DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 011120279–1279–01; I.D. 092401E]

RIN 0648–AP68

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposal to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to provide further protection for large whales, with an emphasis on North Atlantic right whales, through a program called Seasonal Area Management (SAM). This action is necessary due to the critical status of the North Atlantic right whale population. The intent of this action is to reduce interactions between North Atlantic right whales and fishing gear and to reduce serious injury and mortality of North Atlantic right whales due to entanglement in fishing gear.

DATES: Comments on this proposed rule must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on December 13, 2001. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this proposed rule to the Chief, 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 to Gregg LaMontagne, NMFS/ Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Gregg LaMontagne, NMFS, Northeast Region, 978–281–9291 or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this proposed 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. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, http://www.coastalstudies.org/.

Background

On June 14, 2001, NMFS issued four Biological Opinions (BOs) as the result of section 7 consultations on three Fishery Management Plans (FMPs) for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. The BOs concluded that the regulations implementing the three FMPs and lobster regulations are likely to jeopardize the continued existence of North Atlantic right whales. As a result of these jeopardy findings, the BOs provided a Reasonable and Prudent Alternative (RPA) with multiple management components.

The RPA

The BOs provide that the RPA will minimize interactions or overlap between North Atlantic right whales and fishing gear, with the goals of both reducing the total number of entanglements and eliminating serious injury or mortalities of North Atlantic right whales. The RPA identifies the fisheries effects that serve as the basis for the jeopardy determination as ''serious injury or mortality that may result from documented entanglements.'' Jeopardy is defined as engaging in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers or distribution of that species. An entanglement would not reasonably be expected to always result in a reduction in reproduction, numbers or distribution of North Atlantic right whales. However, entanglements that result in a serious injury or mortality of a North Atlantic right whale would result in a reduction in numbers of North Atlantic right whales and therefore would result in jeopardy. The gear modifications proposed for SAM areas address both the goal of reducing the total number of entanglements (through significant reductions in vertical line) and the goal of avoiding serious injury or mortality (through the incorporation of weak links in greater frequency and at reduced breaking strengths).

RPA Discussion of SAM

SAM is one component of the RPA contained in the BOs. The RPA provides that ''NMFS shall...effect annual restrictions to minimize interactions between fishing gear and North Atlantic right whales.'' Area restrictions that could be included in the management scheme as specified in the RPA include closing areas to fishing gear or restricting the areas to only modified gear that has been proven to prevent serious injury or mortality to North Atlantic right whales. It is important to note that the RPA did not require that NMFS must eliminate interactions between fishing gear and North Atlantic right whales through these annual restrictions but that NMFS must minimize the interaction. In addition, the RPA presented two management schemes for SAM-- closures or restrictions. The BOs provide that the Conservation Significance of the SAM component of the RPA is ''reducing the potential for interactions between North Atlantic right whales and fishing gear.'' The proposed gear restrictions for SAM reduce the potential for interactions to occur and also reduce the potential for interactions between North Atlantic right whales and fishing gear to result in serious injury or mortality. The RPA requires this management component to be implemented by a final rule no later than December 31, 2001. NMFS considered the two alternatives of closures or gear restrictions, and for the reasons articulated in this notice, identified gear restrictions as the proposed action. Comments on this proposed action will be considered in determining the course of action to be pursued in the final rule.

Background for this proposed rule is provided in an Advance Notice of Proposed Rulemaking (ANPR) (66 FR 50390, October 3, 2001), which described the SAM program in general terms and requested public comment. Fourteen sets of written comments on the ANPR were received during the comment period date established by the ANPR, which ended November 2, 2001. NMFS received written comment from fishermen, conservationists, and state managers.

Comments received from conservation groups generally supported the SAM concept and favored a proposed rule that would implement North Atlantic right whale protection consistent with the RPAs of the BOs. The conservation groups supported SAM areas where

predictable seasonal congregations occur, including Jeffrey's Ledge and portions of the Gulf of Maine and Georges Bank. Furthermore, conservation groups supported a prohibition on fixed gear unless the gear has been determined to be ''whale safe'' or low risk, as defined by the ALWTRT. Several conservation groups defined ''whale safe'' gear as gear with no chance of entanglement and low risk gear as gear for which it could be expected that any entanglements would be minor and chances of death or serious injury to whales would be highly unlikely.

NMFS is engaging in proposed and final rulemaking, which the commenters favored, as evidenced by this proposed rule. The SAM area proposed in this document extends from Cape Cod to the Hague Line and includes the northern edge of Georges Bank. Animals were not sighted on Jeffreys Ledge or other portions of the Gulf of Maine in all three years of survey data which was analyzed for the SAM area designation. Therefore, these areas were not included in the SAM areas and NMFS intends to manage these areas using another proposed management measure called Dynamic Area Management (DAM). In line with comments from conservation groups, this proposed rule would establish a SAM area and allow lobster trap and gillnet gear to be fished if that gear is low risk as defined at the June 2001 ALWTRT meeting, i.e., gear for which an entanglement would be highly unlikely to result in death or serious injury.

Several state agencies also commented in support of the SAM concept. In particular, the Commonwealth of Massachusetts and State of Maine both support SAM, but strongly recommended that NMFS consider gear modifications consistent with the recent settlement agreement between Massachusetts and environmental groups that sued the Commonwealth over its measures to protect North Atlantic right whales. Other comments received from fishermen and fishermen associations also supported gear modifications for SAM areas.

In response to comments from state fisheries agencies and fishermen, NMFS notes that this proposed rule identifies gear modifications that would allow lobster trap and gillnet gear to be fished in the SAM area while also protecting North Atlantic right whales from serious injury and mortality.

All comments received through November 2, 2001, will be considered in the final decision of this action and will be addressed in the SAM final rule.

Proposed SAM Program

NMFS proposes a SAM program to protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the Exclusive Economic Zone line (see figure 1). NMFS would define two areas, called SAM West and SAM East, in which gear restrictions for lobster trap and anchored gillnet gear would be required. These proposed requirements would be more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description). The time/area restrictions are based on the annual predictable presence of North Atlantic right whales as observed in aerial surveys from 1999-2001 (Merrick, et al. 2001). SAM West is proposed on an annual basis for the period March 1 - April 30. SAM East is proposed on an annual basis for the period May 1 - July 31. The dividing line between SAM West and SAM East is proposed at the 69° 24' west longitude line. See table 1 for the spatial and temporal definitions of the areas.

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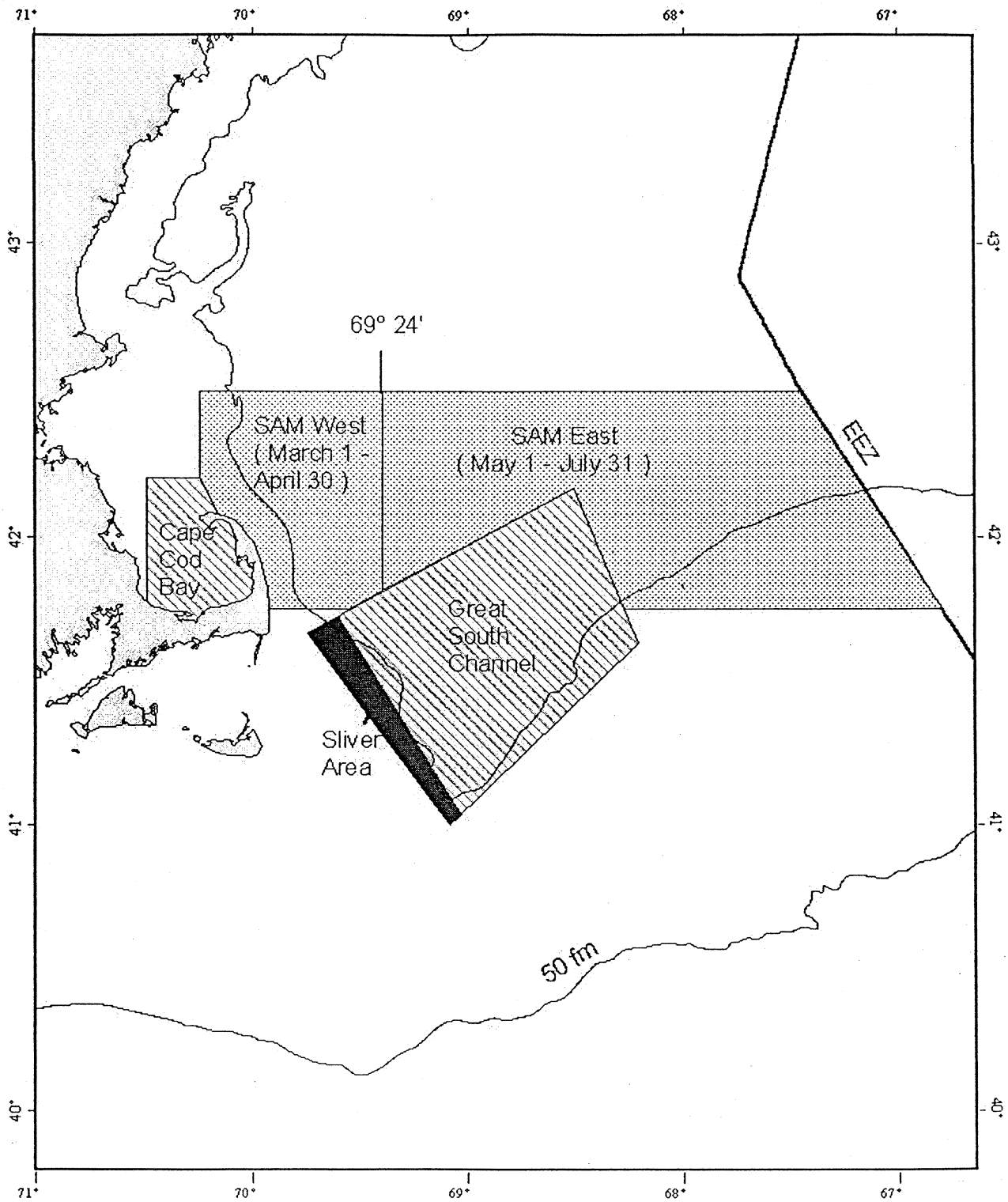
Figure 1 - Atlantic Large Whale Take Reduction Plan Seasonal Area Management (SAM)



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Interaction with other Restrictions

The proposed gear restrictions for the SAM areas would not preempt existing restrictions within Cape Cod Bay and the Great South Channel critical habitat for North Atlantic right whales. In addition, NMFS published a proposed rule that would provide clear authority to implement Dynamic Area Management (DAM) (66 FR 50160, October 2, 2001) which the BOs provide will be implemented as a final rule no later than December 31, 2001. DAM is designed to respond to unexpected aggregations of North Atlantic right whales outside of critical habitat and other regulated waters, such as the proposed SAM areas. The DAM program proposed would include short-term closure to lobster trap and gillnet fisheries. Because SAM areas would protect areas of known North Atlantic right whale aggregations, NMFS does not anticipate that DAM areas will be established within SAM areas. However, the DAM program, as proposed, allows NMFS to implement DAM within SAM areas if conditions warrant such action. NMFS anticipates that the DAM program could be necessary during the times and in the areas when SAM is not in effect. NMFS will consider comments received on the proposed rule on DAM as well as this proposed rule to further refine the relationship between DAM and SAM.

SAM Gear Restrictions

The proposed SAM rule would implement a management scheme that restricts fishing with lobster trap and gillnet gear within the SAM areas to only modified gear that has been proven to prevent serious injury or mortality to North Atlantic right whales. This is achieved through the following means: (1) Identifying and delineating areas of seasonal concentrations of North Atlantic right whales; (2) reducing the amount of lobster trap and gillnet gear in the water column; and (3) requiring gear modifications that minimize the potential for serious injury or mortality of North Atlantic right whales in SAM areas.

NMFS is proposing to implement the approach identified in the RPA of restricting areas to modified gear that has been proven to prevent serious injury or mortality to North Atlantic right whales (rather than closing these areas to fishing gear). The first question that must be answered is what is meant by ''proven.'' It is not feasible, in the typical scientific fashion, to conduct and evaluate experiments on North Atlantic right whale interactions with modified gear. NMFS cannot conduct laboratory or field trials on North Atlantic right whales to collect data. NMFS is able, however, to scrutinize past entanglements and learn from them ways to modify gear so that future serious entanglements do not occur. Since the issuance of the BOs, NMFS has conducted additional analysis of available data including that on the seasonal movement and congregations of right whales, previous entanglements, and the nature and position of gear in the water. Based on these analyses and our knowledge of North Atlantic right whale behavior, NMFS has identified gear modifications that are proven to prevent serious injury or mortality.

The first category of data that has been evaluated is past records of North Atlantic right whale entanglements that resulted in serious injury or mortalities to identify fishing gear that has been proven to result in serious injury or mortality. Utilizing entanglement data from 1999-2001, NMFS concluded that fishing line in the water column presents the highest entanglement risk from fishing gear to the North Atlantic right whale. NMFS examined these cases to determine the cause of the entanglement that resulted in serious injury or mortality and identified gear modifications that would prevent such injuries or mortalities in the future. These cases involved buoyline, floatline, endline and groundline. The proposed gear modifications include provisions to address each of these gear components that have been determined to be sources of entanglement.

Floating line has been identified as the source of North Atlantic right whale entanglement because the line is designed to float in the water column to avoid contact with the bottom of the ocean during lower tides. The slack in the floating line is identified as a source of North Atlantic right whale entanglement. NMFS determined that typical offshore lobster pot gear is configured with approximately 7,000 ft (2,134 m)of floating line. Video recording of typical lobster gear with floating groundline between traps revealed that the line forms large loops in the water column between traps. Similar video recording of neutrally buoyant line between traps revealed that it did not have the same vertical profile as floating line; rather, it was located on or near the bottom and was not available to North Atlantic right whales as an entanglement risk. To minimize interactions between fishing gear and North Atlantic right whales, the proposed SAM rule would prohibit floating line for all lobster pot and gillnet gear within the SAM areas during the times specified. By eliminating floating line and requiring sinking or neutrally buoyant line, approximately 85 percent of the line within the water column would be eliminated.

Based on recent cooperative research between the NMFS Gear Research Team and an offshore lobster industry representative, NMFS estimates that outfitting an offshore lobster vessel with neutrally buoyant line would require approximately 50 nautical miles (nm) (80.5 km)of line. A typical changeover estimate to neutrally buoyant line from floating line for the northern inshore lobster fishery in the SAM area is on the order of 5 nautical miles of line per vessel. Preliminary estimates for the SAM East area suggest that 10 offshore lobster vessels operate in the area with a limit of 1,800 traps per vessel. Forty five trawls of 40 traps each is the typical gear configuration for these 10 offshore lobster vessels. Each trawl uses up to 30 fathoms of groundline between each trap. The proposal to utilize neutrally buoyant and/or sinking line would remove as much as 600 nm (968 km) of floating line from the water column during the time when NMFS expects North Atlantic right whales to be in the area. A greater amount of floating line would be removed from the water column when one considers that the lobster and gillnet vessels in the SAM West area, as well as gillnet vessels in the SAM East area, would also be required to change over from floating to neutrally buoyant or sinking line.

Vertical line between the gear and the surface system is another source of entanglement. By allowing only a single buoy line per net string for gillnet gear and a single buoy line per trawl for lobster trap gear, the amount of vertical line in the water column is further reduced by 50 percent. It is not technologically feasible at this time to remove all vertical lines from the water column, since there has to be some way for fishermen to haul a line at the surface to bring up gear from the sea floor.

The 85-percent reduction in floating line and 50-percent reduction in vertical line are methods that prevent serious injury or mortality to North Atlantic right whales. If the line is not within the water column the threat of entanglements from these gear components is eliminated.

The measures proposed result in a significant reduction in the volume of line in the water column in SAM areas. However, line still remains at the one buoy line for both lobster and gillnet gear and in the panels of gillnet gear. The amount of line in the buoy line that is vertical in the water column would be

reduced significantly by the proposed prohibition on the use of floating line. To further reduce the risk posed by remaining vertical line, weak links at reduced breaking strengths are proposed as a requirement of the modified gear.

Past entanglements provide evidence that weak links are a critical measure to prevent serious injury or mortality of marine mammals. The proposed placement of the weak links is designed to provide key breaking points so that any North Atlantic right whale that does become entangled would be able to break free (by breaking a weak link) prior to any serious injury or mortality. For gillnet gear set in the SAM areas, each net panel would be required to have a total of 5 weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). One floatline weak link would be required to be placed at the center of the net panel and two weak links would be placed as close as possible to each of the bridle ends of the net panel. The remaining two weak links would be placed in the center of each of the up and down lines at either end of each panel. In addition, all anchored gillnets are required to 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. Serious injuries and mortalities have occurred when North Atlantic right whales became wrapped in gear. When a North Atlantic right whale encounters gear that does not have weak links and is not properly anchored then any effort by the whale to free itself of the gear likely results in it becoming further and further wrapped up in the gear. Anchoring provides tension so that, when a whale encounters the anchored gear, sufficient tension is placed on the line, which is then likely to break at the weak links resulting in the whale either entirely breaking free of the gear or swimming away with a line or portion of gear rather than being wrapped in the gear. When the gear is attached to the whale in this manner, rather than being wrapped around the whale, it can be shed by the whale or may be removed through disentanglement efforts, and serious injury or mortality may be avoided.

In order to evaluate the effectiveness of weak links placed in the float line of gillnets, NMFS conducted investigations simulating an entanglement. NMFS placed strain on fifteen net strings that were anchored and twenty that were not anchored. Trials were run with both 600 lb (272.2 kg) and 1,100 lb (498.9 kg) weak links at three places on the floatline. When strain was applied to the gillnets with proper anchoring systems, the floatline weak line broke with very little net attached. This provides evidence that the weak links can be expected to break when encountering strain such as that placed on it by a marine mammal. The fact that the weak link broke quickly and cleanly provides evidence that an encounter between a North Atlantic right whale and gillnet gear with proper anchoring and the five proposed weak links would be highly unlikely to result in the serious injury or mortality of that North Atlantic right whale. It is also important to note that recently a float has been designed and developed that incorporates a weak link allowing fishermen to place weak links in gillnet gear much more easily.

A study was conducted in 1997 by the Department of Fisheries, University of Rhode Island, to estimate the tractive force for the North Atlantic Right Whale. Maximum propulsive force (forward moving burst force) estimates for the North Atlantic right whale ranged from 465 lbs (210.9 kg) for 13 foot (3.9 m) whales to 9,440 lb (4,281.9 kg) for 59 foot whales. Maximum estimates of tractive forces for right whales ranged from 135 lb (61.2 kg) for 13 foot (3.9 m) whales to 6,969 lb (3,161 kg) for 59 foot (17.9 m) whales. Data on objects towed by right whales during rescue operations was also analyzed to determine forces capable of being generated by right whales. During the disentanglement of a 43 foot (13.1 m), 38.6 ton right whale, the Center for Coastal Studies attempted to fatigue the whale by adding an 8 foot (2.4 m) sea anchor, 5 Norwegian balls, and an inflatable boat. A 42 foot (12.8 m) fishing vessel was also tied to the whale. The vessel and gear were towed by the whale for one hour at a speed of 9 knots. The total estimated drag on the whale during this operation ranged from 593 lb to 2,369 lb (268.9 kg to 1,074.6 kg). In addition, during the rescue the whale parted a rope with an estimated breaking strength of 400 lb (181.44 kg). The size of animals in the Bay of Fundy are likely to reflect the size of animals that pass through SAM. Seventy-seven animals observed and measured in the Bay of Fundy in 2000 and 2001 ranged in size between 25 to 50 feet (7.5 to 15 m). Of these seventy-seven animals, 86% were greater than 33 feet (10 m). Based on this information, it would appear that most right whales in the SAM area would be able to exert enough force on the 1,100 weak links to break them and thus become free of the gear.

In July 2001, a North Atlantic right whale was observed entangled in offshore lobster gear. The gear investigation determined that the entanglement was in the surface system (consisting of the buoy(s) and high flyer). Weak links were required in the portions of the gear where the entanglement occurred and, based on the gear remaining in the water and that was removed from the whale during disentanglement, it was determined that the weak link had functioned properly and had released the whale from the lobster pots. Based on the gear investigation, it was determined that the weak link allowed the North Atlantic right whale to break away from the majority of the offshore lobster gear, ending up with only a small piece of the line. The whale was completely disentangled by the Center for Coastal Studies without any serious injury or mortality. Based on weak link studies and reviews of gear configurations involved in entanglements, NMFS concludes that the additional weak links and lower breaking strengths in the surface system proposed in the SAM regulations would have likely allowed the North Atlantic right whale to free itself of all gear.

The concept of removing floating line from groundlines and buoy lines and the increased use of weak links was supported in discussions with the ALWTRT at its June 27-28, 2001 meeting and in public comments received on the SAM ANPR. The ALWTRT membership includes environmental interests, fishermen, gear experts, state and federal fisheries managers and large whale biologists who are considered experts in their respective fields. This group, as evidenced by the extensive development of additional gear modifications at the June 27-28, 2001, ALWTRT meeting, generally supports gear modifications as an element of SAM. NMFS believes that this proposed rule provides significant conservation benefits to North Atlantic right whales and that these measures, as a component of the RPA, remove jeopardy for the North Atlantic right whale.

Level II or Low Risk Gear is proposed as a requirement within a SAM area. A definition developed by a subgroup of the ALWTRT states that Level II or Low Risk Gear is gear for which any entanglement would be minor, meaning where death or serious injury is highly unlikely. NMFS is proposing that the gear listed below be required to fish in SAM areas during the specified times.

The information and analysis provided previously in this document demonstrates that the gear modifications proposed for SAM areas (including replacing floating line with neutrally buoyant line, additional weak links, reduced breaking strengths for weak

links and limits on the number of buoy lines) are proven to prevent serious injury or mortality to North Atlantic right whales. The proposed SAM measures would, therefore, implement the SAM portion of the RPA as described in the June 14, 2001, BOs.

Research and Monitoring Portion of the RPA

Some of the gear modifications that would be included as requirements for lobster and gillnet gear in the SAM area were contained in the RPA under the heading of ''Continue gear research and modifications.'' Specifically, this includes expanded research and testing on eliminating floating line in the anchor and buoy lines of gillnet gear and testing and evaluating the replacement of floating line in lobster gear with neutrally buoyant groundline. The testing and evaluation is identified within the RPA as being necessary to determine whether these measures are feasible. The rationale for including additional investigation in the RPA was to allow for further evaluation to determine the feasibility of adoption of these gear modifications. This research will expand and refine work previously completed and increase cost effectiveness. This investigation was not needed or intended to evaluate the effectiveness of these gear modifications in terms of their ability to minimize the risk to North Atlantic right whales either by reducing the potential for entanglement or by minimizing the potential for any entanglements to result in serious injury or mortality of North Atlantic right whales. While it may not be feasible to require these gear modifications on a broad scale, we have determined that it is appropriate to require their use in SAM areas because they have been proven effective at reducing entanglements and the severity of any entanglements that do occur and the higher costs and logistical barriers are justified due to the increased risk posed by the greater concentration of North Atlantic right whales observed in the SAM area on an annual basis. Fishermen on an individual basis will evaluate the costs of these gear modifications and make a decision whether to implement the required gear modifications, which allow them to fish within the SAM areas during the restricted times, not fish during these times, or fish in other areas during these times.

Consideration of Prohibiting Lobster Trap and Gillnet Gear from SAM Areas

NMFS considered the two alternative methods for SAM implementation provided in the RPA, which include closing areas to fishing gear or restricting the areas to only modified gear that has been proven to prevent serious injury or mortality to North Atlantic right whales. For the reasons specified above, the selection of the latter option is believed to be sufficiently protective of North Atlantic right whales and, in combination with other measures in the BO, remove jeopardy. The proposed gear modifications would both reduce the potential for interactions through a significant reduction in vertical line and reduce the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths.

Initially, it may appear that the option of closing the SAM area to all fishing would offer greater relative protection to North Atlantic right whales. However, enacting a complete closure to lobster and gillnet gear within SAM areas could have the result of concentrating effort at the margins of the SAM areas. This is a well-known behavior in response to closed areas. It is important to note that the SAM area is an area where concentrations of North Atlantic right whales appear on a regular annual basis but it does not, and is not intended to include all areas where North Atlantic right whales occur in the Gulf of Maine during this time of year. Furthermore, North Atlantic right whales passing into and out of the SAM area closures would be at increased risk of serious injury or mortality because gear deployed outside of the SAM area closures would not have incorporated additional modifications to reduce the risk to right whales. It is also expected that fishermen who modify their gear to comply with the SAM gear restrictions would maintain those modifications in their gear when fishing outside of the SAM area. This would result in increased risk reduction in areas and at times not affected by SAM. However, NMFS is seeking public comment on both alternatives and, based on the comments received, reserves discretion to implement either of the two alternatives.

Lobster Trap and Anchored Gillnet Gear for use in Seasonal Area Management(SAM)areas for March 1 - July 31

The gear listed below under the lobster trap and gillnet headings is intended to describe the gear that meets or exceeds the definition of Level II or Low Risk Gear. Level II or Low Risk Gear, as described during the June 2001 ALWTRT meeting, is gear for which any entanglement would be minor, where death or serious injury is highly unlikely. These requirements are in addition to or, where specifically stated, replace the existing or most recently proposed ALWTRP requirements.

Level II or Low Risk Lobster Trap Gear for use in SAM areas would include all of the following characteristics:

(1) Groundlines and buoy lines must be made of either sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

(2) Fishermen operating in offshore lobster waters within a SAM area must utilize a weak link at all buoys with a maximum breaking strength of 1,500 lbs (680.4 kg) in place of the current proposed 2,000 lbs (907.2 kg) weak link at all the buoys. Each weak link must be placed as close to each individual buoy as operationally feasible (See figure 2);

(3) Fishermen operating in offshore lobster waters within a SAM area must utilize a weak link with a maximum breaking strength of 3,780 lbs (1,714 kg) between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading to the trawl on the ocean floor (See figure 2)(Note: This measure is also proposed for the entire offshore lobster waters area in a separate rulemaking in progress, 66 FR 49896, October 1, 2001); and

(4) Fishermen operating in the offshore and nearshore lobster waters within the SAM areas must utilize a single buoy line to mark each trawl. This line must be attached to the northern or western end of the trawl string depending on the direction of the set. Be advised, that these proposed requirements on the number of buoy lines supersede the provision requiring one radar reflector at each end of a trawl with more than three traps, found at 50 CFR 697.21.

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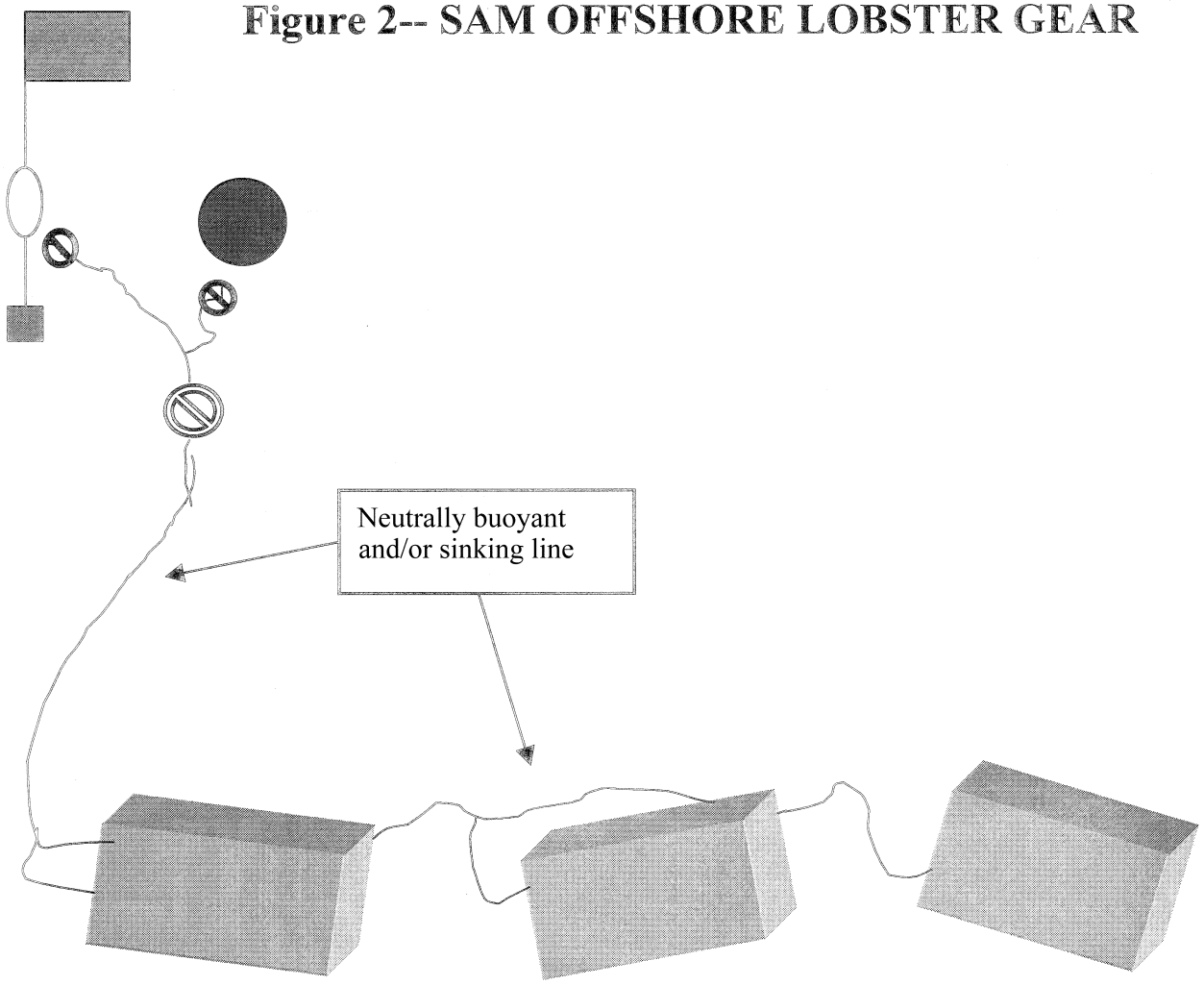
Figure 2-- SAM OFFSHORE LOBSTER GEAR

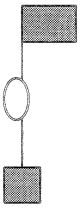


Key:

1500 lb required weak link

3780 lb required weak link

Buoy


High Flyer

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The single buoy line to mark each trawl is intended to further enhance the protection of endangered North Atlantic right whales. The two reflector requirement imposed under the American lobster regulations was designed to reduce gear conflicts. Given the critical juncture of North Atlantic right whale management, it is imperative that vessel operators understand the need to protect North Atlantic right whales while at the same time, respect the property of fellow fishers.

Level II or Low Risk Anchored Gillnet Gear for use in SAM areas would include all of the following characteristics:

(1) Groundlines, meaning the lines between the net bridle and the anchors, and buoy lines must be made of sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

(2) A weak link with a maximum breaking strength of 3,780 lbs (1,714 kg) must be installed between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading to the net panels (See figure 3);

(3) Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include 3 floatline weak links. The placement of the weak links on the floatline must be at the center of the net panel and as close as possible to each of the bridle ends of the net panel. The remaining 2 weak links must be placed in the center of each of the up and down lines at the panel ends;

(4) Fishermen utilizing gillnets within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the gillnet string depending on the direction of the set; and

(5) All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lbs (9.9 kg) Danforth style anchor at each end of the net string.

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Figure 3 - SAM GILLNET GEAR

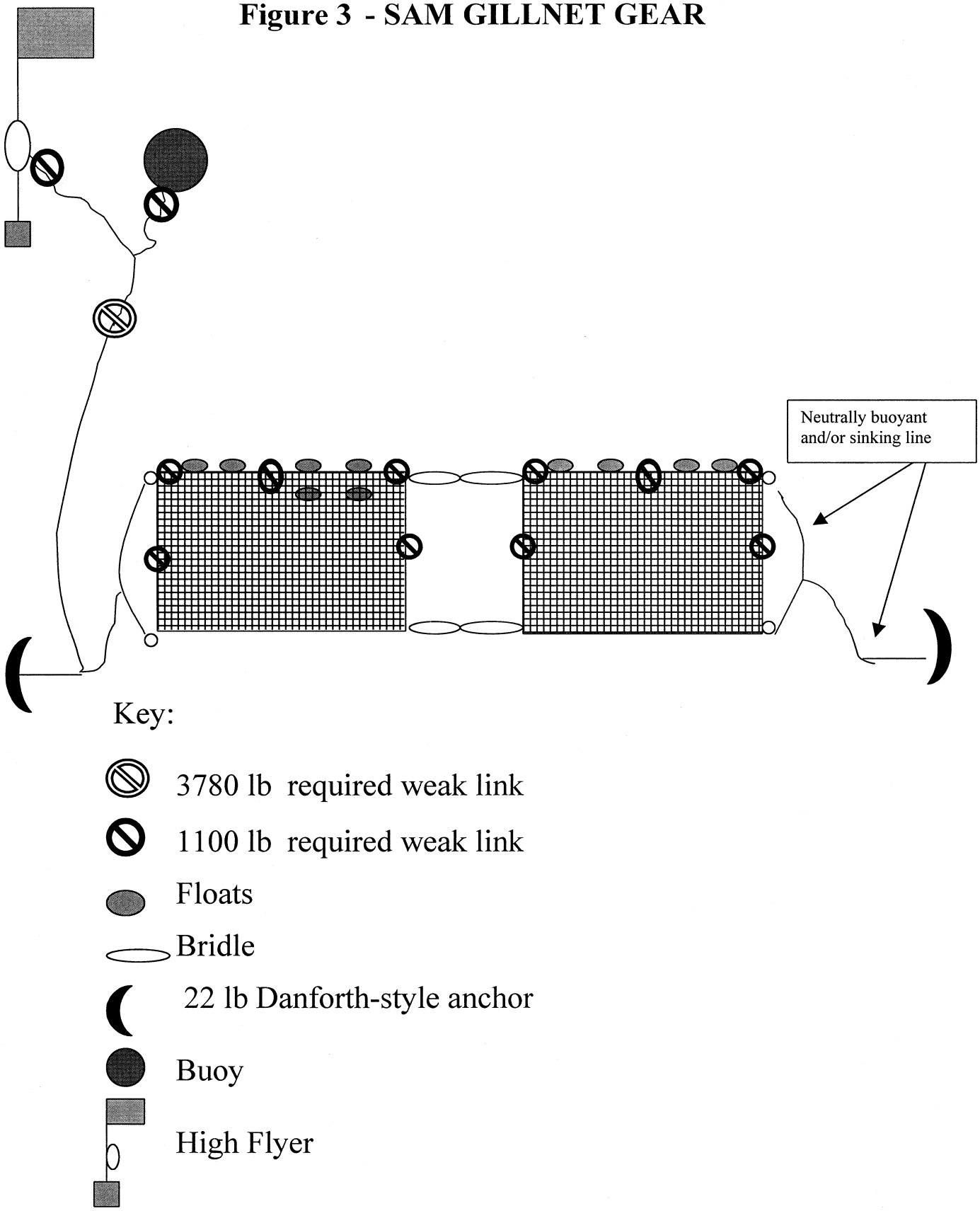

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TABLE 1: SEASONAL AREA MANAGEMENT AREAS SAM WEST POLYGON–IN EFFECT FROM MARCH 1– APRIL 30

Point	Latitude (North)	Longitude (West)	Comment
1	42° 04.8′	70° 10′	NE landfall of Cape Cod Bay(CCB) Critical Habitat (CH) at shoreline
2	42° 12′	70° 15′	NE corner CCB CH
3	42° 30′	70° 15′	NW Corner SAM West
4	42° 30′	69° 24′	NE Corner SAM West
5	41° 48.9′	69° 24′	NW side of Great South Channel CH
6	41° 45′	69° 33′	runs along GSC CH
7	41° 45′	69° 55.8′	SW landfall at Cape Cod
		.....	return along shoreline to point 1

SAM EAST POLYGON - IN EFFECT FROM MAY 1 - JULY 31

Point	Latitude (North)	Longtitude (West)	Comment
1	41° 48.9′	69° 24′	NW side of GSC CH
2	42° 30′	69° 24′	NW corner of SAM East
3	42° 30′	67 ° 27′	NE corner SAM East
4	41° 45′	66° 48′	SE corner SAM East
5	41° 45′	68° 17′	runs to great South Channel CH
6	42° 10′	68° 31′	runs along NE side of GSC CH
			Return along NW side of GSC CH to point #1

Classification

This proposed rule has been determined to be significant for the purposes of Executive Order 12866, because the proposal is controversial.

Though NMFS has not prepared an IRFA or an Regulatory Impact Review, preliminary data on the impact of this proposed rule, if adopted, is available. NMFS seeks comment on this data, as well as additional data to use in preparation of a final regulatory flexibility analysis. Under the worst case scenario, vessel operators will simply not convert their gear under the proposed action, and not fish during the SAM closure. Based on an economic analysis of 2000 right whale sightings data, total forgone industry revenues are estimated at $5.2M for the lobster and sink gillnet fishery under this worst case scenario. However, this proposed rule may mitigate these costs by allowing vessels to fish in the SAM area if they convert their gear as described within this document. Two outcomes are possible. First, the cost of gear conversion may be greater or equal to potential revenues in SAM. In this case they would choose to fish elsewhere or not fish at all, but total forgone revenue would not be expected to exceed $5.2M. A second possible outcome is that gear conversion costs would be less than potential revenues earned in SAM. In this case, vessel operators are likely to convert their gear. If it is assumed that their catch rates will be the same with the gear conversion, the cost of this option is the sum of the gear conversion costs which is expected to be less than $5.2M.

Section 608(a) of the Regulatory Flexibility Act (RFA) states that an agency may waive or delay completion of some or all of the requirements of section 603, if an emergency situation exists that makes compliance with the provisions of section 603 impracticable. NMFS has determined that an emergency situation exists that makes compliance with section 603 impracticable for the following reasons. The June 14, 2001, BOs on the four fisheries subject to this proposed action determined that the continued operation of those fisheries is likely to jeopardize the continued existence of the western North Atlantic right whale and established an extremely short time frame for conducting the ALWTRT meeting to help develop a SAM program and for conducting rulemaking to implement a SAM program designed to remove the likelihood of jeopardy. The RPA to the continued operation of the fisheries outlined in the BOs requires issuance of the final rule for SAM by December 31, 2001. Also, a court order was issued on October 3, 2001, in litigation pertaining to the implementation of the RPA. That court order required the agency to issue a proposed rule to implement SAM by November 23, thereby making it impracticable for the agency to complete the analysis required under section 603 prior to publication of the proposed rule.

References

Merrick, R.L.; Clapham,P.J.; Cole,T.V.N.; Gerrior,P.;Pace, R.M., III. 2001. Identification of seasonal area management Areas for North Atlantic right whale conservation. Northeast Fish. Sci. Cent. Ref. Doc. 01-14;18p. Available from: National Marine Fisheries Service, 166 Water St., Woods Hole, MA 02543-1026.

List of Subjects in 50 CFR Part 229

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

Dated: November 23, 2001.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

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

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

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

2. In § 229.32, paragraph (g)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(4) Seasonal Area Management (SAM) Program. All vessels deploying anchored gillnet or lobster trap gear may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, provided the vessel complies with the gear requirements

during the times specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

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

SAM WEST

Point	N. Lat.	W. Long.
SAM1	42° 04.8′	70° 10′
SAM2	42° 12′	70° 15′
SAM3	42° 30′	70° 15′
SAM4	42° 30′	69° 24′
SAM5	41° 48.9′	69° 24′
SAM6	41° 45′	69° 33′
SAM7	41° 45′	69° 55.8′

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

(*1*) *Anchored gillnet gear.* (*i*) Ground line--All ground lines are made entirely of sinking or neutrally buoyant line.

(*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*) Buoy line weak link--All buoy lines are attached to the buoy, high flyer, and buoy line leading to the net panels with a weak link having a maximum breaking strength of up to 3,780 lb (1,714.6 kg).

(*iv*) Net panel weak link--Each net panel must have a total of five weak links. The breaking strength 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.

(*v*) 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.

(*vi*) 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*) Sinking ground line--All ground lines must be made entirely of sinking or neutrally buoyant line.

(*ii*) Offshore Lobster 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.

(*iii*) Offshore Lobster buoy line weak link--All buoy lines must be attached to the buoy, high flyer, and buoy line leading to the lobster trap with a weak link having a maximum breaking strength of up to 3,780 lb (1,714.6 kg).

(*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	42° 30′	66° 50′
SAM10	41° 45′	66° 50′
SAM11	41° 45′	68° 17′
SAM12	42° 10′	68° 31′

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 111601C]

New England Fishery Management Council; Public Hearings

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

ACTION: Notification of public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of public hearings to solicit comments on proposals to be included in the Deep-sea Red Crab Fishery Management Plan (FMP).

DATES: Written comments on the proposals will be accepted from November 30, 2001, through January 7, 2002. The public hearings will be held on December 14, 2001, and December 17, 2001. See **SUPPLEMENTARY INFORMATION** for specific locations and times.

ADDRESSES: To obtain copies of the public hearing document or to submit comments, contact Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Identify correspondence as ''Comments on Red Crab Management.'' Comments may also be sent via facsimile (fax) to (978) 465-3116. Comments will not be accepted if submitted via e-mail or the Internet. Hearings will be held in Massachusetts. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492. For the specific locations of the public hearings, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (978) 465-0492.

SUPPLEMENTARY INFORMATION: The Council proposes to take action to implement a management program for the deep-sea red crab (*Chaceon quinquedens*) fishery and to address the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996. The Council will consider comments from fishermen, interested parties, and the general public on the proposals and alternatives described in the public hearing document for the Red Crab FMP. Once