

a large percentage of the line within the water column would be eliminated.

Comment 4: One commenter suggested that NMFS add new mandatory provisions to all its permits or impose new mandatory regulations on fishing vessel personnel regarding marine trash and debris awareness and elimination, vessel strike avoidance, and injured/dead protected species reporting.

Response: NMFS appreciates the concerns raised by the commenter; however, these activities fall outside of the scope of this final rule under the DAM program in the ALWTRP. In addition, marine trash and debris awareness and elimination falls outside the scope for regulations promulgated under take reduction plans. Specifically, section 118 of the Marine Mammal Protection Act (MMPA), which authorizes NMFS to establish take reduction teams and develop plans for the purpose of reducing serious injury and mortality to marine mammals, is designed to address interactions between commercial fishing gear and marine mammals. Similarly, although ship strikes and the need to mitigate the risks posed by vessel traffic are important to large whale conservation and recovery, the take reduction team is established to deal solely with the interactions between marine mammals and commercial fishing. NMFS is developing a separate strategy to address ship strikes and will work with interested agencies and parties to implement that strategy. Finally, MMPA section 118 and NMFS implementing regulations have separate requirements for reporting incidental mortality and injury of marine mammals in the course of fishing operations (16 U.S.C. 1387(e) and 50 CFR 229.6) and similar requirements may be imposed under the ESA as necessary for the conservation of other protected species.

Comment 5: One commenter requested that NMFS immediately establish regulations to require all fish and shellfish traps and all gillnets in U.S. waters north of central Florida to use sinking or neutrally buoyant line for ground and buoy lines and a single buoy to mark gear.

Response: The DAM program, under which this final rule is promulgated, only applies to anchored gillnet and lobster trap gear in waters north of 40° N. latitude. Therefore, the gear modifications identified in this final rule would only be required in these waters and for these gear types in the event that a gear modification option is selected for implementation inside a DAM zone. However, NMFS and the ALWTRT have been discussing the need

for bringing other fisheries under the auspices of the ALWTRP.

Representatives from new trap/pot fisheries, such as hagfish, red crab, and black sea bass, have been added to the ALWTRT for the purpose of discussing, developing, and applying risk reduction measures to these fisheries. NMFS and the ALWTRT will continue to investigate the need to add representatives from other fisheries to the Team as warranted.

Comment 6: Several commenters encouraged NMFS to replace the DAM and SAM program with universal gear modifications to protect all large whales from entanglement.

Response: NMFS and the ALWTRT have identified “universal” or expanded gear modifications as a long term objective with the potential for replacing DAM and SAM. However, as indicated in the Biological Opinion that identified DAM, SAM, and expanded gear modifications, these three programs act as multiple management components for one RPA to avoid jeopardy to right whales. Therefore, in order to remove DAM and SAM and still avoid jeopardy, NMFS must replace these programs with management measures of at least equal or more conservation benefit to right whales. NMFS hopes that the implementation of DAM gear modification options through this final rule will help alleviate some of the hardship experienced by the fishing community that might otherwise be caused by requiring or requesting the complete removal of lobster trap/pot and anchored gillnet gear from a DAM zone while still protecting right whales.

DAM Gear Modification Comments

Comment 7: One commenter proposed that NMFS explore the feasibility of year-round breakaway gear, with in-season modifications, such as the anchoring requirement, when concentrations of large mammals are observed.

Response: NMFS and the ALWTRT have been developing and discussing alternative management measures, including year-round, “universal” or expanded gear modifications. However, under the current RPA, DAM, SAM, and additional gear modifications have been identified as multiple management components necessary to avoid jeopardy. In the meantime, NMFS will continue to work with the ALWTRT, fishermen, scientists and fishing gear manufacturers to develop and test gear modifications. NMFS will continue to discuss the need for additional gear modifications requirements under the ALWTRP with the ALWTRT.

Comment 8: Several commenters oppose the proposal to require the use of a single endline, also referred to as a buoy line. One commenter suggests allowing the use of two endlines on gillnets with Danforth-style anchors at each end to ensure the proper operation of weak links on the gear. In addition, this commenter and others felt that NMFS has failed to analyze the increased potential for gear conflicts and financial loss to fixed gear fishermen by prohibiting the use of two endlines. One commenter suggested that NMFS consider allowing fishermen to replace the second endline with a very weak buoy line for the purpose of marking the location of the gear during the 15-day DAM restricted period. Several commenters felt that this provision would lead to increased lobster gear loss because it is common for lobstermen to lose one buoy line. Finally, several commenters felt that prohibiting the use of two buoy lines may encourage fishermen to split their trawls into smaller units (i.e., to avoid increased gear conflict and gear loss), which could result in an increase in vertical lines in the water column, thereby defeating the purpose of requiring a single buoy line (i.e., to reduce the number of lines in the water). Additionally, commenters noted that two buoy lines should be allowed to minimize the risk to human safety that would result if fishermen could not haul from either end of a net string or trap trawl in adverse weather conditions.

Response: Since publication of the proposed rule, NMFS has become aware that requiring gear modifications with one buoy line in a DAM area may not necessarily result in a 50-percent reduction of vertical lines in the water column as fishermen may fish shorter trawls, which may result in the same or a greater number of buoy lines. Allowing SAM gear modifications with a second endline and one third polypropylene on the bottom third of the buoy line reduces both the potential for interaction through a significant reduction in floating line and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths. In addition, having two endlines reduces the probability of gear conflicts and lost gear. Thus, this final rule implements a DAM gear modifications option that allows fishermen to retain a second endline, which addresses both gear conflict and financial burden concerns expressed by the commenter.

Comment 9: One commenter suggested that NMFS reconsider the