reporting requirements imposed under regulations established in 50 CFR Part 21, Subpart E will be utilized to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on Mid-continent light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take Mid-continent light geese within the guidelines provided by the Service.

Dated: February 10, 1999.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–3649 Filed 2–12–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–9044–09; I.D. 031997C]

RIN 0648–AI84

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS by this action issues a final rule implementing a plan to reduce serious injury and mortality to four large whale stocks that occur incidental to certain fisheries. The target whale stocks are the North Atlantic right whale (*Eubalaena glacialis*) western North Atlantic stock; humpback whale (*Megaptera novaeangliae*) western North Atlantic stock; fin whale (*Balaenoptera physalus*) western North Atlantic stock; and minke whale (*Balaenoptera acutorostrata*), Canadian East Coast stock. Covered by the plan are fisheries for multiple groundfish species, including monkfish and dogfish, in the New England Multispecies sink gillnet fishery; multiple species in the U.S. mid-Atlantic coastal gillnet fisheries; lobster in the Gulf of Maine and U.S. mid-Atlantic trap/pot fisheries; and sharks in the Southeastern U.S. Atlantic gillnet fishery. This final rule includes time and area closures for the lobster, anchored gillnet and shark gillnet fisheries; gear requirements, including a general prohibition on having line floating at the surface in these fisheries; a prohibition on storing inactive gear at sea; and restrictions on setting shark gillnets off the coasts of Georgia and Florida and drift gillnets in the mid-Atlantic. The plan also contains non-regulatory aspects, including gear research, public outreach, scientific research, a network to inform mariners when right whales are in an area, and increasing efforts to disentangle whales caught in fishing gear.

DATES: The regulations in this final rule are effective April 1, 1999.

ADDRESSES: Copies of progress reports on implementation of the Atlantic Large Whale Take Reduction Plan (ALWTRP) and of the Final Regulatory Flexibility Analysis for this rule may be obtained by writing Doug Beach, NMFS, 1 Blackburn Dr., Gloucester, MA 01930. Copies of the most recent Stock Assessment Reports for northern right whales, humpback whales, fin whales and minke whales may be obtained by writing to Gordon Waring, NMFS, 166 Water St., Woods Hole, MA 02543.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, NMFS, Northeast Region, 508–495–2367; Katherine Wang, NMFS, Southeast Region, 727–570–5312; or Greg Silber, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) requires commercial fisheries to reduce the incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate by April 30, 2001 (section 118(b)(1)).

For some marine mammal stocks and some fisheries, section 118(f) requires NMFS to develop and implement take reduction plans to assist in recovery or to prevent depletion. The immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the mortality and serious injury of stocks incidentally taken in the course of U.S. commercial fishing operations to below the Potential Biological Removal (PBR) levels established for such stocks. The PBR level is defined in the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The long-term goal of a take reduction plan is to reduce, within 5 years of its implementation, the incidental mortality and serious injury of strategic marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

On July 22, 1997, NMFS published in the **Federal Register** an ALWTRP, or a ''Plan'', and interim final regulations implementing that Plan (62 FR 39157). In this notice, NMFS reports on actions taken pursuant to the Plan, and issues a final rule for it. The final rule makes minor changes to the regulations in the interim final rule, but the general outline of the Plan remains the same.

The Plan, in conjunction with other management actions, is intended to meet the goals stated here for right whales, humpback, and fin whales, all of which are listed as endangered species under the Endangered Species Act (ESA), and for minke whales. The Plan may be amended in the future to take account of new information or circumstances.

The fisheries most affected by this plan are: anchored gillnet fisheries, including the New England sink gillnet fishery; the Gulf of Maine/U.S. Mid-Atlantic lobster trap/pot fishery; the U.S. mid-Atlantic coastal gillnet fisheries; and the Southeastern U.S. Atlantic shark gillnet fishery. The New England Multispecies sink gillnet fishery has an historical incidental bycatch of humpback, minke, and possibly fin whales. This gear type has been documented to entangle right whales in Canadian waters. Additionally, entanglements of right whales in unspecified gillnets have been recorded for U.S. waters, although U.S. sink gillnets have not been conclusively identified as having entangled right whales. The Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery has an historical bycatch of right, humpback, fin, and minke whales. The mid-Atlantic coastal gillnet fisheries have an historical incidental bycatch of humpback whales. The Southeastern U.S. Atlantic gillnet fishery (for which sharks are generally the target species) is believed to be responsible for bycatch of at least one right whale.

Some waters are exempt from this plan. The basic rule for the exempted water boundaries is that all waters landward of the first bridge over any embayment, harbor, or inlet will be exempted. Some bays that do not have bridges over them are also exempted, including Long Island Sound and Delaware Bay. South of the Virginia/

North Carolina border, all waters landward of the demarcation line of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS line) are exempted. These are all areas where large whale occurrences are so rare that NMFS believes gear requirements will have no measurable effect on reducing entanglements. In a change from the interim final rule, the only exempted waters in the Gulf of Maine are those waters landward of the first bridge over any embayment. For a discussion of the rationale for this change, see ''Changes From the Interim Final Rule''. For a precise definition of the exempted areas, see the regulation section of this final rule.

Current Entanglement Rates and Population Status

The information in this section is from the 1996 Stock Assessment Reports (Waring *et al.,* 1997) compiled by NMFS, as required by the MMPA, from information collected for the 1998 Stock Assessment Reports, and from 1997 and 1998 entanglement reports compiled by NMFS. Additional information about the population biology and human-caused sources of mortalities and serious injuries is included in the 1996 Stock Assessment Reports, which are available from NMFS (see **ADDRESSES**). The 1998 Stock Assessment Reports are currently under review.

Some entanglements of large whales were observed by the NMFS sea sampling program; however, most records come from various sources such as small vessel operators. Limitations on the use of the available entanglement data include (1) not all observed events are reported; (2) most reports are opportunistic rather than arriving from systematic data collection, and, thus, conclusions cannot be made regarding actual entanglement levels; (3) identification of the gear type or of the fishery involved is often problematic; and (4) identification of the location where the entanglement first occurred is often difficult since the first observation usually occurs after the animal has left the original location.

North Atlantic Right Whales

The northern right whale is the rarest of all large cetaceans and one of the most endangered species in the world. The western North Atlantic population is estimated at 295 animals (Knowlton *et al.,* 1994) and is unlikely to be significantly higher. The best published estimate of the population growth rate is 2.5 percent per year (Knowlton *et al.,* 1994). However, many uncertainties exist in this estimate, and further assessment is required, notably in light of the known high levels of anthropogenic mortality in this species. The PBR level for this population is 0.4 incidents of serious injury or mortality per year.

Approximately one-third of all known right whale mortality is caused by human activities (Kraus, 1990). Further, the small population size and low annual reproductive rate suggest that human sources of mortality may have a greater effect on population growth rates of the right whale than on those of other whales. The principal factors retarding growth of the population are believed to be ship strikes and entanglement in fishing gear.

For the period 1991 through 1996, the total human-caused mortality and serious injury to right whales is estimated as 2.3 incidents per year. Of this figure, 1.0 incident per year is attributed to entanglements and 1.3 to ship strikes. Note that some injuries or mortalities may go undetected, particularly those that occur offshore. Therefore, the estimates above should be considered minimum estimates.

In June 1997 (prior to the publication of the interim final rule), there was an entanglement in U.S. offshore lobster gear off Chatham, MA. This whale was disentangled without evidence of compromising injury and is not likely to be classified as a ''serious injury'' when analysis of the event is complete. There was another entanglement also reported in U.S. waters in 1997, in which a right whale was seen carrying a line from unknown gear. This whale was later seen by researchers from the New England Aquarium, who believe the line may have been shed during the summer.

Four entangled right whales were sighted in the Bay of Fundy in 1997, after the interim final rule was published. At least two of these entanglements are likely to be classified as serious injuries or mortalities when the reports are reviewed. None of these entanglements can be positively attributed to U.S. fisheries. No entangled right whales were seen in U.S. waters during the first 6 months of the implementation of the Plan (from July 22, 1997, to January 22, 1998). In 1998, there were extensive aerial surveys of right whale critical habitats in the United States; no entangled right whales were seen during these surveys.

In 1998, four right whales were reported entangled. On July 12, two right whales were trapped in a weir near Grand Manan Island, Canada. Both whales were released 2 days later with apparently minor scratches.

One right whale was seen entangled in rope of unidentified origin on August 15 near Mingan Island in the Gulf of St. Lawrence. The whale was too active to approach safely to disentangle it. It appeared to free itself of most of the gear but may still be trailing some line.

One right whale was entangled twice (and actually disentangled three times) in Cape Cod Bay. The whale had been first seen entangled in 1997 in the Bay of Fundy. On July 24, 1998, the whale was seen near Dennis, MA (Cape Cod Bay). Most, but not all, of the gear it had been carrying from the 1997 entanglement was removed by the disentanglement team on that date. (NMFS has not been able to identify the type of gear responsible for this 1997 entanglement. However, the gear is still being studied.) The same whale was seen again near Provincetown, MA, on September 12 with a lobster buoy line through its mouth. This line was cut but not completely removed at that time. The right whale was seen again 2 days later (September 14) near Barnstable, MA. In the interim, it had picked up additional lobster gear, which was entirely removed. At last report, the whale was swimming freely but still had a thin line in its mouth from the entanglement in 1997.

A final evaluation as to whether these entanglements will be considered serious injuries has not yet been made. The agency is in the process of developing guidelines to standardize this kind of evaluation.

Humpback Whales

The best estimate of abundance for North Atlantic humpback whales is 10,600 (Coefficient of Variation (CV) = 0.067, Smith *et al.,* 1998). The minimum population estimate for this stock is 10,019 (CV = 0.067) (Waring *et al.,* in prep). Within this population, the humpback whales in the Gulf of Maine constitute a distinct, relatively small, feeding sub-population. However, it is not genetically distinct from other sub-populations in the western North Atlantic, which are all treated as a single stock for the purposes of the Plan and the estimation of PBR. For purposes of the current stock assessment, the maximum net productivity rate for western North Atlantic humpback whales is assumed to be 0.065 (Barlow and Clapham, 1997). The PBR level for this stock is 32.6 humpback whales per year.

For the period 1991 through 1996, the total estimated human-caused mortality and serious injury to humpback whales in U.S. waters is estimated as 5.8 per year. This is derived from three components: (1) Entanglements that have been reported by NMFS observers, (2) additional fishery interaction records, and (3) vessel collision records.

Fin Whales

The best available estimate of abundance for the western North Atlantic fin whale is 2,700 (CV = 0.59), which is considered conservative (Waring *et al.*, in prep). The minimum population estimate is 1,704 (CV = 0.59) (ibid.). For purposes of the current stock assessment, the maximum net productivity rate for fin whales is assumed to be 0.04. The PBR for this stock is 3.4.

Entanglements of fin whales are rarely documented. Because of the paucity of stranded animals or other records, NMFS has not calculated an average entanglement rate, although it believes that serious injuries or mortalities due to entanglements of fin whales occur at a rate below 10 percent of PBR. A review of 26 records of stranded or floating (dead or injured) fin whales for the period of 1992 through 1996 showed that three had formerly been entangled in fishing gear. Two of these had net or rope marks on the body, and one had line through the mouth and around the tail.

Minke Whales

Minke whales off the eastern coast of the United States are considered to be part of the Canadian east coast population, which inhabits the area from the eastern half of Davis Strait south to the Gulf of Mexico. The best estimate of the population is 2,760 (CV = 0.32) (Waring *et al.*, in prep.), which is considered conservative. The minimum population estimate for Canadian east coast minke whales is 2,145 (CV = 0.32) (ibid.). The current and maximum net productivity rates are not known, but the maximum rate is assumed to be 0.04. The PBR for this stock of minke whales is 17.

Accurate estimates of human-caused mortality are not available for this species because it is likely that many entanglements, injuries, and mortalities go unobserved and/or unrecorded. The total annual estimated average fishery-related mortality and serious injury to this stock in fisheries that have been observed by NMFS is 0.8 minke whales. However, the total number of entanglements from all fisheries is unknown. The figure is believed to be less than PBR but greater than 10 percent of PBR. Entanglements are known to occur in Canadian waters as well.

Atlantic Large Whale Take Reduction Plan

As stated earlier and as required by the MMPA, the Plan has two goals. The short-term goal is to reduce serious injuries and mortalities of right whales in U.S. commercial fisheries to below 0.4 animals per year by January 1998. The long-term goal is to reduce by April 30, 2001, entanglement-related serious injuries and mortalities of right whales, humpback whales, fin whales, and minke whales to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fisheries, the availability of existing technology, and existing state and regional fishery management plans.

To reach the short-term goal, the Plan was expected to achieve the necessary take reductions within 6 months through (1) establishing closures of critical habitats to some gear types during times when right whales are usually present; (2) restricting the way strike nets are set in the southeastern U.S. gillnet fishery to minimize the risk of entanglement and requiring observers on shark gillnet vessels operating adjacent to the southeast U.S. critical habitat; (3) requiring that all lobster and sink gillnet gear be set in such a way as to prevent line from floating at the surface; (4) requiring all lobster and anchored gillnet gear to have at least some additional characteristics that may reduce the risks of entanglements, (5) requiring that drift gillnets in the mid-Atlantic be either tended or stored on board at night; (6) improving the voluntary network of persons trained to assist in disentangling right whales; and (7) prohibiting storage of inactive gear in the ocean.

Although NMFS is not aware of any right whales entangled in U.S. fishing gear during the first 6 months of the implementation of the Plan, it is unable to determine whether the short-term goal of the Plan was met. Because right whale entanglements are rare and because there is no way of knowing that all entanglements were detected, it is impossible to demonstrate conclusively that the goals of the MMPA were achieved. At the same time, NMFS cannot conclude that PBR was exceeded. The 1997 entanglements that might be classified as serious injuries or mortalities were first observed in Canadian waters. The two known entanglements that occurred in U.S. waters during the first 6 months of the Plan did not appear to be serious. It is clear, however, that entanglement in fishing gear remains a danger to individual right whales and that continued reductions in the risk of such entanglements would be prudent, given the endangered status of the population.

The steps in the implementation of the Plan designed to achieve the long-term goal include (1) improving public involvement in take reduction efforts, including conducting outreach and educational workshops for fishermen; (2) instituting ''Take Reduction Technology Lists'' from which fishermen must choose gear characteristics that are intended to decrease the risks of entanglement; (3) facilitating research and development of fishing gear that will reduce the risk of entanglement; (4) continuing to improve the disentanglement effort, including encouraging more cooperation from fishermen; (5) implementing a gear marking program, (6) developing contingency plans in cooperation with states for when right whales are present at unexpected times and places; (7) working with Canada to decrease entanglements in its waters; (8) improving monitoring of the right whale population distribution and biology; (9) conducting aerial surveys to monitor whale distribution, fishing effort and shipping traffic, (10) maintaining a network to alert maritime users about right whale distribution; and (11) establishing the framework of an abbreviated rule-making process to allow NMFS to change the requirements of the plan through notification in the **Federal Register**, thereby improving the responsiveness of NMFS.

NMFS intends to make active use of the Atlantic Large Whale Take Reduction Team (TRT), an advisory group that includes fishermen, scientists, and representatives of environmental groups and state governments, to review progress on reaching the goals of the ALWTRP and to make recommendations on how to continue to decrease serious injuries and mortalities due to entanglements. NMFS also intends to continue to seek technical advice on matters pertaining to gear development for its Gear Advisory Group (GAG), which is composed of persons with direct knowledge of fishing gear or disentangling large whales. NMFS convened the GAG on October 7–8, 1998, and will convene the TRT on February 8–10, 1999. NMFS may modify the plan if it receives a recommendation from the teams to do so.

Report of First Year Activities

During the first year of the Plan, NMFS raised the level of funding for research and development of fishing gear that reduces the risks of entanglement, expanded its disentanglement efforts, increased efforts to raise awareness of marine mammal entanglement problems, conducted or contributed funds to conduct aerial surveys to monitor the distribution of right whales, to collect

photographs for individual identification, and to alert ship operators of the locations of right whales, and increased funding for basic research on right whale population and conservation biology.

The goal of the gear research is to develop new fishing gear or methods that minimize the risk of entanglements by large whales, either by reducing the chances that a whale will encounter the gear or by reducing the likelihood that gear, when encountered, will entangle the animal. Since the publication of the Plan in 1997, research has been conducted in the following areas: (1) Design, development, testing, and manufacture of inexpensive weak links, (2) remotely operated vehicle observations of the configuration of gillnets and lobster gear, (3) estimation of the tractive (pulling) force of right whales, (4) land testing of gillnet modifications, (5) baleen tests with various lines, knots, and splices (to understand how a line gets caught in baleen), and (6) design and fabrication of underwater and dry load cell systems for measuring the hauling and towing loads of fishing gear and the tractive force of animals.

The current disentanglement effort consists of a primary team which has field station support in the northern Gulf of Maine/Bay of Fundy, central Gulf of Maine, southern Gulf of Maine, and Georgia/Florida. The northern Gulf of Maine/Bay of Fundy field station is operational only when biologists are conducting seasonal right whale research. The U.S. Coast Guard (USCG) provides critical support in monitoring initial entanglement reports and transporting persons experienced in disentangling whales. Although the Disentanglement Team currently attempts to respond to all legitimate entanglement reports, the priority for response is for any immediately life-threatening event of endangered right and humpback whales. NMFS has also created a permanent contact point in Maine to supplement the existing infrastructure operating out of the Center for Coastal Studies in Provincetown, Massachusetts. Plans are also underway to establish a disentanglement team in the mid-Atlantic region.

The success of the Plan depends on the cooperation of fishermen in assisting disentanglement efforts as well as in providing ideas for gear research. During the first year of the Plan, NMFS hired a person in Maine to work directly with the fishermen on these matters. NMFS has held 21 meetings in Maine to date, with over 300 fishermen in attendance, of which about 200 have indicated they wish to participate in additional training to further assist in any disentanglement effort in their area. From this series of meetings, a network of qualified responders will be established to coordinate reports, carry out monitoring, and assist the existing Team in response to entangled whales along the coast of Maine. NMFS also met with fishermen directly at fishermen's forums and contracted Sea Grant to discuss proper reporting and operational procedures regarding entangled whales and to gather ideas for appropriate gear modifications. Continued outreach activities in Maine, southern New England, the southeast U.S. and in the Mid-Atlantic are planned.

Existing partnerships with the USCG and the Massachusetts Division of Marine Fisheries and Massachusetts Environmental Trust have resulted in significant additional resources for carrying out the tasks outlined in the Plan. Similar partnerships with the 5th, 7th, and 8th U.S. Coast Guard (USCG) districts are currently being finalized. The USCG conducted aerial surveys for large whales, assisted in disentanglement response support, and provided funds for additional aerial survey contracts carried out by NMFS. The State of Massachusetts funded aerial survey coverage of Cape Cod Bay, as well as a habitat characterization study of the Bay in 1998. Right whale sightings information from all sources were provided to the northeast right whale alert system, designed to inform mariners of the presence of right whales in critical habitats. The sighting data were coordinated, verified, and processed by NMFS. Verified sightings for each survey day are disseminated by an automated fax system immediately after processing, and made available to all marine resource users through various media. The coordinates of the right whale sightings were broadcast for 24 hours by USCG via Broadcast Notice to Mariners and NAVTEX, NOAA Weather Radio, and Army Corps of Engineers Traffic Controllers at Cape Cod Canal to both target shipping traffic as well as other marine resource users. Maps with right whale sightings boxes are also posted on Massachusetts and NMFS web pages and linked to other sites such as WHALENET. An NMFS Inquiry Line at the Northeast Regional Office provides right whale sighting faxes on demand to all interested callers.

During the first year of the Plan, NMFS drafted a memorandum of Agreement (MOA) with USCG districts 5, 7, and 8 to formalize cooperation in protecting marine mammals and endangered species, especially in implementing a disentanglement network. (This MOA is currently undergoing final review within the Department of Commerce.) An MOA was also signed with the Navy, USCG, and the Army Corps of Engineers to formalize cooperation in measures to protect northern right whales in the southeast United States. This has provided a mechanism for funding the southeast U.S. aerial surveys of right whale critical habitat and the associated right whale alert system. NMFS has continued to provide administrative support for the right whale alert system. It has also conducted aerial surveys to the east, north, and south of critical habitat in order to determine whether there may be a need to extend current critical habitat boundaries.

Aerial surveys are also being conducted in the U.S. coastal waters of the mid-Atlantic states to document abundance and distribution of humpback whales in relation to vessel traffic and fishing effort.

Outreach activities are an integral part of all components of the ALWTRP. NMFS contracted the Sea Grant offices at the University of Maine and University of Rhode Island to set up an outreach program in the New England and Mid-Atlantic areas. Sea Grant organized meetings, workshops, and seminars at key fishermen's forums held from Fall 1997 through Spring 1998, covering the area from North Carolina to Rhode Island. Sea Grant also prepared outreach handout materials and videos for use at these and other forums and for the local meetings set up in the Northeast. A letter was sent to all state and Federal lobster and gillnet fishermen in the Northeast providing information about right whales, the entanglement problem, and fishermen's responsibilities under the ALWTRP. As mentioned above, NMFS also hired a Maine Plan Coordinator to work closely with the Maine Lobster Zone Council system to carry out outreach education and gear research collaboration.

In 1998, NMFS also met with shark gillnetters to develop awareness of right whales and their current plight. This meeting was designed to explain threats to right whales in the southeast United States and to discuss the precautions necessary around them and what additional measures the fishery might take to decrease the risk of interactions. In addition to the above mentioned meeting, letters were sent to all known shark gillnetters explaining the ALWTRP regulations. The letters explained the need to contact NMFS to arrange for observer coverage during the right whale calving season. During the

year, this observer program was established.

The Northeast Fisheries Science Center has increased its Protected Species Branch staff to include a large whale research coordinator. Key research on large whales conducted or funded by NMFS include (1) maintaining the right and humpback whale photo ID catalogues where individual identification of animals from photographs taken throughout the western north Atlantic are processed; (2) analyzing data collected from the right whale photo-identification catalogue for population assessment; (3) expanding right whale genetics studies to determine the matriarchal lines that make up the population; (4) supporting right whale stranding response to maximize the information collected from each carcass; (5) conducting directed right whale photo-identification surveys in the Great South Channel; (6) assessing capabilities to locate whales acoustically; (7) evaluating the status of the North Atlantic humpback whale, and (8) surveying potential offshore summer habitats for right whales.

Changes From the Interim Final Rule

1. Definition of ''Lobster Trap.'' The definition of the term ''lobster trap'' in the interim final rule was not as precise as it should have been. Broadly interpreted, it could have been construed as applying to gillnets and to bottom trawls that can catch lobster as well as to traps. These gear types were not intended to be covered by this term. Therefore, in this final rule, NMFS changes the definition of ''lobster trap'' to be: ''any trap, structure or other enclosure that is placed on the ocean bottom and is designed to or is capable of catching lobsters.'' The intent of this definition is to include traps and pots into which lobsters may crawl and be caught by virtue of their inability to find their way out, and not to include mobile gear or devices that catch lobsters through entanglement. The definition includes black sea bass traps and scup traps. The terminology ''lobster trap'' is used in this final rule, instead of ''lobster pot'' (used in the interim final rule) solely to make the terminology consistent with fishery management regulations. The Plan applies to the same gear, whether called ''traps'' or ''pots.''

2. Definition of ''Gillnet''. The definition of ''gillnet'' in the interim final rule could cause confusion as to which nets were included in the regulations. Therefore, in this final rule, NMFS is amending the definition to be as follows: ''fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term 'gillnet' includes gillnets of all types, including but not limited to, sink gillnets, other anchored gillnets (e.g. stab and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.'' The term is intended to include gillnets with or without tie-downs.

3. Elimination of exempted waters in the Gulf of Maine. The State of Maine and groups representing Maine fishermen did not agree with the lines delineating the exempted waters in the Gulf of Maine. These groups commented that the lines chosen by NMFS were confusing and difficult to enforce. On any given day, most lobstermen in Maine fish on both sides of the exemption lines established in the interim final rule. Because most fishermen in Maine waters will need to comply with the ALWTRP regulations for some of their gear (that are set in waters not exempted by the interim final rule), NMFS eliminates the exempted waters in the Gulf of Maine until such time as the TRT can advise NMFS on the most appropriate boundaries for exempted waters in that area. Note, however, that the gear marking provisions that would have applied in all non-exempted waters under the interim final rule have also been changed and will not apply in most coastal waters in the Gulf of Maine.

4. Addition of exempted waters in Rhode Island. The State of Rhode Island noted that the interim final rule failed to exempt some coastal ponds from its regulations. In this final rule, waters are intended to include the following rivers and coastal ponds where right whales have never been seen: Winnapaug Pond, Green Hill Pond, Potter Pond, and the Sakonnet River.

5. Gear marking requirements. In the interim final rule, the gear marking system required the application of two color codes on the buoy lines. In this final rule, the method of applying the marks has not been changed from the interim final rule. However, gear marking is no longer required in most areas.

The gear marking requirements of the interim final rule were criticized by many. Some persons felt they were not specific enough to give clear information about where entanglement problems occur. Others were concerned that if gear was lost in a storm or towed by a boat to another region and then entangled whales, it might give a false impression of where the entanglement problem occurred. Some questioned whether gear marking would provide any useful information, and others wondered whether the method of marking would work.

In this final rule, NMFS no longer requires gear marking of lobster and gillnet gear in most affected waters. Instead, it requires these types of gear to be marked only in right whale critical habitat, in the southeast observer area and on Stellwagen Bank and Jeffreys Ledge in the Gulf of Maine. These are the areas where the risk of entanglement is highest. If entanglements occur in the critical habitat areas during times of high right whale use, they are subject to closure. The Jeffreys Ledge/Stellwagen Bank area is an area used year-round by large whales, and there have been calls for more action to lower entanglements in that area. The marking scheme in the final rule could give NMFS relatively precise information about entanglements that occur in these key areas without requiring an extremely complex system that would have to be devised to identify a large number of areas. It also allows NMFS and the TRT to assess the value of gear marking and to refine the technique without burdening most of the industry. If gear marking proves workable and useful, the system could be expanded after consultation with the Gear Advisory Group and the Take Reduction Team.

In a further change from the interim final rule, gillnetters in the southeast U.S. need only mark their lines every 100 yards (91.4 m), not every 100 feet (30.5 m), when this requirement comes into effect in November 1999. The purpose of this change is to ease the marking burden until it is known whether the system works as expected.

This gear marking requirement constitutes a collection of information under the Paperwork Reduction Act. The Office of Management and Budget (OMB) has given its approval to this collection of information (OMB No. 0648–0364).

6. Gear requirements for lobster fishers in Cape Cod Bay critical habitat. Several persons commented that the Federal government's regulations for lobster gear in Cape Cod Bay critical habitat from January 1 to May 15 were different from the regulations of the Commonwealth of Massachusetts for the same area. NMFS believes that the Commonwealth, working directly with the affected fishermen, has developed a workable plan that has the allegiance of the fishermen to lower the risk of entanglement. Therefore, in this final

rule, NMFS adopts the current version of the regulations established by the Commonwealth for lobster gear set in this area and time. Specifically, during the period from January 1 to May 15, weak links with a breaking strength of no more than 500 lb (226.7 kg) must be installed in all buoy lines, and it is permissible to set traps in ''doubles'', in which only two traps are joined together by a ground line. Doubles can have only one buoy line. In the interim final rule, the NMFS' regulations for Cape Cod Bay from Jan. 1 to May 15 called for a breaking strength of 1100 lb (498.8 kg). The lower breaking strength required by this final rule will reduce the risk that an entanglement becomes serious. Fishing conditions in Cape Cod Bay appear to be such that a 500 lb (226.7 kg). breaking strength does not pose a difficulty for the industry. Allowing the use of doubles may reduce the number of buoy lines in Cape Cod Bay. At least some fishermen have been using four trap trawls (which may have two buoy lines) where they would prefer to use a double (with one buoy line).

7. Elimination of anchoring options from the gillnet take reduction technology list. The Gillnet Take Reduction Technology List in the interim final rule allowed gillnets to hold down the lead line with anchors, weights, or heavy rope as a bycatch reduction option. Allowing the methods that increased the holding power of the lead line as separate options without also requiring weak links to be installed in the net panels has been determined to be ineffective. Without the weak links, the extra weight could make it harder for the whale to carry a net rather than help it to break free of the net as intended. Therefore, in this final rule, NMFS eliminates from the Gillnet Take Reduction Technology List the options for anchoring the lead line with 22-lb (10 kg) danforth-style anchors, 50 lb (22.7 kg) dead weights or lead lines weighing 100 lb (45.4 kg) or more per 300 ft (92.4 m).

NMFS retains on the Gillnet Take Reduction Technology List the option of putting weak links in the net panels. Although weak links will only fail if the resistance to movement by the net is greater than the breaking strength of the link (which was the original intent of the anchoring requirements), NMFS notes that many gillnets are set with 22-lb (10 kg) danforth-style anchors or weights with similar holding capacity, whether or not such characteristics are on the Gillnet Take Reduction Technology List.

The genesis of the anchoring options was a discussion within the TRT of a suite of gear modifications consisting of weak links in the nets and weighted lead lines. These discussions were based on a more complex suite of gillnet modifications used in California with the aim of reducing marine mammal entanglements. The TRT did not have before it the full suite of modifications required by California. NMFS will provide this to the TRT and to the GAG and will ask those groups to consider the likely effectiveness of the California modifications and the feasibility of applying those modifications to the New England gillnet fishery. NMFS is also funding research on the forces that gillnets can withstand under a range of conditions, including those that might occur if a whale becomes entangled in the net. The GAG and the TRT will also be asked to review the results of these tests.

8. The definition of ''anchored gillnet'' is modified slightly to make clear that ''stab nets'' are included in this definition. Likewise, the definition of ''sink gillnet'' is amended to clarify that the regulations applying to sink gillnets are intended to apply to ''stab nets''. Similarly, the definition of ''gillnet'' has been modified to clarify that what is termed ''meshes'' in some places is included in the definition. The definition of ''Strikenet or to fish with strikenet gear'' is amended slightly to make clear that strikenets are considered a category of gillnets for the purposes of this rule and that persons fishing with strikenets must comply with the call-in requirement to fish anywhere within the SEUS observer area.

9. Several definitions were modified slightly to correct for grammatical errors or to add clarity, including: (1) ''driftnet, drift gillnet, or drift entanglement gear'', (2) ''tended gear or tend'', and (3) ''weak link.''

10. New definitions for ''shark gillnetting'' and ''to strikenet for sharks'' are included to clarify the fisheries affected by this rule. These new definitions do not change the fisheries intended to be covered by the Plan.

Fishery-Specific Measures of the Plan

American Lobster Trap/Pot Fisheries

Except for gear set in exempted waters, all lobster trap gear must be set in such a way as to avoid having line floating at the surface at any time. Floating line is allowed between two buoys on the same buoy line and between a buoy and a high flyer.

Throughout the year, lobster trap buoy lines in the Great South Channel must be marked with red and yellow marks. Lobster trap gear is prohibited from the Great South Channel critical habitat area from April 1 through June 30, until the Assistant Administrator for Fisheries (AA) determines that alternative fishing practices or gear modifications have been developed that reduce the risk of serious injury or mortality to whales to acceptable levels. From July 1 through March 31, lobster trap gear set in the Great South Channel critical habitat must have at least two characteristics from the Take Reduction Technology List that follows. Note that, although portions of the Great South Channel critical habitat would be considered offshore, NMFS believes that the weaker maximum breaking strengths allowed for inshore gear are more appropriate in the critical habitat, since right whales may return to the area when not expected. Therefore, the Great South Channel critical habitat is not considered ''offshore'' for the purposes of the Plan. Lobster trap gear set in this area must comply with the inshore gear characteristics.

From January 1 through May 15, lobster trap gear may not be set in the Cape Cod Bay critical habitat unless it meets certain criteria. All lobster trap gear set during that time must have all four of the following characteristics: (1) All buoys must be attached to the buoy line with a weak link with a maximum breaking strength of up to 500 lb (226.7 kg). (2) All traps must be set in either ''doubles'' (two trap trawls with a single buoy line) or trawls of four or more traps. Single traps and trawls with exactly three traps are not allowed. (3) All buoy lines must be made of sinking line, except for the bottom third of the line, which may be floating line. (4) All ground lines between traps must be made of sinking line. These measures are intended to conform to the current requirements set by the State of Massachusetts for its portion of the critical habitat during that period. From May 16 to December 31, lobster trap gear set in the Federal portion of the Cape Cod Bay critical habitat must have at least two characteristics from the Take Reduction Technology List. Throughout the year, the buoy lines of lobster trap gear set in the Cape Cod Bay critical habitat must be marked with red and orange marks.

The Stellwagen Bank/Jeffreys Ledge (SB/JL) area is defined as all Federal waters in the Gulf of Maine that lie to the south of the 43°15′ N lat. line and west of the 70° W long. line, except right whale critical habitat. In this area, lobster trap gear must always have at least two characteristics from the Lobster Take Reduction Technology list. In addition, the buoy lines of lobster trap gear set in this area must be marked with red and black marks. Fishermen

should be aware that humpback and/or right whales are present in this area most months of the year. If the gear modifications are not sufficient to reduce serious injury and mortality to right and humpback whales to achieve the 5-year zero mortality and serious injury rate goal, additional restrictions or closures in some or all of this area may be necessary. A decision to close any portion of this area would be made in consultation with the TRT, and after public comment.

In all other areas, lobster trap gear must be set with at least one characteristic from the Lobster Take Reduction Technology list. This requirement applies year-round in the inshore and offshore lobster fishery north of 41°30′ N lat. and from December 1 through March 31 in the inshore and offshore lobster fishery south of 41°30′ N lat. Some of the gear characteristics are applicable only to offshore lobster fishing because conditions offshore require heavier gear. However, fishermen using offshore gear are encouraged to use the inshore standards. No gear marking is required in these other areas.

Figure 1 shows the boundaries of the areas where the requirements for the lobster fishery apply.

The Lobster Take Reduction Technology List is as follows:

1. All buoy lines are 7/16 inches (1.11 cm) in diameter or less.

2. All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.

3. For lobster traps set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb (1714.3 kg).

4. For traps set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than 3/4 the diameter of the buoy line.

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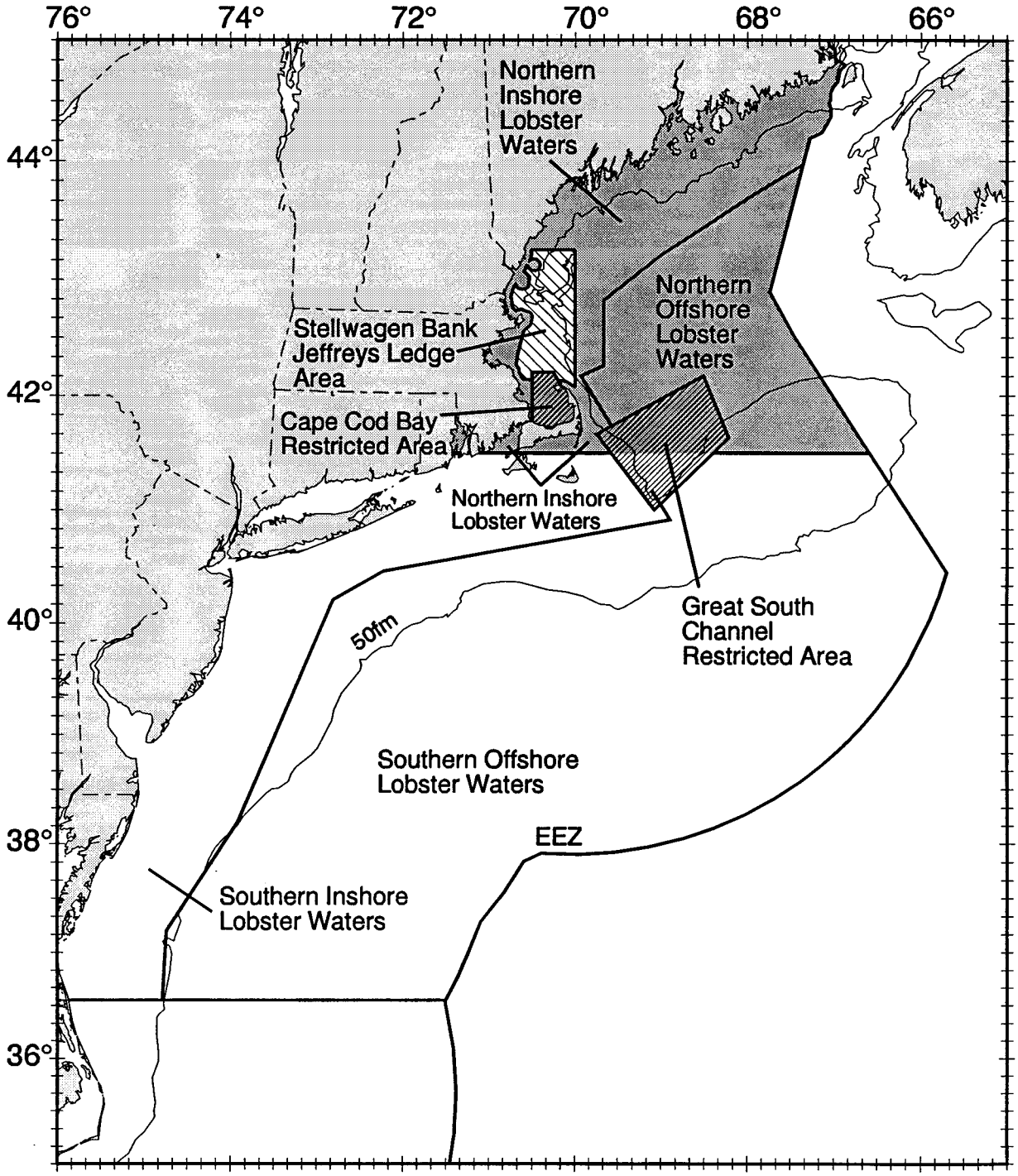

Lobster Gear Restrictions

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5. All buoy lines are composed entirely of sinking line.

6. All ground lines are made of sinking line.

Anchored Gillnet Fisheries

All sink gillnet gear and other anchored gillnet gear must be set in such a way as to avoid having line floating at the surface at any time. Floating line is allowed between two buoys on the same buoy line and between a buoy and a high flyer attached to the same buoy line.

Sink gillnet gear is prohibited from most of the Great South Channel critical habitat area from April 1 through June 30, until the AA determines that alternative fishing practices or gear modifications have been developed that reduce the risk of serious injury or mortality to whales to acceptable levels. Sink gillnets may be used year-round in the ''sliver area'' and from July 1 to March 31 in the entire Great South Channel critical habitat, provided that such gear has at least two characteristics from the Gillnet Take Reduction Technology list. Throughout the year, gillnet buoy lines in the Great South Channel must be marked with yellow and green marks.

From January 1 to May 15, the Cape Cod Bay critical habitat is closed to sink gillnet gear. From May 16 to December 31, gillnet gear set in the Cape Cod Bay critical habitat must have at least two characteristics from the Gillnet Take Reduction Technology List. Throughout the year, the buoy lines of gillnet gear set in the Cape Cod Bay critical habitat must be marked with green and orange marks.

Gillnet gear in the SB/JL area (as defined in this notice under ''Fishery-specific Measures of the Plan, American Lobster Trap/Pot Fisheries'') must always have at least two characteristics from the Gillnet Take Reduction Technology List. In addition, the buoy lines of gillnet gear set in this area must be marked with green and black marks. Fishermen should be aware that humpback and/or right whales are present in the SB/JL area most months of the year. If the gear modifications are not sufficient to reduce serious injury or mortality to right and humpback whales to achieve the 6-month PBR goal or the 5-year zero mortality and serious injury rate goal, additional restrictions or closures of certain portions of the SB/JL area may be necessary.

In all other ''northeast waters'' (defined as Federal and state waters east of 72°30′ W long.), gillnet gear must be set with at least one characteristic from the Gillnet Take Reduction Technology List at all times. Mid-Atlantic gillnets (gillnets set west of 72°30′ W long. and north of 33°51′ N lat.) must have at least one characteristic from this list from December 1 to March 31. No gear marking is required in either area.

Figure 2 shows the boundaries of the areas where the requirements for the sink gillnet fishery apply.

The Gillnet Take Reduction Technology List is as follows:

1. All buoy lines are 7/16 inches (1.11 cm) in diameter or less.

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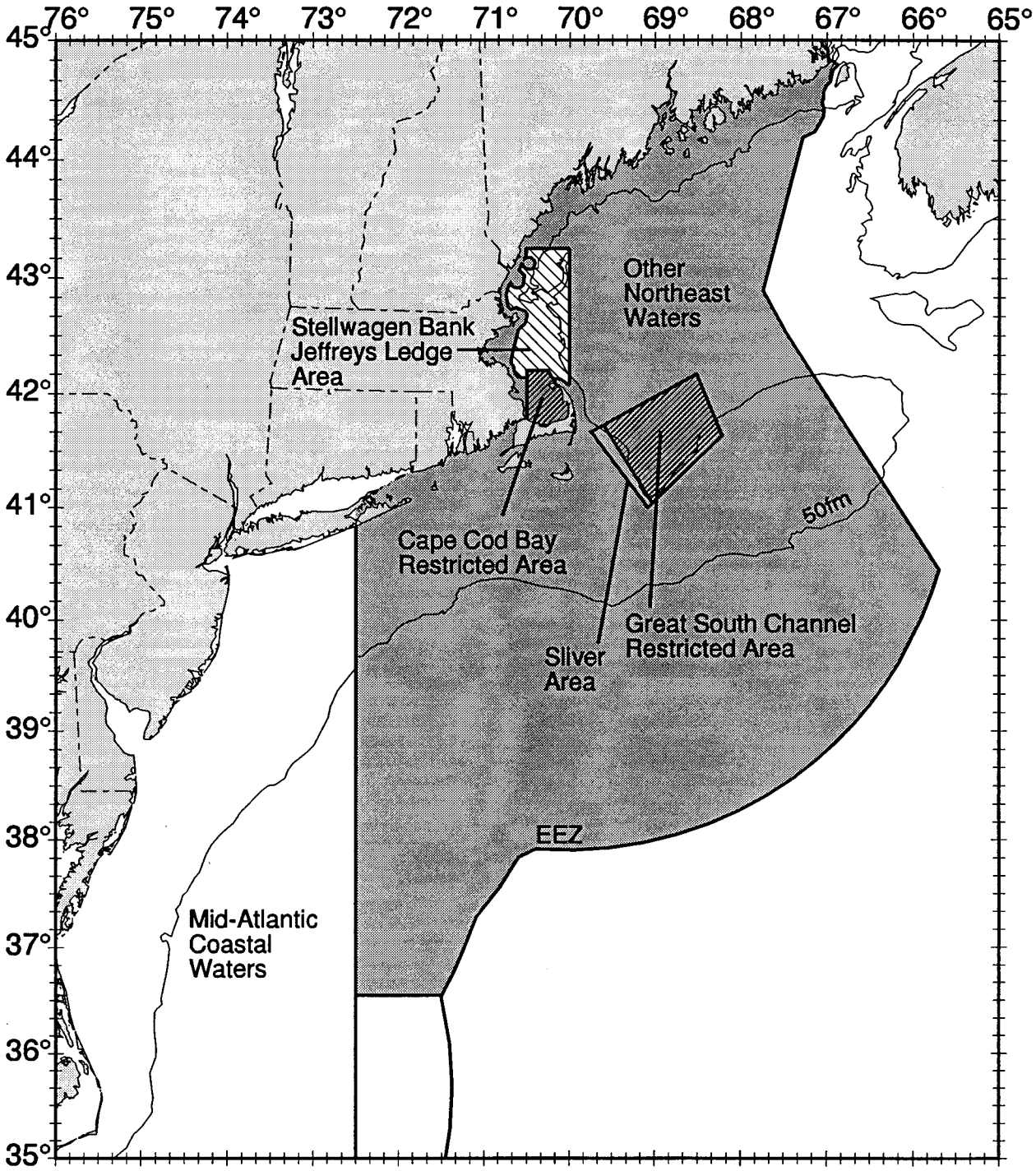

Gillnet Gear Restrictions

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2. All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.

3. Weak links with a breaking strength of up to 1100 lb (498.8 kg) are installed in the float rope between net panels.

4. All buoy lines are composed entirely of sinking line.

Mid-Atlantic Coastal Gillnet Fishery—Drift Gillnets

From December 1 to March 31, all vessels using driftnets in the mid-Atlantic gillnet area are required to haul all such gear and stow all such gear on the vessel before returning to port. If driftnets are set at night, they must remain attached to the vessel.

Southeast U.S. Shark Gillnet Fishery

The area from 27°51′ N lat. (near Sebastian Inlet, FL) to 32°00′ N lat. (near Savannah, GA) extending from the shore outward to 80° W long. is closed to shark gillnet fishing, except for strikenetting, each year from November 15 to March 31. Strikenetting is permitted under certain conditions set forth in the rule. In addition, observer coverage is required for the use of gillnets in the area from West Palm Beach (26°46.5′ N lat.) to Sebastian Inlet (27°51′ N lat.) from November 15 through March 31 and for the use of strikenets in the area between West Palm Beach, FL, and Savannah, GA, for the same time period. Vessel operators intending to use these gear types in these areas must notify NMFS at least 48 hours in advance of departure to arrange for observer coverage. It should be noted that state waters in this area presently ban gillnetting. In addition, shark gillnets, including strikenets, must be marked with green and blue marks to identify the fishery and region in which the gear is fished.

Figure 3 shows the boundaries of the areas where the requirements for the shark gillnet fishery apply.

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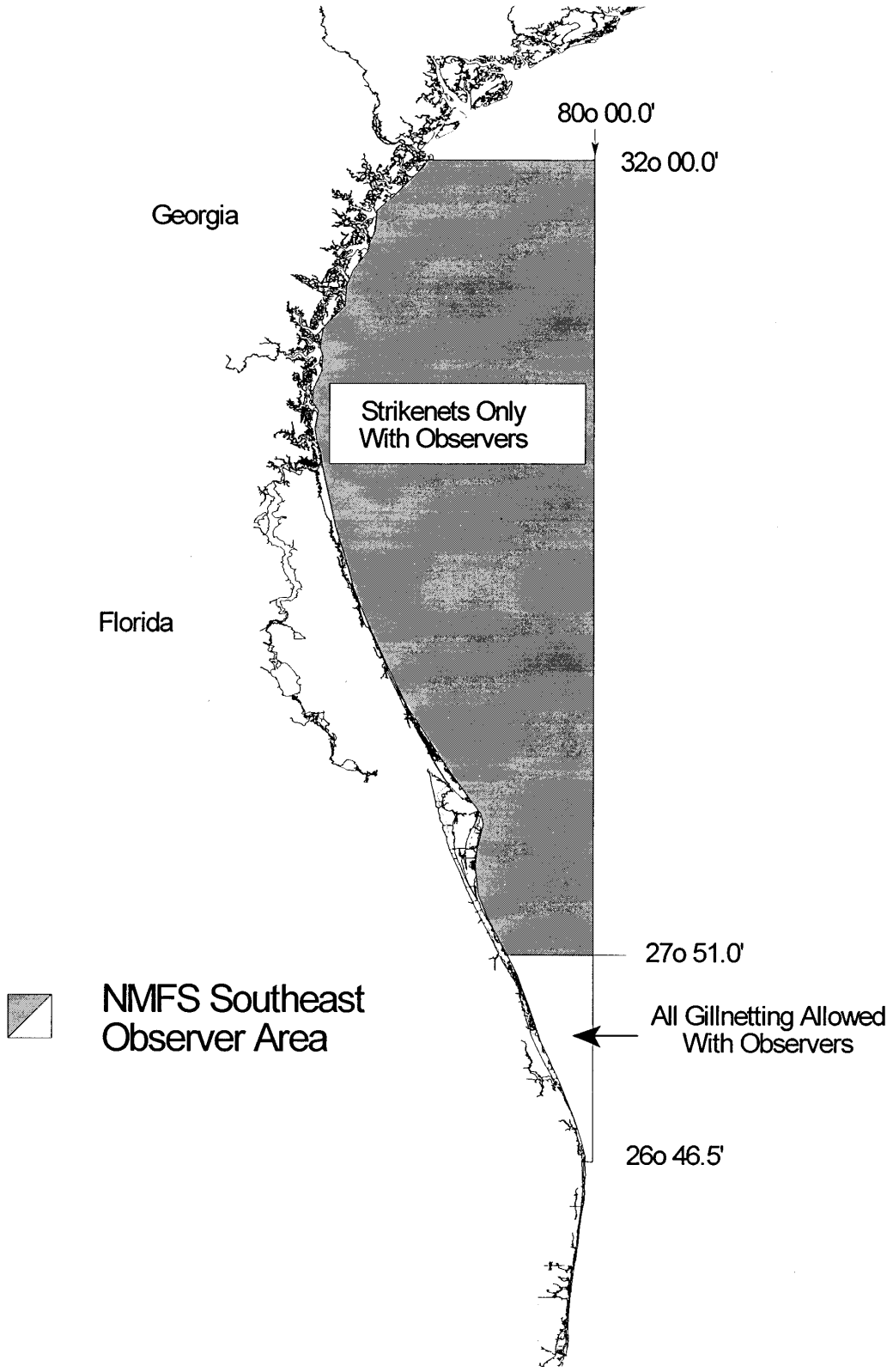

November 15 to March 31 Shark Gillnetting Restrictions

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Other Entanglement Reduction Measures Not Specified in This Plan:

Other measures under the Magnuson-Stevens Fishery Conservation and Management Act that are expected to decrease the risk of entanglement of whales in sink gillnets are either currently in effect or under consideration. Reductions in allowable days at sea and seasonal or year-round area closures to protect groundfish will reduce the risk of entangling right whales. A significant portion of the SB/JL restricted area is closed year-round to all gillnets (and other gear capable of catching groundfish). In addition, currently there are 1-month closures to gillnet and other groundfish fish gear in March, April, May, and June along the coast of the Gulf of Maine. Additional closures are being considered by the New England Fishery Management Council. A prohibition against setting gillnets with mesh size greater than 7 inches in the mid-Atlantic (from the South Carolina/North Carolina border to Delaware) from February 15 to March 15 coincides with a portion of the time when humpback whales are present in the area and when right whales may be migrating through the area on their way north. Proposed closures to monkfish gillnets in the Mid-Atlantic coincide with the time when humpback whales are likely to be in the area.

Some level of lobster trap gear effort reduction is expected to be proposed and implemented under the provisions of the Atlantic Coast Marine Fisheries Cooperative Act. The Atlantic States Marine Fisheries Commission has recommended that the maximum number of traps a person may set be limited in state and inshore Federal waters of the Gulf of Maine to 800 traps and to 2000 traps in Gulf of Maine offshore waters by the year 2000. Trap reductions may occur in areas south of Cape Cod as well. Some offshore areas south of Georges Bank are closed to lobster trap gear during some summer months in order to reduce conflicts with mobile gear. While the closed areas are not the usual right whale habitat, the times when lobster gear is prohibited include periods when right whales may wander into the areas. Gear conflict reduction measures are also expected to decrease the amount of lost gear, which should reduce the risk that whales would become entangled in ''ghost'' gear. Any effort reduction measures implemented for the lobster fishery would reduce the risk of entanglement of whales in that gear.

Comments and Responses

Comments on the interim final rule were received from the States of Maine and Rhode Island; the New England Fishery Management Council; the Rhode Island Coastal Resources Management Council; 19 conservation organizations including the Center for Marine Conservation, Chequamegon Audubon Society, Greenpeace, Humane Society of the U.S., the International Wildlife Coalition, and a joint letter from 18 conservation organizations (including most of the aforementioned ones); 6 fishermen's organizations, including Cape Cod Gillnetter's Association, Maine Lobster Promotion Council, Maine Lobstermen's Association, Maine Zone E Council, Offshore Lobster *ad hoc* Whale Working Group, and the New Hampshire Commercial Fishermen's Association; Cetacean Research Unit; Marine Mammal Commission; New England Aquarium; Washington Legal Foundation; and 23 individuals. Approximately 4700 signatures were received on petitions urging NMFS to strengthen the regulations in the interim final rule.

Comments in Support of the Interim Final Rule

Comment 1: A number of commenters expressed support for the interim final rule and appreciation for NMFS responsiveness to the concerns and suggestions made by the fishing industry on the proposed rule. These commenters felt that the interim final rule was a good step toward developing a cooperative relationship with the fishing industry to reduce the bycatch of large whales.

Response: NMFS appreciates the expressions of support. It believes that the cooperation of the fishing industry is essential to make the ALWTRP achieve its goals.

Comment 2: Several commenters believed that the ALWTRP had a realistic potential of achieving its stated goals.

Response: NMFS agrees, provided that the partnership with the industry continues to make progress in reducing serious injuries and mortalities of large whales in fishing gear. The zero mortality rate goal may be difficult to achieve. To reach it will require continued efforts to develop effective gear modifications and to improve the disentanglement teams.

Comment 3: The State of Maine expressed appreciation for NMFS commitment to fund a position to function as a liaison among the fishermen, coastal communities, the State, and NMFS.

Response: This position is important to the outreach and gear research efforts of NMFS in Maine to improve cooperation on the ALWTRP. When funding is available, NMFS hopes to fund a second such liaison position for southern New England.

Comments in General Opposition to the Plan and the Interim Final Rule

Comment 4: Many comments and petitions were received urging NMFS to strengthen the interim final rule on the grounds that the interim regulations offer virtually no protection for right whales and would probably not prevent future entanglements.

Response: NMFS acknowledges that some persons and groups are disappointed in the regulations implemented by the interim final rule. NMFS continues to believe that the approach taken by the ALWTRP has a reasonable chance of achieving its difficult goals. The ALWTRP is not just a set of regulations. It is a series of intertwined activities that include gear research, outreach and education, disentanglement, closed periods and gear restrictions. The Plan emphasizes cooperation with the fishing industry, which is essential for progress on gear development and is helpful for disentangling whales. Because there were no known cases of serious entanglements of right whales in U.S. waters during the first 6 months of the plan, because fishermen are developing and testing new ways to rig their gear to avoid entanglements, and because of the assistance of and the interest in disentanglement on the part of the fishing community, NMFS believes that the Plan has already reduced the risk of serious injury and mortality due to bycatch in U.S. fishing gear.

The ALWTRP is not a static plan. If it is not achieving its goals or if better ways to achieve the goals are identified, it can be modified. The support and cooperation of the fishing communities will be important in continuing to make progress on right whale conservation.

Comment 5: The ALWTRP will do nothing to fulfill the obligations of NMFS to reduce the take of northern right whales under section 118 of the MMPA.

Response: NMFS disagrees. The ALWTRP balances cooperation and regulation. NMFS believes the ALWTRP has a realistic chance of achieving its goals.

Comment 6: NMFS cannot quantitatively measure the level of risk reduction of various measures, and, therefore, it cannot assert that the plan is expected to achieve the necessary take reductions within 6 months.

Response: NMFS agrees that it is impossible to quantify the risk reduction of any of the measures in the ALWTRP. It acknowledged this when it published the interim final rule. However, the same problem besets all the measures seriously considered by NMFS or the TRT because entanglements are so unpredictable and take place at such a low rate. The TRT recognized this during its discussions. Even wide-scale closures cannot be quantified as to the degree of risk reduction. The impossibility of quantifying risk reduction should not force the Government into choosing the only quantifiable approach to the problem—total closure of all fixed gear fisheries where right whales might occur.

Comment 7: There is no guarantee that the ALWTRP or the associated interim final rule will result in the needed cooperation with the fishing industry. That cooperation can only be achieved through an intensive constituent outreach program.

Response: NMFS agrees. Constituent outreach is a key component of the ALWTRP, even though the benefits are not quantifiable. Outreach efforts have expanded greatly in the past year. Fishermen are reporting entangled whales, and they are experimenting with various gear modifications. Although more work may need to be done, progress is being made.

Comment 8: NMFS must balance a cooperative approach with the implementation of a take reduction plan that prevents entanglements rather than merely relies on disentanglement as a take reduction strategy.

Response: The ALWTRP contains specific measures to prevent entanglements, such as closures of critical habitat to some gear types and restrictions on ways that gear can be rigged. In addition to these measures and to strengthening the disentanglement program, NMFS has a third key component of the plan, namely research and development of gear that will either lower the risk of entanglement or reduce the risk that an entanglement will result in a serious injury.

Comment 9: A number of commenters criticized various aspects of the ALWTRP because they were weaker than the consensus portions of the TRT report, particularly in the mid-Atlantic anchored gillnet fisheries and for the SB/JL area.

Response: The TRT report was not a consensus document. Although the TRT reached consensus on parts of a plan, the understanding within the team was that these parts were contingent on reaching agreement on a complete set of recommendations. Because no overall consensus was reached, NMFS is unable to assume that all members of the TRT still support any particular part of the negotiations.

Comment 10: Several commenters criticized the ALWTRP because it was weaker than proposals that the industry had submitted to NMFS for various areas, including for Cape Cod Bay and the SB/JL area.

Response: Prior to the publication of the proposed ALWTRP, a group of industry and state agencies in the Gulf of Maine formed an informal Industry/State Agency Take Reduction Team (ISATRT) to advise NMFS on bycatch reduction measures. After the comment period for the proposed rule, it was no longer apparent that the industry supported the recommendations made by its representatives on the ISATRT.

Comment 11: The ALWTRP is almost worse than doing nothing, as it creates the appearance of meaningful action when, in fact, nothing has been done to reduce risk.

Response: As explained earlier, NMFS believes that the ALWTRP has a reasonable chance of reducing the risk of entanglement.

Comments Regarding Gear and Take Reduction Technology Lists

Comment 12: Several commenters liked the ''menu'' approach allowed by the Take Reduction Technology Lists and believed this approach allowed flexibility in adapting individual fishing operations to the requirements of the ALWTRP.

Response: NMFS appreciates this support for the flexibility allowed by the Take Reduction Technology Lists. Note, however, that many comments were received that opposed the Take Reduction Technology Lists.

Comment 13: Many commenters opposed the gear technology lists because they are not a departure from current fishing practices that have entangled whales. Therefore, the lists would not achieve the required bycatch reductions.

Response: The gear technology lists were not intended by themselves to meet the short-term goal of the ALWTRP, i.e., reducing right whale entanglements to below PBR. The reason for implementing the gear technology lists is to initiate a flexible process of gear modification over the next 4 years. As progress is made in developing fishing gear and practices that lower the risk of a serious entanglement beyond that gained from using the options on the current lists, new options will be added, and, if appropriate, less effective options may be deleted. There may also be a small immediate risk reduction because some fishermen not using any of these options would have to improve the way they set their gear. The gear technology lists may be modified in the future if new gear is developed and tested in field trials or if any of the characteristics on the list are determined by NMFS to be insufficient to reduce entanglement risks.

Comment 14: NMFS should revise the gear technology lists to require the use of gear characteristics that are more risk averse than is current practice.

Response: NMFS intends to continue funding research into gear technologies that reduce entanglement in order to upgrade the lists. Various possible weak links are being investigated. The operational forces exerted on fixed gear are being measured and the theoretical and actual forces exerted by whales are being studied to determine the best breaking strengths to use. So far, however, no new technology has been tested and determined to both lower the risk of a serious entanglement and be operationally feasible. NMFS intends to seek the advice of the TRT and the GAG, and to seek public comment, before changing the lists.

Comment 15: The gear technology lists undermine NMFS authority because these are regulations that serve no functional purpose.

Response: NMFS disagrees that the regulations serve no functional purpose and, therefore, does not agree with the conclusion that the lists undermine the authority of NMFS. As explained above, NMFS expects some fishermen to improve the way their gear is set, providing a small decrease in the risk of entanglement. Also, by establishing the concept of gear technology lists now and by working with fishermen and gear technology experts to develop gear modifications that will further reduce entanglement risk, more progress can be made in the future as we strive to achieve the long-term goal of the Plan.

Comment 16: A number of the options included on the gear technology lists have been proposed without adequate research to indicate that they may reduce entanglements.

Response: Because the process (or processes) by which entanglements occur is not known, it is difficult to conduct definitive research on whether any particular option on the gear technology lists is effective. The items on the gear technology lists were recommended by the GAG, based on descriptions by members of the disentanglement team of ways in which entanglements might occur. NMFS will

ask the GAG and the TRT to review the lists.

Comment 17: It would be useful to rank the options on the gear technology lists in order of their anticipated benefit.

Response: NMFS agrees, but is unable to rank the options at this time. It will refer this suggestion to the GAG and the TRT.

Comment 18: NMFS should postpone requiring compliance with the gear technology lists in areas where the risk of entanglement is low (i.e., those areas where only one option from the Gear Technology lists is required under the Plan).

Response: Entanglements have been reported from state and Federal waters throughout the northeastern U.S. waters. Therefore, there is value in requiring gear modifications in most waters. Part of the value of requiring compliance with the gear technology lists in all affected waters is to gain acceptance of the concept of a list of take reduction technologies. As technology is improved, NMFS believes it will be easier to make changes to the list than to get agreement to having the lists themselves. Also, if all persons fishing in affected waters are at least aware that they are subject to the lists, there may be more people thinking creatively about how to reduce bycatch without affecting the fishing characteristics of the gear.

Comment 19: Requiring only one option from the Gear Technology lists in lower risk areas is not enough.

Response: There was a divergence of views on this subject (see Comment 18). NMFS will refer this comment to the TRT and the GAG, which will review the gear technology lists.

Comment 20: Several commenters stated that a lead line weighing 100 pounds per 300 feet (91.4 m) is not manufactured. Some urged that the requirement be changed; others urged that it be dropped.

Response: Lead line with these characteristics is available, though it is not in common usage. However, since the option of using this kind of line is no longer on the gillnet gear technology list, the issue of availability is moot.

Comment 21: The breaking strengths of weak links may need to be adjusted for different fishing areas due to tide, current, and setting protocols, but the link should be the weakest link possible that is consistent with practical fishing gear handling and whale safety.

Response: NMFS agrees, but believes it needs more information before establishing region-specific breaking strengths. NMFS is collecting data on forces exerted on gear as well as by whales. This information will be presented to the GAG and the TRT.

Comment 22: There was support for allowing sinking buoy lines to have a section of floating line at the bottom to avoid snagging.

Response: This option is available to all fishing operations. The purpose of allowing the section of floating line is to minimize the risk of lost gear due to chafing on the ocean bottom.

Comment 23: The name ''Take Reduction Technology List'' is misleading and should be changed.

Response: For now, NMFS prefers the formal name because it is descriptive of its goal. However, ''gear technology list'' is already a more common informal term of the option lists.

Comment 24: One commenter urged NMFS not to amend gear or marking requirements without first obtaining the advice and consent of the GAG.

Response: NMFS intends to seek the advice of the GAG before changing the gear marking requirements or the Take Reduction Technology Lists. However, the consent of the GAG will not be a requirement of any changes.

Comment 25: The procedure NMFS has set forth for evaluating whether gear modifications may be allowed into closed areas is too vague. Setting a standard of reducing the risk of entanglement to ''acceptable levels'' is also too vague. A rigorous standard must be set.

Response: NMFS agrees that the standards are vague. Because the degree of risk reduction required to achieve the goals of the MMPA is not quantifiable, any standards are likely to be vague (see following comment). The value of engaging both the GAG and the TRT in review of any gear modifications is to ensure as much as possible that changes to the gear technology lists are appropriate from a variety of viewpoints.

Comment 26: The option of allowing lobster or gillnet gear into the closed areas should be exercised only if the gear reduces the risk of serious injury or mortality to whales to levels approaching zero.

Response: NMFS agrees with the point of view reflected in this suggestion, but notes that this standard is vague. The probability of entanglement in any given piece of fishing gear is already extremely low. Bycatch is a problem because right whales are so rare that even this low probability could harm the population. The suggested standard does not clarify (and perhaps cannot quantify) how much a gear modification must reduce that very low risk to be ''levels approaching zero.''

Comment 27: There were many comments making specific suggestions for changes to the gear technology lists. Included in these suggestions were (1) The 1100 lb (498.8 kg) maximum breaking strength for weak links is too great and will neither reduce the risk of entanglement to whales nor facilitate the whale breaking free from the gear; (2) Floating line at the bottom of a buoy line should be no longer than 10 percent of the depth of the water column; (3) There should be sinking ground lines between lobster traps year round in Cape Cod Bay, where the bottom is primarily sand and is less likely to cause extensive chafing or hinder the retrieval of lost gear as in the case of a rocky bottom; (4) NMFS should require four options of the Take Reduction Technology Lists in Cape Cod Bay, the Great South Channel and Stellwagen Bank/Jeffreys Ledge, instead of requiring only two; (5) NMFS should reduce the allowed diameter of line in critical habitat and the SB/JL area to 5⁄16 (0.79 cm); (6) NMFS should reduce the maximum breaking strength of weak links allowed in Cape Cod Bay and Stellwagen Bank/Jeffreys Ledge to 400 lb (181.4 kg); (7) NMFS should reduce the maximum breaking strength of weak links allowed on Stellwagen Bank/Jeffreys Ledge to 750 lb (340.1 kg); (8) NMFS should reduce the maximum breaking strength of weak links allowed in the Great South Channel to less than 1000 lb (453.5 kg); (9) NMFS should increase the maximum breaking strength of weak links allowed in the Great South Channel area to 1500 lb (680.3 kg); (10) In the Great South Channel, the floating line allowed for the bottom ten fathoms of the buoy line should be up to ½ inch (1.27 cm) diameter because of the problem of chafing in that region; (11) Lobster trawls should be required to use sinking ground line or at least to put a weight on each ground line to reduce the risk of entanglement in the ground line; (12) In Cape Cod Bay critical habitat and in the SB/JL area, NMFS should require gillnets to have (a) a floatline that is 5⁄16 inch (0.79 cm) diameter polypropylene when using net floats or ½ inch (1.27 cm) diameter polypropylene foam core for use in flounder nets; (b) weak links at or near the surface buoy of a breaking strength less than or equal to 400 lb (181.4 kg); (c) Danforth-style anchors to anchor the net instead of weights to increase the likelihood of the weak links parting; (d) nets attached to a lead line weighing 100 lb (45.4 kg) or more per 300 feet (91.4 m); (e) weak links between the net bridles on the float line; (f) sinking line for buoy line not to exceed 5⁄16 inch

(0.79 cm) diameter, except for the last 10 fathoms, which may be up to ½ inch (1.27 cm) polypropylene spliced in to prevent formation of a knot and to create no more than 2 fathoms of vertical lift; and (g) 15 fathom bridle and groundlines to anchors, and (13) In the Great South Channel critical habitat, NMFS should require gillnets to have: (a) a floatline that is 5⁄16 (0.79 cm) to 3⁄8 inch (0.95 cm) diameter polypropylene when using net floats or ½ inch (1.27 cm) diameter polypropylene foam core for use in flounder or monkfish nets; (b) weak links at or near the surface buoy of a breaking strength less than or equal to 1000 lb (453.5 kg); (c) Danforth-style anchors to anchor the net instead of weights to increase the likelihood of the weak links parting; (d) nets attached to a lead line weighing 100 lb (45.4 kg) or more per 300 feet (91.4 m); (e) weak links between the net bridles on the float line; (f) sinking line for buoy line not to exceed 5⁄16 inch (0.79 cm) to 3⁄8 inch (0.95 cm) diameter, except for the last 10 fathoms, which may be up to ½ inch (1.27 cm) polypropylene spliced in to prevent formation of a knot and to create no more than 2 fathoms of vertical lift; and (g) 15 fathom bridle and groundlines to anchors.

Response: These suggestions are useful. Some of them are conflicting; others may not work in all areas and, if implemented, could increase the amount of lost gear. NMFS intends to refer all these comments to the GAG and the TRT for their review.

Comments Regarding Gear Research

Comment 28: NMFS must make a strong financial commitment to an aggressive gear research and development program immediately.

Response: NMFS agrees and intends to continue to fund gear research for the foreseeable future. In the 1998 fiscal year, NMFS allocated $130,000 for gear research. Additional funds were dedicated to outreach. NMFS expects to allocate the same or more funds in 1999, 2000 and 2001.

Comment 29: The ALWTRP provides little incentive for the fishing industry to cooperate in gear research. NMFS must state clearly the implications of failing to find a technological solution to the entanglement problem.

Response: NMFS acknowledges the concern regarding the commitment of the fishing industry to cooperate in gear research. In actuality, the cooperation from the industry has been high, both in terms of ideas and testing. NMFS believes that the outreach efforts have informed the industry of the difficulties of reaching the zero mortality rate level, especially for right whales, and that the industry is working actively to find a technological solution to the problem.

Comment 30: NMFS should conduct research into the development of a weak buoy line, which might be more likely to reduce whale entanglements than weak links alone.

Response: NMFS agrees. NMFS is now in the process of awarding contracts to develop this kind of system.

Comment 31: Research should be done with baleen from dead whales to see how rope passes through it.

Response: NMFS agrees and has tested how rope passes through the baleen from several species this year. The results were presented to the GAG this fall.

Comment 32: NMFS should continue its research to determine whether a weaker breaking strength could be used in Cape Cod Bay.

Response: This research is now being undertaken; preliminary results were presented to the GAG this fall.

Comment 33: NMFS should not conduct research on weak links with 1100 lb (498.8 kg) breaking strengths, as this represents no risk reduction.

Response: NMFS agrees. It is not trying to develop a better link that breaks at 1100 lb (498.8 kg). Instead, it is trying to develop weaker links and is seeking information about what breaking strengths are appropriate in each region.

Comment 34: It would be useful to review photographs of entangled whales to try to determine how many of them have just line wrapped around the body (in which case a weak link at the buoy may not be helpful).

Response: NMFS agrees that this would be useful information. It is conducting detailed investigations of all entanglements reported in 1998.

Comment 35: Research should be done on how to put weak links at the bottom of fishing gear.

Response: NMFS agrees that this could be an important breakthrough, although it will take some creativity to design a weak bottom link that will still allow gear to be hauled. Research is now being conducted to develop a workable weak link to be used between the gear and the buoy line.

Comment 36: There should be research on ways to put weak links into offshore lobster gear because they are so much heavier than inshore gear.

Response: Offshore lobster gear tends to be substantially heavier than inshore gear. This may make it more difficult for a whale to break free if it becomes entangled. This heavier gear also makes the development of weak links more difficult. However, NMFS agrees that solving the problem of putting weak links into offshore lobster gear could be an important step forward in bycatch reduction and has issued a Request for Proposals to address this concern.

Comment 37: Research should be done on the configuration of ground lines between lobster traps; an upward bow of line between traps represents an entanglement risk.

Response: This is being done through in situ observations of both lobster and gillnet configurations while the gear is in the water.

Comments Regarding Gear Marking

Comment 38: Many commenters were opposed to the gear marking scheme as outlined in the interim final rule. Some commenters believed that the information that the gear marking would provide would not be specific enough to determine where entanglements were occurring. Others thought information about location might be misleading, since marked gear could be dragged to another location before an entanglement occurred. Some questioned whether the markings would remain detectable. Several believed that whatever benefit gear marking might provide would not outweigh the burden to the fishermen. Several commenters suggested that gear marking should not be required in exempted waters.

Response: The purpose of requiring gear marking is to obtain better information about where entanglements are taking place. NMFS agrees, therefore, that the marking scheme in the interim final rule was too general and would not have provided useful information about the specific region where an entanglement took place. However, a color-coded marking scheme that is specific for every region and gear type of interest would be extremely complicated. Given the reservations about gear marking, NMFS has decided that it would be best to have a relatively small-scale pilot program to determine whether the gear marking process works and if it provides useful information. Therefore, gear marking will only be required in critical habitats, in the southeast U.S. observer area, and in the SB/JL area. This scheme should provide specific information about where gear that entangles a whale was first set, provided the entanglements take place in one of these regions (which are the areas of greatest concern). It will also allow NMFS to determine whether gear marking works on an operational basis before requiring wide-scale marking. NMFS acknowledges that this gear marking scheme does not surmount the problem of gear that is dragged by some other force from one region to another and then entangles a whale. However,

implementation of gear marking in this pilot program may help to evaluate how big a problem this might be.

Comment 39: Gear marking is an important data gathering device that may assist in designing future bycatch reduction measures to achieve the zero mortality rate goal.

Response: NMFS believes that gear marking has the potential of providing important data on where entanglements occur. This information could contribute to future measures to reduce entanglement risk. There are questions about gear marking, both from an operational standpoint and with regard to the interpretation of the data it might provide. NMFS believes that the relatively restricted gear marking scheme in the final rule will help resolve those questions.

Comment 40: Gear marking does not reduce risk; it simply allows NMFS the possibility of knowing where entanglement occurred.

Response: NMFS agrees. However, the purpose of gear marking is exactly to know more about where an entanglement occurs in order to focus future take reduction measures on the places where the risk is greatest.

Comment 41: NMFS should consult with state governments, the TRT, and the GAG with a view to improving the gear marking system by 1999.

Response: NMFS will ask the GAG and the TRT to keep the gear marking scheme in this final rule under review. If major improvements are recommended, NMFS may modify the gear marking scheme again. However, NMFS expects to implement the current scheme for at least two years in order to get a better picture of its value. The states will be involved in the GAG and the TRT and their experience and concerns will be taken into account during the discussions in these groups.

Comment 42: Gear marking should not apply in exempted areas.

Response: NMFS no longer requires gear marking in exempted areas.

Area-specific Comments

Comment 43: The closures in critical habitats are not likely to result in significant risk reduction, even though they occur at times when right whales are most likely to be present, because the closures take place at times when fishing effort is low.

Response: NMFS believes the current closures are sufficient to achieve the short-term goal of the ALWTRP by providing protection in areas and times when right whales congregate. If it becomes apparent that the long-term goal cannot be met through gear modifications, further closures or other actions may be necessary.

Comment 44: The Cape Cod Bay critical habitat area should be closed to lobster gear as well as to sink gillnet gear from January 1 to May 15.

Response: NMFS believes that the restrictions imposed on lobster gear in Cape Cod Bay are sufficient to protect large whales from entanglement. If there is evidence that this belief is unfounded, NMFS will consider further restrictions in that area, including prohibiting lobster fishing from January 1 to May 15. The Commonwealth of Massachusetts is closely monitoring lobster fishing effort in Cape Cod Bay during the winter, so the effectiveness of the regulations in Cape Cod Bay should be determinable. The gear marking requirements for lobster gear in that area may also help to monitor the effectiveness of the regulations.

Comment 45: The decision to exempt Long Island Sound is appropriate, since no right whales have been seen there in 20 years.

Response: NMFS agrees.

Comment 46: The closure of the Great South Channel critical habitat to lobster gear from April 1 to June 30 is appropriate.

Response: NMFS agrees.

Comment 47: It is irresponsible to allow gillnetting in the ''sliver area'' of the Great South Channel because right whales are known to use the area during that time period.

Response: NMFS agrees that right whales and gillnet gear may occur in this area at the same time, as seen in the 1998 aerial surveys. It will consider closing this area in the future if the MMPA goals are not being met and will urge the TRT to discuss this option as a way to continue progress toward the long-term goal of the Plan. However, as explained in the interim final rule, NMFS understands that the gillnetters in the Sliver Area generally tend their gear, and hence are likely to see and report entangled whales quickly. One right whale that had been entangled elsewhere was disentangled based on a call from a gillnetter in the vicinity of the Sliver Area in 1997.

Comment 48: Gillnetting should be allowed in the Great South Channel once gear has been modified to prevent the potential of entanglement.

Response: NMFS agrees in concept but notes that this is another ''vague standard.'' It will be difficult to demonstrate that a gear modification will prevent entanglements, given our limited understanding of how entanglements occur. Because there will be differences in opinions of what constitutes an adequate demonstration of risk reduction, NMFS will seek the advice of the TRT and the GAG on whether to allow modified gear into a closed area.

Comment 49: The gillnet closure in the Great South Channel should only extend from April 1 to May 31 because the right whales are generally in the ''Area 1'' groundfish closure (where gear is prohibited year round) by June.

Response: NMFS is not aware of any analysis to support this assertion. Therefore, it will not change the timing of the closure in the Great South Channel in this final rule, but it will ask the TRT for advice on this suggestion.

Comment 50: The offshore lobster fishery represents a significant risk to right whales because the gear is heavier and because the chances of seeing an entangled whale and the ability to disentangle it are lower than the chances for inshore lobster gear. Therefore, more stringent measures should be applied to the offshore lobster gear.

Response: NMFS agrees that the gear used in the offshore lobster fishery is generally heavier than inshore gear. Furthermore, offshore lobster gear is known to entangle right whales. However, it is not clear that offshore lobster gear poses a greater threat to right whales than inshore gear. Lobster gear is sparse offshore, and right whales do not appear to be resident in any offshore area for predictable times of the year. NMFS notes that the heavier nature of the offshore gear will make it more difficult to devise a technological solution to the entanglement problems that may occur there. However, NMFS is funding gear research to find a solution to this problem.

Comment 51: There was support for the ALWTRP closure of the Cape Cod Bay critical habitat to gillnet gear for the period of 1 January to 15 May.

Response: NMFS continues to believe that a closure in this area for this duration is prudent. It notes, however, that there was support for allowing more flexibility in opening the area early if right whales leave before May 15. (See the following comment.)

Comment 52: The regulations for Cape Cod Bay critical habitat allow NMFS to lift restrictions if right whales have been determined to have left the Bay early. There should be a similar provision that allows NMFS to keep the area closed if right whales have not yet departed.

Response: Paragraph (g)(2)(v) of § 229.32 would allow NMFS to publish in the **Federal Register** criteria either to open an area if right whales had departed earlier than expected or to keep the area closed if right whales are

remaining in the area longer than expected.

Comment 53: The western boundary of the SB/JL area extends too far toward the coast. There have been whale sightings there, but no incidents of serious entanglements.

Response: Because there have been whale sightings in this area and because the actual locations of most entanglements are unknown, NMFS considers it prudent to keep the boundaries of the SB/JL area as in the interim final rule. It will seek the advice of the TRT as to whether the boundaries should be changed.

Comment 54: There is no need for gear modifications or gear marking in New Hampshire state waters.

Response: This final rule does not require gear marking in New Hampshire state waters. NMFS believes that the proximity to the relatively high-risk SB/JL restricted area, where several species of whales are commonly found, justifies requiring the use of at least one option from the Take Reduction Technology Lists.

Comment 55: There was support for the driftnet gear fishing practices requirements in mid-Atlantic waters.

Response: NMFS appreciates this statement of support. Note that the full rationale for this provision was presented in the **Federal Register** document containing the interim final rule.

Comment 56: One commenter supported the requirement that driftnets in the mid-Atlantic be tended, even though the commenter did not believe that it reduced risk. The commenter believed that tended nets were not less likely to entangle whales than were untended nets and that the only advantage would be the immediate knowledge that an entanglement occurred. Since the nearest disentanglement team was in New England, there would be no benefit to this knowledge.

Response: NMFS believes detecting an entanglement immediately improves the chances of a successful disentanglement. As the commenter noted, a whale caught in a tended driftnet would be noticed quickly. The exact position of that animal would then be known, and the fisherman could assist in keeping track of that animal until the disentanglement team could get to the site. This should increase the chances of disentangling the whale.

NMFS is expanding the disentanglement network to cover the mid-Atlantic area. The first workshop to train fishermen in the mid-Atlantic area to assist in responding to entanglements was held in early December 1998, and additional training sessions are planned for the future. NMFS hopes to avoid a similar situation as that which occurred in March 1998 when a humpback whale died in gillnet gear before a disentanglement team could reach the site.

Comment 57: There was support for the boundaries of the southeast U.S. restricted area and the southeast U.S. observer area and for the prohibition on driftnet use in the southeast U.S. restricted area during the times when right whales are likely to be present.

Response: NMFS appreciates the statement of support. The rationale for the boundaries was explained in the interim final rule.

Comment 58: The best dates for the closure of the southeast U.S. restricted area would be from November 1 through April 1.

Response: The dates of the southeast U.S. closure were selected by the TRT based on historical sighting data. Only two whales have been sighted in this area prior to November 15—one in 1986 and one in 1988. Therefore, NMFS believes the November 15 starting date for this closure is appropriate.

Comment 59: There was support for the strikenet provisions in the southeast U.S. restricted area.

Response: NMFS appreciates the statement of support. The rationale for the strikenet provisions was explained in the interim final rule.

Comment 60: There is no evidence that strikenetting has posed a risk to right whales. Therefore, restrictions on strikenetting offer little reduction in risk to right whales.

Response: As explained in the interim final rule, the southeast U.S. drift gillnet fishery for sharks is believed to be responsible for the entanglement of at least one right whale. Although strikenetting may pose less of a problem than other forms of gillnetting (and therefore is not prohibited during the closed season), the ALWTRP imposes some regulations to further reduce the potential for entanglement. Therefore, NMFS believes it is appropriate to take precautionary steps to reduce the risk of future entanglements.

Comment 61: NMFS should require that observers be on board vessels operating with strike nets in the southeast U.S. restricted area during the closed period.

Response: NMFS will attempt to place an observer on every vessel fishing for sharks with strikenets in the southeast U.S. restricted area during the closed period. It does not seem appropriate, however, to prohibit a person to fish in cases when NMFS fails to provide an observer for that trip.

Comment 62: Gear set adjacent to critical habitat should be subject to the same restrictions as that placed on gear fished within the critical habitat because animals do not respect lines drawn on maps.

Response: The boundaries of right whale critical habitats were selected because they enclosed about 85 percent of the historical right whale sightings. While it is true that right whales must pass through adjacent waters to reach any critical habitat, the chances of finding a right whale in an area adjacent to a critical habitat are substantially less than of finding a right whale in the critical habitat. Therefore, less restrictive measures are appropriate.

Because the right whale sighting record in the southeast U.S. area is relatively new, the critical habitat boundaries there may possibly be less appropriate than those in the northeast. As sighting data are collected, NMFS may consider revising the southeast U.S. critical habitat boundaries. However, gillnet restrictions in this area have been expanded north, south, and east beyond the critical habitat boundaries, encompassing all known sightings of right whales in the vicinity.

Comments Regarding Disentanglement Efforts

Comment 63: NMFS is placing too much faith in disentanglement as a key component of the ALWTRP. No serious wildlife management plan relies on first aid to injured animals in preference to preventing death and injury in the first place.

Response: NMFS agrees that preventing entanglement is preferable to disentangling whales if the cost and effectiveness of each method are equivalent. The ALWTRP relies on a mixture of measures to lower the risk of entanglement, such as closures of critical habitats and gear restrictions, and on disentanglements when whales do encounter gear. In addition, the ALWTRP encompasses research on cost-effective gear technologies that will further reduce entanglement risk and on outreach and education to show fishermen ways to set their gear that could reduce risk, to get ideas from fishermen as to fruitful avenues for gear research, and to encourage fishermen to assist in disentanglements.

Comment 64: The ALWTRP does not have a specific proposal to establish, train, and equip regional disentanglement response teams.

Response: NMFS is in the process of expanding the disentanglement teams. A permanent coordinator has been established in Maine, and efforts to set

up teams in the southeast and mid-Atlantic are underway.

Comment 65: Simply calling in an entanglement does not necessarily result in an animal being disentangled.

Response: NMFS agrees. However, reporting an entanglement is a necessary first step to removing the gear from an animal. The fishing industry can provide a wide-ranging sighting network in regions where other vessels rarely go. In addition, fishermen who call in an entanglement are sometimes able to keep track of the animal until the disentanglement team arrives and to assist in removing the gear. All these efforts can help improve the chances of removing the gear without serious injury to the whale.

Comment 66: Improving the disentanglement effort is more appropriate for achieving the long-term goal than the short-term goal.

Response: Improving the disentanglement effort is appropriate to achieve both the short-term and the long-term goal of the ALWTRP. NMFS intends to continue to improve the disentanglement effort to help achieve the long-term goal of the Plan.

Comment 67: Right whales are notoriously difficult to disentangle because they tend to thrash wildly, whereas other species may become more docile during disentanglements. Therefore, disentanglement should not be viewed as a long-term solution to the bycatch problem.

Response: NMFS acknowledges the difficulties in disentangling right whales. Although it intends to continue to improve the capabilities of the disentanglement network, it is also seeking to develop gear technologies that will reduce entanglements to help achieve the long-term goal of the Plan. NMFS will continue to support the disentanglement effort until an effective solution involving fishing gear or practices is found.

Comment 68: Because no vessel is allowed within 500 yd (457 m) of right whales, detecting entangled whales will be difficult, making reliance on disentanglement even more problematic.

Response: NMFS acknowledges the difficulties in detecting entangled right whales. Nevertheless, if an entangled right whale is seen, an effort should be made to remove the gear. The MMPA regulations specifically provide an exception for a vessel to approach a right whale closer than 500 yd (457 m) to investigate an entanglement, provided the vessel is authorized by NMFS to do so.

Comments Regarding Contingency Measures

Comment 69: Several commenters asked for clarification of the process by which NMFS could keep an area closed if right whales remain longer than expected or could open an area earlier than expected if the whales leave early.

Response: A timely process invoking the regulations of this final rule is not yet available. Because the criteria for opening an area early or for keeping an area closed are likely to both be controversial, NMFS intends to seek a recommendation from the TRT as to an acceptable process. Note, however, that section 118(g) of the MMPA gives NMFS authority to implement emergency closures to protect marine mammals if certain criteria are met. Likewise, the ESA allows emergency closures to protect right whales, humpback whales, and fin whales. These authorities could be used to keep critical habitats closed to fishing gear if right whales remain longer than expected (provided relevant criteria are met), although they cannot be used to open an area if right whales leave earlier than expected.

Comment 70: Several commenters expressed concern about the possibility that the SB/JL area might be closed to gillnetting if further take reduction measures are necessary. They asked for clarification on the process of making such a decision.

Response: Except when there is a need to implement emergency measures under the MMPA or the ESA as explained in response to comment 69, a decision to close the SB/JL area to gillnetting for the purposes of whale conservation would be made by NMFS after consultation with the TRT and after public comment on a proposed rule.

Comment 71: There was support for the provision to close critical habitat to a gear type if its allowance to be set in that area during a closed period results in a serious injury or mortality. However, if NMFS must take this action, it should consult with the TRT.

Response: NMFS intends to consult with the TRT if it is considering taking this action, unless an emergency situation exists.

Comment 72: One group felt that the provision that would require closure of critical habitat if gear that is allowed to be set there entangles a whale should not be mandatory. There are many factors in dealing with people, animals and the ocean, and some flexibility is needed. If fishermen believe that reporting an entanglement will lead to the closure of the fishery in that area, there will be less incentive to cooperate.

Response: NMFS is aware that regulations cannot account for every contingency, and that the possibility of closure could be a disincentive to reporting entangled whales. However, there is some risk in allowing gear to be set in areas when right whales are expected to be in the area. Although NMFS believes this risk is justifiable, it believes that it should have a clear contingency plan in case this risk is underestimated. It will, however, ask the TRT to provide advice on this matter.

Comment 73: Several commenters expressed disappointment that NMFS had removed specific criteria for extending gear requirements or closing an area in the event of anomalous right whales distributions. Some felt that the final rule must specify criteria for mandatory institution of closures in the case of anomalous right whale distribution. Others felt that NMFS should, at a minimum, implement an early warning mechanism to notify fishermen if right whales are in an area.

Response: The criteria contained in the proposed rule for closing an area in the event of anomalous right whale distributions were unilaterally developed by NMFS. During the comment period, a number of difficulties and ambiguities in the criteria were pointed out. Therefore, NMFS did not include the criteria in the interim final rule or in this final rule. It will, however, ask the TRT to develop appropriate ways of dealing with this situation. Note that NMFS has established a right whale alert program to inform marine users of the presence of right whales in an area.

Comments Regarding Constituent Outreach

Comment 74: Many commenters urged NMFS to continue and improve its outreach efforts, especially by going to where the fishermen are gathered, such as on the docks and at their forums and association meetings, rather than require industry to attend meetings convened by NMFS.

Response: NMFS intends to continue its outreach efforts, which are a key component of the ALWTRP.

Comments Regarding Process and Relationships

Comment 75: NMFS should clarify the roles of the TRT and the GAG.

Response: Each group serves a different function. The TRT is composed of persons representing all stakeholders and having a wide range of expertise on fishing practices and on scientific, technical, and policy matters. NMFS intends to use the TRT to advise

it on general strategies for reducing serious injuries and mortalities of large whales due to entanglements and for monitoring the progress of the ALWTRP toward its goals. The GAG is a technical body composed of persons with first-hand experience with fishing gear or disentanglements. Its function is specifically to provide technical advice on matters pertaining to fishing gear.

Comment 76: Several commenters supported the creation of a GAG and urged that it be continued.

Response: NMFS intends to continue to seek advice from the GAG on matters pertaining to development and use of technology that can reduce the risk of entangling large whales. NMFS convened a second meeting of the GAG in October 1998 and plans to convene the group at least once in 1999.

Comment 77: NMFS usurped the authority of the TRT by creating a competing body in the GAG. There was no representation from the conservation community in that Group.

Response: The TRT and the GAG are both advisory bodies to NMFS, and, as such, neither has authority to make decisions. One member of the conservation community with expertise in gear development was asked to participate on the GAG but was unable to do so. NMFS intends to continue to seek participation on the GAG from the conservation community, subject to the requirement that the participant have first-hand experience with fishing gear.

Comment 78: NMFS should require that recommendations of the GAG be reviewed by the TRT.

Response: To the extent that timing allows, NMFS will ask the TRT to review the recommendations of the GAG. In this regard, it will try to convene meetings of the GAG prior to meetings of the TRT in order that the work of the former can be reviewed by the latter.

Comment 79: Several commenters questioned the value of seeking the advice of the TRT on matters regarding the Take Reduction Technology Lists, since many of the TRT members are not fishermen or gear specialists. The GAG should have the lead responsibility for developing and recommending gear modifications.

Response: NMFS believes the GAG should have a leading role in developing and recommending gear modifications. However, the GAG need not be the only source of new ideas for gear modifications; the TRT or any person may make recommendations to NMFS about gear research. NMFS notes that keeping the TRT informed of the activities of the GAG will be essential for the TRT to fulfill its role of monitoring the progress of the ALWTRP.

Comment 80: All gear marking and modification proposals should be approved by the GAG.

Response: NMFS intends to consult with the GAG on matters pertaining to gear technology. However, the GAG does not have authority to approve gear or gear marking proposals.

Comment 81: The commitment to improving the involvement of the fishing industry in whale bycatch reduction is laudable but of questionable concrete benefit, especially if it results in recommendations to continue current fishing practice.

Response: NMFS believes that involving the fishing industry in whale bycatch reduction is the only practical way to achieve the goals of the ALWTRP. The fishing community has much to offer in the form of ideas for better gear and fishing techniques and in cooperation with disentanglements. NMFS recognizes that there are no guarantees that the Plan will reach its goals and that the success of the Plan will only be determined in retrospect, but it believes that the cooperation of the fishing community is essential to whatever actions are taken to reduce bycatch. Current research efforts are aimed at developing fishing practices and gear to protect whales that are feasible and, in some cases, can improve either fishing effectiveness or cost effectiveness.

Comment 82: NMFS should change its procedures for making changes to the regulations affecting the Cape Cod Bay critical habitat so as to keep in line with the regulations of the Commonwealth of Massachusetts.

Response: The regulations in this final rule are intended to be identical to the current regulations of the Commonwealth of Massachusetts regarding fishing in Cape Cod Bay critical habitat, except that NMFS cannot implement the Commonwealth's provisions to open the area early without going through a more formal rule making process.

Comment 83: NMFS and the New England Fishery Management Council should discuss the procedure for reviewing and testing gillnet gear modifications discussed in Framework 23 to the Northeast Multispecies Fishery Management Plan.

Response: NMFS agrees and will seek such a discussion.

Comments Regarding Exempted Waters

Comment 84: Several commenters felt that the boundary lines for exempted waters in the Gulf of Maine were confusing, especially as most coastal lobstermen in Maine set their gear on both sides of the exemption line. Some felt that NMFS should exempt all Maine state waters from the ALWTRP.

Response: Because right whales are known to move through Maine state waters, NMFS does not believe it would be prudent to exempt all state waters from the ALWTRP. Instead, to avoid the confusion caused by the exemption lines in the interim final rule, NMFS will exempt only the area designated in the proposed rule, i.e., waters landward of the first bridge. All other waters in the Gulf of Maine (including New Hampshire and Massachusetts State waters) are subject to the regulations in this final rule. NMFS notes that the gear marking requirement in the interim final rule no longer applies to Maine or New Hampshire State waters, and much of Massachusetts State waters is also exempt from gear marking.

Comment 85: The State of Rhode Island believed that the Sakonnet River and some coastal ponds were inadvertently omitted from the list of exempted areas.

Response: NMFS agrees. NMFS is not aware of any right whale sightings in these areas and, therefore, exempts them from the ALWTRP in this final rule.

Comment 86: One commenter believed that there was no justification for requiring any gear requirements in Rhode Island State waters, since right whale sightings are so rare there.

Response: Right whales occur in Rhode Island State waters from time to time, and therefore, the regulations in this final rule will apply to Rhode Island State waters (with limited exceptions). In 1998, one right whale was seen within 50 yards (45.7 m) of Watch Hill, RI, and 23 right whales were seen in one day east of Block Island off the mouth of Narragansett Bay.

Comments Regarding Other Aspects of the ALWTRP

Comment 87: The definition of ''lobster trap'' is too broad and could be construed to include black sea bass traps and even trawl gear.

Response: The definition in this final rule has been changed to clarify that it is intended to restrict only trap or pot-like gear, including black sea bass traps and scup pots, because they are so similar to lobster traps in the way they are set that it seems likely that large whales would have the same entanglement problems with this kind of gear.

Comment 88: Several persons felt that the prohibition on wet storage is unenforceable. At least one person believed that NMFS should require that gear that is not being actively fished be

removed from the water. While this requirement may be difficult to enforce, it has a greater potential for reducing entanglement risk to whales than simply requiring that gear be hauled at least every 30 days.

Response: NMFS recognizes that the prohibition on wet storage is difficult to enforce. It intends to seek the advice of the TRT on better ways to accomplish the purpose of this provision, which is to minimize the risk of entanglement in gear that is not actively being fished.

Comment 89: One commenter asked for clarification of whether the 30-day ''inspection'' requirement meant that gear had to be hauled back to land every 30 days to be inspected.

Response: Gear must be hauled at sea by its owner or designee at least once every 30 days. It does not need to be brought back to land every 30 days.

Comment 90: The prohibition on ''wet storage'' offers no risk reduction, because it only requires that a fisherman haul his gear once every 30 days. The gear does not need to be brought to land and can be left unbaited in the water.

Response: The intent of this provision was to reduce the practice of ''wet storage'' of inactive gear. The requirement that gear be hauled at least once every 30 days may not be the best way to achieve this. NMFS will ask the TRT to develop a better system for reducing entanglements in gear that is not being actively fished.

Comment 91: NMFS was asked to clarify the requirement that gear be set in such a way as to prevent line from floating at the surface at any time. One commenter pointed out that there will be line floating at the surface at some time during all normal lobster or gillnet fishing operations.

Response: The intent of this provision is that there should be no line floating at the surface when gear is not being hauled. NMFS understands that when gear is being set or hauled there will be time when some line floats at the surface. This is acceptable.

Comment 92: The prohibition on floating line at the surface will not result in any meaningful risk reduction, as current practice results in line that does not usually float at the surface.

Response: Not all fishermen set their gear so that there is no line floating at the surface, although doing so is considered to be the current best fishing practice. NMFS believes that this requirement will reduce the risk of entanglement, although the degree of risk reduction cannot be quantified.

Comment 93: There was support for the requirement that gear be set with no floating line at the surface, even though it might not result in any meaningful risk reduction.

Response: See response to Comment 92.

Comment 94: NMFS should develop an Early Warning System to alert fishermen to the presence of right whales in the high risk areas.

Response: In 1997, NMFS established a right whale alert system operating in and around Cape Cod Bay and Great South Channel critical habitats that informs any interested party of all reliable reports it receives of right whale sightings in the northeast. A similar program has been operating in the southeast U.S. for a number of years. Aerial surveys are flown every day that weather permits during the times when critical habitats are closed to fishing gear. All information is disseminated to a fax network, is available through a ''fax on demand'' system, and is posted on several web sites on the internet. The primary purpose of this alert system is to lower the risk of ship strikes, but the fishing community can avail itself of the information as well.

NMFS will ask the TRT to review the adequacy of this system.

Comment 95: NMFS must make a substantial financial commitment to improve monitoring the movements of large whales, as well as studying changes in the distribution of fixed gear.

Response: NMFS spent $1,000,000 in FY98 on right whale research and management along the U.S. east coast. NMFS expects the financial commitment to remain the same or to increase in FY99.

Comments on Other Matters

Comment 96: Several commenters expressed concern about the effects of ship strikes on the right whale population.

Response: NMFS is also concerned about the effects of ship strikes on right whales, although it cannot address these concerns under this Take Reduction Plan, which is limited under the MMPA to addressing interactions with commercial fishing. Several steps are being taken to address the ship strike problem in other ways. For example, the U.S. Government proposed and the International Maritime Organization (IMO) agreed that ships entering the Great South Channel call the Coast Guard, which can alert the ship when right whales are in the channel and can inform the ship of the general dangers of ships to right whales. The IMO approved this proposal in December, 1998. Implementation is scheduled to begin by July, 1999.

NMFS conducted aerial surveys to study the distribution of whales and ships during 1998. During these surveys, ships in the vicinity of right whales are contacted and informed of the importance of avoiding the whales. In addition, the right whale information in the Coast Pilots is being updated. Revisions to Coast Pilots 1 and 2 were published in May and June, 1998 (respectively); revisions to Coast Pilot 3 is scheduled to be published October, 1999 and to Coast Pilot 4 in June, 1999. Nearly all relevant navigation charts have been revised and updated with information on the 500-yard (457 m) approach rule and right whale critical habitat.

NMFS is also trying to develop cooperative agreements with individual shipping companies, both U.S. and foreign flagged, that operate routinely through right whale habitats.

Comment 97: Two commenters noted that NMFS had not commented on an analysis prepared by the State of Maine of the economic impact of the proposed rule.

Response: The analysis prepared by the State of Maine pertained to the proposed rule. The interim final rule was so different from the proposed rule that it was believed that a detailed response to the State's analysis was not necessary in the interim final rule. NMFS agreed in concept with the State of Maine's conclusion that the proposed regulations would have imposed a substantial economic impact on the Maine lobster fishery, although it disagreed with some of the specific assertions of the authors of the paper. NMFS has forwarded more detailed comments on the State of Maine's analysis to the State.

Comment 98: A suggestion was made that NMFS monitor the mid-water trawl fishery to determine its potential for takes of marine mammals.

Response: NMFS has placed some observers on mid-water trawl vessels, but it does not yet have information suggesting that this is an urgent or high priority situation for large whales. No large whales have been seen by observers to be entangled by this fishery.

Comment 99: One commenter noted that NMFS had said that it would continue to assess the appropriateness of the Category III fishery classification for the tuna hand line/hook-and-line fishery, groundfish longline/hook-and-line fishery, surface gillnet fishery for small pelagic fishes, trap fisheries other than lobster trap, finfish staked trap fisheries, and weir/stop seine fisheries. This commenter urged NMFS to change the classification of these fisheries to Category II in order to more effectively monitor them. The commenter also

recommended that NMFS require these fisheries to mark their gear.

Response: NMFS reviews the list of fisheries every year and seeks comments and information on the list through a **Federal Register** notification. So far, there has not been enough information submitted to justify classifying the preceding fisheries in Category II. NMFS intends to see if the gear marking scheme in this final rule provides useful information before broadening the scope of the gear marking requirement.

Comment 100: One commenter believed that NMFS could not issue an incidental take statement for right, humpback and fin whales, and felt, therefore, that NMFS does not have the authority to exempt fishermen from liability for illegal takes of listed species under the ESA. This commenter urged NMFS to inform fishermen that they should report entangled whales and that such a report would not result in prosecution if the whale is swimming with the entangled gear.

Response: NMFS agrees that it cannot exempt fishermen from liability for illegal takes of species listed under the ESA. It does, however, have discretion as to which cases it will prosecute. Unless there is evidence of willful harm to the whale, it is unlikely that NMFS would prosecute anyone calling in an entangled whale.

Comment 101: One commenter supported NMFS's plan to notify all Atlantic fisheries permit holders of the importance of bringing gear back to shore to be discarded.

Response: This has been done in the Northeast Region, where this problem is of greatest concern.

Comment 102: One commenter supported NMFS's decision to postpone further consideration of market incentives as a way to reduce bycatch.

Response: NMFS will refer the matter of market incentives to the TRT for further discussion.

Comment 103: NMFS should conduct a Regulatory Flexibility Analysis (RFA) of the ALWTRP regulations.

Response: NMFS conducted a regulatory impact review of the provisions of the interim final rule, describing the impact it was expected to have on small entities. Based on that review, NMFS certified that a Final Regulatory Flexibility Analysis (FRFA) was not necessary. The thresholds for Regulatory Flexibility Analysis determinations are: 5 percent loss of revenue for 20 percent of the participants; 5 percent increase in operations costs for 20 percent of the participants; and two percent of participants cease operations. None of these thresholds were met by the interim final rule.

Although no information was provided that called into question the conclusions of the Regulatory Impact Review for the interim final rule, NMFS conducted a FRFA for this rule. The FRFA concluded that the final rule of the ALWTRP would not constitute a significant regulatory action. In this final rule, the overall costs of compliance for the affected fisheries are expected to be less than for the interim final rule, because the gear marking requirement will apply to substantially fewer vessels.

The regulations in this final rule were also evaluated for purposes of E.O. 12866. It was determined that they would not have an annual impact on the economy of $100M or more and would not adversely affect the productivity, environment, public health or safety, or state, local, or tribal governments or communities in the long run. The final rule does not interfere with an action planned by another agency. It does not raise any novel legal and policy issues because it is implementing the provisions of the 1994 Amendments to the MMPA and the regulations already set in place to promulgate that statute.

Classification

An environmental assessment (EA) describing the impacts to the human environment that would result from the implementation of the ALWTRP was prepared for the interim final rule. The conclusion of that EA was that the action would pose no significant impact. There were no comments received disputing this conclusion. Because this final rule is substantially the same as the interim final rule, no further EA has been carried out.

NMFS prepared an Initial Regulatory Flexibility Analysis (IFRA) that described the impact the proposed rule was expected to have on small entities. The conclusion of this IFRA was that the economic impact on small entities was likely to be significant. This was due to the gear modifications which would have been required by the proposed rule. The interim final rule was substantially different than the proposed rule, which mitigated most of the economic consequences of the proposed rule. NMFS prepared a Regulatory Impact Review for the interim final rule. Based on that review, NMFS certified that the action would not have a significant economic impact on a substantial number of small entities, nonetheless, a Final Regulatory Flexibility Analysis (FRFA) was prepared for the final rule.

NMFS received only one public comment relating to the certification of the interim final rule. The commenter questioned the conclusion that the interim final rule would not have a significant impact on small businesses and asked that NMFS prepare a Regulatory Flexibility Analysis. No economic information was provided disputing the conclusions of the Regulatory Impact Review for the interim final rule. The final rule makes only minor changes to the interim final rule. However, to ensure that this final rule's economic impacts on small entities are fully considered, NMFS has prepared a FRFA. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The final rule is expected to have an economic impact on approximately 1100 lobster fishing operations and approximately 160 gillnet vessels (substantially fewer than the interim final rule). Based on 1996 logbook data, 8 gillnet vessels will have their revenue reduced by more than 5 percent. Approximately 72 lobster fishing operations may see their costs increase more than 10 percent. It is unlikely that 2 percent of participants will cease operations as a result of this action. The objectives and need for this action are described above in the preamble. In this final rule, the gear marking requirement will apply to substantially fewer vessels, thereby mitigating the overall economic burden of the interim final rule.

This final rule does not constitute a significant regulatory action under Executive Order 12866. (1) The action will not have an annual effect on the economy of more than $100 million. (2) The action will not adversely affect in a material way the economy, productivity, competition and jobs. (3) The action will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. (4) The action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect these fisheries. (5) The action will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of their recipients. (6) The action does not raise novel legal or policy issues.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone

Management Act. The NMFS letter to the states indicated that responses regarding concurrence were due within 45 days of receipt of the letter and that lack of a response would be an assumption of concurrence with the consistency determination. No state disagreed with our conclusion that the ALWTRP is consistent with the approved coastal management program for that state.

This action contains two collection-of-information requirements and therefore is subject to the provisions of the Paperwork Reduction Act: (1) Persons setting lobster or gillnet gear in some areas of the Atlantic Ocean would be required to paint or otherwise mark their gear with two color codes, one color designating the type of gear, the other designating the area where the gear is set. These marking requirements apply in right whale critical habitats and in areas described below as the southeast Observer Area and as the SB/JL Restricted Area. The goal of this collection of information is to obtain more information on where large whales are being entangled and on what kind of gear is responsible for the entanglement. (2) From November 15 to March 31, persons netting for sharks in Atlantic waters off Florida and Georgia would be required to call NMFS 48 hours prior to departure to arrange for an observer. The purpose of this collection of information is to allow NMFS to coordinate fisheries observer coverage of the fishery.

The affected public includes business and other for-profit organizations (persons participating in the lobster and gillnet fisheries in specified areas). The gear marking requirements are expected to affect 1100 lobster fishermen and 160 gillnet fishermen. The call-in requirement in the southeast U.S. Observer Area is expected to affect 30 shark gillnet fishermen.

In a **Federal Register** document on June 5, 1998 (63 FR 30720), the public was asked to comment on the estimates of time and cost of compliance with the gear marking and call-in requirements. No comments were received during the comment period, which closed on August 4, 1998. The OMB has approved the gear marking requirement (OMB Control Number: 0648–0364). The call-in requirement is part of a general requirement for the shark industry and was approved earlier by OMB (OMB Control Number: 0648–0205). Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

The ALWTRP incorporates the reasonable and prudent alternatives of the three ESA Section 7 Biological Opinions on commercial fisheries for lobster, multispecies, and sharks, which remove the threat of jeopardy to the northern right whale. Furthermore, the ALWTRP incorporates other measures to reduce impacts to the other species of endangered large whales. In addition, a Section 7 consultation was conducted on the interim final rule implementing the ALWTRP. This consultation concluded that operation of the fisheries under the elements of this plan may affect but will not jeopardize the continued existence of any listed species under NMFS jurisdiction. This final rule incorporates few changes to the scope of the action considered in the biological opinion (July 15, 1997) prepared for the interim final rule, and a determination was made that no further consultation under Section 7 was necessary at this time. Therefore, all agency responsibilities under the ESA have been addressed.

Several marine mammal species, other than those listed as endangered or threatened under the ESA, are known to become entangled in gillnet and lobster gear. However, NMFS has determined that this action does not exacerbate the existing problem. Therefore, this action will not have an adverse impact on the marine mammals.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

NMFS has complied with the Administrative Procedures Act through publishing a proposed rule with a request for written comments, and by holding 12 public hearings in the action area of this rule. Because of substantial changes to the proposed rule based on public comments and the Gear Advisory Group, NMFS then published an interim final rule to allow for further comment on the plan. This final rule addresses the comments received on the interim final rule.

References

Barlow, J. *et al.* 1995. U.S. Marine Mammal Stock Assessments: Guidelines for preparations, background, and a summary of the 1995 assessments. NOAA Technical Memorandum NMFS–OPR–6. U.S. Department of Commerce, Washington, DC, p. 73.

Knowlton, A.R. *et al.* 1994. Reproduction in North Atlantic right whales (*Eubalaena glacialis*). Can. J. Zool. 72:1287–1305.

Kraus, S.D. 1990. Rates and potential causes of mortality in North Atlantic right whales (*Eubalaena glacialis*). Mar. Mamm. Sci. 6(4):278–291.

Smith, T.D. *et al.* 1998. An ocean-basin-wide mark-recapture study of the North Atlantic humpback whale (*Megaptera novaeangliae*). Mar. Mamm. Sci. (in press).

Waring, G.T. *et al.* 1997. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—1996. NOAA Technical Memorandum NMFS–NE–114. U.S. Department of Commerce, Northeast Fisheries Science Center, Woods Hole, MA. p. 250.

Waring, G.T. *et al.* in prep. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—1998. Submitted for public comment.

Team Report. 1997. Draft Atlantic Large Whale Take Reduction Report. Report prepared by the Atlantic Large Whale Take Reduction Team and submitted to the National Marine Fisheries Service February 4, 1997. p. 79.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and record-keeping requirements.

Dated: February 8, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, definitions of ''Sink gillnet'', ''Lobster pot'', and ''Lobster pot trawl'' are removed. Definitions of ''Anchored gillnet'', ''Driftnet, drift gillnet or drift entanglement gear'', ''Gillnet'', ''Groundline'', ''Offshore lobster waters'', ''Strikenet or to fish with strikenet gear'', ''Tended gear or tend'', and ''Weak Link'' are revised, and the definitions of ''Lobster trap'', ''Lobster trap trawl'', ''Night'', ''Shark gillnetting'', ''Sink gillnet or stab net'' and ''To strikenet for sharks'' are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Anchored gillnet means any gillnet gear, including a sink gillnet or stab net,

that is set anywhere in the water column and which is anchored, secured or weighted to the bottom of the sea. Also called a set gillnet.

* * * * *

Driftnet, drift gillnet, or drift entanglement gear means a gillnet or gillnets that is/are unattached to the ocean bottom and not anchored, secured or weighted to the bottom, regardless of whether attached to a vessel.

* * * * *

Gillnet means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term ''gillnet'' includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g. stab and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

Groundline, with reference to lobster trap gear, means a line connecting lobster traps in a lobster trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

* * * * *

Lobster trap means any trap, pot or other similar type of enclosure that is placed on the ocean bottom and is designed to or is capable of catching lobsters. This definition includes but is not limited to lobster pots, black sea bass pots and scup pots.

Lobster trap trawl means two or more lobster traps attached to a single groundline.

* * * * *

Night means any time between one half hour before sunset and one half hour after sunrise.

* * * * *

Offshore lobster waters comprises entirely federal waters as defined by the area bounded by straight lines connecting the following points, in the order stated, except for waters in the Great South Channel critical right whale habitat:

Point	Latitude (°N)	Longitude (°W)
A	43° 58′	67° 22′
B	43° 41′	68° 00′
C	43° 12.5′	69° 00′
D	42° 49′	69° 40′
E	42° 15.5′	69° 40′
F	42° 10′	69° 56′
K	41° 10′	69° 06.5′
N	40° 45.5′	71° 34′
M	40° 27.5′	72° 14′
U	40° 12.5′	72° 48.5′
V	39° 50′	73° 01′
X	38° 39.5′	73° 40′
Y	38° 12′	73° 55′
Z	37° 12′	74° 44′
ZA	36° 33′	74° 47′

From point ''ZA'' east to the EEZ boundary and thence along the seaward EEZ boundary to point ''A''.

* * * * *

Shark gillnetting means to fish a gillnet in waters south of the South Carolina/Georgia border with webbing of 5 inches or greater stretched mesh.

Sink gillnet or *stab net* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Strikenet or *to fish with strikenet gear* means a gillnet that is designed so that, when it is deployed, it encircles or encloses an area of water either with the net or by utilizing the shoreline to complete encirclement, or to fish with such a net and method.

* * * * *

Tended gear or tend means fishing gear that is physically attached to a vessel in a way that is capable of harvesting fish, or to fish with gear attached to the vessel.

To strikenet for sharks means to fish with strikenet gear in waters south of the South Carolina/Georgia border with webbing of 5 inches or greater stretched mesh.

* * * * *

Weak link means a breakable component of gear that will part when subject to a certain tension load.

3. In § 229.3, paragraphs (g) through (j) are revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(g) It is prohibited to fish with lobster trap gear in the areas and for the times specified in § 229.32(c)(3) through (c)(9) unless the lobster trap gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(c)(1) through (c)(10).

(h) It is prohibited to fish with anchored gillnet gear in the areas and for the times specified in § 229.32(d)(2) through (d)(7) unless that gillnet gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(d)(1) through (d)(8).

(i) It is prohibited to fish with drift gillnets in the areas and for the times specified in § 229.32(e)(1) unless the drift gillnet gear complies with the restrictions specified in § 229.32(e)(1).

(j) It is prohibited to fish with shark gillnet gear in the areas and for the times specified in § 229.32(f)(1) and (3) unless the gear meets the marking requirements specified in § 229.32(f)(2) and complies with the restrictions and requirements specified in 229.32(f)(1) and (f)(3).

* * * * *

4. Section 229.32, in subpart C, is revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Regulated waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet and to waters landward of the following lines:

Rhode Island

41° 27.99′ N 71° 11.75′ W TO 41° 28.49′ N 71° 14.63′ W
(Sakonnet River)
41° 26.96′ N 71° 21.34′ W TO 41° 26.96′ N 71° 25.92′ W
(Narragansett Bay)
41° 22.41′ N 71° 30.80′ W TO 41° 22.41′ N 71° 30.85′ W
(Pt. Judith Pond Inlet)
41° 21.31′ N 71° 38.30′ W TO 41° 21.30′ N 71° 38.33′ W
(Ninigret Pond Inlet)
41° 19.90′ N 71° 43.08′ W TO 41° 19.90′ N 71° 43.10′ W
(Quonochontaug Pond Inlet)
41° 19.66′ N 71° 45.75′ W TO 41° 19.66′ N 71° 45.78′ W
(Weekapaug Pond Inlet)

New York

West of the line from the Northern fork of the eastern end of Long Island, NY (Orient Pt.) to Plum Island to Fisher's Island to Watch Hill, RI. (Long Island Sound)

41° 11.40′ N 72° 09.70′ W TO 41° 04.50′ N 71° 51.60′ W
(Gardiners Bay)
40° 50.30′ N 72° 28.50′ W TO 40° 50.36′ N 72° 28.67′ W
(Shinnecock Bay Inlet)
40° 45.70′ N 72° 45.15′ W TO 40° 45.72′ N 72° 45.30′ W
(Moriches Bay Inlet)
40° 37.32′ N 73° 18.40′ W TO 40° 38.00′ N 73° 18.56′ W
(Fire Island Inlet)
40° 34.40′ N 73° 34.55′ W TO 40° 35.08′ N 73° 35.22′ W
(Jones Inlet)

New Jersey

39° 45.90′ N 74° 05.90′ W TO 39° 45.15′ N 74° 06.20′ W
(Barnegat Inlet)
39° 30.70′ N 74° 16.70′ W TO 39° 26.30′ N 74° 19.75′ W
(Beach Haven to Brigantine Inlet)
38° 56.20′ N 74° 51.70′ W TO 38° 56.20′ N 74° 51.90′ W
(Cape May Inlet)
39° 16.70′ N 75° 14.60′ W TO 39° 11.25′ N 75° 23.90′ W
(Delaware Bay)

Maryland/Virginia

38° 19.48′ N 75° 05.10′ W TO 38° 19.35′ N 75° 05.25′ W
(Ocean City Inlet)
37° 52.50′ N 75° 24.30′ W TO 37° 11.90′ N 75° 48.30′ W
(Chincoteague to Ship Shoal Inlet)
37° 11.10′ N 75° 49.30′ W TO 37° 10.65′ N 75° 49.60′ W
(Little Inlet)
37° 07.00′ N 75° 53.75′ W TO 37° 05.30′ N 75° 56.50′ W
(Smith Island Inlet)

North Carolina to Florida

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Gear marking provisions*—(1)(i) *Specified gear.* Specified fishing gear consists of lobster trap gear and gillnet gear set in specified areas.

(ii) *Specified areas.* Specified areas are: Southeast U.S. Observer Area, Great South Channel Restricted Areas (including the Great South Channel Sliver Restricted Area), Cape Cod Bay Restricted Area, and the Stellwagen Bank/Jeffreys Ledge Restricted Area.

(iii) *Requirement.* From January 1, 1999, and as otherwise required in paragraphs (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), (d)(5)(ii), and (f)(2) of this section, any person who owns or fishes with specified fishing gear in specified areas must mark that gear as specified in paragraphs (b)(2) and (b)(3) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section.

(2) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

Lobster trap gear—red
Gillnet gear—green
Southeast U.S. Observer Area—blue
Great South Channel Restricted Areas—yellow
Cape Cod Bay Restricted Area—orange
Stellwagen Bank/Jeffreys Ledge Area—black

(3) *Markings.* All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the color codes must be permanently marked on or along the line or lines specified under paragraphs (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), (d)(5)(ii), and (f)(2) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. (For example, buoy lines of gillnet gear set in the Great South Channel Sliver Restricted Area must have a yellow mark and a green mark, each at least 4 inches (10.2 cm) long, with the yellow and green marks placed within 6 inches (15.2 cm) of each other. If the buoy line is yellow, the gear must have white and green marks.) In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic or heat shrink tubing, or other material, or a thin line may be woven into or through the line, or the line may be marked as approved in writing by the Assistant Administrator.

(4) *Changes to requirements.* If the Assistant Administrator revises the gear marking requirements under paragraph (g) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to lobster trap gear in regulated waters*—(1) *No line floating at the surface.* No person may fish with lobster trap gear that has any portion of the buoy line floating at the surface at any time, except that, if more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(2) *No wet storage of gear.* Lobster traps must be hauled out of the water at least once in 30 days.

(3) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with lobster trap gear in the Cape Cod Bay Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with lobster trap gear must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year. During the winter restricted period, no person may fish with lobster trap gear in the Cape Cod Bay Restricted Area unless that person's gear complies with the following requirements:

(A) *Weak links*—All buoy lines are attached to the buoy with a weak link. The breaking strength of this weak link must be no more than 500 lb (226.7 kg).

(B) *Multiple trap trawls*—All traps are set in either a two-trap string or in a trawl of four or more traps. Single traps and three trap trawls are not allowed. A two-trap string must have only one buoy line.

(C) *Sinking buoy lines*—All buoy lines are comprised of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(D) *Sinking ground line*—All ground lines are made entirely of sinking line.

(iv) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with lobster trap gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(4) *Great South Channel Restricted Lobster Area*—(i) *Area.* The Great South Channel restricted area consists of the Great South Channel Critical Habitat area specified under 50 CFR 216.13(a) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with lobster trap gear in the Great South Channel Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with lobster trap gear must be marked within 2 ft (0.6 m) of the top

of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with paragraph (g) of this section. During the spring closed period, no person may fish with or set lobster trap gear in the Great South Channel restricted lobster area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iv) *Other restricted period.* From July 1 through March 31 no person may fish with lobster trap gear in the Great South Channel Restricted Lobster Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge restricted area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15′ N lat. line and west of the 70° W long. line, except for right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with lobster trap gear must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Gear requirements.* No person may fish with lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(6) *Northern offshore lobster waters*—(i) *Area.* The northern offshore lobster waters area includes all offshore lobster waters (as defined in § 229.2) north of 41°30 N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* No person may fish with lobster trap gear in the northern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(7) *Southern offshore lobster waters*—(i) Area. The southern offshore lobster waters area includes all offshore lobster waters (as defined in § 229.2) south of 41°30 N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster trap gear in the southern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(8) *Northern inshore lobster waters*—(i) *Area.* Northern inshore lobster waters consist of all inshore lobster waters (as defined in § 229.2) north of 41°30′ N lat., except the Cape Cod Bay restricted area, Great South Channel restricted area and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Gear Requirements.* No person may fish with lobster trap gear in the northern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(9) *Southern inshore lobster waters*—(i) *Area.* The southern inshore lobster waters consist of all inshore lobster waters (as defined in § 229.2) south of 41°30′ N lat., except the Great South Channel restricted area.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster trap gear in the southern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(10) *Lobster Take Reduction Technology List.* The following gear characteristics comprise the Lobster Take Reduction Technology List:

(i) All buoy lines are 7/16 inches (1.11 cm) in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) For gear set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb (1714.3 kg).

(iv) For gear set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than three fourths the diameter of the buoy line.

(v) All buoy lines are composed entirely of sinking line.

(vi) All ground lines are made of sinking line.

(d) *Restrictions applicable to anchored gillnet gear*—(1) *No line floating at the surface.* No person may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time, except that, if more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(2) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator changes that area under paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises the restricted period under paragraph (g) of this section. During the winter restricted period, no person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (g) of this section and the gear or practices comply with those specifications. The Assistant

Administrator may waive this closure for the remaining portion of any year through a notification in the **Federal Register** if NMFS determines that right whales have left the critical habitat and are unlikely to return for the remainder of the season.

(iv) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(3) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2′ N/69°02′ W, 41°43.5′ N/69°36.3′ W, 42°10′ N/68°31′ W, and 41°38′ N/68°13′ W, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section. This area includes the Great South Channel critical habitat area specified under 50 CFR 216.13(a), except for the ''sliver area'' identified in paragraph (d)(4) of this section.

(ii) *Gear marking requirements.* No person may fish with anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with paragraph (g) of this section. During the spring closed period, no person may set or fish with anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iv) *Other restricted period.* From July 1 through March 31 no person may fish with anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(4) *Great South Channel Sliver Restricted Area*—(i) *Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N/69°02′ W, 41°43.5′ N/69°36.3′ W, 41°40′ N/69°45′ W, and 41°00′ N/69°05′ W, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft below a weak link) and midway along the length of the buoy line.

(iii) *Gear requirements.* No person may fish with anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15′ N lat. line and west of the 70° W long. line, except right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft below a weak link) and midway along the length of the buoy line.

(iii) *Gear requirements.* No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(6) *Other Northeast Waters Area*—(i) *Area.* The ''Other Northeast Waters Area'' consists of all northeast waters (as defined in § 229.2) except for the Cape Cod Bay Restricted Area, the Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area and the Stellwagen Bank/Jeffreys Ledge Restricted Area.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the Other Northeast Waters Area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(7) *Mid-Atlantic Coastal Waters Area*—(i) *Area.* The mid-Atlantic Coastal Waters Area is defined in § 229.2.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with anchored gillnets in the Mid-Atlantic Coastal Waters Area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(8) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are 7/16 inches (1.11 cm) in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) Weak links with a breaking strength of up to 1100 lb (498.8 kg) are installed in the float rope between net panels.

(iv) All buoy lines are composed entirely of sinking line.

(e) *Restrictions applicable to mid-Atlantic driftnet gear*—(1) *Restrictions.* From December 1 through March 31 of the following year, no person may fish with driftnet gear at night in the mid-Atlantic coastal waters area unless that gear is tended. During that time, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator

may revise these requirements in accordance with paragraph (g) of this section.

(f) *Restrictions applicable to shark gillnet gear*—(1) Management areas—(i) *Southeast U.S. restricted area.* The southeast U.S. restricted area consists of the area from 32°00′ N lat. (near Savannah, GA) south to 27°51′ N lat. (near Sebastian Inlet, FL), extending from the shore eastward to 80°00′ W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Southeast U.S. observer area.* The southeast U.S. observer area consists of the southeast U.S. restricted area and an additional area along the coast south to 26°46.5′ N lat. (near West Palm Beach, FL) and extending from the shore eastward out to 80°00′ W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(2) *Gear marking requirements.* From November 15 through March 31 of the following year, no person may fish with gillnet gear in the southeast U.S. observer area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. From November 15, 1999, each net panel must be marked along both the float line and the lead line at least once every 100 yards (92.4 m).

(3) Restrictions—(i) *Observer requirement.* No person may fish with shark gillnet gear in the southeast U.S. observer area from November 15 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 15 through March 31 of the following year, no person may fish with shark gillnet gear aboard that vessel in the southeast U.S. observer area unless an observer is on board that vessel during the trip.

(ii) *Closure.* Except as provided under paragraph (f)(3)(iii) of this section, no person may fish with shark gillnet gear in the southeast U.S. restricted area during the closed period. The closed period for this area is from November 15 through March 31 of the following year, unless the Assistant Administrator changes that closed period in accordance with paragraph (g) of this section.

(iii) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restriction under paragraph (f)(3)(ii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

(g) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay critical habitat from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, or in the Southeast U.S. Restricted Area from November 15 through March 31 as a result of an entanglement by lobster or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g)(2) of this section or unless other measures are implemented under paragraph (g)(2).

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 020999F]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to protect the Atlantic Spanish mackerel resource.

DATES: This rule is effective 6:00 a.m., local time, February 10, 1999, through March 31, 1999, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

An adjusted quota and commercial trip limits were recommended by the Councils and implemented by NMFS for Atlantic migratory group Spanish mackerel from the southern zone. As set forth at 50 CFR 622.44(b)(2), (63 FR 8353, February 19, 1998), the adjusted quota is 3.75 million lb (1.70 million kg). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic group Spanish mackerel from the southern