

Transcript for Presentation:

Public Comment Period: Proposed Modifications to the Massachusetts Restricted Area to Make Final the MRA Wedge Trap/Pot Buoy Line Closure from February 1 Through April 30 Annually
Recorded September 22, 2023

Slide 1: This presentation will provide background and information on how to submit public comments regarding the proposed regulation to make final the annual seasonal closure of an area we call “the Wedge.”

Slide 2: Right whales are in trouble. After being decimated by whaling, and then being protected and experiencing a population increase, they started to decline In 2010. This decline has been linked to a shift in right whale distribution due to climate-driven changes in ocean circulation, warming, and change of prey availability, which has led them to seek new feeding grounds. The most recent published estimate of right whale population size in 2020 is 338 whales (95 percent confidence interval: 325-350) with a strong male bias. And there are fewer than 100 reproductive females, and as you can see at the bottom, calving has not kept up with the deaths. And where cause of death has been determined, all adults have been killed by either vessel strikes or entanglements. They are protected under the ESA and MMPA, and we are working on a number of actions under both laws. The proposed regulation would be part of the take reduction planning required under the MMPA.

Slide 3: Reducing the risk of entanglements is just one of the areas we’re working to help address threats to right whales. We have a North Atlantic Right Whale Road to Recovery page on our website that goes through all the work we’re doing to address a variety of threats, including emerging issues, throughout their range. The scope of public comment period is just the proposed rule regarding the Massachusetts Restricted Area Wedge closure that addresses an area with a high risk of entanglement.

Slide 4: Under the MMPA, take reduction plans are required when takes exceed a level, called the potential biological removal, that is the number of whales that can be removed from the population by other than natural causes while still allowing right whales to reach their optimum sustainable population. We assemble a team that is an advisory body made up stakeholders - we have a 60 member team that includes state and federal resource managers, conservation groups, academics and scientists, fishery management organizations, gillnet fishermen, and trap/pot fishermen. Included in industry representation are some industry groups, like the Mass lobstermen’s association, the Maine lobstermen’s association, offshore lobstermen’s association, and others. The team’s focus is on recommending measures to get takes for right, fin, and humpback whales to below PBR. Because the PBR for right whales is only 0.7 per year, less than one whale per year, they generally tend to drive the action. When we can see that current regs are not getting us to PBR, we convene the Team, and discuss options. The downturn in the

population that started in 2010, which you saw in the previous slides, is what started this round of rulemaking. When we can see that current regs are not getting us to PBR, we convene the Team, and discuss options. The measures are implemented across 11 commercial “fishery” groupings, which are State and federally managed gillnet and trap/pot fisheries from ME thru FL.

Slide 5: I’m going to briefly cover the background for the development of the proposed rule. There is a great deal more information on the recent regulations, the whale data, the fishing effort, the economics, the habitat and much more in the Environmental Assessment that is on our website. This is a photo taken in the Wedge in April 2021, and illustrates the purpose and need for the proposed rule. You see a right whale surfacing right next to a buoy.

Slide 6: Every year, right whales return to Cape Cod Bay in January and stay through April, sometimes into May. Cape Cod Bay is a popular feeding ground for right whales, with sometimes a third or even half of the population showing up here. Though many right whales aggregate within Cape Cod Bay, they are highly mobile and are also detected visually or acoustically in and around Massachusetts Bay and the MRA Wedge, with a notable increase from February through April. Data on right whale presence in February and March in Massachusetts Bay and the MRA Wedge are also likely underestimated given lower survey effort in the area north of Cape Cod Bay and variation in whale detection during these months. As the right whale’s food source declines in April within Cape Cod Bay, right whale distribution accordingly shifts and increases the presence of right whales in the MRA Wedge as they leave Cape Cod Bay, contributing to a peak of sightings in Massachusetts Bay in April. Right whale presence in Massachusetts Bay is likely to shift as climate change impacts the population use of Cape Cod Bay, potentially contributing to higher abundance in earlier months.

Slide 7: Center for Coastal Studies and the Northeast Fisheries Science Center reported consistent observations of right whales within this wedge February through April 2018-2022 (Figure on left). Aerial surveys conducted by CCS in April 2021 and February and March of 2022 also documented the presence of aggregated fixed fishing gear, that is gillnet and trap/pot gear) in the MRA Wedge and in waters north of the MRA (Figure on right). In January 2022, NMFS received letters and emails from Massachusetts Division of Marine Fisheries, Stellwagen Bank National Marine Sanctuary, and non-governmental organizations expressing concerns about this gap in restricted waters and the heightened risk of entanglement for right whales during the MRA closure period from February through April. We closed the area through emergency action in April 2023, and again, because the risk is persisting, from February through April in 2023. We have gotten additional requests to permanently close the area. On August 22, 2023, MA DMF again reiterated strong support for a permanent annual closure of the MRA Wedge from February through May due to “a level of entanglement risk that is troubling and begs for a permanent management solution.” MA DMF stated in a letter to NMFS that the “gap in the closure...created a refuge for fishers to place their gear, leading to

extraordinarily high gear densities in the Wedge Area. DMF believes most gear in this area is infrequently hauled and largely being stored in this location....”

Slide 8: Here are some additional maps of the right whale detections in February, March, and April from 2020-2023- red are definite right whales, yellow are probable right whales, and visual detections, which are gray, again, supporting the need for action to reduce the risk of entanglement.

Slide 9: This proposed rule would close the area you see circled in red in the map for the same time - February through April - that the areas surrounding that wedge are closed. There is the Massachusetts Restricted Area in that has been in effect since 2015 and the Massachusetts State Commercial Trap Gear Closure to Protect Right Whales that was implemented by the state and then mirrored in the federal 2021 final rule. The wedge area would be closed to persistent trap/pot buoy lines from February through April.

Slide 10: The Draft Environmental Assessment and Draft Regulatory Impact Review are also on our website, and we are seeking comments on these as well. They are comprehensive documents, and provide the information that we used in our analysis.

Slide 11: We looked at three different alternatives in our Draft Environmental Assessment - as you see here, there was the no action alternative, the preferred alternative that just closes what we are calling the wedge, and we also looked at a larger closed area that would close nearly 1300 square miles. We also looked at doing an April-only closure, but determined that would leave a very risky area open, and ripe for entanglements during February and March, when there is a very active whale presence.

Slide 12: When comparing the different alternatives, we used the decision support tool, a model that has three layers - gear density, gear configurations and strength, and whale habitat-based density. The DST version used to estimate risk reduction relies on right whale distribution data from 2010 through September 2020 and buoy line estimates from recent years (2015-2018 for lobster, 2010-2020 for other federal trap/pot fisheries, and 2012-2019 for other trap/pot fisheries in state waters), before the current boundaries of the MRA and the MA State Waters Trap/Pot Closure were implemented. The right whale habitat density model uses oceanographic and habitat variables across the region to create a map of likely whale presence. It's important to note that we have acoustic and visual detections of whales, as you have seen, in addition to the habitat-based model indicating that this is an area of high whale use during this time period. Sightings data collected during the months of February through April in the years 2018 through 2022 show that there are at times substantially more right whales in the area than the model estimates that rely on earlier years' surveys. So this could be a lower estimate for the actual amount of risk reduction that whales would benefit from. But we are using the tool to compare

the alternatives. We know from existing restricted areas that removal of all gear from the water is more likely for nearshore restricted areas, particularly the Massachusetts Restricted Area (MRA), when fishermen would have a long transit to open areas and where those without federal permits are restricted in area choices. Many fishermen, including those from the state's largest lobster landings port, Gloucester, will likely move their gear to open waters and continue fishing during the MRA Wedge closure period. Therefore, we assume more lines would be removed from the water, reducing the likelihood that fishing gear will be relocated when comparing the different alternatives, we used the decision support tool, a model that has three layers - gear density, gear configurations and strength, and whale habitat-based density. The DST version used to estimate risk reduction relies on right whale distribution data from 2010 through September 2020 and buoy line estimates from recent years (2015-2018 for lobster, 2010-2020 for other federal trap/pot fisheries, and 2012-2019 for other trap/pot fisheries in state waters), before the current boundaries of the MRA and the MA State Waters Trap/Pot Closure were implemented. The right whale habitat density model uses oceanographic and habitat variables across the region to create a map of likely whale presence. It's important to note that we have acoustic and visual detections of whales, as you have seen, in addition to the habitat-based model indicating that this is an area of high whale use during this time period. Sightings data collected during the months of February through April in the years 2018 through 2022 show that there are at times substantially more right whales in the area than the model estimates that rely on earlier years' surveys. So this could be a lower estimate for the actual amount of risk reduction that whales would benefit from. But we are using the tool to compare the alternatives.

We know from existing restricted areas that removal of all gear from the water is more likely for nearshore restricted areas, particularly the Massachusetts Restricted Area (MRA), when fishermen would have a long transit to open areas and where those without federal permits are restricted in area choices. Many fishermen, including those from the state's largest lobster landings port, Gloucester, will likely move their gear to open waters and continue fishing during the MRA Wedge closure period. However, under alternative 3, it is less likely that gear would be relocated because the remaining waters in LMA 1 require a Maine Zone permit. Only vessels with dual LMA permits for LMAs 1 and 3 would be able to relocate into LMA 3 during the closure. Therefore, we assume more lines would be removed from the water, reducing the likelihood that fishing gear will be relocated. The model estimated maximum and minimum relative risk reduction based on two assumptions of what happens to gear during a closure. The maximum relative risk reduction relies on a scenario assumption where lines are removed from the water, while the minimum risk reduction estimate assumes that all the lines are moved to outside the restricted area. Therefore, actual risk reduction will likely fall between the two analyzed extremes. There are limitations in the ability of the model to predict where gear is reset and in what density, so bear that in mind. The DST is one tool that we use when we evaluate the alternatives. As you see here, the risk reduction that this closure would contribute to -- in the top half, the portion of risk reduction compared to the total risk in the MA portion of the LMA 1, and

in the lower part compared to all NE trap/pot risk. The model estimated maximum and minimum relative risk reduction based on two assumptions of what happens to gear during a closure. The maximum relative risk reduction relies on the gear reduction scenario assumption that all lines are removed from the water, whereas the minimum risk reduction estimate assumes the implementation of a closure scenario redistributes the gear to areas outside of the restricted area. Therefore, actual risk reduction will likely fall between the two analyzed extremes. There are limitations in the ability of the model to predict where gear is reset and in what density, so bear that in mind. The DST is one tool that we use when we evaluate the alternatives. As you see here, the risk reduction that this closure would contribute to -- in the top half, you can see the portion of risk reduction compared to the total risk in the MA portion of the LMA 1, and in the lower part compared to all NE trap/pot risk.

Slide 13: We calculated the number of vessels impacted using the average number of vessels fishing within the MRA Wedge for the months of February, March, and April for each year from 2017 to 2021 based on Vessel Trip Report (VTR) data and adjusted based on the average percentage of LMA 1m federal lobster-only vessels required to provide VTR data in Massachusetts (41 percent). We estimated that 26 to 31 vessels would be affected by Alternative 2, and 53 to 66 vessels affected by Alternative 3. For Alternative 2, the annual compliance costs including gear transportation cost and lost revenue range from \$339,000 to \$608,000 for February to April. For vessels moving their gear to new fishing grounds, the costs are around \$139,000 to \$278,000, about \$9,500 to \$19,100 per vessel; for vessels that stop fishing, the costs are around \$200,000 to \$331,000, about \$11,000 to \$18,000 per vessel. For Alternative 3, the annual compliance costs range from \$898,000 to \$1,453,000. Total costs for vessels moving their gear to new fishing grounds range from \$290,000 to \$581,000, about \$9,900 to \$20,000 per vessel. Total costs for vessels that stop fishing are from \$608,000 to \$872,000, about \$11,400 to \$20,500 per vessel. If you look at costs for each percentage of risk reduction, Alternative 2 showed about \$22-40 thousand per percent risk reduction, while Alternative 3 shows \$30 to 48 thousand for each percent of risk reduction.

Slide 14: We take your comments seriously, and there are many instances where the comments we receive during the public comment period help shape what is in the final rule. The most effective comments are the ones that provide us specific suggestions of ways that the regulation can be improved so, in this case, suggestions on how to improve the proposed closure in terms of time or area, or if you have information you think we should consider that we have not, and which alternative you support and why.

Slide 15: You can submit a public comment through [regulations.gov](https://www.regulations.gov) - go to the website and enter the number you see there. Go to [regulations.gov](https://www.regulations.gov) Search for the Docket number: NOAA-NMFS-2023-0083-0001. Under the proposed rule, click: "Comment Now. Or, If you google MRA wedge september 2023, you should also be able to find all the information.

Slide 16: We scheduled two public hearings for September 26 and 28. These are in-person meetings only. If you are not able to attend or if you are watching this after September 28, please submit your written comments through [regulations.gov](https://www.regulations.gov).

Slide 17: Thank you for watching this presentation. Please remember to submit your comments by October 18 through the [regulations.gov](https://www.regulations.gov) portal. If you have any questions, please contact me at the either of the email addresses on the screen