

FTA initially believed the rulemaking would not be controversial. Based on the adverse comment we agree that input from additional stakeholders is warranted. At this time, FTA will not replace the term "accident" with the term "major incident" in 49 CFR 659.5, 659.39, 659.41. FTA plans to publish a notice of proposed rulemaking in November 2002.

List of Subjects in 49 CFR Part 659

Railroads.

Dated: June 26, 2002.

Jennifer L. Dorn,

Administrator, Federal Transit Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334-2158-09 ; I.D. 062502B]

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 rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions, which include both mandatory and voluntary measures, 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 fishermen in an area totaling approximately 3,500 square nautical miles (nm^2) (6,486 km^2) in the Great South Channel area, east of Cape Cod, Massachusetts, for 15 days. The purpose of this action is to provide immediate protection to an unexpectedly high aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours July 1, 2002, through 2400 hours July 15, 2002.

ADDRESSES: Copies of the proposed and final Dynamic Area Management 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, One Blackburn Drive, Gloucester, MA 01930.

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, 978-28-9145; 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 whales, 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 ALWTRP's Dynamic Area Management (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 right whales. Under the DAM program, NMFS may: (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 three or more right whales sighted within an area (75nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). 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.

On June 18, 2002, NMFS Aerial Survey Team reported a sighting of 75 right whales, 45 in the proximity of 41° 21' N lat. and 69° 17' W long, and 30 in the proximity of 41° 21' N latitude and 69° 01' W longitude. These positions lie east of Cape Cod, Massachusetts, in an area called the Great South Channel.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. 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 additional data regarding current and historic right whale sightings. Through this action, NMFS restricts lobster trap and gillnet gear set in the waters bounded by:

41°48' N, 69°44' W (NW Corner)
41°48' N, 68°25' W
40°54' N, 68°25' W
40°54' N, 69°06' W (SW Corner)

The mandatory restrictions for the portion of the DAM zone east of the western boundary of the Outbound Boston Harbor shipping lanes are as follows: All anchored gillnet and lobster trap gear must be removed from these waters.

In addition, NMFS requests the voluntary removal of all lobster trap and anchored gillnet gear in the waters bounded by:

41°48' N, 69°51' W (NW Corner)
41°48' N, 69°44' W
40°54' N, 69°06' W
40°54' N, 69°51' W (SW Corner)

The voluntary restrictions for this portion of the DAM zone west of the western boundary of the Outbound Boston Harbor shipping lanes are as follows: voluntary removal of all lobster trap and gillnet gear from these waters. Furthermore, NMFS asks lobster trap and gillnet fishermen not to set any new gear in this entire area during the 15-day alert period. The restrictions will be in effect beginning at 0001 hours July 1, 2002, through 2400 hours July 15, 2002, unless terminated sooner or extended by

NMFS, through another notification in the **Federal Register**. The restrictions, both mandatory and voluntary, 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 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 the National Environmental Policy Act (NEPA) is not required.

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 June 18, 2002. If NMFS were to provide notice and an opportunity for public comment prior to the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. 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.

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 aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. 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 beginning at 0001 hours July 1, 2002, through 2400 hours July 15, 2002. 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, DOC, 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 Executive Order 12866.

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

Dated: June 26, 2002.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020620154-2154-01; I.D. 052902A]

RIN 0648-AQ10

Fisheries of the Exclusive Economic Zone Off Alaska; Change of the Name of the Salmon Fisheries Management Plan

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

ACTION: Technical correction.

SUMMARY: NMFS is correcting the title of the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) off Alaska (FMP). This action is necessary to make the name of the FMP in Federal regulations consistent with the actual name of the FMP as approved by the Secretary of Commerce (Secretary). The intended effect of this action is regulatory consistency, and it will have no effect on any person fishing in the EEZ for any species.

DATES: Effective on July 31, 2002.

FOR FURTHER INFORMATION CONTACT:
Patsy A. Bearden, 907-586-7228.

SUPPLEMENTARY INFORMATION: Salmon fisheries in the EEZ off Alaska are managed pursuant to the FMP prepared by the North Pacific Fishery Management Council (Council) and approved and implemented by the Secretary under authority of the Magnuson-Stevens Fishery Conservation and Management Act. The original title of the salmon FMP was the "Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude."

Over time, the international regime affecting salmon fisheries changed and the Council revisited its salmon management policies. In 1989, the Council adopted an amendment to the FMP (Amendment 3) which, among other things, changed the title of the FMP to, "Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska." The Secretary approved Amendment 3 to the FMP in 1990, and published implementing rules on November 15, 1990 (55 FR 47773).

NMFS has discovered that regulations implementing Amendment 3 did not include the new title of the FMP. This change should have been included in