Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 13, 2003

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Title 40, chapter I, part 63 of the *Code of Federal Regulations* is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(33) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(33) *North Carolina.*

(i) [Reserved]

(ii) North Carolina Department of Environment and Natural Resources (NC DENR) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Riegelwood Mill, Riegelwood, North Carolina, for subpart S of this part—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and subpart MM of this part—National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills. This action is contingent upon NC DENR including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 03–21779 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244; DA 03–2671]

Broadcast Ownership Rules, Cross-Ownership of Broadcast Stations and Newspapers, Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This decision grants a motion requesting permission to exceed the Commission's page limits for petitions for reconsideration, as well as oppositions and replies thereto, in this proceeding. This decision provides that such petitions and oppositions may be up to 50 pages each, and replies may be up to 20 pages.

FOR FURTHER INFORMATION CONTACT: Debra Sabourin, 202–418–2330.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244, DA 03–2671, adopted August 15, 2003, and released August 15, 2003. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov*.

Synopsis of the Order

1. On July 2, 2003, the Commission released a *Report and Order and Notice of Proposed Rulemaking*, completing its third biennial review of its broadcast ownership rules. (*See* Report and Order at 68 FR 46286, August 5, 2003, and Notice of Proposed Rulemaking at 68 FR 46359, August 5, 2003.) On August 11, 2003, the Diversity and Competition Supporters (''Petitioners'') filed a motion requesting permission to exceed the page limits for petitions for reconsideration, as well as oppositions and replies thereto. See Motion to Extend Page Limits on Reconsideration (''Motion''), filed by Diversity and Competition Supporters, Aug. 11, 2003. The Commission's rules state that petitions for reconsideration and oppositions to petitions for reconsideration of Commission actions shall not exceed 25 double-spaced typewritten pages, and replies to oppositions shall not exceed 10 double-spaced typewritten pages. 47 CFR 1.429 (d), (f) and (g). Petitioners ask that we increase the limits for petitions and oppositions to 50 pages for each and the limits for replies to 20 pages. They argue that the broadcast ownership proceeding contains several interrelated proceedings, and they cannot discuss their points ''coherently and thoroughly'' within the page limits articulated in the rules. They add that the Commission has previously relaxed the page limitations when parties seek reconsideration of extraordinarily complex decisions.

2. We agree with Petitioners that the issues presented in this proceeding are both complex and important. The Report and Order was the culmination of the most comprehensive review of broadcast ownership regulation in the agency's history. We therefore find that the public interest would be best served by granting the Petitioners' Motion in order to assure a complete record and thorough treatment of all the issues on reconsideration. In this proceeding, petitions for reconsideration and oppositions to petitions for reconsideration will be limited to 50 pages each, and replies to opposition to petitions for reconsideration will be limited to 20 pages.

3. Accordingly, Petitioners' Motion to Extend Page Limits on Reconsideration in the above-captioned proceeding is granted.

Federal Communications Commission.

Robert Ratcliffe,

Deputy Chief, Media Bureau.

[FR Doc. 03–21651 Filed 8–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–3195–02; I.D. 081602B]

RIN 0648–AQ04

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 issues this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to identify gear modifications that sufficiently reduce the risk of entanglement to western North Atlantic right whales (right whales) under the Dynamic Area Management (DAM) program and, as such, allows NMFS to utilize the option of allowing gear with certain modifications within a DAM zone. Specifically, NMFS identifies anchored gillnet and lobster trap/pot gear modifications that could be allowed within a DAM zone. This final rule includes a provision to correct and clarify the regulations implementing the Seasonal Area Management (SAM) program with respect to lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area.

DATES: This final rule is effective September 25, 2003.

ADDRESSES: Copies of the final Environmental Assessment/Regulatory Impact Review for this action can be obtained from the ALWTRP website (see **SUPPLEMENTARY INFORMATION**). Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 or Juan Levesque, NMFS, Southeast Region, 9721 Executive Center Drive, St.Petersburg, FL 33702–2432. For additional addresses and web sites for document availability see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9328 ext. 6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401 ext. 171.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water Street, Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.wh.whoi.edu/psb/sar2002.pdf*. In addition, copies of the documents entitled ''Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options'' and ''Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation'' are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 or can be downloaded from the Internet at *http://www.nero.nmfs.gov/whaletrp/*.

Background

This final rule identifies acceptable gear that would sufficiently reduce the risk of entanglement to right whales and could be allowed under the DAM program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002). This final rule completes the regulatory actions planned and described in the recent amendments to the ALWTRP, which included the SAM program (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), expanded gear modifications (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002), as well as the DAM program. Details concerning the justification for and development of the rule were provided in the preamble to the proposed rule (68 FR 10195; March 4, 2003) and, therefore, are not repeated here.

Lobster Trap and Anchored Gillnet Gear Modifications for Use in DAM Zones

The final gear modifications to the ALWTRP DAM program are based on the SAM anchored gillnet and lobster trap/pot gear, with allowance for a second buoy line and floating line on the bottom third of each buoy line, which are described below. These requirements are in addition to the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Great South Channel Restricted Lobster Area (July 1 through March 31), Stellwagen Bank/Jeffreys Ledge Restricted Area (lobster trap and gillnet area descriptions), Cape Cod Bay Restricted Area (lobster trap and gillnet area descriptions; May 16 through December 31), Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), Mid-Atlantic Coastal Waters (gillnet area description) and Other Northeast Gillnet Waters. If the requirements and exceptions for gear modifications in a DAM zone as provided in this final rule differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Time periods for critical habitat are incorporated to clarify when these are subject to the DAM program, which, as described (66 FR 50160, October 2, 2001; 67 FR 1142, January 9, 2002) and implemented by NMFS, are time periods when the requirements for critical habitat areas are no more conservative than the surrounding waters. Additionally, DAM gear modification requirements under the DAM program are applicable to ALWTRP management areas north of 40° N. latitude where a DAM zone could be triggered.

Lobster Trap Gear

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. Buoy lines must be made of either sinking or neutrally buoyant 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;
3. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys; and
4. Fishermen are allowed to use two buoy lines per trawl string.

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Great South Channel Restricted Lobster Area (July 1 through March 31) and Offshore Lobster Waters

Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. Buoy lines must be made of either sinking or neutrally buoyant 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;
3. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys; and
4. Fishermen are allowed to use two buoy lines per trawl string.

Anchored Gillnet Gear

In addition to the universal gear and gear marking requirements, fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters, Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. Buoy lines must be made of either sinking or neutrally buoyant 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;
3. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys;
4. Each net panel must have a total of 5 weak links each with a maximum breaking strength of 1,100–lb (498.8–kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include 3 floatline weak links. The placement of the weak links on the floatline must be as follows: one at the center of the net panel and one as close as possible to each of the bridle ends of the net panel. The remaining 2 weak links must be placed in the center of each of the up and down lines at the panel ends;
5. Fishermen are allowed to use two buoy lines per net string; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22–lb (10.0–kg) Danforth style anchor at each end of the net string.

Clarification of Weak Link Requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap With SAM Areas

Details concerning the justification for and clarification of the weak link requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap with SAM Areas were provided in the preamble to the proposed rule (68 FR 10195; March 4, 2003) and, therefore, are not repeated here. NMFS includes in this final rule a provision that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlaps with a SAM area must have a weak link with a maximum breaking strength of 600–lb (272.4–kg) at all buoys.

Comments and Responses

Approximately 12 letters of comment were received during the public comment period on the proposed rule, which ended on April 3, 2003. A complete summary of the comments and NMFS' responses is provided here.

General Comments

Comment 1: One commenter expressed support for the preferred alternative because they believe it will provide the guidance necessary for fishermen to modify their gear in order to minimize impacts on marine mammals.

Response: NMFS appreciates the support and reiterates that identifying gear modifications in the final rule is necessary to complete the DAM program as an element of the Reasonable and Prudent Alternative (RPA) required under the Endangered Species Act (ESA) to protect right whales and avoid jeopardy. In addition, through the implementation of the gear modifications identified for potential use in a DAM zone, NMFS acknowledges the preference for management measures that allow fishing to continue with modified gear inside designated DAM zones while also sufficiently reducing the risk of serious injury and mortality to right whales from entanglements.

Comment 2: One commenter disagreed with the conclusion made in the proposed rule for the SAM program that the gear modifications prevent serious injury or mortality to right whales.

Response: NMFS recognizes the practical difficulties associated with identifying gear modifications designed to sufficiently reduce the risk of serious injury or mortality to right whales. As indicated in the Final Environmental Assessments for the SAM interim final rule and this final rule, it is not feasible, in a typical scientific fashion, to conduct and evaluate experiments on right whale interactions with modified gear configurations. For obvious reasons, NMFS cannot conduct field tests or even laboratory experiments on right whales to collect data. However, NMFS is able to scrutinize past entanglements, analyze these events, and develop ways to modify gear in order to sufficiently reduce risk of serious injury and mortality from future entanglements.

Comment 3: One commenter disagrees that interactions between large marine mammals and fixed gear types, such as gillnets, have a major impact. Another commenter disagreed with the assessment that the arc created by floating line between traps in a trawl posed a threat to whales.

Response: While it is often difficult to identify the specific gear type involved in each entanglement, NMFS does have evidence that fixed gear types, such as gillnets, have an impact on large whales. In 2001, there were two confirmed and several unconfirmed entanglements of large whales where gillnet gear was recovered. For example, in February 2001, gillnet gear was recovered from an entangled humpback whale off the coast of North Carolina. In April 2001, gillnet gear was recovered from an entangled humpback whale found dead near Virginia Beach, VA.

Floating line between traps has also been implicated in large whale entanglements; NMFS has evidence that establishes the risk associated with this gear configuration. Underwater video footage of typical lobster gear with floating groundline between traps revealed that the floating groundline forms large loops in the water column between traps. Similar underwater video footage of neutrally buoyant line between traps indicated that it did not have the same vertical profile as floating line; rather, it was located on or near the bottom, thus reducing the risk of entangling a large whale. Additionally, in the SAM proposed rule (66 FR 59394, November 28, 2001), NMFS discussed an analysis of gear profiles in the Offshore Lobster Waters area, which estimated that an 85% reduction in floating line would result if floating line were replaced by sinking or neutrally buoyant line in SAM areas. Therefore, NMFS expects that by eliminating most floating line and requiring sinking or neutrally buoyant line in a DAM zone,

a large percentage of the line within the water column would be eliminated.

Comment 4: One commenter suggested that NMFS add new mandatory provisions to all its permits or impose new mandatory regulations on fishing vessel personnel regarding marine trash and debris awareness and elimination, vessel strike avoidance, and injured/dead protected species reporting.

Response: NMFS appreciates the concerns raised by the commenter; however, these activities fall outside of the scope of this final rule under the DAM program in the ALWTRP. In addition, marine trash and debris awareness and elimination falls outside the scope for regulations promulgated under take reduction plans. Specifically, section 118 of the Marine Mammal Protection Act (MMPA), which authorizes NMFS to establish take reduction teams and develop plans for the purpose of reducing serious injury and mortality to marine mammals, is designed to address interactions between commercial fishing gear and marine mammals. Similarly, although ship strikes and the need to mitigate the risks posed by vessel traffic are important to large whale conservation and recovery, the take reduction team is established to deal solely with the interactions between marine mammals and commercial fishing. NMFS is developing a separate strategy to address ship strikes and will work with interested agencies and parties to implement that strategy. Finally, MMPA section 118 and NMFS implementing regulations have separate requirements for reporting incidental mortality and injury of marine mammals in the course of fishing operations (16 U.S.C. 1387(e) and 50 CFR 229.6) and similar requirements may be imposed under the ESA as necessary for the conservation of other protected species.

Comment 5: One commenter requested that NMFS immediately establish regulations to require all fish and shellfish traps and all gillnets in U.S. waters north of central Florida to use sinking or neutrally buoyant line for ground and buoy lines and a single buoy to mark gear.

Response: The DAM program, under which this final rule is promulgated, only applies to anchored gillnet and lobster trap gear in waters north of 40° N. latitude. Therefore, the gear modifications identified in this final rule would only be required in these waters and for these gear types in the event that a gear modification option is selected for implementation inside a DAM zone. However, NMFS and the ALWTRT have been discussing the need for bringing other fisheries under the auspices of the ALWTRP. Representatives from new trap/pot fisheries, such as hagfish, red crab, and black sea bass, have been added to the ALWTRT for the purpose of discussing, developing, and applying risk reduction measures to these fisheries. NMFS and the ALWTRT will continue to investigate the need to add representatives from other fisheries to the Team as warranted.

Comment 6: Several commenters encouraged NMFS to replace the DAM and SAM program with universal gear modifications to protect all large whales from entanglement.

Response: NMFS and the ALWTRT have identified ''universal'' or expanded gear modifications as a long term objective with the potential for replacing DAM and SAM. However, as indicated in the Biological Opinion that identified DAM, SAM, and expanded gear modifications, these three programs act as multiple management components for one RPA to avoid jeopardy to right whales. Therefore, in order to remove DAM and SAM and still avoid jeopardy, NMFS must replace these programs with management measures of at least equal or more conservation benefit to right whales. NMFS hopes that the implementation of DAM gear modification options through this final rule will help alleviate some of the hardship experienced by the fishing community that might otherwise be caused by requiring or requesting the complete removal of lobster trap/pot and anchored gillnet gear from a DAM zone while still protecting right whales.

DAM Gear Modification Comments

Comment 7: One commenter proposed that NMFS explore the feasibility of year-round breakaway gear, with in-season modifications, such as the anchoring requirement, when concentrations of large mammals are observed.

Response: NMFS and the ALWTRT have been developing and discussing alternative management measures, including year-round, ''universal'' or expanded gear modifications. However, under the current RPA, DAM, SAM, and additional gear modifications have been identified as multiple management components necessary to avoid jeopardy. In the meantime, NMFS will continue to work with the ALWTRT, fishermen, scientists and fishing gear manufacturers to develop and test gear modifications. NMFS will continue to discuss the need for additional gear modifications requirements under the ALWTRP with the ALWTRT.

Comment 8: Several commenters oppose the proposal to require the use of a single endline, also referred to as a buoy line. One commenter suggests allowing the use of two endlines on gillnets with Danforth-style anchors at each end to ensure the proper operation of weak links on the gear. In addition, this commenter and others felt that NMFS has failed to analyze the increased potential for gear conflicts and financial loss to fixed gear fishermen by prohibiting the use of two endlines. One commenter suggested that NMFS consider allowing fishermen to replace the second endline with a very weak buoy line for the purpose of marking the location of the gear during the 15–day DAM restricted period. Several commenters felt that this provision would lead to increased lobster gear loss because it is common for lobstermen to lose one buoy line. Finally, several commenters felt that prohibiting the use of two buoy lines may encourage fishermen to split their trawls into smaller units (i.e., to avoid increased gear conflict and gear loss), which could result in an increase in vertical lines in the water column, thereby defeating the purpose of requiring a single buoy line (i.e., to reduce the number of lines in the water). Additionally, commenters noted that two buoy lines should be allowed to minimize the risk to human safety that would result if fishermen could not haul from either end of a net string or trap trawl in adverse weather conditions.

Response: Since publication of the proposed rule, NMFS has become aware that requiring gear modifications with one buoy line in a DAM area may not necessarily result in a 50–percent reduction of vertical lines in the water column as fishermen may fish shorter trawls, which may result in the same or a greater number of buoy lines. Allowing SAM gear modifications with a second endline and one third polypropylene on the bottom third of the buoy line reduces both the potential for interaction through a significant reduction in floating line and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths. In addition, having two endlines reduces the probability of gear conflicts and lost gear. Thus, this final rule implements a DAM gear modifications option that allows fishermen to retain a second endline, which addresses both gear conflict and financial burden concerns expressed by the commenter.

Comment 9: One commenter suggested that NMFS reconsider the

proposed prohibition of floating line because sinking and/or neutrally buoyant line is not compatible with all bottom types and all conditions.

Response: NMFS has reconsidered the prohibition on floating line in the proposed rule with respect to endlines only. In this final rule, endlines will be required to be composed entirely of either sinking and/or neutrally buoyant line except for the bottom third of the line, which may be made of floating line. Floating groundlines will be prohibited and must, therefore, be composed entirely of sinking or neutrally buoyant line. See also response to Comment 13.

Comment 10: Several commenters suggested that NMFS consider the current management measures in the Cape Cod Bay Critical Habitat Area for guidance with respect to regulating buoy lines. These regulations allow lobstermen to fish with two buoy lines on a trawl and allows for a section of floating line on the buoy line.

Response: The final rule implements a lobster gear modification option for DAM that is similar to those currently required in Cape Cod Bay from January 1 through May 15.

Comment 11: One commenter felt that it was premature for NMFS to suggest that the SAM gear modifications (e.g., the use of 600–lb (272.4–kg) and 1,100–lb (498.8–kg) weak links) have been demonstrated to prevent serious injury or mortality to right whales.

Response: See response to Comment 2.

Comment 12: Two commenters suggested that NMFS should adopt a more regional approach to developing gear modifications, which would take into account unique bathymetric features, especially those found along the coast of Maine. In addition, one of these commenters expressed opposition to the proposal for eliminating one buoy line, the prohibition on floating line on the bottom 1/3 of the endline, and the prohibition on floating groundline.

Response: NMFS is working with the ALWTRT, including the Maine Department of Marine Resources, to understand the unique bathymetric features throughout the Gulf of Maine and fishing operations in these areas. NMFS considers numerous factors when developing regulations to reduce interactions between large whales and commercial fisheries. For example, weak link requirements under the ALWTRP vary by fishery and management area. See also responses to Comments 9 and 13.

Comment 13: One commenter expressed opposition to the proposed requirement that buoy lines be comprised of entirely sinking or neutrally buoyant line because recent research from flume-tank testing of scale models suggests that this gear requirement has little or no conservation value.

Response: Based on this recent research, NMFS has reconsidered the prohibition on floating line identified in the proposed rule with respect to endlines only. The flume-tank testing results support underwater video footage taken by NMFS and discussed in the Environmental Assessment/Regulatory Impact Review (EA/RIR), which demonstrates that allowing one-third polypropylene line on the bottom third of the buoy line does not necessarily produce a loop in the water column, due to current and tidal action on the surface system, and, therefore, would not increase risk to right whales. NMFS does believe that there is conservation value in requiring two-thirds of the buoy line to be sinking and/or neutrally buoyant line, similar to the buoy line gear modification requirement in Cape Cod Bay Critical Habitat. Thus, endlines will be required to be composed entirely of either sinking and/or neutrally buoyant line except for the bottom third of the line, which may be made of floating line.

Comment 14: One commenter expressed support for the proposed requirement that groundlines be comprised entirely of sinking or neutrally buoyant line, but suggested that NMFS allow a phase-in period for fishermen to change their gear.

Response: This final rule will be effective 30–days after date of publication in the **Federal Register**. If a DAM zone is triggered after this time and NMFS requires gear modifications in the DAM zone, fishermen will be required to change their groundlines over to sinking or neutrally buoyant line in order to continue fishing inside the DAM zone during the restricted period if their groundlines are not currently configured in this manner. NMFS understands that some fishermen are already using sinking or neutrally buoyant line in their groundline.

Comment 15: One commenter asked NMFS to consider allowing floating endlines because the free end of the rope would be at the surface and would allow the fishermen to access the line more easily than sinking or neutrally buoyant line.

Response: The final rule will allow fishermen to use floating line on the bottom third of the endline. Under the regulations implementing the ALWTRP, gillnet and lobster trap fishermen are prohibited from having any portion of the buoy line that is directly connected to the gear at the ocean bottom from floating at the surface at any time. 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.

Rulemaking Process Comments

Comment 16: One commenter felt that the 30–day comment period was too short and should be extended for an additional 30 days.

Response: NMFS considers the 30–day comment period on the DAM gear modifications proposed rule appropriate in light of the need to complete the DAM program as it was intended when initially promulgated in 2002. Because the DAM gear modifications proposed rule is an amendment to the already established DAM program, NMFS considers a 30–day comment period sufficient.

Comment 17: One commenter felt that NMFS did not consider enough options in the proposed rule and recommends additional options, such as the gear modifications accepted in Cape Cod Bay during the high use period or the prohibitions in place in the Great South Channel.

Response: An alternative with gear modifications similar to those currently implemented in Cape Cod Bay was analyzed as an option in the proposed rule. That alternative would allow fishermen to retain a second endline, and allow each endline to be comprised entirely of sinking or neutrally buoyant line except for the bottom third, which may be floating line. Based in part on comments received, NMFS is now adopting this option and it will be implemented through this final rule.

DAM Implementation Comments

Comment 18: One commenter felt that NMFS has failed to implement DAM properly and that, in the instances when DAM zones have been declared, the request for voluntary action alone is insufficient.

Response: In its implementation of the DAM program, NMFS has acted in accordance with the DAM rule and internal protocols designed by NMFS to respond to DAM triggers.

Comment 19: One commenter felt that it is unrealistic to require fishermen to modify gear within 48 hours of implementing a DAM zone.

Response: NMFS appreciates the time and effort involved in hauling fishing gear and modifying it in an area designated for DAM. NMFS also understands that some fishermen are already using sinking or neutrally buoyant line in their groundline.

However, if a DAM action is triggered and NMFS implements gear modifications in the DAM zone, fishermen will be required to comply with the specified gear modifications or remove their gear from the area. In order to provide fishermen with enough time to respond to restrictions in a DAM zone, NMFS will issue a notice at the time the action is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to the regulation being published in the **Federal Register**. Once the decision has been made to modify gear inside a DAM zone, NMFS will notify the commercial fisheries affected as quickly and comprehensively as possible. In addition, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at *www.nero.nmfs.gov/whaletrp/*. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help ensure that the fishermen who may have to comply with the gear restrictions in a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the Internet should provide their email address to the Northeast Regional Office (see **ADDRESSES**). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office (See **ADDRESSES**).

Comment 20: One commenter suggested that NMFS exempt small-scale fishing operations in state waters from the DAM program. Another commenter expressed opposition to any DAMs or SAMs in state waters.

Response: The MMPA applies to state waters and there have been aggregations of right whales, which the DAM and SAM rules are designed to address, in state waters. NMFS is currently investigating the feasibility and practicality of revising the exempted waters of the ALWTRP to possibly include other inland areas where the presence of large whales is rare or non-existent.

Changes From the Proposed Rule

In the March 4, 2003 proposed rule (68 FR 10195), NMFS identified as its preferred alternative gear modifications for anchored gillnet and lobster trap/pot gear that could be allowed within a DAM zone. In the preamble to the proposed rule, NMFS sought comment from the public on the proposed regulations and the alternatives analyzed. Based on comments received during the public comment period, and as explained below, NMFS has concluded that its original preferred alternative may not afford the level of protection to right whales as one of the other alternatives discussed in the EA/RIR. Therefore, NMFS has determined that the alternative identifying SAM gear modifications with the allowance for a second endline and floating line on the bottom third of each endline should be implemented as gear that could be allowed within a DAM zone.

Comments received from the public requested that NMFS identify gear modifications similar to those currently required by the ALWTRP in Cape Cod Bay Critical Habitat during the high use time period for right whales (January 1 - May 15). The Cape Cod Bay Critical Habitat gear requirements allow two buoy lines with floating line on the bottom third of each endline. These gear modifications were analyzed in the Draft and Final EA/RIR. Based on this analysis, NMFS believes that this gear sufficiently reduces the risk of entanglement to right whales. This gear is currently allowed in a critical habitat area during the time period when high concentrations of whales occur in the area. Additionally, information received through the comment period supports underwater video footage taken by NMFS and discussed in the EA/RIR, which demonstrates that, due to current and tidal action on the surface system, allowing one-third polypropylene line on the bottom third of the buoy line does not typically produce a loop in the water column, which could increase risk to right whales. Since publication of the proposed rule, NMFS has determined that requiring gear modifications with one buoy line in a DAM area may not necessarily result in a 50–percent reduction in vertical line in the water column as fishermen may fish shorter trawls, which may result in the same or a greater number of buoy lines. Allowing SAM gear modifications with a second endline and one third polypropylene line on the bottom third of the buoy line in DAM zones reduces both the potential for interaction through a significant reduction in floating line (in the groundline) and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths. Thus, DAM gear modifications, including replacing floating line with neutrally buoyant and/or sinking line in the groundline, installing additional weak links, and reducing breaking strengths for weak links, sufficiently reduces the risk of serious injury or mortality to right whales in DAM zones.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule would identify gear modifications that reduce the risk of entanglement to right whales sufficiently to be an option under the DAM program. The objective of this final rule, issued pursuant to section 118 of the MMPA, is to reduce the level of serious injury and mortality of right whales in East Coast lobster trap and finfish gillnet fisheries. Additionally, this final rule enables NMFS to exercise the full range of management options that the agency intended to be available under the DAM program.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. A copy of the FRFA is available from NMFS (see **ADDRESSES**). Four alternatives, including a status quo or no action alternative, the preferred alternative (PA), and two other alternatives were evaluated using a retrospective analysis based on 2000 right whale sightings data and 2000 Vessel Trip Report (VTR) data. Under all alternatives, from June 20th to July 6th, 45 vessels (29 lobster vessels and 16 sink gillnet vessels) were affected by a DAM zone. A summary of the analysis follows:

1. NMFS considered a ''no action'' or status quo alternative that would result in no changes to the current measures under the ALWTRP. The no action alternative would result in NMFS only having the options of requiring the removal of all lobster trap and anchored gillnet gear from a DAM zone or issuing an alert requesting the voluntary removal of all gear. NMFS rejected this alternative as NMFS would not be able to exercise the full range of management options that the agency intended to be available under the DAM program.

2. NMFS considered an alternative (NPA 1) that would allow SAM gear modifications to be used under the DAM program. SAM gear modifications include, among other requirements, the use of neutrally buoyant or sinking line on all ground lines and buoy lines and restricts fishermen to one endline (buoy line) per trawl or string. Due to comments received, NMFS understands that requiring gear modifications with one buoy line in a DAM area may result in fishermen splitting trawls or strings into shorter trawls or strings (to avoid increased gear conflict and gear loss), which may result in the same or a greater number of buoy lines, thus increasing the risk to whales. Furthermore, comments received and a study conducted after publication of the

proposed rule supports underwater video footage taken by NMFS and discussed in the EA/RIR. This information indicates that, due to current and tidal action on the surface system, allowing one- third polypropylene line on the bottom third of the buoy line does not typically produce a loop in the water column, and, therefore, does not increase risk to right whales.

3. The option selected in this final rule will implement SAM gear modifications with two endlines (buoy lines) and floating line on the bottom third of each endline. These are similar gear modifications required under the ALWTRP in Cape Cod Bay Critical Habitat during the high use time period for right whales (January 1 - May 15). NMFS believes that this gear, which is currently required in a critical habitat area during the time period when whales occur in the area, sufficiently reduces the risk of entanglement to right whales.

4. NMFS considered and rejected an alternative (NPA 2) that would implement SAM gear modifications with two endlines (buoy lines) and require that the buoy lines be composed entirely of sinking or neutrally buoyant line. NMFS rejected this alternative because information received during the comment period supports preliminary investigations by NMFS, which demonstrates that due to current and tidal action on the surface system, allowing some floating line on the buoy line does not typically produce a loop in the water column and, therefore, would not increase risk to right whales.

NMFS has taken steps to minimize the economic impact on small entities through this final rule by establishing the option of utilizing gear modifications rather than completely closing DAM areas.

NMFS received two public comments relating to the economic impacts of this final rule. These comments were considered by NMFS before it approved this final rule and are summarized by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response number eight. Changes to the rule were made, in part, as a result of these and other public comments.

The small entities affected by this final rule are anchored gillnet and lobster trap fishermen fishing north of 40° N. latitude. Since DAM is used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. In the northeast, there are potentially 7,147 vessels fishing lobster gear and 312 vessels fishing sink gillnet gear (Bisack 2000). However, NMFS does not expect that number of vessels to be affected by any one DAM zone because of the limited size and duration of a DAM zone. Data from aerial surveys in 2000 were used to retrospectively evaluate the use of the recommended DAM triggers. Based on the analysis of this data, six DAM zones would have been triggered in 2000. Four of the six hypothetical DAM zones would have been subsumed under the SAM program and the other DAM zone would have occurred in Canadian waters, which are outside of U.S. jurisdiction. Therefore, the impacts were assessed with respect to one hypothetical DAM zone from June 20 to July 6, 2000. For example, based on 2000 right whale sightings data and 2000 VTR data from June 20th to July 6th, the final rule would have affected 45 lobster and sink gillnet vessels (29 lobster vessels and 16 sink gillnet vessels), which represents 0.4 percent of the vessels (0.004=29/7,147 lobster vessels) associated with the lobster fleet and 5.1 percent of the vessels (0.051=16/312 sink gillnet vessels) associated with the sink gillnet fleet in the northeast.

This final rule contains no reporting, recordkeeping, or other compliance requirements. 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. No state disagreed with our conclusion that this final rule is consistent with the enforceable policies of the approved coastal management program for that state.

This final rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments. No comments on the federalism implications of the proposed action were received in response to this notification. However, two commenters did respond on the federalism implications during the comment period for the proposed rule. The comment is characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response number twenty. No changes to the rule were made as a result of the comment received.

This final rule would also clarify that vessels in Northern Inshore State and Northern Nearshore Lobster Waters must install and use a 600 lb (272.4 kg) weak link at each buoy when fishing in SAM West during the time it overlaps the Northern Inshore State and Northern Nearshore Lobster Waters. The impacts of this requirement on small entities fall within the scope of the regulatory flexibility analyses performed in conjunction with the original SAM proposed and interim final rules. Among other requirements, the regulations implementing the ALWTRP currently require lobster trap fishermen in Northern Nearshore Lobster Waters to attach a weak link at the buoy with a breaking strength of 600–lb (272.4–kg) or less, and also includes this same weak link requirement as an option from the Lobster Take Reduction Technology List for Northern Inshore State Lobster Waters. Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(a) and (c), no further analysis is required. Copies of the SAM EA/RIR are available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 229 is amended 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 § 229.32, paragraph (g)(3)(iii)(B) is revised and (g)(4)(i)(B)(*2*)(*ii*) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(3) * * *

(iii) * * *

(B) Allow fishing within a DAM zone with anchored gillnet and lobster trap gear, provided such gear satisfies the requirements specified in paragraphs (g)(4)(i)(B)(*1*) and (g)(4)(i)(B)(*2*) of this section, except that a second buoy line

and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. These requirements are in addition to requirements found in § 229.32 (b) through (d) but supersede them when the requirements in paragraphs (g)(4)(i)(B)(*1*) and (g)(4)(i)(B)(*2*) of this section, with the exception that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone, are more restrictive than those in § 229.32 (b) through (d). Requirements for anchored gillnet gear in Other Northeast Gillnet Waters are as specified in paragraphs (g)(4)(i)(B)(*1*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for lobster trap gear in Offshore Lobster Waters, Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters are as specified in paragraph (g)(4)(i)(B)(*2*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for anchored gillnet gear in Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters are the same as requirements for Other Northeast Gillnet Waters. Requirements for lobster trap gear in Southern Nearshore Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31) and Stellwagen Bank/Jeffreys Ledge Restricted Area are the same as requirements for Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters. Requirements for lobster trap gear in the Great South Channel Restricted Lobster Area (July 1 through March 31) are the same as requirements for Offshore Lobster Waters.

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(4) * * *

(i) * * *

(B) * * *

(*2*) * * *

(*ii*) Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters Areas buoy weak links—All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 600–lb (272.4–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 for Fisheries.

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