and biological circumstances and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. Moreover, this proposed listing of a population of desert bighorn sheep must be consistent with Service policy published on February 7, 1996, regarding the recognition of distinct vertebrate population segments (61 FR 4722). This policy requires that distinct population segments be discrete from other populations of the species, be biologically and/or ecologically significant to the species, and meet the standards of a endangered or threatened species under section 4(a) of the Act. In this regard, the following recent articles and reports contained in Service files, including other non-cited information, are available for public review:

Berger, J. 1990. Persistence of different-sized populations: An empirical assessment of rapid extinctions. Conservation Biology 4:91–98.

Bleich, V. C., J. D. Wehausen, and S. A. Holl 1990. Desert-dwelling mountain sheep: Conservation implications of a naturally fragmented distribution. Conservation Biology 4:383–390.

Bleich, V. C., J. D. Wehausen, R. R. Ramey II, and J. L. Rechel 1997. Metapopulation theory and mountain sheep: Implications for conservation. Pages 353–373 *in* D. R. McCullough, editor. Metapopulations and Wildlife Conservation, Island Press, Washington D.C.

Bighorn Institute 1996. Summary of the San Jacinto Mountains helicopter survey of Peninsular bighorn sheep. unpublished report, 2 pp.

Bighorn Institute 1996. Summary of the Santa Rosa Mountains helicopter survey of Peninsular bighorn sheep. unpublished report, 3 pp.

Boyce, W. M., P. W. Hedrick, N. E. Muggli-Cockett, S. Kalinowski, M. C. T. Penedo, and R. R. Ramey II 1997. Genetic variation of major histocompatibility complex and microsatellite loci: A comparison in bighorn sheep. Genetics 145:421–433.

DeForge, J. R., E. M. Barrett, S. D. Ostermann, M. C. Jorgensen, and S. G. Torres 1995. Population dynamics of Peninsular bighorn sheep in the Santa Rosa Mountains, California. Desert Bighorn Council Trans. 39:50–57.

R. R. Ramey II 1995. Mitochondrial DNA variation, population structure, and evolution of mountain sheep in the south-western United States and Mexico. Molecular Ecology 4:429–439.

Rubin, E., and W. Boyce 1996. Results of helicopter survey conducted in Anza-Borrego Desert State Park, unpublished memo to Steve Torres (CDFG Bighorn Sheep Coordinator) and project collaborators. 6 pp.

Wehausen, J. D., and R. R. Ramey II 1993. A morphometric reevaluation of the Peninsular bighorn subspecies. Desert Bighorn Council Trans. 37:1–10.

Regarding the above articles and reports, the Service particularly seeks information concerning:

(1) The biological and ecological distinctiveness of bighorn sheep in the Peninsular Ranges from other populations of bighorn sheep;

(2) other biological, commercial, or other relevant data on any threat (or lack thereof) to bighorn sheep in the Peninsular Ranges; and

(3) the current size, number, or distribution of bighorn sheep populations in the Peninsular Ranges.

Written comments may now be submitted until [May 7, 1997] to the Service office in the **ADDRESSES** section.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 1, 1997.

Thomas J. Dwyer,

Regional Director, Region 1.

[FR Doc. 97–8779 Filed 4–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–7072–02; I.D. 031997B]

RIN 0684–AI84

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS by this action proposes a take reduction plan and implementing regulations to reduce serious injury and mortality of four large whale stocks that occur incidental to certain fisheries. The whales stocks consist of the North Atlantic right whale (*Eubalaena glacialis*), Western North Atlantic stock, humpback whale (*Megaptera novaeangliae*), Western North Atlantic stock, fin whale (*Balaenoptera physalus*), Western North Atlantic stock, and minke whale (*Balaenoptera acutorostrata*), Canadian East Coast stock. Covered by the proposed plan are fisheries: for multiple species, including monkfish and dogfish in the New England Multispecies sink gillnet fishery; for multiple species in the U.S. mid-Atlantic coastal gillnet fisheries; for lobster in the Gulf of Maine and U.S. mid-Atlantic trap/pot fisheries; and for sharks in the Southeastern U.S. Atlantic driftnet fishery. NMFS seeks comments on this proposed plan and the proposed regulations to implement the plan.

DATES: Comments on the proposed plan and proposed regulations to implement the plan must be received by May 15, 1997.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–33226. Copies of the Team Report and draft Environmental Assessment (EA) may be obtained by written request from the Office of Protected Resources, or by telephoning one of the contacts listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Kim Thounhurst, NMFS, Northeast Region, 508/281–9368; Bridget Mansfield, NMFS, Southeast Region, 813/570–5312; or Michael Payne, NMFS, Office of Protected Resources, 301/713–2322.

SUPPLEMENTARY INFORMATION:

Background

Since it was first passed in 1972, one of the underlying goals of the Marine Mammal Protection Act (MMPA) has been to reduce the incidental serious injury and mortality of marine mammals permitted in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate (section 101(a)(2) of the MMPA). The 1994 Amendments to the MMPA reaffirm this Zero Mortality Rate Goal (ZMRG) (section 118 (b)(1)).

To facilitate reduction of incidental serious injury and mortality to high priority marine mammal stocks, section 118(f) requires NMFS to develop and implement a take reduction plan to assist in the recovery or to prevent the depletion of each strategic stock that interacts with a Category I or II fishery. Category I or II fisheries are fisheries that have frequent or occasional incidental mortality and serious injury of marine mammals, respectively. A strategic stock is a stock: (1) For which the level of direct human-caused

mortality exceeds the potential biological removal (PBR) level; (2) which is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA or as a depleted species under the MMPA. The immediate goal of a take reduction plan (TRP) is to reduce, within 6 months of its implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to below the PBR levels established for such stocks. The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality and serious injury of strategic marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate.

NMFS established the Atlantic Large Whale Take Reduction Team (Team or ALWTRT) on August 6, 1996 (61 FR 40819) to prepare a draft Atlantic Large Whale Take Reduction Plan to reduce takes of humpback, fin and right whales, which are listed as endangered species under the ESA (and are thus considered strategic stocks under the MMPA) by commercial fisheries. Although minke whales are not considered strategic at this time, the Team was also asked to consider measures that would reduce takes of minke whales. The Team prepared a report and submitted it to NMFS; a more complete discussion of the Team Report and associated recommendations is provided below.

The New England Multispecies sink gillnet fishery is a Category I fishery that has an historical incidental bycatch of humpback, minke, and possibly fin whales. This gear type has been documented to take right whales in Canadian waters. Additionally, entanglements of right whales in unspecified gillnets have been recorded historically for U.S. waters, although U.S. sink gillnets have not been conclusively identified as having taken right whales. The Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery is a Category I fishery that has an historical incidental bycatch of right, humpback, fin and minke whales. The mid-Atlantic coastal gillnet fisheries are considered a Category II fisheries complex that has an historical incidental bycatch of humpback whales. The Southeastern U.S. Atlantic drift gillnet fishery for sharks is a Category II fishery that is believed to be responsible for bycatch of at least one right whale. These fisheries are therefore addressed in this proposed Atlantic Large Whale Take Reduction Plan (ALWTRP or Plan). The pelagic drift gillnet fishery has recorded takes of large whales, but those interactions are not being addressed in this Plan, since it will be addressed in the Atlantic Offshore Cetacean Take Reduction Plan, which is being developed.

In addition, the Team Report identified several other fisheries operating on the U.S. Atlantic Coast which either use gear similar in construction to gear used by the fisheries covered by this proposed plan, and may therefore represent similar entanglement threat, or which may have documented serious injury or mortality entanglements of right, humpback, fin and/or minke whales. These fisheries include the tuna hand line/hook-and-line fishery, groundfish (bottom) longline/hook-and-line fishery, surface gillnet fishery for small pelagic fishes, pot fisheries other than lobster pot, finfish staked trap fisheries, and weir/stop seine fisheries. Currently, these fisheries are either classified as Category III or are unclassified. NMFS is considering the appropriateness of these classifications and may impose gear-marking requirements and/or restrictions on some or all of these other fisheries in the final plan. NMFS specifically invites comments on whether these other fisheries utilize the same or similar gear as the fisheries considered in this plan, whether the gear is fished in a manner which causes or has the potential to cause serious injury or mortality to marine mammals, whether efficient administration, effective enforcement or similar considerations warrant uniform regulations for similar gear types, and whether the gear-marking requirements and/or other restrictions should apply to all fisheries using similar gear.

The Team was tasked with developing a draft plan for reducing mortality and serious injury to strategic large whale stocks, and minke whales if time permitted, in the specified fisheries. The Team included representatives of NMFS, the Marine Mammal Commission, Maine Department of Marine Resources, Massachusetts Division of Marine Fisheries, Rhode Island Division of Fish and Wildlife, Maryland Department of Natural Resources, Virginia Marine Resources Commission, North Carolina Division of Marine Fisheries, Georgia Department of Natural Resources, Florida Department of Environmental Protection, New England Fishery Management Council, Mid-Atlantic Fishery Management Council, environmental organizations, academic and scientific organizations, and participants in the fisheries considered in this plan. In selecting these team members, NMFS sought an equitable balance among representatives of resource user and non-user interests.

The team met six times between September 1996 and January 1997 and submitted a report to NMFS on February 5, 1997 (Although the report was entitled ''Draft Large Whale Take Reduction Plan'', consensus was not reached. Consequently, it is referred to as the ''ALWTRT Report'' or ''Team Report''). While consensus was not reached, the Team provided a significant and useful framework for NMFS to develop this proposed ALWTRP and the associated implementing regulations. The report submitted by the Team includes: (1) A review of the current information on the status of the affected strategic marine mammal stocks; (2) descriptions of the New England multispecies sink gillnet fishery, the mid-Atlantic coastal gillnet fisheries, the Gulf of Maine and U.S. mid-Atlantic lobster trap/pot fisheries, and the Southeastern U.S. Atlantic drift gillnet fishery for sharks; (3) comments on potential measures to reduce the bycatch of large whales; and (4) other comments regarding research needs for implementation of the plan.

NMFS evaluated the Team Report and subsequent comments submitted by team members in developing this proposed ALWTRP. NMFS considered possible take reduction measures in terms of their potential effectiveness toward reaching both the 6-month and the 5-year goals. This ALWTRP includes specific take reduction goals as well as means to monitor progress toward those goals.

Take Reduction Goals

Most of the measures in this proposed plan focus on ways to reduce the risk of serious injury and mortality to right whales, both because the right whale's population status is more critical than that of either humpback or fin whales, and because right whales are the only endangered large whale in U.S. Atlantic waters for which PBR is known to be exceeded. The proposed measures are also expected to reduce the risk of serious injury and mortality to humpback and fin whales due to entanglement, and may reduce the same risks for minke whales. There is overlap in several areas where fishing occurs and where right, humpback, fin and minke whales are also known to occur, although concurrent use of these areas by all species does not occur during much of the year. Therefore, certain measures directed at reducing right whale entanglements (such as required gear modifications) are proposed to be expanded to year-round coverage

beginning in 1998 to be effective for all species considered by the Plan.

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

Right Whales

Based on data from 1991 through 1995, U.S. fishing gear is estimated to be responsible for approximately 35 percent (6 events) of known human-caused serious injury and mortality to right whales, while Canadian fisheries are estimated to be responsible for 18 percent (3 events); the remaining 47 percent (8 events) is attributed to ship strikes. The MMPA requires that TRPs include measures to reduce takes of strategic marine mammals incidental to U.S. commercial fisheries to below PBR levels.

NMFS estimates that a minimum of 1.2 right whales from the western North Atlantic stock are seriously injured or killed annually by entanglement in U.S. fishing gear. Of those entangled whales, lobster gear is estimated to have entangled an annual average of 0.4 whales over the last 5 years. The Southeastern U.S. drift gillnet fishery for sharks is assumed to have entangled an annual average of 0.2 whales over the same period. Whales entangled in unidentified gillnet gear have been observed. The pelagic drift gillnet fishery is estimated to be responsible for 0.4 fishery-induced mortalities and serious injuries of right whales annually. The remaining known entanglements are from unknown fisheries. With the exception of the swordfish driftnet take, which was documented by the NMFS observer program, these entanglement rates are considered minimum estimates based on known events. Unobserved entanglements are known to occur, based on observed scarred animals. These entanglements may be unobserved because less serious entanglements may be brief in duration, mortality may be rapid, or the entanglement may occur in an area where there is little sighting effort (and, consequently, lower chances of observation and reporting). NMFS is unable to estimate the number of these unobserved events.

NMFS has determined that to meet the 6-month goal set by the MMPA to reduce takes by commercial fisheries to below the PBR level of 0.4 for this stock, the probability of entanglement of right whales by all U.S. Atlantic fisheries must be reduced by more than 67% (from 1.2 to less than 0.4). Reduction of takes in the pelagic drift gillnet fishery will be considered in the Atlantic Offshore Cetacean Take Reduction Plan (AOCTRP). A draft AOCTRP was submitted to NMFS on November 25, 1996, and publication of the proposed plan in the **Federal Register** is expected in the near future.

NMFS estimates annual serious injury and mortality rates based on a 5-year period. Expected rates of entanglement during any 6-month period may vary from the 5-year annual average. This variation may be most pronounced where the sample size is particularly small, as is the case with right whale entanglements. Consequently, it will be difficult to establish whether the goal of reducing incidental takes of right whales to below the PBR level is achieved within 6 months of the plan is implemented. Since the PBR level for right whales is 0.4, if more than two serious injuries or mortalities incidental to commercial fishing operations occur within 5 years after the plan is promulgated, then the PBR goal will not have been achieved.

Progress toward the 5-year goal may be more feasible to monitor than that toward the 6-month goal. However, defining the 5-year goal is somewhat more difficult, since at this time, NMFS has not issued a final quantitative definition for ZMRG. NMFS expects to address the regulatory definition of ZMRG in the near future. However, more than one incident of serious injury or mortality in the fisheries covered under the ALWTRP (which does not include all fisheries) during the first 3 years after the plan is implemented would be a strong indicator that the plan was not achieving its goals. Right whale entanglement rates are proposed to be monitored as described below.

Humpback Whales

NMFS has determined that a reduction in take for the western North Atlantic stock of humpback whales is not required to meet the 6-month goal, because the estimated annual serious injury and mortality level due to entanglement (in the four fisheries groups covered in this plan) for this stock (3.4 minimum annual average for 1991–1995) is below the stock's PBR level of 9.7.

As with right whales, a quantitative goal to achieve the 5-year goal of ZMRG for humpback whales cannot be prescribed until ZMRG has been defined in terms other than ''insignificant levels approaching a zero mortality rate.'' If entanglement rates are observed to be reduced, progress toward ZMRG would be assumed, but could not be assessed more accurately until ZMRG is defined more precisely. The humpback whale entanglement rate is proposed to be monitored as described below.

Fin Whales

Although serious injury and mortality due to entanglement has been documented for this stock of fin whales over the 1991–1995 period, none of those events can be conclusively attributed to any of the four fisheries groups covered in this plan, and the estimated total take due to entanglement is below PBR for this stock. Therefore, NMFS has determined that a reduction in take for the western North Atlantic stock of fin whales is not required for these fisheries to meet the 6-month goal. However, entanglement of fin whales in lobster pot gear and gillnet gear has been documented historically, and some reduction in take may be necessary to achieve the ZMRG. As with right and humpback whales, a quantitative goal to achieve the 5-year goal of ZMRG for fin whales cannot be established with numerical precision at this time. However, measures implemented to reduce the entanglement rate of right and humpback whales would also be expected to reduce the entanglement rate for fin whales, facilitating progress of that stock toward ZMRG. Fin whale entanglement rate are to be monitored, as feasible, although it should be noted that known entanglements are rare, and it may be difficult to determine whether there has been a reduction. Additionally, the number of entangled fin whale sightings is likely to be negatively biased because carcasses usually sink immediately and are therefore less likely to be observed.

Minke Whales

Although minke whales are not considered strategic at this time (human-caused mortality and serious injury are not known to exceed the PBR level of 21 for this stock, and this species is not listed as threatened or endangered under the ESA or as depleted under the MMPA), serious injuries and mortalities incidental to at least two of the fisheries groups covered in this proposed plan are known to

occur. Therefore, the Team was asked to consider measures that would reduce takes of minke whales in these fisheries. In light of the strict time frame available to develop a TRP, the Team did not have time to consider specific needs or measures to reduce entanglements of minke whales. However, measures implemented to reduce the entanglement rate of right and humpback whales may reduce the entanglement rate for minke whales, facilitating progress of that stock toward ZMRG. The minke whale entanglement rate is proposed to be monitored, to the extent feasible. If entanglement rates are observed to be reduced, progress toward ZMRG would be assumed, but could not be assessed more accurately until ZMRG is defined more precisely. As with fin whales, minke entanglement levels are likely to be underestimated because carcasses are likely to sink immediately.

Monitoring Strategies

The following strategies for monitoring progress in take reduction were outlined in the Team Report: (1) Collect adequate photographic data to evaluate the incidence of new entanglement scarring and assess presumed mortality levels; (2) expand field survey efforts for a minimum of six years after implementation of gear modifications, to assess population abundance and distribution; and (3) evaluate effectiveness of gear modifications on future entanglement events. The success of the take reduction measures that are implemented will be evaluated at future Team meetings, with subsequent comments and recommendations forwarded to NMFS.

NMFS will continue to monitor entanglements of all large whale species. Assessment of the success in bycatch reduction measures will be based on reports from the NMFS observer program, examination of stranded whales, abundance and distribution surveys, fishermen's reports and opportunistic reports of entanglement events. NMFS is considering expanding field survey efforts to assess population abundance and distribution. The effectiveness of implemented take reduction measures may be most apparent through monitoring the entanglement rate for humpback whales, since this species has the highest known entanglement rate of the large whales on the U.S. Atlantic coast. A decrease in entanglements of humpback whales will be taken as supportive evidence that the risk of entangling right, fin and minke whales has been reduced.

It should be emphasized that not all whale entanglements result in serious injury or mortality. Levels of entanglement-related scarification in the right whale population have been analyzed (Kraus, 1990). Monitoring of scarification and comparison of historic levels in the population, as noted in the Team Report, may help provide a basis for determining whether the various take reduction measures in the final plan are effective in decreasing levels of interaction between whales and fishing gear. This must be considered together with determining the effectiveness of gear modifications (which may leave scars on whales, but not result in serious injuries and mortalities) in decreasing the severity of entanglement-related injuries. The level of non-serious injuries resulting from entanglements will provide further indication of whether the 6-month and 5-year goals of the ALWTRP are being achieved.

Monitoring fishing effort levels in conjunction with assessment of gear effectiveness may provide another indicator of entanglement rates. This will be considered when the Team periodically convenes to evaluate the success of the ALWTRP. If fishing effort is reduced, entanglement risk may also decline, although a linear relationship cannot be assumed. Rather, entanglement risk may decrease by an unknown percentage depending on the degree of overlap between historical fishing effort and whale distribution.

Some marking of lobster pots, gillnets and associated surface gear (e.g., buoys, high-fliers, or flags) is currently required or being considered under Federal or state fishery management plans for the four groups of fisheries covered by this plan. However, most lines and nets in the water column remain unmarked. Most sightings of entangled whales involve gear which cannot be conclusively tracked to a particular fishery or area, due to the fact that only a fragment of line or net is present.

Several entanglement records indicates that whales are capable of dragging gear great distances. In one known instance, a right whale that became entangled in a lobster pot trawl in the Bay of Fundy dragged fragments of the trawl to Cape Cod, Massachusetts, where the whale was struck by a vessel and washed up on the beach. Due to these factors and the low per-gear interaction rate, NMFS believes that the traditional observer program will not be effective in detecting or monitoring large whale entanglements in most fisheries.

To increase the value of information from future entanglement events, NMFS is proposing gear marking requirements to monitor the effectiveness of this plan and to determine whether entanglements are occurring in gear which has been damaged or displaced by storms or user-group conflicts. NMFS seeks to implement this requirement in as simple a manner as possible as described in the gear modifications section below.

Take Reduction Strategies

The primary measures for take reduction discussed in the Team Report include modifications to fishing gear and practices, area restrictions, reduction of inactive fishing gear as marine debris, and improved disentanglement efforts. Supplementary initiatives for take reduction contained in the Team Report include fisher education and outreach, better monitoring of the distribution of whale stocks and entanglements, joint initiatives with Canada to reduce whale bycatch in commercial fisheries, and exploration of market incentives to reduce large whale bycatch in these fisheries. In this action, NMFS is proposing strategies that seem best suited to follow the intent of the Team and to achieve the goals set forth by the MMPA. NMFS expects that, if implemented, these measures, taken together, would have a significant effect in reducing the risk of entanglement of large whales in the fisheries considered in this plan to levels that meet both the 6-month and 5-year goals.

Whales are extremely mobile and entanglements have occurred outside the bounds of known high risk areas. It is, therefore, not possible to identify all areas of risk. It is likewise difficult to determine if the measures proposed in this plan will be sufficient to reduce entanglements that result in serious injury and mortality to below PBR levels, and eventually to the ZMRG, or to maintain take rates below those levels. Further restrictions will be applied if these measures are not successful.

It is not possible to conclusively quantify the decrease in risk of entanglement that will result from the proposed measures in this ALWTRP. The Team was presented with the best available data on large whale distribution and abundance patterns in the Atlantic, as well as similar information on fisheries effort and distribution. These data were analyzed and compared to determine areas and times that represent ''high risk'' to whales based on high probability of whale occurrence and/or high fishing effort. This analysis was used by the Team to provide comments to NMFS regarding locations and times for area

closures or gear restrictions. For an analysis of the level of entanglement risk from the Northeast sink gillnet fishery for all areas, which was done by overlaying right and humpback whale densities on fishing effort for different times of the year and assigning low, medium or high risk, see the appendix 11 and other materials in the ALWTRT Report. Whale densities during certain months in some areas are such that the Team believed it was important to prevent future expansion of fishery effort until effective gear modifications have been developed and demonstrated. In other areas periodic increased whale densities combined with certain levels of fishing effort may create anomalous high risk periods.

The proposed requirements would govern fishing by all vessels in New England multispecies sink gillnet fisheries, the mid-Atlantic coastal gillnet fisheries, the Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery and the Southeastern U.S. Atlantic drift gillnet fishery for sharks. As stated earlier, there are additional trap/pot, gillnet or other gear that may have the potential to entangle whales. These are primarily Category III fisheries which will be evaluated during the 1998 List of Fisheries process for potential interaction levels with large whales and possible elevation to Category I or II. Although these fisheries are not included in take reduction or gear marking measures under this proposed rule, the final rule may include such measures.

Research Initiatives and Monitoring Strategies

The Team recommended initiation of a gear research and development program to design and implement fishing techniques and technologies that will reduce the entanglement rate and/or severity of injuries and mortalities of large whales. The Team recommended that NMFS work with industry and gear specialists to develop criteria for: (1) Certifying individuals and institutions as qualified to design and evaluate modifications for use consistent with requirements of the ALWTRP and other TRPs; and (2) evaluating gear effectiveness toward reducing marine mammal entanglements.

The Team Report identified several initial gear modifications for investigation. These are the development of: (1) Tag lines (lightweight line that poses no risk to whales, but would hold a buoy at the surface and allow retrieval of a functional buoy line); (2) biodegradable or a weak link at the bottom of the buoy line; (3) improvement of a weak link at the top of the buoy line; (4) smooth or non-snagging gillnet head rope; (5) biodegradable gear and gear components; (6) using weights to sink floating pot trawl groundline, development of other functional equivalents of sinking groundline, or requiring sinking groundline; and (7) ''noisy'' gear, or gear more easily detected by whales. Also identified in the Team Report as areas for further investigation are the evaluation of the breaking strengths of weak links and the performance of weak links in gillnets both between and within net panels. The Team Report further comments that successful gear modifications be considered for future incorporation into the plan as implementation measures.

NMFS is forming a gear review and technical advisory group to work with industry and gear technology specialists to develop gear and fishing practices to reduce the number and impact of large whale entanglements. NMFS recognizes that the current low rate of observed entanglement and other difficulties in evaluating gear makes it difficult or impossible to demonstrate conclusively that any gear modification would reduce entanglement or serious injury and mortality resulting from entanglement. Nonetheless, NMFS has included certain gear modifications in this proposed rule although these measures have not yet been evaluated by the NMFS gear review and technical advisory group. NMFS believes that these modifications will reduce the risk of entanglement, but seeks further review of these measures.

It is anticipated that the NMFS gear review group will conduct an initial review of the proposed gear modifications prior to publication of the final rule implementing this plan. NMFS proposes to immediately implement the most stringent restrictions in areas and times when right whale concentrations are highest. This strategy was initiated in regulations implementing Framework Adjustment 23 to the Northeast Multispecies Fishery Management Plan and emergency regulations for the lobster fishery under the MMPA. The proposed rule incorporates these restrictions and phases in additional restrictions.

Through gear marking requirements, NMFS hopes to obtain more useful data regarding when and where entanglements occur, as well as in which parts of the gear they are most likely to occur. This measure will not reduce bycatch, but is expected to facilitate in monitoring entanglement rates and assist in designing future bycatch reduction measures to achieve ZMRG.

NMFS seeks to implement the gear marking requirement in as simple a manner as possible. A system entailing color-coded marks is proposed. The marking would include three color schemes, one color representing the gear type corresponding to one of the fisheries in this plan, and the second mark consisting of two colors indicating the region in which the gear is being fished. Regions would include Cape Cod Bay critical habitat, Great South Channel critical habitat, the Stellwagen Bank/Jeffreys Ledge area, other Northeast waters, Mid-Atlantic coastal waters, and Southeast waters. Gear marking must be accomplished so that the result is a smooth line with no snags which could catch in a whale's baleen.

Marking of buoy lines (within 2 feet of the buoy and approximately midway in the water column) would be required by January 1, 1998, and marking of nets (at both ends of each net in a string of gillnets and every 100 feet in panels > 300 feet) and lobster pot trawl groundlines (approximately midway between each pot) would be required by January 1, 1999. NMFS solicits comments on these proposed gear marking measures and alternative suggestions. In addition, NMFS also requests comments on whether gear-marking should be required for the other fisheries discussed above which utilize similar gear.

Primary Take Reduction Initiatives

Fishing Method / Gear Modifications and Area Restrictions by Fishery and Area

All Fisheries:

Documented whale behavior and information from actual entanglement records suggest that both vertical (e.g., buoy lines) and horizontal (e.g., gillnets or lobster pot trawl groundlines) components of fishing gear represent entanglement risks. For example, of the 9 records of right whale entanglements in gear identified as lobster gear since 1970, 4 apparently involved only the buoy line, 2 probably involved only groundline, and 3 involved line that was from an unknown part of the gear. Modifications to the current practices of rigging buoy lines are proposed to reduce the number of vertical lines and to ensure that pot trawls are not rigged with more than two vertical lines. Although the level of risk reduction cannot be quantified because the current number of vertical lines is unknown, implementation of these measures will likely directly reduce the entanglement risk presented by vertical buoy lines.

Sinking Buoy Line Requirement (except for driftnet gear): Buoy lines are typically constructed of a section of sinking line near the surface which is spliced or knotted to a longer section of floating line that is attached to the anchor of a gillnet or the first pot of a lobster pot trawl. Sinking line is preferred near the surface to decrease the chance that the line will be severed by propellers of vessels passing through an area. The attached floating line is less expensive than sinking line and has several additional benefits. Using floating line near the bottom can prevent the line from wrapping around gear or rocks on the bottom and chafing as the gear is moved by currents in the area. The length of buoy line used can depend on water depth and tidal influence. In some areas the buoy line may be longer than twice the water depth, and the tautness of the line is influenced by the tidal cycle and other currents. Therefore, the line may be slack during part of the current cycles in certain areas.

Slack floating line appears to represent a greater risk of entanglement than taut line, particularly if the line is laying at or near the surface. Right whales may be particularly susceptible to entanglement in lines laying at or near the surface because of the feeding behavior known as ''skim feeding'' during which whales move slowly forward through a patch of zooplankton, keeping the mouth slightly ajar for hours at a time. Right and humpback whales are also known to feed at depth; however, the behavior when feeding near the bottom or in the water column is poorly understood.

NMFS proposes to require sinking buoy lines or modified sinking buoy lines, by January 1, 1998, in all lobster pot gear and gillnet gear used by anchored gillnet fisheries covered by this plan be required by January 1, 1998. In order to accommodate regional differences in the practice of rigging buoy lines due to oceanographic conditions, NMFS proposes to allow fishers to use a section of floating line near the bottom of buoy lines in some areas. The Team discussed using 10 fathoms (18.3 m) for this bottom floating section in some areas such as the Great South Channel. Several TRT members mentioned that allowing this amount of floating line in the buoy line in portions of Stellwagen Bank and even the Great South Channel would represent very little reduction in risk, since the water is not much deeper than 10 fathoms (18.3 m) in certain parts of those regions. Because requiring one length, even for one area such as the Great South Channel right whale critical habitat, is problematic, NMFS is proposing that the floating line at the bottom of a modified sinking buoy line be no longer than 10% of the depth of the water. NMFS is requesting comments on whether 10 fathoms, 1 fathom, or other lengths is more appropriate or whether a different percentage of the water column depth should be specified as the minimum length.

Breakaway Buoy or Weak Buoy Line Requirement (except for driftnet gear): NMFS proposes that by January 1, 1998, all buoy lines in lobster pot gear and anchored gillnet gear considered in this plan be equipped with a breakaway buoy at the top of the buoy line, or that traditional buoy lines be replaced with a weak buoy line. The breakaway buoy or weak buoy line would be designed to break in a whale entanglement situation. Based on comments by the Team, NMFS is considering requiring a maximum breaking strength of 150, 300 and 500 lbs (68 kg, 136 kg, and 227 kg, respectively). NMFS is proposing a 150 lb (68 kg) breaking strength, which is the initial value recommended by the Commonwealth of Massachusetts Endangered Whale Working Group and which was also discussed by the Team. Comments are requested on the appropriateness and practicality of these and other possible breaking strengths.

The purpose of this requirement is to reduce the serious injury and mortality associated with an entanglement in the buoy line of fixed gear. The goal of a breakaway buoy is to ensure that the buoy itself does not contribute to the entanglement problem. A line without a buoy or knot at the bitter end is expected to pass more easily through the baleen of a whale and to slip more easily past an appendage. A line which does not get hung up on the baleen or on an appendage because there are no knots or buoys is believed to be less likely to initiate thrashing behavior. It is believed that once a whale starts to thrash, line can be wrapped around appendages and/or begin to cut into tissue. The breakaway buoy is intended to prevent the entanglement from progressing to that stage. While this modification may not reduce the incidence of entanglement, breakaway buoys might be expected to at least reduce the severity of an entanglement.

The intent of a weak buoy line is that it would snap if a whale entangled in it but would be strong enough to haul up a heavier, traditional buoy line that would in turn be used to haul up the fishing gear. This measure may be the most effective gear modification of any discussed by the Team for reducing the serious injury and mortality rate from entanglement. As mentioned above, buoy line appears to have been the part of the gear responsible for at least 4 of the 9 known right whale entanglements in lobster pot gear. Right and humpback whales have also been sighted entangled in buoy lines of sink gillnet gear. If a brittle buoy line could be designed to break every time it was encountered by a whale, this modification could reduce and possibly eliminate the risk that entanglement would occur or at least ensure that entanglement in a buoy line would result in serious injury or mortality. NMFS assumes that use of such a brittle buoy line may not be practicable, but that a weak line can be developed that will break at least half of the time.

Since a breakaway buoy is not expected to reduce the possibility of injury once a whale gets wrapped in line, the weak buoy line may represent a greater conservation gain than would be achieved through the breakaway buoy. However, the development of a weak buoy line is not as far along as the development of a breakaway buoy. In addition, the cost of developing and implementing a weak buoy line system may be substantially greater than a breakaway buoy system. NMFS proposes to require the use of breakaway buoys in 1998, but weak buoy lines are encouraged to be used as an alternative. Comments are requested on approaches to phasing in this requirement.

Gear inspection requirement: This proposed rule includes a requirement that all gear used by the four specified fisheries be hauled at least once every 30 days for inspection. This provision was discussed by the ALWTRT for certain gear types to encourage fishers not to ''store'' gear at sea.

Closures: In addition to gear modifications, the Team discussed the use of time/area closures for sink gillnet and lobster pot gear in areas of high use by right whales until fishing gear has been developed that poses minimal risk of serious injury or mortality from entanglement. Only gear demonstrated to pose minimal risk to whales will be allowed in the restricted area.

Contingency Measures: Closure or other restrictions in the event of an entanglement in modified gear: As noted above, NMFS is aware that it will be difficult to determine with surety that required gear modifications will reduce the rate of serious injury and mortality as expected. NMFS proposes that if an injury or mortality of a right whale occurs as the result of an entanglement in modified gear, NMFS will assess the circumstances, including the level of injury, and determine if

there is indication that the modification is not sufficient to reduce the rate of serious injury or mortality to right whales. If such a serious injury or mortality is attributable to modified gear in a critical habitat area, NMFS would close the critical habitat area during the restricted period. If such a serious injury or mortality is attributable to modified gear in another restricted area, NMFS could close the area or impose additional restrictions to ensure the protection of right whales.

If the entanglement involved only the non-serious injury of a right whale, or involved another large whale species, NMFS would again investigate and determine whether the interaction was attributable to modified gear. If the entanglement was attributable to modified gear, NMFS could impose additional gear modifications or alternative fishing practices, or close the area through a publication in the **Federal Register**.

This measure would enable NMFS to take prompt action to protect endangered whales if modified gear is not sufficiently effective. NMFS will examine each entanglement event on a case by case basis to determine whether the gear responsible is modified gear, and whether the entanglement resulted in serious injury or mortality.

Closures or other restrictions based on unusual concentrations of right whales: The measures in this rule are proposed to be implemented in various areas based on current knowledge of migratory patterns of right whales. Right whale movements are unpredictable, however, and there are periods when right whales occur in certain U.S. waters at other than expected times of the year and in areas other than right whale critical habitat. Some of these times and areas may have large amounts of fixed gear in the water. The risk of entanglement may be particularly high in these unpredictable situations. For example, all right whale entanglements in U.S. lobster gear where the location was known occurred either outside critical habitat or outside the peak season in critical habitat. As an added measure to reduce the likelihood of entanglement in the anomalous years with unusual right whale distribution patterns, the proposed regulations allow NMFS to extend gear requirements or to close a restricted area. Notification of such action would be published in the **Federal Register**. Under the proposed rule, special area restrictions would be considered if four or more right whales are sighted in an area for two consecutive weeks. Right whales would be judged to have left the area if there are no confirmed sightings for one week or more. NMFS requests comments on the criteria for determining concentrations of right whales that may require additional protection and suggestions for alternative criteria.

Risk reduction through other MMPA actions or fishery management plan regulations: In addition to this proposed rule, certain other measures that are expected to decrease the risk of entanglement of whales in sink gillnets are either currently in effect or under consideration, such as reductions in allowable days at sea and seasonal or year-round area closures to protect groundfish. Additionally, area closures for harbor porpoise conservation are in effect for Massachusetts Bay, the Gulf of Maine ''mid-coast'' and ''northeast'' areas, and southern New England. With the exception of the harbor porpoise closure in southern New England, all of these closures coincide with times that right whales are also present in the area, further decreasing the likelihood of entanglement. Effort reduction measures under Framework Adjustment 20 to the Northeast Multispecies Fishery Management Plan are expected to reduce total sink gillnet effort by 50 to 80 percent, which is expected to reduce the risk of large whale entanglement associated with this gear by some fraction of the same amount.

NMFS further notes that the Commonwealth of Massachusetts and the New England Fishery Management Council (NEFMC) are considering net caps in the sink gillnet fishery for future implementation to conserve groundfish. These measures, if implemented, may further reduce the risk of entanglement of right whales in sink gillnet gear, but are not a part of this plan.

Some level of lobster pot gear effort reduction may occur under gear conflict management measures such as those implemented by the NEFMC in Southern New England. Further, NMFS is aware that the Atlantic States Marine Fisheries Commission is currently considering reducing effort in the lobster fishery. Any effort reduction measures implemented for the lobster fishery are likely to reduce the risk of entanglement of whales in that gear, but are not a part of this plan.

Fishery-Specific Measures: The following measures are proposed for the four groups of fisheries covered in the ALWTRP. The measures are intended to decrease the risk of entangling large whales in gillnets and lobster gear. Although they did not reach consensus, the Team provided NMFS with a significant and useful framework for developing proposed implementing regulations. The gear modifications proposed by NMFS generally reflect the intent of the Team to reduce the risk of entanglement without creating an undue burden on the fishing industry. NMFS also considered whether the recommended measures would meet the goals of the MMPA. Certain areas, identified as high use areas by large whales during certain times of the year, were targeted for closures or a high level of gear restrictions. The following area closures and gear restrictions are intended to be implemented beginning in 1998 for the period specified, except for measures proposed for the Southeast drift gillnet fishery for sharks, which would be implemented beginning in November 1997.

American Lobster Trap/Pot Fisheries

In addition to the buoy line requirements and contingency measures described above for all fisheries, NMFS proposes the following area-specific measures for the lobster trap/pot fisheries covered in this plan.

As discussed above, groundlines of lobster pot trawls represent an entanglement risk to whales, although the degree of risk relative to other parts of the gear is unknown. The lobster industry uses either sinking or floating groundline, depending on substrate and/or gear densities. Floating line is preferred in many areas to avoid snagging on rocky bottom or on other pots as well as to reduce chafing caused by contact with pots and with the bottom. The degree to which line floats between pots is unknown. Because right and humpback whales are known to use the lower part of the water column for feeding or other activities, even a modest curve to the groundline could still represent an entanglement threat, especially where the length of groundline between pots may be as long as the depth of the water column. The requirement of sinking groundline would reduce the potential for a high profile of the groundline and therefore reduce the entanglement threat represented by that part of the pot trawl.

NMFS proposes to require modifications to lobster pot trawl groundlines only in certain areas with primarily sandy bottoms to minimize the amount of snagging and/or severing on rocky outcrops. Restricting sinking lines to these areas would not be expected to have a significant negative impact on the effectiveness in reducing whale entanglements involving accidental encounters, since whales are not likely to feed close to the bottom in rocky areas. However, there may be cases when whales, particularly juveniles, are attracted to gear even along rocky bottom, so some potential for entanglement remains. The NMFS

gear review and technical advisory group is expected to consider recommendations for alternatives to sinking groundline.

Cape Cod Bay Critical Habitat Area: Based on comments in the Team Report, NMFS proposes to restrict fishing with lobster pot gear in the Cape Cod Bay critical habitat area, including both Federal and Commonwealth waters, from January 1 through May 15 of each year. Only certain types of lobster pot gear would be allowed during this period of high use by right whales. NMFS proposes to prohibit the use of single lobster pots or trawls of less than 4 pots during this time period. In addition, trawls could not be rigged with no more than 2 buoy lines. The purpose of these requirements is to reduce and/or prevent an increase in the number of vertical lines in the water that a whale might encounter. NMFS also proposes to require that all groundlines used in lobster pot trawls in this area consist of sinking line.

Based on comments in the Team Report, NMFS also proposes to restrict fishing with lobster pot gear in the Cape Cod Bay critical habitat area from May 16 through December 31. NMFS does not propose to prohibit the use of single pots from May 16 through December 31, because the likely response to this requirement may be for fishermen who now use single pots in optimal lobster habitat to add pots to their trawls rather than to decrease the number of buoy lines. Only one buoy line would be allowed on trawls of less than 4 pots. Otherwise, gear modifications proposed for the May 16 through December period are similar to those for the January 1 through May 15 period and would include breakaway buoy or weak buoy line, sinking buoy lines, and sinking groundlines.

Great South Channel Critical Habitat Area: Based on comments in the Team Report, NMFS proposes to close all of the Great South Channel critical habitat area from April 1 to June 30 of each year to lobster pot gear until the Assistant Administrator determines that alternative fishing practices or gear modifications have been developed which reduce the risk of serious injury or mortality to whales to acceptable levels. As noted above, if right whale concentrations outside the usual ''high-use'' period warrant additional action, the area may be closed, through a publication in the **Federal Register**.

Although not allowing lobster pot gear in the area west of the Loran C 13710 line from April 1 to June 30 appears inconsistent with what NMFS proposes for sink gillnet gear in this area, NMFS believes that lobster pot gear poses a greater threat to right whales than does sink gillnet gear in this area. The offshore location generally requires that gillnetters tend their gear, whereas lobster pot gear in this area is often not checked for extended periods especially if there is bad weather.

NMFS is proposing closure of the Great South Channel critical habitat to lobster pot gear during the high right whale use period, but proposes gear modifications in the Cape Cod Bay critical habitat over the comparable period. The rationale for this difference is that there is a higher likelihood that an entangled whale in Cape Cod Bay will be sighted and reported, due to the high level of vessel traffic and more research efforts in that area. Potential whale entanglements in Cape Cod Bay are considered more likely to be observed and reported to the disentanglement network. In addition, NMFS believes that disentanglement efforts may be more effective in reducing the potential for serious injuries and mortalities in these relatively shallow, nearshore waters than in offshore waters. The Great South Channel critical habitat is further offshore and little whale watching or survey effort exists there. The likelihood of observing an entangled whale offshore is lower, and offshore disentanglement efforts are subject to greater logistical impediments.

In addition, differences in oceanographic conditions in the two regions may make a particular gear modification less effective in one area relative to the other. For example, the Great South Channel is much deeper than Cape Cod Bay and exhibits much stronger tides, requiring different fishing practices. NMFS' gear review and technical advisory group will be asked to consider oceanographic conditions in the Great South Channel in making gear recommendations that might be effective and practicable in that area.

Although the Team Report contains discussion regarding the closure of Groundfish Management Area I, which covers part of the Great South Channel right whale critical habitat, to lobster fishing during the high whale use period, NMFS does not propose closing the area to lobster pot fishing at this time, as the frequency of right whale sightings in this area (already closed to gillnet gear for groundfish conservation measures) is quite low and the fishing effort minimal. Comments on this decision are requested.

The Team Report provided comments on the lobster pot fisheries in the Great South Channel critical habitat area outside of the known high right whale use period. NMFS proposes to restrict lobster fishing in the Great South Channel right whale critical habitat area from January 1 through March 31 and July 1 through December 31 of each year (beginning in 1998). Proposed restrictions during this time period include only sinking or modified sinking buoy lines, and breakaway buoys or weak buoy lines.

Stellwagen Bank/Jeffreys Ledge Area: NMFS proposes to define the Stellwagen Bank/Jeffreys Ledge (SB/JL) area as the area delineated by the following points: the shoreline at 43½° 00′ N out to 70° W, then south along that line to 42° N, then west along that line to the Massachusetts shoreline at the western end of Cape Cod Bay, excluding right whale critical habitat. The Team Report includes comments indicating a different northern boundary (43°15′ rather than 43°30′). The northern and eastern boundaries proposed here are consistent with one of the groundfish area closures in the Northeast Multispecies Fishery Management Plan.

Based on the Team Report and subsequent comments regarding this area, NMFS proposes to restrict lobster fishing in the SB/JL area from January 1 through December 31 of each year (beginning in 1998). Proposed restrictions during this time period include sinking groundline, sinking or modified sinking buoy lines, and breakaway buoys or weak buoy lines.

Fishers should be aware that humpback and/or right whales are present in the SB/JL area most months of the year. If the gear modifications are not sufficient to reduce serious injury and mortality to right and humpback whales to achieve the 6-month PBR goal or the 5-year ZMRG goal, additional restrictions or closures of certain portions of SB/JL may be necessary.

All Other Areas throughout the East Coast Range of the American Lobster Pot Fishery not Addressed by Previous Measures: NMFS proposes to restrict fishing with American lobster pot gear from January 1 to December 31 in all other U.S. state and Federal waters north of 41° N latitude and from December 1 to March 31 in all state and Federal waters south of 41° N latitude. Beginning January 1, 1998, NMFS proposes to restrict these areas to allow only lobster pot gear that has sinking buoy lines or modified sinking buoy lines. NMFS requests comments on the possible exemption of waters landward of barrier islands, such as those in New Jersey and North Carolina, and other shallow water areas where whales are less likely to occur.

New England Multispecies Sink Gillnet Fishery

In addition to the buoy line requirements and contingency measures described above for all fisheries, NMFS proposes the following area-specific measures. Consistent with the comments of the Team Report, NMFS proposes a suite of modifications specific to sink gillnets. The purpose of these modifications is to maximize the probability that a whale will be able to break free of a sink gillnet. The modifications include prohibiting floating line everywhere except the headrope (cork line) and the bottom-most section of the buoy line, placing weak links between the net panels on the headrope and footrope (lead line) to reduce amount of gear attached to whale in case of entanglement, increasing length of the lines which connect the net to the anchor to maximize the holding power of the anchors, and limiting the thickness of headrope to enhance the likelihood that it will part when encountered by a whale. These measures would be implemented simultaneously because weak links are not expected to function properly without sufficient anchoring and scope of the groundline/bridle, and using more anchoring power without weak links could result in increased rate of drowning. Industry TRT members indicated that some of these modifications, such as an increased bridle-to-anchor length and increased anchoring power, are already in use to minimize loss of gear to mobile gear. NMFS solicits comments on the likely effectiveness of this suite of gear modifications and in particular on minimal breaking strengths of weak links which could be used while still allowing fishermen to haul their gear. In addition, NMFS also requests comments on typical depth or height of gillnets and whether that depth warrants the requirement of weak links in the footrope as well as the headrope.

Cape Cod Bay Critical Habitat Area: The Team Report treated state and Federal waters of right whale critical habitat in Cape Cod Bay separately and did not reach consensus on gillnet restriction measures in the Federal portion of these waters. The Team Report discussed adopting for the state waters of Cape Cod Bay critical habitat the area and gear restrictions implemented by the Commonwealth of Massachusetts for this same area. NMFS supports the regulations adopted by the Commonwealth of Massachusetts for protecting right whales from entanglement in critical habitat within Massachusetts state waters of Cape Cod Bay. To provide consistent protection for right whales throughout the critical habitat area, NMFS proposes to treat state and Federal waters as one unit in Cape Cod Bay. NMFS intends to work closely with the Commonwealth of Massachusetts as the State regulations, which were implemented under emergency authority, are reviewed and modified through regular rulemaking procedures. NMFS will review State regulations in the context of this take reduction plan and its inherent goals.

Based on comments in the Team Report, NMFS proposes that the entire right whale critical habitat in Cape Cod Bay be closed to sink gillnet gear from January 1 through May 15 of each year, until the Assistant Administrator determines that alternative fishing practices or gear modifications which significantly reduce the risk of serious injury or mortality to whales have been developed. As noted above, if whale concentrations outside the usual ''high-use'' period warrant additional action, the area may be closed for additional periods, through a publication in the **Federal Register**.

To provide additional protection for all large whales, NMFS proposes to restrict sink gillnet fishing in the entire Cape Cod Bay critical habitat area from May 16 through December 31 of each year to allow only sink gillnet gear that has been modified as described above.

Great South Channel Critical Habitat Area: Based on comments in the Team Report, NMFS proposes to close the portion of right whale critical habitat east of Loran C line 13710/43940 (Northwest Boundary) and 13710/43650 (Southwest Boundary) from April 1 through June 30 to sink gillnet gear until the Assistant Administrator determines that alternative fishing practices or gear modifications have been developed which reduce the risk of serious injury or mortality to whales to acceptable levels. As discussed above, if whale concentrations outside the usual ''high-use'' period warrant additional action, the area may be closed.

NMFS recognizes that the Team Report did not recommend a complete closure of the entire Great South Channel critical habitat area to sink gillnets. In the narrow band west of the Loran C points 13710/43940 and 13710/43650, the Team considered the likelihood of entanglement of right whales remote. A recent NMFS analysis indicates that only 3% of historical right whale sightings occurred along that western edge of critical habitat. Further, this band is economically important to the sink gillnet fishery.

Based on comments in the Team Report, NMFS proposes to restrict sink gillnet fishing in the portions of the Great South Channel right whale critical habitat area east of the Loran C 13710 line from January 1 to March 31 and July 1 to December 31 of each year and the portion of right whale critical habitat west of Loran C 13710/43940 (Northwest Boundary) and 13710/43650 (Southwest Boundary) (the ''sliver area'') from January 1 through December 31 of each year to allow only sink gillnet gear that has been modified according to the specifications described above.

Stellwagen Bank/Jeffreys Ledge: This area is defined as for the lobster pot fishery. Based on comments in the Team Report, NMFS proposes year-round restrictions in the SB/JL area to allow only sink gillnet gear that has been modified according to specifications described above. Fishers should be aware that humpback and/or right whales are present in the SB/JL area most months of the year and that if gear modifications are not sufficient to reduce serious injury and mortality to right and humpback whales to levels required under the MMPA, additional restrictions or closures may be necessary.

All Other Areas throughout the Range of the Northeast Sink Gillnet Fishery not Addressed by Previous Measures: NMFS proposes to restrict fishing with sink gillnet gear from January 1 to December 31 in U.S. state and Federal waters east of 72° 30′ W (dividing line between Northeast sink gillnet fishery and mid-Atlantic coastal gillnet fishery) and north of a line running due east from the North Carolina/South Carolina border. Beginning January 1, 1998, NMFS proposes to restrict sink gillnet fishing in this area to gear with sinking buoy lines or modified sinking buoy lines, and breakaway buoys or weak buoy lines. Beginning in 1999, the full suite of measures described above are proposed to be required.

Since gillnet fisheries in Long Island Sound (inside a line from Orient Point-Plum Island-Fishers Island-Watch Hill), and waters landward of the first bridge embayments in Rhode Island and southern Massachusetts are classified as Category III inshore gillnet fisheries rather than as part of the Category I northeast sink gillnet fishery, those inshore fisheries would be exempt under this proposed rule.

U.S. Mid-Atlantic Coastal Gillnet Fisheries

All anchored gillnet fisheries: NMFS proposes to restrict fishing with all anchored gillnet gear from December 1 through March 31 in mid-Atlantic waters from Shinnecock Inlet on the southern Long Island, New York shore

south to a line running due east from the North Carolina-South Carolina border. Mid-Atlantic gillnet fisheries classified as Category III inshore gillnet fisheries are exempt from this proposed rule. NMFS requests comments on the possible exemption of waters landward of barrier islands, such as those in New Jersey and North Carolina, and other shallow water areas where whales are less likely to occur.

Beginning January 1, 1998, and in addition to the buoy line requirements and contingency measures described above for all fisheries, NMFS proposes to restrict sink gillnet fishing in this area during the period from December 1 through March 31 to gear that has been modified according to the suite of measures outlined above for Northeast sink gillnet gear.

Beginning in 1998, with respect to mid-Atlantic coastal gillnet anchored gear that is not sink gillnet gear, NMFS proposes to require only the standard requirements for sinking buoy lines or modified sinking buoy lines, and breakaway buoys or weak buoy lines during the winter/spring period from December 1 through March 31. Weak links are not proposed for anchored gillnets other than sink gillnets because the weak link system is not designed for nets fished on the surface or in the upper ⅔ of the water column.

Floating/drift gillnets: For the area and time outlined above, NMFS proposes to require all vessels using driftnets to haul all such gear and stow all such gear on the vessel before returning to port.

Southeast U.S. Driftnet Fishery

Based on comments in the Team Report, NMFS proposes that the area from Sebastian Inlet, FL (27°51• N latitude) to Savannah, GA (32° N latitude) out to 80° W longitude, be closed to driftnet fishing, except for strikenetting, each year from November 15 to March 31. Strikenetting would be permitted under certain conditions set forth in the rule. Most of this area is right whale critical habitat.

Also based on comments in the Team Report, NMFS proposes to require observer coverage for the use of driftnets in the area from West Palm Beach (26°46.5′ N latitude) to Sebastian Inlet (27°51′ N latitude), from November 15 to March 31 of each year. Notifications must be provided at least 48 hours prior to the fishing trip so that arrangements for an observer may be made. An observer must be taken on a fishing trip in this area if requested by NMFS.

Reduction of Inactive Fishing Gear as Marine Debris. The Team Report discusses measures that could be taken to minimize the amount of fishing gear that has been damaged and set adrift, either by storms or user group conflicts, as it is believed that some marine mammal entanglements may involve such gear. Specific measures in the Team Report include: (1) Encourage participants in all fisheries to avoid discarding gear at sea; (2) encourage vessel operators to retrieve and deposit on shore any inactive gear encountered (existing penalties that would discourage this should be eliminated); (3) require any commercial fishing vessel that accidentally captures or snags fixed gear in a trawl or by other means or sets fixed gear adrift to retrieve all such gear and deposit it on shore (existing penalties that would discourage this should be eliminated); (4) require that such gear deposited on shore which carries any identifying markings be reported to the appropriate authorities. A system for tracking such gear should be established, allowing owners to retrieve gear; (5) NMFS should take appropriate measures for reducing gear conflicts that can result in gear set adrift (examples are implementation of the Gear Conflict Resolution for Offshore New England and the use of Vessel Tracking Systems); (6) require use of biodegradable, corrodible, or other rapidly degrading gear components where appropriate; (7) establish dockside disposal/recycling facilities at all ports used by commercial fisheries; and (8) make use of existing programs for recycling and disposing of inactive gear.

NMFS agrees that the reduction of ''ghost'' gear may reduce the number of entanglements of marine mammals in fishing gear. NMFS intends to notify all Atlantic fisheries permit holders of the importance of bringing gear back to shore to be discarded properly. Additionally, NMFS proposes to review regulations currently in place concerning fishing gear or fishing practices that may increase or decrease marine ''ghost'' gear and to determine what additional measures may be useful in reducing the potential for whale entanglement by this gear.

NMFS has not included a Vessel Tracking System provision in this proposed rule pending the outcome and final disposition of this electronic monitoring system within the commercial fishing industry. NMFS invites comments on this issue. This system may encourage mobile gear vessels to avoid towing through areas where fixed gear is set and may encourage vessels to pick up damaged and inactive gear.

Disentanglement Efforts. When entangled in most fishing gear, other than extremely heavy or anchored gear, whales may swim off with some or all of the gear still trailing. Some whales may eventually free themselves or survive for substantial periods of time while trailing gear, but the continued survival of such animals may be severely jeopardized by this gear.

In 1984, the Center for Coastal Studies (CCS) in Provincetown, MA developed an approach for disentangling free-swimming large whales. This process can be very dangerous, and CCS is currently the only organization authorized to attempt such disentanglements on the U.S. Atlantic coast. NMFS has contracted CCS to perform this service in the Northeast area by supporting current efforts and the establishment of a regional Disentanglement Network (Network). Criteria for participation in the Network have been established, and experienced teams have been formed for New England waters. Additionally, rapid response capability has been developed to allow deployment to remote coasts or at sea. A relationship has been established with the Canadian Department of Fisheries and Oceans and whale biologists operating in the Bay of Fundy to respond to entanglement events in Canadian waters of the Gulf of Maine. Local teams have been identified for other areas along the U.S. Atlantic coast. These resources were developed primarily for response to entangled right whales.

The Team Report discussed the following actions to improve and expand the effort to disentangle large whales along the east coast of the U.S.: (1) Continue authorization and support for the current Disentanglement Network; (2) expand the Network to the U.S. Mid-Atlantic region by training identified response/support teams in Virginia, North Carolina and the Southeastern U.S. right whale critical habitat regions, and by developing protocols appropriate to each region; (3) support education and training of fishermen in identification, reporting and disentangling large whales, where appropriate, in all identified risk areas; (4) increase monitoring of at-risk whales in the region through opportunistic and dedicated surveys; (5) request support from the U.S. Coast Guard (USCG) in the SE Region similar to the level of support committed in the NE region, to achieve a coordinated effort; (6) seek support and coordination with other agencies with similar or overlapping responsibilities; (7) ensure fishermen are informed of requirements for reporting and indemnification resulting from the issuance of incidental take permits, and explore further possible

incentives for reporting entangled whales; (8) allow the Network to authorize individuals to stand by or attach tracking equipment to entangled gear; (9) consider all ways the 500-yard approach regulation may affect right whale protection; (10) consider reimbursing vessel operators for real expenses or loss of regulated fishing days when standing by a whale confirmed by an authorized group as entangled; (11) work with appropriate groups to ensure accurate, thorough and standardized reporting of entanglements and results in a central database; and (12) develop an analytical approach for future entanglement reports which considers an increase in reporting due to the actions referenced above, and which counts successful disentanglements in assessments of take reduction.

NMFS intends to continue its authorization of and work to improve the current Disentanglement Network. NMFS has been working cooperatively with the Network and the USCG to extend the disentanglement efforts into mid-Atlantic and Southeastern waters. Currently, NMFS provides funds only for disentanglement in the Northeast. Disentanglement efforts have already been initiated outside New England waters; for example, during the winter of 1996, NMFS, USCG, the states of Georgia and Florida, the New England Aquarium and the Center for Coastal Studies worked cooperatively to attempt disentanglement and subsequent tracking of a right whale off the east coast of Florida. NMFS will work with CCS to form local ''first response'' teams which can respond to entanglements in other areas and of other species prior to (or in some cases in lieu of) dispatching the CCS rapid response teams. Included among improvements to the Disentanglement Network will be a strong educational component, to train fishers to identify and report entangled large whales. Such education will be included during skippers workshops planned under the ''Education and Outreach'' portion of this ALWTRP. Additional training specific to the Disentanglement Network may also be held separately, as needed. NMFS is also funding and/or working cooperatively with other groups to expand the current survey effort to better monitor at-risk areas. For example, year-round aerial and vessel surveys in the mid-Atlantic have recently been funded. These surveys will increase opportunities for sighting entangled whales.

NMFS has been working cooperatively with the USCG in the Southeast U.S. as well as in the northeast to provide protection to whales. The USCG helps fund the southeast and northeast Early Warning Systems, which involve an aerial monitoring program designed to help avoid collisions between vessels and right whales on their calving grounds. The USCG also has been very helpful in providing vessel support for disentanglement efforts and carcass recovery in the southeast. In order to formalize this cooperative effort, NMFS may enter into a Memorandum of Understanding with the southeastern USCG districts, as has been accomplished with the First Coast Guard District operating in the northeast. NMFS is already cooperating extensively with coastal state agencies such as the Georgia Department of Environmental Resources and the Florida Department of Environmental Protection in disentanglements and other right whale recovery efforts. NMFS will continue working cooperatively with these state agencies, and will seek to expand such efforts to other state agencies involved with endangered marine species issues. Recently, the states of Maine and Massachusetts have been working with NMFS and the Disentanglement Network to develop whale identification materials and information on disentanglement to be distributed to vessels for use at sea.

NMFS understands that cooperation by fishermen and others in reporting entangled whales is essential for the ultimate success of the ALWTRP. Reporting entanglement events creates the opportunity for the successful disentanglement of a whale that is entangled in fishing gear and is still alive. Additionally, reports of entangled whales, both dead or alive, improves the information available for assessing the success of this plan and developing future measures.

Takes of marine mammals that are not listed as endangered or threatened are authorized under section 118 of the MMPA for vessels that are registered in the Marine Mammal Authorization Program. However, takes of endangered species can only be authorized under certain conditions specified in section 101(a)(5)(e) of the MMPA and if an incidental take statement is issued under the Endangered Species Act (ESA). Among other requirements, NMFS must determine that the expected level incidental serious injury or mortality of a threatened or endangered marine mammal resulting from commercial fishing operations will have a negligible impact on such stock. Until these conditions have been met, NMFS could not authorize takes of endangered whales, even if a take occurs by a vessel operating in compliance with the ALWTRP. Currently, takes from the western North Atlantic stocks of right, humpback and fin whales are not authorized.

Consequently, NMFS does not have the authority to exempt fishers from ESA provisions that prohibit taking endangered whales. NMFS does, however, exercise broad prosecutorial discretion in deciding on a case by case basis when to prosecute and what level of penalty to seek. When exercising such discretion, NMFS will consider whether the taking was reported promptly, and will regard timely reporting as a mitigating factor when determining the appropriate enforcement response. This approach balances NMFS' statutory duty to endorse provisions of the ESA with its strong desire to minimize non-reporting for fear of prosecution.

NMFS has considered the potential effects of the 500-yard interim final rule on future disentanglement efforts, and has incorporated into that rule an exception to allow approaches to investigate a right whale or injury or to assist in disentanglement provided that permission is received from NMFS designee prior to the approach. In addition, in order to facilitate greater success of disentanglement events, NMFS is considering other actions so that vessels operating in the Northeast Multispecies and American lobster fisheries may assist in disentanglement efforts. NMFS has no mechanism for authorizing disbursement of funds for reimbursing vessel operators for expenses, but encourages conservation organizations to consider implementing such a program. NMFS will approach the fishery management councils regarding reimbursing any loss of regulated fishing days resulting from a fisher's participation in a disentanglement effort. A similar provision, called the ''good samaritan'' provision, exists in several fishery management plans to obtain credit for fishing time lost while assisting search and rescue operations.

NMFS currently maintains a centralized entanglement data base, and intends to work cooperatively with appropriate groups to improve the quality of the data and standardize reporting. Improvements to the current entanglement data base would include incorporation of supplementary data from original sources and information from examination of gear seen on or removed from whales. Tracking of successful disentanglements are to be incorporated in the data base, and

would be considered in assessing progress of take reduction measures.

As stated above, not all whale entanglements result in serious injury or mortality. Monitoring of scarification and comparison of historic levels in the population, as noted by the Team, may help provide a basis for determining whether the various take reduction measures proposed in this plan have been effective in decreasing levels of interaction between whales and fishing gear.

Supplementary Take Reduction Initiatives

Fisher Education and Outreach

The Team Report acknowledges that effective implementation of the ALWTRP will require the active participation of a majority of the fishing industry. To encourage this, the Team Report suggests that NMFS form an advisory group to assist in the implementation of educational workshops and outreach strategies to disseminate information to fishermen on measures to reduce large whale entanglements. The report recommends that education and outreach workshops be held to: (1) Inform fishermen of provisions of the ESA and MMPA, as well as intent and requirements of the ALWTRP; (2) train fishermen in deployment and maintenance of proposed gear modifications; (3) distribute fact sheets for use in whale identification and provision of information on seasonal distribution patterns; (4) train fishermen in protocol for whale disentanglement; (5) supply observer, stranding and entanglement data to fishermen; (6) encourage timely reporting of marine mammals that may be entangled in fishing gear; and (7) solicit information from fishermen on how to reduce marine mammal interactions. The Team Report recommends that such workshops be held throughout the Northeast, Mid-Atlantic and Southeast regions of the U.S. Atlantic coast, and that fishermen be notified by mail of dates, locations and times of the proposed workshops. The Team Report also recommends that public relations materials should be developed and distributed through newsletters, newspapers, radio, television news, and the Internet.

NMFS concurs with the recommendations of the Team Report to conduct fishermen education workshops, as well as other outreach strategies. Although NMFS does not propose to form a formal advisory group, NMFS intends to seek assistance concerning the workshops from SeaGrant and other groups that are experienced in outreach on marine issues. Workshops are proposed to be held throughout the areas of the affected fisheries to inform fishers of gear and area requirements as well as to address other topics as outlined in the Team Report.

Other recommendations contained in the report include promotion of ''responsible fishing practices.'' For example, the Team Report discusses the following measures with respect to the mid-Atlantic gillnet fisheries: (1) Gillnets and other fishing gear should not be set near whales; (2) gear should be removed as soon as possible if whale(s) move into the area being fished; (3) fishers using un-anchored gillnet gear during the high-risk period (December 1—March 31) should remain with actively fishing gear; and (4) any observed entanglements should be reported. NMFS proposes that such practices be discussed and supported during the fishermen education workshops described above.

Monitoring of Whale Stock Distribution and Entanglements

The Team Report acknowledges that the long-term success of the plan depends on the ability to monitor interactions between whales and fisheries, as well as an improved knowledge of whale distribution and movements. The Team Report asserts that successful real-time monitoring of whale distribution could lead to better dynamic management (i.e., flexible area closures and/or gear modifications required during certain periods in certain areas) designed to avoid or respond to entanglements of large whales in fishing gear. The Team Report comments that data collection and monitoring programs should be created where needed, or existing programs improved to achieve a dynamic approach to reducing large whale entanglements, as well as to assess the success of the ALWTRP. The following items were included in the Team Report as significant aspects of an overall take reduction program:

Whale Distribution and Movement Patterns

Issues to be addressed: (1) Distribution of whales; (2) movement patterns; and (3) stability of distribution in high-use/critical habitat areas. Possible measures to address these issues include establishing long-term and real time monitoring of whale distribution via aerial and vessel surveys, telemetry and photo documentation.

Whale Entanglements and Mortalities

Issues to be addressed: (1) Mechanisms of whale entanglements; (2) geographic areas and portions of water column where whales become entangled; (3) gear whales are entangled in, rate of entanglement, serious injury and mortality; (4) effect on population size and recovery; (5) survivorship of entangled whales; and (6) survivorship of disentangled whales. Possible measures to address these issues are: (1) train personnel to recognize signs of entanglement-related injuries and improve stranding report consistency and accuracy; (2) establish repository for gear removed from stranded and/or entangled whales and develop process for examination and identification; and (3) develop entanglement/interaction reporting protocols to encourage fisher participation in monitoring and disentanglement efforts.

Fishing Effort

Issues to be addressed: (1) Status of current information on occurrence and distribution regarding effort and gear type; and (2) identification of information needed for effective monitoring. Possible measures to address these issues are: (1) Improve reporting of fishing effort for area fished, amount of gear, and species targeted, by day; (2) develop improved methods for gear identification and reporting of gear loss; (3) examine fishing practices other than those considered in this ALWTRP for potential impacts to large whales; and (4) improve fishery participation in data collection needs.

Dynamic Management

Issues to be addressed: (1) Surveillance-based management is useful for supporting research for implementation of the ALWTRP; and (2) research should echo the State of Massachusetts Plan for reducing right whale takes. Possible measures to address these issues are: (1) NMFS should work with appropriate agencies and research groups to develop a surveillance-based management plan to protect right whales; and (2) establish a narrow and appropriately focused system of dynamic management.

NMFS agrees that the issues raised are important elements in understanding the nature of whale entanglements and developing subsequent management measures to reduce such entanglements. NMFS currently monitors whale distribution and movement patterns, and supports additional efforts for photo-identification, life history and other studies. Real-time monitoring of whale movements for fishery

management purposes is being used by the State of Massachusetts in conjunction with the newly established early warning system for ship strikes in Cape Cod Bay. The success of this program will be reviewed and may be expanded to other areas, if appropriate.

NMFS plans to seek ways to incorporate the comments in the Team Report regarding entanglements and resulting mortalities into the existing Disentanglement Network efforts. Additional research may be supported through alternate funding sources such as Saltonstall-Kennedy grants or other such sources. Improving current information on fishery participation in data collection, methods for gear identification, and reporting gear loss will be effected through a combination of regulations and fisher education and outreach workshops. NMFS proposes to investigate and consult with the appropriate state agencies to improve information on fishery effort distribution. Monitoring effort in terms of the amount of gear present in the water (e.g., number of vertical lines or length of net) is an important element of determining whether effort reduction measures have been successful, or whether it has simply been displaced to other areas where whale entanglements may still occur.

Joint Initiatives With Canada to Reduce Whale Bycatch in Commercial Fisheries

Large whales are known to be taken in lobster, gillnet, trap and weir fisheries in Canadian waters. The Team Report recognizes that regulatory and management regimes differ between Canada and the U.S., and agrees with the position of Canada that there is need to develop similar and complementary strategies to reduce the incidental take of large whales by commercial fisheries in Canadian Atlantic waters. It is the understanding of the Team that the Canadian Government is considering legislation which, if implemented, would require recovery plans for whale species identified as endangered, threatened or vulnerable. Canada is expected to establish a consultative program similar to the Team. This program would develop, within existing regulatory and management frameworks, programs that are compatible and complementary to the measures proposed by the Team. The Team Report comments that once the ALWTRP is open to public comment, NMFS should initiate discussions with the Canadian Department of Fisheries and Oceans (DFO) to: (1) Obtain comments from DFO on the ALWTRP; (2) urge Canada to develop a joint recovery plan under its Endangered Species Act, when final; (3) institute mechanisms to reduce large whale entanglements in Canadian waters, as well as a means to evaluate the effectiveness of any proposed take reduction strategies; and (4) outline a timetable for meetings between NMFS officials, Team representatives and DFO to review progress toward reducing entanglements of large whales in U.S. and Canadian waters.

NMFS has been working cooperatively with the DFO towards take reduction efforts for both harbor porpoise and large whales for some time. NMFS anticipates continuation of these cooperative efforts. DFO participated as an observer on the Team, and indicated that Canada is expected to enact a new Endangered Species Act. Under this act, DFO would develop a joint recovery plan with NMFS, and form their own TRT. NMFS intends to continue to support and encourage these conservation efforts, and will continue to invite DFO's participation on the Team as a means of promoting effective bycatch reduction measures for large whales throughout western North Atlantic waters.

Exploration of Market Incentives to Reduce Whale Bycatch in Commercial Fisheries

The Team discussed the formation of a committee of Team members and other interested parties to explore and develop incentives, including market and other voluntary incentives, for reducing entanglements of large whales. Also discussed was whether this committee should develop a process for incorporating these incentives into the take reduction effort. The committee, as envisioned by the Team, would include persons with experience or expertise in conservation, market-based incentives, seafood processing and distribution, and various fishing strategies.

NMFS has not proposed to include this aspect of the Team's Report in the plan. NMFS believes it is more important to devote its resources to other aspects of this plan. Such efforts may be considered at future team meetings. Members of the Team and/or other interested parties may form a committee to investigate market or other voluntary incentives to reducing whale entanglements to present to the Team for consideration.

Classification

This proposed rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act.

NMFS prepared an Initial Regulatory Flexibility Analysis (IFRA) that describes the impact this proposed rule, if adopted, would have on small entities. The American lobster pot, New England multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Southeast driftnet fisheries are directly affected by the proposed action and are composed primarily of small business entities. The number of state and federal permit lobster permit holders is estimated to be 13,000. The numbers of vessels in the New England multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Southeast shark driftnet fisheries are estimated to be 350, 650, and 10, respectively. The proposed rule does not include reporting or recordkeeping requirements, but does include requirements that fishing gear be marked and that gear be modified in various ways to reduce potential interactions with large whales. In certain cases, area closures are proposed.

Currently, the American Lobster Fishery, the New England Multispecies Fishery, the weakfish and striped bass portion of the mid-Atlantic coastal gillnet fishery, and the Atlantic shark fishery are subject to Federal regulations under 50 CFR Part 649, Subpart F of Part 648, Part 697, and Part 678, respectively. This proposed rule is designed to complement those existing regulations and fishery management objectives by reducing the bycatch of large whales in these fisheries. A variety of regulatory alternatives were considered, including no action, area closures, and various gear modifications and restrictions as discussed above. With respect to some critical habitat areas, area closures are proposed in order to provide the necessary level of protection for the critically endangered northern right whale. In most cases, however, gear modifications represent the preferred alternative; the plan was designed to achieve the goals of the MMPA while minimizing the economic impact on small entities.

The Assistant Administrator for Fisheries, NOAA, prepared a draft environmental assessment (draft EA) for this proposed rule under the National Environmental Policy Act. A copy of the draft EA and the IFRA is available upon request (see **ADDRESSES**).

References

Blaylock, R.A., J.W. Hain, L.J. Hansen, D.L. Palka, and G.T. Waring. 1995. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments. NOAA Technical Memorandum NMFS, NOAA–TM–NMFS–SEFSC–363. 211p.

Team Report. 1997. Draft Atlantic Large Whale Take Reduction Report. Report prepared by the Atlantic Large Whale Take Reduction Team and submitted to the

National Marine Fisheries Service February 4, 1997. 79pp.

List of Subjects in 50 CFR Part 229

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

Dated: April 1, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, 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 part 229 continues to read as follows:

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

2. In section 229.2, definitions of ''American lobster or Lobster'', ''Anchored gillnet'', ''Breakaway buoy'', ''Bridle'', ''Buoy line'', ''Driftnet, drift gillnet or drift entanglement net'', ''Fish with or fishing with'', ''Footrope'', ''Gillnet'', ''Groundline'', ''Headrope'', ''Lobster pot'', ''Lobster pot trawl'', Mid-Atlantic coastal waters'', Northeast waters'', ''Other anchored gillnet'', ''Sink gillnet'', ''Sinking line'', Southeast waters'', ''Spotter plane'', ''Stellwagen Bank/Jeffreys Ledge area'', ''Strikenet or to fish with strikenet gear'', ''Tended gear or tend'', ''U.S. waters'', ''Weak buoy line'', and ''weak link'' are added in alphabetical order to read:

§ 229.2 Definitions.

* * * * *

American lobster or lobster means the species *Homarus americanus.*

Anchored gillnet means any gillnet gear, including sink gillnets, that is set anywhere in the water column and which is anchored, secured or weighted to the bottom.

* * * * *

Breakaway buoy means a buoy line equipped with a breakable section near the top (buoy) end of the line that will part when subjected to certain pull pressure and, after parting, will result in a knotless end, not thicker than the diameter of the line.

Bridle means the lines connecting a gillnet to an anchor or buoy line.

Buoy line means a line connecting fishing gear in the water to a buoy at the surface of the water.

* * * * *

Driftnet, drift gillnet, or drift entanglement gear means gillnet gear that is not anchored, secured or weighted to the bottom.

Fish with or fishing with means to use, set, or haul back gear or allow gear that is set to remain in the water.

* * * * *

Footrope means the line, weighted or otherwise, to which the bottom edge of a gillnet is attached.

Gillnet means fishing gear consisting of a wall of webbing or nets, designed or configured so that the webbing or nets are held approximately vertically in the water column designed to capture fish by entanglement, gilling, or wedging. Gillnets include gillnets of all types such as sink gillnets, other anchored gillnets, and drift gillnets.

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

Headrope means the line at the top of a gillnet from which the mesh portion of the net is hung.

* * * * *

Lobster pot means any trap, structure or other device that is placed on the ocean bottom and is designed to or is capable of catching lobsters.

Lobster pot trawl means more than one lobster pot attached to a groundline.

Mid-Atlantic coastal waters means waters west of the area bounded by the following points: the southern shoreline of Long Island, New York at 72°30′W, then due south to the intersection of 72°30′W with a line running due east from the North Carolina/South Carolina border, then due west along that line to the North Carolina/South Carolina border.

* * * * *

Northeast waters means those U.S. waters east of 72°30′W and north of a line running due east from the Virginia-North Carolina border.

* * * * *

Other anchored gillnet means any anchored gillnet except sink gillnet.

* * * * *

Sink gillnet has the meaning specified in 50 CFR 648.2.

Sinking line means line that sinks and does not float at any point in the water column. Polypropylene line is not sinking line unless it contains a lead core.

* * * * *

Southeast waters means waters south of a line extending due eastward from the North Carolina/South Carolina border.

* * * * *

Spotter plane means a plane that is deployed for the purpose of locating schools of target fish for a fishing vessel that intends to set fishing gear on them.

* * * * *

Stellwagen Bank/Jeffreys Ledge area means the area bounded by the Maine shoreline at 43°30′ N, then due east to 43°30′N/70°00′ W, then south to 42°00′ N/70°00′W, then due west to the Massachusetts shoreline, then along the Cape Cod shoreline to 42°04.8′ N/70°10′ W, then to 42°12′ N/70°15′ W, to 42°12′ N/70°30′ W, to 42°00′ N/70°30′ W, then due west to the Massachusetts shoreline at 42°00′N.

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

* * * * *

Tended gear or tend means active fishing gear that is physically attached to a vessel or to fish so that active gear is attached to the vessel.

U.S. waters means both state waters and waters of the U.S. exclusive economic zone along the east coast of the United States from the Canadian/U.S. border southward to a line extending eastward from the southernmost tip of Florida on the Florida shore.

* * * * *

Weak buoy line means a buoy line that will part when subjected to certain pull pressure and, after parting, will result in a knotless end, not thicker than the diameter of the line.

Weak link means a breakable device that will part when subjected to certain pull pressure.

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

§ 229.3 Prohibitions.

* * * * *

(g) It is prohibited to fish with lobster pot gear in the areas and for the times specified in § 229.32(b) (3), (4), (5), (6) and (7) unless the lobster pot gear meets the marking requirements specified in § 229.32(b)(1) and complies with the closures, modifications, and restrictions specified in § 229.32(b) (2), (3), (4), (5), (6) and (7).

(h) It is prohibited to fish with sink gillnet gear in the areas and for the times specified in § 229.32(c) (3), (4), (5), (6) and (7) unless the sink gillnet gear meets the marking requirements specified in § 229.32(c)(1) and complies with the closures, modifications, and restrictions specified in § 229.32(c) (2), (3), (4), (5), (6) and (7).

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

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

4. A new § 229.32 is added to subpart C to read as follows:

Subpart C—Take Reduction Plan Regulations and Emergency Regulations

§ 229.32 Atlantic large whale take reduction plan regulations.

(a) *Gear marking provisions.* (1) *Gear marking required for specified gear.* (i) *Specified gear.* Specified fishing gear consists of: lobster pot gear or sink gillnet gear in Northeast waters; lobster pot gear or mid-Atlantic coastal gillnet gear in the mid-Atlantic coastal waters area; and shark driftnet gear in Southeast waters.

(ii) *Requirement.* On or after January 1, 1998 and as otherwise required in paragraphs (b)(1), (c)(1), (d)(1), and (e)(1) of this section, any person who owns or fishes with specified fishing gear must mark that gear in order to identify the gear type and the region where it is used according to the gear marking code specified by paragraphs (a)(2) and (3) of this section, unless otherwise required by the Assistant Administrator under paragraph (f) of this section.

(2) *Gear-type color code.* Gear must be marked with the appropriate color to designate gear-type as follows:

Lobster pot gear	Red.
Sink gillnet gear	Green.
Other anchored gillnet gear	Yellow.
Driftnet gear	Blue.

(3) *Region color code.* Gear must be marked with the appropriate color to designate the area where the gear is set as follows:

Cape Cod Bay critical habitat area	Blue/orange.
Great South Channel critical habitat area	Red/blue.
Stellwagen Bank/Jeffreys Ledge area	Yellow/orange.
Other Northeast waters	Green/orange.
Mid-Atlantic coastal waters	Red/orange.
Southeastern U.S. waters	Green/red.

(4) *Markings.* Each color of the color codes must be permanently marked on or along the line or lines specified under paragraphs (b)(1), (c)(1), (d)(1), and (e)(1) of this section. Each color of the color codes must be marked so that the colors are clearly visible when the gear is hauled or removed from the water. Each color of the region color code must be between 2 and 3 inches (5.1–7.6 cm) wide. The gear-type color code must be between 4 and 5 inches (10.2–12.7 cm) wide. The color codes must be placed on the line either in the following order or in reverse order: The first color of the region color code, the second color of the region code, and the gear color code. All colors of these color codes must be placed immediately next to each other. If the color of the line next to a color code is the same or similar to a color code, an area of one to 2 inches (2.5–5.1 cm) next to that color code must be permanently marked with a white band. In marking or affixing the color code or associated neutral band, the line may be dyed or marked with thin colored whipping line, thin colored plastic or heat shrink tubing, or other material, or thin line may be woven into or through the line, but the marking material must not be connected by a knot in the line or increase the diameter of the line by more than 5 percent of its original diameter. If the Assistant Administrator revises the gear marking requirements under paragraph (f) of this section, the gear must be marked in compliance with those requirements.

(5) *Inspection of gear and marking.* At least once every 30 days, all specified gear that is in the water must be hauled and inspected to ensure that the gear is properly marked and otherwise in compliance with this section.

(b) *Restrictions applicable to lobster pot gear.* (1) *Gear marking requirements.* No person may fish with lobster pot gear unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (a) of this section. On and after January 1, 1998, all buoy lines must be marked within 2 feet (0.6 m) of the top of the buoy line and approximately midway along the length of each buoy line according to the gear type and region. On and after January 1, 1999, each section of groundline must be marked approximately midway between each pot according to gear type and region.

(2) *Gear modifications and restrictions* (i) *Type 1 lobster pot gear.* Type 1 lobster pot gear is gear which complies with the following requirements:

(A) *Multi-pot trawls.* It is a multiple pot trawl consisting of four or more lobster pots;

(B) *Limit on buoy lines.* No more than two buoy lines are used per trawl;

(C) *Sinking buoy lines.* All buoy lines are sinking line;

(D) *Breakaway buoys or weak buoy lines.* All buoy lines and buoys comply with one of the following:

(*1*) The buoy line is attached at the top of the line to a breakaway buoy. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the breakaway buoy must be designed with a breaking strength of no more than 150 pounds (68 kg); or

(*2*) The buoy line has a weak buoy line that is at least as long as the depth of the water at mean high water, is attached to the buoy at the top of the line, and is attached to a functional buoy line resting on the ocean bottom at the bottom of the weak buoy line. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the weak buoy line must be designed with a breaking strength of no more than 150 pounds (68 kg); and

(E) *Sinking groundline.* All groundlines are sinking line.

(ii) *Type 2 lobster pot gear.* Type 2 lobster pot gear is gear which complies with the following requirements.

(A) *Limit on buoy lines.* No more than one buoy line is used per trawl consisting of fewer than four pots, and no more than two buoy lines are used on any trawl consisting of four or more pots; and

(B) *Sinking buoy lines, breakway buoys or weak buoy lines, and sinking groundline.* The gear complies with the gear requirements of paragraph (b)(2)(i) (C), (D) and (E) of this section.

(iii) *Type 3 lobster pot gear.* Type 3 lobster pot gear is gear which complies with the following requirements:

(A) *Sinking or modified sinking buoy lines.* All buoy lines are sinking line, except that floating line may be used if:

(*1*) The floating line is not attached to the buoy, is used only in the bottom-

most section of the buoy line, and is not longer than 10 percent of the depth of the water at mean low water;

(*2*) The floating line is not larger than ½ inch (1.27 cm) in diameter; and

(*3*) The floating line section of the buoy line is attached to the sinking line by a splice and not by a knot; and

(B) *Limit of buoy lines, breakaway buoys or weak buoy lines, and sinking groundline.* The gear complies with the gear requirements of paragraph (b)(2)(i) (B), (D) and (E) of this section.

(iv) *Type 4 lobster pot gear.* Type 4 lobster pot gear is gear which complies with the following requirements:

(A) *Sinking or modified sinking buoy lines.* It complies with the requirements of paragraph (b)(2)(iii)(A) of this section.

(B) *Limit on buoy lines and breakway buoys or weak buoy lines.* It complies with the gear requirements of paragraph (b)(2)(i) (B) and (D) of this section.

(3) *Cape Cod Bay.* (i) *Restricted area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b) (copies of a chart depicting this area are available from the NE Regional Administrator upon request) unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Type 1 gear restrictions.* During the winter/spring restricted period, no person may fish with lobster pot gear in the Cape Cod Bay restricted area unless the lobster pot gear complies with the Type 1 gear requirements specified under paragraph (b)(2)(i) of this section; or, if the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the gear complies with those requirements. The winter/spring restricted period for this area is from January 1 until May 15 of each year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(iii) *Type 4 gear restrictions.* On or after January 1, 1998, during the summer/fall restricted period, no person may fish with lobster pot gear in the Cape Cod Bay restricted area unless the lobster pot gear complies with the Type 4 gear requirements specified under paragraph (b)(2)(iv) of this section; or, if the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the gear complies with those requirements. The summer/fall restricted period for this area is from May 16 through December 31, unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(4) *Great South Channel.* (i) *Restricted area.* The Great South Channel restricted area consists of the Great South Channel Critical Habitat area specified under 50 CFR 216.13(a) (copies of a chart depicting this area are available from the NE Regional Administrator upon request) unless the Assistant Administrator extends that area under paragraph (f) of this section.

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

(iii) *Type 3 gear restrictions.* Beginning on January 1, 1998, during the winter/summer/fall restricted period, no person may fish with lobster pot gear in the Great South Channel restricted area unless the lobster pot gear complies with the Type 3 gear requirements specified under paragraph (b)(2)(iii) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. The winter/summer/fall restricted period for this area is from January 1 through March 31 and from July 1 through December 31 of each year, unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge.* (i) *Restricted area.* The Stellwagen Bank/Jeffreys Ledge restricted area (copies of a chart depicting this area are available from the NE Regional Administrator upon request) consists of the area bounded by the Maine shoreline at 43°30′ N, then due east to 43°30′N/70°00′ W, then south to 42°00′ N/70°00′W, then due west to the Massachusetts shoreline, then along the Cape Cod shoreline to 42°04.8′ N/70°10′ W, then to 42°12′ N/70°15′ W, to 42°12′ N/70°30′ W, to 42°00′ N/70°30′ W, then due west to the Massachusetts shoreline at 42°00′N unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Type 3 gear restrictions.* On or after January 1, 1998, no person may fish with lobster pot gear in the Stellwagen Bank/Jeffreys Ledge restricted area unless the lobster pot gear complies with the Type 3 gear restriction requirements specified under paragraph (b)(3)(iii) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(6) *Other northern waters.* (i) *Description of the other northern waters.* Other northern waters consist of all U.S. waters north of 41°00′ N except the Cape Cod Bay restricted area, Great South Channel restricted areas, and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Type 4 gear restrictions.* On or after January 1, 1998, no person may fish with lobster pot gear in other northern waters unless the lobster pot gear complies with the Type 4 gear restriction requirements specified under paragraph (b)(2)(iv) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(7) *All other lobster waters.* (i) *Description of all other lobster waters.* All other lobster waters consist of all U.S. waters south of 41°00′ N.

(ii) *Type 4 gear restrictions.* On or after January 1, 1998, during the winter restricted period, no person may fish with lobster pot gear in all other lobster waters unless the lobster pot gear complies with the Type 4 gear restriction requirements specified under paragraph (b)(2)(iv) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. The winter restricted period for this area is from December 1 through March 31, unless the Assistant Administrator modifies the restricted period under paragraph (f) of this section.

(c) *Restrictions applicable to Northeast sink gillnet gear.* (1) *Sink gillnet gear marking requirements.* No person may fish with sink gillnet gear in Northeast waters unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (a) of this section. On and after January 1, 1998, all buoy lines must be marked within 2 feet (0.6 m) of the top of the buoy line and approximately midway along the length of the buoy line according to gear type and region. On and after January 1, 1999, all net panels in each string of a sink gillnet must be marked along the headrope at both ends of each panel according to gear type and region.

(2) *Gear modifications and restrictions.* (i) *Type 1 sink gillnet gear modifications.* Type 1 sink gillnet gear is gear which complies with the following requirements:

(A) *Sinking line.* All groundlines, bridle lines, anchor lines and other lines, except the headrope and bottom-most section of the buoy lines, are sinking line;

(B) *Headrope specifications.* The headrope:

(*1*) Is equipped with net floats and the diameter of the headrope does not exceed 5/16 inch (0.79 cm); or

(*2*) Has a foam core and the diameter of the headrope does not exceed ½ inch (1.27 cm);

(C) *Sinking or modified sinking buoy lines.* All buoy lines are sinking line, except that floating line may be used if:

(*1*) The floating line is not attached to the buoy, is used only in the bottom-most section of the buoy line, and is not longer than 10 percent of the depth of the water at mean low water;

(*2*) The floating line is not larger than ½ inch (1.27 cm) in diameter; and

(*3*) The floating line section of the buoy line is attached to the sinking line by a splice and not by a knot;

(D) *Breakaway buoys or weak buoy lines.* All buoy lines and buoys comply with one of the following:

(*1*) The buoy line is attached at the top of the line to a breakaway buoy. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the breakaway buoy must be designed with a breaking strength of no more than 150 pounds (68 kg); or

(*2*) The buoy line has a weak buoy line that is at least as long as the depth of the water at mean high water, is attached to the buoy at the top of the line, and is attached to a functional buoy line resting on the ocean bottom at the bottom of the weak buoy line. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the weak buoy line must be designed with a breaking strength of no more than 150 pounds (68 kg);

(E) *Weak links.* The gillnet is equipped with weak links on the headrope and on the footrope between each net panel. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, each weak link must be designed with a breaking strength of no more than 150 pounds (68 kg); and

(F) *Securely anchored.* Each gillnet is securely anchored so that the anchor will not dislodge when there is a pull on any weak link of more than the applicable maximum breaking strength for the weak link.

(G) *Groundline.* At each end of a string of net panels, an anchor is attached to the gillnet by a groundline and bridle with a combined length which is equal to or greater than 90 feet (27.7 m).

(ii) *Type 2 sink gillnet gear modifications.* Type 2 sink gillnet gear is gear which complies with the requirements of paragraph (c)(2)(i)(C) and (D) of this section (requirements for sinking buoy lines or modified sinking buoy lines, and breakaway buoys or weak buoy lines).

(3) *Cape Cod Bay.* (i) *Restricted area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b) (copies of a chart depicting this area are available from the NE Regional Administrator upon request) unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Closure.* During the winter/spring closed period, no person may fish with sink gillnet gear in the Cape Cod Bay restricted area unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (f) of this section and the gear or practices comply with those specifications. The winter/spring closed period for this area is from January 1 until May 15 of each year unless the Assistant Administrator revises the closed period under paragraph (f) of this section.

(iii) *Type 1 gear restrictions.* During the summer/fall restricted period, no person may fish with sink gillnet gear in the Cape Cod Bay restricted area unless the gear complies with the Type 1 gear requirements specified under paragraph (b)(2)(i) of this section; or, if the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the gear complies with those requirements. The summer/fall restricted period for this area is from May 16 through December 31 of each year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(4) *Great South Channel restricted area (excluding the sliver area).* (i) *Restricted area.* The Great South Channel restricted area, excluding the sliver area, consists of the area bounded by lines connecting the following four points: 41°02.2′ N/69°02′ W, 41°43.5′ N/69°36.3′ W, 42°10′ N/68°31′ W, and 41°38′ N/68°13′ W (copies of a chart depicting this area are available from the NE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section. This described area excludes the sliver area specified under paragraph (c)(5)(i) of this section.

(ii) *Closure.* During the spring closed period, no person may fish with sink gillnet gear in the Great South Channel restricted area, excluding the sliver area, unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (f) of this section. The spring closed period for this area is from April 1 until June 30 of each year unless the Administrator revises the closed period under paragraph (f) of this section.

(iii) *Type 1 gear restrictions.* Beginning on January 1, 1998, during the winter/summer/fall restricted period, no person may fish with sink gillnet gear in the Great South Channel restricted area unless the sink gillnet gear complies with the Type 1 gear requirements specified under paragraph (c)(2)(i) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. The winter/summer/fall restricted period for this area is from January 1 through March 31 and from July 1 through December 31 of each year, unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(5) *Great South Channel sliver restricted area.* (i) *Restricted area.* The Great South Channel sliver restricted area consists of the area bounded by lines connecting the following points: 41°02.2′N/69°02′W, 41°43.5′N/69°36.3′W, 41°40′N/69°45′W, and 41°00′N/69°05′W, (copies of a chart depicting this area are available from the NE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Type 1 gear restrictions.* On or after January 1, 1998, no person may fish with sink gillnet gear in the Great South Channel sliver restricted area unless the sink gillnet gear complies with the Type 1 gear restrictions specified under paragraph (c)(2)(i) of this section or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(6) *Stellwagen Bank/Jeffreys Ledge restricted area.* (i) *Description of the restricted area.* The Stellwagen Bank/Jeffreys Ledge restricted area (copies of

a chart depicting this area are available from the NE Regional Administrator upon request) consists of the area bounded by the Maine shoreline at 43°30′ N due east 43°3′N/70°00′ W, then south to 42°00′ N/70°00′ W, then due west to the Massachusetts shoreline at 42°00′N, then along the Cape Cod shoreline to 42°04.8′ N/70°10′ W, then to 42°12′ N/70°15′ W, then to 42°12′ N/70°30′ W, then to 42°00′ N/70°30′ W, then west to the Massachusetts shoreline (copies of a chart depicting this area are available from the NE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Type 1 gear restrictions.* On or after January 1, 1998, no person may fish with sink gillnet gear in the Stellwagen Bank/Jeffreys Ledge restricted area unless the sink gillnet gear complies with the Type 1 gear restrictions specified under paragraph (c)(2)(i) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(7) *Other Northeast waters area.* (i) *Description of the other Northeast waters area.* The other Northeast waters area consists of all Northeast waters except for the Cape Cod Bay restricted area, the Great South Channel and Great South Channel sliver restricted areas, all waters landward of the first bridge of any embayment in Rhode Island, and southern Massachusetts (to Monomoy Island) and all waters west of a line from the north fork of the eastern end of Long Island, NY (Orient Point to Plum Island to Fisher Island) to Watch Hill Rhode Island.

(ii) *Type 2 gear restrictions.* From January 1 through December 31, 1998, no person may fish with sink gillnet gear in the other Northeast waters area unless the sink gillnet gear complies with the Type 2 gear modification requirements specified under paragraph (c)(2)(ii) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(iii) *Type 1 gear restrictions.* On or after January 1, 1999, no person may fish with sink gillnet gear in the other Northeast waters area unless the sink gillnet gear complies with the Type 1 gear modification requirements specified under paragraph (c)(2)(i) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(d) *Restrictions applicable to mid-Atlantic coastal gillnet gear.* (1) *Gear marking requirements.* No person may fish with mid-Atlantic coastal gillnet gear unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (a) of this section. On and after January 1, 1998, all buoy lines must be marked within 2 feet (0.6 m) of the top of the buoy line and midway along the length of the buoy line according to gear type and region. On and after January 1, 1999, all net panels in each string of a gillnet must be marked along the headrope at both ends of each panel according to gear type and region.

(2) *Mid-Atlantic coastal gillnet gear modifications and restrictions.* (i) *Type 1 mid-Atlantic coastal gillnet gear.* Type 1 mid-Atlantic coastal gillnet gear is sink gillnet gear which complies with the following requirements:

(A) *Sinking line.* All groundlines, bridle lines, anchor lines and other lines, except the headrope and bottom-most section of the buoy lines, are sinking line;

(B) *Headrope specifications.* The headrope:

(*1*) Is equipped with net floats and the diameter of the headrope does not exceed 5⁄16 inch (0.79 cm); or

(*2*) Has a foam core and the diameter of the headrope does not exceed ½ inch (1.27 cm);

(C) *Sinking or modified sinking buoy lines.* All buoy lines are sinking line, except that floating line may be used if:

(*1*) The floating line is not attached to the buoy, is used only in the bottom-most section of the buoy line, and is not longer than 10 percent of the depth of the water at mean low water;

(*2*) The floating line is not larger than ½ inch (1.27 cm) in diameter; and

(*3*) The floating line section of the buoy line is attached to the sinking line by a splice and not by a knot;

(D) *Breakaway buoys or weak buoy lines.* All buoy lines and buoys comply with one of the following:

(*1*) The buoy line is attached at the top of the line to a breakaway buoy. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the breakaway buoy must be designed with a breaking strength of no more than 150 pounds (68 kg); or

(*2*) The buoy line has a weak buoy line that is at least as long as the depth of the water at mean high water, is attached to the buoy at the top of the line, and is attached to a functional buoy line resting on the ocean bottom at the bottom of the weak buoy line. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the weak buoy line must be designed with a breaking strength of no more than 150 pounds (68 kg);

(E) *Weak links.* The gillnet is equipped with weak links on the headrope and on the footrope between each net panel. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, each weak link must be designed with a breaking strength of no more than 150 pounds (68 kg);

(F) *Securely anchored.* Each gillnet is securely anchored so that the anchor will not dislodge when there is a pull on any weak link of more than the applicable maximum breaking strength for the weak; and

(G) *Groundline.* At each end of a string of net panels, an anchor is attached to the gillnet by a groundline and bridle with a combined length which is equal to or greater than 90 feet (27.7 m).

(ii) *Type 2 mid-Atlantic coastal gillnet gear.* Type 2 mid-Atlantic coastal gillnet gear is anchored gillnet gear, other than sink gillnet gear, which complies with the requirements of paragraph (d)(2)(i)(C) and (D) of this section (sinking buoy lines or modified sinking buoy lines, and breakaway buoys or weak buoy lines).

(3) *Mid-Atlantic coastal waters area.* (i) *Description.* The mid-Atlantic coastal waters area consists of all mid-Atlantic waters except that the following waters are excluded:

(A) Waters landward of the first bridge of any embayment in Raritan and lower New York Bays in the New York Bight;

(B) Waters north of a line drawn from the southern point of Nantuxent Cove (mouth of Cedar Creek, New Jersey) to the southern boundary of Bombay Hook National Wildlife Refuge at Kelly Island, Delaware (Port Mahon);

(C) Waters in the Chesapeake Bay north of the Chesapeake Bay Bridge/Tunnel; and

(D) All waters between the Outer Banks and the mainland from Morehead City, North Carolina, to the Virginia/North Carolina border.

(ii) *Type 1 (sink gillnet) mid-Atlantic coastal gillnet gear restrictions.* On or after January 1, 1998, during the winter/spring restricted period, no person may fish with sink gillnet gear in the Mid-Atlantic coastal waters area unless the gillnet gear complies with the Type 1 gillnet gear restrictions specified under paragraph (d)(2)(i) of this section. The winter/spring restricted period for this area is from December 1 through March 31 unless the Assistant Administrator revises that restricted period under paragraph (f) of this section.

(iii) *Type 2 (other anchored gillnet) mid-Atlantic coastal gillnet gear restrictions.* On or after January 1, 1998, during the winter/spring restricted period, no person may fish with other anchored gillnet gear in the Mid-Atlantic coastal waters area unless the gillnet gear complies with the Type 2 gillnet gear restrictions specified under paragraph (d)(2)(ii) of this section. The winter/spring restricted period for this area is from December 1 through March 31 unless the Assistant Administrator revises that restricted period under paragraph (f) of this section.

(iv) *Driftnet gear—fishing practices requirements.* No person may fish at night with driftnet gear in the mid-Atlantic coastal waters area unless that gear is tended. Before a vessel returns to port, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel.

(e) *Restrictions on shark driftnet gear.* (1) *Gear marking requirements.* No person may fish with drift gillnet gear in Southeast waters unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (a) of this section. On and after November 1, 1998, all buoy lines must be marked within 2 feet (0.6 m) of the top of the buoy line and midway along the length of the buoy line according to gear type and region. On and after November 1, 1999, each net panel must be marked along both the float line and the lead line and at least once every 100 feet (30.8 m) along the floatline and bottom line.

(2) *Management areas.* (i) *SEUS restricted area.* The Southeast U.S. restricted area consists of the SEUS critical habitat area described in 50 CFR 226.13(c) plus an additional area along the coast north to 32°00′ N (near Savannah, Georgia) from the shore and extending eastward out 15 nautical miles from the shore, and an additional small area along the coast south to 27°51′ N (near Sebastian Inlet, Florida) and extending from the shore eastward out 5 nautical miles from the shore (copies of a chart depicting this area are available from the SE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *SEUS observer area.* The SEUS observer area consists of the area south of the SEUS restricted area and an additional area along the coast south to 26°46.05′ N (near West Palm Beach, Florida) and extending from the shore eastward out 5 nautical miles (copies of a chart depicting this area are available from the SE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section.

(3) *Restrictions.* (i) *Closure.* Except as provided under paragraph (e)(3)(iii) of this section, no person may fish with driftnet gear in the SEUS restricted area during the closed period. The closed period for this area is from November 1 through March 31 of the following year, unless the Assistant Administrator extends that closed period under paragraph (f) of this section.

(ii) *Observer requirement.* No person may fish with driftnet gear in the SEUS observer area unless the captain of the vessel calls the SE Regional Office in St. Petersburg, Florida not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on a fishing trip, no person may fish with driftnet gear in the SEUS observer area unless the observer is on board the vessel during the trip.

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

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

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

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

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

(f) *Contingency measures and other provisions.* In addition to any other emergency authority under the MMPA, 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) Unusual right whale patterns. The Assistant Administrator may impose additional temporary restrictions on specified gear under paragraph (a)(1)(i) of this section for the purpose of reducing the risk of interactions with right whales through a publication in the **Federal Register** if right whales are determined to be resident in the area. This determination will be based on sightings of four or more right whales in the area for 2 or more consecutive weeks or on alternative criteria specified by the Assistant Administrator under this paragraph (f). These additional restrictions may extend any restricted area specified under this section or restrict any other area along the Atlantic coast of the U.S., may revise any closed or restricted period specified under this section to regulate gear specified under paragraph (a)(1)(i) of this section, or take other similar action. The Assistant Administrator may remove these additional temporary restrictions through a publication in the **Federal Register** if right whales are determined to have left the area. This determination will be based on sighting efforts that produce no confirmed sightings for 1 week or more or other evidence that the right whales have left the area.

(2) *Gear failure.* If a serious injury or mortality of a northern right whale occurs in an interaction with gear specified under paragraph (a)(1)(i) of this section in a restricted area and during a restricted period specified under this section, NMFS will assess the interaction. If NMFS determines that the interaction is attributable to restricted gear used in a critical habitat area, the Assistant Administrator shall close the area during the restricted period. If NMFS determines that the interaction is attributable to restricted gear used in any other restricted area, the Assistant Administrator shall close the restricted area during the restricted period or impose additional gear modifications or alternative fishing practices that will significantly reduce the risk of serious injury or mortality to right whales. The closure or additional restrictions will be imposed through a publication in the **Federal Register**.

(3) *Gear concerns.* If an entanglement of a right whale or the serious injury or mortality of any endangered whale occurs as a result of an interaction with gear specified under paragraph (a)(1)(i) of this section at any time or in any area, NMFS will assess the interaction. If NMFS determines that the interaction is attributable to restricted gear, the Assistant Administrator may impose additional gear modifications or alternative fishing practices through a publication in the **Federal Register**, or may close a restricted area or areas until additional gear modifications or alternative fishing practices are imposed through a publication in the **Federal Register**.

(4) *Other special measures.* If NMFS verifies that certain gear restrictions are effective in reducing serious injuries and mortalities of endangered whales; if new gear technology is developed and determined to be appropriate; if revised breaking strengths are determined to be appropriate; if new marking systems are developed and determined to be appropriate; if alternative criteria for identifying whether right whales are resident in an area is determined to be appropriate; if gear testing operations are considered appropriate; or for similar purposes, the Assistant Administrator may revise the requirements of this section through a publication in the **Federal Register**.

[FR Doc. 97–8738 Filed 4–4–97; 8:45 am]

BILLING CODE 3510–22–P