Register, EPA is approving the Rhode Island Operating Permit Program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments must be received on or before October 31, 2001.

ADDRESSES: Comments may be mailed to Steven Rapp, Unit Manager, Air Permit Program Unit, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and other supporting documentation relevant to this action, are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, 11th floor, Boston, MA Region I, JFK Federal Building, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, (617) 918–1653.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 20, 2001.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 01–24253 Filed 9–28–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7068–2]

Missouri: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Missouri has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Missouri. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by October 31, 2001.

ADDRESSES: Send written comments to Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101. You can view and copy Missouri's application during normal business hours at the following addresses: Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102–0176, (573) 751–3176; and EPA Region 7 Library, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7877, Lisa Haugen.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: September 13, 2001.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–24195 Filed 9–28–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. ; I.D. 092101B]

RIN 0648–AN88

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 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 protective measures to benefit North Atlantic right whales.

DATES: Comments on this proposed rule must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on October 31, 2001. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this proposed rule to the Chief, Protected Resources Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Copies of the Environmental Assessment can be obtained from the ALWTRP website listed under Electronic Access portion of this document. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and table of the changes to the ALWTRP may be obtained by writing to Gregg LaMontagne, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432.

FOR FURTHER INFORMATION CONTACT: Gregg LaMontagne, NMFS, Northeast Region, 978–281–9291; Katherine Wang, NMFS, Southeast Region, 727–570–5312; 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

The ALWTRP was developed pursuant to the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury/mortality of all whales in East Coast lobster trap and finfish gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is set out in the preamble to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), final (64 FR 7529, February 16, 1999), and interim final (65 FR 80368, December 21, 2000) rules implementing the ALWTRP. Copies of these documents and supporting Environmental Assessments (EA) are available from the NMFS/Northeast Region contact in the **ADDRESSES** section of this proposed rule.

NMFS issued four biological opinions (BOs) on the multispecies, spiny dogfish, monkfish fishery management plans (FMPs) and lobster Federal regulations on June 14, 2001, in accordance with section 7 of the Endangered Species Act (ESA). The BOs concluded that all four of the fisheries jeopardized the continued existence of the North Atlantic right whale. The analysis that led to that conclusion incorporated the gear modifications in the December 2000 interim final rule that were recommended by the Northeast sub-group of the ALWTRT for Northeast gillnet and lobster trap fisheries. The reasonable and prudent alternative (RPA) in the June 14, 2001, BOs included additional gear modifications for the Northeast lobster trap fisheries and new gear modifications for the Mid-Atlantic and Southeast gillnet and lobster trap fisheries that were necessary to avoid jeopardizing the continued existence of North Atlantic right whales. The need for additional gear modifications in these fisheries had been considered by the ALWTRT, but not implemented by the December 2000 interim final rule.

Take Reduction Planning Activities in 2001

Pursuant to section 118 (f)(7)(E) and (F) of the MMPA, NMFS has reconvened the ALWTRT periodically to monitor progress of the ALWTRP and to make recommendations for improvements. During the February 2000 meeting, the ALWTRT split into sub-groups covering the Northeast, Mid-Atlantic, and Southeast Areas. The recommendations of the Northeast sub-group were addressed by the December 2000 interim final rule. The Mid-Atlantic and Southeast sub-groups met on August 25, 2000, and July 24, 2000, respectively and provided meeting summaries with recommendations to the entire ALWTRT for review. The recommendations of the Mid-Atlantic and Southeast sub-groups are addressed by this proposed rule.

The ALWTRT met on June 27 and 28, 2001, to review the elements of the RPA required by the four BOs and recommend measures that would not only satisfy the requirements of the ESA and the four BOs, but would also satisfy the requirements of the MMPA. The MMPA provides goals of reducing takes in commercial fishing operations to below the potential biological removal (PBR) level within 6 months of the ALWTRP's implementation and the achievement of the zero mortality rate goal (ZMRG) within 5 years of ALWTRP implementation. For North Atlantic right whales, these two goals are essentially the same since PBR level is defined as zero. Consequently, additional entanglement risk reduction is needed to comply with the MMPA.

This preamble describes modifications to the ALWTRP recommended by the ALWTRT, as well as other modifications NMFS deems necessary to satisfy requirements of the ESA and MMPA. Specifically, for the following areas, this proposed rule would:

(1) *Northern Inshore State Lobster Waters Area*. Remove the option for lobstermen to use line with a diameter of 7/16 in (1.11 cm) or less for all buoy line, effective January 1, 2003, as an option in the Lobster Take Reduction Technology List applicable to fishing with lobster traps in this area, and allow the use of neutrally buoyant line in all buoy lines and ground lines.

(2) *Southern Nearshore Lobster Waters Area*. Replace the Lobster Gear Technology List with the following mandatory gear modifications applicable year-round: (a) Installation of a weak link with a maximum breaking strength of 600 lb (272.4 kg) on the buoy line, and (b) installation of weak links in such a way that produces knotless ends if the weak link breaks;

(3) *Offshore Lobster Waters Area*. Reduce the maximum breaking strength of weak links at all buoys from 3,780 lb (1,714.3 kg) to 2,000 lb (906.9 kg); require the use of a weak link with a maximum breaking strength of 3,780 lb (1,714.3 kg) between the surface system (all buoys, highflyers, and associated lines) and the buoy line going to the trawl on the ocean floor; and require that fishers install weak links so that if the lines were to break, they would produce knotless ends on the line;

(4) *Gillnet Mid-Atlantic Coastal Waters Area*. Replace the Gillnet Gear Technology List with requirements to install buoy line weak links with a maximum breaking strength of 1,100 lb (498.8 kg) and net panel weak links with a maximum breaking strength of 1,100 lb (498.8 kg) in the center of the floatline section on each 50–fathom net panel or every 25 fathoms on the floatline for longer panels; and require fishers to return all gillnet gear to port with their vessels, or if the gillnets are left at sea to continue fishing to secure the nets on each end with anchors that have the holding power of at least a 22–lb (10.0–kg) Danforth-style anchor; and

(5) *Southeast U.S. Restricted Area*. Prohibit straight sets of gillnets at night between November 15 and March 31 in the Southeast U.S. Restricted Area, unless the exemption under § 229.32 (f)(3)(iii) applies.

In addition, NMFS proposes the following changes to the Take Reduction Technology Lists:

(1) *For the Lobster Take Reduction Technology List*. Remove the option for fishers to use 7/16 in (1.11 cm) diameter line for all buoy lines, effective January 1, 2003, and to amend the list to provide the option that all buoy lines and ground lines be composed entirely of sinking and/or neutrally buoyant line. For the Southern Nearshore Lobster Waters Area, this rule proposes to replace the requirement to choose options from the Lobster Take Reduction Technology List with a set of specific requirements.

(2) *For the Gillnet Take Reduction Technology List*. Remove the option for fishers to use line of 7/16–in (1.11–cm) in diameter or less for all buoy lines, require installation of weak links with a maximum breaking strength of 1,100 lb (498.8 kg) in the center of the floatline of each net panel, and require that all buoy lines be composed entirely of sinking and/or neutrally buoyant line.

Changes Proposed for the Atlantic Large Whale Take Reduction Plan for Lobster Trap Gear

Northern Inshore State Lobster Waters Area

Under the proposed rule the Northern Inshore State Lobster Waters Area

would be the only area to incorporate the Lobster Take Reduction Technology List into its area-specific regulations. The ALWTRP currently incorporates a Lobster Take Reduction Technology List from which fishers must choose at least one gear option in order to reduce risk of entanglement of whales in their gear. The ALWTRT discussed, but did not reach consensus on, removal of 7/16–in (1.11–cm) diameter line from the Lobster Take Reduction Technology List, which would reduce to three the number of options available to lobster trap fishers in this area. Nevertheless, NMFS proposes to remove the option for lobstermen to use line with a diameter of 7/16 in (1.11 cm) or less for all buoy line, effective January 1, 2003. For rationale, see the discussion under the Lobster Take Reduction Technology List heading later in this proposed rule. This proposed rule also would add the use of neutrally buoyant buoy lines and ground lines as options in the Lobster Take Reduction Technology List. See the discussion under ''Lobster Take Reduction Technology List'' for the rationale and justification of this proposed change.

Southern Nearshore Lobster Waters Area

The Southern Nearshore Lobster Waters Area encompasses both the state- and Federal-water portions of EEZ Nearshore Management Areas 4 and 5 (as defined in the American lobster fishery regulations at part 697 of this title), excluding the waters currently exempted from regulation under the ALWTRP. This definition was adopted in the December 2000 interim final rule. To further reduce the risk of entanglement, NMFS is proposing, upon the recommendation of the Mid-Atlantic sub-group, to replace the Lobster Take Reduction Technology List with the following mandatory gear modifications applicable year-round for the Southern Nearshore Lobster Waters Area: (1) installation of a buoy line weak link with a maximum breaking strength of 600 lb (272.4 kg); and (2) installation of weak links in such a way that produces knotless ends if the weak link breaks. The weak link at the buoy increases the likelihood that a line sliding through a whale's mouth will break away quickly at the buoy before the whale begins to thrash and become more entangled. It is also expected to reduce risk in cases where a whale gets line wrapped around an appendage at a point close to the buoy. The weak link would only be effective when sufficient resistance is created by the weight and drag of the gear to exceed the breaking strength of the weak link.

The required 1,100–lb (489.8–kg) breaking strength for weak links in the buoy line in the 1997 interim final rule was recommended by the Gear Advisory Group (GAG) at its original meeting in June 1997 as a ''best available practice'' that could be used in the gear technology lists. The proposed buoy line weak link breaking strength of 600 lb (272.4 kg) for Southern nearshore lobster trap gear is based on information collected by the gear research program that suggests that the 1,100–lb (498.8–kg) breaking strength required in a previous rule is higher than necessary for the nearshore lobster trap/pot fisheries. Based on this information, the breaking strength of buoy line weak links in Northeast waters was reduced from 1,100 lb (498.8 kg) to 600 lb (272.4 kg) in the December 2000 interim final rule. The proposed rule would require installation of buoy weak link with a maximum breaking strength of 600 lb (272.4 kg), which would make nearshore lobster gear regulations consistent throughout the range of the ALWTRP.

The proposed rule would require installation of weak links in such a way that produces knotless ends in the line if the weak link were to break, because a weak link that breaks but leaves a knot or other obstruction at the end of the line leading down to the gear could become lodged in the whale's baleen or around an appendage. Observations of North Atlantic right whale jaw anatomy suggest that even a knotless line would be difficult to pull through a whale's mouth when the jaw is clamped shut. However, testing on baleen obtained from whale carcasses has shown that knots further hinder the passage of line through the baleen.

Offshore Lobster Waters Area

The December 2000 interim final rule required that fishers reduce the risk of entanglements by installing a buoy line weak link with a maximum breaking strength of 3,780 lb (1,714.3 kg) in lobster trap gear set in the offshore lobster fishery area and ensuring that if the weak link were to break, it would produce a knotless end. In light of cooperative research between NMFS and the offshore lobster fishing industry using load cells and based on lessons learned from a recent whale entanglement, this proposed rule would reduce the maximum breaking strength of weak links at all buoys from 3,780 lb (1,714.3 kg) to 2,000 lb (906.9 kg); require the use of weak links with a maximum breaking strength of 3,780 lb (1,714.3 kg) between the surface system (all buoys, highflyers, and associated lines) and the buoy line going to the trawl on the ocean floor; and require that fishers install weak links so that if they were to break, they would produce knotless ends on the line.

The current required maximum breaking strength of 3,780 lb (1,714.3 kg) for the offshore lobster buoy line weak links is the same as that specified in the Lobster Take Reduction Technology List in the February 1999 final rule. The option for fishers to choose to use a weak link with a maximum breaking strength of 3,780 lb (1,714.3 kg) was developed based on a recommendation from the GAG at its June 1997 meeting for 0.5 inches (1.27 cm) polypropylene line, which has a breaking strength of approximately 3,780 lb (1,714.3 kg). Initial testing conducted by NMFS suggests that this breaking strength could be lowered for these gear types while still allowing the gear to be effectively used. The ALWTRT requested further testing for extreme conditions and that information was presented at the June 2001 ALWTRT meeting.

Load cells were deployed with the assistance of the offshore lobster industry, which measured and recorded actual strain values on buoy systems. These deployments collected 310 days of data from six locations ranging from the Gulf of Maine to Hydrographer Canyon. Deployments took place throughout all four seasons from March of 2000 through July of 2001. The highest maximum strain was 535 lb (243 kg) on a deployment in Hydrographer Canyon and the lowest maximum strain was 190 lb (86 kg) on an offshore deployment. The average maximum strain across all six buoy systems for a total of 310 days was 397 lbs (180 kg) The ALWTRT discussed the data associated with four of the six deployments. The consensus recommendation by the ALWTRT was for a weak link with a maximum breaking strength of 2,000 lb (906.9 kg). The ALWTRT recommended, and NMFS proposes, a 2,000 lb maximum breaking strength because it is approximately three times the measured strain of 535 lb (243 kg) and, as such, provides a reasonable measure of safety that would help prevent gear from being lost at sea during the worst conditions. Ghost gear, or gear lost at sea, presents an additional entanglement risk to whales, other marine mammals, and fish. Based on these load cell data, the need to prevent gear from being lost at sea, and the recommendation of the ALWTRT, NMFS proposes to lower the current breaking strength from 3,780 lb (1714.3 kg) to 2,000 lb (906.9 kg) for weak links at the buoy in the offshore lobster waters.

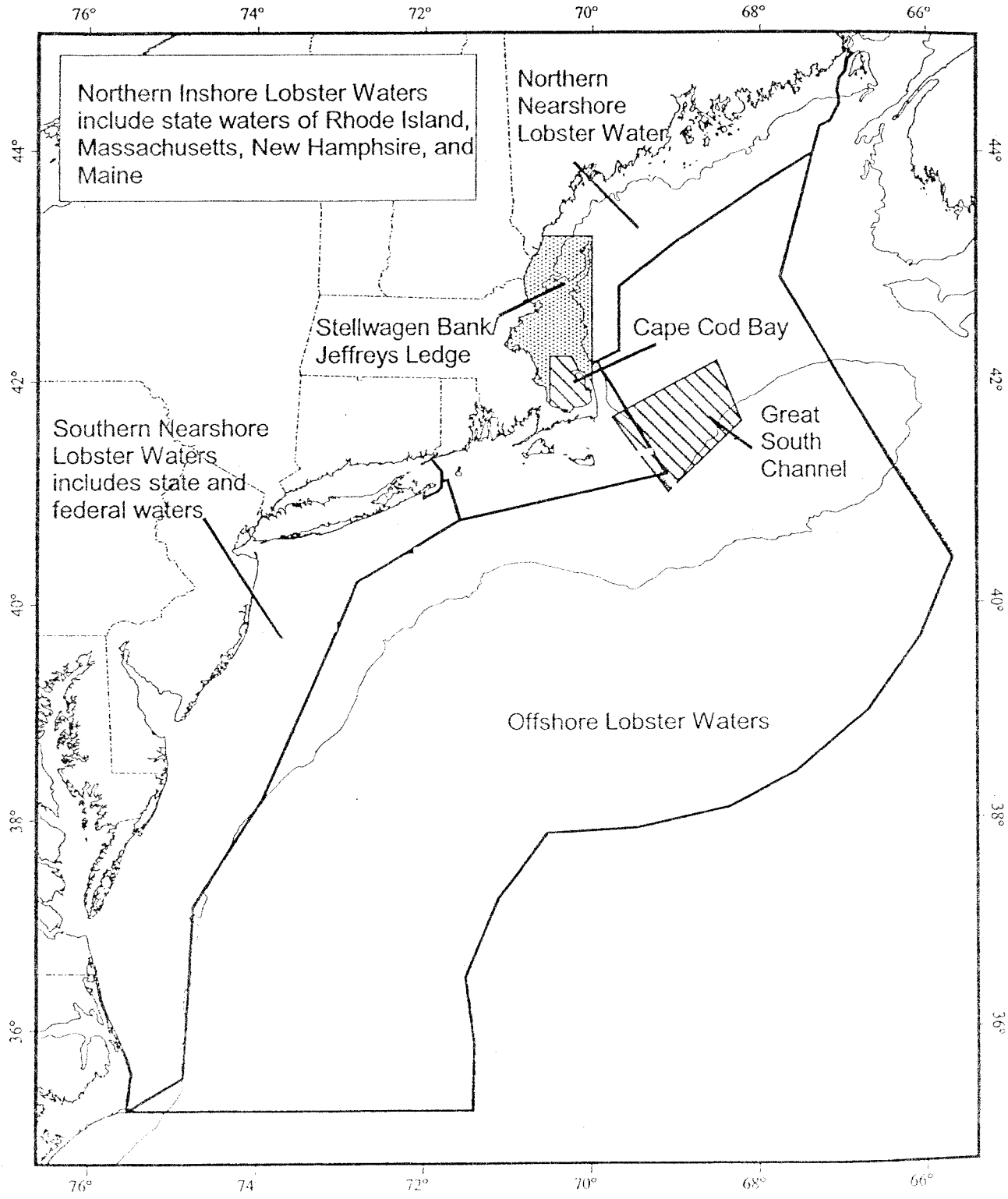
NMFS proposes to require installation of a weak link with a maximum breaking strength of 3,780 lb (1,714.3 kg) in offshore lobster trap gear between the surface system (all surface buoys, the high flyer, and associated lines) and the buoy line leading down to the trawl, based on the analysis of gear that had recently entangled a whale. On July 20, 2001, a whale watch vessel reported an entangled whale in the Jeffreys Ledge area off the coast of New Hampshire. The whale was identified as a 7-year-old male North Atlantic right whale, catalog #2427, and the Center for Coastal Studies disentangled the animal very soon after locating it. The recovered gear was identified in the fishery interaction gear analysis process as offshore lobster gear set in offshore lobster waters. The owner was contacted to determine when and where the gear was set, and how it was configured in an effort to better understand the entanglement process.

The NMFS analysis of this entanglement and the recovered gear has resulted in additional proposed gear modifications for lobster trap gear used in the offshore lobster waters, which are detailed in this proposed rule. The gear recovered during the disentanglement and the description of the owner's typical gear configuration indicates that the surface system was separated from the buoy line going to the trawl by a weak link consisting of a 1 fathom-long section of 1/2 in (1.27 cm) polypropylene line with a breaking strength of 3,780 lb (1,714.3 kg) or less. It appears that the animal may have become entangled in the surface system and exerted sufficient strain to part the 1/2–in (1.27–cm) polypropylene weak link. The presence and location of this weak link in the gear may have prevented the animal from becoming further entangled in the buoy line below the weak link.

NMFS' rationale for proposing to require lobstermen fishing in the offshore lobster waters area to install weak links in such a way that produces knotless ends in the line if the weak link were to break is the same as the rationale described in the previous section on the Southern Nearshore Lobster Waters Area.

Figure 1 shows the boundaries for the regulated lobster waters. These boundaries were effective February 21, 2001, as a result of an interim final rule published on December 21, 2000.

ALWTRP Regulated Lobster Waters



Effective February 21, 2001

Changes Proposed for the Atlantic Large Whale Take Reduction Plan for Gillnet Gear

No additional changes were recommended for gillnet fishers in Northeastern waters. However, the ALWTRT Mid-Atlantic and Southeast sub-groups recommended in 2000, that NMFS amend the ALWTRP restrictions applicable to gillnet fisheries in their respective areas.

Mid-Atlantic Coastal Waters

The Mid-Atlantic Coastal Waters Area includes coastal waters from the south shore of Long Island to the border between North Carolina and South Carolina and out to the long. 72° 30′ W. as defined in 50 CFR 229.2. The ALWTRT Mid-Atlantic sub-group recommended reducing entanglement risk by replacing the Gillnet Take Reduction Technology List, from which gillnetters must choose one gear option to abide by, with a requirement that gillnetters install buoy line weak links with a maximum breaking strength of 1,100 lb (498.8 kg), install net panel weak links with a maximum breaking strength of 1,100 lb (498.8 kg) in the center of the floatline on each net panel, and return all gillnet gear to port with their vessels or, if the gillnets are left at sea to continue fishing, secure the nets with anchors that have the holding power of at least a 22–lb (10.0–kg) Danforth-style anchor.

The proposed changes were identified by NMFS following ALWTRT sub-group meetings in 2000 and a full meeting in 2001 of the ALWTRT. There was no consensus recommendation on 600–lb (272.4–kg) versus 1,100-lb (498.8-kg) buoy and floatline weak links for anchored gillnets from the full ALWTRT meeting in June 2001. The weak link breaking strength is the same as the buoy line and net panel weak link options in the Gillnet Take Reduction Technology List in the February 1999 final rule. NMFS believes that a 1,100–lb (498.8–kg) maximum breaking strength would be consistent with the buoy and floatline weak links breaking strength currently required in the Northeast anchored gillnet fisheries. NMFS does not believe there is sufficient information available to implement a 600–lb (272.4–kg) breaking strength in the Mid-Atlantic while utilizing 1,100 lb (498.8 kg) in the Northeast. NMFS will investigate the utility of lowering this breaking strength for both the Northeast and the Mid-Atlantic through further gear research efforts.

The placement of the net panel weak link at the center of the floatline for each panel is a change from the February 1999 final rule, which required that the weak link be placed on the floatline between net panels. Weak links in the center of each 50–fathom (300–ft or 91.4–m) net panel floatline, or every 25 fathoms for longer nets, are expected to break when a whale exerts force in opposition to the resistance provided by the anchoring system and weight of the gear. The weak link would allow the floatline to part and unravel from the net mesh when a whale encounters any section of the gear. The net mesh would then be free of the stronger floatline, and a large whale would have a better chance of breaking free of the weaker monofilament mesh.

The net panel weak links are required in the center of each net panel floatline, rather than between net panels as was specified for the gillnet technology list option in the February 1999 final rule. The ALWTRT recommended changing the placement of the net panel weak links because a weak link placed at the bridle might cause a failure at a point in the gear which is critical for safe hauling of the gear and placement in the center of the net panel would reduce chances of lost gear. Furthermore, in cases where a whale hits the gear near a weak link in the floatline, a breaking point within that floatline would maximize the chance for the whale to break away from the net before becoming entangled in the mesh. Once a whale becomes entangled in the mesh, there is a greater chance that other parts of the gear including the heavier lines will contribute to the seriousness of the entanglement. This is also based on observations of the flexibility and mobility of net strings along the ocean floor, where the nets become bowed with the current rather than remain in a rigid straight line. A whale exerting force on a net string would move the net before breaking it. During that period of movement, a net without weak links is likely to wrap along either side of the whale. With a weak link at the bridle, which is much shorter than the net panel sections, there is a greater chance that a whale would come away wrapped in sections of the net.

The net panel weak link requirement contained in this proposed rule specifies a breaking strength of no more than 1,100 lb (498.8 kg). This breaking strength is a significant reduction from the floatline strength used historically in sink gillnet gear, which ranges from 1,700–lb (771.8–kg) to 2,500–lb (1,135–kg). The use of weak links is not expected to hinder retrieval of the gear, as gillnetters would be able to haul their gear by the lead line in each net panel and the full-strength bridles between the net panels.

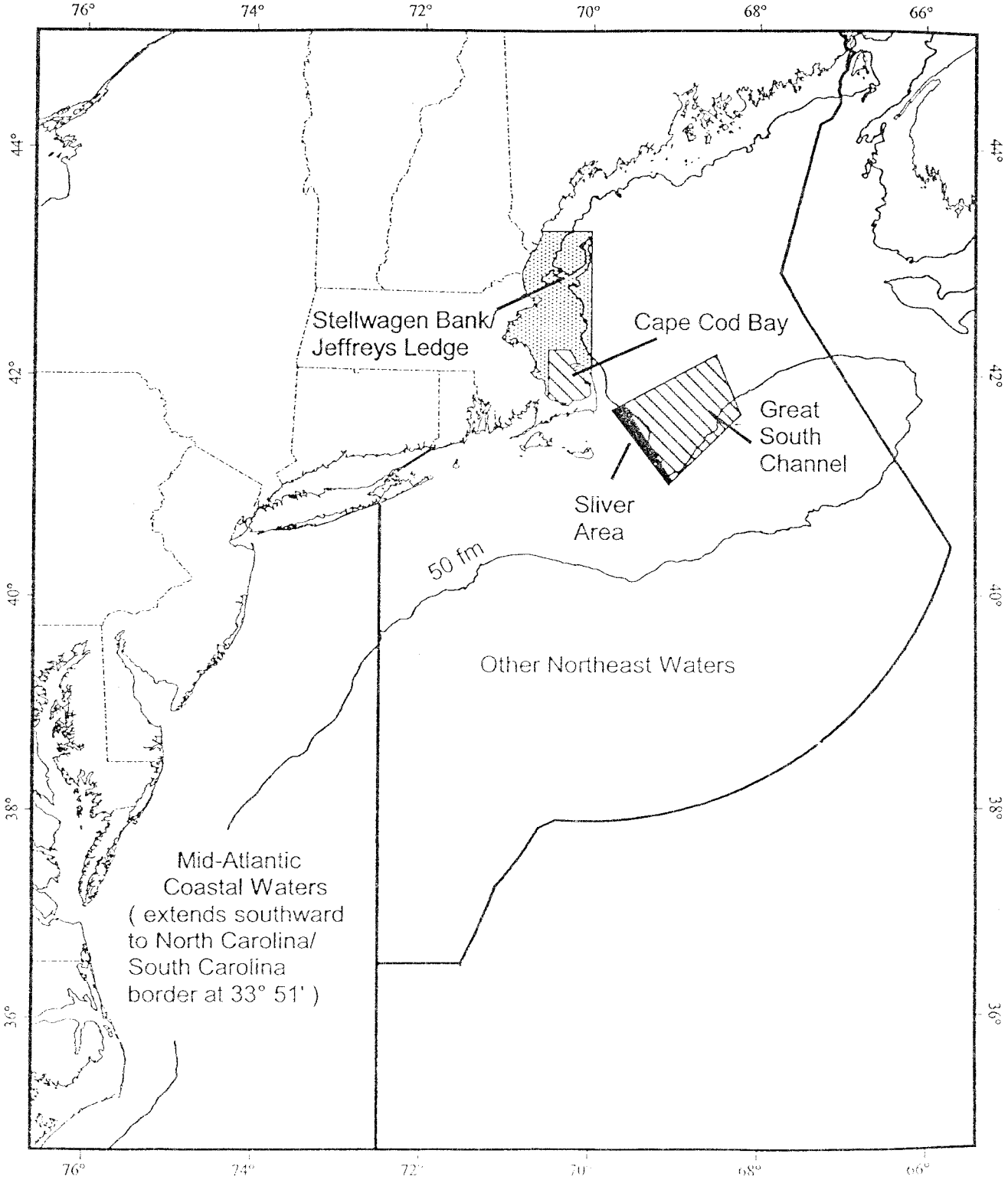
When a whale encounters a net panel, the pressure exerted by the whale will not necessarily be directly at the weak link, and the part of the floatline containing the weak link will not necessarily be in the whale's mouth. Therefore, these weak links do not need to be knotless.

The anchoring requirement was intended to create sufficient resistance to allow the net panel weak links to break when at least 1,100 lb (498.8 kg) of force is exerted by a whale on net strings of 20 or fewer net panels. The anchoring system for gillnet gear not returning to port with the vessel in the Mid-Atlantic Coastal Waters was recommended by the subgroup to allow sufficient resistence such that a whale can part the net regardless of the number of net panels.

At this time, information is not available on the minimum breaking strength, maximum number of weak links, and the location along the floatline of those weak links that will allow the gear to fish and provide some measure of protection for entangled animals. The ALWTRT requested further testing on these parameters, and the NMFS Gear Research Team has various weak link strength and floatline configurations out with commercial fishers in an attempt to assess measures available to further reduce risk to whales.

Figure 2 shows the boundaries for the regulated gillnet waters in the Northeast and Mid-Atlantic waters. These boundaries were effective February 21, 2001, as a result of an interim final rule published on December 21, 2000.

ALWTRP Regulated Gillnet Waters



Effective February 21, 2001

Southeast U.S. Restricted Area

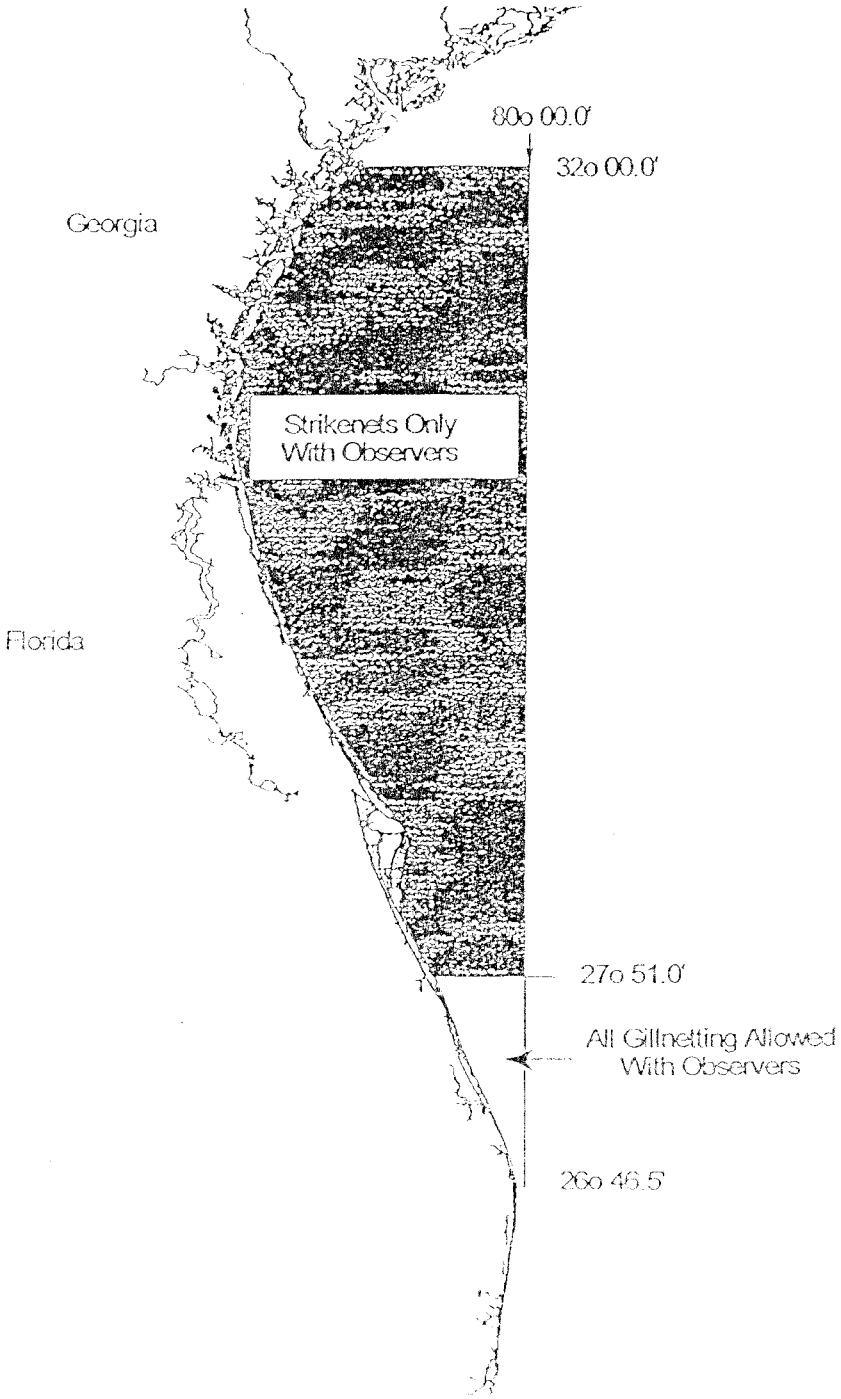
The ALWTRT Southeast sub-group discussed activities associated with the ALWTRP at their July 2000 meeting. Many of the items discussed or recommended involved measures not requiring regulatory action. The Southeast sub-group did discuss two specific regulatory items, applying Northeast gear marking requirements to the Southeast and prohibiting straight sets at night at certain times.

There was limited discussion on applying Northeast gear marking requirements to the Southeast at the June 2001 ALWTRT meeting. However, subsequent information from the NMFS Northeast Regional Office and Southeast Regional Office indicates that the current gear marking system is performing its required function. In addition, applying the Northeast gear marking requirements in the Southeast may conflict with current gear marking requirements under an existing FMP. NMFS intends at this time to leave the existing gear marking requirement in place for the Southeast U.S. Observer Area. This system is more elaborate than the Northeast gear marking scheme and, as such, may yield more information than the simplified scheme employed by the December 2000 interim final rule for the Northeast.

The second of the two regulatory items discussed by the Southeast sub-group was the prohibition of straight sets of gillnets at night between November 15 and March 31 in the Southeast U.S. Restricted Area, unless the exemption under § 229.32 (f)(3)(iii), which relates to shark gillnets, applies. A straight set is the deployment of a gillnet in a straight line, as opposed to the deployment of a gillnet in a circular manner, for example around a school of fish. Straight sets at night pose a higher level of risk of entanglement to whales, because fishers are not as actively involved with straight set gear and whales are much more difficult to spot at night due to darkness.

Figure 3 shows the boundaries for the regulated shark gillnet waters in the southeastern waters. These boundaries were effective April 1, 1999, as a result of an interim final rule published on February 16, 1999.

ALWTRP Regulated Shark Gillnet Waters



November 15 to March 31 Shark Gillnetting Restrictions

Proposed Changes to the Lobster and Gillnet Take Reduction Technology Lists

Lobster Take Reduction Technology List

The ALWTRT discussed, but did not reach consensus on, the removal of 7/16 in (1.11 cm) diameter line from the Lobster Take Reduction Technology List, which would reduce to three the number of options that lobster trap fishers in this area have to modify their gear to reduce risks of entanglement. Although the ALWTRT did not reach consensus, NMFS proposes to remove the option to utilize 7/16 in (1.11 cm) line for all buoy lines. The option of using line of a diameter of 7/16 in (1.11 cm) or less was previously adopted as part of the ALWTRP based upon the breaking strength of 7/16 in (1.11 cm) line. This strategy assumed that using a line with a consistent diameter would result in a consistent breaking strength. However, experience has demonstrated that the breaking strength of 7/16 in. (1.11 cm) line can vary dramatically and, therefore, is not an appropriate entanglement risk reduction tool. Since the December 2000 interim final rule was published, weak links have been developed and are now available commercially. These weak links, or alternative techniques (such as swivels, hog rings, and rope stapled to a buoy stick) may provide a more reliable and consistent breaking strength than using line diameter to predict breaking strength.

However, the ALWTRT is split between sub-groups on this issue. The Mid-Atlantic sub-group recommended removing the 7/16–in (1.11–cm) line option, while some members of the Northeast sub-group expressed concern regarding the loss of the 7/16–in (1.11–cm) line option for the northern inshore lobster waters area. They are concerned that weak links may not be standing up well to inshore conditions and may be showing signs of abrasion and weakening with only a single season of use. In light of this concern, NMFS proposes to delay the elimination of the 7/16–in (1.11–cm) line option for the Lobster Take Reduction Technology List until January 1, 2003, to allow additional time for the improvement and study of weak links or the development of alternatives to weak links that can meet the unique physical requirements of the northern inshore state lobster waters area. The NMFS gear research team is available to provide support in the development of alternative methods to achieve the purpose of the weak link requirement.

NMFS proposes to allow the use of neutrally buoyant line in buoy lines and ground lines as a risk reduction tool because the existing option to use sinking line for all groundlines and buoy lines is not operationally feasible in areas of hard rocky bottom. The neutrally buoyant line will provide more flexibility to fishers and facilitate the use of non-floating line in various bottom types.

Gillnet Take Reduction Technology List

NMFS proposes to amend the Gillnet Take Reduction Technology List by: (1) removing the option of using buoy line with a diameter of 7/16 in (1.11 cm) or less as a take reduction measure; and (2) requiring that weak links with a maximum breaking strength of 1,100 lb (498.8 kg) be installed in the center of the floatline of each net panel. The rationale for the option of using buoy line with a diameter of 7/16 in (1.11 cm) or less is the same as that presented in the discussion of proposed changes to the Lobster Take Reduction Technology List. The rationale for requiring that weak links with a maximum breaking strength of 1,100 lb (498.8 kg) be installed in the center of the floatline of each 50–fathom net panel or every 25 fathoms for longer panels is the same as that presented in the discussion of proposed changes for the Mid-Atlantic Coastal Waters Area. The rationale for allowing buoyline and ground lines to be composed of neutrally buoyant line is the same as that presented in the discussion of proposed changes to the Lobster Take Reduction Technology List.

Voluntary Measures

NMFS encourages fishers to use and maintain knot-free buoy lines. The ALWTRT initially recommended requiring knot-free buoy lines, but changed the recommendation from a mandatory measure to a voluntary measure because fishers need to repair and re-tie buoy lines frequently at sea. The knot-free buoy line concept is similar to the breakaway buoy concept, where the objective is to keep knots from becoming lodged in a whale's baleen or from contributing to the wrapping of line around an appendage.

In some cases, fishers prefer splices to knots, because splices are stronger. NMFS is recommending the use of splices wherever possible, because splices are not likely to increase entanglement threat. However, NMFS recognizes that connecting lines using a splice may not be practicable while gear is being hauled. NMFS encourages the splicing of line, as opposed to knot-tying, especially during seasonal gear overhauls or as new gear is added. Although concepts for devices to join lines quickly at sea have been proposed, none have been developed yet; therefore, there is currently no feasible way to join lines quickly other than knotting. NMFS will continue to investigate line connecting alternatives and may require further use of knotless lines in the future if a reasonable substitute for knots is developed.

Classification

This proposed rule refers to a collection-of-information requirement subject to the Paperwork Reduction Act, namely a gear marking requirement, and which has been approved by OMB under control number 0648-0364. The public reporting burden for this requirement is estimated to average .6 minutes per line. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20053 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the RPA, unless that collection of information displays a currently valid OMB Control Number.

As required by the Regulatory Flexibility Act, NMFS prepared an initial regulatory flexibility analysis (IRFA) for this proposed rule. A summary of that IRFA follows.

The objective of this proposed rule, which would implement additional gear modifications to protect concentrations of North Atlantic right whales published pursuant to the authority of section 118 of the MMPA, is to reduce the level of serious injury to and mortality of North Atlantic right whales in East Coast lobster trap and finfish gillnet fisheries. The impacted fishing communities include gillnet and lobster trap fishermen. The geographic range of the gear modifications will include the northern inshore, offshore, and the Mid-Atlantic water areas. The potential sizes of the fleets impacted are: the northern inshore fleet as large as 5,982 vessels, the offshore fleet as large as 172 vessels, and the Mid-Atlantic fleet as large as 625 vessels. All vessels are assumed to be small entities within the meaning of the Regulatory Flexibility Act.

The proposed rule contains no reporting, record keeping, or additional compliance requirements other than modifying lobster and gillnet gear. There are no relevant Federal rules that duplicate, overlap, or conflict with the proposed rule.

Four alternatives were evaluated for this proposed rule, including a status quo or ''no action'' alternative, the preferred altenative (PA), and two other alternatives. The No Action alternative would leave in place the existing regulations promulgated under the ALWTRP and as such would result in no additional economic burden on the fishing industry.

The proposed action is to implement the gear modifications as stated for the areas described. In the northern inshore area, the total lower and upper bound cost per vessel (compliance cost for change in gear requirements) in the lobster fleet under the PA plan is $139 and $648, respectively (Table 8.2.1 of the EA). Given there are 5,982 vessels potentially fishing lobster gear, the total lower and upper bound cost to the industyr is $832K and $3,877K, respectively.

In the northern offshore area, the total lower and upper bound cost per vessel in the lobster fleet under the PA plan is $97 and $218, respectively. Given there are 172 vessels potentially fishing lobster gear, the total lower and upper bound cost to the industry is $17K and $38K, respectively. In the southern nearshore area, there is no additional cost to the lobster fleet under the PA plan.

In the Mid-Atlantic (southern nearshore and southern offshore) under the PA plan, the average cost per sink gillnet vessel is $657 to attach weak links at the top of the buoy line, in the middle of each 50 fathom net panel, and to purchase a 22-lb (10.0-kg) Danforth anchor (Table 8.2.2). The total industry cost to the Mid-Atlantic sink gillnet fishery is $99.0K.

Finally, the total lower and upper bound industry costs to the lobster and sink gillnet fleet under the PA plan are $948K ($948 = $849 lobster + $99 sink gillnet) and $4,014 ($4,014 = $3,915 lobster + $99 sink gillnet), respectively.

The third alternative which is the non-preferred alternative (NPA-1) would consist of the PA as well as the use of full weak links at the surface and bottom of the buoy line and the reduction of floating line.

The total lower and upper bound cost per vessel in the lobster fleet under the NPA-1 plan is $5,297 and $17,841, respectively (Table 8.2.1). Given there are 5,982 vessels potentially fishing lobster gear, the total lower and upper bound cost to the industry is $31.7M and $106.8M, respectively.

In the northern offshore area, the total lower and upper bound cost per vessel in the lobster fleet under the NPA-1 plan is $50,212 and $105,849, respectively. Given there are 172 vessels potentially fishing lobster gear, the total lower and upper bound cost to the industry is $8.6M and $18.2M, respectively.

In the southern nearshore area, the total lower and upper bound cost per vessel in the lobster fleet under the NPA-1 plan is $3,411 and $10,743, respectively. Given there are 222 vessels potentially fishing lobster gear, the total lower and upper bound cost to the industry is $0.8M and $2.4M, respectively.

In the southern nearshore area, the average cost per vessel in the sink gillnet fleet under the NPA-1 plan is $1,009 if an anchor is required and $440 if an anchor is not required under the PA plan (Table 8.2.2). Given there are 357 vessels potentially fishing sink gillnet gear, the average industry cost is $225K. In the southern offshore area, the average cost per vessel in the sink gillnet fleet under the NPA-1 plan is $4,349 if an anchor is required and $3,789 if an anchor is not required under the PA plan. Given there are 100 vessels potentially fishing sink gillnet gear, the average industry cost is $469K.

Finally, the total lower and upper bound industry cost to the lobster fleet under the NPA-1 plan is $41.1M and $127.4M. The average total industry cost for the sink gillnet fleet is $694K.

The fourth alternative (NPA-2) would consist of the PA as well as buoy line removal and the reduction of floating line. The costs of that alternative are provided here in summary form.

In the northern inshore area, the total lower and upper bound cost per vessel in the lobster fleet under the NPA-2 plan is $158.1K and $517.6K, respectively (Table 8.2.1). Given there are 5,982 vessels potentially fishing lobster gear, the total lower and upper bound cost to the industry is $945.6M and $3,096.2M, respectively.

In the northern offshore area, the total lower and upper bound cost per vessel in the lobster fleet under the NPA-2 plan is $131.0K and $271.6K, respectively. Given there are 172 vessels potentially fishing lobster gear, the total lower and upper bound cost to the industry is $22.5M and $46.7M, respectively.

In the southern nearshore area, the total lower and upper bound cost per vessel in the lobster fleet under the NPA-2 plan is $73.9K and $224.3K, respectively. Given there are 222 vessels potentially fishing gear, the total lowre and upper bound cost to the industry is $16.4M and $49.8M, respectively.

In the southern nearshore area, the average cost per vessel in the sink gillnet fleet under the NPA-2 plan is $22.8K (Table 8.2.2). Given there are 357 vessels potentially fishing sink gillnet gear, the total industry cost is $8.1M. In the southern offshore area, the total cost per vessel in the sink gillnet fleet under the NPA-2 plan is $44.5K. Given there are 100 vessels potentially fishing sink gillnet gear, the average industry cost is $44.5M.

Finally, the total lower and upper bound industry cost to the lobster fleet under the nPA-2 is $984.5M and $3,192.7M. The average total cost for the sink gillnet fleet under the NPA-2 is $712,598K.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

References

International Whaling Commission (IWC). 2001. Report on the IWC Workshop on the Status and Trends in western North Atlantic Right whales. J. of Cetacean Research and Management. In press.

Kraus, S.D., P.K. Hamilton, R. D. Kenney, A.R. Knowlton, and C.K. Slay. 2000. Status and trends in reproduction of the North Atlantic Right Whale. J. Cetacean Research Management. In press.

Waring, G.T., J.M Quintal, and S. Swartz. 2000. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments - 2000. NOAA Technical Memorandum NMFS-NE-162. U.S. Department of Commerce, Northeast Fisheries Science Center, Woods Hole, MA. pp. 303.

List of Subjects in 50 CFR Part 229

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

Dated: September 26, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service 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 part 229 continues to read as follows:

Authority: 16 U.S.C. 1371 *et seq.*

2. In § 229.2, a definition of ''Neutrally buoyant line'' is added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Neutrally buoyant line means line with a specific gravity near that of sea water, so that the line neither sinks to the ocean floor nor floats at the surface, but remains close to the bottom.

* * * * *

3. In § 229.3, paragraph (k) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with gillnet gear in the areas and for the times specified in § 229.32 (b)(2), (f)(1)(i), and (f)(1)(ii) unless the gear complies with the closures, marking requirements, modifications, and other restrictions specified in § 229.32 (b)(3)(i), (b)(3)(ii), and (f)(2) through (f)(3)(iv).

* * * * *

4. Section 229.32 is amended by adding a note at the end of the section; adding paragraphs (c)(5)(ii)(B) and (f)(3)(iv); revising the heading of the introductory text of paragraph (c)(5)(ii)(A); and revising paragraphs (c)(5)(ii)(A)(2), (c)(8)(ii), (c)(9)(i), (c)(9)(iii), (c)(9)(iv), (d)(7), (d)(8), and the heading of paragraph (f) to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(A) *Weak links on all buoy lines.* * *

*

* * * * *

(*2*) The breaking strength of these weak links may not exceed 2,000 lb (906.9 kg).

* * * * *

(B) *Weak links between the surface system and buoy line.* A weak link must be utilized between the surface system (which includes all buoys, high flyers, line, and associated hardware) and the buoy line that leads to the trawl on the ocean floor. This weak link must meet the following specifications:

(*1*) This weak link must be chosen from the following list of combinations approved by the NMFS gear research program: Swivels, plastic weak links, rope of appropriate breaking strength, or other materials or devices approved in writing by the Assistant Administrator.

(*2*) The breaking strength of this weak link may not exceed 3,780 lb (1,714.3 kg).

* * * * *

(8) * * *

(ii) *Area-specific gear requirements for the restricted period*— (A) *Restricted period.* The restricted period for Southern Nearshore Lobster Waters is year round unless the Assistant Administrator revises this period in accordance with paragraph (g) of this section.

(B) *Gear requirements.* No person may fish with lobster trap gear in the Southern Nearshore Lobster Waters Area during the restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal lobster trap gear requirements in paragraph (c)(1) of this section, and the following gear requirements for this area, which the Assistant Administrator may revise in accordance with paragraph (g) of this section:

(*1*) *Buoy line weak links.* All buoy lines must be attached to the main buoy with a weak link that meets the following specifications:

(*i*) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: 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.

(*ii*) The breaking strength of this weak link may not exceed 600 lb (272.4 kg).

(*iii*) Weak links must be designed such that the bitter end of the buoy line is clean and free of knots when the link breaks. Splices are not considered to be knots for the purpose of this provision.

(*2*) [Reserved]

(9) * * *

(i) Through December 31, 2002, all buoy lines must be 7/16 inches (1.11 cm) or less in diameter.

* * * * *

(iii) All buoy lines must be comprised entirely of sinking and/or neutrally buoyant line.

(iv) All ground lines must be comprised entirely of sinking and/or neutrally buoyant line.

(d) * * *

(7) *Mid-Atlantic Coastal Waters Area*—(i) Area. The Mid-Atlantic Coastal Waters Area consists of all U.S. waters bounded by the line defined by the following points: The southern shore of Long Island, NY, at 72° 30′ W. long., then due south to 33° 51′ N. lat., thence west to the North Carolina-South Carolina border, as defined in § 229.2.

(ii) *Area-specific gear requirements.* No person may fish with anchored gillnet gear in the Mid-Atlantic Coastal Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, which the Assistant Administrator may revise in accordance with paragraph (g) of this section:

(A) *Buoy line weak links.* All buoy lines must be attached to the main buoy with a weak link that meets the following specifications:

(*1*) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(*2*) The breaking strength of these weak links may not exceed 1,100 lb (498.8 kg).

(*3*) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* All net panels must contain weak links that meet the following specifications:

(*1*) Weak links must be inserted in the center of the floatline of each 50-fathom net panel in a net string or every 25 fathoms for longer panels.

(*2*) The breaking strength of these weak links may not exceed 1,100 lb (498.8 kg).

(C) *Tending/anchoring.* All gillnets must return to port with the vessel or be anchored at each end with an anchor capable of the holding power of at least a 22–lb (10.0-kg) Danforth-style anchor.

(8) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are attached to the buoy line with a weak link having a maximum breaking strength of up to 1,100 lb (498.8 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.

(ii) Weak links with a breaking strength of up to 1,100 lb (498.8 kg) must be inserted in the center of the floatline (headrope) of each 50 fathom net panel or every 25 fathoms for longer panels.

(iii) All buoy lines must be comprised entirely of sinking and/or neutrally buoyant line.

* * * * *

(f) Restrictions applicable to the Southeast U.S. Restricted Area and the Southeast U.S. Observer Area. * **

(3) * * *

(iv) Straight sets of gillnets may not be made at night in the Southeast U.S. restricted area during the closed period described in paragraph (f)(3)(ii) of this section, except for shark gillnets exempted under paragraph (f)(3)(iii) of this section. A straight set is defined as a set in which the gillnet is placed in a straight line in the water column, as opposed to a circular set in which the gillnet is used to encircle a school or group of fish.

* * * * *

Note to § 229.32: Additional regulations that affect fishing with lobster trap gear have also been issued under authority of the Atlantic Coastal Fisheries Cooperative Management Act in part 697 of this title.

[FR Doc. 01–24590 Filed 9–27–01; 3:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010914227–1227–01; I.D. 080201E]

RIN 0468–AM40

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 67 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action is necessary to stabilize fully utilized Pacific cod resources harvested with non-trawl gear in the Bering Sea and Aleutian Islands Area (BSAI). This would be accomplished by issuing endorsements for exclusive participation in the Pacific cod non-trawl fishery in the BSAI by long-time participants. The intended effect of this action is to conserve and manage the Pacific cod resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by November 15, 2001.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (analysis) prepared for Amendment 67 are available from the North Pacific Fishery Management Council, 605 West Avenue, Suite 306, Anchorage, AK 99501; telephone 907–271–2809. Specifically, NMFS requests comments on the findings of the analysis, such as more information about the number of small entities adversely affected by this proposed rule and the magnitude of any such adverse effects.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228 or email at john.lepore@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The North Pacific Fishery Management Council (Council) prepared this fishery management plan (FMP) under the authority of the Magnuson-Stevens Act. Regulations governing U.S. fisheries and implementing this FMP appear at 50 CFR parts 600 and 679.

Background of Amendment 67

The Council recommended, and NMFS approved, the License Limitation Program (LLP) to address concerns of excess fishing capacity in the groundfish and crab fisheries off Alaska. The LLP replaced the Vessel Moratorium Program, a program implemented by NMFS to impose a temporary moratorium on the entry of new capacity in the groundfish fisheries off Alaska and crab fisheries in the BSAI and to define the class of entities that would be eligible for licenses under the LLP. The Vessel Moratorium Program expired on December 31, 1999, and fishing under the LLP began on January 1, 2000. More information on the specifics of the LLP and the problems it was designed to resolve can be found in the final rule implementing the LLP (63 FR 52642, October 1, 1998).

The LLP, as implemented on January 1, 2000, was always considered by the Council and NMFS as an initial stage in a multi-staged process designed to reduce fishing capacity in the affected fisheries. The LLP is a limited access system authorized under the Magnuson-Stevens Act that requires a person to hold a license in order to participate in the groundfish fishery. Under the original provisions of the LLP, an LLP groundfish license was specific as to the area in which a person could participate, but not as to gear or species. The Council fully anticipated that specific fisheries within the LLP complex of fisheries would need further management controls to fully respond to the effects of excess fishing capacity. One such fishery is BSAI Pacific cod harvested with non-trawl gear.

In 1996, the Council recommended Amendment 46 to the BSAI FMP. Amendment 46 allocated the total allowable catch (TAC) for BSAI Pacific cod among participants who used jig gear (2 percent), trawl gear (47 percent), and fixed gear (or hook-and-line gear and pot gear)(51 percent). Amendment 46 further split the trawl gear allocation equally between catcher vessels and catcher/processor vessels. Amendment 46 was approved by NMFS, and implemented in January 1997 (61 FR 59029, November 20, 1996).

Although Amendment 46 initiated a process to address issues surrounding the allocation of BSAI Pacific cod fisheries among various participants, it did not address all of the issues, including increased prices for Pacific cod; reduced crab guideline harvest levels; and shortened or cancelled crab seasons due to low resource abundance, which intensified the use of Pacific cod resources by participants using pot gear. This intensified use prompted the concern of long-time Pacific cod fishermen who use non-trawl gear about the potential erosion of historical harvest trends in the BSAI Pacific cod fishery in favor of more recent participants. Also, the entrance of new participants in the fisheries has raised concerns regarding the increase of competition for a fully utilized resource.

In response to this concern, the Council recommended Amendment 64. This amendment, approved by NMFS and implemented by final rule in September 2000 (65 FR 51553, August 24, 2000), further divided the 51 percent of the TAC for BSAI Pacific cod allocated to hook-and-line gear and pot gear as follows: hook-and-line catcher/processor vessels, 80 percent; hook-and-line catcher vessels, 0.3 percent; pot gear vessels, 18.3 percent; and hook-and-line or pot catcher vessels less than