TABLE—TOTAL ESTIMATED BURDEN HOURS FOR RESPONDENTS—Continued

Type of filing	Estimated hours per response	Number of respondents	Estimated frequency	Total burden hours
Total Burden Hours	.....	.....	.....	2,564

Total ''Non-Hour Burden'' Cost: There are no non-hourly burdens, as the reports will be submitted electronically.

Needs and Uses: A reciprocal switching agreement provides for the transfer of a rail shipment between Class I rail carriers or their affiliated companies within the terminal area in which the shipment begins or ends its journey on the rail system. An agreement facilitates line-haul service by a rail carrier that serves the terminal area, other than the rail carrier on whose tracks the shipment begins or ends its journey. Several years ago, the Board began to consider new regulations to require rail carriers to enter into reciprocal switching agreements. Those proposed regulations were never promulgated. Due to subsequent developments in the rail sector, including the emergence of service problems as a critical and ongoing issue, the Board is now considering a new set of regulations to prescribe reciprocal switching agreements in cases of inadequate rail service.

The newly proposed regulations would allow for terminal-area shippers or receivers to seek the prescription of a reciprocal switching agreement when service to them fails to meet certain objective performance standards. The standards reflect what the Board believes to be the minimal level of rail service that is compatible with the public need, considering shippers and receivers' need for reliable, predictable, and efficient rail service as well as rail carriers' need for a certain degree of operating flexibility. When an incumbent rail carrier's service fails to meet the performance standards, and when other conditions to a prescription are met (including the absence of a valid affirmative defense), the Board will consider if it would be in the public interest to allow access to an alternate rail carrier through prescription of a reciprocal switching agreement. To facilitate implementation of the new regulations, the Board proposes to require weekly reporting of certain service data by Class I carriers and to grant shippers and receivers the right to receive their own individualized service data from a Class I carrier. The proposed reporting and submissions are necessary to the purposes of the proposed regulation and therefore to enable the Board to implement its statutory authority in this important area.

[FR Doc. 2023–19543 Filed 9–15–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Parts 1144 and 1145

[Docket No. EP 711 (Sub-No. 1)]

Reciprocal Switching

AGENCY: Surface Transportation Board.

ACTION: Proposed rule; closure of Docket No. EP 711 (Sub-docket No. 1).

SUMMARY: On July 27, 2016, in Docket No. EP 711 (Sub-No. 1), the Surface Transportation Board (Board or STB) proposed to revise its reciprocal switching regulations. After considering the full record and the developments in the freight rail industry, the Board has decided not to pursue those revisions and to close Docket No. EP 711 (Sub-No. 1). Instead, in Docket No. EP 711 (Sub-No. 2), the Board is proposing a new set of regulations that would provide access to reciprocal switching when there is inadequate service. The Board will continue to assess what other action, if any, the Board should take with respect to reciprocal switching.

DATES: September 18, 2023.

ADDRESSES: All filings must be submitted to the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. Filings will be posted to the Board's website and need not be served on other commenters or any other party to the proceedings.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 740–5567. If you require accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: On July 27, 2016, the Board granted in part a petition for rulemaking filed by the National Industrial Transportation League seeking revised reciprocal switching regulations. The Board proposed regulations in Docket No. EP 711 (Sub-No. 1) that would provide for prescription of a reciprocal switching agreement when either practicable and in the public interest or necessary to provide competitive rail service. Due to developments in the freight rail industry since the Board's 2016 notice, including critical and ongoing service problems, the Board has decided to focus, at this time, its reciprocal switching reforms on more specific and objective remedies for inadequate rail service. *See Reciprocal Switching,* EP 711 (Sub-No. 1) et al., slip op. at 1–21, 31 (STB served Sept. 7, 2023). *See also id.* at 7 n.8 (welcoming comment on what other actions, if any, the Board should consider with respect to competitive access and, in particular, whether the Board should further broaden the application of the public interest prong of 49 U.S.C. 11102). Accordingly, for the reasons discussed in *Reciprocal Switching,* the Board is closing Docket No. EP 711 (Sub-No. 1) and is instead proposing, in Docket No. EP 711 (Sub-No. 2), a new rule focused on more defined processes for the prescription of a reciprocal switching agreement in cases of inadequate service. Notice of the rule proposed in Docket No. EP 711 (Sub-No. 2) is being published concurrently with this notice. That concurrent notice includes the full discussion from the Board's September 7, 2023 decision, which is fully incorporated by reference herein.

It is ordered:

1. Docket No. EP 711 (Sub-No. 1) is discontinued as of the service date of the Board's decision in *Reciprocal Switching,* EP 711 (Sub-No. 1) et al.

Decided: September 13, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2023–20137 Filed 9–15–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 230912–0217]

RIN 0648–BM31

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: Proposed rule; request for comments.

SUMMARY: NMFS is proposing an amendment to the Atlantic Large Whale Take Reduction Plan (Plan) to expand the boundaries of the Massachusetts Restricted Area to include the wedge between State and Federal waters

known as the Massachusetts Restricted Area Wedge. The Massachusetts Restricted Area Wedge was closed by emergency rulemaking in 2022 and 2023 due to the immediate risk to North Atlantic right whale (*Eubalaena glacialis*) mortality and serious injury caused by buoy lines in an area with a high co-occurrence of whales and buoy lines. This risk is expected to recur annually. This action will address this gap in protection and reduce the incidental mortality and serious injury of right whales, fin whales (*Balaenoptera physalus*), and humpback whales (*Megaptera novaeangliae*) in commercial trap/pot fisheries.

DATES: Submit comments on or before October 18, 2023.

ADDRESSES: You may submit written and oral comments, identified by NOAA–NMFS–2023–0083, by the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter [NOAA–NMFS–2023–0083] in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: All comments received that are timely and properly submitted are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Comments received after the end of the comment period or outside the scope of this proposed rule, may not be considered.

NMFS is interested in all comments on the proposed rule. However, we are specifically soliciting comments on the timing and spatial extent of the closure, if implemented. In addition to comments on this proposed rule, reviewers are asked to comment on and identify support for Alternative 1, 2, or 3 described in the associated Environmental Assessment (EA; see instructions below to access the EA and other background documents).

Oral Comments: Public meeting locations or webinar access information will be posted on the Plan website at *https://www.fisheries.noaa.gov/ALWTRP* or contact Jennifer Goebel for information on locations and dates. See **FOR FURTHER INFORMATION CONTACT** below.

Copies of this action, including the draft EA and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared in support of this action, are available via the internet at *https://www.regulations.gov/* or by contacting Jennifer Goebel (see **FOR FURTHER INFORMATION CONTACT** below).

Several of the background documents for the Atlantic Large Whale Take Reduction Plan (Plan or ALWTRP) and the take reduction planning process can also be downloaded from the Plan website (*https://www.fisheries.noaa.gov/ALWTRP*), including copies of the draft EA/RIR/IRFA for this action. Information on the analytical tools used to support the development and analysis of the proposed regulations can be found in the EA and appendices. The complete text of current regulations implementing the Plan can be found in 50 CFR 229.32 or downloaded from the Plan's website, along with outreach compliance guides to current regulations.

FOR FURTHER INFORMATION CONTACT: Jennifer Goebel, 978–281–9175, *jennifer.goebel@noaa.gov,* Colleen Coogan, 978–281–9181, *colleen.coogan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

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Background

The North Atlantic right whale (*Eubalaena glacialis,* hereafter referred to as right whale) population has been in decline since 2010, with the most recent published estimate of right whale population size in 2020 at 338 whales (95 percent confidence interval: 325–350) with a strong male bias (Hayes *et al.* 2023, Pace *et al.* 2017, Pace 2021). The steep population decline is a result of high levels of human-caused mortality from entanglement in fishing gear and vessel strikes in both the U.S. and Canada. An Unusual Mortality Event (UME) was declared for the population in 2017, due to high rates of documented vessel strikes and entanglement in fishing gear. As of August 31, 2023, the UME includes 36 detected mortalities (17 in 2017, 3 in 2018, 10 in 2019, 2 in 2020, 2 in 2021, 0 in 2022, and 2 in 2023). In addition, 34 serious injuries were documented (6 in 2017, 6 in 2018, 3 in 2019, 6 in 2020, 5 in 2021, 4 in 2022, and 4 in 2023). Lastly, 45 morbidity (or sublethal injury or illness) cases were documented (13 in 2017, 12 in 2018, 6 in 2019, 6 in 2020, 1 in 2021, 6 in 2022, and 1 in 2023; *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event*). Documented mortalities and serious injuries represent a minimum; population models estimate that 64 percent of all mortalities are not seen and not accounted for in the right whale observed incident data (Pace *et al.* 2021, Pace *et al.* 2017).

The North Atlantic right whale is listed as an endangered species under the Endangered Species Act (ESA) and is a strategic stock under the Marine Mammal Protection Act (MMPA). NMFS is required by the MMPA to reduce mortality and serious injury incidental to commercial fishing to below a stock's potential biological removal (PBR) level. PBR is defined as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.'' In the most recently published stock assessment report (Hayes *et al.* 2023), PBR for the North Atlantic right whale population is 0.7 whales per year. Between 2010 and 2022, there has not been a single year where observed mortality and serious injury of right whales was below a PBR of 0.7. Moreover, total estimated mortality is higher than observed mortality.

The Plan was originally developed pursuant to section 118 of the MMPA (16 U.S.C. 1387) to reduce mortality and serious injury of three stocks of large whales (fin, humpback, and North Atlantic right) incidental to certain Category I and II fisheries. Under the MMPA, a strategic stock of marine mammals is defined as a stock: (1) For which the level of direct human-caused mortality exceeds the PBR level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the ESA within the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA or is designated as depleted under the MMPA (16 U.S.C. 1362(19)). When incidental mortality or serious injury of marine mammals from commercial fishing exceeds a stock's PBR level, the MMPA directs NMFS to convene a take reduction team of stakeholders that includes the following: Representatives of Federal agencies; each coastal State that has fisheries interacting with the species or stock; appropriate Regional Fishery Management Councils; interstate fisheries commissions; academic and scientific organizations; environmental

groups; all commercial and recreational fisheries groups using gear types that incidentally take the species or stock; and, if relevant, Alaska Native organizations or Indian tribal organizations.[1]

The Atlantic Large Whale Take Reduction Team (ALWTRT) was established in 1996 and has 60 members, including 23 trap/pot and gillnet fishermen or fishery representatives. The background for the take reduction planning process and initial development of the Plan is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules implementing the initial plan. The ALWTRT met and recommended modifications to the ALWTRP, implemented by NMFS through rulemaking, several times since 1997 in an ongoing effort to meet the MMPA take reduction goals.

Mortalities and serious injuries of right whales continue at levels exceeding the right whale's PBR. NMFS informed the ALWTRT in late 2017 that it was necessary to reconvene to develop recommendations to reduce the impacts of U.S. commercial fisheries on large whales, with a focus on reducing risk to the declining North Atlantic right whale population. During an ALWTRT meeting in April 2019, the ALWTRT recommended a framework of measures to modify lobster and Jonah crab trap/pot trawls within the Northeast Region Trap/Pot Management Area (Northeast Region). The recommended measures intended to reduce the risk of mortality and serious injury to right whales incidentally entangled in buoy lines in those fisheries by at least 60 percent. At the time of the 2019 ALWTRT meeting and subsequent rulemaking, 60 percent was the best estimate of the minimum amount of risk reduction necessary to reduce annual mortality and serious injury rates below PBR. This estimate was calculated based on observed entanglements. On July 2, 2021, NMFS published a Final Environmental Impact Statement (FEIS) (86 FR 35288), with a 30-day comment period. The Record of Decision was signed on August 30, 2021, and the final rule published on September 17, 2021 (86 FR 51970). NMFS estimated that the new rule would meet the minimum 60-percent reduction in risk recommended by the ALWTRT in 2019, though updated estimates suggest the rule only achieved 47 percent risk reduction coastwide. Additional data on right whale population estimates, the stock's decline, changes in distribution and reproductive rates, and entanglement-related mortalities and serious injuries that have been documented in recent years can be found in Chapters 2 and 4 of the FEIS (NMFS 2021) and the preamble to the 2021 final rule (86 FR 51970, September 17, 2021).

The 2021 final rule (86 FR 51970, September 17, 2021) inadvertently left a critical gap in protection for right whales within the Massachusetts Restricted Area (MRA). Observational sightings from 2018 through 2022 provide empirical evidence of the high risk of overlap between right whales and buoy lines in this area (See Figures 2 and 3 below). The 2021 rule expanded the geographic extent of the MRA under the Plan to mirror the area included in the 2021 Massachusetts State Commercial Trap Gear Closure to Protect Right Whales (322 CMR 12.04(2), hereafter referred to as MA State Waters Trap/Pot Closure), which had extended restrictions north to the New Hampshire border (Figure 1). The MRA, as implemented under the Plan, is in place from February 1 through April 30 while the MA State Waters Trap/Pot Closure area is closed from February 1 through May 15, with the option to open early on April 30 or extend the closure in May depending on right whale sightings and copepod abundance. The implementation of the 2021 MRA expansion resulted in approximately 200 square miles (518 square kilometers) of Federal waters remaining open to trap/pot fishing between State and Federal closures. This created the ''MRA Wedge'' (Figure 1). Center for Coastal Studies (CCS) and the Northeast Fisheries Science Center (NEFSC) reported consistent observations of right whales within this wedge February through April 2018–2022 (Figure 3). Aerial surveys conducted by CCS in April 2021 and February and March of 2022 also documented the presence of aggregated fixed fishing gear (*i.e.,* gillnet and trap/pot gear) in the MRA Wedge and in waters north of the MRA (Figure 2). In January 2022, NMFS received letters and emails from Massachusetts Division of Marine Fisheries (MA DMF), Stellwagen Bank National Marine Sanctuary, and non-governmental organizations expressing concerns about this gap in restricted waters and the heightened risk of entanglement for right whales during the MRA closure period from February through April. After reviewing available information and considering the high risk of entanglement in this relatively small area, NMFS prepared and issued an emergency rule prohibiting trap/pot fishery buoy lines within the MRA Wedge for the month of April 2022 (87 FR 11590, March 2, 2022; NMFS 2022). Though the January 2022 letter from MA DMF requested a closure to address the closure period in the MRA, which begins in February and remains closed through April under the Plan, the closure was only implemented in April due to the several months it took to prepare a new emergency rule and Environmental Assessment to understand the potential economic and biological impacts of the closure.

ALWTRT meetings and deliberations in November and December of 2022 culminated in a majority vote for a Plan amendment to implement new measures to further reduce right whale entanglement mortality and serious injury. Among those measures was an expanded MRA that would address the entanglement risk in the MRA Wedge and waters farther north, including Jeffreys Ledge. On December 12, 2022, MA DMF requested that NMFS extend the MRA Wedge closure into 2023 and 2024, or until new long-term measures are implemented. On January 4, 2023, following the signing of the Consolidated Appropriations Act, 2023 (CAA), MA DMF reiterated its concerns about the MRA Wedge and indicated full support for an annual closure of the area from February through May, or as long as the adjacent areas (*i.e.,* Federal or State waters) remain closed. On January 31, 2023, NMFS announced an extension of the 2022 Emergency Rule closing the MRA Wedge to trap/pot fishing with buoy lines while adjacent Federal waters within the MRA were similarly restricted from February 1 through April 30 to address this gap in protections again in 2023 (88 FR 7362, February 3, 2023; NMFS 2023; see Figure 1). On August 22, 2023, MA DMF again reiterated strong support for a permanent annual closure of the MRA Wedge from February through May due to ''a level of entanglement risk that is troubling and begs for a permanent management solution.'' MA DMF stated in a letter to NMFS that the ''gap in the closure . . . created a refuge for fishers to place their gear, leading to extraordinarily high gear densities in the Wedge Area. DMF believes most gear in this area is infrequently hauled and largely being stored in this location. . . .''

The MRA was first implemented in 2015, and was originally intended to restrict trap/pot fishing from January through April due to the recurring seasonal presence of right whales in the

[1] There are no Alaska Native or Indian tribal organizations on the Atlantic Large Whale Take Reduction Team.

area (79 FR 36585, June 27, 2014). Instead of a smaller closure limited to Cape Cod Bay, the MRA's boundaries offered greater protection to right whales given their presence in the area north of Race Point and Outer Cape Cod. However, the MRA was amended prior to implementation to allow fishing during January, not because whales are not present in the area in January, but because it is a key month for the fishing industry (79 FR 73848, December 12, 2014). Though right whales and the associated entanglement risk are present annually in Federal waters adjacent to Massachusetts before and after the MRA trap/pot closure, the MRA Wedge poses an acute entanglement risk to right whales from February through April during the MRA closure.

North Atlantic right whales are known to aggregate in Cape Cod Bay in winter and spring to forage on copepods (Watkins and Schevill 1976, Mayo and Marx 1990, Mayo *et al.* 2018). The whales begin arriving in Cape Cod Bay and surrounding waters as early as December and typically leave the area during the month of May after copepod abundance has declined (Jacquet *et al.* 2007, Hlista *et al.* 2009, Pendleton *et al.* 2009, Plourde *et al.* 2019, Ganley *et al.* 2019). Abundance of right whales in Cape Cod Bay during winter and spring has increased over time, despite a declining population size, making protection of the Bay and surrounding waters during their presence particularly important for population recovery (Ganley *et al.* 2019). Past and current sightings data indicate that April is, on average, the month of peak abundance in the Bay (see Figure 12, Figure 13, Figure 14 in the associated EA for this action). Ganley *et al.* (2019) found that sightings data do not accurately reflect peak whale presence due to diving behavior, with higher abundances in January through March than detectable through simple whale counts or sightings per unit effort and that the month of peak abundance varies annually, sometimes occurring in March or April (Pendleton *et al.* 2022). Furthermore, right whale use of the Bay has increased as spring temperatures warm up earlier in the year and suggest the month of peak abundance may continue to occur earlier in the year in the future due to climate change (Ganley *et al.* 2022).

Detections of right whales in the MRA and surrounding waters from February through April continue to demonstrate that whales occupy and travel through the MRA Wedge to feed in waters in and around Massachusetts Bay (Figure 3; also see Figure 12, Figure 13, Figure 14 in the associated EA for this action). Though many right whales aggregate within Cape Cod Bay, they are highly mobile and are also detected visually or acoustically in and around Massachusetts Bay and the MRA Wedge, with a notable increase from February through April (Johnson *et al.* 2021). Data on right whale presence in February and March in Massachusetts Bay and the MRA Wedge are also likely underestimated given lower survey effort in the area north of Cape Cod Bay and variation in whale detection during these months (Ganley *et al.* 2019). As the right whale's food source declines in April within Cape Cod Bay (Hlista *et al.* 2009; Ganley *et al.* 2019, 2022), right whale distribution accordingly shifts and increases the presence of right whales in the MRA Wedge as they leave Cape Cod Bay, contributing to a peak of sightings in Massachusetts Bay in April. Right whale presence in Massachusetts Bay is likely to shift as climate change impacts the population use of Cape Cod Bay, potentially contributing to higher abundance in earlier months. Accordingly, it is critical that the MRA includes the MRA Wedge within the boundaries of the existing closure under the Plan to reduce mortalities and serious injuries from entanglements in buoy lines (Figure 4).

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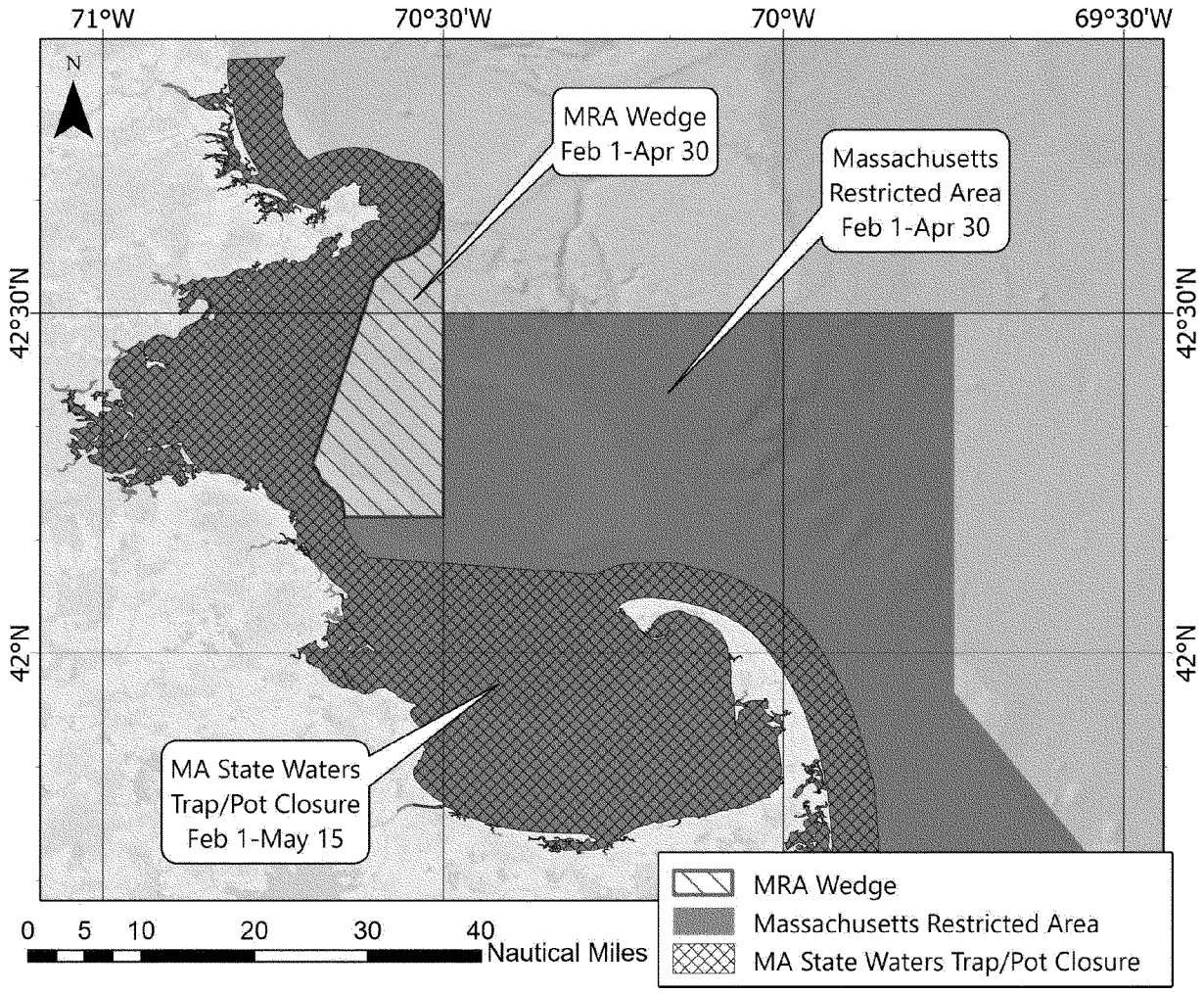

Figure 1 – Massachusetts Restricted Area, MRA Wedge, and MA State Waters Trap/Pot Closure Areas Under Consideration

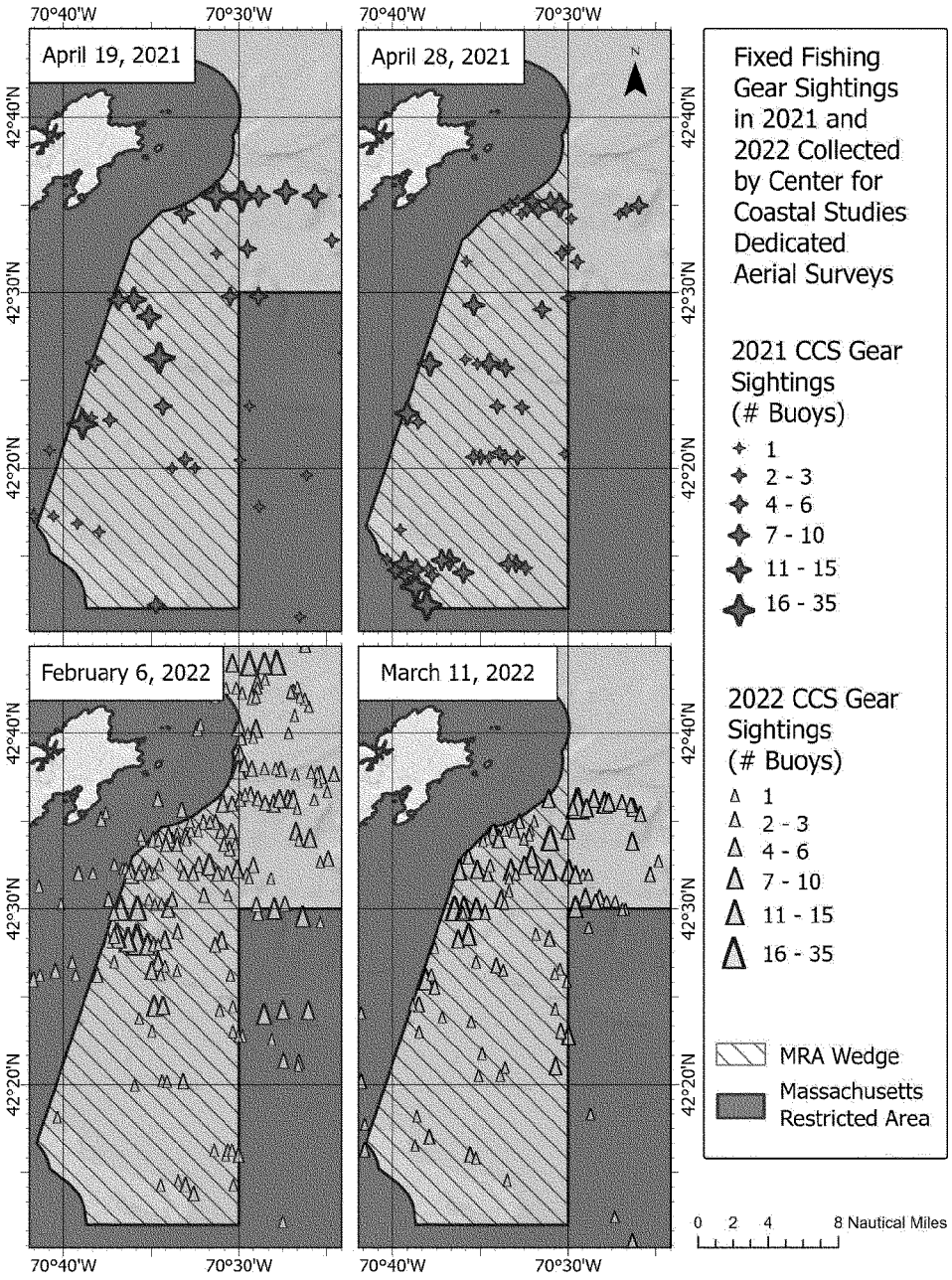

Figure 2 -- Fixed-Fishing Gear Observed by the CCS Within Portions of the Massachusetts Restricted Area, MRA Wedge, and Other Adjacent Waters

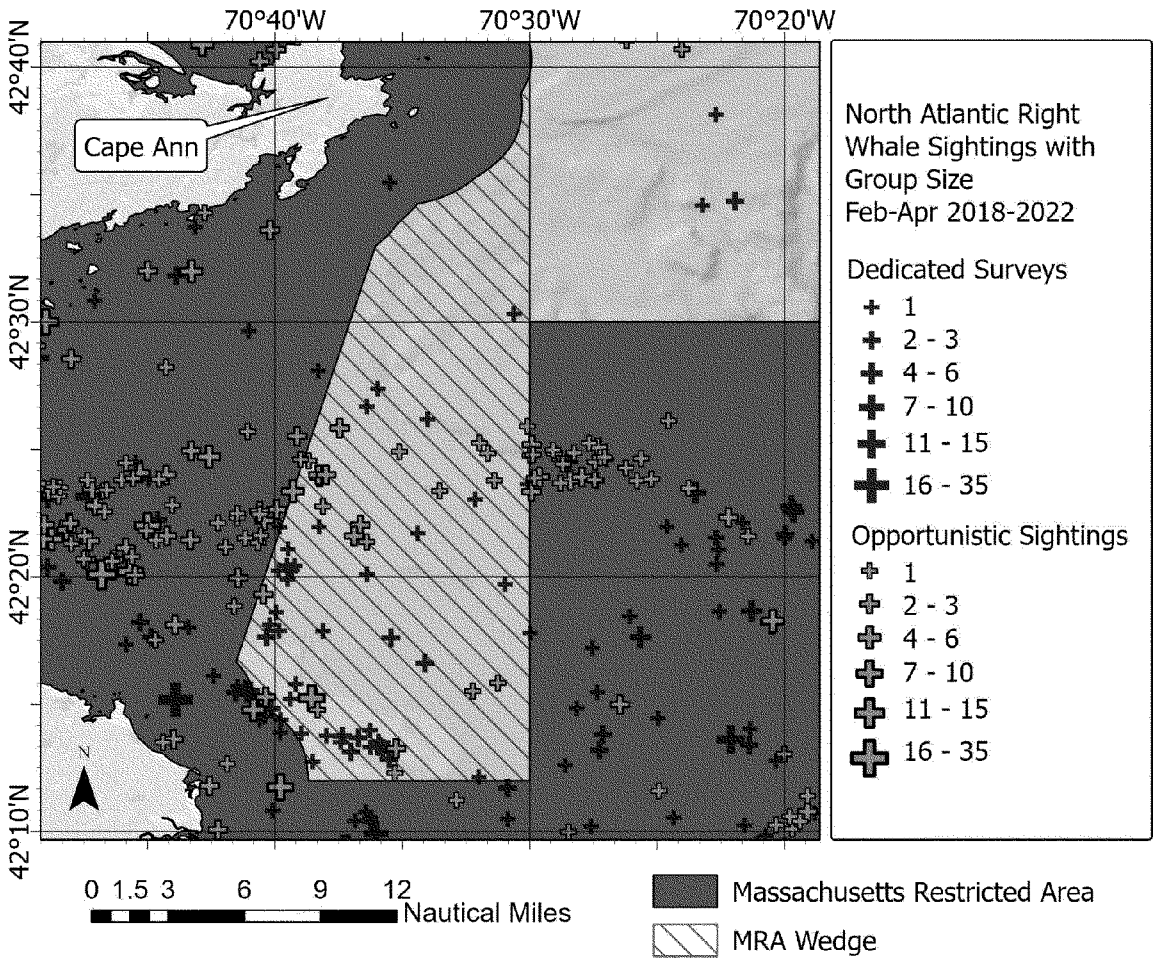

Figure 3 -- North Atlantic Right Whale Sightings Spanning February-April 2018-2022 in Portions of the Massachusetts Restricted Area, MRA Wedge Area, and Other Adjacent Waters

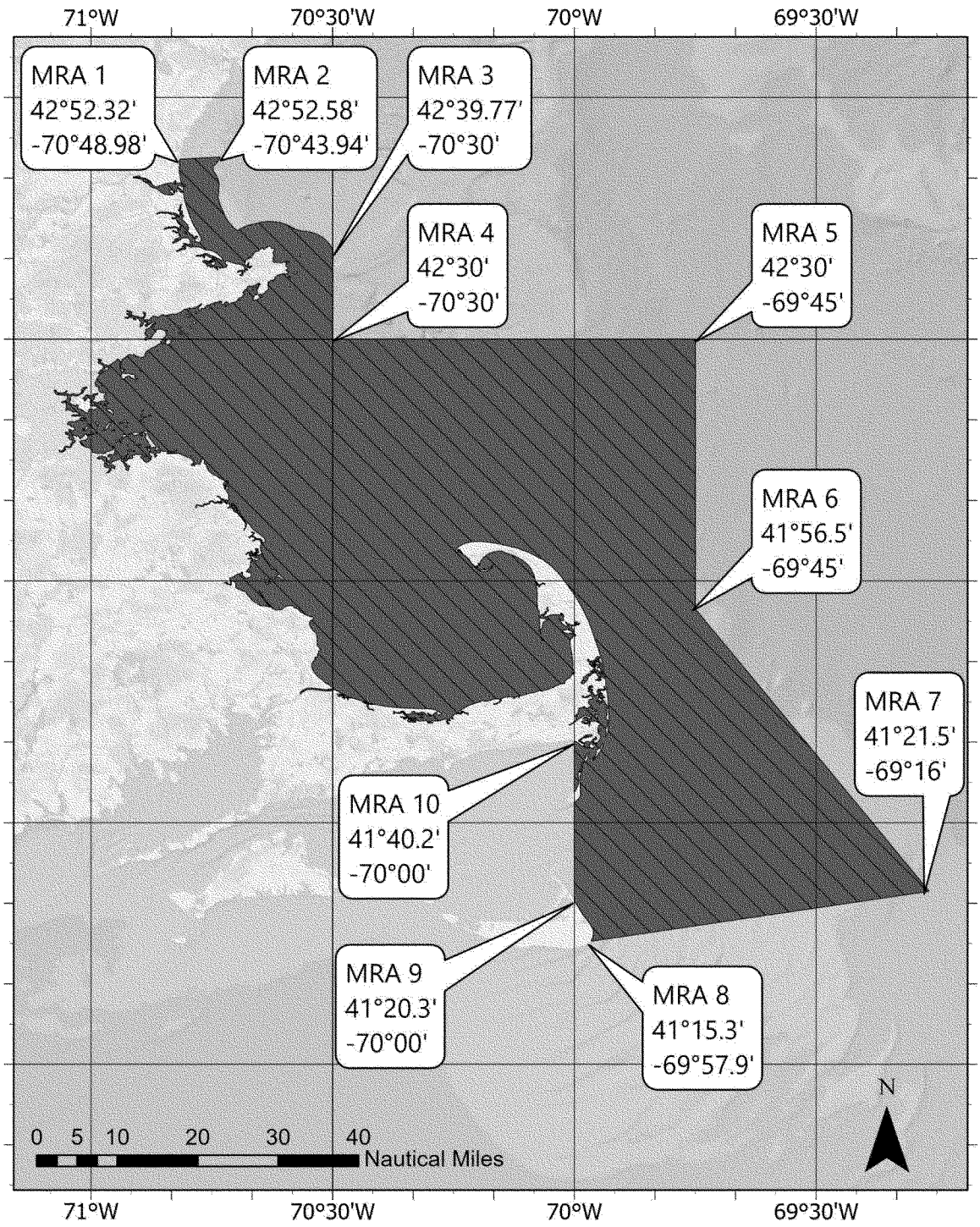

Figure 4 -- Coordinates for the Proposed Boundaries of the Massachusetts Restricted Area

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Summary of Proposed Changes

This proposed rule, if adopted, would expand the boundaries of the MRA, where the use of persistent trap/pot buoy lines are seasonally prohibited, to include the MRA Wedge (Figure 4). The proposed rule, if adopted, would close this area during the existing MRA closure season under the Plan from February 1 through April 30 (86 FR 51970, September 17, 2021) to reduce acute entanglement risk. As shown above in Figures 2 and 3, empirical observations of right whales alongside fixed gear in the MRA Wedge from February through April in the years 2018–2022, and the high density of right whales in nearby adjacent waters, demonstrate the urgent need for the closure. To estimate the reduction of entanglement-related mortality and serious injury risk that would likely result if the proposed rule was

implemented, we used the Large Whale Decision Support Tool (DST) version 4.1.0, which quantitatively evaluates potential risk outcomes for relevant management actions. The DST estimates that the proposed closure would result in an approximately 1.9 to 2.4 percent reduction of risk of mortality or serious injury due to entanglement. This is equivalent to a total risk reduction of approximately 13.2 to 16.6 percent for the trap/pot fisheries in Lobster Management Area 1 (LMA 1) adjacent to Massachusetts, where the threat of entanglement is particularly high for right whales.

The DST version used to estimate anticipated risk reduction relies on right whale distribution data from 2010 through September 2020 and buoy line estimates from recent years (2015–2018 for lobster, 2010–2020 for other Federal trap/pot fisheries, and 2012–2019 for other trap/pot fisheries in state waters), before the current boundaries of the MRA and the MA State Waters Trap/Pot Closure were implemented. The 2021 restrictions likely pushed more gear into this area than is reflected in the gear data that was incorporated into DST. In addition, we used the right whale habitat density model produced by Duke University (Version 12; Roberts *et al.* 2016a, Roberts *et al.* 2016b, Roberts *et al.* 2020, Roberts *et al.* 2021, Roberts and Halpin 2022) within the DST, which estimates that up to five whales total are likely to be present in this locality at any given time throughout the time frame. However, sightings data collected during the months of February through April in the years from 2018 through 2022 shows that there are at times more right whales in the area than the model estimates (Figure 3). For example, on April 28, 2021, dedicated surveys sighted 15 whales in the Wedge Area. Accordingly, the DST provides strong supporting evidence for the Rule, and the empirical observational evidence collected in 2018–2022 demonstrates that the proposed closure of the MRA Wedge area will likely have greater value to right whale conservation than the DST estimates (see section 6.2 in the associated EA for more details on these analyses).

The economic impact of the addition of the MRA Wedge to the MRA on the lobster and Jonah crab trap/pot fishery is estimated to be relatively small compared to the total value of the fishery. We estimate that the MRA Wedge closure will impact between 26–31 vessels each month and that the annual costs, including gear transportation costs and lost revenue, range from $339,000 to $608,000, or $1.7 million to $3 million across 5 years. For this analysis, we evaluated two scenarios for the economic impacts on lobster vessels. We assumed that half of the vessels would relocate their traps, and the other half would stop fishing. For vessels that stop fishing, the cost differences include lost revenue, gear relocation costs, and saved operating costs from not fishing. The lower and higher range of cost estimates come from the range of lost revenue of the relocated vessels, and a range of gear relocation costs for all vessels. We calculated the number of vessels impacted using the average number of vessels fishing within the MRA Wedge for the months February, March, and April for each year from 2017 to 2021 according to Vessel Trip Report (VTR) data and adjusted based on the average percentage of LMA 1 lobster-only vessels required to provide VTR data in Massachusetts (41 percent). Landing values were similarly averaged for the time period using landing pounds from VTR data and lobster prices in Massachusetts provided in dealer reports. For more details on the economic analyses and underlying assumptions, please see section 6.2 in the associated EA and RIR/IRFA for this proposed rule.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the ALWTRP, with the rulemaking authority under MMPA section 118(f), and with other applicable laws including the CAA, 2023 (H.R. 2617–1631—H.R. 2617–1632, Division JJ—North Atlantic Right Whales, Title I—North Atlantic Right Whales and Regulations).

Consolidated Appropriations Act

On December 29, 2022, President Biden signed H.R. 2617, the CAA, into law. The CAA establishes that from December 29, 2022, through December 31, 2028, NMFS' September 17, 2021, rule amending the ALWTRP, Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations, published at 86 FR 51970 (September 17, 2021), ''shall be deemed sufficient to ensure that the continued Federal and State authorizations of the American lobster and Jonah crab fisheries are in full compliance'' with the MMPA and the ESA. H.R. 2617–1631—H.R. 2617–1632 (Division JJ—North Atlantic Right Whales, Title I—North Atlantic Right Whales and Regulations, § 101(a)). The CAA requires NMFS to promulgate new lobster and Jonah crab regulations, consistent with the MMPA and ESA, that take effect by December 31, 2028. *Id* at § 101(a)(2). Notwithstanding these directions, § 101(b) of the CAA provides that NMFS may take ''any action . . . to extend or make final an emergency rule that is in place on the date of enactment of this Act, affecting lobster and Jonah crab.''

This proposed rule is permitted under § 101(b). The ''emergency rule'' in § 101(b)'s express exception plainly refers to the 2022 MRA Wedge Rule, 87 FR 11590 (Mar. 2, 2022), because the 2022 Emergency Rule was ''in place'' at the time of the CAA's enactment on December 29, 2022.

Although the Emergency Rule's seasonal closure was effective from April 1, 2022 through April 30, 2022, the state of emergency necessitating the rule continued and NMFS was authorized to extend that rule at the time of the CAA's enactment under MMPA § 118(g). The 2022 Emergency Rule closed the MRA Wedge for 30 days under MMPA § 118(g)(3). After that 30-day closure, NMFS retained authority to extend the 2022 Emergency Rule for 90 additional days under MMPA § 118(g)(4), which allows an extension of an emergency rule where ''incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species.'' That was the case at the time of the CAA's enactment because, after the 2022 Emergency Rule was no longer in effect, right whales continued to occupy and travel through the MRA Wedge annually during February through April, while vertical-line fishermen also continued to fish and stage gear there at great risk of causing incidental mortality or serious injury by entanglement. The MMPA does not require that emergency rule extensions are coterminous in time with the original emergency rule.

Any other reading of the statute would deprive the § 101(b) exception of any meaning. The 2022 Emergency Rule is the only emergency rulemaking implemented in the past decade under the MMPA, ESA, or other relevant statutes affecting lobster and Jonah crab; there is no other ''emergency rule'' to which the exception could have referred. Moreover, Congress would not have reasonably expected NMFS to issue another emergency rule when Congress was contemplating and enacting the statute, or in the short time between when Congress passed and the President signed the CAA. For example, no other emergency rule related to right whale and the lobster fishery was under consideration in and around that time. Accordingly, the 2022 Emergency Rule

was ''in place'' within the meaning of the CAA at the time of its enactment, even though the seasonal closure required by that rule was no longer in effect.

Based on this understanding, NMFS ''extend[ed]'' the 2022 Emergency Rule, CAA § 101(b), the following year on February 1, 2023, by closing the MRA Wedge from February 2023 through April 2023 to match the broader closure of Federal waters in the MRA. This proposed rule seeks to ''make final,'' CAA § 101(b), the 2022 Emergency Rule by incorporating the MRA Wedge into the larger MRA boundaries. The proposed rule is based on the scientific evidence demonstrating the annual recurrence of high entanglement risk in the MRA Wedge—*i.e.,* direct observations of right whales and extensive fishing gear occupying the MRA Wedge annually from February through April, and the supporting DST analysis. The proposed rule would therefore ''make final'' the wedge closure under the Plan, in accordance with the MMPA and CAA.

National Environmental Policy Act

NMFS prepared a draft EA for this proposed rule that discusses the potential impacts of proposed changes to the ALWTRP on the environment. In addition to the status quo (Alternative 1), two alternatives are analyzed: Alternative 2 (preferred and the basis of this proposed rule) and Alternative 3. Alternative 1 (No Action) would maintain the status quo as implemented in 2021. Alternative 2 (Preferred Alternative) would add the MRA Wedge, approximately 200 square miles (518 square kilometers) of Federal waters adjacent to the existing MRA, to the MRA during the current closure period of February 1 through April 30. Alternative 3 would add approximately 1,297 square miles (3,359 square kilometers) to the MRA and extend the northern MRA boundaries up to the New Hampshire border during the same time period.

Alternative 2 is estimated to reduce risk of mortality or serious injury from entanglement in trap/pot gear in the Northeast by approximately 1.9 to 2.4 percent. Alternative 3 is estimated to reduce risk by 3.3 to 5.5 percent. The difference in impact between the two alternatives is even greater when considering local risk in the area in LMA 1 adjacent to Massachusetts, an area with particularly high entanglement risk during the MRA closure months (13.2 to 22.3 percent risk reduction under Alternative 2 compared to 14.9 to 37.4 percent under Alternative 3). Overall, the economic impacts of the Alternative 2 result in an estimated total annual cost (including lost revenue) of $339,000 to $608,000 with approximately 26 to 31 affected vessels, or $1.7 million to $3 million across 5 years. Alternative 3 is estimated to impact 53 to 66 vessels for an estimated annual cost (including lost revenue) of $898,000 to $1,453,000 and an estimated total 5-year cost of $4.5 million to $7.3 million. The social and economic impacts on the human community would decrease year by year as fishermen adapt to the proposed restricted area. A copy of the EA is available in the docket or from NMFS (see **ADDRESSES**).

Executive Order 12866—Regulatory Planning and Review

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866. NMFS has prepared a regulatory impact review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. We prepared an initial regulatory flexibility analysis (IRFA) in support of this action, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available in the docket or from NMFS (see **ADDRESSES**), and a summary follows.

The IRFA analysis estimates that 1,273 distinct entities had at least one LMA 1 Federal lobster permit in 2021, and 39 distinct entities were in other trap/pot fisheries. All of them are small entities with annual landings value below $11 million. While considering the compliance costs for the small entities, it is worth noting that the vast majority of the regulated entities are located far away from the MRA Wedge area so that it would not be economically feasible to travel to this area to fish. Therefore, this proposed rule would directly affect relatively few entities that actually fished with vertical lines in the proposed Wedge Area within the past five seasons (2017–2021). Alternative 2 would affect 26 to 31 entities, with the estimated annual compliance costs ranging from $339,000 to $608,000. The estimated cost for each entity ranges from $9,500 to $19,100. Alternative 3 would affect 53 to 66 entities, and the estimated annual compliance costs range from $898,000 to $1,453,000. The estimated cost for each entity ranges from $9,900 to $20,500.

Paperwork Reduction Act

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Endangered Species Act

NMFS completed an ESA section 7 consultation on the implementation of the Plan on July 15, 1997, and concluded that the action was not likely to adversely affect any ESA-listed species under NMFS jurisdiction. Five subsequent consultations were conducted in 2004, 2008, 2014, 2015, and 2021 when NMFS amended the Plan. This proposed rule falls within the scope of the analysis conducted in the informal Endangered Species Act section 7 consultation on the implementation of the Atlantic Large Whale Take Reduction Plan (May 25, 2021), and a separate consultation is not required for this action. NMFS, as both the action agency and the consulting agency, reviewed the changes and determined that the measures as revised through this rulemaking would not affect ESA-listed species under NMFS jurisdiction in a manner that had not been previously considered.

This proposed rule is a separate action independent from the 2021 Endangered Species Act section 7 Consultation on the: (a) Authorization of the American Lobster, Atlantic Bluefish, Atlantic Deep-Sea Red Crab, Mackerel/Squid/Butterfish, Monkfish, Northeast Multispecies, Northeast Skate Complex, Spiny Dogfish, Summer Flounder/Scup/Black Sea Bass, and Jonah Crab Fisheries and (b) Implementation of the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2 (2021 BiOp). The proposed rule was not developed during the fisheries consultation process that culminated in the 2021 BiOp, and the proposed rule satisfies the ESA and MMPA requirements through a consultation that was entirely distinct from the 2021 BiOp. The proposed rule is not associated with the 2021 BiOp and was not analyzed under the 2021 BiOp, nor does the 2021 BiOp provide ESA coverage for the proposed rule.

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List of Subjects in 50 CFR Part 229

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

Dated: September 13, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 229 as follows:

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

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

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

■ 2. Amend § 229.32 by revising paragraph (c)(3)(i) to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(c) * * *

(3) * * *

(i) *Area.* The Massachusetts Restricted Area is bounded landward by the Massachusetts shoreline, from points MRA1 through MRA3 bounded seaward by the designated Massachusetts State waters boundary, and then bounded by a rhumb line connecting points MRA3 through MRA10 in order as detailed in table 11 to paragraph (c)(3)(i);

TABLE 11 TO PARAGRAPH (c)(3)(i)

Point	N lat.	W long.
MRA1	42°52.32′	70°48.98′
MRA2	42°52.58′	70°43.94′
MRA3	42°39.77′	70°30′
MRA4	42°30′	70°30′
MRA5	42°30′	69°45′
MRA6	41°56.5′	69°45′
MRA7	41°21.5′	69°16′
MRA8	41°15.3′	69°57.9′
MRA9	41°20.3′	70°00′
MRA10	41°40.2′	70°00′

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