

Public Hearing: New Protected Species Regulations Affecting Trap and Gillnet Fishing

6PM

December 8, 2020

Virtually Via Zoom

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6PM

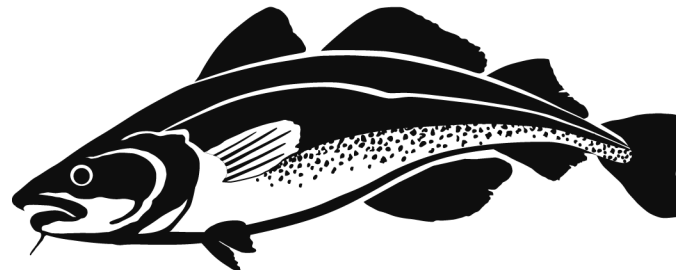
December 9, 2020

Virtually Via Zoom

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Marine Fisheries

Commonwealth of Massachusetts



Public Hearing and Comment

Under the provisions of M.G.L. c. 30A, and pursuant to the authorities found at M.G.L. c. 130 §§ 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.

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.



Virtual Rules of Engagement

- Purpose of the hearing is to afford interested parties an opportunity to submit data, opinions, comments, or arguments on specific amendments being proposed, or to offer how the proposed amendment can be changed to minimize the impact on those affected while still achieving goals.
- At the conclusion of this presentation, DMF will first accept clarifying questions regarding the proposals and then once all the questions are addressed, we will invite public comment. I recommend you submit comments in writing. All correspondence will be shared with the MFAC in advance of the January 7th business meeting. The hearing will be recorded, and questions and comments are part of the public record.
- All members of the public will be muted throughout the meeting. To participate in the question and comment period at the end of the meeting, the public is required to use the raise hand function. This will create a queue for questions and comments. DMF will recognize individuals when it is their turn to speak. They will then be unmuted for the duration of their question or comment. Commenters will be provided two (2) minutes person per hearing item. Follow-up comments may be allowed after all other persons have had an opportunity to speak.

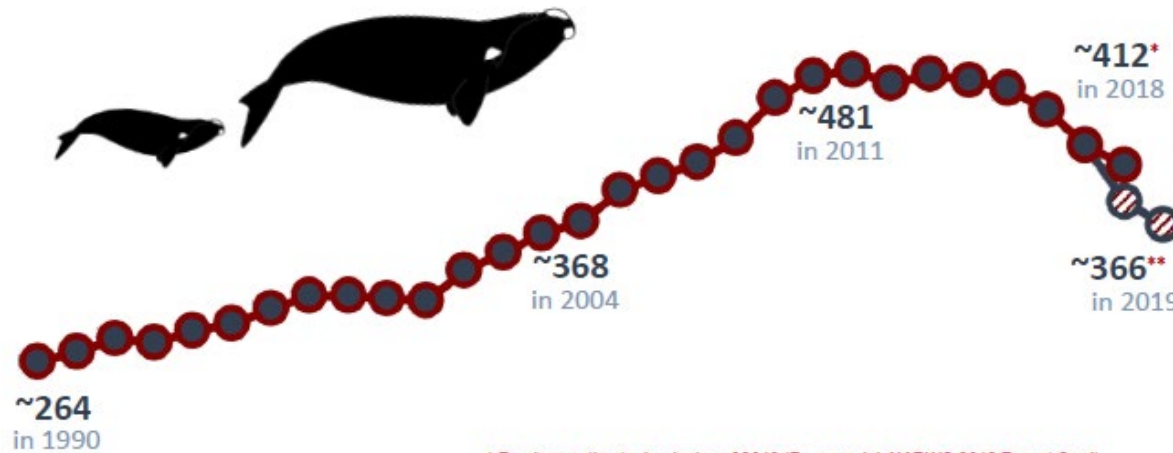


Virtual Rules of Engagement (cont.)

- The written chat function has been disabled. DMF will answer questions at the end of the hearing. Additionally, you can follow up with DMF staff after the hearing by e-mailing your questions to marine.fish@mass.gov.
- Participants must conduct themselves in a professional and courteous manner. Individuals may be permanently muted or removed from the meeting based on their conduct.
- It is not necessary for you to comment during this virtual hearing to register your concerns. Please feel free to use this virtual hearing for informational purposes and submit written comments later. The record will remain open through Friday, December 18, 2020.
- A recording of the conclusion of the hearing will be posted to [DMF's YouTube Channel](#).



Status of North Atlantic Right Whale



* Previous estimate, beginning of 2018 (Pace model; NARWC 2018 Report Card)

** Preliminary estimate, beginning of 2019 (Pace model; draft 2020 NARWC Report Card)

References: Pace et al 2017, Hayes et al 2020, Pettis et al 2020

- Much of the population growth of the last decade has been wiped out by elevated mortalities and reduced calves born each year
- Right whale population estimate is 366 animals as of January 2019.
- Right whales in decline since 2010 coinciding with oceanographic regime shift resulting in reduced calves and changing right whale distribution.
- “Unusual Mortality Event.” Since 2017 32 mortalities and 14 additional serious injuries (likely resulting in death).
- Entanglement and vessel strike continue to be a significant source of serious injury and mortality throughout the species range.



Proposal Background: Responding to Two Challenges

Take Reduction Team Initiative

- Since 1996 multi-decadal program to conserve right whales, working with state and federal partners on the “Large Whale Take Reduction Team” that last met in April 2019.
- Team addressing Unusual Mortality Event.
- State-specific proposals submitted to NMFS earlier this year.
- NMFS expected to publish proposed regulations proposed.

Litigation

- April 2020 US District Court ordered the Commonwealth to apply for and receive an Incidental Take Permit from NMFS to cover “unauthorized takes”.
- Some of these proposals will distinguish MA state waters fishery from other jurisdictions and this is strategic to improve our chances of being awarded the permit.



Summary of Fixed Gear Closure Proposals

1. 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. This would include adjusting the conch pot haul-out period from December 15 – April 14 to December 15 – April 30.
2. 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. Implement a new closed season for buoyed recreational lobster and crab trap gear. The closed season is proposed to run from the Tuesday following Columbus Day through the Friday preceding Memorial Day.



Summary of Gear Modification Proposals

1. Require all commercial vertical buoy lines break when exposed to 1,700 pounds of tension. This may be accommodated by fishing buoy lines with a 1,700 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. Require all vertical buoy lines affixed to commercial trap gear have a diameter not greater than 3/8" and all vertical buoy lines affixed to recreational lobster and crab trap gear have a diameter not greater than 5/16".
3. Effective January 1, 2022, 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.



Summary of Other Proposals

1. Cap the number of seasonal (student) lobster permits issued annually at 150.
2. 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.
3. Consolidate the regulations that govern vessel interactions with right whales into one section.
4. Establish a consolidated section of maps relevant to the protected species regulations.
5. Consolidate and refine all regulatory language as necessary to improve the clarity and readability of existing regulations.



Incidental Take Permit Application

Ongoing Litigation

- January 2020. Endangered Species Act (ESA) citizens suit was filed in the US District Court in Massachusetts against the Commonwealth of Massachusetts. Argued that DMF licenses and regulates the deployment of vertical buoy lines and this violates the ESA as vertical buoy lines may entangle endangered right whales and leatherback turtles.
- April 2020. Court ordered DMF to apply to NOAA Fisheries for an Incidental Take Permit.

ITP Application

- DMF has begun ITP application process.
- ITP application requires development of a Habitat Conservation Plan (HCP). HCP must demonstrate steps applicant is taking to minimize and mitigate impacts the activity is having on the endangered species.
- Proposed regulations make up the backbone of the HCP for right whales. This proposal does not address leatherback turtles. Leatherback turtle conservation measures will be proposed separately.
- Proposals were previously vetted through ALWTRP's rule making process and NOAA's Relative Risk Decision tool.



Proposed Commercial Trap Closure Extension

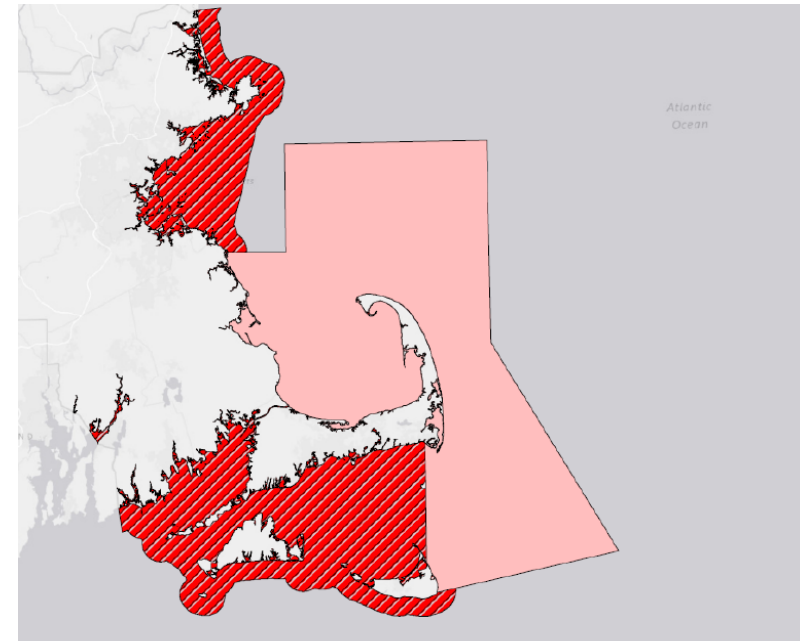
Action:



- Extend the existing February 1 – April 30 large whale seasonal commercial trap gear closure north and east of Cape Cod to all waters under the jurisdiction of the Commonwealth.
- Adjust timing of conch pot haul-out period so that it runs from December 15 – April 30.
- Retain authority to extend trap gear closure if right whales remain present in MA waters after April 30.

Rationale:

- Reduces risk of right whales becoming entangled in commercial trap gear by prohibiting the presence of this gear in Commonwealth waters during periods of time when right whales are known to aggregate in and migrate through these waters.

Existing and Proposed Trap Closure



Existing MA Restricted Area Trap Closure	
Proposed Trap Closure Extension	

Proposed Commercial Gillnet Closure Extension

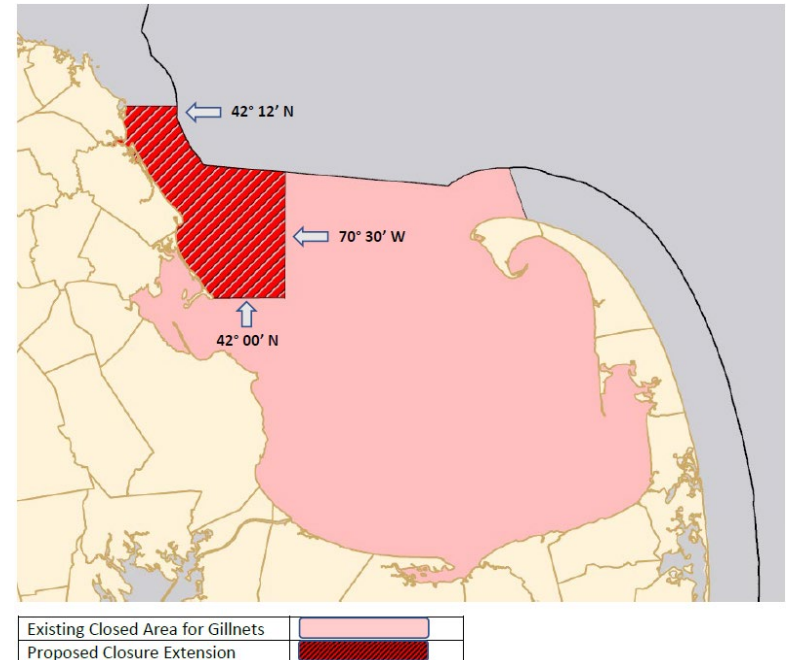
Action:

- Extend the existing January 15 – May 15 gillnet closure in Cape Cod Bay to include those waters west of $70^{\circ} 30' W$ between $42^{\circ} 00' N$ (Gurnett Point, Plymouth) and $42^{\circ} 12' N$ (Scituate Harbor, Scituate).

Rationale:

- Extends northern boundary commensurate with current trap gear closure boundary ($42^{\circ} 12' N$).
- Area is closed seasonally due to existing fishery management closures, but may be incidentally opened in April if DMF lifts conditional groundfish closure.
- Reduces risk of right whales becoming entangled in gillnets by prohibiting the presence of this gear in Commonwealth waters during periods of time when right whales are known to aggregate in and migrate through these waters.

Existing and Proposed Gillnet Closure



Proposed Recreational Lobster/ Crab Trap Closed Season

Action:

- Adopt a closed season for buoyed recreational trap gear.
- Closed season would extend from the Tuesday following Columbus Day through the Saturday immediately preceding Memorial Day.

Rationale:

- DMF issued 6,482 non-commercial licenses in 2020.
- [DMF Technical Report](#): Historically, about 60% report fishing. About 80% of active permits fish traps. Average trap fisherman fishes 7-traps. 95% are fished as single traps. Gear typically set in May and is removed by November.
- Large Whale Seasonal Trap Gear Closure was extended to recreational trap gear.
- Reduces risk of right whales becoming entangled in recreational trap gear by prohibiting the presence of this gear in Commonwealth waters during periods of time when right whales are known to aggregate in and migrate through these waters.
- Lost and abandoned recreational trap gear is routinely observed and hauled during gear removal efforts.
- Provides MEP and DMF with ample time to identify and haul abandoned recreational trap gear, allowing focus to shift to commercial gear removal later in the season.



Proposed 1,700 Pound Breaking Strength Buoy Line

Action:

- Require all commercial trap fishermen rig their gear with buoy lines that break when exposed to 1,700 pounds of tension.
- This may be accomplished by fishing a “weak rope” or by fishing a buoy line rigged with contrivances that allow it to break at that load.

Rationale:

- A 2016 study by Knowlton et al. found that use of ropes with 1,700 or less breaking strength could reduce the severity of entanglement injuries by at least 72%.
- If an entanglement were to occur, it would reduce the risk of injury or mortality posed by buoyed trap gear.



Proposed Maximum Buoy Line Diameters

Action:

- Require all commercial trap fishermen fish buoy lines that do not exceed 3/8" diameter.
- Require all recreational lobster and crab trap fishermen to fish buoy lines that do not exceed 5/16" diameter.

Rationale:

- Lighter diameter rope poses less of a threat of injury and mortality from entanglement.
- Throughout the Atlantic entanglements in recent years have been in heavier gear.
- Creates a de facto gear marking system that would differentiate Massachusetts trap gear from heavier gear that is commonly fished offshore and in Canada.
- Improved gear identification allows for more surgical management and improved conservation.



Single Lobster Trap Prohibition

Action:

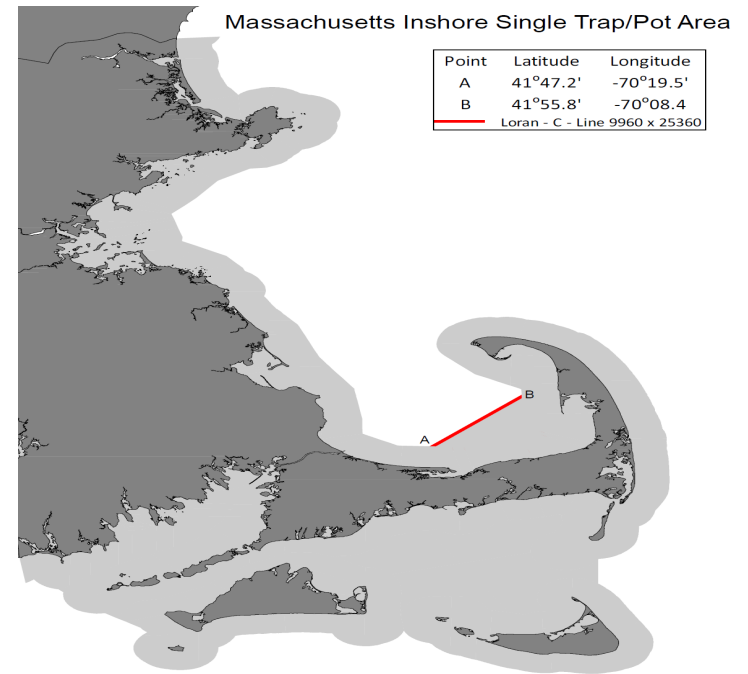
- Prohibit commercial fishermen using vessels larger than 29' to fish single traps. Proposed effective date is 2022.

Exemptions:

- Does not apply to conch pots or fish pots fished in exempted area.
- Does not apply to vessels 29' or less fishing within exempted area.

Rationale:

- Requires lobstermen fishing from larger platforms to trawl their gear, thereby reducing the number of vertical lines in the water column.
- Fishermen fishing doubles or triples are already required to only fish one buoy line.
- Fewer vertical lines in the water column reduce the risk of entanglement.
- Smaller vessels fishing inshore would still be allowed to fish single traps to promote fisherman safety.
- Conch and fish pots are fished at times and places when right whales are not present.



Seasonal Lobster Permit Cap

Action:

- Cap the annual issuance of seasonal (student) lobster permits at 150.

Rationale:

- Effectively caps effort near current levels.
- Prevent the further proliferation of fishing effort under this permit class and thereby caps the overall number of buoy lines fished by this permit class.
- Continues to allow young persons to gain commercial fishing experience and provide a means for young fishermen to enter the commercial fishery.



Photo credit: www.skifflife.com



Housekeeping

Action:

- 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.
- Consolidate the regulations that govern vessel interactions with right whales into one section.
- Establish a consolidated section of maps relevant to the protected species regulations.
- Consolidate and refine all regulatory language as necessary to improve the clarity and readability of existing regulations.

Rationale:

- Ensures regulations are clear, concise, and up-to-date.
- Better captures current efforts and approaches to managing protected species.
- Updates relevant maps and definitions.



Questions and Comments

1. Meeting moderator will now recognize members of the public.
2. DMF will first recognize individuals with questions regarding the presentation and proposals.
3. Upon conclusion of the question period, DMF will accept verbal public comment.
4. To ask a question or submit a verbal comment, please use the “raise hand” function. This will create a queue of participants.

Written Public Comment

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