determining sulfur content in fuel for demonstrating compliance with 40 CFR part 60, subpart GG?

A: No determination was made. Additional information is necessary to clarify the facility's requests.

Abstract for (0100071):

Q1: May the DP&L facility use NO_X CEMs for in lieu of fuel monitoring requirements for nitrogen given at 40 CFR part 60, subpart GG?

A1: Yes. DP&L may use CEMs as required by the acid rain program to demonstrate compliance with NO_X limits in 40 CFR part 60, subpart GG. This approval is granted so long as listed conditions are met.

Q2: May the DP&L facility get a waiver of the requirements to correct NO_X CEM emission data to ISO conditions?

A2: Yes. DP&L may waive the requirement to convert results to ISO conditions, so long as all data necessary for the conversion is still maintained.

Q3: May the DP&L facility use RATA results obtained during certification of the NO_X CEMs to demonstrate initial compliance with 40 CFR part 60, subpart GG?

A3: Yes. DP&L may use RATA results to demonstrate initial compliance with NO_X limits for NSPS subpart GG so long as certain conditions are met.

Q4: May the DP&L facility use fuel monitoring provisions for sulfur at 40 CFR part 75, in lieu of fuel monitoring provisions for sulfur given at 40 CFR part 60, subpart GG?

A4: Yes. DP&L may use monitoring provisions at 40 CFR part 75 for sulfur content in fuel in lieu of fuel monitoring requirements given at 40 CFR part 60, subpart GG.

Abstract for (0100072)

Q1: May the DP&L facility conduct initial performance testing of all turbines identified at base load only?

A1: Yes. DP&L may conduct initial performance testing at base load if certain conditions are met.

Q2: May DP&L use Method 7E in lieu of Method 20 for demonstrating initial compliance with NOX for NSPS subpart GG?

A2: Yes. DP&L may use Method 7E to demonstrate initial compliance with NSPS subpart GG. This approval was granted by the Emissions, Monitoring and Analysis Division in the Office of Air Quality Planning and Standards, in a memorandum to George Czerniak.

Abstract for (0100073)

Q: May the BP Chemicals facility waive the requirement to conduct initial performance testing of the Butanediol Plant flare?

A: No. BP Chemicals cannot waive the requirement to conduct initial performance testing of the Butanediol Plant flare. Current methods for initial performance testing of flares are applicable to BP Chemicals.

Abstract for (0100074)

Q: Will EPA Region III approve a custom fuel monitoring schedule for sulfur content under 40 CFR part 60, subpart GG?

A: Yes. EPA has National Policy in regard to fuel sampling and analysis for sulfur content under subpart GG for stationary gas turbines that combust pipeline-quality natural gas fuel.

Abstract for (0100075)

Q: Will EPA Region III approve a custom fuel monitoring schedule for Wolf Hills Energy Under 40 CFR part 60, subpart GG?

A: Yes. Because the request meets the conditions of EPA's National Policy on such schedules, EPA Region III will approve the request.

Abstract for (0100076)

Q: Are ethanol manufacturing facilities exempt from the requirements of 40 CFR part 60, subparts RRR and NNN?

A: Yes. EPA has previously determined that ethanol manufacturing facilities may be exempt from NSPS, subparts RRR and NNN, on a case-by-case basis. In this instance, the ethanol facilities in question use a biological process to ferment the converted starches in corn into ethanol. These subparts did not envision unit operations for biological processes.

Dated: January 4, 2002.

Lisa C. Lund,

Acting Director, Office of Compliance.

[FR Doc. 02–624 Filed 1–9–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–1313–06; I.D. 092101B]

RIN 0648–AN88

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

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule 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 protective measures to benefit North Atlantic right whales. This final rule expands gear modifications required by the December 2000 interim final rule to the Mid-Atlantic and Offshore lobster waters and modifies requirements for gillnet gear in the mid-Atlantic.

DATES: This final rule is effective February 11, 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, progress reports on implementation of the ALWTRP, and a table of the changes to the ALWTRP may be obtained by writing to Diane Borggaard at the address above or Katherine Wang, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432. Copies of the EA, the RIR, and the FRFA can be obtained from the ALWTRP website listed under the Electronic Access portion of this document.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9145; Katherine Wang, NMFS, Southeast Region, 727–570–5312; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this final rule and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick,

NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nmfs.noaa.gov/prot_res/mammals/sa_rep/sar.html*. 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

This final rule implements approved modifications contained in the ALWTRP recommended by the ALWTRT, as well as other modifications deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA). Details concerning the justification for and development of this rule were provided in the preamble to the proposed rule (66 FR 49896, October 1, 2001) and are not repeated here.

Changes to the ALWTRP for Lobster Trap Gear

Northern Inshore State Lobster Waters Area

This final rule removes the option for lobstermen to use line with a diameter of 7/16 in (1.11 cm) or less for all buoy line, effective January 1, 2003, from the Lobster Take Reduction Technology List applicable to fishing with lobster traps in this area, and it allows the use of neutrally buoyant line in all buoy lines and ground lines as an option to be chosen from that list.

Southern Nearshore Lobster Waters Area

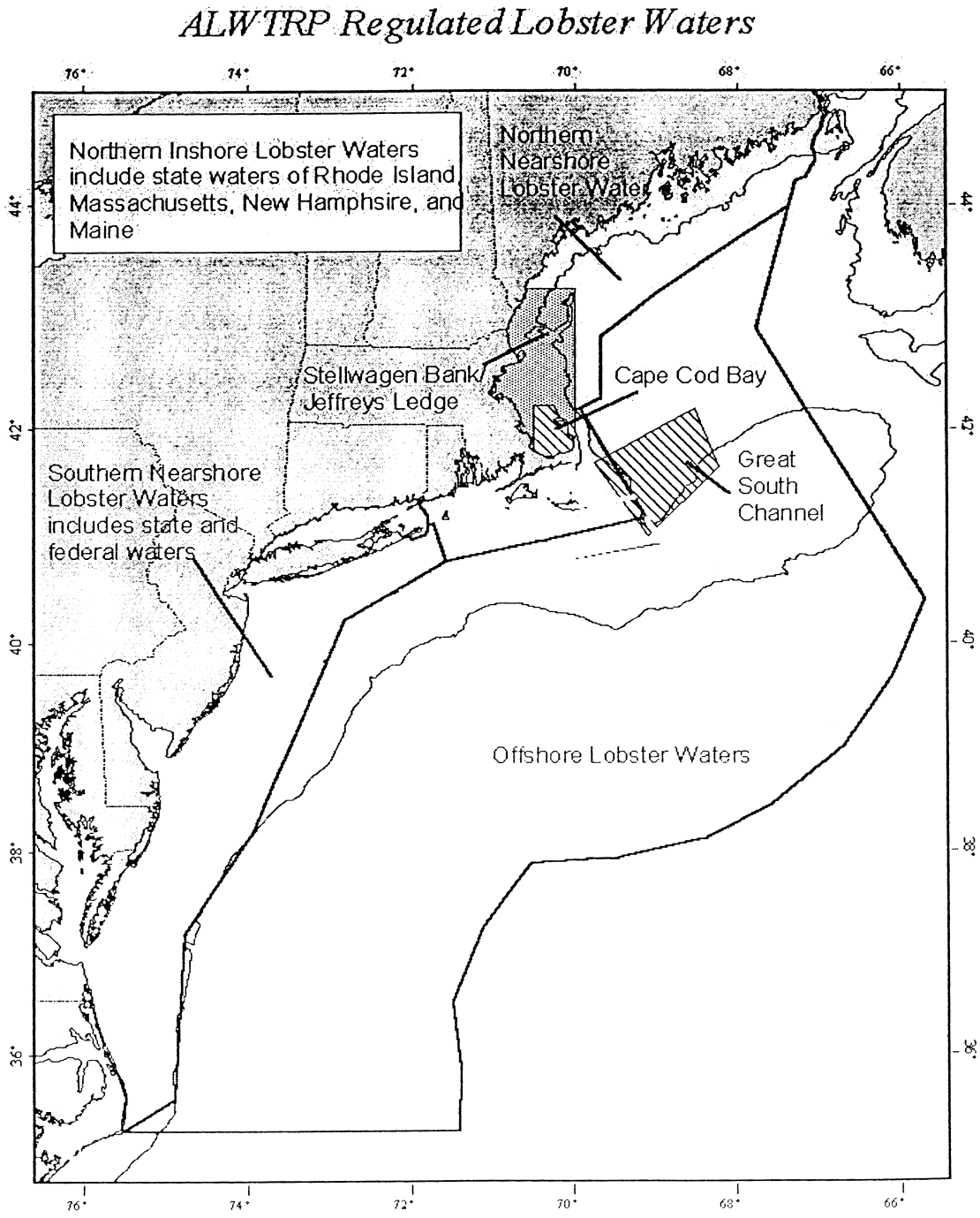
This final rule replaces the Lobster Gear Technology List with the following mandatory gear modifications applicable year-round: (a) installation of a weak link with a maximum breaking strength of 600 lb (272.4 kg) on the buoy line, and (b) installation of weak links in such a way that produces knotless ends if the weak link breaks.

Offshore Lobster Waters Area

This final rule reduces the maximum breaking strength of weak links at all buoys from 3,780 lb (1,714.3 kg) to 2,000 lb (906.9 kg), and requires installation of weak links in such a way that produces knotless ends if the weak link breaks.

BILLING CODE 3510–22–P

Figure 1



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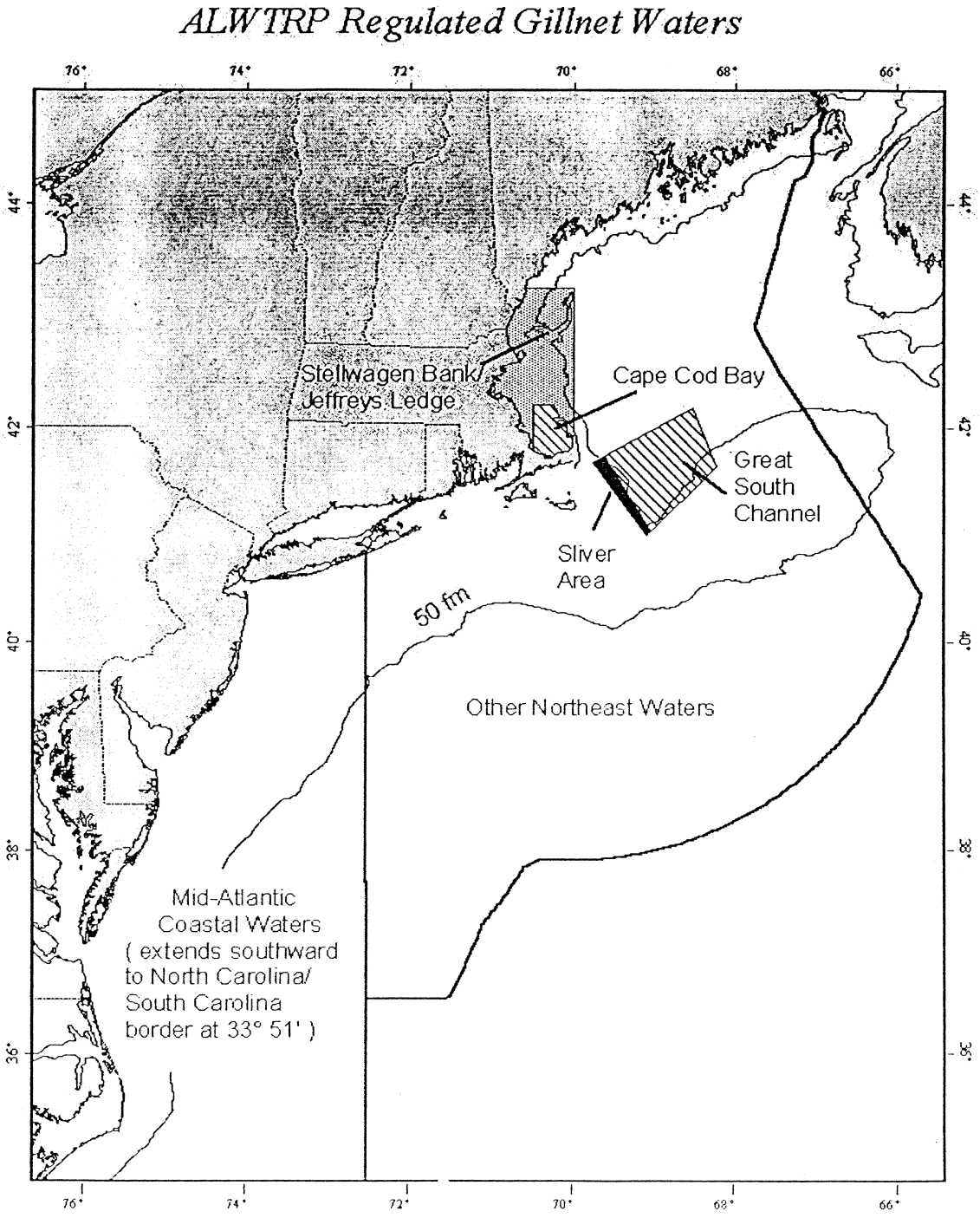
Changes to the ALWTRP for Gillnet Gear

Gillnet Mid-Atlantic Coastal Waters Area

This final rule replaces the Gillnet Take Reduction Technology List with requirements to install buoy line weak links with a maximum breaking strength of 1,100 lb (498.8 kg) placed as close to each individual buoy as operationally feasible and net panel weak links with a maximum breaking strength of 1,100 lb (498.8 kg) in the center of the floatline section on each 50-fathom net panel or every 25 fathoms on the floatline for longer panels. It also requires fishers to return all gillnet gear to port with their vessels, or if the gillnets are left at sea to continue fishing, to secure the nets on each end with anchors that have the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor.

Figure 2



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Changes to the Take Reduction Technology Lists

Lobster Take Reduction Technology List

This final rule removes the option for fishers to use 7/16 in (1.11 cm) diameter line for all buoy lines, effective January 1, 2003, and amends the list to provide the option that all buoy lines and ground lines be composed entirely of sinking and/or neutrally buoyant line. For the Southern Nearshore Lobster Waters Area, this final rule replaces the requirement to choose options from the Lobster Take Reduction Technology List with a set of specific requirements.

Gillnet Take Reduction Technology List

This final rule removes the option for fishers to use line of 7/16 in (1.11 cm) in diameter or less for all buoy lines, requires installation of weak links with a maximum breaking strength of 1,100 lb (498.8 kg) in the center of the floatline of each net panel, and requires that all buoy lines be composed entirely of sinking and/or neutrally buoyant line.

Voluntary Measures

NMFS continues to encourage fishers to use and maintain knot-free buoy lines. As described in the preamble to the proposed rule, the ALWTRT initially recommended requiring knot-free buoy lines, but changed the recommendation from a mandatory measure to a voluntary measure because fishers need to repair and re-tie buoy lines frequently at sea. The knot-free buoy line concept is similar to the breakaway buoy concept, where the objective is to keep knots from becoming lodged in a whale's baleen or from contributing to the wrapping of line around an appendage.

In some cases, fishers prefer splices to knots, because splices are stronger. NMFS is recommending the use of splices wherever possible, because splices are not likely to increase entanglement threat. However, NMFS recognizes that connecting lines using a splice may not be practicable while gear is being hauled. NMFS encourages the splicing of line, as opposed to knot-tying, especially during seasonal gear overhauls or as new gear is added. Although concepts for devices to join lines quickly at sea have been proposed, none have been developed yet; therefore, there is currently no feasible way to join lines quickly other than knotting. NMFS will continue to investigate line connecting alternatives and may require further use of knotless lines in the future if a reasonable substitute for knots is developed.

Comments and Responses

NMFS received 23 sets of written comments on the proposed rule by the October 31, 2001 deadline. The comments were considered in developing this final rule to amend the regulations that implement the ALWTRP and are responded to here.

General Comments

Comment 1: Two commenters generally opposed the gear regulations, one of which noted that the regulations were too restrictive and costly. Four commenters generally believed that the regulations were not restrictive enough; all noted that other options exist that have a greater potential to reduce risk of serious injury and mortality to large whales. Seven commenters generally supported the new rule changes. One commenter expressed support because the proposed rule reflects the ALWTRT recommendations, and another because they were based on reasonable and tested gear modifications.

Response: NMFS is amending the regulations that implement the ALWTRP to provide further protection for large whales, with an emphasis on North Atlantic right whales due to their critical status. NMFS takes the economics of the fisheries into consideration, to the extent possible, when developing marine mammal protective measures that meet the standards of the MMPA and ESA. NMFS seeks recommendations from the ALWTRT, and considers these along with the best available information on gear and large whale entanglements when developing ALWTRP regulations.

Comment 2: Eight commenters noted other sources or potential sources of right whale mortality, such as recreational boaters, commercial shipping vessels, whale watch vessels, other fishing gear aside from lobster and gillnet gear that has vertical line in the water column or is configured in a way that poses a potential threat to right whales, and gear employed by foreign fishing vessels. Four commenters noted that NMFS was implementing significant modifications to fishing gear and practices of the lobster and gillnet fisheries without providing adequate protection to right whales from other sources of mortality. One of these commenters expressed concern that right whale mortality due to fishing is the smallest source of right whale mortality, but NMFS focuses on it because it is the easiest to manipulate.

Response: This final rule stems from a component of the Reasonable and Prudent Alternative (RPA) resulting from consultations required under section 7 of the ESA. NMFS issued four BOs on the monkfish, spiny dogfish, multispecies Fishery Management Plans (FMPs)and lobster Federal regulations on June 14, 2001. NMFS is issuing this final rule specifically to address commercial fishery impacts from these four fisheries. In addition, under the MMPA, NMFS must reduce incidental mortality and serious injury of marine mammals resulting from interaction with commercial fishing gear. NMFS appreciates the gillnet and lobster fishing industries' involvement in the ALWTRT and their efforts to reduce takes of marine mammals in their fisheries. NMFS realizes that other marine resource user groups, including other fisheries with gear with vertical lines, are affecting large whale populations, and NMFS will continue efforts to try to reduce these impacts.

NMFS is currently addressing other sources of right whale mortality through other rulemaking processes and policy discussions. NMFS issued a contract for the completion of a report that made recommendations to decrease ship strikes. The Northeast and Southeast Recovery Plan Implementation Teams, composed of members from various marine stakeholders, including the U.S. Navy and port authority representatives, have been advising NMFS on ways to address impacts from recreational and commercial vessels. NMFS is taking these recommendations under consideration and is working to minimize the potential for vessel collisions. NMFS is also working on a proposed rule to minimize the potential for future serious injury and mortality of whales from whale watch vessels. NMFS is continuing to work with Canadian biologists and to support efforts to expand disentanglement efforts in Canadian waters. NMFS will continue to work with the Government of Canada toward development of similar protective measures for right whales in Canadian waters.

Comment 3: One commenter noted that NMFS should include through the Take Reduction Team (TRT) process all other fishing gear types that pose a potential threat to the right whale because of the use of a vertical line in the water column or the configuration of the gear itself. This commenter urged NMFS to work with states and Fishery Management Councils (FMC) to obtain further information on these fisheries as well as other experimental fishery permits that might potentially use a vertical buoy line. Another commenter recommended that NMFS consider including other regulated fixed gears that use buoy lines, and gear types that have a configuration that poses a

potential threat to right whales in these regulations because unidentified gear or line has been involved in whale entanglements. NMFS should give a rationale for gear determined to be exempt from such measures.

Response: At the next ALWTRT meeting, NMFS would like to discuss this with ALWTRT members and to obtain recommendations on which fisheries to bring into the take reduction team process and which fisheries to exempt. Currently, state representatives and council members have been invited to participate as members of the NMFS take reduction teams. Through its involvement, NMFS can utilize its expertise and obtain further information on additional fisheries and experiments that may potentially use a vertical buoy line. NMFS also participates in FMC and Atlantic States Marine Fisheries Commission's protected species committees/subcommittees to coordinate on protected species management issues. Also, through the ESA section 7 process, any Federal Experimental Fishery Permit would be reviewed to assess the impacts of that fishery on species protected under the ESA, such as right whales.

Comment 4: Two commenters opposed the preemption of state laws and/or regulations by Federal regulations issued by NMFS. One of these commenters noted that states should make their own rules as they are better able to adapt whale protection measures in response to new information, and to adjust those measures when necessary, than NMFS. This same commenter noted that enforcement could prove to be even more problematic than it currently is.

Response: Although the MMPA provides NMFS with authority to regulate in State waters, states can develop equally protective or more protective restrictions if they choose, and NMFS encourages such action. Further, NMFS has cooperative agreements in place with a number of Atlantic states, which enable states to enforce requirements of the MMPA and its implementing regulations.

NMFS tries to coordinate with states on other issues as well. For example, with regard to gear markings that yield individual vessel information, many of the state and Federal FMPs currently require marking of buoys and/or traps with individual vessel identification. NMFS plans to continue to work with state fisheries agencies to investigate gear marking coast-wide and identify gaps in marking of surface gear, gillnets, and traps. This information will be presented to the ALWTRT for future consideration.

Comment 5: NMFS must develop and implement plans for the conservation and survival of the right whale under the MMPA and ESA and the current plan has not met that mandate.

Response: NMFS is presently updating the ALWTRP with additional gear modifications in this final rule, as well as with measures proposed for Seasonal Area Management (66 FR 59394, November 28, 2001) and Dynamic Area Management (66 FR 50160, October 2, 2001). It is NMFS' Biological Opinion (BO) that if the agency modifies the ALWTRP according to the RPA, then the continued operation of the four fisheries will not jeopardize the continued existence of the western North Atlantic right whale. The ALWTRP is not a static plan, and NMFS continues to revise the ALWTRP to achieve its goals of reducing the serious injury and mortality of whales in commercial fishing gear. The ALWTRT continues to convene yearly as required to make recommendations to NMFS on any needed modifications to the plan to reach the Potential Biological Removal levels and Zero Mortality Rate Goal of right, humpback, fin and minke whales. Additionally, pursuant to the ESA, NMFS publishes recovery plans for endangered or threatened marine mammals to promote the recovery of the species. The first Right Whale Recovery Plan was published in 1991, and an updated draft was recently released for public comment (66 FR 36260, July 11, 2001). The comment period ended October 25, 2001, and NMFS is presently reviewing comments and modifying the plan. The plan includes an implementation schedule to direct and monitor the completion of recovery tasks.

Comment 6: One commenter noted that although progress has been made to identify gear modifications that hold potential for reducing entanglement risks, strong reliance on gear modification as a take reduction tool is warranted only if there is a solid reason to believe they will reduce entanglement risks (e.g., neutrally buoyant line). The commenter added that most gear modifications to date offer little certainty that they will actually reduce entanglement risk. Another commenter thought that NMFS should stop relying on current best fishing practices to reduce mortality and serious injury as these practices have been unsuccessful.

Response: NMFS believes that implementing the additional gear modifications in this final rule combined with the forthcoming final rules on Seasonal Area Management (SAM) and Dynamic Area Management (DAM) of lobster and gillnet fisheries will reduce interactions between right whales and fishing gear, and reduce serious injury and mortality of right whales due to entanglement in fishing gear. The RPAs in the June 14, 2001, BOs advised NMFS to, amongst other measures, expand additional gillnet and lobster pot gear modifications to avoid jeopardizing the continued existence of North Atlantic right whales (See preamble under Changes in the Final Rule from the Proposed Rule for discussion on the RPA and the southeast gillnet fishery). Since issuance of the BOs, NMFS has conducted additional analyses 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 prevent serious injury or mortality. These additional gear modifications will be implemented with this final rule. NMFS considered multiple strategies to decrease gear interactions with large whales, including implementing gear modifications based on recent technological advances. Time/area closures have also been used under the ALWTRP to remove the potential for interaction between large whales and lobster and gillnet fisheries.

Comment 7: One commenter noted that NMFS must undertake an adequate program of research and development for the purpose of devising improved fishing methods and gear so as to reduce the incidental taking of right whales in commercial fishing. Two commenters noted that there should be aggressive gear research undertaken with promising innovations implemented in a timely manner.

Response: As part of the RPA in the BOs issued on June 14, 2001, NMFS noted the need for continued gear research and modification. NMFS is committed to gear research and development, and will expand this program as funding allows. NMFS has gear laboratories and research teams that specifically focus on gear development and testing. Additionally, NMFS contracts with researchers, individuals and companies to develop gear solutions. Much of the current take reduction plan measures are based on the outcome of such gear research (e.g., weak links) conducted and/or funded by NMFS. The gear modifications are important to reduce interactions between right whales (and other large whales) and fishing gear to further reduce serious injury and mortality of

large whales due to entanglement in fishing gear. In addition, NMFS intends to continue to support the contributions made by the ALWTRT's Gear Advisory Group. NMFS is collaborating with other organizations to host a gear workshop, tentatively scheduled for February 2002, to investigate additional options and gear enhancements for gillnet and lobster trap gear. The results of this workshop will be distributed to the ALWTRT for consideration of future gear recommendations to NMFS. (Also see response to comment 34).

Comment 8: Two commenters objected to the language in the BO that NMFS would use an entanglement by unidentified gear or gear approved for use in multi-species fisheries to generate a conclusion that the measures in the RPA are not demonstrably effective at reducing right whale injuries or death. They mentioned the gear could possibly be Canadian or from other sources of line. The commenters also felt that scarification is a poor indicator of whether the RPA is effective as scars can occur for a number of reasons, including interactions with fishing gear and vessels that are not serious.

Response: Although this comment is not related to the proposed rule for gear modifications, NMFS will take the comments under consideration.

Comment 9: One commenter urged the ALWTRT to continue to work with the Gear Advisory Group to explore and develop additional gear options that do not pose a risk to the large whale population.

Response: NMFS intends to continue to support studies on gear modifications to reduce interactions, and eliminate serious injury and mortality. NMFS sees the value of the contributions that the Gear Advisory Group can bring to the ALWTRT. NMFS is collaborating with other organizations to host a gear workshop in 2002 to investigate options for gillnet and lobster trap gear modifications to prevent serious injury to right whales that may become entangled in gillnet and lobster trap gear. The results of this workshop will be distributed to the ALWTRT for consideration in making additional recommendations to NMFS. NMFS will also be reconvening the Gear Advisory Group in 2002 and distributing the results of the gear workshop to participants.

Comment 10: NMFS should immediately identify at-sea enforcement as a high priority and develop protected resources penalty schedules for the ALWTRP.

Response: NMFS agrees that at-sea enforcement is important to the success of the ALWTRP and does conduct such enforcement. NMFS also relies on its partnership with the U.S. Coast Guard to monitor compliance with the ALWTRP. NMFS already has penalty schedules for violations of the MMPA, ESA, and regulations issued pursuant to those statutes.

Comment 11: The fishing industry was not notified of the publication of the proposed rule, and involving industry is crucial to the success or failure of these plans. A letter to permit holders, similar to what is done for fishery regulations, should have been sent to involve industry. Involving industry is crucial to the ALWTRP process.

Response: Given the current critical status of the right whale population and the aggregate effects of human-caused mortality that have led to the species' current status, the development of this final rule occurred during an accelerated rulemaking process. Time constraints prevented NMFS from holding public hearings on the current regulations; however, NMFS used other ways to let the public know that public comments were being sought on a proposed rule to address commercial fishery/large whale interactions. These efforts included distributing the information to ALWTRT members who represent various stakeholder groups and provide valuable links to distribute information to the public, issuing a NOAA press release and an announcement in NOAA's FishNews, providing notification through the **Federal Register**, and communicating with state managers. NMFS will consider other means of communicating with the public and welcomes recommendations on ways to disseminate such information, such as through letters to permit holders, as was suggested. NMFS agrees with the commenter that involving fishermen in the process is important to the success of the ALWTRP.

Comment 12: Three commenters noted that neutrally buoyant line holds promise as a measure to reduce risk of entanglements. Removing floating line from the water column is widely believed to be important to reducing risk to whales. Two of these commenters also made specific recommendations by management area for the lobster fishery: (1) Both commenters noted that the use of neutrally buoyant line should be required in the Northern Inshore Lobster Waters. One of these commenters thought this should be effective January 1, 2003, in the Cape Cod Bay Critical Habitat, and in the Northern Inshore State Lobster Waters Area effective January 1, 2004; (2) both commenters suggested NMFS require the use of neutrally buoyant line in offshore lobster trawl lines. One of these commenters suggested implementation by January 1, 2004; and (3) one commenter thought that NMFS must mandate the immediate use of neutrally buoyant line for all lobster ground lines, and another commenter suggested this requirement be mandated by 2004.

Response: Neutrally buoyant line is an important gear modification to reduce interactions between right whales and fishing gear by reducing the amount of line in the water column. NMFS has incorporated the option to use neutrally buoyant line into parts of the ALWTRP through this final rule.

NMFS will seek recommendations from the ALWTRT on whether to require neutrally buoyant line and how NMFS could implement such a requirement in the future. In addition, NMFS will continue to work with industry to incorporate neutrally buoyant or sinking line into their operation whenever possible.

NMFS is currently investigating issues such as the time to change over and other operational problems associated with the full utilization of neutrally buoyant line. For example, NMFS is working with a Gulf of Maine offshore lobster fisherman who is willing to change over all his buoy and ground lines to neutrally buoyant line for 1800 traps. This fisherman will provide monthly reports to the NMFS Gear Research Team on how the traps work with the line, how breaking strength holds up over time, and the life expectancy of the gear. NMFS is also beginning to investigate the manufacturing issues that may arise should this technology be used as a widespread risk reduction tool. These results will be presented to the ALWTRT for consideration. The NMFS' Gear Research Team has also supplied 90 miles (78.2 nm) of neutrally buoyant line to lobster and gillnet fishermen from Maine to Rhode Island to test the life expectancy of the line, how the breaking strength holds up over time, and other operational considerations. These results will also be provided to the ALWTRT for consideration. NMFS notes that the requirement to use neutrally buoyant line in a Seasonal Area Management (SAM) could mean benefits to whales if these same fishers use this gear in other areas. Fishermen and the NMFS Gear Research Team report that many fishermen from Maine through Rhode Island already use neutrally buoyant line as part of their fishing operation due to local tides and/or type of fishing bottom. NMFS appreciates the concern and effort

fishers have shown by switching to neutrally buoyant or sinking line to reduce gear interactions with large whales.

Comment 13: One commenter stated that weak links at buoy lines may offer little meaningful protection against entanglement risks. As most entangled whales are found without buoys, a weak link at the buoy may not increase the likelihood that a line sliding through a whale's mouth will break away before the whale becomes more entangled. It is questionable that a weak link strong enough to maintain fishing gear in an operable condition would fall free before a whale begins thrashing and becomes entangled. The commenter also suggested that NMFS should assess the effectiveness of knotless lines by examining lines removed from whales, as well as photos of the entangled whales, to evaluate the extent to which knots tied by fishermen may have contributed to the entanglement. The relative proportion of entangled whales with and without potential troublesome knots could provide a measure of the overall effectiveness of eliminating knots.

Response: NMFS believes that implementing the additional gear modifications in this final rule combined with the forthcoming final rules on SAM and DAM of lobster and gillnet fisheries will reduce interactions between right whales and fishing gear, and reduce serious injury and mortality of right whales due to entanglement in fishing gear. NMFS feels that weak links and installation of these in such a way that produces knotless ends if the weak link breaks are important gear modifications. Of the 15 right whale entanglements from 1997 through 2001 where gear was either recovered or documented, buoys were present in eight cases. NMFS will be conducting a similar analysis with other whale species.

NMFS has investigated whether an analysis on rope recovered from entangled whales could help determine the effectiveness of eliminating knots. However, NMFS does not usually have information on how the whale became entangled and in which part of the retrieved gear it was entangled. NMFS will continue to investigate this and work with others to obtain information to better assess large whale interactions with fishing gear.

In regard to the question of a weak link being strong enough to break free and maintain gear in operable condition, see summary on page 49899 of the proposed rule on gear modifications (66 FR 49896, October 1, 2001) of the right whale entanglement and subsequent gear analysis indicating that the surface system was separated from the buoy line going to the trawl by a 3,780-lb (1,714.3-kg) weak link. It appears the whale was able to part the gear at the 3,780-lb weak (1,714.3-kg) link although the whale was still entangled in gear. However, NMFS believes that the lower breaking strengths for weak links required in this final rule will provide improved protection for right whales. NMFS will continue working with others to develop additional gear modifications and appreciates hearing ideas from the public.

Southern Nearshore Lobster Waters Area

Comment 14: One commenter supported NMFS' proposal to replace the Lobster Gear Technology List with the following year-round gear modifications: (a) Installation of a weak link with a maximum breaking strength of 600 lb (272.4 kg) on the buoy line, and (b) installation of weak links such that if the lines were to break, they would produce knotless ends on the line.

Response: Research will continue to investigate alternative methods to connect lines.

Comment 15: One commenter opposed the elimination of the gear technology list for the Southern Nearshore Lobster Waters Area. The commenter noted that they should have an option list just like northern inshore areas are offered one.

Response: NMFS proposed to replace the Lobster Take Reduction Technology List with mandatory gear modifications based upon the recommendation of the ALWTRT Mid-Atlantic subgroup. NMFS believes that these mandatory gear modifications are necessary to reduce entanglements in this area.

Comment 16: One commenter supported reducing the current 1,100 lb (498.8 kg) breaking strength at the buoy to 600-lb (272.4 kg) breakaway for nearshore lobster areas due to research results, except for the Outer Cape or offshore due to difficult sea and current conditions.

Response: Current gear research indicates that a 600 lb (272.4 kg) breaking strength weak link is sufficient to protect whales, as well as to keep gear feasible in the Southern Nearshore Lobster Waters Area and prevent ghost gear. The 600 lb (272.4 kg) weak link requirement has been in effect since February 21, 2001, in the Northern Nearshore Lobster Waters Area, and the NMFS Gear Research Team has had very few problems reported to them regarding weak links. The NMFS Gear Research Team has conducted research on how much strain there is on inshore buoy systems on the Outer Cape. Inshore lobster buoys were towed up to 20 knots and a 120 lb (54.432 kg) strain was recorded. Load cells were also attached to large buoy systems in Grand Manan Channel, known for its strong tides (approx. 18 to 20 ft (5.49 m to 6.09 m)), and a 140 lb (63.5 kg) strain was recorded in the spring. For comparison, NMFS notes that in over a year of testing the highest maximum strain the NMFS Gear Research Team recorded on load cells attached to offshore lobster surface buoy systems was 535 lb (243 kg). NMFS cautions that recorded strains can not dictate weak link breaking strengths, as breaking strengths must include reasonable measures of safety that would help prevent gear from being lost at sea during the worst conditions. NMFS appreciates the commenter's general support for changes to other nearshore lobster areas.

Comment 17: Two commenters noted that neutrally buoyant line should be a requirement in the Southern Nearshore Lobster Waters Area as the lowered breaking strength of the weak link may not provide adequate risk reduction.

Response: Past entanglements provide evidence that weak links are a critical measure to prevent serious injury or mortality of marine mammals. NMFS believes that the use of a 600-lb (272.4-kg) weak link on the buoy line and knotless weak links would reduce risk of serious injury and death if an entanglement were to occur. In response to the comment on neutrally buoyant line, see response to comment 12.

Comment 18: One commenter noted that there is not sufficient research on the proposed weak links on a buoy line (not the breakaway at the buoy) to mandate a year-round requirement for all buoy lines in the southern nearshore areas. This commenter supported research to develop a weak link in the main buoy line.

Response: The proposed rule did not clearly indicate where in the buoy line the weak link is required. NMFS has clarified this in the regulatory text in this final rule. Specifically where fishermen are required to utilize buoy weak links, they will also be required to place the weak link as close to each individual buoy as operationally feasible. The NMFS Gear Research Team has already begun investigating development of a weak link in the main buoy line.

Offshore Lobster Waters Area

Comment 19: Two commenters did not support the proposal to reduce breaking strength of weak links in

offshore gear to 2,000 lb (906.9 kg). These commenters added that the breaking strength of 2,000 lb (906.9 kg) is approximately four times the maximum strain of 535 lb (243 kg), not three times as stated in the discussion of the proposed rule. Two commenters believed that the breaking strengths in both the offshore surface and buoy lines should be lowered. One of these commenters suggested that NMFS subdivide the offshore area to allow for the reduced breaking strengths of 600 lb (272.4 kg) at all buoys and the use of a weak link with a maximum breaking strength of 1500 lb (680.4 kg) between the surface system and the line to the trawl; and in offshore areas 1500 lb (680.4 kg) be required at all buoys and the line between the surface system and the trawl. All four of the commenters suggested NMFS should require breaking strengths to more closely reflect the maximum loads sustained by the gear as outlined in the final summary of the latest ALWTRT meeting in order to reduce entanglement risks.

Response: The breaking strength of 2,000 lb (906.9 kg) is more than three times the maximum strain of 535 pounds (243 kg) recorded on the buoy system of offshore lobster gear, not three times the maximum strain of 535 pounds (243 kg) as reported in the proposed rule. NMFS cautions that recorded strains can not dictate weak link breaking strengths, as breaking strengths must include reasonable measures of safety that would help prevent gear from being lost at sea during the worst conditions. NMFS believes that the required breaking strengths are both beneficial to whales and safe for the industry. The 2,000 lb (906.9 kg) breaking strength for year-round use in offshore lobster waters outside of SAM was arrived at through the TRT process. NMFS believes a reduction from the previously required 3,780-lb (1,714.3-kg) weak link to the 2,000 lb (906.9 kg) weak link required in this final rule is a substantial reduction and provides a conservation benefit to right whales. The NMFS Gear Research Team will continue load cell testing on offshore lobster gear and report their results to the ALWTRT. NMFS will continue to work with industry and others on this issue through the ALWTRT process, and will seek feedback from the ALWTRT, gear workshop participants, and the Gear Advisory Group on the most appropriate location(s) to conduct load cell testing on offshore lobster gear.

Comment 20: Two commenters noted that having two different breaking strengths in the gear is confusing to the industry and three commenters noted it is not protective of whales. These commenters believe that a 3,780-lb (1,714.3-kg) weak link at the surface buoy only helps if a whale becomes entangled above the weak link at the surface, and that this defeated the purpose of lowering the strength of the weak link at the buoys.

Response: NMFS has been conducting outreach to offshore lobster industry representatives on this issue and discussions with them and fishermen indicate that having different breaking strengths in their gear is not confusing. Rather, the industry understands why various breaking strengths may be needed and would rather make modifications based on what research indicates is needed to reduce interactions.

In response to comments questioning the conservation benefit of a 3,780-lb (1,714.3-kg) weak link at the line between the surface system and the buoy line leading down the trawl, NMFS has decided to withdraw this requirement at this time. NMFS proposed this requirement based on the analysis of offshore lobster gear recovered from an entangled right whale, as described in the proposed rule (66 FR 49896, October 1, 2001). As the results of the gear analysis seemed to indicate that the presence and location of the weak link in the gear may have prevented the animal from becoming further entangled in the buoy line below the weak link, NMFS proposed to require the installation of this weak link in offshore lobster traps. However, as there are concerns whether sufficient resistence would exist for a whale to part such a weak link given its position in the gear, NMFS has withdrawn this proposal. NMFS will discuss this analysis with the ALWTRT and continue load cell testing on offshore lobster gear as mentioned in the previous comment.

Comment 21: One commenter supported the weak link below the buoy on the offshore lobster gear. The commenter supported NMFS making this proposal based on detailed entanglement data.

Response: NMFS has decided not to implement this requirement at this time (see previous comment).

Comment 22: Two commenters generally agreed with the provisions in the proposed rule for the Offshore Lobster Waters Area, and one added that the breaking strengths noted in the proposed rule were a positive step toward further protection of right whales and other marine mammals. Both commenters noted that the 2,000-lb (906.9-kg) weak link was a compromise by the offshore industry, and stated that the offshore industry supported this recommendation contingent on the lack of lost or ghost gear produced by inclement weather.

Response: As described in the response to comment 19, NMFS will continue to conduct load cell testing on offshore lobster gear to investigate the operational forces experienced in this fishery under various conditions.

Comment 23: One commenter supported the installation of weak links so that if the lines were to break, they would produce knotless ends on the line.

Response: Broken weak links providing knotless ends on the line is important so that it will not become lodged in the whale's baleen or around an appendage of a whale.

Northeast and Mid-Atlantic Gillnet Waters Area

Comment 24: One commenter generally supported the extension of measures for gillnet gear from the northeast to mid-Atlantic waters. One commenter supported the proposal to require fishers in the mid-Atlantic to return all gillnet gear to port with their vessels or to anchor their gear.

Response: The need for additional gear modifications in these fisheries had been considered by the ALWTRT, but not implemented by the December 2000 interim final rule. The RPA developed in response to the Bos included additional gear modifications for the Mid-Atlantic gillnet and lobster trap fisheries that were necessary to avoid jeopardizing the continued existence of North Atlantic right whales.

Comment 25: One commenter opposed requiring weak links and Danforth anchors at both ends of the spot sink gillnet fishery in southeastern NC. As this fishery operates near or at the surf zone, the commenter was concerned that the weak links would cause the net to break when it is being dragged into calmer water, and a Danforth anchor would not enable the fishermen to drift with their nets to calmer water. The commenter thought these gear requirements should be exempted in the area due to this unique fishery.

Response: The gear requirements state that mid-Atlantic gillnet gear has to be anchored at each end of the net string with an anchor that has the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor, not necessarily a Danforth anchor. However, fishers do not have to use an anchor unless they return to port without their gear. NMFS recommends that spot gillnet fishers explore different ways to anchor their gear in this fishery. NMFS gear

specialists are available to consult with on these types of issues, but some suggestions include using other anchors that do not become entangled on the ocean bottom and are retrieved successfully from the bottom, but have the same holding power of at least a 22-lb (10.0-kg) Danforth-style anchor. In response to the comment on weak links, gear research studies that involved pulling a string of nets in the Gulf of Maine in up to 45 knots of wind in 100 fathoms of water and utilizing 1,100 lb (272.4 kg) weak links resulted in no failures. Thus, it is unlikely that the weak links in the spot gillnets would break during fishing operations. The NMFS Gear Research Team will continue to investigate weak links and various anchoring systems.

Comment 26: One commenter opposed the 1,100-lb (272.4-kg) maximum breaking strengths for the weak links and said that NMFS incorrectly stated that the ALWTRT Mid-Atlantic recommended 1,100 lb (272.4 kg) rather than 600 lb (272.4 kg). The full ALWTRT did not reach consensus on this point as the New Jersey state representative and fishermen said their fisheries were prosecuted similarly to the northeast, whereas Virginia and North Carolina fishermen were willing to adopt a 600-lb (272.4-kg) breaking strength. Representatives from environmental organizations were concerned that humpback entanglements off North Carolina and Virginia have appeared to increase, and scientists with experience in whale disentanglement have indicated that humpback whales do not appear to exert the same degree of force as right whales do to break free of gear. The commenter recommended that in areas south of New Jersey, NMFS should require gillnetters to install weak links with a maximum breaking strength of 600 lb (272.4 kg) in buoy line and in the center of the floatline on each net panel.

Response: NMFS has decided to require a breaking strength in Mid-Atlantic gear similar to that required in northeast gillnet gear until the gear research studies using load cells currently planned for the mid-Atlantic are conducted. Such studies are scheduled to occur during the winter of 2002 and a report will be provided at the next ALWTRT meeting. The ALWTRT including its New Jersey representative, and its Mid-Atlantic subgroup can discuss these results and come up with new recommendations to NMFS, if deemed necessary. In response to concerns about humpback whale entanglements off of North Carolina and Virginia, NMFS will continue to work through the ALWTRT process to address humpback whale entanglements in these areas. The BOs found jeopardy to right whales, not humpbacks, and the recommended RPA is designed to avoid jeopardy to right whales.

Southeast U.S. Restricted Area

Comment 27: One commenter supported the proposal to prohibit straight sets of gillnet at night between November 15 and March 31 in the southeast US unless the exemption under 50 CFR 229.32(f)(3)(iii), which relates to shark gillnets, applies.

Response: NMFS will not be implementing regulations on straight sets of gillnet in the Southeast U.S. restricted area at this time. Although this requirement was contained in the proposed rule, NMFS inadvertently omitted the analysis of its expected impacts from the EA/RIR. As a result, NMFS did not provide adequate information for the public to provide comment on the proposed provision. NMFS will provide the public another opportunity to comment on this provision and the necessary analytical documents as soon as possible.

Northern Inshore Lobster Waters and Lobster Take Reduction Technology List

Comment 28: Four commenters opposed dropping the 7/16-in (1.11-cm) diameter line option, two mentioned that most or all line removed from whales has been larger than 7/16 in (1.11 cm). Three commenters believed that dropping this option puts animals at greater risk because the use of thicker rope will no longer be discouraged. One of these commenters noted that the 7/16-in (1.11-cm) line should be replaced with more specific breakaway features only after they are field tested and found to be practical. The commenter added that many fishermen in the Cape Cod area have reported that by using line that measures only 5/16 in (.79 cm) or 3/8 in (.95 cm) in diameter they are contributing to risk reduction. These lines are comparatively lighter with lower breaking strengths than lines used in the past. One of these commenters also noted that with the elimination of 7/16 in (1.11 cm) or less diameter line, fishers fishing single traps on the Outer Cape have less options available for reducing the risk to whales because they have no ground lines and a strong current makes 600-lb (272.4-kg) breakaway buoys impractical (a lost buoy on a single trap means the trap is lost). The commenter would like to encourage the members if the Massachusetts's Lobstermen's Association to continue to use single pots in state waters to avoid ground lines and continue to use thinner ropes.

Response: The option of using buoy line of a diameter of 7/16 in (1.11 cm) or less was previously adopted as part of the ALWTRP based upon the breaking strength of 7/16 in (1.11 cm) line. This strategy assumed that using a line with a consistent diameter would result in a consistent breaking strength. However, experience has demonstrated that the breaking strength of 7/16 in (1.11 cm) line can vary dramatically. Weak links, or alternative techniques such as swivels, are expected to provide a more reliable and consistent breaking strength rather than using line diameter to predict breaking strength. NMFS does not believe fishermen will go to larger line than what they are currently using due to the costs involved in purchasing and incorporating the new line. Also, removing this option from the Lobster Take Reduction Technology List does not prevent a fisherman from continuing to use buoy line with a diameter of 7/16 in (1.11 cm) or less.

Field testing conducted by the NMFS Gear Research Team indicates that a 600-lb (272.4-kg) weak link will be feasible in this area. For specifics and in regard to the comment on field tests, see response to comment 16. The NMFS Gear Research Team will assist fishers in determining whether alternative devices will work and provide them with feedback on whether the breaking strength is in compliance with current ALWTRP regulations. NMFS would like to reiterate that fishers can still use 7/16 in (1.11 cm) or less diameter buoy line.

Comment 29: Four commenters noted that the use of 7/16 in (1.11 cm) line should be immediately discontinued as an option on the Lobster Take Reduction Technology List. One of these comments noted that since February 2000 the ALWTRT has been questioning the conservation risk reduction value of this option. Another agreed with NMFS that line thickness is not an appropriate entanglement risk reduction tool because line thickness has little bearing on breaking strength. However, the commenter did not think that the unacceptable wear in weak links should be a reason to delay the requirement as weak links could be replaced as necessary, pending the development of longer-lived links if that proves necessary. In addition, the commenter noted that other options aside from weak links can be chosen from the list and NMFS did not provide enough information on the prevalence of an unacceptable wear in weak links.

Response: NMFS agrees that the 7/16-in (1.11-cm) or less diameter buoy line option should be removed from the Lobster Take Reduction Technology

List. NMFS will be removing the option from the list effective January 1, 2003. NMFS believes that this is justified based on concerns expressed by some members of the ALWTRT Northeast subgroup that weak links may not be standing up well to inshore conditions and may be showing signs of abrasion and weakening with only a single season of use. An ALWTRT member brought a weak link showing this type of wear to the June 2001 ALWTRT meeting. NMFS believes that removing this option January 1, 2003, will enable fishermen and gear specialists to address this localized problem, and give fishermen time to incorporate an option into their fishing gear. The NMFS Gear Research Team will be available, if needed, to provide support in the development of alternative methods to achieve the purpose of the weak link requirement. NMFS will also conduct extensive outreach to fishing communities and industry associations throughout New England to inform inshore lobster fishermen of their ALWTRT requirements and encourage them to begin developing improved weak links or choosing a different option other than the 7/16 in (1.11 cm) or less diameter buoy line if they do not already meet the Lobster Take Reduction Technology List requirements. Those fishers who need to select another option will be encouraged to do so as soon as possible.

Comment 30: In the proposed rule, NMFS combined two options on the Lobster Take Reduction Technology List into one. The elimination of floating rope on ground line and the elimination of floating rope at the bottom of buoy lines are two options.

Response: NMFS agrees with the commenter that in the explanatory text of the proposed rule, NMFS incorrectly stated that comprising all buoy lines and ground lines with entirely sinking and/or neutrally buoyant line is one option. It was NMFS' intent that these be two options as indicated on page 49907 of the proposed rule (66 FR 49896, October 1, 2001) under the Lobster Take Reduction Technology List regulatory section where using entirely sinking and/or neutrally buoyant line on all buoy lines is one option and using entirely sinking and/or neutrally buoyant line on all ground lines is another option.

Comment 31: Three commenters supported the use of neutrally buoyant buoy and ground lines as an option to the Lobster Take Reduction Technology List, one noting that this should not be delayed until 2003.

Response: In response to the comment to not delay this option until 2003, NMFS notes that this option will go into effect in 2002 with this final rule.

Gillnet Take Reduction Technology List

Comment 32: The 7/16-in (1.11-cm) line should be replaced with more specific breakaway features only after they are field tested and found to be practical. If NMFS removed this option fishermen may opt for stronger lines. The commenter noted that many fishermen in the Cape Cod area have reported that by using lines that measure only 5/16 in or 3/8 in in diameter they are contributing to risk reduction. These lines are comparatively lighter with lower breaking strengths than lines used in the past.

Response: Fishermen can still use 7/16 in (1.11 cm) line; however, it can not be counted as an option from the Take Reduction Technology List. NMFS will continue its gear research to test the breaking strength of various lines and will continue to report these results to the ALWTRT for consideration. Also see response to comment 28.

Comment 33: Two commenters supported the removal of the 7/16-in (1.11-cm) or less line diameter from the technology list. However, one of these commenters noted that NMFS should ensure that the effective date for both gillnet and lobster fisheries is the same.

Response: Due to reported wear in the weak links in the Inshore Lobster Waters Area, NMFS has delayed requirements for this area (see response to comment 29).

Comment 34: Two commenters noted that the proposed rule indicated that the ALWTRT did not recommend changes to gillnet fisheries in the northeast. The ALWTRT did address such changes but was unable to reach consensus on them. NMFS has put little effort into developing innovative approaches to reducing risk from gillnet gear. If gillnet gear is to be used, risk reduction modifications must be implemented. These commenters also noted that there is a need to develop and implement new gillnet gear modifications in mid-Atlantic coastal and Northeast waters.

Response: NMFS is expanding gillnet gear modifications and restrictions in this final rule, as well as in the forthcoming final rules on SAM and DAM, which will reduce interactions between right whales and gillnet gear, and reduce serious injury and mortality of right whales due to entanglement in gillnet gear. The RPA in the June 14, 2001, BOs advised NMFS to, amongst other measures, expand additional gillnet and lobster pot gear modifications to avoid jeopardizing the continued existence of North Atlantic right whales. 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 prevent serious injury or mortality. These additional gear modifications will be implemented with this final rule.

NMFS continued gear research and modifications and these efforts include the RPA requirements to: (1) Host a workshop to investigate options for gillnet (and lobster) modifications to prevent serious injury from entangling right whales; (2) expanded research and testing on eliminating floating line in the anchor and buoy lines of gillnet gear (and lobster gear), and replacing it with neutrally buoyant line; (3) continued research on weak link float lines in gillnet gear to investigate the possibility of reducing the strength of gillnet float-lines, a known problem area in the entanglement of large whales; and (4) continued research on Mega-Float line in gillnets to eliminate external plastic floats combined with properly placed weak links. Additionally, NMFS will be conducting tests on how different types of weak links react to different types of anchoring systems; to do this NMFS will tow gillnets through the water to simulate a whale entanglement. NMFS has also contracted with a company to develop rope with uniform breaking strength to distribute to fishers for field testing. Additional efforts NMFS has conducted include hiring an outreach coordinator for the Southeast Region (similar to the position already in place in the Northeast) to conduct outreach on the various TRPs including the Atlantic Large Whale TRP, as well as to solicit gear modification ideas from fishers. NMFS will continue to work with the ALWTRT and seek input from the Gear Advisory Group (also see response to comment 9) to identify additional management measures in the gillnet fisheries.

Changes in the Final Rule From the Proposed Rule

NMFS proposed to require the installation of weak links with a maximum breaking strength of 3,780 lb (1,714.3 kg) in offshore lobster trap gear between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading down to the trawl. This proposed measure was the result of analysis conducted by NMFS from a successful disentanglement of a 7-year-old male

North Atlantic right whale, catalog #2427, on July 20, 2001. NMFS' analysis concluded that the gear recovered during the disentanglement and the description of the owner's typical gear configuration indicated that the surface system was separated from the buoy line going to the trawl by a weak link with a breaking strength of 3,780 lb (1,714.3 kg). It was felt that the presence and location of this weak link in the gear may have prevented the animal from becoming further entangled in the buoy line.

However, since the publication of this proposed measure, NMFS technical experts have re-evaluated this proposed measure. Although in theory the proposed measure would add an extra level of protection to potentially prevent the risk of serious injury to North Atlantic right whales should they become entangled in the buoy line, this measure is not practical from a mechanical standpoint. Operationally, having any weak link below the float system will essentially be ineffective. In order to break, a link would need to have adequate resistance from the relevant end of the gear. Given that any whale that is caught below the link would be pulling against nothing more than the surface system and the buoy, one cannot reasonably conclude that the resistance involved would be sufficient to trigger the break of the weak link. NMFS has reconsidered this measure and is not requiring the use of weak links between the surface system and the buoy line for the offshore lobster trap fishery. Therefore, in § 229.32, paragraph (c)(5)(ii)(B) of the proposed rule is removed from the final rule.

NMFS also proposed that fishermen with gillnets in the Southeast U.S. Restricted Area be prohibited from setting gillnets in straight sets at night during the restricted period, unless they meet the criteria for an exemption for shark gillnets that currently exists in the regulations. Although this requirement was contained in the proposed rule, NMFS inadvertently omitted the analysis of its expected impacts from the EA/RIR. As a result, NMFS did not provide adequate information for the public to provide comment on the proposed provision. NMFS will provide the public another opportunity to comment on this provision and the necessary analytical documents as soon as possible. Consequently, NMFS is eliminating this measure from the final rule by eliminating paragraph (f)(3)(iv) in § 229.32 of the proposed rule.

NMFS believes this final rule, in combination with the forthcoming rules for SAM and DAM, are collectively sufficient to remove the likelihood of jeopardy to the continued existence of North Atlantic right whales from the Northeast multispecies, spiny dogfish and monkfish gillnet, and American lobster fisheries as the Northeast Multispecies, Spiny Dogfish, and Monkfish FMPs do not incorporate southern U.S. waters. NMFS recently elevated Southeast Atlantic gillnet fisheries to Category II in the Final List of Fisheries for 2001 (66 FR 42780, August 15, 2001) due to their occasional interaction with bottlenose dolphins. The Southeast Atlantic gillnet fishery is separate from the Category II Southeastern U.S. Atlantic shark gillnet fishery presently regulated by the ALWTRP.

NMFS intends to consider implementation of this measure, after public review of its environmental and economic impact analysis, as soon as possible in 2002, but no later than November 1 when the whales are expected to return to this area. This delay is not expected to adversely affect North Atlantic right whales. Unlike the Northeast, there is no direct evidence of interactions between right whales and gillnets in the southeast region. However, the ALWTRT developed the proposed modifications in Southeast waters as a precautionary measure to address the potential rare occurrence of interaction and to offer additional protection to right whales.

A technical change was also made to correct and clarify the intent of the regulations. As proposed, lobster trap gear in the Southern Nearshore Waters Area and Offshore Lobster Waters Area, and gillnet gear in the Mid-Atlantic Coastal Waters are required to install weak links at the buoy. However, the proposed regulations were not clear as to the location of the installation of the weak links at the buoy. Therefore, in § 229.32, paragraph (c)(8)(ii) is revised to clarify the location of the buoy line weak links within the Southern Nearshore Lobster Waters Area, Offshore Lobster Waters Area, and Mid-Atlantic Coastal Waters.

Classification

NMFS prepared a FRFA for this final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**). Four alternatives were evaluated, including a status quo or No Action alternative, the Preferred Alternative (PA), and two other alternatives. A summary of that analysis follows:

1. NMFS considered but rejected a No Action alternative that would result in no changes to the current measures under the Atlantic Large Whale Take Reduction Plan. The No Action alternative would result in no additional economic burden on the fishing industry, at least in the short-term. However, if the status quo is maintained now, more restrictive and economically burdensome measures than those in this final rule may be necessary in the future to protect endangered right whales from the fisheries. The No Action alternative was rejected because it would not enable NMFS to meet the RPA measures of the BO required under the ESA.

2. NMFS considered but rejected an alternative that would consist of the PA as well as the use of full weak links at the surface and bottom of the buoy line and the reduction of floating line. The operational impacts of the bottom weak link may be large for the fishermen and result in negative impacts on the North Atlantic right whale. The ability to haul back gear successfully while employing a bottom weak link has not been developed and the potential for gear loss is considered high at this point. Gear left on the bottom without surface representation, such as buoy or high flyer, is difficult to recover and becomes ghost gear which continues to fish and still presents an entanglement risk to the North Atlantic right whale.

3. NMFS considered but rejected an alternative that would consist of the PA as well as buoy line removal and the reduction of floating line. Complete removal of buoy line and reduction of floating line are recognized as the most risk averse technique for utilization of fixed gear. However, one of the major drawbacks of this alternative is that other fishermen will not know where gear has been set, and gear conflicts with both fixed and mobile gear are likely to result in lost and/or damaged gear possibly resulting in an increase in ghost gear. Ghost gear is a potential entanglement source and source of negative impacts on North Atlantic right whales. Thus, this option may only be feasible in areas where other gear cannot be set or can be strictly controlled.

4. The PA plan includes the expansion of gear modifications (e.g. weak links) to the Southern Nearshore Waters lobster trap and Mid-Atlantic Coastal Waters gillnet fisheries, and a reduction in the maximum breaking strength for buoy weak links used in the Offshore Lobster Waters Area. NMFS accepted this alternative as these gear modifications are necessary to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BOs.

This action implements additional gear modifications to remove the likelihood of jeopardy of North Atlantic right whales posed by the continued operation of the multispecies, spiny

dogfish, monkfish and lobster fisheries as required in the RPA that resulted from the BOs issued by NMFS in accordance with section 7 of the ESA. The objective of the RPA is to eliminate mortality and serious injuries of right whales, eliminate serious and prolonged right whale entanglements, and significantly reduce the total number of right whale entanglements in the multispecies, spiny dogfish, monkfish and lobster fisheries.

NMFS has taken steps to minimize the significant economic impact on small entities through this PA. The PA meets a portion of the RPA designed to remove jeopardy, consistent with the requirements of the ESA, while allowing fishing to continue and, therefore, reduce economic impacts compared to fishery closures.

The small entities affected by this final rule are gillnet and lobster trap fishermen. The geographic range of the gear modifications will include the northern inshore area, southern nearshore area, offshore area, and the Mid-Atlantic waters area. The potential sizes of the fleets impacted are: the northern inshore fleet is potentially as large as 5,982 vessels, the southern nearshore fleet is potentially as large as 222 vessels, the offshore fleet is potentially as large as 172 vessels, and the Mid-Atlantic fleet is potentially as large as 625 vessels. This action contains no new reporting or record-keeping requirements. However, it does require modifications to lobster and sink gillnet gear. There are no relevant Federal rules that duplicate, overlap, or conflict with this final rule.

NMFS received only one public comment relating to the economic impacts of this final rule. This comment was considered by NMFS before it approved this final rule, and is characterized and responded to by NMFS in the ''Comments and Responses'' section of the preamble to this final rule, as comment/response number one. No changes to this final rule were made as a result of the comment received.

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

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this final rule is consistent with the enforceable policies of the approved coastal management program for that state.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule refers to a collection-of-information requirement subject to the Paperwork Reduction Act, namely a gear marking requirement, which has been previously approved by OMB under control number 0648–0364. The public reporting burden for this requirement is estimated to average .6 minutes per line. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

This final rule implements a portion of the RPA, which resulted from ESA section 7 consultations on three FMPs for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. This final rule implements a component of the RPA contained in the BOs issued by NMFS on June 14, 2001. Therefore, no further section 7 consultation is required.

This final rule contains policies with federalism implications that were sufficient to warrant consultations and preparation of a federalism summary impact statement under Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local and/or tribal government in October 2001. No comments on the federalism implications of the proposed action were received in response to the October 2001 letter.

List of Subjects in 50 CFR Part 229

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

Dated: December 31, 2001.

Rebecca Lent,

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

Authority: 16 U.S.C. 1371 *et seq.*

2. In § 229.2, a definition of ''Neutrally buoyant line'' is added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Neutrally buoyant line means line with a specific gravity near that of sea water, so that the line neither sinks to the ocean floor nor floats at the surface, but remains close to the bottom.

* * * * *

3. In § 229.3, paragraph (k) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

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

* * * * *

4. Section 229.32 is amended by adding a note to the end of the section; revising the heading of the introductory text of paragraph (c)(5)(ii)(A); and revising paragraphs (c)(5)(ii)(A)(*2*), (c)(8)(ii), (c)(9)(i), (c)(9)(iii), (c)(9)(iv), (d)(7), and (d)(8) to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(A) *Weak links on all buoy lines.*

* * *

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(*2*) The breaking strength of these weak links may not exceed 2,000 lb (906.9 kg).

* * * * *

(8) * * *

(ii) *Area-specific gear requirements for the restricted period—* (A) *Restricted period.* The restricted period for Southern Nearshore Lobster Waters is year round unless the Assistant Administrator revises this period in accordance with paragraph (g) of this section.

(B) *Gear requirements.* No person may fish with lobster trap gear in the Southern Nearshore Lobster Waters Area during the restricted period unless

that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal lobster trap gear requirements in paragraph (c)(1) of this section, and the following gear requirements for this area, which the Assistant Administrator may revise in accordance with paragraph (g) of this section:

(*1*) *Buoy Line Weak Links.* All buoy lines must be attached to the main buoy with a weak link placed as close to each individual buoy as operationally feasible that meets the following specifications:

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

(*ii*) The breaking strength of this weak link may not exceed 600 lb (272.4 kg).

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

(*2*) [Reserved]

(9) * * *

(i) Through December 31, 2002, all buoy lines must be 7/16 inches (1.11 cm) or less in diameter.

* * * * *

(iii) All buoy lines must be comprised entirely of sinking and/or neutrally buoyant line.

(iv) All ground lines must be comprised entirely of sinking and/or neutrally buoyant line.

* * * * *

(d) * * *

(7) *Mid-Atlantic Coastal Waters Area*—(i) *Area.* The Mid-Atlantic Coastal Waters Area consists of all U.S. waters bounded by the line defined by the following points: The southern shore of Long Island, NY, at 72° 30′ W. long., then due south to 33° 51′ N. lat., thence west to the North Carolina-South Carolina border, as defined in § 229.2.

(ii) *Area-specific gear requirements.* No person may fish with anchored gillnet gear in the Mid-Atlantic Coastal Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, which the Assistant Administrator may revise in accordance with paragraph (g) of this section:

(A) *Buoy line weak links.* All buoy lines must be attached to the main buoy with a weak link placed as close to each individual buoy as operationally feasible that meets the following specifications:

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

(*2*) The breaking strength of these weak links may not exceed 1,100 lb (498.8 kg).

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

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

(*1*) Weak links must be inserted in the center of the floatline of each 50-fathom (300-ft or 91.4-m) net panel in a net string or every 25 fathoms for longer panels.

(*2*) The breaking strength of these weak links may not exceed 1,100 lb (498.8 kg).

(C) *Tending/anchoring.* All gillnets must return to port with the vessel or be anchored at each end with an anchor capable of the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor.

(8) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are attached to the buoy line with a weak link having a maximum breaking strength of up to 1,100 lb (498.8 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.

(ii) Weak links with a breaking strength of up to 1,100 lb (498.8 kg) must be inserted in the center of the floatline (headrope) of each 50 fathom net panel or every 25 fathoms for longer panels.

(iii) All buoy lines must be comprised entirely of sinking and/or neutrally buoyant line.

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Note to § 229.32: Additional regulations that affect fishing with lobster trap gear have also been issued under authority of the Atlantic Coastal Fisheries Cooperative Management Act in part 697 of this title.

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