



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229 and 697

[Docket No. 141002823-4823-01]

RIN 0648-BE57

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan to modify the start date of the Massachusetts Restricted Area to begin on February 1, 2015, and to expand the Massachusetts Restricted Area by 912 square miles. In addition, this action also proposes to revise the Federal lobster regulations to be consistent with the revised start date of the Massachusetts Restricted Area. Recent Federal lobster regulations closed the Outer Cape Lobster Management Area to lobster trap fishing

from January 15 through March 15, which is consistent with the lobster trap haul-out period in the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for American Lobster. This proposed rule would adjust the Outer Cape Lobster Management Area closure dates to February 1 through March 31.

DATES: Submit comments on or before [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2014-0127, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal at www.regulations.gov.
- Mail: Submit written comments to Kim Damon-Randall, Assistant Regional Administrator for Protected Resources, NMFS Greater Atlantic Region, 55 Great Republic Dr., Gloucester, MA 01930, Attn: Large Whale Proposed Rule.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted

voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS Greater Atlantic Region, 978-282-8481, Kate.Swails@noaa.gov; or, Kristy Long, NMFS Office of Protected Resources, 206-526-4792, Kristy.Long@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.greateratlantic.fisheries.noaa.gov/protected/whaletrp/index.html>. The complete text of the regulations implementing the Plan can be found in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the website, along with a guide to the regulations.

Background

This proposed rule combines two regulatory modifications that are authorized under different statutes. Specifically, this action proposes to amend the regulations implementing: (1) the Atlantic Large Whale Plan (Plan)_regulations found at 50 CFR part 229 under

the authority of the MMPA; and (2) the Federal American lobster Fishery Management Plan regulations found at 50 CFR part 697 under the authority of the Atlantic Coastal Fisheries Cooperative Management Act.

NMFS published a final rule implementing an amendment to the Plan on June 27, 2014 (79 FR 36586) to address large whale entanglement risks associated with vertical line (or buoy lines) from commercial trap/pot fisheries. That amendment included gear modifications, gear setting requirements, a seasonal closure (Massachusetts Restricted Area) and gear marking for both the trap/pot and the gillnet fisheries. The Massachusetts Restricted Area is a seasonal closure that is effective January 1 through April 30 for all trap/pot fisheries, which accounts for the largest number of vertical lines in the water column.

In September 2010, in consultation with the Atlantic Large Whale Take Reduction Team (Team), NMFS developed protocols for considering modifications or exemptions to the regulations implementing the Plan. Following these protocols, on August 18, 2014, the Massachusetts Division of Marine Fisheries (DMF) submitted a proposal to modify the Massachusetts Restricted Area and exempt several areas from the gear setting requirements to address safety and economic concerns raised by Massachusetts fishermen.

Review of Massachusetts Restricted Area

The proposal submitted by DMF contains two components:

- (1) Modify the Massachusetts Restricted Area (closure), which begins on January 1, 2015 by:
 - o Modifying the timing and size of the closure.
 - o Establishing gear stowage areas during a portion of the closure.
- (2) Establish several exemption areas to the current minimum number of traps per trawl requirement, which take effect June 1, 2015.
 - o Exemption areas would include portions of Southern New England waters (Buzzards Bay, Vineyard Sound, and Nantucket Sound) as well as state waters north and east of Cape Cod.

Given the importance of addressing the Massachusetts Restricted Area before the closure begins on January 1, 2015, and the time needed to complete the analysis of the entire suite of requests contained in the entire DMF proposal, NMFS decided to address the modifications to the Massachusetts Restricted Area and the exemption of the minimum number of traps per trawl requirements separately.

Changes Proposed to the Plan

NMFS proposes to modify the start date of the Massachusetts Restricted Area to begin on February 1, 2015 and expand the area by 912 square miles. NMFS proposes this action because it responds to comments to improve the past action while balancing risk reduction considerations. Specifically, the action decreases the number of affected vessels and results in reductions in compliance costs while maintaining the same entanglement risk reduction as provided in the June 2014 amendment to the Plan.

At its October 1, 2014 meeting, the Team discussed the requested modifications to the Massachusetts Restricted Area, as well as the creation of the trap/pot storage areas. The discussion included a review of the merits and analysis of the DMF proposal utilizing NMFS' co-occurrence model. The model incorporates information on geographic and temporal variations in fishing effort and the distribution of fishing line, as well as whale sightings per unit of survey effort, and identifies areas and times at which whales and commercial fishing gear are likely to co-occur. The model's final product is a set of indicators that provide information on factors that contribute to the risk of entanglement at various locations and at different points in time. These indicators, in particular the number of vertical lines in an area and the area's co-occurrence score, assumed to be related to the relative entanglement risk in

different locations. They also provide a basis for comparing the impact of alternative management measures on the potential for entanglements to occur.

NMFS compared the impacts of the two closure areas for conservation benefit using its co-occurrence model and economic analysis. The methods and data sources used in this analysis are consistent with those applied in the Final Environmental Impact Statement (FEIS) for the 2014 Plan amendments referred above. The proposed changes to the closure would allow approximately 125 vessels to continue to fish during a lucrative time of year for the fishing industry and would require a slightly greater number of vessels to suspend activity from February through April. This is because the proposed closure area is larger than the current closure area, an increase of 912 square miles. On average, the proposed closure area offers a similar reduction in co-occurrence to that of the current closure (38.2 %) while providing less of an economic burden. Therefore, this proposed action minimizes potential economic impacts without increasing risk to large whales.

At the conclusion of the October 1, 2014, meeting, the Team, by consensus, recommended that we modify the Massachusetts Restricted Area as proposed by DMF. However, the Team recommended that NMFS not act on DMF's proposed trap/pot storage areas. The

remainder of DMF's proposal will be analyzed and discussed with the Team during its January 2015 meeting. The Team will provide NMFS a recommendation at that time on whether to move forward with the remaining components of the DMF proposal.

Changes to American Lobster Regulations

On April 7, 2014, NMFS published a final rule (79 FR 19015) that implemented the Outer Cape Area lobster haul-out period. In that rule, NMFS acknowledged in the preamble that it might need to adjust the closure dates if Massachusetts ultimately requested a different time period (See Response to Comment 22, 78 FR 35217, June 12, 2013). Now that Massachusetts has done so, if this proposed rule is adopted, the original Outer Cape Area lobster closure dates would become outdated and may create unintended impacts to Federal lobster fishers. For example, if NMFS does not adjust the January 15 start date, Federal lobster fishers would have to remove their traps from the Outer Cape Area two weeks earlier than the February 1 start date that exists in the Massachusetts regulations and the large whale Plan. Therefore, in this rule, NMFS proposes to change the start date of the Outer Cape Lobster Management Area closure dates from January 15 to February 1. Further, NMFS proposes to adjust the end of the Outer Cape Area haul-out period by two weeks from March 15 to March 31, to continue with a full two-month haul-out period as

dictated by the Commission. NMFS considered extending the haul-out period to April 30, to be consistent with the Plan. However, the southwestern portion of the Outer Cape Area is not included in the Plan's revised closure area, and would be closed for an additional month longer than the Commission's two-month haul-out period.

Accordingly, NMFS proposes to simply shift the Outer Cape Area haul-out period dates ahead by two weeks. After March 31, lobster trap fishermen in the Massachusetts Restricted Area will be held to the more restrictive Plan dates through April 30.

Classification

The Office of Management and Budget (OMB) has determined that this action is not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The fisheries affected by this proposed rule are the Northeast American lobster trap/pot, Atlantic blue crab trap/pot and Atlantic mixed species trap/pot. The population of vessels that are affected by this proposed action includes commercial trap/pot vessels fishing

in state and federal waters in Massachusetts. On June 12, 2014, the SBA issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647). The rule increased the size standard for Finfish Fishing from \$19.0 to 20.5 million, Shellfish Fishing from \$5.0 to 5.5 million, and Other Marine Fishing from \$7.0 to 7.5 million (79 FR 33656, 33660, 33666). Currently, the Massachusetts Restricted Area closure impacts an average of 109 vessels. All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses.

The analysis of the economic impacts for this action were based on data from the 2014 FEIS that supported the most recent Plan amendment published as a final rule on June 27, 2014 (79 FR 36586). The number of vessels and level of overall fishing effort have remained constant since the preparation of the FEIS. Therefore, NMFS believes that these data are still relevant for the purpose of this analysis.

Currently, the Massachusetts Restricted Area closure impacts an average of 109 vessels, with \$1.2 M in gross revenue potentially lost during the closure period. Relatively strong landings make this a critical time for the Massachusetts lobster fishery, especially in the northern part of the closure area. Based on an analysis of

the affected number of vessels, average traps per vessel, and net revenues, NMFS estimates that by starting the closure in February, instead of January, this action would result in net revenue gains of \$447,000. The net change in revenue has two components: (1) the revenue gain associated with allowing trap/pot fishing in January within the current boundaries of the Massachusetts Bay Restricted Area, and (2) the revenue loss associated with expanding the boundaries of the closure to include *all* waters within the Outer Cape Lobster Management Area, thus prohibiting trap/pot fishing in these newly-closed waters from February through April. The difference between the two is the overall net revenue gain.

This rule would result in positive economic impacts on the affected vessels by excluding the prime fishing month of January. The start date of February 1 would allow lobstermen to complete normal lobster fishing operations through the lucrative holiday months of November into January. Although the closed area is increasing by 912 square miles, the number of vessels affected by the increase in area is minimal. The average number of vessels impacted in the larger area is 106 versus the 109 vessels impacted under current regulations.

NMFS has determined that this action is consistent to the maximum extent practicable with the approved coastal management

programs of Massachusetts. This determination was submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act.

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments.

List of Subjects

50 CFR Part 229

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

50 CFR Part 697

Fisheries, fishing.

Dated: October 31, 2014

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 229 and 697 are proposed to be 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 § 229.32, paragraph (c) (3) is revised to read as follows:
§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(c) * * *

(3) Massachusetts Restricted Area--(i) Area. The Massachusetts restricted area is bounded by the following points connected by straight lines in the order listed, and bounded on the west by the shoreline of Cape Cod, Massachusetts.

Point	N. Lat.	W. Long.
MRA1	42°12'	70°44'
MRA2	42°12'	70°30'
MRA3	42°30'	70°30'
MRA4	42°30'	69°45'
MRA5	41°56.5'	69°45'
MRA6	41°21.5'	69°16'
MRA7	41°15.3'	69°57.9'
MRA8	41°20.3'	70°00'
MRA9	41°40.2'	70°00'

(ii) Closure. From February 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 January 30, 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 (c) (2) of this section, or unless the gear is stowed as specified in § 229.2.

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PART 697 - ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

3. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 et seq.

4. In § 697.7, revise paragraph (c) (1) (xxx) introductory paragraph to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) ***

(1) ***

(xxx) Outer Cape Area seasonal closure. The Federal waters of the Outer Cape Area shall be closed to lobster fishing with traps by Federal lobster permit holders from February 1 through March 31.

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