

under multiple award contracts or schedules. Attendance at the training sessions is limited to 60 per session. For those who are unable to attend the training sessions, briefings, including briefer notes, have been posted to the Defense Procurement Web site at <http://www.acq.osd.mil/dp> under the special interest drop down box/Section 803.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition  
 Regulations Council.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 020819201-2201-01; I.D.'s 091401B and 092401E]

RIN 0648-AQ23

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

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

**ACTION:** Final rule, technical amendment.

**SUMMARY:** NMFS is issuing a correction to the interim final rule and final rule implementing the ALWTRP's Seasonal Area Management (SAM) and Dynamic Area Management (DAM) programs, respectively, which were published in the **Federal Register** on January 9, 2002. The purpose of this action is to correct errors in and make minor clarifications to the SAM interim final rule and to the DAM final rule. Some aspects of the SAM and DAM program were inadvertently omitted from the associated regulatory text and this technical amendment makes the regulatory text reflect information provided in the rules' preambles.

**DATES:** Effective October 28, 2002.

**ADDRESSES:** Copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Analysis (FRFA), are available from the Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation

of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS, Southeast Region, 9721 Executive Center Dr., St.Petersburg, FL 33702-2432.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS, Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.nmfs.gov/whaletrp/>. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at <http://www.wh.whoi.edu/psb/sar2001.pdf>. In addition, copies of the document entitled "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" and "Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation" are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or can be downloaded from the Internet at <http://www.nero.nmfs.gov/whaletrp/>.

##### Background

This final rule modifies the Atlantic Large Whale Take Reduction Plan as deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). On January 9, 2002, NMFS published a SAM interim final rule (67 FR 1142) and DAM final rule (67 FR 1133) in the **Federal Register**. The purpose of this final rule is to correct errors in and make minor clarifications in the SAM interim final rule and DAM final rule regulatory text. NMFS had discussed the SAM and DAM programs in the preambles to the SAM and DAM rules, however, some aspects of each program were inadvertently omitted from the associated regulatory text.

## Corrections

NMFS noted in the preamble to the DAM proposed (66 FR 50160) and final rules (67 FR 1133) that if NMFS decides not to implement restrictions within a DAM zone, it will issue an alert to fishermen requesting that they voluntarily remove lobster trap and anchored gillnet gear from a DAM zone and asking them not to set additional gear inside it. However, NMFS inadvertently omitted this language from the regulatory text section of the DAM rule.

The new and existing SAM gear requirements discussed in the preambles to the SAM proposed and interim final rules are intended to be required in addition to existing requirements for Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Gillnet Waters or in place of the existing requirements for those areas to the extent the SAM gear requirements conflict with them. But, text to that effect did not appear in the proposed rule's regulatory text. NMFS noted this discrepancy and intended to correct this oversight in the interim final rule. However, this clarification was also inadvertently omitted from the interim final rule's regulatory text section. Therefore, the regulations are corrected to note that the SAM gear modifications supercede requirements found at existing ALWTRP fishery specific area requirements when they are more restrictive.

The SAM interim final rule also incorrectly defined SAM East to include Point 9, 42°30' N Lat., 66°50' W Long., which is outside the Exclusive Economic Zone. This rule removes this point from the regulations and renames the remaining points. Also, NMFS clarifies that the gear restriction in § 229.32 (g)(4)(ii)(B) applies in SAM East. While the fact that the gear restrictions in § 229.32(g)(4)(ii)(B) apply in SAM East is clear from the structure of the regulations, NMFS is adding the words "in SAM East" for added clarity.

A number of clarifications are made to § 229.32 (g)(4)(i)(B). First, NMFS clarifies that the gear restriction in § 229.32 (g)(4)(i)(B) applies in SAM West. While the fact that the gear restrictions in § 229.32(g)(4)(i)(B) apply in SAM West is clear from the structure of the regulations, NMFS is adding the words "in SAM West" for added clarity. Second, NMFS mistakenly omitted from the regulatory text for the SAM interim final rule the following requirements: (1) buoy lines are to be composed entirely of sinking or neutrally buoyant

line; and (2) floating ground lines and buoy lines are prohibited. However, the preambles to the proposed and interim final rules for SAM stated that the ground lines and buoy lines were to be composed entirely of sinking or neutrally buoyant line in SAM areas, and indicated that floating ground lines and buoy lines are prohibited. Thus, the wording at § 229.32 (g)(4)(i)(B)(1) and (g)(4)(i)(B)(2) has been changed accordingly to reflect the discussion in the preambles.

Third, NMFS wrote “sinking ground line” in the heading at the beginning of § 229.32 (g)(4)(i)(B)(2); however, this has been changed to “ground line” to clarify the requirement stated in the preambles and the regulatory text following the heading that ground lines be made entirely of sinking or neutrally buoyant line. Fourth, NMFS noted on the SAM Gillnet Gear graphics that five weak links with a breaking strength not to exceed 1,100 lb (498.9 kg) each are required on a net panel. However, the word “each” was not in the regulatory text to the SAM interim final rule. Through this rule, § 229.32 (g)(4)(i)(B)(1)(iii) is clarified to indicate that the breaking strength of each weak link on a net panel must not exceed 1,100 lb (498.9 kg).

The SAM interim final rule and associated gear modifications were effective March 1, 2002; however, NMFS mistakenly indicated on the SAM Northern Nearshore and Inshore Lobster Gear and SAM Offshore Lobster Gear graphics (Figures 2 and 3) that the single

buoy line requirement was effective January 1, 2003. This correction removes the incorrect effective date from the graphics.

Figure 4 also incorrectly indicated on the SAM Gillnet Gear graphic that the single buoy line requirement was effective January 1, 2003, and described the SAM gillnet gear anchoring system as a 22 lb (9.9 kg) Danforth-style anchor. As noted above, the SAM interim final rule and associated gear modifications were effective March 1, 2002. Additionally, the regulations state that all anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (9.9 kg) Danforth-style anchor at each end of the net string. This language is consistent with the preamble of the proposed and interim final rule for SAM.

#### Classification

The Assistant Administrator (AA) finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary. Prior notice and opportunity for comment are unnecessary because the technical amendment to the regulations implementing the SAM and DAM programs merely clarifies NMFS’ intent as explained in the preambles to the rules and will have a de minimis effect, if any, on the regulated community. The clarifications do not increase the scope

of the regulated community nor add new requirements. Also, because this rule corrects and clarifies provisions and makes non-substantive or de minimis changes to the SAM and DAM regulations good cause exists, under 5 U.S.C. 553(d), not to delay the effective date for 30 days.

Because a general notice of proposed rulemaking is not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a Regulatory Flexibility Analysis is not required and none has been prepared for this technical amendment, the economic impacts on affected fisheries of the rules and alternatives to them were considered by NMFS. Copies of the analyses for the SAM interim final rule and the DAM final rule may be obtained from NMFS (see **ADDRESSES**) by requesting copies of the EA/RIRs for each program.

Dated: October 17, 2002.

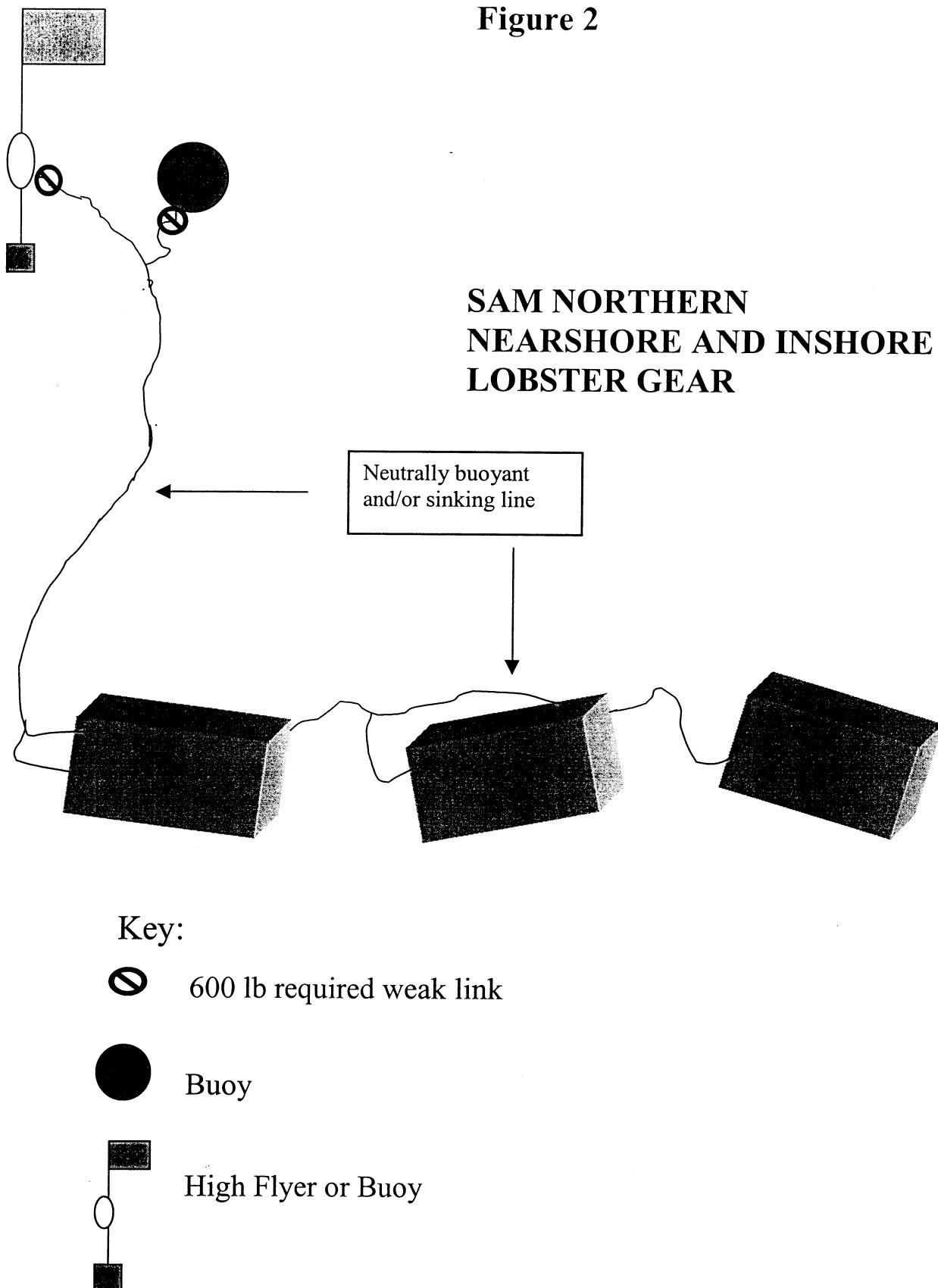
**Rebecca Lent**,

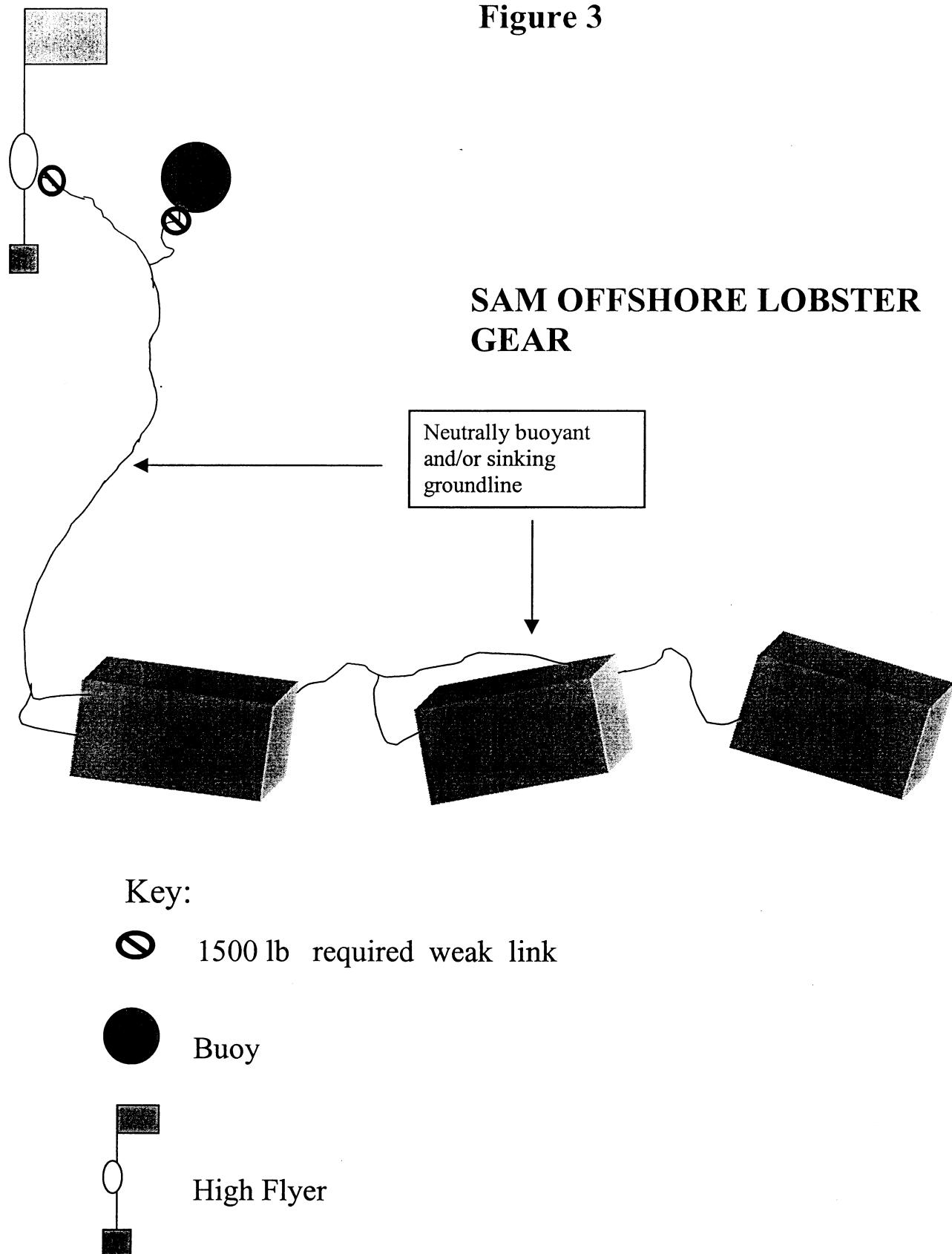
*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

#### Corrections to the Preamble of the Interim Final Rule

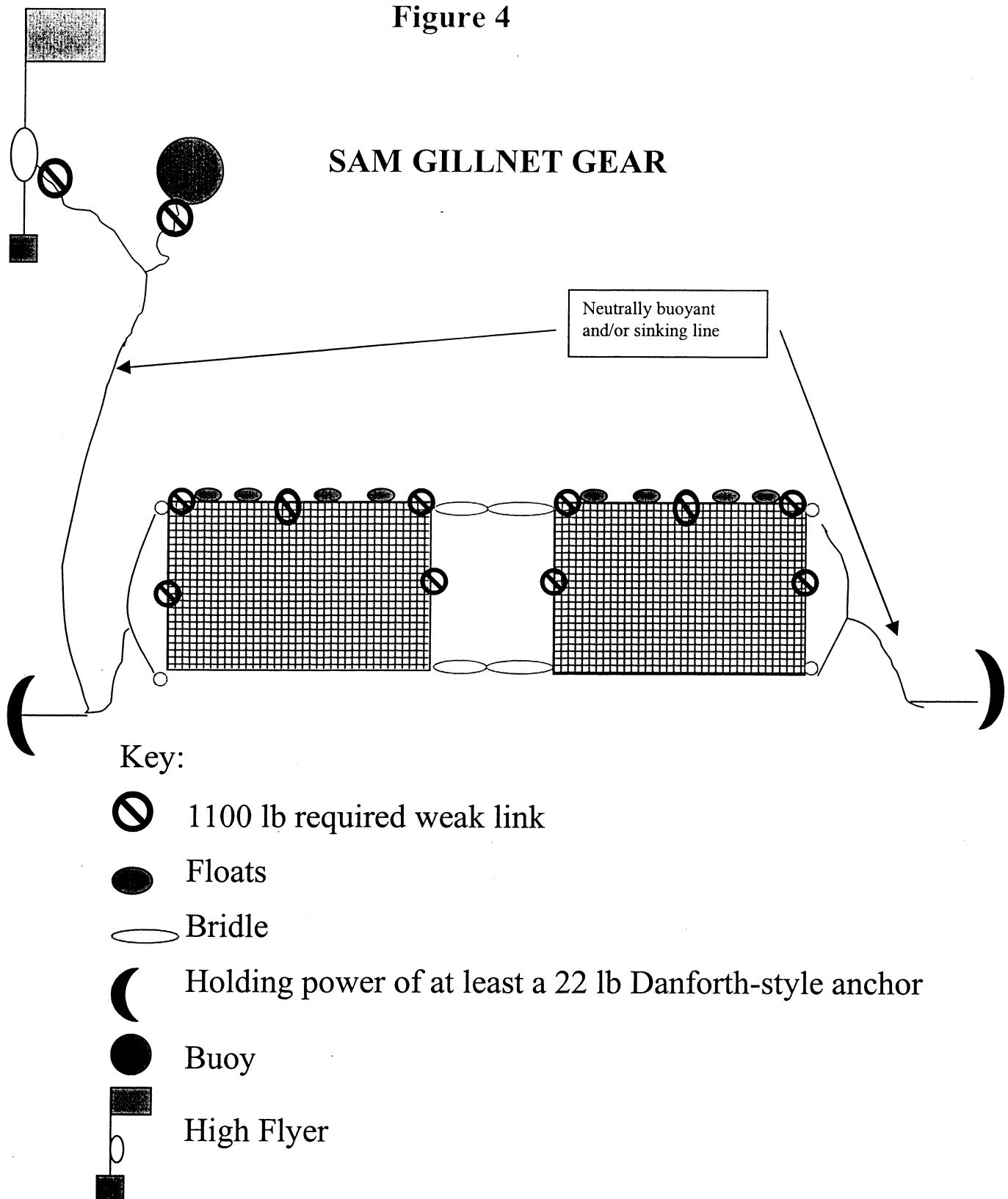
In rule FR Doc. 02-274, published January 9, 2002 (67 FR 1142), make the following corrections:

1. On pages 1146 and 1147, Figures 2 and 3 are corrected to read as follows:  
**BILLING CODE 3510-22-S**

**Figure 2**



2. On page 1149, Figure 4 is corrected to read as follows:



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

Fisheries, Marine mammals.

For the reasons set out in the preamble, 50 CFR part 229 is corrected by making the following correcting amendments:

**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.*

**§ 229.32 [Corrected]**

2. Corrected § 229.32 as follows:

a. Paragraph (g)(3)(iii) introductory text is corrected by removing the word “either” in the last sentence;

b. Paragraph (g)(3)(iii)(A) is corrected by removing the word “or” at the end of the text;

c. Paragraph (g)(3)(iii)(B) is corrected by adding “and/or” at the end of the text;

d. Paragraph (g)(3)(iii)(C) is correctly designated as (g)(3)(iii)(D); and

e. A new paragraph (g)(3)(iii)(C) is added and paragraphs (g)(4) introductory text, (g)(4)(i)(B) and (g)(4)(ii) are correctly revised to read as follows:

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

\* \* \* \* \*

(g)\* \* \*

(3)\* \* \*

(iii)\* \* \*

(C) Issue an alert to fishermen using appropriate media to inform them of the fact that right whale density in a certain area has triggered a DAM zone. In the alert, NMFS will provide detailed information on the location of the DAM zone and the number of animals sighted within it. Furthermore, NMFS will request that fishermen voluntarily remove lobster trap and anchored gillnet gear from the DAM zone and ask that no additional gear be set inside it for 15 days or until NMFS rescinds the alert.

\* \* \* \* \*

(4) *Seasonal Area Management (SAM) Program.* In addition to existing requirements for vessels deploying anchored gillnet or lobster trap gear in the Other Northeast Gillnet Waters, Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Offshore Lobster Waters found at

§ 229.32 (b) – (d), a vessel may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, which overlay the previously mentioned areas, provided the vessel complies with the gear requirements specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section during the times specified in those paragraphs. The gear requirements in (g)(4)(i)(B) and (g)(4)(ii)(B) supercede requirements found at § 229.32 (b) - (d) when the former are more restrictive than the latter. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(i)\* \* \*

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from March 1 through April 30, no person may fish with anchored gillnet or lobster trap gear in SAM West unless that person’s gear complies with the following gear characteristics:

(1) *Anchored gillnet gear.* (i) Ground lines and Buoy lines—All ground lines and buoy lines must be made entirely of sinking or neutrally buoyant line. Floating ground lines and buoy lines are prohibited.

(ii) *Buoy weak links—*All buoy lines are attached to the buoy with a weak link having a maximum breaking strength of up to 1,100 lb (498.9 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) *Net panel weak link—*Each net panel must have a total of five weak links. The breaking strength of each of these weak links must not exceed 1,100 lb (498.9 kg). The weak link requirements apply to all variations in panel size. Three of the five weak links must be located on the floatline. One floatline weak link must be placed at the center of the net panel, and two weak links must be placed as close as possible to each of the bridle ends of the net panel. The remaining two of the five weak links must be placed in the center of each of the up and down lines at either end of each panel.

(iv) *Buoy line—*No more than one buoy line per net string may be used, and it must be deployed at the northern

or western end of the gillnet string depending on the direction of the set.

(v) *Gillnet anchor—*All anchored gillnets, regardless of the number of net panels, must be securely anchored with a holding power of at least a 22 lb (9.9 kg) Danforth-style anchor at each end of the net string.

(2) *Lobster Trap gear.* (i) *Ground lines and Buoy lines—*All ground lines and buoy lines must be made entirely of sinking or neutrally buoyant line. Floating ground lines and buoy lines are prohibited.

(ii) [Reserved]

(iii) *Offshore Lobster Waters Area buoy weak links—*All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 1,500 lb (680.4 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iv) *Buoy line—*No more than one buoy line per trawl is allowed. The buoy line must be attached to the northern or western end of the trawl string depending on the direction of the set. These requirements supersede the requirements found at § 697.21, which require one radar reflector at each end of a trawl with more than three traps.

(ii) *SAM East.* (A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

**SAM EAST**

Point	N. Lat.	W. Long.
SAM5	41°48.9'	69°24'
SAM4	42°30'	69°24'
SAM8	42°30'	67°26'
SAM9	41°45'	66°50'
SAM10	41°45'	68°17'
SAM11	42°10'	68°31'

(B) *Gear requirements.* Unless otherwise authorized by the Assistant Administrator for Fisheries, NMFS, in accordance with paragraph (g)(2) of this section, from May 1 through July 31, no person may fish with anchored gillnet or lobster trap gear in SAM East unless that person’s gear complies with the gear characteristics found at paragraph (g)(4)(i)(B) of this section.

\* \* \* \* \*

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