

proposed prohibition of floating line because sinking and/or neutrally buoyant line is not compatible with all bottom types and all conditions.

Response: NMFS has reconsidered the prohibition on floating line in the proposed rule with respect to endlines only. In this final rule, endlines will be required to be composed entirely of either sinking and/or neutrally buoyant line except for the bottom third of the line, which may be made of floating line. Floating groundlines will be prohibited and must, therefore, be composed entirely of sinking or neutrally buoyant line. See also response to Comment 13.

Comment 10: Several commenters suggested that NMFS consider the current management measures in the Cape Cod Bay Critical Habitat Area for guidance with respect to regulating buoy lines. These regulations allow lobstermen to fish with two buoy lines on a trawl and allows for a section of floating line on the buoy line.

Response: The final rule implements a lobster gear modification option for DAM that is similar to those currently required in Cape Cod Bay from January 1 through May 15.

Comment 11: One commenter felt that it was premature for NMFS to suggest that the SAM gear modifications (e.g., the use of 600-lb (272.4-kg) and 1,100-lb (498.8-kg) weak links) have been demonstrated to prevent serious injury or mortality to right whales.

Response: See response to Comment 2.

Comment 12: Two commenters suggested that NMFS should adopt a more regional approach to developing gear modifications, which would take into account unique bathymetric features, especially those found along the coast of Maine. In addition, one of these commenters expressed opposition to the proposal for eliminating one buoy line, the prohibition on floating line on the bottom 1/3 of the endline, and the prohibition on floating groundline.

Response: NMFS is working with the ALWTRT, including the Maine Department of Marine Resources, to understand the unique bathymetric features throughout the Gulf of Maine and fishing operations in these areas. NMFS considers numerous factors when developing regulations to reduce interactions between large whales and commercial fisheries. For example, weak link requirements under the ALWTRP vary by fishery and management area. See also responses to Comments 9 and 13.

Comment 13: One commenter expressed opposition to the proposed requirement that buoy lines be

comprised of entirely sinking or neutrally buoyant line because recent research from flume-tank testing of scale models suggests that this gear requirement has little or no conservation value.

Response: Based on this recent research, NMFS has reconsidered the prohibition on floating line identified in the proposed rule with respect to endlines only. The flume-tank testing results support underwater video footage taken by NMFS and discussed in the Environmental Assessment/Regulatory Impact Review (EA/RIR), which demonstrates that allowing one-third polypropylene line on the bottom third of the buoy line does not necessarily produce a loop in the water column, due to current and tidal action on the surface system, and, therefore, would not increase risk to right whales. NMFS does believe that there is conservation value in requiring two-thirds of the buoy line to be sinking and/or neutrally buoyant line, similar to the buoy line gear modification requirement in Cape Cod Bay Critical Habitat. Thus, endlines will be required to be composed entirely of either sinking and/or neutrally buoyant line except for the bottom third of the line, which may be made of floating line.

Comment 14: One commenter expressed support for the proposed requirement that groundlines be comprised entirely of sinking or neutrally buoyant line, but suggested that NMFS allow a phase-in period for fishermen to change their gear.

Response: This final rule will be effective 30-days after date of publication in the **Federal Register**. If a DAM zone is triggered after this time and NMFS requires gear modifications in the DAM zone, fishermen will be required to change their groundlines over to sinking or neutrally buoyant line in order to continue fishing inside the DAM zone during the restricted period if their groundlines are not currently configured in this manner. NMFS understands that some fishermen are already using sinking or neutrally buoyant line in their groundline.

Comment 15: One commenter asked NMFS to consider allowing floating endlines because the free end of the rope would be at the surface and would allow the fishermen to access the line more easily than sinking or neutrally buoyant line.

Response: The final rule will allow fishermen to use floating line on the bottom third of the endline. Under the regulations implementing the ALWTRP, gillnet and lobster trap fishermen are prohibited from having any portion of the buoy line that is directly connected

to the gear at the ocean bottom from floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

Rulemaking Process Comments

Comment 16: One commenter felt that the 30-day comment period was too short and should be extended for an additional 30 days.

Response: NMFS considers the 30-day comment period on the DAM gear modifications proposed rule appropriate in light of the need to complete the DAM program as it was intended when initially promulgated in 2002. Because the DAM gear modifications proposed rule is an amendment to the already established DAM program, NMFS considers a 30-day comment period sufficient.

Comment 17: One commenter felt that NMFS did not consider enough options in the proposed rule and recommends additional options, such as the gear modifications accepted in Cape Cod Bay during the high use period or the prohibitions in place in the Great South Channel.

Response: An alternative with gear modifications similar to those currently implemented in Cape Cod Bay was analyzed as an option in the proposed rule. That alternative would allow fishermen to retain a second endline, and allow each endline to be comprised entirely of sinking or neutrally buoyant line except for the bottom third, which may be floating line. Based in part on comments received, NMFS is now adopting this option and it will be implemented through this final rule.

DAM Implementation Comments

Comment 18: One commenter felt that NMFS has failed to implement DAM properly and that, in the instances when DAM zones have been declared, the request for voluntary action alone is insufficient.

Response: In its implementation of the DAM program, NMFS has acted in accordance with the DAM rule and internal protocols designed by NMFS to respond to DAM triggers.

Comment 19: One commenter felt that it is unrealistic to require fishermen to modify gear within 48 hours of implementing a DAM zone.

Response: NMFS appreciates the time and effort involved in hauling fishing gear and modifying it in an area designated for DAM. NMFS also understands that some fishermen are already using sinking or neutrally buoyant line in their groundline.