

From: jtlobster@aol.com
To: [Fish, Marine \(FWE\)](#)
Subject: Comment on proposed lobster gear marking
Date: Friday, May 14, 2021 5:19:48 PM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I would like to make a comment on the gear marking proposal. During the Zoom meeting on May 11th a Lobsterman by the name of Steve Budrow had made a comment regarding the open Area 2 State water lobster fishery and the potential of a miss representation of where a NARW might appear to have become entangled should one happen to encounter Area 2 gear. I understand this concern, but I felt like Dan and Bob had perhaps not understood Steve's concern completely.

If the remainder of Mass State waters are closed to gear except for Area 2, and despite no historical data to support NARW's in Area 2 State waters, a NARW became entangled in gear in Area 2 State waters but not seen immediately then there would be no way of knowing that it encountered that gear in Area 2 during the time that the remainder of State waters were closed to fishing. This would then reflect negatively on the whole state lobster fishery and potentially cause harsher consequences when the remainder of the closed State water fleet had nothing to do with an entanglement that happened in the only State water area that was allowed to fish.

Steve had suggested that perhaps the buoy line marking scheme for Area 2 State waters should be modified some way to make it stand out. I also think this might be a good idea. Perhaps something as simple as putting a 1" or 2" black (electrical tape ?) mark in the middle of each of the red marks in the proposed new red mark scheme? That would allow Area 2 to have the exact same makings as the rest of Mass State waters, but with just a very small, super easy, inexpensive and uncumbersome way of differentiating Area 2 from the remainder of the State water fleet.

This may be even more important now that the Vineyard Wind project has been given the green light by the Federal government. The construction and operation of this wind farm may very well interfere with the NARW migration and habits and potentially cause them to venture into Area 2 State waters which could make the fear of an entanglement in that area a very real possibility. Thank you for your time and consideration of this comment.

Thank You,

John Todd

From: [Ryan Drohan](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Line markings
Date: Tuesday, April 27, 2021 4:31:48 PM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Dan. This new proposal seems a little over the top. What exactly is wrong with the 3 red marks we have now? I think we should just switch over to a 1700lb red line in the future that has some durability to last a few seasons and is affordable. I mean \$90 for a 600ft on a 22lb coil that is outrageous and the rope seems to be complete trash too. I think you need to speak with a company that manufactures rope for our industry like polysteel or hyliner in Maine. We need to do a little more research before we spend this much time and effort. I'm trying to manage a small business and a family at the same time I don't have time to be re-rigging my lines every season. I really hope you can understand where I am coming from.

Sincerely
Ryan Drohan
Rockport MA

May 19, 2021

Director Daniel McKiernan
Jared Silva
251 Causeway Street, Suite 400
Boston, MA 02114
mailto:jared.silva@mass.gov

Submitted electronically: marine.fish@mass.gov

Re: New Buoy Line Marking Rules for Commercial Lobster and Crab Trap Fishery

Dear Dan:

On behalf of the Conservation Law Foundation and the Humane Society of the United States, we are writing in response to the Massachusetts Division of Marine Fisheries (MA DMF) request for comment on gear markings.¹ As members of the Atlantic Large Whale Take Reduction Team and residents of Massachusetts, we want to thank the Commonwealth for continuing to address entanglements of North Atlantic right whales in fishing gear and for implementing meaningful conservation measures, while also considering the importance of the lobster fishery to fishermen and the coastal communities that dependent upon it. In addition to supporting the measures proposed here related to improving gear markings, we urge MA DMF to broaden the scope of its proposal to enhance the utility and clarity of the information retrieved.

Under the Marine Mammal Protection Act (MMPA), the National Marine Fisheries Service (NMFS) must reduce bycatch of protected and endangered species to below the Potential Biological Removal (PBR). 16 U.S.C. §§ 1386(a), 1387(f)(4), 1387(f)(5). Insufficient gear marking is a long standing issue. As currently mandated, gear marking requirements are insufficient to provide the intended benefit of reducing injuries and deaths of large whales, especially right whales, due to incidental entanglement in commercial fishing gear. Current marking requirements do not require marking for groundline, do not consider unique markings by regions, are not visible from aerial- or boat-based platforms, and can only be identified if gear is removed from a whale. According to NMFS, retrieval of gear has been in fewer than 23

¹ <https://www.mass.gov/doc/041621-public-hearing-notice-on-commercial-lobster-and-crab-trap-buoy-line-marking-rules/> (Under the provisions of M.G.L. c. 30A and pursuant to the authority found at M.G.L. c. 130 §§ 17A and 104, the Division of Marine Fisheries is taking public comment and holding a virtual public hearing on draft regulations to amend 322 CMR 4.00 and 12.00.).

percent of cases since 2010.² A better understanding of gear origin is necessary to define areas and types of fishing gear that pose high risk for right whales vulnerable to entanglement.

Enhanced Regionally Identifiable Marking Schemes

Understanding where and when large whale entanglements occur is an important data set to help meet the mandates of the MMPA as well as those of the Endangered Species Act. The data collected from entangled whales are used to identify areas and fisheries that pose risk to the survivorship of protected and endangered species. For example, North Atlantic right whale 3823 was documented in NMFS's incident data as entangled on September 22, 2016 in "heavy gear with trailing buoys 150 ft. aft of flukes."³ The gear removed during a disentangling event was determined to be of 3/8" diameter with a red vertical line tracer. As a result, NMFS was able to attribute the entanglement to gear used in the U.S. northern nearshore/inshore trap/pot waters. However, this marking is consistent with trap pot fisheries operating in the Massachusetts Restricted Area, the Northern Nearshore Trap/Pot Waters, the Northern Inshore State Trap/Pot Waters, Stellwagen Bank Jeffreys Ledge Restricted Area, and the Great South Channel Restricted Area overlapping Lobster Management Area 2 and/or the Outer Cape LMA. This broad range and limited marking system make it nearly impossible to identify the fishery, area, and time the entanglement occurred with the specificity necessary to take targeted actions.⁴ Thus, we strongly support the proposal to require regionally identifiable marking schemes.

Improved Marking Specificity

Ideally, we recommend that MA DMF require a marking that is woven throughout the entire line on which the fisherman's permit number, the agency that issued the permit, and the line type (groundline or endline) are printed. We acknowledge that this marking system does not currently exist, and that the industry would require support from NMFS to implement it. However, the long-term benefit of such a system could provide the necessary data to ensure that MA DMF fulfills its statutory mandates to implement meaningful risk reduction measures. Until that is available, however, we recommend that the regionally specific proposal from MA DMF include and identify lines from *all* fixed gear fisheries (not just American lobster and Jonah crab).

In addition to a marking that is woven throughout the line, we ask MA DMF to develop a marking that is visible from aerial or vessel based platforms. Entangled North Atlantic right

²https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/2000-2018_right_whale_incident_data_3_19_19v.xlsx.

³ https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/2000-2018_right_whale_incident_data_3_19_19v.xlsx.

⁴ Fortunately, in this case, surface marking systems were also present, allowing the gear to be identified and information determined on when and where it was set. However, surface gear is rarely present in most entanglement cases leaving most entanglement events unresolved as to gear type as well as when and where the gear was set. The cooperation from the fisherman whose gear was involved in the case of right whale #3823 provided invaluable insight into the case.

whales are often identified by these platforms and the ability to identify origin of the gear from photographs is imperative as gear is rarely retrieved.

Increased Marking Frequency

In the interim, we urge MA DMF to require a unique gear mark on every 40 feet of all lines. On average, rope recovered from an entangled whale is approximately 180 feet long.⁵ Moreover, rope used for trawling in the lobster fishing is permitted to stretch up to 1.5 nautical miles in length.⁶ This, combined with the fact that most gear, if marked at all, is only marked at the top, middle and bottom⁷, means that much of the gear recovered from entanglements cannot be identified. While it is our understanding that the vast majority of the Massachusetts state fisheries will meet or exceed this mandate based on the average line length of under 200 feet, a minimum standard should be clarified in the state's proposal with detail provided on why this standard is required.

Sinking Line Markings

The relative risk of entanglement in sinking groundline is unknown, especially as it is sometimes incorporated into vertical line systems. We urge MA DMF to include a unique marking strategy that identifies all sinking line and whether or not it is used as part of a vertical buoy system.

Ropeless Fishing in the Massachusetts Restricted Area

Finally, as MA DMF moves forward in developing the regulatory and technical frameworks to allow ropeless fishing gear, it is important to consider improving both the digital and physical gear marking as many ropeless systems will continue to deploy endlines and utilize groundline in the fishery. Lines used by fisheries using ropeless technologies should be marked uniquely.

Thank you for the opportunity to comment.

Sincerely,



Erica Fuller
Senior Attorney
Conservation Law Foundation



Sharon Young
Senior Strategist, Marine Wildlife
Humane Society of the United States

⁵ Gregory Krutzikowsky *et al.*, Investigation of Practical Aspects of Marking Fixed Fishing Gear With Coded Wire Tags To Better Understand Whale Entanglement 3 (Aug. 31, 2009) (unpublished draft final report, on file with GARFO).

⁶ Feb. 2018. GARFO. American Lobster Information Sheet.

⁷ <https://www.fisheries.noaa.gov/webdam/download/94698537>.

May 18, 2021

Director Daniel McKiernan
251 Causeway Street, Suite 400
Boston, MA 02114

Submitted electronically: marine.fish@mass.gov

Re: New Buoy Line Marking Rules for Commercial Lobster and Crab Trap Fishery

Dear Dan:

Please accept these comments submitted on behalf of Whale and Dolphin Conservation (WDC). WDC is a federally appointed member of the Atlantic Large Whale Take Reduction Team, where we have consistently advocated for regional gear marking to better inform regulatory decisions designed to protect critically endangered North Atlantic right whales and reduce unnecessary burdens on low-risk fisheries. We applaud the Massachusetts Division of Marine Fisheries (DMF) for once again taking a leadership role in prioritizing its responsibility to protect right whales while ensuring that the economically important and vibrant fishing communities in the state continue to thrive. We are generally supportive of the proposal put forward by DMF and offer the following comments to further enhance the data that will result from this proposed rule.

Insufficient gear marking is a long standing issue that has not been successfully managed at the federal level. Current gear marking requirements cannot provide the specificity necessary to identify the fishery or the time and area in which a whale entanglement likely occurred. As a result, broad regulatory mandates are imposed, placing burdensome regulations on fisheries posing limited risk of entanglement to North Atlantic right whales.

For example, the line removed from North Atlantic right whale 3823 during a disentangling included a red vertical line tracer¹. This marking system includes trap pot fisheries operating in the following areas: Massachusetts Restricted Area • Northern Nearshore Trap/Pot Waters • Northern Inshore State Trap/Pot Waters • Stellwagen Bank Jeffreys Ledge Restricted Area • Great South Channel Restricted Area overlapping Lobster Management Area (LMA) 2 and/or the Outer Cape (OC) LMA². This broad range and limited marking system makes it nearly impossible to identify the fishery, area, and time the entanglement occurred. Fortunately, in this case, surface marking systems were also present, allowing the gear to be identified and information determined on when and where it was set³. However, surface gear is rarely present in the majority of entanglement cases leaving most entanglement events unresolved as to gear type as well as when and where the gear was set. The cooperation from the fisherman whose gear was involved in the case of right whale #3823 provided invaluable insight into the case, and the individual fisherman was not subjected to any fines as a result of this accidental entanglement. These data are vital to understanding entanglement risk. We therefore strongly support MA DMF's proposal to require more regionally identifiable marking schemes. These data would be able to inform management strategies much more effectively and reduce the sweeping regulatory

¹https://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/trt/meetings/April%202019/2000-2018_right_whale_incident_data_3_19_19v.xlsx.

² <https://www.maine.gov/dmr/science-research/species/lobster/documents/netrappot07-14.pdf>

³

<https://www.greateratlantic.fisheries.noaa.gov/policyseries/index.php/GARPS/article/view/16/13>

WHALE AND
DOLPHIN
CONSERVATION



measures that impact fisheries indiscriminately. More targeted, fishery-specific regulatory measures are better for reducing risk to whales as well as supporting healthy, thriving fisheries.

Marking Specificity:

As we have previously advocated for in all static gear fisheries, we believe the ideal marking system would incorporate a printed tracer throughout the line that includes the fishery, permit number, and region fished. Until that is available, we appreciate the regionally specific proposal from MA DMF, but we recommend it be enhanced to include and identify lines from other static gear fisheries beyond lobster and crab.

Marking Frequency:

We ask MA DMF to mandate that markings be present on lines at least every 40 feet as a minimum standard. We acknowledge the burden on the industry of additional markings at this frequency, but base this request on the data available from gear retrieved from entangled whales. While it is our understanding that the vast majority of the state fisheries will meet or exceed this mandate based on the average line length of under 200', a minimum standard should be clarified in the state's proposal with detail provided on why this standard is required.

Sinking Line:

The risk reduction benefit from the sinking groundline rule remains unclear as sinking line is sometimes incorporated into vertical line systems. As such, we ask MA DMF to include a unique marking strategy for sinking line to identify whether it is part of the vertical buoy line or the groundline.

Visibility:

Finally, we note that entangled right whales are often identified by boat or aerial platforms and gear is rarely retrieved from whales. Therefore, the ability to identify gear origin from photographs is imperative. We ask MA DMF to consider how its marking system can be enhanced to make it more visible from survey platforms.

Again, we applaud the MA DMF for its leadership role in ensuring that both endangered North Atlantic right whales and Massachusetts fishing communities can survive and thrive.

We appreciate this opportunity to comment.

Sincerely,



Regina Asmutis-Silva
Executive Director, North America
Whale and Dolphin Conservation





Massachusetts Lobstermen's Association, Inc.

8 Otis Place ~ Scituate, MA 02066
781.545.6984

May 20, 2021

Massachusetts Division of Marine Fisheries
Director, Daniel McKiernan
251 Causeway Street, Suite 400
Boston, MA 02114

RE: Draft Buoy Line Marking regulations to amend 322 CMR 4.00 and 12.00

Dear Dan,

The Massachusetts Lobstermen's Association (MLA) submits this letter of comment on the Draft Buoy Line Marking regulations to amend 322 CMR 4.00 and 12.00 being proposed by the Massachusetts Division of Marine Fisheries (DMF). The Massachusetts commercial lobster industry encompasses several Lobster Conservation Management Areas (LCMA) encompassing scores of gear configurations making the buoy line marking regulations more complicated so to truly identify what LMA the gear is from.

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 Division of Marine Fisheries, the Atlantic States Marine Fisheries, and the New England Fisheries Management Council to ensure the continued sustainability and profitability of all the resource in which our fishermen are engaged in.

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



State Waters

The MLA supports the DMF's proposed markings for "LCMA 1, 2, & Outer Cape Cod, within the first 12 feet of the buoy line below the surface buoy, there is to be one solid (e.g., paint or tape) red mark that measures at least three feet in length. Then in the body of the buoy line there are to be at least four additional two foot solid (e.g., paint or tape) or non-solid (e.g., tracer) red marks. Two of these red marks are to be located in the top 50% of the buoy line and two of these red marks are to be located in the bottom 50% of the buoy line with no more than 60' between marks." <https://www.mass.gov/doc/041621-public-hearing-notice-on-commercial-lobster-and-crab-trap-buoy-line-marking-rules/download>

Currently, there are still hundreds of thousands of endlines in the Gulf of Maine being fished in New Hampshire and Maine waters that may have the "old" red gear marking color of one foot red marks. Massachusetts needs to be uniquely identifiable because any gear found on a right whale with 1' red markings would be detrimental to the Massachusetts commercial lobster industry should there be an unfortunate interaction between a right whale and these out of state endlines.

The marking of endlines in Massachusetts is going to be a bit of a challenge as the MLA, Lobster Foundation of Massachusetts (LFoM), and Ketcham Trap developed and deploy over 1000 coils of the weak red rope and breaking at 1700lbs in 2019-2020 with great success. Putting red marks on redline is going to be challenging to say the least. Furthermore, the LFoM, MLA and Ketcham in 2020 also developed the 2.0 version which is called the “Candy Cane” weak rope breaking at 1700lbs and is now available now for commercial lobstermen.

For those lobstermen fishing a full buoy line of the weak red or candy cane rope marking them with a red marking will be cumbersome. During the recent Public Hearing on May 11th several fishermen indicated this and it was recommended to use **WHITE** markings instead of red on these weak vertical lines.

The MLA supports the use of **WHITE** markings on the weak red or candy cane rope so it will be truly unique and identifiable from the rest of the region as these ropes are readily available to everyone.

Unfortunately, Massachusetts commercial lobstermen would shoulder the responsibility, alone and for that Massachusetts commercial lobstermen need to be unique and truly identifiable as different from the “old” gear markings.

The MLA continues to supports the use of the weak 1700lb red rope or candy cane rope that can double as the weak contrivance and meet the gear marking requirements at the same time.

Federal Waters

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



LCMAs 1, 2 and Outer Cape Cod

The MLA supports the DMF’s proposed markings for the ***LCMAs 1, 2 and Outer Cape Cod***, “*within the first 12 feet of the buoy line below the surface buoy, there is to be one solid red mark (e.g., paint or tape) that measures at least three feet in length followed by a one foot solid (e.g., paint or tape) green mark below the solid red mark.*” <https://www.mass.gov/doc/041621-public-hearing-notice-on-commercial-lobster-and-crab-trap-buoy-line-marking-rules/download>

Then in the body of the buoy line there are to be three marks that measure **at a minimum** “*two feet each and are comprised of one solid (e.g., paint or tape) or non-solid (e.g., tracer) red mark measuring at least one foot in length and one solid (e.g., paint or tape) or non-solid green mark measuring at least one foot in length. One mark is to be located in the top third of the buoy line, another mark in the middle third of the buoy line, and the third mark in the bottom third of the buoy line.*” <https://www.mass.gov/doc/041621-public-hearing-notice-on-commercial-lobster-and-crab-trap-buoy-line-marking-rules/download>

The dual permit holders in Massachusetts would have to continually swap out buoy lines when they move between state and federal waters and, by adding the language “**at a minimum**” would allow them to mark their endlines with the two foot state waters requirements and add the one foot green marking easily when moving into federal waters.

LCMA 3

The MLA supports the DMF's proposed markings for "LCMA3, within the first 12 feet of the buoy line below the surface buoy, there is to be one solid (e.g., paint or tape) black mark that measures at least three feet in length followed by a one foot solid (e.g., paint or tape) green mark below the solid black mark. Then in the body of the buoy line there are to three solid (e.g., paint or tape) or non-solid (e.g., tracer) black marks that measure at least two feet in length. One mark is to be located in the top third of the buoy line, another mark in the middle third of the buoy line, and the third mark in the bottom third of the buoy line."

<https://www.mass.gov/doc/041621-public-hearing-notice-on-commercial-lobster-and-crab-trap-buoy-line-marking-rules/download>

Other Comments & Concerns

Weak Red Lead Rope

The MLA is greatly concerned about the use of ANY weak red lead rope for a multitude of reasons. The incorporation of ANY lead into the ecosystem is counterproductive to all of our efforts to maintain a healthy ecosystem. Lead in the water is NOT good for anyone or marine life that depends on a healthy ecosystem.



Environmental effects of lead

"Not only leaded gasoline causes lead concentrations in the environment to rise. Other human activities, such as fuel combustion, industrial processes and solid waste combustion, also contribute.

Lead can end up in water and soils through corrosion of leaded pipelines in a water transporting system and through corrosion of leaded paints. It cannot be broken down; it can only converted to other forms.

Lead accumulates in the bodies of water organisms and soil organisms. These will experience health effects from lead poisoning. Health effects on shellfish can take place even when only very small concentrations of lead are present. Body functions of phytoplankton can be disturbed when lead interferes. Phytoplankton is an important source of oxygen production in seas and many larger sea-animals eat it. That is why we now begin to wonder whether lead pollution can influence global balances." <https://www.lenntech.com/periodic/elements/pb.htm>

Furthermore, the current use of leaded lines in the Massachusetts lobster fishery is absent. By allowing the use of the new Canadian weak red lead rope in the Massachusetts lobster fishery is counterintuitive to the DMF's efforts to make the gear used in the Massachusetts lobster fishery unique and identifiable as this rope is being widely used in the Canadian lobster fishery. Additionally, there are thousands of commercial lobstermen in Canada deploying countless buoy lines in contrast to the 750 active commercial lobstermen in Massachusetts.

The MLA DOES NOT support the use of ANY leaded line in the commercial lobster fishery. By default, this would be yet another gear marking to separate the Massachusetts commercial lobstermen from the rest of the industry, should a whale show up with ANY leaded line on it, it wouldn't be from Massachusetts.

LCMA 2

During the recent public hearing there was great concern from the industry on the lack of additional markings for the LCMA 2 commercial lobstermen that were fishing as they are not under a mandated closure. There were several comments that there should be an additional marking for LCMA 2 and that the DMF needs to do something about this.

The MLA is also concerned about this and recommends that the DMF review all the comments and effort data during the closure months to see what the impact would be. Should there be an unfortunate interaction with a right whale in LCMA2 during the time of the closure in the rest of the state it would be unfair to put any more draconian management on those commercial lobstermen that are under the closure.

Thank you for the opportunity to comment and your thoughtful consideration. If you have any follow up questions, please let me know.

Sincerely,
Beth Casoni
Executive Director

From: [doug.maxfield](#)
To: [Fish, Marine \(FWE\)](#)
Subject: Public comment on line markings
Date: Saturday, April 17, 2021 2:18:29 PM

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Daniel McKiernan,

It's not that any one of the non-sensical rules implied in the last few years is all that big a deal... until they are looked at cumulatively. Money, time, effort, inconvenience and ineffectiveness does not seem to bother any of the folks who don't have to do it; and the knowledge that this ongoing foolishness will never seem to end hasn't slowed anyone down. Just take a little more every year; change the requirements a little more; and please, whatever happens don't revisit any rulings after the fact to determine whether or not anything has made a difference. Don't take a stand for common sense, that would be asking too much. Just keep chipping away and try to convince yourselves we'll survive. But, we are fast approaching a point where good, honest, rule-following hard working folks will have had enough. And then what?

Capt. Doug Maxfield

F/v Sarah Day