

below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Set restrictions.* All gillnets must comply with the following set restrictions:

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

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

(3) *Restrictions for Southeast Atlantic gillnet fishery.* No person or vessel may fish with or possess gillnet gear in the Other Southeast Gillnet Waters Area, except as provided in paragraph (g)(2) of this section, north of 29°00' N. lat. from November 15 through April 15 and south of 29°00' N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) [Reserved]

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

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area from December 1 through March 31 unless that gear complies with the gear marking requirements specified in

paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2, and the person or vessel satisfies the vessel monitoring system and observer requirements listed below. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Vessel monitoring systems.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area during the restricted period unless the operator of the vessel is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(ii) *At-sea observer coverage.* When selected, vessels are required to take observers on a mandatory basis in compliance with the requirements for at-sea observer coverage found in 50 CFR 229.7. Any vessel that fails to carry an observer once selected is prohibited from fishing pursuant to 50 CFR part 635.

(iii) [Reserved]

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

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

unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the FEDERAL REGISTER if:

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

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

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

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

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

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

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

(3) *Seasonal Area Management (SAM) Program.* Until October 6, 2008, in addition to existing requirements for vessels deploying anchored gillnet or trap/pot gear in the Other Northeast Gillnet Waters, Northern Inshore State Trap/Pot Waters, Trap/Pot Waters, Offshore Trap/Pot Waters, Great South Channel Restricted Gillnet Area (July 1 through July 31), Great South Channel Sliver Restricted Area (May 1 through July 31), Great South Channel Restricted Trap/Pot Area (July 1 through July 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area (anchored gillnet and trap/pot area) found at § 229.32 (b)–(d), a vessel may fish in the SAM Areas as described in paragraphs (i)(3)(i)(A) and (i)(3)(ii)(A) of this section, which overlay the previously mentioned areas, provided the gear or vessel complies with the requirements specified in paragraphs (i)(3)(i)(B) and (i)(3)(ii)(B) of this section during the times specified in those paragraphs. These requirements are in addition to requirements found in § 229.32 (b)–(d). The requirements in (i)(3)(i)(B) and (i)(3)(ii)(B) of

this section supercede requirements found at § 229.32 (b)–(d) when the former are more restrictive than the latter. For example, the closures applicable to trap/pot and gillnet gear in the Great South Channel found in paragraphs (c)(3)(ii) and (d)(3)(ii) of this section are more restrictive than the gear modifications described in this section and, therefore, supercede them. A copy of a chart depicting these areas is available upon request from the Regional Administrator, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930.

(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
1W .....	42°30'	70°30'
2W .....	42°30'	69°24'
3W .....	41°48.9'	69°24'
4W .....	41°40'	69°45'
5W .....	41°40'	69°57'
and along the eastern shoreline of Cape Cod to		
6W .....	42°04.8'	70°10'
7W .....	42°12'	70°15'
8W .....	42°12'	70°30'

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from March 1 through April 30, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM West unless that gear complies with the following gear modifications, or unless the gear is stowed as specified in § 229.2.

(1) *Anchored gillnet gear—(i) Groundlines.* All groundlines must be made entirely of sinking line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(ii) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(iii) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc.,