

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 229**

[Docket No. 001128334-0334-01; I.D. 101800A]

RIN 0648-AN88

**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:** Interim final rule.

**SUMMARY:** NMFS is issuing an interim final rule to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). The Atlantic Large Whale Take Reduction Team (ALWTRT) recommended modifications to the ALWTRP to further reduce whale entanglement. The intent of this interim final rule is to implement the recommendations of the ALWTRT.

**DATES:** This interim final rule is effective January 22, 2001. Comments on this interim final rule must be postmarked or transmitted via facsimile by 5 p.m., Eastern Standard Time, on February 20, 2001. Comments transmitted via e-mail will not be accepted.

**ADDRESSES:** Send comments on this interim final rule to the Chief, Marine Mammal Division, NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Environmental Assessment, ALWTRT meeting summaries, progress reports on implementation of the ALWTRP, and a map and table of the changes to the ALWTRP may be obtained by writing Douglas Beach, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702-2432.

Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this interim final rule to the Marine Mammal Division Chief at the previously listed address. See **SUPPLEMENTARY INFORMATION** for Internet addresses pertaining to this interim final rule.

**FOR FURTHER INFORMATION CONTACT:** Douglas Beach, NMFS, Northeast Region, 978-281-9254; Katherine Wang, NMFS, Southeast Region, 727-570-5312;

or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

Several of the background documents for this interim final rule and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.nmfs.gov/whaletrp/>. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at <http://www.nmfs.noaa.gov/prot-res/mammals/sa-rep/sar.html>.

**Background**

The ALWTRP was developed pursuant to the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury/mortality of all whales in four East Coast lobster trap and finfish gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is set out in the preamble to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules implementing the ALWTRP. Additional information is available in the report from the ALWTRT after its initial series of meetings in 1996 and 1997. Copies of these documents and supporting Environmental Assessments are available from the NMFS/Northeast Region contact in the **ADDRESSES** section of this document.

Since the ALWTRP final rule was published in February 1999, entanglements of whales have continued to occur. The four whale species protected by the ALWTRP are the northern right whale, the humpback whale, and the fin whale which are listed as endangered pursuant to the Endangered Species Act (ESA), and the minke whale. Because of the critical status of the right whale population, there is an urgent need to reduce entanglement. The impacts of the gear modifications required by this rule (buoy line weak links, net panel weak links with anchoring systems, restrictions on number of buoy lines, and gear marking) were analyzed in the 1997 proposed and 1999 final rules and were available for public comment. In addition, through the ALWTRT process, representatives of all stakeholder groups directly affected by the ALWTRP participated in development of the consensus recommendations implemented by this interim final rule. Because of the continued entanglements

of whales, the Assistant Administrator for Fisheries, NOAA (AA) has determined that it would be contrary to the public interest to delay this interim final rule to provide prior notice and an opportunity for public comments. However, rather than issuing a final rule the AA is issuing an interim final rule to allow public comments to be received and considered before this rule is made final. The final rule will be incorporating the most current gear technology that has been tested and confirmed to be valid for reducing whale entanglements.

**Recent Information on Entanglement and Right Whale Population Status**

Section 118 of the MMPA requires NMFS to monitor the incidental take of U.S. marine mammal stocks. Through the monitoring process, NMFS obtains data on annual serious injury/mortality of these stocks which is then analyzed and prepared in accordance with the Stock Assessment Report (SAR) process established in Section 117 of the MMPA. Data presented in the SARs are then used for establishing take reduction teams, preparing take reduction plans, and monitoring the progress of those plans. A copy of the most recent SAR can be obtained from the mail or web site contacts listed in the **ADDRESSES** section.

NMFS prepared a summary of the 1999 entanglement events for the ALWTRT's February 2000 meeting. The most recent summary of the 1999 events is available on the ALWTRP web site listed in the **ADDRESSES** section. A summary of the 2000 events will be provided to the ALWTRT at its next meeting. Information on some of the 1999 and 2000 events is also available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, at <http://www.coastalstudies.org/>.

In 1999, six confirmed right whale entanglements, nine confirmed humpback whale entanglements, three confirmed fin whale entanglements, and four confirmed minke whale entanglements were reported by the Center for Coastal Studies. NMFS has determined that one of the right whale entanglements resulted in mortality which is attributable to gillnet gear regulated by the ALWTRP; this entanglement is described in greater detail here.

As of September 8, 2000, six confirmed right whale entanglements, 11 confirmed humpback whale entanglements, zero confirmed fin whale entanglements, and five confirmed minke whale entanglements have been reported for 2000.

### *Information Specific to Right Whales*

The northern right whale is the rarest of all large cetaceans and one of the most endangered species in the world. The size of the Western North Atlantic population has most recently been estimated at 291 animals (Kraus et al., In press). In October 1999, the Scientific Committee of the International Whaling Commission (IWC) hosted a workshop on the status and trends in this population (IWC In press) and concluded that survival has declined. Due to the decline in survival resulting from continuing mortality coupled with poor reproduction (as evidenced by the decline in calving rates and increase in calving interval), the Atlantic Scientific Review Group recommended that the potential biological removal (PBR) level for this population be reduced from 0.4 individuals per year to zero in the 2000 SAR.

Approximately one-third of all known right whale mortality is caused by human activities (Kraus, 1990), the most significant of which are ship strikes and fishing gear entanglements. Furthermore, the small population size and low annual reproductive rate suggest that human sources of mortality may have a greater effect on population growth rates of the right whale than on those of other whales (IWC In press).

NMFS implemented a Mandatory Ship Reporting System to help protect right whales on July 1, 1999. Commercial ships 300 tons and greater are required to report to a shore-based station when entering designated right whale critical habitats. When the officers of the ship report in, they are provided with the latest whale sightings and advice on how to avoid a collision with the right whales.

With regard to assessing the effectiveness of the ALWTRP, two recent right whale entanglements are particularly significant. The first involves an adult female that was first sighted entangled in sink gillnet gear in the Cultivator Shoals area off Massachusetts on May 10, 1999. Attempts to remove the gear were made several times in September 1999 in Canada, and some gear was removed. However, the animal's injuries were substantial and it was found floating dead off New Jersey in October 1999.

Another right whale was sighted floating dead, entangled in fishing gear (type not determined) on January 19, 2000, off Rhode Island. The carcass could not be recovered and examined due to inclement weather, therefore the agency could not determine whether the entanglement caused the death.

### **Take Reduction Planning Activities in 1999 and 2000**

The ALWTRP creates a regulatory (e.g., gear restrictions, closures) and non-regulatory (e.g., disentanglement, gear research) framework for reaching the MMPA take reduction goals, including the short-term goal of achieving the PBR level and the long-term goal of reaching a zero mortality rate. The regulatory elements of the ALWTRP implemented by the 1999 final rule included time/area closures in right whale critical habitats and a series of gear modifications for lobster and gillnet gear.

Pursuant to Section 118(f)(7)(E) and (F) of the MMPA, NMFS has reconvened the ALWTRT periodically to monitor progress of the ALWTRP and to make recommendations for improvements. The ALWTRT met on February 8-10, 1999, to review gear modifications, gear research progress, and entanglements that occurred since the publication of the 1997 interim final rule. On April 9, 1999 (64 FR 17292), NMFS published a partial stay for the gear marking requirements in the northeast U.S. fisheries until November 1, 1999, to allow time for modifications to the requirements to be developed. On December 30, 1999 (64 FR 73434), NMFS extended the suspension until November 1, 2000 to allow for additional developmental time. On November 22, 2000 (65 FR 70316), NMFS removed and reserved the gear marking system indefinitely. The removal did not apply to required gear marking regimes in the Southeast U.S., which remains in effect. The gear marking system implemented by this interim final rule replaces the one in the final rule for northeast fisheries and is described later in this document.

At the February 2000 meeting, the ALWTRT reached consensus on a number of improvements to the final rule which could be implemented without further research as well as more advanced concepts that require additional research and field-testing prior to implementation. The ALWTRT provided detailed recommendations for short-term measures, which are the subject of this interim final rule, and an outline for long-term measures. For more information on the range of options discussed by the ALWTRT, readers should refer to the February 2000 meeting summary which is available from the NMFS Northeast Regional Office contact provided in the ADDRESSES section. To facilitate more thorough discussion of area-specific issues, the ALWTRT split into three

sub-groups covering the New England, Mid-Atlantic, and Southeast Areas.

The ALWTRT did not fully discuss gillnet measures for the Mid-Atlantic and Southeast areas at the February 2000 meeting. However, the sub-groups for these areas met subsequently (August 25, 2000, and July 24, 2000, respectively) and have provided recommendations to the whole ALWTRT for its review. The Northeast subgroup of the ALWTRT also met on April 11, 2000, and May 22-23, 2000, to discuss modification to the time/area closure component of the ALWTRP for the New England area.

Although NMFS intends to consider the recommendations of the three sub-groups after they have been fully vetted by the whole ALWTRT, this information was not available at the time this interim final rule and supporting analyses were prepared. NMFS has decided to move forward with the consensus recommendations from the February 2000 meeting without waiting for the additional sub-group recommendations in order to address the urgent need for additional protection for the northern right whale. Recommendations from the April-August 2000 sub-group meetings will be addressed in future rulemaking.

Thus, this interim final rule only implements the ALWTRT's recommendations for lobster trap gear in New England and the Mid-Atlantic and for anchored gillnet gear in New England. These measures are described in detail here. Readers should refer to the Environmental Assessment prepared for this interim final rule for a discussion of impacts of this action on the environment.

### **Changes Recommended by the Atlantic Large Whale Take Reduction Team for Lobster Trap Gear**

The ALWTRT reached consensus on the following amendments to the ALWTRP lobster trap gear restrictions for each time/area combination outlined here. Further discussion on the rationale for many of the changes recommended by the ALWTRT is provided in the Rationale section.

#### *Northern Inshore State Lobster Waters*

The ALWTRT establishes an area called the "Northern Inshore State Lobster Waters Area" that includes the state-water portions of Management Areas 1 and 2 in the American Lobster Fishery regulations (64 FR 68228, December 6, 1999) not otherwise included in the right whale critical habitat. This area does not include the portions of Rhode Island waters that are currently exempted from the ALWTRP

regulations. Based on the best available information, the ALWTRT believes that the threat of entanglement of right whales in New England state waters, with the exception of CCB in the winter, is small enough that no additional gear restrictions are needed at this time.

The ALWTRT recommended that state-water vessels comply with the Lobster Gear Take Reduction Technology List from the February 1999 final rule (one option), with the following exceptions: (1) the buoy line weak link option maximum breaking strength changed from 1100 lbs (489.8 kg) to 600 lbs (272.4 kg), and (2) buoy line weak links must break to produce a knotless end. No gear marking was recommended by the ALWTRT for lobster trap gear in the Northern Inshore State Lobster Waters Area.

The ALWTRT also suggested that fishers be encouraged to maintain the buoy lines as knot-free as possible, with splices preferable to knots.

#### *Cape Cod Bay Restricted Area*

The ALWTRT recommended measures for the CCB Restricted Area, which is the same as the area of CCB designated as right whale critical habitat. As in the final rule, these measures are divided into two categories; the peak and off-peak periods of right whale abundance.

The ALWTRT did not recommend additional measures for the peak period of right whale abundance (January 1 - May 15) in the CCB Restricted Area. For monitoring purposes, a gear marking system was recommended to be implemented. Thus, all buoy lines must be marked with a red mark midway along all lobster trap buoy lines; this is the same color required for the Northern Nearshore Lobster Waters Area. The gear marking system is discussed in greater detail here.

For the off-peak period (May 16 - December 31), the ALWTRT divided the CCB Restricted Area into state and Federal waters. For the state-water portion, the ALWTRT recommended that the Lobster Take Reduction Technology List in the February 1999 final rule be maintained, but that the number of requirements from the list be reduced from two to one so that the requirements would be similar to those for the Northern Inshore State Lobster Waters Area during the off-peak period. Changes to the Lobster Take Reduction Technology List described in this document also apply to lobster gear set in the state-water portion of the CCB Restricted Area during the off-peak period. For consistency with requirements for Northern Inshore State Lobster Waters, no gear marking is

required for the state-water portion of CCB during the off-peak period.

For the Federal-water portion of the CCB Restricted Area during the off-peak period, the ALWTRT recommended that lobster trap gear set in this area be required to comply with the requirements for the Northern Nearshore Lobster Waters Area. The ALWTRT recommended different measures for the Federal-water portion because, although all four whale species protected by the ALWTRP might occasionally enter the state-water portion of the area during the off-peak period for right whales, the best available information suggests that most sightings of all whale species in this time/area have been in the Federal-water portion. The ALWTRT also recognized that the Commonwealth of Massachusetts monitors concentrations of whales that are sighted in the state-water portion of the area during the off-peak period and notifies NMFS and fishermen of the whales' locations. Gear marking (red) midway on buoy lines is required for lobster trap gear set in the Federal-water portion of CCB during the off-peak period.

#### *Great South Channel Restricted Lobster Area*

Management of the GSC Restricted Lobster Area for lobster trap gear maintains the right whale critical habitat area as one unit. For monitoring purposes, the ALWTRT recommended that all lobster trap buoy lines set in this time/area be marked with a black mark midway along each buoy line. This is the same mark required for the Offshore Lobster Waters Area.

The ALWTRT did not make any recommendations for adjustments in the GSC Restricted Lobster Area during the peak right whale period. Therefore, the area remains closed to lobster trap gear until NMFS "determines that alternative fishing practices or gear modifications have been developed that reduce the risk of serious injury or mortality to whales to acceptable levels" (64 FR 7534).

For the off-peak period (July 1 - March 31) of right whale abundance in the GSC Restricted Lobster Area, the ALWTRT recommended that requirements for this time/area (choosing two options from the Lobster Gear Technology List) be replaced with a mandatory requirement for knotless buoy line weak links. The maximum breaking strength of 3780 lb (1714.3 kg) for this buoy line weak link requirement is the same as in the technology list from the final rule.

The ALWTRT also recommended, and NMFS is currently undertaking, research on the actual operational forces

experienced in the offshore lobster fishery to determine options for reduced breaking strength.

#### *Stellwagen Bank/Jeffreys Ledge Restricted Area*

Readers should refer to the Northern Nearshore Lobster Waters Area discussion below for new measures applicable to the Stellwagen Bank/Jeffreys Ledge Restricted Area. NMFS also maintains the Stellwagen Bank/Jeffreys Ledge Restricted Area designation from the final rule because of its significance as a high-use habitat for whales and the need to maintain the flexibility to implement protective measures in the future.

#### *Northern Nearshore Lobster Waters Area*

The ALWTRT recommended that NMFS establish an area called the "Northern Nearshore Lobster Waters Area" to encompass the federal-water portion of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area as defined in the lobster fishery management plan, excluding the critical habitat areas and the Stellwagen Bank/Jeffreys Ledge Restricted Area. This area does not include the Area 2/3 Overlap from the lobster fishery management plan; instead Area 2/3 is included in the Offshore Lobster Waters Area.

For reduction of entanglement risk from lobster trap gear set in the Northern Nearshore Lobster Waters Area, the ALWTRT recommended that the technology list strategy from the final rule (one option required) be replaced with the following mandatory modifications: (1) Breaking strength of the weak link at the buoy is decreased from 1100 lb (498.8 kg) to 600 lbs (272.4 kg); (2) the weak link must break to produce a knotless end; (3) no single traps are prohibited; and (4) multiple-trap trawls with two to five traps can only have one buoy line. For monitoring purposes, the ALWTRT recommended marking all vertical lines midway in the water column with a red mark. The ALWTRT also suggested that fishers be encouraged to maintain the buoy lines as knot-free as possible, with splices preferable to knots.

The ALWTRT determined that requiring this new set of gear modifications in areas where whales may not be concentrated, but are likely to be transiting, would significantly reduce the risk of serious injury/mortality to these animals due to entanglement in lobster trap gear.

### *Southern Nearshore Lobster Waters*

The ALWTRT recommended that NMFS change the name of the area designated as "Southern Inshore Lobster Waters" in the February 1999 final rule to "Southern Nearshore Lobster Waters Area" and revise the boundaries to be consistent with the American Lobster Fishery regulations. The Southern Nearshore Lobster Waters Area encompasses both the state- and Federal-water portions of EEZ Nearshore Management Areas 4 and 5 (as defined in the American Lobster Fishery regulations), excluding the waters currently exempted from regulation under the ALWTRP.

The ALWTRT did not recommend splitting the Southern Nearshore Lobster Waters Area into state and Federal waters because it did not recommend different modifications for these zones at this time. The only change the ALWTRT recommended for reduction of entanglement risk in this area is that the lobster trap gear must comply with one option from the technology list. For monitoring purposes, the ALWTRT recommended marking of buoy lines of lobster trap gear set in this area with an orange mark midway along the length of the buoy line.

### *Offshore Lobster Waters Area*

The ALWTRT recommended the area designated as the "Offshore Lobster Waters Area" to encompass both the area represented by EEZ Offshore Management Area 3 and the Area 2/3 Overlap as defined in the American Lobster Fishery regulations. However, for the purposes of the ALWTRP, the GSC Restricted Lobster Area is maintained as a separate area.

The February 1999 final rule required that lobster trap gear set in this area comply with one option from the technology list. The ALWTRT recommended the following changes for entanglement risk reduction in this area: (1) The 3780 lb (1714.3 kg) buoy line weak link is now mandatory, and (2) the weak link must break to produce a knotless end. The ALWTRT also recommended that research be done by using load cells to test actual strain on offshore gear with the intent to provide options for lowering the breaking strength of the buoy line weak link. For monitoring purposes, the ALWTRT also recommended that buoy lines be marked with a black mark midway along the buoy line. For voluntary measures, the ALWTRT recommended that fishers be encouraged to maintain buoy lines as knot-free as possible, with splices preferable to knots.

### **Changes Recommended by Atlantic Large Whale Take Reduction Team for Northeast Anchored Gillnet Gear**

The ALWTRT recommended that NMFS amend the ALWTRP restrictions applicable to anchored gillnet gear in the Northeast. In changing the gear restrictions for the Northeast anchored gillnet fisheries, the ALWTRT replaced the gillnet technology list options with mandatory items. Unlike the strategy for lobster pot gear, the ALWTRT did not recommend a distinction between state and Federal waters in the Northeast for gillnet gear. The ALWTRT did recommend establishing an area called the "Other Northeast Gillnet Waters Area" to encompass Northeast waters other than the critical habitats and the Stellwagen Bank/Jeffreys Ledge Restricted Area, which was formerly designated as "Other Northeast Waters Area". The ALWTRT also recommended that the gillnet gear restrictions for the right whale critical habitat areas and Stellwagen Bank/Jeffreys Ledge Restricted Area be the same as those recommended for the Other Northeast Gillnet Waters Area.

Although new measures for anchored gillnet gear in the Mid-Atlantic and Southeast were discussed by the ALWTRT at the February 2000 meeting, the ALWTRT did not reach consensus. The Southeast subgroup met on July 24, 2000, and the Mid-Atlantic subgroup met on August 25, 2000. NMF S will incorporate their recommendations into future rulemaking for the ALWTRP.

The following is a discussion of the changes for each combination of time/area closures. Further discussion of the rationale for many of the changes recommended by the ALWTRT is provided in a following section entitled "General Rationale for Gear Modification Changes".

#### *Cape Cod Bay Restricted Area*

The ALWTRT recommended measures for anchored gillnet gear set in the CCB Restricted Area, which is the area of CCB designated as right whale critical habitat. These measures are divided into two categories for peak and off-peak periods of right whale abundance.

The peak period in this area, or spring restricted period, is January 1 - May 15. The closure for anchored gillnet gear in this time/area is unchanged from the February 1999 final rule.

For the off-peak period (May 16 - December 31), the ALWTRT recommended replacing the technology list option strategy from the final rule (two options required) with the mandatory gear requirements for

entanglement risk reduction described below in the Other Northeast Gillnet Waters Area section. For monitoring purposes, the ALWTRT also recommended that all anchored gillnet gear set in this area be marked with a green marking midway along each buoy line. This is the same marking required for the Other Northeast Gillnet Waters Area.

#### *Great South Channel Restricted Gillnet Area*

The GSC Restricted Gillnet Area is the area designated as right whale critical habitat with the exception of the "Sliver" along the western boundary. The ALWTRT recommended that this separation be maintained. The Sliver recommendations are discussed here. The ALWTRT did not recommend changes to the area boundaries; however, ALWTRT members did recommend criteria for modification of closure timing.

During the spring restricted period (April 1 - June 30), anchored gillnet gear is prohibited in this area under the ALWTRP until NMFS "determines that alternative fishing practices or gear modifications have been developed that reduce the risk of serious injury or mortality to whales to acceptable levels" (64 FR 7529, February 16, 1999). The area is also currently closed under Framework Adjustment 23 to the Northeast Multispecies Fishery Management Plan (FMP) as discussed here.

During its 1999 and 2000 deliberations, the ALWTRT agreed upon criteria, based on right whale sightings, which the AA could use to open the area early or extend the closure through July 7. The additional flexibility was requested by the ALWTRT for this time/area, which is currently heavily restricted by other measures for groundfish conservation under the Multispecies FMP. The ALWTRT recommended that consideration be given to relaxing the closure to allow access to the fishing grounds if NMFS determines that right whales have left the area. Conversely, if observations from surveys indicate that the right whales are remaining in the closure area longer than anticipated, the closure could be extended through July 7.

After reviewing the ALWTRT's recommendations, the Biological Opinion requirements, and the requirements still effective under Framework 23, NMFS has chosen not to incorporate the closure modification criteria recommended by the ALWTRT for the GSC Restricted Gillnet Area. This decision is based in part on the significance that NMFS has placed on

the GSC right whale critical habitat area pursuant to the ESA review and also on the concern that closure modification criteria should be considered in a consistent manner for all closures in the ALWTRP. Accordingly, NMFS prefers to address criteria for modifying the GSC Restricted Gillnet Area closure in the context of an ongoing examination of the administration of all closures currently in place in the ALWTRP or which may be developed in the future under such measures as dynamic area management (in-season modifications) recently discussed by the ALWTRT.

For the off-peak period (July 1 - March 31), the ALWTRT recommended that the technology list strategy from the final rule (two options required) be replaced with the mandatory gear requirements for entanglement risk reduction described below in the Other Northeast Gillnet Waters Area. For monitoring purposes, the ALWTRT also recommended that all anchored gillnet gear set in this area be marked with a green mark midway along each buoy line. This is the same marking required for the Other Northeast Gillnet Waters Area.

#### *Great South Channel Sliver Restricted Area*

The ALWTRT did not recommend any additional risk reduction modifications for anchored gillnet gear exclusive to this area. Readers should refer to the Other Northeast Gillnet Waters Area discussion below for new measures that apply to the GSC Sliver Restricted Area. Gear marking requirements (green) for this area are the same as for the Other Northeast Gillnet Waters Area.

#### *Stellwagen Bank/Jeffreys Ledge Restricted Area*

The ALWTRT did not recommend any additional risk reduction modifications for anchored gillnet gear exclusive to this area. Readers should refer to the Other Northeast Gillnet Waters Area discussion for new measures that apply to the Stellwagen Bank/Jeffreys Ledge area. NMFS also maintains the Stellwagen Bank/Jeffreys Ledge Restricted Area designation because of its significance as a high-use habitat for whales. Gear marking requirements (green) are the same as for the Other Northeast Gillnet Waters Area.

#### *Other Northeast Gillnet Waters Area*

The Other Northeast Gillnet Waters Area, previously included as the "Other Northeast Waters Area" in the February 1999 final rule, encompasses those waters of the Northeast Region (Maine through and including Virginia) not

otherwise included in the CCB Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Mid-Atlantic Coastal Waters Area, or exempted waters. For this area, the ALWTRT recommended reducing entanglement risk by replacing the technology list strategy from the final rule (one option required) with mandatory gear modifications. The new mandatory gear requirements for anchored gillnet gear set in this area are: (1) knotless buoy line weak links with a breaking strength no greater than 1100 lb (498.8 kg); (2) net panel weak links, with a breaking strength no greater than 1100 lb (498.8 kg), placed in the center of the headrope section on each net panel; and (3) for strings of 20 or fewer nets, each end of the string must be anchored with either a Danforth-style anchor with the holding power of at least 22 lb (10.0 kg), dead weights weighing at least 50 lb (22.7 kg), or a lead line weighing at least 100 lb (45.4 kg) per 300 feet (91.4 m). For monitoring purposes, the ALWTRT recommended that all anchored gillnet buoy lines set in this area be marked with a green marking midway in the water column. The ALWTRT also suggested that fishers be encouraged to maintain buoy lines as knot-free as possible, with splices preferable to knots.

The weak link-breaking strength is the same as the buoy line and net panel weak link options in the technology list in the February 1999 final rule. The ALWTRT requested that stress load research be conducted by the end of 2000 with the intent of providing options for lowering the maximum weak link breaking strength. Results from ongoing testing are expected in late 2000. The placement of the net panel weak link at the center of each panel is a change from the February 1999 final rule, which required that the weak link be placed between net panels.

#### **General Rationale for Gear Modification Changes**

##### *Buoy Line Weak Links*

The weak link at the buoy increases the likelihood that a line sliding through a whale's mouth will break away quickly at the buoy before the whale begins to thrash and become more entangled. It is also expected to reduce risk in cases where a whale gets line wrapped around an appendage at a point close to the buoy. The weak link would only be effective when sufficient resistance is created by the weight and drag of the gear to exceed the breaking strength of the weak link.

The 1100 lb (489.8 kg) breaking strength in the 1997 interim final rule was recommended by the Gear Advisory Group (GAG) at its original meeting in June 1997 as a "best available practice" which could be used in the gear technology lists. The decrease in the buoy line weak link breaking strength for nearshore lobster trap gear is based on information collected by the ALWTRP gear research program which suggests that the 1100 lb (489.8 kg) breaking strength required in the previous rule is higher than necessary for the nearshore lobster fishery.

The required breaking strength of 3780 lb (1714.3 kg) for the offshore lobster buoy line weak links is the same as that specified in the Lobster Take Reduction Technology List in the February 1999 final rule. This option was developed based on a recommendation from the GAG at its June 1997 meeting for 0.5 in (1.27 cm) polypropylene line, which has a breaking strength of approximately 3780 lb (1714.3 kg). Initial testing conducted by NMFS suggests that this breaking strength can be lowered for these gear types while still allowing the gear to be effectively used. However, the ALWTRT requested further testing for extreme conditions. In response to the ALWTRT's request, NMFS is conducting further testing to investigate loads encountered in offshore gear to determine if a lower breaking strength may be effectively used in the fishery.

The required breaking strength of 1100 lb (498.9 kg) for the anchored gillnet gear buoy line weak links is the same as that specified in the Gillnet Take Reduction Technology List in the February 1999 final rule. This option was developed based on a recommendation from the GAG at its June 1997 meeting. The NMFS gear research staff is conducting further testing of gillnet weak links along with the offshore lobster testing mentioned above.

The NMFS gear research staff has tested various types of buoy line weak links and provided fishers with a list of tested devices that include swivels, plastic weak links, rope of appropriate diameter, hog rings, and rope stapled to a buoy stick. Fishers must use one of these options or request approval of another option in writing from the AA. NMFS gear staff will assist fishers in determining whether alternative devices will work as a weak link and provide them with feedback on whether the breaking strength is in compliance with current ALWTRP regulations.

Buoy line weak links are required to be knotless when the weak link fails because a weak link that breaks but

leaves a knot or other obstruction at the end of the line leading down to the gear would have reduced effectiveness. A knot or piece of a broken link could become lodged in the whale's baleen or around an appendage and prevent the line from slipping through. Observations of right whale jaw anatomy suggest that even a knotless line would be difficult to pull through a whale's mouth when the jaw is clamped shut. Testing on baleen obtained from stranded whale carcasses has shown that knots hinder the passage of line through the baleen. This interim final rule does not require buoy line weak links for lobster trap gear during the peak period of right whale abundance in the CCB Restricted Area to be knotless because such a requirement would conflict with the Commonwealth of Massachusetts regulations for lobster trap gear in this time/area. The Massachusetts regulations currently allow certain types of knots as part of one of the weak link options.

#### *Buoy Lines*

The ALWTRT initially recommended requiring knot-free buoy lines, but changed to the recommendation to voluntary because fishers need to repair and re-tie buoy lines frequently at sea. The knot-free buoy line concept is similar to the breakaway buoy concept, where the objective is to keep knots from hanging up in a whale's baleen or around an appendage and preventing the line from sliding out.

In some cases, fishers prefer splices to knots because splices are stronger. NMFS is also recommending the use of splices wherever possible because splices are not likely to increase entanglement threat. However, connecting lines using a splice is not practicable while gear is being hauled, so splicing, if used at all, is preferentially done on land during seasonal overhaul or as new gear is added. Although concepts for devices to join lines quickly at sea have been proposed, none are yet developed; therefore, there is currently no feasible way to join lines quickly other than knotting. NMFS will continue to investigate line connecting alternatives and may require knotless buoy lines in the future if a reasonable substitute for knots is developed.

#### *Net Panel Weak Links and Anchoring Requirements*

Weak links in the center of each 50-fathom (300 ft = 91.4 m) net panel floatline (headrope) are expected to break when a whale exerts pressure in opposition to the resistance provided by

the anchoring system and weight of the gear. The weak link would allow the floatline to part and unravel from the net mesh when a whale encounters any section of the gear. The net mesh would then be free of the stronger floatline and a large whale would have a better chance of breaking free of the weaker monofilament mesh.

The net panel weak link requirement contained in this interim final rule specifies a breaking strength of no more than 1100 lb (498.8 kg). This breaking strength is a significant reduction from the floatline strength typically used in sink gillnet gear, which ranges from 1700 lb (771.8 kg) to 2500 lb (1135 kg). The use of weak links is not expected to hinder retrieval of the gear, as gillnetters will be able to haul their gear by the lead line in each net panel and the full-strength bridles between the net panels.

When a whale encounters a net panel, the pressure exerted by the whale will not necessarily be right at the weak link, and the part of the headrope containing the weak link will not necessarily be in the whale's mouth. Therefore, these weak links do not need to be knotless.

The anchoring requirement is intended to create sufficient resistance to allow the net panel weak links to break when at least 1100-lb (498.8 kg) of pressure is exerted by a whale on net strings of 20 or fewer net panels. The specified anchoring system is only required for net strings of 20 or fewer nets because NMFS gear research has shown that, for strings of greater than 20 net panels, the 1100 lb (498.8 kg) force necessary to break the weak link is reached solely by the weight and resistance of the gear itself, rendering additional resistance from anchors unnecessary.

The net panel weak links are required in the center of each net panel floatline, rather than between net panels as was specified for the gillnet technology list option in the February 1999 final rule. The ALWTRT recommended changing the placement of the net panel weak links because a weak link placed at the bridle might cause a failure at a point in the gear which is critical for safe hauling of the gear and would reduce chances of lost gear. Furthermore, in cases where a whale hits the gear near a weak link in the floatline, a breaking point within that floatline would maximize the chance for the whale to break away from the net as soon as possible, before becoming entangled in the mesh. Once a whale becomes entangled in the mesh, there is a greater chance that other parts of the gear, including the heavier lines will contribute to the seriousness of the

entanglement. This theory is also based on observations of the flexibility and mobility of net strings along the ocean floor, where the nets become bowed with the current rather than remain in a rigid straight line. A whale exerting force on a net string would move the net before breaking it. During that period of movement, a net without weak links is likely to wrap along either side of the whale. With a weak link at the bridle, which is much shorter than the net panel sections, there is a greater chance that a whale would come away wrapped in sections of the net.

At this time, information is not available on the ideal breaking strength for different locations along a string of nets, the ideal number of weak links, or for all oceanographic conditions. The ALWTRT requested further testing on these parameters for New England waters and to determine appropriate configurations for the Mid Atlantic.

#### *Single Traps and Multiple-trap Trawls*

Prohibiting single pots in Federal waters reduces the number of buoy lines in the water column. Trap trawls of up to, and including, five traps have only one buoy line, which accomplishes the goal of reducing the number of lines in the water column. The ALWTRT recommended this consensus measure as a reasonable means of reducing the entanglement risk represented by vertical lines in nearshore waters where large whale movements predominantly occur in summer and fall. Although NMFS has limited information on the number of single traps in use in Federal waters at this time, it is known that single traps are used in some areas. Therefore, lobster trap vessels operators who decide to continue fishing in federal waters must reconfigure the gear into multiple-trap trawls, thereby reducing the number of buoy lines in the water.

#### *Gear Marking*

As noted earlier, on April 9, 1999 (64 FR 17292), NMFS published a partial stay suspending the gear marking requirements for the northeast U.S. fisheries until November 1, 1999 to allow time for developing modifications to the requirements. On December 30, 1999 (64 FR 73434), the suspension was extended until November 1, 2000 to allow for additional developmental time. On November 22, 2000 (65 FR 70316), a final rule was published removing and reserving the gear marking system indefinitely. The system provided in the February 16, 1999, final rule (64 FR 7529) involved two-part color markings (one for fishery and one for area) placed in two places on each

buoy line but did not provide individual vessel identification. NMFS agreed to the ALWTRT's request for a suspension of the gear marking requirements to allow for further study of alternative systems which would provide identification of individual vessels and be less complex. Individual identification is still preferred to maximize information on when and where gear was set as well as to provide a description of the modification in use. However, it has proven difficult to find a marking material that can be placed on lines without interfering with fishing operations or creating a safety hazard. Therefore, the ALWTRT recommended a simpler system involving a one-color marking placed in one location, midway on each buoy line for all lobster trap gear (except lobster trap gear in Northern Inshore State Lobster Waters and in the state-water portion of the CCB Restricted Area during the off-peak period) and for all Northeast anchored gillnet gear. The one-color marking indicates both area and gear type, where previously a two-color code was required. For example, lobster trap gear set in the Northern Nearshore Lobster Waters Area must have a red mark, and, by contrast, lobster trap gear in the Southern Nearshore Lobster Waters Area must have an orange mark.

With regard to markings which yield individual vessel information, many of the state and Federal fishery management plans currently require marking of buoys and/or traps with individual vessel identification. Additionally, some plans require tags for gillnet gear when there are caps on the number of net sets in a certain area for effort reduction. NMFS plans to work with state fisheries agencies to investigate the plans coastwide and identify gaps in marking of surface gear, gillnets, and traps. This information will be presented to the ALWTRT and GAG for future consideration.

The ALWTRT had originally discussed the need to mark gear in such a way that there would be enough markings on the buoy lines and groundlines that the sections of line likely to be found on a whale would be marked with individual vessel identification. However, at the February 2000 meeting, the ALWTRT recognized that a marking system extensive enough to meet those requirements had not yet been developed. Consequently, the ALWTRT recommended requiring only one marking per buoy line and did not recommend markings for groundlines at this time.

The NMFS gear research program has provided options for marking or affixing the gear marking color code that include

dye, paint, thin colored line whipped around the buoy line or woven through it, thin colored plastic, or heat shrink tubing.

#### **Other Entanglement Reduction Measures not Specified in this Plan**

Several fishery management plans affect the level of fixed gear effort and, therefore, the level of entanglement risk to large whales protected by the ALWTRP. These plans and several specific actions are described in the preamble to the February 16, 1999, final rule (64 FR 7529). NMFS has also implemented the Harbor Porpoise Take Reduction Plan (63 FR 66464) which contains additional gillnet fishing effort reduction in New England and the Mid-Atlantic.

#### **Changes from the February 1999 Final Rule**

With this interim final rule, NMFS is implementing the recommendations of the ALWTRT described for lobster trap gear throughout the range of the American lobster fishery and for anchored gillnet gear in the Northeast. Specifically, these changes are:

1. *Removal of definitions for "Inshore Lobster Waters", "Northeast Waters", "Offshore Lobster Waters", "Southeast Waters", and "Stellwagen Bank/Jeffreys Ledge Area"*. These terms are removed from the definitions section of the rule in favor of describing the areas in the area-specific sections of this interim final rule. This practice is consistent with the manner in which areas are described in the FMP regulations.

2. *Lobster area changes*. The generic lobster areas are replaced with designations which are consistent with the area descriptions in the American Lobster Fishery regulations (64 FR 68228, December 6, 1999). In addition, the ALWTRT recommended that the nearshore lobster fishery in waters off New England states be further split into state and Federal waters. Thus, the north/south division line of 41° 30' N. lat. has been removed, and the following inshore and nearshore area descriptions are added to be consistent with the American Lobster Fishery regulations: (a) the "Northern Inshore State Lobster Waters Area" includes the state waters of Maine, New Hampshire, Massachusetts, and Rhode Island, which fall within the Exclusive Economic Zone (EEZ) Nearshore Management Area 1 and/or Area 2; (b) the "Northern Nearshore Lobster Waters Area" includes the Federal waters of EEZ Nearshore Management Areas 1 and 2 as well as the EEZ Nearshore Outer Cape Lobster Management Area; and (c) the "Southern Nearshore Lobster Waters

Area" includes both state and Federal waters of EEZ Nearshore Management Areas 4 and 5. Management measures for these waters do not affect the exempted waters listed in § 229.32 (a)(2). Separate areas for right whale critical habitat and the Stellwagen Bank/Jeffreys Ledge area are maintained. The "Offshore Lobster Waters Area" is modified to correct Points C and ZA and to add Point ZB to be consistent with the American Lobster Fishery regulations. It is also clarified that the Area 2/3 Overlap in the lobster plan is encompassed by the Offshore Lobster Waters Area in the ALWTRP.

#### 3. *Prohibitions*.

The Prohibitions listed in § 229.2 are modified to incorporate changes made with this interim final rule.

4. *Gear marking for lobster trap gear and Northeast gillnet gear*. The gear marking system implemented for lobster trap gear (in the New England and Mid-Atlantic areas) and anchored gillnet gear (in New England areas) replaces that specified in the February 1999 final rule. Gear marking is required for anchored gillnet gear in the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, and Other Northeast Gillnet Waters Area. Gear marking is also required for lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Lobster Area, Northern Nearshore Lobster Waters Area, Southern Nearshore Lobster Waters Area, Offshore Lobster Waters Area, and CCB Restricted Area (whole area during the winter restricted period and Federal waters only during the other restricted period). For the above gear/area combinations, gear marking of buoy lines is changed from a two-color code on each buoy line to a one-color code midway along the buoy line. Gear marking is not required for lobster gear in the Northern Inshore State Lobster Waters Area or for the state-water portion of the CCB Restricted area during the other restricted period.

5. *Gear marking in the Southeast U.S. Observer Area*. Requirements for markings of buoy lines and net panels in this area have been in effect since the publication of the February 1999 final rule. Therefore, NMFS has added paragraph (b) of § 229.32 to maintain the provisions of that paragraph that were applicable to the Southeast, which uses a different system than that implemented with this interim final rule.

6. *Structural changes to the regulations*. The gear modification

requirement paragraphs are re-organized to bring all requirements for a given area closer together. Paragraph headings reflecting the differences between "universal" and "area-specific" requirements are provided, and cross-references to both gear marking and universal gear modification requirements are provided in a complete set of measures for each area.

7. *Lobster Take Reduction Technology List*. Because measures for offshore lobster gear are now mandatory rather than optional, the two options in the Lobster Take Reduction Technology List specific to offshore lobster gear have been removed. The technology list is now only applicable to nearshore lobster trap gear. In addition, two of the remaining options have been changed. The buoy line weak link option has been changed to lower the breaking strength of the weak link from 1100 lb (498.8 kg) to 600 lb (272.4 kg), and the weak link is now required to be knotless.

8. *Measures for lobster trap gear in the "Northern Inshore State Lobster Waters Area"*. The Northern Inshore State Lobster Waters Area is now treated as a separate area as described in change number 2. Lobster trap gear in this area must still comply with one option from the Lobster Take Reduction Technology List; however, the nature of the available options has changed as described in change number 7.

9. *Measures for lobster trap gear in the Cape Cod Bay Restricted Area*. The division of measures for the CCB Restricted Area (right whale critical habitat area) into peak and off-peak requirements is maintained. However, the off-peak section is further subdivided into state and federal waters. Changes for the peak period of right whale abundance (January 1 - May 15) include mandatory gear marking (red) midway on all buoy lines. Changes to the off-peak period (May 16 - December 31) for state waters include reducing the number of technology list options required from two to one. Because the technology list has changed, the option list requirement is affected by the changes described in change number 7. For the Federal-water portion of the CCB Restricted Area during the off-peak period, technology list options strategy is replaced with the mandatory requirements described in change number 12, and gear marking (red) on buoy lines is required throughout the year.

10. *Measures for lobster trap gear in the Great South Channel Restricted Lobster Area*. Changes to the lobster trap requirements for the off-peak (April 1 - June 30) period for this area include (1)

replacing the technology list options strategy (two items required) with mandatory knotless buoy line weak links with a breaking strength of no more than 3780 lb (1714.3 kg) and (2) mandatory gear marking (black) midway on all buoy lines.

11. *Measures for lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area*. Changes for lobster trap gear in this area include (1) Replacing the technology list options strategy (two items required) with the mandatory modifications described in change number 12 and (2) mandatory marking (red) midway on all buoy lines.

12. *Measures for lobster trap gear in the "Northern Nearshore Lobster Waters Area"*. For this area, the technology list options strategy (one item required) is replaced with the following mandatory gear modification requirements: (1) Knotless buoy line weak links with a breaking strength of no more than 600 lb (272.4 kg), (2) prohibition on single traps, and (3) only one buoy line permitted for trawls of up to five traps. In addition, gear marking (red) midway on all buoy lines is required.

13. *Measures for lobster trap gear in the "Southern Nearshore Lobster Waters Area"*. The number of technology list options required (one) is unchanged; however, the nature of available options is changed as described in change number 7. In addition, lobster trap gear set in this area must be marked (orange) midway along all buoy lines.

14. *Measures for lobster trap gear in the Offshore Lobster Waters Area*. The technology list options strategy (one item required) is replaced with a requirement for a knotless buoy line weak link with breaking strength of no more than 3780 lb (1714.3 kg). In addition, marking (black) of all lobster trap buoy lines midway along the buoy line is required.

15. *Measures for anchored gillnet gear in the Cape Cod Bay Restricted Area*. The gillnet technology list options strategy (two items required) for the off-peak period (May 16 - December 31) is replaced with the following requirements: (1) A knotless buoy line weak link; (2) the buoy line and net panel weak link breaking strength of no more than 1100 lb (498.8 kg) is now mandatory; (3) the placement of floatline (headrope) weak link is changed from bridles to the center of each net panel; and (4) an anchoring system consisting of either (a) dead weights weighing at least 50 lb (22.7 kg) at each end of the net string, (b) anchors with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string, or (c) a lead line weighing at least 100 lb (45.4 kg)

per 300 ft (91.4 m) for each net panel in the net string is required for net strings of 20 or fewer nets. In addition, marking (green) of all buoy lines midway along the buoy line is required.

16. *Measures for anchored gillnet gear in the Great South Channel Restricted Gillnet Area*. The separation of the bulk of the right whale critical habitat area from the "Sliver" along the western boundary is maintained. (See change number 17 for changes to Sliver Area requirements.) For the off-peak (July 1 - March 31) period, the technology list options strategy (two items required) is replaced with the mandatory gear modifications as described in change number 15 for CCB. Gear marking (green) is also now required midway along all buoy lines.

17. *Measures for anchored gillnet gear in the Great South Channel Sliver Restricted Area*. For the off-peak period (July 1 - March 31), the technology list options strategy (two items required) is replaced with the mandatory gear modifications described in change number 15 for CCB. Gear marking (green) is also required midway along all buoy lines.

18. *Measures for anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area*. The technology list options strategy (two items required) is replaced with the mandatory gear modifications described in change number 15 for CCB. Gear marking (green) is also required midway along all buoy lines.

19. *Measures for anchored gillnet gear in the Other Northeast Gillnet Waters Area*. The technology list options strategy (one item required) is replaced with the mandatory gear modifications described in change number 15 for CCB. Gear marking (green) is also required midway along all buoy lines.

### Classification

An Environmental Assessment (EA) describing the impacts to the environment that would result from the implementation of the ALWTRP was prepared for the July 22, 1997, interim final rule (62 FR 39157). Supplemental EAs were also prepared for the April 9, 1999, final rule (64 FR 17292) and subsequent gear marking suspensions. The conclusion of those EAs was that the actions would pose no significant adverse environmental impact. NMFS prepared an EA for this interim final rule and has concluded that these regulations would pose no significant adverse environmental impact.

The actions implemented by this interim final rule are expected to impact approximately 7,539 lobster trap fishing operations and 316 gillnet operations.

Four alternatives were evaluated in the EA prepared for this interim final rule, including a status quo or "no action" alternative as represented by the 1999 final rule, the present interim final rule, and two other alternatives. For a description and a detailed economic analysis of the alternatives analyzed for the lobster fleet and gillnet fleet, readers should refer to the EA prepared for this interim final rule. The total cost to the lobster industry resulting from the time/area closures and gear restrictions in this interim final rule is expected to fall between \$191K and \$539K. The total cost to the gillnet industry under this interim final rule, based on a point estimate, is expected to be approximately \$109K. Adding the lobster trap and gillnet costs, the total cost to the combined fleets is expected to fall between \$300K and \$648K.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This interim final rule contains collection-of-information requirements subject to the (PRA) which has been approved by the (OMB) under control number 0648-0364. Public reporting burden for marking fishing gear, using the whipping line option, is estimated to average .5 minutes per line. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden to the NMFS, Office of Protected Resources, Marine Mammal Division Chief (see ADDRESSES) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

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

Pursuant to 15 CFR 930.35(d)(2), NMFS has determined that preparation of a consistency determination for this interim final rule is unnecessary because the action falls within the scope of past ALWTRP actions for which consistency determinations were made. Therefore, this action does not change the determination that the ALWTRP will be implemented in a manner that is consistent to the maximum extent

practicable with the approved coastal zone management programs of the U.S. Atlantic coastal states. This determination has been submitted for review by the responsible state agencies under Section 307 of the Coastal Zone Management Act.

A biological opinion (BO) on the ALWTRP was finalized on July 15, 1997. That opinion concluded that implementation of the ALWTRP and continued operation of fisheries conducted under the American Lobster, Northeast Multispecies, and Shark FMPs, as modified by the ALWTRP, may adversely affect, but are not likely to jeopardize the continued existence of any listed species or adversely modify critical habitat. A further determination was made that the February 16, 1999, final rule (64 FR 7529) did not change the basis for that BO. This interim final rule implements additional gear restrictions for lobster trap and anchored gillnet gear which will provide additional protection for endangered whales. NMFS has determined that this interim final rule does not change the basis for the 1997 and 1999 ESA determinations. In addition, NMFS has reinitiated ESA section 7 consultation on the FMPs listed to consider new information on endangered whale entanglements, new fishery management actions, and ESA listing actions. Since the ALWTRP is the Reasonable and Prudent Alternative for several of the FMPs, future modification of the ALWTRP may be necessary in response to the outcome of these consultations.

Several species of non-endangered marine mammals protected by the MMPA, including cetacean and pinniped species that are not the focus of this plan are known to become entangled in gillnet and/or lobster trap gear. This action benefits large whales and other marine mammals by implementing restrictions to lobster trap and gillnet gear which are designed to reduce adverse impacts of entanglement in those gear types. Therefore, the changes in the ALWTRP made by this interim final rule will have no adverse impacts on marine mammals.

Given the status of the species to be protected and the fact that entanglements are continuing to occur under the existing regulations the AA, for good cause, under U.S.C. 553 (b)(B) finds that delaying this action to allow for prior notice and an opportunity for public comment would be contrary to the public interest. Because prior notice and an opportunity for public comment are not required to be provided for this interim final rule by 5 U.S.C. 553 or by any other law, the analytical

requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

#### Plain Language Requirement for Rulemaking

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Send comments to the NMFS Marine Mammal Division Chief (see ADDRESSES).

#### References

- International Whaling Commission (IWC). In press. Report of the IWC Workshop on the Status and Trends of the Western North Atlantic Right Whale.
- Kraus, S.D. 1990. Rates and potential causes of mortality in North Atlantic right whales (*Eubalaena glacialis*). *Mar. Mamm. Sci.* 6(4):278-291.
- Kraus, S.D., P.K. Hamilton, R. D. Kenney, A.R. Knowlton, and C.K. Slay. In press. Reproductive parameters of the North Atlantic Right Whale.
- Waring, G.T., D.L. Palka, P.J. Clapham, S. Swartz, M.C. Rossman, T.V.N. Cole, L.J. Hansen, K.D. Bisack, K.D. Mullin, R.S. Wells, D.K. Odell, and N.B. Barros. 1999. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments - 1999. NOAA Technical Memorandum NMFS-NE-153. U.S. Department of Commerce, Northeast Fisheries Science Center, Woods Hole, MA. 196 pp.

#### List of Subjects in 50 CFR Part 229

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

Dated: December 6, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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

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

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

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

**§ 229.2 [Amended]**

2. In § 229.2, the definitions of “Inshore Lobster waters”, “Northeast waters”, “Offshore lobster waters”, “Southeast waters”, and “Stellwagen Bank/Jeffreys Ledge area” are removed.

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

**§ 229.3 Prohibitions.**

\* \* \* \* \*

(h) It is prohibited to fish with lobster trap gear in the areas and for the times specified in § 229.32 (b)(2) and (c)(2) through (c)(8) unless the lobster trap gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32 (b)(3)(i), (b)(3)(ii), and (c)(1) through (c)(9).

(i) It is prohibited to fish with anchored gillnet gear in the areas and for the times specified in § 229.32(b)(2) and (d)(2) through(d)(7) unless that gillnet gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (d)(1) through (d)(8).

(j) It is prohibited to fish with drift gillnet gear in the areas and for the times specified in § 229.32 (d)(7) and (e)(1) unless the drift gillnet gear complies with the restrictions specified in § 229.32 (e)(1).

(k) It is prohibited to fish with shark gillnet gear in the areas and for the times specified in § 229.32(b)(2), (f)(1)(i), and (f)(1)(ii) unless the gear complies with the closures, marking requirements, modifications, and other restrictions specified in § 229.32(b)(3)(i), (b)(3)(ii), and (f)(2) through (f)(3)(iii)(D).

\* \* \* \* \*

4. In subpart C, § 229.32, paragraphs (b)(1) through (d)(6)(ii) are revised to read as follows:

\* \* \* \* \*

**§ 229.32 Atlantic large whale take reduction plan regulations.**

\* \* \* \* \*

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

(2) *Specified areas.* The following areas are specified for gear marking purposes: CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Lobster Waters Area, GSC Restricted Lobster Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Southern Nearshore Lobster Waters Area, Offshore Lobster Waters Area, Other Northeast Gillnet Waters Area, and Southeast U.S. Observer Area.

(3) *Requirements for Southeast U.S. Observer Area.* Any person who owns or fishes with specified fishing gear in the Southeast U.S. Observer Area must mark that gear in accordance with (b)(3)(i) and (b)(3)(ii) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section.

(i) *Color code.* Specified gear in the Southeast U.S. Observer Area must be marked with the appropriate color code to designate gear types and areas as follows:

(A) *Gear type code—Gillnet gear.* Gillnet gear must be marked with a green marking.

(B) *Area code.* Gear set in the Southeast U.S. Observer Area must be marked with a blue marking.

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

(4) *Requirements for other specified areas.* Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with (b)(4)(i) and (b)(4)(ii) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section. For the purposes of the following gear marking requirements only, lobster trap gear set in the CCB Restricted Area during the winter restricted period, the Federal-water portion of the CCB Restricted Area during the off-peak period, and the Stellwagen Bank/Jeffreys Ledge Restricted Area shall comply with the requirements for the Northern Nearshore Lobster Waters Area. Lobster gear set in the GSC Restricted Lobster Area shall comply with the requirements for the Offshore Lobster Waters Area. Similarly, anchored gillnet gear set in the CCB Restricted area,

Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, and GSC Silver Restricted Area shall comply with the requirements for gillnet gear in the Other Northeast Gillnet Waters Area.

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

(A) Lobster trap gear in the Northern Nearshore Lobster Waters Area must be marked with a red marking.

(B) Lobster trap gear in the Southern Nearshore Lobster Waters Area must be marked with an orange marking.

(C) Lobster trap gear in the Offshore Lobster Waters Area must be marked with a black marking.

(D) Gillnet gear in the Other Northeast Gillnet Waters Area must be marked with a green marking.

(ii) *Markings.* All specified gear in specified areas must be marked with one color code (see paragraph (4)(i) of this section) which indicates the gear type and general area where the gear is set. Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The mark must be placed along the buoy line midway in the water column.

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

(c) *Restrictions applicable to lobster trap gear in regulated waters—*(1) Universal lobster trap gear requirements. In addition to the area-specific measures listed in (c)(2) through (c)(8) of this section, all lobster trap gear in regulated waters, including the Northern Inshore State Lobster Waters Area, must comply with the universal gear requirements listed here<sup>1</sup>. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(i) *No line floating at the surface.* No person may fish with lobster trap gear that has any portion of the buoy line that is directly connected to the gear at the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

<sup>1</sup> Fishers are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.

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

(2) *Cape Cod Bay Restricted Area—(i) Area.* The CCB restricted area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Area-specific gear requirements during the winter restricted period.* No person may fish with lobster trap gear in the CCB Restricted Area during the winter restricted period unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Winter restricted period.* The winter restricted period for the CCB Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(B) *Weak links.* All buoy lines shall be attached to the main buoy with a weak link meeting the following specifications:

(1) The breaking strength of the weak link must not exceed 500 lb (226.7 kg).

(2) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(C) *Single traps and multiple-trap trawls.* Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

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

(E) *Sinking ground line.* All ground lines must be comprised entirely of sinking line.

(iii) *Area-specific gear requirements during the other restricted period.* No person may fish with lobster trap gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements in paragraph (b) of this section and the universal lobster

trap gear requirements in (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Other restricted period.* The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises that period in accordance with paragraph (g) of this section.

(B) *Gear requirements—(1) State-water portion.* No person may fish with lobster trap gear in the state-water portion of the CCB Restricted Area during the other restricted period unless that person's gear complies with the requirements for the Northern Inshore State Lobster Waters Area listed in (c)(6) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(2) *Federal-water portion.* No person may fish with lobster trap gear in the federal-water portion of the CCB Restricted Area during the other restricted period unless that person's gear complies with the requirements for the Northern Nearshore Lobster Waters Area in (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(3) *Great South Channel Restricted Lobster Area—(i) Area.* The GSC Restricted Lobster Area consists of the GSC right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Closure during the spring restricted period—(A) Spring restricted period.* The spring restricted period for the GSC Restricted Lobster Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (g) of this section.

(B) *Closure.* During the spring restricted period, no person may fish with or set lobster trap gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period.* No person may fish with lobster trap gear in the GSC Restricted Lobster Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the

universal lobster trap gear requirements in (c)(1) of this section, and the area-specific requirements listed here for the other restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Other restricted period.* The other restricted period for the GSC Restricted Lobster Area is July 1 through March 31, unless the Assistant Administrator revises the timing in accordance with paragraph (g) of this section.

(B) *Weak links.* All buoy lines must be attached to the main buoy with a weak link meeting the specifications listed in subparagraph (c)(5)(ii)(A) below for the Offshore Lobster Waters Area.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area—(i) Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70° W long.. The Assistant Administrator may change that area in accordance with paragraph (g) of this section.

(ii) *Area-specific gear requirements.* No person may fish with lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the requirements listed for the Northern Nearshore Lobster Waters Area in (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(5) *Offshore Lobster Waters Area—(i) Area.* The Offshore Lobster Waters Area includes all waters bounded by straight lines connecting the following points in the order stated (including the area known as the Area 2/3 Overlap in the American Lobster Fishery regulations at 50 CFR 697.18 but not including the GSC Restricted Lobster Area):

Point	Latitude (°N)	Longitude (°W)
A .....	43° 58'	67° 22'
B .....	43° 41'	68° 00'
C .....	43° 12'	69° 00'
D .....	42° 49'	69° 40'
E .....	42° 15.5'	69° 40'
F .....	42° 10'	69° 56'
K .....	41° 10'	69° 6.5'
N .....	40° 45.5'	71° 34'
M .....	40° 27.5'	72° 14'
U .....	40° 12.5'	72° 48.5'
V .....	39° 50'	73° 01'
X .....	38° 39.5'	73° 40'
Y .....	38° 12'	73° 55'
Z .....	37° 12'	74° 44'
ZA .....	35° 34'	74° 51'

Point	Latitude (°N)	Longitude (°W)
ZB .....	35° 14.5'	75° 31'1"

<sup>1</sup>From Point ZB east to the EEZ boundary, thence along the seaward EEZ boundary to Point A.

(ii) *Area-specific gear requirements.* No person may fish with lobster trap gear in the Offshore Lobster Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Weak Links.* All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(1) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(2) The breaking strength of these weak links must not exceed 3780 lb (1714.3 kg).

(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) [Reserved]

(6) *Northern Inshore State Lobster Waters Area*—(i) *Area.* The Northern Inshore State Lobster Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine but does not include waters exempted under (a)(2) of this section.

(ii) *Area-specific gear requirements.* No person may fish with lobster trap gear in the Northern Inshore State Lobster Waters Area unless that person's gear complies with the universal lobster trap gear requirements in (c)(1) of this section and at least one of the options on the Lobster Take Reduction Technology List in (c)(9) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

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

exception of the CCB Restricted Area and the Stellwagen Bank/Jeffreys Ledge Restricted Area.

(ii) *Area-specific gear requirements.* No person may fish with lobster trap gear in the Northern Nearshore Lobster Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the gear requirements listed below for this area. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Weak Links.* All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(1) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(2) The breaking strength of these weak links must not exceed 600 lb (272.4 kg).

(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Single traps and multiple-trap trawls.* Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.

(8) *Southern Nearshore Lobster Waters Area*—(i) *Area.* The Southern Nearshore Lobster Waters Area includes all state and federal waters which fall within EEZ Nearshore Management Area 4 and EEZ Nearshore Management Area 5 as described in the American Lobster Fishery regulations in 50 CFR 697.18.

(ii) *Area-specific gear requirements for the restricted period*—(A) *Restricted period.* The restricted period for Southern Nearshore Lobster Waters is from October 1 through April 30 unless the AA revises this period in accordance with paragraph (g) of this section.

(B) *Gear requirements.* No person may fish with lobster trap gear in the Southern Nearshore Lobster Waters Area during the restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and at least one of the options on the Lobster Take

Reduction Technology List in (c)(9) of this section. The AA may revise these requirements in accordance with paragraph (g) of this section.

(9) *Lobster Take Reduction Technology List.* The following gear modification options comprise the Lobster Take Reduction Technology List:

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

(ii) All buoys must be attached to the buoy line with a weak link meeting the following specifications:

(A) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(B) The breaking strength of these weak links must not exceed 600 lb (272.4 kg).

(C) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(iii) All buoy lines must be comprised entirely of sinking line.

(iv) All ground lines must be comprised entirely of sinking line.

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here<sup>2</sup>. The AA may revise these requirements in accordance with paragraph (g) of this section.

(i) *No line floating at the surface.* No person may fish with anchored gillnet gear that has any portion of the buoy line that is directly connected to the gear on the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

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

(2) *Cape Cod Bay Restricted Area*—(i) *Area.* The CCB Restricted Area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b), unless the AA changes the boundaries

<sup>2</sup>Fishers are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.

in accordance with paragraph (g) of this section.

(ii) *Closure during the winter restricted period*—(A) *Winter restricted period*. The winter restricted period for this area is from January 1 through May 15 of each year, unless the AA revises the timing in accordance with paragraph (g) of this section.

(B) *Closure*. During the winter restricted period, no person may fish with anchored gillnet gear in the CCB Restricted Area unless the AA specifies gear restrictions or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications. The AA may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the Federal Register if NMFS determines that right whales have left the critical habitat and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period*. The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the AA revises that period in accordance with paragraph (g) of this section.

(B) No person may fish with anchored gillnet gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(3) *Great South Channel Restricted Gillnet Area*—(i) *Area*. The GSC Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2' N/69°02' W, 41°43.5' N/69°36.3' W, 42°10' N/68°31' W, and 41°38' N/68°13' W. This area includes most of the GSC right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in (d)(4)(i) here. The AA may revise these boundaries in accordance with paragraph (g) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period*. The spring restricted period for the GSC Restricted Gillnet Area is from April 1 through June 30 of each year unless the AA revises that period in

accordance with paragraph (g) of this section.

(B) *Closure*. During the spring restricted period, no person may set or fish with anchored gillnet gear in the GSC Restricted Gillnet Area unless the AA specifies gear restrictions or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period*. The other restricted period for the GSC Restricted Gillnet Area is from July 1 through March 31 of each year unless the AA revises that period in accordance with paragraph (g) of this section.

(B) During the other restricted period, no person may fish with anchored gillnet gear in the GSC Restricted Gillnet Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(4) *Great South Channel Sliver Restricted Area*—(i) *Area*. The GSC 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. The AA may revise these boundaries in accordance with paragraph (g) of this section.

(ii) *Area-specific gear requirements*. No person may fish with anchored gillnet gear in the GSC Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in subparagraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area*. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70° W long. The AA may change these boundaries in accordance with paragraph (g) of this section.

(ii) *Area-specific gear requirements*. No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(6) *Other Northeast Gillnet Waters Area*—(i) *Area*. The Other Northeast Gillnet Waters Area consists of all U.S. waters west of the U.S./Canada border and north of a line extending due east from the Virginia/North Carolina border with the exception of the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Mid-Atlantic Coastal Waters Area, and exempted waters listed in (a)(2) of this section.

(ii) *Area-specific gear requirements*. No person may fish with anchored gillnet gear in the Other Northeast Gillnet Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed below. The AA may revise these requirements in accordance with paragraph (g) of this section.

(A) *Buoy line weak links*. All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(1) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the AA.

(2) The breaking strength of these weak links must not exceed 1100 lb (498.8 kg).

(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links*. All net panels must contain weak links meeting the following specifications:

(1) Weak links must be inserted in the center of the floatline (headrope) of each net panel in a net string.

(2) The breaking strength of these weak links must not exceed 1100 lb (498.8 kg).

(C) Anchoring System. All anchored gillnet strings containing 20 or fewer net panels must be securely anchored with one of the following anchoring systems:

(1) Anchors with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string,

(2) Dead weights weighing at least 50 lb (22.7 kg) at each end of the net string, or

(3) A lead line weighing at least 100 lb (45.4 kg) per 300 ft (91.4 m) for each net panel in the net string.

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## DEPARTMENT OF COMMERCE

### National Oceanic Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 001023289-0289-01; I.D. 083000C]

RIN 0648-AO25

#### Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through December 31, 2002

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to extend through 2002 the regulations implementing the Interim North Pacific Groundfish Observer Program (Interim Observer Program), which otherwise would expire December 31, 2000. This action is necessary to ensure uninterrupted observer coverage through December 31, 2002. The intention is to advance the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This final rule does not amend the existing regulations, except to extend the certifications of observer contractors who are currently certified by NMFS.

**DATES:** Effective January 1, 2001.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the 1997 Interim

Groundfish Observer Program, the RIR/FRFA prepared for the 1998 Interim Groundfish Observer Program, the RIR/FRFA prepared for the 1999-2000 Interim Groundfish Observer Program, and the RIR/FRFA prepared for this final regulatory action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Administrator, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** Bridget Mansfield, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS implemented the Interim Observer Program in 1996, which superseded the North Pacific Fisheries Research Plan (Research Plan). The regulations implementing the Interim Program were extended through 1997 (61 FR 56425, November 1, 1996), again through 1998 (62 FR 67755, December 30, 1997), and again through 2000 (63 FR 69024, December 15, 1998). The Interim Observer Program provides the framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, it authorizes mandatory observer coverage requirements for vessels and shoreside processors and establishes vessel, processor and contractor responsibilities relating to the observer program. NMFS intends that by 2003 a long-term program will be developed and implemented that addresses several current concerns. These include data integrity, observer compensation, working conditions for observers, and equitable distribution of observer costs.

NMFS is working with the Council and the Council's Observer Advisory Committee (OAC) to address these concerns and to develop new options for an alternative infrastructure for an Observer Program. A new infrastructure would be expected to ensure the

continued collection of quality observer data and address observer coverage cost distribution issues through a fee system or alternate funding mechanism.

The development of a new infrastructure will require extensive time and coordination among NMFS staff, the OAC, and representatives of the industry sectors and observer interests. NMFS and the Council intend to implement a replacement structure for the program prior to the expiration of the Interim Observer Program on December 31, 2002.

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the proposed and final rules implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996, respectively) as well as the proposed and final rules extending this program through 1998 and again through 2000 (62 FR 49198, September 19, 1997; 62 FR 67755, December 30, 1997; 63 FR 47462, September 8, 1998; 63 FR 69024, December 15, 1998, respectively).

A proposed rule to extend the Interim Observer Program through 2002 was published in the **Federal Register** on November 3, 2000 (65 FR 66223), for a 17-day public comment and review period that ended on November 20, 2000. No written comments were received. This final rule does not change the existing regulations, except to extend certification of observer contractors who are currently certified by NMFS under the terms and conditions set forth in the regulations at § 679.50(i).

#### Changes From the Proposed Rule

No changes are made in this final rule from the proposed rule published in the **Federal Register** (65 FR 66223 November 3, 2000).

#### Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Act of 1996, which requires a plain language guide to compliance with this final rule by affected small entities.

#### *How much observer coverage do I need?*

Observer coverage requirements for vessels over 60 ft (18.3 m) length overall (LOA) and up, other than motherships, that fish for groundfish in the BSAI or the GOA are applicable each calendar quarter and are specific to vessel type and length. Coverage requirements also vary according to the gear used and the directed fishery in which the vessel participates. Vessels under 60 ft (18.3 m) LOA are exempt from observer coverage under this final rule.