

322 CMR 12.00: PROTECTED SPECIES

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12.01: Purpose

The Division of Marine Fisheries works to protect marine protected species such as endangered turtles, harbor porpoise and large whales. The Division's efforts dovetail with federal regulation of marine mammals, including the northern right whale is the rarest of the world's great whales. Despite international protection by the International Whaling Commission established pursuant to the 1946 International Convention for the Regulation of Whaling and national protection afforded by the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 the northern right whale is listed as endangered and its population remains dangerously low in the Atlantic.

In response to this threat the Massachusetts Legislature passed a Resolve in 1985 requesting the Department of Fisheries, Wildlife and Environmental Law Enforcement to study the right whale in Massachusetts waters and make recommendations for its conservation. That study recommended, among other measures, a 500 yard buffer zone between right whales and vessels within Massachusetts waters.

The purpose of 322 CMR 12.00 is to:

- (1) implement a 500 yard buffer zone and prohibit activities of vessels that affect large whales, including right whales, within waters under the jurisdiction of the Commonwealth. 322 CMR 12.00 exempts vessels with federal or state Right Whale scientific study permits and commercial fishing vessels in the act of hauling back or towing gear. In addition, 322 CMR 12.00 applies to both commercial and recreational fishermen, but only to waters under the jurisdiction of the Commonwealth.
- (2) minimize the risk of large whale entanglements, including right whales in waters under the jurisdiction of the Commonwealth.
- (3) reduce interactions between harbor porpoise and commercial gillnet gear in waters under the jurisdiction of the Commonwealth.

12.02: Definitions

For the purposes of 322 CMR 12.00 the following terms shall have the following meanings:

Bottom or Sink Gillnet means a gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Buffer Zone means an area outward from a right whale a distance of 500 yards in all directions.

Critical Habitat means those waters in Cape Cod Bay under the jurisdiction of the Commonwealth that fall within the federally designated Right Whale Cape Cod Bay Critical Habitat area listed in the federal Right Whale Recovery Plan and found in 322 CMR 12.12.

12.02: continued

Double means two traps/pots connected together by a groundline with a single vertical line buoy attached.

Fixed Fishing Gear means any bottom or sink gillnets or pots that are set on the ocean bottom or in the water column and are usually connected to lines that extend to the water's surface.

Gillnet means anchored, or surface or drifting vertical walls of webbing, buoyed on top and weighted at the bottom, designed to capture fish by entanglement, gilling, or wedging.

Groundlines means the lines connecting traps/pots on a trap/pot trawl and lines connecting gillnets to anchors.

Harass means to approach, pursue, chase, follow, interfere with, observe, threaten, harm in any fashion, turn in any manner to intercept or attempt to engage in any such conduct.

Large Whale Seasonal Trap/Pot Gear Closure Area means those waters under the jurisdiction of the Commonwealth that fall within the federally designated Massachusetts Restricted Area listed in the Atlantic Large Whale Take Reduction Plan and established at 322 CMR 12.11.

Negatively Buoyant Line means line that has a specific gravity equal to or greater than that of seawater, 1.03, and does not float up in the water column.

Positively Buoyant Line means line that has a specific gravity less than that of seawater, 1.03, and floats up in the water column.

Pot or Trap means any lobster trap, modified lobster trap, fish pot, fish trap, conch pot, scup pot or other, other than nets, that is placed on the ocean bottom and designed to catch finfish or lobsters.

Pot Trawls or Strings means single pots tied together in a series and buoyed at both ends.

Right Whale means that species of marine mammal known as *Eubalaena (Balaena) glacialis*.

Single Pots or Trap means individual pots or traps buoyed at the surface.

To Abandon or To Store means to leave fixed gear in the water without hauling it at least every 30 days or in prohibited areas during prohibited periods.

To Fish means to use, set, maintain, leave in the water or haul gillnets or pots to harvest, catch, or take any species of fish or lobster.

Vessel means any waterborn craft.

Weak Link means a breakable section or device that will part when subjected to specified poundage of pull pressure and after parting, will result in a knot-less end, no thicker than the diameter of the line, the so-called "bitter end" to prevent lodging in whale baleen.

12.03: Prohibition on Certain Gear or Lines in Waters under Jurisdiction of the Commonwealth

- (1) It shall be unlawful for any person to fish fixed fishing gear with:
 - (a) Lines floating at the water's surface;
 - (b) Positively buoyant groundline; and
 - (c) Buoy lines comprised of positively buoyant line except the bottom portion of the line which may be a section of floating line, not to exceed $\frac{1}{3}$ of overall length of the buoy line.
- (2) It shall be unlawful to abandon any fixed gear.

12.04: Fixed Gear Seasonal Closures

- (1) Gillnet Closures in Right Whale Critical Habitat and Cape Cod Bay. It is unlawful to fish, store, or abandon gillnets in Critical Habitat and in waters of Cape Cod Bay west of the Critical Habitat south of 42° North Latitude during the period January 1st through May 15th.
- (2) Trap/Pot Gear Haul-out Period. It shall be unlawful for any commercial fisherman, permitted in accordance with M.G.L. c. 130, § 80 and 322 CMR 7.01(2): *Commercial Fisherman Permits*, to fish, set, store, or abandon any trap/pot gear in the Large Whale Seasonal Trap/Pot Gear Closure Area from February 1st through April 30th.

12.05: Fixed Gear Seasonal Gear Restrictions

- (1) Single Pots and Pot Trawls in Right Whale Critical Habitat. To minimize the number of vertical buoy lines in the Critical Habitat during the winter and early spring period, fishermen may fish traps/pots in either doubles or in multiple trap/pot trawls of four trap/pots or more with vertical buoy lines on each end. During the period of January 1st through January 31st and May 1st through May 15th, within the Critical Habitat, it is unlawful to fish, store, or abandon:
 - (a) single traps/pots; or
 - (b) a trawl with less than four traps/pots with vertical lines on the first and last pot of the trawl.
 - (c) a trawl with four or more traps/pots having other than a single vertical line attached to the first and last pot of the trawl.
 - (d) a double with more than one vertical buoy line.
- (2) Modifications. The Director may amend by emergency authority the gear time and area restrictions in response to changes in right whale migrations and distributions. The Director may suspend the fixed gear rules if whales depart the Bay early in the season. If at least three full surveys of Cape Cod Bay are successfully completed after April 1st yielding no right whale sightings, and if corroborating evidence supports whales' departure from the Critical Habitat, the Director may suspend the fixed gear restrictions beginning on April 21st or thereafter.
- (3) Experimental Fishery Permits for Gear Testing. The Director may issue experimental fishery permits to authorize a person to fish fixed gear that does not conform with the specifications set in 322 CMR 12.00 for the purposes of developing and testing new gear designs to minimize risk of right whale entanglement in Critical Habitat.

12.06: Fixed Gear Year-round Gear Restrictions

- (1) Gillnets. It is unlawful to fish any gillnet in any waters under the jurisdiction of the Commonwealth unless the net is rigged with the following breakaway features:
 - (a) Knot-less weak link at the buoy with a breaking strength of 600 pounds.
 - (b) Weak links with a breaking strength of up to 1,100 pounds are installed in the float rope between net panels.
 - (c) Anchoring system for the gillnets must anchor with the holding power of at least 22 pound Danforth anchor.
- (2) Trap/Pot Gear. It is unlawful to fish any traps/pots in any waters under the jurisdiction of the Commonwealth 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.
- (3) Exceptions. During January 1st through May 15th, all buoy lines attached to traps/pots fished in the Right Whale Critical Habitat shall be equipped with a Weak Buoy Link that will part when subjected to 500 pounds or less of pull pressure along the buoy line.
- (4) A list of DMF approved weak links is available from DMF and furnished to fishermen upon request.

12.07: Buffer Zone

Except as otherwise provided for in 322 CMR 12.10, it is unlawful:

- (1) for any vessel to enter a right whale buffer zone,
- (2) for any vessel to approach or intercept a right whale within a buffer zone;
- (3) for any vessel not to depart immediately from a buffer zone, or;
- (4) for any commercial fishing vessel which has completed a haul back, a tow of its gear or otherwise completed its fishing operation and is no longer at anchor not to depart immediately from a buffer zone;

12.08: Harassment and Harm

It is unlawful for any operator of a vessel to harass or to harm any right whale at any time or place.

12.09: Entanglement Reporting

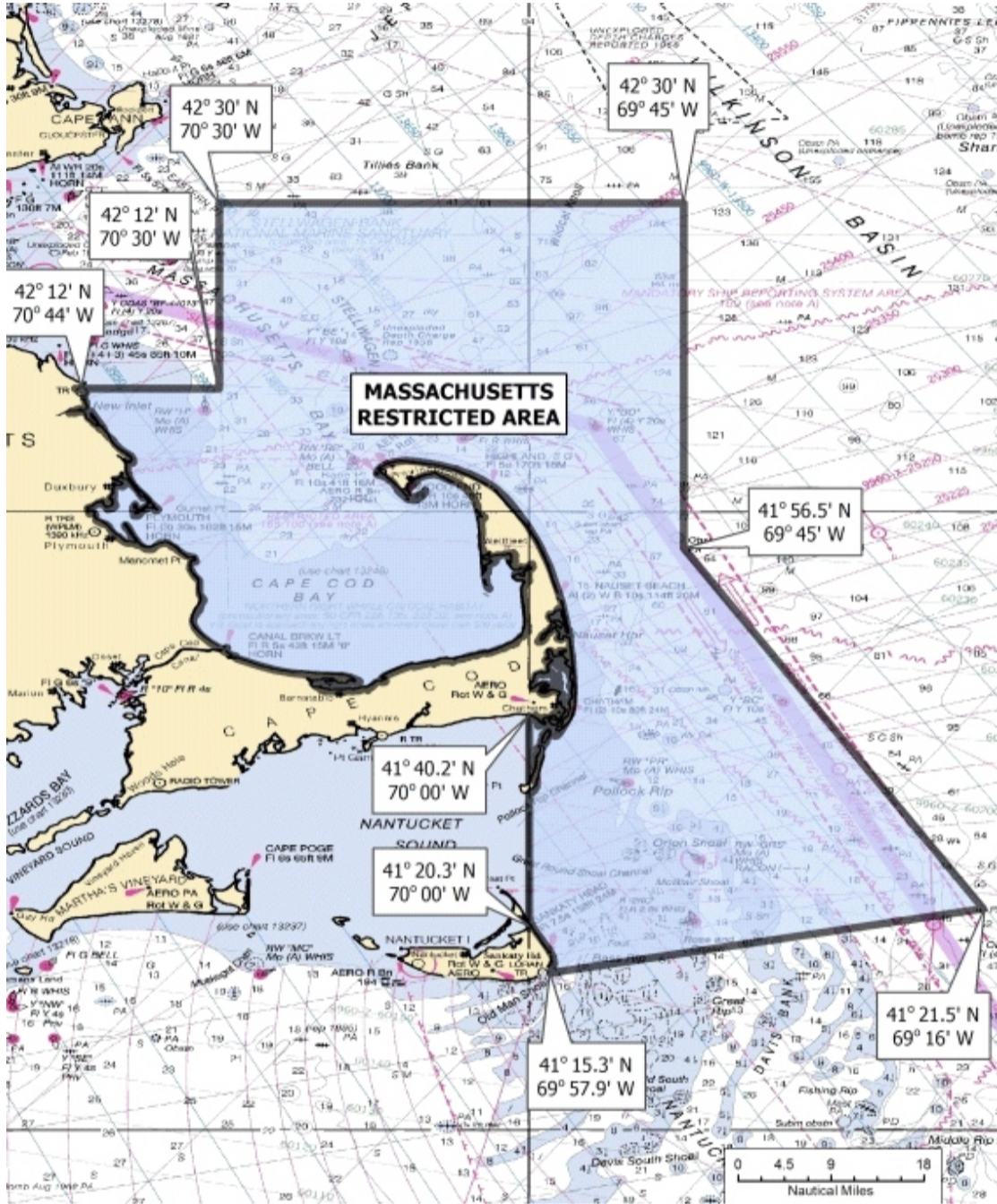
It is unlawful for any operator of a commercial or recreational vessel to fail to report the entanglement of a right whale in its gear or lines.

12.10: Exceptions

- (1) Federal Permit. Any person issued a permit from any federal department, agency or instrumentality having authority to issue permits for the scientific research, observation, or management of the right whale, may conduct the activity authorized by such permit.
- (2) State Permit. Any person issued a permit in accordance with 322 CMR 7.01(4)(d) for the scientific research, observation, or management of the right whale may conduct the activity authorized by such permit.
- (3) Commercial Fishing. Commercial fishing vessels in the act of hauling back, towing gear or engaged in fishing operations at anchor within a buffer zone created by the surfacing of a right whale, may complete the haul, tow or fishing operation provided it does so with a minimum of disruption to the right whale, hauls, tows or conducts its fishing operation in a direction away from the right whale, and departs from the buffer zone immediately after the haul, tow, or fishing operation. In no event may 322 CMR 12.09(3) be construed to authorize a commercial fishing vessel to begin to haul, tow, or conduct its fishing operation in or into a buffer zone.
- (4) Disentanglement.
 - (a) To assist federally approved disentanglement efforts for northern right whales, any vessel that reports to the National Marine Fisheries Service, the Division of Environmental Law Enforcement, the Coast Guard, or to designees of those agencies, that it has sighted an entangled right whale may operate in the buffer zone to assist those agencies in locating and tracking the whale if requested to do so by those agencies.
 - (b) Any vessel operating in the buffer zone under 322 CMR 12.06(4) shall:
 1. operate so as to minimize disruption to the right whale, and
 2. immediately depart the buffer zone once the disentanglement effort begins, or when requested to do so by the agencies or their designees.
 - (c) When conducting activities within the scope of 322 CMR 12.06(4), vessels shall make every effort to comply with 322 CMR 12.00.

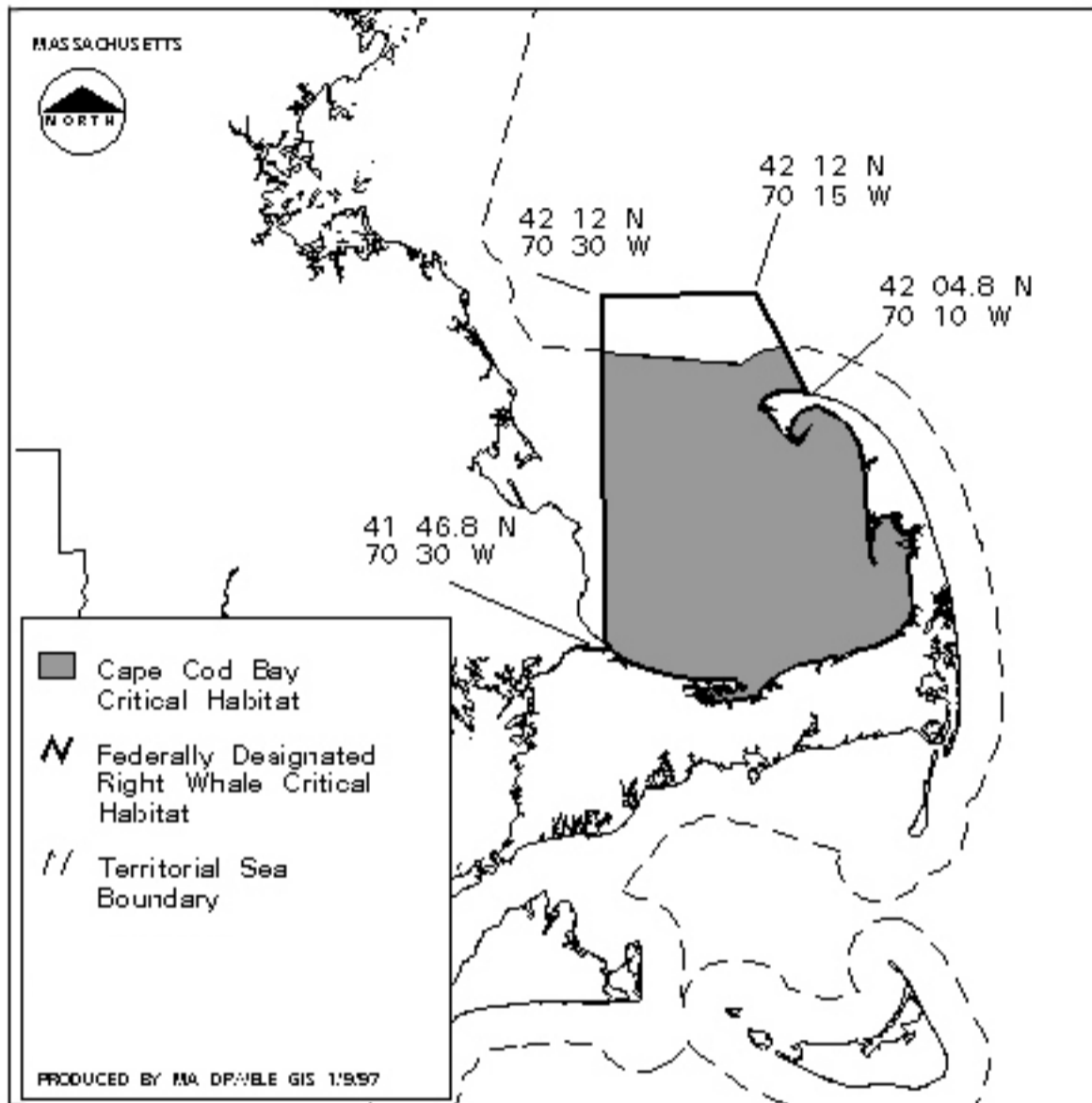
12.11: Large Whale Seasonal Trap/Pot Gear Closure Area

The following map depicts the federal Massachusetts Restricted Area and its coordinates. That portion of the Massachusetts Restricted Area within the waters under the jurisdiction of the Commonwealth is referred to as the Large Whale Seasonal Trap/Pot Gear Closure Area.



12.12: Right Whale Cape Cod Bay Critical Habitat Map

The following map depicts the Cape Cod Bay Critical Habitat and its coordinates.



REGULATORY AUTHORITY

322 CMR 12.00: M.G.L. c. 130, § 17(11); c. 30A.