DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. FR–230130–0030]

RIN 0648–BM05

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: Temporary rule; emergency final rule.

SUMMARY: NMFS is extending a temporary emergency rule to prohibit trap/pot fishery buoy lines between federal and state waters within the Massachusetts Restricted Area (MRA) from February through April 2023 to reduce the incidental mortality and serious injury of North Atlantic right whales (*Eubalaena glacialis*) in commercial lobster and Jonah crab trap/pot fisheries. This emergency rule extension is necessary to reduce the risk of right whale mortality and serious injury caused by buoy lines in an area with a high co-occurrence of whales and buoy lines.

DATES: Effective February 1, 2023 through April 30, 2023.

ADDRESSES: Copies of the documents associated with this emergency rule are available at *https://www.fisheries.noaa.gov/alwtrp* or by emailing Marisa Trego at *marisa.trego@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Marisa Trego, 978–282–8484, *marisa.trego@noaa.gov,* Colleen Coogan, 978 281–9181, *colleen.coogan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Background
Justification for Emergency Action
Emergency Measures
Classification
References

Background

The North Atlantic right whale (*Eubalaena glacialis,* hereafter referred to as right whale) population has been in decline since 2010, with the most recent published estimate of right whale population size in 2019 at 368 whales (95 percent confidence interval: 356–378) with a strong male bias (Pace *et al.* 2017, Pace 2021). Data from 2020 and 2021 suggest the decline has continued and that fewer than 350 individuals remain (Pettis *et al.* 2022). The steep population decline is a result of high levels of human-caused mortality caused by entanglement in fishing gear and vessel strikes in both the U.S. and Canada. An Unusual Mortality Event was declared for the population in 2017, as a result of high rates of vessel strikes and entanglement in fishing gear. As of January 11, 2023, the Event includes 35 detected mortalities (17 in 2017, 3 in 2018, 10 in 2019, 2 in 2020, 2 in 2021, 0 in 2022, and, tentatively, 1 in 2023). In addition, 21 serious injuries were documented (2 in 2017, 5 in 2018, 1 in 2019, 4 in 2020, 5 in 2021, 4 in 2022, and, tentatively, 1 in 2023). Lastly, 37 morbidity (or sublethal injury or illness) cases were documented (12 in 2017, 10 in 2018, 7 in 2019, 5 in 2020, 1 in 2021, and 2 in 2022); see: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2022-north-atlantic-right-whale-unusual-mortality-event*). Population models estimate that 64 percent of all mortalities are not observed and not accounted for in the right whale observed incident data (Pace 2021, Pace *et al.* 2021).

The North Atlantic right whale is listed as an endangered species under the Endangered Species Act (ESA), and considered a strategic stock under the Marine Mammal Protection Act (MMPA). NMFS is required by the MMPA to reduce mortality and serious injury incidental to commercial fishing to below a stock's potential biological removal (PBR) level. This is defined as the maximum number of animals that can be removed annually, while allowing a marine mammal stock to reach or maintain its optimal sustainable population level. PBR for the North Atlantic right whale population is 0.7 whales per year in the most recently published stock assessment report (Hayes *et al.* 2022). Between 2010 and 2021, there has not been one year where observed mortality and serious injury of right whales fell below a PBR of 0.7. With the total estimated mortality well above this number, additional measures are urgently needed to reduce the impact of U.S. Atlantic fisheries on right whales.

The Atlantic Large Whale Take Reduction Plan (''Plan'' or ALWTRP) was originally developed pursuant to section 118 of the MMPA (16 U.S.C. 1387) to reduce mortality and serious injury of three stocks of large whales (fin, humpback, and North Atlantic right) incidental to certain Category I and II fisheries. Under the MMPA, a strategic stock of marine mammals is defined as a stock: (1) For which the level of direct human-caused mortality exceeds the PBR level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA or is designated as depleted under the MMPA (16 U.S.C. 1362(19)). When incidental mortality or serious injury of marine mammals from commercial fishing exceeds a stock's PBR level, the MMPA directs NMFS to convene a take reduction team of stakeholders that includes the following: Representatives of Federal agencies; each coastal state that has fisheries interacting with the species or stock; appropriate Regional Fishery Management Councils; interstate fisheries commissions; academic and scientific organizations; environmental groups; all commercial and recreational fisheries groups using gear types that incidentally take the species or stock; and, if relevant, Alaska Native organizations or Indian tribal organizations.[1]

The Atlantic Large Whale Take Reduction Team (ALWTRT) was established in 1996 and has 60 members, including approximately 22 trap/pot and gillnet fishermen or fishery representatives. The background for the take reduction planning process and initial development of the Plan is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules implementing the initial plan. The ALWTRT met and recommended modifications to the ALWTRP, implemented by NMFS through rulemaking, several times since 1997 in an ongoing effort to meet the MMPA take reduction goals.

Mortalities and serious injuries of right whales confirmed in U.S. fishing gear or first seen in U.S. waters with an entanglement continue at levels exceeding the right whale's PBR. NMFS informed the ALWTRT in late 2017 that it was necessary to reconvene to develop recommendations to reduce the impacts of U.S. commercial fisheries on large whales, with a focus on reducing risk to the declining North Atlantic right whale population. During an ALWTRT meeting in April 2019, the ALWTRT recommended a framework of measures to modify lobster and Jonah crab trap/pot trawls within the Northeast Region

[1] There are no Alaska Native or Indian tribal organizations participating in fisheries managed under the Atlantic Large Whale Take Reduction Team.

Trap/Pot Management Area (Northeast Region). The recommended measures intended to reduce risk of mortality and serious injury to right whales incidentally entangled in buoy lines in those fisheries by at least 60 percent. At that time, this was the best estimate of the minimum amount of risk necessary to get annual mortality and serious injury rates below PBR based on observed entanglements. NMFS published a Final Environmental Impact Statement (FEIS) on July 2, 2021 (86 FR 35288), with a 30-day comment period. The Record of Decision was signed on August 30, 2021, and the final rule was published on September 17, 2021 (86 FR 51970). The new rule was estimated to meet the minimum 60-percent reduction in risk recommended by the ALWTRT in 2019. Further detail on right whale population estimates, the stock's decline, changes in distribution and reproductive rates, as well as entanglement-related mortalities and serious injuries that have been documented in recent years can be found in Chapters 2 and 4 of the FEIS (NMFS 2021b) and the preamble to the 2021 final rule (86 FR 51970; September 17, 2021).

The 2021 final rule (86 FR 51970, September 17, 2021) left a critical gap in protection of right whales within the MRA, as suggested by sighting data that indicate a high risk of overlap between right whales and buoy lines. The 2021 expansion of the geographic extent of the MRA, to include Massachusetts state waters north to the New Hampshire border (Figure 1) mirrored the Massachusetts 2021 modification of the state water closure (322 CMR 12.04(2)). The implementation of the MRA Expansion, allowed approximately 200 mi^2 (518 km^2) of federal waters to remain open to trap/pot fishing between state and federal closures. This created the ''MRA Wedge'' (Figure 1). Center for Coastal Studies (CCS) survey data from 2021 and 2022 indicate that trap/pot gear was concentrated in the MRA Wedge during the closure period (Figure 2). Additionally, CCS and the Northeast Fisheries Science Center (NEFSC) observed right whales within this wedge alongside the presence of aggregated fishing gear during aerial surveys in April 2021, and March and April of 2022. In early 2022, NMFS received letters and emails from Massachusetts Division of Marine Fisheries (MA DMF), Stellwagen Bank National Marine Sanctuary, and non-governmental organizations expressing concerns about this gap in restricted waters and the heightened risk of entanglement for right whales. After reviewing available information and due to the high risk of entanglement in this relatively small area, NMFS issued an emergency rule prohibiting trap/pot fishery buoy lines between federal and state waters within the MRA for the month of April in 2022 (87 FR 11590; March 2, 2022).

On December 12, 2022, MA DMF requested that NMFS extend the MRA Wedge closure into 2023 and 2024, or until new long-term measures are implemented. On January 4, 2023, following the signing of the Consolidated Appropriations Act, MA DMF reiterated their concerns about the MRA Wedge and indicated full support for an annual closure of the area from February through May, or as long as the adjacent areas (*i.e.,* Federal or state waters) remain closed. Further, on January 10, 2023, MA DMF notified the fishing community of our intent to implement an emergency closure of the MRA Wedge imminently. The critical gap in protection for right whales persists seasonally for the period of February through April of this year; thus, this rule is an extension of the 2022 emergency rule.

Justification for Emergency Action

At the time of the 2022 emergency action, NMFS had already begun the rulemaking process for a second round of modifications to the ALWTRP, because new population information indicated a need for further risk reduction to reduce mortality and serious injury of right whales below PBR in U.S. commercial fisheries. Concurrently, NMFS faced litigation on the 2021 Batched Fisheries Biological Opinion issued under the ESA and the 2021 amendment to the ALWTRP issued under the MMPA (86 FR 51970; September 17, 2021). On July 8, 2022, the District Court for the District of Columbia held that the 2021 final ALWTRP rule violated the MMPA for failing to include measures expected to reduce mortality and serious injury to below the PBR level within six months of implementation. (*Center for Biological Diversity, et al.,* v. *Raimondo, et al.,* (Civ. No. 18–112 (D.D.C.)). As a result, on September 9, 2022, NMFS announced it was scoping in advance of additional rulemaking (87 FR 55405) to meet its MMPA mandate as described by the Court's decision. Then, on November 17, 2022, the Court ordered NMFS to promulgate a new MMPA compliant ALWTRP rule by December 9, 2024. (*Center for Biological Diversity, et al.,* v. *Raimondo, et al.,* (Civ. No. 18–112 (D.D.C.)).

When the 2022 emergency rule was published, NMFS anticipated that the upcoming modifications to the ALWTRP would address the risk associated with the lack of seasonal restrictions in the MRA Wedge. However, in light of the Court's decisions, an ALWTRP rule addressing the MRA Wedge area was not feasible by February 2023, given that the Court instructed NMFS to promulgate the ALWTRP amendment with measures necessary to meet the PBR level within 6 months of implementation and the ALWTRT had not completed deliberations on recommended measures until December 2, 2022. Accordingly, the risk associated with a lack of seasonal restrictions in the MRA Wedge could not be feasibly addressed by an ALWTRP amendment in time to mitigate an immediate and significant adverse impact to right whales in the MRA Wedge, while the MRA is closed in 2023.

On December 29, 2022, President Biden signed H.R. 2617, the Consolidated Appropriations Act, 2023 (''Consolidated Appropriations Act'') into law. The Consolidated Appropriations Act establishes that from December 29, 2022, through December 31, 2028, NMFS' September 17, 2021, rule amending the ALWTRP, *Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations,* 86 FR 51970 (September 17, 2021), ''shall be deemed sufficient to ensure that the continued Federal and State authorizations of the American lobster and Jonah crab fisheries are in full compliance'' with the MMPA and the ESA. H.R. 2617–1631–H.R. 2617–1632 (Division JJ–North Atlantic Right Whales, Title I–North Atlantic Right Whales and Regulations, § 101(a)). The Consolidated Appropriations Act disrupts the Court's 2024 deadline and requires that NMFS promulgate new regulations for the American lobster and Jonah crab fisheries, consistent with the MMPA and ESA, to take effect by December 31, 2028. Id.

This emergency rule, however, is permitted pursuant to an exception at § 101(b), stating that § 101(a) does not apply to ''an existing emergency rule, or any action taken to extend or make final an emergency rule that is in place on the date of enactment of this Act, affecting lobster and Jonah crab.'' This explicit exception in the Consolidated Appropriations Act can only refer to the 2022 MRA Wedge Rule, because that is the only emergency rulemaking implemented under the MMPA, ESA, or other relevant statutes, affecting lobster and Jonah crab, to occur in the past decade. The exception at § 101(b) is a specific reference to the 2022 emergency

rule closing the MRA Wedge. If the exception did not cover an extension or finalization of the MRA Wedge Rule, the provision would have no purpose. Moreover, the emergency rulemaking provisions of MMPA Section 118(g) allow for extensions of existing emergency rules when conditions warrant, and the statutory language does not require an extension to follow immediately upon the expiration of the original emergency action. Thus, the continued existence of the emergency, as opposed to the operability of the emergency rule, is what matters for an extension of an emergency rule. Here, the 2022 30-day emergency rule was not in effect longer than 270 days (the statute's temporal limit), but the same conditions exist this year to warrant an extension. Section § 101(b) explains that NMFS may take any action, including this action, to extend the MRA Wedge closure. NMFS is extending the 2022 emergency rule into 2023 and also extending the duration of closure to February through April to match the broader closure of Federal waters in the MRA that left a spatial gap in protection between State and Federal waters and thereby addressing the emergency Congress intended that NMFS address during the 2023 fishing season. Therefore, this extension of the 2022 emergency rule into 2023 is justified, in part, as a consequence of changing circumstances following the 2022 emergency rule which put in place ''emergency measures in an area of anticipated acute risk of entanglement to the population while long-term measures are being developed'' (87 FR 11591–92).

This extension of the 2022 emergency rule into 2023 is also justified based on the scientific evidence regarding right whale and gear locations. North Atlantic right whales are known to aggregate in Cape Cod Bay in winter and spring to forage on copepods (*Calanus spp.*). As this food source declines, right whale distribution accordingly shifts and increases the presence of right whales in the MRA Wedge as they leave the Bay. Federal waters reopen to trap/pot fishing in May, increasing the area available to fishermen and reducing the likelihood of high gear density from fishermen ''storing'' their gear in the MRA Wedge. Aerial surveys from 2021 and 2022 capturing gear sightings on specific days when surrounding waters of the MRA are closed to buoy lines, demonstrate the high risk of entanglement that right whales face while in or traversing the waters of the MRA Wedge (Figure 2). Additionally, sightings of right whales throughout the spring in the MRA Wedge and surrounding waters continue to demonstrate that whales are in the MRA Wedge or likely traveling through this gap in the MRA closure to feed in waters in and around Massachusetts Bay (Figure 3). Without restrictions in place in the MRA Wedge, gear may increase in this area as fishermen pushed out of surrounding waters move gear into this small open area and continue to actively fish. Gear may also increase if fishermen start bringing gear into the MRA Wedge anticipating the May 1 opening of Federal waters. The staging of gear in anticipation of Federal waters opening may be especially likely in April when whale sightings are still high. Given the high likelihood that endangered right whales are present throughout this area and in adjoining waters during February through April, the MRA Wedge poses a particularly high risk of mortality or serious injury from entanglement in fishing gear. Accordingly, it is critical that this buoy line closure address the gap between State and Federal waters within the MRA Wedge during the MRA closure in Federal waters in 2023 to prevent the likelihood of an immediate and significant adverse impact on right whales in the MRA Wedge.

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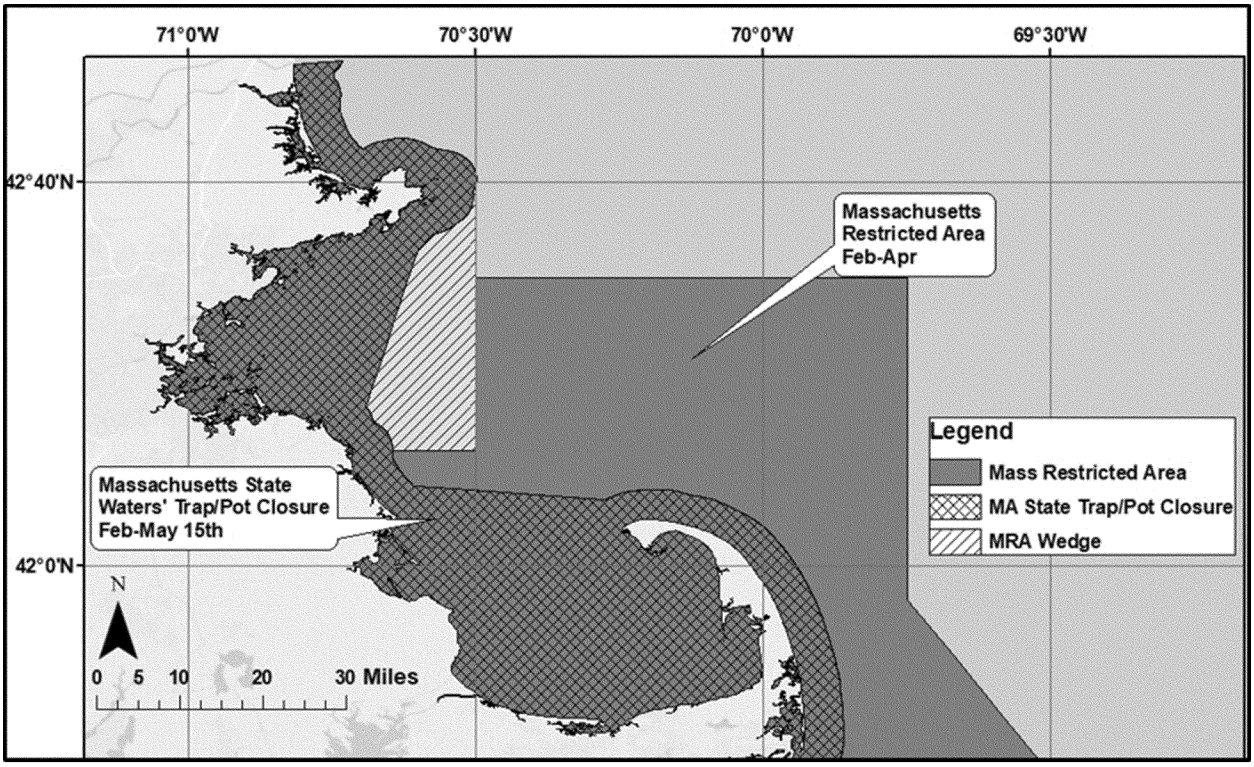

Figure 1. The Massachusetts Restricted Area and MRA Wedge*

*Massachusetts Restricted Area (MRA; dark gray), Massachusetts state waters (dark gray hatched), and MRA Wedge (pale gray hatched) are represented. MRA waters are closed to commercial trap gear from February-April. Massachusetts state regulations prohibit trap/pot fishing in any waters under the jurisdiction of the Commonwealth from February 1 through May 15, but can be extended past May 15 in the continued presence of North Atlantic Right whales or rescinded after April 30 in their absence.

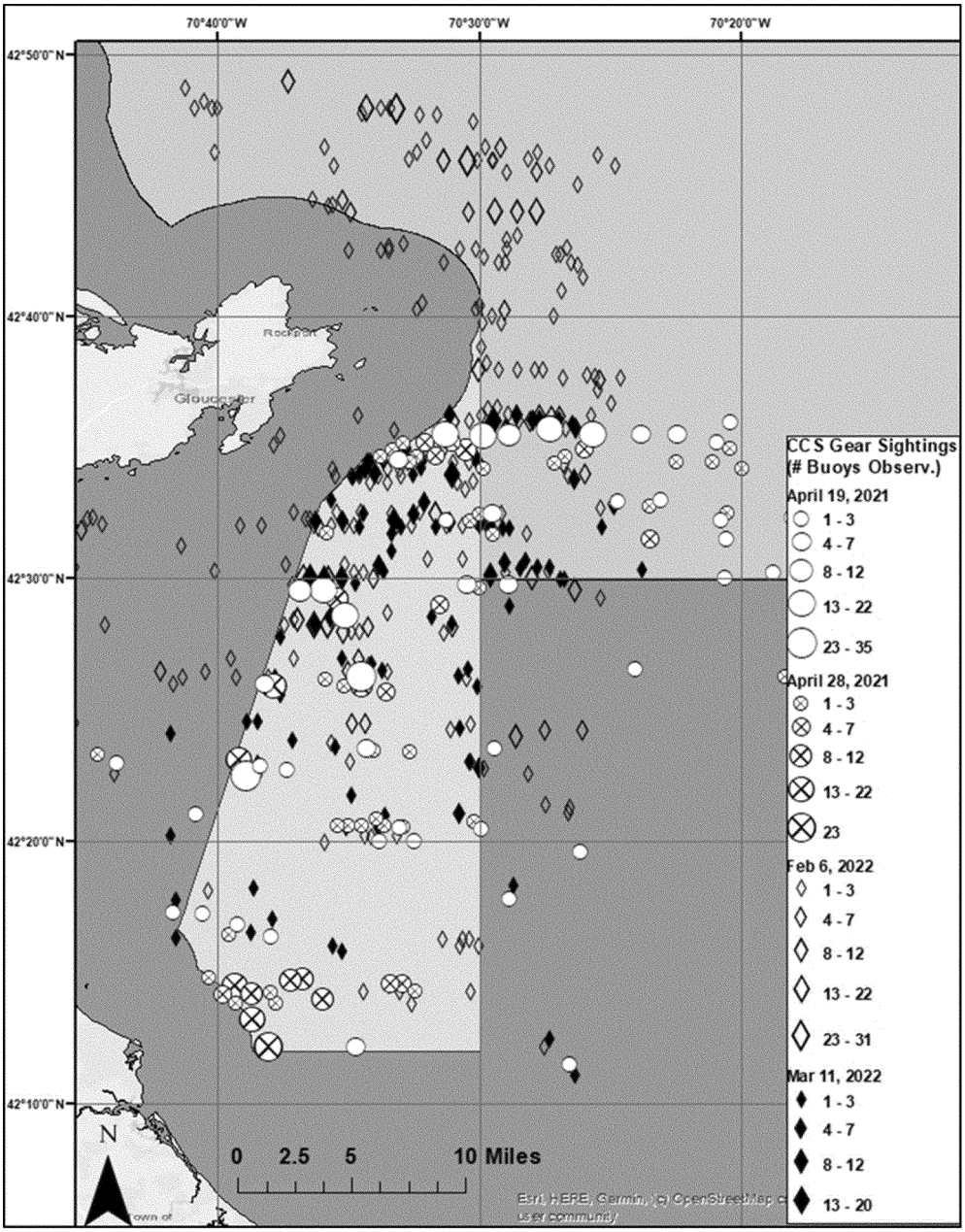

Figure 2. Gear sightings in the Massachusetts Restricted Area "Wedge"*

* The Massachusetts Restricted Area "Wedge" closed by this rule is represented in pale gray. Fishing gear observed by the Center for Coastal Studies (CCS) on April 19, 2021 (white circles), April 28, 2021 (encircled "x"), February 6, 2022 (open diamonds), and March 11, 2022 (black diamonds), were selected as representative snapshots of fishing gear present in survey areas. Surveys concentrate on Cape Cod Bay; surveyors rarely fly north of mid Cape Ann, offshore Rockport, MA. These maps are used for qualitative not quantitative comparison, and differ from Decision Support Tool data.

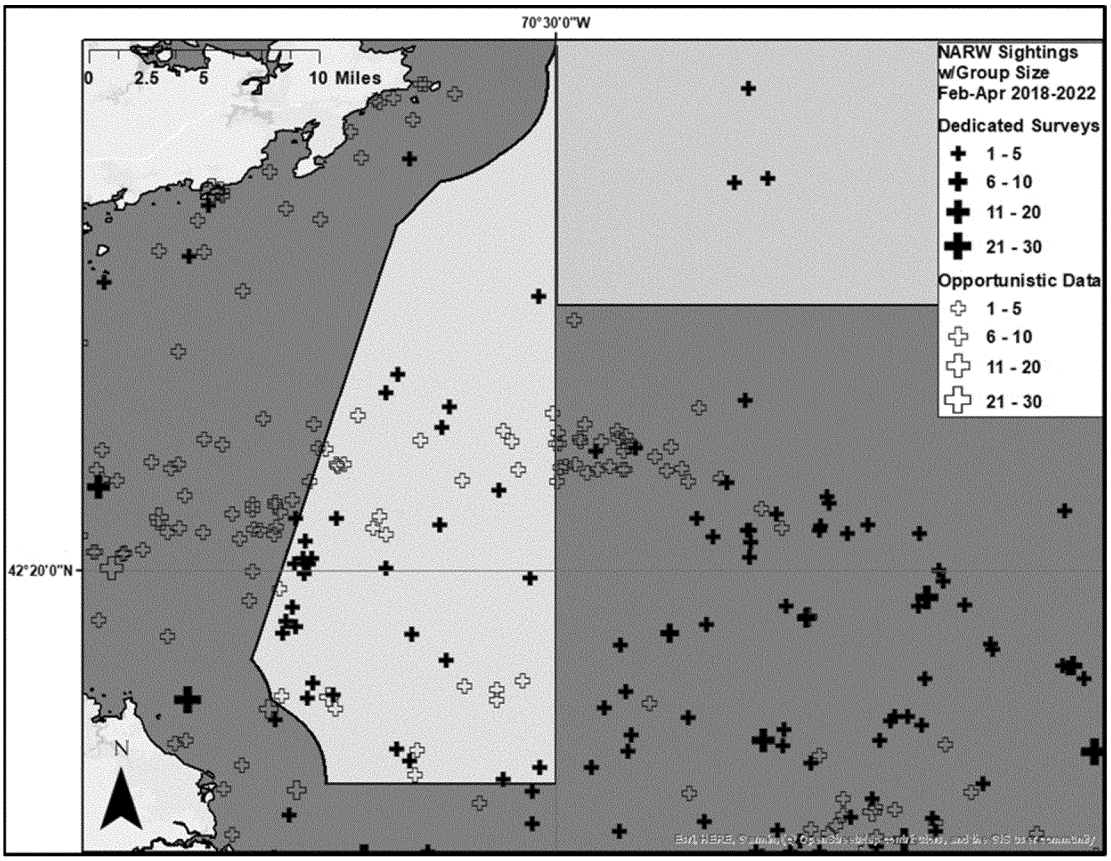

Figure 3. North Atlantic Right Whale sightings spanning February-April 2018-2022*

* North Atlantic Right Whale sightings spanning February-April 2018-2022 in the closed area (pale gray) are represented below. The black crosses are sightings observed during dedicated Northeast Fisheries Science center (NEFSC) and Center for Coastal Studies (CCS) aerial surveys and dedicated NEFSC, CCS, and Stellwagen Bay National Marine Sanctuary shipboard surveys. The open crosses represent sightings opportunistically observed from various platforms.

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Emergency Measures

This emergency rule implements a fishery closure in the waters nearly circumscribed by federal and state waters of the MRA, where the use of persistent trap/pot buoy lines is prohibited seasonally (Figure 1). This closure period aligns with the existing MRA closure season for Federal waters, as of February 1 and continues through April 30 (322 CMR 12.04(2)). Risk reduction and change in right whale co-occurrence were calculated for this emergency measure using the Decision Support Tool (DST) version 4.1.0, which is an updated version of the model that was used in the 2021 FEIS (NMFS 2021b). The area restricted by this emergency rule includes approximately 200 mi^2 (518 km^2), representing about 1.9 to 2.4 percent reduction of the total trap/pot entanglement risk in the Northeast. This amounts to a 13.2 to 16.6 percent reduction of the total risk of trap/pot fisheries in LMA 1 adjacent to Massachusetts where the threat of entanglement is particularly high for right whales.

The DST used to estimate risk reduction of the emergency closure relies on whale distribution data from 2010 through September 2020 and line estimates from recent years before the new boundaries of the MRA and the new Massachusetts State Water closure were implemented (2015–2018 for lobster, 2010–2020 for other federal trap/pot fisheries, and 2012–2019 for other trap/pot fisheries in state waters). These data likely underestimate the risk reduction according to 2018–2022 right whale sightings (Figure 3). The 2021 restrictions may have also pushed more gear into this area. Furthermore, the right whale habitat density model produced by Duke University and used within the DST estimates that up to 5 whales total are likely to be present in this locality throughout the time frame, but sighting data collected during February–April 2018–2022 indicate that in 2022 there may be more right whales in the area than the model predicts (Figure 3). Given the empirical evidence collected in 2018–2022, it is likely that the risk reduction estimated in this small area may have even greater value to the right whale population than the DST estimates.

The economic impact of a February–April closure to the lobster and Jonah crab trap/pot fishery is estimated to be small relative to the total value of the fishery. It is estimated to impact between 26–31 vessels in a given month and the total costs including gear transportation costs and lost revenue range from $338,804–$608,346. For this analysis, we evaluated two scenarios for the economic impacts on lobster vessels. We assume half of the vessels would

relocate their traps, and the other half would stop fishing. For vessels that stop fishing, the cost differences include lost revenue, gear relocation costs, and saved operating costs from not fishing. The lower and higher end of cost estimates come from the range of lost revenue of the relocated vessels, and a range of gear relocation costs for all vessels. The number of vessels impacted was calculated from the average number of vessels fishing within the MRA Wedge in a given month from 2017 to 2021 according to Vessel Trip Report (VTR) data, and was adjusted based on the average percentage of Lobster Management Area 1 lobster-only vessels required to provide VTR data in Massachusetts (41 percent). Landing values were similarly averaged for the time period using landing pounds from VTR data and lobster prices in Massachusetts from dealer reports.

Classification

The NMFS Assistant Administrator has determined that this emergency rule is consistent with the ALWTRP, with the emergency rulemaking authority under MMPA section 118(g), and with other applicable laws including the Consolidated Appropriations Act, 2023. H.R. 2617–1631–H.R. 2617–1632 (Division JJ—North Atlantic Right Whales, Title I—North Atlantic Right Whales and Regulations).

The Office of Management and Budget has waived review of this emergency rule under Executive Order 12866. NMFS has prepared a regulatory impact review.

This emergency final rule is exempt from the procedures of the Regulatory Flexibility Act because the rule will not include prior notice or an opportunity for public comment.

This emergency final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This emergency rule falls within the scope of the analysis conducted in the informal ESA consultation, *Endangered Species Act section 7 consultation on the implementation of the Atlantic Large Whale Take Reduction Plan (May 25, 2021),* a separate consultation is not required for this action. The emergency rule modifies a separate action independent from the *2021 Endangered Species Act Section 7 Consultation on the: (a) Authorization of the American Lobster, Atlantic Bluefish, Atlantic Deep-Sea Red Crab, Mackerel/Squid/Butterfish, Monkfish, Northeast Multispecies, Northeast Skate Complex, Spiny Dogfish, Summer Flounder/Scup/Black Sea Bass, and Jonah Crab Fisheries and (b) Implementation of the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2* (''2021 BiOp''). The emergency rule was not developed during the fisheries consultation process that culminated in the 2021 BiOp and it satisfies its ESA and MMPA requirements through consultation that was entirely distinct from the 2021 BiOp. The emergency rule is not associated with the 2021 BiOp, and was not analyzed under the 2021 BiOp, nor does the 2021 BiOp provide ESA or MMPA coverage for the emergency rule.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3) the Assistant Administrator for Fisheries finds good cause to waive notice and public comment, and the 30 day delay in rule effectiveness. Right whale distribution data identify risk in unrestricted waters encapsulated on three sides by the expanded MRA while seasonal restrictions are in place from February through April in surrounding waters, as noted in the *Justification for Emergency Action* section above. While publication of this rule will implement this closure immediately, the fishing community was notified on January 10, 2023, of the anticipated closure of the MRA Wedge by the Massachusetts Division of Marine Fisheries, which fully supports this closure. This notification provides time for fishermen to comply with the emergency restrictions by removing or relocating their gear from the MRA Wedge before the seasonal closure is effective.

In summary, this emergency action is necessary to prevent entanglements of right whales in an area of elevated risk in Massachusetts Bay in February through April of 2023, while seasonal restrictions are in place in nearby Federal waters. Providing prior notice through proposed rulemaking and public comment period in the normal rulemaking process, or providing a delay in effective date, would delay implementation of time sensitive emergency measures necessary to prevent incidental mortality and serious injury of right whales that would likely have an immediate and significant adverse impact on the species. Providing notice and comment or a delay in effective date would prevent NMFS from meeting its obligations to protect right whales from entanglements in the MRA Wedge, in contravention of the MMPA and ESA, because such a delay would inhibit NMFS' ability to stave off an imminent risk to right whales. Similarly, providing notice and comment or a delay in effective date would harm the public by preventing NMFS' from immediately addressing this emergency. The emergency will not be adequately addressed if the action is delayed. For the reasons outlined above, NMFS finds it impracticable and contrary to the public interest to provide prior notice and public comment on these emergency measures. For the same reasons, NMFS finds good cause to waive the delay in the effective date of this rule.

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List of Subjects in 50 CFR Part 229

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

Dated: January 30, 2023.

Samuel D. Rauch, III,

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

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

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

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

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

■ 2. Amend § 229.32 by adding paragraph (c)(3)(iv) to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(c) * * *

(3) * * *

(iv) *Massachusetts Restricted Area Emergency Extension.* During the period from February 1, 2023 through April 30, 2023, the Massachusetts Restricted Area defined in paragraph (c)(3)(i) of this section is extended from the Massachusetts state waters boundary at MRAW1 to MRAW2 (also MRA3 in Table 11 to paragraph (c)(3)(i)), then it is bounded by a rhumb line connecting points MRAW2 to MRAW3 (MRA4), and then bounded by a rhumb line connecting points MRAW3 through MRAW4 (MRA5) back to MRAW1, in the order detailed in Table 11a to paragraph (c)(3)(iv); From February 1, 2023 through April 30, 2023, it is prohibited to fish with, set, or possess trap/pot gear in the area in this paragraph (c)(3)(iv) of this section unless it is fished without buoy lines or with buoy lines that are stored on the bottom until remotely released for hauling, or buoy lines that are stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84 of this title or other applicable fishery management regulations. The minimum number of trap/trawl gear configuration requirements specified in paragraph (c)(2)(iv) of this section remain in effect unless an exemption to those requirements is authorized.

TABLE 11a TO (c)(3)(iv)

Point	Lat	Long
MRAW1	42°39.77′	70°30′
MRAW2 (MRA3) ...	42°12′	70°38.69′
MRAW3 (MRA4) ...	42°12′	70°30′
MRAW4 (MRA5) ...	42°30′	70°30′
MRAW1	42°39.77′	70°30′

* * * * *

[FR Doc. 2023–02185 Filed 2–1–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC670]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2023 total allowable catch (TAC) of Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 1, 2023, through 1200 hrs, A.l.t., June 10, 2023.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2023 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA is 998 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) and inseason adjustment (87 FR 80088, December 29, 2022).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2023 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 993 mt and is setting aside the remaining 5 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 30, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 31, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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