

proposed rule supports underwater video footage taken by NMFS and discussed in the EA/RIR. This information indicates that, due to current and tidal action on the surface system, allowing one-third polypropylene line on the bottom third of the buoy line does not typically produce a loop in the water column, and, therefore, does not increase risk to right whales.

3. The option selected in this final rule will implement SAM gear modifications with two endlines (buoy lines) and floating line on the bottom third of each endline. These are similar gear modifications required under the ALWTRP in Cape Cod Bay Critical Habitat during the high use time period for right whales (January 1 - May 15). NMFS believes that this gear, which is currently required in a critical habitat area during the time period when whales occur in the area, sufficiently reduces the risk of entanglement to right whales.

4. NMFS considered and rejected an alternative (NPA 2) that would implement SAM gear modifications with two endlines (buoy lines) and require that the buoy lines be composed entirely of sinking or neutrally buoyant line. NMFS rejected this alternative because information received during the comment period supports preliminary investigations by NMFS, which demonstrates that due to current and tidal action on the surface system, allowing some floating line on the buoy line does not typically produce a loop in the water column and, therefore, would not increase risk to right whales.

NMFS has taken steps to minimize the economic impact on small entities through this final rule by establishing the option of utilizing gear modifications rather than completely closing DAM areas.

NMFS received two public comments relating to the economic impacts of this final rule. These comments were considered by NMFS before it approved this final rule and are summarized by NMFS in the "Comments and Responses" section of the preamble to this final rule, as comment/response number eight. Changes to the rule were made, in part, as a result of these and other public comments.

The small entities affected by this final 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 SAM program and the other DAM zone would have occurred in Canadian waters, which are outside of U.S. jurisdiction. Therefore, the impacts were assessed with respect to one hypothetical DAM zone from June 20 to July 6, 2000. For example, based on 2000 right whale sightings data and 2000 VTR data from June 20th to July 6th, the final rule would have affected 45 lobster and sink gillnet vessels (29 lobster vessels and 16 sink gillnet vessels), which represents 0.4 percent of the vessels (0.004=29/7,147 lobster vessels) associated with the lobster fleet and 5.1 percent of the vessels (0.051=16/312 sink gillnet vessels) associated with the sink gillnet fleet in the northeast.

This final rule contains no reporting, recordkeeping, or other compliance requirements. NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this final rule is consistent with the enforceable policies of the approved coastal management program for that state.

This final rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments. No comments on the federalism implications of the proposed action were received in response to this notification. However, two commenters did respond on the federalism implications during the comment period for the proposed rule. The comment is characterized and responded to by NMFS in the "Comments and Responses" section of the preamble to this final rule, as comment/response number twenty. No changes to the rule

were made as a result of the comment received.

This final rule would also clarify that vessels in Northern Inshore State and Northern Nearshore Lobster Waters must install and use a 600 lb (272.4 kg) weak link at each buoy when fishing in SAM West during the time it overlaps the Northern Inshore State and Northern Nearshore Lobster Waters. The impacts of this requirement on small entities fall within the scope of the regulatory flexibility analyses performed in conjunction with the original SAM proposed and interim final rules. Among other requirements, the regulations implementing the ALWTRP currently require lobster trap fishermen in Northern Nearshore Lobster Waters to attach a weak link at the buoy with a breaking strength of 600-lb (272.4-kg) or less, and also includes this same weak link requirement as an option from the Lobster Take Reduction Technology List for Northern Inshore State Lobster Waters. Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(a) and (c), no further analysis is required. Copies of the SAM EA/RIR are available upon request (see ADDRESSES).

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.32, paragraph (g)(3)(iii)(B) is revised and (g)(4)(i)(B)(2)(ii) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

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(g) * * *

(3) * * *

(iii) * * *

(B) Allow fishing within a DAM zone with anchored gillnet and lobster trap gear, provided such gear satisfies the requirements specified in paragraphs (g)(4)(i)(B)(1) and (g)(4)(i)(B)(2) of this section, except that a second buoy line