

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 668

Report On Use of Employees of Non-Federal Entities To Provide Services to Department of the Army

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), and Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), Department of Army, DOD.

ACTION: Final rule.

SUMMARY: This action removes the Department of the Army regulations on Contractor Manhour Reporting Requirement. The Director of Defense Procurement directed the Department of the Army to withdraw the regulations pending approval of, and further rulemaking on, the repetitive use provisions employed in covered Army contracts. In addition, the Office of Management and Budget concluded that the final rule made significant changes to the interim rule in apparent conflict with the Paperwork Reduction Act.

DATES: Effective July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Conklin, at *john.conklin@saalt.army.mil*, or Dr. John C. Anderson at 703-614-8247 or *John.Anderson@hqda.army.mil*.

SUPPLEMENTARY INFORMATION: 1.

Applicability: No new contract actions containing the requirements cited in 32 CFR Part 668 may be awarded after the effective date of this rule. Contracting officers shall timely notify, in writing, all contractors whose existing contracts contain 32 CFR Part 668 requirements, that the requirement has been eliminated and that no further reporting is required under those contract actions. Any actual modification of such contracts to formally eliminate the requirement must take into account such issues as consideration and best

interest of the Government on a case-by-case basis.

2. **Background:** The Department of the Army, in the **Federal Register** (65 FR 13906) dated Wednesday, March 15, 2000, announced an interim rule to establish and implement basic contractor-reporting requirements to identify the number and value of direct, and associated indirect, labor work year equivalents for contracted services in support of the Army. This requirement was Army's implementation of statutory mandates and FY 2000 Congressional data requirements (10 U.S.C. 129a, 10 U.S.C. 2461(g) and Section 343 of the FY 2000 DoD Authorization Act).

Army contracting officers were directed to include the reporting requirements in all covered contracts involving services for Research and Development or Other Services and Construction. The interim rule was effective on the date of publication. A final rule, published at 65 FR 81357-81362, December 26, 2000, codified regulations at 32 CFR Part 668 that mandated the inclusion of a reporting requirement in certain contract actions as described in the rule.

As a result of a number of legal and technical/procedural issues and significant complaints from industry about the scope and methodology of the Army final rule and the rulemaking process, the Director of Defense Procurement (DDP) in memorandums dated May 5, and June 5, 2001, directed the Army to cease using the standard contract requirements language ("repetitive use clause") in covered contracts absent approval by the DDP and rulemaking in 40 CFR (covering acquisition regulations supplementing and implementing the Federal Acquisition Regulations System). The Office of Management and Budget concluded that the final rule made significant changes to the interim rule without changing the Paperwork Reduction Act estimates and assumptions, and without allowing for additional public comment thereon, in apparent conflict with the requirements of the Paperwork Reduction Act.

Based on the foregoing, the Army hereby removes the resulting regulations from the Code of Federal Regulations (32 CFR Part 668).

General: The Army's requirement for information on unit level contractor manpower equivalents, as stated in the December 26, 2000, final rule, remains. The Army needs this information for a host of reasons, including planning, programming and budgeting, and prioritization and allocation of resources. From March 2000 to the present, the Army collected over \$9.2 billion in

contract data from approximately 1,200 contractors. Although this data has yet to be validated and analyzed in depth, initial indications are that the numbers of contract manpower equivalents reported by contractors were lower (for the associated values) than those estimated employing algorithms currently used by the Department of the Army and the Department of Defense for reporting to Congress.

List of Subjects in 32 CFR Part 668

Government contracting, Reporting and recordkeeping requirements.

PART 668—[REMOVED AND RESERVED]

Accordingly, for the reasons set out in the preamble, 32 CFR Chapter V, Subchapter L, Part 668, *Contractor Manhour Reporting Requirement*, is removed in its entirety.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01-17613 Filed 7-12-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

Miscellaneous Rules Relating to Common Carriers

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of Oct. 1, 2000, in §§ 64.2103, 64.2104 and 64.2105 remove the effective date note.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No.010710169-1169-01; I.D. 060401B]

RIN 0648-AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues an emergency rule closing the Northeast Distant Statistical Reporting (NED) Area to pelagic longline fishing. Additionally, this emergency rule requires operators of all vessels that use pelagic longline gear and have been issued, or are required to have, Federal highly migratory species (HMS) limited access fishing permits and that fish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, to follow certain requirements in deploying their gear. Finally, all operators of vessels that have been issued, or are required to have, HMS fishing permits must post in the wheelhouse safe handling guidelines for sea turtles captured in pelagic longline fisheries to be supplied by NMFS. This rule is necessary to reduce the bycatch and bycatch mortality of loggerhead and leatherback sea turtles in the Atlantic pelagic longline fishery as required by the June 8, 2001, Biological Opinion (BO).

DATES: This emergency rule is effective July 11, 2001, through January 9, 2002, except for amendments to: § 635.21(a)(3), effective September 15, 2001, local time, through January 9, 2002; § 635.21(c)(2) and § 635.21(c)(6), effective from July 15, 2001, local time through January 9, 2002; and § 635.21(c)(5)(iii), effective August 1, 2001, local time, through January 9, 2002.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Tyson Kade at the address listed here.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Karyl Brewster-Geisz at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

Pelagic Longline Fishery

Pelagic longline gear is a type of commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target yellowfin tuna, bigeye tuna, or swordfish.

Data collected through observer and vessel logbook programs indicate that pelagic longline fishing for Atlantic swordfish and tunas often results in the catch of non-target finfish species, including sharks, bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and endangered sea turtles. The bycatch of protected species (sea turtles or marine mammals) may significantly impair the recovery of these species. Consistent with national standard 9 of the Magnuson-Stevens Act, NMFS has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery.

Sea Turtle Bycatch Reduction

Under the Endangered Species Act (ESA), NMFS is required to address the fishery-related take of sea turtles that are listed as threatened or endangered. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries of turtles taken by pelagic longline gear.

In a Biological Opinion (BO) prepared under section 7 of the ESA, completed June 30, 2000, NMFS concluded that operation of the pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. After the June 30, 2000, BO was issued, NMFS concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles were needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS re-initiated consultation on September 7, 2000. The new BO, issued on June 8, 2001, incorporates information from the February 2001 Stock Assessment of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on the Loggerhead and Leatherback Sea Turtles of the Western North Atlantic.

The June 8, 2001, BO concludes that the operation of the U.S. pelagic

longline fishery jeopardizes the continued existence of loggerhead and leatherback sea turtles. The June 8, 2001, BO estimates that a 55-percent reduction in bycatch mortality from the pelagic longline fishery is necessary to allow for the recovery of these two species. It is anticipated that this level of reduction can be achieved by implementing an area closure and by modifying how pelagic longline gear is deployed.

Area Closure and Gear Modifications

The intent of this emergency rule is to reduce the incidental take and mortality of sea turtles captured by pelagic longlines. The first measure is a closure of the NED area effective July 15, 2001. The NED area has the highest incidental take rate of sea turtles by the U.S. pelagic longline fleet. This emergency regulation will close the NED area to vessels that have been issued, or are required to have, Federal HMS limited access permits and/or use pelagic longline gear. The closed area is bounded by the following coordinates: 35°00' N. lat., 60°00' W. long.; 55°00' N. lat., 60°00' W. long.; 55°00' N. lat., 20°00' W. long.; 35°00' N. lat., 20°00' W. long. This closure comprises an area of 2,631,00 square nautical miles (nm²), including the Grand Banks and other fishing locations. Only larger vessels, primarily fishing out of ports in the northeast, travel to this area on a seasonal basis, from June to October. Although the NED area is large, vessels fishing in that area primarily utilize only about 168,000 nm² or less than 10 percent of the total area subject to the closure.

The second measure, effective August 1, 2001, is designed to reduce the mortality rate of captured sea turtles year-round and in all fishing areas. All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are prohibited from setting gangions within two gangion lengths of the floatline. Specifically, while the gear is deployed, gangions may not be attached to floatlines, nor to the mainline except at a distance from the attachment point of the floatline to the mainline of at least twice the length of the average gangion length in the set. Based on information from the Hawaii longline fleet, hooks that are beneath or adjacent to floatlines have a much higher incidental take of sea turtles than hooks one or more positions away from the floatline. NMFS projects that this measure will result in reductions of 22 percent for loggerhead interactions and 24 percent for leatherback interactions.

In addition to restricting the gangion placement relative to the floatline, all Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits must deploy the gear during shallow sets so that the length of the gangion is greater than the length of the floatline. The intent of this requirement is to ensure that hooked or entangled turtles have sufficient slack line to be able to reach the surface and avoid drowning. For longline sets in which the combined depth of the floatline plus the gangion is 100 meters or less, the length of the gangion must be at least 10 percent longer than the length of the floatline. For sets over 100 meters, the requirement does not apply.

Finally, all Atlantic vessels that have been issued, or are required to have, Federal HMS permits for any gear type and/or target species are required to post inside the wheelhouse the guidelines for the safe handling of sea turtles captured in a pelagic longline interaction. This measure will allow vessel captains to refer to the appropriate handling and release guidelines in the event a sea turtle is accidentally hooked or entangled. The requirement to post sea turtle handling instructions is effective September 15, 2001. NMFS will distribute the guidelines via mail to all HMS permit holders and announce this requirement and the availability of the guidelines via the fax network. If a vessel owner does not receive the document by September 1, 2001, it will be available for downloading by that date from the Internet at: <http://www.nmfs.noaa.gov/sfa/hmspg.html>, or NMFS can be contacted to request a copy requested (see ADDRESSES).

Experimental Fishery

Consistent with the BO, NMFS expects to undertake a research program, in consultation and cooperation with the domestic pelagic longline fleet, to develop and evaluate the efficacy of new technologies and changes in fishing practices to reduce sea turtle interactions. The experimental fishery will use a limited number of qualifying commercial fishing vessels as cooperative research platforms in the NED area. To provide for the maximum amount of transparency and public participation in the process of developing the experimental fishery, NMFS has applied for an ESA section 10 permit to conduct this scientific research (June 4, 2001, 66 FR 29934). Any research plan approved for this experimental fishery, as stated in the BO, will comply with four conditions: the sea turtle target mortality reduction

will be 55 percent, the duration will be 3 years, all measures that are tested must be exportable to international fleets, and the level of mortality reduction may be achieved through reducing take rates or improving post-release survival for captured sea turtles.

Classification

This emergency rule is issued under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act. The Acting Assistant Administrator for Fisheries, NOAA (AA) has determined that these regulations are necessary to comply with the requirements of the June 8, 2001, BO.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact would result. This emergency rule is of limited duration. NMFS plans to undertake rulemaking, including preparation of an environmental impact statement, that will propose measures necessary to meet the requirements of the June 8, 2001, BO on a permanent basis.

To comply with Executive Order 12866, NMFS also prepared a Regulatory Impact Review for this action which assesses the net economic costs and benefits of this action. In 1999, 10 vessels fished in the NED area and accounted for 18.5 percent of the total number of swordfish landed by the entire fleet. Tuna are also caught by vessels fishing in this area, but the percentage is minuscule compared to the amount of swordfish landed by these vessels. The estimated total annual ex-vessel gross revenues from swordfish for the 10 vessels in the NED area were approximately \$3.2 M in 1999, with an estimated average of \$323,532 ex-vessel revenues per vessel. The estimated total annual ex-vessel revenues from swordfish for all areas except the NED area is \$13.9 M for 1999.

Thus, closing the NED area could reduce the total annual ex-vessel gross revenues of the swordfish fishery by almost 20 percent. This reduction would likely cause some individual fishermen who normally fish in the NED area (10 vessels in 1999) to experience a large decrease in gross revenues. This reduction would also likely cause some individual processors, dealers, and suppliers to experience a slight increase in costs if they need to relocate, and possibly a decrease in gross revenues if they rely mostly on landings from the NED area. However, this closure should not affect the fleet as a whole. It is anticipated that some of the vessels that have historically fished in the NED area will participate in the planned

experimental fishery. It is intended that participants in the research program will be compensated by NMFS for costs not covered through sale of swordfish, shark, and tunas caught during fishing operations.

The gear modifications required by this emergency rule are not expected to incur significant economic costs other than the potential effect on catch rates for target species. In many cases, the fishermen would be required to purchase these expendable supplies (monofilament and hooks) in the normal course of business. Posting the sea turtle handling guidelines is not expected to incur any additional expense. Thus, this emergency rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS issues this emergency rule, effective for 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This emergency rule may be extended for an additional 180 days provided the public has had an opportunity to comment on the emergency rule and, at the time of extension, a plan amendment or proposed regulations to address sea turtle bycatch and bycatch mortality on a permanent basis is being actively pursued. Public comments on this emergency rule will be considered in determining whether to extend this emergency rule to reduce sea turtle bycatch. Responses to comments will be provided if the emergency rule is revoked, modified, or extended.

Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule, the analytical requirements of the Regulatory Flexibility Act are not applicable and no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as providing prior notice and an opportunity for public comment would be contrary to the public interest. Public comments were received regarding the April 11, 2001 draft BO, which indicated the measures to be implemented by this emergency rule. This emergency rule is necessary to reduce the anticipated impacts of the pelagic longline fishery on listed sea turtles and to implement the provisions of the June 8, 2001, BO, prepared under section 7 of the ESA. To avoid jeopardy to listed sea turtles, the NED area closure must be in effect by July 15, 2001, the gangion placement and length requirements must be in effect by

August 1, 2001, and the sea turtle safe handling guidelines must be posted in the wheelhouse of all vessels with an HMS permit by September 15, 2001. The months of July through October, are historically high periods of sea turtle interactions. If these actions are delayed, the highest level of fishing activity in the NED area will have already occurred for the 2001 fishing year and the expected reduction in sea turtle bycatch and associated mortality will not be achieved.

The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the NED area closure for the 30 days normally required. The AA finds that this measure is necessary to reduce sea turtle bycatch and bycatch mortality that otherwise would occur this fishing season and that fishermen do not need time in order to comply with this regulation. Given NMFS's ability to communicate regulations to fishing interests through the HMS Fax network, NOAA weather radio, press releases, mailing lists, the Internet, and the HMS Infoline, and because NMFS has previously notified the public via fax network and **Federal Register** notice of the results and requirements of the June 8, 2001, BO and that the agency will promulgate an emergency rule, the AA has determined there is good cause to waive the 30-day delay in the effective date because such delay would be contrary to the public interest.

Similarly, the AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the gear modifications for all of the 30 days normally required. The AA finds that this measure is also necessary to reduce sea turtle bycatch and bycatch mortality that would otherwise occur during this fishing season. The AA also finds that a small delay is justified so that fishermen can modify the gear as required by this emergency rule. However, because the modifications should not be difficult to make, because NMFS has previously notified the public via fax network and **Federal Register** notice of the results and requirements of the June 8, 2001, BO, and because the fishing season has already started, the AA has determined there is good cause to waive part of the 30-day delay in the effective date because such delay would be contrary to the public interest.

Given the time required for NMFS to print and distribute the sea turtle handling and release guidelines, the BO allowed for delayed effectiveness of the posting requirement.

The AA has determined that this emergency rule is consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. NMFS notified the states as soon as the June 8, 2001, BO was released and requested that they notify the agency with respect to concurrence with the consistency determination.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: July 10, 2001.
William T. Hogarth,
Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, new definitions for "floatline," "gangion," and "northeast distant closed area" are added alphabetically to read as follows:

§ 635.2 Definitions.

* * * * *

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

Northeast Distant closed area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00' N. lat., 60°00' W. long.; 55°00' N. lat., 60°00' W. long.; 55°00' N. lat., 20°00' W. long.; 35°00' N. lat., 20°00' W. long.; 35°00' N. lat., 60°00' W. long.

* * * * *

3. In § 635.21, paragraph (c)(2) is suspended and paragraphs (a)(3), (c)(5)(iii), and (c)(6) are added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *
(3) Effective September 15, 2001, through January 9, 2002, operators of all vessels issued, or required to have, a permit under this part must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(c) * * *
(5) * * *

(iii) *Gear modifications.* The following measures to reduce the incidental capture and mortality of sea turtles are effective August 1, 2001, through January 9, 2002.

(A) *Gangion placement.* Pelagic longline gear must be deployed such that gangions may not be attached to floatlines nor to the mainline except at a distance from the attachment point of the floatline to the mainline, along the mainline, of at least twice the length of the average gangion length in the set.

(B) *Gangion length.* Pelagic longline gear must be deployed such that the length of the gangion is at least 10 percent greater than the length of the floatline for longline sets in which the combined length of the floatline and the gangion is 100 meters or less.

(6) If pelagic longline gear is on board a vessel issued, or required to have, a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in:

(i) The Northeastern United States closed area from June 1 through June 30 each calendar year;

(ii) In the Charleston Bump closed area from March 1 through April 30, 2001, and from February 1 through April 30 each calendar year thereafter;

(iii) In the East Florida Coast closed area at any time beginning at 12:01 a.m. on March 1, 2001;

(iv) In the DeSoto Canyon closed area at any time beginning at 12:01 a.m. on November 1, 2000;

(v) In the Northeast Distant closed area from July 15, 2001, through January 9, 2002.

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