



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2276

#4

MAR 28 2013



Thomas A. Nies, Executive Director  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

Dear Tom:

I received your letter requesting that NOAA Fisheries work with the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission (Commission) to determine whether inconsistencies in state and Federal lobster gear marking requirements may lead to unsafe conditions for fishing vessels. Your letter noted that inshore lobstermen are required to follow state laws, which may differ among various states, and which may also differ from Federal requirements. As a result, the New England Fishery Management Council (Council) believes current gear markings may be unobservable on the water's surface and, in some cases, the marking requirements may not be strictly adhered to. Therefore, you recommend that a working group be convened to review the gear marking requirements and establish a minimum standard for marking fixed gear, similar to existing Federal gear-marking regulations for traps in a trawl.

As noted in your letter, the Council voiced similar concerns to NOAA Fisheries in 2010, stating that some fishermen were unaware of Federal gear-marking regulations. We responded to your concerns in February 2011 and May 2011 by mailing to all Federal lobster permit holders a Small Entity Compliance Guide that described, in great detail, our Federal gear marking regulations. This Compliance Guide is also available on our American lobster homepage at: <http://www.nero.noaa.gov/nero/nr/nrdoc/11/112ndNoticeTrapGearRequire.pdf>.

I support the intent of your request to review current state and Federal lobster gear-marking requirements to ensure the regulations continue to be effective as intended. However, I face a dilemma in establishing consistent state and Federal gear marking requirements as you suggest, because the Commission is the lead in the management of American lobster, not NOAA Fisheries. While NOAA Fisheries promulgates lobster regulations to complement Commission actions, only the Commission has the regulatory authority to ensure state compliance with any agreed-upon regulatory changes that may result from working group recommendations on this issue. The Atlantic Coastal Act (Act) provides the Commission with the authority to find a state out-of-compliance if that state fails to implement measures recommended by the Commission management process. In addition, the Act directs NOAA Fisheries to complement Commission regulatory actions, and implement Federal lobster regulations, whenever possible, based upon recommendations by the Commission.

Therefore, given the Commission's primacy in lobster management, I believe a more effective and appropriate approach to resolve regulatory inconsistencies in lobster gear-marking requirements would be for the Council to request that the Commission initiate discussions on this issue with their member states that participate on the Commission's American Lobster




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Board. NOAA Fisheries also sits on the Commission's Lobster Board and we would fully support participation in a working group on this issue. In addition, U.S. Coast Guard staff from several Coast Guard districts routinely participate in the Commission's Law Enforcement Committee (LEC) , and it would seem appropriate for the Commission's LEC to engage the Coast Guard.

If you wish to discuss this issue in further detail, please do not hesitate to contact George Darcy, Assistant Regional Administrator, at 978-281-9331.

Sincerely,

  
John K. Bullard  
Regional Administrator