

captive rail shippers to utility customers, favoring an approach that conforms to Generally Accepted Accounting Principles (GAAP), and determining that removing the effect of deferred taxes led to a more accurate representation of railroad profitability. *See id.* at 272–75; *Consol. Rail Corp. v. United States*, 855 F.2d 78, 93 (3rd Cir. 1988) (affirming the ICC’s decision and finding that the “adjustment of its formula in the interests of accuracy is rational”). Does the ICC’s reasoning for adopting the utility method remain valid, specifically with respect to analogizing captive shippers to utility customers, determining whether the utility method continues to conform with GAAP today, and finding that the utility method led to a more accurate representation of railroad profitability?

Additionally, the Joint Carriers will be requested to file workpapers sufficient to replicate the analysis underlying their proposals and to make those workpapers available, upon request, to other participants in this proceeding, under an appropriate protective order.

Interested persons may file comments by March 1, 2021. If any comments are filed, replies will be due by March 31, 2021.

It is ordered:

1. A rulemaking proceeding is initiated, as discussed above.
2. Comments are due March 1, 2021; replies are due March 31, 2021.
3. The Joint Carriers are requested to file workpapers sufficient to replicate the analysis underlying their proposals and to make those workpapers available, upon request, to other participants in this proceeding, under an appropriate protective order.
4. Notice of this decision will be published in the **Federal Register**.
5. This decision is effective on its service date.

Decided Date: December 22, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Andrea Pope-Matheson,
Clearance Clerk.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229 and 697

[Docket No. 201221–0351]

RIN 0648–BJ09

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan to reduce the incidental mortality and serious injury to North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), and humpback whales (*Megaptera novaeangliae*) in northeast commercial lobster and crab trap/pot fisheries to meet the goals of the Marine Mammal Protection Act and the Endangered Species Act. In addition, this action also proposes a small revision to Federal regulations implemented under the Atlantic State Marine Fisheries Commissions’ Interstate Fishery Management Plan for Lobster to increase the maximum length of a lobster trap trawl groundline. This action is necessary to reduce the risks to North Atlantic right whales and other large whales associated with the presence of fishing gear in waters used by these animals.

DATES: Submit comments on or before March 1, 2021.

Public Hearings: Eight or more remote public meetings will be held during the public comment period. See **ADDRESSES** to obtain public hearing notification details.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2020–0031, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0031, click the “Comment Now!” icon and complete the required fields, and enter or attach your comments.

Instructions: All comments received that are timely and properly submitted

are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us.

Oral Comments: Remote public meeting access information will be posted on the Plan website fisheries.noaa.gov/ALWTRP or contact Colleen Coogan for information on locations and dates. Contact information below.

Copies of this action, including the Draft Environmental Impact Statement (DEIS) and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DEIS/RIR/IRFA) prepared in support of this action, are available via the internet at <https://www.regulations.gov/> or by contacting Colleen Coogan at the contact information below.

Several of the background documents for the Plan and the take reduction planning process can be downloaded from the Plan website. Copies of the DEIS/RIR/IRFA for this action can also be obtained from the Plan website. Information on the Decision Support Tool and Co-Occurrence model used to support the development and analysis of the proposed regulations can be found in appendices to the DEIS. The complete text of current regulations implementing the Plan can be found in 50 CFR 229.32 or downloaded from the Plan’s website, along with outreach compliance guides to current regulations. The complete text of current regulations implementing the Lobster Plan can be found at 50 CFR part 697.

FOR FURTHER INFORMATION CONTACT: Colleen Coogan, NMFS, Greater Atlantic Regional Fisheries Office, 978–281–9181, Colleen.Coogan@noaa.gov.

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Background

The Atlantic Large Whale Take Reduction Plan (ALWTRP, or Plan) was originally developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA, 16 U.S.C. 1387 to reduce the level of mortality and serious injury of three stocks of large whales (fin, humpback, and North Atlantic right) interacting with Category I and II fisheries. Under the MMPA a strategic stock of marine mammals is defined as a stock: (1) For which the level of direct human-caused mortality exceeds the Potential Biological Removal (PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 (ESA) within the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA or is designated as depleted under the MMPA (16 U.S.C. 1362(19)). When incidental mortality or serious injury of marine mammals from commercial fishing is over the PBR level, NMFS convenes a take reduction team made up of stakeholders from the fishing industry, fishery management councils and commissions, state and Federal resource management agencies, the scientific community and conservation organizations.

The Atlantic Large Whale Take Reduction Team (ALWTRT or Team) was established in 1996 and is made up of 60 members, including about 22 trap/pot and gillnet fishermen or fishery representatives. Because both right whales and fin whales are listed as endangered, they are considered strategic stocks under the MMPA. Due to population growth, in 2016 certain stocks of humpback whales, which are taken in the Atlantic Category I and II fisheries regulated under the ALWTRP, are no longer listed as endangered or threatened under the Endangered Species Act (81 FR 62259). However, although they are not currently a strategic stock, they continue to be included in the Plan because they are taken in Category I fisheries and will continue to benefit from Plan requirements and proposed revisions.

Specific Category I and II fisheries addressed by the Plan include the Northeast sink gillnet, Northeast drift gillnet, Northeast anchored float gillnet, Southeast Atlantic gillnet, Mid-Atlantic gillnet, Southeastern U.S. Atlantic shark gillnet, Atlantic mixed species trap/pot,

Atlantic blue crab trap/pot, and Northeast/Mid-Atlantic American lobster trap/pot. Proposed modifications for this rulemaking are limited in scope to the crab and trap/pot fisheries in the Northeast Region Trap/Pot Management Area (Northeast Region). The Northeast Region encompasses those waters where year-round trap/pot measures are required as described in 50 CFR 229.32. This area includes the Northern Inshore State Trap/Pot Waters, the Northern Nearshore Trap/Pot Waters Areas, the Massachusetts Restricted Area, the Great South Channel Restricted Trap/Pot Area, the Jordan Basin, Jeffreys Ledge, and Stellwagen Bank Restricted Areas and the northeast Offshore Trap/Pot Waters Area that are within the area bounded on the west by a straight line running south from the coast at 41°18.2' N latitude, 71°51.5' W longitude to 40°00' N latitude, and then bounded on the south by a line running east along 40°00' N latitude to the eastern edge of the Exclusive Economic Zone (EEZ) (Figure 1).

The background for the take reduction planning process and initial development of the Plan is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules that implemented the original plan.

Since its 1997 implementation, the Plan has been modified several times to reduce the risk of mortality and serious injury of large whales incidentally taken in commercial sink gillnet and trap/pot gear. The most recent final rule was published in May 2015 (80 FR 30367, May 28, 2015). Because of the declining population and the persistent incidental entanglement mortalities and serious injuries above the stock's PBR, Plan modifications have, and continue to be, directed primarily at reducing the risk of commercial fisheries on the North Atlantic right whale.

Right Whale Population Decline

In a peer-reviewed scientific paper published in 2017, Pace *et al.* (see References section at end of this preamble), confirmed that due to decreased calving rates and increased mortality, much of it unseen, the North Atlantic right whale population had been in decline since 2010 (Pace *et al.* 2017). Seventeen right whale mortalities were documented in 2017, causing NMFS to declare an Unusual Mortality Event, which continues through 2020. Although most right whale mortalities in 2017 occurred in Canadian waters and not all were confirmed to be entanglement related, three mortalities first seen in U.S. waters exhibited signs

of entanglement. The evidence of a declining population exacerbated by high mortalities caused NMFS to convene subgroups of the ALWTRT in early 2018 to investigate the feasibility of risk reduction measures. A meeting of the full Team was held in October 2018 to develop recommendations for modifying the Take Reduction Plan.

As described in detail in Chapter 3 of the DEIS prepared in support of this action and very briefly below, the location and exact fishery in which each entanglement incident occurs can rarely be determined. However, over 95 percent of vertical buoy lines fished along the U.S. East Coast in waters not currently exempt from Plan requirements are fished by the lobster and Jonah crab trap/pot fishery—93 percent within the Northeast Region. For this reason and given the magnitude of the issue, NMFS is addressing this issue in phases to expedite rulemaking. The initial phase focused the scope of the Team meetings on developing recommendations for the Northeast Region lobster and Jonah crab trap/pot fisheries. In 2021, the ALWTRT will be asked to recommend modifications to the Take Reduction Plan to address risk in the remaining fixed gear fisheries that use buoy lines, including other trap/pot fisheries and gillnet fisheries coastwide. Table 2.3 in the DEIS provides additional information supporting prioritizing the lobster and Jonah crab trap/pot fisheries in the Northeast Region first.

Team members submitted risk reduction proposals for the October 2018 in-person ALWTRT meeting. The lack of agreement on whether or how much risk reduction was necessary, or metrics to compare the wide range of proposal elements, challenged the Team's ability to develop recommendations. In anticipation of a spring 2019 meeting, the Team created workplans for NMFS identifying data needs to support decision making on Plan modification recommendations.

While the MMPA establishes PBR as a goal for take reduction, the Team identified the need for a risk reduction target that better described what their recommendations should achieve. NMFS estimated that to reduce serious injury and mortality below PBR, entanglement risk across U.S. fisheries needs to be reduced by 60 to 80 percent. There is much uncertainty regarding the source of entanglement mortality to the North Atlantic right whale population. There is no gear present or retrieved from most documented incidents of dead or seriously injured right whales. When gear is retrieved, it can rarely be identified to a fishery or to a location.

For the years 2009 through 2018, an average of five entanglement-related serious injuries and mortalities a year were observed. Only 0.2 a year could be attributed with certainty to U.S. fisheries and only 0.7 a year to Canadian fisheries. An annual average of four documented incidental entanglement mortalities and serious injuries could not be attributed to a country.

NMFS' has produced *Guidelines for Assessing Marine Mammal Stocks* to address how to consider PBR for transboundary stocks if certain information is available. Those Guidelines specify that in transboundary situations where a stock's range spans international boundaries or the boundary of the U.S. Exclusive Economic Zone (EEZ), the best approach is to establish an international management agreement for the species and to evaluate all sources of human-caused mortality and serious injury (U.S. and non-U.S.) relative to the PBR for the entire stock range. In the interim, if a transboundary stock is migratory and it is reasonable to do so, the fraction of time the stock spends in U.S. waters should be noted, and the PBR for U.S. fisheries should be apportioned from the total PBR based on this fraction. For non-migratory transboundary stocks (e.g., stocks with broad pelagic distributions that extend into international waters), if there are estimates of mortality and serious injury from U.S. and other sources throughout the stock's range, then PBR calculations should be based upon a range-wide abundance estimate for the stock whenever possible.

Therefore, if a stock spends half its time in U.S. waters, PBR would be divided by two, resulting in a U.S. PBR for right whales of 0.5. Thus, the U.S. fishery related mortality would need to be reduced to below 0.5 (instead of 0.9 as is currently the goal). The Atlantic Scientific Review Group (established under MMPA sec. 117) that advises NMFS on Stock Assessment Reports, including PBR calculations, does not support this approach yet because we do not have sufficient information to apportion time spent in U.S. versus Canadian waters. Therefore, the U.S. target goal remains 0.9; however, NMFS did consider the relative threat including the time right whales spend in U.S. and Canadian waters when apportioning the unattributed entanglement incidents to create the risk reduction target, as described below.

For the purposes of creating a risk reduction target, NMFS assigned half of these right whale entanglement incidents of unknown origin to U.S. fisheries. Under this assumption, a 60

percent reduction in serious injury or mortality would be needed to reduce right whale serious injury and mortality in U.S. commercial fisheries, from an annual average of 2.2 to a PBR of 0.9 per year.

The upper bound of the risk reduction target (80 percent) considered estimated but unseen right whale mortalities, generated by a new population model (described in Hayes *et al.* 2019). Because all observed mortalities that can be attributed to a source have been caused by either entanglements or vessel strikes (except for some natural neonate mortalities), estimated non-observed mortalities are likely caused primarily by entanglements and vessel strikes. However, there is no way to definitively apportion unseen but estimated mortality across causes or country of origin (United States or Canada). For the purposes of developing a conservative target, NMFS assumed that half of the unseen mortalities occurred in U.S. waters and were caused primarily by incidental entanglements.

However, given the additional sources of uncertainty in the 80 percent target, as well as the challenges achieving such a target without large economic impacts to the fishery, the Take Reduction Team focused on recommendations to achieve the lower 60 percent target.

Additionally, to support the April 2019 Team meeting, the NMFS Northeast Fisheries Science Center created a preliminary decision support tool (DST): A model for analyzing and comparing how various proposal elements contributed toward the target risk reduction.

Both the target risk reduction and the DST generated a common understanding of the scope of measures that NMFS determined were necessary to reduce mortality and serious injury to below the PBR level for right whales. After some discussion, there was general agreement that risk reduction should be shared across jurisdictions so that no one state or fishing area would bear the bulk of the restrictions. This encouraged adoption of measures across the Northeast Region that would be resilient to changes in North Atlantic right whale distribution within the region. All but one Team member agreed that NMFS should move forward on a framework of recommended modifications to achieve 60 percent risk reduction. The dissenting Team member did not believe that the recommended modifications were sufficient to achieve PBR. The Team's recommendations were essentially a framework, largely dependent on extensive buoy line reduction goals and expansive

requirements to use weak rope or weak insertions with breaking strengths of 1,700 lbs. (771 kgs.) or less that would allow large whales to break free of gear before a serious injury or mortality can occur (Knowlton *et al.* 2016).

In acknowledgement of the regional diversity of the fisheries, New England states sought and were given the lead in developing measures and implementation details related to the Team's near-consensus recommendation. Maine, New Hampshire, Massachusetts, and Rhode Island conducted public meetings before and after drafting measures. NMFS also worked closely with the Team members that represent the Atlantic Offshore Lobster Association on measures for the northeast Offshore Trap/Pot Waters Area, widely referred to as Lobster Management Area (LMA) 3. NMFS conducted its own scoping in August 2019 (84 FR 37822, August 2, 2019), receiving over 130 unique written comments as well as over 89,000 form emails generated by about a dozen campaigns. Oral comments were also collected during eight public meetings attended by over 800 stakeholders. The measures proposed in this rule are drawn largely from proposals received from New England states. Those proposals can be found in Appendix 3.2 of the DEIS. As described in the DEIS associated with this action, some Plan modifications in state waters will be implemented by Maine and Massachusetts under state laws and so are not included in the proposed Federal measures. Additionally, some measures proposed by the states for this rulemaking were not adopted in the regulations proposed here because they were inconsistent between adjacent states. Public comments received during scoping were considered throughout the development of the DEIS and proposed rule (Appendix 3.3 of the DEIS).

It should be noted that a draft population estimate developed by the North Atlantic Right Whale Consortium for their October 2020 meeting indicates that the right whale population has declined further, to about 366 right whales as of January 2019. Further peer review of this preliminary estimate is anticipated during Scientific Review Group meetings in early 2021 in preparation for an updated stock assessment. The updated stock assessment information along with other updates and analyses will be considered in drafting the final rule and environmental impact statement.

Summary of Proposed Changes

NMFS proposes changes for lobster and crab trap/pot gear in the Northeast

Region. The proposed measures detailed below seek to reduce large whale entanglement largely through risk reduction measures consistent with the April 2019 Team recommendations, which can be found in Table 3.1 in the DEIS. The proposed changes fall into four primary categories: (1) Gear modifications to reduce the number of vertical lines; (2) seasonal restricted areas that allow ropeless fishing but would be seasonally closed to fishing with persistent buoy lines; (3) gear modifications to include replacement of buoy lines with weak rope or weak insertions placed in intervals in buoy lines; and (4) additional gear marking and expansion of gear marking requirements throughout the Northeast Region.

Gear configuration changes to reduce line numbers include increases to the minimum number of traps per trawl (trawling up) in varying degrees related to distance from shore and area fished. In LMA 3, an extension of the maximum trawl length (distance between endlines) is also proposed to accommodate the increase in traps per trawl proposed for that area. Modified gear configuration to require weak rope in buoy lines or weak insertion at prescribed intervals in buoy lines are proposed across the Northeast Region crab/lobster fisheries. An alternative to allow fishermen the option of moving the weak link at the buoy connection to the surface system connect below the buoy is also proposed.

We are co-proposing three alternatives, as described in more detail below, for consideration concerning seasonal restricted areas. Under the first alternative, analyzed in the DEIS, we propose two new seasonal restricted areas that would be open to harvest of lobster and Jonah crab using ropeless fishing technology that does not require the use of persistent buoy lines, as well as changes to existing Northeast Region seasonal restricted areas to allow fishing in those areas with ropeless technology. Northeast state-specific gear marking modifications are also proposed. Under the second alternative, there would be only one new seasonal restricted area south of Cape Cod and Nantucket Island. Under the third alternative, NMFS is co-proposing provisions under which the imposition of seasonal restrictions on fishing in an area proposed for seasonal restrictions in LMA1 offshore of Maine would be triggered only if certain determinations are made in the future. We are soliciting comment on the relative merits of the three co-proposed approaches, including comment concerning the factual justifications for each approach,

the legal adequacy of each approach, and the impacts of each approach on fishermen and other affected stakeholders.

In addition to the proposed Federal regulatory measures reflected in the proposed rule, modifications to the Plan to achieve at least a 60 percent risk reduction includes some risk reduction measures that will be implemented by the states of Maine and Massachusetts in exempted or state waters. Specifically, in waters currently exempted from regulations under the ALWTRP, the Maine Department of Marine Resources (MEDMR) will require the use of a weak insertion that breaks at 1,700 lbs. (771 kgs.) or less halfway down the buoy line. Maine has already implemented gear marking requirements consistent with gear marking modifications proposed here. The gear marking changes in Maine become effective September 1, 2020 for all Maine lobster fishermen, including those in Maine exempted waters. The Massachusetts Department of Marine Fisheries (MADMF) will continue their recent practice of extending the state waters closure of the Massachusetts Restricted Area into May until surveys demonstrate right whales have left the area. The DEIS includes an analysis of the risk reduction of the Maine weak insertions and the Massachusetts closure of the state waters of the Massachusetts Restricted Area because they contribute to the required risk reduction. The economic impacts of state measures are not included in the economic analysis of the Federal rulemaking, however. Massachusetts will also restrict buoy line diameters to no greater than $\frac{3}{8}$ inch (0.95 cm) within state waters to restrain the introduction of larger diameter line into the fishery. Even $\frac{3}{8}$ inch (0.95 cm) diameter rope can break at strengths much greater than 1,700 lbs; therefore, while this measure may contribute to future risk reduction by constraining line diameter, that cannot be assumed, and it is difficult to estimate a quantitative risk reduction.

As described fully in Chapter 3 of the DEIS, there are three categories of measures that contribute toward the target 60 percent risk reduction relative to the 2017 baseline:

- The proposed measures in this rulemaking
- the risk reduction measures that will be implemented by Massachusetts and Maine, and
- the lobster fishery management measures in LMA2 and LMA3 that have been implemented or are on a parallel regulatory track with ALWTRP modifications

The measures in this proposed rule were selected because they include those developed by Maine, Massachusetts, and to a lesser extent Rhode Island after extensive stakeholder outreach, supplemented by additional proposed measures and estimated by the DST to, together with the state and existing and anticipated Federal fishery management measures, achieve the 60-percent risk reduction target. Additional analyses using a co-occurrence model developed by IEC Inc. for NMFS demonstrated that proposed plan modifications should reduce the co-occurrence of North Atlantic right whales with lobster and crab buoy lines in the Northeast Region by about 69 percent.

Estimating the risk reduction of the weak insertion measures is more difficult. Nearly all Northeast lobster and crab trap/pot buoy lines would be modified with weak insertion. However, following the state proposals, the proposed rule would not require the insertions at intervals of every 40 feet (12.2 m), which was discussed by the Team as the interval needed to ensure it is equivalent to weak rope. The depth of the lowest weak insertion is also significant, as a whale that encounters a line above the lowest weak insertion can break away from the trawl, reducing the burden of gear on the whale. The risk reduction analysis takes an average of a lower bound of risk reduction estimate that compares the number of insertions to the number that would be required to be equivalent to weak rope and an upper bound estimate that considers the amount of rope above the lowest weak insertion to be weak. By this estimate, the proposed weak rope measures would modify nearly 26 percent of the rope in buoy lines to break at 1,700 lbs. (771 kgs.) or less.

The economic analysis does not estimate the number of vessels affected under the Maine measures within Maine exempted waters. Beyond the Maine exemption area, 3,970 vessels would be impacted, with first year compliance costs estimated at \$6.9 million to \$15.4 million (DEIS Table 6.22). Over the first six years (selected as the average span of time between amendments and consistent with buoy line replacement timing), there will continue to be costs associated with catch losses due to trawl up and closure requirements. The average annual cost in those out years is estimated to be \$5.7 million to \$12.3 million at a three percent discount rate. If Maine and Massachusetts do not implement the state measures identified in their proposals, and upcoming LMA3 aggregated trap measures are not finalized, further modifications to the

Plan would be required to achieve at least the 60 percent target risk reduction in the Northeast Region lobster and Jonah crab trap/pot fisheries to reduce mortality and serious injury to below PBR for North Atlantic right whales. Compliance costs would increase if states did not take these actions and NMFS were to include in Federal regulation the Maine exemption area measures and the extension of the Massachusetts Restricted Area in state waters. As noted above, we are co-proposing three alternatives for consideration concerning seasonal restricted areas. As the first alternative, NMFS proposes two new seasonal restricted areas that would restrict buoy lines but would be open to ropeless fishing; that is, harvesting lobster and Jonah crabs would be allowed using trap/pot trawls that would be retrieved without the use of persistent buoy lines. The purpose of these restricted areas would be to achieve risk reduction and reduce mortalities and serious injuries to below PBR for right whales when combined with the other proposed measures described in this rulemaking. The addition of restricted areas open to ropeless fishing was not included in the ALWTRT framework recommendations, but a seasonal closure south of Cape Cod and Nantucket was proposed by the Commonwealth of Massachusetts to increase risk reduction in southern New England. A restricted area open to ropeless fishing in LMA1 was not included in any state proposal but is proposed here at § 229.32(c)(6)(ii) to achieve sufficient risk reduction in the northern Gulf of Maine.

While NMFS has included both seasonal restricted areas in the proposed regulatory text below, and analyzed them in the DEIS, NMFS has not yet made a final determination as to whether the LMA1 closure is necessary to meet the goal of a 60 percent risk reduction. Accordingly, NMFS is co-proposing two additional alternative options regarding this issue, and is seeking public comment as set forth below:

Alternative 1–A (second co-proposed alternative): Not Including the LMA1 Seasonal Restricted Area.

NMFS is seeking comment on the option to not include the LMA1 seasonal restricted area in the final rule. Commenters that believe this additional restricted area is not warranted to achieve PBR are encouraged to provide specific information or analysis in support of not including the restricted area in the final rule. If NOAA receives information indicating that we can achieve the 60 percent risk reduction without the restricted area, we would

consider not including the restricted area in the final rule. Additionally, if commenters believe that information will be available after issuance of the final rule on this topic, commenters should articulate the nature of that information, describe how the information might affect the decision, and propose a mechanism for evaluating that information in determining whether or not to continue with the restricted area.

Alternative 1–B (third co-proposed alternative): Implementing the LMA1 Seasonal Restricted Areas Only If Certain Triggers are Met.

NMFS is seeking comment on a proposal to provide that the Regional Administrator may implement the LMA1 closure only if certain triggers are met in the future. This option would require the Regional Administrator to examine the available information in advance of October in any given year and determine whether the closure is necessary. Specifically, the Regional Administrator would implement the closure if he or she determines that the frequency of entanglements has not been reduced below 60 percent from the effective date of the final rule. NMFS is considering the following specific language to implement this provision and is interested in any comments on this textual change (see § 229.32(c)(6)(ii) Alternative 1–B).

The Regional Administrator may determine whether the frequency of entanglements from the trap/pot gear in the Northeast region has been reduced by 60 percent from [the effective date of this rule] within a time period that allows meaningful analysis. If the Regional Administrator determines that the frequency of such entanglements has not been reduced by 60 percent, then from October 1 to January 31, it shall be prohibited to fish with, set, or possess trap/pot gear in this area unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84.

As relevant to the first and third co-proposed alternatives, the proposed rule would also modify two existing restricted areas to allow fishing without buoy lines. This modification was also not in the Team recommendations or state proposals, but is proposed here to accelerate research and development of ropeless (buoyless) fishing methods so that in the future, commercial fishing

using ropeless technology can be used instead of seasonal closures to allow trap pot fishing while protecting right whales. NOAA has invested a substantial amount of funding in the industry's development of ropeless gear, in specific geographic areas and in general. We anticipate that these efforts to facilitate and support the industry's development of ropeless gear will continue, pending appropriations.

Finally, a number of housekeeping edits were made in the existing regulatory text. The initiation point was added as the final endpoint to the table describing the Great South Channel Area (see table 11 at 50 CFR 229.32(c)(5)(i) in amended text) to fully enclose the restricted area. In a number of places, revisions were made describing the availability of guidance created to aid in compliance with gear configuration and marking measures. In a number of places, state abbreviations were replaced with the complete state names.

See **ADDRESSES** for information on access to the DEIS for a detailed analysis of the impacts of the proposed measures and other measures considered.

Changes Proposed To Reduce the Number of Vertical Buoy Lines

The proposed rule would reduce the number of vertical buoy lines fished outside of areas exempted under the Plan by increasing the minimum number of traps required per trawl (known as trawling-up), based on area fished and distance from shore as indicated in Table 1. Concerns have been raised that the trawling-up requirement of 45 traps per trawl in LMA3 may present a safety concern to a handful of LMA3 vessels that have insufficient deck space or rope storage capacity. NMFS requests LMA3 fishery participants and other reviewers' comments on the feasibility of permit-specific conditions that would result in an average of 45 traps per trawl in LMA3, to achieve the same buoy line reduction.

The trawling-up measures included in this proposed rule were proposed by the states or by LMA3 ALWTRT fishing industry participants. Outside of waters exempted from trawling up requirements under the ALWTRP, an estimated 19 percent reduction in buoy line numbers would be achieved by the proposed trawling-up measures described on Table 1. Note that MEDMR proposed an option for lobstermen to use fewer traps per trawl using one buoy line in a manner resulting in the same line proportion of buoy lines to pots (four traps on a single buoy between three and six miles, eight trap per single

buoy between 6 and 12 miles). NMFS is not proposing this at this time because past gear modifications allowing more than three pots per buoy were rescinded due to comments that those gear configurations resulted in gear conflicts and safety concerns. Outside of three miles, this option would also require modifications to regulations on lobster gear configuration found at 50 CFR 697.21(b)(2) requiring trawls of more

than three traps to mark both ends of the trawl with buoys and radar reflectors. Although not proposed here, comments on this option are requested. Additionally, the proposed rule would require 45 traps per trawl in the Northeast LMA3 management area. This trawl configuration may pose logistic and safety concerns for a few smaller vessels permitted to fish in LMA3. Offshore lobster fishermen have

suggested that they would consider individual permit conditions requiring some vessels to fish more traps/trawl to ensure that the average traps/trawl fished in the area, and therefore, the buoy line numbers will be the same as that analyzed for the proposed rule. Reviewers are asked to provide comments on whether equivalencies implemented through fishing permit conditions should be considered.

TABLE 1—PROPOSED REGULATORY CRAB/LOBSTER NORTHEAST REGION BUOY LINE REDUCTION MODIFICATIONS TO THE ATLANTIC LARGE WHALE TAKE REDUCTION PLAN

Component	Area	Distance from shore if applicable	Proposed measure
Modify minimum traps per trawl requirements.	Maine state waters	Maine Exemption line to 3 nmi (5.56 km).	3 traps/trawl.
	Offshore Maine	3 nmi (5.56 km) to the 6 mi line ...	8 traps/trawl.
	All LMA1	6 mi line to 12 nmi (22.22 km)	15 traps/trawl.
	LMA2 and Outer Cape Cod	3–12 nmi (5.56–22.22 km)	15 traps/trawl.
	LMA1 and LMA2	>12 nmi (22.22 km)	25 traps/trawl.
Increase maximum trawl length to accommodate traps/trawl.	Northeast LMA3	45 traps/trawl.
	Northeast LMA3	Extend maximum trawl length to 1.75 nm (3.24 km).

Note: See 50 CFR 229.32 for delineations of regulated waters and associated terms, such as exempted waters. The “6-mile line” refers to an approximation, described in 50 CFR 229.32(a)(2)(ii).

Changes to Restricted Areas

The proposed measures, summarized in Table 2, would modify current Northeast Region restricted areas to allow commercial trap/pot fisheries to harvest lobster and crabs if they fish with ropeless gear, without persistent buoy lines. The proposed modifications would affect two existing seasonal restricted areas currently closed to fishing: the Massachusetts Restricted Area (50 CFR 229.32(c)(3)) and the Great South Channel Restricted Trap/Pot Area (50 CFR 229.32(c)(4)). However, no changes are proposed to the surface system requirements (buoys and radar reflectors required at either end of lobster trawls or bottom tending fixed gear) under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. 5101 *et seq.* See 50 CFR 697.21. Therefore, fishermen harvesting lobster in these areas would need to get authorization from the appropriate state or Federal agency to be exempted from these surface marking requirements.

This measure is not expected to introduce substantial fishing effort into the currently restricted areas, and any exempted fishing authorization would require methods, monitoring, and reporting that minimize the possibility of impacts on large whales. The purpose of this measure is to encourage fishermen to participate in the development of ropeless fishing, to improve operational feasibility and accelerate the timeline for adoption

within commercial fishery operations. NMFS continues to prioritize ropeless fishing development and has initiated a pilot program to support ropeless experimentation and develop other innovative fishing gear technologies to reduce North Atlantic right whale entanglements in U.S. commercial fisheries as supported by fiscal year 2020 appropriations described in Senate Report 116–127. We anticipate that these efforts to facilitate and support the industry’s development of ropeless gear will continue, pending appropriation. Reviewers are asked to comment on this proposed measure.

Two new seasonal restricted areas that would allow harvest of lobster and Jonah crab using bottom trap/pot trawl gear but without the use of persistent buoy lines are also proposed and summarized in Table 2 and illustrated in Figure 1: (1) Offshore of Maine along the LMA1 and LMA3 border and (2) south of Cape Cod and Nantucket. The first proposed new seasonal lobster and crab trap/pot buoy line restricted area from October through January about 30 miles (48 km) offshore of Maine along the LMA1 and LMA3 border was discussed with MEDMR but was not included in their proposal to NMFS. This buoy line restricted area is proposed at 229.32(c)(6)(ii) to ensure that the risk reduction measures in LMA1 approach the regional target risk reduction of 60 percent. The amount of risk reduction relative to the economic impact of the restricted area may vary in

unpredictable ways during the restricted season. NMFS seeks comment as to whether restricted areas during certain months may have a disproportionately higher amount of economic impact. NMFS also seeks comment as to whether the proposed closure is necessary to achieve a sufficient level of risk reduction across the region or whether the buoy line closures should be excluded from the final rule. Additionally, as noted above and analyzed in the DEIS, while NMFS has included both proposed seasonal restricted areas in the proposed regulatory text below, NMFS has not yet made a final determination as to whether the LMA1 closure is necessary to meet the goal of a 60 percent risk reduction. As such, NMFS is also considering two alternative options regarding this requirement, and is seeking public comment on these two options as well as the proposed restricted area as set forth below:

Alternative Option 1–A. Invite Comment on not including the LMA1 Seasonal Restricted Area.

As an alternative to the proposed seasonal restricted areas, NMFS is also seeking comment on the option to not include the LMA1 seasonal restricted area. Commenters that believe this additional restricted area is not warranted to achieve PBR are encouraged to provide specific information or analysis in support of recommended removal of the restricted area from the proposed rule. If NOAA

receives information indicating that we can achieve the 60 percent risk reduction without the restricted area, we would consider not including the restricted area in the final rule. Additionally, if commenters believe that information will be available after issuance of the final rule on this topic, commenters should articulate the nature of that information, how the information might affect the decision, and propose a mechanism for evaluating that information in determining whether or not to continue with the restricted area.

Alternative Option 1–B: Invite Comment on not including the LMA1 Seasonal Restricted Areas Unless Certain Triggers are Met.

As an alternative to the proposed seasonal restricted areas, NMFS is also seeking comment on the option to modify the regulatory structure such that the Regional Administrator may implement the LMA1 closure if certain triggers are met in the future. This proposal would require the Regional Administrator to examine the available information in advance of October in any given year and determine whether the closure is necessary. Specifically, the Regional Administrator would implement the closure if he or she determines that the frequency of entanglements has not been reduced below 60 percent from the effective date of the final rule. NMFS is considering the following specific language to

implement this provision and is interested in any comments on this textual change at § 229.32(c)(6)(ii) Alternative 1–B.

The Regional Administrator may determine whether the frequency of entanglements from the trap/pot gear in the Northeast region has been reduced by 60 percent from [the effective date of this rule] within a time period that allows meaningful analysis. If the Regional Administrator determines that the frequency of such entanglements has not been reduced by 60 percent, then from October 1 to January 31, it shall be prohibited to fish with, set, or possess trap/pot gear in this area unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84.

The second proposed new seasonal lobster and crab trap/pot buoy line closure area was proposed by MADMF south of Cape Cod and Nantucket from February through April. These seasonal restricted areas closures are proposed as closures to buoy lines so that ropeless fishing for lobster and crab could occur with appropriate exemptions, as described above in discussion of

changes to closure current restricted areas.

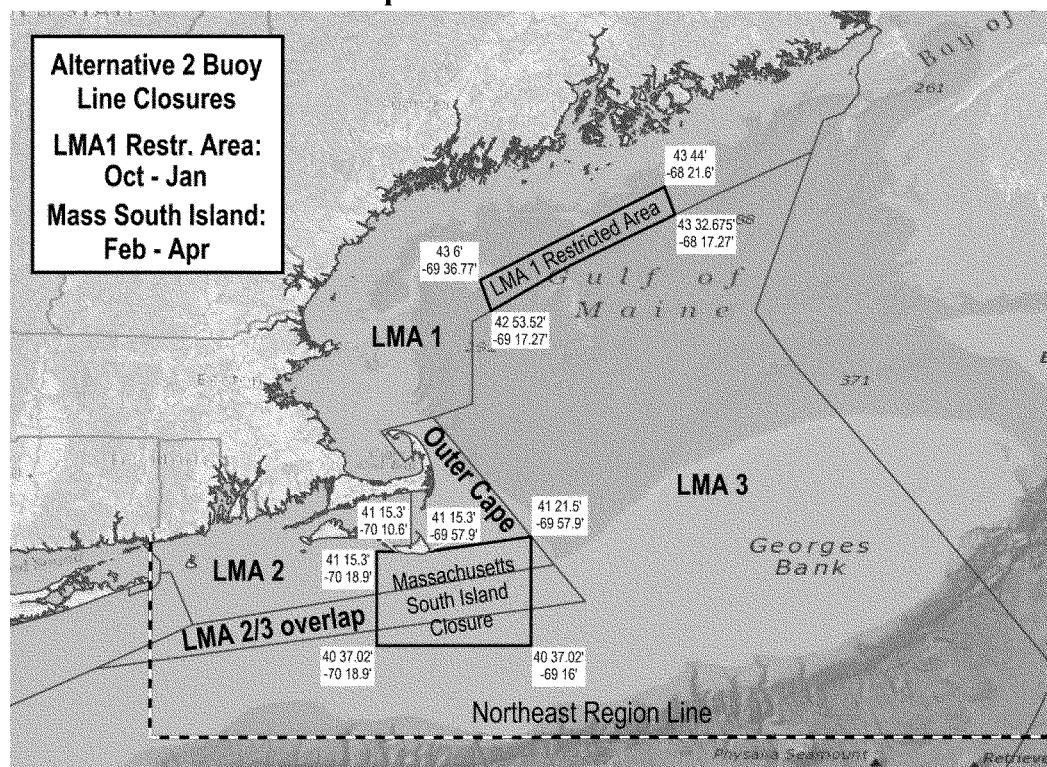
Rhode Island fishermen may also be affected by the Massachusetts South Island Restricted Area in LMA2, and a restriction of buoy lines was not included in the Rhode Island Division of Marine Fisheries (RIDMF) proposal. RIDMF instead proposed that LMA2 fishermen fish with two weak buoy lines (considered to be top 75 percent of the buoy line, allowing 25 percent chafing line where the line makes contact with the ocean floor) to achieve 60 percent risk reduction. Although weak buoy lines are analyzed within Alternative 3 in the DEIS, the Massachusetts South of Island closure was selected for proposed rulemaking due to the demonstrated value of the Massachusetts Restricted Area to North Atlantic right whale protection and recent use by right whales in the area south of Nantucket.

Through flexible state rulemaking, Massachusetts extends the current closure of state waters within the Massachusetts Restricted Area in May if whales remain. Taken together with line reduction measures and the two proposed buoy line closures, co-occurrence of trap/pot buoy lines with North Atlantic right whales would be reduced by an estimated 69 percent (Table 5.4, DEIS).

TABLE 2—PROPOSED REGULATORY CHANGES TO EXISTING NORTHEAST REGION RESTRICTED AREAS AND ADDITION OF TWO NEW AREAS PROHIBITING PERSISTENT BUOY LINES

Component	Proposed area	Measure
Northeast Region Lobster and Crab Trap/Pot Fishery seasonal closures to persistent buoy lines, open to harvest of lobster and Jonah crab using ropeless technology; Ropeless fishing would be allowed with appropriate state and Federal authorizations for exemption from Atlantic Coastal Fisheries Cooperative Management Act and the Magnuson-Stevens Fishery Conservation and Management Act surface marking requirements.	Massachusetts Restricted Area (50 CFR 229.32(c)(3)) and Great South Channel Restricted Trap/Pot Area (50 CFR 229.32(c)(4)).	Would change the trap/pot fishery restricted areas from complete fishing closures to closures to buoy lines. Would allow ropeless fishing for crab and lobster with appropriate state and Federal authorization for exemption from the remaining surface system marking requirements under the Atlantic Coastal Fisheries Cooperative Management Act and the Magnuson-Stevens Fishery Conservation and Management Act.
	New LMA1 Restricted Areas, across Maine Lobster Zones C/D/E.	October–January proposed restricted area; open to fishing with ropeless technology but closed to trap/pot fishing with persistent buoy lines. See Figure 1. Alternative 1–A No Closure. Alternative 1–B Open unless a determination is made by the Regional Administrator that the frequency of entanglements has not been reduced by 60 percent, in which case the area shall be open from October–January to fishing with ropeless technology but closed to trap/pot fishing with persistent buoy lines.
	New Massachusetts South Island Restricted Area.	February–April proposed restricted area; open to fishing with ropeless technology but closed to trap/pot fishing with persistent buoy lines. See Figure 1.

Figure 1 -- Northeast Region Trap/Pot Management Area, showing lobster management area boundaries and proposed LMA1 and Massachusetts South Island Seasonal Crab/Lobster Trap/Pot Restricted Areas



Gear Modifications To Include Weak Line or Weak Insertions in Buoy Lines

The proposed rule also identifies area-specific modifications to buoy lines to introduce weak rope or weak insertions breaking at 1,700 lbs. (771 kgs.) or less at various depths on the buoy line to increase the likelihood that a large whale would break the line prior to becoming entangled in a manner that causes a serious injury or mortality (Table 3). NMFS has confirmed with gear manufacturers that they can include one alternate color in three-strand buoy lines that are manufactured to break at less than 1,700 lbs. (771 kgs.) to distinguish them from strong line of the same diameter. Publication of this proposed rule would be an indicator of future market demand that may spur the production of weak line that can be visibly differentiated.

Weak insertions create places along the rope that have a breaking strength of 1,700 lbs. (771 kgs.) or less. The proposed regulations require a stipulation regarding the depths of weak insertions. Large whales including right whales appear to use the entire water column; therefore, encounters at depth can happen. We assume no risk reduction below the insertion. A large right whale encountering the rope above

the weak insertion should be able to break free of the gear below the insertion with a lesser chance of serious injury. The closer the distance between weak insertions, the greater the benefit to right whales, with an ideal interval proposed by some Team members of 40 ft. (12.19 m), the average length of a right whale.

The proposed weak rope and weak insertion measures included in the proposed rule are taken directly from state proposals. MEDMR is evaluating the breaking strength of weak insertion devices, and some that have effectively broken at or below 1,700 lbs (771 kgs) include: Use of an engineered rope designed to have a tensile strength of up to 1,700 lbs. (771 kgs.); spliced insertion into a buoy line of a 3 to 6 ft. (0.91 to 1.83 m) long length of rope engineered to break at 1,700 lbs. (771 kgs.); and insertion of a 3 to 6 ft. (0.91 to 1.83 m) length of South Shore Lobster Fishermen's Association sleeve, a hollow braided sleeve that can be quickly integrated into typical three strand $\frac{5}{16}$ and $\frac{3}{8}$ inch (0.79 and 0.95 cm) diameter buoy line. Preliminary results of MEDMRs evaluations can be found in their proposal in Appendix 3.2 of the DEIS. Fishermen continue to test additional weak insertion

configurations; therefore, additional options that demonstrate appropriate breaking strengths may be identified by the time of final rulemaking. The proposed rule requires inserts or weak line that has been demonstrated to break under forces greater than 1,700 lbs. (771 kgs.), but allows the Regional Administrator to approve new weak insertion devices as they are developed and proven effective to respond to the diversity in fishing practices and available materials across the Northeast Region.

The proposed requirements do not require weak insertions in the Maine exemption area because MEDMR will be requiring one insertion halfway down the buoy line in the exemption area through state regulations. The elements within the Preferred Alternative (Alternative 2) were selected because the DST estimated together they would achieve a greater than 60-percent risk reduction. The analysis includes Maine's intention to require a weak insertion in their exemption waters. The weak line and weak insertion modifications proposed below estimates that outside of the Maine exemption area, all buoy lines in the Northeast Region would be modified under the proposed rule and more than 26 percent

of the rope in crab and lobster buoy lines would be weakened to 1,700 lbs. (771 kgs.) or less. Planned state regulations would modify all buoy lines in Maine exempted waters so that an additional 31.7 percent of line would be equivalent to weak rope. If MEDMR does not implement weak insertion requirements in the exemption area, further modifications to the Plan may be needed to reduce risk of serious injury and mortality of North Atlantic right whales due to entanglement in the commercial Northeast Region lobster and crab trap/pot fisheries by 60 percent.

In addition to weak rope and weak insertions along the length of the buoy lines, the proposed rule would also modify the current weak link requirement at the buoy. The rule would allow fishermen the option of inserting the weak links (at current area-specific

strengths) where the surface system connects to the buoy line rather than requiring it at the buoy itself. This modification was requested by fishermen for operational reasons rather than risk reduction reasons. The change would not increase risk, and may allow a whale to break away from entire surface system, which can include multiple lines, buoys, and radar reflectors, rather than just releasing the buoys. This may have a positive benefits due to a reduction in entanglement complexity. Comments from fishermen and the public on this measure specifically are encouraged.

We propose modifying the buoy weak link to provide fishermen with two options, the current connection close to the buoy or a weak link connecting the base of the surface system to the single buoy line. Moving the weak link to the base of the surface system could be

required if there is information demonstrating this is a large risk reduction improvement. Finally, the non-preferred alternative in the DEIS (Alternative 3) considers removing the buoy weak link requirement for all buoy lines that would be required to have weak line or weak insertions farther down the buoy line. Under this configuration, a retained buoy could provide resistance that helps the buoy line to part lower down, or the buoy could pull the line away from the whale, increasing the possibility that it will fall from the whale. A retained buoy could also be helpful to large whale disentanglement responders, and buoys from commercial fisheries are usually required to be marked with vessel specific information that would provide information on the original location of entanglement. NMFS invites comments on all of these options.

TABLE 3—PROPOSED REGULATORY CHANGES TO REQUIRE WEAK ROPE, WEAK INSERTIONS ON BUOY LINES AND CHANGE TO WEAK LINK REQUIREMENT ON NORTHEAST REGION CRAB AND LOBSTER TRAP/POT BUOY LINES

Component	Area including distance from shore	Proposed measure
Weak line/Weak Insertion	From Maine exemption line to 3 nmi (5.56 km)	2 weak insertions, at 25 percent and 50 percent down buoy line.
	New Hampshire/Massachusetts/Rhode Island. From coast to 3 nmi (5.56 km).	1 weak insertion, at 50 percent down the buoy line.
	All Northeast Region. 3–12 nmi (5.56 km–22.22 km).	2 weak insertions, at 25 percent and 50 percent down line.
	LMA1, LMA2, and Outer Cape Cod. >12 nmi (22.22 km).	1 weak insertion, at 35 percent down the line.
	Northeast LMA 3	The top 75 percent of one buoy line weak.
Weak link placement option	Entire Northeast Region (Figure 1)	Allow option to place weak link as a connection between the surface system and the single buoy line.

Gear Marking Changes

Finally, the proposed rule would modify current gear marking requirements, introducing colored marks that identify state of permit issuance, as well as a 6-inch (15.24 cm) mark that distinguishes Northeast Region lobster and crab trap trawls in Federal waters from state waters. The rule would also add a 3 ft. (0.91 m) long mark within 2 fathoms of the buoys to increase the possibility of detection and identification to state fishery from vessels and aerial survey aircraft. Proposed modifications are summarized in Table 4. The gear markings are based on proposals received from or discussed with New England States. Maine has already published gear marking

requirements analogous to these measures, requiring gear marking on every Maine permitted lobster buoy line, effective in September 2020. Maine’s gear marks for Federal waters are mirrored in these regulations. Multiple marking methods would be allowed including paint, tape, or colored rope insertions.

While existing gear marking requirements have increased the amount of retrieved gear with marks, they do not provide sufficient entanglement location information. The proposed gear marking scheme would increase the number of marks present by approximately 56 percent (not including Maine exempt waters, which are regulated under state requirements and will substantially

increase the number of marked lobster buoy lines there), increasing the chances that gear will be recovered with visible marks. The proposed gear marking would not impact the probability of whales becoming entangled in commercial fishing gear nor would they affect the severity of an entanglement should one occur. However, the markings would increase the information available regarding the fishery and state of origin of large whale entanglements to aid the efforts of NMFS and the ALWTRT in assessing, and if needed reducing, entanglements in U.S. commercial fisheries that cause mortalities and serious injuries of North Atlantic right whales and other large whales.

TABLE 4—PROPOSED REGULATORY CHANGES TO GEAR MARKING ON NORTHEAST CRAB AND LOBSTER TRAP/POT BUOY LINES

Area	Proposed gear marking measure
Entire Northeast Management Area (see figure 1) except Maine exemption area.	3-ft long state-specific mark (see color below) within 2 fathoms of the buoy. In Federal waters, an additional 6-inch green mark within 1 ft. of 3-ft mark.
Maine Exemption Area	3-ft long mark within 2 fathoms of the buoy. One or two additional 1-ft marks (depth dependent) through state regulation only.
Maine Non-Exempt	Purple. Three 1-ft marks: At top, middle and bottom of line. In Federal waters, an additional 6-inch green buoy line mark within 2 fathoms of buoy.
New Hampshire	Yellow. In state waters: Two 1-ft marks in the top half and bottom half of buoy line. Beyond state waters, three 1-ft marks: At top, middle and bottom of line. In Federal waters, an additional 6-inch green mark within 1 ft. of 3-ft mark within 2 fathoms of buoy.
Massachusetts	Red. In state waters: Two 1-ft marks in the top half and bottom half of buoy line. Beyond state waters three 1-ft marks: At top, middle and bottom of line. In Federal waters, an additional 6-inch green mark within 1 ft. of 3-ft mark within 2 fathoms of buoy.
Rhode Island	Silver/Gray. In state waters: Two 1-ft marks in the top half and bottom half of buoy line. Beyond state waters three 1-ft marks at top, middle and bottom of line. In Federal waters, an additional 6-inch green mark within 1 ft. of 3-ft mark within 2 fathoms of buoy.
LMA 3	Retain Black. In Federal waters add a 3-ft long mark within 2 fathoms of the buoy, and an additional 6-inch green mark within 1 ft. of 3-ft mark within 2 fathoms of buoy.

Addition to Definitions

To ensure clarity related to the management areas that are referenced but were developed for the American lobster fishery, a definition for “Lobster Management Area” is provided, citing the Atlantic Coastal Fisheries Cooperative Management Act regulations at 50 CFR 697.18.

For clarity related to proposed changes in weak link and gear marking requirements, the proposed rule would add a definition for “surface system” to the definitions in § 229.2.

Change in the Maximum Length of a Lobster Trap Trawl

In addition to changes to 50 CFR part 229, the proposed rule would revise Federal regulations implemented under the Atlantic State Marine Fisheries Commission’s Interstate Fishery Management Plan for Lobster at 50 CFR 697.21. The proposed modification would increase the maximum length of a lobster trap trawl from 1.5 nm (2.78 km) to 1.75 nm (3.24 km) in LMA3 as measured from radar reflector to radar reflector, to accommodate a proposed increase in the minimum number of traps per trawl in LMA3.

Risk Reduction Target of 60 Percent

The proposed changes are intended to achieve a regional risk reduction target of at least 60 percent within the Northeast Region lobster and Jonah crab trap/pot fisheries. The Team will be convened to develop recommendations to modify the Plan to reduce risk in other U.S. Atlantic fisheries in meetings in 2021. A 60 percent risk reduction across U.S. commercial fisheries is the minimum that NMFS believes is necessary to reduce the incidental

mortalities and serious injuries to below the potential biological removal level for right whales (0.9 potential biological removal level to 0.9 right whales (see Section 2.1.5 of the DEIS) based on documented serious injuries and mortalities. This rulemaking is intended to reduce the risk of entanglement within the Northeast Region lobster and Jonah crab fisheries by 60 percent, which fish about 93 percent of the buoy lines that occur in areas in the United States where right whales occur. NMFS will develop measures to reduce the risk within other fisheries by a similar amount so that the risk reduction target of 60 percent across U.S. commercial fisheries is achieved. NMFS seeks comment as to whether the allocation of risk reduction in the proposed rule is appropriate relative to other fixed gear fisheries (e.g., gillnets) in the region that contribute to the risk of entanglement. Commenters that believe a lower target for risk reduction is warranted should provide specific information or analysis in support of any recommended level.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Plan and the provisions of the Marine Mammal Protection Act, the Atlantic Coastal Fisheries Cooperative Management Act, and other applicable law, subject to further consideration after public comment.

National Environmental Policy Act

NMFS prepared a DEIS for this proposed rule that discusses the potential impacts of proposed changes to the ALWTRP on the environment. In addition to the status quo (Alternative

1), two alternatives are analyzed, Alternative 2 (preferred and the basis of this proposed rule) and Alternative 3. Alternatives 2 and 3 would both modify existing seasonal restricted areas from closure areas to areas closed to persistent buoy lines rather than closed to harvesting lobster and crab, reduce the number of vertical buoy lines fished in northeast lobster and crab trap/pot fisheries, deploy weak rope to allow whales to break free before being killed or seriously injured, seasonally close some areas to crab and lobster trap/pot fishing with persistent buoy lines, and increase gear marking requirements across the Northeast Region lobster and crab trap/pot fisheries. Alternative 2 would reduce buoy lines through an increase in minimum traps/trawl based on area fished. Alternative 3 would reduce lines by providing a line allocation in Federal waters capped at half the lines fished in 2017. While Alternative 2 weak buoy line provisions allow the use of a small number of weak insertions, under Alternative 3 those insertions would be required every 40 ft. along the buoy line or engineered weak rope would be required. Alternative 3 has more and larger seasonal restricted areas closed to buoy lines. An analysis of the impacts of the Federal portion of the two action alternatives estimates that Alternative 2 would reduce the co-occurrence of North Atlantic right whales and buoy lines in these fisheries by 69 percent and would modify 26 percent of the rope in vertical buoy lines to be weakened lines. Co-occurrence of humpback and fin whales with vertical lines would also be reduced by 19 and 27 percent, respectively. Alternative 3 would reduce the co-occurrence of North Atlantic right whales by 86

percent or greater and would modify 75 percent of rope in remaining vertical buoy lines to be weakened lines. Co-occurrence of fin and humpback whales with buoy lines would also be reduced by over 56 percent and 58 percent, respectively, in Alternative 3. Because of the extensive gear marking and weak rope provisions under both alternatives, 3,970 vessels would be affected. The estimated annualized compliance costs of each action alternative are \$5.7 to \$12.3 million for Alternative 2 and \$16.3 to \$31.8 million for Alternative 3. A copy of the DEIS is available in the docket or from NMFS (see **ADDRESSES**). Reviewers are asked to comment on and identify support for Alternative 1, 2 or 3.

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This proposed rule has been determined significant for the purposes of Executive Order 12866. This proposed rule is expected to be an Executive Order 13771 regulatory action. Depending on the assumptions used, the estimated total cost of this rule over the first six years of implementation, in 2020 dollars, is between \$24.5 and \$53.5 million.

Regulatory Flexibility Act

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available in the docket or from NMFS (see **ADDRESSES**), and a summary follows.

Description and Estimate of Number of Small Entities To Which This Proposed Rule Would Apply

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in

commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified by NMFS as including those businesses, including their affiliates, whose primary industry is commercial fishing and who have \$11 million or less in annual gross receipts. This standard applies to all businesses classified under NAICS code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses. Data are not available to ascertain non-ownership interests needed to confirm the Small Business Act definition of “affiliations;” therefore, the Social Sciences Branch (SSB) of the NMFS Northeast Fisheries Science Center created an affiliated database. There are three major components of this dataset: Vessel affiliation information, landing values by species, and vessel permits. All federally permitted vessels in the Northeast Region from 2016 to 2018 are included in this dataset. Vessels are affiliated into entities according to common owners. The entity definition used by the SSB uses only unique combinations of owners.

Since this proposed regulation applies only to the crab and lobster pot/trap vessels in the Northeast Region, entities that possess one or more of these permits are evaluated. For each affiliation, the revenues from all member vessels of the entity are summed into affiliation revenue in each year. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only. The \$11 million standard became effective on July 1, 2016. Thus, the RFA defines a small business in the lobster fishery as a firm that is independently owned and operated with receipts of \$11 million or less annually. Based on this size standard, if the three-year average (2016–2018) affiliation revenue is greater than \$11 million, the fishing business is considered to be a large entity, otherwise it is a small entity.

Within the Northeast Fisheries Science Center (NEFSC) SSB database,

1,591 distinct entities were identified as regulated entities. Using landings data, four of these entities are considered large entities. Because the regulations will also affect fishermen holding only state permits, the vertical buoy line estimates within the NMFS/IEC Co-Occurrence model were used to identify an addition estimate of 1,913 active vessels fishing in state waters that would be regulated by the proposed rule. In total, therefore, there are 3,504 regulated entities.

While we do not have data to determine the dependence of state permitted vessels on lobster landings, if they are analogous to the small entities fishing under Federal permits, they are likely to be dependent on lobster landings, as further described below. To determine the number of impacted entities within the NEFSC data, we identified whether one or more members of an affiliation landed lobster in 2018. These are entities likely to be impacted by the proposed regulations. The determination of whether an entity is a large or small entity is based on three-year average affiliation revenue from 2016 to 2018. Based on these characteristics, we identified 1,591 distinct entities as regulated entities, including 259 entities with no fishing revenue in 2018, and 111 entities (one large, 110 small) with no 2018 lobster landings. That is, there are 1,221 federally permitted vessels that would be impacted by the proposed rule because at least one vessel in the entity landed lobster in the past year (Table 5). Only three of the affected entities would be considered large entities; 1,218 are Federally-permitted small entities. We assume that in addition to those, the 1,912 vessels in state waters would also be impacted, for a total of 3,130 impacted small entities.

As estimated in Chapter 9 of the DEIS, Table 5 displays the average profit for all large and small entities, compared to their mean total revenue. Results indicate the profitability for large entities is 1.77 percent and for small entities is 18.48 percent. As such, we could conclude that the action would not create more significant economic impact on small entities compared to large entities.

TABLE 5—PROFITABILITY OF LARGE AND SMALL ENTITIES

	Mean profit	Mean total revenue	Profitability (%)
Large Entity	\$469,784	\$26,485,600	1.77
Small Entity	52,235	282,586	18.48

Under Alternative Two, a few measures are proposed to reduce the probability of serious injury and mortality of North Atlantic right whales including weak ropes, minimum trawl length requirement, and restricted areas. A gear marking requirement is also proposed to increase the chance of threat identification. All these measures generate a series of compliance costs for small entities.

As discussed in Chapter 6 of the DEIS, we assume the rulemaking cycle is six years, considered the approximate replacement time for buoy lines. Table 6 displays the compliance costs for all affected entities from Year 1 to Year 6.

Year 0 is the status quo, so the compliance cost is zero, and we do not include it in the table. The discount rate of three percent and seven percent are used for the annualized value calculation. Weak rope only generate costs in Year 1, while gear marking needs to be replaced every year. Trawling up and restricted area measures have costs in the subsequent years due to the catch reduction impacts. At seven percent discount rate, the trawling up measures have the highest annual cost of \$2.8 to \$9.4 million. Gear marking would cost \$2.5 million each year. Weak rope and restricted areas (seasonal buoy line

closures) cost less than half a million dollars annually. The total annual cost of all measures ranges from \$5.9 million to \$12.8 million. If applied to roughly 3,100 affected small entities, each entity would have to bear a compliance cost of \$1,900 to \$4,100 per year for six years. If we are applying a three percent discount rate, the final cost for each vessel would be around \$1,700 to \$3,600 per year. In terms of realized Year 1 costs, compliance costs would range between \$2,200 and \$5,000 but would be lower in Years 2–6. The Year 1 costs would result in an estimated reduction in profit ranging from 4.3 percent to 9.5 percent.

TABLE 6—YEARLY COMPLIANCE COST OF PREFERRED ALTERNATIVE

Year	Gear marking	Weak rope	Trawling up lower	Trawling up upper	Restricted area lower	Restricted area upper	Total lower	Total upper
1	\$2,017,283	\$2,152,497	\$2,660,792	\$10,957,354	\$106,259	\$315,300	\$6,936,831	\$15,442,434
2	2,017,283	0	4,239,722	12,236,593	106,259	315,300	6,363,264	14,569,176
3	2,017,283	0	3,179,791	9,517,350	106,259	315,300	5,303,333	11,849,933
4	2,017,283	0	2,119,861	6,798,107	106,259	315,300	4,243,403	9,130,690
5	2,017,283	0	1,059,930	4,078,864	106,259	315,300	3,183,472	6,411,447
6	2,017,283	0	0	1,359,621	106,259	315,300	2,123,542	3,692,204
PV	12,103,698	2,152,497	13,260,096	44,947,889	637,554	1,891,800	28,153,845	61,095,884
AV (3%)	2,234,312	397,346	2,447,781	8,297,268	117,691	349,222	5,197,129	11,278,147
AV (7%)	2,539,305	451,585	2,781,912	9,429,878	133,756	396,892	5,906,558	12,817,660

Notes: 1. Year 1 to year 6 values are in 2017 dollars.

2. PV represents net present value of year 1 to year 6, also in 2017 dollars.

3. AV represents annualized value of the net present value. It is an equalized yearly cost during the 6-year time period with 3% and 7% discount rate.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Paperwork Reduction Act

The gear marking requirements in this proposed rule constitute a revision to the information collection burden estimates, subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), OMB Control Number 0648–0364. The DEIS includes two alternatives which both include gear marking modifications and on which NMFS is soliciting comment here.

Comments are requested on assumptions made in estimating the public reporting burden associated with gear marking, including proposed revisions. In addition to new marks that would be required under this proposed rulemaking, we have revised past assumptions that fishermen replace about 20 percent of their buoy lines each year and therefore replace 20 percent of the gear marks annually. Based on new information from a NMFS gear specialist, burden estimates now include an assumption that fishermen will recreate every mark each year. The estimated time required to mark buoy lines has also increased to account for the new marks required and based on

new information that the estimated time to make each mark is about 8.4 minutes for each mark. We estimate an average of 334.4 marks for each vessel, for a total reporting burden of an average of 47 hours per year for each of the 1,670 vessels, including the time and costs in acquiring gear marking materials. The total labor cost is estimated to be \$1,963,949. Previous burden estimates assumed that 3,672 fishermen (including Maine fishermen outside of the Maine exempted waters) would replace an average of about 47 marks per vessel each year, with each mark taking 5 minutes, and a total burden cost estimate of \$199,540 per year.

Reviewers are asked to comment and provide data on whether this proposed revision to the collection of information is necessary for the proper performance and function of the agency, including: The practical utility of the information; the accuracy of the burden estimate; the opportunities to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the NMFS Greater Atlantic Region at the ADDRESSES above. Notwithstanding

any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information is conducted under OMB Control Number 0648–0364.

Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

This action does not duplicate, overlap, or conflict with any other Federal rules.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This rule proposes to amend the ALWTRP to reduce the incidental mortality and serious injury to North Atlantic right whales (*Eubalaena glacialis*), humpback (*Megaptera Novaeangliae*) and fin whales (*Balaenoptera physalus*) in the northeast commercial lobster and crab trap/pot fisheries to meet the goals of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). In addition, this action also proposes a small revision to Federal regulations

implemented under the Atlantic State Marine Fisheries Commissions' Interstate Fishery Management Plan for Lobster to increase the maximum length of a lobster trap trawl groundline to accommodate a gear configuration modification proposed in the Plan amendment.

Because incidental entanglement-related serious injury and mortality of North Atlantic right whales is above PBR, and the population is declining, the primary purpose of the proposed modifications is to reduce mortality and serious injury of right whales incidental to northeast U.S. crab and lobster trap/pot gear to below by greater than 60 percent. A reduction in entanglement incidents and serious injuries would also reduce sub-lethal impacts to right whales. NMFS estimated that to reduce mortality and serious injury to below PBR, entanglement risk across U.S. fisheries needs to be reduced by 60 to 80 percent. Non-preferred alternatives would likely not accomplish these objectives for this action or would be less cost effective.

Alternative 1 (status quo) would not modify the Plan or reduce the risk of mortality or serious injury of right whales to below its PBR level as required by the MMPA.

Alternative 3 would reduce the amount of line in the water via a line cap allocation to 50 percent of the lines fished in 2017, implemented in Federal and non-exempt waters except in LMA3. An increase in the minimum traps per trawl requirement would be implemented in LMA3. Under this alternative, existing closures to fishing would be modified to be closed to fishing with persistent buoy lines. The Massachusetts Bay Restricted area would also be extended with a soft closure through May, opening if surveys demonstrate that whales have left the restriction area. Three new seasonal restricted areas would allow ropeless fishing but be closed to buoy lines, including a longer restricted period for the LMA1 Restricted Area and a summer buoy line restriction in an area north of George's Bank at Georges Basin. Two alternative buoy line restricted area options are analyzed south of Cape Cod. Additional measures in Alternative 3 include conversion of a portion of the top 75 percent of all lobster and crab trap/pot vertical buoy lines to weaker rope with a maximum breaking strength of 1,700 lbs. (771.1 kgs.). The Alternative also includes a more robust gear marking requirement that differentiates buoy lines by state and fishery and expands into areas previously exempt from gear marking.

Alternative 3 demonstrated better risk reduction than Alternative 2, but at a much greater cost. The DST estimated the preferred alternative proposed in this rulemaking would achieve over 60 percent risk reduction for lobster and crab trap/pot buoys in the Northeast Region, within the target established for reaching right whale PBR. The Co-Occurrence model suggested that co-occurrence would be reduced by over 69 percent and that more than 26 percent of the buoy lines in the regulated area would be modified to weak lines. The estimated cost of bringing gear into compliance and lost landings in the first year ranges from \$6.04 to \$14.5 million.

The DST estimated that Alternative 3 achieved a risk reduction score of nearly 70 percent, and the Co-occurrence Model estimated a co-occurrence reduction of greater than 86 percent. This alternative would increase the likelihood of reducing mortality and serious injury to below PBR for right whales even when taking into account cryptic mortality (estimated but unseen). However, the estimated costs associated with Alternative Three are substantially higher; ranging from \$35.0 million to \$53.6 million in first year implementation costs.

Alternative 2 was selected as the preferred alternative and is proposed for rule making because it addresses the Purpose and Need for Action stated in this DEIS, is made up primarily of measures proposed by New England states with extensive input from fishing industry stakeholders who will be directly affected by the measures, and includes measures that will help to conserve large whales by reducing the potential for and severity of interactions with commercial fishing gear that may lead to mortalities and serious injuries. In addition, NMFS believes that its preferred alternative achieves these goals while reducing, to the extent possible, the adverse socioeconomic impacts of the rule. On this basis, NMFS believes that Alternative 2 (Preferred) offers the best option for achieving compliance with MMPA requirements.

Coastal Zone Management

NMFS has determined that this action is consistent to the maximum extent practicable with the approved coastal management programs of the U.S. Atlantic coastal states. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

Federalism

This proposed rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs will provide notice and invite for appropriate participation in the proceedings for the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments.

Endangered Species Act

An Endangered Species Act Section 7 consultation has been initiated and will be completed prior to publication of a final rule. Previously, NMFS completed an ESA Section 7 consultation on the implementation of the Plan on July 15, 1997, and concluded that the action was not likely to adversely affect any ESA-listed species under NMFS jurisdiction. Three subsequent consultations were concluded in 2004, 2008, 2014, and 2015, when NMFS amended the Plan. NMFS, as both the action agency and the consulting agency, reviewed the changes and determined that the measures as revised through rulemaking would not affect ESA-listed species under NMFS jurisdiction in a manner that had not been previously considered.

References

- Knowlton, A.R., J. Robbins, S. Landry, H.A. McKenna, S.D. Kraus, and T.B. Werner. 2016. Effects of fishing rope strength on the severity of large whale entanglements. *Conserv Biol* 30:318–328.
- Pace, R.M., 3rd, P.J. Corkeron, and S.D. Kraus. 2017. State-space mark-recapture estimates reveal a recent decline in abundance of North Atlantic right whales. *Ecology and Evolution* 7:8730–8741.

List of Subjects

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Endangered species, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 697

Fisheries, Fishing.

Dated: December 22, 2020.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR parts 229 and 697 are proposed to be amended as follows:

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

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*;
§ 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.2, add definitions for “Lobster Management Area” and “Surface system” in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Lobster Management Area as used in this part means the management areas defined in the American Lobster Fishery regulations found at § 697.18 of this title.

* * * * *

Surface system, with reference to trap/pot and fixed gillnet gear, includes

the components at the sea surface to identify the presence of stationary bottom fishing gear, and includes buoys, radar reflectors, and high flyers as well as the rope that connect these components to the vertical buoy line that connects to the bottom gear.

* * * * *

■ 3. Revise § 229.32 to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a) *Purpose and scope*—(1) *Whales and fixed gear fisheries.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. Specific Category I and II commercial fisheries within the scope of the Plan are identified and updated in the annual List of Fisheries. The measures

identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (*e.g.*, anchored, drift, and shark) and traps/pots. The Assistant Administrator may revise the requirements set forth in this section in accordance with paragraph (i) of this section.

(2) *Regulated waters*—(i) *U.S. Atlantic waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(ii) *Six-mile line.* The six-mile line referred to in paragraph (c)(2)(iv) of this section is a line connecting the following points (Machias Seal to Provincetown):

TABLE 1 TO PARAGRAPH (a)(2)(ii)

44°31.98' N lat., 67°9.72' W long (Machias Seal)
44°3.42' N lat., 68°10.26' W long (Mount Desert Island)
43°40.98' N lat., 68°48.84' W long (Matinicus)
43°39.24' N lat., 69°18.54' W long (Monhegan)
43°29.4' N lat., 70°5.88' W long (Casco Bay)
42°55.38' N lat., 70°28.68' W long (Isle of Shoals)
42°49.53' N lat., 70°32.84' W long
42°46.74' N lat., 70°27.70' W long
42°44.18' N lat., 70°24.91' W long
42°41.61' N lat., 70°23.84' W long
42°38.18' N lat., 70°24.06' W long
42°35.39' N lat., 70°25.77' W long
42°32.61' N lat., 70°27.91' W long
42°30.00' N lat., 70°30.60' W long
42°17.19' N lat., 70°34.80' W long
42°12.48' N lat., 70°32.20' W long
42°12.27' N lat., 70°25.98' W long
42°11.62' N lat., 70°16.78' W long
42°12.27' N lat., 70°10.14' W long
42°12.05' N lat., 70°54.26' W long
42°11.20' N lat., 70°17.86' W long
42°09.55' N lat., 69°58.80' W long (Provincetown)

(iii) *Maine pocket waters.* The pocket waters referred to in paragraph (c)(2)(iv) of this section are defined as follows:

TABLE 2 TO PARAGRAPH (a)(2)(iii)

West of Monhegan Island in the area north of the line 43°42.17' N lat., 69°34.27' W long and 43°42.25' N lat., 69°19.3' W long
East of Monhegan Island in the area located north of the line 43°44' N lat., 69°15.08' W long and 43°48.17' N lat., 69°8.02' W long
South of Vinalhaven Island in the area located west of the line 43°52.31' N lat., 68°40' W long and 43°58.12' N lat., 68°32.95' W long
South of Bois Bubert Island in the area located northwest of the line 44°19.27' N lat., 67°49.5' W long and 44°23.67' N lat., 67°40.5' W long

(3) *Exempted waters*—(i) *COLREGS demarcation line.* The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at

Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS

lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the State of Massachusetts.

(ii) *Other exempted waters*—(A) *Maine.* The regulations in this section

do not apply to waters landward of a line connecting the following points (Quoddy Narrows/U.S.-Canada border

to Odiornes Pt., Portsmouth, New Hampshire):

TABLE 3 TO PARAGRAPH (a)(3)(ii)(A)

44°49.67' N lat., 66°57.77' W long. (R N "2", Quoddy Narrows)
 44°48.64' N lat., 66°56.43' W long. (G "1" Whistle, West Quoddy Head)
 44°47.36' N lat., 66°59.25' W long. (R N "2", Morton Ledge)
 44°45.51' N lat., 67°02.87' W long. (R "28M" Whistle, Baileys Mistake)
 44°37.70' N lat., 67°09.75' W long. (Obstruction, Southeast of Cutler)
 44°27.77' N lat., 67°32.86' W long. (Freeman Rock, East of Great Wass Island)
 44°25.74' N lat., 67°38.39' W long. (R "2SR" Bell, Seahorse Rock, West of Great Wass Island)
 44°21.66' N lat., 67°51.78' W long. (R N "2", Petit Manan Island)
 44°19.08' N lat., 68°02.05' W long. (R "2S" Bell, Schoodic Island)
 44°13.55' N lat., 68°10.71' W long. (R "8BI" Whistle, Baker Island)
 44°08.36' N lat., 68°14.75' W long. (Southern Point, Great Duck Island)
 43°59.36' N lat., 68°37.95' W long. (R "2" Bell, Roaring Bull Ledge, Isle Au Haut)
 43°59.83' N lat., 68°50.06' W long. (R "2A" Bell, Old Horse Ledge)
 43°56.72' N lat., 69°04.89' W long. (G "5TB" Bell, Two Bush Channel)
 43°50.28' N lat., 69°18.86' W long. (R "2 OM" Whistle, Old Man Ledge)
 43°48.96' N lat., 69°31.15' W long. (GR C "PL", Pemaquid Ledge)
 43°43.64' N lat., 69°37.58' W long. (R "2BR" Bell, Bantam Rock)
 43°41.44' N lat., 69°45.27' W long. (R "20ML" Bell, Mile Ledge)
 43°36.04' N lat., 70°03.98' W long. (RG N "BS", Bulwark Shoal)
 43°31.94' N lat., 70°08.68' W long. (G "1", East Hue and Cry)
 43°27.63' N lat., 70°17.48' W long. (RW "WI" Whistle, Wood Island)
 43°20.23' N lat., 70°23.64' W long. (RW "CP" Whistle, Cape Porpoise)
 43°04.06' N lat., 70°36.70' W long. (R N "2MR", Murray Rock)
 43°02.93' N lat., 70°41.47' W long. (R "2KR" Whistle, Kittery Point)
 43°02.55' N lat., 70°43.33' W long. (Odiornes Pt., Portsmouth, New Hampshire)

(B) *New Hampshire*. New Hampshire State waters are exempt from the minimum number of traps per trawl

requirement in paragraph (c)(2)(iv) of this section. Harbor waters landward of

the following lines are exempt from all the regulations in this section.

TABLE 4 TO PARAGRAPH (a)(3)(ii)(B)

A line from 42°53.691' N lat., 70°48.516' W long. to 42°53.516' N lat., 70°48.748' W long. (Hampton Harbor)
 A line from 42°59.986' N lat., 70°44.654' W long. to 42°59.956' N, 70°44.737' W long. (Rye Harbor)

(C) *Rhode Island*. Rhode Island State waters are exempt from the minimum number of traps per trawl requirement

in paragraph (c)(2)(iv) of this section. Harbor waters landward of the following

lines are exempt from all the regulations in this section.

TABLE 4 TO PARAGRAPH (a)(3)(ii)(C)

A line from 41°22.441' N lat., 71°30.781' W long. to 41°22.447' N lat., 71°30.893' W long. (Pt. Judith Pond Inlet)
 A line from 41°21.310' N lat., 71°38.300' W long. to 41°21.300' N lat., 71°38.330' W long. (Ninigret Pond Inlet)
 A line from 41°19.875' N lat., 71°43.061' W long. to 41°19.879' N lat., 71°43.115' W long. (Quonochontaug Pond Inlet)
 A line from 41°19.660' N lat., 71°45.750' W long. to 41°19.660' N lat., 71°45.780' W long. (Weekapaug Pond Inlet)
 A line from 41°26.550' N lat., 71°26.400' W long. to 41°26.500' N lat., 71°26.505' W long. (Pettaquamscutt Inlet)

(D) *New York*. The regulations in this section do not apply to waters landward of a line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY).

(E) *Massachusetts*. The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts. The following Massachusetts State waters are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iv) of this section:

(1) *Exempt waters of Massachusetts Bay and Outer Cape*. Heading From the New Hampshire border to 70° W longitude south of Cape Cod, waters in EEZ Nearshore Management Area 1 and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations under § 697.18 of this title), from the shoreline to 3 nautical miles from shore, and including waters of Cape Cod Bay southeast of a straight line connecting 41°55.8' N lat., 70°8.4' W long. and 41°47.2' N lat., 70°19.5' W long.

(2) *Exempt waters of southern Massachusetts*. Heading From 70° W longitude south of Cape Cod to the Rhode Island border, all Massachusetts State waters in EEZ Nearshore Management Area 2 and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations under § 697.18 of this title), including Federal waters of Nantucket Sound west of 70° W longitude.

(F) *South Carolina*. The regulations in this section do not apply to waters landward of a line connecting the following points from 32°34.717' N lat.,

80°08.565' W long. to 32°34.686' N lat., 80°08.642' W long. (Captain Sams Inlet).

(4) *Sinking groundline exemption.*

The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m).

(5) *Net panel weak link and anchoring exemption.* The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the float-line is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m).

(6) *Island buffer.* Those fishing in waters within $\frac{1}{4}$ nautical miles of the following Maine islands are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iv) of this section: Monhegan Island, Matinicus Island Group (Metinic Island, Small Green Island, Large Green Island, Seal Island, Wooden Ball Island, Matinicus Island, Ragged Island), and Isles of Shoals Island Group (Duck Island, Appledore Island, Cedar Island, Smuttynose Island).

(b) *Gear marking requirements—(1) Specified areas.* Except for when fishing in LMA3 and Maine exempted waters, Maine, New Hampshire, Massachusetts, and Rhode Island lobster and crab trap/pot fishermen will follow the color code scheme assigned to the state that permits their vessel, indicated in paragraph (b)(3) of this section. For all other trap/pot and gillnet gear, excluding shark gillnet, the following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Massachusetts Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Areas, and Southeast U.S. Monitoring Area.

(i) *Jordan Basin.* The Jordan Basin Restricted Area is bounded by the following points connected by straight lines in the order listed:

TABLE 5 TO PARAGRAPH (b)(1)(i)

Point	N lat.	W long.
JBRA1	43°15'	68°50'
JBRA2	43°35'	68°20'

TABLE 5 TO PARAGRAPH (b)(1)(i)—Continued

Point	N lat.	W long.
JBRA3	43°25'	68°05'
JBRA4	43°05'	68°20'
JBRA5	43°05'	68°35'
JBRA1	43°15'	68°50'

(ii) *Jeffreys Ledge Restricted Area.* The Jeffreys Ledge Restricted Area is bounded by the following points connected by a straight line in the order listed:

TABLE 6 TO PARAGRAPH (b)(1)(ii)

Point	N lat.	W long.
JLRA1	43°15'	70°25'
JLRA2	43°15'	70°00'
JLRA3	42°50'	70°00'
JLRA4	42°50'	70°25'
JLRA1	43°15'	70°25'

(2) *Markings.* All specified gear in specified areas must be marked with the color code shown in paragraph (b)(3) of this section. The color must be permanently marked on or along the line or lines specified under paragraphs (b)(2)(i) through (iii) of this section. Each colored mark must be clearly visible when the gear is hauled or removed from the water, including if the color of the rope is the same as or similar to the respective color code.

(i) *Northeast crab and lobster buoy line markings.* For all Northeast Region crab and lobster trap/pot gear regulated under this section, the surface system ropes must be marked with a solid 36-inch mark (91.4 cm) within two-fathoms (3.7 m) of the buoy. When fishing in Federal waters, all Northeast Region crab and lobster trap/pot surface system lines must have an additional 6-inch (15.24 cm) green mark one-foot (30.05 cm) below the 36-inch (91.4 cm) mark. These surface system marks must be solid marks that may be dyed, painted, or heat-shrink tubing, insertion of a colored rope or braided sleeve, or the line may be marked as approved in writing by the Assistant Administrator. When fishing in state waters, the buoy line must be marked at least two additional times (top half, bottom half) and each mark must total 12-inches (30.5 cm) for a total of four marks in state waters. When in Federal waters, the buoy line must be marked at least three additional times (top, middle, and bottom) and each mark must total 12-inches (30.5 cm) for a total of five marks in Federal waters. In marking or affixing the color code for buoy line below the surface system for gear regulated under this paragraph (b)(2)(i), the line may be:

Dyed; painted, marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing; spliced in insertion of a colored rope or braided sleeve or other material, or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator.

(ii) *Other buoy line markings.* For all other trap/pot and gillnet gear regulated under this section, the buoy line must be marked at least three times (top, middle, bottom) and each mark must total 12 inches (30.5 cm) in length. If the mark consists of two colors then each color mark may be 6 inches (15.25 cm) for a total mark of 12 inches (30.5 cm). In marking or affixing the color code for gear regulated under this paragraph (b)(2)(ii), the line may be: Dyed, painted, marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, spliced in insertion of a colored rope or braided sleeve or other material, or a thin line may be woven into or through the line, or the line may be marked as approved in writing by the Assistant Administrator. An outreach guide illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request and posted on the NMFS, Greater Atlantic Region Atlantic Large Whale Take Reduction Plan website <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan#outreach>.

(iii) *Net panel markings.* Shark gillnet gear net panels in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters is required to be marked. The net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m).

(iv) *Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the Federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or Federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or Arabic numbers in a color that contrasts with the background color of the buoy. An outreach guide illustrating the techniques for marking gear is available from the Regional

Administrator, NMFS, Greater Atlantic Region upon request and posted on the NMFS, Greater Atlantic Region Atlantic Large Whale Take Reduction Plan

website <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan#outreach>.

(3) *Color code.* Gear must be marked with the appropriate colors to designate gear types and areas as follows.

TABLE 7 TO PARAGRAPH (b)(3)

Color code scheme	
Plan management area	Color
Northeast Region, Lobster and Crab Trap/Pot Gear	
Trawls fished by vessels permitted by the state of Maine when fished in state waters	Purple.
Trawls fished by vessels permitted by the state of Maine when fished in Federal LMA 1 waters	Purple, Green (Surface System).
Trawls fished by vessels permitted by the state of New Hampshire when fished in state waters	Yellow.
Trawls fished by vessels permitted by the state of New Hampshire when fished in Federal LMA 1 waters.	Yellow, Green (Surface System).
Trawls fished by vessels permitted by the state of Massachusetts when fished in state waters	Red.
Trawls fished by vessels permitted by the state of Massachusetts in Federal waters of LMA 1, OC, LMA 2 (including $\frac{2}{3}$ overlap).	Red, Green (Surface System).
Trawls fished by vessels permitted by the state of Rhode Island in state waters	Silver/Gray.
Trawls fished by vessels permitted by the state of Rhode Island in Federal waters of LMA 2 (including $\frac{2}{3}$ overlap).	Silver/Gray Green (Surface System).
Trawls fished in the Northeast EEZ Offshore Management Area 3 (LMA3) excluding the $\frac{2}{3}$ overlap	Black, Green (Surface system).
Northeast Region, Other Trap/Pot Gear	
Massachusetts Restricted Area	Red.
Northern Nearshore	Red.
Northern Inshore State	Red.
Stellwagen Bank/Jeffreys Ledge Restricted Area	Red.
Great South Channel Restricted Area overlapping with LMA 2 and/or Outer Cape	Red.
Exempt Rhode Island state waters (single traps)	Red and Blue.
Exempt Massachusetts state waters in LMA 1 (single traps)	Red and White.
Exempt Massachusetts state waters in LMA 2 (single traps)	Red and Black.
Exempt Massachusetts state waters in Outer Cape (single traps)	Red and Yellow.
Isles of Shoals, ME (single traps)	Red and Orange.
Great South Channel Restricted Area overlapping with LMA 2/3 and/or LMA 3	Black.
Jordan Basin	Black and Purple (LMA 3), Red and Purple (LMA 1).
Jeffreys Ledge	Red and Green.
Trap/Pot Gear	
Southern Nearshore	Orange.
Southeast Restricted Area North (State Waters)	Blue and Orange.
Southeast Restricted Area North (Federal Waters)	Green and Orange.
Offshore	Black.
Gillnet Excluding Shark Gillnet	
Cape Cod Bay Restricted Area	Green.
Stellwagen Bank/Jeffreys Ledge Restricted Area	Green.
Great South Channel Restricted Area	Green.
Great South Channel Restricted Sliver Area	Green.
Other Northeast Gillnet Waters	Green.
Jordan Basin	Green and Yellow.
Jeffreys Ledge	Green and Black.
Mid/South Atlantic Gillnet Waters	Blue.
Southeast U.S. Restricted Area South	Yellow.
Other Southeast Gillnet Waters	Yellow.
Shark Gillnet (With Webbing of 5" or Greater)	
Southeast U.S. Restricted Area South	Green and Blue.
Southeast Monitoring Area	Green and Blue.
Other Southeast Waters	Green and Blue.

(c) *Restrictions applicable to trap/pot gear in regulated waters—(1) Universal trap/pot gear requirements.* In addition to the gear marking requirements listed in paragraph (b) of this section and the

area-specific measures listed in paragraphs (c)(2) through (12) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must

comply with the universal gear

requirements listed in paragraphs (c)(1)(i) through (iii) of this section.¹

(i) *No buoy line floating at the surface.* No person or vessel may fish with trap/pot gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. 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.

(ii) *No wet storage of gear.* Trap/pot gear must be hauled out of the water at least once every 30 days.

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(2) *Area specific gear requirements.* Trap/pot gear must be set according to the requirements outlined in paragraphs (c)(2)(i) through (iii) of this section and in Table 8 to paragraph (c)(2)(iv) of this section.

(i) *Single traps and multiple-trap trawls.* All traps must be set according to the configuration outlined in Table 8 to paragraph (c)(2)(iv) of this section. Trawls up to and including five traps must only have one buoy line unless specified otherwise in Table 8 to paragraph (c)(2)(iv) of this section.

(ii) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, radar reflectors, subsurface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed either as close to each individual buoy, flotation device and/or weight as operationally feasible, or at the base of

the surface system where the surface system attaches to the single buoy line, and that meets the following specifications:

(A) *Weak link breaking strengths.* The breaking strength of the weak links must not exceed the breaking strength listed in paragraph (c)(2)(iv) of this section for a specified management area.

(B) *Approved weak links.* The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. An outreach guide illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request and posted on the NMFS, Greater Atlantic Region Atlantic Large Whale Take Reduction Plan website <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan#outreach>.

(C) *Clean breaks.* Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this paragraph (c)(2)(ii)(C).

(iii) *Weak buoy lines and weak insertion devices.* All crab and lobster trap buoy lines in the management areas and configurations outlined in Table 8 to paragraph (c)(2)(iv) of this section must use weak line or must insert weak devices along the buoy line as described in Table 8 to paragraph (c)(2)(iv). The weak line and weak insert devices must meet the following specifications:

(A) *Breaking strength.* The breaking strength of the weak buoy lines and weak insert devices must not exceed 1,700 lbs. (771 kgs.).

(B) *Distance between weak insertions.* Weak insertion devices must be inserted in the specified intervals from the surface system and must be devices chosen from the following list approved by NMFS: Three-foot long hollow braided sleeves such as those known as the South Shore Sleeve, spliced insert of three-foot long weak buoy line that is no thinner than five sixteenths inches (8mm) in diameter, three-foot (.91 m) long “lazy splice” loop and double tuck of three eighths inch (9.5 mm) diameter line with three eighths inch (9.5 mm) diameter line, or a loop and double tuck (lazy splice) of three eighths inch (9.5mm) diameter line with five sixteenths inch (8 mm) diameter line, or other materials or devices approved in writing by the Assistant Administrator. An outreach guide illustrating the techniques for making weak insert devices is available from the Regional Administrator, NMFS, Greater Atlantic Region upon request and posted on the NMFS, Greater Atlantic Region Atlantic Large Whale Take Reduction Plan website <https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan#outreach>.

(C) *Clean breaks.* Weak line and weak inserts must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak insert breaks. Splices are not considered to be knots for the purposes of this paragraph (c)(2)(iii)(C).

(iv) *Table of area specific trap/pot gear requirements.*

TABLE 8 TO PARAGRAPH (c)(2)(iv)

Mgmt area; location	Minimum number traps/rawl	Weak link strength	Weak rope or weak insertion configuration
Northeast Lobster/Crab Trap/Pot			
Northern Inshore State; Maine State and Pocket Waters ¹ .	3 (1 buoy line)	≤600 lbs	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore; Maine Zones A–G (3–6 miles).	8	≤600 lbs	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Inshore State and Massachusetts Restricted Area; Massachusetts State Waters ² .	No minimum number of traps per trawl. Trawls up to and including 3 or fewer traps must only have one buoy line.	≤600 lbs	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.

¹ Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are

considered to be less of an entanglement threat and are thus preferable to knots.

TABLE 8 TO PARAGRAPH (c)(2)(iv)—Continued

Mgmt area; location	Minimum number traps/rawl	Weak link strength	Weak rope or weak insertion configuration
Northern Inshore State and Massachusetts Restricted Area; Other Massachusetts State Waters.	2 (1 buoy line) Trawls up to and including 3 or fewer traps must only have one buoy line.	≤600 lbs	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.
Northern Inshore State; New Hampshire State Waters.	No minimum trap/rawl	≤600 lbs	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.
Northern Nearshore; New Hampshire and Massachusetts (3–6 miles).	10	≤600 lbs	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore, Massachusetts Restricted Area, and Stellwagen Bank/Jeffreys Ledge Restricted Area; LMA 1 (6–12 miles).	15	≤600 lbs	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore and LMA1 Restricted Area; LMA1 (12 + miles).	25	≤600 lbs	Weak line for the top 35 percent of the buoy line or one weak insertion device at 35 percent buoy line length from top.
Northern Inshore State and Massachusetts Restricted Area; LMA1/OC Overlap (0–3 miles).	No minimum number of traps per trawl	≤600 lbs	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.
Northern Inshore State, Massachusetts Restricted Area, and Massachusetts South Island Restricted Area; OC (0–3 miles).	No minimum number of traps per trawl	≤600 lbs	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.
Northern Nearshore and Massachusetts Restricted Area; OC (3–12 miles).	15	≤600 lbs	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore and Great South Channel Restricted Area; OC (12 + miles).	20	≤600 lbs	Weak line for the top 35 percent of the buoy line or one weak insertion device at 35 percent buoy line length from top.
Northern Inshore State; RI State Waters	No minimum number of traps per trawl	≤600 lbs	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.
Northern Nearshore; LMA 2 (3–12 miles).	15	≤600 lbs	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore, Great South Channel Restricted Area, and Massachusetts South of Island Restricted Area; LMA 2 (12 + miles).	25	≤600 lbs	Weak line for the top 35 percent of the buoy line or one weak insertion device at 35 percent buoy line length from top.
Offshore, Great South Channel Restricted Area, and Massachusetts South Island Restricted Area; LMA 2/3 Overlap (12 + miles).	25	≤1500 lbs (2,000 lbs if red crab trap/pot).	Weak line for the top 35 percent portion of the buoy line or one weak insertion device at 35 percent buoy line length from top.
Northeast Offshore waters North of 40°, Great South Channel Restricted Area, and Massachusetts South Island Restricted Area; LMA 3 (12 + miles).	45	≤1500 lbs (2,000 lbs if red crab trap/pot).	Weak line for the top 75 percent of the buoy line.
Other Trap/Pot			
Northern Inshore State; Maine State and Pocket Waters ¹ .	2 (1 buoy line)	≤600 lbs.	
Northern Nearshore; Maine Zones A–G (3–6 miles) ¹ .	3 (1 buoy line)	≤600 lbs.	
Northern Nearshore; Maine Zones A–C (6–12 miles) ¹ .	5 (1 buoy line)	≤600 lbs.	
Northern Nearshore; Maine Zones D–G (6–12 miles) ¹ .	10	≤600 lbs.	
Northern Nearshore, Offshore, and LMA1 Restricted Area; Maine Zones A–E (12 + miles).	15	≤600 lbs (≤1500 lbs in offshore, 2,000 lbs if red crab trap/pot).	

TABLE 8 TO PARAGRAPH (c)(2)(iv)—Continued

Mgmt area; location	Minimum number traps/rawl	Weak link strength	Weak rope or weak insertion configuration
Northern Nearshore, Offshore, and LMA1 Restricted Area; Maine Zones F–G (12 + miles).	15 (Mar 1–Oct 31) 20 (Nov 1–Feb 28/29).	≤600 lbs (≤1500 lbs in offshore, 2,000 lbs if red crab trap/pot).	
Northern Inshore State and Massachusetts Restricted Area; Massachusetts State Waters ² .	No minimum number of traps per trawl. Trawls up to and including 3 or fewer traps must only have one buoy line.	≤600 lbs.	
Northern Inshore State, Massachusetts Restricted Area, and Massachusetts South Island Restricted Area; Other Massachusetts State Waters.	2 (1 buoy line) Trawls up to and including 3 or fewer traps must only have one buoy line.	≤600 lbs.	
Northern Inshore State; New Hampshire State Waters.	No minimum trap/rawl	≤600 lbs.	
Northern Nearshore and Massachusetts Restricted Area and Stellwagen Bank/Jeffreys Ledge Restricted Area; LMA 1 (3–12 miles).	10	≤600 lbs.	
Northern Nearshore and LMA1 Restricted Area; LMA 1 (12 + miles).	20	≤600 lbs.	
Northern Inshore State and Massachusetts Restricted Area; LMA1/OC Overlap (0–3 miles).	No minimum number of traps per trawl	≤600 lbs.	
Northern Inshore State and Massachusetts Restricted Area; OC (0–3 miles).	No minimum number of traps per trawl	≤600 lbs.	
Northern Nearshore and Massachusetts Restricted Area; OC (3–12 miles).	10	≤600 lbs.	
Northern Nearshore and Great South Channel Restricted Area; OC (12 + miles).	20	≤600 lbs.	
Northern Inshore State; Rhode Island State Waters.	No minimum number of traps per trawl	≤600 lbs.	
Northern Nearshore, and Massachusetts South Island Restricted Area; LMA 2 (3–12 miles).	10	≤600 lbs.	
Northern Nearshore, Great South Channel Restricted Area; LMA 2 (12 + miles).	20	≤600 lbs.	
Northeast Offshore and Great South Channel Restricted Area, and Massachusetts South Island Restricted Area; LMA 2/3 Overlap (12 + miles).	20	≤1500 lbs (2,000 lbs if red crab trap/pot).	
Northeast Offshore waters, Great South Channel Restricted Area, and Massachusetts South Island Restricted Area; LMA 3 (12 + miles).	20	≤1500 lbs (2,000 lbs if red crab trap/pot).	
Southern Nearshore; LMA 4,5,6	≤600 lbs.	
Southeast U.S. Restricted Area North; ³ Florida State Waters.	1	≤200 lbs.	
Southeast U.S. Restricted Area North; ³ Georgia State Waters.	1	≤600 lbs.	
Southeast U.S. Restricted Area North; ³ South Carolina State Waters.	1	≤600 lbs.	
Southeast U.S. Restricted Area North; ³ Federal Waters off Florida, Georgia, South Carolina.	1	≤600 lbs.	

¹ The pocket waters and 6-mile line are defined in paragraphs (a)(2)(ii) and (iii) of this section.

² Massachusetts State waters as defined as paragraph (a)(3)(ii) of this section.

³ See paragraph (f)(1) of this section for description of area.

(3) *Massachusetts Restricted Area*—(i) *Area*. The Massachusetts Restricted Area is bounded by the following points connected by straight lines in the order listed, and bounded on the west by the shoreline of Cape Cod, Massachusetts.

TABLE 9 TO PARAGRAPH (c)(3)(i)

Point	N lat.	W long.
MRA1	42°12'	70°44'
MRA2	42°12'	70°30'
MRA3	42°30'	70°30'
MRA4	42°30'	69°45'
MRA5	41°56.5'	69°45'

TABLE 9 TO PARAGRAPH (c)(3)(i)—Continued

Point	N lat.	W long.
MRA6	41°21.5'	69°16'
MRA7	41°15.3'	69°57.9'
MRA8	41°20.3'	70°00'

TABLE 9 TO PARAGRAPH (c)(3)(i)—
Continued

Point	N lat.	W long.
MRA9	41°40.2'	70°00'
MRA1	42°12'	70°44'

(ii) *Closure to fishing with buoy lines.* From February 1 to April 30, it is prohibited to fish with, set, or possess trap/pot gear in the area in paragraph (c)(3)(i) unless it is fished without buoy lines or with buoy lines that are stored on the bottom until it can be remotely released for hauling, or it is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84 of this chapter.

(iii) *Area-specific gear or vessel requirements.* From May 1 through January 31, no person or vessel may fish with or possess trap/pot gear in the Massachusetts Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *Massachusetts South Island Restricted Area—(i) Area.* The Massachusetts South Island Restricted Area is bounded by the following points connected by straight lines in the order listed, and bounded on the north by the shoreline of Nantucket, Massachusetts.

TABLE 10 TO PARAGRAPH (c)(4)(i)

Point	N lat.	W long.
MSI1	41°15.3'	70°18.9'
MSI2	41°15.3'	70°10.6'
MSI3	41°15.3'	69°57.9'
MSI4	41°21.5'	69°16'
MSI5	40°37.02'	69°16'
MSI6	40°37.02'	70°18.9'
MSI1	41°15.3'	70°18.9'

(ii) *Closure to fishing with buoy lines.* From February 1 to April 30, it is prohibited to fish with, set, or possess trap/pot gear in the area in paragraph (c)(4)(i) unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84 of this chapter.

(iii) *Area-specific gear or vessel requirements.* From May 1 through January 31, no person or vessel may fish with or possess trap/pot gear in the Massachusetts South Island Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(5) *Great South Channel Restricted Trap/Pot Area—(i) Area.* The Great South Channel Restricted Trap/Pot Area consists of the area bounded by the following points.

TABLE 11 TO PARAGRAPH (c)(5)(i)

Point	N Lat.	W Long.
GSC1	41°40'	69°45'
GSC2	41°0'	69°05'
GSC3	41°38'	68°13'
GSC4	42°10'	68°31'
GSC1	41°40'	69°45'

(ii) *Closure to fishing with buoy lines.* From April 1 through June 30, it is prohibited to fish with, set, or possess trap/pot gear in the area in paragraph (c)(5)(i) unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84 of this chapter.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(6) *Lobster Management Area One Restricted Area—(i) Area.* The Lobster Management Area One Restricted Area (LMRA1) is bounded by the following points connected by straight lines in the order listed.

TABLE 12 TO PARAGRAPH (c)(6)(i)

Point	N lat.	W long.
LMRA1 1	43°06'	69°36.77'

TABLE 12 TO PARAGRAPH (c)(6)(i)—
Continued

Point	N lat.	W long.
LMRA1 2	43°44'	68°21.6'
LMRA1 3	43°32.68'	68°17.27'
LMRA1 4	42°53.52'	69°32.16'
LMRA1 1	43°06'	69°36.77'

(ii) *Restrictions to fishing with buoy lines.* From October 1 to January 31, it is prohibited to fish with, set, or possess trap/pot gear in the area in paragraph (c)(6)(i) unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84 of this chapter.

Alternative 1—A (for Paragraph (c)(6)(ii))

(ii) *Restrictions to fishing with buoy lines.* There are no seasonal restrictions to fishing with buoy lines.

Alternative 1—B (for Paragraph (c)(6)(ii))

(ii) *Restrictions to fishing with buoy lines.* The Regional Administrator may determine whether the frequency of entanglements from trap/pot gear in the Northeast region has been reduced by 60 percent from [effective date of the final rule] within a time period that allows for meaningful analysis. If the Regional Administrator determines that the frequency of such entanglements has not been reduced by 60 percent, then from October 1 to January 31, it shall be prohibited to fish with, set, or possess trap/pot gear in the area in paragraph (c)(6)(i) unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84 of this chapter.

(iii) *Area-specific gear or vessel requirements.* From February 1 through September 30, no person or vessel may fish with or possess trap/pot gear in the Lobster Management Area One Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or

unless the gear is stowed as specified in § 229.2.

(7) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area*. The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Massachusetts Restricted Area in paragraph (c)(3) of this section, that lie south of 43°15' N lat. and west of 70°00' W long.

(ii) *Year round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(8) *Offshore Trap/Pot² Waters Area*—(i) *Area*. The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area known as Lobster Management Area 3, including the area known as the Area ²/₃ Overlap and Area ³/₅ Overlap as defined in the American Lobster Fishery regulations at § 697.18 of this title, with the exception of the Great South Channel Restricted Trap/Pot Area and Southeast Restricted Area, and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°14' N lat. South to 27°51' N lat., and east to the eastern edge of the EEZ.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the northeast portion of Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements*. From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the

Offshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements*. From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 32°00' N lat. south to 29°00' N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements*. From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 29°00' N lat. south to 27°51' N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(9) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area*. The Northern Inshore State Trap/Pot Waters Area includes the State waters of Rhode Island, Massachusetts, New Hampshire, and Maine, with the exception of Massachusetts Restricted Area and those waters exempted under paragraph (a)(3) of this section. Federal waters west of 70°00' N lat. in Nantucket Sound are also included in the Northern Inshore State Trap/Pot Waters Area.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this

section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(10) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area*. The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations at § 697.18 of this title), with the exception of the Great South Channel Restricted Trap/Pot Area, Massachusetts Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Federal waters west of 70°00' N lat. in Nantucket Sound (included in the Northern Inshore State Trap/Pot Waters Area) and those waters exempted under paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(11) *Southern Nearshore³ Trap/Pot Waters Area*—(i) *Area*. The Southern Nearshore Trap/Pot Waters Area includes all State and Federal waters that fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in § 697.18 of this title, and excluding the Area ³/₅ Overlap), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30' N lat. south to 27°51' N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section and those waters in the Southeast Restricted Area defined in paragraph (f)(1) of this section.

(ii) *Year-round area-specific gear or vessel requirements*. No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N

² Fishermen using red crab trap/pot gear should refer to paragraph (c)(12) of this section for the restrictions applicable to the red crab trap/pot fishery.

³ Fishermen using red crab trap/pot gear should refer to paragraph (c)(12) of this section for the restrictions applicable to the red crab trap/pot fishery.

lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00' N lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00' N lat. south to 29°00' N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00' N lat. south to 27°51' N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in

paragraph (c)(1) of this section, the area-specific requirements in (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

(12) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(6)(i) and (c)(9)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(12)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(12)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2' N lat., 71°51.5' W long. (Watch Hill Point, RI) south to 40°00' N lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00' N lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(12)(i) of this section that overlaps an

area from 32°00' N lat. south to 29°00' N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(12)(i) of this section that overlaps an area from 29°00' N lat. south to 27°51' N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(vi) [Reserved]

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 4. The authority citation for 50 CFR part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 5. In § 697.21, revise paragraph (b)(3) to read as follows:

§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.

* * * * *

(b) * * *

(3) No American lobster trap trawl shall exceed 1.5 nautical miles (2.78 km) in length, as measured from radar reflector to radar reflector, except in the EEZ Offshore Management Area 3 where the maximum length of a lobster trap trawl shall not exceed 1.75 nautical miles (3.24 km).

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