



The Commonwealth of Massachusetts

Division of Marine Fisheries

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Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)
FROM: Daniel J. McKiernan, Director
DATE: November 13, 2020
SUBJECT: **Update on New Right Whale Conservation Measures**

At the October 29, 2020 MFAC business meeting, I provided you with a memorandum and briefing on draft amendments to DMF's protected species regulations affecting commercial fixed gear fisheries and recreational lobster and crab trap fisheries. I also speculated on the approximate timeline for rule making. Subsequently, and pursuant to Executive Order 562 (EO562), these draft regulations have been approved by the Executive Offices of Energy and Environmental Affairs and Administration and Finance to proceed to public hearing. Public hearings have been scheduled for 6PM on December 8 and 9, 2020 and the public comment period will conclude at 5PM on December 18, 2020. DMF will then return to the MFAC with a final recommendation at the January 7, 2021 business meeting. Following that meeting, DMF will submit regulations for final EO562 review with the intention of promulgating regulations in early February 2021. This differs slightly from the initial timeline presented at the October 29 business meeting, which had DMF providing a recommendation back to the MFAC at their December 10, 2020 business meeting and promulgating final regulations by late January 2021.

Background

In January 2020, an Endangered Species Act citizens suit was filed in the US District Court in Massachusetts against the Commonwealth of Massachusetts. It was argued that: (1) DMF licenses and regulates the deployment of vertical buoy lines in fixed gear fisheries; and (2) this activity violates the Endangered Species Act, as it may cause entanglements of endangered right whales and sea turtles. Accordingly, the Court was petitioned to halt the further deployment of vertical buoy lines in fixed gear fisheries and to require the state apply for an Endangered Species Act Incidental Take Permit (ITP) for the licensing and regulating of its fixed gear fisheries. In April 2020, the Court ordered DMF to apply to NOAA Fisheries for an ITP.

To comply with this court order, DMF has begun the work to submit an ITP application. In an ITP application, a Habitat Conservation Plan (HCP) is developed to detail the steps the applicant is taking to minimize and mitigate impacts the activity is having on an endangered species. If approved, these regulations will constitute the foundation of the state's HCP for right whales. The ITP application process is lengthy and complicated, and there is uncertainty as to whether or not our application will be successful. However, I think these proposed regulations are substantial conservation measures that strongly support our ITP application.

It is noteworthy that these draft regulatory amendments only affect right whale conservation, whereas the litigation also addressed leatherback sea turtles. This is because right whale conservation measures have

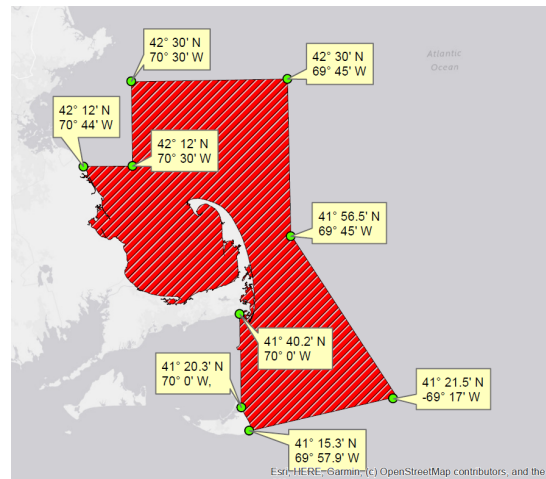
been formulated through the Atlantic Large Whale Take Reduction Team’s ongoing deliberations and NMFS’ upcoming rule making process. Leatherback sea turtle conservation has not had the same level of ongoing management. Accordingly, there are no prescribed management actions for reducing leatherback sea turtle entanglements, nor are there target levels of reductions in takes. As a result, DMF – in collaboration with NOAA Fisheries – will have to analyze current leatherback sea turtle entanglement data and develop potential management options. Future rules affecting leatherback sea turtle conservation may be proposed separately and would be subject to separate rule making.

Overview of Draft Regulations

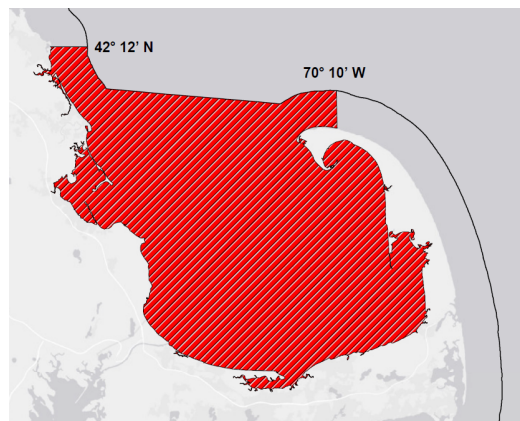
Fixed Gear Closures.

1. **Expand Trap Closure.** The existing February 1 – April 30 Large Whale Seasonal Trap Gear Closure, which occurs north and east of Cape Cod (see map), will be expanded to include all waters under the jurisdiction of the Commonwealth. During this closed period, it will be unlawful to set, haul, or abandon any trap gear in these waters. This will ensure that Massachusetts’ waters are free of trap gear during a period that corresponds to when right whales seasonally migrate in and out of Cape Cod Bay. This will likely prevent entanglements from occurring.
2. **Conch Pot Fishery.** As the above described closure applies to all trap gear, DMF will adjust the existing December 15 – April 14 conch pot fishery haul-out period so that it continues through April 30.
3. **Recreational Lobster and Crab Trap Fishery.** A new closed season for buoyed recreational lobster and crab trap fishery will be implemented. This closure will be in effect from the Tuesday following Columbus Day through the Friday immediately preceding Memorial Day. This will not apply to unbuoyed gear commonly fished in the Cape Cod Canal, nor the taking of lobsters by divers using SCUBA. This regulation serves two purposes. First, it will likely prevent entanglements from occurring similar to the above described commercial trap gear closure. Second, it provides DMF and MEP with ample time during the late fall and early winter to identify and remove lost or abandoned recreational trap gear prior to the seasonal right whale migration.
4. **Gillnets.** The existing January 1 – May 15 gillnet closure in Cape Cod Bay will remain in effect, but its geographic extent will be expanded to include those waters west of 70° 30’ west longitude between 42°00’ north latitude and 42°12’ north latitude (see map). Effectively, this will close those nearshore waters along the south shore from Gurnet Point in Plymouth to Scituate Harbor. While this area is typically closed to gillnet fishing due to overlapping seasonal groundfish closures and harbor porpoise closures, it may be incidentally opened in April if the state’s conditional groundfish closure is lifted. The

Existing Large Whale Seasonal Trap Gear Closure



Proposed Jan 1 – May 15 Gillnet Closure



proposed action to close this discrete area will further reduce the potential for right whales to interact or become entangled with gillnets.

Trap Gear Restrictions.

1. Buoy Line Breaking Strength. All commercial trap fishermen will be required to fish buoy lines with a 1,700 pound breaking strength. This may be accomplished by deploying a buoy line that breaks at this specific breaking strength or by rigging the buoy line with certain approved contrivances. The purpose of this rule is reduce harm to right whales if they interact with trap gear by allowing the buoy line to more readily break and potentially prevent an entanglement that results in the whale carrying the gear or buoy line with it.
2. Maximum Buoy Line Diameter. Commercial trap fishermen will be prohibited from fishing buoy lines with a diameter larger than 3/8" and recreational trap fishermen will be prohibited from fishing buoy lines with a diameter larger than 5/16". Inshore trap fisheries typically do not deploy larger diameter buoy lines. Accordingly, this will establish a de facto gear marking system that will differentiate the gear that may be lawfully fished in Massachusetts to heavier gear that may be fished in the EEZ (offshore) or in Canada.
3. Prohibition on Single Traps. Effective January 1, 2022, commercial lobster trap fishermen will be prohibited from fishing single traps onboard vessels with an overall length greater than 29'; all lobster traps fished from vessels with an overall length of 29' or greater will be required to be configured as multiple trap trawls. This is being implemented to reduce the number of vertical lines in the water column, thereby reducing the potential entanglement risk posed to whales. The setting of single lobster traps by any vessel of any size will remain prohibited north of Cape Cod seaward of the three nautical mile line and the Billingsgate exempted area. This rule will not apply to fish pots, conch pots and eel pots.

Seasonal Lobster License. DMF will cap the number of seasonal lobster licenses issued annually at 150. This is not expected to impact current effort. However, it will prevent the proliferation of new fishing activity under this seasonal student lobster permit and consequently cap the potential maximum number of vertical buoy lines deployed by this permit type.

Housekeeping. DMF intends to revise, update, and consolidate regulations as necessary to ensure the regulations are accurate, clear, and readable. This includes an updated purpose and definitions sections to the protected species regulations and consolidated sections regarding gear configurations, vessel interactions with right whales, and maps.

Attachments

Public hearing notice

Draft strikethrough regulations



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November 13, 2020

Notice of Virtual Public Hearings: New Protected Species Regulations Affecting Trap and Gillnet Fishing

Under the provisions of M.G.L. c. 30A, and pursuant to the authorities found at M.G.L. c. 130 §§ 2, 17(10), 17A, 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 6.00, 7.00, and 12.00. These draft regulations are designed to reduce the risk of endangered right whales becoming entangled in fixed fishing gear and reduce the potential harm posed by fixed fishing gear if a right whale interacts with it. The draft regulations are described below:

Fixed Gear Closures

1. Commercial Trap Gear Closure (322 CMR 12.04, 12.08, and 12.11). DMF is proposing to extend the existing February 1 – April 30 Large Whale Seasonal Trap Gear Closure (north and east of Cape Cod) to all waters under the jurisdiction of the Commonwealth.
2. Gillnet Closure in Cape Cod Bay (322 CMR 12.04, 12.08, and 12.12). DMF is proposing to extend the existing January 1 – May 15 gillnet closure in Cape Cod Bay to include those waters shoreward of 70°30' W longitude between 42°00' N latitude (Gurnet Point) and 42°12' N latitude (Scituate Harbor).
3. Fixed Gear Closure Extensions (322 CMR 12.04). DMF intends to retain the regulatory authority to extend the above described fixed gear closures (#1 and #2), or portions thereof, based on the Director's assessment of the documented presence of right whales in Massachusetts waters and if reasonably necessary to prevent the entanglement of right whales in commercial trap gear.
4. Recreational Lobster and Crab Trap Gear Haul-Out Season (322 CMR 6.02). DMF is proposing to implement a new closed season for buoyed recreational lobster and crab trap gear. The closed season would run from the Tuesday following Columbus Day through the Friday preceding Memorial Day.
5. Conch Pot Haul-Out Period (322 CMR 6.12). As the above described commercial trap gear closure (#1) applies to all trap gear, including conch pot gear, DMF is proposing to extend the existing December 15 – April 14 conch pot haul-out period through April 30.

Trap Gear Configuration Modifications and Restrictions

1. 1,700-lb Breaking Strength Contrivance (322 CMR 12.02 and 12.06). DMF is proposing that all vertical buoy lines break when exposed to 1,700 pounds of pressure. This may be accommodated by fishing buoy lines with a 1.7000 pound breaking strength or by rigging the buoy line with a contrivance or multiple contrivances that allows for it to break at that pressure.
2. Vertical Buoy Line Maximum Diameter for Commercial Trap Gear (322 CMR 12.06). DMF is proposing that all vertical buoy lines affixed to commercial trap gear have a diameter not greater than 3/8".

3. Vertical Buoy Line Maximum Diameter for Recreational Trap Gear (322 CMR 12.06). DMF is proposing that all vertical buoy lines affixed to recreational lobster and crab trap gear have a diameter not greater than 5/16”.
4. Prohibition on Single Lobster Traps for Vessels of a Certain Size (322 CMR 12.06). DMF is proposing to prohibit the fishing of single lobster traps onboard vessels with an overall length of 29’ or greater. These vessels will be required to configure their traps as multi-trap trawls. Vessels with an overall length of less than 29’ may continue to fish single lobster traps where authorized; the setting of single lobster traps by any vessel of any size will remain prohibited north of Cape Cod seaward of the three nautical mile line and the Billingsgate exempted area. DMF is proposing that this regulation go into effect on January 1, 2022.

Permitting

1. Cap on Issuance of Seasonal Lobster Permits (322 CMR 7.01). DMF is proposing to cap the annual issuance of seasonal lobster permits for students at 150 permits.

Housekeeping

1. Purpose and Definitions (322 CMR 12.01 and 12.02). DMF is proposing to revise and update the purpose of the state’s protected species regulations so that it better reflects the DMF’s current approach to managing protected species.
2. Conduct Related to Interacting with Right Whales (322 CMR 12.07 – 12.10). DMF is proposing to consolidate the regulations that govern vessel interactions with right whales into one section.
3. Maps (322 CMR 12.04, and 12.08 – 12.12). DMF is proposing to establish a consolidated section of maps relevant to the protected species regulations.
4. Other (322 CMR 6.02, 6.12, 12.03, 12.04, 12.05, 12.06, 12.07). DMF is consolidating and refining regulatory language as necessary to improve the clarity and readability of existing regulations.

Public Comment Period and Public Hearing Schedule

Written public comment will be accepted through 5PM on Friday, December 18, 2020. Please address written comments to Director Daniel McKiernan and submit it 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. DMF has also scheduled two virtual public hearings for 6PM on Tuesday, December 8, 2020 and Wednesday, December 9, 2020:

December 8, 2020 (6PM) Login Information:

- [Internet Login](#)
- Call In: 929 436 2866
- Passcode: 509869
- Meeting ID: 894 6836 3614

December 9, 2020 (6PM) Login Information:

- [Internet Login](#)
- Call In: 929 436 2866
- Passcode: 263730
- Webinar ID: 884 8653 2400

Additional Information

All materials, including the rationale for these proposals and the strikethrough regulatory language, may be found on [DMF’s website](#) or may be acquired by contacting Jared Silva by e-mail at jared.silva@mass.gov. Recordings of the public hearings will be published to [DMF’s YouTube channel](#).

Draft Strikethrough Protected Species Regulations at 322 CMR 6.00, 7.00 and 12.00 Affecting Trap and Gillnet Fishing

6.02: Lobster Conservation and Management

(2) Gear Restrictions. It **shall be** ~~is~~ unlawful for any person to take or attempt to take lobsters from ~~the~~ waters under the jurisdiction of the Commonwealth by the use of traps without said traps having the following features:

(f) All traps must be marked in accordance with the trap gear marking requirements at 322 CMR 4.13(2)

(g) All traps must be configured to comply with the relevant fixed gear and trap gear restrictions at 322 CMR 12.06(2) and (3).

(7) Seasonal Closures.

(a) Outer Cape LCMA. Fishing for lobster with traps is prohibited within the Outer Cape LCMA, as defined at 322 CMR 6.33, from February 1 – April 30. Fishermen are required to remove all lobster traps from the waters of the Outer Cape LCMA prior to this closed period. It shall be unlawful to fish, set or abandon any lobster traps in the Outer Cape Cod LCMA or any LCMA during this seasonal closure.

(b) Non-Commercial Lobster and Crab Traps. Fishing for lobsters with traps by non-commercial lobster and crab trap permit holders is prohibited in all waters under the jurisdiction of the Commonwealth from the Tuesday immediately following Columbus Day through the Friday immediately preceding Memorial Day. It shall be unlawful for non--commercial lobster and crab trap permit holders to fish, set, store or abandon any lobster traps within the waters under the jurisdiction of the Commonwealth during this seasonal closure. This shall not apply to any buoyless lobster and crab trap gear set inside the Cape Cod Canal.

~~Fishing for lobster with traps is prohibited in the Outer Cape LCMA from February 1st through April 30th. Fishermen are required to remove all lobster traps from waters of the Outer Cape LCMA as defined in 322 CMR 6.33 during this closed period. It is unlawful for any fisherman authorized to fish traps in the Outer Cape LCMA to fish, set, or abandon any lobster pots in the Outer Cape LCMA or any other LCMA during this seasonal closure.~~

6.12: Fish Pot Fishery Restrictions

(2) Closed Season.

(a) Conch Pots. From December 15 through April 30 ~~April 14~~ it **shall be** ~~is~~ unlawful for any person to take whelks by pots or set, haul, tend or abandon conch pots in the waters under the jurisdiction of the Commonwealth.

(4) Gear Restrictions.

(d) All fish pots and conch pots must be configured to comply with the relevant fixed gear and trap gear restrictions at 322 CMR 12.06(2) and (3).

7.01: Form, Use and Contents of Permits

(2) Commercial Fisherman Permits. In order to harvest, possess or land fish, shellfish or bait for commercial purposes, the following permits are required for the following fishing activities:

(f) Seasonal Lobster. Authorizes only the named individual to harvest, possess and land lobsters for commercial purposes, to be issued only to full-time students 12 years of age or older and conditioned to authorize the harvest, possession and landing of lobsters for commercial purposes only from June 15th to September 15th of each year and further conditioned to the use of not more than 25 lobster pots. **DMF may issue up to 150 seasonal lobster permits for use during any single calendar year.**

12.01: Purpose

In 1972 the federal government passed the Marine Mammal Protection Act to protect marine mammal species that may be in danger of extinction or depletion due to anthropogenic activity and to keep populations levels at sustainable levels. In 1973, the federal government passed the Endangered Species Act to provide a program for the conservation of threatened and endangered plants and animals and the habitats in which they are found. As marine mammals and sea turtle species may interact with fishing gear and fishing activity, and are protected under the Marine Mammal Protection Act or the Endangered Species Act, fisheries are managed at the state and federal level to address the risk posed to these protected species.

For the waters under the jurisdiction of the Commonwealth, the management of fisheries for protected species is accomplished by the Division of Marine Fisheries pursuant to its authorities at G.L. c. 130. Management measures have evolved over time, but currently include certain restrictions on the use and configuration of fixed gear (i.e., traps and gillnets) designed to reduce the risk of protected species becoming entangled in the gear and make any entanglements that may occur less injurious, as well as certain rules governing vessel conduct in areas where protected species may be present.

The regulations at 322 CMR 12.00 are particularly focused on minimizing the risk of interaction between fisheries, vessel activity, and North Atlantic right whales (“right whale”). The right whale is a critically endangered species. There are estimated to be approximately 400 known individuals in the population, as of 2019, and the population has been declining since 2010. Large numbers of these whales migrate into Commonwealth waters during the winter period and aggregate in Cape Cod Bay to feed on zooplankton before migrating out of the area during the early spring.

To address these risks, DMF has promulgated a series of regulations at 322 CMR 12.00 to protect right whales. This includes: a February 1 – April 30 seasonal closure of all waters under the jurisdiction of the Commonwealth to trap gear fishing; a January 1 – May 15 closure of Cape Cod Bay and certain adjacent waters to gillnet gear; and a March 1 – April 30 speed limit for small vessels operating in Cape Cod Bay and certain adjacent waters. Each of these seasonal restrictions may be extended beyond their end date in response to the continued presence of right whales in the waters under the jurisdiction of the Commonwealth.

The protected species regulations at 322 CMR 12.00 reflect only a part of Division’s efforts to address protected species. DMF also regulates buoy line marking for gillnets and trap gear 322 CMR 4.00, establishes lobster and fish trap fishing seasons at 322 CMR 6.00, and restricts the issuance of lobster and trap fishing permits at 322 CMR 7.00. In aggregate, these various regulations create a portfolio of measures designed with the goal of minimizing the impact fishing and vessel activity may have on protected species when in the waters under the jurisdiction of the Commonwealth and improving management moving forward.

~~The Division of Marine Fisheries works to protect marine protected species such as endangered turtles, harbor porpoise and large whales. The Division's efforts dovetail with federal regulation of marine mammals, including the northern right whale is the rarest of the world's great whales. Despite international protection by the International Whaling Commission established pursuant to the 1946 International Convention for the Regulation of Whaling and national protection afforded by the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 the northern right whale is listed as endangered and its population remains dangerously low in the Atlantic.~~

~~In response to this threat the Massachusetts Legislature passed a Resolve in 1985 requesting the Department of Fisheries, Wildlife and Environmental Law Enforcement to study the right whale in Massachusetts waters and make recommendations for its conservation. That study recommended, among other measures, a 500 yard buffer zone between right whales and vessels within Massachusetts waters. The purpose of 322 CMR 12.00 is to:~~

~~(1) implement a 500 yard buffer zone and prohibit activities of vessels that affect large whales, including right whales, within waters under the jurisdiction of the Commonwealth. 322 CMR 12.00 exempts vessels with federal or state Right Whale scientific study permits and commercial fishing vessels in the act of hauling back or towing gear. In addition, 322 CMR 12.00 applies to both commercial and recreational fishermen, but only to waters under the jurisdiction of the Commonwealth.~~

~~(2) minimize the risk of large whale entanglements, including right whales in waters under the jurisdiction of the Commonwealth.~~

~~(3) reduce interactions between harbor porpoise and commercial gillnet gear in waters under the jurisdiction of the Commonwealth.~~

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~~(3) reduce interactions between harbor porpoise and commercial gillnet gear in waters under the jurisdiction of the Commonwealth.~~

12.02: Definitions

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

1,700 pound contrivance means any contrivance, insert, or other means of establishing a buoy line with a breaking strength of 1,700 pounds or less.

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.

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).

Critical Habitat means those waters in Cape Cod Bay under the jurisdiction of the Commonwealth that fall within the federally designated Right Whale Cape Cod Bay Critical Habitat area listed in the federal Right Whale Recovery Plan and found in 322 CMR 12.12.

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 pots** 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/pots on a trap/**pot** 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.

~~**Large Whale Seasonal Trap/Pot Gear Closure Area means those waters under the jurisdiction of the Commonwealth that fall within the federally designated Massachusetts Restricted Area listed in the Atlantic Large Whale Take Reduction Plan and established at 322 CMR 12.11.**~~

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 pots 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.

12.03: Prohibition on Abandoning Fixed Gear ~~Certain Gear or Lines in Waters under Jurisdiction of the Commonwealth~~

(1) It shall be unlawful for any fisherman to abandon any fixed gear in the waters under the jurisdiction of the Commonwealth.

~~(1) It shall be unlawful for any person to fish fixed fishing gear with:~~

~~(a) Lines floating at the water’s surface;~~

~~(b) Positively buoyant groundline; and~~

~~(c) Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed $\frac{1}{3}$ of overall length of the buoy line.~~

~~(2) It shall be unlawful to abandon any fixed gear.~~

12.04: Fixed Gear Seasonal Closures

(1) Gillnet Closure to Protect ~~s-in~~ Right Whales in Cape Cod Bay ~~Critical Habitat and Cape Cod Bay~~. From January 1 through May 15, it shall be unlawful to fish, store or abandon gillnets within those waters under the jurisdiction of the Commonwealth beginning at 42° 12' north latitude and the shoreline, thence due east to where it intersects with the state-federal waters line, then following the state waters line in an easterly direction to where it intersects with 70° 10 west longitude, thence due south to where 70° 10 west longitude intersects with the coastline of Cape Cod; thence following the shoreline along Cape Cod and South Shore back to the starting point at 42° 12' north latitude and the shoreline. ~~It is unlawful to fish, store, or abandon gillnets in Critical Habitat and in waters of Cape Cod Bay west of the Critical Habitat south of 42° North Latitude during the period January 1st through May 15th.~~

(2) Trap Gear Haul-out Period. It shall be unlawful for ~~any recreational or~~ any Commercial Fisherman, ~~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,~~ to fish, set, store, or abandon any trap gear in any waters under the jurisdiction of the Commonwealth from February 1 – April 30. For vessels permitted by NOAA fisheries and registered in Massachusetts, this seasonal trap closure also extends into those federal waters north and east of Cape Cod within the Massachusetts Restricted Area. This closure may be extended in accordance with 322 CMR 12.04(3). ~~the Large Whale Seasonal Trap/Pot Gear Closure Area from February 1st through April 30th.~~

(3) Notice of Declaration to Amend Timing of Fixed Gear Seasonal Closures. The Director, through Notice of Declaration, may adjust the duration of the fixed gear seasonal closures at 322 CMR 12.04(1) and (2), as reasonably necessary to prevent the entanglements of the North Atlantic right whale in fixed fishing gear based on the Director's assessment of the documented presence of the North Atlantic right whale in Massachusetts waters. The Director shall amend the timing of these fixed gear seasonal closures by filing the Notice of Declaration with the Secretary of State for publication in the *Massachusetts Register*, publishing the Notice on the Division's Legal Notice web page, and distributing it *via* the Division's e-mail list serve.

12.05: Speed Restrictions to Protect North Atlantic Right Whales

(1) Purpose and Scope. North Atlantic right whales are a critically endangered species. Annually they migrate through state waters and aggregate in Cape Cod Bay to feed during the late-winter and early-spring. In order to protect these whales from vessel strikes, the National Marine Fisheries Service promulgated regulations at 50 CFR 224.105 in 2008 that restrict the speed of vessels measuring at least 65 feet in overall length to ten knots while transiting certain waters around Cape Cod. In order to establish similar measures to prevent strikes of whales by vessels smaller than those regulated under the federal regulations, the Division of Marine Fisheries has established these seasonal vessel speed restrictions for Cape Cod Bay.

~~(2) 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, as described in the map below.~~

(2) ~~(3)~~ Vessel Speed Restriction and Time Period. During the period of March 1st through April 30th, all vessels measuring less than 65' overall length and operating within the Cape Cod Bay Restricted Speed Area, **as defined at 322 CMR 12.02**, shall travel at a speed of ten knots or less.

(3) ~~(4)~~ Exemptions. 322 CMR 12.05(2) **and (3)** shall not apply:

(a) Inshore Areas. Within those waters within Plymouth, Kingston and Duxbury Harbors, Barnstable Harbor and Wellfleet Harbor, as defined at 322 CMR 4.02(2) and (3).

(b) Enforcement and Emergency Personnel. To law enforcement and emergency personnel in the course of their authorized duties including, but not limited to, authorized federal whale disentanglement personnel when responding to an entangled whale.

(4) ~~(5)~~ Notice of Declaration to Amend the Vessel Speed Restriction Time Period. The Director may, through a Notice of Declaration, adjust the duration of the Cape Cod Bay Vessel Speed Restriction Time Period in 322 CMR **12.05(2) 12.05(3)**, as reasonably necessary to prevent vessel strikes on right whales, based on the Director's assessment of the documented presence of North Atlantic right whales in Cape Cod Bay. The Director shall amend the timing of these fixed gear seasonal closures by filing the Notice of Declaration with the Secretary of State for publication in the *Massachusetts Register*, publishing the Notice on the Division's Legal Notice web page, and distributing it *via* the Division's e-mail list serve.

12.06: Fixed Gear Year-round Gear Restrictions

(1) Gillnets. It **shall be is** unlawful to fish any gillnet in any waters under the jurisdiction of the Commonwealth, unless the net is rigged with the following breakaway features:

(a) Knot-less weak link at the buoy with a breaking strength of 600 pounds.

(b) Weak links with a breaking strength of up to 1,100 pounds are installed in the float rope between net panels.

(c) Anchoring system for the gillnets must anchor with the holding power of at least 22 pound Danforth anchor.

(2) Trap Gear.

(a) Weak Link Requirement. It **shall be is** unlawful to fish any traps in any waters under the jurisdiction of the Commonwealth unless all buoy lines are equipped with a Weak Link that will part when subjected to 600 pounds or less of pull pressure along the buoy line.

(b) Buoy Line Breaking Contrivance. It shall be unlawful for any Commercial Fisherman to fish any traps in the waters under the jurisdiction of the Commonwealth unless all buoy lines are equipped with a 1,700 pound breaking strength contrivance.

(c) ~~(b)~~ Maximum Buoy Line Restriction Requirements for Trawls. It is unlawful to fish two and three trap trawls with two buoy lines in the waters under the jurisdiction Commonwealth. Two buoy lines may **only** be fished **only** on trawls of four or more traps.

- (d) ~~(e)~~ Prohibitions on Single Traps. It shall be unlawful for:
- (i) any Commercial Fisherman to set, fish or store single traps within any of the waters under the jurisdiction of the Commonwealth when using a vessel greater than 29' overall length. This prohibition shall not apply to any scup, black sea bass, or conch traps fished lawfully in accordance with 322 CMR 6.12 or eel traps fished lawfully under municipal regulations pursuant to G.L. c. 130, § 52. This prohibition shall go into effect on January 1, 2022.
 - (ii) for any person to set, fish or store any single traps in the waters under the jurisdiction of the Commonwealth north of Cape Cod that are seaward of three nautical miles from the mean low tide water mark, except within those waters along Billingsgate Shoal that are shoreward of Loran C Line 9960-X-25360 as it runs north east from 41° 47.2' north latitude and 70° 19.5' west longitude (Barnstable) to 41° 55.8' north latitude and 70° 8.4' west longitude (Wellfleet). This prohibition shall not apply to any eel traps fished lawfully under municipal regulations pursuant to G.L. c. 130, § 52.
- (e) Restrictions on Buoy Line Diameters. It shall be unlawful for:
- (i) any Commercial Fisherman to set or fish traps within the waters under the jurisdiction of the Commonwealth with buoy lines that are greater 3/8" diameter.
 - (ii) any recreational lobster or crab trap fishermen, permitted in accordance with G.L. c. 130, § 38 and 322 CMR 7.01(4)(b), to fish traps within the waters under the jurisdiction of the Commonwealth with buoy lines that are greater than 5/16" diameter.

~~It is unlawful to set, fish or abandon any single traps in the waters under the jurisdiction of the Commonwealth north of Cape Cod that are seaward of three miles from mean low tide water mark.~~

~~Exception for Billingsgate Shoal. It is lawful to set and fish single traps within those waters under the jurisdiction of the Commonwealth within of southeast Cape Cod Bay that are shoreward of Loran C Line 9960-X-25360 as it runs north east from 41°47.2' north latitude and 70°19.5' west longitude (Barnstable) to 41°55.8' north latitude and 70°8.4' west longitude (Wellfleet).~~

~~(d) Buoy Line Requirement for Single Traps. It is unlawful to fish single traps with a buoy line requirement that does exceed 3/8 inch diameter.~~

~~(3) A list of DMF approved weak links is available from DMF and furnished to fishermen upon request.~~

- (3) Fixed Gear. It shall be unlawful for any person to fish fixed fishing gear with:
- (a) Lines floating at the water's surface;
 - (b) Positively buoyant groundline; and
 - (c) Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed 1/3 of overall length of the buoy line.

12.07: Conduct Related to Interacting with Right Whales

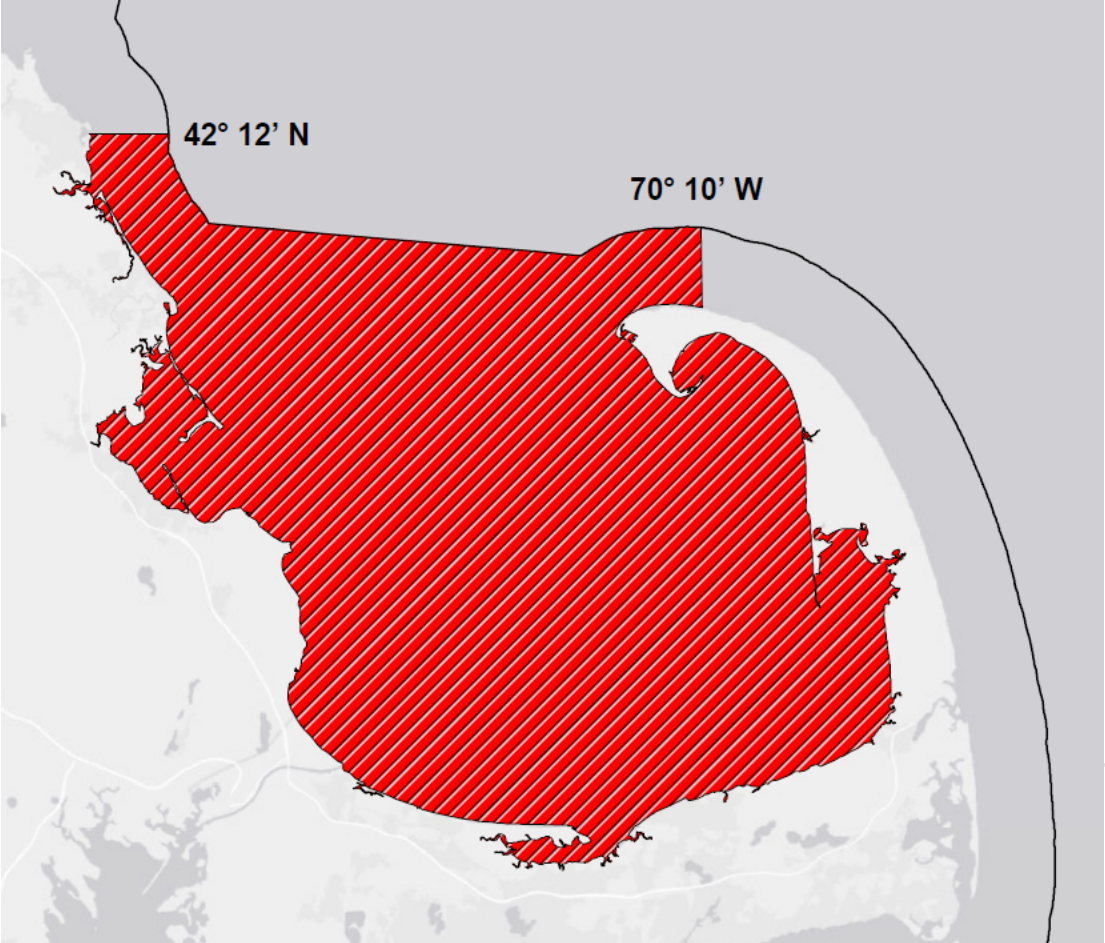
- (1) Harassment and Harm. It shall be unlawful for any vessel, or operator thereof, to harass or harm any right whale at any time or place.
- (2) Vessel Interactions and Buffer Zones. It shall be unlawful for any vessel registered in Massachusetts or within the waters under the jurisdiction of the Commonwealth to:
- (a) enter into a Buffer Zone created by a surfacing right whale;
 - (b) approach or intercept a right whale from a Buffer Zone; or
 - (c) not depart immediately from a Buffer Zone upon the presence of a surfacing right whale.
- (3) Commercial Fishing Activity and Buffer Zones. It shall be unlawful for any commercial fishing vessel which has completed a haul back, a tow of its gear, or otherwise completed its active fishing operation and is no longer at anchor not to depart immediately from a Buffer Zone upon presence of a surfacing right whale. If a commercial fishing vessel is in the act of hauling back, towing gear, or is actively engaged in a fishing operation within a Buffer Zone created by a surfacing right whale, the vessel may complete its haul, tow or active fishing operation provided it

does so with minimum disruption to the right whale and immediately departs from the Buffer Zone upon completion. This provision shall not authorize a commercial fishing vessel to begin a haul, tow, or active fishing operation in or into a Buffer Zone.

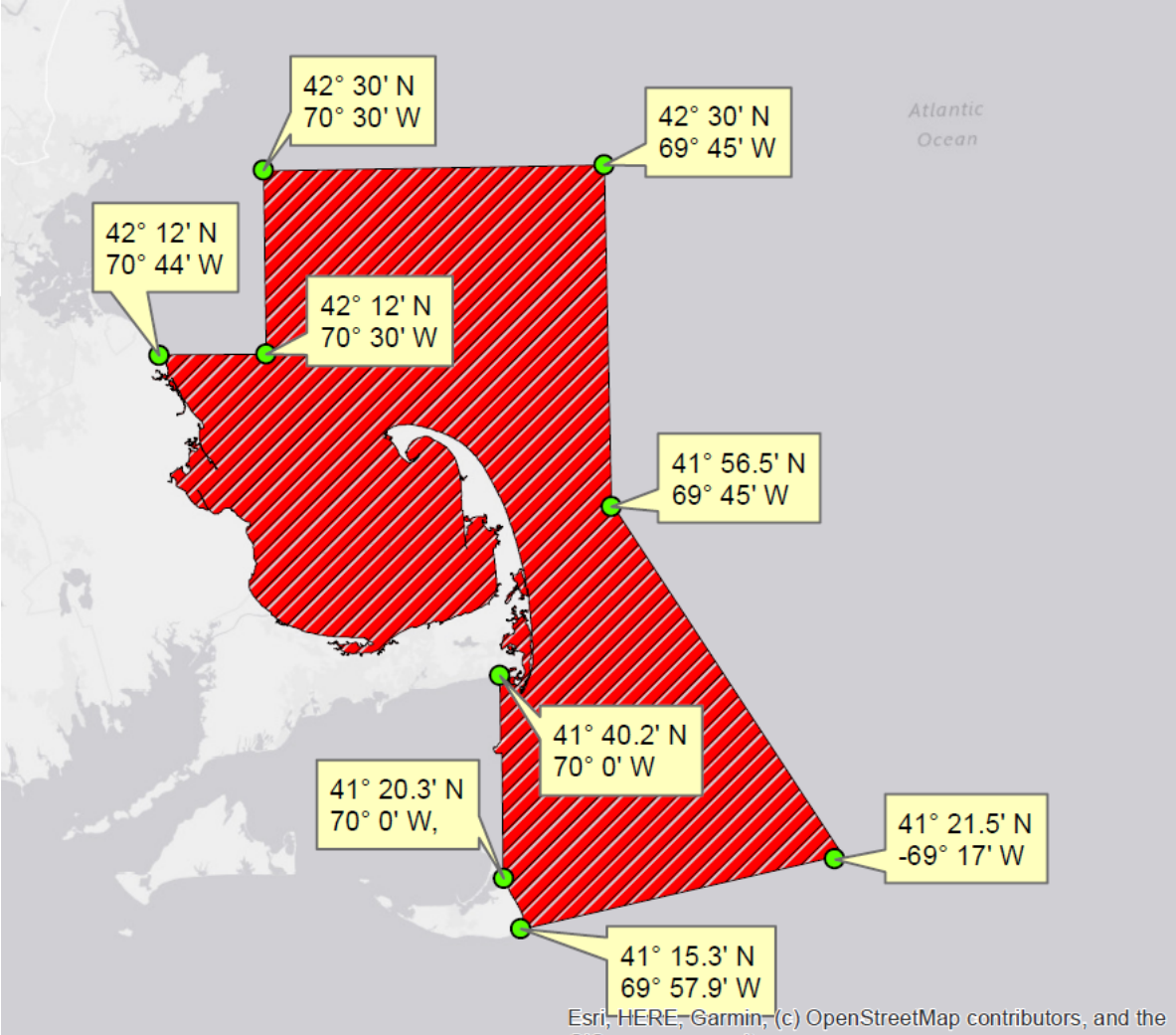
- (4) **Commercial Fishing.** Commercial fishing vessels in the act of hauling back, towing gear or engaged in fishing operations at anchor within a Buffer Zone created by a surfacing right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whale, and departs from the buffer zone immediately after the haul, tow, or fishing operation. In no event may 322 CMR 12.07(4) be construed to authorize a commercial fishing vessel to begin to haul, tow, or conduct its fishing operation in or into a Buffer Zone.
- (5) **Entanglements.**
- (a) It shall be unlawful for the operator of any vessel to immediately fail to report the entanglement of a right whale in any fishing gear or lines.
- (b) Operators of vessels that observe right whales entangled in fishing gear or lines shall report said entanglements to the National Marine Fisheries Service, the Office of Law Enforcement, the Coast Guard, or to designees of those agencies, that it has sighted an entangled right whale may operate in the Buffer Zone to assist those agencies in locating and tracking the whale if requested to do so by those agencies.
- (c) Upon reporting an entanglement in accordance with this section - and if so requested by the National Marine Fisheries Service, the Office of Law Enforcement, the Coast Guard, or to designees of those agencies - the vessel that has sighted the entangled whale is exempt from complying with 322 CMR 12.07(2) for the sole purpose of assisting in the locating and tracking of the right whale. Any vessel operating in accordance with this section shall operate the vessel so as to minimize the disruption to the right whale; operate the vessel at a speed of less than 10 nautical miles per hour; and immediately depart the Buffer Zone once disentanglement efforts begin or when requested to do so by the agencies or their designees.
- (6) **Exceptions for Scientific Permit Holders.** Any entity issued a special scientific permit from the Division in accordance with G.L. c 130, § 17 and 322 CMR 7.01(4)(c) or from any federal department, agency or instrumentality having the authority to issue permits for scientific research, observation, or management of right whales may be exempt from this section for the purposes of conducting the research activity authorized by such a permit.

12.08: Maps

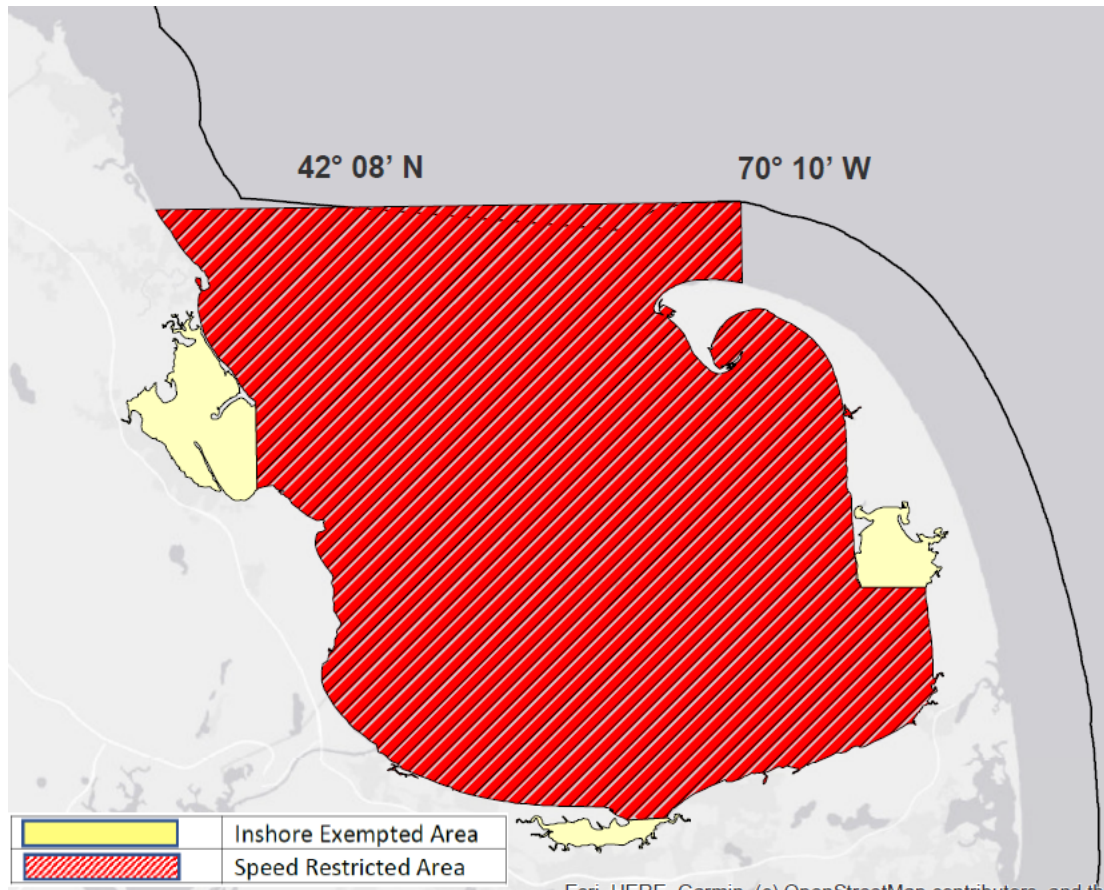
(1) Gillnet Closure to Protect Right Whales in Cape Cod Bay



(2) Massachusetts Restricted Area



322 CMR: DIVISION OF MARINE FISHERIES
(3) Cape Cod Bay Vessel Speed Restricted Area



~~12.07: Buffer Zone~~

~~Except as otherwise provided for in 322 CMR 12.10, it is unlawful:~~

- ~~(1) for any vessel to enter a right whale buffer zone;~~
- ~~(2) for any vessel to approach or intercept a right whale within a buffer zone;~~
- ~~(3) for any vessel not to depart immediately from a buffer zone; or~~
- ~~(4) for any commercial fishing vessel which has completed a haul back, a tow of its gear or otherwise completed its fishing operation and is no longer at anchor not to depart immediately from a buffer zone.~~

~~12.08: Harassment and Harm~~

~~It is unlawful for any operator of a vessel to harass or to harm any right whale at any time or place.~~

~~12.09: Entanglement Reporting~~

~~It is unlawful for any operator of a commercial or recreational vessel to fail to report the entanglement of a right whale in its gear or lines.~~

~~12.10: Exceptions~~

- ~~(1) Federal Permit. Any person issued a permit from any federal department, agency or instrumentality having authority to issue permits for the scientific research, observation, or management of the right whale, may conduct the activity authorized by such permit.~~
- ~~(2) State Permit. Any person issued a permit in accordance with 322 CMR 7.01(4)(d) for the scientific research, observation, or management of the right whale may conduct the activity authorized by such permit.~~
- ~~(3) Commercial Fishing. Commercial fishing vessels in the act of hauling back, towing~~

~~gear or engaged in fishing operations at anchor within a buffer zone created by the surfacing of a right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whale, and departs from the buffer zone immediately after the haul, tow, or fishing operation. In no event may 322 CMR 12.09(3) be construed to authorize a commercial fishing vessel to begin to haul, tow, or conduct its fishing operation in or into a buffer zone.~~

~~(4) Disentanglement.~~

~~(a) To assist federally approved disentanglement efforts for northern right whales, any vessel that reports to the National Marine Fisheries Service, the Division of Environmental Law Enforcement, the Coast Guard, or to designees of those agencies, that it has sighted an entangled right whale may operate in the buffer zone to assist those agencies in locating and tracking the whale if requested to do so by those agencies.~~

~~(b) Any vessel operating in the buffer zone under 322 CMR 12.06(4) shall:~~

- ~~1. operate so as to minimize disruption to the right whale, and~~
- ~~2. immediately depart the buffer zone once the disentanglement effort begins, or when requested to do so by the agencies or their designees.~~

~~(c) When conducting activities within the scope of 322 CMR 12.06(4), vessels shall make every effort to comply with 322 CMR 12.00.~~

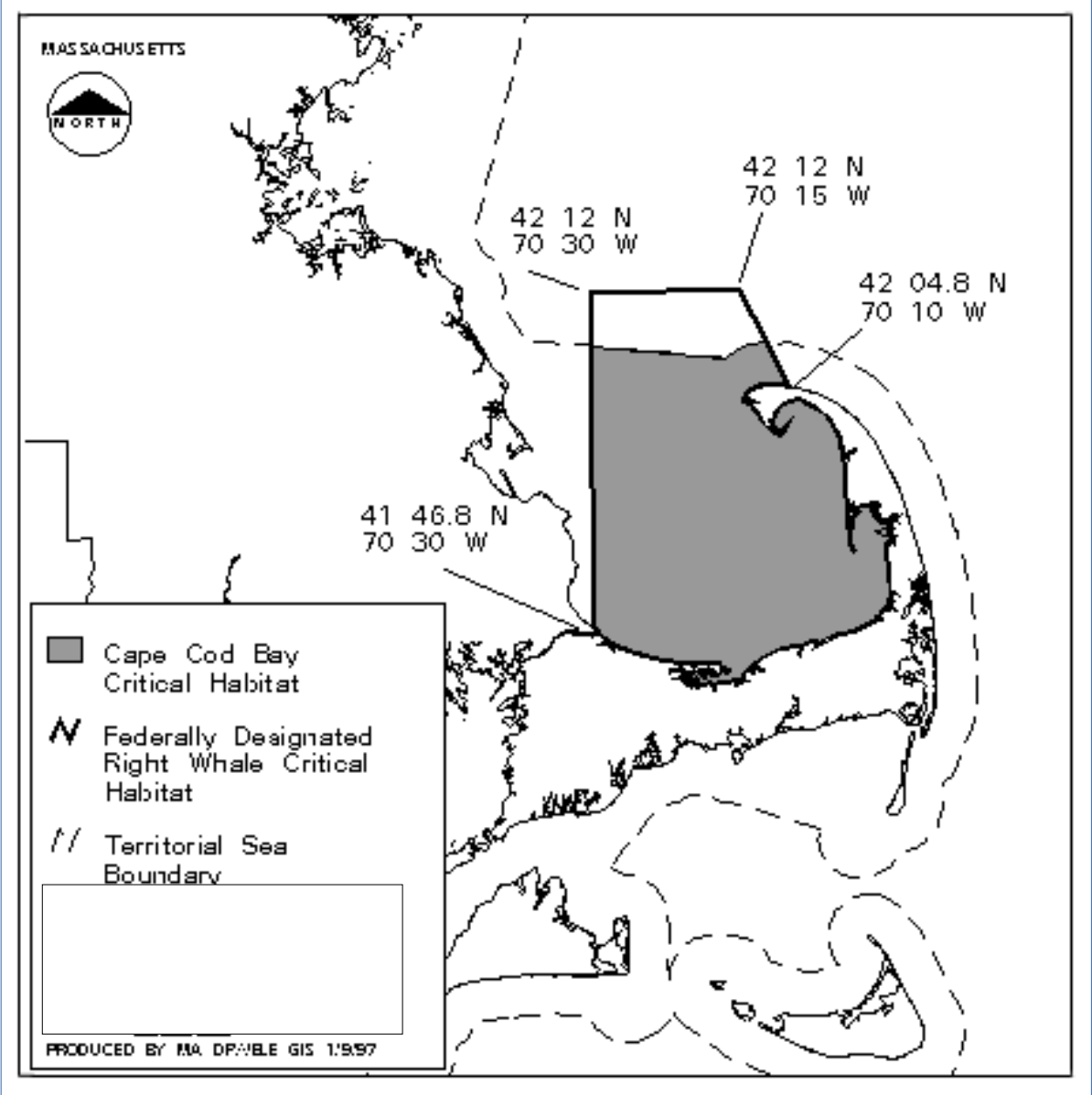
12.11 Large Whale Seasonal Trap/Pot Gear Closure Area

~~The following map depicts the federal Massachusetts Restricted Area and its coordinates. That portion of the Massachusetts Restricted Area within the waters under the jurisdiction of the Commonwealth is referred to as the Large Whale Seasonal Trap/Pot Gear Closure Area.~~

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12.12: Right Whale Cape Cod Bay Critical Habitat Map

The following map depicts the Cape Cod Bay Critical Habitat and its coordinates.



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