

Signed: February 8, 1999.

**John W. Magaw,**  
Director.

Approved: March 12, 1999.

**John P. Simpson,**

Deputy Assistant Secretary, (Regulatory,  
Tariff and Trade Enforcement).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 970129015-9082-10; I.D.  
031997B]

RIN 0648-A184

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

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

**ACTION:** Final rule; partial stay.

**SUMMARY:** On February 16, 1999, NMFS issued a final rule implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). This document stays the provisions concerning gear marking requirements for all fisheries regulated by the ALWTRP (published on February 16, 1999) until November 1, 1999. The remainder of 50 CFR 229.32 is not changed.

**DATES:** In regulations published at 64 FR 7529 (February 16, 1999), paragraphs § 229.32 (b), (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), (d)(5)(ii),

and (f)(2) are stayed until November 1, 1999.

**FOR FURTHER INFORMATION CONTACT:**  
Douglas Beach, NMFS, Northeast  
Region, 978-281-9254; Katherine Wang,  
NMFS, Southeast Region, 727-570-5312;  
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. The effective date given in the regulatory text of 64 FR 7529 pertaining to gear marking of all fisheries regulated by the ALWTRP was April 1, 1999. It was generally noted in the Response to Comments portion of the final rule (64 FR 7544) that, although gear marking is an important data gathering device, the proposed scheme published in the Interim Final Rule on July 22, 1997 (62 FR 39157), was not likely to be as effective as expected. NMFS also stated in the final rule (64 FR 7545) that, as requested in other comments, that the Gear Advisory Group (GAG) and the Atlantic Large Whale Take Reduction Team (ALWTRT) would be tasked with reviewing the current scheme, and if recommendations were provided, NMFS would modify the scheme.

The GAG met in October 1998, and the ALWTRT met on February 8-10, 1999. The ALWTRT discussed the gear marking scheme in detail and recommended by consensus (NMFS members abstaining) that NMFS suspend the implementation of the gear marking requirement until November 1, 1999, or until a better system is designed. The ALWTRT recommended a specific course of action be followed to provide an appropriate gear marking scheme that could be implemented by

NMFS by November 1, 1999. They asked that the GAG be reconvened quickly to design a better system for approval by the ALWTRT. The criteria established by the ALWTRT for an appropriate gear marking system were: (1) the system should identify the buoy lines by individual fishermen; (2) the system should apply to all waters affected by the plan; (3) it should be easily implemented by the affected fisheries; (4) to allow identification when the gear is not removed from a whale, the system should allow identification of gear type from a photograph; and (5) the system should allow identification of where the gear had been set.

The ALWTRT asked that, in order to minimize unnecessary confusion and expense for fishermen, the existing gear marking provision be stayed until November 1, 1999. This would assure that, should the GAG or ALWTRT not be able to reach a consensus on an appropriate gear marking scheme, the existing final rule gear marking scheme would remain in place. NMFS notes that the final rule comments on gear marking state that gear marking does not, by itself, reduce risk but provides important data for fine tuning the ALWTRP. Therefore, NMFS is staying the gear marking regulations for all fisheries affected by the ALWTRP so that the GAG and ALWTRT will have time to provide a more appropriate scheme to be implemented through the appropriate rulemaking process.

Dated: April 5, 1999.

**Andrew A. Rosenberg,**

Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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