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Re: DFG Laws and Regulations for Massachusetts and Connecticut Lobster Fisheries
(NSGLC-11-04-01)

This product was prepared by the National Sea Grant Law Center under award number NA09OAR4170200 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Dear Sarah,

Please find attached our compilation of statutory and regulatory derelict fishing gear provisions for the lobster fisheries in the states of Massachusetts and Connecticut as requested in your February 2011 Advisory Request. The attached information is intended as advisory research only and does not constitute legal representation of the NOAA Marine Debris Program or its constituents. It represents our interpretations of the relevant laws and regulations.

This report was prepared using traditional legal research methods. For each fishery, state codes and regulations were searched using Westlaw, an online legal database, for definitions of fishing gear used; definitions of derelict fishing gear; restrictions on handling gear; requirements for escape mechanisms; closed areas and periods; and provisions providing for the removal of derelict fishing gear. State agency websites were then consulted to verify results and provide additional information on derelict fishing gear removal programs. I hope you find this information helpful. If you would like additional information on these or other fisheries, please let me know.

Sincerely,

Stephanie Showalter
Director, National Sea Grant Law Center

MASSACHUSETTS

Definition of Fishing Gear Used

“Single Pots” means individual lobster pots, fish pots, and conch pots (322 MASS. CODE REGS. 4.13(2)).

- The volume of any trap must not exceed 22,950 cubic inches. (*Id.* 6.02(1)(c)).

“Pot trawls” means lobster pot trawls, fish pot trawls, and conch pot trawls and refers to single pots tied together in a series and buoyed at both ends (*Id.* 4.13(2)).

- The total length of pot trawls set in state waters may not exceed 2,500 feet from end to end. (*Id.* 4.13(5)).

“Lobster car” means any container, enclosure, crate, or any other container or contrivance designed to hold and store lobsters. (*Id.* 6.14(1)).

- It is prohibited and unlawful for any person to place a buoyed or unbuoyed lobster car within state waters except in inshore net areas defined in 322 Mass. Code Regs. 4.02. (*Id.* 6.14(2)).

The use of wooden lobster buoys was prohibited after 1974. (MASS. GEN. LAWS ch. 130, § 38).

Definition of Derelict Fishing Gear

Massachusetts’s regulations refer to “ghost gear.” Ghost gear is defined as “any fixed fishing gear including but not limited to gillnets with their flyers and floats and lobster pots with their buoys and line, which are no longer buoyed to the surface of the water, are not visible from the surface and become entangled with mobile gear.” (322 MASS. CODE REGS. 4.06).

Restrictions on Handling Gear

It is illegal for anyone, except the owner, to handle, destroy or molest any lobster or crab pot or other fishing gear, including any gear swept upon the shore, beaches or flats whether public or private, or to take fish therefrom (MASS. GEN. LAWS ch. 130, § 31).

- Except, any vessel with mobile gear whose gear becomes entangled with ghost gear may haul said ghost gear on board for the purpose of identification and return to the rightful owner, if authorized in writing by said owner (322 MASS. CODE REGS. 4.06).

The owner of any fishing gear which is swept ashore by storm or tide or other natural causes and deposited upon the shore, beaches or flats, whether public or private, may recover the same within thirty days from the time of such deposit without liability for trespass; provided, that such owner in so doing does not commit any unreasonable or wanton injury to the property whereupon such fishing gear is deposited. (MASS. GEN. LAWS, ch. 130, § 32).

- If the gear is not recovered by the owner as detailed above or recovered by other legal means within 60 days it becomes the property of the riparian owner of such shore, beach or flat.

Requirements for Escape Mechanisms

It is unlawful for any person to take or attempt to take lobsters from state waters by use of pots or traps without said pots or traps having the following features identified in the Code of Massachusetts Regulations, title no. 322, § 6.02:

- **Escape Vent:**

- One or more unobstructed rectangular escape vents or openings or two or more unobstructed round openings in the parlor section(s) of the trap from which lobsters are normally removed by the fisherman. Separate parlors shall be vented individually, while only the outer of connected parlors must be vented.
- The required size of the vent varies by Lobster Conservation Management Area (LCMA). LCMAs are delineated in 322 Mass. Code Regs. 6.33.
 - *Commercial Fishermen in LCMA 1:* Traps shall be rigged with vents that measure at least 1-15/16 inches by 5 3/4 inches or two circular vents that measure at least 2-7/16 inches.
 - *Commercial Fishermen in LCMA 2, 3, 4, 5, 6 or Outer Cape Cod:* Traps shall be rigged with vents that measure at least two inches by 5 3/4 inches or two circular vents that measure at least 2 5/8 inches.
 - *Non-commercial Fishermen Fishing in the Gulf of Maine Recreational Lobster Area:* Traps shall be rigged with vents that measure at least 1-15/16 inches by 5 3/4 inches or two circular vents that measure at least 2-7/16 inches.
 - *Non-commercial Fishermen Fishing in the Outer Cape Cod or Southern New England Recreational Lobster Areas:* Traps shall be rigged with vents that measure at least two inches by 5 3/4 inches or two circular vents that measure at least 2 5/8 inches.

- **Ghost Panel:**

- A panel or other mechanism which is designed to create an opening to allow the escapement of lobsters within 12 months after a trap has been abandoned or lost, the specifications of which are as follows:
 - The opening covered by the panel or created by other approved mechanism shall be rectangular and measure at least 3 3/4 by 3 3/4 inches, shall be located in the outer parlor section(s) of the trap, and in a position which allows an unobstructed exit of lobsters from the trap.
 - The panel shall be constructed of, or fastened to the trap with, one of the following materials: wood lath; cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter; or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter.

- The door of the trap may serve as the ghost panel if fastened to the trap with a material specified above.
- The escape vent may serve as a ghost panel if incorporated into a panel constructed of, or attached to the trap with, a material specified above and upon breakdown of the degradable materials, will create an opening for egress of lobsters at least 3 3/4 by 3 3/4 inches.
- Traps constructed entirely or partially of wood shall be considered to be in compliance if constructed of wood lath to the extent that deterioration of wooden component(s) will result in an unobstructed opening 3 3/4 inches square.

Weak Buoy Links

- It is unlawful to fish any traps or pots in state waters unless all buoy lines are equipped with a Weak Link that will part when subjected to 600 pounds or less of pull pressure along the buoy line. (322 MASS. CODE REGS. 12.06(2)).

Requirements for Marking Gear

All buoys, pots, traps, and lobster cars must be marked with the licensee's number assigned to him by the director, which shall be burned or cut into the surface thereof. (MASS. GEN. LAWS ch. 130, § 38).

- Non-commercial lobstermen are required to add the letter "N" prior to the four-digit permit number, and a dash (-) with a single digit from 0 through 9 shall follow the four-digit permit number, indicating the sequential pot number in the series, up to ten pots. (322 MASS. CODE REGS. 3.07(1)).
 - The permit numbers shall not be less than 1/2 inch in height nor less than 1/8 inch in thickness or width of line. Said numbers shall be burned or cut into a wooden lath or a plate made of durable synthetic material, which shall be permanently secured to the inside of the trap.
- Lobster traps fished by commercial fishermen may be marked solely with trap tags in accordance with 322 Mass. Code Regs. 6.31. (*Id.*)

For individuals lobstering commercially with scuba in state waters, the scuba tank and floating marker must display permit numbers. Permit numbers shall be not less than 3 inches in height nor less than 1/2 inch in thickness or width of line (322 MASS. CODE REGS. 3.07(2)).

322 Mass. Code Regs. 4.13(3)(b) establishes the following minimum requirements for the marking of fixed pot trawls and single pots within state waters:

- The east end of a pot trawl shall be marked with a double buoy, consisting of any combination of two seven inches x seven inches or five inches x 11 inches buoys and one or more three foot sticks. The west end of a pot trawl shall be marked with a single seven inches x seven inches

or five inches x 11 inches buoy with a three-foot stick and a flag. Single pots shall each be marked with a single seven inches x seven inches or five inches x 11 inches buoy. Sticks are optional, but if used, shall not have a flag attached.

- For gear fished or authorized to fish in LCMA 1, LCMA 2 or the Outer Cape Cod LCMA, the buoy line shall be marked with a four-inch red mark midway on the buoy line;
- For gear fished or authorized to fish in LCMA 3, the buoy line shall be marked with a four-inch black mark midway on the buoy line;
- For gear fished or authorized to fish in the Gulf of Maine, Outer Cape Cod and Southern New England Recreational Lobster Area, the buoy line shall be marked with a four-inch red mark midway on the buoy line beginning January 1, 2010.
- If the color of the rope (buoy line) is the same as or similar to a color code, a white mark may be substituted for that color code.

Boston Harbor

Within Boston Harbor and its approaches, it is lawful to fish with trawls marked on one end with a plastic bottle attached by at least ten feet of 1/2 inch cotton line or similar light material, provided that said substitute buoy shall be painted with the buoy colors and permit number of the owner. A standard buoy as specified in 322 Mass. Code Regs. 4.13(3)(b) shall be attached to the other end of the trawl, except that sticks need not be used. Single pots shall be marked with a standard buoy attached by light line in channel areas. (322 MASS. CODE REGS. 4.13(3)(c)).

- “Boston Harbor and its Approaches” is delineated as: “In waters under the jurisdiction of the Commonwealth and circumscribed by an imaginary line beginning at Point Allerton in Hull; thence in an easterly direction to the #1 buoy at Thieves Ledge; thence in a northerly direction to the BG buoy; thence in a westerly direction to Grovers Cliff in Winthrop.”

Cape Cod Bay Critical Habitat Area

Within the Cape Cod Bay Critical Habitat Area (defined in 322 Mass. Code Regs. 12.10), lobster pots set during January through May 15th that are properly modified with those features required in 322 Mass. Code Regs. 12.03 designed to reduce the risk of whale entanglement must be marked as follows:

- Two-pot trawls or “doubles” shall be marked with a single buoy line. The buoy shall be rigged with a three-foot stick and twin orange markers visibly attached to the top of the buoy stick. (322 MASS. CODE REGS. 4.13(4)(d)).
- All buoys marking either ends of a trawl shall have twin orange markers visibly attached to the buoy stick in addition to the existing marking requirements in 322 Mass. Code Regs. 4.13(3)(b). (*Id.*)

- These twin orange markers must be removed from all buoy sticks after May 15th and before June 1st and fishermen may not re-attach them until after November 30th of each year.
- “Twin Orange Markers” means a pair of identical orange flag-like strips of material that are clearly visible and attached to the buoy stick or high flyer. (322 Mass. Code Regs. 4.13(2)).
- It is unlawful to mark fixed gear as required in § 4.13(3)(d) if the lobster pots are not properly rigged with those features required in § 12.05 to reduce risk of whale entanglement.

Closed Areas/Periods for the Fishery

Right Whale Critical Habitat

To minimize the number of vertical buoy lines in Right Whale Critical Habitat (delineated in 322 Mass. Code Regs. 12.12) between January 1st through May 15th, Massachusetts law makes it unlawful to fish, store, or abandon the following:

- Single pots; or
- A trawl with less than four pots with vertical lines on the first and last pot of the trawl.
- A trawl with four or more pots having other than a single vertical line attached to the first and last pot of the trawl.
- A double with more than one vertical buoy line. (322 MASS. CODE REGS. 12.05(1)).

Fishermen, however, may fish in the Right Whale Critical Habitat during this time in either multiple pot trawls of four pots or more with vertical buoy lines on each end or may set doubles.

- All buoy lines attached to traps or pots must be equipped with a Weak Buoy Link that will part when subjected to 500 pounds or less of pull pressure along the buoy line. (322 MASS. CODE REGS. 12.06(3)(a)).

Outer Cape LCMA

Fishing for lobster with pots is prohibited in the Outer Cape LCMA from January 15th through March 15th. (322 MASS. CODE REGS. 6.02(5)).

- Fishermen are required to remove all lobster traps from waters of the Outer Cape LCMA during this closed period.
- It is unlawful for any fisherman authorized to fish traps in the Outer Cape LCMA to fish, set, or abandon any lobster traps in the OCC LCMA during this seasonal closure.

Upper Cape Cod Whiting Area

From September 1st - October 31st, it is unlawful to set, store, or abandon lobster pots in a portion of the upper Cape Cod whiting area. (322 MASS. CODE REGS. 8.14(1)(c) and 8.15(1)(c)).

- The closure area is defined as follows using LORAN C coordinates: beginning at the intersection of the 9960-W-13880 line with the state/federal territorial seas line; then following in a southeast direction along the aforementioned 13880 line to the intersection with the 9960-Y-44100 line; then in a northeast direction following the aforementioned 44100 line to the intersection with LORAN C 9960-W-13845 line; then in a northeast direction to the intersection with the 9960-Y-44120 line; then in a northeasterly direction along the 44120 line to the intersection with the 9960-W-13830 line; then in a northwest direction following the 13830 line to the state/federal waters line; then in a westerly direction back to the origin at the intersection of the 9960-W-13880 line and the state/federal territorial sea line.

Acushnet River Estuary

It is unlawful to harvest, catch, or take lobster from Areas 1 and 2 within the Acushnet River Estuary. (322 MASS. CODE REGS. 6.29(2)).

- “Area 1” means all waters north of the Hurricane Dike in New Bedford including all of New Bedford Harbor and the Acushnet River. This area corresponds to Area I described in 105 Mass. Code Regs. 260.000.
- “Area 2” means all waters encompassed by an imaginary straight line beginning at the southernmost part of Ricketsons Point in Dartmouth; thence in an easterly direction to the southernmost part of Wilbur Point in Scotcut Neck, Fairhaven; thence along the western shoreline of Scotcut Neck in a northerly direction along the Fairhaven shoreline; thence along the Hurricane Dike to the New Bedford shoreline; thence in a southerly direction to Clarks Point and along the shoreline of Clarks Cove to the starting point. This area corresponds to Area II described in 105 Mass. Code Regs. 260.000.

Provisions Allowing for Removal of DFG

All buoys, pots, traps, and lobster cars that are not marked as required shall be removed from the coastal waters by any officer who is empowered to enforce state fisheries regulations and shall be held for up to six months. (MASS. GEN. LAWS, ch. 130, § 38).

- If the owner of any such buoy, pot, trap or lobster car fails to claim the gear within six months it shall be permanently confiscated and disposed of by the director of law enforcement or his designee for the best interest of the commonwealth. Said director, designee, or officer shall in no way be liable for such removal, confiscation or disposal.
- Before any buoy, pot, trap or lobster car is transferred, sold or given away the owner shall burn or cut the letter “T” into the buoy, pot, trap or lobster car, after his number, to indicate that the buoy, pot, trap or lobster car has been transferred and the new owner shall burn or cut his number into the buoy, pot, trap or lobster car. It shall be prima facie evidence of a violation of this section if a person has in his possession or uses any buoy, pot, trap or lobster car, that has had the license number removed, altered or defaced.

In 2007, the Massachusetts Division of Marine Fisheries conducted a Cape Code Ghost Gear Removal Project. Marine Fisheries partnered with the Massachusetts Environmental Police to conduct ghost gear removal in Cape Cod Bay Critical Habitat. The project identified and

retrieved abandoned fixed gear and lobster gear that was not compliant with the whale-safe regulations. (MASS. DIV. OF MARINE FISHERIES AND MASS. ENVTL. POLICE, 2007 CAPE COD GHOST GEAR REMOVAL PROJECT, *available at* http://www.mass.gov/dfwele/dmf/programsandprojects/ghost_gear_final_report_020909.pdf).

CONNECTICUT

Definition of Fishing Gear Used

Lobsters may be taken in Connecticut only by lobster pots, traps, trawls, or similar devices or by skin diving, including the use of scuba, or by hand. The use of spears or hooks of any kind to take lobsters and the possession of lobsters taken by any method that pierces the shell is prohibited. (CONN. AGENCIES REGS. §26-157c-1(b)).

- “Pot” means any lobster pot, trap or similar device used to take lobsters. (*Id.* § 26-157c-4(30)).

Lobster pots, traps, and similar devices with a volume larger than 22,950 cubic are prohibited. (*Id.* § 26-157c-2(c)).

Definition of Derelict Fishing Gear

Connecticut does not define “derelict fishing gear.” However, state law does provide that any fishing gear “which is abandoned, discarded or thrown away in an attempt to destroy or conceal evidence or to prevent apprehension, may be seized and taken into possession by any conservation officer.” (CONN. GEN. STAT. § 26.23).

Restrictions on Handling Gear

No person except the licensed owner, an authorized licensed agent of the owner, the commissioner or authorized agents of the department or law enforcement officers empowered to serve criminal process shall remove or attempt to remove any fish or lobster from any pound, weir, net, pot or other device used for the purpose of taking or retaining fish or lobsters. (CONN. GEN. STAT. § 26-127).

- No person shall have in his possession or set or cause to be set any trap, pot or other device for taking fish or lobsters which belong to another without having written authorization from the owner or his authorized agent. Any trap, pot or other device so set and not identified by the owner's number, which shall be assigned by the commissioner, shall, for the purpose of this section, be considered prima facie evidence of having been stolen or illegally possessed by the person setting the same.
- Any unauthorized person who lifts, raises, draws or molests, or assists in so doing, any trap, pot or other device set for the purpose of taking fish or lobsters, or steals any fish or lobster therefrom except as provided herein, shall be fined not more than two hundred dollars or be imprisoned not more than six months or both. Any trap, pot or other device and accessories thereto used in violation of this section shall be forfeited to the state and shall be sold or otherwise disposed of by the commissioner or his authorized agent.

Requirements for Escape Mechanisms

Escape Vents

All lobster pots, traps and similar devices used for the taking of lobsters shall be constructed so as to contain in the catch compartment (parlor) one of the following:

- A horizontal, rectangular escape vent with an unobstructed opening not less than 1- 15/16 inches by 5- 3/4 inches, or
- Two circular escape vents each with an unobstructed opening not less than 2- 7/16 inches in diameter. (CONN. AGENCIES REGS. § 26-157c-2(a)).

Escapement Panels

All lobster pots and traps made of material other than wood used for the taking of lobsters shall be constructed so as to contain, on any side of the catch compartment (parlor), an escapement panel which, when open, will provide an unobstructed orifice not less than 3- 3/4 inches by 3- 3/4 inches. (CONN. AGENCIES REGS. § 26-157c-2(b)).

- If constructed of material other than wood, the escapement panel may be hinged and shall be held in the closed position with uncoated, ferrous wire, the stock of which is not more than 3/32 of an inch in diameter, or with untreated natural fiber such as cotton, sisal, hemp, or manila.

If constructed of wood, said escapement panel shall incorporate a rectangular escape vent with an inside measurement less than 1- 15/16 inches by 5- 3/4 inches and, on the longitudinal axis, be composed of lath not thicker than 3/8 of an inch. (Id.)

Requirements for Marking Gear

All live cars or other devices in which lobsters are kept in the water, after having been removed from the pots, traps or trawls in which they were caught shall have branded thereon, in letters or figures not less than three-quarters of an inch in height the number of the license issued by the commissioner to the owner of such live car or other device for the taking of lobsters. (CONN. GEN. STAT. § 26-157a(a)).

All lobster pots, traps or similar devices for the catching of lobsters shall be suitably identified by having legibly branded on the top of the pot, or trap or similar device and painted or branded on the float in letters or figures not less than three-quarters of an inch in height the number of the license issued by the commissioner to the owner of such pot, trap or similar device for the taking of lobsters. (Id. § 26-157a(b)).

All lobster pot buoys used in the waters of this state shall be of uniform color and pattern of coloration, such color or pattern to be determined by the license holder. (CONN. AGENCIES REGS. § 26-157c-2(e))

Pots must be affixed with a tag that is valid for the period from June 1 through May 31. (*Id.* § 26-157c-4(d)(1)).

- Tags shall only be fished in Lobster Management Areas (LMAs) for which they are designated. Possession of untagged pots on the waters of any LMA is prohibited.
- The tag must be affixed to the top of the pot, provided that it is not affixed to any portion of the door or to any cut wire mesh.

Closed Areas/Periods for the Fishery

From one-half hour after sunset to one-half hour before sunrise, no person shall set, tend or assist in setting or tending any lobster pot, trap or similar device for the catching of lobsters or any live car or other device in which lobsters are kept in the water after having been removed from the pots, traps or trawls in which they were caught. (CONN. AGENCIES REGS. § 26-157c-2(d)).

Provisions Allowing Removal DFG

While Connecticut does not have any provisions directly addressing DFG, the Department of Environmental Protection does have the authority to remove gear that is not in compliance with state law.

- Lobster pots and traps in use which do not contain the required escape vents and escapement panels may be seized by any authorized representative of the Department of Environmental Protection and disposed of as determined by the commissioner. (CONN. AGENCIES REG. § 26-157c-2).
- Any lobster pot, trap or similar device found to contain a defaced or obliterated license number may be seized by any authorized representative of the Department of Environmental Protection and either used by the Department for purposes of marine research or destroyed. (*Id.*)
- All lobster pots, traps or similar devices not marked as required and all lobsters found in such lobster pots, traps or similar devices may be seized by any authorized representative of the department and disposed of as determined by the commissioner. (CONN. GEN. STAT. § 26-157a(b)).

In addition, any fishing gear “which is abandoned, discarded or thrown away in an attempt to destroy or conceal evidence or to prevent apprehension, may be seized and taken into possession by any conservation officer.” (CONN. GEN. STAT. § 26.23).

- If the owner or person having custody of any such article at the time it is abandoned, discarded or thrown away fails to claim such article within one year after it comes into the possession of such officer, such article shall be forfeited to the state and may be retained for use by the commissioner, may be sold at public auction or may be destroyed at the discretion of said commissioner. The proceeds from such sales shall be paid to the state treasurer to be credited to the general fund.

