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50 CFR Part 229

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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 130201095–3095–01]

RIN 0648–BC90

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: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan (Plan). This proposed rule revises the management measures for reducing the incidental mortality and serious injury to the North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), and fin whale (*Balaenoptera physalus*) in commercial trap/pot and gillnet fisheries to meet the goals of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The measures identified in the Plan are also intended to benefit minke whales (*Balaenoptera acutorostrata*), which are not strategic, but are known to be taken incidentally in commercial fisheries.

DATES: Submit comments on or before September 16, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0095, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2013–0095* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS Northeast Region, 55 Great Republic Dr., Gloucester, MA 01930, Attn: Large Whale Proposed Rule.
- *Fax:* 978–281–9394 Attn: Large Whale Proposed Rule

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS, Northeast Region, 978–282–8482, *Kate.Swails@noaa.gov;* Kristy Long, NMFS Office of Protected Resources, 301–427–8440, *Kristy.Long@noaa.gov;* or Barb Zoodsma, NMFS Southeast Region, 904–321–2806, *Barb.Zoodsma@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the Plan and the take reduction planning process can be downloaded from the Plan Web site at *http://www.nero.noaa.gov/whaletrp/.* Copies of the Draft Environmental Impact Statement/Regulatory Impact Review for this action can be obtained from the Plan's Web site. The complete text of the regulations implementing the Plan can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the Web site, along with a guide to the regulations.

Background

The Plan was originally developed pursuant to section 118 of the MMPA to reduce the level of serious injury and mortality of three strategic stocks of large whales (fin, humpback and North Atlantic right) interacting with Category I and II fisheries. The MMPA defines a strategic stock of marine mammals as a stock: (1) For which the level of direct human-caused mortality exceeds the Potential Biological Removal (PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future; or (3) which is listed as threatened or endangered species under the ESA or depleted under the MMPA (16 U.S.C. 1362(19)). Specific Category I and II fisheries addressed by the Plan include the Northeast sink gillnet, Northeast drift gillnet, Northeast anchored float gillnet, Southeast Atlantic gillnet, Mid-Atlantic gillnet, Southeastern US Atlantic shark gillnet, Atlantic mixed species trap/pot, Atlantic blue crab trap/pot, and Northeast/Mid-Atlantic American lobster trap/pot.

The background for the take reduction planning process and initial development of the Plan is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules that implemented the original plan.

Since its 1997 implementation, the Plan has been modified several times to reduce the risk of serious injury and mortality of large whales that interact with commercial sink gillnet and trap/pot gear. The most recent final rule was implemented in September 2008 (73 FR 51228).

ESA Section 7 Consultation and the Plan

As described above, the Plan was developed under section 118 of the MMPA and subsequently modified to comply with the statutory requirements and mandates of the MMPA. However, the three whale species directly protected by the Plan (fin, humpback, and North Atlantic right) are also listed as Endangered under the ESA (16 U.S.C. 1531 *et seq.*). In addition, many of the fisheries affected by the Plan are subject to interagency consultation under section 7 of the ESA since the fisheries occur (at least in part) in Federal waters and are federally managed. These include the American lobster, black sea bass, and deep sea red crab trap/pot fisheries; and the Northeast multispecies, monkfish, spiny dogfish, bluefish, southeastern U.S. Atlantic shark, and South Atlantic gillnet fisheries.

Section 7 of the ESA requires Federal agencies to ensure that their actions do not jeopardize the continued existence of ESA-listed species. The process for determining whether a Federal-agency action will jeopardize any ESA-listed species is referred to as a ''section 7 consultation.''

The most recent consultations for the American lobster and deep sea red crab trap/pot fisheries; the Northeast black sea bass, multispecies, monkfish, spiny dogfish, and bluefish fisheries; and Southeastern U.S. Atlantic shark fisheries evaluated the effect of the proposed measures under each of the fishery management plans as well as those under the Plan. Specifically, these Biological Opinions stated that it was anticipated that the final regulations implementing the conservation measures proposed in this action would prioritize risk reduction in areas where there is the greatest co-occurrence of

vertical lines and large whales. The Biological Opinions stated that a model was being developed and used to analyze various gear configurations and determine the relative co-occurrence reductions (as a proxy for risk) that could be achieved by gear configuration changes and/or effort reductions by area. This co-occurrence analysis is an integral component of the vertical line strategy that will further minimize the risk of large whale entanglement and associated serious injury and death. The Biological Opinions identified the steps NMFS is taking to develop, analyze and implement a vertical line reduction rule including publication of a proposed rule by late 2013 and a final rule by late summer 2014.

NMFS issued its most recent biological opinion for the American Lobster Fishery on August 3, 2012. However, NMFS has also reinitiated consultation on the spiny dogfish, monkfish and Northeast multispecies fisheries. NMFS anticipates the new biological opinions for these fisheries to be finalized in 2014.

The 2006 consultation on the South Atlantic Snapper-Grouper Fishery Management Plan, which includes the black sea bass fishery, and the 2007 consultation on the Southeast Coastal Migratory Pelagic Fishery Management Plan, which includes Southeast Atlantic gillnet fishery, both considered the effects of proposed measures under those fisheries management plans as well as those under the Plan. Those consultations pre-dated the vertical line strategy proposed in this action. However, changes within the black sea bass fishery have reduced risk to large whales. Today, fishermen are allowed a limited number of pots and must return pots to shore at the end of each trip. Most notably, the black sea bass fishing season has not co-occurred with the right whale season for the last four years.

Take Reduction Team Activities

Based on continued entanglements that resulted in a serious injury or mortality of large whales managed under the Plan, NMFS, in consultation with the Atlantic Large Whale Take Reduction Team (Team), determined that additional modifications to the Plan were warranted. The Team is made up of fishing industry representatives, environmentalists, state and federal officials, and other interested parties.

At the 2003 meeting, the Team agreed to manage entanglement risk by first reducing the risk associated with groundlines and then reducing the risk associated with vertical lines in commercial trap/pot and sink gillnet gear. In June 2005, NMFS issued a proposed rule and in October 2007, NMFS issued a final rule that implemented broad-based gear modifications to replace the Seasonal Area Management and Dynamic Area Management programs. This broad-based gear modification strategy includes expanded weak link and sinking groundline requirements, additional gear marking requirements, changes in boundaries, seasonal restrictions for gear modifications, expanded exempted areas, and regulatory language changes for the purposes of clarification and consistency (72 FR 57104, October 5, 2007). The broad-based sinking groundline requirement for trap/pot fishermen became fully effective on April 5, 2009.

Following the implementation of the sinking groundline rule, NMFS and the Team turned its focus toward addressing the entanglement risks associated with vertical lines from trap/pot and gillnet gear. At the 2009 Team meeting, the Team agreed on a schedule to develop a management approach to reduce the risk of serious injury and mortality due to vertical lines. As a result of this schedule, NMFS committed to publishing a final rule to address vertical line entanglement by 2014. The approach for the vertical line rule focuses on reducing the risk of vertical line entanglements in high impact areas versus a wide-broad scale management scheme. Using fishing gear survey data and whale sightings per unit effort (SPUE), a model was developed to determine the co-occurrence of fishing gear density and whale density (i.e., the ''co-occurrence model'').

The Team's Northeast Subgroup met in November 2010 and the Mid-Atlantic/Southeast Subgroup met in April 2011 to review the co-occurrence model and consider its implications for an overall management strategy to address vertical line entanglements. The Team agreed NMFS should use the model to consider and develop possible options to address fishery interactions with large whales by reducing the potential for entanglements, minimizing adverse effects if entanglements occur, and mitigating the effects of any unavoidable entanglements. In addition, the gear characterization information in the model shows the majority of the vertical lines coastwide are from lobster trap/pot and other trap/pot fisheries. As a result, NMFS decided to narrow the scope of the proposed rule to focus on the reduction of verticals lines from trap/pot gear instead of both trap/pot and gillnet gear. The Team also discussed using the model to identify areas of high co-occurrence of right whales and humpback whales combined instead of focusing on a single species.

During the subgroup meetings, the Team requested that NMFS allow stakeholders to submit proposals outlining vertical line risk reduction strategies tailored to specific areas and fisheries. This approach would avoid broad-based management and move towards finer scale management. The proposals were submitted for review by NMFS and the Team at the next meeting in January 2012. Acceptable proposals included descriptions of the areas and fisheries affected, management approach, monitoring plan, and enforcement plan.

To solicit additional stakeholder involvement, on June 14, 2011, NMFS published a Notice of Intent in the **Federal Register** (76 FR 34654) to announce the agency's intent to prepare an Environmental Impact Statement that would analyze the impacts of alternatives for amending the Plan. In the NOI, NMFS announced multiple public scoping meetings along the east coast to solicit comments. In July and August 2011, NMFS held 15 scoping meetings to solicit feedback on the vertical line risk reduction strategy. The information provided at the scoping meetings was also reviewed at a full Team meeting in January 2012. Team members further refined their vertical line risk reduction proposals and the team met via teleconference in February 2012 to review the final proposals submitted. The Team reviewed five proposals: three from state agencies, one from the scientist/academic community, and one from the conservation community. Results of the proposals were presented via teleconference in April 2012. Each vertical line risk reduction proposal was analyzed to assess its impact on both the number of vertical lines and co-occurrence scores relative to the baseline in the Northeast and coastwide.

NMFS designed the proposed alternatives in the DEIS based on comments received during public scoping and using many of the measures submitted by the team in their stakeholder proposals.

Reducing the Risk of Entanglement Associated With Vertical Lines

NMFS believes that all parts of fixed gear create entanglement risk because all have been identified as entangling large whales. However, at this time, determining which part of fixed gear creates the most entanglement risk for large whales is difficult due to the uncertainties associated with entanglements, as well as unknown

biases associated with reporting effort and the lack of information about the types and amounts of gear being used (Johnson et al., 2005). For example, buoy line may be reported more frequently at sea than groundline, since it is easier to recognize when a buoy or high-flyer is present. Groundline, on the other hand, does not have a distinguishing characteristic that would allow it to be identified without removing it from an entangled animal and analyzing it (Johnson *et al.,* 2005). Therefore, vertical line (buoy and surface system line) may only seem to create more of an entanglement risk than groundline, when in fact it is difficult to quantify and compare the risks associated with each part of the gear. In some cases, it is still impossible to determine the gear part even when the gear is recovered and/or identified. Despite gear recovery and/or identification, 44 percent (20 out of the total 45) of the right and humpback whale entanglement events analyzed involved an unknown part of the gear (source Johnson et al., 2005). Currently, the only definitive way to assess the nature of entanglements is through gear removal, as it is difficult to identify a line's origin through photographs alone (Johnson *et al.,* 2005). However, all of the caveats noted above must be considered when gear has been recovered and an assessment is in progress.

A better scientific understanding about the nature of entanglements, specifically the gear components involved (e.g., buoy line), would help NMFS develop better management programs and reduce the risk of serious injury and mortality of large whales due to incidental interactions with commercial fisheries. Therefore, NMFS is also proposing to expand gear marking requirements for fisheries that are subject to the Plan. This information may provide valuable insight concerning where, when, and how the entangling gear was set.

In order to better understand the entanglement risk resulting from vertical lines, NMFS commissioned the development of a model to evaluate the potential risk of entanglement and inform the following types of questions: Where do the fisheries that are subject to the Plan operate? Where are concentrations of vertical line the greatest? Do whales frequent areas with high concentrations of vertical line?

Although the model successfully identifies the highest areas of large whale and commercial fishing gear co-occurrence, the model cannot provide a direct assessment of the probability of an entanglement at a particular place and time, nor does it assess the risk of injury or death in the event of an entanglement. It focuses instead on relative indicators of the potential for an entanglement to occur (% change in number of vertical lines and % change in co-occurrence), using these as a proxy measure of risk.

Given the significant public interest in this topic, it was critical for NMFS to obtain a transparent and independent review of the model documentation. It is important that the model contain the best available information on both whale density and fishing gear density and that the associated caveats seem reasonable.

Therefore, NMFS sought a Center for Independent Experts (CIE) peer review of the model documentation and associated caveats. The CIE reviewers had combined working knowledge and recent experience in spatial analysis, scenario modeling, marine mammal biology, and fisheries management.

Reviewers desired clarification on portions of the model but overall the reviews were favorable. Reviewers provided ideas for future expansion of the model as more information becomes available stating that the assumptions made about current inputs are reasonable. The model could be improved as NMFS learns more about the nature of entanglements. The reviewers suggested NMFS continue to work with their state partners to improve the gear characterization information as well. In an attempt to address multiple reviewers concerns about accounting for uncertainty, and lack of SPUE data within the model, a sensitivity analysis was conducted. The results of this analysis are in the Draft Environmental Impact Statement (DEIS) that supports this proposed action. One reviewer suggested the model be compared to other approaches or models as a way to attempt to validate the results. NMFS is unaware of a completed model that attempts to characterize the risk of entanglement through co-occurrence. In addition, the model was vetted through the Team on numerous occasions and the model inputs were heavily influenced by Team member input.

NMFS and the Team agreed that the vertical line risk reduction measures proposed by stakeholders should be analyzed by the model to see what percent change in vertical lines and percent change in co-occurrence resulted from each proposal. The proposals include measures requiring increased traps per trawl, the use of weaker weak links and/or vertical lines of lower breaking strength, and potential time-area closures.

Alternatives

As a result of public input provided through the scoping process and Team meetings, NMFS developed six alternatives including a ''No Action'' or status quo alternative, to modify the Plan. All six of these alternatives are described and analyzed in detail in the DEIS prepared to accompany this proposed rule. Of the six alternatives considered, NMFS has identified a Preferred Alternative (Alternative 5 in the DEIS) for amending the Plan, which is described below. Although NMFS has identified six alternatives, one of which is preferred, NMFS is seeking comment on all the alternatives. Based on comments received, NMFS proposes to implement one of those six alternatives in the final rule.

Preferred Alternative (Alternative Five)

Changes Proposed to the Plan for Boundaries and Seasons

The co-occurrence model currently incorporates data on fishing activity in Federal waters from 2000 to 2011. This range represents the most recent period for which data on commercial fishing activity are available. Because states have differing data collection programs that have evolved over time, the availability of data characterizing fishing in state waters varies by state. At minimum, the model incorporates state data that characterizes vessel activity from 2008 to 2010; many states have provided data from prior years, and some have recently provided data for 2011. The North Atlantic Right Whale Sightings per Unit Effort dataset includes information obtained from surveys conducted between October 1978 and May 2010.

NMFS proposes to exempt New Hampshire state waters from the Plan's requirements based on the co-occurrence model, with the exception of marking requirements (see § 229.32 (b)(2) and (3)). The co-occurrence model does not indicate any monthly co-occurrence concerns with the exception of November within nearshore state waters. During the month of November effort within state waters is already being reduced due to part-time and limited commercial harvesters seasonally removing gear from state waters and federal/state commercial and limited commercial harvesters are moving to federal waters.

NMFS proposes to expand the Cape Cod Bay Restricted Area to include portions of the Outer Cape, and the area abutting the Great South Channel. This new area, Massachusetts Restricted Area, would be closed for a portion of the year (January 1–April 30) to trap/pot

fisheries. According to a recent report by Massachusetts Division of Marine Fisheries (2011) there has been an increase in presence of whales, particularly right whales, in this area in the months of January through April. Increasing the closure area to include the Outer Cape creates a protection corridor for the whales to travel through on their way to their Cape Cod Bay feeding ground. Recent passive acoustic studies analyzing right whale calls detected in Massachusetts Bay indicate a persistent presence of right whales and call activity throughout much of the year (Morano et al. 2012; Mussoline *et al.* 2012).

NMFS proposes to seasonally close two other areas to trap/pot fishing: Jeffreys Ledge and Jordan Basin areas from October 1 through January 31 and November 1 through January 31, respectively. These are areas of high co-occurrence and high use by whales according to the SPUE data in the model. During the winter months, recent aerial surveys have sighted aggregations of right whales in the central Gulf of Maine. The demographic composition of individuals suggests this may be a mating ground (NMFS Northeast Fisheries Science Center, unpublished data).

Finally, NMFS proposes to create a new trap/pot management area in the Southeast Region. The eastern boundary of the current Southern Nearshore Trap/Pot waters area would be aligned with the eastern boundary of the existing Southeast Restricted Area North management area. This new area would coincide with the current Southeast Restricted Area North management area in place for gillnets. Creating a new management area for trap/pots would better focus proposed vertical line risk reduction measures to the area of overlap of vertical lines off South Carolina, Georgia, and Florida with the presence of whales. During the winter months (November through April), right whales are most often sighted south of the North Carolina/South Carolina border. Occasionally, humpback whales are also reported in the southeast coastal waters during this time of year. Management measures in this area would be in place from November 15 through April 15.

Changes Proposed to the Plan for Trap/Pot Gear

In the Northeast Region, NMFS proposes to institute restrictions designed to reduce the number of buoy lines that fishermen employ. The preferred alternative would limit the number of lines in the Northeast by prohibiting single trap/pots and requiring fishermen to increase the number of traps per trawl they set based on area and distance to shore. In some areas (mainly inshore and nearshore waters) this may represent a change from how they currently fish. In Federal waters and offshore, larger trawls are currently fished so this requirement may not affect these vessels to the same extent as smaller inshore vessels. The current requirement of one endline for trawls less than or equal to five traps remains in place. Larger trawls (i.e., > 5 traps/pots) would not be required to have one endline.

The numbers of traps per trawl proposed are based on the co-occurrence model, discussions with the public, and NMFS state partners. The required traps per trawl differ based on distance to shore and lobster management area. In Maine the traps per trawl were defined based on Maine state lobster zones.

In the Southeast Region, NMFS proposes to require single trap/pots, implement weaker weak links and breaking strength of vertical lines, and require all vertical lines to be free of objects (e.g. weights, floats, etc.) except where it attaches to the buoy and trap/pot, and made of sinking line.

Single trap/pots are preferable in the Southeast to reduce damage to sensitive habitats and protect newborn calves. The Southeast U.S. has extensive amounts of live bottom and traps set in multiple-trap trawls can damage live bottom more than single traps. Additionally, newborn calves are less buoyant than older whales and apparently have a difficult time raising their blowholes above the water to breathe (Thomas and Taber 1984). For this reason, lighter gear is less risky to newborn calves than heavy gear (i.e., multiple traps are heavier than single traps).

The Plan requires the use of weak links with breaking strengths of 600 to 1,500 lbs (272 to 680 kg) depending on management area. The preferred alternative proposes to decrease the required breaking strength of weak links in Florida state waters. Right whale mother/calf pairs in the calving area are most often sighted in water depths of 10 to 20 m (32 to 65 ft) (Keller *et al.* 2012). The greatest co-occurrence of trap/pot gear and right whales occurs off the Northeast Florida shoreline. Florida state waters are deeper and can be greater than 10 m deep within ⅓ of mile of the beach, whereas Georgia and South Carolina state oceanic waters are generally less than 10 m deep. Therefore, neophyte calf and reproducing female interactions with trap pot gear is a greater risk in Florida State waters than in Georgia or South Carolina State waters. Requiring weak links in Florida state waters of the Southeast U.S. Restricted Area North is a measure designed to help mitigate the risk in an area where there is a high co-occurrence of right whales, particularly newborn calves, and blue crab trap/pot gear.

NMFS proposes to define the maximum breaking strength of vertical line in the Southeast. Currently the required breaking strength of vertical line is not defined but most fishermen use No.8 or No.10 Osprey line with a breaking strength of 1,500 or 2,200 lbs. respectively. Codifying the current practices would ensure that any new effort in the area would be required to use an established breaking strength.

In an effort to decrease the number of ways gear is rigged, NMFS is also proposing to require that vertical lines be made of sinking line and free of objects for those traps set in the Southeast. Gear that is splice-free, knot-free, and/or free of attachments may be more likely to slide through the whale's baleen freeing the animal rather than becoming lodged in the mouth or elsewhere creating a serious injury or mortality risk. Fishermen will still be encouraged to maintain knot free buoy lines as in other areas of the coast.

Changes Proposed to the Plan for Gear Marking

The Plan currently requires fishermen to mark their trap/pot or gillnet buoy lines with one 4-inch (10.2 cm) mark depending on the area they fish. This colored mark should be midway along the buoy line and surface buoys are marked to identify the vessel or fishery. Colors correspond to specific Plan management areas.

This current gear marking strategy (implemented in 1997) is inadequate. From 1997–2008 there were 364 large whale entanglement events. Gear was retrieved in 129 of these cases; of the cases where gear was retrieved, gear marking led to 36 cases where fishery, location, and date were known. A stronger gear marking strategy would help answer questions such as when and where entanglements occur.

The proposed gear marking scheme would maintain the current color combinations but increase the size and frequency of the mark. The new mark must equal 12-inch (30.5 cm) in length and buoy lines must be marked three times (top, middle, bottom). A mark for the Maine and New Hampshire exempted waters would also be required. A mark for the new Southeast U.S. Restricted Area North would be required for both state and Federal

waters. This proposal would continue to allow multiple methods for marking line (e.g., paint, tape, rope, etc).

Regulatory Language Changes

A correction and clarification has been identified since the last regulation was implemented. The following changes to the current Plan regulations are proposed to improve consistency and clarity:

Exempted waters: NMFS proposes to add language to clarify the exempted waters description.

Southeast U.S. Monitoring Area Clarification: The proposed rule would clarify the restricted period for the Southeast US Monitoring Area. Currently the restricted period is not defined. This was an oversight in the last amendment (73 FR 51228). The added language would define the restricted period as December 1 through March 31.

Definitions: The proposed rule would modify the definition of groundline when referring to gillnets to remove reference to buoy line. The definition would read: Groundline with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor.

Prohibitions: The proposed rule would eliminate the individual prohibition paragraphs on fishing or possessing trap/pot gear, anchored gillnet, drift gillnet, gillnet, and shark gillnets (§ 229.3(h) through § 229.3(l)) and condense the intended prohibitions into three paragraphs that apply to any person or vessel and fishing gear subject to the Plan.

We are proposing to add a paragraph that clarifies fishermen are responsible for proving that an exemption or exception under § 229.32 is applicable.

Other Special Measures: We are proposing to add language clarify the intent of § 229.32(i)(2) to include consultation with the Take Reduction Team. In addition to comments on the alternatives NMFS is also seeking comment on two additional areas. Since vertical lines pose a risk to whales regardless of vessel size, NMFS is proposing to require both small and large vessels to increase the number of traps per trawl to reduce the number of vertical lines in the water column. To address impacts to smaller vessels, state managers and industry representatives on the Team proposed utilizing smaller minimum number of trap/pots per trawl. Those smaller limits in inshore state water areas are contained in several of the proposed alternatives. However, we recognize that this may still result in some difficulty for smaller vessels, so we are requesting comments on whether the final regulations should be adjusted so that the number of traps per trawl is limited by specific vessel sizes. In addition, NMFS requests public comment on whether the net benefits of the rule would be affected, either positively or negatively, by exempting vessels under a particular size class.

Also, because the measures developed are based on a model, which accounts for the way the fishing industry deployed its gear in the past, 'credit' for past requirements has already been accounted for when the proposed measures were developed. However, NMFS realizes that potential effort reductions or increases in the future could reduce or increase the number of vertical lines in the water column. Therefore, NMFS is interested in public comment during this comment period on suggestions for how best to quantify potential future trap reductions or increases with respect to how many vertical lines could be reduced.

Should future fishery management actions result in a reduction in vertical lines such that a party would want to request relief from certain measures of the Atlantic Large Whale Take Reduction Plan, such requests should be submitted and evaluated consistent with the NMFS Process for Evaluating Exemption Requests (*http://www.nero.noaa.gov/whaletrp/plan/ALWTRT%20Exemption%20Request%20Process_final.pdf*) that was developed in cooperation with the Team. Following the Team's existing Process, NMFS may allow such exemptions. As a part of the Process NMFS will, among other things, forward each request to the Team, seek to identify any issues or concerns with the request, and convene the Team to discuss and provide a recommendation on the request before taking appropriate action (i.e., commence rulemaking, request more information, or deny request).

Classification

This proposed rule has been determined significant for the purposes of Executive Order 12866. This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act (PRA), specifically, the marking of fishing gear. The proposed collection of information requirement was submitted to the Office of Management and Budget for approval. Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance and function of the agency, including: the practical utility of the information; the accuracy of the burden estimate; the opportunities to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

The DEIS includes several alternatives on which NMFS will solicit comment during a 60-day public comment period. The gear marking scheme proposed in each alternative does not differ; however, the burden estimates may vary by alternative for two reasons: (1) Differences in the number of affected vessels between alternatives and (2) differences in the number of buoy lines allowed per trawl for lobster and other trap/pot vessels. The alternatives were analyzed two ways to account for varying fishing effort depending upon the behavior of industry as a result of the proposed closures. One way assumed 100% suspension of fishing as a result of the closures and the other way assumed some vessels would relocate to fish outside the closed areas. The table below depicts the range in the estimate of burden. The burden for all the alternatives falls within these estimates.

TABLE 1—ESTIMATED ANNUAL BURDEN

Proposed alternative	Number of respondents	Total estimated annual burden hours	Estimated annual burden hours per person	Total estimated annual cost to public	Estimated annual cost to public per person
No Action	6,130	114,541	56	$75,597	$37
Preferred	6,143	102,178	50	67,437	32.93

Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Notwithstanding any other provision of the 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 requirement of the PRA, unless that collection of information displays a valid Office of Management and Budget (OMB) Control Number.

As required by the Regulatory Flexibility Act, NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule. A summary of that IRFA follows.

This proposed rule would identify measures that reduce the risk of serious injury or mortality from entanglement of large whales under the Plan. The objective of this proposed rule, issued pursuant to section 118 of the MMPA, is to reduce the level of serious injury and mortality of right, humpback, and fin whales in commercial east coast trap/pot and gillnet fisheries. The small entities affected by this proposed rule are commercial gillnet and trap/pot fishermen.

The geographic range of the proposed rule would include the Northeast Atlantic, Mid-Atlantic, and Southeast Atlantic waters. In the lobster trap/pot fishery, there are potentially 5,301 vessels that would be affected. In the other trap/pot fisheries, there are potentially 282 vessels that would be affected. In the blue crab fishery there are potentially 48 vessels that would be affected. In the gillnet fishery, there are approximately 499 vessels that would be affected. All vessels are assumed to be small entities within the meaning of the Regulatory Flexibility Act.

The most affected vessels are based in the Northeast due to the high number of vessels that would need to reconfigure gear in this region. However, when considering the coastwide gear marking requirement, the number of vessels considered most affected is essentially identical under all alternatives with the exception of the no action alternative (Alternative 1).

Six alternatives, consisting of one status quo, one preferred alternative, and four additional alternatives were evaluated using model vessels, each of which represents a group of vessels that share similar operating characteristics and would face similar requirements under a given regulatory alternative. Both an upper and lower bound of annual compliance costs for lobster and other trap/pot was analyzed. A summary of analysis describing the potential range of compliance costs follows:

1. NMFS considered a ''no action'' or status quo alternative (Alternative 1) that would result in no changes to the current measures under the Plan and, as such, would result in no additional economic effects on the fishing industry.

2. Alternative 2, which would implement new gear marking restrictions coastwide, increase traps per trawl, and require the use of weaker weak links and/or vertical lines of lower breaking strength. This alternative would also implement a new management area in the Southeast Region. Under this alternative, the average annual vessel compliance costs would equal or range from $1.8 to $4.5 million for lobster trap/pot vessels; $435,000 to $859,900 for other trap/pot vessels; $7,000 for blue crab and $5,000 for gillnet vessels.

3. Alternative 3 would implement all of the requirements of Alternative 2, except the number of traps per trawl required in Maine would differ. Under this alternative NMFS proposes a closure in the Cape Cod Bay from February 1 through April 30. In addition, New Hampshire state waters would be exempt from the Plan's requirements. Under this alternative, the average annual vessel compliance costs would equal or range from $1.6 to $3.6 million for lobster trap/pot vessels; $420,000 to $844,000 for other trap/pot vessels; $7,000 for blue crab and $5,000 for gillnet vessels.

4. Alternative 4 would implement all of the requirements of Alternative 2. In addition, NMFS would propose three closures: (1) Jordan Basin from November 1 through January 31; (2) Jeffreys Ledge from October 1 through January 31; and (3) Cape Cod Bay (including a portion of the Outer Cape and abutting the Great South Channel) from January 1 through April 30. Under this alternative, the average annual vessel compliance costs would equal or range from $3.2 to $6.6 million for lobster trap/pot vessels; $435,000 to $859,000 for other trap/pot vessels; and $7,000 for blue crab and $5,000 for gillnet vessels.

5. Alternative 5 (Preferred Alternative) is a combination of Alternatives 2, 3, and 4. The traps per trawl for Maine would mimic what is required under alternative 3; traps per trawl in all other areas would mimic what is required under Alternative 2. New Hampshire state waters would be exempt under Alternative 5. The closures proposed under Alternative 4 remain in place under Alternative 5. Under this alternative, the average annual vessel compliance costs would equal or range from $3 to $5.7 million for lobster trap/pot vessels; $420,000 to $844,000 for other trap/pot vessels; and $7,000 for blue crab and $5,000 for gillnet vessels.

6. Alternative 6 would implement all of the requirements of Alternative 5 with a few exceptions. Doubles would be required in Massachusetts state waters instead of three traps per trawl. Also, only one closure would be implemented. From January 1 through April 30 Cape Cod Bay and the Outer Cape would be closed to fishing. Under this alternative, the average annual vessel compliance costs would equal or range from $2.2 to $4.4 million for lobster trap/pot vessels; $423,000 to $847,000 for other trap/pot vessels; and $7,000 for blue crab and $5,000 for gillnet vessels.

NMFS has determined that this action is consistent to the maximum extent practicable with the approved coastal management programs 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 proposed rule is consistent with the enforceable policies of the approved coastal management program for that state.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments.

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Figure 1. Exemption lines for the state of New Hampshire. Waters left of the dotted line would be exempt. See proposed Plan regulations for exact exemption line coordinates.

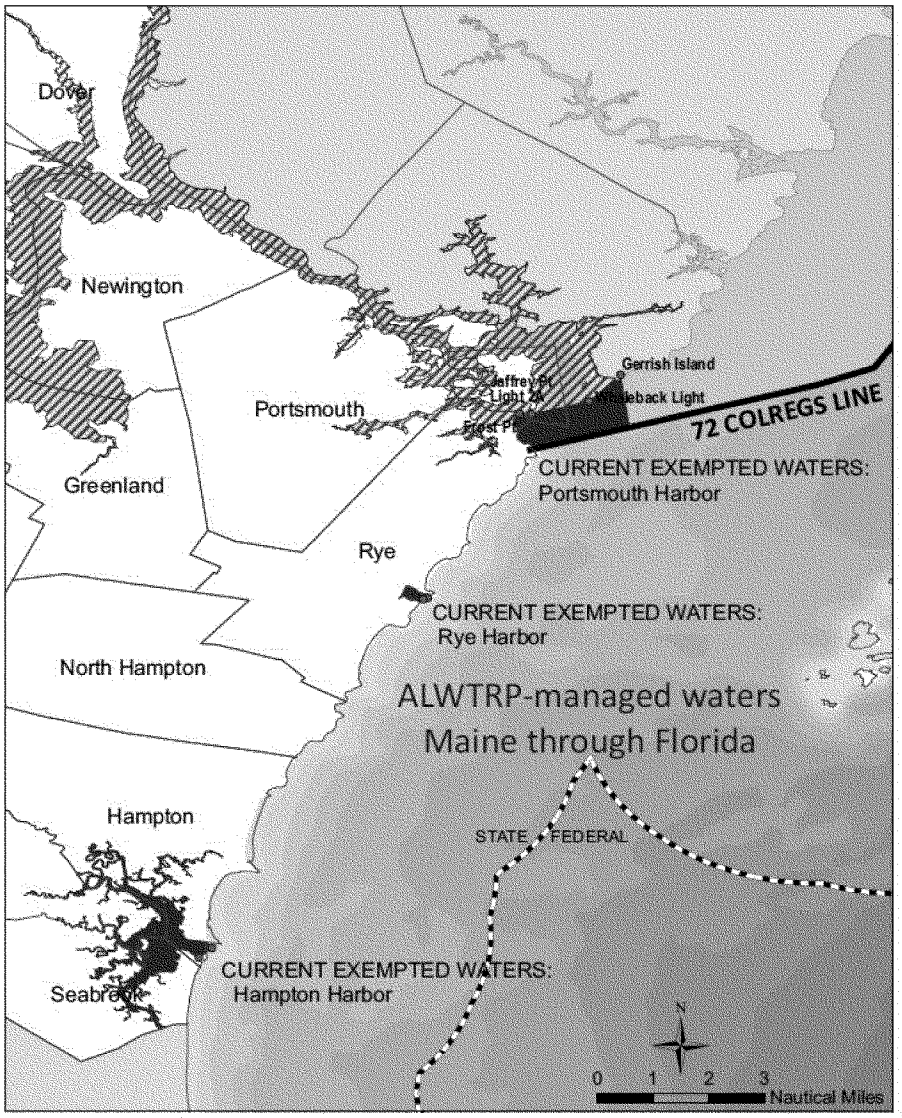


Figure 2. Proposed Massachusetts Restricted Area under Alternative 5.

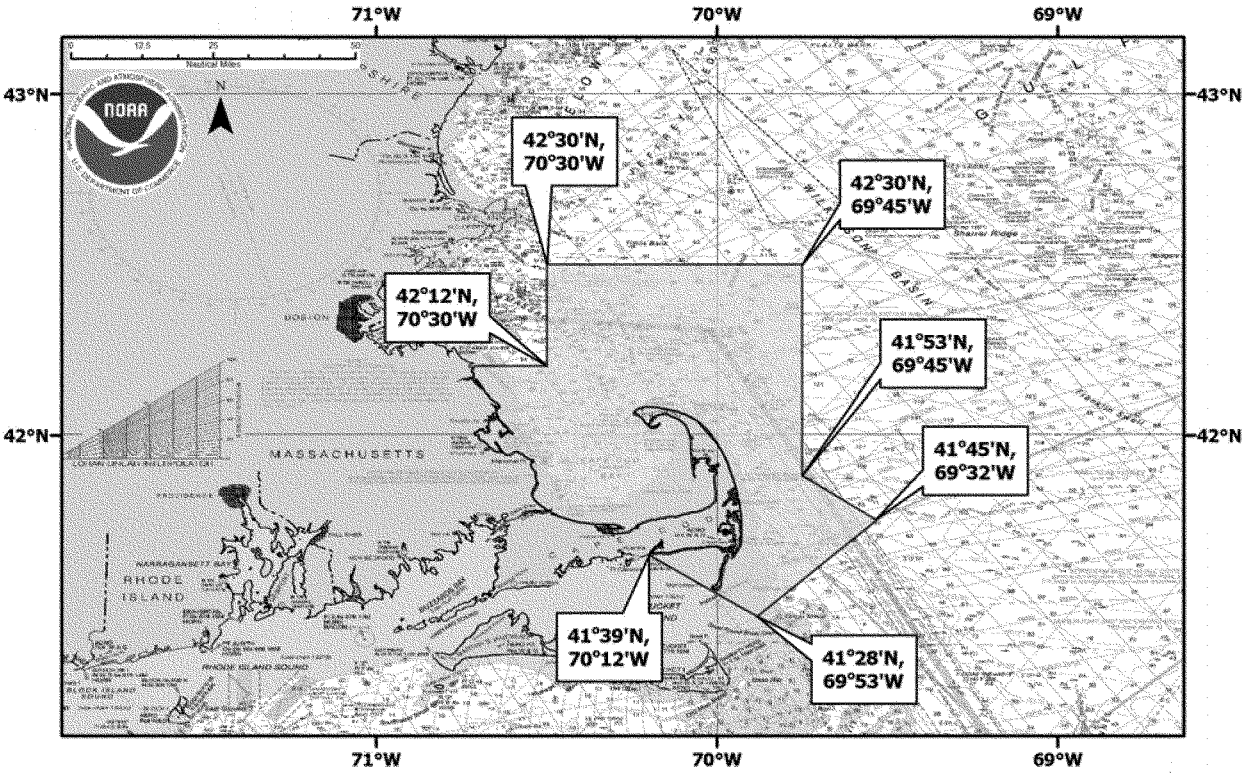


Figure 3. Proposed Jordan Basin Restricted Area under Alternative 5.

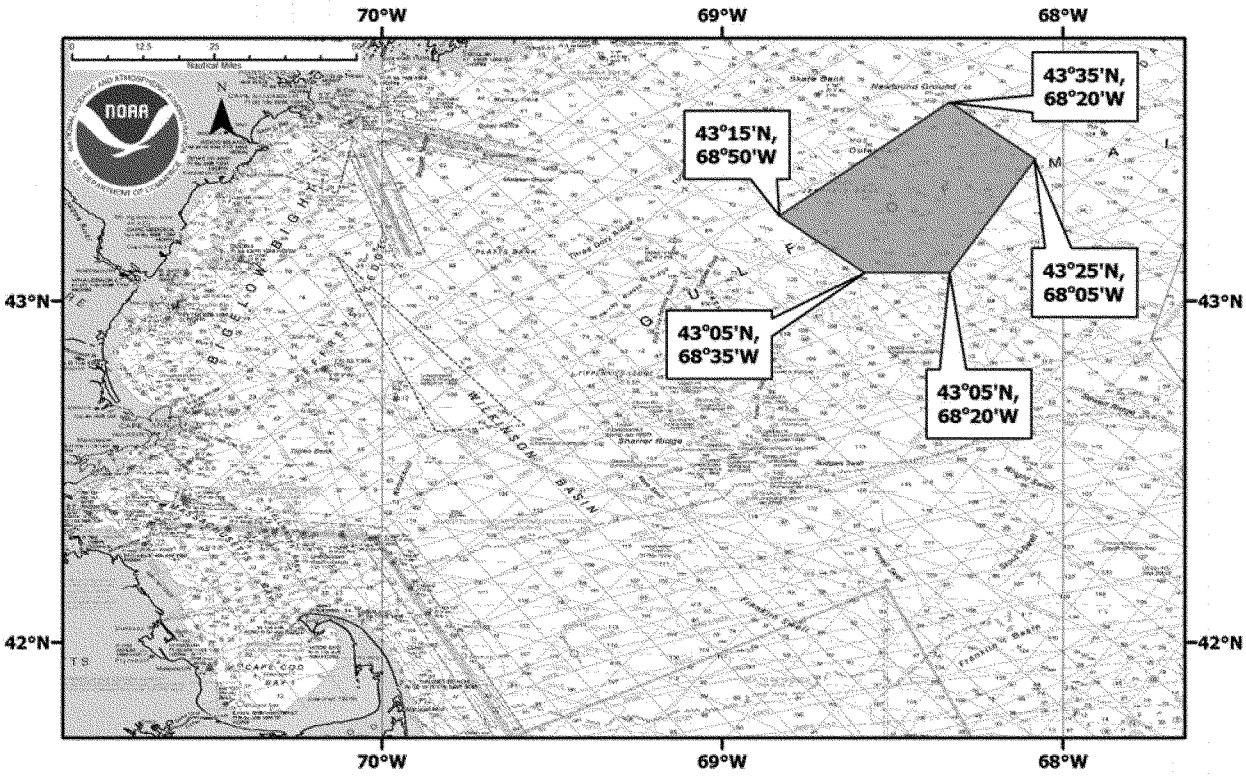


Figure 4. Proposed Jeffreys Ledge Restricted Area under Alternative 5.

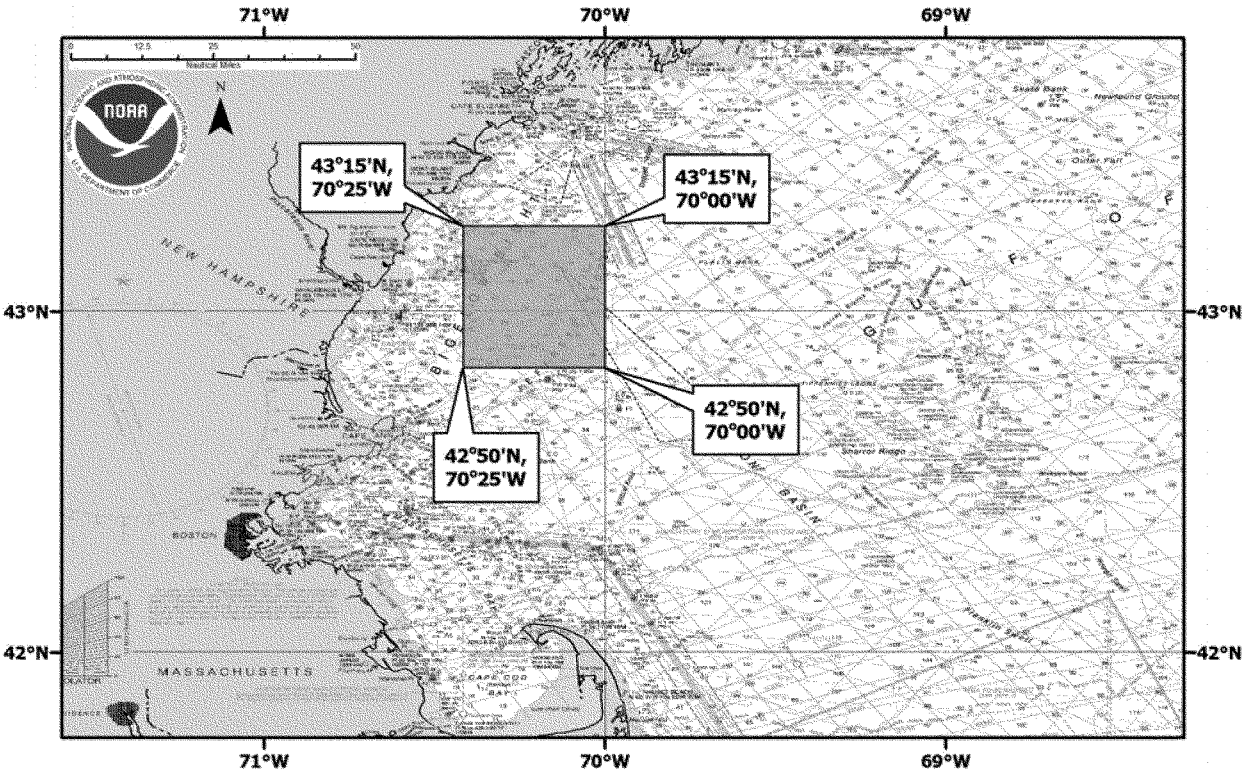
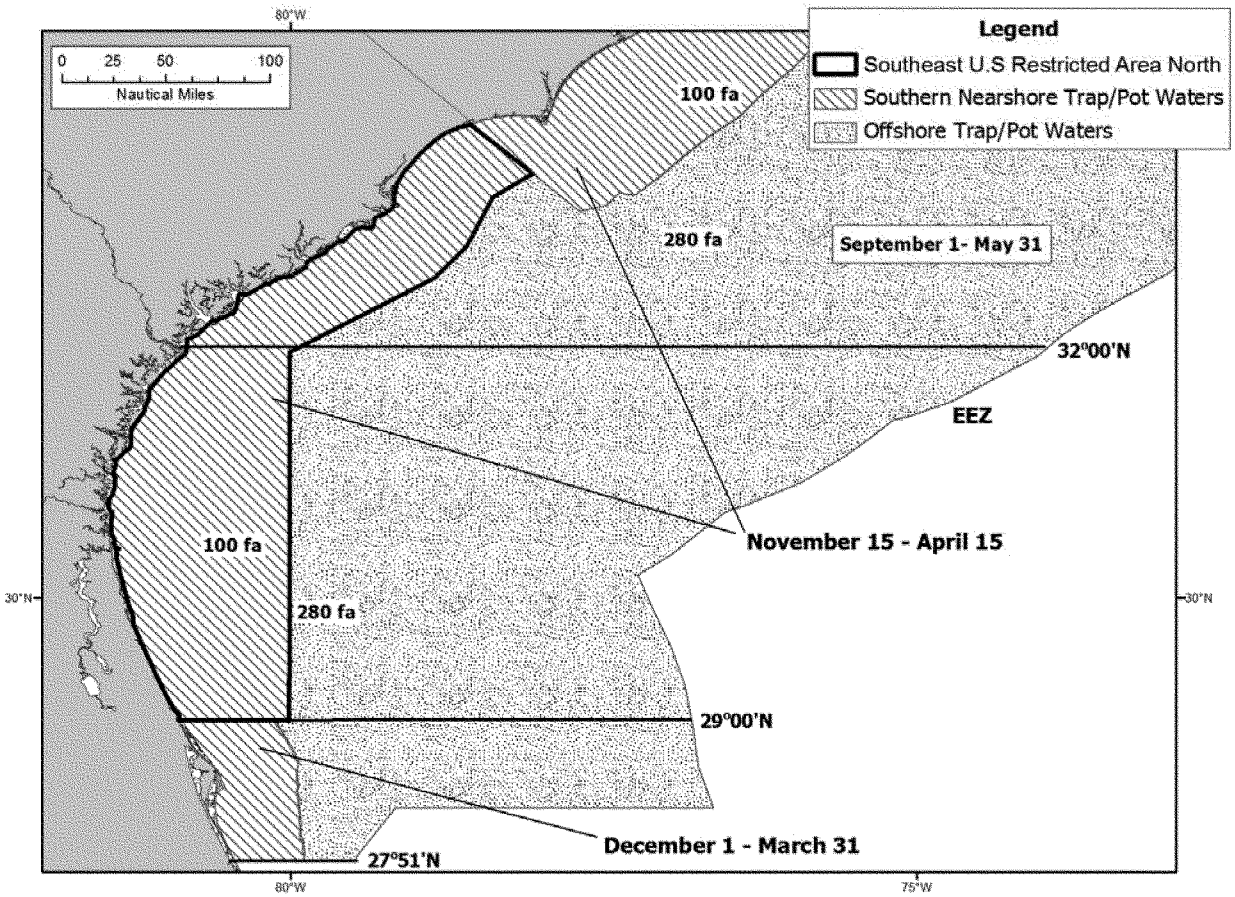


Figure 5. Proposed new Southeast Restricted Area North Trap/Pot Waters. See proposed Plan regulations for exact management area coordinates.



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List of Subjects in 50 CFR Part 229

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

Dated: July 3, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

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

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.2, the definition of ''Groundline'' is revised in to read as follows:

§ 229.2 Definitions.

* * * * *

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

* * * * *

■ 3. Revise § 229.3 paragraphs (h) through (j) and remove and reserve paragraphs (k) and (l) to read as follows:

§ 229.3 Prohibitions.

* * * * *

(h) It is prohibited to own, operate, or be on board a vessel subject to the Atlantic Large Whale Take Reduction Plan except if that vessel and all fishing gear comply with all applicable provisions of § 229.32.

(i) It is prohibited to fish for, catch, take, harvest or possess fish or wildlife while on board a vessel subject to the Atlantic Large Whale Take Reduction Plan, except if that vessel and all fishing gear is in compliance with all applicable provisions of § 229.32.

(j) Any person or vessel claiming the benefit of any exemption or exception under § 229.32 has the burden of

proving that the exemption or exception, is applicable.

* * * * *

■ 4. Section 229.32 is revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Purpose and scope.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. Specific Category I and II commercial fisheries within the scope of the Plan are identified and updated in the annual List of Fisheries. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (e.g., anchored, drift, and shark) and traps/pots. The Assistant Administrator may revise the requirements set forth in this section in accordance with paragraph (i) of this section.

(2) *Regulated waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(3) *Exempted waters.* (i) The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts.

(ii) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (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 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(iii) *Other exempted waters.* The regulations in this section do not apply to waters landward of the following lines:

Maine

The specified waters below are exempt from the regulations stated in this section, except for paragraph (b) of this section.

A line connecting the following points (Quoddy Narrows/US-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

44°49.67′ N. lat., 66°57.77′ W. long. (R N ''2'', Quoddy Narrows)
44°48.64′ N. lat., 66°56.43′ W. long. (G ''1'' Whistle, West Quoddy Head)
44°47.36′ N. lat., 66°59.25′ W. long. (R N ''2'', Morton Ledge)
44°45.51′ N. lat., 67°02.87′ W. long. (R ''28M'' Whistle, Baileys Mistake)
44°37.70′ N. lat., 67°09.75′ W. long. (Obstruction, Southeast of Cutler)
44°27.77′ N. lat., 67°32.86′ W. long. (Freeman Rock, East of Great Wass Island)
44°25.74′ N. lat., 67°38.39′ W. long. (R ''2SR'' Bell, Seahorse Rock, West of Great Wass Island)
44°21.66′ N. lat., 67°51.78′ W. long. (R N ''2'', Petit Manan Island)
44°19.08′ N. lat., 68°02.05′ W. long. (R ''2S'' Bell, Schoodic Island)
44°13.55′ N. lat., 68°10.71′ W. long. (R ''8BI'' Whistle, Baker Island)
44°08.36′ N. lat., 68°14.75′ W. long. (Southern Point, Great Duck Island)
43°59.36′ N. lat., 68°37.95′ W. long. (R ''2'' Bell, Roaring Bull Ledge, Isle Au Haut)
43°59.83′ N. lat., 68°50.06′ W. long. (R ''2A'' Bell, Old Horse Ledge)
43°56.72′ N. lat., 69°04.89′ W. long. (G ''5TB'' Bell, Two Bush Channel)
43°50.28′ N. lat., 69°18.86′ W. long. (R ''2 OM'' Whistle, Old Man Ledge)
43°48.96′ N. lat., 69°31.15′ W. long. (GR C ''PL'', Pemaquid Ledge)
43°43.64′N. lat., 69°37.58′ W. long. (R ''2BR'' Bell, Bantam Rock)
43°41.44′ N. lat., 69°45.27′ W. long. (R ''20ML'' Bell, Mile Ledge)
43°36.04′ N. lat., 70°03.98′ W. long. (RG N ''BS'', Bulwark Shoal)
43°31.94′ N. lat., 70°08.68′ W. long. (G ''1'', East Hue and Cry)
43°27.63′ N. lat., 70°17.48′ W. long. (RW ''WI'' Whistle, Wood Island)
43°20.23′ N. lat., 70°23.64′ W. long. (RW ''CP'' Whistle, Cape Porpoise)
43°04.06′ N. lat., 70°36.70′ W. long. (R N ''2MR'', Murray Rock)
43°02.93′ N. lat., 70°41.47′ W. long. (R ''2KR'' Whistle, Kittery Point)
43°02.55′ N. lat., 70°43.33′ W. long. (Odiornes Pt., Portsmouth, New Hampshire)

New Hampshire

New Hampshire state waters are exempt from the regulations stated in this section, except for paragraph (b) of this section. This includes the harbor waters listed below.

A line from 42°53.691′ N. lat., 70°48.516′ W. long. to 42°53.516′ N. lat., 70°48.748′ W. long. (Hampton Harbor)

A line from 42°59.986′ N. lat., 70°44.654′ W. long. to 42°59.956′ N., 70°44.737′ W. long. (Rye Harbor)

Rhode Island

A line from 41°22.441′ N. lat., 71°30.781′ W. long. to 41°22.447′ N. lat., 71°30.893′ W. long. (Pt. Judith Pond Inlet)

A line from 41°21.310′ N. lat., 71°38.300′ W. long. to 41°21.300′ N. lat., 71°38.330′ W. long. (Ninigret Pond Inlet)

A line from 41°19.875′ N. lat., 71°43.061′ W. long. to 41°19.879′ N. lat., 71°43.115′ W. long. (Quonochontaug Pond Inlet)

A line from 41°19.660′ N. lat., 71°45.750′ W. long. to 41°19.660′ N. lat., 71°45.780′ W. long. (Weekapaug Pond Inlet)

New York

A line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY)

South Carolina

A line from 32°34.717′ N. lat., 80°08.565′ W. long. to 32°34.686′ N. lat., 80°08.642′ W. long. (Captain Sams Inlet)

(4) *Sinking groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m).

(5) *Net panel weak link and anchoring exemption.* The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the float-line is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m).

(b) *Gear marking requirements.* (1) *Specified areas.* The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Massachusetts Restricted Area, Jordan Basin Restricted Area, Jeffreys Ledge Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Areas, Southeast U.S. Monitoring Area, and

Maine and New Hampshire exempted state waters.

(2) *Markings.* All specified gear in specified areas must be marked with the color code shown in (b)(3) of this section. The color of the color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i) and (ii) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. The rope must be marked at least three times (top, middle, bottom) and each mark must total 12-inch (30.5 cm) in length. If the mark consists of two colors then each color mark may be 6-inch (15.25 cm) for a total mark of 12-inch (30.5 cm). If the color of the rope is the same as or similar to a color code, then a white mark may be substituted for that color code. 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. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(i) *Buoy line markings.* All buoy lines greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface), midway along the length of the buoy line, and within 2 feet (0.6 m) of the bottom of the buoy line.

(ii) *Net panel markings.* Each gillnet net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m).

(iii) *Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: the owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

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

COLOR CODE SCHEME

Plan management area	Lobster management area [1]	Color
Trap/Pot Gear		
Massachusetts Restricted Area	LMA 1	Red.
Jeffreys Ledge Restricted Area	LMA 1	Red.
Northern Nearshore	LMA 1, LMA 2, Outer Cape	Red.
Northern Inshore State	LMA 1, LMA 2, LMA 2/3, Outer Cape	Red.
Stellwagen Bank/Jeffreys Ledge Restricted Area	LMA 1	Red.
Great South Channel Restricted Area overlapping with LMA 2 and/or Outer Cape.	LMA2 and Outer Cape	Red.
Southern Nearshore	LMA 4, 5, 6	Orange.
Southeast Restricted Area North	State Waters	Blue and Orange.
Southeast Restricted Area	Federal Waters	Green and Orange.
North Offshore	LMA 2/3 and LMA 3	Black.
Great South Channel Restricted Area overlapping with LMA 2/3 and/or LMA 3.	LMA 2/3 and LMA 3	Black.
Jordan Basin Restricted Area	LMA 3	Black.
New Hampshire and Maine Exemption Area	LMA 1	Red and Blue.
Gillnet excluding shark gillnet		
Cape Cod Bay Restricted Area		Green.
Stellwagen Bank/Jeffreys Ledge Restricted Area		Green.
Great South Channel Restricted Area		Green.
Great South Channel Restricted Sliver Area		Green.
Other Northeast Gillnet Waters		Green.
Mid/South Atlantic Gillnet Waters		Blue.
Southeast US Restricted Area South		Yellow.
Other Southeast Gillnet Waters		Yellow.
New Hampshire and Maine Exemption Area		Red and Blue.
Shark Gillnet (with webbing of 5″ or greater)		
Southeast US Restricted Area South		Green and Blue.
Southeast Monitoring Area		Green and Blue.
Other Southeast Waters		Green and Blue.

[1] If applicable.

(c) *Restrictions applicable to trap/pot gear in regulated waters*—(1) *Universal trap/pot gear requirements.* In addition to the gear marking requirements listed in paragraph (b) of this section and the area-specific measures listed in paragraphs (c)(2) through (12) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed below.[1]

[1] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are

(i) *No buoy line floating at the surface.* No person or vessel may fish with trap/pot gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. 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.

(ii) *No wet storage of gear.* Trap/pot gear must be hauled out of the water at least once every 30 days.

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(2) *Area specific gear requirements.* Trap/pot gear must be set according to the requirements outlined below and in the Table in paragraph (c)(2)(iii) of this section.

(i) *Single traps and multiple-trap trawls.* All traps must be set according to the configuration outlined in the Table (c)(2)(iii). Trawls up to and including 5 or fewer traps must only have one buoy line.

(ii) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(A) The breaking strength of the weak links must not exceed the breaking strength listed in paragraph (c)(2)(iii) of this section for a specified management area.

(B) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(iii) *Table of Area Specific Gear Requirements.*

Location	Mgmt area	Traps/trawl	Weak link strength
ME State Waters	Northern Inshore State	2	≤ 600 lbs.
ME Zones A–G (3–6 miles)	Northern Nearshore	3	≤ 600 lbs.
ME Zones A–C (6–12 miles)	Northern Nearshore	5	≤ 600 lbs.
ME Zones D–G (6–12 miles)	Northern Nearshore	10	≤ 600 lbs.
ME Zones A–E (12+ miles)	Northern Nearshore and Offshore	15	≤ 600 lbs (≤ 1500 lbs in offshore, 2,000 lbs if red crab trap/pot).
ME Zones F–G (12+ miles)	Northern Nearshore and Offshore	15 (Mar 1–Oct 31) 20 (Nov 1–Feb 28/29)	≤ 600 lbs (≤ 1500 lbs in offshore, 2,000 lbs if red crab trap/pot).
MA State Waters	Northern Inshore State	2	≤ 600 lbs.
LMA 1 (0–3 miles)	Northern Inshore State and Massachusetts Restricted Area and Stellwagen Bank/Jeffreys Ledge Restricted Area.	3	≤ 600 lbs.
LMA 1 (3–12 miles)	Northern Nearshore and Massachusetts Restricted Area and Stellwagen Bank/Jeffreys Ledge Restricted Area.	10	≤ 600 lbs.
LMA 1 (12+ miles)	Northern Nearshore	20	≤ 600 lbs.
LMA1/OC Overlap (0–3 miles)	Northern Inshore State and Massachusetts Restricted Area.	2	≤ 600 lbs.
OC (0–3 miles)	Northern Inshore State and Massachusetts Restricted Area.	2	≤ 600 lbs.
OC (3–12 miles)	Northern Nearshore and Massachusetts Restricted Area.	10	≤ 600 lbs.
OC (12+ miles)	Northern Nearshore and Great South Channel Restricted Area.	20	
LMA 2 (0–3 miles)	Northern Inshore State	3	≤ 600 lbs.
LMA 2 (3–12 miles)	Northern Nearshore	10	≤ 600 lbs.
LMA 2 (12+ miles)	Northern Nearshore	20	≤ 600 lbs.
LMA 2/3 Overlap (12+ miles)	Offshore	20	≤ 1500 lbs (2,000 lbs if red crab trap/pot).
LMA 3 (3–12 miles)	Offshore	10	≤ 1500 lbs (2,000 lbs if red crab trap/pot).
LMA 3 (12+ miles)	Offshore and Jordan Basin Restricted Area.	20	≤ 1500 lbs (2,000 lbs if red crab trap/pot).
LMA 4 5 6	Southern Nearshore		≤ 600 lbs.
FL State Waters	Southeast US Restricted Area North[2]	1	≤ 200 lbs.
GA State Waters	Southeast US Restricted Area North[2]	1	≤ 600 lbs.
SC State Waters	Southeast US Restricted Area North[2]	1	≤ 600 lbs.
Federal Waters off FL, GA, SC	Southeast US Restricted Area North[2]	1	≤ 600 lbs.

(3) *Massachusetts Restricted Area*—(i) *Area.* The Massachusetts restricted area is bounded by the following point surrounding the shoreline of Cape Cod, Massachusetts.

considered to be less of an entanglement threat and are thus preferable to knots.

[2] *See* § 229.32 (f)(1) for description of area.

Point	N. Lat.	W. Long.
MRA1	42°12′	70°30′
MRA2	42°30′	70°30′
MRA3	42°30′	69°45′
MRA4	41°53′	69°45′
MRA5	41°45′	69°32′
MRA6	41°28′	69°53′
MRA7	41°39′	70°12′

(ii) *Closure.* From January 1 to April 30, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements.* From May 1 through December 31, no person or vessel may fish with or possess trap/pot gear in the Massachusetts Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *Great South Channel Restricted Trap/Pot Area*—(i) *Area.* The Great South Channel Restricted Trap/Pot Area consists of the area bounded by the following points.

Point	N. Lat.	W. Long.
GSC1	41°40′	69°45′
GSC2	41°0′	69°05′
GSC3	41°38′	68°13′
GSC4	42°10′	68°31′

(ii) *Closure.* From April 1 through June 30, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Cape Cod Bay Restricted Area in paragraph (c)(3) of this section, that lie south of 43°15′ N. lat. and west of 70°00′ W. long.

(ii) *Year round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(6) *Offshore Trap/Pot*[3] *Waters Area*—(i) *Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3, including the area known as the Area ⅔ Overlap and Area ⅗ Overlap as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the Great South Channel Restricted Trap/Pot Area and Southeast Restricted Area, and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°14′ N. lat. south to 27°51′ N. lat., and east to the eastern edge of the EEZ.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and area-specific requirements in paragraph (c)(2) or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) in this section, or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(7) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area.* The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, and Maine, with the exception of Cape Cod Bay Restricted Area and those waters exempted under paragraph (a)(3) of this section. Federal waters west of 70°00'N.lat. in Nantucket Sound are also included in the Northern Inshore State Trap/Pot Waters Area.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(8) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations at 50 CFR 697.18), with the exception of

[3] Fishermen using red crab trap/pot gear should refer to § 229.32(c)(10) for the restrictions applicable to red crab trap/pot fishery.

the Great South Channel Restricted Trap/Pot Area, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Federal waters west of 70°00'N.lat. in Nantucket Sound (included in the Northern Inshore State Trap/Pot Waters Area) and those waters exempted under paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(9) *Southern Nearshore*[4] *Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18, and excluding the Area 3/5 Overlap), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30′ N lat. south to 27°51′ N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section and those waters in the Southeast Restricted Area defined in paragraph (f)(1) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph(c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(10) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(6)(i) and (c)(9)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(10)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41° 18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(11)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40° 00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(11)(i) of this section that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(11)(i) of this section that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2

(vi) [Reserved]

(11) *Jeffreys Ledge Restricted Area*—(i) *Area.* The Jeffreys Restricted Area is bounded by the following points:

Point	N. Lat.	W. Long.
JLRA1	43°15′	70°25′
JLRA2	43°15′	70°00′
JLRA3	42°50′	70°25′
JLRA4	42°50′	70°00′

[4] Fishermen using red crab trap/pot gear should refer to § 229.32(c)(10) for the restrictions applicable to red crab trap/pot fishery.

(ii) *Closure.* From October 1 to January 31, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements.* From February 1 through September 30, no person or vessel may fish with or possess trap/pot gear in the Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2

(12) *Jordan Basin Restricted Area*—(i) *Area.* The Jordan Basin Restricted Area is bounded by the following points:

Point	N. Lat.	W. Long.
JBRA1	43°15′	68°50′
JBRA2	43°35′	68°20′
JBRA3	43°25′	68°05′
JBRA4	43°05′	68°20′
JBRA5	43°05′	68°35′

(ii) *Closure.* From November 1 to January 31, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements.* From February 1 through October 31, no person or vessel may fish with or possess trap/pot gear in the Jordan Basin Restricted unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(3) through (d)(8) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed below.[5]

(i) *No buoy line floating at the surface.* No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. 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, sinking and/or neutrally buoyant line must be used between these objects.

(ii) *No wet storage of gear.* Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(2) *Area specific gear restrictions.* No person or vessel may fish with or possess anchored gillnet gear in Areas referenced in paragraphs (d)(3) through (d)(8) of this section, unless that gear complies with the gear requirements specified in paragraph (d)(1) of this section, and the area specific requirements listed below, or unless the gear is stowed as specified in § 229.2.

(i) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(A) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(B) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(ii) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations unless exempted from this requirement under paragraph (a)(5) of this section:

(A) Configuration 1. (*1*) The weak link must be chosen from the following list approved by NMFS: plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(*2*) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(*3*) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(*4*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(*5*) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(B) Configuration 2. (*1*) The weak link must be chosen from the following list approved by NMFS: plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(*2*) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(*3*) One weak link must be placed between the floatline tie loops between net panels; and

(*4*) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(*5*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(*6*) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(iii) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted

[5] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

from this requirement under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region.

(3) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay restricted area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

Point	N. Lat.	W. Long.
CCB1	41°40′	69°45′
CCB2	42°30′	69°45′
CCB3	42°30′	70°30′
CCB4	42°12′	70°30′

(ii) *Closure.* During January 1 through May 15 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements.* From May 16 through December 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *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:

Point	N. Lat.	W. Long.
GSC1	41°02.2′	69°02′
GSC2	41°43.5′	69°36.3′
GSC3	42°10′	68°31′
GSC4	41°38′	68°13′

(ii) *Closure.* From April 1 through June 30 of each year, no person or vessel may set, fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(5) *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:

Point	N. Lat.	W. Long.
GSCRA1	41°02.2′	69°02′
GSCRA2	41°43.5′	69°36.3′
GSCRA3	41°40′	69°45′
GSCRA4	41°00′	69°05′

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(6) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Cape Cod Bay Restricted Area in paragraph(d)(3) of this section that lie south of 43°15′ N. lat. and west of 70°00′ W. long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(7) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(8) *Mid/South Atlantic Gillnet Waters*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as

specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, or unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications unless exempted under paragraph (a)(5) of this section:

(*1*) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(*2*) The weak link must be chosen from the following list approved by NMFS: plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*3*) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(*1*) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations found in paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B)of this section.

(*3*) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(8)(ii)(C)(*1*) and (d)(8)(ii)(C)(*2*) of this section, or the following:

(*i*) The entire net string must be less than 300 yards (274.3 m) from shore.

(*ii*) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(*iii*) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraphs (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section.

(*iv*) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(e) *Restrictions applicable to drift gillnet gear*—(1) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay restricted area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

Point	N. Lat.	W. Long.
CCB1	41°40′	69°45′
CCB2	42°30′	69°45′
CCB3	42°30′	70°30′
CCB4	42°12′	70°30′

(ii) *Closure.* From January 1 through April 30 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements.* From May 1 through December 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(2) *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:

Point	N. Lat.	W. Long.
GSC1	41°02.2′	69°02′
GSC2	41°43.5′	69°36.3′
GSC3	42°10′	68°31′
GSC4	41°38′	68°13′

(ii) *Closure.* From April 1 through June 30 of each year, no person or vessel may set, fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(3) *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:

Point	N. Lat.	W. Long.
GSCRA1	41°02.2′	69°02′.
GSCRA2	41°43.5′	69°36.3′.
GSCRA3	41°40′	69°45′.
GSCRA4	41°00′	69°05′.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated the Cape Cod Bay Restricted Area in paragraph (e)(1) of this section, that lie south of 43°15′ N. lat. and west of 70°00′ W. long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(5) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(6) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless:

(A) The gear complies with gear marking requirements specified in paragraph (b) of this section;

(B) The gear is tended; and

(C) All gear is removed from the water and stowed on board the vessel before a vessel returns to port. No person or vessel may possess drift gillnet at night in the Mid/South Atlantic Gillnet Waters unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(f) *Restrictions applicable to the Southeast U.S. Restricted Area*—(1) *Area.* The Southeast U.S. Restricted

Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north:

Point	N. Lat.	W. Long.
SERA1	27°51′	(1)
SERA2	27°51′	80°00′
SERA3	32°00′	80°00′
SERA4	32°36′	78°52′
SERA5	32°51′	78°36′
SERA6	33°15′	78°24′
SERA7	33°27′	78°04′
SERA8	(2)	78°33.9′

[1] Florida shoreline.
[2] South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N.* The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N. lat. northward.

(ii) *Southeast U.S. Restricted Area S.* The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N. lat.

(2) *Restricted periods, closure, and exemptions.* (i) *Restricted periods.* The restricted period for the Southeast U.S. Restricted Area N is from November 15 through April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31.

(ii) *Closure for gillnets.* (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraphs (f)(2)(iii) and (f)(2)(iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29°00′ N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery.* Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4⅞ inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(8)(ii)(A) through (d)(8)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) *Restrictions for trap/pot gear.* Fishing with trap/pot gear in the Southeast U.S. Restricted Area N during the restricted period is allowed if:

(A) Trap/pot gear is not fished in a trap/pot trawl;

(B) All buoys or flotation devices are attached to the buoy line with a weak link that meets the requirements of paragraph (c)(2)(ii) of this section. The weak link has a maximum breaking strength of 600 lbs (272 kg) except in Florida State waters where the maximum breaking strength is 200 lbs (91 kg);

(C) The buoy line has a maximum breaking strength of 2,200 lbs (998 kg) except in Florida State waters where the maximum breaking strength is 1,500 lbs (630 kg);

(D) The entire buoy line must be free of objects (e.g., weights, floats, etc.) except where it attaches to the buoy and trap/pot;

(E) The buoy line is made of sinking line;

(F) The gear complies with gear marking requirements as specified in paragraph (b) of this section; and

(G) Trap/pot gear that is deployed in the EEZ (as defined in 50 CFR 600.10) is brought back to port at the conclusion of each fishing trip.

(g) *Restrictions applicable to the Other Southeast Gillnet Waters* (1) *Area*—The Other Southeast Gillnet Waters Area includes all waters

bounded by 32°00′ N. lat. on the north (near Savannah, GA), 26°46.50′ N. lat. on the south (near West Palm Beach, FL), 80°00′ W. long. on the west, and the EEZ boundary on the east.

(2) *Closure for gillnets.* Fishing with or possessing gillnet gear in the Other Southeast Gillnet Waters Area north of 29°00′N lat. from November 15 through April 15 or south of 29°00′ N lat. from December 1 through March 31 is allowed if one of the following exemptions applies:

(i) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh is allowed if:

(A) The gear is marked as required in paragraph (b) of this section.

(B) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(C) The gear is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear.

(ii) *Exemption for Southeast Atlantic gillnet fishery.* Fishing with or possessing gillnet gear is allowed if:

(A) The gear is marked as required in paragraph (b) of this section; or

(B) The gear is fished south of 27°51′ N.

(iii) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet gear aboard a vessel in transit is allowed if:

(A) All nets are covered with canvas or other similar material and securely fastened to the deck, rail, or drum; and

(B) All buoys, high flyers, and anchors are disconnected from all gillnets.

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area*—(1) *Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51′ N. lat. (near Sebastian Inlet, FL) south to 26°46.50′ N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00′ W. long.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh from December 1 through March 31 is allowed if:

(i) The gear complies with the gear marking requirements specified in paragraph (b) of this section;

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69; and

(iii) The vessel owner/operator and crew are in compliance with observer requirements found in 50 CFR 229.7.

(3) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery vessels in transit.* Possession of gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh aboard a vessel in transit from December 1 through March 31 is allowed if:

(i) All gear is stowed as specified in 50 CFR 229.2; and

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(i) *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 or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) 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 (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may, in consultation with the Take Reduction Team, 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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