



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



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Governor

KARYN E. POLITO
Lt. Governor


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Secretary

RONALD S. AMIDON
Commissioner

DANIEL J. MCKIERNAN
Director

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: August 12, 2022

SUBJECT: **Protected Species Regulatory Amendments and Clarifications**

Over the course of 2021 and 2022, DMF enacted a series of regulatory changes affecting fixed gear fisheries and their interactions with protected species. These changes were proposed to reduce the risk of entanglement posed by vertical buoy lines to protected species, particularly the endangered right whale, and to better identify Massachusetts gear should an entanglement occur. These changes were components of the agency's Habitat Conservation Plan for its Incidental Take Permit application for the Massachusetts Mixed Species Trap Fishery.

With these regulations now having been in place for one season, and NOAA Fisheries listing Massachusetts trap fisheries separately as its own Mixed Species Trap Fishery on the 2022 List of Fisheries (under the authority of the marine Mammal Protection Act), there are several minor modifications that are worthwhile considering for 2023. Accordingly, I plan to take a series of regulatory amendments and housekeeping clarifications to public hearing. In the sections below, I address the more substantive proposed amendments and summarize the housekeeping changes.

Weak Links on Trap Gear

Historically, the Atlantic Large Whale Take Reduction Plan (ALWTRP) and DMF regulations have required trap fishermen fish a weak link where the buoy meets the buoy line. The weak link is a mechanism designed to separate the buoy from the buoy line when exposed to 600 pounds of tension. Should an entanglement occur, the line would then break free from the buoy potentially disentangling the whale.

In 2021, DMF began to require state-waters commercial trap fishermen to fish weak rope (1,700-pound breaking strength) or rig their buoy lines with approved weak contrivances every 60°. For 2022, the ALWTRP was amended to adopt similar weak rope and weak contrivance rules for the lobster and crab trap fishery occurring in adjacent federal waters and state waters jurisdictions. However, when the new federal rules were implemented, the weak link requirement was rescinded from the ALWTRP.

This was done because of a lack of evidence in the entanglement record that these links were working as intended and that entanglements were occurring in a manner that the weak link could

be effective. Buoy line entanglements almost always occur when a portion of the buoy line wraps around the whale's body, appendage, or becomes lodged in the baleen. The terminus of the buoy line where the buoy is attached with the weak link is not typically involved in observed entanglements.

This sequencing of rule-making resulted in Massachusetts maintaining the remanent weak link requirement for 2022. For the start of the 2023 season, I want to eliminate this requirement for the commercial Massachusetts Mixed Species Trap Fishery. Weak link requirements will remain in effect for recreational lobster and edible crab fishery, as weak rope and contrivances are not required for this sector. Additionally, the weak link rules for the gillnet fishery will remain status quo, but may be amended in response to potential future changes to the management of gillnets under the ALWTRP.

Recreational Lobster and Edible Crab Season

In 2021, DMF implemented a November 1 – May 15 closed season for recreational lobster and crab trap gear. Unlike the commercial trap gear (and gillnet gear) closure, the regulation does not delineate the Director's authority to extend or rescind the recreational closure in response to the presence or absence of whales.

This potential deficiency came to light this past season, as DMF was analyzing the potential need to extend fixed gear closures past May 15 in the event right whales remain aggregated in state waters on or after that date. If DMF had to extend the commercial fixed gear closures in 2022 past May 15, it would not have been able to apply the same extension to the recreational lobster fishery without filing an emergency regulation. Accordingly, I am proposing to amend the regulations to have the recreational closure subject to the same extension and rescission criteria as the other regulated fixed gears. This will ensure that future actions to adjust the start of the open season apply uniformly to all affected fixed gear fisheries.

Buoy Line Definition and Frequency of Weak Contrivances

At present, DMF defines 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 trawl and extends no more than 12' from the first trap on the trawl." This was done to ensure buoy line modification rules did not apply to that small segment of groundline leading off the ends of a trawl. For similar reasons, DMF also defined a 1,700 pound buoy line as having "one 1,700 pound contrivance per every 60 feet of buoy line in the top 75% of the buoy line."

Over the course of 2022, DMF has worked with MEP to audit numerous buoy lines for compliance with the weak rope rule. This redundancy has complicated how to inspect and enforce this buoy line rule, as one must account for what part of the buoy line extending from the first gangion in the groundline and then determine the part of the buoy line subject to the weak contrivance rule. Based on comments from staff and MEP, I am proposing to simplify how to address this convention and prefer to adopt a standard definition for buoy line that would accommodate it and eliminate the redundant language in the weak contrivance rule.

Housekeeping

There are also several housekeeping changes that should be proposed. This includes: (1) moving the buoy line marking rules for gillnets and traps from the gear section at 322 CMR 4.00 to the protected species section at 322 CMR 12.00 and eliminating all outdated requirements; (2) moving the recreational trap gear closure from regulation of catch section at 322 CMR 6.00 to the protected species section at 322 CMR 12.00; and (3) reorganizing the sections of the protected species regulations at 322 CMR 12.00 to enhance clarity and improve compliance.