



**MARINE FISHERIES ADVISORY COMMISSION  
BUSINESS MEETING AGENDA**

**9:00 AM**

**June 3, 2021**

**Held Virtually Via Zoom**

**Webinar Link: <https://bit.ly/3usY9px>**

**Dial In: 1 929 436 2866**

**Webinar ID: 842 0075 8783**

**Webinar Passcode: 428444**

1. Introductions and Announcements (9:00 – 9:10)
  - a. Review and Approval of the June 3, 2021 Business Meeting Agenda
  - b. Review and Approval of the April 15, 2021 Draft Business Meeting Minutes
2. Comments (9:10 – 9:30)
  - a. Chairman
  - b. Commissioner
  - c. Director
  - d. Law Enforcement
3. Action Items (9:30 – 10:00)
  - a. Buoy Line Marking Rules for Commercial Lobster and Crab Traps
4. Discussion Items (10:00 – 11:30)
  - a. Incidental Take Permit Application Update
  - b. CARES Act Relief Update
  - c. Report on ASMFC and Council Meetings
  - d. Allowing Menhaden Seining on Fridays in Boston Harbor
  - e. Renewing Period II Summer Flounder Pilot Program
  - f. Shellfish Program Updates
5. Other Business (11:30 – 12:00)
  - a. Status of Sub-Committees
  - b. MFAC Meeting Dates and Format for Remainder of 2021
  - c. Commission Member Comments
  - d. Public Comment
6. Adjourn (12:00)

**Future Meeting Dates**

**TBD**

All times provided are approximate and the meeting agenda is subject to change. The MFAC may amend the agenda at the start of the business meeting.

## **MARINE FISHERIES ADVISORY COMMISSION**

**April 15, 2021**

**Held Virtually via Zoom**

### **In attendance:**

*Marine Fisheries Advisory Commission:* Raymond Kane, Chairman; Michael Pierdinock, Vice-Chairman; Bill Doyle, Clerk; Arthur “Sooky” Sawyer; Kalil Boghdan; Bill Amaru; Lou Williams; Tim Brady; and Shelley Edmundson.

*Division of Marine Fisheries:* Daniel McKiernan, Director; Kevin Creighton, CFO; Michael Armstrong, Assistant Director; Story Reed; Jared Silva; Nichola Meserve; Jeff Kennedy; Bob Glenn; Erin Burke; Anna Webb; Nick Buchan; Derek Perry; Tracy Pugh; and Steve Wilcox.

*Department of Fish and Game:* Ron Amidon, Commissioner

*Massachusetts Environmental Police:* Col. Santos; Lt. Col. Moran; Lt. Matt Bass; and Capt. Kevin Clayton

*Members of the Public:* Allen Rencurrel; Drew Kolek; Peter Fallon; Sarah Beth Menck; Genevieve McCloy; Rebekah Panaro; Emerson Hasbrouck; and Lizzie Roche.

## **INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Ray Kane called the April 15, 2021 Marine Fisheries Advisory Commission (MFAC) business meeting to order.

## **REVIEW AND APPROVAL OF APRIL 15, 2021 BUSINESS MEETING AGENDA**

No amendments were proposed to the April 15, 2021 MFAC business meeting agenda.

**Chairman Kane asked for a motion to approve the draft agenda. Mike Pierdinock made a motion to approve the draft agenda. The motion was seconded by Shelley Edmundson. The April 15, 2021 MFAC business meeting agenda was approved by unanimous consent.**

## **REVIEW AND APPROVAL OF MARCH 18, 2021 DRAFT BUSINESS MEETING MINUTES**

There were no amendments to the Draft Business Meeting Minutes.

**Chairman Kane asked for a motion to approve the March 18, 2021 meeting minutes. Mike Pierdinock made motion to approve the March business meeting minutes. Bill Amaru seconded the motion. The motion was approved by unanimous consent.**

### **CHAIRMAN'S COMMENTS**

Chairman Kane thanked everyone for their attendance and asked Commissioner Amidon to take the floor.

### **COMMISSIONER'S COMMENTS**

Commissioner Amidon commented positively on meeting attendance by MFAC members. He then reported on the budget process. With Earth Day on April 22, DFG was hosting a variety of events throughout the week.

### **DIRECTOR'S COMMENTS**

Among the Earth Day events scheduled was an event at the Back River in Weymouth to highlight the newly renovated herring run. The Director stated staff would forward the event invite to Commission members.

Dan stated MA was allocated about \$23 million for a second round of CARES funding for COVID-related fishing industry relief. The federal requirements regarding needing to demonstrate a 35% COVID related loss in revenue and not being able to be made more than whole by COVID relief funding sources remained in place. The sector specific industry working groups utilized during the first round of CARES funding are convening again to assist the agency in the development of its spending plans. Dan was hopefully DMF would submit a final spend plan to NOAA Fisheries in late May.

Dan announced the Massachusetts Shellfish Initiative recently approved and finalized a Strategic Plan. A press event was scheduled for May 4. Part of the final plan was to introduce legislation to formalize the makeup of the Shellfish Advisory Panel and require the body meet biannually.

Sooky Sawyer asked if fishing businesses would be allocated a percentage of CARES money if the full allotted amount would make the recipient more than whole. Dan indicated this is how he expected the spend plan would be organized.

Chairman Kane asked if ASMFC will be distributing the checks for the second round of CARES. Dan stated this will be the case for round two as well.

### **LAW ENFORCEMENT COMMENTS**

Lt. Matt Bass handled the comments for the Massachusetts Environmental Police (MEP). Lt. Bass stated their focus has been on the new endangered species regulations and clearing the trap gear closure of any lost or abandoned gear. He also added there has been a multitude of minor enforcement issues as well. Lt. Bass welcomed any questions from the commission.

Sooky Sawyer asked if there is anything being done about speeding vessels in Cape Cod Bay. Lt. Bass stated they are monitoring AIS, and MEP will be following up.

Ray Kane asked if they have seen poaching of glass eels. Lt. Bass stated they were investigating potential poaching activity.

### **ACTION ITEMS**

#### **Commercial Striped Bass Season and Open Fishing Days**

Director McKiernan provided a brief background on the commercial striped bass fishery. The Director then recommended the MFAC vote to open the commercial striped bass fishery on June 16, start the commercial fishing season with three consecutive open fishing days (Mondays - Wednesdays), and add Thursdays and Fridays as open fishing days effective October 1. The Director welcomed any comments or questions from the Commission.

Kalil Boghdan stated the memo is well thought out. He spoke about how the recreational and commercial fisheries share the resource, but how each fishery is managed differently to achieve the conservation objectives of the ASMFC's FMP. He thought the Director's recommendation attempted to reconcile some of the adversarial positions held by recreational and commercial fishing interests, and in that way, provided a good compromise. He opined there could be difficult decisions down the road for ASMFC regarding the management of the striped bass resource.

Lt. Bass and Lt. Col. Moran had no objections, but wanted DMF's advisory announcing these rules to clarify how limits would apply if fishing overnight on consecutive open fishing days. Jared Silva stated that if approved, DMF's advisory would address this issue.

Mike Pierdinock stated commercial striped bass management is a contentious public matter. MFAC needs to consider everyone's interests when making these management decisions. He expressed the importance of attempting to use the quota allocated by ASMFC and added decisions affecting access to the state's quota should not be viewed as conservation measures as the quotas are set in accordance with the FMP and the stock assessment. Mike P. He expressed concerns about opening the season earlier and adding Fridays in the fall. Specifically, he was concerned about the ability to market fish in mid-June and get fish to markets on Fridays, and he also felt these two issues could potentially create user group conflicts between recreational and commercial fishermen.

The Director stated that based on the historical amount of fish that were caught in October is very low, and those fish could be sold locally rather than being shipped.

**Chairman Kane asked for a motion to adopt the DMF's recommendation on the commercial striped bass fishery. Sooky Sawyer made motion to approve the recommendation as provided by the Director. Bill Amaru seconded the motion. A**

**roll call vote was taken and the motion was approved 6-2, with Tim Brady and Mike Pierdinock voting in opposition.**

#### Menhaden Limits and Reporting Requirements for Small Scale Fishery

The Director provided background on the state's menhaden fishery management system. There were longstanding concerns from the waterfront regarding non-compliance in the open access fishery. Additionally, after opting into the Episodic Event Set-Aside (EESA) fishery in 2020, DMF felt it necessary to clarify certain rules to ensure the state regulations adhered to the ASMFC's FMP. Accordingly, to address these issues, DMF recommended the following regulations be adopted for 2021:

1. Establish a maximum purse seine size of 450' x 48' (75 fathom x 8 fathom) for open access fishermen at all times and limited access fishermen during the small scale/incidental fishery. This restriction thus applies to all harvesters operating under a 6,000-pound trip limit, and it excludes only limited access fishermen during the quota managed fishery and episodic event set-aside (EESA) fishery when larger trip limits apply.
2. Require the immediate (at-sea) storage of harvested menhaden into 55-gallon barrels or standard fish totes by all open access fishermen at all time and limited access fishermen during the small-scale/incidental fishery. Similar to above, this requirement thus applies to all harvesters operating under a 6,000-pound trip limit, and it excludes only limited access fishermen during the quota managed fishery and EESA fishery when larger trip limits apply.
3. Establish a volumetric equivalency of 350 pounds of menhaden per level, filled 55-gallon barrel and 117 pounds of menhaden per level, filled standard fish tote (measuring 28 inches long x 16 inches wide x 11 inches deep). This results in an allowance for 17 barrels or 51 totes for the 6,000 pound trip limit.
4. Require any commercial permit holder participating in the EESA fishery to hold a bait dealer permit and report their harvest nightly into SAFIS as a bait dealer.
5. Establish a 6,000-pound trip limit for open access participants during the EESA fishery.

The Director welcomed any comments or questions.

Bill Amaru expressed concern over fishermen safety and the stacking of fish totes on small vessels, particularly as the open access fishery is often occurring in open waters. Accordingly, he asked about the characteristics of the vessels that participate in this fishery. Story Reed indicated the average vessel length was about 38' and the median vessel length was 40'. Nichola Meserve added through informal discussions with industry there was little concern about requiring vessels 40' and larger to stack totes. She added that Maine had similar requirements.

Bill Amaru then asked about at-sea enforcement. Nichola stated the motivation behind these regulations would be to more readily determine compliance during at-sea boardings. Lt. Col. Moran stated he did not have a summary of menhaden boarding incidents on hand, but could get back to Amaru later.

Sooky Sawyer recommended adding how many barrels and totes this would equate to in the regulations. Jared Silva stated this information was in the text of the regulation. Three fish totes would be the equivalent of one barrel and fishermen would be allowed to store fish in both totes and barrels.

Mike Pierdinock asked if the increase in maximum purse seine size was developed to accommodate the larger vessels in the fishery and if the smaller vessels will be required to convert over to the larger net size. Nichola stated the recommended purse seine size rule would apply only to vessels fishing at the 6,000-pound limit. Vessels fishing at higher limits in the limited access fishery are not subject to a maximum purse seine size. Nichola then explained this recommended maximum purse seine size was larger than the size proposed at public hearing, and that rule was developed in response to public comment.

Mike P. then asked if the larger net size will make the larger boats come further inshore. Based on public comment, Nichola expected this maximum net size would keep the open access purse seiners out of more near-shore shallow waters where the recreational fishery is conducted. She was uncertain of how a maximum net size restriction on the open access fleet would impact interactions with larger vessels. The larger seining operations hold inshore net permits allowing them to fish in the highly productive inshore net areas subject to a strict set of permit conditions, whereas the open access participants don't hold inshore net permits.

**Chairman Kane asked for a motion to adopt the DMF's commercial menhaden recommendations. Bill Amaru made motion to approve the recommendation as provided by the Director. Sooky Sawyer seconded the motion. A roll call vote was taken, and the motion was approved unanimously.**

Prohibition on Purse Seining for Atlantic Bluefin Tuna; Black Sea Bass Pot Ghost Panel Requirement; and Correction to Mobile Gear Rules

Jared stated he would like to have one sweeping motion to cover the three regulatory housekeeping recommendations. Jared provided a brief summary of each recommendation. Then he asked for a motion to: 1) require all black sea bass pots be configured with an escape panel that measures at least 3" by 6"; 2) prohibit purse seining for Atlantic bluefin tuna in the waters under the jurisdiction of the Commonwealth and rescind all historic regulations previously governing this regulated fishery as all permits to conduct this fishing activity have been retired; and 3) correct a typographical error in the state's mobile gear fishing regulations to clarify that certain ground gear may be used when fishing trawls in North Shore Exemption Areas 1A (Gloucester/Rockport) and 1B (Ipswich Bay).

**Chairman Kane asked for a motion to adopt DMF's regulatory housekeeping recommendations. Sooky Sawyer made motion to approve the recommendation as provided by the Director. Shelley Edmundson seconded the motion. A roll call vote was taken, and the motion was approved unanimously.**

## **DISCUSSION ITEMS**

### Updates on Protected Species Issues

DMF Senior Biologist Bob Glenn stated NOAA Fisheries and the Provincetown Center for Coastal Studies were conducted surveillance flights for right whales. Based on this surveillance, he provided an update regarding the presence of right whales in Massachusetts waters. These flights would continue into mid-May and inform DMF's decision making regarding the status of seasonal fixed gear closures and the small vessel speed limit.

### *Buoy Line Marking Proposal for Public Hearing*

Bob Glenn gave a presentation on NOAA's Buoy Line Marking Proposal. He discussed the different aspects of DMF's proposal regarding buoy line markings in state and federal waters and explained the importance of using the markers as a way to differentiate Massachusetts' gear from other fisheries in the case of an entanglement. Bob then discussed the rule making process, timeline, and rationale of buoy line marking requirements.

Sooky Sawyer asked for clarification on which parties are named in the ongoing lawsuit and if that included federal permit holders. Bob Glenn clarified that the lawsuit is specifically against the Secretary of Environmental Affairs and DMF. Sooky then asked about the requirements for additional gear marking for federal permit holders. Bob Glenn explained NOAA Fisheries draft rules require a green mark in the surface section to demonstrate the gear is federally permitted and the state-specific colors in the body of the buoy line based on homeport. DMF was working with NOAA Fisheries to add the green federal mark throughout the body of the buoy line for gear set in federal waters to help differentiate it from state-waters gear.

Sooky Sawyer asked about whale sightings on the North Shore. Bob stated there were several sightings off Cape Ann in April, most recently on April 13. Bob and Sooky then discussed how to best get this information to industry and agreed DMF could send out regular advisories relaying surveillance information.

Chairman Kane commended Bob Glenn and his staff for all their work. Ray asked if the buoy line marking timeline included the conch and fish pot fishermen. Jared Silva stated that this new proposal would apply to commercial lobster trap gear only, recreational lobster gear and fish and conch pot gear would continue to be subject to the existing buoy line marking requirements.

### *Gear Distribution*

Bob Glenn discussed the weak rope gear roll out. He thanked Erin Burke and Justin Wilson for their work on organizing the events. Erin Burke further discussed weak rope distribution. With funds from Governor Baker and an ASMFC grant, DMF purchased 2,500 coils of weak rope and 7,000 South Shore Sleeves. DMF sought to provide each fisherman with two weak coils of rope and 20 south shore sleeves to help them comply

with the new weak rope requirements. The expectation was that most fishermen would not fish fully formed weak rope, but would instead use the sleeves and segments of weak rope to insert weak contrivances into existing buoy lines. Then overtime, the fishery may turn over to fishing fully formed weak rope as they routinely replace gear. Erin then discussed the DMF Buoy Line Trap Gear Modifications Webpage, as well as the main email that has been setup for lobstermen to contact DMF.

Sooky Sawyer stated the initial batch of candy cane weak rope did not fish well and the manufacturer was working to develop a second batch based on feedback from industry. He was curious if DMF had received this improved candy cane rope. Bob Glenn stated DMF was waiting on a shipment. However, he did not intend to distribute the rope directly to industry, but to work with select fishermen to test this version of the rope.

Ray Kane asked if there is any way to utilize CARES money to subsidize the harvesters for the cost of the weak rope and contrivances. The Director stated CARES funding was to be distributed to those businesses affected by COVID. However, fishermen who are eligible for CARES money could spend it on purchasing gear.

Shelley Edmundson thanked DMF for distributing rope on Martha's Vineyard.

#### *Updates from ASMFC*

Nichola Meserve stated the ASMFC and MAFMC delayed the final action on the commercial/recreational allocation amendment for fluke, scup, and sea bass until December. The Council and Commission supported this delay to advance the Recreational Reform Initiative before allocation decisions are made. Additionally, more options within the range of alternatives may be developed in the interim based on concerns expressed during the public comment, which Nichola opined may help broker compromise between commercial and recreational interests. The implementation date has been flagged in the motion for 2023. The implications for the 2022 recreational fisheries are unknown, but all three species will go through a stock assessment this summer with the results factored into the fishery specification setting for 2022.

Nichola stated the agenda for the spring ASMFC meeting was posted online and the meeting was scheduled to occur virtually during the first week of May. Nichola made note of some high interest board actions, including: the identification of issues to be addressed in Amendment 7 to the Striped Bass FMP; a potential management action being initiated to reallocate commercial menhaden quotas among the states; a Policy Board review of an appeal by New York regarding state-by-state commercial black sea bass quota reallocations; and the development of an ASMFC Working Group to address the challenges associated with reallocation.



## **PRESENTATION ON MA OCEAN ACIDIFICATION COMMISSION REPORT**

Director McKiernan gave a brief overview of the MA Ocean Acidification Commission. Mark Rousseau then provided a summary of this Commission and its report on ocean acidification. Mark welcomed any questions from the Commission at the conclusion of his presentation.

Kalil asked if the oceans have reached the tipping point to sustain CO<sub>2</sub> absorption. Mark did not know the exact answer to Kalil's question, but stated there was a need for more sampling to occur in order to have more robust baseline data. He added that some local ocean acidification can be resolved by addressing local eutrophication that is occurring.

Bill Amaru commended Mark for his work and thanked him for making it understandable. Bill asked if acidification is standard throughout the entire water column. Mark stated pH levels were not likely equal throughout the water column. Moving forward, some technology needs to be developed to better sample this.

Mike Pierdinock asked if there is any connection between ocean acidification and recent dissolved oxygen levels in Cape Cod Bay. Mark stated this was yet to be determined.

Chairman Kane suggested Commission Members can reach out to Jared with any concerns or questions for Mark. Chairman Kane thanked Mark for his presentation.

## **OTHER BUSINESS**

Director McKiernan brought up two areas of other business from DMF. He suggested moving the May Business Meeting two weeks out. The May meeting was moved to June 3<sup>rd</sup>. The June MFAC meeting was cancelled.

Director McKiernan stated he received a request from a Hull purse seiner to allow menhaden seining in Boston Harbor on Friday. This request was made at the recent March 29 public hearing and was subsequently supported in writing by the Massachusetts Striped Bass Association. Dan and staff were preparing a memorandum for the MFAC that explains this request and Dan's likely decision to allow it for 2021.

### *Commission Member Comments*

Kalil Boghdan stated he really enjoys listening to the weekly seminars put on by DMF, and urged his fellow Commission members to listen in.

Bill Doyle would like an update on the Three Bay reclassification, as well as DMF's recent meeting with FDA. Director McKiernan provided an update regarding a recent meeting with the FDA, and added DMF was working to minimize the spatial extent to which it would reclassify and downgrade "Approved" shellfish growing areas to "Conditionally Approved". DMF would follow up with Bill Doyle with additional information.

Shelley Edmundson thanked DMF for all their hard work, particularly getting trap fishermen weak rope and weak contrivances.

Mike Pierdinock stated he got an email from NOAA Fisheires regarding a 90-day petition to place shortfin mako sharks on the Endangered Species List, and noted comments on this action are due June 14. He added that he has been participating in civilian science workshops through ACCSP to develop mobile applications as a means for reporting recreational and for-hire catch and effort data.

Ray Kane thanked the Commission for their continued attendance. Ray then asked Shelley Edmundson for an update on the whelk research fleet. Shelley stated the grant would begin in 2022.

Ray and Dan discussed a recent petition from the Massachusetts Conch Association to stall whelk gauge increases pending additional scientific review. The association hired Dr. James Sulikowski to review the agency's size-at-maturity work and management. DMF had received some comments from Dr. Sulikowski and was reviewing it with SMAST staff and preparing a response.

Bill Amaru asked Shelley to speak to a new seafood marketing program she promoted on NPR. Shelley discussed a new wholesale seafood marketing program focused at making local seafood more accessible on the island and better marketing locally caught seafood throughout the state.

#### **PUBLIC COMMENTS**

No public comments were made.

#### **ADJOURNMENT**

Chairman Ray Kane requested a motion to adjourn the April MFAC business meeting. **Sooky Sawyer made a motion to adjourn the meeting. The motion was seconded by Shelley Edmundson. The motion was approved by unanimous consent.**

## **MEETING DOCUMENTS**

- April MFAC Agenda
- March 2021 Draft MFAC Business Meeting Minutes
- Commercial Striped Bass Recommendation
- Commercial Menhaden Management
- Housekeeping Recommendation Memo
- Buoy Line Marking Proposal

## **UPCOMING MEETINGS**

**9AM**

**June 3, 2021**

**Via Zoom**



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114  
p: (617) 626-1520 | f: (617) 626-1509  
[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor


KATHLEEN A. THEOHARIDES  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: May 28, 2021

SUBJECT: Recommendation on Buoy Line Marking Requirements for Lobster and Crab Trap Gear

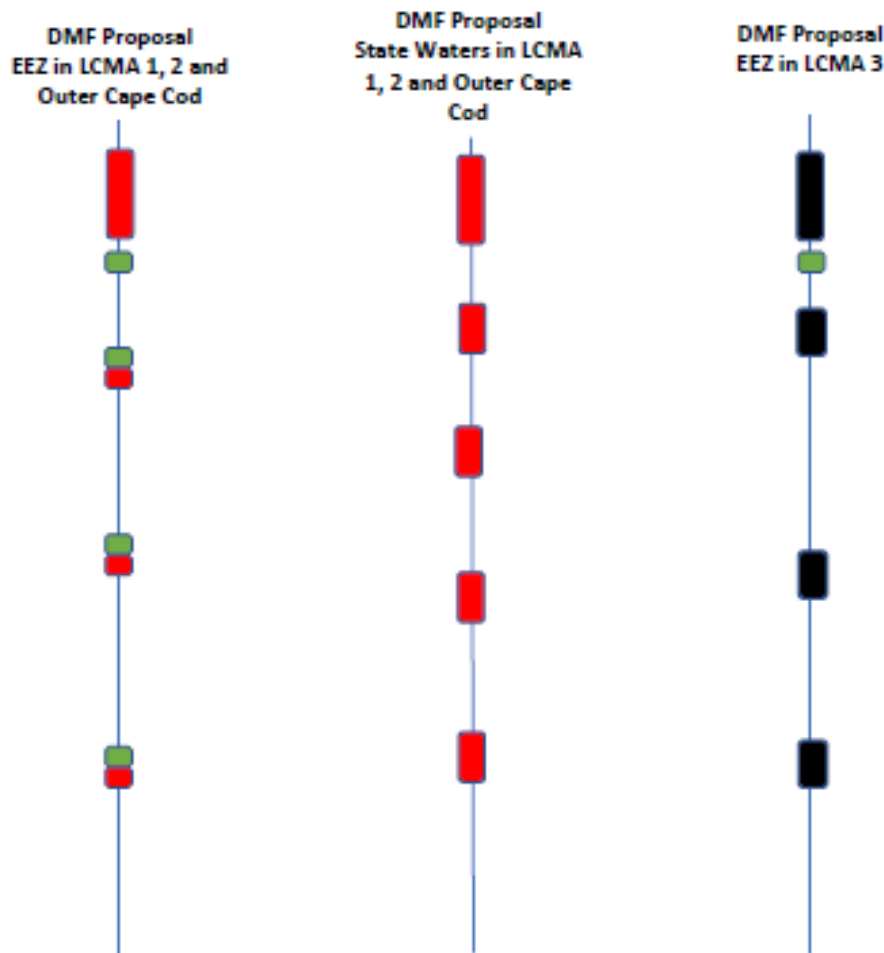
#### Recommendation

I recommend the MFAC vote in favor of the following regulatory amendments to 322 CMR 4.00 and 12.00 affecting buoy line marking in the commercial lobster and crab fishery. These amendments are described in the bullets below and depicted in Figure 1. If approved, these buoy line marking requirements will go into effect on February 1, 2022. The existing buoy line marking requirements for other commercial fixed gear fisheries and the recreational lobster fishery will remain unchanged.

1. Fishermen Homeported in MA and Authorized to Fish in EEZ in LCMA 1, 2 and Outer Cape Cod.
  - Require two distinct solid marks (e.g., paint, tape) in the surface system. Within 12' of the buoy require one solid red mark of at least 3' in length. Then within 1' below the 3' red mark there is to be an additional solid green mark of at least 1' in length.
  - Throughout the remainder of the buoy line require at least three additional solid or non-solid (e.g., tracer) marks with a mark located in the top, middle, and bottom third of the buoy line. Each mark shall be at least 2' in length and be comprised of 1' of red and 1' green. The red and green marks need not be adjacent but must be within at least 6" of each other.
  - If a fisherman is fishing with red-colored rope—including the fully formed red or red and white striped ("candy cane") weak rope—are to replace the red marks with white marks.
2. MA Fishermen in State Waters of LCMA 1, 2, and Outer Cape Cod.
  - Require one solid red mark measuring 3' in length within 12' of the buoy.
  - Throughout the remainder of the buoy line require at least four additional solid or non-solid red marks with two marks occurring in the top 50% of the buoy line and two marks occurring in the bottom 50% of the buoy line. Each mark shall be at least 2' in length. No segment of buoy line greater than 60' shall be unmarked.

- If a fisherman is fishing with red-colored rope—including the fully formed red or red and white striped (“candy cane”) weak rope—are to replace the red marks with white marks.
3. MA Fishermen in EEZ in LCMA 3.
- Require two distinct solid marks in the surface system. Within 12’ of the buoy require one solid black mark of at least 3’ in length. Then within 1’ below the 3’ black mark there is to be an additional solid green mark of at least 1’ in length.
  - Throughout the remainder of the buoy line require at least three additional solid or non-solid (e.g., tracer) black marks with a mark located in the top, middle, and bottom third of the buoy line.
4. Definitions.
- Define the term buoy line as, “the line that extends through the water column from the buoy at the surface to a single trap on the ocean floor or to a groundline that connects multiple traps on a trap trawl and extends no more than 12’ from the first trap trawl.

**Figure 1. Image of DMF’s Proposed Gear Marking Proposal**



## **Review of Public Comment**

DMF took public comment on the draft rule from April 16 through May 20 and held a virtual public hearing on May 11. The written public comment record is extensive and was dominated by a write-in campaign sponsored by the conservation community requesting DMF expedite the authorization of so-called “ropeless technology”. Similar testimony was provided at the public hearing as well. Moreover, a comment letter signed by 42 members of the MA legislature similarly requested DMF pursue ropeless fishing technology.

For the purpose of this recommendation, I view comments regarding ropeless fishing as being outside the scope of this specific regulatory proposal. However, I recognize there is significant public interest in this subject and want to address the issue directly. In doing so, I would like to call your attention to a [January 22, 2021 memo](#) from DMF to the MFAC. This memo described the status of ropeless fishing technology in Massachusetts fixed gear fisheries. Since this memo was released, DMF has hired Noah Oppenheim and Homarus Strategies, LLC to conduct an in-depth study into the potential for ropeless fishing in Massachusetts. Additionally, the January 2021 amendments to the state’s protected species rules set aside a section of regulations at 322 CMR 12.07 that will allow DMF to eventually authorize the future use of alternative gears, such as ropeless fishing technology. DMF continues to work with NOAA Fisheries to resolve relevant legal, practical, and jurisdictional challenges related to the implementation of a ropeless fishing program at the state and federal level. Once these issues are resolved, DMF will be in a position build out a regulatory structure that could allow ropeless fishing to be permitted.

Some conservation organizations—notably the Conservation Law Foundation, Humane Society, and Whale and Dolphin Conservation—generally supported the proposal but advocated for the adoption and consideration of several alternative management approaches. This included more frequent markings in state waters—every 40’ rather than every 60’—and marking groundline.

With regards to more frequent marking, my recommendation requires at least four 2’ marks in the buoy line with no segment of buoy line greater than 60’ going unmarked. Given the vast majority of buoy lines fished within MA state waters are less than 200’, the rule as proposed will result in the majority of buoy lines being marked at intervals of 40’ or less. Moreover, the reason we chose a maximum of 60’ between marks was to accommodate the use of the weak rope inserts, as one such insert is required at least every 60’ in the buoy line. Accordingly, I think my recommended action is consistent with these comments and ensures state-waters buoy lines are marked with sufficient frequency to truly distinguish MA permitted lobster gear from all other jurisdictions.

These conservation groups also suggested DMF require fishermen to mark the groundlines for gear set as trawls. While I appreciate the need to clearly and unambiguously identify all lobster gear authorized by DMF, I do not believe there is sufficient evidence to support that marking groundlines will contribute to or achieve this standard. The entanglement record shows minimal observations of groundlines being involved in right whale entanglements. While most entanglements involve long segments of rope that cannot be attributed to a particular gear type or fishery, it is easy to rule out groundline in these instances because of the absence of gangions spliced into the rope at regular intervals. Requiring fishermen to mark long lengths of groundline with would place an inordinate burden on fishermen while not significantly contributing to

enhancing our ability to identify fishing gear involved in right whale entanglements. Given this, I do not believe requiring fishermen to mark groundlines is warranted.

These groups also commented on having the markings woven through the entire buoy line and have such markings include information regarding the permit holder and having the buoy line markings visible from the air. These are intriguing comments and would certainly improve gear identification when entanglements occur. However, as the commenters note, these technologies are not yet available.

Comment from the industry was limited. This typically indicates that industry either supports, accepts, or does not oppose the action. This is further evidenced by the Massachusetts Lobsterman Association's comment letter in support of the proposed regulations.

That said, there was some interest from two commercial fishermen to have additional buoy line marking requirements for the state-waters portion of LCMA2. The rationale for this is that these fishermen are not subject to a seasonal closure. If one of their buoy lines were to entangle a right whale during this closure period, the entanglement could be attributable to the state as a whole and likely have an adverse impact on those fishermen who are subject to the seasonal closure. Therefore, the commenters felt this gear should be uniquely identifiable.

While I understand the concern raised, I do not think an additional marking requirement is necessary for the state-waters portion of LCMA2. The risk posed by this fishery to right whales is minimal, if not negligible, based on historic data. The wintertime lobster fishery occurring in LCMA2 is small in scale and conducted around Vineyard Sound and Buzzards Bay. There is little evidence to suggest right whales use these waters with any frequency. This was the reason why this area was kept open during the wintertime, as the NOAA Fisheries' decision support tool demonstrated that exempting the area would increase risk by only 1.4% relative to the baseline of a state-wide seasonal trap gear closure. Ultimately, if the risk is sufficient to require a separate gear marking strategy for the area, then the risk is sufficient to require a seasonal trap closure. DMF will continue to monitor effort in this fishery and the potential risk posed by it.

It is also worth noting that the comment was premised on right whales being in or near state-waters within LCMA2. There is no data to support this. The right whale observations that occur south of Cape Cod during the winter are in federal waters around Coxes Ledge and the Great South Channel. These whales are not being found along Vineyard Sound and Buzzards Bay where the fishery is occurring. The gear set offshore in federal waters would be identifiable to federal waters and the state of origin.

### **Coordination with Federal Government**

In December 2020, NOAA Fisheries released its draft regulations affecting the Atlantic Large Whale Take Reduction Plan (ALWTRP). This included new, more extensive buoy line marking requirements for the commercial lobster and crab trap fishery (Figure 2). As these rules are developed and promulgated under the Marine Mammal Protection Act (MMPA), they would apply to all commercial fishing activity in state and federal waters. DMF expects final federal

rules to be announced in the coming weeks. Once approved by the federal government, these rules will set the baseline regulations by which commercial fishermen must comply.

**Figure 2. NOAA’s Proposed Draft Gear Marking Regulations Under ALTWRP**

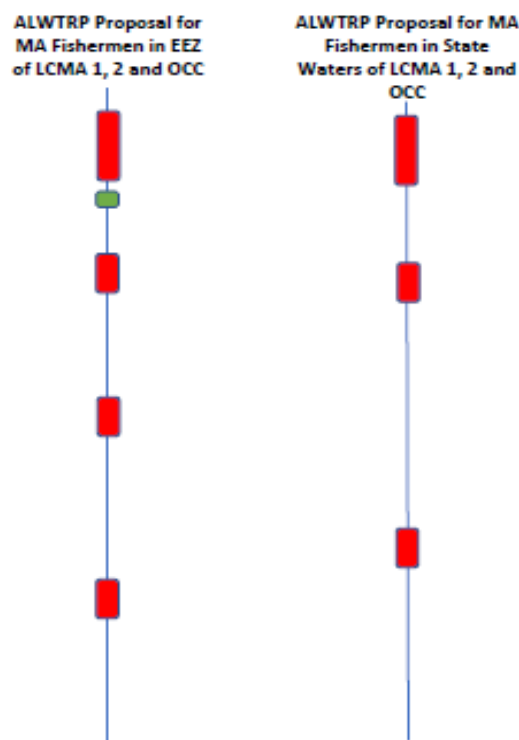
**Table 4 from Federal Register Vol. 85 No. 251**

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.

The proposed federal rules did not sufficiently differentiate gear set in the federal waters from gear set in state waters in these LCMA 1, 2, and Outer Cape Cod (Figure 3). Specifically, the only differentiating factors are a 6” green mark in the surface system (buoy and top portion of the line) and an additional 1’ red mark in the body of the buoy lines fished in the EEZ. Frequently, when gear is disentangled from a protected species the full buoy line often is not intact and the surface system is often missing. Accordingly, gear fished in federal waters by MA fishermen could be easily misidentified as state waters gear. This poses a legal risk to our state waters fishery and could jeopardize the state’s Incidental Take Permit (if approved).

DMF provided public comment on the draft rule which described these concerns. Additionally, in developing our proposed draft regulation, we worked to address our concerns about gear be misattributed to state waters in three ways. First, the length of all marks required by DMF will be at least 2’, rather than 6”. This helps to differentiate our gear from Canadian gear (6” markings) and MA gear from remnant buoy lines fished on trawls throughout LCMA 1 (1’ red

**Figure 3. Draft ALWTRP Buoy Line Marking Rules for LCMAs 1, 2 and OCC**





marks). Second, DMF will require a green mark to accompany all red marks in the body of buoy lines fished federal by Massachusetts fishermen in federal waters. This will better distinguish gear in the EEZ from state waters gear. Through these actions, state waters gear becomes more readily identifiable than gear set in other jurisdictions.

In finalizing this recommendation, DMF has continued to work with NOAA Fisheries. In doing so, we are confident that the pending federal rules will address the issues raised by DMF regarding federal gear marking requirements and DMF's rules will be consistent with what is being adopted at the federal level. This coordination is critical to ensuring that dually permitted fishermen are not subject to contradictory rules resulting in additional burden to industry. As a result of this coordination, DMF is also moving to enact a final rule that is slightly different than the proposed rule but will match the expected final federal rule and specify the red and green marks for federal waters gear need not be adjacent but cannot be greater than 6" apart.

### **Incidental Take Permit Application**

In April 2020, the US District Court ordered the Commonwealth to seek an Incidental Take Permit (ITP) pursuant to Section 10 of the Endangered Species Act to cover the licensing and regulating of its fixed gear fisheries that deploy vertical buoy lines that may cause entanglements of endangered right whales and sea turtles. This is a lengthy and ongoing process that DMF remains engaged in.

In the development of an ITP permit application, the state is required specify the impacts that are likely to result from a taking and to develop a Habitat Conservation Plan (HCP). The HCP details the steps the applicant is taking to minimize and possibly mitigate (if warranted) impacts the permitted activity is having on an endangered species. Currently the MA lobster fishery is classified as part of the Northeast/Mid-Atlantic American Lobster Pot/Trap Fishery on NOAA's List of Fisheries (LOF)<sup>1</sup>. This fishery includes the federal waters fishery, as well as all other state water lobster fisheries from New York to Maine. To be successful in its ITP application, DMF must first take steps to distinguish our lobster fishery from the rest of the Northeast Lobster Fishery, so that our fishery can be classified as its own separate fishery on NOAA's LOF.

Next, DMF must minimize or mitigate for all potential sources of risk to endangered species. For large whales this includes a National Environmental Protection Act ("NEPA") review and the requirement to receive a Negligible Impact Determination. Accordingly, DMF has adopted new regulations that allow the state to demonstrate that the state's lobster fishery is different and our management system as providing additional conservation when compared to the fishery in other jurisdictions. This proposal is consistent with this approach and a necessary next step for DMF to successfully obtain an ITP.

To potentially obtain an ITP for right whales in 2022, DMF must have our lobster trap fishery listed separately from the Northeast/Mid-Atlantic American Lobster Pot/Trap Fishery on NOAA's 2022 LOF. Accordingly, Massachusetts must continue to approach right whale conservation in a manner that distinguishes its lobster fishery from the broader lobster fishery. NOAA typically reviews each fishery in the summer and proposes the following year's LOF in Sept/Oct. Accordingly, while these buoy line marking rules will not go into effect until 2022, if

---

<sup>1</sup> <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries>

approved they will be promulgated in late June or early July. This will ensure NOAA will be able to consider these new management measures prior to making the 2022 LOF determinations.

### **Industry Outreach**

DMF recognizes that these additional marking requirements pose a challenge to commercial lobster trap fishermen. Accordingly, we are taking several steps to address and alleviate some of these challenges. First, we are working to get the information out to industry well in advance of the 2022 implementation date. In fact, we publicly aired our strawman proposal prior to this more formal memorandum by presenting it at the March 18 and April 15 MFAC business meetings and held a question and answer session with commercial trap fishermen on March 23. We will continue pursuing an interactive process whereby fishermen can provide us with useful feedback as we move forward. Second, we are working to use color of the marks and the size of the marks to our favor. Recall that state waters trap fishermen are now required to fish weak rope and may comply with this by inserting one weak contrivances into their buoy line per every 60 feet of buoy line in the top 75% of the buoy line. Accordingly, fishermen may be able to have certain contrivances (e.g., red rope inserts) serve as both their weak contrivance and their gear marking modification. Lastly, fishermen who fish in both state and federal waters may be challenged to comply with this requirement and it may force them to fish different sets of ropes when they move gear from state waters to federal waters and vice versa. This may ultimately be an inevitable inconvenience. However, staff will work with lobstermen this summer to determine if there are solutions that may allow them to place removable green markers (e.g., weavable strands) on their buoy lines when they move gear into federal waters.

### **Attachments**

[Written Public Comment on Buoy Line Marking](#)

[Written Comments on Ropeless Fishing](#)

Final Draft Strikethrough Language

#### 4.13: Trap Gear Marking and Maximum Trawl Length

(1) Definitions.

Boston Harbor and its Approaches means those waters under the jurisdiction of the Commonwealth circumscribed by an imaginary line beginning at Point Allerton in Hull; thence in an easterly direction to the #1 buoy at Thieves Ledge; thence in a northerly direction to the BG buoy; thence in a westerly direction to Grovers Cliff in Winthrop.

Buoy Line means the line that extends through the water column from the buoy at the surface to a single trap on the ocean floor or to a groundline that connects multiple traps on a trap trawl and extends no more than 12' from the first trap on the trawl.

Black Sea Bass Pot means any trap that has six sides and at least two unobstructed escape vents or openings in the parlor that are at least two and one-half inch in diameter, two inches square or one inch by five inches, and is set on the bottom of the ocean and designed to capture black sea bass.

Conch Pot means any trap without side heads or horizontal laths that is set on the bottom of the ocean and designed to capture whelks.

East End means that part of the trawl extending from 01° through 180° magnetic.

Fish Pot means inclusively any black sea bass pot or scup pot.

Groundline means lines connecting traps on a trap trawl.

Homeport means the location assigned as vessel's home on its commercial American Lobster Permit issued by NOAA Fisheries, or if a federal commercial American Lobster Permit is not held, then the Homeport shall mean the location assigned as the vessel's home on its Coastal Lobster Permit issued by the Division of Marine Fisheries pursuant to 322 CMR 7.01(2).

Parlor means that compartment of a pot that does not contain bait.

Recreational Fishing means the non-commercial taking or attempted taking of lobsters and crabs for personal or family use, sport or pleasure, which are not to be sold, traded or bartered.

Registered Under the Laws of the Commonwealth means any individual or vessel which is licensed by the Division of Marine Fisheries as evidenced by the issuance and possession of a valid commercial Offshore Lobster Permit or Coastal Lobster Permit, issued pursuant to 322 CMR 7.01(2), which may be in addition to any federal registration of the vessel.

Scup Pot means any trap that has six sides and at least two unobstructed escape vents or openings in the parlor that are at least three and one-tenth inch in diameter or two and one-quarter inch square that is set on the bottom of the ocean and designed to catch scup.

Single means individually set and buoyed traps.

Trap means any lobster trap, modified lobster trap, fish pot, conch pot or any other contrivance, other than nets, that is placed on the ocean bottom and designed to catch finfish, whelks lobsters or crabs.

Trawls means a series of single traps that are tied together and buoyed at one or both ends.

West End means that part of a trawl extending from 181° through 00° magnetic.

Vessel means any waterborn craft.

(2) Traps. The following requirements apply to marking of traps set within the waters under the jurisdiction of the Commonwealth.

(a) Buoy and Trap Marking.

1. All buoys set by commercial fishermen permitted in accordance with M.G.L. c. 130, §§ 37, 38 or 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits* or (4): *Special Permits*, shall be marked with the permit number assigned by the Director.
2. All traps or cars set by commercial fishermen permitted in accordance with M.G.L. c. 130, §§ 37, 38 or 80, and 322 CMR 7.01(2): *Commercial Fisherman Permits* or (4): *Special Permits*, shall be marked with trap tags in accordance with 322 CMR 6.31: *Trap Tags*.
3. All buoys set by non-commercial lobster and crab trap fishermen, permitted in accordance with M.G.L. c. 130, §§ 37 and 38, and 322 CMR 7.01(4): *Special Permits*, shall be marked with the letter "N" prior to the permit number assigned by the Director then a dash (-) with a single digit from 0 - 9 shall follow the permit number indicating the sequential trap number in the series up to ten traps. Said alpha numerical sequence shall be permanently secured to the inside of the trap through the use of a synthetic plate or by being burned or cut into a wooden lath.
4. The buoy markings required in 322 CMR 4.13(4) shall not be less than one inch in height nor less than ½ inch in thickness or width of line.

(b) Buoy Line Marking Requirements.

1. Single Traps in LCMA1. The buoy line on single traps fished or authorized to fish in LCMA 1, as defined at 322 CMR 6.33: *Lobster Management Areas*, shall be marked with three 12 inch marks located at the top, midway and bottom of the buoy line. Each mark shall be composed of at least six inches of red and at least six inches of white. **Effective February 1, 2022, this requirement shall apply only to fish pots and conch pots.**
2. Single Traps in LCMA2. The buoy line on single traps fished or authorized to fish in LCMA 2, as defined at 322 CMR 6.33: *Lobster Management Areas*, shall be marked with three 12 inch marks located at the top, midway and bottom of the buoy line. Each mark shall be composed of at least six inches of red and at least six inches of black. **Effective February 1, 2022, this requirement shall apply only to fish pots and conch pots.**
3. Single Traps in Outer Cape Cod LCMA. The buoy line on single traps fished or authorized to fish in Outer Cape Cod LCMA, as defined at 322 CMR 6.33: *Lobster Management Areas*, shall be marked with three 12 inch marks located at the top, midway and bottom of the buoy line. Each mark shall be composed of at least six inches of red and at least six inches of yellow. **Effective February 1, 2022, this requirement shall apply only to fish pots and conch pots.**
4. Trawls in LCMA1, LCMA2 and Outer Cape Cod LCMA. The buoy line on trawls fished or authorized to fish in LCMA 1, LCMA 2 or the Outer Cape Cod LCMA, as defined in 322 CMR 6.33: *Lobster Management Areas*, shall be marked with three red marks of at least 12 inches. A mark shall be located at the top, midway and bottom of the buoy line. **Effective February 1, 2022, this requirement shall apply only to fish pots and conch pots.**
5. Trawls in LCMA 3. The buoy line on trawls fished or authorized to fish in LCMA 3, as defined in 322 CMR 6.33: *Lobster Management Areas*, shall be marked with three black

marks of at least 12 inches. A mark shall be located at the top, midway and bottom of the buoy line. **This requirement shall expire on February 1, 2022.**

6. Non-commercial Lobster and Crab Traps. The buoy line on traps fished or authorized to be fished by recreational lobster and crab fishermen, permitted in accordance with 322 CMR 7.01(4): *Special Permits* shall be marked with a red mark midway on the buoy line of at least four inches.

7. Exception to Buoy Line Marking Requirements. **For the buoy line marking requirements at 322 CMR 4.13(2)(b)(1)-(6), if ~~if~~ the color of the buoy line is the same as or similar to the buoy line marking requirement color code, a similar sized white mark may be substituted for that color code at the appropriate location(s) on the buoy line.**

**8. New Buoy Line Marking Requirements for the Commercial Lobster and Crab Trap Fisheries in 2022**. Effective February 1, 2022 the following buoy line marking requirements shall apply to lobster trap and crab trap gear:

a. Commercial Lobster Gear Seaward of the Waters Under the Jurisdiction of the Commonwealth LCMA1, LCMA2, and Outer Cape Cod LCMA. Any vessel registered under the laws of the Commonwealth with a Homeport in Massachusetts fishing commercial lobster trap gear seaward of the waters under the jurisdiction of the Commonwealth, within LCMA1, LCMA2 and the Outer Cape Cod LCMA, as defined at 322 CMR 6.33, shall mark their buoy lines with at least five color coded marks in the following configuration:

- i. There shall be one solid red mark that is at least three feet in length within the first 12 feet of the buoy line extending through the water column from the buoy to the trap.
- ii. No more than one foot below the three foot solid red mark, which occurs in the first 12 feet of the buoy line extending through the water column from the buoy to the trap, there shall be one solid green mark that is at least one foot in length .
- iii. After the first 12 feet of the buoy line, there shall be at least one mark in each third of the remaining buoy line extending down to the trap. Each mark shall be at least two feet long and comprised of a solid or non-solid red mark measuring at least one foot in length and a solid or non-solid green mark measuring at least one foot in length. The red and the green marks do not need to be adjacent but shall not be more than six inches apart.
- iv. If the color of the buoy line is red or red and white striped, then a solid white mark of the same size shall be substituted for the red mark.

b. Commercial Lobster and Crab Trap Gear in the Waters Under the Jurisdiction of the Commonwealth within LCMA1, LCMA2, and Outer Cape Cod LCMA. Commercial fishermen who hold a Coastal Lobster Permit, issued pursuant to 322 CMR 7.01(2), and are fishing lobster and crab trap gear in the waters under the jurisdiction of the Commonwealth within LCMA1, LCMA2, and the Outer Cape Cod LCMA, as defined at 322 CMR 6.33, shall mark their buoy lines with at least five color coded marks in the following configuration:

- i. There shall be one solid red mark that is at least three feet in length within the first 12 feet of the buyo line extending through the water column from the buoy to the trap.
- ii. After the first 12 feet of the buoy line, there shall be at least four two foot solid

or non-solid red marks in the remaining buoy line extending down to the trap with two of the red marks occurring in the top 50% of the buoy line and the other two red marks occurring in the bottom 50% of the buoy line.

iii. There shall be no length of buoy line greater than 60 feet without a red mark.

iv. If the color of the buoy line is red or red and white striped, then a solid white mark of the same size shall be substituted for the red mark.

c. Commercial Lobster Trap Gear in within LCMA3. Any vessel registered under the laws of the state and with a Homeport in Massachusetts fishing lobster trap gear in in LCMA3, as defined at 322 CMR 6.33, shall mark their buoy lines with at least five color-coded marks in the following configuration:

i. There shall be one solid black mark that is at least three feet in length within the first 12 feet of the buoy line extending through the water column from the buoy to the trap.

ii. No more than one foot below the three foot solid black mark, which occurs in the first 12 feet of the buoy line extending through the water column from the buoy to the trap, there shall be one solid green mark that is at least one foot in length.

ii. After the first 12 feet of the buoy line, there shall be at least one sold or non-solid black that is at least one foot long in each third of the remaining buoy line extending down to the trap.

(c) Surface Identification of Traps.

1. Single Traps. Single traps shall each be marked with a single buoy measuring at least seven inches by seven inches or five inches by 11 inches. Sticks are optional, but if used, shall not have a flag attached.

2. Trawls. The east end of a trawl shall be marked with a double buoy, consisting of any combination of two buoys measuring at least seven inches by seven inches or five inches by 11 inches and one or more three foot sticks. The west end of a trawl shall be marked with a single buoy measuring at least seven inches by seven inches or five inches by 11 inches buoy with a three foot stick and a flag.

3. Exemption for Boston Harbor and its Approaches. It shall be lawful to fish with trawls marked on one end with a plastic bottle attached by at least ten feet of ½ inch cotton line or similar light material, provided that said substitute buoy shall be painted with the buoy colors and permit number of the owner. A single seven inches by seven inches or five inches by 11 inches shall mark the other end of the trawl. Sticks need not be used.

(d) Trawl Maximum Length. The total length of trawls set in waters under the jurisdiction of the Commonwealth shall not exceed 2,500 feet from end to end.

## 12.02: Definitions

For the purposes of 322 CMR 12.00 the following terms shall have the following meanings:

1,700 pound buoy line means any buoy line with a breaking strength of 1,700 pounds or less or any buoy line that is rigged with no less than one 1,700 contrivance per every 60 feet of buoy line in the top 75% of the buoy line. Only contrivances be approved by NOAA Fisheries pursuant to the Atlantic Large Whale Take Reduction Plan shall be lawful.

Abandon means to leave any fixed gear in the waters for a period of at least 30-days without hauling the gear or to leave any fixed gear in any fixed gear seasonal closure.

Bottom or Sink Gillnet means a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

**Buoy Line means the line that extends through the water column from the buoy at the surface to a single trap on the ocean floor or to a groundline that connects multiple traps in a trawl and extends no more than 12' from the first trap in the trawl.**

Buffer Zone means an area outward from a right whale a distance of 500 yards in all directions.

Cape Cod Bay Vessel Speed Restriction Area. The Cape Cod Bay Vessel Speed Restriction Area shall consist of all waters of Cape Cod Bay south of 42° 08' north latitude and those waters north and east of Cape Cod west of 70° 10' west longitude.

Commercial Fisherman means any person who may set gear or catch, possess or land fish for the purpose of sale, barter, or exchange or keeps for personal use any fish taken under the authority of a commercial fisherman permit issued in accordance with M.G.L. c. 130, §§ 2, 37, 38 or 80, and 322 CMR 7.01(2).

Double means two traps connected together by a groundline with a single vertical line buoy attached.

Fixed Fishing Gear means any bottom or sink gillnets or traps that are set on the ocean bottom or in the water column and are usually connected to lines that extend to the water's surface.

Gillnet means anchored, or surface or drifting vertical walls of webbing, buoyed on top and weighted at the bottom, designed to capture fish by entanglement, gilling, or wedging.

Groundlines means the lines connecting traps on a trap trawl and lines connecting gillnets to anchors.

Harass means to approach, pursue, chase, follow, interfere with, observe, threaten, harm in any fashion, turn in any manner to intercept or attempt to engage in any such conduct.

Massachusetts Restricted Area means those waters described in the federal Atlantic Large Whale Take Reduction Plan and bounded by the following coordinates: beginning at the shoreline at 42° 12' N latitude; thence heading due east to where 42° 12' N latitude intersects

with 70° 30' W longitude; thence due north to where 70° 30' W longitude intersects with 42° 30' N latitude; thence due east to where 42° 30' N latitude intersects with 69° 45' W longitude; thence due south to where 69° 45' W longitude intersects with 41° 56.5' N latitude; thence in a straight line in a southeasterly direction to where it intersects with 41° 21.5' N latitude and 69° 16' W longitude; thence in a straight line in a west southwesterly direction to where it intersects with 41° 15.3' N latitude and 69° 57.9' W longitude at the shoreline of Nantucket; thence following the eastern shoreline of Nantucket to where it intersects with 70° 00' W longitude; thence due north to where 70° 00' W longitude intersects with the shoreline of Cape Cod at 41° 40.2' N latitude; thence following the shore line of Cape Cod back to the original point.

Negatively Buoyant Line means line that has a specific gravity equal to or greater than that of seawater, 1.03, and does not float up in the water column.

Positively Buoyant Line means line that has a specific gravity less than that of seawater, 1.03, and floats up in the water column.

Recreational Fisherman means any person permitted in accordance with G.L. c. 130, § 38 and 322 CMR 7.01(4)(b) to catch, possess and land lobster or crabs for family use, sport, or pleasure, which are not to be sold, traded, or bartered.

Right Whale means that species of marine mammal known as *Eubalaena (Balaena) glacialis*.

Single Trap means individual set and buoyed traps.

To Abandon or To Store means to leave fixed gear in the water without hauling it at least every 30 days or in prohibited areas during prohibited periods.

To Fish means to use, set, maintain, leave in the water or haul gillnets or traps to harvest, catch, or take any species of fish or lobster.

Trap means any lobster trap, modified lobster trap, fish pot, fish trap, conch pot, or other contrivance, other than nets, that is placed on the ocean bottom and designed to catch finfish, whelks, lobsters or crabs.

Trawls means a series of single traps that are tied together and buoyed at one or both ends.

Vessel means any waterborn craft.

Weak Link means a breakable section or device that will part when subjected to specified poundage of pull pressure and after parting, will result in a knot-less end, no thicker than the diameter of the line, the so-called "bitter end" to prevent lodging in whale baleen. Lawful weak links are those devices approved by the National Marine Fisheries Service pursuant to the Atlantic Large Whale Take Reduction Plan and published in the Atlantic Large Whale Take Reduction Plan's Supplemental Gear Guide.





# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114  
p: (617) 626-1520 | f: (617) 626-1509  
[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



CHARLES D. BAKER  
Governor


KARYN E. POLITO  
Lt. Governor

KATHLEEN A. THEOHARIDES  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)  
FROM: Daniel J. McKiernan, Director   
DATE: May 28, 2021  
SUBJECT: Inshore Net Permit Conditions for 2021 – Seining in Boston Harbor

Beginning in 2021, DMF has amended its inshore net permit conditions for purse seines to allow fishing in the Boston Harbor inshore net area<sup>1</sup> on Fridays. This action is being taken in response to a petition from a Hull seiner. This is a conditional allowance that may be amended in-season for cause or adjusted for future years.

DMF issues Inshore Net Permits on a limited basis. These permits allow the use of certain net gears in the so-called inshore net areas set forth at 322 CMR 4.02. These inshore net areas are inclusive of the state's inshore harbors and embayments. Over time, this has become the permit required to fish purse seines for menhaden in highly productive areas like Boston Harbor, Beverly Harbor, and Salem Harbor.

On an annual basis, DMF issues inshore net permit conditions governing the inshore purse seine fishery. This includes certain time, area, and gear restrictions. This allows DMF to manage the fishery on an embayment specific basis and respond to emerging challenges and realities. The conditions are reflective of more than 20-years of cooperative management among purse seiners, recreational fishermen, and harbormasters to ensure this fishery is conducted in a manner that does not cause conflicts among various competing user groups.

At the March 29, 2021 public hearing on commercial menhaden fishing regulations for 2021, DMF received a public comment from a Hull purse seiner requesting access to the fishery in Boston Harbor on Fridays. Boston Harbor has been closed to purse seine fishing for about a decade on Fridays, Saturdays, and Sundays to reduce user group conflicts with the recreational fishery in the area.

This particular seiner has developed a strong working relationship with recreational fishing interests and I believe allowing access on Fridays will not result in emerging conflicts. This

---

<sup>1</sup> At 322 CMR 4.02(2)(a)(12), the Boston Harbor inshore net area is described in regulation as those "waters inside imaginary straight lines drawn from the tower on Telegraph Hill in the town of Hull to the southernmost point of Lovells Island thence from the northernmost point of Lovells Island to the southeasternmost tip of Deer Island."

sentiment is similarly reflected in the attached April 2 letter from the Massachusetts Striped Bass Association supporting the seiner's request.

It is worth noting that this allowance would be for all Inshore Net Permit holders, not just the petitioner. However, it is likely he will be the only participant. There are only a handful of Inshore Net Permit holders who may fish purse seines for menhaden and among these permit holders effort in the Boston Harbor fishery will be limited. With the abundance of menhaden north of Cape Cod in recent years, there has been little interest among the other seiners to incur the additional overhead associated with fishing out of Boston or steaming to Boston to fish. Moreover, the Boston harbor fishery is subject to numerous spatial closures and spatial restrictions governing purse seine size and the use of mechanically hauled nets.

#### Attachments

April 2, 2021 Letter from MA Striped Bass Association  
2021 Inshore Net Purse Seine Permit Conditions



**Massachusetts  
Striped Bass Association**

*Since 1950*

April 2, 2021

MA Division of Marine Fisheries  
251 Causeway Street  
Suite 400  
Boston MA 02114

Dear Director McKiernan,

I am writing in response to learning of a request by Eric Lorentzen, owner of the commercial fishing vessel McCaffery to be allowed to harvest menhaden within Boston Harbor on Fridays. The MSBA Executive Board discussed this request at our April 1, 2021 Executive Board meeting and we ask you to consider the following comments in your decision-making process.

All involved are aware this issue involves decades of user group conflict and other controversy. Over the past three years the problems have almost completely disappeared. MSBA has identified two major reasons for this improvement.

1) Abundance and availability of menhaden is completely different today than it was for much of the past 20 years. The past three years have seen such an increase of menhaden in local waters that “enough” menhaden are regularly present for stakeholders to “usually” not be attempting to harvest from the exact same school of fish.

2) The departure from the fishery by the former owner of the McCaffery operation.

When Mr. Lorentzen purchased the operation, he reached out directly to the entire Boston Harbor fishing community seeking to understand past problems and show his commitment to being a “good neighbor.” MSBA can say with complete confidence that Mr. Lorentzen is the “good neighbor” he said he would be.

The MSBA Executive Board is in support of Mr. Lorentzen’s request, however; with far more years of problems in this fishery than not we request the following:

- 1) MSBA requests that the only part of the permit conditions document to change is the allowance of fishing on Fridays by only small boat seiners.
- 2) MSBA requests that the Friday opening be limited to 2021 and viewed as a test or pilot program with the acknowledgement that there is a possibility for a return of user conflicts due to the normal increased recreational fishing presence on Fridays.
- 3) MSBA requests this test or pilot program be reviewed after the season and input from all stakeholders be considered prior to making this a permanent change to the permit conditions

Thanks for your consideration.

Mike Jones  
President  
MA Striped Bass Association

Patrick Paquette  
Govt Affairs Officer



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114

p: (617) 626-1520 | f: (617) 626-1509

[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

KATHLEEN A. THEOHARIDES  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

May 24, 2021

### **2021 Statement of Permit Conditions**

#### **Use of Purse Seines in Inshore Net Areas**

You are receiving this letter because you hold an Inshore Net regulated fishery permit endorsement with the Commonwealth of Massachusetts and have indicated purse seine as a gear type. In accordance with 322 CMR §§4.02(6) and (7), this **Statement of Conditions** allows the use of purse seine gear in the inshore restricted waters established at 322 CMR §4.02(2). Additionally, it sets forth restrictions necessary for the conservation and management of inshore bait fisheries.

Pursuant to the authority of G.L. c. 130 § 80 and 322 CMR §§4.02(6) and 7.01(7), the Director of the Division of Marine Fisheries has determined that the **Statement of Conditions** enumerated below shall apply to all 2021 Inshore Net regulated fishery permit endorsements.

#### **General Provisions**

1. In accordance with G.L. c. 130 §31, fixed gear shall be avoided.
2. Only species named on the permit may be taken and retained by the permit holder. All other species shall be immediately released alive. Dead fish shall not be discarded.
3. In accordance with G.L. c. 130 §§4A and 9, and 322 CMR 7.01(13), the Director or his agent may board a vessel for the purpose of administrative inspection or sea sampling.
4. The Harbormasters of any of the towns or cities bordering the regulated fishing areas listed on the permit shall have the right to board and inspect purse seiners in the listed areas after consultation with the Director, and may with his approval, suspend fishing operation if warranted.
5. This statement of permit conditions shall be onboard the named vessel when any purse seine fishing activity is occurring.

#### **Reporting Requirements**

1. Notwithstanding any other requirements set forth by the Director, in accordance with G.L. c. 130 §21, permit holder shall report all catch at a trip level on monthly reports provided by the Division of Marine Fisheries. These reports shall be submitted to the Division of Marine Fisheries by the 15<sup>th</sup> of the following month.
2. Permit holders participating in the limited entry menhaden fishery or the Episodic Event Fishery:
  - a. Shall report their menhaden landings in accordance with the menhaden daily catch reporting requirements for dealers set forth at 322 CMR §6.43(5).
  - b. Shall maintain a daily logbook onboard the vessel. This logbook shall detail the daily harvest; any and all daily sales, including those made at sea; and any and all menhaden kept for personal use.
  - c. Are authorized to offload at sea to a carrier vessel that holds a bait dealer permit from the Division of Marine Fisheries and appurtenant carrier vessel bait dealer permit conditions. If a carrier vessel is utilized, the carrier vessel shall report menhaden landings in

accordance with menhaden daily catch dealer reporting requirements set forth at 322 CMR §6.43(5). In this case, the harvest vessel does not need to report the catch to DMF through their bait dealer permit daily reporting requirement.

### **Conditions Affecting Fishing Activity**

1. The use of purse seine gear shall not occur within areas where recreational fishing activity is concentrated.
2. The use of purse seine gear shall not occur from ½ hour after sunset until ½ hour before sunrise.
3. The use of spotter planes shall occur only after 8 a.m. and away from residential areas.
4. The use of purse seines larger than 600 feet (100 fathoms) shall be prohibited, and in specific areas, the maximum purse seine size is further restricted. See restricted areas below
5. The use of purse seines shall be prohibited on Saturdays and Sundays inside any inshore net area, as defined as 322 CMR §4.02(2).
6. The use of purse seines shall be prohibited on Memorial Day, the 4<sup>th</sup> of July and Labor Day inside any inshore net area, as defined as 322 CMR §4.02(2).
7. The use of purse seines shall be prohibited on Fridays Beverly Harbor, as defined at 322 CMR §4.02(2).
8. Vessels intending to fish with purse seine gear in Salem Harbor, as defined at 322 CMR §4.02(2), shall contact the Salem Harbormaster's office at (978) 741-0098, prior to setting nets for the first time each year, in order to establish communication with the Harbormaster and receive guidance on restricted fishing areas due to vessel traffic.
9. If a carrier vessel is utilized in the menhaden fishery, the permit holder shall not offload to that carrier vessel more than one trip limit per day, as set forth at 322 CMR §6.43(4)(a).

**Restricted Areas.** The use of purse seine gear is subject to the following restrictions within the following areas:

1. Hingham Bay. Vessels may fish with a hand hauled purse seine net up to 400' x 60' within those waters inside Hull Gut and West Gut. The use of spotter planes, purse seine nets larger than 400' x 60' and mechanically hauled purse seine nets are prohibited.
2. Quincy Bay. Vessels may fish with a hand hauled purse seine net up to 400' x 60' within those waters west of a line drawn from the point of rocks on the east side of Squantum Neck to the easternmost end of the Merrymount designated "A Anchorage Area" in Quincy, including that anchorage area.
3. Winthrop. Vessels may fish with a hand hauled purse seine net up to 400' x 60' within those waters inside Winthrop Harbor bounded to the east by an imaginary straight line beginning at the southern end of Cottage Park Yacht Club, Winthrop, thence south to the "1" day marker, thence west to the easternmost end of Logan Airport Runway 27, excluding those waters within Winthrop designated "A Anchorage Area". This fishing activity shall only occur from one-half hour before sunrise to 8AM. The use of purse seine nets larger than 400' x 60' and mechanically hauled purse seine nets are prohibited.

### **Prohibited Areas**

1. Charles River. It shall be unlawful to fish with purse seine gear inside an imaginary straight line drawn from Pier 4 in Charlestown to the easternmost Coast Guard Pier in Boston.
2. Mystic River. It shall be unlawful to fish with purse seine gear upstream of a line drawn from the end of the Massport concrete pier to the white storage tanks at the Exxon Terminal. Fishing may only be conducted above the Mystic River Bridge from ½ hour before sunrise to 8 a.m. Each purse seine operation is allowed to make one successful set when fishing above the Mystic River Bridge between ½ hour before sunrise until 8 a.m.
3. The Chelsea River. It shall be unlawful to fish with purse seine gear upstream of the Andrew McCardle Bridge.
4. Dorchester. It shall be unlawful to fish with purse seine gear inside an imaginary straight line drawn from UMASS to the "Corita" Gas Tank.

5. Neponset River. It shall be unlawful to fish with purse seine gear inside the southeast express way.
6. Marina Bay. It shall be unlawful to fish with purse seine gear inside the break water. .
7. Weir River. It shall be unlawful to fish with purse seine gear inside red nun “8”.
8. Quincy Bay. It shall be unlawful to fish with purse seine gear inside the waters west of a line drawn from the point of rocks on the east side of Squantum Neck to the easternmost end of the Merrymount designated “A Anchorage Area” in Quincy, including that anchorage area.
9. Winthrop Harbor. It shall be unlawful to fish with purse seine gear within the area bounded by an imaginary straight line beginning at the southern end of Cottage Park Yacht Club, Winthrop, thence south to the “1” day marker, thence east to Coughlin Park, Winthrop.
10. Designated A Anchorage Areas. It shall be unlawful to fish with purse seine gear within any designated “A Anchorage Area” as described on NOAA Chart #13270.

The Statement of Permit Condition enforceable by law, pursuant to G.L. c. 130 §80 and 322 CMR §7.01(7). Violations of any condition or restriction herein, or any provision of 322 CMR or G.L. 130 may result in the suspension or revocation of the commercial fisherman permit and any other applicable fines and penalties. The Director may revise or discontinue the provisions set forth in this Statement of Permit Conditions any time.

**This Statement of Permit Condition is valid through December 31, 2021, unless sooner revoked for cause.**



---

Daniel J. McKiernan  
Director

May XX, 2021

---

Effective Date



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114  
p: (617) 626-1520 | f: (617) 626-1509  
[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



CHARLES D. BAKER  
Governor


KARYN E. POLITO  
Lt. Governor

KATHLEEN A. THEOHARIDES  
Secretary

RONALD S. AMIDON  
Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)  
FROM: Daniel J. McKiernan, Director   
DATE: May 28, 2021  
SUBJECT: DMF Renews Period II Summer Flounder Program in 2021

I have renewed the Period II summer flounder pilot program for 2021. This pilot program was initiated in late-August 2019. It allowed commercial trawlers participating in summertime trawl fishery for summer flounder to possess and land two daily limits of lawfully caught and retained over consecutive open commercial fishing days.

This program was developed with input from a number of small-scale trawlers who have traditionally participated in this inshore summertime fishery. Moreover, it considered the impacts of a number of factors negatively affecting these fishery participants. This included the eastward movement of summer flounder during the summertime from out of Vineyard and Nantucket Sound to the cooler waters along Nantucket Shoals; rising overhead costs for small inshore trawlers, including fuel and dockage; nighttime prohibitions on mobile gear fishing; and the lack of a buy-boat that in previous years may have offloaded trawlers and transported fish from Nantucket or Martha's Vineyard to the mainland. By allowing vessels to lay up overnight closer to the fishing grounds without having to offload and authorizing them to then land consecutive daily limits, the fleet would be more efficient able to target the available quota and be able to operate with greater safety.

To ensure compliance with daily catch limits, the program contained provisions that require fishermen segregate the first day's catch into sealed containers then document each day's catch in a DMF issued logbook. These requirements would also prevent this program from becoming an aggregate catch limit program, which may lead to increased inshore fishing effort on summer flounder and alter the "day boat" composition of the summer-time fishery.

The program was renewed in 2020. Initially, it only accommodated summer flounder. However, on July 22, the program was modified to also include black sea bass and horseshoe crabs. In total we issued 32 Letters of Authorization (LOA) to participate. Considering the obvious caveats regarding fishing effort in 2020 due to the COVID-19 pandemic, SAFIS dealer data demonstrates 14 permit holders participated, which resulted in a total of 53 trips occurring where more than one limit was landed.

Staff spoke with members of the inshore trawl fleet in anticipation of this upcoming fishing season and there was strong interest to renew this program. Accordingly—on May 20—DMF issued an advisory to notify fishery participants the agency would be accepting applications for LOAs for 2021. This year's program will allow for Coastal Access Permit holders to land two daily limits of lawfully caught and retained summer flounder and black sea bass retained over consecutive open commercial fishing days.

I do not intend to include horseshoe crabs or whelks in this program. The inclusion of horseshoe crabs will be re-evaluated in-season in response to quota utilization and demand for crabs from the bait and biomedical sectors. I am excluding whelks from this program due to concerns about the overall status of the state's channeled and knobbed whelk fisheries, particularly given the overfished status and the current minimum size fails to adequately protect sexually mature females of either species.

Attachments

[May 19, 2021 Advisory](#)