

secondary basis with respect to adjacent channel licensees. Additionally, these licensees may continue to operate with an authorized bandwidth wider than 11.25 kHz on such low power frequencies, subject to the provisions of § 90.209(b) of this chapter.

(8) Applicants proposing to operate with an authorized bandwidth wider than 11.25 kHz, on low power frequencies that are subject to an authorized bandwidth of 11.25 kHz, may be licensed on a secondary, non-interference basis. Such applicants are subject to the conditions of paragraphs (b) through (g) of this section and the provisions of § 90.209(b) of this chapter.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030414084-3084-01; I.D. 021202A]

RIN 0648-AR02

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

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a correction to final rules implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP) in order to correct unintended errors from the preamble and regulatory text in the final rules published in the **Federal Register** on February 16, 1999 and September 23, 2002. This technical amendment clarifies the requirements for shark gillnet gear in the southeast U.S. and corrects an error regarding fisheries affected by the final rules.

DATES: Effective April 21, 2003.

ADDRESSES: Copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis for the final rules that are being corrected are available from Protected Resources Division, NMFS/Southeast Region, 9721 Executive Center Dr. North, St. Petersburg, FL 33702-2432. The ALWTRP Compliance guide,

Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and a progress report on implementation of the ALWTRP may be obtained by writing to Diane Borggaard, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or to Katie Moore, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702-2432. Copies of the EA, the RIR, and the RFA analysis may also be obtained from the ALWTRP web site listed (See Electronic Access).

FOR FURTHER INFORMATION CONTACT:

Katie Moore, NMFS, Southeast Region, 727-570-5312; Diane Borggaard, NMFS, Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this technical amendment and the take reduction planning process may be obtained from the ALWTRP web site: <http://www.nero.nmfs.gov/whaletrp/>. Copies of the most recent Stock Assessment Reports may be downloaded from the Internet at <http://www.nefsc.nmfs.gov/psb/assesspdfs.htm>. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, <http://www.coastalstudies.org/>.

Background

NMFS published a final rule (67 FR 59471, September 23, 2002) implementing approved modifications in the ALWTRP recommended by the ALWTRT to satisfy the requirements of the Endangered Species Act and the Marine Mammal Protection Act (MMPA). Details concerning the justification for and development of the rule were provided in the preamble to the proposed rule (67 FR 14690, March 27, 2002) and are not repeated here.

This technical amendment clarifies and corrects the preamble to the final rule. By truncating the definition of the Southeast Atlantic gillnet fishery and misstating a word, the rule incorrectly defined the fisheries affected. On page 59472, column 1, the first paragraph, second sentence under *Changes Proposed for the ALWTRP for Gillnet Gear* in the preamble should read:

"This final rule regulates the MMPA's List of Fisheries (LOF) definition for the Southeast Atlantic gillnet fishery which includes any type of gillnet gear for any species (except shark gillnetting effort using 5-inch (12.7-cm) or greater stretched mesh south of the South Carolina/Georgia border) in waters south of a line extending due east from the North Carolina/South Carolina border and south and east of the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105)."

Fishing for sharks with strikennet gear is exempt from restrictions detailed in 50 CFR 229.32(f)(4) if the fishers adhere to a list of requirements. All of the requirements must be met in order for this exemption to apply. For clarity, NMFS is adding the term "and" before the last requirement of the list. The term "and" was included in the proposed rule (62 FR 16519, April 7, 1997), the interim final rule's comments and responses (62 FR 29157, July 22, 1997, comment 67), but was inadvertently omitted from the interim final rule and the final rule (64 FR 7529, February 16, 1999) regulatory text.

This final rule will also correct an error in the regulatory text of the February 16, 1999 final rule (64 FR 7529) by deleting the reference to minke whales. Two of the requirements necessary to obtain an exemption, as discussed in the previous paragraph of this preamble, specifically relate to a list of whale species included in that regulatory provision. Minke whale was not in this list of species in the proposed rule (April 7, 1997, 62 FR 16519) or the interim final rule (62 FR 39157, July 22, 1997). However, minke whale was included in this list of species in the regulatory text of final rule (64 FR 7529, February 16, 1999) without explanation and NMFS did not intend to include it.

Classification

The Assistant Administrator (AA) finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary. Prior notice and opportunity for comment are unnecessary because the technical amendments merely correct the preamble and inadvertent changes to regulatory text and will have a de minimis effect, if any, on the regulated community. The corrections do not increase the scope of the regulated community nor add new requirements. Because this portion of the rule corrects and clarifies provisions and makes non-

substantive or de minimis changes to the ALWTRP regulations, good cause exists under 5 U.S.C. 553(d) not to delay the effective date of this final rule for 30 days.

In addition, in regard to removing minke whales from the regulatory text, NMFS did not intend to change the regulatory text to include minke whales and had no authority to do so; therefore, NMFS has no discretion in the decision to correct the provision. Because this portion of the rule relieves a restriction, it is not subject to a 30-day delay in effective date.

Because a general notice of proposed rulemaking is not required for this final rule under 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 229

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

Dated: April 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, the National Marine Fisheries Service amends 50 CFR part 229 as follows:

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

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

Authority: 16 U.S.C. 1371 *et seq.*

■ 2. In § 229.32, paragraph (f)(4)(iv) is revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(f) * * *

(4) * * *

(iv) *Special provision for strikennets.*

Fishing for sharks with strikennet gear is exempt from the restrictions under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460m);

(B) Each set is made under the observation of a spotter plane;

(C) No net is set within 3 nautical miles of a right, humpback or fin whale; and

(D) If a right, humpback or fin whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

* * * * *

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appear at subpart H of 50 CFR part 600 and CFR part 679.

The second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 195 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the amount of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI will be caught. Consequently, NMFS is closing directed fishing for species in the yellowfin sole fishery category by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the second seasonal apportionment of the halibut bycatch allowance specified, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 15, 2003.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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