DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

(iv) *Restricted period*. Any DAM zone will remain in effect for a minimum period of 15 days. At the conclusion of the 15-day period, the DAM zone will expire automatically unless it is extended by subsequent publication in the **Federal Register**.

(v) *Extensions of the restricted period*. Any 15-day period may be extended if NMFS determines that the trigger established in paragraph (g)(3)(i) of this section continues to be met.

(vi) *Reopening of restricted zone*. NMFS may remove any gear restriction or prohibition and reopen the DAM zone prior to its automatic expiration if there are no confirmed sightings of right whales for at least 1 week, or other credible evidence indicates that right whales have left the DAM zone. NMFS will notify the public of the reopening of a DAM zone prior to the expiration of the 15-day period by issuing a document in the **Federal Register** and through other appropriate media.

[FR Doc. 02–272 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 011120279–1311–02; I.D. 092401E]

RIN 0648–AP68

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

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

ACTION: Interim final rule.

SUMMARY: NMFS is issuing an interim final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to provide further protection for large whales, with an emphasis on North Atlantic right whales, through a Seasonal Area Management (SAM) program. The SAM program defines two areas based on the annual predictable presence of North Atlantic right whales in which gear restrictions for lobster trap and anchored gillnet gear will be required. This action is necessary due to the critical status of the North Atlantic right whale population. The intent of this action is to reduce interactions between North Atlantic right whales and fishing gear and to reduce serious injury and mortality of North Atlantic right whales due to entanglement in fishing gear.

DATES: Effective March 1, 2002. Comments on this interim final rule must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on February 8, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this interim final rule to the Chief, Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries and progress reports on implementation of the ALWTRP may be obtained by writing to Gregg LaMontagne, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930.

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

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this proposed rule and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal Stock Assessment Reports may be obtained by writing to Richard Merrick, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nmfs.noaa.gov/prot_res/mammals/sa_rep/sar.html*. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, *http://www.coastalstudies.org/*.

Background

This interim final rule implements modifications to the ALWTRP as deemed necessary by NMFS to satisfy requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). On June 14, 2001, NMFS issued four Biological Opinions (BOs) as the result of ESA section 7 consultations on the three Fishery Management Plans (FMP) for the monkfish, spiny dogfish, and Northeast multispecies fisheries, and the Federal regulations for the American lobster fishery. The BOs concluded that the fisheries conducted pursuant to the three FMPs and the lobster regulations are likely to jeopardize the continued existence of right whales. In response to the section 7 consultation's jeopardizing finding, NMFS developed a Reasonable and Prudent Alternative (RPA) with multiple management components. As part of its RPA, NMFS developed gear restrictions for the anchored gillnet and lobster trap fisheries based on predictable annual concentrations of right whales. Details concerning the justification for and development of the SAM program and the implementing regulations were also provided in the preamble to the proposed rule (66 FR 59394, November 28, 2001) and are not repeated here.

Approved Measures

SAM Areas

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

TABLE 1.—SEASONAL AREA MANAGEMENT AREAS

Point	Latitude (north)	Longitude (west)	Comment
SAM West Polygon—In effect from March 1–April 30			
1	42° 04.8′	70° 10′	NE landfall of Cape Cod Bay (CCB) Critical Habitat (CH) at shoreline.
2	42° 12′	70° 15′	NE corner CCB CH.
3	42° 30′	70° 15′	NW Corner SAM West.
4	42° 30′	69° 24′	NE Corner SAM West.
5	41° 48.9′	69° 24′	NW side of GSC CH.
6	41° 45′	69° 33′	Runs along GSC CH.
7	41° 45′	69° 55.8′	SW landfall at Cape Cod return along shoreline to point 1.
SAM East Polygon—In effect from May–July 31			
1	41° 48.9′	69° 24′	NW side of GSC CH.
2	42° 30′	69° 24′	NW corner of SAM East.
3	42° 30′	67° 27′	NE corner SAM East.
4	41° 45′	66° 48′	SE corner SAM East.
5	41° 45′	68° 17′	Runs to GSC.
6	42° 10′	68° 31′	Runs along NE side GSC CH return along NW side of GSC CH to point #1.

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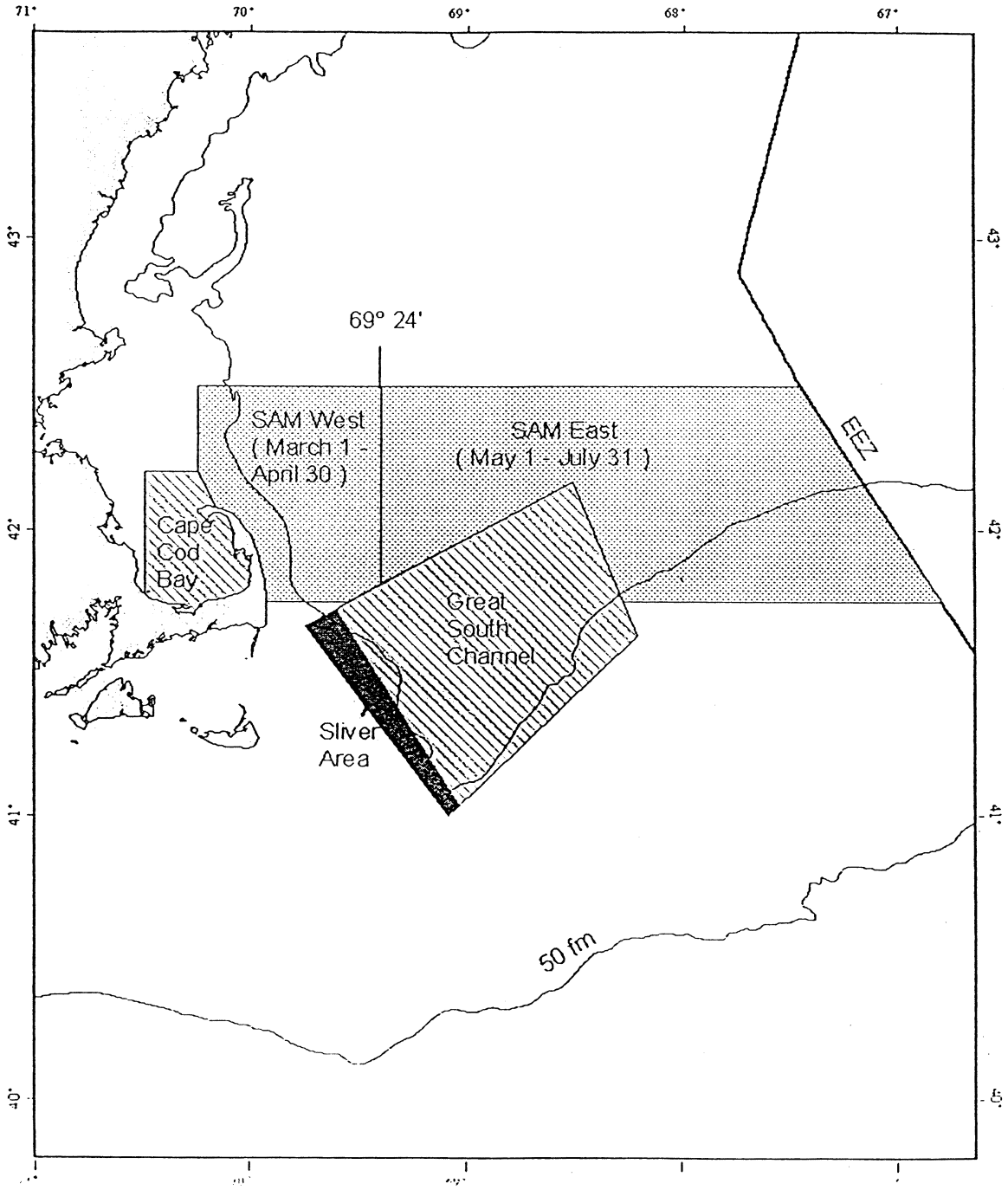
Figure 1

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



Lobster Trap Gear

Fishermen utilizing lobster trap gear within the portions of the Northern Nearshore and Northern Inshore State Lobster Waters that overlap with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

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

2. A weak link must be placed at all buoys with a maximum breaking strength of 600 lb (272.2 kg) at each buoy. Each weak link must be installed as close to each individual buoy as operationally feasible (See figure 1); and

3. Fishermen utilizing lobster trap gear within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

Fishermen utilizing lobster trap gear within the portion of the Offshore Lobster Waters Area that overlaps with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

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

2. A weak link must be placed at all buoys with a maximum breaking strength of 1,500 lbs (680.4 kg). Each weak link must be installed as close to each individual buoy as operationally feasible (See figure 2);

3. Fishermen utilizing lobster trap gear within the SAM areas must utilize no more than one buoy line per net string. This buoy line must be at the northern or western end of the trawl string depending on the direction of the set.

Figure 2

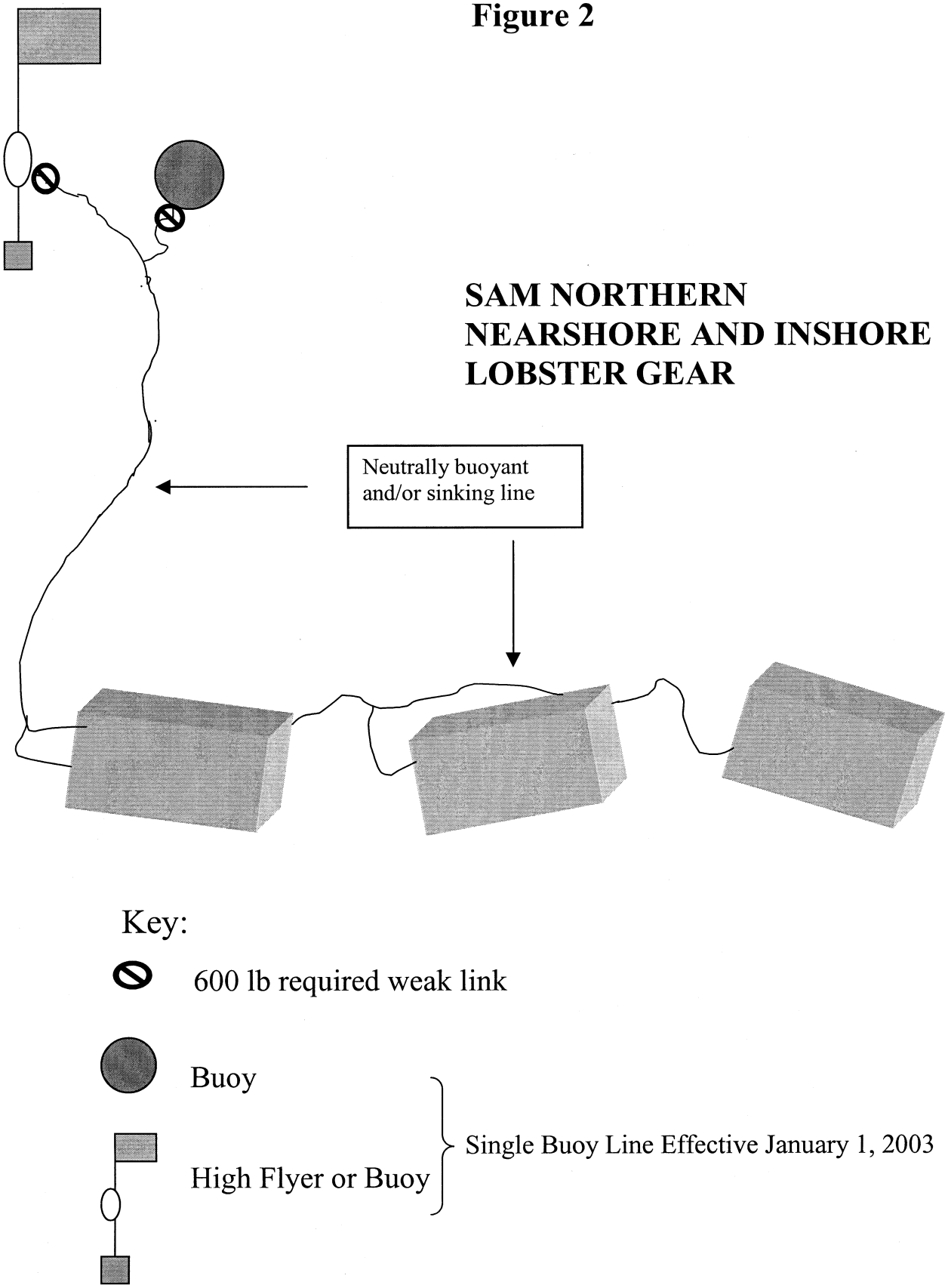
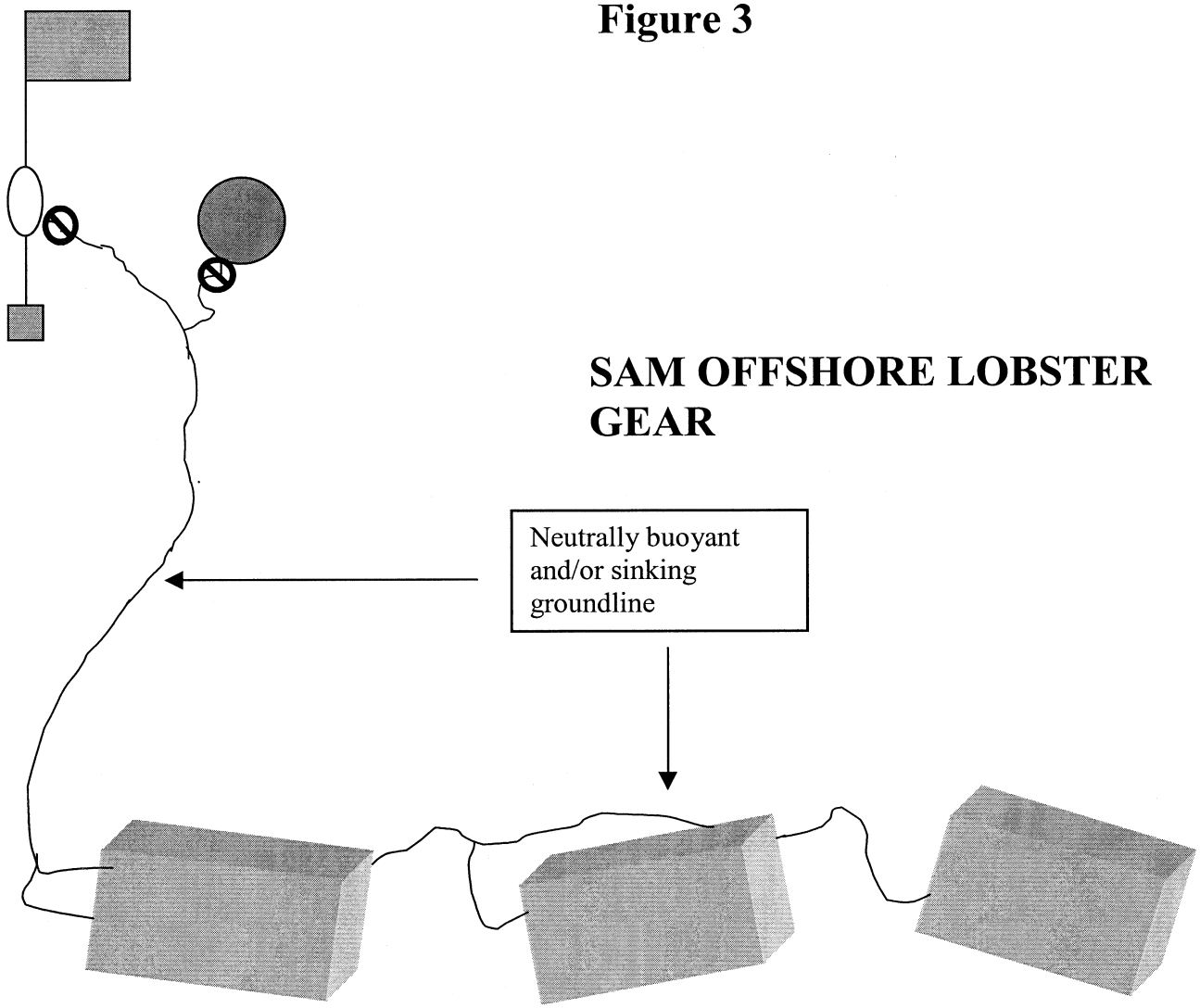

SAM NORTHERN
NEARSHORE AND INSHORE
LOBSTER GEAR
Neutrally buoyant
and/or sinking line
Key:
600 lb required weak link
Buoy
High Flyer or Buoy
Single Buoy Line Effective January 1, 2003

Figure 3



Key:

1500 lb required weak link

Buoy

High Flyer

Single Buoy Line Effective January 1, 2003

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Waters Area that overlaps with a SAM area must utilize all the following gear modifications when a SAM area is in effect:

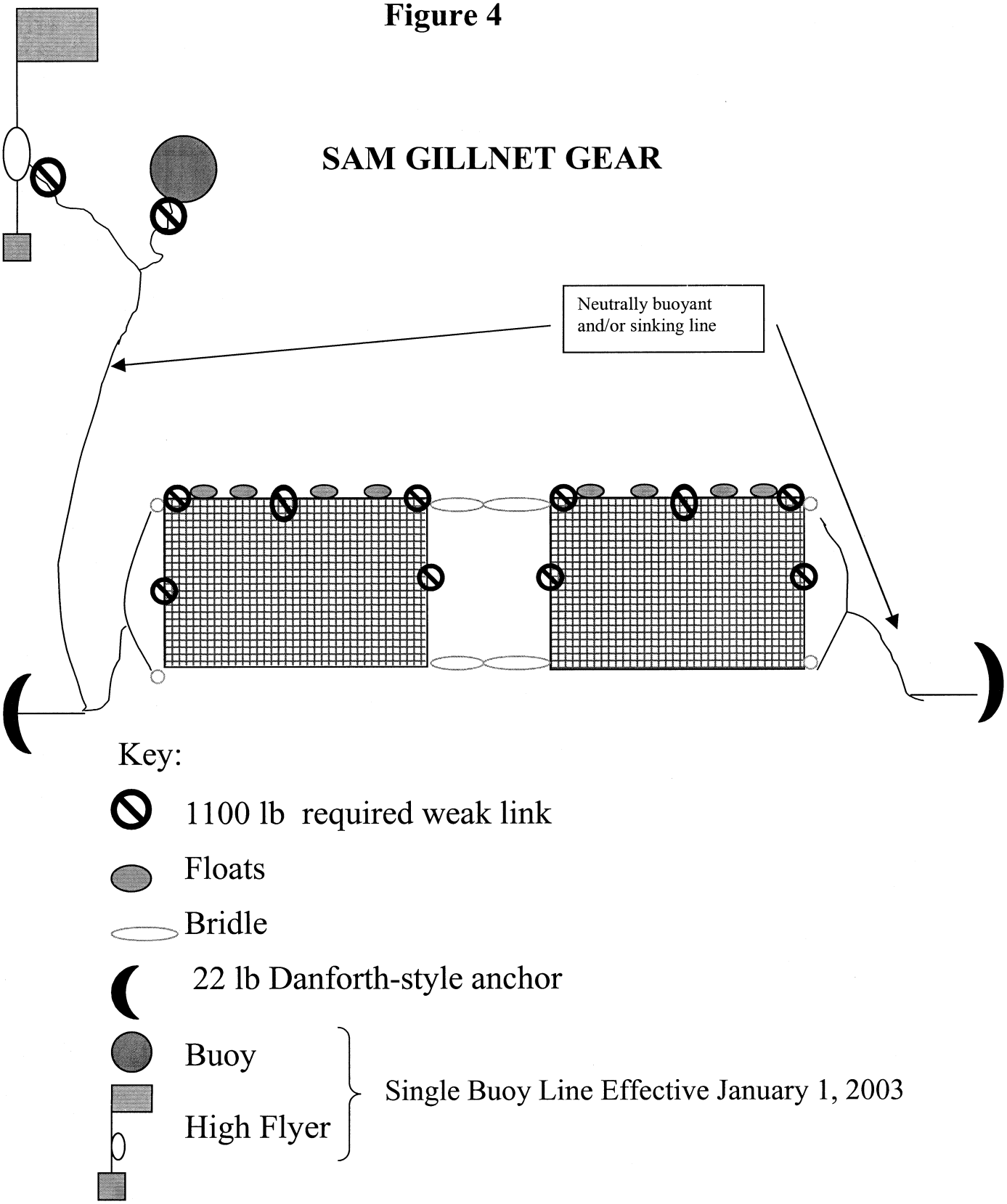
1. Groundlines (the lines between the net bridle and the anchors) and buoy lines must be made of sinking or neutrally buoyant line. Floating groundlines and buoy lines are prohibited;

2. Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lbs (498.9 kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be, one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends (See figure 4);

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

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

Figure 4



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Interaction With Other Restrictions

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

Comments and Responses

On October 3, 2001, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) and a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for SAM (66 FR 50390). As discussed in the preamble to the proposed rule for this action (66 FR 59394, November 28, 2001), the Federal District Court for the District of Massachusetts ordered NMFS to have a signed proposed SAM rule by November 23, 2001. Consequently, NMFS published a proposed rule and requested public comments regarding the proposed action. Approximately 168 letters of comment were received during the public comment periods for the ANPR and proposed rule. NMFS considered the comments received on both the ANPR and proposed rule as part of its decision making process. A complete summary of the comments and NMFS' responses is provided here.

ANPR Comments

NMFS received 14 sets of comments on the SAM ANPR. The comment period for the ANPR ended November 2, 2001.

General Comments

Comment 1: Seven commenters generally supported additional regulations or management measures, including Seasonal Area Management (SAM), to protect North Atlantic right whales (right whales). Four of these commenters further stated that fixed gear fisheries should be allowed to continue operating in SAM areas with modified fixed gear and practical regulations.

Response: NMFS believes SAM is necessary as an element of the Reasonable and Prudent Alternative (RPA) required under the Endangered Species Act (ESA) to protect the right whales. NMFS acknowledges the preference for a management plan that facilitates continued fishing with gear modifications that address both the goal of reducing the total number of entanglements and the goal of avoiding serious injury or mortality to North Atlantic right whales.

Comment 2: One commenter was opposed to any regulatory changes.

Response: Due to the endangered status of the North Atlantic right whale population, there is a need to further reduce serious injury and mortality caused by the multispecies, spiny dogfish, monkfish, and lobster fisheries as currently prosecuted. NMFS believes SAM is necessary as an element of the RPA required to protect the right whales. NMFS has determined that the additional regulatory measures included in SAM, DAM and the additional gear modifications are necessary to meet the objectives of the ESA and the MMPA. The ESA requires that the NMFS ensure that activities it authorizes, including commercial fishing, do not jeopardize the continued existence of right whales. The MMPA provides that the immediate goal of a take reduction plan is to reduce incidental mortality or serious injury of marine mammals taken in the course of commercial fishing to levels less than the potential biological removal level and the long-term goal is to reduce such incidental mortality or serious injury to insignificant levels approaching a zero rate. Because the potential biological removal level for right whales is zero, these goals are essentially the same for right whales. These regulatory changes are necesssary to attain these goals.

Comment 3: One commenter stated strong opposition to removal of lobster gear from a SAM zone as a management measure.

Response: NMFS did consider closure to lobster and gillnet gear in the proposed rule and selected gear modification as the management measure of choice. In selecting the approach of gear modifications, we determined that it was consistent with the reasonable and prudent alternative (RPA) in the biological opinions for the gillnet, Northeast multispecies, and monkfish fishery management plans and the Federal regulations for the lobster fishery. The Management Action identified in the RPA is to utilize data to ''effect annual restrictions to minimize interactions between fishing gear and right whales.'' Area restrictions that could be included in the management scheme as specified in the RPA include closing areas to fishing gear or restricting the areas to only modified gear that has been proven to prevent serious injury or mortality to right whales. It is important to note that the language in the RPA did not direct NMFS to eliminate interactions between fishing gear and right whales but to minimize the interaction. Another factor in NMFS' identification of gear modifications rather than closures as the preferred option was the concern that closures would result in concentration of gear at the edges of the SAM management area. Since that gear would not include the additional gear modifications that NMFS is requiring within the SAM zone, it would pose a greater risk to right whales. Additional conservation benefit gained through the adoption of a gear modification approach is obtained due to the fact that once fishermen re-rig their gear to comply with the SAM gear modifications, it is likely that they will maintain these gear modifications even while fishing outside of the SAM restricted zone.

Comment 4: One commenter expressed a preference for measures such as SAM versus management measures contained in the Dynamic Area Management (DAM) proposed rule. The commenter's interpretation is that SAM would include the widespread use of practical whale safe gear.

Response: NMFS acknowledges the preference for SAM over DAM given that SAM is predictable and allows for fishing activity to continue with the use of modified gear. DAM and SAM are both elements of the RPA's management plan and as such both must be utilized to provide protection to right whales. NMFS anticipates that the need to utilize DAM will be significantly decreased through the implementation of SAM since the vast majority of sightings of right whale concentrations occur during the time and area identified in the SAM.

Comment 5: One Commenter stated that the input and support of the fishing industry is critical to the success of these regulations in meeting the

objectives. There was further concern expressed that the comment and response process NMFS utilized did not allow adequate time for response.

Response: NMFS values the input and support of the fishing industry in developing measures to protect right whales. NMFS is engaged in the Atlantic Large Whale Take Reduction Team (ALWTRT) process as a means to incorporate the knowledge and experience of the constituents early in the regulatory process. Some of the recommendations contained in this interim final rule are a product of the ALWTRT. Though NMFS may not always implement ALWTRT recommendations exactly as stated, NMFS does consider this information when developing regulations. The comments and response process was expedited in this interim final rule due to a court order to finalize rulemaking by December 31, 2001 associated with the critical status of the North Atlantic right whale population.

Comment 6: One commenter indicated that NMFS should immediately identify at-sea enforcement as a high priority and develop protected resource penalty schedules for the ALWTRP.

Response: NMFS agrees that at-sea enforcement is important to the success of the ALWTRP and will conduct enforcement activities as the budget allows. NMFS also relies on its partnership with the U.S. Coast Guard and state agencies to monitor compliance with the ALWTRP. NMFS has existing penalty schedules for violations of the MMPA and the ESA, and regulations pursuant to those statutes. In addition, NMFS enforcement has entered into agreements with many states to encourage and facilitate joint enforcement of regulations.

Gear Modification Comments

Comment 7: Three commenters stated that lobster gear modifications for use in the SAM area should correspond to what is currently used and proposed for use in Cape Cod Bay Critical Habitat (CCBCH). These gear modifications would include neutrally buoyant and/or sinking line for groundlines and weak links for buoy lines. Two commenters also endorsed neutrally buoyant line as a gear modification to be employed in SAM areas. One of these commenters is already using neutrally buoyant line and weak links and believes this gear is ''whale safe''.

Response: NMFS does endorse the measures currently employed in CCBCH and acknowledges that some fishermen are already using gear similar to what is proposed for use in SAM areas. NMFS has included neutrally buoyant line and/or sinking line as well as weak links as gear modifications for lobster trap gear to be used in SAM areas.

Comment 8: Two commenters endorsed the use of neutrally buoyant line for gillnet bridles in SAM areas. One of these commenters endorsed the expanded use of weak links in the net panels of gillnets.

Response: NMFS has prohibited the use of floating line for gillnet bridles in SAM areas and increased the number of weak links in the gillnet panels as a part of this rule. Neutrally buoyant or sinking line are methods of complying with this prohibition.

Comment 9: One commenter indicated that NMFS should prohibit fishing in SAM areas until such time as whale safe or low risk gear, as defined at the June 27–28, 2001, ALWTRT meeting, is developed. This commenter further indicated that the ANPR did not specify gillnet gear modifications and as such gillnets should be prohibited from any SAM.

Response: NMFS has included a description of gillnet and lobster trap gear which NMFS believes does meet the low risk definition. Lobster trap and gillnet gear that meets the definition is described in this rule. Gear research and testing will continue to identify ways to further reduce risk and to make progress toward the goal of identifying ''whale safe gear.''

Rulemaking Process Comments

Comment 10: Two commenters indicated that the full administrative process, including an Environmental Impact Statement (EIS) as required under the National Environmental Policy Act, should be carried out prior to the final determinations of SAM area boundaries. These commenters also wanted the conservation equivalencies of closures required under the Harbor Porpoise Take Reduction Plan and existing groundfish closures to be considered in determining management actions and the SAM boundaries.

Response: NMFS has completed an Environmental Assessment (EA) for the SAM interim final rule which is available to the public (see Addresses section). NMFS did consider other management actions in the Gulf of Maine when drafting these regulations. The closures/restrictions referenced by the commenter will impact gillnet activities but not lobster trap activities in the SAM areas and as such other management measures may or may not contribute to the protection of right whales.

SAM Implementation Comments

Comment 11: One commenter indicated that the SAM area should encompass the Jeffreys Ledge area which is reported to be a seasonal high use area in a recent paper titled: Right Whales (*Eubalaena glacialis*) on Jeffreys Ledge: A Habitat of Unrecognized Importance. This commenter supports designating areas that encompass approximately 90 percent of seasonal sightings as SAM areas.

Response: NMFS utilized the Dynamic Area Management (DAM) trigger and associated protective zones to define the SAM zones in terms of time and space (Clapham and Pace, 2001). The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001). NMFS utilized the criteria that the animals were sighted in sufficient density, as described in the DAM trigger document, in at least 2 survey seasons. This approach was utilized to impose predictable restrictions in areas and times where animals were sighted while also accounting for inter-annual variation. NMFS will continue aerial survey efforts in 2002 and should animals appear in sufficient density in the Jeffreys Ledge area, NMFS could implement a DAM closure to provide further protection for North Atlantic right whales. Additional survey data could also support expansion of the SAM area or delineation of additional separate SAM areas.

Comment 12: One commenter favored the implementation of the entire area for the entire time period rather than dividing the area.

Response: NMFS did not believe that data supported a SAM area for the entire area over a 5-month period. NMFS did employ a divided polygon to define the SAM areas. The SAM West and East designation was determined based on the distribution (spatially and temporally) of North Atlantic right whales.

Comment 13: Three commenters preferred ''rolling restrictions'' running from west to east as the animals moved east and the season progressed. This concept would result in no initial restrictions until right whales were sighted, followed by the lifting of restrictions as the animals depart the area. One commenter indicated that an initial restriction date with sequential openings to follow as the animals departed an area would be preferred.

Response: NMFS did consider this approach in developing this rule. The

approach was not employed due to the logistical difficulties inherent in the regular monitoring and surveillance of right whales over such a large area. The areas defined in this interim final rule support sufficient right whale density to trigger a management action, as demonstrated by data for the last three consecutive years. NMFS will continue survey efforts to refine the boundaries of SAM as required. In addition, a programmed restriction, at a predetermined time and location, which the industry is aware of in advance, is reported to be preferred by the fishing industry thereby increasing the likelihood of compliance. The gear modifications required to fish in a SAM area are extensive and NMFS believes fishermen will not be able to change gear quickly to comply with SAM. NMFS believes that fishermen who want to fish in a SAM area will need to plan months in advance to have their gear in compliance. These factors were considered in using programmed restrictions. An additional logistical difficulty in using sightings to impose or lift SAM regulations is that it requires regular monitoring and surveillance of right whales over such a large area. NMFS has determined that there is sufficient survey data to support the SAM area in this rule; additional survey data may provide insights into other candidate SAM areas.

Comment 14: One commenter indicated that additional survey effort is urgently needed to assure that seasonal management zones are adequate in time and area.

Response: NMFS agrees that additional survey data is necessary to refine management initiatives for right whales. NMFS will continue aerial survey efforts in the Gulf of Maine/New England area in 2002 in pursuit of this goal.

SAM Timing Comments

Comment 15: One commenter indicated that a SAM zone east of Cape Cod for the period April–June 30 might be a reasonable measure.

Response: NMFS utilized aerial survey data from the last 3 field seasons (1999–2001) to determine the time and areal extent of the SAM areas. The SAM West and SAM East areas represent times and areas where right whales were sighted in all 3 survey seasons. This area is east of Cape Cod and covers the time period from March 1–July 31.

Comment 16: One commenter indicated that the SAM area should be in effect beginning in January of every year to protect right whales as they arrive from the southern wintering areas and any animals that wander out of the Cape Cod Bay Critical Habitat Area.

Response: NMFS utilized the DAM trigger and associated protective zones to define the SAM zones in terms of time and space (Clapham and Pace, 2001). The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001). Should animals appear in sufficient density in the geographic area defined as SAM prior to the effective dates of the restriction, DAM would be implemented thus providing protection for the animals. NMFS will continue to conduct surveys to refine management measures such as SAM for the protection of right whales. SAM was not intended to encompass every right whale sighting, but to provide additional protection to feeding aggregations of right whales due to their increased vulnerability.

Comment 17: Two commenters suggested a specific area be defined as an Offshore Lobster SAM area. The suggestion was an area east of a point defined by the easternmost location of a whale aggregation that met the DAM trigger as shown during the June 27–28 ALWTRT and reflected on page 4 of the meeting summary prepared by Resolve, Inc. This commenter indicated that fishermen in this area would fish with neutrality buoyant or sinking line and weak links at the buoy of not more than 1500 lbs (680.4 kg) breaking strength.

Response: NMFS believes this area corresponds to an area east of 68°15′ W. long. out to the Hague Line. NMFS did include these gear modifications for the area specified as well as all Offshore Lobster Waters (as defined by the ALWTRP, 50 CFR 229.32(c)(5)(i)) within a SAM area. It is important to note that at the time of the ALWTRT meeting, NMFS presented only preliminary data that included only 2001 sightings. Many commenters discuss the SAM area and refer only to the preliminary data that was presented at the ALWTRT meeting. The analysis that was conducted following the ALWTRT meeting included sightings data from 1999, 2000 and 2001. The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, *et al.* 2001).

Comment 18: One commenter stated that the ANPR/NOI was inadequate to meet the RPA and that all three actions (DAM, SAM and gear modifications) must be in place simultaneously.

Response: NMFS recognizes the concern expressed by the commenter. NMFS followed the ANPR with a proposed rule which provided additional information. This interim final SAM rule addresses the concern that a rule implementing SAM be in place with the DAM and gear modification rules, which are also being published in final form.

Comment 19: One commenter indicated that SAM is a poor substitute for stronger regulations in critical habitat and that critical habitat should be extended to the areas determined to be appropriate for SAM.

Response: NMFS recognizes the concern expressed by the commenter. The designation of an area as critical habitat does not automatically add regulations stronger than those in place for SAM areas. NMFS will consider designating SAM areas as critical habitat as part of the comprehensive EIS planned for 2002.

Proposed Rule Comments

NMFS received a total of 168 sets of comments on the proposed rule for SAM. Approximately 150 of these were of a standard format. The comment period ended December 13, 2001.

General Comments

Comment 1: Four commenters stated that the SAM regulations as proposed do not provide the protection necessary to achieve the reasonable and prudent alternative under the ESA or constitute an effective take reduction plan under the MMPA.

Response: NMFS believes that the SAM program in combination with other measures in the RPA constitute the level of protection necessary to meet the requirements under the ESA and coupled with the other elements of the ALWTRP does constitute an effective take reduction plan under the MMPA. NMFS is implementing a strategy for addressing the threat posed by commercial fishing practices to right whales which includes the following components: Adoption of broad based gear modifications to reduce the risk of serious injury or mortality of right whales; specific, more restrictive, gear modifications in areas and at times of greater concentration of right whales (SAM); specific, more restrictive, restrictions in areas which contain physical or biological features essential to the conservation of North Atlantic right whales (and, therefore, designated as critical habitat under the ESA); an ability to impose restricts in areas and at times when concentrations of right whales are observed (DAM); support for implementation of a disentanglement

program to respond to observed entangled marine mammals; and investigation and testing of additional gear modifications to further reduce the risk of entanglement and serious injury or mortality of rights whales. Collectively, this approach is designed to avoid jeopardy to right whales from commercial fishing practices and supports the achievement of a zero mortality rate goal.

Comment 2: One commenter stated that management initiatives based on the distribution and occurrence of right whales may have little or no impact on the entanglement rate of other large whales species the ALWTRP is charged with protecting.

Response: NMFS disagrees with the commenter and does believe that the management initiatives implemented by this interim final rule will benefit other species of large whales that NMFS is charged with protecting. Obviously right whale distribution was the principal driving force in the delineation of the SAM area. However, the additional gear modifications reduce the risk posed by this gear to large whales, including but not limited to right whales. Since we expect that fishermen who modify their gear to be able to fish within the SAM zone will likely fish that same modified gear outside the time and area of the SAM restriction, additional benefits to right whales and to other large whales outside of SAM will be realized.

Comment 3: All commenters supported the concept of SAM which facilitates continued fishing coupled with gear modifications which reduce entanglements and hence serious injury or mortality. Several commenters wanted to see specific changes to the implementation of the measure or questioned the overall conservation benefits of the SAM program as described in the proposed rule.

Response: NMFS has responded to the comments received and adopted some specific recommendations shown in this interim final rule. The conservation benefit of the SAM program is that it offers increased protection to anticipated concentrations of right whales at a time when they may be more vulnerable to entanglement, i.e. when they are feeding. NMFS has used past sightings data to predict right whale concentrations in time and in space and has identified and required modified fishing gear that poses a low risk to right whales of serious injury or mortality. This SAM program is a very important component in the overall NMFS strategy for the protection and recovery of right whales.

Comment 4: One commenter supported SAM in concept but indicated that all gillnet and lobster fishing should be prohibited in the SAM area until such time as fishing gear proven to be unlikely to seriously injure or kill right whales has been developed. Three commenters supported gear modifications as opposed to total closures.

Response: NMFS considered the concept of a total closure to lobster trap and gillnet gear in the SAM areas and determined that gear modifications developed through the TRT process would result in more conservation benefits to the animals. The basis for this determination is that total closures refocus fishing efforts to other areas and may result in an edge effect where gear is concentrated around the periphery of a closure posing a greater risk of entanglement. NMFS believes that the gear modifications required in this interim final rule prevent entanglements where possible and reduce the severity of entanglements when they do occur and will alleviate the threat of serious injury or mortality. NMFS maintains that the data available and presented in the proposed rule provides sufficient evidence that fishing within the SAM area with the gear modifications required is unlikely to result in serious injury or mortality of a right whale.

Comment 5: Two commenters identified at-sea enforcement as a priority and requested a schedule of protected resources penalties be developed for the ALWTRP regulations.

Response: See comment and response 6 in the ANPR Comments and Responses.

Comment 6: Two commenters stated that ship strikes remain a major problem for right whales. One of the two wanted to know how DAM and SAM would impact vessel traffic.

Response: NMFS agrees that ship strikes remain an issue and is addressing the issue under the Northeast Implementation Team for the Recovery of the Northern Right Whale and the Humpback Whale and the Southeast U.S. Right Whale Recovery Plan Implementation Team, including their Ship Strike Committees. The shipping industry has been responsive in this forum and the agency is actively seeking solutions to the problem. DAM and SAM are management actions directed at the commercial lobster and gillnet fisheries in the SAM area and will not impact vessel traffic.

Comment 7: One commenter indicated that NMFS should seek out additional historical data other than the 1999–2001 aerial survey data in developing the SAM boundaries as the SAM area may be overstated.

Response: The aerial survey efforts of 1999–2001 were partially based on the historical presence of right whales such as the data used to support the critical habitat designation in Great South Channel. Historical data is not available in suitable quantity for the areas in question and as such could not be utilized in this analysis. There is no reason to expect that the observations of right whales in 1999, 2000 and 2001 are not representative of the future presence of right whales.

Comment 8: Four commenters stated that NMFS should develop broad based gear modifications for regional use based on the tracking data from several right whales observed during the 2001 field season which demonstrated these animals can range far and wide and may not remain in the areas defined as critical habitat. A broad based gear requirement would also be less complex to implement and more readily enforced.

Response: NMFS agrees with the concept of broad based gear modifications but the experience to date is that unique physical environments require unique gear modifications. Different breaking strength weak links for the Offshore Lobster Waters versus Nearshore Lobster Waters is an example of such unique environmental requirements. The fishing industry has objected to gear modifications in areas that are not documented to support whales as an unnecessary economic burden with no perceived benefit to the animal. NMFS recognizes the economic impact on industry and has strived, through the ALWTRT process and outreach, to minimize economic impact while maximizing conservation benefit from the management measures implemented. The gear modifications required in the SAM areas are over and above broad based gear modifications; however, NMFS believes that the additional burden to comply with these more restrictive gear modifications is justified based on the increased potential for interactions between right whales and fishing gear in the SAM area (due to the observed concentrations of right whales).

Comment 9: One commenter indicated that the rulemaking process did not facilitate a full and open process to include public hearings and industry feedback on the management plan.

Response: See comment and response 5 and in the ANPR Comments and Responses.

Comment 10: Two commenters indicated that a regulation with gear modifications of this magnitude will require time. One of the commenters indicated that NMFS should develop a

phase-in schedule to change over all lobster and gillnet gear that is fished in waters where right whales occur routinely.

Response: NMFS appreciates the comments which address the need for manufacturers and suppliers to manufacture the neutrally buoyant and/or sinking line in sufficient quantity and time for the fishermen to replace the existing gear. In fact, the limitation on supply, as well as the increased economic cost, is one of the reasons why it is not reasonable at this time to impose these gear modifications more broadly. Due to the critically endangered status of right whales, and agency mandates under the ESA and MMPA, however, we must take immediate action within SAM areas to decrease the risk to right whales. Fishermen who cannot comply with the gear requirements in the allotted timeframe still have the option of fishing outside of the SAM areas.

Comment 11: One commenter encourages NMFS to utilize passive acoustics and aerial surveys to detect right whales for DAM actions.

Response: NMFS will continue to conduct aerial and shipboard surveys to detect right whales for research and monitoring purposes. The use of passive acoustics appears promising based on a presentation at the 2001 Right Whale Consortium held in October and its use may be more prevalent in the future.

Comment 12: Three commenters indicated that NMFS should continue survey efforts to modify SAM boundaries and effective dates. One commenter indicated that survey efforts may have been inadequate to detect aggregations in areas such as Jeffreys Ledge.

Response: See response to comment 15 in the ANPR Comments and Responses.

SAM Timing Comments

Comment 13: One hundred and fifty commenters indicated that the proposed rule for SAM should be strengthened to protect right whales. The commenters recommended that restrictions in the entire SAM area should be in effect from January 1 through July 31st with areas only open to unrestricted fishing after the whales have left the area. Sixty of these commenters also stated that they are willing to pay more for products if it will ensure the protection and survival of whales.

Response: NMFS appreciates the large response to this important rulemaking process. The level of support from the general public for additional measures to protect right whales is encouraging. The rationale provided for having the SAM areas in effect beginning March 1st as opposed to January 1st, are stated in the proposed rule. NMFS is aware of the migration of right whales into the CCBCH, but believes these animals are transiting the area and not aggregating to feed as described in the DAM trigger document (Clapham and Pace 2001). As stated previously in this document, the SAM area is not intended to encompass every right whale, but rather to offer increased protection to concentrations of feeding right whales, which we believe may be at higher risk of entanglement. Should animals appear in sufficient density in the geographic area defined as SAM prior to the effective dates of the restriction, DAM could be implemented thus providing protection for the animals. NMFS will continue to conduct surveys to refine management measures such as SAM for the protection of right whales. NMFS appreciates the fact that these commenters recognize that conservation comes at some economic cost to fishermen, which may be passed on to the consumer in the form of higher prices for seafood products.

Comment 14: Four commenters indicated that the timing for the SAM West and SAM East was incorrect and should be expanded. The comments generally supported SAM West from January–May 31 and SAM East from March 1–July 31. This expansion of time was considered necessary to protect animals arriving into the Cape Code Bay Critical Habitat and animals that may wander out of the critical habitat as evidenced by two specific animals during the 2001 season.

Response: See response to comment 16 under ANPR section above.

SAM Area Division/Extent Comments

Comment 15: Two commenters stated that the division between SAM West and SAM East was incorrect based on discussions at the ALWTRT meeting on June 27–28, 2001. These commenters indicated the dividing line between these two areas should be in the vicinity of the western most side of the eastern most DAM circle shown on the figure on page 4 of the meeting summary (Resolve 2001). This division would be at approximately the 68° 15′ W. long. line.

Response: NMFS agrees that the dividing line between SAM West and SAM East is not as recommended in the ALWTRT meeting summary. NMFS welcomes such recommendations from the TRT process through the recommendations are not always implemented for a variety of reasons. At the time of the ALWTRT meeting, NMFS presented only preliminary data from 2001 sightings. The discussion at the ALWTRT meeting and any recommendations made at that time were based only on the limited preliminary data presented for general discussion purposes. Following the ALWTRT meeting, NMFS conducted an analysis of the distribution of animals from the aerial surveys conducted from 1999–2001 to determine the appropriate division in time and space of the SAM area. NMFS uses the best available scientific data in developing its regulations which would include all three years of survey data. The full details of the analysis to determine the SAM areas are provided in the document titled: Identification of Seasonal Area Management Zones for North Atlantic right whale conservation (Merrick, et al. 2001). NMFS based the areas on this analysis and overlaid it on the existing ALWTRP areas.

Comment 16: Three commenters stated that the SAM area is too large and the eastern end of the SAM East area should be at 67° 45′ W. long. as there are infrequent sightings of animals east of this longitude line. Two of these commenters indicated that right whales do not appear south of the 50-fathom line on the Georges Bank Northern Edge and, therefore, the polygon should be adjusted to exclude waters south of the 50-fathom line that occur east of the Great South Channel Critical Habitat.

Response: NMFS extended the SAM area out to the Hague Line based on the sightings of right whales as reported in the document titled: Identification of SAM Zones for North Atlantic right whale conservation (Merrick, et al. 2001). Figure 9 of that document shows whale aggregations clustered around the Hague Line in all three survey years, 1999–2001. The portion of the SAM East area south of the 50 fathom line is necessary to encompass the 15 nautical mile buffer, as described in Clapham and Pace 2001, which provides a margin of protection to encompass the movement of the animals during an aggregation.

Comment 17: Two commenters opposed the boundaries as presented in the proposed rule and indicated that states should be able to manage whale issues in their waters. One of the commenters indicated that the SAM area should not extend into state waters located east of Cape Cod, MA due to the fact that right whales are only seen on occasion in that area during March and April and furthermore that fishing gear is rarely seen close to shore in that area. The commenter indicated that there was not sufficient risk to the animals to justify federal regulations that would preempt state regulations.

Response: The data presented in Merrick, *et al.,* 2001 demonstrates that aggregations of right whales do occur east of Cape Cod in March and April. While these aggregations have not been observed in state waters, within 3 nautical miles of the shore, the 15-nautical mile protective buffers from the sightings do encompass state waters. NMFS has determined that Federal regulations are required in order to achieve the mandates and goals of the ESA and MMPA.

Comment 18: Two commenters indicated that the Jeffreys Ledge area should be included as part of the SAM program. One of the commenters acknowledged that NMFS has proposed DAM in order to address such aggregations, but they lack confidence in DAM and therefore stated that the agency should not rely on that measure.

Response: See comment and response 11 above in the ANPR Comments and Responses. NMFS does believe that DAM is a meaningful management measure which will result in real protection for right whales. Furthermore, NMFS maintains that sufficient data is needed to confidently identify an area of predictable right whale concentration prior to designating it as a SAM area. Sufficient data is not currently available for Jeffreys Ledge.

SAM Gear Modifications Comments

Comment 19: One hundred and fifty commenters stated that, within a SAM area buoy lines extending from the fishing gear to the surface should break at no more than 1,100 lbs (498.8 kg.) to allow right whales to break free in the event of an entanglement. Other commenters questioned the value of this additional weak link at all.

Response: NMFS appreciates the large response to this important rulemaking process. The level of support from the general public for additional measures to protect right whales is encouraging. NMFS interprets these comments to mean that all lobster and gillnet gear allowed to fish in the SAM areas should utilize a weak link with a maximum breaking strength of 1100 lbs (498.8 kg). This comment appears to be in response to the 3780-lbs (1714.3-kg) weak link proposed for the Offshore Lobster Waters and Other Northeast Waters, as defined by the ALWTRP (50 CFR 229.32 (c)(5)(1)), for lobster and gillnet fishermen operating within a SAM area. NMFS proposed this 3780-lbs (1714.3-kg) maximum breaking strength ''system'' weak link based on the analysis of an entanglement, and subsequent successful disentanglement, which occurred on July 20, 2001, in the area of Jeffreys Ledge. This proposal was to introduce an additional weak link at a new location (between the surface and subsurface gear), not to increase the breaking strength of any of the existing required weak links. NMFS did consider setting the breaking strength of the system weak link at the same level as the buoy link (which is required at the buoy itself). The buoy weak links for gillnet buoys are 1100 lbs (498.8 kg), and for lobster trap buoys are 1500 lbs (680.4 kg) for SAM in Offshore Lobster Waters and 2000 lbs (906.9 kg.) for Offshore Lobster Waters outside of SAM. The values of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.9 kg) have all been exceeded in load cell testing measurements. If a weak link of any of these breaking strengths was introduced between the surface and subsurface system, it would likely break when gear was being hauled, potentially leading to a dangerous situation and also contributing to ghost gear. These load cell measurements exceeded the 2800 lbs (363.2 kg) limit of the load cell and clearly demonstrate that loads in excess of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.9 kg) have occurred in these gear types. Based on this load cell data, NMFS cannot require a weak link with a breaking strength below values we have measured in the buoy line section of the gear. Based on the comments received regarding this analysis NMFS believes that this system weak link proposal requires further discussion and development in the take reduction team arena. The proposal for a system weak link was completely removed from the interim final rule and will be discussed further with the ALWTRT.

NMFS proposed the weak link between the surface and subsurface system with the intention of introducing another point where the gear could break away from a right whale. Many of the comments questioned the value of the proposed weak link. The theory behind this proposal was that if a right whale encountered the vertical line in the buoy/end line reaching to the surface it could exert sufficient drag on the line to part it. The right whale would then be able to swim freely with little or no gear attached. Several commenters stated that the effectiveness of a weak link at this location is severely compromised by the fact that there would not be resistance on either side of the weak link to exert the pressure needed to break this weak link. Given these concerns, we will table this requirement for now and discuss it further with the ALWTRT and also at the upcoming gear workshop.

Comment 20: Nine commenters indicated that dropping an endline or the use of only a single buoy line is operationally problematic throughout the SAM areas. Four of these nine commenters stated that this measure raised safety issues as well. The basis of the safety contention is that extreme tides and weather from Cape Cod to the Hague Line are a major factor in determining which end of a trawl line to haul from in order to minimize strain on the lines, assuming there are two buoys/high flyers per lobster trap trawl/gillnet string. These commenters further indicated that a single mark, buoy/highflyer, will lead to gear conflicts and an increase in lost gear resulting in increased ghost gear and a resulting potential increase in entanglement risk. Three commenters offered strong support for the reduction in endlines as a step resulting in a tangible decrease in vertical line in the water column.

Response: NMFS acknowledges the comments concerning potential safety issues. NMFS also acknowledges that a 50 percent reduction in endlines/buoy lines furthers the goal of eliminating entanglements as indicated in the comments. NMFS further recognizes the potential for gear conflicts and other fishery management regulations which require both ends to be marked.

NMFS continues to support this measure as an acceptable risk reduction measure due to the very real decrease in the volume of line in the water column. The operational difficulties will require the industry to work together to come up with coordinated procedures to reduce gear conflicts. NMFS has required the single buoy to be at the northern or western end of the trawl string depending on the direction of the set as a standard procedure. NMFS will work with the industry to define more suitable standard practices if the industry has a better approach to this issue. As noted earlier in this rule, NMFS is accepting comments regarding this interim final rule (see **DATES** Section of this interim final rule) and is seeking additional comments on this measure.

Four of the nine commenters indicated their operation is partly based on safety. As this was not a universal concern NMFS interprets this to mean that the issue may be fishery specific (offshore versus inshore) and, as noted, is seeking additional comment during the 30-day comment period for this interim final rule which may lead to unique solutions in the fisheries/areas where safety is an issue.

In 2002, NMFS will pursue resolution of the safety and gear conflict issues at a gear workshop in February and also at the next meeting of the ALWTRT. Representatives from the environmental community and the fishing industry will participate in these meetings.

Comment 21: One commenter indicated that weak link characteristics need to be more clearly and uniformly defined.

Response: The Atlantic Large While Take Reduction Plan Regulations (50 CFR 229.32) define a weak line as a breakable component of gear that will part when subject to a certain tension load. The regulations further provided a variety of known weak link configurations and offer that other material or devices may be approved in writing by the Assistant Administrator for Fisheries of NMFS. NMFS believes the regulations adequately define various methods of compliance with the weak link requirements and offer a process for innovative techniques to be developed and introduced for consideration.

Comment 22: One commenter indicated that they disagreed with NMFS' conclusion regarding the entanglement of right whale #2427 which occurred on July 20, 2001, in the area of Jeffreys Ledge. NMFS concluded in the proposed rule that the gear measures required for SAM would have likely allowed the animal to free itself of all gear.

Response: NMFS agrees with the commenter and has decided to eliminate the requirement for the 3780 lb weak link, which was based on the conclusion regarding the entanglement of right whale #2427. NMFS has provided its basis for this change under changes in the Interim Final Rule from the Proposed Rule.

Comment 23: Two commenters indicated that weak links, as they are employed in the proposed rule, do not prevent entanglement of whales in the fishing gear remaining in the water or provide sufficient risk reduction to render gear ''whale safe'' and further are not proven to meet the criteria of ''low risk'' gear as defined in the proposed rule.

Response: NMFS recognizes that weak links in and of themselves do not constitute ''whale safe'' gear. However, NMFS does believe the weak links are an important component of the low risk gear determination. The weak links are intended to facilitate the animal's escape from gear should an entanglement occur in SAM gear or any gear in which weak links are required. The ability to escape from gear quickly and relatively easily is very important to avoid serious injury or mortality. As illustrated by the load cell and testing data presented in the proposed rule. NMFS does believe that there is sufficient data to demonstrate that weak links do break when sufficient strain is exerted on them. Breaking of line at the point of the weak links reduces the likelihood that a whale will become wrapped in the gear and will either not be able to freely swim away from the gear or only be able to swim away with a significant portion of the gear remaining attached. The weak links allow an entangled whale to break away from the gear with little or no gear attached minimizing the potential for the entanglement episode to have any significant adverse effects on the individual right whale.

Comment 24: Three commenters indicated that it is technically feasible to remove all vertical lines from the water column in gillnet and lobster fisheries using a corrodible link (link which corrodes in sea water at a known rate) with a bundled or coil buoy line and a hard float.

Response: NMFS recognizes these techniques exist and are reported to be used in some Caribbean pot fisheries. The NMFS Gear Research Team presented data on field tests using corrodible links as part of the June 27–28 ALWTRT. This technique has not been employed in the fixed gear fisheries which occur along the Eastern seaboard due to the potential for gear conflicts which are expected to result in lost gear further resulting in increased ghost gear with associated entanglement risks. The observations of these commenters are correct that it is technologically feasible to elimiante endlines/buoy lines for part of the time that fixed gear is in the water. NMFS has determined it is not practical at this time for the reasons stated earlier. NMFS will seek further discussion of these techniques and resolution of the gear conflict issues in the upcoming gear workshop and the 2002 meeting of the ALWTRT.

Comment 25: One commenter indicated that the fixed gear (lobster trap and gillnet) and mobile gear fisheries (trawling) should be segregated to specific parts of the ocean to reduce gear conflicts.

Response: NMFS acknowledges that this management approach would alleviate gear conflicts between fixed and mobile gear fisheries, but has determined that conflicts within the fixed gear fishery are also a problem of considerable magnitude. Lobster and gillnet fisheries rely on the visual or radar reflector reference to an endline/buoy line when setting out and retrieving gear to prevent gear conflicts and subsequent gear loss. Without this visual guide, one lobster fishermen could set his gear directly on top of another set of traps. Segregation of mobile and fixed gear types does not appear to solve the problem of gear conflicts.

Comment 26: One commenter indicated that NMFS should develop a ghost gear recovery program, similar to the program in the Commonwealth of Massachusetts, in conjunction with the states to remove gear that may entangle whale from the water.

Response: NMFS acknowledges the comment and will discuss the viability of ghost gear programs with state managers in an effort to remove ghost gear as an entanglement risk. The concept will also be suggested as a discussion item at the next ALWTRT Meeting.

Comment 27: One commenter indicated that states should reduce the number of recreational lobster pots allowed which would result in a reduced number of vertical lines in the water column.

Response: NMFS does not have jurisdiction over state managed recreational fisheries through the ALWTRT. The concept has merit and NMFS will suggest it as a discussion item with the participating states at the next ALWTRT Meeting.

Comment 28: Two commenters endorsed the concept of SAM which allows modified gear into an area in lieu of a complete closure based on the fact that a complete closure results in an edge effect. The commenter described an edge effect as a situation where a concentration of gear is set along the periphery of the closed area.

Response: NMFS acknowledges the comment in support of the SAM program and has experienced the edge effect as a result of other commercial fishery closures. For the reasons specified in the proposed rule, in the response to comments and elsewhere in this interim final rule, NMFS believes that greater conservation benefit is realized from gear restrictions within SAM areas as compared to a complete closure.

Comment 29: One commenter indicated that NMFS should provide estimates of the amount of actual lobster trap and gillnet gear which will be displaced in the event of a total closure or if fishermen decide the gear modifications are not feasible and consequently decide to fish elsewhere.

Response: NMFS has completed an EA for the SAM interim final rule which is available for public review. NMFS has identified impacts on the fishing industry, including the number of vessels impacted, in that document.

Comment 30: Four commenters indicated that NMFS should modify the requirement for a weak link between the surface and subsurface system. These

commenters indicated the proposed weak link should be at the same breaking strength as the buoy weak link or be completely removed. The basis for removal or replacement was that the proposed maximum breaking strength of 3780 lbs (1714.3 kg) provided no benefit to entangled animals as it may actually prevent the animal from physically reaching the lower breaking strength buoy weak link(s) thus reducing the ability of an animal to free itself from an entanglement.

Response: NMFS proposed this 3780-lb (1714.3-kg) maximum breaking strength ''system'' weak link based on the analysis of an entanglement, and subsequent successful disentanglement, which occurred on July 20, 2001, in the area of Jeffreys Ledge. NMFS did consider setting the breaking strength of the system weak link at the same level as the buoy weak link, but the buoy weak links are 1100 lbs (498.8 kg) for gillnet buoys and 1500 lb (680.4 kg) (SAM in Offshore Lobster Waters maximum) and 2000 lb (906.9 kg) (Offshore Lobster Waters maximum for non-SAM use) for lobster trap buoy weak links. The values of 1100, 1500 and 2000 (498.8, 680.4, 906.6 kg.) have all been exceeded in load cell testing measurements. These load cell measurements exceeded the 2800 lb (363.2 kg.) limit of the load cell and clearly demonstrate that loads in excess of 1100, 1500 and 2000 lbs (498.8, 680.4, 906.6 kg.) have occurred in these gear types. Based on this load cell data NMFS cannot require a weak link with a breaking strength below values we have measured in the buoy line section of the gear. Based on the comments received regarding this analysis NMFS believes that this system weak link proposal requires further discussion and development in the take reduction team arena. The proposal for a system weak link was completely removed from the attached interim final rule and will be discussed further with the ALWTRT.

Comment 31: Four commenters indicated that NMFS did not propose a 600-lbs (272.4-kg) weak link in all SAM areas west of the proposed offshore SAM area agreed to by the offshore lobster fishery representative at the June 27–28, 2001, ALWTRT meeting. This proposed division was at approximately 68° 15′ W. long.

Response: NMFS recognizes that a 600-lb (272.4-kg) weak link west of the proposed offshore SAM area was not proposed. The entire SAM area includes 4 distinct areas which have year round gear requirements in place already per the ALWTRP (50 CFR 229.32). These areas, from west to east, are the Northern Inshore Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Waters (gillnet area description). The intent of the SAM program is to leave these distinct areal definitions in place and require additional gear modifications for the portions of these areas that have a SAM area overlaid on them. This approach is clarified in this rulemaking. Given that this is the approach, a subdivision of the Offshore Lobster Waters area into two areas with a 600-lb (272.4-kg) buoy weak link for one area and a 1500-lb (680.4-kg) buoy weak link for the other area during a SAM period was determined by NMFS to be too complex. Complex regulatory structure can result in confusion which may lead to unintended non-compliance.

Comment 32: Three commenters indicated that NMFS should require gillnet weak link breaking strengths at values less than 1100 lb (498.8 kg) based on NMFS testing reported in the proposed rule.

Response: NMFS did conduct research with 1100 lb (498.8 kg) and reduced strength weak links, 600 lb (272.4 kg), in gillnets as reported in the proposed rule and continues to work towards reducing weak link breaking strengths to the lowest possible value which will allow fishing and provide an increased probability that an entangled animal will be able to break free from gear should an entanglement occur. The difficulty with going to a 600-lb (272.4-kg) breaking strength weak link at this point in time is that the Other Northeast Waters (as defined by the ALWTRP, 50 CFR 229.32) includes waters out to the Hague Line. The expansive area covered by the gillnet ALWTRP includes physical environments that require that the 1100-lb (498.8-kg) breaking strength weak link be maintained. As stated previously, NMFS will continue gear research to determine the lowest possible value which will allow fishing to continue safely and provide a higher probability that an entangled animal will be able to free itself in the event of an entanglement.

Neutrally Buoyant Line Issues

Comment 33: Five commenters specifically indicated their support for the use of neutrally buoyant or sinking line for ground lines and buoy lines to reduce the risk of entanglement.

Response: NMFS acknowledges the general support for the use of neutrally buoyant line to reduce the probability of entanglement. This measure was included in the interim final rule based on the support of the fishing industry and the environmental community and NMFS' belief that this measure will provide considerable benefits in the elimination of entanglements.

Comment 34: Four commenters expressed concern over the cost of neutrally buoyant line for replacement of ground lines and buoy lines in the lobster and gillnet fisheries. Commenters estimated costs ranging from $6,000 for inshore fishermen to $65,000 for offshore fishermen to change over from their present gear to neutrally buoyant line. One of these commenters indicated that the SAM East would impact one particular company quite hard in that they operate five offshore lobster vessels in that area. Due to the territorial nature of lobster fishing, these fishermen cannot relocate their gear as a general matter. Two of these commenters also referenced the poor quality of neutrally buoyant line available and cited a usable life of 6 months for some of this neutrally buoyant line recently tested in the field.

Response: NMFS is aware that the cost of compliance with these regulations will be greater than any previous whale plan gear modifications. The status of the animals is such that a measure of this magnitude is required to continue prosecuting the fishery. The higher cost and burden on the industry in order to be able to fish within the SAM areas is justified by the increased risk posed of entanglement in this area due to the presence of concentrations of feeding right whales. NMFS acknowledges that some of the neutrally buoyant line which was field tested by NMFS in cooperation with the fishing industry was of inferior quality and would not be suitable for use. NMFS does believe that other manufacturers of neutrally buoyant line have performed well and the manufacturer that had difficulty is working to improve their product through the information gained during these experimental gear deployment with the industry.

Comment 35: Three commenters opposed the measure that endlines/buoy lines be composed of entirely neutrally buoyant line or sinking line due to operational difficulties associated with the buoy line snagging on the fishing gear or other bottom materials. These commenters requested that the requirement be modified to require that the top two-thirds of the buoy line be composed of neutrally buoyant and/or sinking line and that the bottom section of line be allowed to be floating line, not to exceed one-third the length of the buoy line.

Response: NMFS recognizes the operational difficulty of a buoy line composed entirely of neutrally buoyant and/or sinking line as well as the industry practice of splicing in floating

line at the base of the buoy line to prevent snags. NMFS also recognizes that existing winter restricted period regulations for fishing in the Cape Cod Bay Restricted Area (CCBRA) allows a section of floating line not to exceed one-third the overall length of the buoy line. However, the status of the North Atlantic right whale is such that a measure of this magnitude is required to continue prosecuting the fishery. The BOs provide that the Conservation Significance of the SAM component of the RPA is ''reducing the potential for interactions between North Atlantic right whales and fishing gear''. NMFS believes that the gear restrictions for SAM reduce the potential for interaction to occur and also reduce the potential for interaction between North Atlantic right wales and fishing gear that would otherwise result in serious injury and/or mortality.

Changes in the Interim Final Rule From the Proposed Rule

NMFS proposed to require the installation of weak links with a maximum breaking strength of 3,780 lb in the offshore lobster trap and anchored gillnet gear between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading down to the trawl and gillnet, respectively. This proposed measure was the result of analysis conducted by NMFS from a successful disentanglement of a 7-year-old male North Atlantic right whale, catalog #2427, on July 20, 2001. NMFS' analysis concluded that the gear recovered during the disentanglement and the description of the owner's typical gear configuration indicated that the surface system was separated from the buoy line going to the trawl by a weak link with a breaking strength of 3,780 lb. It was felt that the presence and location of this weak link in the gear may have prevented the animal from becoming further entangled in the buoy line.

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

A technical change was also made to correct and clarify the intent of the regulations. ALWTRP gear requirements are described for designated areas which include: Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, Offshore Lobster Waters, and Other Northeast Waters (gillnet area). These areas require specific gear modifications to meet the ALWTRP regulations. As proposed, the SAM gear modifications are required in addition to or in place of existing requirements based on the fishery specific area defined by the ALWTRP.

Although the proposed rule discussed the relationship between the proposed SAM restrictions and the current gear requirements within the ALWTRP, the description of the lobster trap gear and anchored gillnet gear requirements in the proposed rule did not explicitly articulate the specific gear requirements for the portions of the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Other Northeast Waters (gillnet area) that are overlapped by the SAM areas. this interim final rule will correct and clarify the regulations to explicitly define the gear requirements for each of these areas that are overlapped by SAM Areas.

Classification

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

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this rule. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). Five alternatives were evaluated, including a status quo or no action alternative, the preferred alternative (PA), and three other alternatives. A summary of the analysis follows:

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

2. NMFS considered but rejected an alternative that would implement one SAM zone comprised of the two separate SAM zones with gear restrictions throughout the designated time frame. From the data collected during the 3 years of aerial surveys, it was determined that the core SAM area, in combination with the existing Cape Cod Bay and Great South Channel Restricted Areas, encompassed 134 (90 percent) of the 149 events from 1999–2001. The analysis of this data also led to the finding that, within the core SAM area, right whale events occur more frequently in the western part of the zone (near Cape Cod Bay and the Great South Channel) in March–April than in June–July. For example, 13 of the 15 events outside of the Cape Cod Bay and Great South Channel Restricted Areas occurred in the area NMFS has defined as SAM West, which lies west of 69° 24″ W. long.

Conversely, during May–July, all of the events within the area defined as SAM East, which were not in the Great South Channel Restricted Area, were east of 69° 24″ W. long. This analysis strongly suggests that right whales migrate from west to east within the SAM core area between the months of March and July. Therefore, NMFS does not believe that the scientific data supported a single SAM zone covering the entire area for the duration of the 5 month period.

3. NMFS considered but rejected an alternative that would implement a single SAM zone based on gear restrictions initially required throughout the zone, but lifted sequentially over time as concentrations of right whales move across the zone from west to east. This alternative is similar to the one described in section 5.3 of the EA with the only differences being the sequential lifting of gear restrictions as right whales migrate across the SAM zone from west to east instead of maintaining gear restrictions for the 5 month duration of the SAM zone. The analysis of the aerial surveys found that, during the 3 years data was collected, right whales consistently migrated across the core SAM area from west to east between the months of March and July. Therefore, this alternative acknowledges and responds to the most recent scientific study of right whale distribution and abundance in the Gulf of Maine.

However, although sequential openings would make this alternative somewhat less burdensome than sustaining restrictions over the entire area for a 5 month period, implementation of this alternative presents significant logistical difficulties inherent in the regular monitoring and surveillance of right whales over such a large area.

4. NMFS considered but rejected an alternative that would implement a single SAM zone based on the same criteria as the preferred alternative (PA) with no initial gear restrictions required until concentrations of right whales begin to appear in the area and then lifted as the animals leave the area. This alternative would be extremely difficult if not impossible to implement, as NMFS would need to continuously monitor for the presence of right whales and then inform industry in a timely manner.

5. The PA would protect predictable annual congregations of North Atlantic right whales in the waters off Cape Cod and out to the exclusive Economic Zone line. NMFS has defined two areas (SAM East and SAM West), where gear restrictions for lobster trap and anchored gillnet gear are required. These requirements are more stringent than, and in addition to, the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Northern Inshore Lobster Waters and Other Northeast Waters (gillnet area description).

The time/area restrictions are based on the annual predictable presence of North Atlantic right whales as observed in aerial surveys from 1999–2001. SAM West will occur on an annual basis for the period March 1–April 30. SAM East will occur on an annual basis for the period May 1–July 31. NMFS accepted this alternative as these gear modifications are necessary to avoid jeopardizing the continued existence of North Atlantic right whales and enable NMFS to meet a portion of the RPA in the BOs.

The small entities affected by this interim final rule are gillnet and lobster trap fishermen. The geographic range of the gear modifications will include the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters, and Other Northeast Waters (gillnet area). Under the preferred alternative, 49 vessels are affected, of which 18 are lobster vessels and 31 are sink gillnet vessels. This action contains no new reporting or record-keeping requirements. However, it does require modifications to lobster and sink gillnet gear. There are no relevant Federal rules that duplicate, overlap, or conflict with this interim final rule except the requirements related to no more than one buoy line per trawl being allowed in the SAM area. These requirements supersede the requirements at 50 CFR 697.21, which require one radio reflector at each end of a trawl with more than three traps.

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

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

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

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

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

References

Merrick, R.L.; Clapham, P.J.; Cole, T.V.N.; Gerrior, P.; Pace, R.M., III. 2001. Identification of seasonal area management zones for North Atlantic right whale conservation. Northeast Fisheries Science Center Reference Document 01–14. October 2001.

Clapham, P.J.; Pace, R.M., III. 2001. Defining triggers for temporary area closures to protect right whales from entanglements: issues and options. Northeast Fisheries Science Center Reference Document 01–06. April 2001.

Resolve. 2001. Meeting Summary Atlantic Large Whale Take Reduction Team Meeting, June 27–28, Portland, Maine. October 22, 2001.

List of Subjects in 50 CFR Part 229

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

Dated: December 31, 2001.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

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

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

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

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

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(4) Seasonal Area Management (SAM) Program. All vessels deploying anchored gillnet or lobster trap gear may fish in the SAM Areas as described in paragraphs (g)(4)(i)(A) and (g)(4)(ii)(A) of this section, provided the vessel complies with the gear requirements during the times specified in paragraphs (g)(4)(i)(B) and (g)(4)(ii)(B) of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

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

SAM WEST

Point	N. Lat.	W. Long.
SAM1	42°04.8′	70°10′
SAM2	42°12′	70°15′

SAM WEST—Continued

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

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

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

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

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

(*iv*) Buoy line—No more than one buoy line per net string may be used, and it must be deployed at the northern or western end of the gillnet string depending on the direction of the set.

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

(*2*) *Lobster Trap gear.* (*i*) Sinking ground line—All ground lines must be made entirely of sinking or neutrally buoyant line.

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

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

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

SAM EAST

Point	N. Lat.	W. Long.
SAM5	41°48.9′	69°24′
SAM4	42°30′	69°24′
SAM8	42°30′	67°26′
SAM9	42°30′	66°50′
SAM10	41°45′	66°50′
SAM11	41°45′	68°17′
SAM12	42°10′	68°31′

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

[FR Doc. 02–274 Filed 1–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 121701E]

Fisheries of the Exclusive Economic Zone off Alaska; Bycatch Rate Standards for the First Half of 2002

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

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the first half of 2002. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program (VIP). This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to avoid excessive prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 20, 2002, through 2400 hours, A.l.t., June 30, 2002. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., February 7, 2002.

ADDRESSES: Comments may be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, fax 907–586–7465, e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and ''other trawl'' fisheries, and the BSAI yellowfin sole and ''bottom pollock'' fisheries. Vessel operators also must not exceed red king crab bycatch rate standards specified for the BSAI