



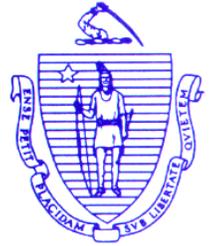
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June 16, 2014

John Bullard
Regional Administrator
NOAA Fisheries
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930

Re: Final Environmental Impact Statement (FEIS) on Vertical Line Reduction Rule

Dear Mr. Bullard,

The Massachusetts Division of Marine Fisheries (*Marine Fisheries*) has reviewed the FEIS and provides the following comments.

Consistent with past correspondence, we have ongoing concerns about the co-occurrence model, its limitations, and the resulting regulations. While we agreed in principle with the Take Reduction Team's (TRT) goal set in 2003 to reduce risk from vertical lines, the co-occurrence model warrants a much improved data set to allow any meaningful assessment of the plan's effects. We hope NOAA Fisheries will address them before any substantial plan modifications and future actions are taken.

Below we reiterate some of our specific concerns and introduce some new concerns with the FEIS and the strategy being pursued by NOAA Fisheries.

Co-occurrence Model. The co-occurrence model is fine in concept, but the data necessary for a robust model design do not exist across much of the East Coast. As such, the methods used by NOAA Fisheries to estimate fishing effort and gear configuration are not suitable for a model used in fine-scale analysis. The whale survey effort is also not evenly distributed, as limited survey effort occurs off much the coast especially in northern New England, which contains 50% of the known vertical lines on the East Coast. The scale of the whale and fishing effort data used in the model are also not the same, leading to problems with analysis on a spatial scale, which is the basis for the model.

Federal Waters Fisheries. We feel strongly that NOAA Fisheries should tackle gaps in the reporting and regulation of certain federal fixed gear fisheries. The Agency does not require reporting for those permit holders who fish with a federal lobster permit only, an oversight that makes it difficult to track or manage risk associated with that gear. According to NOAA Fisheries data, 85% of federal lobster-only permit holders land in the State of Maine, thus subjecting them to limited reporting requirements from the state perspective as well.

We note that in the FEIS section 1.1.9 *Comments on Enforcement and Monitoring*, in response to comments 81, 82, and 83, the agency stated that it "cannot implement reporting requirements in this

rule because NMFS did not seek comments on this measure in the proposed rule.” It is not clear whether NOAA Fisheries will be working with the Atlantic States Marine Fisheries Commission (ASMFC) to improve reporting. This is extraordinarily frustrating for members of the TRT, but especially staff of *Marine Fisheries*, because the TRT has stated on-record over the past 18 years that data collection on fixed gear fisheries is incomplete and needs to be improved.

In response to the historical data gaps, *Marine Fisheries* has required all state waters fishermen and vessels landing in state ports to report catch and effort, but NOAA Fisheries has not accomplished the same standard. There are numerous vessels in current and emerging federal fisheries that are not required to report catch and effort data. This undermines and weakens all of our ability to manage risk and assess the effectiveness of any forthcoming management action including the “trawling up” strategies of the proposed rule.

We also strongly urge the Agency to address the risk associated with emerging pot fisheries such as Jonah crab and waved whelk, which are prosecuted with no restrictions through loop holes in the federal management system. There is no tracking of these fisheries, nor any limit on the number of vertical lines they can put in the water. Regarding the waved whelk fishery, we anticipate an imminent spike in new vessels and pot fishing effort in federal waters when NOAA Fisheries opens the Northern and Southern Temporary Paralytic Shellfish Poisoning Closure Areas, which will occur later this year once PSP sampling has been completed by the U.S. Food and Drug Administration with the assistance of *Marine Fisheries*. It is reasonable to expect a fishery comparable in scale to the Area 3 Offshore Lobster Fishery. While we recognize that this new fixed gear pot fishery will be subject to the gear requirements, there is no trap limit, no permit required, no limited entry, and no reporting requirement. It is difficult to defend NOAA Fisheries’ vertical line plan and the impacts that it will have on the Massachusetts fleets with such glaring holes in the overall strategy to reduce risk. In previous correspondence, we also discussed issues with the new and unregulated Jonah crab trap fishing and latent effort among federal lobster permit holders. We are concerned that the forecasted benefits of “trawling up” requirements proposed for state and federal waters could be canceled out by an increase in vertical lines from latent permits and emerging fisheries in federal waters, which the rule does not address.

The Atlantic Large Whale Take Reduction Plan (ALWTRP) Monitoring Strategy (previously published by NOAA Fisheries in August 2012) fails to identify any methodology to assess the plan’s effectiveness to reduce vertical lines, risk from vertical lines, or calculate accurately any future of changes in co-occurrence scores that would be correlated with risk reduction.

Closure. The closure in Cape Cod Bay and Massachusetts Bay is excessive in area and time. The January 1 closure date will have severe impacts on those lobstermen who fish in the late fall and early winter because of the need to remove gear throughout December in time for the January 1 closure date. December and January are important fishing months for much of the nearshore lobster fleet, especially in the areas around Stellwagen Bank. The proposed closure extends beyond Cape Cod Bay into adjacent federal waters where a very lucrative early winter fishery occurs around Stellwagen Bank. The federal waters portion of NMFS statistical area 514 (MA SRA 19) has had an average of 127,000 lbs of lobster harvested in January over the last five years. These landings come at a time when the ex-vessel price of lobster reaches high levels around Christmas and New Years. As a result, a substantial portion of the annual revenue of these fishermen is made during January.

Marine Fisheries’ right whale aerial survey data show February through April as the predominant months of right whale presence in Cape Cod Bay. We do not feel the Agency is justified closing

January, nor do we feel there are sufficient data to close such a large area to the north and east of Cape Cod Bay Critical Habitat.

To accomplish a 32% reduction in co-occurrence, NOAA Fisheries has primarily focused on the Massachusetts Bay and Cape Cod areas. We understand NOAA Fisheries cited the Cornell University passive acoustic monitoring in Massachusetts Bay showing right whales present in some quantity nearly year-round, but we believe if there was a comparable program in other known whale habitats (e.g., Jeffrey's Ledge, Wilkinson Basin, Jordan Basin) then there would be similar findings in those habitats. The passive acoustic array was created in the shipping lanes approaching Boston as mitigation for the impacts of the LNG terminals in Massachusetts Bay. The lack of comparable data and protective measures in other areas with seasonal aggregations of right whales is disconcerting.

Gillnet Exemptions in Closed Areas. It is inconceivable that vertical lines on gillnets will remain in the closure area, while virtually the same type of vertical line attached to a lobster trawl will be banned. Given the recent rise in gillnet entanglements of right whales over the past few years, this exemption is curious.

Exempted Areas. The exempted areas put forth in the Proposed Rule and the FEIS are not equitable. There are many parts of the Northeast U.S. with no co-occurrence of whales and gear. While certain areas with little or no co-occurrence have been exempted, requests have been ignored for exemptions in other areas, despite the lack of co-occurrence there too. Far in advance of the Draft Rule, *Marine Fisheries* sent letters to NOAA Fisheries requesting the Agency exempt areas in portions of our waters (notably southern waters, i.e. Statistical Area 538) with no co-occurrence. These requests were not included in the Draft EIS or the FEIS.

We are not opposed to New Hampshire being exempt from the “trawling-up” requirements in the Proposed Rule since they have very little documented co-occurrence in their waters. However, NOAA Fisheries should be equitable in the implementation of that standard. It is difficult to defend or accept the outcome of the proposed rule when New Hampshire state waters are exempted but adjacent state waters in the Commonwealth are not. Many portions of Massachusetts waters similarly have no co-occurrence or only seasonal co-occurrence, yet a year-round, state-wide ban on single traps in Massachusetts has been proposed.

We invite NOAA Fisheries fishing gear experts to work more closely with this fleet to learn about the uniqueness of the area off eastern Cape Cod. This traditional, small vessel fleet is restricted by the severe trap limits of the ASMFC and federal management plans. These fishermen fish predominately single-handedly due to the low numbers of traps and small vessel sizes. We continue to insist that the government must find a way to accommodate this fishing style without putting the operators at risk. The interstate and federal lobster plans do not allow the affected permit holders to fish a larger number of traps to compensate for the expected gear losses or loss of economic efficiency that comes from fishing trawls versus single traps. In our view, NOAA Fisheries has yet to address these legitimate concerns of safety and economic sustainability expressed by *Marine Fisheries* and the Outer Cape Cod (OCC) fishermen.

The safety dilemma is simple: if every OCC lobsterman who is currently fishing single traps is forced to fish 2-trap trawls as the Plan proposes, then whenever another lobsterman sets a 2-trap trawl over another, the lobsterman who is set over will be hauling and must unravel a 4-trap tangle that is far heavier than the single trap he normally hauls. Without a sternman, adequate deck space, and sufficient hydraulic power, the risk of injury to the lobsterman is unacceptable.

Recreational Lobster Gear. The ALWTRP and the proposed rule do not apply to recreational lobster gear. This creates a difficult double standard because under the proposed rule, commercial single pots would be banned by federal rules from areas where recreational singles are allowed under state rules. It is not feasible, practical, or reasonable for Massachusetts to outlaw the recreational lobster fishery, nor require recreational lobstermen to fish trawls. A one mile exemption to the commercial “trawling up” proposal in Massachusetts state waters would remedy the problem.

Gear Marking. We support the proposed increase in the size and frequency of gear marking described in the FEIS. However, the spatial scale of the colored markings is not sufficient. More than one color should be required for vertical lines in Northern Nearshore and Inshore Trap/Pot Waters. The current system where RED represents all of New England nearshore waters is not specific enough to pinpoint the origin of entanglements, other than just “New England.” A separate color should be added for each LMA in the Northeast.

In addition, we still believe lack of gear marking in exempted Maine waters may be a mistake. The majority of vertical lines on the East Coast are found in these waters and the gear in this exemption area should be marked so the appropriateness of that exemption can be evaluated.

Summary

As a result of these issues and concerns, the Commonwealth will be formally requesting NOAA Fisheries to consider rulemaking for reasonable modifications to the anticipated Final Rule. *Marine Fisheries* will be submitting a formal request for exemptions in the coming weeks. These exemptions include, but are not limited to:

- An exemption from the “trawling up” requirement in all Massachusetts state waters south of Cape Cod including Nantucket Sound, Vineyard Sound, and Buzzards Bay. We anticipate Rhode Island officials will co-sign this request as well for the state waters portion of Rhode Island. This action is reasonable because the state waters portion of these areas has negligible co-occurrence and is already subject to strict and dropping trap limits. With a 50% reduction in lobster trap allocation over the next five years, we anticipate a commensurate drop in buoy lines. Massachusetts will be prepared to furnish analyses documenting the drop in buoy lines thanks to the comprehensive data collection program that *Marine Fisheries* has instituted for the past five years that includes universal reporting on catch, effort (traps fished), and buoy lines.
- A one-mile exemption for all other Massachusetts state waters to allow the fishing of single traps. (This exemption would not occur during and inside the seasonal closure area). This exemption would be consistent with the allowance granted the state of New Hampshire and Maine’s inshore exemption areas. It is critical for our population of Commercial Student Lobster permit holders to be granted some kind of exemption because of their small scale and nearshore fishing area. They are only allowed 25 traps by state law and fish from small open boats. These permit holders may be as young as 12 and should not be required to handle multiple trap trawls with lines that may entangle them and result in injury or drowning. *Marine Fisheries* will not force recreational fishermen to fish trawls due to their small scale (10 traps), open boats, and inshore (close to the beach) fishing areas. Outer Cape Cod lobster fishermen will also be acutely affected by the ban on single traps and we intend to work with this fleet to craft a future strategy of conservation equivalency in terms of vertical line reduction in the area. The good news is that because we have been collecting catch, effort and buoy line count data for many years, we will be in a position to deliver a measurable buoy line

risk reduction strategy. We will meet with participating fishermen over the next few months to get their input.

- Allowance for OCC lobstermen to soak wooden traps before the May 1 start of the season. Many members of the fleet still use wooden traps and they soak the traps for a few weeks in shallow water locations during April. This can be accommodated through a state authorization that delineates the area and time for this activity without increasing risk of entanglement.

In the coming weeks, *Marine Fisheries* will submit a formal request for exemptions/modifications as outlined above, and we understand some level of review or comment may be afforded the TRT. We recognize there is not a definitive target rate of risk reduction embedded in the proposed rules, but the 32% co-occurrence score reduction that is accomplished by the plan may serve as a proxy goal for the conservation measures.

We had a different vision for how vertical line reduction should be accomplished: precise and accurate data collected by marine mammal scientists and fishing effort data furnished by the fishermen would allow us to meet risk reduction goals surgically and in a manner that is verifiable. Unfortunately we were alone in our pursuit of the data that the TRT, Northeast Fisheries Science Center, Regional Office staff, and Industrial Economics staff was so desperate to have to effectively manage risk. We have worked diligently to achieve a co-existence of endangered whales and maritime industries. We have always kept our eyes on the prize of ensuring fishermen's safety, profitability, and sustainability as goals while we managed fixed gear fisheries in the presence of endangered species.

We pledge to continue to bring vision and persistence to this ALWTRP process. It is our hope that NOAA Fisheries will put that same effort into addressing the serious concerns we've outlined in this letter.

Sincerely,



Paul J. Diodati
Director

Cc: K. Swails (NOAA Fisheries)
D. McKiernan, E. Burke, R. Glenn (*Marine Fisheries*)