

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the simplified acquisition threshold in FAR part 2;

(3) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced;

(4) To chemical warfare protective clothing produced in the countries listed in subsection 225.872-1 of the Defense FAR Supplement; or

(5) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/ tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 235

[DFARS Case 2001-D002]

#### Defense Federal Acquisition Regulation Supplement; Research and Development Streamlined Contracting Procedures

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate the requirement for posting of solicitations at the Research and Development Streamlined Solicitation Web site. Posting of

solicitations at this Web site is no longer necessary, because contracting activities now make synopses and solicitations available to the public through the Governmentwide point of entry (FedBizOpps).

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-1302; facsimile (703) 602-0350. Please cite DFARS Case 2001-D002.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS subpart 235.70 contains streamlined procedures for acquiring research and development using a standard solicitation and contract format. The standard format is available on the Research and Development Streamlined Solicitation (RDSS) Web site at <http://www.rdss.osd.mil>. This final rule revises DFARS 235.7003-2 to eliminate the requirement for posting of individual solicitations at the RDSS Web site. Contracting activities now make synopses and solicitations available to the public through the Governmentwide point of entry (FedBizOpps), in accordance with FAR 5.102 and 5.203.

DoD published a proposed rule at 66 FR 63348 on December 6, 2001. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not significantly change solicitation procedures or limit public access to solicitation information.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Part 235

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for 48 CFR Part 235 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

### PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.7003-2 is revised to read as follows:

#### 235.7003-2 RDSS process.

(a) *Synopsis.* The synopsis required by FAR 5.203 shall include—

(1) The information required by FAR 5.207; and

(2) A statement that the solicitation will be issued in the research and development streamlined solicitation format shown at the RDSS/C Web site.

(b) *Solicitation.*

(1) The solicitation, to be made available consistent with the requirements of FAR 5.102—

(i) Shall be in the format shown at the RDSS/C Web site;

(ii) Shall include the applicable version number of the RDSS standard format; and

(iii) Shall incorporate by reference the appropriate terms and conditions of the RDSS standard format.

(2) To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 020419092-2092-01 ; I.D. 041802E]

RIN 0648-AP97

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

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

**ACTION:** Temporary area and gear restrictions.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions apply to lobster trap and anchored gillnet fishing gear in an area totaling approximately 1,100 square nautical miles (nm<sup>2</sup>) (2,038.5 km<sup>2</sup>) in April and 1,700 nm<sup>2</sup> (3,150 km<sup>2</sup>) in May off Cape Ann, MA for 15 days. The purpose of this action is to provide immediate protection to an aggregation of North Atlantic right whales (right whales).

**DATES:** The area and gear restrictions are effective beginning April 29, 2002 through May 13, 2002.

**ADDRESSES:** Send comments on this document to Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region at the address above.

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.nmfs.gov/whaletrp/>.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

**SUPPLEMENTARY INFORMATION:** The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the DAM program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap and anchored gillnet fishing

gear in areas north of 40° N. lat. on an expedited basis to protect North Atlantic right whales (right whales) where the animals congregate to feed. The regulations found at § 229.32(g)(3) allow NMFS to: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15-day period, and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of 3 or more right whales sighted within an area (75nm<sup>2</sup> (139 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (1.85 km<sup>2</sup>). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting based upon which a DAM zone would be triggered.

On April 14, 2002, NMFS received a reliable report from a NMFS aerial survey team of 8 right whales, in the proximity of 42° 31' N lat and 70° 00.6' W long. This position lies approximately 30 nautical miles east of Cape Ann, Massachusetts in an area called Wildcat Knoll.

Once a DAM zone is triggered, NMFS will determine whether to impose, in the zone, restrictions on fishing and/or fishing gear. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above and, through this action, until April 30, 2002, restricts lobster trap and gillnet gear set in the waters bounded by:

42° 54'N, 70° 30'W (NW Corner)

42° 54'N, 69° 30'W  
42° 30'N, 69° 30'W  
42° 30'N, 70° 15'W  
42° 12'N, 70° 15'W  
42° 12'N, 70° 30'W (SW Corner).

This DAM zone excludes areas of overlap within the Seasonal Area Management (SAM) West area. Additionally, the DAM abuts but does not overlap with the northern boundary of the Cape Cod Bay Critical Habitat Area. The restrictions for the DAM zone are as follows: All anchored gillnet and lobster trap gear must be removed from these waters within 2 days of publication of this notice in the Federal Register, and no new gear may be set in this area during the restricted period. On May 1, 2002, due to the termination of gear restrictions within the SAM West area, the DAM zone and restrictions will be expanded to include the waters bounded by the following coordinates:

42° 54'N, 70° 30'W (NW Corner)  
42° 54'N, 69° 30'W  
42° 12'N, 69° 30'W  
42° 12'N, 70° 30'W (SW Corner).

The restrictions within the expanded DAM zone are as follows: All anchored gillnet and lobster trap gear must be removed from these waters and no new gear may be set in this area during the restricted period. The restrictions will remain in effect through May 13, 2002, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**. This restriction will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

#### Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator for Fisheries, NOAA (AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under NEPA is not required.

The AA finds that providing prior notice and an opportunity for public comment on this action would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. To meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once

the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. The criteria were triggered with respect to this rule on April 14, 2002. If NMFS were to provide notice and an opportunity for public comment prior to the creation of a DAM restricted zone, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap and anchored gillnet gear as such procedures would be impracticable and contrary to the public interest.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time that it went into effect, thereby

rendering the action ineffective at reducing the risk of entanglement of endangered right whales. Nevertheless, NMFS recognizes the need for fishermen to have time to remove their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as possible.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (SEE **ADDRESSES**).

This rule has been determined to be not significant under EO 12866.

**Authority:** 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: April 19, 2002.

**Rebecca J. Lent,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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