

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 229

[Docket No. 130201095-4400-02]

RIN 0648-BC90

**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 implementing the Atlantic Large Whale Take Reduction Plan (Plan). This rule revises the management measures for reducing the incidental mortality and serious injury to the North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), and fin whale (*Balaenoptera physalus*) in commercial trap/pot and gillnet fisheries to further the goals of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The measures identified in the Plan are also intended to benefit minke whales (*Balaenoptera acutorostrata*), which are not classified as strategic stocks under the MMPA, but are known to be taken incidentally in commercial fisheries.

**DATES:** These regulations are effective August 26, 2014. Section 229.32(f)(2)(vi) (gear marking requirements and gear modifications in the Southeast) is applicable November 1, 2014 and § 229.32(b) and (c)(2)(i) (gear marking requirements and minimum number of traps per trawl requirement in the Northeast) are applicable June 1, 2015.

**ADDRESSES:** Copies of the Final Environmental Impact Statement/Regulatory Impact Review/Record of Decision for this action can be obtained from the Plan Web site listed under Electronic Access.

Written comments regarding the burden hour estimates or other aspects of the collection of information requirements contained in this final rule can be submitted to David Gouveia, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Dr, Gloucester, MA 01930 or Office of Information and Regulatory Affairs by email at [OIRA\\_submissions@omb.eop.gov](mailto:OIRA_submissions@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Kate Swails, NMFS, Greater Atlantic Region, 978-282-8481, [Kate.Swails@noaa.gov](mailto:Kate.Swails@noaa.gov); Kristy Long, NMFS Office of Protected Resources, 301-427-8440, [Kristy.Long@noaa.gov](mailto:Kristy.Long@noaa.gov); or Barb Zoodsma, NMFS Southeast Region, 904-321-2806, [Barb.Zoodsma@noaa.gov](mailto:Barb.Zoodsma@noaa.gov).

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

Several of the background documents for the Plan and the take reduction planning process can be downloaded from the Plan Web site at <http://www.nero.noaa.gov/whaletrp/>. The complete text of the regulations implementing the Plan can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the Web site, along with a guide to the regulations.

**Background**

The Marine Mammal Protection Act Section 118 requires NMFS to implement a Take Reduction Plan to reduce the serious injury and mortality of marine mammals incidental to commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate. NMFS first implemented regulations establishing the Atlantic Large Whale Take Reduction Plan (Plan) to meet this requirement in 1997. Section 118(f)(7)(E) of the MMPA requires the Take Reduction Team (Team) and NMFS to meet every six months, or at other such intervals as NMFS determines are necessary, to monitor the implementation of the final Plan until such time that NMFS determines that the objectives of the Plan have been met.

Section 118(f)(7)(F) requires NMFS to amend the Plan and implementing regulations as necessary to meet the requirements of Section 118 to reduce incidental serious injury and mortality to a level approaching ZMRG, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. The Team and NMFS have met and amended the Plan and implementing regulations several times since 1997 in an ongoing effort to ensure the requirements of the MMPA regarding take reduction of large whales continue to be met.

This final rule is the latest step in this ongoing process. The rule implements modifications to the Plan suggested by the Team and public, as well as modifications deemed necessary by NMFS to further enhance the likelihood of meeting the requirements and further the goals of the MMPA, as well as the

ESA. Section 7(a)(2) of the ESA requires federal agencies to ensure that any action authorized, funded or authorized by the agency is not likely to jeopardize the continued existence of any endangered or threatened species. Details concerning the development and justification of this final rule were provided in the preamble to the proposed rule (78 FR 42654, July 16, 2013) and are not repeated here.

As a result of public input provided through the scoping process and Team meetings, NMFS developed six alternatives including a “No Action” or status quo alternative, to modify the Plan. All six of these alternatives are described and analyzed in detail in the Final Environmental Impact Statement (FEIS) prepared to accompany this rule. NMFS identified Alternative 5 as the Preferred Alternative in the proposed rule but after receiving public comment on each alternative NMFS has decided to amend the Plan as proposed in Alternative 6, with a few adjustments.

The proposed rule’s preferred Alternative 5 would have implemented three closure areas to reduce the risk of serious injury and mortality incidental to interaction between whales and commercial fishing gear, thereby enhancing the likelihood of meeting MMPA requirements of reducing serious injury and mortality to level approaching ZMRG. Two of the three proposed closure areas; however, were determined to have low levels of “co-occurrence” of whales and fishing gear, and therefore the conservation benefit of closing those two areas was deemed to be minimal, while the cost to the fishing industry would have been substantial. The single closure contained in this final rule was the only one of the proposed three closure areas in which there is a high level of co-occurrence of whales and fishing gear. Thus, closing this area will have a similar conservation benefit that closing all three of the areas in the proposed Preferred Alternative 5 would have had.

The other adjustments to Alternative 6 which have been included in this final rule are described as follows:

(1) New Hampshire state waters are exempted from the minimum number of traps per trawl requirement of the final rule, but fishermen are not exempted from other previously implemented requirements. This is a change from the proposed rule which would have exempted New Hampshire state waters from all requirements, and therefore increases the conservation benefit to whales from the measures in the proposed rule.

(2) The minimum number of traps per trawl in the final rule for Massachusetts

and Rhode Island state waters and pocket waters in Maine is reduced from three to two traps per trawl. This change is due to concerns about the safety of small boats having to work trawls of three traps as opposed to trawls of two traps. This change is negligible, and thus is still consistent with the MMPA.

(3) An exemption from the minimum number of traps per trawl requirement is newly created in this final rule for a  $\frac{1}{4}$  mile buffer in waters surrounding three inhabited islands in Maine—Monhegan, Matinicus, and Ragged Islands. Boats within this  $\frac{1}{4}$  mile buffer will be allowed to continue fishing single traps rather than multiple trap trawls in the proposed rule, due to safety issues since these waters are generally less than 30 fathoms deep with rocky edges, and boats fishing close to shore areas usually small. Whales are not likely to come this close to shore, so this change from the proposed rule does not lessen the conservation benefit of the final rule.

(4) Gear marking is not required in Maine exempted waters, in contrast to the proposed rule, due to feasibility concerns of switching marks when moving from an exempt area to a non-exempt area. The change in conservation benefit to whales from this change is negligible.

Because this final rule with a single closure and the other changes described above will provide a conservation benefit comparable to that which would have been provided by the preferred Alternative 5 in the proposed rule, yet pose less economic impact and fewer safety concerns to the fishing industry, it is consistent with the requirements of the MMPA to reduce serious injury and mortality to approach ZMRG. The changes in the final rule, as compared to the proposed rule, are justifiable under MMPA requirements and goals because they take into account the economics of the fishery, the availability of existing technology, and existing fishery management plans, as well as the goal of the ESA to avoid jeopardizing the continued existence of ESA-listed whales.

As noted in the **DATES** section above, this rule is effective 60 days after publication with the exception of the amended gear marking requirements and gear modifications in the Southeast (effective November 1, 2014) and amended gear marking requirements and minimum number of traps per trawl requirement in the Northeast (effective June 1, 2015). NMFS chose a phased-in implementation for this rule as a result of public comment. The changes in the Plan require the reconfiguration of approximately 200,000 vertical lines at

an annual compliance cost of approximately \$1.9 to \$4.5 million. In the Southeast, Industry members and state partners requested that NMFS provide adequate time for industry to comply with the amended gear marking requirements, as 60 days would not be sufficient time for that purpose given the extent of needed changes in light of the new requirements. In the Northeast, Industry members and state partners requested that the implementation date coincide with the trap tag renewal date of June 1 to allow for a more cost-effective implementation of the new requirements, as gear is out of the water during that time as industry affix new trap tags for the upcoming season. The new minimum trap per trawl measure requires increasing the number of traps per vertical line which requires removal of equipment from the water and reconfiguration of line and equipment. Additional time is needed for fishermen to adapt to these changes. NMFS finds that there is good cause for the November 1, 2014 and June 1, 2015 phased-in implementation date to address the public's concerns, and given that the impact on conservation benefit to large whales from this phased-in implementation will be minimal given the relatively short delay in implementation. Specifically, the majority of the conservation measures included in the final rule will be in place 60 days after publication of the rule—including protective measures during calving season, and a closure that goes into effect January 1, 2015, and all current ALWTRP requirements, including the sinking groundline requirement, remain in place during this phased-in implementation of some of the new measures.

#### **Changes to the Plan for Boundaries and Seasons**

This final rule will exempt New Hampshire State waters from the Plan's minimum number of traps per trawl requirement based on the co-occurrence model. Those fishing in state waters would still be required to comply with previously implemented requirements including marking requirements (see 50 CFR 229.23(b)(2) and (3)).

NMFS intends to expand the Cape Cod Bay Restricted Area to include portions of the Outer Cape. This new area, Massachusetts Restricted Area, would be closed for a portion of the year (January 1–April 30) to trap/pot fisheries, due to the level of co-occurrence of whales and gear and the conservation benefit to be gained while minimizing economic impacts to the fishery.

Finally, NMFS intends to create a new trap/pot management area in the Southeast. The eastern boundary of the current Southern Nearshore Trap/Pot waters area would be aligned with the eastern boundary of the existing Southeast Restricted Area North management area. This new area would coincide with the current Southeast Restricted Area North management area in place for gillnets. Management measures in this area would be in place from November 15 through April 15.

#### **Changes to the Plan for Trap/Pot Gear**

In the Northeast, NMFS will institute restrictions designed to reduce the number of buoy lines that fishermen employ. This final rule limits the number of lines in the Northeast by prohibiting single trap/pots and requiring fishermen to increase the number of traps per trawl they set based on area and distance to shore. In some areas (mainly inshore and nearshore waters) this may represent a change from how they currently fish. In Federal waters and offshore, larger trawls are currently fished so this requirement may not affect these vessels to the same extent as smaller inshore vessels. The current requirement of one endline for trawls less than or equal to five traps remains in place. Larger trawls (i.e., > 5 traps/pots) will not be required to have only one endline.

The numbers of traps per trawl are based on the co-occurrence model, public input, and discussions with state partners. The required traps per trawl differ based on distance to shore and lobster management area. In Maine the number of traps per trawl is defined based on Maine state lobster zones.

In the Southeast Restricted Area North, NMFS will require single traps/pots, implement weaker weak links and breaking strength of vertical lines, and require all vertical lines to be free of objects (e.g., weights, floats, etc.) except where it attaches to the buoy and trap/pot, and made of sinking line.

The Plan requires the use of weak links with maximum breaking strengths of 200 to 600 lbs (90.7 to 272 kg) depending on management area within the Southeast Restricted Area North. This final rule defines the breaking strengths of weak links in South Carolina, Georgia, Florida state waters as 600 lbs (272 kg), 600 lbs (272 kg), and 200 lbs (90.7 kg), respectively. In Federal waters the breaking strength is defined as 600 lbs (272 kg).

This final rule also defines the maximum breaking strength of vertical line in the Southeast Restricted Area North. In South Carolina and Georgia state waters breaking strength of the

vertical line will not exceed 2,200 lbs (998 kg). In Florida state waters breaking strength of vertical line will not exceed 1,500 lbs (680 kg). Federal waters will have a breaking strength of 2,200 lbs (998 kg).

In an effort to decrease the number of ways gear is rigged, NMFS is also requiring that vertical lines be made of sinking line and free of objects for those traps set anywhere in the Southeast Restricted Area North. (effective in the Southeast on November 1, 2014 and effective in the Northeast on June 1, 2015).

### Changes to the Plan for Gear Marking

This final rule will implement a gear marking scheme that maintains the current color combinations but increases the size and frequency of the mark. The new mark must equal 12-inches (30.5 cm) in length and buoy lines must be marked three times (top, middle, bottom). A mark for the new Southeast U.S. Restricted Area North would be required for both state and Federal waters. This rule will continue to allow multiple methods for marking line (e.g., paint, tape, rope, etc.). (effective in the Southeast on November 1, 2014 and effective in the Northeast on June 1, 2015).

### Regulatory Language Changes

Some corrections and clarifications have been identified as necessary since the last regulation was implemented. The following changes to the current Plan regulations will improve consistency and clarity.

*Exempted waters:* NMFS added language to clarify the exempted waters description.

*Southeast U.S. Monitoring Area Clarification:* The final rule clarifies the restricted period for the Southeast U.S. Monitoring Area. The added language defines the restricted period as December 1 through March 31.

*Definitions:* The final rule modifies the definition of “groundline” when referring to gillnets to remove reference to buoy line. The modified definition reads, “Groundline with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor.”

*Prohibitions:* The final rule eliminates the individual prohibition paragraphs on fishing or possessing trap/pot gear, anchored gillnet, drift gillnet, gillnet, and shark gillnets (§ 229.3(h) through (l)) and condenses the intended prohibitions into three paragraphs that apply to “any person or vessel and fishing gear subject to the Plan.”

NMFS clarifies that fishermen are responsible for proving that an exemption or exception under § 229.32 is applicable.

*Other Special Measures:* This final rule clarifies the intent of § 229.32(i)(2) to include consultation with the Take Reduction Team.

### Comments and Responses

NMFS received 533 letters from commenters on the Draft Environmental Impact Statement (DEIS) and proposed rule via [www.regulations.gov](http://www.regulations.gov), letter, fax, or email. Additionally, two form letters were received on the DEIS via hardcopy letter and email; approximately 27,500 of one form letter, 13,500 of another form letter, and approximately 1,300 slight variations to the form letters. NMFS also solicited comments on the DEIS during 16 public hearings held along the Atlantic coast. The substantive comments are summarized and grouped below by major subject headings. NMFS’ response follows each comment. NMFS received comments on DEIS technical changes that were not substantive, and incorporated such changes in the FEIS as appropriate. These technical comments are not listed in the summary.

### General Comments

*Comment 1:* One commenter stated that the proposed measures should be extended to recreational fishermen and not just commercial fishermen.

*Response:* The regulations implementing the Plan are governed by Section 118 of the MMPA, which requires take reduction teams to assist NMFS in the development of take reduction plans that address serious injuries and mortalities of marine mammals that interact with commercial fishing operations. Therefore, the proposed measures apply to commercial fishing only. However, recreational fishermen that take marine mammals are in violation of the MMPA prohibition against taking marine mammals. NMFS has created brochures designed to inform recreational fishermen about protected species conservation.

*Comment 2:* Two commenters requested that the 60-day public comment period be extended.

*Response:* NMFS believes that the 60-day comment period was adequate and chose not to extend the time period.

*Comment 3:* One commenter stated that the proposed regulations should consider the shifting baseline in the marine food chain as a result of climate change and eutrophication, stating that right whale prey distribution is changing in time and place and

management should be adapted to account for these shifts. The commenter suggested that the status quo approach be supplemented with dynamic solutions using an ecosystem approach for management.

*Response:* NMFS acknowledges this important comment. Managing resources in the face of changing environmental conditions is challenging. The ability to account for distribution shifts that may result from changing environmental conditions exist in the current regulations. These regulations can be found at § 229.32(i)(2). Among other considerations, should NMFS, in consultation with the Team, determine that right whale distribution shifts result in its current conservation measures being no longer appropriate, NMFS has the ability to make changes to the measures.

*Comment 4:* A few commenters stated that they have never seen a whale in state waters and thus it was unfair to propose new laws in areas without whales.

*Response:* Because most large whale entanglements (particularly those involving right whales) tend to be free swimming entanglements when detected and the gear recovered from these entanglements do not provide adequate information to determine where an entanglement occurred, entanglements from specific fisheries and areas are rarely documented. Therefore, NMFS developed a model to help identify the relative likelihood of an entanglement by time and area. The model is based on high “co-occurrence areas,” which are areas that have the highest frequency of gear that overlap with large whale sightings per unit effort. NMFS believes that these high co-occurrence areas represent a higher likelihood of entanglement to large whales. Areas identified as a high co-occurrence area may be subject to conservation measures regardless of whether a take has been documented in that area.

*Comment 5:* Some commenters stated that the entanglement risk to right and other large whales is greater in areas outside of the Southeast U.S. Atlantic and that there have been no documented cases of black sea bass or blue crab gear on a right whale. Some commenters also noted that fewer trap/pots are set in the Southeast relative to northern regions (including Canada) and that gear in the Southeast is lighter, uses shorter vertical lines, and is therefore less risky to whales than trap/pot gear found farther north.

*Response:* The annual Stock Assessment Reports (SARs) partition out

entanglement records between U.S. and Canadian waters for large cetacean species. Currently, in the 2012 SAR (Waring et al., 2013) the average number of annual fishery entanglements of right whales was 1.6 in U.S. waters and 0.2 in Canadian waters. The potential biological removal for this species is calculated at 0.9. Thus, even when considering only entanglements from U.S. fisheries, right whales are being taken at too great a rate to maintain optimal population sustainability. Furthermore, gear removed from right whales is not always identified to a specific fishery; however, in cases where the gear could be identified, more rope was associated with trap/pot gear than gillnet gear (Johnson et al., 2005).

The vertical line model utilized by NMFS and the Team for the development of this rule focused on areas of high co-occurrence of vertical lines associated with commercial trap/pot and gillnet gear and large whale sighting per unit effort data. The analysis of these data indicated that co-occurrence was relatively low within the Southeast Restricted Area North during the right whale season from November 15th through April 15th. Consequently, NMFS did not propose a closure throughout the Southeast Restricted Area North or critical habitat area. However, the gear is not risk-free, which is why NMFS is implementing other risk reduction measures through this final rule. Also, see response to Comment 40.

*Comment 6:* One commenter stated that before taking further action NMFS should provide fishermen with statistical significance and a five year period by which to assess the major April 2009 implementation of the previous rule requiring fishermen to change their floating groundline to sinking groundline.

*Response:* At its 2003 meeting, by consensus, the Team agreed to two overarching principles associated with reducing large whale entanglement risks: (1) Reducing entanglement risks associated with groundlines in commercial trap/pot gear; and (2) reducing entanglement risks associated with vertical lines. The Team agreed to focus first on addressing the groundline entanglement risk, which was completed in October 2007 (72 FR 57104, October 5, 2007), followed by the development and implementation of a vertical line rule. This rule addresses the entanglement risk identified by the Team to large whales from vertical lines, and completes the two-pronged strategy identified by the Team to address large whale entanglements in commercial trap/pot and gillnet gear. Under the

MMPA, the number of deaths or serious injuries due to commercial fishing activities must not affect a species' ability to reach or maintain its optimum sustainable population. At present, with just the sinking groundline conservation measures in place, the number of serious injuries and mortalities for right whales and humpback whales remain above permissible levels and mortalities due to entanglements in vertical lines in trap/pot and gillnet gear continue to occur. NMFS, in consultation with the Team, has developed a monitoring strategy to evaluate industry compliance with the Plan and the effectiveness of the Plan in achieving the Plan's goals and objectives. For more information on the monitoring strategy, please see the response to Comment 8.

*Comment 7:* A few commenters suggested that NMFS move forward with one measure to reduce interactions at a time in a phased approach. It was suggested that NMFS should just increase the number of traps per trawl before proposing closures or just move forward with the increased gear marking at this time and then once the problem areas are identified come back with management measures targeting those problem areas.

*Response:* NMFS appreciates the suggestion but believes that the combination of management measures in the final rule is necessary to achieve the goals of the MMPA and ESA.

*Comment 8:* A few commenters were concerned that there was a lack of strategy if entanglement levels continued to exceed Potential Biological Removal Rate (PBR) regardless of the proposed measures. The commenters stated that whales could continue to experience high levels of entanglement than legally allowed with no recourse.

*Response:* On February 23–24, 2009, NMFS convened an internal workshop to discuss the development of a comprehensive monitoring strategy for the Plan. The goal of this workshop was to develop an outline for a monitoring strategy that included components to review compliance with and to assess the effectiveness of the Plan regulations in achieving the MMPA short-and long-term goals of reducing serious injury and mortality of large whales in U.S. commercial fisheries. This monitoring strategy was shared with the Team and went into effect in August 2012. This strategy includes both annual monitoring reports and a multi-year status summary intended to review the Plan's effectiveness and compliance over a 5-year timeframe. If analyses determine that the Plan is not achieving its goals, NMFS will review the multi-year status summary to evaluate the

potential causes for not achieving the management objectives and consult with the Team on the development of appropriate actions to address any identified shortcomings in the Plan.

*Comment 9:* One commenter requested that the preamble to the rule and FEIS include a discussion that more accurately reflects decisions reached by the Team with respect to the rulemaking timeline.

*Response:* NMFS disagrees with the commenter's assessment that the discussion of the rulemaking timeline is not accurately reflected. NMFS believes that the proposed rule's preamble and DEIS reflect the Team discussions at past meetings about the need to move forward with a vertical line rule and the timeline to develop and implement the rule. The text in the preamble and DEIS is consistent with the Team's meeting summaries.

*Comment 10:* Several commenters stated that there are too many unanswered questions that need to be answered before expanding new policies. They requested that the northeast portion of the rule be reconsidered until better information exists regarding what part of the line is entangling whales and what the economic impact of the changes will be on the industry.

*Response:* The FEIS notes that entanglements of large whales are still occurring and highlights the provisions of the MMPA and ESA that NMFS is required to follow. Based on the continued serious injury and mortality of large whales, NMFS must take action to provide more protection to large whales. Although NMFS acknowledges the need for more scientific information, NMFS is required to take action based on the best information that is available when developing the EIS. The economic impact of this action is discussed in the EIS. As new information becomes available regarding large whales, entanglements, or economic impacts of these policies NMFS will share this information with the Team to determine if additional changes to the Plan are warranted.

*Comment 11:* One commenter stated that there is a lack of data and the data that is available is often flawed.

*Response:* See Response to Comment 10.

*Comment 12:* A few commenters commented that NMFS fails to link the proposed measures to a reduction in serious injury/mortality. The commenters stated that, although a reduction in risk does not necessarily equate to the same level of reduction in serious injury/mortality, it provides some basis for meeting the PBR goals.

The commenters believe the rule should meet a 50% reduction standard or provide explanation for how the rule will reduce the levels of serious injury/mortality to below PBR.

*Response:* Sufficient information is not available on when, where, and how entanglements occur such that a specific vertical line reduction target can be calculated. Therefore, NMFS and the Team have not determined a percent reduction of vertical lines that would reduce serious injury and mortality of large whales that encounter vertical lines to a level that would achieve the MMPA's PBR and ZMRG mandates. NMFS used the best information that is available and worked with commercial trap/pot and gillnet fishermen and other stakeholders to develop feasible conservation measures intended to achieve the goals and objectives of the Plan and MMPA. The preferred alternative achieves a 38% reduction in co-occurrence coastwide. NMFS believes this level of co-occurrence reduction is consistent with and furthers the goals and objectives of the MMPA and ESA.

*Comment 13:* In response to NMFS' request to comment on the proposed changes to the 'other special measures' provision, one commenter agreed that the Team should be consulted but that the consultation must involve dialogue. The commenter questioned if the provision agreed with the MMPA since the MMPA specifically provides NMFS with authority to take emergency actions to promote conservation.

*Response:* NMFS appreciates the support for the change to the provision. The provision and the MMPA emergency regulations are different and have their own requirements. The "Other Special Measures" provision is not intended to address NMFS' ability to take emergency actions, rather it allows NMFS to make changes to the Plan as new information about gear marking, gear technology, or right whale distribution in closed areas becomes available. This final rule includes language to ensure that the Team is consulted prior to actions being taken under the "Other Special Measures" provision.

#### **General Comments on Proposed Alternatives**

*Comment 14:* Many people stated their general support for the Preferred Alternative stating that the level of serious injury and mortality is above PBR and therefore additional management measures are necessary.

*Response:* NMFS acknowledges this comment and agrees that additional management measures are necessary.

*Comment 15:* Numerous people stated their support for the No Action Alternative referring to the increasing right whale population as a sign that the current management measures are working and additional measures are not necessary.

*Response:* NEPA requires NMFS to analyze a no action alternative. NMFS did not choose this alternative for this final rule because it is not consistent with the goals and objectives of the Plan and therefore is not consistent with the goals and requirements of the MMPA or ESA. Although the right whale population has increased in recent years, the number of serious injury and mortalities occurring as a result of entanglement in commercial fishing gear is still at a level above PBR and ZMRG. NMFS has determined that additional measures included in this action are necessary to help meet the objectives of the MMPA and ESA.

*Comment 16:* One commenter stated that the proposed alternatives would require fishermen to spend more money on weak links and sinking rope and fishermen can't afford to spend more money.

*Response:* NMFS is sensitive to the costs of complying with this final rule and characterized the economic and social impacts in the FEIS. Chapter 7 of the FEIS identifies the vessels segments that may be heavily affected by the new requirements. Based on the comments received during the public comment period and public hearings, the preferred alternative was chosen because it provided a significant conservation benefit to large whales while having a lower economic cost to industry.

*Comment 17:* One commenter agreed that reducing vertical line offshore is a good thing to do as there are more whales offshore so the rules should be made to account for this.

*Response:* NMFS agrees with this comment and the final rule includes measures for vessels fishing offshore.

*Comment 18:* A handful of commenters provided general comments about the Southeast U.S. portion of the proposed rule: (1) The proposed rule contained a patchwork of requirements within the currently designated critical habitat that are inconsistent and arbitrary, (2) the various requirements would make it difficult for fishermen to comply and law enforcement officials to enforce, and (3) the presence of neophyte calves in Florida state waters was NMFS' basis for requiring weak links and ropes with lower breaking strengths in that area, but these same "neophytes" are born further to the north where breaking strengths are far

higher (and presumably create higher risk). Many of these commenters were also concerned that proposed measures in the Southeast largely retain the status quo and do not reduce risk to right whales, especially for mother/calf pairs.

*Response:* This final rule provides additional protection to right whales by focusing management measures in areas of elevated co-occurrence of whales and vertical lines. First, NMFS believes the various requirements provide protection for right whales while avoiding unnecessary impact to fisheries. Second, NMFS did not receive any comments about difficulties associated with compliance or enforcement from fishermen or law enforcement officials. Third, NMFS is particularly cognizant of the weaker physical characteristics of neophyte calves, which most often occur in the Southeast U.S. Neophyte calves are occasionally documented off North Carolina and Cape Cod Bay, Massachusetts; however, the highest co-occurrence of very young right whale calves and vertical lines is in Florida state waters and where the trap/pot gear modifications in this rule are the most risk averse.

Finally, NMFS agrees that some of the Southeast measures in this final rule retain the status quo regarding existing fishing gear and techniques. In those instances, NMFS believes the present gear/practice is appropriately risk averse and codified those practices to ensure the gear does not become riskier to whales in the future. However, other measures such as requiring object-free lines, sinking vertical lines, returning gear to port from federal waters, and additional gear marking are all new measures that reduce entanglement risks to right whales, including mother/calf pairs.

*Comment 19:* One commenter supported customizing management measures to specific high priority areas rather than using wide-scale broad management; this commenter thought that applying the same management measures to the area from North Carolina all the way down to Florida to the 29 latitude line isn't a customized plan. Another commenter stated that the Southeast Restricted Area North (SERA N) is a huge area and that he fishes in only a small portion of that area and requested a "secondary boundary" that would allow him to fish for blue crab in Federal waters.

*Response:* NMFS is defining the Southeast Restricted Area North as a trap/pot management areas so that the southeast U.S. measures in this final rule apply to the same management area used for gillnet fisheries. This helps reduce and streamline the number of

management areas while providing protection for right whales. However, new information on right whale distribution has become available since the Southeast Restricted Area North gillnet area was established. This new data is currently being evaluated. If NMFS determines that the Southeast Restricted Area North and South boundaries should be adjusted, we will do so in consultation with the Team as part of future rulemaking.

*Comment 20:* Some commenters suggested that all states should have the same protections coastwide paying special attention to areas and seasons where right whales feed and give birth.

*Response:* NMFS, in consultation with the Team, chose not to implement a broad-based management scheme as it had done in the past. Instead, NMFS and the Team developed a model to compare the relative likelihood of entanglements occurring across areas and seasons. The model is based on high “co-occurrence areas,” which are areas that have the highest frequency of gear that overlap with large whale sightings. NMFS utilized these high co-occurrence areas as a proxy for high risk of entanglement to large whales. The management measures are intended to provide the same protection to areas of high co-occurrence regardless of whether the measures differ from state to state. There are regional differences in fishing practices that influence fishing techniques, and NMFS tried to account for the differences in techniques when developing the rule.

*Comment 21:* Two commenters stated they did not support making splicing line illegal. It would be impossible to make buoy lines without splices.

*Response:* NMFS agrees and did not intend to suggest that splicing line would be illegal. This is clarified in this final rule.

*Comment 22:* One commenter agreed that there is insufficient data in the mid-Atlantic to propose management measures at this time. The commenter supports efforts to assess whale distribution in this area and if high co-occurrence areas are identified later on then fisheries should be managed.

*Response:* The Plan was developed to reduce the level of serious injury and mortality of North Atlantic right, humpback, and fin whales. NMFS, in consultation with the Team, chose to develop management measures in areas of high co-occurrence of gear and large whale sightings. NMFS used these high co-occurrence areas as a proxy for entanglement risk to large whales. There are fewer large whale sighting data in the mid-Atlantic than in other regions. Because of this, the mid-Atlantic did not

register as an area of high co-occurrence between whales and fishing gear. NMFS would welcome new information, including sightings and effort data, on large whales in this area. In fact, NMFS and the Team have identified Mid-Atlantic surveys as a priority should additional funding become available for monitoring and/or modeling efforts in the Mid-Atlantic. If so, NMFS will work with its research partners to develop an adequate monitoring plan and/or model for the Mid-Atlantic area.

*Comment 23:* One commenter requested that NMFS add another alternative that assesses the impacts of the closures without the proposed increase in number of traps per trawl.

*Response:* During the development of the alternatives, NMFS and the Team did consider utilizing only closures. However, preliminary analysis indicated that the closure-only strategy would not afford enough protection to large whales to satisfy the requirements of the MMPA and ESA. Further, NMFS believes that the number of alternatives analyzed in the EIS was adequate. The alternatives analyzed were a combination of stakeholder proposals developed by the Team during the course of several meetings and the result of input received during the 15 public scoping meetings.

*Comment 24:* One commenter stated that fishing effort in the Gulf of Maine lobster fishery may have exceeded capacity and the fishing effort could be reduced without significantly impacting lobster catch. Reducing effort would reduce entanglement risk but the proposed rule sidesteps the issue of effort reduction and it is unclear how effective the rule would be at reducing entanglements.

*Response:* NMFS acknowledges that effort reduction through limits on the number of trap/pot gear utilized by fishermen has taken place. However a reduction in traps does not necessarily equate to a reduction in the number of vertical lines in the water column. During the comment period NMFS requested comments on how best to quantify potential future trap reductions or increases with respect to how many vertical lines could be reduced or increased. NMFS did not receive any substantive comments addressing this issue.

*Comment 25:* A few commenters felt that the proposed rule did not address latent effort and the potential for more gear to be in the water in the future.

*Response:* NMFS realizes that potential effort reductions or increases in future fishing effort could reduce or increase the number of vertical lines in the water column. During the comment

period NMFS requested suggestions for how best to quantify potential future trap reductions or increases with respect to how many vertical lines could be reduced or increased. NMFS did not receive any responsive comments. NMFS intends to monitor this issue as part of the Plan’s monitoring strategy (see response to Comment 8).

*Comment 26:* NMFS received many comments on the proposal to require trap/pot gear fished in Southeast Restricted Area North (SERA N) Federal waters be brought back to port at the end of a fishing trip. South Carolina Department of Natural Resources (SCDNR) and several individuals from Georgia and South Carolina commented that a small number of blue crab fishermen with larger boats may set traps in both state and federal waters (up to 12 miles (19.3 km) offshore) in years when coastal water temperatures may be cooler than normal and crabs move farther out of the estuaries and into the ocean. This seasonal fishing activity is extremely important economically to the relatively few fishermen who can participate in this aspect of the fishery, particularly since winter is the high-dollar season for blue crab. These commenters stated that the requirement to return all traps to shore at the end of the day would, at minimum, greatly hamper the efficiency and cost effectiveness of fishermen, but more likely would create a closure of the blue crab fishery in Federal waters and cause an economic hardship on fishermen. One commenter supported the requirement to return gear to port at the conclusion of each fishing trip because it represented a de facto seasonal closure in Federal waters for trap/pot fisheries that required long soak times and would prevent trap/pot effort from encroaching into Federal waters where whale density is high. One commenter thought there were multiple ways to interpret the meaning of “the conclusion of each fishing trip” and was curious about how enforcement officials would interpret the phrase.

*Response:* NMFS is concerned about the risk to right whales from trap/pot gear in SERA N Federal waters because fishermen use longer vertical lines with a higher breaking strength. These factors increase the risk from entanglement to right whales because longer lines mean more line that whales may encounter and higher breaking strength means a whale, particularly a calf, is less likely to break free of gear once it becomes entangled. Additionally, all other things being equal, long-soak gear represents a greater opportunity for entanglement than short-soak gear. Right whales, including calves, occur in Federal

waters off the coasts of South Carolina and Georgia from November through April. The measures in this rule reduce risk to right whales from entanglement in Federal waters by specifying a 2,200 lb (998 kg) maximum breaking strength of vertical lines and reducing the exposure of gear to right whales by requiring gear be returned to port at the end of a fishing trip.

Based on fishermen's comments, we recognize that this measure will likely eliminate blue crab fishing effort in Federal waters in the winter because deploying trap/pots for only a short period of time (period of hours) is not effective at catching blue crabs. However, according to comments, the majority of blue crab fishermen do not fish in Federal waters. Consequently, this requirement will likely impact only a small proportion of fishermen and only during cold winters when blue crabs are reportedly found farther offshore. NMFS believes that the majority of fishermen in the blue crab fishery will be largely unaffected by this final rule because they will still be able to fish in state waters where the majority of blue crabs are harvested. In developing these regulations, NMFS considered right whale distribution, entanglement risk factors, and blue crab fishery characteristics.

A fishing trip is defined in 50 CFR 229.2 as a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

*Comment 27:* NMFS received one comment on the object-free line proposed for trap/pot gear fished in the Southeast Restricted Area North. The commenter stated that many Florida blue crab fishermen use a second, trailing buoy and wondered if weak links would need to be attached to each buoy.

*Response:* During the public hearings, a few Florida blue crab fishermen reported they attach a trailing buoy by 1–3 ft (0.3–0.91 m) of line to the surface buoy of blue crab trap/pot. They stated that the surface and trailing buoy combination is used to assess ocean currents and the direction from which they should approach and retrieve their gear. NMFS believes that knot-free and object-free lines have a higher probability of sliding through whale baleen than lines with bumps, bulges, or attached buoys, weights, bottles, etc. that are larger than the line's diameter (splices are allowed, but not preferred). NMFS believes that the use of a trailing buoy and weak link as described during the public hearing process would defeat the purpose of the object-free line. However, NMFS did not notify and request comments on prohibiting

trailing buoys or using weak links with trailing buoys. Therefore, NMFS will consult with the Team and evaluate whether to ban the use of a trailing buoy and weak link in a future rulemaking.

*Comment 28:* One commenter commented that the lack of risk reduction proposed in the mid-Atlantic was unacceptable. The commenter stated that this is an area of high seasonal use for humpbacks and subject to sparse survey effort. The commenter also suggested that recent increases in dogfish and black sea bass quotas are likely to increase effort beyond what was considered in the model and likely result in increased risk.

*Response:* See response to Comment 22.

*Comment 29:* One commenter commented that the proposed measures only incidentally protect humpback whales in the Gulf of Maine and do nothing to protect them in the mid-Atlantic. The commenter stated that the closures are in areas where humpbacks are known to occur but not during times when they're the most abundant.

*Response:* The closures were developed by stakeholders in areas of high right whale abundance. The final rule will implement one closure in an area including portions of Massachusetts Bay, Cape Cod Bay, and the Outer Cape. Humpback whales are known to frequent these areas and, therefore, will benefit from the closure. As mentioned above in response to Comment 22, NMFS chose to develop management measures in areas of high co-occurrence. High co-occurrence areas are areas that have the highest frequency of gear that overlap with right and humpback whale sightings. NMFS believes that these high co-occurrence areas pose the highest relative risk of entanglement to right and humpback whales. Due to lower sightings data, the mid-Atlantic did not register as an area of high co-occurrence between whales and fishing gear. NMFS would welcome new information, including sightings and effort data, on large whales in this area. NMFS will monitor fishing effort and whale distribution data in the mid-Atlantic to see if future management measures are needed. NMFS intends to monitor this issue as part of the Plan's monitoring strategy (see response to Comment 8).

#### Comments on Exemption Lines/Areas

*Comment 30:* Several commenters supported the proposed exemption to New Hampshire state waters.

*Response:* NMFS acknowledges this comment. The final rule will exempt New Hampshire state waters from portions of the Plan.

*Comment 31:* Several commenters disagreed with the proposal to exempt New Hampshire state waters and continuing to exempt portions of Maine state waters from the Plan.

*Response:* The New Hampshire exemption and buffers around certain Maine islands implemented under this rule only apply to the requirement to increase the number of traps per trawl for commercial trap/pot gear. All other requirements of the Plan, including the sinking groundline and weak link requirements are still required. NMFS believes the risk of entanglement in the New Hampshire exempted area and Maine island buffers are minimal. However, NMFS will continue to monitor exempted areas, and encourage states to develop contingency plans for large whales in these areas in the event that entanglements are identified to gear from exempted areas.

*Comment 32:* One commenter stated that Buzzards Bay and Vineyard Sound should be exempt from regulations since Narragansett Bay in RI, inshore ME, and now possible state waters in New Hampshire would be exempt.

*Response:* The exemption areas have been developed in response to requests from state fishery management agencies and are designed to ensure that regulations do not extend into areas where whale sightings or the potential for co-occurrence is low. Should a state wish to exempt portions of its waters from the Plan, NMFS has established a process for requesting exemptions from requirements under the Plan (see the Plan's Web site for more information).

*Comment 33:* Several commenters supported the exemption to New Hampshire state waters from the increase in number of traps per trawl but not from all aspects of the Plan.

*Response:* NMFS agrees with this comment (see response to Comment 31).

*Comment 34:* One commenter stated that the exemptions could increase the risk to leatherback turtles as a large number of boats fish in exempt waters and exempt areas put leatherbacks at risk.

*Response:* The risk to leatherbacks as a result of the proposed New Hampshire state waters exemption was considered in the FEIS (Chapter 5). NMFS is not relaxing the current restrictions in the exempted waters, thus, does not expect an increased risk to leatherbacks relative to the status quo. Leatherbacks are found within New Hampshire state waters but not in the abundance that they are found in other waters.

*Comment 35:* One commenter did not support exemptions of small vessels from the trawling up requirement. The commenter stated that small vessels



operate close to shore and that these proposed requirements are already proposed to be shorter lengths. If shorter trawls or singles were allowed then the projections of risk reduction would change and haven't been analyzed in the DEIS.

*Response:* The final rule does not include a small vessel exemption. NMFS is allowing a minimum of two traps per trawl in some state waters as opposed to the three traps per trawl originally proposed. Also, there will be a 1/4 mile buffer around three inhabited Maine islands that will allow fishermen fishing in those waters to continue to fish singles. These changes and subsequent changes to projections of risk reductions were analyzed in the FEIS. The changes result in only a small adjustment to the level of risk reduction. NMFS believes these changes address the safety concerns for small vessel operators, which were raised by fishermen during the public comment period and public hearings while still reducing the risk of entanglement.

#### Comments on Closed Areas

*Comment 36:* Many commenters support the proposed closures, stating that the closures were aimed at reducing fishing effort in key areas with high concentrations of right whales.

*Response:* NMFS acknowledges this comment. However, the final rule will incorporate only one such closure, the Massachusetts Bay Restricted Area. This closure was chosen by NMFS based on the importance of the area to right whales and the presence of large whales within the area during proposed closure period, and the determination, consistent with MMPA requirements, that this one closure furthers the MMPA's intent to reduce serious injury and mortality to levels below PBR and approaching ZMRG, taking into account the economics of the fishery, the availability of existing technology, and existing fishery management plans. See response to comment 38.

*Comment 37:* Several commenters took issue with the start date of the proposed closure of January 1 for the Cape Cod Bay and Massachusetts Restricted Area. By starting the closure January 1 the commenters felt they would miss fishing opportunities during the months of November and December in that area. They stated that November and December are especially productive and profitable months for them.

*Response:* The proposed closure start date is the same start date as the current closure for the gillnet fisheries in that area. The closure period reflects the time period when whales are most abundant in this area. The social impact

analysis included in the FEIS examines the economic burden posed by the closure and the likely effect on the economic viability of fishing operations. The analysis identifies vessel segments that may be heavily impacted by the requirements and suggests that, under the preferred alternative, a limited number of small vessels are most at risk when comparing annual compliance costs to average per-vessel revenues. As a result, harvest levels are unlikely to change and related industries (e.g., seafood processing) are not likely to be affected. NMFS believes the expected conservation gain of the closures will provide the best chance for the Plan to achieve its goals and objectives, as well as those of the MMPA and ESA.

*Comment 38:* Many commenters opposed the closures and questioned the conservation value of the closed areas. In some of the proposed areas, fishing effort is low so the chance of an entanglement is already low.

*Response:* Based on public comments received, in this final rule, NMFS is implementing one closure instead of the three originally proposed. NMFS evaluated the conservation value and took into consideration economic impacts of such measures on industry. NMFS identified one closure area that is substantial in size and achieves a similar conservation value but is less economically burdensome on industry, consistent with Section 118 of the MMPA. The Massachusetts Restricted Area contains habitat that is very important and heavily utilized by right whales and is currently closed to gillnet fishing. The closure in this area would be extended to trap/pot fisheries under the final rule in an effort to lower the risk of entanglement in a high co-occurrence area.

*Comment 39:* Numerous commenters stated that a closed area would displace fishermen to already crowded areas or create a wall of gear just outside the closure.

*Response:* NMFS analyzed the alternatives in two ways to account for varying fishing effort depending upon the behavior of industry as a result of the proposed closures. One way assumed 100% suspension of fishing as a result of the closures and the other way assumed some vessels would relocate to fish outside the closed areas. The potential range of the reduction in co-occurrence of the Preferred Alternative is 37.4–37.9%. NMFS believes that this closure will result in a reduction in co-occurrence that will further the likelihood of meeting the requirements and goals of the MMPA and ESA.

*Comment 40:* Multiple commenters recommended that NMFS close the Southeast U.S. right whale critical habitat to trap/pot fishing since the agency proposed closing Cape Cod Bay to trap/pot fishing in January and February and the two areas exhibited similar co-occurrence scores of whales and fishing gear during this time of year (as presented in Appendix 5–A of the DEIS). These commenters further stated that closing critical habitat in the Northeast but not in the Southeast was an inconsistent strategy given young small calves are at a greater risk for entanglement in the Southeast critical habitat. Some strongly recommended that NMFS adopt the black sea bass seasonal closure currently required under South Atlantic Snapper-Grouper Fishery Management Plan as part of this final rule throughout the Southeast U.S. Restricted Area, an area that is already closed to gillnet fishing.

*Response:* NMFS did not propose a trap/pot closure in the southeast U.S. critical habitat or Southeast Restricted Area North under this rulemaking because these areas did not exhibit extensive trap/pot fishing effort within either of these areas when compared to the volume of effort in Cape Cod Bay. In addition, the characteristics of blue crab trap/pot gear and lobster gear used in Cape Cod Bay are very different and therefore require different strategies to reduce risk to right whales. NMFS believes blue crabs can be harvested safely within state waters for reasons stated in the proposed rule, FEIS, and in this final rule under comments and responses on weak links, rope breaking strength, and trap removal. NMFS is not adopting the current black sea bass seasonal closure required under the Snapper-Grouper Fishery Management Plan in this final rule. NMFS published the ALWTRP proposed rule to mitigate the threat of vertical lines in commercial fisheries on July 16, 2013 (78 FR 42654). In a separate, unrelated rulemaking action, NMFS published a South Atlantic Fishery Management Council (SAFMC) Snapper-Grouper Fishery Management Plan-related proposed rule on July 2, 2013 (78 FR 39700), which, among other things, proposed a closure of the commercial black sea bass fishery in the South Atlantic from approximately Cape Hatteras, North Carolina to Cape Canaveral, Florida from November 1 through April 30. That closure became effective when the final rule was published on September 23, 2013 (78 FR 58249).

During team discussions, data analyses, and the initial ALWTRP rulemaking process beginning in 2009, the Team and NMFS were unaware that



there would be an increase in the black sea bass quota (specifically, during the right whale winter migration) and associated closure as a result of this quota increase. Thus, this scenario was not discussed or included in the proposed rule. NMFS cannot implement a similar closure in this rulemaking because NMFS did not seek comment on mirroring the SAFMC Snapper-Grouper Fishery Management Plan black sea bass closure to protect right whales. NMFS will consider this issue as it further develops the Snapper-Grouper Fishery Management action and discuss this with the Team should a future rulemaking become necessary.

*Comment 41:* Multiple commenters noted that the closure boundaries in the Northeast could be incorrect because of changing environmental conditions. The commenters believe that if the boundaries are wrong there is little chance to change them in a timely manner due to the lengthy process that is required to amend the Plan. They also did not support static closures as a means to protect whales.

*Response:* NMFS acknowledges this comment. Managing resources in changing environmental conditions is challenging. NMFS believes that there is enough evidence suggesting whales inhabit the proposed Massachusetts Restricted Area to support closing this area. This area has long been known to be an important feeding ground for large whales. In fact, according to a recent report by Massachusetts Division of Marine Fisheries (2011) there has been an increase in presence of whales, particularly right whales, in this area in the months of January through April. Including the Outer Cape as part of this closure area creates a protection corridor for the whales to travel through on their way to their Cape Cod Bay feeding ground. Recent passive acoustic studies analyzing right whale calls detected in Massachusetts Bay indicate a persistent presence of right whales and call activity throughout much of the year (Morano et al., 2012; Mussoline et al., 2012). NMFS will continue to survey the area for whale abundance and will work with the Team to modify the Plan if future surveys indicate that this area is no longer an important one for large whales. In addition, the ability to account for distribution shifts exists in the current regulations (see response to Comments 3 and 13). If it is found that right whales remain in a closed area longer than expected or leave earlier, or if the boundaries of a closed area are no longer appropriate NMFS, in consultation with the Team, may make changes to the requirements pursuant to

the “Other Special Measures” provisions in the Plan.

*Comment 42:* Multiple commenters noted that the boundaries of some of the closures (Jeffreys Ledge and Jordan Basin) appear to be based on right whale distribution and not co-occurrence as decided by the Team. They mentioned that the closures were not fully vetted through the Team and adding them after the fact is not transparent to the Team process.

*Response:* NMFS agrees that the boundaries for all of the proposed closed areas were based in part on the distribution of right whales. Although the Team did agree to focus its conservation efforts on high co-occurrence areas, some Team members expressed concern that by relying solely on co-occurrence, some of the known right whale high use areas would not be adequately protected. In response, several closure proposals were developed by Team members. The closure proposals were initially discussed at the January 2012 Team meeting followed by additional discussion at the February and April 2012 meetings. Therefore, NMFS disagrees with the comment that the closures were not vetted through the Team. Based on public comments, the final rule does not include the Jeffreys Ledge or Jordan Basin closure (see the “Changes from the Proposed Rule” section of the preamble).

*Comment 43:* One commenter stated that the proposal to close the northern portion of Cape Cod Bay was not warranted. There is not a lot of fishing effort in the area and to those that fish there that area encompasses almost all of their winter fishing area.

*Response:* See responses to Comments 37, 38, and 42.

*Comment 44:* One commenter commended NMFS for proposing the closures but stressed the importance of reporting requirements to assess the closures effectiveness. Closures could trigger a relocation of effort so NMFS should be ready to expand the boundaries of the closures if this relocation leads to new areas of high co-occurrence.

*Response:* NMFS intends to continue to monitor fishing vessel trip report and observer data, and work with states to improve reporting requirements to accurately capture fishing effort and changes in fishing effort as a result of the final rule requirements. Should relocation of effort occur that would result in new areas of high co-occurrence NMFS would work with the Team to adjust the Plan as needed.

*Comment 45:* One commenter suggested that NMFS consider replacing

the proposed Jeffreys Ledge and Jordan Basin closures with an increase to the minimum number of traps per trawl from November 1 through February in Maine Zones F&G (6–12 mile) to 15 traps per trawl and in Maine Zone F&G (12+ mile) to 20 traps per trawl.

*Response:* The final rule does not include the Jeffreys Ledge and Jordan Basin closures (see the “Changes from the Proposed Rule” section of the preamble). The rule will implement the minimum number of traps per trawl in Maine as requested by Maine Department of Marine Resources. This includes the above suggested seasonal increase to a 20 trap per trawl minimum in Maine Zones F&G.

*Comment 46:* Many commented that the proposed area for closure in Nantucket Sound was not justified by the co-occurrence model.

*Response:* See response to Comment 42. NMFS has modified the final rule based on public comment and chosen to implement a seasonal closure in Massachusetts that does not include portions of Nantucket Sound. The final rule reduces risk to large whales and is consistent with the requirements of Section 118 of the MMPA.

*Comment 47:* One commenter suggested that the closures may provide some level of reduction but these closures may not achieve the reduction needed to reach PBR. The closures are a minor step in addressing the issue. The commenter further requested that NMFS use an appropriate and peer-reviewed population model to quantify the impact of closures on whale populations.

*Response:* NMFS and the Team cannot determine the exact percentage reduction of vertical lines needed to reduce serious injury and mortality of large whales that encounter vertical lines to PBR levels. Sufficient information is not available on when, where, and how entanglements occur such that a quantifiable line reduction target can be calculated. NMFS believes that the closure, accompanied by the minimum number of traps per trawl requirement coupled with the current regulations already required under the Plan, will achieve the goals and objectives of the MMPA and ESA. As part of its monitoring plan, NMFS will monitor the impacts of all the requirements in the rule on whale populations (see response to Comment 8).

*Comment 48:* One commenter suggested that the time period for the Jeffreys Ledge closure should include September.

*Response:* The final rule does not include the Jeffreys Ledge closure (see

the “Changes from the Proposed Rule” section of the preamble).

*Comment 49:* One commenter supported the use of closed areas to manage entanglement risks to right whales in locations where right whale abundance is predictable and impacts to industry are minimal. The commenter supported closing Massachusetts State waters in the Cape Cod Bay Critical Habitat and suggested that this closure be state managed. The commenter believes that a closure in Cape Cod Bay should be dynamic to allow the state to alter the closure based on the large whale surveillance program conducted in that area.

*Response:* See response to Comment 42. NMFS appreciates the support for a closed area in Cape Cod Bay. NMFS believes that the most effective closure to reduce the risk of serious injury and mortality would include Federal waters as well as state waters. NMFS intends to monitor this issue as part of the Plan’s monitoring strategy (see response to Comment 8).

*Comment 50:* Some commenters stated that the economic costs of the closures to the industry are too great and outweigh the conservation benefits to whales gained by the closures. They stated that the reduction in co-occurrence as a result of the closures will be minimal compared to the cost to industry. The cost per unit of co-occurrence reduction is spread across fewer vessels impacted by closures.

*Response:* NMFS partially agrees with the commenter and has modified the final rule based on public comment to include one closure instead of the proposed three (see the “Changes from the Proposed Rule” section of the preamble). NMFS is sensitive to the cost of complying with the final rule and has analyzed these costs in Chapter 7 of the FEIS. NMFS believes that there is enough evidence indicating whales inhabit the proposed Massachusetts Restricted Area to support closing this area (see responses to Comments 37, 38, and 42). The Massachusetts Restricted Area has long been known to be an important feeding ground for large whales and there is a reduction in co-occurrence that will translate into a conservation benefit, thus helping achieve the requirements of the MMPA.

*Comment 51:* Multiple commenters stated that if the Jordan Basin closure is finalized then the boundary of the closure area should be modified to only include waters in LMA 1 and not have the boundary cross the LMA 3 line as currently proposed.

*Response:* The final rule does not include the Jordan Basin closure. Please see the “Changes from the Proposed

Rule” section of the preamble and the response to Comments 37, 38 and 42.

*Comment 52:* One commenter stated that closures are essential to reducing serious injury/mortality of large whales. The commenter believes that closures are the best means to reduce risk as each proposed closure has a high co-occurrence score during the proposed season.

*Response:* NMFS believes that closures can serve as an important conservation tool if utilized appropriately. However, based on public comment and the analysis of its alternatives found in the FEIS, NMFS does not believe all three proposed closures are based on high co-occurrence scores during the proposed seasons as the commenter suggests. Therefore, based on public comment, the final rule does not include the Jeffreys Ledge or Jordan Basin closure (see the “Changes from the Proposed Rule” section of the preamble and response to Comment 42). The single closure is consistent with the MMPA’s provisions to reduce risk of serious injury and mortality while also taking into account the economics of the fishery, the availability of existing technology, and existing fishery management plans.

*Comment 53:* Some commenters were concerned about the failure to more fully address vertical line risk in the Southeast in light of the likely increased effort in the black sea bass trap/pot fishery during the winter as a result of the SAFMC’s recent actions related to the Snapper-Grouper Fishery Management Plan. Commenters noted that this potential increase in fishing effort was not considered in the DEIS.

*Response:* SAFMC is developing Snapper Grouper Regulatory Amendment 16, to modify or remove the recently implemented black sea bass fishery closure intended to protect right whales from entanglement in vertical lines associated with the black sea bass fishery. This regulatory amendment has the potential to contradict or remain consistent with the intent of this final rule (intended to reduce the threat of entanglement to right and other large whales from vertical lines associated with commercial fisheries). NMFS holds a seat on the SAFMC and continues to collaborate with the SAFMC on its regulatory amendment to encourage adequate protection for right whales. Additionally, NMFS will consult the Team and may consider future amendments to the Plan, if appropriate, to address new developments that affect the risk to right and other large whales in the South Atlantic from vertical lines associated with commercial fishing gear.

## Comments on Effective Date

*Comment 54:* One commenter recommended that NMFS provide an adequate period prior to implementation of the final rule to allow for public education and for industry to convert their gear to comply with the new regulations. The commenter further noted that affected states might need time to make changes to state trap/pot gear regulations to address inconsistencies between state regulations and NMFS’ proposed amendments to the ALWTRP.

*Response:* NMFS agrees and considered input from state managers and industry leaders to ensure that the date chosen for implementation is practical and provides adequate time to comply with new requirements. The rule will have a phased-in implementation. The rule will become effective 60 days after publication in the **Federal Register**; however, changes to gear marking and gear modification requirements in the Southeast Restricted Area North are effective November 1, 2014, and changes to gear marking and the minimum number of traps per trawl requirements in the Northeast are effective June 1, 2015. The new minimum trap per trawl measure requires increasing the number of traps per vertical line which requires removal of equipment from the water and reconfiguration of line and equipment. Additional time is needed for fishermen to adapt to these changes. The changes in the Plan require the reconfiguration of approximately 200,000 vertical lines at an annual compliance cost of approximately \$1.9 to \$4.5 million. NMFS finds that there is good cause for the phased-in implementation dates to address the public’s concerns to provide adequate time to implement the requirements in a cost-effective manner and given that the impact on conservation benefit to large whales from this phased-in implementation will be minimal given the relatively short delay in implementation. Specifically, the majority of the conservation measures included in the final rule will become effective 60 days of publication, including protective measures during calving season and a closure starting January 1, 2015, and all current ALWTRP requirements, including the sinking groundline requirement, remain in place during the phased-in implementation of some of the new measures.

*Comment 55:* One commenter stated that there will be a significant burden placed on industry to comply with the proposed measures and requested that

NMFS provide adequate time for industry to convert their gear.

*Response:* NMFS is sensitive to the needs of industry to convert gear to the required minimum number of traps/pots per trawl and appropriate gear marking scheme. Typically NMFS provides 30 days for industry to comply with new requirements. Based on public comment, NMFS has agreed to provide additional time for fishermen to convert their gear (please see response to Comment 54).

*Comment 56:* Numerous commenters requested that the implementation date coincide with the trap/tag date of June 1, asserting that a mid-season implementation date in the fall is not practical.

*Response:* NMFS agrees with the commenters and considered input from state managers and industry leaders to ensure that the date chosen for implementation is practical and provides adequate time to comply with new requirements. NMFS will have a phased in approach to the new requirements. Based on public comment, NMFS has agreed to provide additional time for fishermen to convert their gear (please see response to Comment 54 and 55).

#### Comments on Gear Marking

*Comment 57:* Numerous people commented that requiring one color code for trap/pot lines deployed in state waters and another for Federal waters as proposed for the SERA N would force commercial fishermen to re-rig their gear because blue crab trap/pot gear is fished in state, Federal, or state and Federal waters depending on blue crab distribution. These commenters recommended a gear marking scheme that would allow fishers to quickly alter color markings without incurring the expense and labor of changing the entire line. One commenter requested a 3-year phase-in period because old or wet lines will not take paint or hold colored tape, so entirely new lines will have to be purchased before the fishery could come into compliance with this measure. However, the commenter supported the two-color marking requirements to differentiate trap/pot gear fished in state vs. Federal waters. There were also some commenters, including fishermen, who did not object to the proposed gear marking scheme.

*Response:* The concern about different gear marking requirements between Federal and state waters is restricted to the blue crab fishery off Georgia and South Carolina. NMFS believes that the requirement for trap/pot gear fished in Federal waters to return to port at the end of a fishing trip will eliminate

fishing for blue crab in Federal waters. Consequently, NMFS does not believe that a gear marking scheme that will enable trap/pot gear to be easily moved between Federal and state waters is needed. Furthermore, the Team highlighted that gear marking is an important conservation measure, specifically gear marking that allows gear to be distinguished between areas.

NMFS appreciates the concern about old or wet lines not taking paint or holding colored tape. Since we did not receive any comments from trap pot fishermen regarding challenges with gear marking or the need for a phase-in period, NMFS does not believe these actions are necessary. See response to Comment 26.

*Comment 58:* Many commenters support gear marking but felt the proposed gear marking falls short of managers' needs and a more refined gear marking is necessary.

*Response:* Based on implementation considerations and technology presently available, NMFS believes the final gear marking scheme is appropriate. If more promising techniques become available in the future, NMFS will discuss them with the Team.

*Comment 59:* Many commenters stated that marking in exempted waters would be difficult and not feasible. Many fish both inside and outside of the exemption area so they would need to remark their gear with a different color scheme every time they fish in and out of the exempted waters. This is not time or cost effective.

*Response:* NMFS has modified the final rule based on public comment and will not require gear marking inside the exemption area (see "Changes from the Proposed Rule" section of the preamble).

*Comment 60:* Some commenters stated that if exempted waters were required to be marked, then Maine and New Hampshire should have different colors for their exempt waters and not be grouped together.

*Response:* See Response to Comment 59.

*Comment 61:* Some commenters stated that marking the line three times was excessive and 1-mark mid-way down the line is adequate. The commenters felt that making the current mark larger would be the easiest approach but were unclear if this would really make a difference.

*Response:* NMFS believes the current gear marking scheme that requires only one 4-inch mark is inadequate. Frequently the line recovered from entanglement events is unmarked. Of the 499 entanglement events from 1997–2011, gear was only recovered in 170

cases. Of the 499 entanglement events, gear marking led to 51 (10%) cases where fishery, location, and date were identified. NMFS believes requiring larger marks more frequently will increase the amount of marked line recovered during events and thus better inform future management decisions.

*Comment 62:* Some commenters questioned the need to mark in exempt waters if the occurrence of whales in exempt waters is rare.

*Response:* See response to Comment 59.

*Comment 63:* Two commenters cited challenges with marking offshore gear as the gear is always wet and infrequently brought back to shore. The gear is also easily identified due to its size.

*Response:* NMFS acknowledges this challenge but points out that offshore gear is currently required to be marked. The new gear marking scheme would expand the size and frequency of the current gear marking scheme.

*Comment 64:* A few commenters noted that fine scale marking in the Gulf of Maine is justifiable and more unique color codes are necessary than what is being proposed.

*Response:* See response to Comment 58.

*Comment 65:* Many commenters opposed increased gear marking in LMA1 (frequency, level, or size) stating that the gear marking only informs where the gear was set and not where the entanglement occurred. These commenters suggested that NMFS suspend increased gear marking requirements until more definitive regional markings are available.

*Response:* See response to Comment 58.

*Comment 66:* A few commenters suggested that NMFS modify the proposed gear marking to better understand the gear configuration in the Gulf of Maine. The commenters suggested marking by trawl length.

*Response:* Various gear marking schemes were discussed by the Team over the course of several meetings during the development of this rule, including the idea suggested by the commenter. However, the Team could not reach agreement on how to mark gear based on the gear's configuration. NMFS also solicited gear marking ideas during its public scoping meetings, which also did not yield any feasible alternatives. Therefore, NMFS believes the final gear marking scheme is appropriate based on the current technology that exists and public comments received on feasibility of gear marking.

*Comment 67:* One commenter suggested adding a second color for

each LMA. The commenter also did not support the use of orange as color for marking the Southern Nearshore Trap/Pot area as this is too similar to the red color required in other waters.

*Response:* Based on implementation considerations and technology presently available, NMFS believes the final gear marking scheme is appropriate (see response to Comment 63). The current color mark for Southern Nearshore Trap/Pot area is orange. The final rule does not change this color scheme.

*Comment 68:* One commenter suggested that rather than just three marks per line that the number of marks be increased for those fishing in deeper waters. The commenter also suggested marking groundlines.

*Response:* Based on the public comments received, NMFS believes that three marks per line is adequate at this time. NMFS did not propose marking groundlines through this rulemaking.

#### Comments on Weak Links/Vertical Line

*Comment 69:* Multiple commenters stated they already used weak links and some used weak links with fewer hog rings than required (i.e., lower breaking strength). These commenters stated that they did not have objections to the proposed weak link requirement. One commenter requested test trials because he did not know how many hog rings resulted in 200 lb (90.7 kg) breaking strength and he wanted to ensure the feasibility of this requirement in the blue crab fishery. Another commenter mentioned the importance of enforcing the existing weak link requirements. Other commenters recommended that 200 lb (90.7 kg) weak links be required throughout critical habitat or throughout SERA N.

*Response:* We agree that enforcement is important and we will ensure that our Joint Enforcement Agreements with state agencies include checking weak links on trap/pot gear.

We believe a three hog ring weak link configuration is feasible for the Florida blue crab fishery. We conducted five trials to test the breaking strength of a 3-hog ring, side-by-side configuration and each time found the breaking strength to be less than 200 lbs (90.7 kg) (NMFS unpub. data).

We are not requiring a uniform 200 lb (90.7 kg) weak link throughout critical habitat or the SERA N for the same reasons a vertical line with maximum breaking strength of 1,500 lbs (680 kg) is not required (see response to Comment 70).

*Comment 70:* A number of commenters submitted the following comments on the rope breaking strength requirement: (1) The 1,500 lb (680 kg)

vertical line breaking strength is the most risk-averse proposal and should be adopted for the right whale calving area critical habitat or the entire Southeast restricted area; (2) NMFS does not explain why the Federal waters vertical line breaking strength requirements mirror those of Georgia and South Carolina rather than the more appropriate (and more conservative) Florida breaking strengths; and (3) NMFS attempted to rationalize different rope breaking strengths in different areas by stating that the lower breaking strength in Florida state waters would protect “neophyte” calves; however, these same “neophytes” are born further to the north where rope breaking strengths are far higher and thus, presumably create potentially greater risk. On the other hand, some submitted comments in support of lower breaking strengths for vertical lines and weak links in Florida state waters versus those required for Georgia and South Carolina. They commented that right whales off Georgia and South Carolina are frequently found over 3 miles from the shoreline so there is less overlap of whales with state water fisheries, whereas right whales in northeast Florida frequently inhabit state waters.

*Response:* NMFS does not agree with the recommendation to require 1,500 lb (680 kg) vertical line breaking strength throughout critical habitat or the entire Southeast restricted area. The rationale for requiring different rope breaking strengths in different areas is based on multiple considerations: (1) Right whale mother/calf pairs in the Southeast most frequently occur in water depths of 10–20 m (~33–66 ft) (Keller et al., 2012). Florida state waters are typically deeper than 10 m (~33 ft) closer to shore, whereas depths along the coasts of Georgia or South Carolina are generally less than 10 meters (~33 ft). Therefore, NMFS believes the probability of blue crab trap/pot gear interactions with mother/calf pairs is higher in Florida state waters than South Carolina or Georgia state waters; (2) many fishermen in South Carolina and Georgia state waters report their trap/pot gear can be partially buried in bottom sediment and therefore require stronger vertical lines to avoid unintentionally breaking lines during retrieval; and (3) offshore Federal waters are less protected and typically exhibit harsher conditions that require vertical lines with greater breaking strengths to reduce accidental gear loss and the potential risk to right whales from derelict gear. Consequently, NMFS capped the maximum vertical line breaking strength in federal waters at 2,200 lbs (998 kg) and included the

additional requirement that all trap/pot gear be brought back to shore at the end of each fishing trip. NMFS believes these combined measures provide overall risk reduction for right whales while taking into account their co-occurrence with fishing gear, bathymetry, and characteristics of fishing practices in offshore federal waters.

#### Comments on Gillnets

*Comment 71:* Many commenters felt that the impact from gillnet gear should be included in the proposed vertical line reduction measures.

*Response:* Including gillnets in the proposed measures was analyzed in the FEIS and rejected (See Chapter 3, Appendix 3–A of the FEIS). The gear characterization information in the co-occurrence model shows that 99% of the vertical lines coastwide are from lobster trap/pot and other trap/pot fisheries (Exhibit 3A–1). For this reason, NMFS and the Team chose to focus this rule making on trap/pot gear only.

*Comment 72:* One commenter suggested that a prohibition on gillnets be included in the Jeffreys Ledge trap/pot closure area.

*Response:* The final rule does not include the Jeffreys Ledge closure (see the “Changes from the Proposed Rule” section of the preamble and response to Comment 42).

*Comment 73:* One commenter suggested that the rule include a prohibition on gillnets in all proposed closure areas as well as the sliver management area with the current Great South Channel Restricted Gillnet Area.

*Response:* See response to Comment 71. In addition, the amount of gillnet vertical lines removed as a result of the proposed closures is minimal compared to the trap/pot gear vertical lines removed (Chapter 3 Exhibit 3A–2 of the FEIS). This result leads to a high economic impact on individual gillnet vessels but low overall conservation impacts or reduction in co-occurrence. Therefore, NMFS proposed the closures for only trap/pot gear and not for gillnet gear.

#### Comments on Enforcement and Monitoring

*Comment 74:* Many commenters expressed their support for increased effort and funding for enforcement to improve compliance.

*Response:* NMFS appreciates the support and acknowledges that enforcement is essential to the success of the Plan’s regulations.

*Comment 75:* One commenter stated that the status quo could be improved by having mandatory training for

disentanglement by industry members. He stated that it didn't make sense to wait hours for trained responders to arrive during a rescue situation.

*Response:* NMFS has an Atlantic Large Whale Disentanglement Network that provides training, equipment, and authorization for responders to disentangle large whales. There are defined safety protocols and established guidelines for training and designation of response levels within the program. A five-level structure was established based upon levels of training, with respect for the inherent danger of working with various species of large whales. Only authorized persons may disentangle large whales.

*Comment 76:* Multiple commenters stated that the rule does not address data gaps for lobster fishing in Federal waters. They suggested NMFS require Federal lobster permit holders to report landings, gear configuration, and other relevant information.

*Response:* NMFS is aware that data gaps exist in certain fisheries. The American lobster fishery is managed cooperatively by the Atlantic states and NMFS under an FMP developed by the Atlantic States Marine Fisheries Commission (Commission), which is a deliberative body of 15 Atlantic coastal states that coordinate the conservation and management of Atlantic coastal fishery resources. Under the American Lobster FMP, the states issue regulations for lobster fishing in state waters and NMFS supports the FMP by implementing regulations for fishing in federal waters. NMFS continues to work closely with the Commission to develop uniform reporting where appropriate.

*Comment 77:* One commenter expressed his support for better enforcement and monitoring of existing regulations before proposing additional measures. He suggested there should be annual stock assessments for large whale species and a more timely decision making process that relies on real time information.

*Response:* NMFS and the Team have developed a comprehensive monitoring strategy that evaluates industry compliance to the Plan's requirements and the overall effectiveness of the Plan in achieving its goals and objectives (see responses to Comments 6 and 8). NMFS continues to work with the U.S. Coast Guard, NOAA Office of Law Enforcement, and state partners through Joint Enforcement Agreements to enforce NMFS' regulations. NMFS currently publishes SARs for large whales on an annual basis because decision making processes that rely on real time information are challenging; NMFS, in collaboration with the Team,

bases decisions on the best information available at that time.

*Comment 78:* One commenter believes that the monitoring of the impacts of the proposed changes is unclear. The commenter recommends that funding for large whale scar analysis continue in order to determine if scarring has increased or decreased and if the reduction of vertical line has reduced the rate of interaction. Scarring analysis could also help to monitor the trend in severity of the entanglements.

*Response:* Scarring analysis is included as a metric in the monitoring strategy (see Response to Comment 8).

*Comment 79:* One commenter feels that NMFS must address the risk associated with emerging fisheries.

*Response:* NMFS has a plan in place to deal with emerging fisheries through its annual List of Fisheries. Fisheries are added to the Plan once they are classified on the annual List of Fisheries as having frequent or occasional interactions with right, humpback, or fin whales. If an emerging fishery fits these criteria and is added to the List of Fisheries, then that fishery would have to abide by all the Plan's requirements including the proposed trawling up requirements.

*Comment 80:* One commenter stated that improved enforcement and monitoring is needed and fisheries should be monitored on a day to day basis. The commenter suggested increasing the frequency of observer coverage or video surveillance as data collection leads to stricter enforcement.

*Response:* NMFS agrees that enforcement and monitoring are essential to the Plan's success. Sea-sampling observers collect large whale sightings data, however, this is one of many data collection responsibilities and the likelihood of observing an entanglement event is rare.

*Comment 81:* One commenter feels that there should be mandated reporting requirements for all states.

*Response:* See response to Comment 72. NMFS will continue to work with state partners to improve reporting requirements to keep the fishing effort data in its vertical line model current. If voluntary reporting becomes an ineffective means to collect information, NMFS will work with the Atlantic States Marine Fisheries Commission on the prospect of mandatory reporting.

*Comment 82:* One commenter encouraged NMFS to produce more robust annual monitoring reports. The commenter also requested a full five year report be completed before the final rule assessing the sinking groundline rule since it has been in place for five years.

*Response:* See responses to Comments 6 and 8. NMFS will assess its annual monitoring reports to ensure that the most useful information is included.

*Comment 83:* One commenter recommended a requirement that all trap/pot fishermen permitted to fish in federal waters record and submit data on the location, number, and length of time that endlines are deployed and that NMFS should describe in the FEIS precisely what data on endlines (e.g., number, location, and length) NMFS expects state fishery agencies to provide to evaluate compliance and rule effectiveness.

*Response:* NMFS did not implement reporting in this rule-making because NMFS did not seek comment on this measure in the proposed rule. Although such reporting is outside the scope of this rulemaking, NMFS will consult the Team and may consider a reporting requirement in future rulemaking.

#### **Comments on the Shipping Industry and/or Ship Strikes**

*Comment 84:* One commenter stated that he thought whales got hit by boats and then entangled in the line so the shipping industry should be held accountable.

*Response:* The Recovery Plan for the North Atlantic Right Whale (National Marine Fisheries Service 2005) identifies vessel interactions and interactions with commercial fishing operations as the two primary sources of anthropogenic activities that result in right whale death or serious injury. Although the scenario suggested by the commenter is plausible, NMFS addresses vessel interactions and interactions with commercial fishing operations separately. Ship strikes are evaluated through a separate action in support of the implementation of the North Atlantic right whale ship strike strategy. The ship strike reduction rule, first implemented in 2008, implements regulatory measures that reduce the risk of ship strike to right whales, such as speed restrictions and vessel routing measures. The rule is one component of a suite of NMFS' comprehensive right whale ship strike reduction measures, which also includes education and outreach to commercial and recreational mariners, research on technologies that may help mariners avoid whales, a comprehensive program of sighting advisories to mariners, section 7 consultations to address Federal vessel activities, and the development of a Conservation Agreement with Canada on a ship strike strategy. This final rule addresses the risks to right whales from interactions with commercial fishing operations by reducing the risk of death

or serious injury when large whales encounter vertical lines from commercial trap/pot gear.

*Comment 85:* One commenter stated that the ship speed rule should be permanent.

*Response:* NMFS concurs. On December 9, 2013 NMFS published a final rule (78 FR 73726) that eliminated the expiration date of the ship strike reduction rule. The regulation is now permanent.

*Comment 86:* One commenter stressed the need to address the impact of ship strikes.

*Response:* See response to Comment 84.

#### **Comments on the Number of Traps per Trawl**

*Comment 87:* Several commenters were concerned that increasing the number of traps per trawl would create safety issues for smaller fishing operations. These commenters stated that there would be stability issues and the potential for capsizing due to the distribution of weight of the additional rope and traps on board.

*Response:* Because vertical lines pose a risk to whales regardless of vessel size, NMFS requires both small and large vessels to increase the number of traps per trawl to reduce the number of vertical lines in the water column. However, NMFS is aware of these safety concerns for smaller vessels. To address impacts to smaller vessels, state managers and industry representatives on the Team proposed utilizing a smaller minimum number of trap/pots per trawl. Those smaller limits in inshore state water areas are contained in this final rule. Also, based on public comment NMFS modified the final rule to allow for a minimum of two traps per trawl in some areas that previously would have required three traps per trawl. NMFS also established a ¼ mile buffer around three inhabited Maine islands to allow those small vessels to continue to fish single trap/pots. NMFS believes that these modifications address the small vessel safety concerns while still meeting the conservation goals of the MMPA and ESA.

*Comment 88:* Several commenters disagreed with the changes to the inshore fishery to require pairs or triples and no longer allow singles. They stated that they fish around shallow bays and rugged bottoms so fishing with anything more than a single would create gear loss or damage. They suggested a near shore exemption for singles.

*Response:* The final rule does not include a near shore exemption for singles. See response to Comment 87.

*Comment 89:* One commenter stated that it appeared that concessions were made to minimize the hardships in meeting the plan's goal and LMA 2 lobstermen are disproportionately affected by the proposal. The commenter stated that Downeast Maine lobstermen were allowed to fish doubles but those in LMA 2 would be required to go up to three traps per trawl in state waters even though there are probably 30–50% fewer vertical lines in LMA 2 today than in the past due to the lobster stock collapse.

*Response:* NMFS modified the final rule based on public comment. All those fishing in state waters of LMA 2 will be allowed to fish doubles rather than the previously proposed three traps per trawl.

*Comment 90:* Several commenters stated that trawls would increase gear conflict and thus ghost gear.

*Response:* NMFS evaluated the effects of trawls on gear loss in Chapter 6 of the FEIS. Overall, the effect of trawling on gear loss is unclear. While data from a Maine trawling project completed in 2012 suggest some potential for increased gear loss during fishermen's transition to trawls, the more extensive data from the Massachusetts ghost gear survey completed in 2011 suggest that trawls are less subject to gear loss in steady-state conditions. Gear loss is likely a function of numerous variables that extend well beyond the trawl configuration, including bottom structure, shipping traffic, gear density, gear conflicts, tides, currents, and weather events. The net effect of trawling in the context of all these variables is difficult to characterize or quantify. NMFS will continue to monitor this issue and consider future rulemaking if warranted.

*Comment 91:* One commenter stated that it was more profitable and safer to fish singles than trawls.

*Response:* Analysis of the impact to catch as a result of trawling is discussed in Chapter 6 of the FEIS. Data to support a quantitative analysis of trawling effects on catch are extremely limited. Because multiple factors influence catch rates (gear configuration, gear density, the abundance of the target species, bottom structure, soak time, individual skill, etc.), it is difficult to isolate the effect of trawl configuration on catch. Research has demonstrated that the optimal spacing of lobster traps depends upon the abundance of lobster in an area; the greater the density of lobster, the greater the density of traps that can be fished without an adverse impact on catch per trap (Schreiber, 2010). In Massachusetts waters, where lobster appear to be less dense than Maine

waters, there is a possibility that changing gear configurations may impact catch. These impacts may diminish over time, as fishermen adapt to new gear configurations and learn to fish longer trawls more efficiently. NMFS believes that the minimum number of traps per trawl required and exceptions made to this requirement adequately address the safety concerns associated with fishing trawls while still providing a viable economic return to fishermen.

*Comment 92:* A few commenters questioned the proposal to increase the number of traps per trawl and stated their opinion that a whale would be more likely to survive a single pot entanglement than an entanglement in a trawl.

*Response:* NMFS believes that a single line of high breaking strength with one or multiple traps can be deadly. Past experiences show that just a simple loop can kill a whale. Also, fewer vertical lines create a lower entanglement risk to whales.

*Comment 93:* Many commenters supported the proposed number of traps per trawl, particularly the proposed increase outside state waters.

*Response:* NMFS appreciates the support.

*Comment 94:* Several commenters mentioned the danger of fishing with trawls in the Outer Cape citing issues related to storms, traffic, and tides unique to the Outer Cape.

*Response:* NMFS is sensitive to these concerns and the uniqueness of the Outer Cape. The final rule will require those fishing on the Outer Cape to fish a minimum of two traps per trawl as opposed to larger trawls required elsewhere.

*Comment 95:* A few commenters stated that many in the Outer Cape and Cape Cod Bay use singles and wondered if there were confirmed interactions with singles in these areas. If there are not then why penalize fishermen?

*Response:* It is uncertain how many interactions there have been with Outer Cape and Cape Cod Bay gear. Because most large whale entanglements (particularly those involving right whales) tend to be free swimming entanglements when detected and the gear recovered from these entanglements do not provide adequate information to determine where an entanglement occurred, entanglements from specific fisheries and areas are rarely documented. After the implementation of the broad based prohibition on floating groundline in 2009, 54 new whale entanglements were reported: 21 in 2010 (5 right and 16 humpback), and 33 in 2011 (11 right, 21

humpback, and 1 fin). The entangling gear was either retrieved or identified in only 15 of these incidents. NMFS must take action to ensure the goals of the MMPA and ESA are met.

*Comment 96:* Two commenters stated that mandating one buoy line on trawls per five traps or less would cause a safety issue and the potential for gear loss and gear conflict. It is a common problem for boat traffic or gear conflict to cause the temporary or permanent loss of a buoy, connected to a vertical line, identifying a trawl. Without the option to haul that trawl from a second vertical line there is a potential for increased ghost gear.

*Response:* The regulations currently require one buoy line on trawls having less than or equal to five traps. The final rule would not change this requirement.

*Comment 97:* One commenter had concerns with the trawling up strategy, stating that those fishing in Federal waters are already fishing trawls with the minimum number proposed so there would be no reduction in vertical lines.

*Response:* NMFS disagrees with this comment. The model used current data to estimate vertical lines based on current fishing practices and estimated the reduction in vertical lines that would result from compliance with the new requirements. This demonstrates that there would be a reduction in vertical lines.

*Comment 98:* Two commenters felt that NMFS should set vertical line reduction limits and work with the Atlantic States Marine Fisheries Commission and Fishery Management Councils to reach those targets. One commenter felt that gillnet and other trap/pot fisheries should be included in this process as well.

*Response:* The MMPA provides the authority to address marine mammal bycatch; NMFS is responsible for implementing the MMPA. Both the ASMFC and FMCs provide input to NMFS through their representatives on the Team. Also, see responses to Comments 12 and 47.

*Comment 99:* Numerous commenters voiced safety concerns associated with trawling up in waters surrounding Maine's many islands. The bottom is rocky and shallow in this area and many small boats fish these waters. The waters are generally less than 30 fathoms deep and unlikely to increase co-occurrence risk; some suggested a  $\frac{1}{4}$  mile exemption around islands from the proposal to increase the number of traps per trawl. One commenter suggested limiting the trawl minimums on a seasonal basis for areas around islands which are considered state waters but that are found outside the 3-mile line.

*Response:* See response to Comment 87. The final rule includes a  $\frac{1}{4}$  mile exemption around three inhabited islands in Maine. Those fishing in these waters will have no minimum number of traps per trawl requirement; however, all other requirements would remain in place.

*Comment 100:* A few commenters commented that the four pocket waters in Maine should maintain their current practices of fishing pairs rather than increasing to triples. These pocket waters are described in Federal law (50 CFR 697.24). Maintaining current practice in these waters is operationally practical for both industry and enforcement. One commenter also notes that the co-occurrence score near the pocket waters exceeds one in only one month at the head of one pocket water with the majority of this score located outside of the pocket water boundary.

*Response:* NMFS modified the final rule based on public comment to include the definition of pocket waters. The rule defines the geographic location of pocket waters and applies the same gear requirements for traps per trawl as in state waters, and as such, those fishing in that area can maintain the current practice of fishing pairs rather than increasing to triples.

*Comment 101:* Two commenters commented on Rhode Island's single pot fishery. They stated that three-pot trawls are not an option for small boats for safety reasons. They also mentioned that there is no known serious injury/mortality in Rhode Island state waters and the area has a low co-occurrence score and as such should be exempted.

*Response:* NMFS modified the final rule based on public comment. The minimum number of traps per trawl required in Rhode Island state waters will be two instead of the three pot trawls originally proposed.

*Comment 102:* One commenter requested NMFS to decrease the minimum number of traps per trawl in LMA 2 (12+) from 20 to 15.

*Response:* The Preferred Alternative in the proposed rule proposed 15 as a minimum number of traps per trawl in LMA 2 (12+). The Preferred Alternative in the final rule includes this as well.

*Comment 103:* One commenter stated that there are indicators that suggest rope is too strong for whales to break free and a serious entanglement and/or injury could occur.

*Response:* The final rule includes numerous measures to reduce the likelihood that a serious entanglement will occur. The rule requires a weaker breaking strength of rope in the Southeast where the potential for calves to get entangled is higher. The rule also

defines a maximum breaking strength of weak links in the Southeast. Weak links are designed to reduce the breaking strength of traditional gear and have been in the Plan since its inception. Also, the final rule will lead to less vertical lines in the water which will make an encounter less likely.

*Comment 104:* One commenter feels that it is problematic to ban singles in areas where recreational fishing occurs and this creates a double standard.

*Response:* The regulations implementing the Plan are governed by Section 118 of the MMPA, which requires take reduction teams to assist NMFS in the development of take reduction plans that address serious injuries and mortalities of marine mammals that interact with commercial fishing operations. Therefore, the proposed measures apply to commercial fishing only. However, recreational fishermen who take marine mammals are in violation of the MMPA prohibition against taking marine mammals. However, states may choose to regulate recreational fisheries within their state jurisdictions.

*Comment 105:* One commenter asserted that it was counterintuitive that there would be a ban on singles proposed in the Northeast but a proposal to require singles in the Southeast. The commenter questioned the lack of consistency between regions.

*Response:* The proposed measures differ between the Northeast and Southeast region, as well as from state to state, to account for variance in fisheries, right whale habitat use, right whale life history stage, and environmental features. The core right whale calving area located within the Southeast is of particular conservation concern due to the presence of neophyte calves and reproducing females. Singles are required in this area because calves may be able to break free of an entanglement in lighter single trap gear configuration than from a heavier multiple trap trawl gear configuration. Also, in an effort to reduce damage to sensitive habitats, single traps/pots are preferable in the Southeast. The Southeast U.S. has many coastal habitats that include live bottom and corals; in particular, there are ample amounts of live bottom off the coast of Northeast Florida. Traps set in multiple trap trawls can damage live bottom more than single traps. Groundlines may drag across the bottom, potentially shearing off living organisms most important in providing topographic complexity (Barnette, 2001). Furthermore, the area swept by the groundline is orders of magnitude greater than the cumulative area of the



traps themselves (Barnette, 2001). It is estimated that hauling in a single trap results in 30% more damage to the substrate than setting the trap itself (Appledorn et al., 2000); thus, hauling in multiple traps would increase the extent of the habitat damage more than hauling a single pot.

*Comment 106:* One commenter stated that a number of fishermen can't fish the minimum number traps/rawl proposed for the 12 mile line in Maine. The commenter suggested proposing a 'safe trawl equivalency.' Fishermen could fish in areas traditionally fished with a number of traps they feel is safe. This would be no less than 10 traps/rawl but they would have to apply for this equivalency and explain why they are not able to fish the standard limit.

*Response:* NMFS appreciates the suggestion. NMFS developed the minimum number of traps per trawl with input from multiple stakeholder groups. NMFS believes that the minimum number of traps per trawl in the final rule is adequate, and addresses the safety concerns of industry while meeting the MMPA and ESA goals.

*Comment 107:* One commenter suggested that the rule include a recommendation to maximize the number of traps per trawl as a voluntary measure similar to the current recommendation that ropes should be as knotless as possible.

*Response:* NMFS appreciates this suggestion and will add the suggestion to maximize the number of traps per trawl in northeastern waters to outreach materials similar to what is done with the knotless rope recommendation.

*Comment 108:* Numerous commenters supported the proposed increase in traps per trawl including adopting the proposed 6-mile line in Maine.

*Response:* NMFS appreciates the support for this measure in the final rule.

*Comment 109:* One commenter supported the proposed trawl minimums but stated without a defined target for reduction the trawl minimums are unlikely to achieve the required impact without the use of closures.

*Response:* NMFS appreciates the support for the trawl minimums and agrees that both the trawl minimums and closures combined will achieve the best reduction in co-occurrence. The final rule includes both trawl minimums and a seasonal closure. Regarding the use of a defined target for reduction, please see the response to Comments 12 and 47.

#### Comments on Trap Reduction/Existing Measures

*Comment 110:* A few commenters noted that LMA 2 has undergone trap reductions and the impact of these trap reductions should be accounted for when considering vertical line reductions.

*Response:* The measures developed are based on a vertical line model that allowed us to target conservation measures in areas that have the highest overlap of large whale sightings per unit effort with vertical lines associated with commercial trap/pot and gillnet fishing. The model accounts for the way the fishing industry deployed its gear in the past, which reflect the requirements when the proposed measures were developed. NMFS acknowledges that effort reduction has taken place; however, a reduction in traps does not necessarily equate to a reduction in the number of vertical lines in the water column. During the comment period, NMFS requested comments on how best to quantify potential future trap reductions or increases with respect to how many vertical lines could be reduced or increased. NMFS did not receive any substantive comments addressing this issue. NMFS realizes that potential effort reductions or increases in the future could reduce or increase the number of vertical lines in the water column. NMFS, in consultation with the Team, has developed a monitoring strategy to evaluate industry compliance with the Plan and the effectiveness of the Plan in achieving the plan's goals and objectives. For more information on the monitoring strategy, please see the response to Comment 8.

*Comment 111:* One commenter requested that NMFS anticipate the implementation of Addendum XVII to the American Lobster FMP intended to reduce the number of LMA 2 traps to greater than 50% in six years through active and passive reductions. He stated that 50% reduction in traps may not equate to the same vertical line reduction but it's anticipated the vertical line goal could be met by trap reductions and there should be an attempt to quantify potential line reduction from effort control.

*Response:* See response to Comment 110.

*Comment 112:* A few commenters noted that trap reductions occur when permits are transferred and thus the numbers of vertical lines are reduced. There has also been a reduction of traps because of the general reduction of fishermen.

*Response:* See response to Comment 110.

*Comment 113:* A few commenters suggested that many fishermen are fishing below their allotment of trap/pot gear on their permit and flexibility should be allowed. They stated that NMFS can reduce the number of vertical lines by allowing fishermen the option of either trawling up or fishing below their allotment of traps with less number of trawls.

*Response:* NMFS and the Team discussed this issue at several of its Team meetings during the development of this rule. Similar to the response to Comment 105, NMFS and the Team could not quantify how fishing below ones trap/pot allocations equates to a reduction in the number of vertical lines in the water column.

*Comment 114:* One commenter stated that LMA3 traps have been reduced by over 30% and will continue to be reduced by another 25% through active reduction. The passive reductions will result in 10% of transferred traps being retired.

*Response:* See response to Comment 110.

*Comment 115:* Some commenters stated that many of the goals of the ALWTRP are currently being achieved through the South Atlantic Fishery Management Council Snapper-Grouper Fishery Management Plan since it limits the number of endorsements, requires pot tending, requires that pots return to shore at the end of the fishing trip, and limits fishermen to a 1000 lb (453.6 kg) trip limit.

*Response:* In the proposed rule, we acknowledged changes within the commercial black sea bass trap/pot fishery have reduced risk to large whales. The most important and effective risk reduction measure is that South Atlantic black sea bass fishing season has not co-occurred with the right whale season since January 2010 (i.e., no temporal or spatial overlap between commercial black sea bass trap/pot gear and right whales). However, there are other trap/pot fisheries active within the SERA N during the right whale calving season that NMFS must consider.

#### Comments on Research

*Comment 116:* Many commenters expressed their support for increased funding for research and disentanglement.

*Response:* NMFS appreciates the support for funding for both research and disentanglement efforts.

*Comment 117:* One commenter commented that NMFS should continue to research and develop alternative

fishing gear as a way to mitigate the effect of a potential increase in effort outside the closure areas. The commenter encouraged the development of ropeless fishing or reduced breaking strength of vertical lines.

*Response:* NMFS agrees that gear research is an important component of the Plan. NMFS funded two studies to look at the feasibility of ropeless fishing by using grapples/hooks to haul gear. There were a number of complications with this fishing method that made it infeasible from an economic and safety standpoint. At this time, ropeless fishing is not a feasible option. NMFS encourages the fishing industry, state partners, and others to work collaboratively with the agency to continue to develop new ideas and techniques that will reduce entanglement risk. NMFS is committed to gear research and development and, as funding allows, will continue to develop reliable and safe gear modifications.

#### Comments on Economic and Social Impacts (of the Plan)

*Comment 118:* Two commenters stated that the data used for the offshore fishery (LMA 3) in the socio-economic analysis is flawed and is not an accurate depiction of the fishery.

*Response:* NMFS acknowledges that the characterization of the offshore lobster fishery, like the characterization of other fisheries, is subject to the limitations of available data. The EIS attempts to address these limitations, where possible, by drawing on data from multiple sources. In the case of the offshore lobster fishery, for example, estimates of the impact of trawling requirements on revenues are based in part on catch-per-trap estimates from a 2005 survey conducted by the Gulf of Maine Research Institute, and in part on data reported in the 2009 Lobster Stock Assessment, focusing on Georges Bank as an indicator of offshore catch rates (see Exhibit 6–4). These and the other sources upon which the EIS relies constitute the best available information on the economic characteristics of the offshore lobster fishery.

*Comment 119:* One commenter disagreed that, with lower landings, less consumer surplus will lead to a greater boat price for fishermen to help offset the cost or loss in revenue from these proposed regulations. The commenter did not believe this would occur, and instead thought that the U.S. imports Canadian lobsters with no import/export quota restriction; meaning when these proposed closures result in lower landings from Maine, New Hampshire

and Massachusetts, the U.S. businesses depending on this product will increase their imports from Canada before an increase in boat price will trickle down through dealers to harvesters. This may result in a higher Canadian price first, possibly a higher U.S. price later but nothing that will substitute for the projected 40–66% loss in average annual gross revenue.

*Response:* As the EIS indicates, the dynamics of the lobster market are complex. The potential moderating effect of imports from Canada on any increase in U.S. prices adds to this complexity. In light of these considerations—as well as the relatively modest impact the alternatives would likely have on U.S. landings—the analysis does not attempt to adjust the estimate of economic impacts on U.S. lobstermen to account for a potential increase in ex-vessel prices. It simply notes the possibility that a reduction in catch could lead to an increase in prices. It does not suggest that any such increase would be sufficient to offset the impact of a closure, either on the vessels displaced by the closure or on the industry as a whole.

*Comment 120:* One commenter commented that the loss in revenue as a result of closures will be more than predicted, stating that the cost is severely underestimated and that the cost per unit of co-occurrence reduction is much larger.

*Response:* NMFS acknowledges the difficulty of predicting the impact of seasonal area closures on affected vessels. The EIS evaluates an upper and a lower bound scenario in an attempt to characterize the potential range of effects. In the upper bound scenario, the analysis assumes that vessels whose effort is displaced by the closure will not relocate that effort to other areas; hence, all revenue (net of operating cost savings) associated with this effort is assumed to be lost. NMFS believes this approach provides a conservative but reasonable high-end estimate of the potential economic impacts of a closure.

The commenter also notes the relatively high cost of closures, compared to minimum trawl-length requirements, in achieving a reduction in co-occurrence scores. The summary of the impact analysis (see Chapter 8) explicitly addresses this issue.

*Clarification Requests for the FEIS*

*Comment 121:* One commenter commented that the change in number of vertical lines and co-occurrence is not partitioned out by state versus Federal and, as such, it is difficult to evaluate the proposed rule.

*Response:* NMFS has attempted to present the results of the analysis in a

manner that clearly communicates the key impacts of the alternatives under consideration. While presentation of some findings at a higher degree of geographic resolution is theoretically possible, developing this information would require a substantial investment of analytic resources. NMFS has evaluated the effectiveness of each alternative in reducing co-occurrence scores in all waters subject to the requirements of the Plan, and believes it is appropriate to report the impacts of each alternative at that level.

*Comment 122:* One commenter requested that the discussion of weak links be expanded to include evidence that weak links have prevented entanglements, reduced the likelihood that an entangled whale would be seriously injured or die, have failed to prevent entanglements, or may be counterproductive in helping whales shed gear.

*Response:* Additional information was added to the FEIS to address this comment.

*Comment 123:* One commenter requested that the FEIS identify the steps NMFS will take to ensure enforcement of the new trawling up requirements.

*Response:* See response to Comment 122.

*Comment 124:* One commenter requested that the analysis be revised to identify criteria being used to determine when the economic costs of closures outweigh the conservation benefit to large whales.

*Response:* As the EIS notes, NMFS' evaluation of regulatory alternatives is guided by the requirements of the MMPA, the ESA, and the National Environmental Policy Act, as well as the requirements of other Federal laws like the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act) and executive orders such as Executive Order 12866, Regulatory Planning and Review. None of these statutes or executive orders establishes explicit criteria for determining when the economic costs of a regulatory measure outweigh its benefits when—as is the case here—costs and benefits cannot be fully quantified and measured. In such cases, identification of a preferred alternative requires an assessment of all information available, including information on the potential impacts of management measures that cannot be quantified. The preferred alternative that NMFS has identified was developed on the basis of such an assessment.

*Comment 125:* One commenter requested that the FEIS provide data on

recent levels of fishing effort and economic impacts for proposed closures. Those data should include the number of affected fishermen, amount of gear set, and volume and net revenues of ex-vessel landings.

*Response:* Chapter 6 of the EIS provides the requested parameters in a series of exhibits (Exhibits 6–17, 6–22, and 6–24). For each closure, these exhibits show the number of affected vessels, the average number of traps per affected vessel, and the revenue lost per trap fished. As explained earlier in the chapter, the lost revenue figures incorporate assumptions regarding the total landings per trap (in pounds) during the closure period.

Exhibit 6–25 presents a concise summary of the commercial fishing activity each closure would be likely to affect. Exhibit 6–28 presents estimates of the costs associated with each closure.

*Comment 126:* One commenter requested that the FEIS include a discussion of the full range of Team and peer reviewer comments on the limitations of the model.

*Response:* As the EIS notes, documentation for the Vertical Line Model, including a detailed discussion of the model's limitations, is available online at <http://www.nero.noaa.gov/protected/whaletrp/eis2013/index.html>. The peer review of an earlier draft of the model's documentation is available at the same Web site.

A summary of each of the 16 public hearings held in 2013 to solicit comments on the DEIS is available online at <http://www.nero.noaa.gov/protected/whaletrp/vlr2013/index.html>. These summaries include comments made on the limitations of the Vertical Line Model, as well as other aspects of the DEIS.

Written comments on the DEIS are publicly available as part of the regulatory docket for this rulemaking. Volume II of the FEIS provides a summary of these comments, along with NMFS' responses. This includes comments submitted by members of the Atlantic Large Whale Take Reduction Team, as well as comments submitted by others, concerning the limitations of the Vertical Line Model.

*Comment 127:* One commenter stated that there is no part of LMA3 that is within the 3–12 mile zone so this should be corrected in the traps per trawl proposals.

*Response:* This correction has been made.

*Comment 128:* One commenter requested that the FEIS include a more thorough explanation and discussion on the following: impacts to sea turtles,

rationale for continuing to exempt portions of Maine waters, recent fishery management actions, ocean noise, offshore energy development, and impacts and risks of chronic entanglements.

*Response:* The FEIS was updated to include a more thorough explanation.

*Comment 129:* One commenter commented that NMFS did not provide a sufficient variety of alternatives in the DEIS. The commenter suggested additional alternatives including reducing co-occurrence by 50%, mandating reductions in the amount of gear that can be used and season it is fished, and addressing gillnets.

*Response:* The Council on Environmental Quality guidance states that when there is a potentially large number of alternatives exist only a reasonable number of examples, covering a spectrum of alternatives, must be analyzed and compared in the EIS. NMFS believes that the number of alternatives (seven) analyzed in the EIS was adequate. The alternatives analyzed were a combination of stakeholder proposals developed by the Team during the course of several meetings and the result of input received during the 15 public scoping meetings.

*Comment 130:* One commenter requested that the FEIS include adjusted co-occurrence scores for the mid-Atlantic as was done for the Northeast to account for areas with minimal to no survey effort.

*Response:* NMFS considered expanding the analysis presented in Appendix 5–B of the EIS to include the mid-Atlantic, but concluded that to do so would be overly speculative, given the relative dearth of both survey effort and opportunistic sightings data in the region for much of year. Rather than suggest a greater understanding of the potential for co-occurrence in the mid-Atlantic than the data warrant, NMFS chose to limit the analysis to the Northeast, where the effort to fill gaps in the effort-corrected sightings data would be better informed by opportunistic data on the presence of whales. Note too that the primary purpose of the analysis presented in Appendix 5–B is to examine how the use of adjusted sightings data would influence NMFS' assessment of the impact of the vertical line management measures under consideration. With the exception of gear marking, none of these measures apply to mid-Atlantic waters. Thus, while development of adjusted sightings scores for the mid-Atlantic would alter the estimates of absolute impacts on co-occurrence, it would have no effect on the relative ranking of

alternatives with respect to this measure.

#### Comments on the Co-Occurrence Model

*Comment 131:* One commenter stated that the projections of risk reduction from a model are not accurate and don't work in the real world.

*Response:* NMFS acknowledges the uncertainties inherent in any attempt to model complex interrelationships, such as that between commercial fishing activity and entanglement risk. Through its research programs, NMFS has invested considerable resources in improving our understanding of these issues. While uncertainties remain, NMFS believes that the co-occurrence model makes appropriate use of the information available to help guide development and assessment of alternative management measures. As better information is developed, NMFS will incorporate it into the analytic tools it employs to inform the further development of the Plan.

*Comment 132:* A few commenters commented that there is a lack of statistical conclusion in the model citing the comments of one of the peer reviewers that “this version of model is not ready to be used in a management application until its performance has been validated or compared with other approaches”.

*Response:* The data the Vertical Line Model employs were derived from a variety of sources, including fishing reports, surveys, and expert judgment, not all of which are amenable to statistical analysis; thus, it is not possible to generate statistical confidence intervals that characterize the uncertainty in the model's output. In addition, the availability of data to validate the model is limited. When such information is available—as was the case with data on vertical line use in Massachusetts—NMFS has employed it to refine the model. NMFS has also shared information with other researchers who are attempting to model various indicators of entanglement risk, and has invited them to share information on their approaches with the Team. To NMFS' knowledge, however, these models have yet to be completed. Until they are more fully developed, attempts to validate the Vertical Line Model through comparisons with these models would be premature. NMFS will consider the recommendation to make such comparisons in future model development, analysis, and rulemaking efforts.

*Comment 133:* One commenter stated that the data used in the model is not sufficient for the intended purpose and

stated that the use of Right Whale Consortium data only for all whale species was not appropriate. Inclusion of data outside this database would provide a more balanced and complete picture.

*Response:* NMFS incorporated the Right Whale Consortium data into the Vertical Line Model at the recommendation of the Team. Members of the team have also expressed interest in expanding the data the model considers to include information on the presence or distribution of whales from other sources, such as acoustic monitoring systems. NMFS recognizes the potential value of this information, but notes that incorporation of data from these sources raises issues of comparability and consistency that it has yet to investigate and resolve. Addressing these issues and incorporating the data into the model would delay action on modification of the Plan, which would be inconsistent with the timeline for action to which NMFS has committed. NMFS believes that the information the model incorporates at this time is sufficient to guide development and assessment of alternative management measures. NMFS will consider the recommendation to incorporate additional data in future model development, analysis, and rulemaking efforts.

*Comment 134:* One commenter suggested that after a final rule has been adopted, NMFS should revise the current model or develop a new one more suitable to estimate the extent to which co-occurrence between whales and gear would be reduced, and the uncertainty of this estimate.

*Response:* NMFS will consider this recommendation in future model development, analysis, and rulemaking efforts.

*Comment 135:* One commenter requested that a study be completed to validate the model against results of an alternative co-occurrence model at least for LMA 1. Based on those results the model should be modified and co-occurrence estimates recalculated.

*Response:* As noted above, NMFS will consider this recommendation in future model development, analysis, and rulemaking efforts.

*Comment 136:* One commenter stated that the model is not an accurate method to detect whales as it only relies on visual sightings. It's possible that other important areas exist and alternate technology to detect high risk areas needs to be included in the model.

*Response:* The sightings dataset upon which the model relies was incorporated into the model at the

recommendation of the Team. Members of the team have also expressed interest in expanding the data the model considers to include information on the presence or distribution of whales from other sources, such as acoustic monitoring systems. Also see response to Comment 133.

*Comment 137:* A few commenters had concerns regarding the adequacy of the model and commented that NMFS should discuss the model's limitations and how they affect model output.

*Response:* The documentation for the Vertical Line Model, including a discussion of the model's limitations, is available online at <http://www.nero.noaa.gov/protected/whaletrp/eis2013/index.html>. The peer review of an earlier draft of the model's documentation is available at the same site. See also response to Comment 126.

*Comment 138:* A few commenters commented that additional data and approaches should be used to strengthen the accuracy of the model. The commenters stated that the model was based on outdated data and had concerns about averaging fishing effort across large areas as well as the failure to include opportunistic, acoustic, and telemetry data on whale distribution.

*Response:* As noted above, NMFS will consider these recommendations in future model development, analysis, and rulemaking efforts.

*Comment 139:* A few commenters commented that the model fails to provide adequate information regarding uncertainty. The commenters suggested that NMFS provide a qualitative score that ranks the quality of data that was input into each analysis cell.

*Response:* NMFS will consider this recommendation in future model development, analysis, and rulemaking efforts. NMFS notes, however, that the model's documentation already includes a detailed description of the fishing effort data upon which the model relies, along with detailed discussions of the limitations of the data. Similarly, the documentation discusses the limitations of the whale sightings data and presents a detailed analysis showing the effect of adjusting for key data gaps and uncertainties. NMFS believes that this information provides a more than adequate description of the limitations of the model.

*Comment 140:* A few commenters commented that the model appears sensitive to the presence of whales but a basic examination of the sensitivity of the model to all inputs would be helpful. NMFS needs to evaluate uncertainty even if the evaluation is qualitative in nature.

*Response:* NMFS will consider this recommendation in future model development, analysis, and rulemaking efforts.

*Comment 141:* A few commenters commented that the model should include all data on distribution of whales, that NMFS should ask states for data on fishing activity and investigate the possibility of modeling activity in relation to physical parameters and environmental conditions to address data gaps. The commenters also suggested investigating alternative models that calculate risk.

*Response:* As noted above, the whale sightings dataset upon which the model relies was incorporated into the model at the recommendation of the Team. Members of the team have also expressed interest in expanding the data the model considers to include information on the presence or distribution of whales from other sources, and to include information on physical parameters (e.g., depth) or environmental conditions (e.g., the presence of prey species) that may identify areas that whales are likely to frequent. NMFS recognizes the potential value of this information and will consider this recommendation in future model development, analysis, and rulemaking efforts.

NMFS has collaborated closely with state fisheries managers to obtain all available data on fishing activity (and other parameters) for use in the Vertical Line Model. Similarly, NMFS has shared information with other researchers who are attempting to model various indicators of entanglement risk, and has invited them to share information on their approaches with the Team. NMFS will continue to work collaboratively with these groups to ensure that development of the Plan takes appropriate advantage of the information and insights they can provide.

### Changes From the Proposed Rule

NMFS changed the preferred alternative from the one identified in the proposed rule published on July 16, 2013 (78 FR 42654). That alternative was then modified slightly based on public comments received during the comment period. The preferred alternative is the most cost-effective of the alternatives when comparing co-occurrence reduction to cost of compliance. The measures proposed in the final rule would achieve nearly as great a reduction in co-occurrence as what was presented in the proposed rule at approximately 57 to 70 percent of the estimated cost. The modifications are within the range of previously

analyzed effects and do not constitute a substantial change from the DEIS. The modifications continue to increase the likelihood of meeting the requirements and goals of MMPA section 118 to reduce serious injury and mortality to below PBR and approaching ZMRG, taking into account the economics of the fishery, the availability of existing technology, and existing fishery management plans. The modifications are listed below:

(1) NMFS received numerous comments questioning the rationale of proposing closures that would result in large economic loss for the industry but little reduction in co-occurrence and thus little conservation gain. NMFS is sensitive to the cost of complying with the final rule and has analyzed these costs in Chapter 7 of the FEIS. The final rule will implement one seasonal trap/pot closure (Massachusetts Restricted Area) instead of the three originally proposed under Alternative 5. This closure area includes Cape Cod Bay, the Outer Cape, and portions of Massachusetts Bay.

(2) The final rule will exempt New Hampshire State waters from the minimum number of traps per trawl requirement implemented in this final rule. Those fishing in New Hampshire state waters will still have to comply with other existing requirements. This is a change from the proposed rule, which exempted New Hampshire from all requirements. NMFS received numerous comments against relaxing current management measures.

(3) The minimum number of traps per trawl in the final rule changes slightly from what was proposed. In the proposed rule NMFS acknowledged that the proposed limits for inshore waters might still result in some difficulty for smaller vessels, so NMFS requested comments on whether the final regulations should be adjusted so that the number of traps per trawl is limited by specific vessel sizes. In addition, NMFS requested public comment on whether the net benefits of the rule would be affected, either positively or negatively, by exempting vessels under a particular size class. NMFS received many comments reiterating the safety concerns of those who fish close to shore. Several commenters disagreed with exempting vessels from the minimum number of traps per trawl requirement. After reviewing all comments NMFS decided not to institute a small boat exemption. Instead the final rule allows for a minimum number of two traps per trawl to be fished in Rhode Island and Massachusetts state waters instead of

the proposed minimum of three traps per trawl.

(4) The final rule allows for 'pocket waters' in Maine to fish a minimum of two traps per trawl instead of three. NMFS received multiple comments requesting that these waters be treated the same as state waters and allowed to fish pairs. Allowing those fishing in these waters to fish under the same requirements as proposed for the rest of Maine's state waters will help with enforcement.

(5) The final rule will create a ¼ mile buffer in waters surrounding three inhabited islands in Maine—Monhegan, Matinicus, and Ragged Island. Boats fishing within this ¼ mile buffer will be allowed to continue the current practice of fishing singles. NMFS received comments expressing concern with safety issues surrounding an increase of traps per trawl in these waters. The waters surrounding these islands are generally less than 30 fathoms deep with rocky edges. It would not be feasible for small boats to fish trawls greater than singles in this area.

(6) The final rule will not require gear marking in the exempted waters of Maine. NMFS received numerous comments from those industry members who fish in both exempt and non-exempt waters. Common concerns included the feasibility of switching marks when moving from an exempt area to a non-exempt area; cost of 'double' marking lines; and the rationale for needing to mark line in an area that is already exempt.

#### Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866. This final rule contains collection of information requirements subject to the Paperwork Reduction Act (PRA), specifically, the marking of fishing gear. The collection of information requirement was approved by OMB under control number (0648–0364). Public comment was sought regarding whether this proposed collection of information is necessary for the proper performance and function of the agency, including: the practical utility of the information; the accuracy of the burden estimate; the opportunities to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see

ADDRESSES) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395–7285.

This collection of information requirement applies to a total of 4,006 vessels. Model vessel types were developed for gillnet fisheries, lobster trap/pot fisheries, and other trap/pot fisheries. Total burden hours for all vessels is 32,775 hours over three years or 10,925 hours per year. Total cost burden for all vessels is \$21,631 over three years or \$7,231 per year. For more information, please see the PRA submission associated with this rulemaking.

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.

As required by the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA incorporates a summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis, NMFS responses to those comments provided elsewhere in the preamble to this final rule, and a summary of the analyses completed to support the final rule. A summary of that FRFA follows: The objective of this final rule, issued pursuant to section 118 of the MMPA, is to reduce the level of serious injury and mortality of right, humpback, and fin whales in commercial east coast trap/pot and gillnet fisheries.

Six alternatives, consisting of the status quo, one preferred alternative, and four additional alternatives were evaluated using model vessels, each of which represents a group of vessels that share similar operating characteristics and would face similar requirements under a given regulatory alternative. Both an upper and lower bound of annual compliance costs for lobster and other trap/pot were analyzed. The final preferred alternative is a modification to the original preferred alternative. A summary of analysis describing the potential range of compliance costs follows:

1. NMFS considered a "no action" or status quo alternative (Alternative 1) that would result in no changes to the current measures under the Plan and, as such, would result in no additional economic effects on the fishing industry.

2. Alternative 2, would implement new gear marking restrictions coastwide, increase traps per trawl, and require the use of weaker weak links

and/or vertical lines of lower breaking strength. This alternative would also implement a new management area in the Southeast. Under this alternative, the average annual vessel compliance costs would equal or range from \$1.8 to \$4.5 million for lobster trap/pot vessels; \$430,000 to \$849,000 for other trap/pot vessels; \$7,000 for blue crab and \$5,000 for gillnet vessels.

3. Alternative 3 would implement all of the requirements of Alternative 2, except the number of traps per trawl required in Maine would differ. Under this alternative NMFS proposes a closure in the Cape Cod Bay from February 1 through April 30. In addition, New Hampshire state waters would be exempt from the Plan's requirements. Under this alternative, the average annual vessel compliance costs would equal or range from \$1.6 to \$3.6 million for lobster trap/pot vessels; \$414,000 to \$833,000 for other trap/pot vessels; \$7,000 for blue crab and \$5,000 for gillnet vessels.

4. Alternative 4 would implement all of the requirements of Alternative 2. In addition, NMFS would require three closures: (1) Jordan Basin from November 1 through January 31; (2) Jeffreys Ledge from October 1 through January 31; and (3) Cape Cod Bay (including a portion of the Outer Cape and abutting the Great South Channel) from January 1 through April 30. Under this alternative, the average annual vessel compliance costs would equal or range from \$3.1 to \$6.5 million for lobster trap/pot vessels; \$430,000 to \$849,000 for other trap/pot vessels; and \$7,000 for blue crab and \$5,000 for gillnet vessels.

5. Alternative 5 is a combination of Alternatives 2, 3, and 4. The traps per trawl for Maine would mimic what is required under alternative 3; traps per trawl in all other areas would mimic what is required under Alternative 2. New Hampshire state waters would be exempt under Alternative 5. The closures proposed under Alternative 4 would remain in place under Alternative 5. Under this alternative, the average annual vessel compliance costs would equal or range from \$2.9 to \$5.5 million for lobster trap/pot vessels; \$414,000 to \$833,000 for other trap/pot vessels; and \$7,000 for blue crab and \$5,000 for gillnet vessels.

6. Alternative 6 would implement all of the requirements of Alternative 5 with a few exceptions. Doubles would be required in Massachusetts state waters instead of three traps per trawl. Also, only one closure would be implemented. From January 1 through April 30 Cape Cod Bay and the Outer Cape would be closed to fishing. Under

this alternative, the average annual vessel compliance costs would equal or range from \$2.2 to \$4.4 million for lobster trap/pot vessels; \$416,000 to \$836,000 for other trap/pot vessels; and \$7,000 for blue crab and \$5,000 for gillnet vessels.

A Notice of Availability for the FEIS was issued on May 16, 2014 (79 FR 28508). The FEIS describes the impacts of the measures on the environment. On June 20, 2014 NMFS issued a Record of Decision identifying the selected alternative. A copy of the Record of Decision is available from NMFS (see ADDRESSES).

NMFS selected Alternative 6 as the preferred alternative but modified it slightly. The preferred alternative would implement all of the requirements of Alternative 6 with a few exceptions. Two traps per trawl would be required in both Massachusetts and Rhode Island state waters instead of three traps per trawl. New Hampshire state waters would only be exempt from the proposed minimum number of traps per trawl requirement. Maine exempted waters would not be required to gear mark as previously proposed. The final rule allows for those fishing in 'pocket waters' in Maine to fish a minimum of two traps per trawl instead of three and creates a ¼ mile buffer around three inhabited islands in Maine that would be allowed to continue traditional fishing practices. Under this alternative, the average annual vessel compliance costs would equal or range from \$1.5 to \$3.6 million for lobster trap/pot vessels; \$416,000 to \$835,000 for other trap/pot vessels; and \$7,000 for blue crab and \$5,000 for gillnet vessels. NMFS solicited public comments on both the DEIS (78 FR 41927, July 13, 2013) and proposed rule (78 FR 42654, July 16, 2013) through several different means including written comments. The public also had the opportunity to provide oral comments at 16 public hearings from Maine to Florida. A summary of all comments received and NMFS' Responses is included in Volume II of the FEIS. Numerous issues were raised by the public regarding to the expected effects of this final rule. Areas of concern included: the implementation time for the new requirements, the practicality of the proposed gear marking scheme, safety and feasibility of the proposed minimum number of traps per trawl, the effects of the proposed seasonal trap/pot closures, and the rationale for proposing changes to the vertical line and weak link breaking strength in the proposed Southeast Restricted Area North.

NMFS formulated the final preferred alternative based on these public

comments. This final preferred alternative introduces changes including: delineating a ¼ mile buffer around three Maine islands to allow current fishing practices to continue, allowing pairs to be fished in Rhode Island state waters and the pocket waters of Maine, and exempting New Hampshire state waters from the minimum number of traps per trawl requirements only. These and other variations decrease the number of affected vessels and result in reductions in compliance costs, while sacrificing little in terms of entanglement risk reduction.

The small entities affected by this final rule are commercial gillnet and trap/pot fishermen. The geographic range of the final rule includes the Northeast Atlantic, Mid-Atlantic, and Southeast Atlantic waters. In the lobster trap/pot fishery, there are potentially 3,186 vessels that would be affected. In the other trap/pot fisheries, there are potentially 274 vessels that would be affected. In the blue crab fishery there are potentially 48 vessels that would be affected. In the gillnet fishery, there are approximately 498 vessels that would be affected. All vessels are assumed to be small entities within the meaning of the Regulatory Flexibility Act.

NMFS has determined that this action is consistent to the maximum extent practicable with the approved coastal management programs 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. The following states agreed with NMFS' determination: Connecticut; Delaware; Florida; New Hampshire; New Jersey; North Carolina; Rhode Island; South Carolina; and Virginia. Maine, Maryland, Massachusetts, and New York did not respond; therefore, consistency is inferred. Georgia conditionally concurred with NMFS' conclusion that the action is consistent with enforceable policies of the approved coastal management program for that state; however, the Georgia conditional occurrence was treated as an objection because NMFS could not meet the state agency's conditions.

The Georgia Coastal Management Program (GCMP) was concerned that the proposed gear marking scheme would create significant economic burden on the fishery and stated that a method should be developed to allow industry to quickly alter markings when moving gear from state to Federal waters. For concurrence, GCMP required the Alternative to be modified to include alternative gear marking schemes that

would allow expeditious changes between state and Federal waters and this scheme should be phased in over a three year period in the Southeast. This final rule does not include a phase in of gear marking nor does it change the gear marking scheme from what was proposed. Thus, NMFS did not meet all the state agency's conditions. NMFS believes the final rule will implement modifications to the Plan deemed necessary by NMFS to meet the goals of the ESA and MMPA. Therefore, pursuant to 15 CFR 930.4, the requirements of paragraphs (a) (1) through (3) were not met and the GCMP no longer concurs with the determination that the proposed measures are consistent to the maximum extent practicable with the GCMP.

This final rule contains policies with federalism implications as that term is defined in 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 governments. No concerns were raised by the states contacted; hence, NMFS will infer that these states concur with the finding that the regulations for amending the Plan were consistent with fundamental federalism principles and federalism policymaking criteria.

An informal consultation under the ESA for this final rule to modify the Plan was concluded on August 16, 2013. As a result of the informal consultation, the Regional Administrator determined that the measures to modify the Plan do not meet the triggers for reinitiation of consultation. NMFS completed an ESA Section 7 consultation on the implementation of the Plan on July 15, 1997, and concluded that the action was not likely to adversely affect any ESA-listed species under NMFS jurisdiction. Two subsequent consultations were completed in 2004 and 2008, when NMFS changed some of the measures in the Plan. NMFS, as both the action agency and the consulting agency, reviewed the changes and determined that the measures as revised through rulemaking would not affect ESA-listed species under NMFS jurisdiction in a manner that had not been previously considered.

#### References

- Appledorn, R.S., M. Nemeth, J. Vasslides, and S.M. 2000. The effects of fish traps on benthic habitats off La Parguera, Puerto Rico. Caribbean Fishery Management Council, Hato Rey, Puerto Rico.
- Barnette, M.C. 2001. A review of the fishing gear utilized within the Southeast Region and their potential impacts on essential fish habitat. NOAA Technical Memorandum NMFS-SEF SC-449, 62pp.
- Johnson, A.J., G.S. Salvador, J.F. Kenney, J. Robbins, S.D. Kraus, S.C. Landry, and P.J. Clapham. Fishing gear involved in entanglements of right and humpback whales, *Marine Mammal Science* 21(4):635–645, 2005.
- Knowlton, A., S. Landry, J. Robbins, and T. Werner. 2011. Breaking strength and diameter of rope taken off entangled North Atlantic right whales in relation to wound severity and age. Pages 161 *in* 19th Biennial Conference on the Biology of Marine Mammals, Tampa, Florida.
- McCarron, P. and H. Tetreault. Lobster Pot Gear Configurations in the Gulf of Maine, 2012.
- Morano, J.L., A.N. Rice, J.T. Tielens, B.J. Estabrook, A. Murray, B.L. Roberts and C.W. Clark. 2012. Acoustically Detected Year-Round Presence of Right Whales in an Urbanized Migration Corridor. *Conservation Biology* 28:698–707.
- Mussoline, SE., D. Risch, C.W. Clark, L.T. Hatch, M.T. Weinrich, D.N. Wiley, M.A. Thompson, P.J. Corkeron and S.M. Van Parijs. 2012. Seasonal and diel variation of the North Atlantic right whale up-call: implications for management and conservation in the Northwestern Atlantic Ocean. *Endangered Species Research* 17:17–26.
- National Marine Fisheries Service. 2005. Recovery Plan for the North Atlantic Right Whale (*Eubalaena glacialis*). National Marine Fisheries Service, Silver Spring, MD.
- Schreiber, Laurie, "Lobster Catch-to-Trap Ratio Studied," *Fisherman's Voice*, Vol. 15, No. 4, April 2010.

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Figure 1. Proposed exemption line for the state of New Hampshire. Waters shoreward of the dotted line would be exempt. See Plan regulations for exact exemption line coordinates.

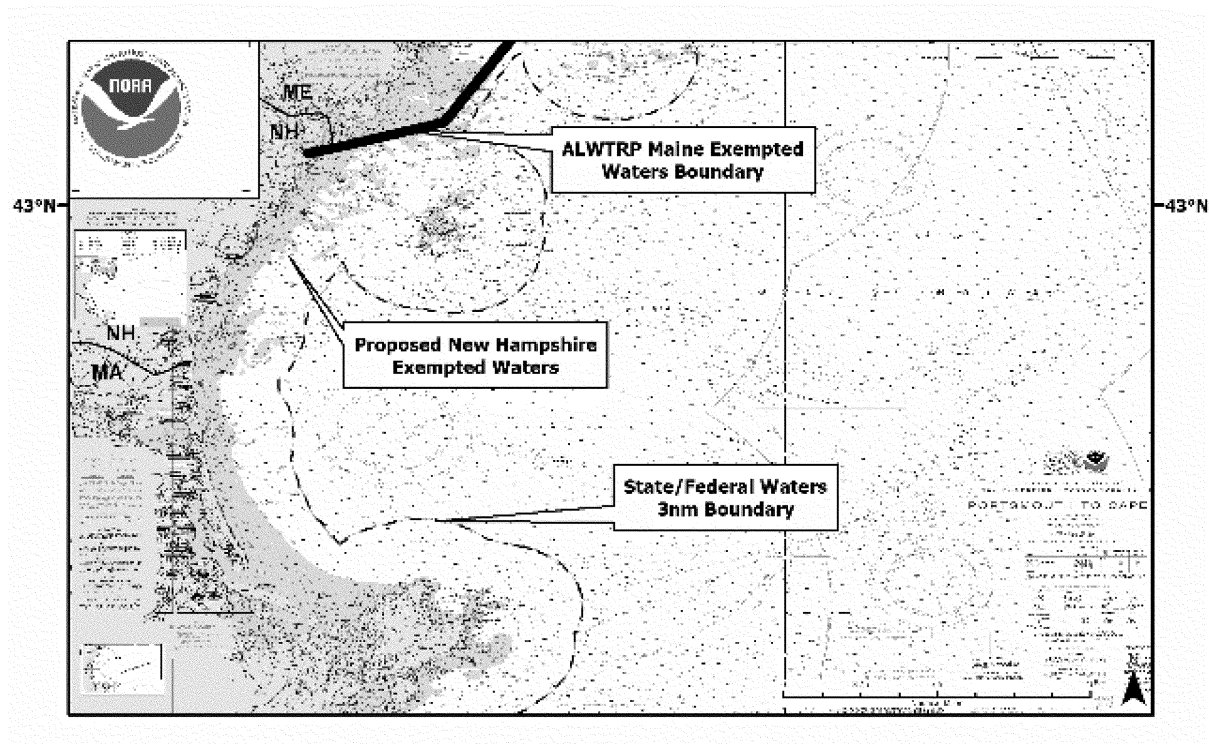


Figure 2. Massachusetts Restricted Area. See Plan regulations for exact management area coordinates.

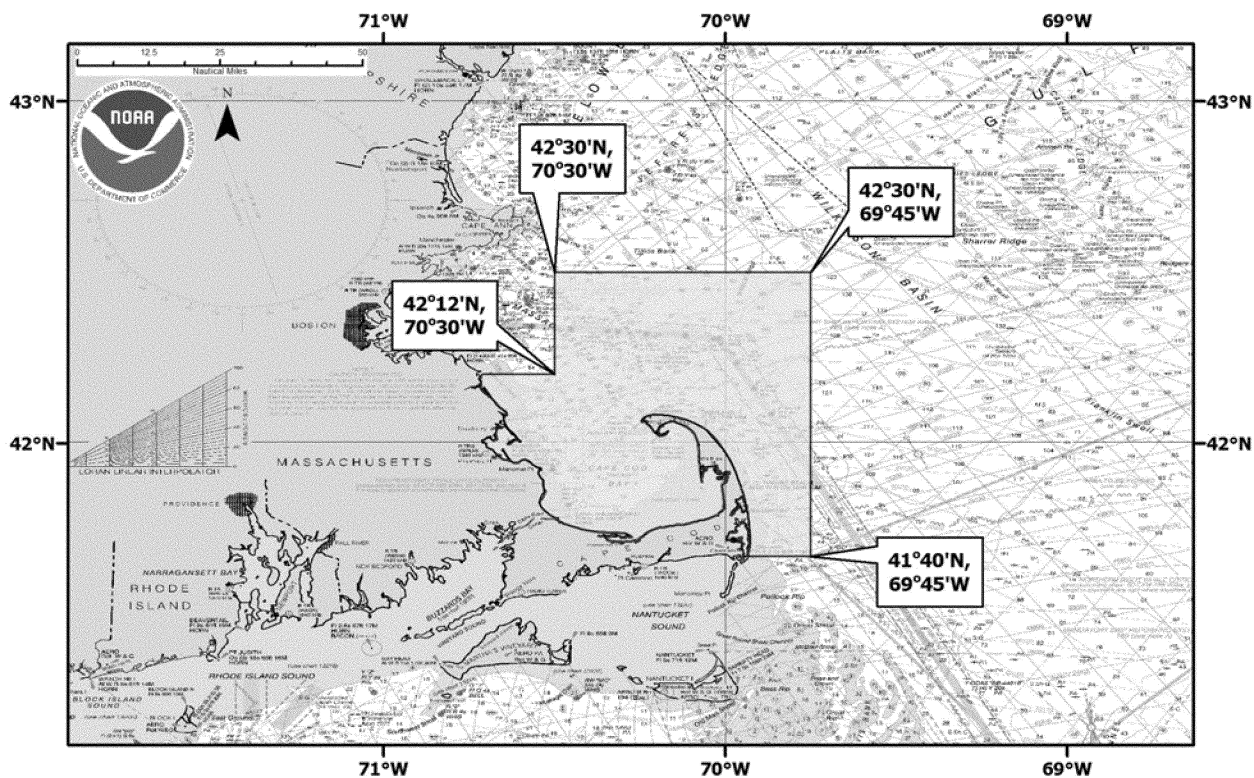
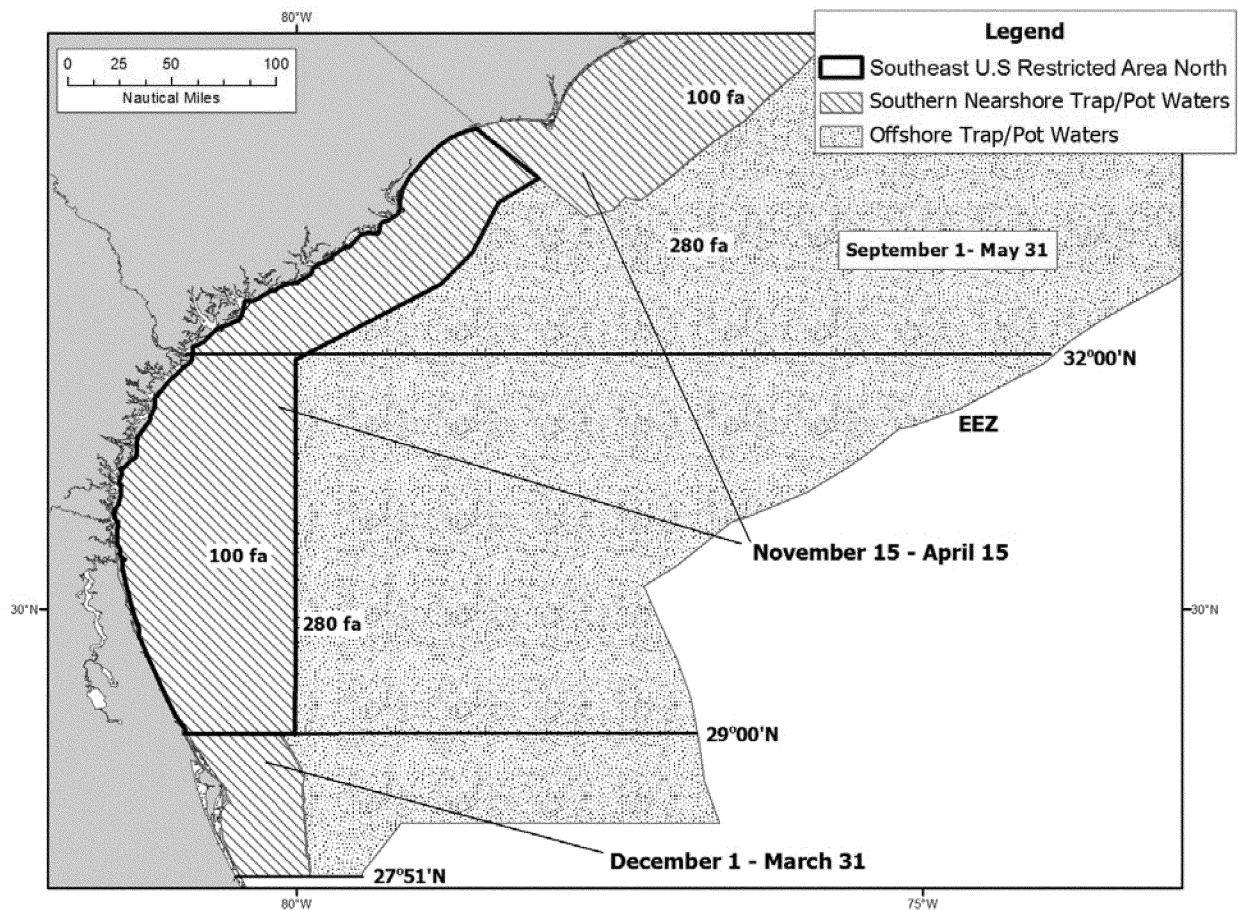


Figure 3. Southeast Restricted Area North Trap/Pot Waters. See Plan regulations for exact management area coordinates.



BILLING CODE 3510-22-C

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

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

Dated: June 20, 2014.

**Eileen Sobeck,**

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

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

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

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

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

■ 2. In § 229.2, the definition of “Groundline” is revised to read as follows:

##### § 229.2 Definitions.

\* \* \* \* \*

*Groundline*, with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor.

\* \* \* \* \*

■ 3. In § 229.3, revise paragraphs (h) through (j) and remove and reserve paragraphs (k) and (l) to read as follows:

##### § 229.3 Prohibitions.

\* \* \* \* \*

(h) It is prohibited to own, operate, or be on board a vessel subject to the Atlantic Large Whale Take Reduction Plan except if that vessel and all fishing

gear comply with all applicable provisions of § 229.32.

(i) It is prohibited to fish for, catch, take, harvest or possess fish or wildlife while on board a vessel subject to the Atlantic Large Whale Take Reduction Plan, except if that vessel and all fishing gear is in compliance with all applicable provisions of § 229.32.

(j) Any person or vessel claiming the benefit of any exemption or exception under § 229.32 has the burden of proving that the exemption or exception, is applicable.

(k) [Reserved]

(l) [Reserved]

\* \* \* \* \*

■ 4. Section 229.32 is revised to read as follows:

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

(a)(1) *Purpose and scope.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction

Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. Specific Category I and II commercial fisheries within the scope of the Plan are identified and updated in the annual List of Fisheries. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (e.g., anchored, drift, and shark) and traps/pots. The Assistant Administrator may revise the requirements set forth in this section in accordance with paragraph (i) of this section.

(2) *Regulated waters.* (i) The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(ii) The six-mile line referred to in paragraph (c)(2)(iii) of this section is a line connecting the following points (Machias Seal to Isle of Shoals):

44°31.98' N. lat., 67°9.72' W. long (Machias Seal)  
44°3.42' N. lat., 68°10.26' W. long (Mount Desert Island)  
43°40.98' N. lat., 68°48.84' W. long (Matinicus)  
43°39.24' N. lat., 69°18.54' W. long (Monhegan)  
43°29.4' N. lat., 70°5.88' W. long (Casco Bay)  
42°55.38' N. lat., 70°28.68' W. long (Isle of Shoals)

(iii) The pocket waters referred to in paragraph (c)(2)(iii) of this section are defined as follows:

West of Monhegan Island in the area north of the line 43°42.17' N. lat., 69°34.27' W. long and 43°42.25' N. lat., 69°19.3' W. long  
East of Monhegan Island in the area located north of the line 43°44' N. lat., 69°15.08' W. long and 43°48.17' N. lat., 69°8.02' W. long  
South of Vinalhaven Island in the area located west of the line 43°52.31' N. lat., 68°40' W. long and 43°58.12' N. lat., 68°32.95' W. long  
South of Bois Bubert Island in the area located northwest of the line 44°19.27' N. lat., 67°49.5' W. long and 44°23.67' N. lat., 67°40.5' W. long

(3) *Exempted waters.* (i) The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts.

(ii) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for

Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(iii) *Other exempted waters.* The regulations in this section do not apply to waters landward of the following lines:

#### Maine

A line connecting the following points (Quoddy Narrows/US-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

44°49.67' N. lat., 66°57.77' W. long. (R N "2", Quoddy Narrows)  
44°48.64' N. lat., 66°56.43' W. long. (G "1" Whistle, West Quoddy Head)  
44°47.36' N. lat., 66°59.25' W. long. (R N "2", Morton Ledge)  
44°45.51' N. lat., 67°02.87' W. long. (R "28M" Whistle, Baileys Mistake)  
44°37.70' N. lat., 67°09.75' W. long. (Obstruction, Southeast of Cutler)  
44°27.77' N. lat., 67°32.86' W. long. (Freeman Rock, East of Great Wass Island)  
44°25.74' N. lat., 67°38.39' W. long. (R "2SR" Bell, Seahorse Rock, West of Great Wass Island)  
44°21.66' N. lat., 67°51.78' W. long. (R N "2", Petit Manan Island)  
44°19.08' N. lat., 68°02.05' W. long. (R "2S" Bell, Schoodic Island)  
44°13.55' N. lat., 68°10.71' W. long. (R "8BI" Whistle, Baker Island)  
44°08.36' N. lat., 68°14.75' W. long. (Southern Point, Great Duck Island)  
43°59.36' N. lat., 68°37.95' W. long. (R "2" Bell, Roaring Bull Ledge, Isle Au Haut)  
43°59.83' N. lat., 68°50.06' W. long. (R "2A" Bell, Old Horse Ledge)  
43°56.72' N. lat., 69°04.89' W. long. (G "5TB" Bell, Two Bush Channel)  
43°50.28' N. lat., 69°18.86' W. long. (R "2 OM" Whistle, Old Man Ledge)  
43°48.96' N. lat., 69°31.15' W. long. (GR C "PL", Pemaquid Ledge)  
43°43.64' N. lat., 69°37.58' W. long. (R "2BR" Bell, Bantam Rock)  
43°41.44' N. lat., 69°45.27' W. long. (R "20ML" Bell, Mile Ledge)  
43°36.04' N. lat., 70°03.98' W. long. (RG N "BS", Bulwark Shoal)  
43°31.94' N. lat., 70°08.68' W. long. (G "1", East Hue and Cry)  
43°27.63' N. lat., 70°17.48' W. long. (RW "WI" Whistle, Wood Island)  
43°20.23' N. lat., 70°23.64' W. long. (RW "CP" Whistle, Cape Porpoise)  
43°04.06' N. lat., 70°36.70' W. long. (R N "2MR", Murray Rock)  
43°02.93' N. lat., 70°41.47' W. long. (R "2KR" Whistle, Kittery Point)  
43°02.55' N. lat., 70°43.33' W. long. (Odiornes Pt., Portsmouth, New Hampshire)

#### New Hampshire

New Hampshire state waters are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iii) of this section. Harbor waters landward of the following lines are exempt from all the regulations in this section.

A line from 42°53.691' N. lat., 70°48.516' W. long. to 42°53.516' N. lat., 70°48.748' W. long. (Hampton Harbor)  
A line from 42°59.986' N. lat., 70°44.654' W. long. to 42°59.956' N. lat., 70°44.737' W. long. (Rye Harbor)

#### Rhode Island

A line from 41°22.441' N. lat., 71°30.781' W. long. to 41°22.447' N. lat., 71°30.893' W. long. (Pt. Judith Pond Inlet)  
A line from 41°21.310' N. lat., 71°38.300' W. long. to 41°21.300' N. lat., 71°38.330' W. long. (Ninigret Pond Inlet)  
A line from 41°19.875' N. lat., 71°43.061' W. long. to 41°19.879' N. lat., 71°43.115' W. long. (Quonochontaug Pond Inlet)  
A line from 41°19.660' N. lat., 71°45.750' W. long. to 41°19.660' N. lat., 71°45.780' W. long. (Weekapaug Pond Inlet)

#### New York

A line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY)

#### South Carolina

A line from 32°34.717' N. lat., 80°08.565' W. long. to 32°34.686' N. lat., 80°08.642' W. long. (Captain Sams Inlet)

(4) *Sinking groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m).

(5) *Net panel weak link and anchoring exemption.* The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the float-line is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m).

(6) *Island buffer.* Those fishing in waters within ¼ mile of Monhegan Island, Maine; Matinicus, Maine; and Ragged Island, Maine are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iii) of this section.

(b) *Gear marking requirements—(1) Specified areas.* The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Massachusetts Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great

South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Areas, and Southeast U.S. Monitoring Area.

(2) *Markings.* All specified gear in specified areas must be marked with the color code shown in paragraph (b)(3) of this section. The color of the color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i) and (ii) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. The rope must be marked at least three times (top, middle, bottom) and each mark must total 12-inch (30.5 cm) in length. If the mark consists of two colors then each color mark may be 6-inch (15.25 cm) for a total mark of 12-inch (30.5 cm). If the color of the rope is the same as or similar to a color code, then a white mark may be substituted for that color code. In marking or

affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(i) *Buoy line markings.* All buoy lines of shark gillnet gear in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters, greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface), midway along the length of the buoy line, and within 2 feet (0.6 m) of the bottom of the buoy line.

(ii) *Net panel markings.* Shark gillnet gear net panels in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters is required to be marked. The net panel must be marked along

both the floatline and the leadline at least once every 100 yards (91.4 m).

(iii) *Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

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

#### COLOR CODE SCHEME

Plan management area	Color
<b>Trap/Pot Gear</b>	
Massachusetts Restricted Area .....	Red.
Northern Nearshore .....	Red.
Northern Inshore State .....	Red.
Stellwagen Bank/Jeffreys Ledge Restricted Area .....	Red.
Great South Channel Restricted Area overlapping with LMA 2 and/or Outer Cape .....	Red.
Southern Nearshore .....	Orange.
Southeast Restricted Area North (State Waters) .....	Blue and Orange.
Southeast Restricted Area North (Federal Waters) .....	Green and Orange.
Offshore .....	Black.
Great South Channel Restricted Area overlapping with LMA 2/3 and/or LMA 3 .....	Black.
<b>Gillnet excluding shark gillnet</b>	
Cape Cod Bay Restricted Area .....	Green.
Stellwagen Bank/Jeffreys Ledge Restricted Area .....	Green.
Great South Channel Restricted Area .....	Green.
Great South Channel Restricted Sliver Area .....	Green.
Other Northeast Gillnet Waters .....	Green.
Mid/South Atlantic Gillnet Waters .....	Blue.
Southeast US Restricted Area South .....	Yellow.
Other Southeast Gillnet Waters .....	Yellow.
<b>Shark Gillnet (with webbing of 5" or greater)</b>	
Southeast US Restricted Area South .....	Green and Blue.
Southeast Monitoring Area .....	Green and Blue.
Other Southeast Waters .....	Green and Blue.

(c) *Restrictions applicable to trap/pot gear in regulated waters—*(1) *Universal trap/pot gear requirements.* In addition to the gear marking requirements listed in paragraph (b) and the area-specific measures listed in paragraphs (c)(2)

through (10) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters

Area, must comply with the universal gear requirements listed below.<sup>1</sup>

<sup>1</sup> Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

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

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

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(2) *Area specific gear requirements.* Trap/pot gear must be set according to

the requirements outlined below and in the table in paragraph (c)(2)(iii).

(i) *Single traps and multiple-trap trawls.* All traps must be set according to the configuration outlined in the table in paragraph (c)(2)(iii).

(ii) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(A) The breaking strength of the weak links must not exceed the breaking strength listed in paragraph (c)(2)(iii) of

this section for a specified management area.

(B) The weak link must be chosen from the following list approved by NMFS: 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. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(iii) *Table of Area Specific Gear Requirements.*

Location	Mgmt area	Minimum # traps/trawl	Weak link strength
ME State and Pocket Waters <sup>2</sup> .	Northern Inshore State .....	2 (1 endline) .....	≤600 lbs.
ME Zones A–G (3–6 miles) <sup>2</sup> .	Northern Nearshore .....	3 (1 endline) .....	≤600 lbs.
ME Zones A–C (6–12 miles) <sup>2</sup> .	Northern Nearshore .....	5 (1 endline) .....	≤600 lbs.
ME Zones D–G (6–12 miles) <sup>2</sup> .	Northern Nearshore .....	10 .....	≤600 lbs.
ME Zones A–E (12+ miles).	Northern Nearshore and Offshore .....	15 .....	≤600 lbs (≤1,500 lbs in offshore, 2,000 lbs if red crab trap/pot)
ME Zones F–G (12+ miles).	Northern Nearshore and Offshore .....	15 (Mar 1–Oct 31) ..... 20 (Nov 1–Feb 28/29)	≤600 lbs (≤1,500 lbs in offshore, 2,000 lbs if red crab trap/pot).
MA State Waters .....	Northern Inshore State and Massachusetts Restricted Area.	2 (1 endline) .....	≤600 lbs.
NH State Waters .....	Northern Inshore State .....	No minimum trap/trawl	≤600 lbs.
LMA 1 (3–12 miles) ....	Northern Nearshore and Massachusetts Restricted Area and Stellwagen Bank/Jeffreys Ledge Restricted Area.	10 .....	≤600 lbs.
LMA 1 (12+ miles) ....	Northern Nearshore .....	20 .....	≤600 lbs.
LMA1/OC Overlap (0–3 miles).	Northern Inshore State and Massachusetts Restricted Area.	2 (1 endline) .....	≤600 lbs.
OC (0–3 miles) .....	Northern Inshore State and Massachusetts Restricted Area.	2 (1 endline) .....	≤600 lbs.
OC (3–12 miles) .....	Northern Nearshore and Massachusetts Restricted Area.	10 .....	≤600 lbs.
OC (12+ miles) .....	Northern Nearshore and Great South Channel Restricted Area.	20 .....	≤600 lbs.
Rhode Island State Waters.	Northern Inshore State .....	2 (1 endline) .....	≤600 lbs.
LMA 2 (3–12 miles) ....	Northern Nearshore .....	10 .....	≤600 lbs.
LMA 2 (12 + miles) ....	Northern Nearshore and Great South Channel Restricted Area.	15 .....	≤600 lbs.
LMA 2/3 Overlap (12+ miles).	Offshore and Great South Channel Restricted Area.	20 .....	≤1,500 lbs (2,000 lbs if red crab trap/pot).
LMA 3 (12+ miles) ....	Offshore waters North of 40° and Great South Channel Restricted Area.	20 .....	≤1,500 lbs (2,000 lbs if red crab trap/pot).
LMA 4,5,6 .....	Southern Nearshore .....	.....	≤600 lbs.
FL State Waters .....	Southeast US Restricted Area North <sup>3</sup> .....	1 .....	≤200 lbs.
GA State Waters .....	Southeast US Restricted Area North <sup>3</sup> .....	1 .....	≤600 lbs.
SC State Waters .....	Southeast US Restricted Area North <sup>3</sup> .....	1 .....	≤600 lbs.
Federal Waters off FL, GA, SC.	Southeast US Restricted Area North <sup>3</sup> .....	1 .....	≤600 lbs.

<sup>2</sup> The pocket waters and 6-mile line as defined in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section.

<sup>3</sup> See § 229.32 (f)(1) for description of area.

(3) *Massachusetts Restricted Area*—(i) *Area*. The Massachusetts restricted area is bounded by the following point surrounding the shoreline of Cape Cod, Massachusetts.

Point	N. lat.	W. long.
MRA1 .....	42°12'	70°30'
MRA2 .....	42°30'	70°30'
MRA3 .....	42°30'	69°45'
MRA4 .....	41°40'	69°45'

(ii) *Closure*. From January 1 to April 30, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements*. From May 1 through December 31, no person or vessel may fish with or possess trap/pot gear in the Massachusetts Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *Great South Channel Restricted Trap/Pot Area*—(i) *Area*. The Great South Channel Restricted Trap/Pot Area consists of the area bounded by the following points.

Point	N. Lat.	W. Long.
GSC1 .....	41°40'	69°45'
GSC2 .....	41°0'	69°05'
GSC3 .....	41°38'	68°13'
GSC4 .....	42°10'	68°31'

(ii) *Closure*. From April 1 through June 30, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements*. From July 1 through March 31, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area*. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Massachusetts Restricted Area in paragraph (c)(3) of

this section, that lie south of 43°15' N. lat. and west of 70°00' W. long.

(ii) *Year round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(6) *Offshore Trap/Pot Waters Area*—(i) *Area*. The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3, including the area known as the Area 2/3 Overlap and Area 3/5 Overlap as defined in the American Lobster Fishery regulations at § 697.18 of this title, with the exception of the Great South Channel Restricted Trap/Pot Area and Southeast Restricted Area, and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°14' N. lat. south to 27°51' N. lat., and east to the eastern edge of the EEZ.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements*. From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements

specified in paragraph (c)(1) of this section, and area-specific requirements in (c)(2) or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements*. From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements*. From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) in this section, or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(7) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area*. The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, and Maine, with the exception of Massachusetts Restricted Area and those waters exempted under paragraph (a)(3) of this section. Federal waters west of 70°00' N. lat. in Nantucket Sound are also included in the Northern Inshore State Trap/Pot Waters Area.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(8) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area*. The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the

<sup>4</sup> Fishermen using red crab trap/pot gear should refer to § 229.32(c)(10) for the restrictions applicable to red crab trap/pot fishery.



American Lobster Fishery regulations at 50 CFR 697.18 of this title), with the exception of the Great South Channel Restricted Trap/Pot Area, Massachusetts Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Federal waters west of 70°00' N. lat. in Nantucket Sound (included in the Northern Inshore State Trap/Pot Waters Area) and those waters exempted under paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(9) *Southern Nearshore<sup>5</sup> Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18, and excluding the Area 3/5 Overlap), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30' N. lat. south to 27°51' N. lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section and those waters in the Southeast Restricted Area defined in paragraph (f)(1) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on

the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(10) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(6)(i) and (c)(9)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(10)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements

in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(10)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(11)(i) of this section that overlaps an area from 32°00' N. lat. south to 29°00' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(11)(i) of this section that overlaps an area from 29°00' N. lat. south to 27°51' N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(3) through (d)(8) of this section, all anchored gillnet gear in regulated waters must comply with

<sup>5</sup> Fishermen using red crab trap/pot gear should refer to § 229.32(c)(10) for the restrictions applicable to red crab trap/pot fishery.

the universal gear requirements listed below.<sup>6</sup>

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

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

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(2) *Area specific gear restrictions.* No person or vessel may fish with or possess anchored gillnet gear in Areas referenced in paragraphs (d)(3) through (d)(8) of this section, unless that gear complies with the gear requirements specified in paragraph (d)(1) of this section, and the area specific requirements listed below, or unless the gear is stowed as specified in § 229.2.

(i) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(A) The weak link must be chosen from the following list approved by NMFS: 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. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(B) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(C) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(ii) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations unless exempted from this requirement under paragraph (a)(5) of this section:

(A) *Configuration 1.* (1) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request; and

(2) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(3) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(4) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(5) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(B) *Configuration 2.* (1) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request; and

(2) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(3) One weak link must be placed between the floatline tie loops between net panels; and

(4) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(5) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(6) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one

weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(iii) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted from this requirement under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Greater Atlantic Region.

(3) *Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay restricted area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

Point	N. lat.	W. long.
CCB1 .....	41°40'	69°45'
CCB2 .....	42°30'	69°45'
CCB3 .....	42°30'	70°30'
CCB4 .....	42°12'	70°30'

(ii) *Closure.* During January 1 through May 15 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements.* From May 16 through December 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *Great South Channel Restricted Gillnet Area—(i) Area.* The Great South Channel Restricted Gillnet Area consists

<sup>6</sup> Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

of the area bounded by lines connecting the following four points:

Point	N. lat.	W. long.
GSC1 .....	41°02.2'	69°02'
GSC2 .....	41°43.5'	69°36.3'
GSC3 .....	42°10'	68°31'
GSC4 .....	41°38'	68°13'

(ii) *Closure*. From April 1 through June 30 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements*. From July 1 through March 31 of each year, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(5) *Great South Channel Sliver Restricted Area*—(i) *Area*. The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points:

Point	N. lat.	W. long.
GSCRA1 .....	41°02.2'	69°02'
GSCRA2 .....	41°43.5'	69°36.3'
GSCRA3 .....	41°40'	69°45'
GSCRA4 .....	41°00'	69°05'

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(6) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area*. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except

those designated as the Cape Cod Bay Restricted Area in paragraph (d)(3) of this section that lie south of 43°15' N. lat. and west of 70°00' W. long.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(7) *Other Northeast Gillnet Waters Area*—(i) *Area*. The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that 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 area-specific requirements listed in paragraph (d)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements*. From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that 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 area-specific requirements listed in paragraph (d)(2) of this section or unless

the gear is stowed as specified in § 229.2.

(8) *Mid/South Atlantic Gillnet Waters*—(i) *Area*. The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements*. From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that 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, or unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(A) *Buoy line weak links*. All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(1) The weak link must be chosen from the following list approved by NMFS: 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. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(2) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(3) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free

of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications unless exempted under paragraph (a)(5) of this section:

(1) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(2) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(3) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(1) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor unless exempted under paragraph (a)(5) of this section. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request.

(2) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations found in paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section.

(3) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs

(d)(8)(ii)(C)(1) and (d)(8)(ii)(C)(2) of this section, or the following:

(i) The entire net string must be less than 300 yards (274.3 m) from shore.

(ii) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(iii) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this section.

(iv) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(e) *Restrictions applicable to drift gillnet gear—(1) Cape Cod Bay Restricted Area—(i) Area.* The Cape Cod Bay Restricted Area is bounded by the following points and on the south and east by the interior shoreline of Cape Cod, Massachusetts.

Point	N. Lat.	W. Long.
CCB1 .....	41°40'	69°45'
CCB2 .....	42°30'	69°45'
CCB3 .....	42°30'	70°30'
CCB4 .....	42°12'	70°30'

(ii) *Closure.* From January 1 through April 30 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (e)(1)(i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements.* From May 1 through December 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is

stowed as specified in § 229.2.

Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(2) *Great South Channel Restricted Gillnet Area—(i) Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points:

Point	N. Lat.	W. Long.
GSC1 .....	41°02.2'	69°02'
GSC2 .....	41°43.5'	69°36.3'
GSC3 .....	42°10'	68°31'
GSC4 .....	41°38'	68°13'

(ii) *Closure.* From April 1 through June 30 of each year, no person or vessel may set, fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31 of each year, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(3) *Great South Channel Sliver Restricted Area—(i) Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points:

Point	N. lat.	W. long.
GSCRA1 .....	41°02.2'	69°02'
GSCRA2 .....	41°43.5'	69°36.3'
GSCRA3 .....	41°40'	69°45'
GSCRA4 .....	41°00'	69°05'

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2.

Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated the Cape Cod Bay Restricted Area in paragraph (e)(1), that lie south of 43°15' N. lat. and west of 70°00' W. long.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2.

Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(5) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all state and Federal U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements

specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2' N. lat., 71°51.5' W. long. (Watch Hill Point, RI) south to 40°00' N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port.

(6) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY at 72°30' W. long. south to 36°33.03' N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00' N. lat., and east to the eastern edge of the EEZ. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless:

(A) The gear complies with gear marking requirements specified in paragraph (b) of this section;

(B) The gear is tended; and

(C) All gear is removed from the water and stowed on board the vessel before a vessel returns to port. No person or vessel may possess drift gillnet at night in the Mid/South Atlantic Gillnet

Waters unless the gear is stowed as specified in § 229.2. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2) of this section, then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) of this section applies.

(f) *Restrictions applicable to the Southeast U.S. Restricted Area*—(1) *Area.* The Southeast U.S. Restricted Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north:

Point	N. lat.	W. long.
SERA1 .....	27°51'	( <sup>1</sup> )
SERA2 .....	27°51'	80°00'
SERA3 .....	32°00'	80°00'
SERA4 .....	32°36'	78°52'
SERA5 .....	32°51'	78°36'
SERA6 .....	33°15'	78°24'
SERA7 .....	33°27'	78°04'
SERA8 .....	( <sup>2</sup> )	78°33.9'

<sup>1</sup> Florida shoreline.

<sup>2</sup> South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N.* The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00' N. lat. northward.

(ii) *Southeast U.S. Restricted Area S.* The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00' N. lat.

(2) *Restricted periods, closure, and exemptions.*

(i) *Restricted periods.* The restricted period for the Southeast U.S. Restricted Area N is from November 15 through April 15, and the restricted period for the Southeast U.S. Restricted Area S is from December 1 through March 31.

(ii) *Closure for gillnets.*

(A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraph (f)(2)(iii) of this section and (f)(2)(iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to

the vessel in accordance with 50 CFR § 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29°00' N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery.* Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) of this section from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4<sup>7</sup>/<sub>8</sub> inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with § 622.4(a)(2)(iv) of this title and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period

begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The 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 area-specific requirements for anchored gillnets specified in paragraphs (d)(8)(ii)(A) through (d)(8)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) *Restrictions for trap/pot gear.* Fishing with trap/pot gear in the Southeast U.S. Restricted Area N during the restricted period is allowed if:

(A) Trap/pot gear is not fished in a trap/pot trawl;

(B) All buoys or flotation devices are attached to the buoy line with a weak link that meets the requirements of paragraph (c)(2)(ii) of this section. The weak link has a maximum breaking strength of 600 lbs (272 kg) except in Florida State waters where the maximum breaking strength is 200 lbs (91 kg);

(C) The buoy line has a maximum breaking strength of 2,200 lbs (998 kg) except in Florida State waters where the maximum breaking strength is 1,500 lbs (630 kg);

(D) The entire buoy line must be free of objects (e.g., weights, floats, etc.)

except where it attaches to the buoy and trap/pot;

(E) The buoy line is made of sinking line;

(F) The gear complies with gear marking requirements as specified in paragraph (b) of this section; and

(G) Trap/pot gear that is deployed in the EEZ (as defined in § 600.10 of this title) is brought back to port at the conclusion of each fishing trip.

(g) *Restrictions applicable to the Other Southeast Gillnet Waters* (1) *Area*—The Other Southeast Gillnet Waters Area includes all waters bounded by 32°00' N. lat. on the north (near Savannah, GA), 26°46.50' N. lat. on the south (near West Palm Beach, FL), 80°00' W. long. on the west, and the EEZ boundary on the east.

(2) *Closure for gillnets.* Fishing with or possessing gillnet gear in the Other Southeast Gillnet Waters Area north of 29°00' N. lat. from November 15 through April 15 or south of 29°00' N. lat. from December 1 through March 31 is allowed if one of the following exemptions applies:

(i) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh is allowed if:

(A) The gear is marked as required in paragraph (b) of this section.

(B) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(C) The gear is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear.

(ii) *Exemption for Southeast Atlantic gillnet fishery.* Fishing with or possessing gillnet gear is allowed if:

(A) The gear is marked as required in paragraph (b) of this section; or

(B) The gear is fished south of 27°51' N.

(iii) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet gear aboard a vessel in transit is allowed if:

(A) All nets are covered with canvas or other similar material and securely fastened to the deck, rail, or drum; and

(B) All buoys, high flyers, and anchors are disconnected from all gillnets.

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area*—(1) *Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51' N. lat. (near Sebastian Inlet, FL) south to 26°46.50' N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00' W. long.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with or possessing gillnet gear with

webbing of 5 inches (12.7 cm) or greater stretched mesh from December 1 through March 31 is allowed if:

(i) The gear complies with the gear marking requirements specified in paragraph (b) of this section;

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69; and

(iii) The vessel owner/operator and crew are in compliance with observer requirements found in § 229.7.

(3) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery vessels in transit.* Possession of gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh aboard a vessel in transit from December 1 through March 31 is allowed if:

(i) All gear is stowed as specified in 50 CFR 229.2; and

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-

Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may, in consultation with the Take Reduction Team, revise the requirements of this section through a publication in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

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