

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

02/22/2006

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 10/21/2005.

TITLE: Gear-Marking Requirements for Atlantic Large Whale
Take Reduction Plan

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE
OMB NO.: 0648-0364
EXPIRATION DATE: 02/28/2009

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	257,218	2,572	27
New	257,216	2,572	15
Difference	-2	0	-12
Program Change		0	0
Adjustment		0	-12

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
GEAR-MARKING REQUIREMENTS FOR THE ATLANTIC LARGE
WHALE TAKE REDUCTION PLAN
OMB CONTROL NO.: 0648-0364**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The purpose of this collection of information is to enable NOAA to reduce entanglements of large whales, especially right whales, in U.S. fishing gear. Northern right whales are among the most endangered mammal species in the world. Only about 300 are left in the entire North Atlantic. Despite more than 50 years of protection, it is still not clear whether the population is increasing at all.

One of the factors slowing recovery is entanglement in fishing gear. For the period 1995 through 1999, (.6) right whale is seriously injured or die because of entanglement in U.S. fishing gear per year. NMFS is mandated by the Marine Mammal Protection Act (MMPA) to reduce entanglements to rates that approach zero mortality.

To assist in reaching this objective, persons setting lobster or gillnet gear in some areas of the Atlantic Ocean are required to mark their gear with one color midway along the buoy line, designating the type of gear and the area where the gear is set. Gear marking is required for anchored gillnet gear in the Cape Cod Bay(CCB) Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel (GSC) Restricted Gillnet Area, GSC Sliver Restricted Area, and Other Northeast Gillnet Waters Area. Gear marking is also required for lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Lobster Area, Northern Nearshore Lobster Waters Area, Southern Nearshore Lobster Waters Area, Offshore Lobster Waters Area, and CCB Restricted Area (whole area during the winter restricted period and Federal waters only during the other restricted period). For the above gear/area combinations, gear marking of buoy lines is a one-color code midway along the buoy line. Gear marking is not required for lobster gear in the Northern Inshore State Lobster Waters Area or for the state-water portion of the CCB Restricted area during the other restricted period. For the shark gillnet fishermen in the Restricted Area, the gear marking scheme requires two color codes, one color designating the type of gear and the other designating the area where the gear is set.

The goals of this collection of information are to obtain more information on where large whales are being entangled and on what kind of gear is responsible for the entanglement. This information allows NMFS to focus further risk reduction measures on problem areas rather than instituting broader measures that affect the overall industry. A major problem with designing further measures to reduce entanglements is that we do not know where whales are encountering the fishing gear, and we often do not know what kind of fishing gear is involved in an entanglement. Depending on how badly entangled it is, a whale can swim hundreds of miles and

many months before either shedding the gear or succumbing to the entanglement. Without information on the where the entanglement actually occurred, NOAA might have to implement sweeping measures that apply to all areas where right whales are known to occur in order to meet the statutory entanglement reduction goals. Often, only the rope stays attached to the whale, while traps, buoys, nets or other distinctive aspects of gear are lost. Without knowing what type of gear is responsible for the entanglement, NMFS may be required to impose measures on all gear that could entangle a large whale.

The gear-marking requirement is intended to provide information about where entanglements occur and what type of gear is responsible. The gear-marking scheme requires that ropes be marked with different color codes to differentiate between lobster gear and gillnet gear. Finding an entangled whale with marked gear on it would allow NMFS to focus its conservation efforts on that gear type and area rather than requiring gear changes throughout the industry.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

NMFS compiles an annual report on the status of each affected large whale species. Information about marked gear removed from whales would be included in the annual status reports, which are available to the public, and would be provided to the Atlantic Large Whale Take Reduction Team, an advisory group (including fishermen and environmentalists) who requested the gear-marking scheme and who advise NMFS on ways to reduce entanglements of large whales.

The information collected will not be disseminated to the public, as it consists solely of marking gear and/or vessels with the appropriate vessel or permit number. This information is not submitted to NMFS.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

There is no use of automated or electronic or other technological techniques associated with the gear-marking scheme.

4. Describe efforts to identify duplication.

NMFS requires under its fishery management rules that lobster traps have a tag issued by NMFS attached to the trap, with limits set on the number of tags issued (hence limiting the number of traps that each fisherman could set). Gillnet operators are required to mark their buoys or gillnets such that the name of the owner or vessel is visible on the surface of the water. In addition, many gillnet operators are subject to limits on the number of gillnets that can be set. These operators must also place a tag on each net. A contractor under the authority of NMFS issues the tags. There is no plan to amend these marking requirements at this time.

Despite the current lobster trap and gillnet marking requirements, NMFS requires persons using either kind of gear to mark their buoy lines. Neither of the current marking schemes provide useful information about where an entanglement of a large whale occurs. Both the buoys and the traps tend to be pulled off when a whale gets entangled. Usually only the ropes remain attached to the whale. The Northeast gear-marking scheme requires one color code midway along the buoy line. The Southeast gear-marking scheme requires two-color codes midway along the buoy line. All ropes removed from a whale would be inspected by NMFS for the marks.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection of information affects lobster trap and gillnet fishermen. This part of the fishing industry is composed almost entirely of small businesses. However, the burden is not considered to be significant. The gear-marking requirements are expected to affect 2,500 lobster fishermen, 2,000 gillnet fishermen, and 6 shark gillnet fishermen. The total cost of materials for all persons is estimated to be \$15,433.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

NMFS is required by the MMPA to reduce entanglements of large whales in U.S. fishing gear to levels approaching zero. Without the information which could be provided by the gear-marking collection of information on where entanglements occur and what type of gear is responsible, further entanglement reduction measures may have to be broader and affect more individuals than necessary. In the worst-case scenario, areas may have to be closed entirely to fishing when right whales are present. Knowing which areas to close would minimize the economic impact of closures while maximizing the benefits to right whales.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with OMB guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (copy attached) solicited public comment on this collection. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There is no provision to provide any payment or gift to participants in this marking scheme.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No confidentiality is promised or provided. The markings don't provide any information on the individual fisherman.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no sensitive questions.

12. Provide an estimate in hours of the burden of the collection of information.

NMFS estimates that approximately 2,500 lobster fishermen, 2,000 gillnet fishermen, and 6 shark gillnet fishermen are affected by the gear-marking requirement. Lobster fishermen are expected to have an average of 94 lines to mark, gillnet fishermen will mark 11, and shark gillnet fishermen will mark 36. The estimate for time required to mark lines is 6 minutes to mark 10 lines, or an average of .6 minutes per line.

2,500 lobster fishermen x 94 lines x 0.6 min. = 2,350 hours

2,000 gillnet fishermen x 11 lines x 0.6 min. = 220 hours

6 shark gillnet fishermen x 36 lines x 0.6 min. = 2 hours

The combined burden therefore would be 4,506 respondents, and 2,572 hours.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

The estimated total annual cost to the public to mark the affected gear is \$15,433 (assuming \$0.06 per mark). 257,216 lines x \$.06 = \$15,433.

14. Provide estimates of annualized cost to the Federal government.

The gear-marking requirement is not expected to have any annualized costs to the Federal Government.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The cost of marking lines has decreased due to an adjustment; there was an arithmetical error in the previous submission.

16. For collections whose results will be published, outline the plans for tabulation and publication.

There are no plans to publish the results of this collection per se. Information about gear and areas involved in entanglements might be published as part of some broader report or analysis.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

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each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

[62 FR 51813, Oct. 3, 1997, as amended at 63 FR 27861, May 21, 1998; 64 FR 3432, Jan. 22, 1999]

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Regulated waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet and to waters landward of the following lines:

Rhode Island

- 41° 27.99' N 71° 11.75' W TO 41° 28.49' N 71° 14.63' W (Sakonnet River)
41° 26.96' N 71° 21.34' W TO 41° 26.96' 71° 25.92' W (Narragansett Bay)
41° 22.41' N 71° 30.80' W TO 41° 22.41' N 71° 30.85' W (Pt. Judith Pond Inlet)
41° 21.31' 71° 38.30' W TO 41° 21.30' N 71° 38.33' W (Ninigret Pond Inlet)
41° 19.90' N 71° 43.08' W TO 41° 19.90' N 71° 43.10' W (Quonochontaug Pond Inlet)
41° 19.66' N 71° 45.75' W TO 41° 19.66' N 71° 45.78' W (Weekapaug Pond Inlet)

New York

West of the line from the Northern fork of the eastern end of Long Island, NY (Orient Pt.) to Plum Island to Fisher's Island to Watch Hill, RI. (Long Island Sound)

- 41° 11.40' N 72° 09.70' W TO 41° 04.50' N 71° 51.60;min; W (Gardiners Bay)
40° 50.30' 72° 28.50' W TO 40° 50.36' N 72° 28.67' W (Shinnecock Bay Inlet)
40° 45.70' N 72° 45.15' W TO 40° 45.72' N 72° 45.30' W (Moriches Bay Inlet)
40° 37.32' N 73° 18.40' W TO 40° 38.00' N 73° 18.56' W (Fire Island Inlet)
40° 34.40' N 73° 34.55' W TO 40° 35.08' N 73° 35.22' W (Jones Inlet)

New Jersey

- 39° 45.90' N 74° 05.90' W TO 39° 45.15' N 74° 06.20' W (Barnegat Inlet)
39° 30.70' N 74° 16.70' W TO 39° 26.30' N 74° 19.75' W (Beach Haven to Brigantine Inlet)
38° 56.20' N 74° 51.70' W TO 38° 56.20' N 74° 51.90' W (Cape May Inlet)
39° 16.70' N 75° 14.60' W TO 39° 11.25' N 75° 23.90' W (Delaware Bay)

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Maryland/Virginia

- 38° 19.48' N 75° 05.10' W TO 38° 19.35' N 75° 05.25' W (Ocean City Inlet)
37° 52.50' N 75° 24.30' W TO 37° 11.90' N 75° 48.30' W (Chincoteague to Ship Shoal Inlet)
37° 11.10' N 75° 49.30' W TO 37° 10.65' N 75° 49.60' W (Little Inlet)
37° 07.00' N 75° 53.75' W TO 37° 05.30' N 75° 56.50' W (Smith Island Inlet)

North Carolina to Florida

All marine and tidal waters landward of the 72 COLREGS demarcation line (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.

(b) Gear marking requirements. (1) Specified gear consists of lobster trap gear and gillnet gear set in specified areas.

(2) Specified areas. The following areas are specified for gear marking purposes: CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Lobster Waters Area, GSC Restricted Lobster Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Southern Nearshore Lobster Waters Area, Offshore Lobster Waters Area, Other Northeast Gillnet Waters Area, and Southeast U.S. Observer Area.

(3) Requirements for Southeast U.S. Observer Area. Any person who owns or fishes with specified fishing gear in the Southeast U.S. Observer Area must mark that gear in accordance with (b)(3)(i) and (b)(3)(ii) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section.

(i) Color code. Specified gear in the Southeast U.S. Observer Area must be marked with the appropriate color code to designate gear types and areas as follows:

(A) Gear type code—Gillnet gear. Gillnet gear must be marked with a green marking.

(B) Area code. Gear set in the Southeast U.S. Observer Area must be marked with a blue marking.

(ii) Markings. All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the

two-color code must be permanently marked on or along the line or lines specified under (f)(2) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, 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 (AA).

(4) *Requirements for other specified areas.* Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with (b)(4)(i) and (b)(4)(ii) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section. For the purposes of the following gear marking requirements only, lobster trap gear set in the CCB Restricted Area during the winter restricted period, the Federal-water portion of the CCB Restricted Area during the off-peak period, and the Stellwagen Bank/Jeffreys Ledge Restricted Area shall comply with the requirements for the Northern Nearshore Lobster Waters Area. Lobster gear set in the GSC Restricted Lobster Area shall comply with the requirements for the Offshore Lobster Waters Area. Similarly, anchored gillnet gear set in the CCB Restricted area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, and GSC Silver Restricted Area shall comply with the requirements for gillnet gear in the Other Northeast Gillnet Waters Area.

(i) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(A) Lobster trap gear in the Northern Nearshore Lobster Waters Area must be marked with a red marking.

(B) Lobster trap gear in the Southern Nearshore Lobster Waters Area must be marked with an orange marking.

(C) Lobster trap gear in the Offshore Lobster Waters Area must be marked with a black marking.

(D) Gillnet gear in the Other Northeast Gillnet Waters Area must be marked with a green marking.

(ii) *Markings.* All specified gear in specified areas must be marked with one color code (see paragraph (4)(i) of this section) which indicates the gear type and general area where the gear is set. Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The mark must be placed along the buoy line midway in the water column.

(5) *Changes to requirements.* If the Assistant Administrator revises the gear marking requirements in accordance with paragraph (g) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to lobster trap gear in regulated waters*—(1) Universal lobster trap gear requirements. In addition to the area-specific measures listed in (c)(2) through (c)(8) of this section, all lobster trap gear in regulated waters, including the Northern Inshore State Lobster Waters Area, must comply with the universal gear requirements listed here¹. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(i) *No line floating at the surface.* No person may fish with lobster trap gear that has any portion of the buoy line that is directly connected to the gear at the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

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

¹Fishers are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.

(2) *Cape Cod Bay Restricted Area*—(i) *Area*. The CCB restricted area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Area-specific gear requirements during the winter restricted period*. No person may fish with lobster trap gear in the CCB Restricted Area during the winter restricted period unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Winter restricted period*. The winter restricted period for the CCB Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(B) *Weak links*. All buoy lines shall be attached to the main buoy with a weak link meeting the following specifications:

(1) The breaking strength of the weak link must not exceed 500 lb (226.7 kg).

(2) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(C) *Single traps and multiple-trap trawls*. Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) *Sinking buoy lines*. All buoy lines must be comprised of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) *Sinking ground line*. All ground lines must be comprised entirely of sinking line.

(iii) *Area-specific gear requirements during the other restricted period*. No person may fish with lobster trap gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements in paragraph (b) of this section and the universal lobster trap gear requirements in (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Other restricted period*. The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises that period in accordance with paragraph (g) of this section.

(B) *Gear requirements—(1) State-water portion*. No person may fish with lobster trap gear in the state-water portion of the CCB Restricted Area during the other restricted period unless that person's gear complies with the requirements for the Northern Inshore State Lobster Waters Area listed in (c)(6) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(2) *Federal-water portion*. No person may fish with lobster trap gear in the federal-water portion of the CCB Restricted Area during the other restricted period unless that person's gear complies with the requirements for the Northern Nearshore Lobster Waters Area in (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(3) *Great South Channel Restricted Lobster Area*—(i) *Area*. The GSC Restricted Lobster Area consists of the GSC right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period*. The spring restricted period for the GSC

Restricted Lobster Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (g) of this section.

(B) *Closure.* During the spring restricted period, no person may fish with or set lobster trap gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period.* No person may fish with lobster trap gear in the GSC Restricted Lobster Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the area-specific requirements listed here for the other restricted period. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Other restricted period.* The other restricted period for the GSC Restricted Lobster Area is July 1 through March 31, unless the Assistant Administrator revises the timing in accordance with paragraph (g) of this section.

(B) *Weak links.* All buoy lines must be attached to the main buoy with a weak link meeting the specifications listed in subparagraph (c)(5)(ii)(A) below for the Offshore Lobster Waters Area.

(4) *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 right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70° W long. The Assistant Administrator may change that area in accordance with paragraph (g) of this section.

(ii) *Area-specific gear requirements.* No person may fish with lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the requirements listed for the

Northern Nearshore Lobster Waters Area in (c)(7) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(5) *Offshore Lobster Waters Area—(i) Area.* The Offshore Lobster Waters Area includes all waters bounded by straight lines connecting the following points in the order stated (including the area known as the Area 2/3 Overlap in the American Lobster Fishery regulations at 50 CFR 697.18 but not including the GSC Restricted Lobster Area):

Point	Latitude (°N)	Longitude (°W)
A	43° 58'	67° 22'
B	43° 41'	68° 00'
C	43° 12'	69° 00'
D	42° 49'	69° 40'
E	42° 15.5'	69° 40'
F	42° 10'	69° 56'
K	41° 10'	69° 6.5'
N	40° 45.5'	71° 34'
M	40° 27.5'	72° 14'
U	40° 12.5'	72° 48.5'
V	39° 50'	73° 01'
X	38° 39.5'	73° 40'
Y	38° 12'	73° 55'
Z	37° 12'	74° 44'
ZA	35° 34'	74° 51'
ZB	35° 14.5'	75° 31'

¹From Point ZB east to the EEZ boundary, thence along the seaward EEZ boundary to Point A.

(ii) *Area-specific gear requirements.* No person may fish with lobster trap gear in the Offshore Lobster Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the gear requirements listed here. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Weak Links.* All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(1) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(2) The breaking strength of these weak links must not exceed 3780 lb (1714.3 kg).

(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) [Reserved]

(6) *Northern Inshore State Lobster Waters Area*—(i) *Area*. The Northern Inshore State Lobster Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine but does not include waters exempted under (a)(2) of this section.

(ii) *Area-specific gear requirements*. No person may fish with lobster trap gear in the Northern Inshore State Lobster Waters Area unless that person's gear complies with the universal lobster trap gear requirements in (c)(1) of this section and at least one of the options on the Lobster Take Reduction Technology List in (c)(9) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(7) *Northern Nearshore Lobster Waters Area*—(i) *Area*. The Northern Nearshore Lobster 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 50 CFR 697.18, with the exception of the CCB Restricted Area and the Stellwagen Bank/Jeffreys Ledge Restricted Area.

(ii) *Area-specific gear requirements*. No person may fish with lobster trap gear in the Northern Nearshore Lobster Waters Area unless that person's gear complies with the gear marking requirements in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and the gear requirements listed below for this area. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(A) *Weak Links*. All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(1) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog

rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(2) The breaking strength of these weak links must not exceed 600 lb (272.4 kg).

(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Single traps and multiple-trap trawls*. Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.

(8) *Southern Nearshore Lobster Waters Area*—(i) *Area*. The Southern Nearshore Lobster Waters Area includes all state and federal waters which fall within EEZ Nearshore Management Area 4 and EEZ Nearshore Management Area 5 as described in the American Lobster Fishery regulations in 50 CFR 697.18.

(ii) *Area-specific gear requirements for the restricted period*—(A) *Restricted period*. The restricted period for Southern Nearshore Lobster Waters is from October 1 through April 30 unless the AA revises this period in accordance with paragraph (g) of this section.

(B) *Gear requirements*. No person may fish with lobster trap gear in the Southern Nearshore Lobster Waters Area during the restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal lobster trap gear requirements in (c)(1) of this section, and at least one of the options on the Lobster Take Reduction Technology List in (c)(9) of this section. The AA may revise these requirements in accordance with paragraph (g) of this section.

(9) *Lobster Take Reduction Technology List*. The following gear modification options comprise the Lobster Take Reduction Technology List:

(i) All buoy lines must be 7/16 inches (1.11 cm) or less in diameter.

(ii) All buoys must be attached to the buoy line with a weak link meeting the following specifications:

(A) The weak link must be chosen from the following list of combinations

approved by the NMFS gear research program: swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(B) The breaking strength of these weak links must not exceed 600 lb (272.4 kg).

(C) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(iii) All buoy lines must be comprised entirely of sinking line.

(iv) All ground lines must be comprised entirely of sinking line.

(d) *Restrictions applicable to anchored gillnet gear*—(1) *Universal anchored gillnet gear requirements*. In addition to the area-specific measures listed in (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here². The AA may revise these requirements in accordance with paragraph (g) of this section.

(i) *No line floating at the surface*. No person may fish with anchored gillnet gear that has any portion of the buoy line that is directly connected to the gear on the ocean bottom floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

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

(2) *Cape Cod Bay Restricted Area*—(i) *Area*. The CCB Restricted Area consists of the CCB right whale critical habitat area specified under 50 CFR 226.203(b), unless the AA changes the boundaries in accordance with paragraph (g) of this section.

(ii) *Closure during the winter restricted period*—(A) *Winter restricted period*. The

winter restricted period for this area is from January 1 through May 15 of each year, unless the AA revises the timing in accordance with paragraph (g) of this section.

(B) *Closure*. During the winter restricted period, no person may fish with anchored gillnet gear in the CCB Restricted Area unless the AA specifies gear restrictions or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications. The AA may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the Federal Register if NMFS determines that right whales have left the critical habitat and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear requirements for the other restricted period*—(A) *Other restricted period*. The other restricted period for the CCB Restricted Area is from May 16 through December 31 of each year unless the AA revises that period in accordance with paragraph (g) of this section.

(B) No person may fish with anchored gillnet gear in the CCB Restricted Area during the other restricted period unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(3) *Great South Channel Restricted Gillnet Area*—(i) *Area*. The GSC Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2' N/69°02' W, 41°43.5' N/69°36.3' W, 42°10' N/68°31' W, and 41°38' N/68°13' W. This area includes most of the GSC right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in (d)(4)(i) here. The AA may revise these boundaries in accordance with paragraph (g) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period*. The

²Fishers are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are not considered to be an entanglement threat and are thus preferable to knots.

spring restricted period for the GSC Restricted Gillnet Area is from April 1 through June 30 of each year unless the AA revises that period in accordance with paragraph (g) of this section.

(B) *Closure.* During the spring restricted period, no person may set or fish with anchored gillnet gear in the GSC Restricted Gillnet Area unless the AA specifies gear restrictions or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iii) *Area-specific gear requirements for the other restricted period—(A) Other restricted period.* The other restricted period for the GSC Restricted Gillnet Area is from July 1 through March 31 of each year unless the AA revises that period in accordance with paragraph (g) of this section.

(B) During the other restricted period, no person may fish with anchored gillnet gear in the GSC Restricted Gillnet Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(4) *Great South Channel Sliver Restricted Area—(i) Area.* The GSC Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2' N/69°02' W, 41°43.5' N/69°36.3' W, 41°40' N/69°45' W, and 41°00' N/69°05' W. The AA may revise these boundaries in accordance with paragraph (g) of this section.

(ii) *Area-specific gear requirements.* No person may fish with anchored gillnet gear in the GSC Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in subparagraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(5) *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 right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15' N. lat. and west of 70° W long. The AA may change these boundaries in accordance with paragraph (g) of this section.

(ii) *Area-specific gear requirements.* No person may fish with anchored gillnet 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 anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed in (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area. The AA may revise these requirements in accordance with paragraph (g) of this section.

(6) *Other Northeast Gillnet Waters Area—(i) Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters west of the U.S./Canada border and north of a line extending due east from the Virginia/North Carolina border with the exception of the CCB Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, GSC Restricted Gillnet Area, GSC Sliver Restricted Area, Mid-Atlantic Coastal Waters Area, and exempted waters listed in (a)(2) of this section.

(ii) *Area-specific gear requirements.* No person may fish with anchored gillnet gear in the Other Northeast Gillnet Waters Area unless that person's gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in (d)(1) of this section, and the area-specific requirements listed below. The AA may revise these requirements in accordance with paragraph (g) of this section.

(A) *Buoy line weak links.* All buoy lines must be attached to the main buoy with a weak link meeting the following specifications:

(1) The weak link must be chosen from the following list of combinations approved by the NMFS gear research program: swivels, plastic weak links,

rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the AA.

(2) The breaking strength of these weak links must not exceed 1100 lb (498.8 kg).

(3) Weak links must be designed such that the bitter end of the buoy line is clean and free of any knots when the link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* All net panels must contain weak links meeting the following specifications:

(1) Weak links must be inserted in the center of the floatline (headrope) of each net panel in a net string.

(2) The breaking strength of these weak links must not exceed 1100 lb (498.8 kg).

(C) *Anchoring System.* All anchored gillnet strings containing 20 or fewer net panels must be securely anchored with one of the following anchoring systems:

(1) Anchors with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

(2) Dead weights weighing at least 50 lb (22.7 kg) at each end of the net string, or

(3) A lead line weighing at least 100 lb (45.4 kg) per 300 ft (91.4 m) for each net panel in the net string.

(7) *Mid-Atlantic Coastal Waters Area—(i) Area.* The mid-Atlantic Coastal Waters Area is defined in § 229.2.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with anchored gillnets in the Mid-Atlantic Coastal Waters Area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(8) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are $\frac{7}{16}$ inches (1.11 cm) in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to

1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) Weak links with a breaking strength of up to 1100 lb (498.8 kg) are installed in the float rope between net panels.

(iv) All buoy lines are composed entirely of sinking line.

(e) *Restrictions applicable to mid-Atlantic driftnet gear—(1) Restrictions.* From December 1 through March 31 of the following year, no person may fish with driftnet gear at night in the mid-Atlantic coastal waters area unless that gear is tended. During that time, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(f) *Restrictions applicable to shark gillnet gear—(1) Management areas—(i) Southeast U.S. restricted area.* The southeast U.S. restricted area consists of the area from 32°00' N lat. (near Savannah, GA) south to 27°51' N lat. (near Sebastian Inlet, FL), extending from the shore eastward to 80°00' W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Southeast U.S. observer area.* The southeast U.S. observer area consists of the southeast U.S. restricted area and an additional area along the coast south to 26°46.5' N lat. (near West Palm Beach, FL) and extending from the shore eastward out to 80°00' W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(2) *Gear marking requirements.* From November 15 through March 31 of the following year, no person may fish with gillnet gear in the southeast U.S. observer area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. From November 15,

1999, each net panel must be marked along both the float line and the lead line at least once every 100 yards (92.4 m).

(3) Restrictions—(i) *Observer requirement.* No person may fish with shark gillnet gear in the southeast U.S. observer area from November 15 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 15 through March 31 of the following year, no person may fish with shark gillnet gear aboard that vessel in the southeast U.S. observer area unless an observer is on board that vessel during the trip.

(ii) *Closure.* Except as provided under paragraph (f)(3)(iii) of this section, no person may fish with shark gillnet gear in the southeast U.S. restricted area during the closed period. The closed period for this area is from November 15 through March 31 of the following year, unless the Assistant Administrator changes that closed period in accordance with paragraph (g) of this section.

(iii) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restriction under paragraph (f)(3)(ii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

(g) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat.* If a serious injury or mortality of a right

whale occurs in the Cape Cod Bay critical habitat from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, or in the Southeast U.S. Restricted Area from November 15 through March 31 as a result of an entanglement by lobster or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g)(2) of this section or unless other measures are implemented under paragraph (g)(2).

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the FEDERAL REGISTER if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

[64 FR 7552, Feb. 16, 1999, as amended at 65 FR 70317, Nov. 22, 2000; 65 FR 80377, Dec. 21, 2000]

§ 229.33 Harbor Porpoise Take Reduction Plan Implementing Regulations—Gulf of Maine.

(a) *Restrictions*—(1) *Northeast Closure Area.* From August 15 through September 13 of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, from Northeast Closure

Sec. 1387. Taking of marine mammals incidental to commercial fishing operations

- (a) In general
 - (1) Effective on April 30, 1994, and except as provided in section [1383a](#) of this title and in paragraphs (2), (3), and (4) of this subsection, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section [1824\(b\)](#) of this title. In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate within 7 years after April 30, 1994.
 - (2) In the case of the incidental taking of marine mammals from species or stocks designated under this chapter as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), both this section and section [1371\(a\)\(5\)\(E\)](#) of this chapter shall apply.
 - (3) Sections [11](#) 1374(h) of this title and subchapter IV of this chapter, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.
[11](#) So in original. Probably should be "Section".
 - (4) This section shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).
 - (5) Except as provided in section [1371\(c\)](#) of this title, the intentional lethal take of any marine mammal in the course of commercial fishing operations is prohibited.
 - (6) Sections [1373](#) and 1374 of this title shall not apply to the incidental taking of marine mammals under the authority of this section.
- (b) Zero mortality rate goal
 - (1) Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after April 30, 1994.
 - (2) Fisheries which maintain insignificant serious injury and mortality levels approaching a zero rate shall not be required to further reduce their mortality and serious injury rates.
 - (3) Three years after April 30, 1994, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which additional information is required to accurately assess the

level of incidental mortality and serious injury of marine mammals in the fishery.

- (4) If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary shall take appropriate action under subsection (f) of this section.
- (c) Registration and authorization
 - (1) The Secretary shall, within 90 days after April 30, 1994 -
 - (A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under section 1383a(b)(1) of this title and which is in existence on March 31, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to commercial fisheries that have -
 - (i) frequent incidental mortality and serious injury of marine mammals;
 - (ii) occasional incidental mortality and serious injury of marine mammals; or
 - (iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;
 - (B) after the close of the period for such public comment, publish in the Federal Register a revised list of commercial fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and
 - (C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this chapter and other relevant sources and after notice and opportunity for public comment, the classification of commercial fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.
 - (2)
 - (A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a commercial fishery listed under paragraph (1)(A)(i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration,

and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used. Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as the authorization remains current and valid, shall be reissued annually thereafter.

- (B) No authorization may be granted under this section to the owner of a vessel unless such vessel -
 - (i) is a vessel of the United States; or
 - (ii) has a valid fishing permit issued by the Secretary in accordance with section [1824](#)(b) of this title.
 - (C) Except as provided in subsection (a) of this section, an authorization granted under this section shall allow the incidental taking of all species and stocks of marine mammals to which this chapter applies.
- (3)
- (A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A)(i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in a commercial fishery -
 - (i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned and used in the fishery an authorization for the purpose of incidentally taking marine mammals in accordance with this section, except that owners of vessels holding valid certificates of exemption under section [1383a](#) of this title are deemed to have registered for purposes of this subsection for the period during which such exemption is valid;
 - (ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel;
 - (iii) report as required by subsection (e) of this section; and
 - (iv) comply with any applicable take reduction plan and emergency regulations issued under this section.
 - (B) Any owner of a vessel receiving an authorization under this section for any fishery listed under paragraph (1)(A)(i) or (ii) shall, as a condition of that authorization, take on board an observer if requested to do so by the Secretary.
 - (C) An owner of a vessel engaged in a fishery listed under paragraph (1)(A)(i) or (ii) who -
 - (i) fails to obtain from the Secretary an authorization for such vessel under this section;
 - (ii) fails to maintain a current and valid authorization for such vessel; or

- (iii) fails to ensure that a decal or other physical evidence of such authorization issued by the Secretary is displayed on or is in possession of the master of the vessel, and the master of any such vessel engaged in such fishery, shall be deemed to have violated this subchapter, and for violations of clauses (i) and (ii) shall be subject to the penalties of this subchapter, and for violations of clause (iii) shall be subject to a fine of not more than \$100 for each offense.
- (D) If the owner of a vessel has obtained and maintains a current and valid authorization from the Secretary under this section and meets the requirements set forth in this section, including compliance with any regulations to implement a take reduction plan under this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the authorization applies.
- (E) Each owner of a vessel engaged in any fishery not listed under paragraph (1)(A)(i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (e) of this section, instances of incidental mortality or injury of marine mammals in the course of that fishery.
- (4)
 - (A) The Secretary shall suspend or revoke an authorization granted under this section and shall not issue a decal or other physical evidence of the authorization for any vessel until the owner of such vessel complies with the reporting requirements under subsection (e) of this section and such requirements to take on board an observer under paragraph (3)(B) as are applicable to such vessel. Previous failure to comply with the requirements of section [1383a](#) of this title shall not bar authorization under this section for an owner who complies with the requirements of this section.
 - (B) The Secretary may suspend or revoke an authorization granted under this subsection, and may not issue a decal or other physical evidence of the authorization for any vessel which fails to comply with a take reduction plan or emergency regulations issued under this section.
 - (C) The owner and master of a vessel which fails to comply with a take reduction plan shall be subject to the penalties of sections [1375](#) and [1377](#) of this title, and may be subject to section [1376](#) of this title.
- (5)
 - (A) The Secretary shall develop, in consultation with the appropriate States, affected Regional Fishery Management Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.
 - (B) The Secretary shall utilize newspapers of general circulation, fishery trade

associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

- (C) The Secretary is authorized to charge a fee for the granting of an authorization under this section. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an authorization. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of authorizations under this section.
- (d) Monitoring of incidental takes
 - (1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. The purposes of the monitoring program shall be to -
 - (A) obtain statistically reliable estimates of incidental mortality and serious injury;
 - (B) determine the reliability of reports of incidental mortality and serious injury under subsection (e) of this section; and
 - (C) identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.
 - (2) Pursuant to paragraph (1), the Secretary may place observers on board vessels as necessary, subject to the provisions of this section. Observers may, among other tasks -
 - (A) record incidental mortality and injury, or by catch of other nontarget species;
 - (B) record numbers of marine mammals sighted; and
 - (C) perform other scientific investigations.
 - (3) In determining the distribution of observers among commercial fisheries and vessels within a fishery, the Secretary shall be guided by the following standards:
 - (A) The requirement to obtain statistically reliable information.
 - (B) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery.
 - (C) The requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage.
 - (D) To the extent practicable, the need to minimize costs and avoid duplication.
 - (4) To the extent practicable, the Secretary shall allocate observers among commercial fisheries in accordance with the following priority:
 - (A) The highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or

threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

- (B) The second highest priority for allocation shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks.
 - (C) The third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.
- (5) The Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.
- (6) The Secretary is not required to place an observer on a vessel in a fishery if the Secretary finds that -
 - (A) in a situation in which harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;
 - (B) the facilities on a vessel for quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or
 - (C) for reasons beyond the control of the Secretary, an observer is not available.
- (7) The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not listed under subsection (c)(1)(A)(i) or (ii) of this section.
- (8) Any proprietary information collected under this subsection shall be confidential and shall not be disclosed except -
 - (A) to Federal employees whose duties require access to such information;
 - (B) to State or tribal employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;
 - (C) when required by court order; or
 - (D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.
- (9) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public upon request any such information in aggregate, summary, or other form which does not directly or

indirectly disclose the identity or business of any person.

- (e) Reporting requirement

The owner or operator of a commercial fishing vessel subject to this chapter shall report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated or computerized data processing system and shall require the vessel owner or operator to provide the following:

- (1) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.
- (2) The name and address of the vessel owner or operator.
- (3) The name and description of the fishery.
- (4) The species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

- (f) Take reduction plans

- (1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, and may develop and implement such a plan for any other marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) of this section which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.
- (2) The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal level established for that stock under section [1386](#) of this title. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.
- (3) If there is insufficient funding available to develop and implement a take reduction plan for all such stocks that interact with commercial fisheries listed under subsection (c)(1)(A)(i) or
 - (ii) of this section, the Secretary shall give highest priority to the development and implementation of take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the potential biological removal level, those that have a small population size, and those which are declining most

rapidly.

- (4) Each take reduction plan shall include -
 - (A) a review of the information in the final stock assessment published under section [1386](#)(b) of this title and any substantial new information;
 - (B) an estimate of the total number and, if possible, age and gender, of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of commercial fishing operations, by fishery;
 - (C) recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury;
 - (D) recommended dates for achieving the specific objectives of the plan.
- (5)
 - (A) For any stock in which incidental mortality and serious injury from commercial fisheries exceeds the potential biological removal level established under section [1386](#) of this title, the plan shall include measures the Secretary expects will reduce, within 6 months of the plan's implementation, such mortality and serious injury to a level below the potential biological removal level.
 - (B) For any stock in which human-caused mortality and serious injury exceeds the potential biological removal level, other than a stock to which subparagraph (A) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months of the plan's implementation, the incidental mortality and serious injury by such commercial fisheries from that stock. For purposes of this subparagraph, the term "maximum extent practicable" means to the lowest level that is feasible for such fisheries within the 6-month period.
- (6)
 - (A) At the earliest possible time (not later than 30 days) after the Secretary issues a final stock assessment under section [1386](#)(b) of this title for a strategic stock, the Secretary shall, and for stocks that interact with a fishery listed under subsection (c)(1)(A)(i) of this section for which the Secretary has made a determination under paragraph (1), the Secretary may -
 - (i) establish a take reduction team for such stock and appoint the members of such team in accordance with subparagraph (C); and
 - (ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all commercial fisheries that cause incidental mortality and serious injury of marine mammals from such stock.
 - (B) The Secretary may request a take reduction team to address a stock that extends over one or more regions or fisheries, or multiple stocks within a region or fishery, if the Secretary determines that doing so would facilitate the development and

implementation of plans required under this subsection.

- (C) Members of take reduction teams shall have expertise regarding the conservation or biology of the marine mammal species which the take reduction plan will address, or the fishing practices which result in the incidental mortality and serious injury of such species. Members shall include representatives of Federal agencies, each coastal State which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations or Indian tribal organizations, and others as the Secretary deems appropriate. Take reduction teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests.
 - (D) Take reduction teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings of take reduction teams shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.
 - (E) Members of take reduction teams shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their duties as members of the team.
- (7) Where the human-caused mortality and serious injury from a strategic stock is estimated to be equal to or greater than the potential biological removal level established under section [1386](#) of this title for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, the following procedures shall apply in the development of the take reduction plan for the stock:
- (A)
 - (i) Not later than 6 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.
 - (ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.
 - (B)
 - (i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

- (ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.
 - (C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.
 - (D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.
 - (E) The Secretary and the take reduction team shall meet every 6 months, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.
 - (F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.
- (8) Where the human-caused mortality and serious injury from a strategic stock is estimated to be less than the potential biological removal level established under section [1386](#) of this title for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, or for any marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) of this section for which the Secretary has made a determination under paragraph (1), the following procedures shall apply in the development of the take reduction plan for such stock:
 - (A)
 - (i) Not later than 11 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for the stock to the Secretary, consistent with the other provisions of this section.
 - (ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

- (B)
 - (i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.
 - (ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.
- (C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.
- (D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.
- (E) The Secretary and the take reduction team shall meet on an annual basis, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.
- (F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.
- (9) In implementing a take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement a take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited

to, measures to -

- (A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area;
 - (B) require the use of alternative commercial fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;
 - (C) educate commercial fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected commercial fisheries; and
 - (D) monitor, in accordance with subsection (d) of this section, the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of commercial fishing operations.
- (10)
 - (A) Notwithstanding paragraph (6), in the case of any stock to which paragraph (1) applies for which a final stock assessment has not been published under section [1386\(b\)\(3\)](#) of this title by April 1, 1995, due to a proceeding under section [1386\(b\)\(2\)](#) of this title, or any Federal court review of such proceeding, the Secretary shall establish a take reduction team under paragraph (6) for such stock as if a final stock assessment had been published.
 - (B) The draft stock assessment published for such stock under section [1386\(b\)\(1\)](#) of this title shall be deemed the final stock assessment for purposes of preparing and implementing a take reduction plan for such stock under this section.
 - (C) Upon publication of a final stock assessment for such stock under section [1386\(b\)\(3\)](#) of this title the Secretary shall immediately reconvene the take reduction team for such stock for the purpose of amending the take reduction plan, and any regulations issued to implement such plan, if necessary, to reflect the final stock assessment or court action. Such amendments shall be made in accordance with paragraph (7)(F) or (8)(F), as appropriate.
 - (D) A draft stock assessment may only be used as the basis for a take reduction plan under this paragraph for a period of not to exceed two years, or until a final stock assessment is published, whichever is earlier. If, at the end of the two-year period, a final stock assessment has not been published, the Secretary shall categorize such stock under section [1386\(a\)\(5\)\(A\)](#) of this title and shall revoke any regulations to implement a take reduction plan for such stock.
 - (E) Subparagraph (D) shall not apply for any period beyond two years during which a final stock assessment for such stock has not been published due to review of a proceeding on such stock assessment by a Federal court. Immediately upon final action by such court, the Secretary shall proceed under subparagraph (C).

- (11) Take reduction plans developed under this section for a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any recovery plan developed for such species or stock under section 4 of such Act (16 U.S.C. 1533).

- (g) Emergency regulations
 - (1) If the Secretary finds that the incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take actions as follows:
 - (A) In the case of a stock or species for which a take reduction plan is in effect, the Secretary shall -
 - (i) prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and
 - (ii) approve and implement, on an expedited basis, any amendments to such plan that are recommended by the take reduction team to address such adverse impact.
 - (B) In the case of a stock or species for which a take reduction plan is being developed, the Secretary shall -
 - (i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and
 - (ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.
 - (C) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a commercial fishery listed under subsection (c)(1)(A)(iii) of this section which the Secretary believes may be contributing to such adverse impact, the Secretary shall -
 - (i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;
 - (ii) immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and
 - (iii) may, where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), place observers on vessels in a commercial fishery listed under subsection (c)(1)(A)(iii) of this section, if the Secretary has reason to believe such vessels may be causing the incidental mortality and serious injury to marine

mammals from such stock.

- (2) Prior to taking action under paragraph (1)(A), (B), or (C), the Secretary shall consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, State fishery managers, and the appropriate take reduction team (if established).
- (3) Emergency regulations prescribed under this subsection -
 - (A) shall be published in the Federal Register, together with an explanation thereof;
 - (B) shall remain in effect for not more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier; and
 - (C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for emergency regulations no longer exist.
- (4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

- (h) Penalties

Except as provided in subsection (c) of this section, any person who violates this section shall be subject to the provisions of sections [1375](#) and 1377 of this title, and may be subject to section [1376](#) of this title as the Secretary shall establish by regulations.

- (i) Assistance

The Secretary shall provide assistance to Regional Fishery Management Councils, States, interstate fishery commissions, and Indian tribal organizations in meeting the goal of reducing incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

- (j) Contributions

For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

- (k) Consultation with Secretary of the Interior

The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this subchapter.

- (l) Definitions

As used in this section and section [1371\(a\)\(5\)\(E\)](#) of this title, each of the terms "fishery" and "vessel of the United States" has the same meaning it does in section [1802](#) of this title.

copies of the information collection instrument and instructions should be directed to Walter Ikehara (808) 927-1805 or Walter.Ikehara@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

National Marine Fisheries Service (NMFS) requires U.S. vessels fishing for coral reef management unit species in the designated low-use Marine Protected Areas and open areas, *i.e.*, waters seaward of the inner boundary of the U.S. Exclusive Economic Zone in the western Pacific region, to obtain and carry a permit. This permit is also required for at-sea transshipment of coral reef management unit species. The permit application form provides basic information about the permit applicant, vessel, fishing gear and method, target species, projected fishing effort, *etc.*, for use by NMFS and the Western Pacific Fishery Management Council in determining eligibility for permit issuance. The information is important for understanding the nature of the fishery and provides a link to participants. It also aids in the enforcement of Fishery Management Plan measures.

II. Method of Collection

Information is submitted to NMFS, in the form of paper permit application forms.

III. Data

OMB Number: 0648-0463.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 12.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 30.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 17, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-10182 Filed 5-20-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Gear-Marking Requirement for Atlantic Large Whale Take Reduction Plan.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 22, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kristy Long (301) 713-1401 or Kristy.Long@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this proposed collection of information is to enable NOAA to reduce entanglements of large whales, especially right whales, in U.S. commercial fishing gear. Persons setting lobster trap/pot or gillnet gear in some areas of the Atlantic Ocean would be required to paint or otherwise mark their gear with two color codes, one color designating the type of gear, the

other designating the area where the gear is set depending on area. These marking requirements would apply in right whale critical habitats and in two other areas where right whales are seen on a regular basis. These areas are the southeast U.S. observer area and the Stellwagen Bank/Jeffreys Ledge restricted area.

The goals of this collection of information are to obtain more information on where large whales are being entangled and on what type gear responsible for the entanglement. This information will allow NMFS to focus further risk reduction measures on problem areas rather than instituting broader measures that affect the overall industry.

II. Method of Collection

This is a marking requirement and no information is submitted to NOAA.

III. Data

OMB Number: 0648-0364.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 4,506.

Estimated Time Per Response: 6 minutes.

Estimated Total Annual Burden Hours: 2,572.

Estimated Total Annual Cost to Public: \$27,313.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 17, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-10183 Filed 5-20-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051805A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Amendment for the Fishery Ecosystem Plan

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

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS); request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) intends to prepare a DEIS to assess the impacts on the natural and human environment of the management measures proposed in its draft Fishery Ecosystem Plan Comprehensive Amendment.

DATES: Written comments on the scope of issues to be addressed in the preliminary DEIS will be accepted through June 30, 2005.

ADDRESSES: Comments and requests for copies of the scoping document should be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699, PHONE: 1-866-SAFMC-10; FAX: 843-769-4520; email: FEPA@safmc.net.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; toll free 1-866-SAFMC-10 or 843-571-4366; kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: There has been recent interest in using ecosystem-based management principles to complement the current fishery management regime. It is believed that the incorporation of ecosystem-based principles will improve upon a system that has largely been based on single-species stock assessment and management. Ecosystem principles include the consideration of information that has not been available in the past when managing fish stocks, including predator-prey interactions, the influence of weather and climate on the biological environment, the condition of the habitat/environment, and the role of

species diversity to ecosystem functions.

With the Habitat Plan as a cornerstone, the South Atlantic Fishery Management Council (Council) is developing an ecosystem-based approach to resource management. In doing so, the Council is initiating development of a comprehensive resource document that will present fishery and resource information for fisheries in the South Atlantic Bight ecosystem. This document, here referred to as the Fishery Ecosystem Plan (FEP), will build upon the detailed habitat information described in the Council's 1998 Habitat Plan for the South Atlantic. The FEP will describe the detailed ecological and socioeconomic information regarding southeast fisheries from an ecosystem perspective. Information will include the delineation of the geographical extent of the ecosystems, descriptions of species life histories, and the development of a conceptual model of the food web.

Based upon the information developed in the FEP, the Council plans to establish a process to incorporate ecosystem information obtained through the FEP (and future FEP updates) into the current policy-making and management process. The proposed system calls for the initial development of a FEP as described above, in addition to the implementation of a 5-year system-wide evaluation cycle. The FEP will be reviewed, amended, and updated every five years with new scientific knowledge about ecosystem interactions. Concurrent with the development of the FEP will be a determination if new regulations should be incorporated into the current management system. If needed, existing fishery management plans (FMPs) will be amended through a FEP Comprehensive Amendment and in accordance with the National Environmental Policy Act.

In determining the actions to be taken in the initial FEP Comprehensive Amendment, the Council is adopting several recommendations from an Ecosystem Principles Advisory Panel 1999 report to Congress. The report outlined eight basic principles that should be contained in a FEP. Included in these are delineation of geographical extents of ecosystems that occur within the Council's authority, development of a conceptual model of the food web, and calculation of total removals from an ecosystem as a function of fishery-related actions. Using these eight principles as guidance, the Council is considering the following actions in the initial FEP Comprehensive Amendment/DEIS:

1. In order to calculate and characterize total removals from the ecosystem as a consequence of fishery-related actions (i.e., landings, discards, bycatch), the Council is considering requiring a permit to fish for, harvest, or possess any resource in the EEZ for all recreational and commercial fishermen. Other alternatives to calculate and characterize total removals being considered include: Replace the current Snapper/Grouper and Mackerel paper logbook programs by implementing the use of electronic logbooks and implement the Atlantic Coastal Cooperative Statistics Program's (ACCSP) modules. These modules provide the minimum data elements to be collected by all ACCSP partners conducting data collection programs.

2. The following three actions are being considered in order to comply with the Essential Fish Habitat (EFH) final rule (published at 67 FR 2343, January 17, 2002):

- a. Refine existing EFH and Essential Fish Habitat-Habitat Areas of Particular Concern (EFH-HAPCs) as necessary;
- b. Identify new EFH and/or EFH-HAPCs as necessary;
- c. Implement measures to reduce impacts of fishing and non-fishing impacts on EFH and EFH-HAPCs as necessary.

3. Establishment of deep water coral HAPCs, with possible gear limitations in the newly protected areas, is being considered.

4. For enforcement and data collection purposes, requiring Vessel Monitoring Systems (VMS) on commercial, for-hire, and/or private recreational vessels is being considered.

5. The Council is considering amending the Mackerel FMP (as part of the Comprehensive FEP Amendment) with the following ten actions:

- a. Add little tunny, bonita, false albacore, greater barracuda, and blackfin tuna to the fishery management unit;
- b. Revert to utilizing a control rule in place of a quota-based management system;
- c. Modifications to the mackerel framework;
- d. Implement a permit to include all fisheries with an endorsement for mackerel;
- e. Add new qualifications for king mackerel.
- f. Prohibit the sale of recreationally caught coastal migratory pelagics;
- g. Implement a standardized bycatch reporting protocol;
- h. Modify the current bag, size, and trip limits;
- i. Implement a moratorium and limited-entry for Spanish mackerel; and
- j. Modify the king mackerel management boundaries.