

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of the Rules. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Measure the field strength of the visual carrier with a calibrated instrument with an i.f. bandwidth of at least 200 kHz, but no greater than one megahertz (1,000 kHz). Perform an on-site calibration of the instrument in accordance with the manufacturer's specifications. The instrument must accurately indicate the peak amplitude of the synchronizing signal. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an unbalanced line, employ a suitable balun. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements in inclement weather or when major weather fronts are moving through the measurement area.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for each instrument, specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBu and after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 991222346-9346-01; I.D. 031997B]

RIN 0648-AN40

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Suspension of Effectiveness of Gear Marking Requirements for Northeast U.S. Fisheries

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

ACTION: Final rule; suspension.

SUMMARY: On February 16, 1999, NMFS issued a final rule implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). This suspends the gear marking requirements for northeast U.S. fisheries contained in that rule. The other provisions of that rule, including the gear marking requirements for southeast U.S. (SEUS) fisheries under the ALWTRP, remain in effect. The current gear marking requirements for northeast U.S. fisheries under the rule are unlikely to provide useful information. The purpose of this suspension is to spare fishermen from unnecessary expenses while a better gear marking system is devised and implemented.

DATES: Effective December 30, 1999 50 CFR 229.32 (b), (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), and (d)(5)(ii) are suspended until November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, NMFS, Northeast Region, 978-281-9254; or Gregory Silber, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1999, NMFS published a final rule (64 FR 7529) implementing the ALWTRP. Among other measures, the final rule required gear marking in all fisheries under the ALWTRP by April 1, 1999.

The Atlantic Large Whale Take Reduction Team (ALWTRT) met on February 8-10, 1999, discussed the gear marking scheme in detail, and recommended by consensus (with the NMFS members abstaining) that NMFS suspend the implementation of the gear marking requirement until November 1, 1999, or until a better system is designed. In order to provide an appropriate gear marking scheme that could be implemented by NMFS by November 1, 1999, the ALWTRT asked that the Gear Advisory Group (GAG) be reconvened quickly to design a better system for approval by the ALWTRT. The criteria established by the ALWTRT for the better gear marking system were that the system should: (1) identify the buoy lines by individual fishermen; (2) apply to all waters affected by the ALWTRP; (3) be easily implemented by the affected fisheries; (4) allow identification of gear type from a photograph so that it can be identified without being removed from a whale; and (5) allow identification of where the gear had been set.

In March 1999, an ad hoc group of ALWTRT members representing the scientific, conservation and state and Federal fishery managers of the northeastern area met to discuss gear marking. The group recognized many of the points discussed here and agreed that, under the gear marking requirements then in effect, it was highly probable that gear recovered from animals could be identified to the individual fisherman, thus allowing details on the gear (i.e., gear type, and date and location of set) to be determined in most cases. NMFS then changed the effective date of the gear marking measures contained in the final rule to November 1, 1999 (64 FR 17292, April 9, 1999), and tasked the GAG and the ALWTRT with reviewing the final rule's gear scheme. NMFS committed to revise the final rule's gear marking scheme if the GAG and ALWTRT reached consensus on an appropriate gear marking scheme.

Three GAG meetings were held in April at Sandwich, Massachusetts; Portsmouth, New Hampshire; and Ellsworth, Maine to gather the fishermen's perspectives from each region. A summary of the three GAG meetings is available upon request from

the contacts noted at the beginning of this document. The basic conclusions from the GAG members were:

(1) A single gear identification number is desirable. State and

Federal regulations require gear tagging or marking systems for both lobster and gillnet gear. A marking system that incorporates the existing marking requirements should be used.

(2) An individual fisherman's identification would provide more information than the current ALWTRP color-coding system, which only requires marking in certain areas. Fishermen set gear across boundary areas and, under the current ALWTRP system, would have to re-rig their gear when moving into or out of a required area. With individual markings, the fishermen can provide specific information on where the gear had been set at any given time.

(3) The ALWTRP color-coded system does not provide the detailed information that a universal individual marking system throughout the range would provide. Better ways of marking buoy lines and high flyers with individual numbers are being tested, and the results of these tests will be available by Spring 2000.

(4) The ALWTRP marking system was based on the need to identify gear on whales that is observed from a distance that may never be recovered. Recent entanglement events and subsequent detailed investigations have resulted in up to 70 percent of the gear involved being identified, including the probable time and location the gear was set, for those whales that have been disentangled and the gear has been recovered. The current ALWTRP gear marking system would not have improved identification of gear in any of the recent Northeast entanglement events. Entangled animals are receiving close scrutiny, and photos or video images are routinely collected, allowing a more definitive analysis of gear type before a disentanglement is attempted. Thus, the current ALWTRP gear marking system is not needed to identify gear that is not removed from a whale.

In summary, the consensus of the GAG and the ALWTRT is that: (1) The gear marking measures for northeastern U.S. fisheries under the ALWTRP as contained in the February 16, 1999, final rule are unlikely to provide useful information; (2) the value of making a gear marking system being visible from a distance is questionable; (3) existing gear marking and buoy color-coding requirements applicable to the various northeastern U.S. fisheries allow gear type and ownership to be identified in

most cases; (4) gillnet fisheries operating in the SEUS do not have the same level of existing gear marking requirements; (5) after 2 years of investigating gear entangled on whales, NMFS has found that it is possible to determine gear ownership in the majority of the entanglements and thus find out the details about the date and location of the set; and (6) better ways for buoy lines and high flyers to be marked with individual identification numbers are being tested and the results should be available soon. Therefore, in order to spare fishermen from unnecessary expense, NMFS is suspending the effectiveness of the gear marking requirements for northeast U.S. fisheries in the February 16, 1999, final rule implementing the ALWTRP. Gear marking requirements for SEUS fisheries remain in effect. The ALWTRT will meet in early Spring, 2000, to review the GAG report and the results of the testing of new gear marking methods, and make further recommendations to NMFS on how or whether to modify the ALWTRP gear marking system. By late Spring, 2000, NMFS will propose modifications to the ALWTRP gear marking system and implementing regulations with the aim of having an effective system implemented by November, 2000.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an Environmental Assessment (EA) on the interim final rule preceding the February 16, 1999, final rule to implement the ALWTRP, and its findings applied to the February 16, 1999 final rule, as well. This action suspends the effectiveness of a portion of that final rule. Although this action falls within the scope of alternatives of that EA and the environmental consequences described in that action, NMFS has prepared a supplemental EA for this action with a finding of no significant impact.

A biological opinion (BO) on the ALWTRP was completed on July 15, 1997. That BO concluded that implementation of the ALWTRP and continued operation of fisheries conducted under the American Lobster and Northeast Multispecies fishery management plans (FMPs), and southeastern shark gillnet component of the Shark FMP, may adversely affect, but are not likely to jeopardize the continued existence of any listed species of large whales or sea turtles under NMFS jurisdiction. The February 16, 1999, final rule was determined not to change the basis for that BO. This

action also does not change the basis for that BO.

The suspension of the effective date of the ALWTRP gear marking requirement for Northeast U.S. fisheries made by this rule will have no adverse impacts on marine mammals. In addition, this rule does not change the determination that the ALWTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the Atlantic states.

As noted above, the ALWTRP gear marking regime for the Northeast is unlikely to provide useful information. Fishermen should be spared the expense of having to comply with it prior to implementation of a better system. Accordingly, the Assistant Administrator for Fisheries, for good cause, finds that delaying this rule to allow for prior notice and opportunity for public comment would be contrary to the public interest. Because this suspension of effectiveness relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in the effective date.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

This rule suspends the effectiveness of a collection-of-information requirement subject to the Paperwork Reduction Act previously approved by OMB (OMB Control Number: 0648-0364).

Dated: December 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122299B]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2000

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

ACTION: Notification of suspension of surf clam minimum size limit.