

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 1,500 lb (680.4 kg) must be placed at all buoys; and
4. Fishermen are allowed to use two buoy lines per trawl string.

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 must be made of 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 1,100 lb (498.8 kg) must be placed at all buoys;
4. Each net panel must have a total of 5 weak links each with a maximum breaking strength of 1,100-lb (498.8-kg). 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 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;
5. Fishermen are allowed to use two buoy lines per net string; and
6. 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

Details concerning the justification for and clarification of the weak link requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap with SAM Areas were provided in the preamble to the proposed rule (68 FR 10195; March 4, 2003) and, therefore, are not repeated here. NMFS includes in this final rule a provision that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlaps with a SAM area must have a weak link with a maximum breaking strength of 600-lb (272.4-kg) at all buoys.

Comments and Responses

Approximately 12 letters of comment were received during the public comment period on the proposed rule, which ended on April 3, 2003. A complete summary of the comments and NMFS' responses is provided here.

General Comments

Comment 1: One commenter expressed support for the preferred alternative because they believe it will provide the guidance necessary for fishermen to modify their gear in order to minimize impacts on marine mammals.

Response: NMFS appreciates the support and reiterates that identifying gear modifications in the final rule is necessary to complete the DAM program as an element of the Reasonable and Prudent Alternative (RPA) required under the Endangered Species Act (ESA) to protect right whales and avoid jeopardy. In addition, through the implementation of the gear modifications identified for potential use in a DAM zone, NMFS acknowledges the preference for management measures that allow fishing to continue with modified gear inside designated DAM zones while also sufficiently reducing the risk of serious injury or mortality to right whales from entanglements.

Comment 2: One commenter disagreed with the conclusion made in the proposed rule for the SAM program that the gear modifications prevent serious injury or mortality to right whales.

Response: NMFS recognizes the practical difficulties associated with identifying gear modifications designed

to sufficiently reduce the risk of serious injury or mortality to right whales. As indicated in the Final Environmental Assessments for the SAM interim final rule and this final rule, it is not feasible, in a typical scientific fashion, to conduct and evaluate experiments on right whale interactions with modified gear configurations. For obvious reasons, NMFS cannot conduct field tests or even laboratory experiments on right whales to collect data. However, NMFS is able to scrutinize past entanglements, analyze these events, and develop ways to modify gear in order to sufficiently reduce risk of serious injury and mortality from future entanglements.

Comment 3: One commenter disagrees that interactions between large marine mammals and fixed gear types, such as gillnets, have a major impact. Another commenter disagreed with the assessment that the arc created by floating line between traps in a trawl posed a threat to whales.

Response: While it is often difficult to identify the specific gear type involved in each entanglement, NMFS does have evidence that fixed gear types, such as gillnets, have an impact on large whales. In 2001, there were two confirmed and several unconfirmed entanglements of large whales where gillnet gear was recovered. For example, in February 2001, gillnet gear was recovered from an entangled humpback whale off the coast of North Carolina. In April 2001, gillnet gear was recovered from an entangled humpback whale found dead near Virginia Beach, VA.

Floating line between traps has also been implicated in large whale entanglements; NMFS has evidence that establishes the risk associated with this gear configuration. Underwater video footage of typical lobster gear with floating groundline between traps revealed that the floating groundline forms large loops in the water column between traps. Similar underwater video footage of neutrally buoyant line between traps indicated that it did not have the same vertical profile as floating line; rather, it was located on or near the bottom, thus reducing the risk of entangling a large whale. Additionally, in the SAM proposed rule (66 FR 59394, November 28, 2001), NMFS discussed an analysis of gear profiles in the Offshore Lobster Waters area, which estimated that an 85% reduction in floating line would result if floating line were replaced by sinking or neutrally buoyant line in SAM areas. Therefore, NMFS expects that by eliminating most floating line and requiring sinking or neutrally buoyant line in a DAM zone,