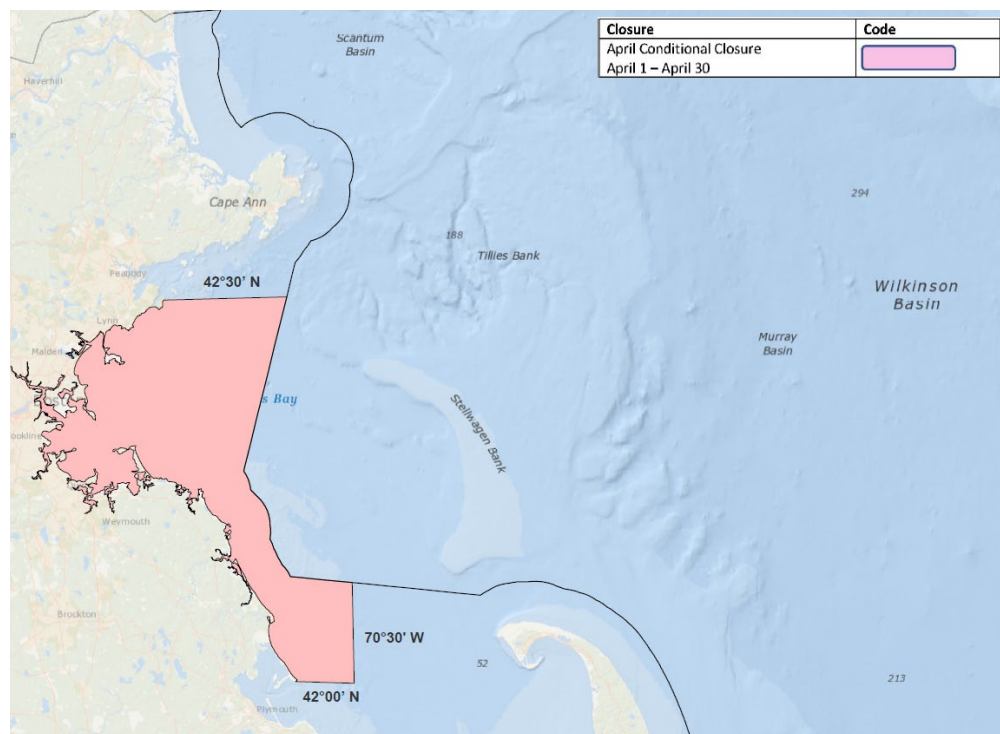
By way of background, the discrete Spring Cod Conservation Zone [322 CMR 8.07] off Marblehead was adopted in 2009 and closes certain waters to all groundfish fishing from April 16 – July 21¹⁰. Then the seasonal springtime monthly commercial groundfish closures in the GOM [322 CMR 8.05] were adjusted in 2015 for 2016¹¹. These closures currently serve the dual purpose of providing more broad-scale seasonal cod spawning protections for GOM and controlling overall groundfish landings and mortality by the GE fleet. In combination, these closures protect much of the time-area spawning aggregations observed in IBS1 and our acoustic tagging research.

¹⁰ The Spring Cod Conservation Zone is bounded by 42°30' N to the south, 42°33' N to the north and 70°44.5' W to the west, and 70°38.5' W to the east. Within this area, all groundfish fishing—both recreational and commercial—is seasonally prohibited. The closure was first implemented on an emergency basis in 2009 and applied only during May and June. In 2010, it was renewed for May and June and then extended to July 21 on an emergency basis. Then in 2011, it was implemented on a more permanent basis from April 16 – July 21, which is how it currently applies.

¹¹ See [July 27, 2015 Final Recommendations on Commercial and Recreational Groundfish](#).

During the 2016 rule making process on monthly groundfish closures, the April closure was considered. However, it was not adopted in the final rule and April was opened to provide the GE fleet with opportunities to target groundfish inshore, principally cod, flounders, and haddock. However, at this time, the GOM cod commercial trip limit was dropped from 800-pounds to 200-pounds¹². Then in 2019¹³, April became subject to a conditional groundfish mortality closure in those state waters between 42° 00' N and 42° 30' N west of 70° 30' W (Figure 6) [[322 CMR 8.05](#)]. This closure was designed to be a fail-safe to prevent the state waters fishery from causing overages of the total annual catch limit (ACL) set by NOAA Fisheries.

Figure 6. Conditional April Groundfish Closure



Since these decisions were made, DMF concluded its second Industry Based Survey (IBS2). IBS2 occurred from October 2016 through January 2019 and offered enhanced coverage of both winter and spring cod spawning seasons. Consequently, the results of this survey refined DMF's understanding of cod spawning seasonality¹⁴ (Figure 7). IBS2 demonstrates that while the presence of spring spawning cod has declined overall, May is still the peak spawning month and April is now almost as important as May in terms of the presence of cod in the spawning conditions.

¹² See [November 15, 2015 DMF Advisory on Recreational and Commercial Groundfish](#).

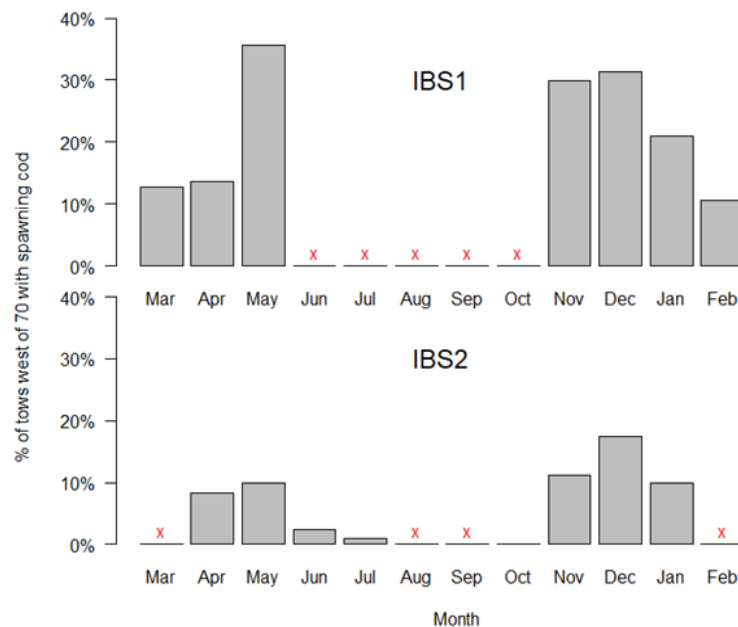
¹³ See [January 18, 2019 Recommendation Memo on State-Waters Multi-Species Groundfish](#).

¹⁴ IBS1 did not occur in June and July. Our subsequent acoustic tagging work informed our understanding of cod spawning in these months. As a result, these months were sampled during IBS2.

The importance of spring spawning protections for GOM cod has been further underscored by Dr. Micah Dean’s recent work. Dr. Dean’s work demonstrates the relative importance of sub-populations to the overall GOM cod stock. To be more specific, there are two discrete sub-populations of GOM cod that exhibit different seasonal peaks in spawning activity—the so-called “spring spawners” and the so-called “winter spawners”. The importance of these two groups to the overall stock has changed over time, and currently nearly all recruitment comes from the winter-spawning group.

However, as recently as the early 2000s, the spring spawning group accounted for a majority of the spawning stock and recruitment. Ensuring that both sub-populations continue to persist is critical for the recovery of the GOM cod stock.

Figure 7. Presence of Spawning Cod by Month from IBS1 to IBS2



While the federal Western Gulf of Maine closure offers some protection to spring-spawning cod outside of the spawning season, the loss of some seasonal closures (i.e., “rolling” closures) as the sector system was implemented may be impacting reproductive success through disruption of mating behaviors (Dean et al., 2019). Adding on potential depensation effects at low population density (Allee effects), the continued poor status of GOM cod and failure to rebuild and it is now clear additional conservation management measures are going to be required. To this end, the New England Fishery Management Council may include such measures in its upcoming Groundfish Framework 63 (to be approved in December 2021) or in a subsequent follow-on action to revise the existing GOM cod rebuilding plan.

Given these above-described factors, I think it is necessary to extend the state’s framework of time-area closures into April to protect spawning cod. While we have the Spring Cod Conservation Zone in effect during late April (April 16 – April 30), this closure only protects one discrete spawning aggregation and does not—by itself—provide sufficiently robust protections for the spring spawners. Spatially broader closures are necessary to protect other remnant spawning aggregations, as individuals move in and out of discrete spawning locations. To this point, whereas the current federal closure applies only to those waters within the 10-minute square known as Area 125, I propose extending the state waters closure up to the MA/NH maritime border. This expanded area would include locations where spawning cod were observed during IBS1 (Figure 8), when the spring spawning sub-population was more robust. Having protections in place for these historic spawning aggregations will likely be necessary to

Figure 8. Distribution of spring spawning cod observed during IBS 1

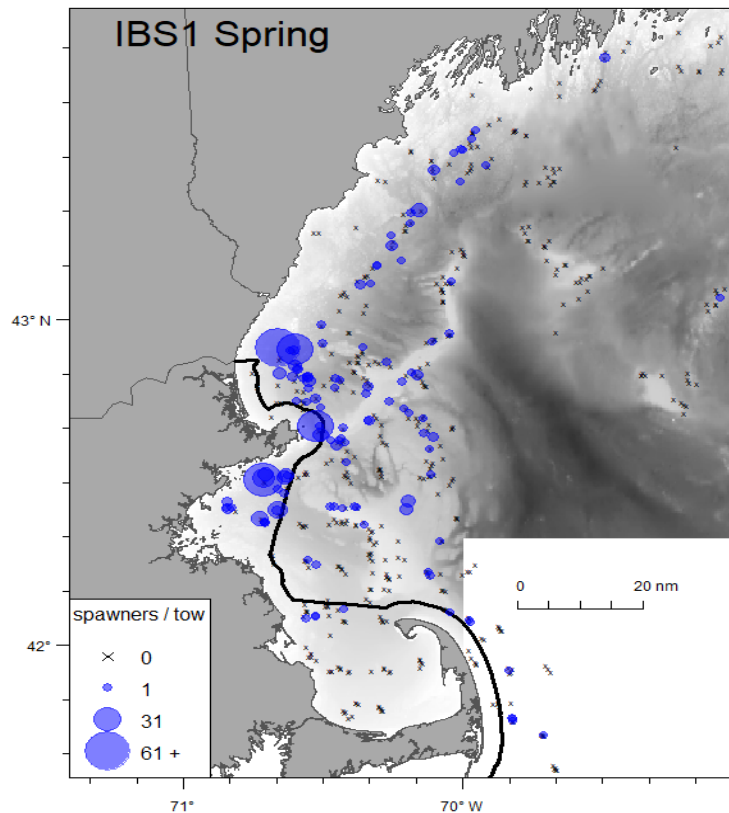
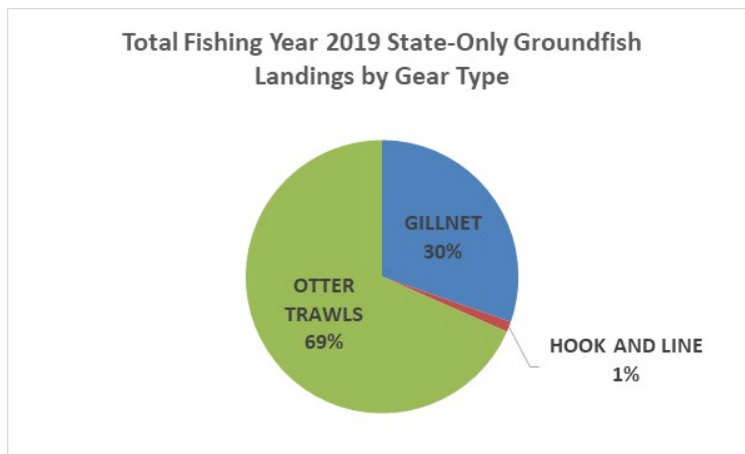


Figure 9. GE Catch by Gear Type for 2019



Data Source: MATL Reports and NMFS VTRs as of September 2021
FY19 is presented as it is most representative of current effort levels.

2019 landings were haddock, but the GE trawl fleet also caught yellowtail, American plaice (“dabs”), and winter flounder. While April 2020 may not be largely representative of a typical April—given the COVID-19 pandemic was at its height at that time—haddock fishing was relatively unaffected by the pandemic and actually increased over the course of 2020 as

allow for the recovery of spring spawners and to enhance the likelihood of a broader stock recovery.

Potential Impacts

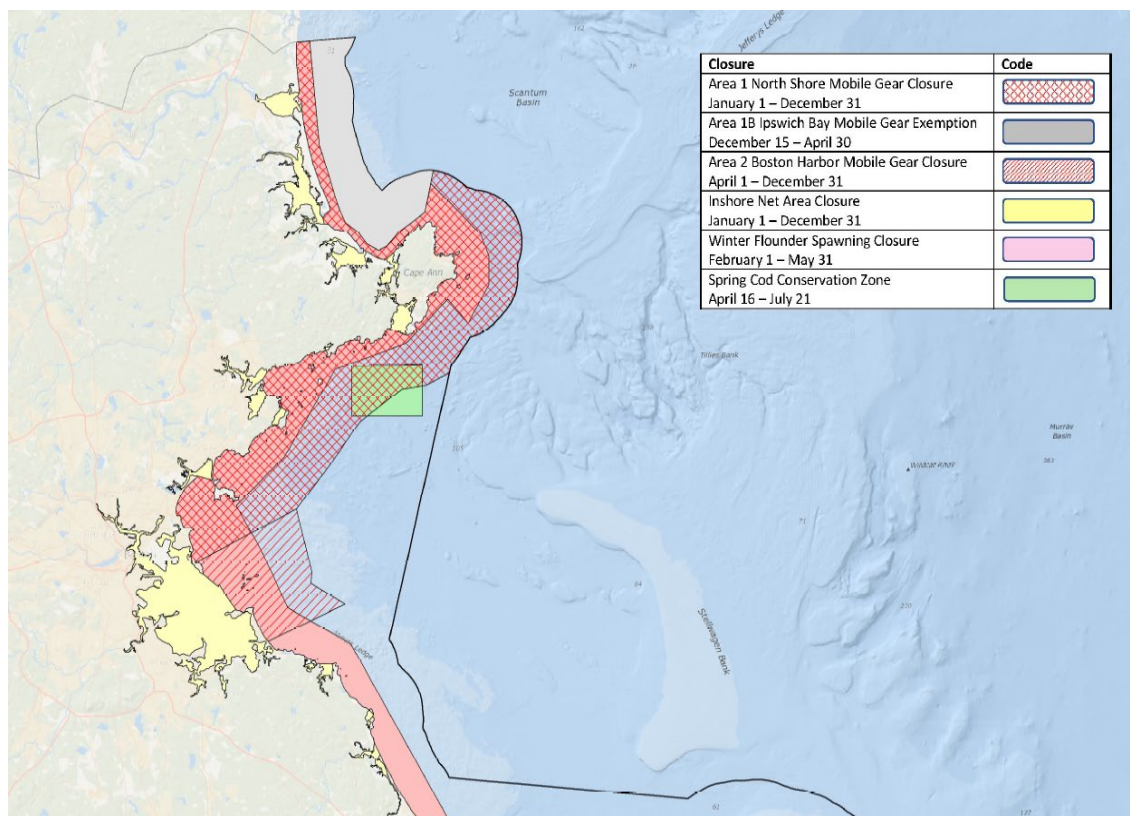
Our GE groundfish fishery is principally prosecuted by gillnets and trawls, with some low levels of hook and line landings (Figure 9). Presuming the January 1 – May 15 gillnet closure is implemented for all state-waters, this spawning closure would be redundant for gillnet gear. However, it would impact trawl fishing effort during the second half of April, as well as any commercial hook and line effort that may be occurring during this time. Keeping in mind mobile gear closures [322 CMR 4.06], trawl fishing effort during April within the affected area is limited to outer Massachusetts Bay seaward of Area 2 (Boston Harbor) and Ipswich Bay within exempted Area 1B (Figure 10).

According to our landings data, most trawl effort in the GE fleet is coming from the SRAs within Massachusetts Bay. In FY19, six GE trawlers landed groundfish harvested in SRAs 1 – 5. Their overall catch approximates 80% of overall GE landings in that year, excluding monkfish. During April of FY19, 3 vessels were active and their landings accounted for approximately 5% of overall trawl landings from the GE fleet in that year. The majority of these April

compared to 2019. In fact, April 2020 groundfish landings are similar to those of April 2019 in terms of quantity as a percent of overall groundfish landings, but the 2019 landings primarily consisted of winter flounder. While SRAs 1-5 are clearly important trawl fishing grounds during much of the year, April generally contributes very little with variable species compositions by year.

While Area 1B (Ipswich Bay) is be seasonally open to mobile gear fishing in April, this has historically been a groundfish fishing area. The area was developed and continues to provide seasonal access to sea scallops. This groundfish closure will not prevent mobile gear fishermen from continuing to target sea scallops in April in Area 1B.

Figure 10. Areas Closed and Open to Mobile Gear Fishing in April



Conditional April Groundfish Closure

Proposal

Eliminate the existing conditional April 1 – April 30 commercial groundfish closure in Massachusetts Bay [[322 CMR 8.05](#)].

Rationale

As described above, the conditional April groundfish closure in Massachusetts Bay was implemented in 2019 to serve as a fail-safe to prevent the GE fleet from causing overages of the

total annual catch limit (ACL) set by NOAA Fisheries, such overages then trigger accountability measures affecting federal permit holders. Annually, DMF analyzes GE fleet landings and compares them to the federally established stock specific state-waters sub-components for the federal fishing year of May 1 – April 30. Should this analysis demonstrate it is unlikely an April opening would result in exceedance of groundfish ACLs, then DMF—with the MFAC’s approval—may rescind the closure. In each of the three-years since this conditional closure was implemented, DMF has rescinded the closure and allowed commercial groundfish fishing in the area¹⁵.

Given the performance of the GE fleet in recent years, and considering the potential limiting effects of the above-described gillnet and spawning closures, I do not anticipate there is a need for maintaining this conditional closure. Therefore, I am proposing to rescind it contingent upon the MFAC approving a January 1 – May 15 gillnet closure to protect right whales and April 15 – April 30 commercial groundfish closure to protect spawning cod.

Potential Impact

Rescinding this closure would also have the added benefit of reducing animosity among user groups. When DMF moves to rescind the closure, we are required to hold a two-week public comment period. The nuance of the purpose of the conditional closure is often not well understood and we typically receive an outpouring of comments objecting to the action. These comments typically express conservation concerns and user group objections that are beyond the scope of the intended closure. Eliminating this conditional annual action—and implementing more predictable and comprehensive conservation measures—may help assuage tensions along the waterfront.

Opportunities to Enhance GE Fishing Opportunities

Proposal

Increase the commercial trip limits for GOM cod from 200 pounds to 300 pounds and yellowtail flounder from 250 pounds to 350 pounds, as well as rescind a remnant May 15 – October 31 sink gillnet closure off outer Boston Harbor.

Rationale

The MFAC’s State Waters Groundfish Sub-Committee in its review of the proposals to close areas and seasons asked if some measures, such as increased trip limits during the open season, could be liberalized to mitigate the impacts of the proposed closures discussed above.

First, I am proposing to increase the GOM cod trip limit from 200 pounds to 300 pounds. This proposed 50% increase in the trip limit should provide the GE fleet with additional access to GOM cod, particularly during the summer months when the fish are not in spawning condition.

¹⁵ Recall that in 2021, DMF did not rescind this closure for gillnet gear as a means of protecting right whales from the entanglement risk posed by the gear type.

Federal specifications have set the state waters sub-component for GOM cod at 105,822 pounds (48 mt) for the 2022 fishing year (May 1, 2022 – April 30, 2023)¹⁶. In 2019, the GE fleet landed 63,052 pounds of GOM cod. This indicates there is room to increase GOM cod landings from the GE fleet without overharvesting the sub-component. In FY19, 21% of gillnet trips landed cod at or above 175 pounds, while no trawl trips reached the limit.

Therefore, I do not expect this increase will result in the consistent utilization of the trip limit. Instead, I suspect it will provide an opportunity to retain additional poundage when caught and thereby reduce regulatory discarding. Following this logic, a trip limit increase should not result in an exceedance of the state waters sub-component or ACL for this stock.

Second, I reviewed the potential to increase the GOM yellowtail flounder trip limit from 250 pounds and am proposing to increase the trip limit to 350 pounds. GOM yellowtail flounder is among the species targeted by the GE fleet during April. Given the expected impact the proposed closures may have on GOM yellowtail flounder landings from the GE fleet, this modest trip limit increase should allow the GE fleet to recoup revenues that may be lost due to the April closure.

Federal specifications have set the state waters sub-component for GOM yellowtail flounder at 127,868 pounds (58 mt) for the 2022 fishing year (May 1, 2022 – April 30, 2023). In 2019, the GE fishery landed 93,256 pounds of GOM yellowtail flounder. Accordingly, there is some room to accommodate a modest increase in landings before approaching the state waters sub-component for this stock. That said, landings data indicates that only 8% of gillnet but 43% of trawl trips landed at or above 225 pounds of GOM yellowtail flounder per trip. Accordingly, a modest, 100-pound trip limit could be accommodated.

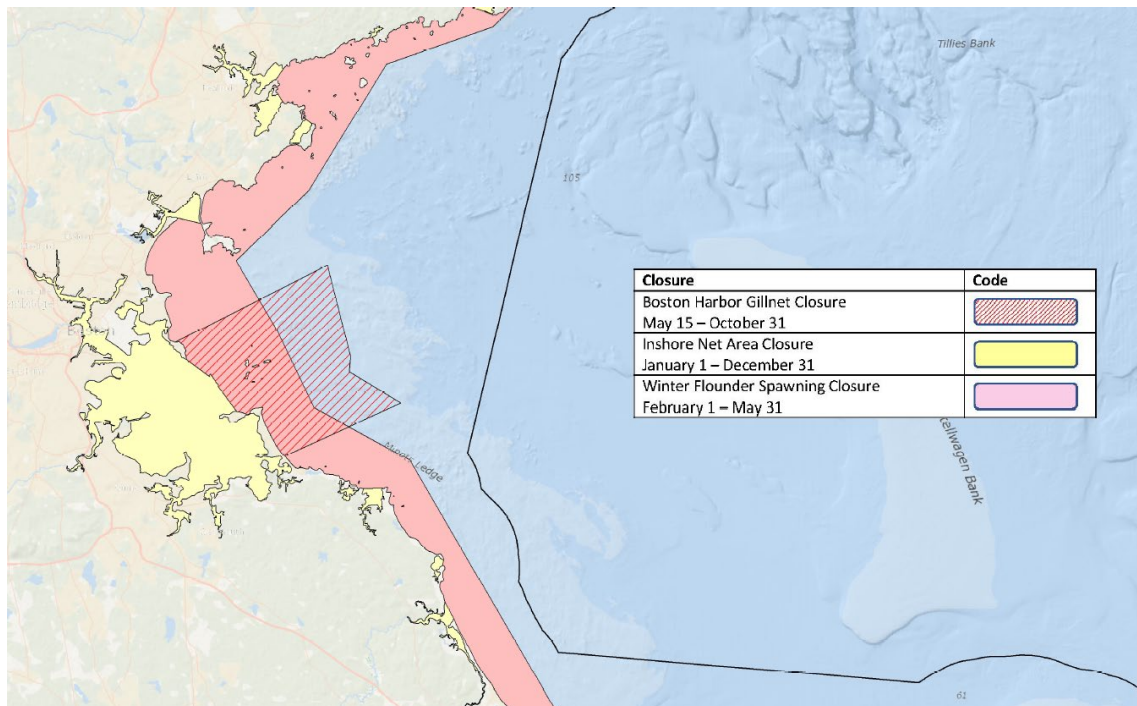
Lastly, I am proposing to rescind the May 15 – October 31 gillnet closure off Boston Harbor (Figure 11). DMF implemented this closure in the 1980s to constrain the proliferation of an emerging gillnet fishery for lobsters by a new user, as the gillnet fishery had not yet been made limited entry. This new gillnet fishing effort was producing substantial user group conflict with the Boston Harbor area lobster fleet. Rescinding this closure will not result in these issues reoccurring. There are only small number of active gillnet fishermen, and most are also active lobstermen. Accordingly, if they are going to target lobsters during the summer and fall, they are likely to switch over to lobster trap gear. Not only is this gear more effective and efficient at targeting lobsters, gillnet fishermen are restricted to a 100 pound lobster bycatch limit [[322 CMR 6.26](#)]. If this closure is eliminated it may open some productive bottom for season groundfish and dogfish gillnet effort. All existing overlapping time-area closures for spawning winter flounder and commercial groundfish management would continue to apply.

¹⁶ The New England Fishery Management Council is scheduled to finalize Framework 63 in December 2021, which may contain updated FY2022 limits for GOM cod. The Council's Science and Statistical Committee meets October 25th to review the June 2021 Management Track Assessment and information provided by the Council's Groundfish Plan Development Team (PDT) and recommend the overfishing limits and acceptable biological catch (ABC) for GOM cod for FYs 2022 – 2024.

Next Steps for Rule Making

I intend to take these items out to public hearing during the late fall and early winter of 2021. Following public hearings, a final recommendation will be provided to the MFAC during the winter of 2021-2022. If approved, final regulations will be implemented in early 2022.

Figure 11. Boston Harbor Gillnet Closure



Attachments

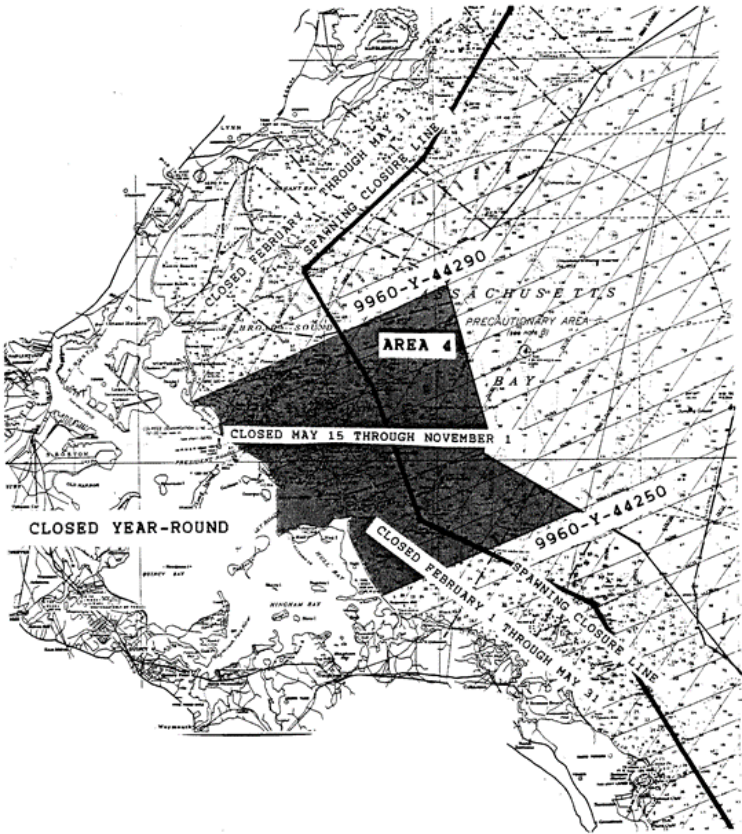
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(4) Areas Closures.

(a) South and West of Cape Cod. It is unlawful to use, set, maintain, or fish with any sink gillnets during the period of April 1st through November 15th in waters under the jurisdiction of the Commonwealth in Mount Hope Bay and circumscribed by an imaginary line beginning at the intersection of the Loran C line 9960 Y 43940 with the Chatham shoreline; thence seaward following the Loran C line 9960 Y 43940 to the territorial seas line; thence in a southerly direction following the territorial seas line to its intersection with a point at 70 00'; thence in a southerly direction following the 70 00' line to its intersection with the territorial seas line; thence following the territorial seas line in a southerly direction and south of Nantucket Island and Martha's Vineyard to the Massachusetts/Rhode Island boundary; thence in a northerly direction following the Massachusetts/Rhode Island boundary to the shoreline; thence following the shoreline in an easterly direction to the starting point.

~~(b) Greater Boston Harbor. It is unlawful to use, set, place or maintain any sink gillnet from May 15th to November 1st beginning at the intersection of the Loran C 9960 Y 44250 line with the shoreline of the town of Hull; thence following the 44250 line to the so called otter and beam trawl line otherwise known as the old exterior line of the Commonwealth; thence following said line in a northerly direction to the intersection with the Loran C 9960 Y 44290 line; thence following the 44290 line in a westerly direction to the shoreline north of Deer Island; thence along the shoreline of Deer Island in a southerly direction to the southeasternmost tip of Deer Island; thence along an imaginary straight line to the northernmost point of Lovell Island; thence along the shore of Lovell Island to its southernmost point; thence along an imaginary straight line to the tower on Telegraph Hill in the town of Hull; thence along the shore eastward to Pt. Allerton and southward along Nantasket Beach to the intersection of the shore with the Loran C 44250 line at the point of beginning, all as appearing on Chart 322 CMR 4.04(4)(b).~~

Chart 322 CMR 4.04(4)(b)



322 CMR 6.03 Regulated Multi-Species Groundfish

(5) Commercial Fishery Cod Trip Limits. The trip limits established in 322 CMR 6.03(5) shall be determined by the weight of whole, whole-gutted, or gilled fish and shall apply to any trip or 24-hour period, whichever period is longer. It is unlawful for a vessel fishing in:

(a) Gulf of Maine Groundfish Management Area to possess onboard or land more than **300**
200 pounds of cod.

(b) Southern New England Groundfish Management Area to possess onboard or land more than 1,000 pounds of cod.

(7) ~~Seasonal~~ Commercial Fishery Limits for Yellowtail Flounder. It is unlawful for any vessel fishing within waters under the jurisdiction of the Commonwealth to possess onboard or land more than **350** **250** pounds of yellowtail flounder during a trip or 24-hour period, whichever period is longer.

322 CMR 8.05 Commercial Groundfish Closures

(2) April 15 – April 30 from in Massachusetts Bay from Plymouth to New Hampshire Border Marblehead. Except as provided at 322 CMR 8.05(9), from ~~April 1 through~~ April 15 through April 30, it ~~shall be is~~ unlawful for commercial fishermen to fish for, possess, or land regulated groundfish species taken within the waters under the jurisdiction of the Commonwealth between 42°00' north latitude **north to the Massachusetts/New Hampshire border. and 42/30' north latitude west of 70/30' west longitude.**

~~The Director may annually rescind this April closure in accordance with the Declaration Process set forth at 322 CMR 6.41(2). This action may be taken if, based on the Division's review of relevant data, it determines that rescinding the closure will not result in an exceedance of the annual federally allocated state waters sub-component for regulated groundfish stocks during the federal fishing year of May 1 through April 30 or federal conservation objectives are not compromised.~~

322 CMR 12.04: Fixed Gear Seasonal Closures

- (1) Gillnet Closure to Protect Right Whales in Cape Cod Bay. It shall be unlawful for any Commercial Fisherman to fish, set, store, or abandon any sink gillnets within the waters under the jurisdiction of the Commonwealth during the period of January 1 through May 15. This closure may be extended past May 15 or rescinded after April 30 based on the presence or absence of right whales, in accordance with the process set forth at 322 CMR 12.04(3). ~~From January 1 through May 15 it shall be unlawful to fish, store or abandon gillnets within those waters under the jurisdiction of the Commonwealth, beginning at 42/12' north latitude and the shoreline; thence due east to where it intersects with the state-federal waters line; thence following the state waters line in an easterly direction to where it intersects with 70/10 west longitude; thence due south to where 70/10 west longitude intersects with the coastline of Cape Cod; thence following the shoreline along Cape Cod and South Shore back to the starting point at 42/12' north latitude and the shoreline.~~
- (2) Trap Gear Haul-out Period. It shall be unlawful for any Commercial Fisherman, to fish, set, store, or abandon any trap gear in any waters under the jurisdiction of the Commonwealth from February 1 through May 15. **This closure may be extended past May 15 or rescinded after April 30 based on the presence or absence of right whales, in accordance with the process set forth at 322 CMR 12.04(3).** Exception: This shall not apply to those waters under the jurisdiction of the Commonwealth within Lobster Management Area 2, as defined at 322 CMR 6.33(2)(e): LCMA 2. ~~This closure may be extended past May 15 or rescinded after April 30 based on the th th presence or absence of right whales, in accordance with the process set forth at 322 CMR 12.04(3).~~
- (3) Notice of Declaration to Amend Timing of Fixed Gear Seasonal Closures. The Director, through Notice of Declaration, may adjust the duration of the fixed gear seasonal closures at 322 CMR 12.04(1) and (2), as reasonably necessary to prevent the entanglements of the North Atlantic right whale in fixed fishing gear based on the Director's assessment of the documented presence of the North Atlantic right whale in Massachusetts waters. The Director shall amend the timing of these fixed gear seasonal closures by filing the Notice of Declaration with the Secretary of State for publication in the Massachusetts Register, publishing the Notice on the Division's Legal Notice web page, and distributing it via the Division's e-mail list serve.