



Mid-Atlantic Fishery Management Council
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Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman
Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: January 26, 2021
To: Chris Moore, Executive Director
From: Kiley Dancy and Karson Coutre, Staff
Subject: Tab 1: North Atlantic Right Whale Issues

On Wednesday, February 10, the Council will receive updates on two recent developments related to North Atlantic Right Whales.

Proposed Revisions to the Atlantic Large Whale Take Reduction Plan

On December 31, 2020, the National Marine Fisheries Service (NMFS) published a proposed rule to amend the Atlantic Large Whale Take Reduction Plan (ALWTRP) to reduce the impacts of entanglement in fishing gear on right whales in U.S. waters. The proposed modifications focus on the Northeast Jonah crab and lobster trap/pot fisheries. NMFS will hold [public hearings](#) on the proposed measures between February 16 and February 24, 2021. Later in 2021, the Atlantic Large Whale Take Reduction Team will be asked to recommend risk reduction measures for other Atlantic trap/pot and gillnet fisheries.

During the February 2021 Council Meeting, the Council will receive a presentation on this proposed rule from Jen Anderson, NMFS Greater Atlantic Regional Administrator for Protected Resources. The briefing materials for this discussion include:

- 1) Message from Chris Oliver dated December 30, 2020
- 2) Fact Sheet: Proposed “Risk Reduction Rule” to Modify the Atlantic Large Whale Take Reduction Plan

Supplemental:

- [Proposed rule](#) dated Thursday, December 31, 2020
- [Draft EIS](#) for proposed ALWTRP modifications

ESA Section 7 Consultation Draft Batched Biological Opinion Covering 10 FMPs

During this agenda item, the Council will also receive a presentation on the Draft Biological Opinion on 10 Fishery Management Plans (FMPs) released by NMFS on January 15, 2021.

Section 7 of the Endangered Species Act (ESA) is the mechanism by which Federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the continued

existence of any endangered or threatened species. When the action of a federal agency may affect species listed as threatened or endangered, that agency is required to consult with either NMFS or the U.S. Fish and Wildlife Service (USFWS), depending upon the species that may be affected. In instances where NMFS or USFWS are themselves proposing an action that may affect listed species, the agency must conduct intra-service consultation.

In 2017, the Sustainable Fisheries Division of NMFS Greater Atlantic Regional Fisheries Office (GARFO) reinitiated formal intra-service consultation with the Protected Resources Division on the authorization of eight FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and two FMPs under the Atlantic Coastal Fisheries Cooperative Management Act. Reinitiation of the consultations was necessary given new information on the status of the North Atlantic right whale. The following fisheries were included in the consultation:

1. American Lobster
2. Atlantic Bluefish
3. Atlantic Deep-Sea Red Crab
4. Mackerel/Squid/Butterfish
5. Monkfish
6. Northeast Multispecies
7. Northeast Skate Complex
8. Spiny Dogfish
9. Summer Flounder/Scup/Black Sea Bass
10. Jonah Crab

In assessing the impact of the various fisheries on the North Atlantic right whale, NMFS identified that mortality and serious injury of North Atlantic right whales in federal fisheries managed by the GARFO needs to be further reduced. Therefore, NMFS developed and is committed to implementing the North Atlantic Right Whale [Conservation Framework](#) for Federal Fisheries in the Greater Atlantic Region to further reduce entanglements and mortality and serious injury of North Atlantic right whales. The Framework outlines NOAA Fisheries' commitment to implement measures that are necessary for the recovery of right whales, while providing a phased approach and flexibility to the fishing industry.

The draft Biological Opinion is available for review until February 19, 2021. Relevant information and feedback can be provided to nmfs.gar.fisheriesbiopfeedback@noaa.gov.

The following **supplemental** briefing materials on this topic are available on the February 2021 Council Meeting page. These materials include correspondence between NEFMC, MAFMC, and GARFO via letter and email regarding involvement in Section 7 consultation.

- Full [Draft Biological Opinion](#) released on January 15, 2021
- [Letter from NEFMC and MAFMC to GARFO](#) dated February 25, 2019
- January 2021 Emails on Council involvement in consultation
- [Policy Directive: Integration of Endangered Species Act Section 7 with Magnuson-Stevens Act Processes](#) renewed September 2018



Proposed Pot/Trap Fisheries Regulations to Help Save North Atlantic Right Whales Available for Public Comment

December 30, 2020

Proposed modifications to the Atlantic Large Whale Take Reduction Plan address entanglements in fishing gear, one of two leading causes of right whale serious injury and death.



The North Atlantic right whale is one of the most endangered large whale species, with under 400 whales, and fewer than 100 breeding females remaining in the world. Due to a large number of deaths in 2017, we declared an [Unusual Mortality Event](#) (UME). Since 2017, about 10 percent of the population has either died or been seriously injured. In real terms, that means the total confirmed deaths for the UME are 32 dead whales—21 in Canada and 11 in the United States—plus 13 seriously injured whales. We know that the leading causes of death and serious injury for this UME are entanglements in fishing gear and vessel strikes.

Protecting and recovering this species has been a priority for the agency for many years. Since 1997, we have worked with stakeholders on the [Atlantic Large Whale Take Reduction Team](#) to reduce the impacts of commercial fishing gear on right whales. We continually refine our management measures to support recovery of this critically endangered population, with the most recent [modifications](#) in 2015.

Today, we released our [proposed modifications](#) to the [Atlantic Large Whale Take Reduction Plan](#) to further reduce the impacts of entanglement in fishing gear on right whales in U.S. waters. The proposed modifications focus on the Northeast Jonah crab and lobster trap/pot fisheries, which deploy about 93 percent of the buoy lines fished in areas where right whales occur. In 2021, the team will be asked to recommend risk reduction measures for other Atlantic trap/pot and gillnet fisheries. We also released the associated [Draft Environmental Impact Statement](#).

We opened a public comment period on both of these documents. Comments are due on the proposed modifications and on the DEIS by March 1, 2021. We will also hold a series of virtual [informational sessions in January](#) to explain the proposed modifications and [public hearings in February](#) to accept public comments on the modifications.

The proposed modifications to the Plan would:

- Modify gear configurations to reduce the number of vertical lines by requiring more traps between buoy lines and by introducing weak insertions or weak rope into buoy lines.
- Modify existing seasonal restricted areas to be closed to buoy lines.
- Add up to two new seasonal buoy line closures.
- Modify gear marking to introduce state-specific marking colors and increase the number of and area of marked lines.

The proposed modifications would also allow fishermen to experiment with ropeless (buoyless) alternatives to accelerate research and development of ropeless fishing methods so that in the future, commercial fishing using ropeless technology can be used instead of seasonal closures to allow trap/pot fishing while protecting right whales.

These proposed modifications will affect about 2,500 lobster trap/pot vessels that will have to make changes to the way they fish. The material and labor costs caused by the proposed rule in the first year are estimated to be \$7 million to \$15.4 million spread out among the fishery that

last year generated \$485 million in fishing revenue in Maine alone. As always, we are looking for ways to support fishermen as they transition to these new requirements, as our goal is to have both a thriving trap/pot fishery and a healthy population of right whales.

Developing these proposed modifications was challenging for everyone involved. On behalf of the agency, I want to thank the 61-member Atlantic Large Whale Take Reduction Team, including the 18 fishermen and fishing industry representatives on the team, for their many hours of time spent developing the recommendations on which these proposed modifications are based.

We recognize that the risk of entanglement in fishing gear in U.S. waters is one of the many risks that these whales face. We will continue our work to reduce the risks posed by vessel strikes in U.S. waters, as well as to collaborate with Fisheries and Oceans Canada and Transport Canada on all matters related to the transboundary reduction of vessel strike and entanglement mortalities and serious injuries of North Atlantic right whales.

We will provide updates on those activities as we have them.

Chris Oliver
Assistant Administrator for Fisheries

*Last updated by
Greater Atlantic Regional Fisheries Office
on December 30, 2020*





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Greater Atlantic
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Office

Proposed “Risk Reduction Rule” to Modify the Atlantic Large Whale Take Reduction Plan

SUMMARY FOR PUBLIC COMMENTS

To reduce the impacts of entanglement in commercial fishing gear on right whales, we are requesting comments on proposed changes to the Atlantic Large Whale Take Reduction Plan (ALWTRP). These modifications are intended to achieve at least a 60 percent reduction in mortalities or serious injuries of right whales in the Northeast crab and lobster trap/pot fisheries, which deploy about 93 percent of the buoy lines fished in areas where right whales occur. In 2021, the Atlantic Large Whale Take Reduction Team will be asked to recommend risk reduction measures for other Atlantic trap/pot and gillnet fisheries.

The proposed rule and the Draft Environmental Impact Statement, as well as details on how to provide comments, can be found on the Plan website: fisheries.noaa.gov/ALWTRP.

The Proposed Rule would:

- Modify gear marking to introduce state-specific marking colors
- Increase the number of and area of marked lines
- Modify gear configurations to reduce the number of vertical buoy lines by requiring more traps between buoy lines and by introducing weak insertions or weak rope into buoy lines
- Modify existing seasonal restricted areas to restrict buoy lines (but allow ropeless fishing)
- Add up to two new seasonal buoy line closures

The tables on the following pages list the regulatory elements of the risk reduction alternatives in the proposed rule and considered in the preferred alternative within the Draft Environmental Impact Statement. Measures shaded in blue are those that will be managed under other state or fishery management rulemaking.

Comments are due by March 1, 2021.

For information on **public hearings** on the DEIS and proposed rule, as well as copies of the documents and background information, visit our website: fisheries.noaa.gov/ALWTRP.

Attendance at a public hearing is not necessary for commenting.

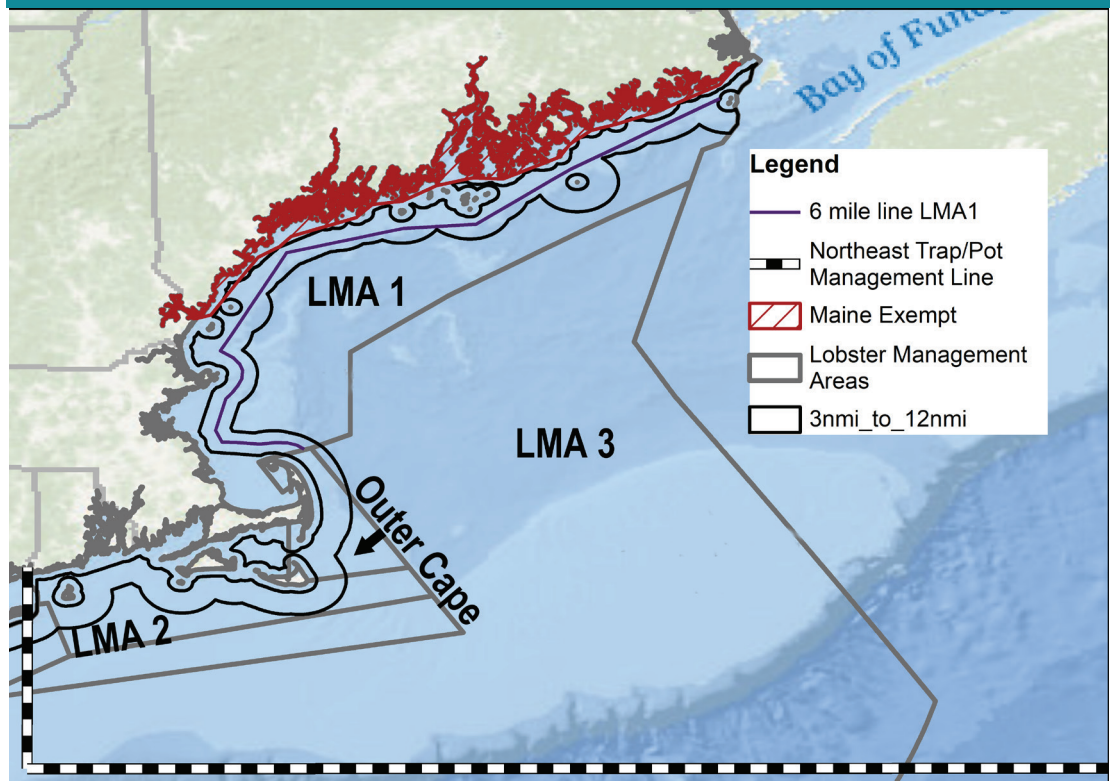
Comments may also be submitted in writing **through the online comment portal**.

To comment, go to: [regulations.gov](https://www.regulations.gov). Search for NOAA-NMFS-2020-0031.

Choose “Comment Now” to submit your comments.

Questions?
Contact Colleen.
Coogan@noaa.gov,
Marisa.Trego@noaa.gov
or call (978) 281-9181.

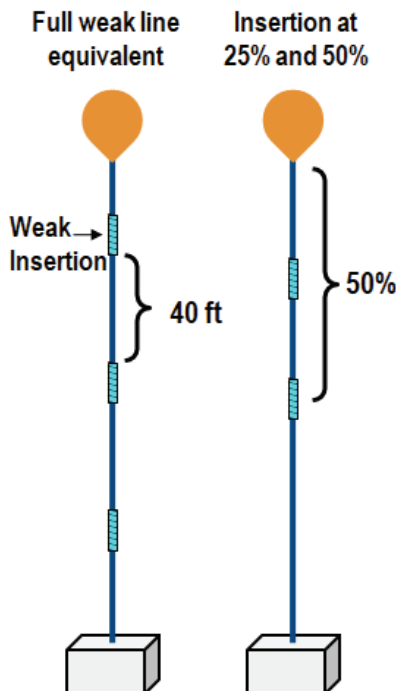
Lobster Management Areas and Regulatory Lines



Traps Per Trawl

Area	Current Regulations	Proposed Regulations
ME exempt area – 3 nm	2 traps/trawl	3 traps/trawl
ME 3–6 nm	3 traps/trawl	8 traps/trawl
LMA1, 6–12 nm	10 traps/trawl	15 traps/trawl
LMA 2, OC 3-12 nm	10 traps/trawl	15 traps/trawl
LMA1, 2 beyond 12 nm	15-20 traps/trawl	25 traps/trawl
MA state waters	1 or 2 traps/trawl	No singles on vessels longer than 29' (8.84 m) permits after 1/1/2020
LMA3	20 traps/trawl	Year-round: 45 traps/trawl, extend trawl length to 1.75 nm

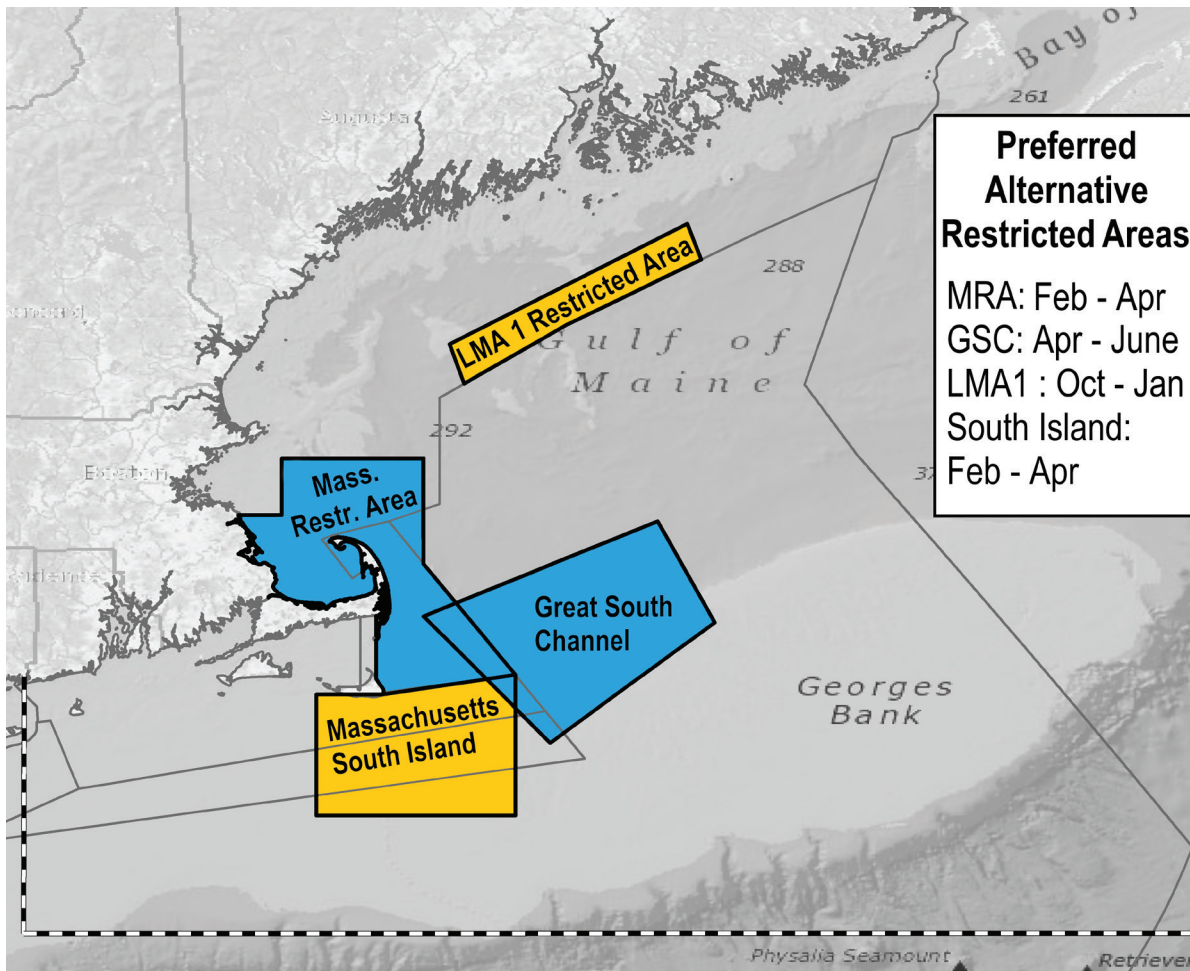
Weak Link and Weak Line Regulations



Component	Area	Current	Proposed
Weak Link Modification	Northeast Region	Weak link required attaching buoy to buoy line	Allow it to be at base of the surface system or, as currently required, at buoy
Weak Line	ME exempt area	None	1 weak insertion 50% down the line
	NH/MA/RI Coast–3 nm	None	1 weak insertion 50% down the line
	ME exempt area–3 nm, All areas 3–12 nm	None	2 weak insertions at 25% and 50% down line
	LMA 1, 2, OCC beyond 12 nm	None	1 weak insertion 35% down the line
	LMA 3	None	1 buoy line weak year-round to 75%

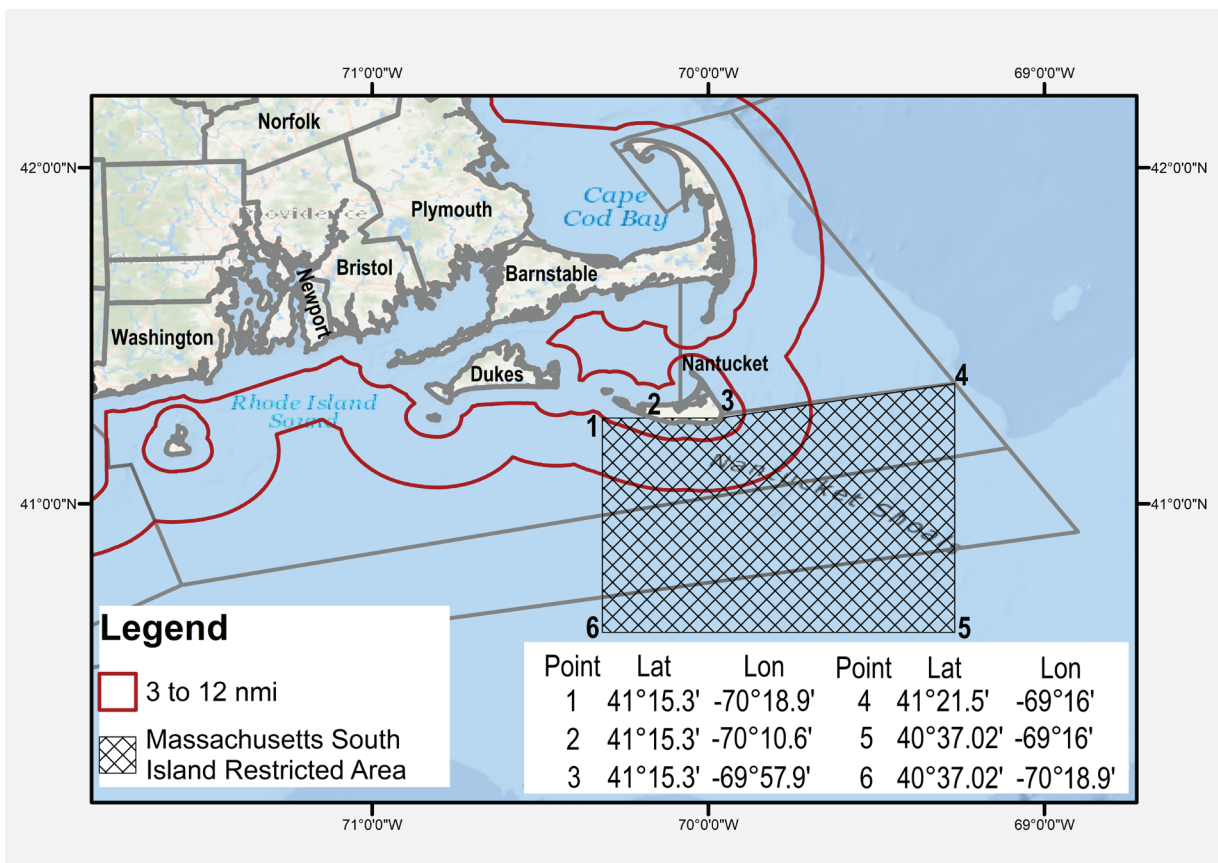
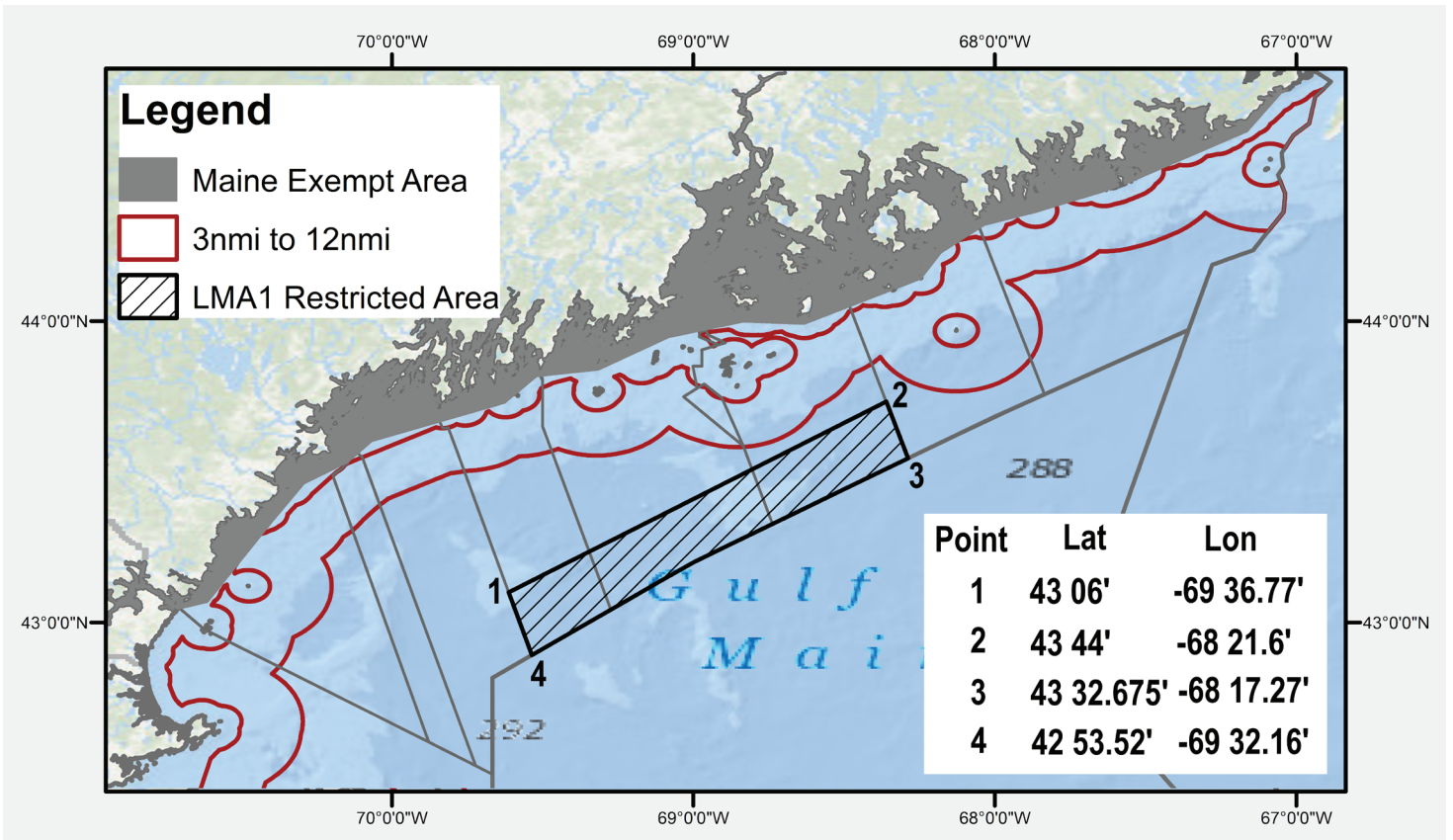
Blue shading indicates state regulations, including Maine gear marking, Massachusetts Restricted Area closure extension into May, and Massachusetts banning of single pots on vessels greater than 29 feet after permit transfers.

Restricted Areas



Area	Current Regulations	Proposed Regulations
All Restricted Areas	Closed to Fishing	Allow trap/pot fishing without buoy lines in existing and proposed restricted areas with an exempted fishing permit (EFP). EFP authorizations would likely include conditions to protect right whales (e.g. area restrictions, low vessel speed, observer monitoring, and reporting requirements.)
LMA1 Restricted Area	None	Restricted Oct-Jan Or 1-A no restriction Or 1-B restricted Oct-Jan based on future determinations
Massachusetts South Island Restricted Area	None	Restricted Feb-April
Massachusetts Restricted Area (MRA)	Closed Feb-April	Restricted Feb-April
	State waters closed through May until <3 whales remain (confirmed by surveys)	State waters closed through May until < than 3 whales remain (confirmed by surveys)
Great South Channel Restricted Area	Closed April-June	Restricted April-June

Restricted Areas - Detailed Maps



Gear Marking

Federal Waters

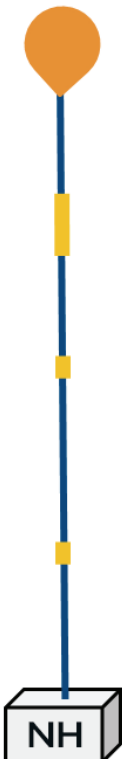
Federal Water Marks



Area	Current	Proposed
Marks		
Entire Northeast Region	Three 12-inch marks, one at the top, middle, and bottom in the color below	One 3-foot long state-specific mark within two fathoms of the buoy (within the surface system) and three 12-inch marks at the top, middle and bottom of the buoy line (color below)
	No federal specific mark	6-inch green mark within the surface system within 12 inches of the 3-foot mark
Colors		
Maine	Red	Purple with 6-inch green mirroring state regulations effective 09/2020
New Hampshire	Red	Yellow with 6-inch green
Massachusetts	Red	Red with 6-inch green
Rhode Island	Red	Silver/Gray with 6-inch green
LMA 3	Black	Black with 6-inch green

State Waters

State Water Marks



Area	Current	Proposed
Marks		
Maine	None in TRP regs, state regulations as of 09/2020	One 3-foot long and one or two additional 1-foot marks (by depth) through state regulation
Massachusetts, Rhode Island, & New Hampshire	Three 12-inch marks, one at the top, middle, and bottom in the color below	One 3-foot long state-specific mark within two fathoms of the buoy (within the surface system) and two 12-inch marks in the top and bottom half of the buoy line in (color below)
Colors		
Maine	Purple (as of 09/2020)	Purple
New Hampshire	Red	Yellow
Massachusetts	Red & White (LMA1) Red & Black (LMA2) Red & Yellow (Outer Cape)	Red
Rhode Island	Red & Blue	Silver/Gray