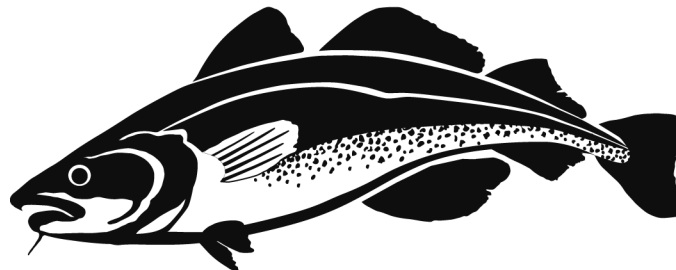


Public Hearing: New Regulations Affecting Trap Gear

**6PM
January 5, 2022
Virtually Via Zoom**

Marine Fisheries
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, 21, 38, 80 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, 6.00 and 7.00 affecting trap gear fishing.

Written public comment will be accepted through Friday, January 14, 2022. Please send written public comment via e-mail to marine.fish@mass.gov or by post to the attention of Director McKiernan at 251 Causeway Street, Suite 400, Boston, MA 02114.



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 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).
- 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). All written comment is to be submitted by January 14, 2022. Written comment will be shared with the MFAC in advance of the January 20, 2022 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](#).



Overview of Proposal

- Trap Tag Installation Deadline (322 CMR 6.31). Establish a May 1 trap tag installation deadline for all LCMAs. After May 1, any trap gear being set in any LCMA must have a current year trap tag installed.
- Seasonal Lobster Permit (322 CMR 7.01). Amend regulation to clarify Seasonal Lobster Permit is “resident-only” consistent with G.L. c. 130 s. 38.
- Bouy Line Marking Rules (322 CMR 4.13). Amend recently adopted trap gear buoy line marking rules implemented for February 2022. The amendments will:
 - Have the state-waters buoy line marking rules apply to all commercial trap gear (e.g., fish pot and conch pot), not just commercial lobster and crab trap gear.
 - Require all red marks have a corresponding green mark when fished in federal waters and have all green marks removed from trap gear when fished in state waters.

Timeline for Rule Making

- January 5, 2022: Hold virtual public hearing
- January 14, 2022: Conclude public comment period
- January 17, 2022: Provide recommendation to MFAC
- January 20, 2022: MFAC vote on recommendation
 - February 4, 2022: File final regulations
 - February 18, 2022: Effective date



Trap Tag Installation Deadline

Proposal:

For all LCMAs, establish May 1 as the date certain to have current year trap tags installed in gear.

Current Rule:

- For OCCLCMA, the current date for annual installation is March 16, consistent with end of historic Jan 15 – Mar 15 seasonal trap closure to control effort and harvest.
- For LCMA 1, LCMA 2, and LCMA 3 prior date was June 1, consistent with time of year that the trap fishery begins in earnest.

Rationale:

- With new seasonal trap gear closure affecting state-waters of LCMA 1 and OCCLCMA, makes sense to sequence trap tag installation with earliest likely date these areas will reopen.
- For LCMA 3, federal rule already requires a May 1 installation.
- For LCMA 2, will require installation of tags one month earlier, but will have consistent rule across all LCMAs.



Seasonal Lobster Permit Proposal

Proposal:

Modify Season Lobster Permit regulation to clarify the permit is “resident-only”.

Implementing State Law:

G.L. c. 130, § 38:

“In addition to the above noncommercial lobster and crab permit and the commercial fisherman permit (lobster) there shall be a seasonal commercial fisherman permit (lobster). Such a permit shall be issued to full-time students only, after such verification of student status as the director may determine, and shall allow the holder to take and sell lobster during the period June fifteen to September fifteen and shall limit the holder to the use of not more than twenty-five pots.”

“Except as hereinafter provided, such licenses to catch or take both lobsters and edible crabs shall be granted only to individuals who are *citizens of the commonwealth and who have resided therein for at least one year next preceding the date of such license...*”

Rationale:

- In recent years, DMF has become aware of non-resident student lobster permit applications.
- DMF views issuing these permits to non-residents is inconsistent with the implementing state law.
- DMF seeks to clarify this by specifying in regulation the permit is resident only.



Background:

Prior Buoy Line Marking Rule

- DMF currently in process of applying for an Incidental Take Permit from NOAA Fisheries to cover commercial trap fisheries interactions with endangered right whales and sea turtles.
- Successful ITP application distinguishes state-waters fisheries from similar fisheries in other jurisdictions and mitigates for all potential sources of risk to endangered species.
- In June 2021, DMF adopted new buoy line marking regulations, effective February 1, 2022. These new regulations established distinct marking requirements for MA commercial lobster and crab trap gear being fished in state waters and complemented anticipated ALWTRP rules for federal waters.
- These rules, along with the expanded trap gear closure area and weak buoy line regulations, were adopted to provide additional conservation to endangered right whales when compared to other jurisdictions.
- DMF requested to have its commercial trap fisheries listed separately from broader fisheries on NOAA's 2022 List of Fisheries. This is a necessary step for MA to receive an ITP.



Background:

Current Buoy Line Marking Rule

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.
- *Green marks do not need to be adjacent to red marks but must be within 6" consistent with anticipated federal rule.*

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.

Federal Waters
OCCLMA, LMA 1
and LMA 2



State Waters
OCCLMA, LMA 1
and LMA 2



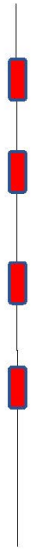

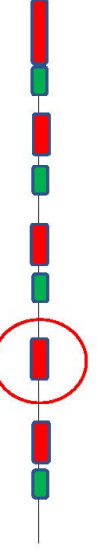

Federal Waters
LCMA 3



Inconsistencies Between State & Federal Rules

Overview

- Following adoption of 2021 ALWTRP rules, DMF and NOAA identified two inconsistencies.
- Inconsistencies deal with dual federal/state permit holders and the movement of gear across the boundary if same buoy line is used.
- State requires more red marks (at least five) than NOAA (four) rule. However, not all red (state) marks are required to have a corresponding green (federal) mark.
- No requirement green marks be removed from gear being fished in state waters.
- Typical for only remnants of buoy line to remain on right whale following entanglement. Current rules may result in misattribution of buoy lines to a certain jurisdiction.
- Entanglements attributed to state waters fishery may have significant impact on ITP and future of fishery.
- Critical to avoid misattributions.

State Gear Marking	Federal Gear Marking	Concern- State Gear Moved into Federal Waters	Concern Federal Gear Moved into State Waters
			



2022 List of Fisheries

- August 2021: NOAA Fisheries proposed a new fishery in 2022 Draft List of Fisheries published in the federal register
 - MA Mixed Species Pot/Trap Fishery
 - Includes all trap/pot fisheries – lobster pot, whelk pot, fish pot.
 - Separates our pot fisheries from all other state and federal pot fisheries.
 - Sets MA up for a successful ITP application.
 - Requires that all gear in the fishery is distinguishable from other pot/trap gear.
- Final 2022 List of Fisheries publication imminent.
 - Public comment - DMF has not implemented a unique gear marking scheme for its conch pot or fish pot fisheries.
 - Since all MA pot/trap fisheries are listed as one fishery we need to have the same gear marking requirements for all components – lobster, whelk, fish pot



Amended Buoy Line Proposal

DMF is proposing to maintain the buoy line marking scheme scheduled to go into effect for February 2022 with three modifications.

1. Have buoy line marking requirements apply to all commercial trap fishermen.
2. Require all Massachusetts lobster and crab trap fishermen fishing in federal waters to have a green mark measuring at least 1' within 1' of all red marks in the buoy line.
3. Prohibit all Massachusetts commercial trap fishermen from fishing buoy lines with marks other than the prescribed red marks, or white marks should the buoy line be red. This requires all federal green marks be removed from buoy line if set in state waters.



Written Public Comment

Written public comment will be accepted through Friday, January 14, 2022. Please address written by e-mail to 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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