



# MARINE MAMMAL COMMISSION

21 November 2014

Ms. Kim Damon-Randall  
Assistant Regional Administrator for Protected Resources  
National Marine Fisheries Service, Greater Atlantic Region  
55 Great Republic Drive  
Gloucester, Massachusetts 01930

Dear Ms. Damon-Randall:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) notice (79 Fed. Reg. 65918) proposing to modify provisions for the Massachusetts Restricted Area (MRA) recently adopted as part of the Atlantic Large Whale Take Reduction Plan to reduce the entanglement of right whales in commercial fishing gear. The Commission offers the following comments.

On 27 June 2014 NMFS adopted a final rule to amend the Atlantic Large Whale Take Reduction Plan (79 Fed. Reg. 36586). The rule included a provision to close the 2,140-mi<sup>2</sup> MRA to all commercial trap and pot fisheries from 1 January to 30 April to reduce the risk of right whales becoming entangled in lines associated with lobster gear. The MRA established by the rule includes all of Cape Cod Bay plus waters approximately 10 to 15 miles to the east of Cape Cod and 25 miles to the north of Cape Cod, including much of Stellwagen Bank.

At the request of the Massachusetts Division of Marine Fisheries (the Division), NMFS is now proposing to delay the start date for the MRA seasonal closure from 1 January to 1 February. To compensate for lost protection of right whales in January, the Division proposes to expand the size of the restricted area by 42 percent (912 mi<sup>2</sup>) to include waters southeast of Cape Cod in a triangle roughly between Cape Cod, Nantucket, and the vessel traffic lanes along the southeast edge of the Great South Channel. The Division's request was precipitated by the concerns of Massachusetts lobster fishermen that the current rule would shorten an economically important winter lobster fishing season between November and early January in MRA waters.

The Division noted this expansion of the MRA area would (1) prevent the displacement of lobster fishing from the MRA into the high-use right whale habitat along the southeastern edge of the Great South Channel during the closure period, (2) delay outer coast lobster fishing in the added MRA area from 15 March (when a closure of the Outer Cape Cod Lobster Management Area under the lobster management plan currently ends) to the end of April, and (3) prevent a rapidly expanding whelk fishery from setting pots in the expanded MRA zone. The Division also proposed exempting certain areas in the western part of Cape Cod Bay near the town of Scituate from the MRA closure. That exemption was proposed to allow for wet storage of lobster gear near ports, a practice that reduces the hazardous accumulation of traps on docks and staging areas as fishermen prepare to deploy all their gear at once when the closure period ends.

The proposed changes to the MRA were reviewed by members of the Atlantic Large Whale Take Reduction Team during a conference call on 1 October 2014. During that call, the team considered relevant co-occurrence scores from a model to assess entanglement risks for the MRA in January compared to co-occurrence scores for the expansion area. The comparison suggested a similar or slightly greater reduction in risk within the expanded area during the February to April closure period compared to the current MRA boundaries in January. The team therefore agreed by consensus to support the Division's proposed time and boundary changes. In that regard, the *Federal Register* notice stated that "on average, the proposed closure area offers a similar reduction in co-occurrence to that of the current closure (38.2%) while providing less of an economic burden" (79 Fed. Reg. 65919). However, the team did not support the proposed trap/pot storage areas, which were not included in the current proposed rule.

The Commission supports the proposed changes but does not believe the rule goes far enough. It is concerned that the analysis of co-occurrence scores overestimates the potential benefits of closing the added area southeast of Cape Cod because significant amounts of gillnet fishing, particularly in March and April, will still be allowed in this area. Thus, the relatively high right whale/fishery co-occurrence scores for that area during the proposed closure period reflects the presence of both trap/pot gear *and* gillnets, yet gillnets in this area would not be affected by the proposed rule. Because gillnet fishing is prohibited in the right whale critical habitat and the Commission understands little gillnet fishing occurs elsewhere in the MRA during the closure period, it is unclear to what extent closure of the expanded area to lobster fishing will compensate for increased interaction risks in January. Neither the take reduction team nor NMFS has taken this into account. The *Federal Register* notice stated that "on average, the proposed closure area offers a similar reduction in co-occurrence to that of the current closure (38.2%)"—however, that statement seems to assume that all fishing in the expanded area is attributable to lobster fishing, which it is not.

Moreover, the vertical line rule adopted by NMFS this past June did not consider the need to reduce entanglement risks in gillnets, especially gillnet webbing. Gillnet webbing and its associated float and lead lines constitute significant entanglement risks for right and humpback whales, both of which occur in high numbers in the added area southeast of Cape Cod. As noted repeatedly in past comments to NMFS on closure provisions in the Atlantic Large Whale Take Reduction Plan, the Commission believes that any closure warranted for trap/pot gear is no less warranted for gillnet gear, and vice versa. Moreover, the Commission notes that the co-occurrence model is not adequate to assess entanglement risks from gillnets. That model only considers risks from the vertical buoy lines associated with gillnets and does not consider their greatest entanglement risk, which is from the miles of float line, lead line, and webbing associated with each pair of buoys and anchor lines.

There are disturbing signs that entanglement injuries and deaths of right whales are increasing due to trap and gillnet fisheries. For example, eight right whale deaths were attributed to entanglement in fishing gear in the 10 years from 2000 to 2009; whereas, there have already been eight entanglement deaths in the four years since 2009. Similarly, the number of live right whales seen entangled or with serious injuries from fishing gear more than doubled from 25 between 1990 and 1999 to 54 between 2000 and 2009 (the latest date for which data are available). Therefore, to account for the risks from gillnets in the expanded closure area and to provide additional protection to right whales from gillnets, as well as from vertical lines in lobster and other pot fisheries, the Commission recommends that NMFS adopt the proposed rule as written to modify the MRA

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boundaries and effective period and also expand the proposed rule to prohibit gillnets, as well as trap and pot gear in the revised area and effective period.

The Commission appreciates your consideration of these comments. If you or your staff has any questions, please let me know.

Sincerely

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial 'R' and a distinct 'L'.

Rebecca J. Lent, Ph.D  
Executive Director