

Memorandum**From: Maine Department of Marine Resources****To: OIRA****Re: RIN 0648-BJ09**

Lobster Fishery in Maine

- American lobster has been the highest single species fishery by value in the nation for several years. Total ex-vessel revenue in New England was \$628M in 2019.
- Maine catches 80-85% of total catch by volume in the nation.
- Roughly 4800 harvesters with state lobster licenses, and roughly 1200 also hold federal permits in Lobster Management Area 1, in the Gulf of Maine.
- Ex-vessel revenue in the state fishery has averaged half a billion dollars annually for last several years, with an estimated \$1B in additional economic impact to the state through the supply chain.
- Landings have doubled in last twenty years, and diversity in Maine's fisheries has become more limited over recent decades. Lobster is now the most important fishery in Maine by far, particularly in rural coastal communities where there is limited other economic activity.
- Maine's coast is vast and varied. Because of this we have split the coast into lobster zones so we are better able to address variable fishing practices, the magnitude of tides, bottom substrate, and local vessel traffic, which all influence gear configurations. Fishing practices can also differ with distance from shore and the number of traps that can safely be fished on a trawl is influenced by the size and build of the vessel.

History of DMR and industry involvement on TRT/rule development

- DMR conducted over 60 meetings with industry groups while developing the states proposal and subsequent conservation equivalency proposals
- Fishermen concerns about regional fishing practices and safety-at-sea weighed heavily in DMR drafting of proposal
- In December 2019 submitted DMR proposal which included a state-wide approach to risk reduction. Subsequently worked with Lobster Zones to develop conservation equivalency proposals for each Zone.

Conservation Equivalencies

- In our comments on the proposed rule, Maine DMR included zone-specific plans that were developed in collaboration with the industry. The conservation equivalency plans provide equivalent or greater conservation benefits to whales while also providing flexibility based on operational and safety concerns given the varied conditions along Maine's coast. These measures were included in recognition of the unique fishing practices, differing oceanographic conditions, and safety concerns along Maine's coast. It is critical that NOAA Fisheries include them in the final rule, and the FEIS

indicates they are included for the most part, with exception of the portion outside of 12 nautical miles.

- The FEIS claims there was less risk reduction in the conservation equivalency proposal than the statewide plan. Unfortunately, the FEIS provides no table or information showing the difference in risk reduction outside 12 nm between the conservation equivalency proposal and the preferred alternative in the FEIS. Without evidence supporting NMFS conclusion or knowledge if this supposed risk reduction deficit is specific one Zone or throughout Maine's lobster zones, Maine continues to support full adoption of our conservation equivalency proposal.
- However, there is also a strong need for flexibility in the future if we run into challenges related to fishermen's safety going forward. The current regulatory process, which requires development of a conservation equivalency proposal through the Take Reduction Team or during federal rulemaking, is time-intensive and does not allow for quick adaptability. A mechanism that would allow for more nimble regulatory changes if they provide an equivalent conservation benefit would provide opportunity to reduce economic impacts on industry and regulatory agility that may be critically important if right whale distribution continues to change.

Gear Marking

- The FEIS includes a new gear marking scheme that differs from what was included in the DEIS and proposed rule. DMR is deeply concerned about the inclusion of this change in the Final Rule.
- DMR implemented gear marking changes in state regulations last year, with an implementation requirement of September 2020, in order to obtain better information as soon as possible. This was done with considerable communication between NMFS and ME DMR to ensure a common understanding of gear marking needs and future requirements.
- Maine fishermen have already implemented these changes but based on the preferred alternative in the FEIS, considerable changes will have to be made again, which is burdensome and unnecessary both for fishermen and for state government.
- In particular, there are substantial differences in the requirements for the green mark in Maine regulations vs. the FEIS. Originally, this mark was developed as a way to distinguish between exempt and non-exempt waters. Now it is being used to distinguish between state and federal waters. Further, originally the green mark was intended to be a single 6" mark that is easily removable in recognition that some fishermen move gear between inshore and offshore areas. Now fishermen have to place more, longer marks throughout their line.
- This increased burden will likely require dual-permitted fishermen to have two sets of vertical lines, one for state waters and one for federal waters. This type of economic impact was not analyzed in the FEIS and is potentially significant.
- This outcome is also disenfranchising to fishermen who participate in development of the regulatory process, who feel that their time and energy is undervalued already.

- It also discourages proactive action by states in anticipation of federal rulemaking, even if there is a conservation benefit. Maine put substantial staff time into development of this rulemaking, and now will have to do it all over again.

Gear Restricted Area in Lobster Management Area 1

- Scientific basis for proposed LMA1 Restricted Area is inadequate.
- Basis for the LMA 1 closure primarily relies on model outputs with very little sightings or acoustic data corroborating this area as a right whale hot-spot.
- Updated model indicates the LMA 1 closure now receives significantly less risk reduction when considering data since 2010.
- In other words, the importance of this area for right whale protection has declined over time.
- Very little analysis or figures provided in support of the LMA 1 closure in the FEIS. Of the limited amount of information that is presented (Figure 3.2), the document fails to provide rationale for why Zone E is included in the LMA 1 Restricted Area in the months of December and January. This zone is not highlighted as an area of high-risk during December and January yet its closure comes at the economic expense of fishermen in the area.
- Maine ran the DST excluding Zone E from the closure in the months of December and January and the resulting risk reduction was 6.2%, a 0.4% reduction. When weighing the costs to industry and the benefit to right whales, Maine recommends removing one E from the LMA 1 closure in December and January.