

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 229**

[Docket No. 030221039-3195-02; I.D. 081602B]

RIN 0648-AQ04

**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:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to identify gear modifications that sufficiently reduce the risk of entanglement to western North Atlantic right whales (right whales) under the Dynamic Area Management (DAM) program and, as such, allows NMFS to utilize the option of allowing gear with certain modifications within a DAM zone. Specifically, NMFS identifies anchored gillnet and lobster trap/pot gear modifications that could be allowed within a DAM zone. This final rule includes a provision to correct and clarify the regulations implementing the Seasonal Area Management (SAM) program with respect to lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area.

**DATES:** This final rule is effective September 25, 2003.

**ADDRESSES:** Copies of the final Environmental Assessment/Regulatory Impact Review for this action can be obtained from the ALWTRP website (see **SUPPLEMENTARY INFORMATION**). Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 or Juan Levesque, NMFS, Southeast Region, 9721 Executive Center Drive, St. Petersburg, FL 33702-2432. For additional addresses and web sites for document availability see **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS, Northeast Region, 978-281-9328 ext. 6503; or

Kristy Long, NMFS, Office of Protected Resources, 301-713-1401 ext. 171.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

Several of the background documents for the ALWTRP 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 Street, Woods Hole, MA 02543 or can be downloaded from the Internet at <http://www.wh.who.edu/psb/sar2002.pdf>. In addition, copies of the documents entitled "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" and "Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation" are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 or can be downloaded from the Internet at <http://www.nero.nmfs.gov/whaletrp/>.

**Background**

This final rule identifies acceptable gear that would sufficiently reduce the risk of entanglement to right whales and could be allowed under the DAM program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002). This final rule completes the regulatory actions planned and described in the recent amendments to the ALWTRP, which included the SAM program (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), expanded gear modifications (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002), as well as the DAM program. Details concerning the justification for and development of the rule were provided in the preamble to the proposed rule (68 FR 10195; March 4, 2003) and, therefore, are not repeated here.

**Lobster Trap and Anchored Gillnet Gear Modifications for Use in DAM Zones**

The final gear modifications to the ALWTRP DAM program are based on the SAM anchored gillnet and lobster trap/pot gear, with allowance for a second buoy line and floating line on the bottom third of each buoy line, which are described below. These requirements are in addition to the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Great South Channel Restricted

Lobster Area (July 1 through March 31), Stellwagen Bank/Jeffreys Ledge Restricted Area (lobster trap and gillnet area descriptions), Cape Cod Bay Restricted Area (lobster trap and gillnet area descriptions; May 16 through December 31), Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), Mid-Atlantic Coastal Waters (gillnet area description) and Other Northeast Gillnet Waters. If the requirements and exceptions for gear modifications in a DAM zone as provided in this final rule differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Time periods for critical habitat are incorporated to clarify when these are subject to the DAM program, which, as described (66 FR 50160, October 2, 2001; 67 FR 1142, January 9, 2002) and implemented by NMFS, are time periods when the requirements for critical habitat areas are no more conservative than the surrounding waters. Additionally, DAM gear modification 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 must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. Buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys; and
4. Fishermen are allowed to use two buoy lines per trawl string.

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