

requirements under the DAM program are applicable to ALWTRP management areas north of 40° N. latitude where a DAM zone could be triggered.

#### *Lobster Trap Gear*

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

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

2. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys; and

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

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Great South Channel Restricted Lobster Area (July 1 through March 31) and Offshore Lobster Waters Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

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

2. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys; and

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

#### *Anchored Gillnet Gear*

In addition to the universal gear and gear marking requirements, fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters, Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through

March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

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

2. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys;

3. Each net panel must have a total of 5 weak links with a maximum breaking strength of 1,100 lb (498.8 kg) each. Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include 3 floatline weak links. The placement of the weak links on the floatline must be as follows: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining 2 weak links must be placed in the center of each of the up and down lines at the panel ends;

4. Fishermen utilizing gillnets within the DAM zone must have no more than one buoy line per net string. This buoy line must be at the northern or western end of the gillnet string depending on the direction of the set; and

5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth style anchor at each end of the net string.

#### **Clarification of Weak Link Requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap with SAM Areas**

NMFS includes in this proposed rule a provision clarifying that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area must have a weak link with a maximum breaking strength of 600 lb (272.4 kg) at all buoys. Prior to the SAM rulemaking, the ALWTRP regulations already required a 600 lb (272.4 kg) weak link for all lobster gear in the Northern Nearshore Lobster Waters, and it was one of a suite of required options in the Northern Inshore State Lobster Waters. Although the proposed rule for SAM discussed the relationship between the proposed SAM restrictions and the existing gear requirements within the ALWTRP, the description of the SAM lobster trap gear requirements did not explicitly articulate the weak link requirement for the portions of the

Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters overlapped by the SAM areas. NMFS noted this discrepancy in the preamble to the SAM interim final rule (67 FR 1142, January 9, 2002) and intended to correct this oversight in the interim final rule. However, although NMFS discussed these changes in the preamble of the interim final rule, NMFS inadvertently omitted this clarification from the regulatory text of the SAM interim final rule. To dispel confusion NMFS may have caused in the SAM rulemaking, this action would amend the ALWTRP regulations to state explicitly that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area must have a weak link with a maximum breaking strength of 600 lb (272.4 kg) at all buoys as part of the required SAM gear modifications.

#### **Classification**

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

This proposed rule would identify gear modifications that sufficiently reduce the risk of entanglement to right whales under the DAM program. The objective of this proposed rule, issued pursuant to section 118 of the Marine Mammal Protection Act (MMPA), is to reduce the level of serious injury and mortality of right whales in East Coast lobster trap and finfish gillnet fisheries. The small entities affected by this proposed rule are anchored gillnet and lobster trap fishermen fishing north of 40° N. latitude. Since DAM is used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. In the northeast, there are potentially 7,147 vessels fishing lobster gear and 312 vessels fishing sink gillnet gear (Bisack, 2000). However, NMFS does not expect that number of vessels to be affected by any one DAM zone because of the limited size and duration of a DAM zone. Data from aerial surveys in 2000 were used to retrospectively evaluate the use of the recommended DAM triggers. Based on the analysis of this data, six DAM zones would have been triggered in 2000. Four of the six hypothetical DAM zones would have been subsumed under the Seasonal Area Management (SAM) program and the other DAM zone would have occurred in Canadian waters, which are outside of U.S. jurisdiction. Therefore the