



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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From: Mark Gibson
Deputy Chief for Marine Fisheries

Date: October 3, 2014

Subject: Rhode Island Exemption Request to ALWTRP final rule

Rhode Island is submitting the enclosed exemption request from the recent amendment to the Atlantic Large Whale Take Reduction Plan, pursuant to the guidelines developed by NMFS for exemption requests. Our request is specific to the prohibition on deployment of single pots in the lobster/fish pot gears.

RI has been an active participant in the ALWTRT since its conception in 1996. We have actively worked with the Team, including NMFS, industry, as well as outreaching to multiple partners to seek rationale alternatives to balance the operational needs of industry while attempting to meet the critical need for whale conservation. RI sits on multiple TRT's, and has always worked to foster this balance, developing the RI Conservation Plan for marine mammals and sea turtles, development of a response network, hosting workshops for education and outreach and enlisting industry in aiding in marine mammal response.

We will continue to partner with the agency, the TRT and industry to further investigate viable alternatives. Please contact April Valliere or Scott Olszewski on my staff should you have further questions.

Cc: Director Janet Coit-RIDEM
Larry Mouradjian- RIDEM
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Kate Swails, NMFS

Rhode Island Exemption Request to the Final Atlantic Large Whale Take Reduction Plan

The Rhode Island Department of Environmental Management, Division of Marine Fisheries is applying for an exemption to the final rule (50 CFR Part 229.32) to the “trawling up” requirement for lobster and fish pot gear types, which implements a prohibition on the setting of single pots. These fisheries are a vitally important component to RI’s economy . We believe this restriction is unnecessary in RI state waters based upon the low co-occurrence between whales and prime fishing activity. Historically, RI state waters have not been a high use area, except for a few anomalous periods of whales feeding in the area for short periods of time coinciding with unusually high volumes of copepod concentrations.

Background on Affected Fisheries

Lobster

The lobster industry has historically been the one of the most valuable commercial fisheries in the state of Rhode Island. It is a large complex fishery that has been undergoing dramatic shifts in effort in response to declining stock status in the last decade. Industry has worked with the state in the Take Reduction Team process, suggesting viable alternatives for whale conservation during this time. At present, the industry has shrunk noticeably, and further cuts from a management perspective are looming.

The lobster resource in Narragansett Bay and Rhode Island coastal waters (Lobster Conservation Management Area 2, Southern New England lobster stock unit) has been over exploited for many years. Rhode Island Division of Fish and Wildlife (DFW) surveys conducted in Narragansett Bay and Rhode Island coastal waters since 1979 show that local lobster abundance dropped from high levels in the mid-1990’s to low levels in 2002-2003 (Figure 1). Although surveys conducted during 2005-2008 caught slightly more lobster, abundance has not recovered to former levels and remains below the time-series average. URI scientists have observed a similar pattern in lobster catches made by the Graduate School of Oceanography survey in state waters (Figure 2). Both Massachusetts and Connecticut have reported lobster declines to the east in Buzzards Bay and to the west in Long Island Sound. The decline in abundance of both sub-legal and legal lobster from 1997 to 2002 was preceded by a steep decline in the abundance of newly settled lobster from 1990 to 1996 (Figure 3).

RIDFW has also conducted a ventless trap survey from 2006-2014 and all indicators in recent years depict poor recruitment and resource decline. These abundance patterns are consistent with the generally accepted time lag of 6-7 years between first settlement and attainment of adult size. In addition to reduced settlement, shell disease, oil spills, and increasing predation by finfish have likely increased the natural mortality rate and reduced the number of lobster

surviving from settlement to legal size. The combined effects of reduced settlement and declining post-settlement survivorship have impacted the fishery, reducing recruitment, landings and catch per unit effort (CPUE) to lower levels (Figure 4). Fishery performance indicators are generally negative, reflecting the fact that catches and abundance are cascading downward. In general, stock indicators and model results both reflect the same stock status: overall abundance, spawning stock biomass, and recruitment are all at low levels throughout SNE lobster stock region; the stock has not rebuilt since the last assessment and is still in poor condition.

In May 2012 the Atlantic States Marine Fisheries Commission (ASMFC) American Lobster Management Board approved Draft Addendum XVIII for Public Hearing. The draft Addendum proposed a consolidation program for Lobster Conservation Management Area's (LCMA) 2 and 3 to address latent effort and reduce the overall number of traps allocated. The specific management tools being considered include trap allocations, trap banking and controlled growth for participants in the fishery. Addendum XVIII was approved in August 2012 with the goal of scaling the southern New England lobster fishery to the size of the resource, with an initial goal of reducing qualified trap allocation by 25% - 50% over a 5-10 year period of time.

Additional restrictions may be placed on existing fishers in the future via addendums to the interstate fishery management plan including a prohibition on issuance of new Area 2 permits. This prohibition includes state lobster licenses and landing permits applicable to lobster. The state is preparing to neutralize latent effort through the trap reductions imbedded in Addendum XVIII so that it cannot activate if resource conditions improve. Participation in Area 2 is based on historical performance and the state has reviewed lobster licensing and made appropriate changes in preparation for limited access-historical performance. A lobster trap allocation transferability program that was initiated with Addendum XII is under development in consultation with ASMFC and NOAA fisheries. This can be used to bring new individuals into the fishery without increasing effort above that qualified in the initial trap allocation.

The ongoing 2014 ASMFC benchmark stock assessment has determined the SNE stock remains in poor condition. Due to poor stock status in the Southern New England area, attrition from the lobster fishery and reduced fishing effort has been dramatic, along with a shift to other fisheries (directed jonah crab, trawl, gillnet and conch). A large number of lobster businesses have sold out, with a reverberating negative impact on the local community and fishing ports. Table 1 represents all license categories endorsed to catch lobsters over the last 12 years, as well as trap tags ordered as a proxy for potential effort. Licenses have declined steadily in response to declining stock status.

Although we cannot quantify the reduction in vertical lines, we can qualitatively assume a large number of vertical lines have already been removed from SNE waters due to the decreased number of pots being set in lobster fishery. The fishery has changed radically since the analysis for the EIS was done, using 2009-2010 data. Table 2 shows the actual decline in lobster pots reported fished from 2011 on.

Affected Pot Fisheries

There are a number of pot fisheries prosecuted in RI state waters that are included in the TRP regulations. Those fisheries include scup, black sea bass, conch, jonah crab and eel. Blue crab pots are allowed by statute. Fish pot activity peaks during the month of July, conch pot fishery is late spring thru December with highest number of pots being fished during the fall months.

Scup: RI has a 50 pot limit on scup pots per license holder. Pots are set as singles seasonally primarily from May-September. Requiring pots to be trawled up is not feasible due to safety reasons. Pots are often set on rocky habitat and due to rough bottom and tidal conditions, couldn't be hauled safely. This seasonal fishery is prosecuted by smaller vessels that would not have the deck space to trawl up. Fishing activity peaks in July.

Black Sea Bass: While there is currently no limit on the number of pots, this fishery is governed by an extremely limited quota, which necessitates low trip limits and frequent closures. For the May-September season, the fishery was only open for 57 days. The month of August has been closed for this fishery with the concurrence of industry in attempts to extend the season. These factors are self limiting on the number of pots set, with a 50 pound daily trip limit.

Conch: RI currently has a 300 pot limit, pots are deployed singly and also in trawls. Sea sampling and logbook data indicate virtually the entire fishery takes place within the already exempted areas inside of Narragansett Bay. Conch fishery is targeted April thru December with the fall months showing the highest effort. The fishery has been opportunistically pursued depending on stock status, and has recently become self limiting due to the availability and high cost of bait; horseshoe crabs. Conch fishing effort increased as a substitute fishery for the lobster industry due to the decline in that stock

Eel: Single pot fishery is prosecuted entirely within the already exempted area with single pots

Jonah Crabs: The directed Jonah fishery increased subsequent to the decline in lobster resource and is targeted offshore in federal waters. Within state waters, Jonah crabs are primarily caught as by catch seasonally in the lobster fishery.

Blue Crabs: Pots are limited to 25 crabs, thereby limiting the number of pots set for harvesting of blue crabs in state waters. The entire blue crab pot fishery is pursued within exempted state waters.

None of the other pot fisheries listed in the final rule are prosecuted in RI state waters or adjacent federal waters.

Exemptions requested from specific ALWTRP gear requirements

Elimination of the prohibition on single pots/trawling up requirements:

- Prohibition of Single Pots in Rhode Island State waters (0-3 miles). We are requesting a change from the current exempted waters from Narragansett Bay and the South Shore Coastal Ponds to include all Rhode Island State waters which would allow for seasonal single pot fisheries. See Figure 5 for areas.

- The State of Rhode Island has substantial seasonal lobster and fish pot fisheries which take place from late spring to early fall months in the inshore State waters zone from 0-3 miles. The spatial and temporal analysis presented in the final Environmental Impact Statement documents a very low co-occurrence during this time. DFW's knowledge and response to large whale presence in state waters has historically occurred between December to April.

- These fisheries are prosecuted by small vessels, almost always single handed. The final rule institutes the prohibition of single pots and requires trawls to have two pots per trawl and one vertical line. Two pot trawls are not an option for these small boat fisheries and pose a significant safety concern. Single pot fisheries deploy a single pot before another one is hauled. There can be little room for additional pots and ground line during the fishing operations given the limited size of the vessels. This measure would be unlikely to have an impact on large whale entanglements as this area has a low co-occurrence score based on 2009/2010 Northeast Baseline co-occurrence analysis. There are also no known serious injury or mortality events to marine mammals in Rhode Island State waters attributed to single pot fisheries.

- The Rhode Island fixed gear fishing fleet is diverse with multiple vessel and operation sizes. The fleet is comprised of vessels from wood bottom skiffs measuring 16 feet in length to greater than 50 foot inshore/mid shelf vessels. There are a number of mid range vessels that have tailored their operations based on the vessel's capability to haul and transport gear to and from their fishing grounds which can be from the immediate shore

to offshore fishing grounds. There are small vessels that fish this distance from shore but can not accommodate large trawls due to space and safety concerns.

- The State of Rhode Island has concerns with the gear complexity issue of trawling up. The fact that trawls will now be heavier, fishermen would likely have to use heavier line trawling up and thereby difficult for large whales to shed if an entanglement occurs. This is a serious concern that may undermine the reduction in vertical line strategy. The problems stated above would create few options for industry to safely meet the objectives of the Large Whale Plan as well as creating an economic hardship

Rationale: Seasonality of fisheries and co-occurrence model support exemption. Safety issues have been repeated throughout TRT rulemaking by industry and the state(s). The RI inshore lobster/pot fisheries abut similar Massachusetts fisheries which have also requested an exemption on the prohibition of single pots. Both requests have identical concerns and justification for such requests.

Reasonable trade off options: none

Gear Marking: Remains the same as the final rule, no exemption or special markings are requested

Expected Conservation benefits: Conservation neutral, RI state waters are not a high risk area, given the low number of large whales observed in the area during the months of highest fishing pressure.

Implementation: June 2015 restrictions to be lifted

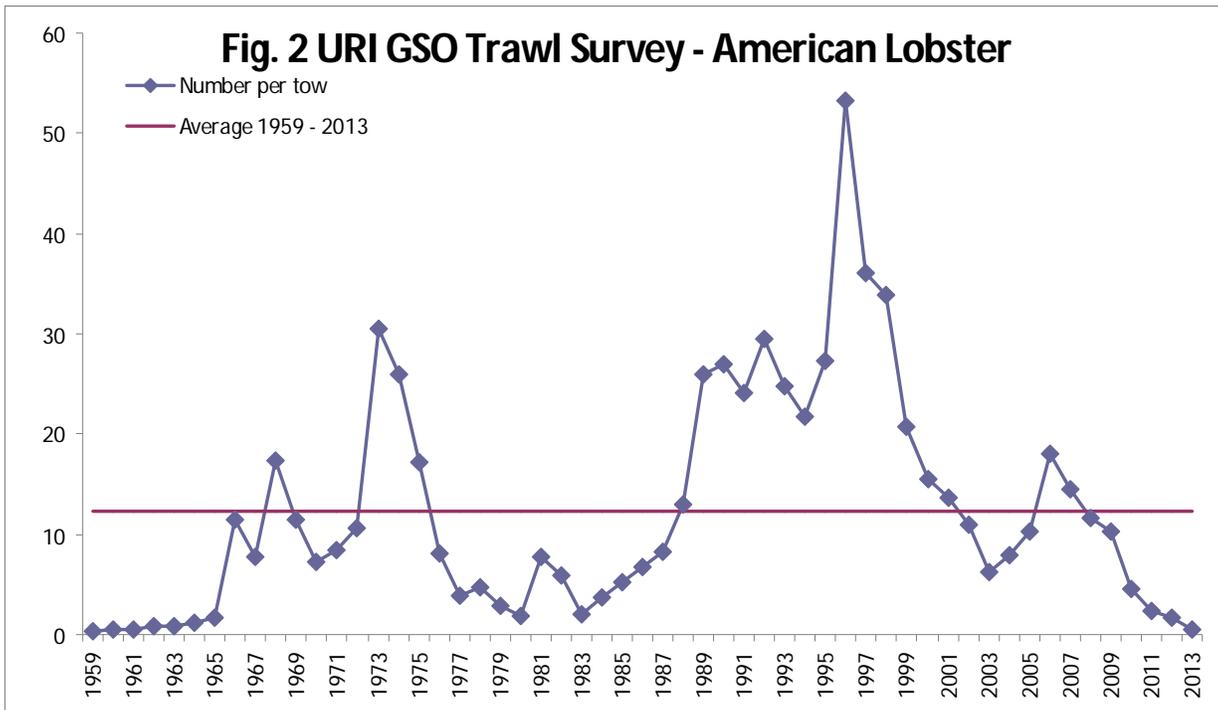
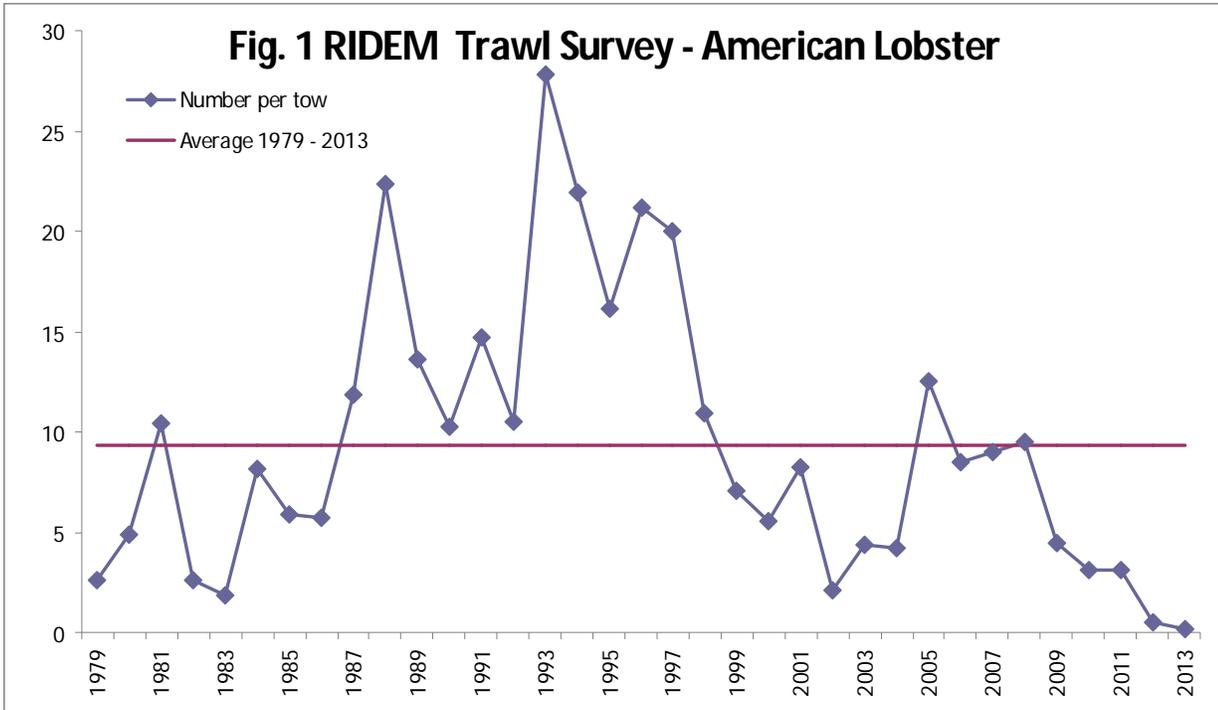
Strategic Monitoring: No additional observer coverage proposed. RI has had a dedicated lobster sea sampling program in Narragansett Bay and the RI/BIS area for 24 years which was utilized to characterize the resource and fishing operations. Due to the decline in fishing effort, DFW has been unable to find vessels to continue sampling at previous levels.

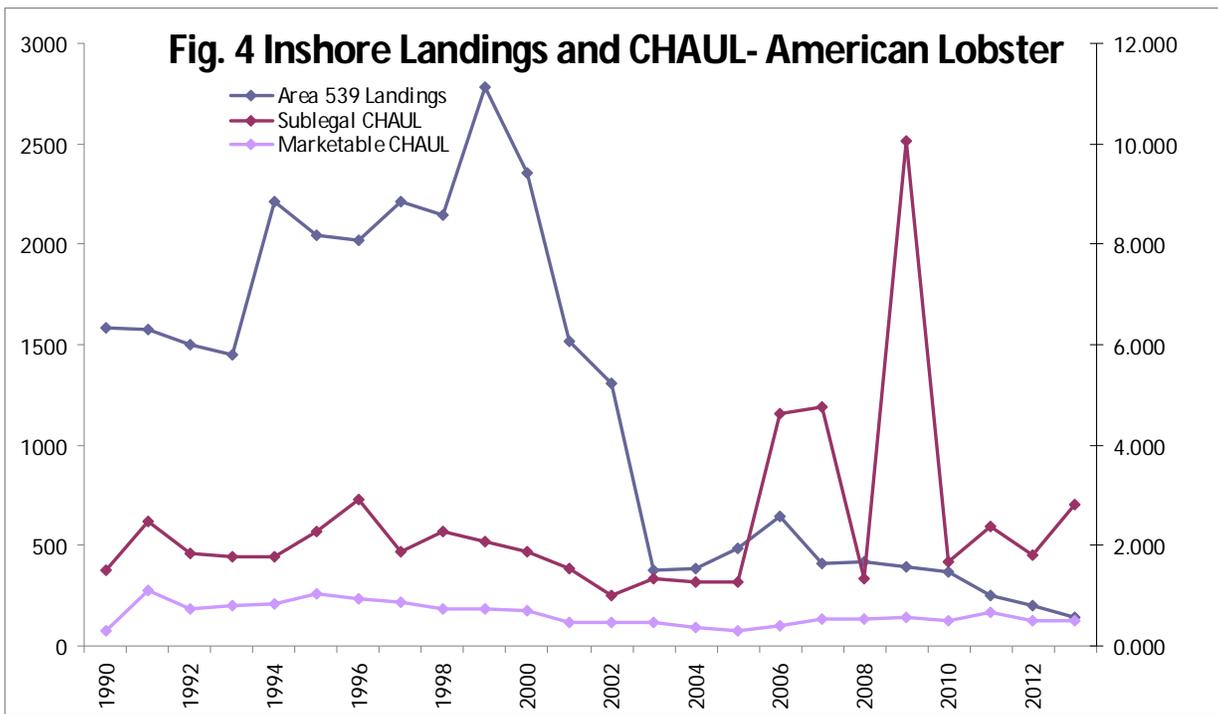
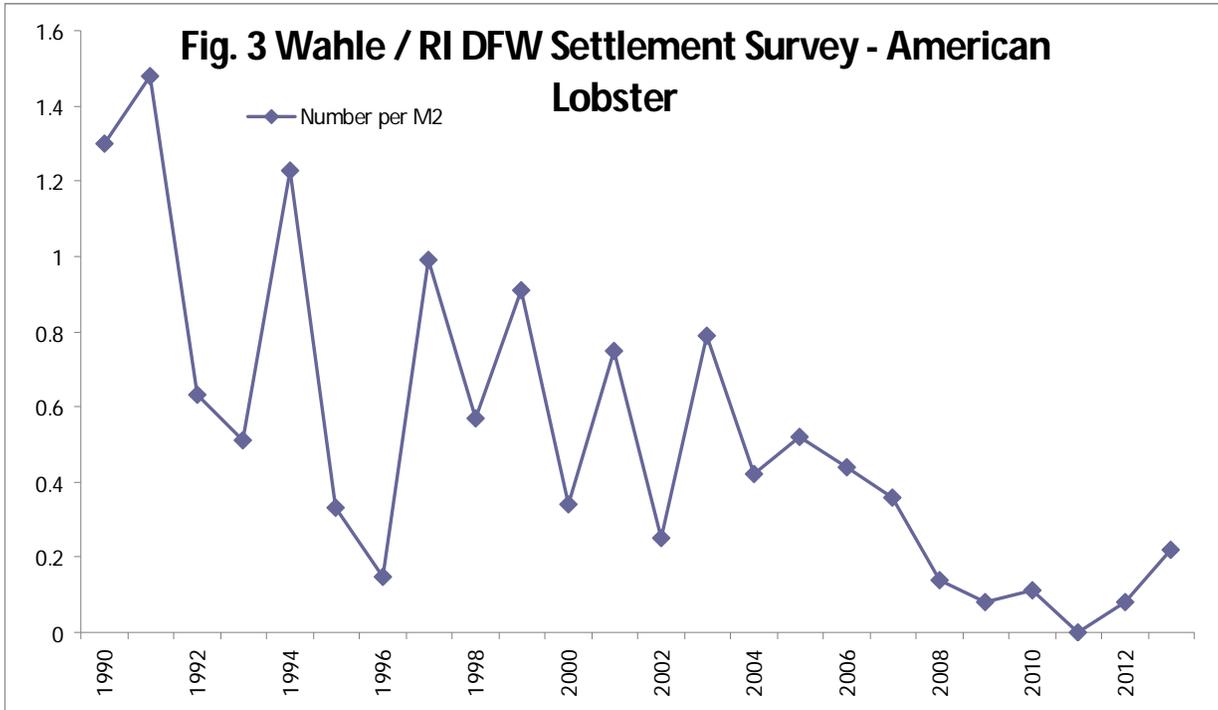
Table 1 - Rhode Island Commercial Fishing License and Lobster License/Endorsement Issuance Data, 2003-2014.

License Type	YEAR											
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total Multi-Purpose Licenses MPL	1191	1135	1075	1019	973	939	917	891	868	853	829	816
MPL w/ lobster endorsement*	1191	1135	1075	1019	973	939	917	891	868	853	829	816
MPL ordered trap tags (State only/Area2)**	265	243	228	207	154	172	148	156	141	108	113	88
MPL w/ lobster trap allocation (State only/Area2)*					210	219	215	210	209	209	210	200
MPL ordered trap tags (Federal/Area 2)**	130	130	119	108	95	91	87	89	81	78	83	64
MPL w/ lobster trap allocation (Federal/Area 2)*					112	111	112	110	110	104	107	108
Total Principal Effort Licenses PEL	1325	1148	997	930	862	810	776	737	717	690	655	615
PEL w/ lobster endorsement*	61	56	52	46	45	44	40	38	37	36	30	27
PEL ordered trap tags (State only/Area 2)**	25	21	19	18	20	17	17	17	13	10	10	5
PEL w/ lobster trap allocation (State only/Area 2)*					23	22	22	21	21	21	21	16
PEL ordered trap tags (Federal/Area 2)**	16	15	15	10	12	12	13	13	12	7	7	7
PEL w/ lobster trap allocation (Federal/Area 2)*					14	14	15	15	14	14	13	13
Total Commercial Fishing Licenses CFL	271	283	317	397	464	421	433	450	394	398	420	404
CFL w/ lobster endorsement***	50	48	41	38	32	27	22	19	17	16	15	14
CFL ordered trap tags (State only/Area 2)**	24	16	13	10	6	6	6	6	5	4	4	2
CFL w/ lobster trap allocation (State only/Area 2)***					9	8	8	8	8	8	8	6
CFL ordered trap tags (Federal/Area 2)**	0	2	2	2	2	2	1	1	1	1	1	1
CFL w/ lobster trap allocation (Federal/Area 2)***					2	2	2	1	1	1	1	1
Total Effective Lobster Licenses	1302	1239	1168	1103	1050	1010	979	948	922	905	874	857
Total Effective Lobster Licenses w/ trap allocation	0	0	0	0	370	376	374	365	363	357	360	344
* 800 trap limit during 2003-2006; individual history-based lobster trap allocation starting in 2007; all MPL licenses are endorsed to take lobster.												
** 2003-2013 used trap tag orders as proxy for "effective" lobster licenses												
*** 100 trap limit during 2003-2006; individual history-based lobster trap allocation starting in 2007												

Table 2 – Actual lobster pots reported fished from SAFIS logbooks

	Decline in traps/fishermen 2011=2013	
	# traps	# fishermen
2011	312180	733
2012	269283	629
2013	210393	492





72°00'W

MASSACHUSETTS

PROVIDENCE

NARRAGANSETT BAY

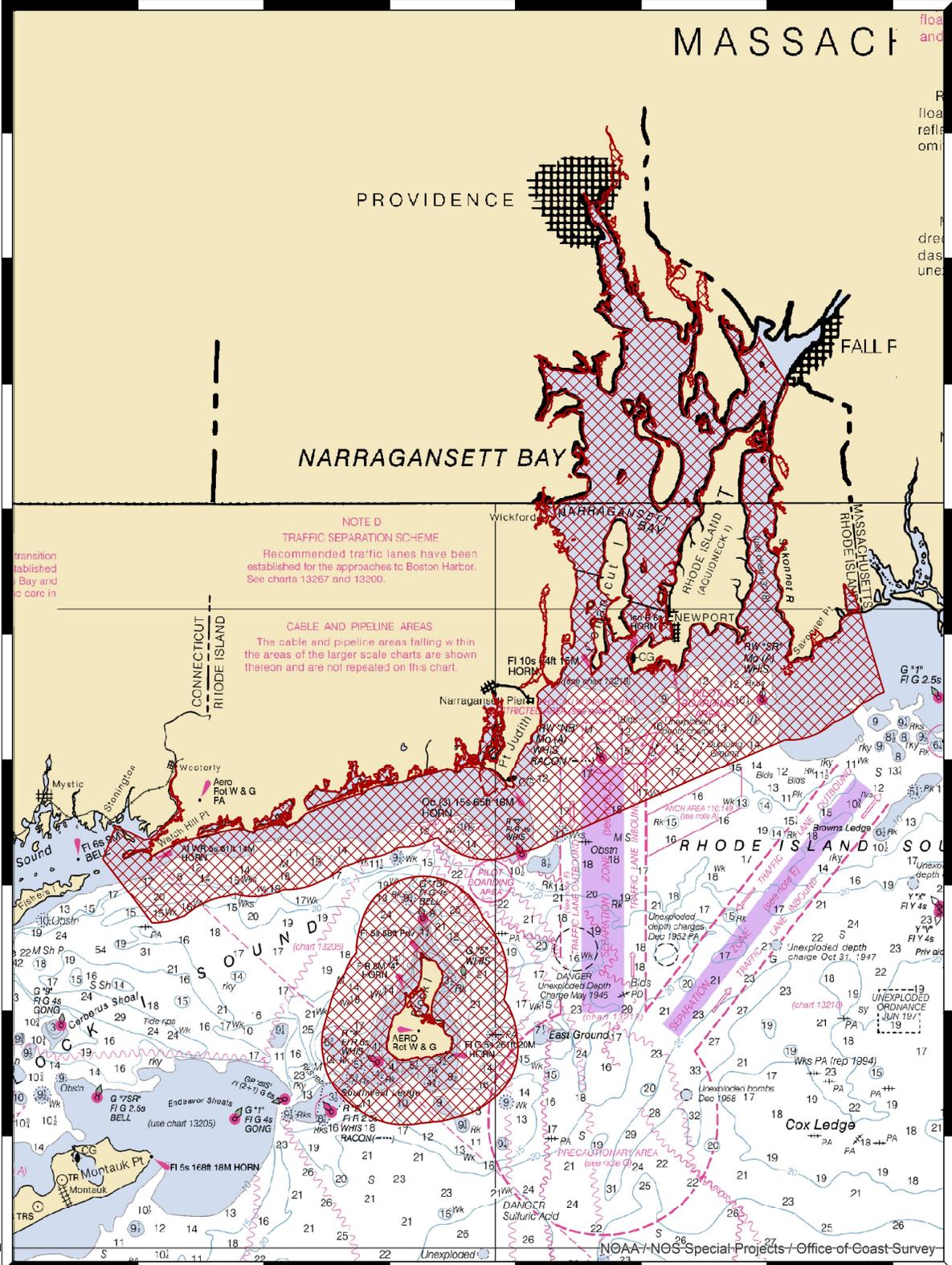
FALL F

NOTE D
TRAFFIC SEPARATION SCHEME

Recommended traffic lanes have been established for the approaches to Boston Harbor. See charts 13267 and 13200.

CABLE AND PIPELINE AREAS

The cable and pipeline areas falling within the areas of the larger scale charts are shown in red and are not repeated on this chart.



41°00'N

72°00'W

41°00'N