recordkeeping requirements, Transportation.

Dated: February 4, 1997.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 97–3464 Filed 2–13–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–7015–01; I.D. 010397A]

RIN 0648–AI84

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Pacific Offshore Cetacean Take Reduction Plan Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a plan to reduce the bycatch and mortality of several marine mammal stocks that occur incidental to fishing for swordfish and thresher shark with drift gillnet gear offshore California and Oregon. The draft plan was submitted by the Pacific Offshore Cetacean Take Reduction Team (PCTRT) pursuant to the Marine Mammal Protection Act (MMPA). NMFS seeks comment on the draft Pacific Offshore Cetacean Take Reduction Plan (PCTRP), a NMFS proposed change to the draft plan, and proposed regulations to implement the plan.

DATES: Comments on the draft plan, NMFS' proposed change to the plan, and the proposed rule to implement the plan must be received by March 31, 1997.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. Copies of the draft PCTRP and Environmental Assessment (EA) are available upon request from Irma Lagomarsino, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or from Victoria Cornish, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Irma Lagomarsino, NMFS, 310–980–4016 or Victoria Cornish, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION: The California/Oregon drift gillnet (CA/OR DGN) fishery for thresher shark and swordfish is classified as a Category I fishery under section 118 of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*). The CA/OR DGN fishery is a pelagic fishery with the majority of the fishing effort occurring within 200 miles (320 kilometers) offshore of California and Oregon. Between May 1 and August 14, drift gillnets may not be used to take swordfish or thresher shark in ocean waters within 75 miles (120 kilometers) of the California coastline. From August 15 to January 31, swordfish may be taken within 75 miles (120 kilometers) of the California mainland, although additional area restrictions also apply within this area.

The CA/OR DGN fishery has a historical incidental bycatch of several strategic marine mammal stocks including: Several beaked whale species, short-finned pilot whales, pygmy sperm whales, sperm whales, and humpback whales (Barlow *et al.*, 1995). A strategic stock is a stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA. The incidental bycatch of strategic stocks in the CA/OR DGN fishery exceeds the PBR levels established for these stocks (Barlow *et al.*, 1995).

Section 118 of the MMPA requires NMFS to develop and implement a take reduction plan to assist in the recovery or to prevent the depletion of each strategic stock that interacts with a Category I or II fishery. Category I or II fisheries are fisheries that have frequent or occasional incidental mortality and serious injury of marine mammals, respectively. The immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to below the PBR levels established for such stocks. Since the CA/OR DGN fishery is a Category I fishery that interacts with several strategic stocks, NMFS established the PCTRT on February 15, 1996 (61 FR 5385) to prepare a draft take reduction plan. The PCTRT included representatives of NMFS, the California Department of Fish and Game (CDFG), the Pacific States Marine Fisheries Commission, environmental organizations, academic and scientific organizations, and participants in the CA/OR DGN fishery. In selecting these team members, NMFS sought an equitable balance among representatives of resource user and non-user interests.

The PCTRT was tasked with developing a consensus plan for reducing incidental mortality and serious injury of strategic marine mammal stocks in the CA/OR DGN fishery. The PCTRT met five times between February and June 1996 and submitted a consensus draft plan to NMFS on August 15, 1996 (PCTRP, 1996). The PCTRP includes: (1) A review of the current information on the status of the affected strategic marine mammal stocks; (2) a description of the CA/OR DGN fishery; (3) an analysis of data from NMFS' CA/OR DGN fishery observer program from 1990–1995; (4) primary strategies to reduce takes of strategic marine mammal stocks; (5) contingency measures that would reduce fishing effort; and (6) other recommendations regarding voluntary measures to reduce takes, enhancing the effectiveness of the observer program, research on oceanographic/environmental variables, and other potential strategies considered and rejected by the team.

The PCTRT recommended that four primary strategies be implemented to reduce bycatch of strategic marine mammal stocks in the CA/OR DGN fishery. The PCTRT recommended that three of these strategies be administered on a mandatory basis (strategies #1, #2, and #4) and that one be administered on a voluntary basis (strategy #3). This action proposes regulations to implement three of these primary strategies. These include the establishment of a depth of fishing requirement (strategy #1), the use of acoustic deterrent devices (pingers) (strategy #2), and mandatory skipper workshops (strategy #4). The PCTRT recommended that one other primary strategy be implemented by NMFS, yet not through Federal regulation. This would be for NMFS to encourage CDFG not to reissue lapsed permits, and to encourage the Oregon Department of Fish and Wildlife (ODFW) to continue issuing the same number of permits (strategy #3).

The proposed requirements would govern fishing by all drift gillnet vessels that operate out of California or Oregon.

Primary Strategies

Depth of Fishing Requirement (Strategy #1)

The PCTRT recommended that NMFS establish a fleetwide 16 fathom (36 feet; 10.9 meters) minimum extender line length requirement. Extender lines attach buoys (floats) to the drift gillnet's floatline and determine the depth of the water column at which the net is fished. Lowering nets in the water column has significantly reduced the incidental bycatch of cetaceans in several other drift gillnet fisheries (see PCTRP, 1996). In addition, analysis of NMFS' observer program data for the CA/OR DGN fishery from 1990–95 indicates that a significantly greater number of cetaceans are caught during sets that use extenders that are less than 6 fathoms (10.9 meters) deep. Furthermore, the majority of the cetaceans incidentally taken were observed entangled in the upper third of the net. Thus, requiring the CA/OR DGN fishery to use extenders of 6 fathoms (10.9 meters) in length or greater should reduce overall cetacean, and strategic stock, mortality and serious injury in the fishery. This proposed rule would require vessel operators to use an extender with a length of at least 6 fathoms (10.9 meters).

Skipper Education Workshops (Strategy #2)

The PCTRT recommended that NMFS conduct mandatory skipper workshops on the components of the PCTRP, together with expert skipper panels, to further generate and consider potential, additional take reduction strategies. Workshops would provide drift gillnet skippers with information relevant to how the PCTRP was developed and how to avoid marine mammal entanglement, and the workshops would solicit feedback from fishers on how to reduce marine mammal interactions. Workshops would be conducted at several locations in California that are accessible to the majority of drift gillnet fishers (e.g., Crescent City, Moss Landing, Morro Bay, Los Angeles, San Diego). Outreach materials that explain take reduction plan development, plan components, plan implementation, and species identification information would be provided to workshop participants. This proposed rule would require all CA/OR DGN vessel operators to attend one Skipper Education Workshop before initiating fishing in the 1997/98 fishing season (May 1 to December 31). CA/OR DGN vessel operators would be required to attend Skipper Education Workshops at annual intervals thereafter, unless that requirement is waived by NMFS. NMFS would provide sufficient advance notice to vessel operators by mail prior to convening workshops.

Pinger Experiment and Requirement (Strategy #3)

The PCTRT recommended that NMFS and the CA/OR DGN fishery initiate an acoustic deterrent device (pinger) experiment in the fishery during the 1996–97 fishing season to evaluate the effectiveness of pingers at reducing incidental cetacean and strategic stock bycatch. Moreover, the PCTRT recommended that if results from this experiment indicate that there is a downward trend in overall cetacean bycatch, NMFS should establish a mandatory fleetwide pinger requirement for all CA/OR DGN fishery vessels prior to the next fishing season (1997–98) and continue to monitor the effectiveness of pingers at reducing bycatch.

The use of pingers in other gillnet fisheries has been shown to be effective at reducing the incidental bycatch of harbor porpoise (PCTRP, 1996). Analysis of CA/OR DGN observer program data from 1990–95 indicates that more cetaceans are entangled in areas of the net further away from the vessel, indicating that sound from the vessel may alert these animals to use their echolocation and, thus, avoid entanglement in the net. Furthermore, a workshop of cetacean and acoustic experts recently concluded that a pinger experiment should be conducted in the CA/OR DGN fishery to test its effectiveness at reducing cetacean entanglement (Reeves *et al.*, 1996). The workshop participants recommended that the pingers used in the New England sink gillnet fishery (10 kHz at 132 dB re 1μ Pa at 1 meter) be used experimentally in the CA/OR DGN fishery because the sound frequency of the pingers was within the hearing sensitivity of most of the cetaceans that interact with that fishery.

NMFS and the CA/OR DGN fishery initiated a pinger experiment in the CA/OR DGN fishery in August 1996. The CA/OR DGN fishery pinger experiment used pingers with the same sound frequency, level, and pulse duration and rate as those used in the New England sink gillnet fishery. Preliminary results indicate that observed cetacean entanglement rate is almost 4 times greater for non-pinger sets than for those sets that used pingers (NMFS, unpublished data). Final statistical results from the pinger experiment should be available in March 1997.

Under this proposed rule, NMFS-approved pingers must be used on all vessels, during every set, and during the entire fishing season. A NMFS-approved pinger is an acoustic deterrent device which, when immersed in water, broadcasts a sound frequency range of 10 to 80 kHz at 132 dB re 1 micropascal at 1 meter with a pulse duration of 300 milliseconds and a pulse rate of 4 seconds. However, if better information on the hearing sensitivity of cetaceans taken in the CA/OR DGN fishery indicates that different pinger specifications would be more effective, or if experiments using alternative pingers are more effective, NMFS could require that different pingers be used in the fishery. NMFS would publish proposed specifications for alternative pingers, and provide opportunity for public comment to determine whether alternative pingers should be required.

If the final results from the pinger experiment indicate that these devices are ineffective at reducing cetacean bycatch in the CA/OR DGN fishery, the use of pingers will not be included in the final rule to implement the final PCTRP. NMFS may reconvene the PCTRT prior to publishing a final rule requiring the mandatory use of pingers in the CA/OR DGN fishery to solicit its input on whether pingers should be included in the final rule.

Encourage CDFG Not to Reissue Lapsed Permits and Encourage ODFW to Continue to Issue the Same Number of Permits (Strategy #4)

The California drift gillnet fishery for thresher shark and swordfish is a limited entry fishery, and the OR DGN fishery is a developmental fishery. The PCTRT recognized that the CA DGN fishery is not restricted from a substantial expansion in fishing effort, because nearly a third of the drift gillnet permittees annually satisfy only the minimum CDFG requirements to keep their permits valid. The PCTRT recommends two approaches for limiting the potential expansion of fishing effort by permit holders in California and Oregon. Implementation of these approaches would not affect those drift gillnet fishers that annually land well beyond the minimum landing requirements established by CDFG.

First, the PCTRT recommended that CDFG continue not to reissue drift gillnet permits that have lapsed. In the past, if the minimum landing requirements for a drift gillnet permit have not been met by the permittee, the permit lapsed and could then be reissued to other applicants. However, it is the current practice of CDFG to not reissue lapsed permits. The PCTRT also recommended that ODFW continue issuing the same number of permits as were issued in 1996. NMFS intends to

contact CDFG and ODFW to encourage continuation of these practices.

Second, the PCTRT recommended that a California drift gillnet permit buy-back program be instituted to reduce those California drift gillnet permittees that annually land only the minimum requirements to maintain their permits. Theoretically, any agency or any private sector entity could initiate a buy-back program by entering into an agreement with a drift gillnet permit holder. Although NMFS does not have funding to implement this strategy, section 118(j) of the MMPA allows NMFS to accept, solicit, receive, hold, administer and use gifts, devises and bequests to carry out the provisions of section 118, which includes the implementation of take reduction plans. NMFS is seeking comments on the establishment of such a permit buy-back program in conjunction with CDFG, other agencies, or with the private sector.

Contingency Measures Involving a Reduction in Fishing Effort

The PCTRT reviewed several contingency measures involving a reduction in fishing effort that may be considered if the implementation of the primary strategies fail to achieve the goals of the MMPA. The PCTRT recommended that NMFS reconvene the PCTRT prior to June 15, 1997, to review the results from the pinger experiment, evaluate the efficacy of pingers at achieving the goals of the MMPA, and make additional recommendations for the plan, if necessary. The PCTRT also recommended that NMFS continue to reconvene the team on an annual basis to monitor the implementation of the final take reduction plan, until such time that NMFS determines that the objectives of the MMPA have been met.

The contingency measures reviewed by the PCTRT include a preliminary list of possible strategies for reducing incidental mortality and serious injury that involve changes in fishing effort. Once the final PCTRP is adopted by NMFS, the team recommended that if the 6-month take reduction goal has not been met when the team reconvenes, the PCTRT will recommend methods to reduce fishing effort in the upcoming season, if necessary. NMFS intends to reconvene the PCTRT prior to June 1997 and on an annual basis until the goals of the MMPA have been met.

Other Team Recommendations

The PCTRP included several other recommendations that do not require regulations to implement yet were considered important in achieving the long-term goals of the PCTRP. These include: (1) Voluntary modifications of net mesh size; (2) enhancing the effectiveness of the observer program; (3) research on oceanographic/environmental variables in relation to cetacean distribution.

The PCTRP also included recommendations that all vessels in the CA/OR DGN fishery voluntarily convert to 20–inch (50.8 centimeter) net mesh size when replacing old nets or large panels of existing net. The mesh conversion was recommended because an analysis of observer data showed a significant correlation between size of mesh and cetacean entanglement rate. The rate of entanglement was higher for mesh sizes greater than 21 inches than that for 20 inches or less. The biological reasons for this relationship are unknown. NMFS plans to encourage DGN fishers to convert their nets to 20–inch (50.8 centimeters) mesh during the Skipper Education Workshops.

The PCTRT recommended measures to enhance the effectiveness of NMFS' observer program, including: (1) Achieving 20 percent observer coverage; (2) ensuring that the observer program is targeting all possible DGN vessels, including vessels that cannot carry an observer; and (3) ensuring that the observer program data collection be expanded to include several additional data variables (i.e., net and environmental characteristics). NMFS is in the process of implementing these measures within the constraints of available funding.

The PCTRP recommended that data be collected on oceanographic/environmental variables that could be used for predicting cetacean distribution on a real-time basis and, possibly, reducing marine mammal interactions with the CA/OR DGN fishery. NMFS intends to include this additional data collection in its research program where possible.

The PCTRP also identified an additional 13 strategies that might reduce bycatch of strategic marine mammal stocks. These strategies were either rejected by the PCTRT or held in reserve for future consideration. If the goals of section 118(f) of the MMPA have not been met once the final PCTRP has been implemented, these strategies may be reconsidered by the PCTRT and NMFS.

NMFS' Proposed Change to the Plan

NMFS proposes to adopt the draft plan as submitted, except for one minor change with respect to strategy #2 (the use of pingers). The PCTRT recommended that this strategy be mandatory if a downward trend in overall cetacean bycatch could be demonstrated as the result of the use of pingers during the 1996/97 fishing season. As discussed above, NMFS decided to propose the mandatory use of pingers before final results are available. However, if the final results from the pinger experiment indicate that these devices are ineffective at reducing cetacean bycatch in the CA/OR DGN fishery, the use of pingers will not be included in the final rule.

Comments are requested on all aspects of the draft plan, NMFS's proposed change to the plan, and on the proposed regulatory actions to implement the plan.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities as follows:

> The cost of fishing line to implement a minimum extender length of 6 fathoms (10.9 meters) is negligible, and swordfish catch rates are not significantly different at various depths. Travel costs to attend skipper education workshops would be minimized by having workshops scheduled at various locations around the state and at various times outside of the fishing season. The cost of installing pingers on nets would be approximately $1,640 per vessel, based on 41 pingers required at an average cost of $40 per pinger. The cost of pingers could be offset by reductions in marine mammal entanglements, and subsequent reduction in costs due to net damage or loss. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA (AA) has determined, based on an EA prepared under the National Environmental Policy Act, that implementation of these regulations would not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. A copy of the EA prepared for this rule is available upon request (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 229

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

References

Barlow, J., R.L. Brownell Jr., D.P. DeMaster, K.A. Forney, M.S. Lowry, S. Osmek, T.J. Ragen, R.R. Reeves, and R.J.

Small. 1995. U.S. Pacific Marine Mammal Stock Assessments. NOAA Technical Memorandum NMFS, NOAA-TM-NMFS-SWFSC–219. 162 p.

Reeves, R.R., R.J. Hofman, G.K. Silber, D. Wilkinson. 1996. Acoustic Deterrence of Harmful Marine Mammal-Fishery Interactions: Proceedings of a Workshop held in Seattle, Washington, 20–22 March 1996. NOAA Technical Memorandum, NMFS-OPR–10. 70 p.

PCTRP. 1996. Final Draft, Pacific Offshore Cetacean Take Reduction Plan. Draft plan submitted to the National Marine Fisheries Service and prepared by the Pacific Cetacean Take Reduction Team. 75 p.

Dated: February 10, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

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

1. The authority citation for part 229, subpart C continues to read as follows:

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

2. In subpart C, sections 229.21 and 229.22 are added to read as follows:

§ 229.21 Basis.

Section 118(f)(9) of the Act authorizes the Director, NMFS, to impose regulations governing commercial fishing operations where necessary to implement a take reduction plan to protect or restore a marine mammal stock or species covered by such a plan.

§ 229.22 Pacific Offshore Cetacean Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Sections 229.22(a) through (d) apply to all drift gillnet fishing vessels operating out of California or Oregon.

(b) *Extenders.* Extenders (buoy lines) of less than 6 fathoms (36 feet; 10.9 meters) may not be used by drift gillnet vessels operating out of California or Oregon.

(c) *Acoustic deterrent devices.* (1) For the purposes of this subpart, a pinger is defined as an acoustic deterrent device.

(2) NMFS-approved pingers must be used on all vessels, during every set, and during the entire drift gillnet fishing season. A NMFS-approved pinger is an acoustic deterrent device which, when immersed in water, broadcasts a sound frequency range of 10 to 80 kHz at 132 dB re 1 micropascal at 1 meter with a pulse duration of 300 milliseconds and a pulse rate of 4 seconds.

(3) Pingers must be attached to both the floatline and leadline and spaced no more than 300 feet (90.9 meters) apart. Pingers on the floatline and leadline must be staggered, such that the horizontal distance between a pinger on the floatline and a pinger on the leadline is no more than 150 feet (45.5 meters).

(4) The pingers must be operational and functioning at all times during deployment.

(5) If requested, NMFS may authorize the use of pingers with specifications differing from those set forth in section 229.21(c)(2) for limited, experimental purposes within a single fishing season.

(d) *Skipper education workshops.* After notification from NMFS, vessel operators must attend a Pacific Offshore Cetacean skipper workshop before commencing fishing each fishing season. For purposes of this requirement, the fishing season shall be deemed to begin May 1 and end on January 31 of the following year. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

[FR Doc. 97–3808 Filed 2–13–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 424

[I.D. 010997C]

Endangered and Threatened Species and Designation of Critical Habitat; Petition To Designate Critical Habitat for the Atlantic Green and Hawksbill Turtles.

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

ACTION: Notice of receipt of a petition presenting substantial information and request for additional information.

SUMMARY: NMFS announces receipt of a petition to designate critical habitat for the Atlantic green and hawksbill turtles pursuant to the Endangered Species Act of 1973 (ESA). NMFS is soliciting public comment and information on the petition to designate critical habitat.

DATES: Written comments will be accepted through April 15, 1997.

ADDRESSES: Written comments on this announcement may be submitted to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder, 301–713–1401, or Charles A. Oravetz, 813–570–5312.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1996, Ms. Cindy Gines-Sanchez, Esq., on behalf of the Misión Industrial de Puerto Rico, Inc. and Chelonia, The Puerto Rico Herpetological Society, Inc., petitioned NMFS to designate critical habitat for the Atlantic green and hawksbill turtles to include all coastal waters surrounding the islands of the Culebra archipelago, including Isla de Culebra, Cayo Norte, Cayo Ballena, Cayos Geniquí, Isla Culebrita, Arrecife Culebrita, Cayo de Luis Peña, Las Hermanas, El Mono, Cayo Lobo, Cayo Lobito, Cayo Botijuela, Alcarraza, Los Gemelos, and Piedra Steven, from the Mean High Water line out to 3 nautical miles (nm)(4.2 km).

Section 4 of the Endangered Species Act (ESA) and 50 CFR part 424 contain provisions allowing interested parties to petition for the designation of critical habitat. Although the ESA does not require that the time frames outlined in section 4(b) of the ESA be followed for designation of critical habitat for species listed prior to 1982, NMFS will apply those time frames to the referenced petition, as a matter of policy, to the greatest extent practicable.

NMFS has determined that the petition presents substantial information indicating that designation may be warranted. A copy of the information submitted with the petition is available upon request (see **ADDRESSES**).

NMFS will conduct a review to determine if the petitioned action to designate critical habitat is warranted. The determination concerning critical habitat will be made on the best available scientific and commercial data and the economic impacts of such designation. NMFS will make a determination by November 7, 1997, 12 months after receipt of the petition. A notice of finding will be published in the Federal Register and, if the action is warranted, a proposed regulation to implement the action will be included.

Unlike listing a species as endangered or threatened, economic impacts must be considered when designating critical habitat. An area may be excluded from the designation if it is determined that the benefits of an exclusion outweigh the benefits of including the area as critical habitat, and the exclusion will not result in the extinction of the species.

NMFS is soliciting information and comments concerning the petition to