

# FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[DA 08–126; MB Docket No. 05–243; RM–11363; RM–11364, RM–11365]

## Radio Broadcasting Services; Various Locations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division amends the FM Table of Allotments by substituting Channel 259C for vacant Channel 273C at Meeteetse, Wyoming. Channel 259C can be allotted to Meeteetse, Wyoming in conformity with the Commission's Rules without a site restriction at reference coordinates 44–09–26 NL and 108–52–15WL. Additionally, the Audio Division grants three counterproposals filed timely in this proceeding. See **SUPPLEMENTARY INFORMATION**, *supra*.

**DATES:** Effective March 3, 2008.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MB Docket No. 05–243, adopted January 16, 2008, and released January 18, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The first counterproposal filed jointly by Millcreek Broadcasting, LLC, licensee of Station KUUU(FM), Channel 223C2, South Jordan, Utah; Simmons SLC, LLC, licensee of Station KAOX(FM), Channel 297C2, Kemmerer, Wyoming; 3 Point Media—Coalville, LLC, licensee of Station KCUA(FM), Channel 223C3, Naples, Utah; 3 Point Media—Delta, LLC, licensee of Station

KMGR(FM), Channel 240C1, Delta, Utah; and College Creek Broadcasting, LLC, permittee of Station KADQ–FM, Channel 252C2 at Evanston, Wyoming and FM Station KRPX, Channel 237C3 at Wellington, Utah requests the substitution of Channel 252C for Channel 252C2 at Evanston, Wyoming, and modification of the Station KADQ–FM authorization. The reference coordinates for Channel 252C at Evanston are 41–14–14 NL and 110–58–09 WL, located 3.5 kilometers (2.2 miles) south of Evanston. To accommodate the Evanston channel substitution, we are substituting Channel 237C3 for Channel 252C3 at Price, Utah, and modifying the Station KARB(FM) license, which in turn requires the substitution of Channel 233C3 for Channel 237C3 at Wellington, Utah, and modification of the FM Station KRPX authorization. The reference coordinates for Channel 237C3 at Price are 39–36–33 NL and 110–48–50 WL, located 1.1 kilometers (0.7 miles) north of Price. The reference coordinates for Channel 233C3 at Wellington are 39–30–41 NL and 110–45–54 WL, located 4.3 kilometers (2.7 miles) southwest of Wellington. In order to allot Channel 233C3 at Wellington, we are substituting Channel 239C for vacant Channel 233C at Salina, Utah, which in turn requires the substitution of Channel 240C0 for Channel 240C1 at Delta, Utah, reallocating Channel 240C0 from Delta to Randolph, Utah, as its second local service, and modifying the Station KMGR(FM) license. The reference coordinates for Channel 239C at Salina are 38–50–58 NL and 112–00–28 WL, located 17.6 kilometers (11 miles) southwest of Salina. The reference coordinates for Channel 240C0 at Randolph are 41–56–46 NL and 111–00–04 WL, located 34.5 kilometers (21.5 miles) northeast of Randolph. To accommodate the Randolph reallocation, we are substituting Channel 260C3 for Channel 240A at Weston, Idaho, and modifying the Station KLZX(FM) license. The reference coordinates for Channel 260C3 at Weston are 41–52–18 NL and 111–48–31 WL, located 23.2 kilometers (14.4 miles) southwest of Weston. The Channel 260C3 at Weston requires the substitution of Channel 228C for Channel 260C at Burley, Idaho, and modification of Station KZDX(FM)'s license to facilitate this change. The reference coordinates for Channel 228C at Burley are 42–29–33 NL and 113–44–44 WL, located 6.1 kilometers (3.8 miles) southwest of Burley. In order to allot Channel 228C at Burley, we are substituting Channel 230C for Channel 229C at Pocatello, Idaho, and modifying

the Station KZBQ(FM) license. The reference coordinates for Channel 230C at Pocatello are 42–51–57 NL and 112–30–46 WL, located 5.6 kilometers (3.5 miles) west of Pocatello. To accommodate Channel 260C3 at Weston, we are substituting Channel 261C3 for Channel 261C2 at Soda Spring, Idaho, reallocating Channel 261C3 from Soda Springs, Idaho to Wilson, Wyoming, as its first local service, and modifying the Station KITT(FM)'s license. The reference coordinates for Channel 261C3 at Wilson are 43–27–40 NL and 110–45–09 WL, located 10.8 kilometers (6.7 miles) southeast of Wilson. In order to eliminate the gray area created by the Wilson reallocation, we are reallocating Channel 297C2 from Kemmerer, Wyoming to Shelley, Idaho, as its second local service, and modifying the Station KAOX(FM) license. The reference coordinates for Channel 297C2 at Shelley are 43–02–00 NL and 111–55–34 WL, located 41.8 kilometers (26 miles) south of Shelley. To facilitate the Shelley reallocation, we are substituting Channel 300C1 for Channel 296C1 at Idaho Falls, Idaho, and modifying the Station KEQO(FM)'s license and substituting Channel 223C1 for Channel 223C3 at Naples, Utah, reallocating Channel 223C1 from Naples, Utah, to Diamondville, Wyoming and modifying the Station KCUA(FM) license. The reference coordinates for Channel 300C1 at Idaho Falls are 43–46–04 NL and 111–57–57 WL, located 33.9 kilometers (21.1 miles) north of Idaho Falls. The reference coordinates for Channel 223C1 at Diamondville are 41–54–14 NL and 110–31–06 WL, located 13.9 kilometers (8.6 miles) north of Diamondville. In order to allot Channel 223C1 to Diamondville, we are substituting Channel 223A for Channel 223C2 at South Jordan, Utah, and modifying the Station KUUU(FM) license. The reference coordinates of Channel 223A at South Jordan are 40–27–11 NL and 111–56–36 WL, located 12.2 kilometers (7.6 miles) south of South Jordan. Moreover, we are substituting Channel 255C2 for Channel 253C2 at Roosevelt, Utah, reallocating Channel 255C2 from Roosevelt, Utah, to Naples, Utah, to prevent removal of Naples' sole local service, and modifying the Station KIFX(FM) license. The reference coordinates of Channel 255C2 at Naples are 40–33–24 NL and 109–38–08 WL, located 18.5 kilometers (11.5 miles) northwest of Naples. To accommodate the Naples reallocation, we are substituting Channel 268C3 for vacant Channel 255C3 at Fruita, Colorado. The reference coordinates for Channel 268C3

at Fruita are 39–06–52 NL and 108–51–09 WL. To accommodate the Randolph reallocation, we are substituting Channel 239C3 for Channel 239C1 at Marbleton, Wyoming, reallocating Channel 239C3 from Marbleton, Wyoming, to Ballard, Utah, as its first local service, and modifying the Station KFMR(FM) authorization. The reference coordinates for Channel 239C3 at Ballard are 40–27–04 NL and 109–56–25 WL, located 18 kilometers (11.2 miles) north of Ballard. To prevent removal of potential first local service at Marbleton, we are allotting Channel 257C1 at Marbleton, Wyoming. The reference coordinates of Channel 257C1 at Marbleton are 42–19–28 NL and 110–19–12 WL, located 30.8 kilometers (19.2 miles) southwest of Marbleton.

The second counterproposal filed jointly by Millcreek Broadcasting, LLC, licensee of Stations KNJQ(FM), Channel 286C, Manti, Utah, KUUV(FM), Channel 223C2, South Jordan, Utah, and KUDD(FM), Channel 300C, Roy, Utah; Simmon SLC, LS, LLC, licensee of Stations KDWW(FM), Channel 287C2, Diamondville, Wyoming, KAOX(FM), Channel 297C1, Kemmerer, Wyoming, and KRAR(FM), Channel 295C, Brigham City, Utah; 3 Point Media-Coalville, LLC, licensee of Station KCUA(FM), Channel 223C3, Naples, Utah; and College Creek Broadcasting, LLC, permittee of FM Station KHUN, Channel 296C2, Huntington, Utah, FM Station KRID, Channel 243C2, Ashton, Idaho, FM Station KKWW, Channel 293C, Superior, Wyoming, and Station KTYN(FM), Channel 290C1, Thayne, Wyoming requests the allotment of Channel 285C at Milford, Utah, as its first local service and a first aural reception service to 197 persons. The reference coordinates for Channel 285C at Milford are 38–31–11 NL and 113–17–07 WL. This site is located 27.6 kilometers (17.2 miles) northwest of Milford. To accommodate this vacant allotment, we are reallocating Channel 286C from Manti to American Fork, Utah, as the community's first local service, and modifying the Station KNJQ(FM) license. The reference coordinates for Channel 286C at American Fork are 40–39–34 NL and 112–12–05 WL. This site is located 46.6 kilometers (28.9 miles) northwest of American Fork. This reallocation requires the substitution of Channel 290C for Channel 289C at Centerville, Utah and modification of the Station KXRV(FM) license. The reference coordinates for Channel 290C at Centerville are 40–39–34 NL and 112–12–05 WL. This site is located 40 kilometers (24.9 miles) southwest of

Centerville. In order to allot Channel 290C to Centerville, we are substituting Channel 245C2 for Channel 290A at Vernal, Utah, and modifying Station KLCY–FM's license and substituting Channel 294C for Channel 293C at Spanish Fork, Utah, and modifying Station KOSY–FM's license. The reference coordinates for Channel 245C2 at Vernal are 40–32–16 NL and 109–41–57 WL. This site is located 17.1 kilometers (10.7 miles) northwest of Vernal. The reference coordinates for Channel 294C at Spanish Fork are 40–39–34 NL and 112–12–05 WL. This site is located 76.2 kilometers (47.4 miles) northwest of Spanish Fork. To accommodate the Channel 294C to Spanish Fork, we are substituting Channel 296C for Channel 295C at Brigham City, Utah, reallocating Channel 296C from Brigham City to Woodruff, Utah, as the community's second local service, and modifying the Station KRAR(FM) license, which in turn requires reallocating Channel 297C2 from Kemmerer, Wyoming to Shelley, Idaho, as its second local service, and modifying the Station KAOX(FM) license. The reference coordinates for Channel 296C at Woodruff are 40–56–07 NL and 111–00–03 WL. This site is located 66.5 kilometers (41.3 miles) south of Woodruff. The reference coordinates for Channel 297C2 at Shelley are 43–02–00 NL and 111–55–34 WL, located 41.8 kilometers (26 miles) south of Shelley. To facilitate the Shelley reallocation, we are substituting Channel 300C1 for Channel 296C1 at Idaho Falls, Idaho, and modifying the Station KEQO(FM) license. The reference coordinates for Channel 300C1 at Idaho Falls are 43–46–04 NL and 111–57–57 WL, located 33.9 kilometers (21.1 miles) north of Idaho Falls. In order to allot Channel 296C to Woodruff, we are substituting Channel 297C2 for Channel 296C2 at Huntington, Utah, and modifying the Station KHUN authorization, which in turn requires reallocating Channel 298C from Orem to Kaysville, Utah, as the community's first local service, and modifying the Station KKAT–FM license. The reference coordinates for Channel 297C2 at Huntington are 39–10–41 NL and 111–01–22 WL. This site is located 17.3 kilometers (10.7 miles) south of Huntington. The reference coordinates for Channel 298C at Kaysville are 40–39–34 NL and 112–12–05 WL. This site is located 47.3 kilometers (29.4 miles) southwest of Kaysville. To accommodate the Kaysville reallocation, we are reallocating Channel 300C from Roy to Randolph, Utah, as the community's second local service and

modifying the Station KUDD(FM) license. The reference coordinates for Channel 300C at Randolph are 41–04–48 NL and 111–05–32 WL. This site is located 65.5 kilometers (40.7 miles) south of Randolph. To accommodate Channel 290C at Centerville, we are substituting Channel 286C3 for Channel 290C3 at Thayne, Wyoming, and modifying the Station KTYN(FM) authorization, which in turn requires substituting Channel 243A for vacant Channel 286A at Dubois, Idaho. The reference coordinates for Channel 286C3 at Thayne are 43–06–18 NL and 111–07–17 WL. This site is located 22.7 kilometers (14.1 miles) northwest of Thayne. The reference coordinates for Channel 243A at Dubois are 44–15–50 NL and 112–09–00 WL. This site is located 11.6 kilometers (7.2 miles) northeast of Dubois. The allotment of Channel 286A at Dubois was added to the FM Table in MB Docket No. 04–427. See 70 FR 37289, published June 29, 2005. Channel 286A at Dubois was inadvertently removed from the FM Table of Allotments in MB Docket No. 05–210. See 72 FR 45813, published August 15, 2007. To accommodate the Dubois vacant allotment, we are substituting Channel 283A for Channel 243C2 at Ashton, Idaho, and modifying the Station KRID authorization. The reference coordinates for Channel 283A at Ashton are 43–58–32 NL and 111–34–40 WL. This site is located 14.9 kilometers (9.3 miles) southwest of Ashton. To accommodate Channel 286C3 at Thayne, we are substituting Channel 288C for Channel 287C2 at Diamondville, Wyoming, reallocating Channel 288C from Diamondville, Wyoming to Oakley, Utah, as the community's second local service, and modifying the Station KDWW(FM) license. The reference coordinates for Channel 288C at Oakley are 40–52–16 NL and 110–59–43 WL. This site is located 31 kilometers (19.3 miles) northeast of Oakley. To prevent removal of Diamondville's sole local service, we are substituting Channel 223C1 for Channel 223C3 at Naples, Utah, reallocating Channel 223C1 from Naples, Utah, to Diamondville, Wyoming and modifying the Station KCUA(FM) license. The reference coordinates for Channel 223C1 at Diamondville are 41–54–14 NL and 110–31–06 WL, located 13.9 kilometers (8.6 miles) north of Diamondville. To prevent removal of Naples' sole local service, we are substituting Channel 255C2 for Channel 253C2 at Roosevelt, Utah, reallocating Channel 255C2 from Roosevelt, to Naples, Utah and modifying the Station KIFX(FM) license. The reference

coordinates of Channel 255C2 at Naples are 40–33–24 NL and 109–38–08 WL, located 18.5 kilometers (11.5 miles) northwest of Naples. To accommodate the Naples reallocation, we are substituting Channel 268C3 for vacant Channel 255C3 at Fruita, Colorado. The reference coordinates for Channel 268C3 at Fruita are 39–06–52 NL and 108–51–09 WL. To accommodate the Diamondville reallocation, we are substituting Channel 223A for Channel 223C2 at South Jordan, Utah, and modifying the Station KUUV(FM) license. The reference coordinates of Channel 223A at South Jordan are 40–27–11 NL and 111–56–36 WL, located 12.2 kilometers (7.6 miles) south of South Jordan. To facilitate Channel 290C to Centerville, we are substituting Channel 292C for Channel 291C at Evanston, Wyoming, and modifying the Station KBMG(FM) license, which in turn requires substituting Channel 298C1 for Channel 293C1 at Superior, Wyoming, and modifying of the Station KKWY authorization. The reference coordinates for Channel 292C at Evanston are 40–52–16 NL and 110–59–43 WL, located 44.2 kilometers (27.5 miles) south of Evanston. The reference coordinates for Channel 298C1 at Superior are 41–25–32 NL and 109–07–42 WL, located 40.5 kilometers (25.1 miles) south of Superior.

The third counterproposal filed jointly by Sand Hill Media Corporation, licensee of Station KADQ–FM, Channel 232C2, Rexburg, Idaho and Sandhill Media Group, LLC, licensee of Station KUPI–FM, Channel 256C1, Idaho Falls, Idaho, requested Channel 262C2 at Lima, Montana, as the community first local service. However, we allotted alternate Channel 265C2 at Lima, Montana, as its first local service to avoid the ultimate permittee of this vacant allotment to reimburse Brigham Young University for its reasonable expenses associated with changing Station KBYI's frequency to Channel 232C1 at Rexburg. The reference coordinates for Channel 265C2 at Lima are 44–42–58 NL and 112–40–40 WL. This site is located 11.2 kilometers (6.9 miles) northwest of Lima. Additionally, we substituted Channel 232C1 for Channel 263C1 at Rexburg, Idaho and modifying the Station KBYI license to accommodate the substitution of Channel 263C1 for Channel 256C1 at Idaho Falls, Idaho and modification of the FM Station KUPI license. The reference coordinates for Channel 232C1 at Rexburg are 43–45–44 NL and 111–57–30 WL. The site is located 15.4 kilometers (9.6 miles) southwest of Rexburg. The reference coordinates for

Channel 263C1 at Idaho Falls are 43–21–06 NL and 12–00–22 WL. The site is located 13 kilometers (8.1 miles) south of Idaho Falls. Moreover, to facilitate the Channel 232C1 substitution at Rexburg, we substituted Channel 233C0 for Channel 233C at Logan, Utah, and modified the Station KVFX(FM) license and substituted Channel 256C2 for Channel 232C2 at Rexburg, Idaho and modified the Station KSNA(FM) license. The reference coordinates for Channel 233C0 at Logan are 41–53–50 NL and 111–57–39 WL. The site is located 20.8 kilometers (12.9 miles) northwest of Logan. The reference coordinates for Channel 256C2 at Rexburg are 43–45–20 NL and 111–57–56 WL. The site is located 16.2 kilometers (10.1 miles) southwest of Rexburg.

The Media Bureau's Consolidated Data Base System will reflect the following FM Channel as the reserved assignment for the listed stations, respectively: Channel 252C in lieu of Channel 252C2 at Evanston, Wyoming for Station KADQ–FM; Channel 237C3 in lieu of Channel 252C3 at Price, Utah for Station KARB(FM); Channel 233C3 in lieu of Channel 237C3 at Wellington, Utah for FM Station KRPX; Channel 240C0 at Randolph, Utah in lieu of Channel 240C1 at Delta, Utah for Station KMGR(FM); Channel 260C3 in lieu of Channel 240A at Weston, Idaho for Station KLZX(FM); Channel 228C in lieu of Channel 260C at Burley, Idaho for Station KZDX(FM); Channel 230C in lieu of Channel 229C at Pocatello, Idaho for Station KZBQ(FM); Channel 261C3 at Wilson, Wyoming in lieu of Channel 261C2 at Soda Spring, Idaho for Station KITT(FM); Channel 297C2 at Shelley, Idaho in lieu of Kemmerer, Wyoming for Station KAOX(FM); Channel 300C1 in lieu of Channel 296C1 at Idaho Falls for Station KEQO(FM); Channel 223C1 at Diamondville, Wyoming in lieu of Channel 223C3 at Naples, Utah for Station KCUA(FM); Channel 223A in lieu of Channel 223C2 at South Jordan, Utah for Station KUUV(FM); Channel 255C2 at Naples in lieu of Channel 253C2 at Roosevelt, Utah for Station KIFX(FM); Channel 239C3 at Ballard, Utah in lieu of Channel 239C1 at Marbleton, Wyoming for Station KFMR(FM); Channel 286C at American Fork, Utah in lieu of Manti, Utah for Station KNJQ(FM); Channel 290C in lieu of Channel 289C at Centerville, Utah for Station KXRV(FM); Channel 245C2 in lieu of Channel 290A at Vernal, Utah for Station KLCY–FM; Channel 294C in lieu of Channel 293C at Spanish Fork, Utah for Station KOSY–FM; Channel 296C at Woodruff, Utah in lieu of Channel 295C at Brigham City, Utah for Station

KRAR(FM); Channel 297C2 in lieu of Channel 296C2 at Huntington, Utah for Station KHUN; Channel 298C at Kaysville, Utah in lieu of Orem, Utah for Station KKAT–FM; Channel 300C at Randolph, Utah in lieu of Roy, Utah for Station KUDD(FM); Channel 286C3 in lieu of Channel 290C3 at Thayne, Wyoming for Station KTYN(FM); Channel 283A in lieu of Channel 243C2 at Ashton, Idaho for Station KRID; Channel 288C at Oakley, Utah in lieu of Channel 287C2 at Diamondville, Wyoming for Station KDWY(FM); Channel 292C in lieu of Channel 291C at Evanston, Wyoming for Station KBMG(FM); Channel 298C1 in lieu of Channel 293C1 at Superior, Wyoming for Station KKWY; Channel 232C1 in lieu of Channel 263C1 at Rexburg, Idaho for Station KBYI license; Channel 263C1 in lieu of Channel 256C1 at Idaho Falls, Idaho for Station KUPI–FM license; Channel 256C2 in lieu of Channel 232C2 at Rexburg, Idaho for Station KSNA(FM) license; and Channel 233C0 in lieu of Channel 233C at Logan, Utah for Station KVFX(FM).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 255C3 and adding Channel 268C3 at Fruita.

■ 3. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Dubois, Channel 243A.

■ 4. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Lima, Channel 265C2.

■ 5. Section 73.202(b), the Table of FM Allotments under Utah is amended by adding Milford, Channel 285C; and removing Channel 233C and adding Channel 239C at Salina.

■ 6. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Marbleton, Channel 257C1 and removing Channel 273C and adding Channel 259C at Meeteetse.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E8-2458 Filed 2-8-08; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 080117051-8123-02]

RIN 0648-XF17

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

**ACTION:** Temporary rule; extension of temporary area and gear restrictions.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations will continue to apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,767 nm<sup>2</sup> (6,061 km<sup>2</sup>), northeast of Boston, MA, for an additional 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

**DATES:** The area and gear restrictions were initially effective 0001 hours January 26, 2008, through 2400 hours February 9, 2008. This notice extends the restricted period from 0001 hours February 10, 2008, through 2400 hours February 24, 2008.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

## SUPPLEMENTARY INFORMATION:

### Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

### Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm<sup>2</sup> (257 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (3.43 km<sup>2</sup>). A qualified individual is an individual ascertained by NMFS to be reasonably

able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 13, 2008, an aerial survey reported two aggregations of right whales, totaling seven individuals: four whales in the proximity of 42° 37' N. latitude and 70° 01' W. longitude, and three whales in the proximity of 42° 51' N. latitude and 70° 04' W. longitude. These positions lie northeast of Boston, Massachusetts, and southeast of Portsmouth, New Hampshire, respectively. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS reviewed the options and factors noted above and on January 24, 2008, published a temporary rule in the **Federal Register** (73 FR 4118) to announce the establishment of a DAM zone with restrictions on anchored gillnet and lobster trap gear for a 15-day period. On February 4, 2008, a subsequent survey conducted over the DAM zone indicated that four whales were still present in the area northeast of Boston, MA, and the DAM zone trigger of 0.04 right whales per square nm (3.43 km<sup>2</sup>) continues to be met in this portion of the original DAM zone. Therefore, in order to further protect the right whales in this DAM zone, pursuant to 50 CFR 229.32(g)(3)(v), NMFS is exercising its authority to extend the restrictions on lobster trap and anchored gillnet gear for an additional 15 day period.

The extended DAM Zone is bound by the following coordinates: