

mammals to assist in management decisions for wild populations. A permit is requested for five years.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 3, 2008.

**P. Michael Payne,**

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XK98

#### 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:** Notice.

**SUMMARY:** Pursuant to a preliminary injunction issued in the case, *The Humane Society of the United States, et al. v. Gutierrez, et al.*, in U.S. District Court for the District of Columbia (Civil Action No. 08-cv-1593 (ESH)), NMFS is reinstating the Dynamic Area Management (DAM) program that was terminated by the October 5, 2007, final rule amending the Atlantic Large Whale Take Reduction Plan (ALWTRP). The DAM program will be implemented consistent with the previous regulations for this program, except that it will only be reinstated north of the pre-existing Seasonal Area Management boundaries (i.e., north of 42°30' N. latitude). DAM zones will be established through future notice in the **Federal Register**. The restrictions 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 issuance of a rule by the AA.

**DATES:** Effective beginning at 0001 hours October 5, 2008, until the broad-based sinking groundline requirements for trap/pot and lobster trap/pot fisheries established by the October 5, 2007, final rule go into effect.

**ADDRESSES:** Copies of the previous rulemaking documents associated with the ALWTRP, 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.

**FOR FURTHER INFORMATION CONTACT:**

Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

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.noaa.gov/whaletrp/>. The complete text of the regulations implementing the ALWTRP can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the website, along with a guide to the regulations.

**Background**

In response to the continued serious injury and mortality of large whales (e.g., right, humpback, and fin whales) from entanglement in commercial fishing gear, NMFS determined that additional modifications to the ALWTRP were warranted. Subsequently, in October 2007, NMFS finalized an amendment to the ALWTRP, which implemented a broad-based gear modification strategy that included additional regulated fisheries; expanded weak link and sinking groundline requirements; additional gear marking requirements; changes in boundaries; seasonal restrictions for gear modifications; expanded exempted areas; and regulatory language changes for the purposes of clarification and consistency (72 FR 57104, October 5, 2007; 73 FR 19171, April 9, 2008). The October 2007 rule eliminated the Dynamic Area Management (DAM) Program on April 5, 2008, when most of the broad-based gear modifications became effective. Additionally, gillnet and trap/pot fishermen were given one year (through October 5, 2008) to convert floating groundline to sinking groundline as part of the broad-based gear modification requirements.

On September 2, 2008, NMFS published a final rule that provided an additional six months (through April 5, 2009) for trap/pot fishermen along the Atlantic coast to comply with the ALWTRP's broad-based sinking groundline requirement (73 FR 51228,

September 2, 2008). Pursuant to a preliminary injunction issued in the case, *The Humane Society of the United States, et al. v. Gutierrez, et al.*, in U.S. District Court for the District of Columbia (Civil Action No. 08-cv-1593 (ESH)), NMFS is reinstating the DAM program, which was terminated by the October 5, 2007, final rule (72 FR 57104). The DAM program will be implemented consistent with the previous regulations for this program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002; 68 FR 51195, August 26, 2003; 72 FR 57104, October 5, 2007), except that it will only be reinstated north of the pre-existing Seasonal Area Management boundaries (i.e., north of 42°30' N. latitude). DAM zones will be established through future notice in the **Federal Register**. Future DAM zone restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of a temporary rule by the Assistant Administrator for Fisheries (AA). The DAM program will be reinstated until the Court's resolution on the merits of the case or the broad-based sinking groundline requirements for trap/pot and lobster trap/pot fisheries established by the October 5, 2007, final rule go into effect, whichever occurs earlier.

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications may be required in a DAM zone. In such a case, the ALWTRP management areas impacted would be dependent on the area of overlap with the DAM zone. If the requirements and exceptions for gear modification in a DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements would apply in the DAM zone.

**Lobster Trap/Pot Gear**

Fishermen utilizing lobster trap/pot gear within portions of Northern Inshore Lobster Waters, Northern Nearshore Lobster Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with a DAM zone may be required to utilize all of the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of sinking line. Floating groundlines are prohibited;

2. All buoy lines must be made of sinking line, except the bottom portion of the line, which may be a section of

floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone may be required to utilize all of the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of sinking line. Floating groundlines are prohibited;

2. All buoy lines must be made of sinking line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

#### **Anchored Gillnet Gear**

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of sinking line. Floating groundlines are prohibited;

2. All buoy lines must be made of sinking line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per string;

4. The breaking strength of each net panel weak link must not exceed 1,100 lb (498.8 kg). The weak link requirements apply to all variations in net panel size. One weak link must be placed in the center of the floatline and one weak link must be placed in the center of each of the up and down lines at both ends of the net panel. Additionally, one weak link must be placed as close as possible to each end of the net panels on the floatline; or, one weak link must be placed between floatline tie-loops between net panels and one weak link must be placed where the floatline tie-loops attach to the bridle, buoy line, or groundline at each end of a net string;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

Dated: October 2, 2008.

#### **John Oliver**

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

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**BILLING CODE 3510-22-S**

## **DEPARTMENT OF COMMERCE**

### **United States Patent and Trademark Office**

#### **Submission for OMB Review; Comment Request**

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Board of Patent Appeals and Interferences (BPAI) Actions.

*Form Number(s):* No forms.

*Agency Approval Number:* 0651-00xx.

*Type of Request:* New information collection.

*Burden:* 773,895 hours annually. In the future, once this proposed collection and 0651-0031 are approved by the OMB, the USPTO expects to move the notices of appeal and requests for oral hearing before the BPAI into this collection. The USPTO estimates that this will add a minimum of 5,719 hours per year to this collection.

*Number of Respondents:* 31,828 responses per year. The USPTO estimates that once the notices of appeal and requests for oral hearing before the BPAI are moved into this collection, a minimum of 28,595 responses will be added to this collection.

*Avg. Hours Per Response:* The USPTO estimates that it takes the public approximately 5 to 30 hours to complete this information, depending on the brief, petition, or request. This includes the time to gather the necessary information, prepare the briefs, petitions, and requests, and submit them to the USPTO. The USPTO estimates that it takes the public approximately 12 minutes (0.20 hours) to complete the notices of appeal and requests for oral hearing before the BPAI. Needs and Uses: This collection

of information is required by 35 U.S.C. 134, 135, 306, and 315 and is implemented through the appeal rules found in Part 41. The Board of Patent Appeals and Interferences was established under 35 U.S.C. 6(b). This collection permits applicants and registrants to prepare appeal and reply briefs which set forth the claims, issues, and arguments on appeal to the BPAI and permits the filing of petitions requesting extensions of time to respond to the agency, petitions requesting an increase in the page limit of a brief, and requests for rehearing before the BPAI. The BPAI uses the information to aid in rendering a decision on the claims, issues, and arguments outlined in the appeal and reply briefs and to determine whether the petitions for extensions of time, the petitions to increase the page limit of a brief, and requests for rehearings before the BPAI should be granted. There are no forms associated with the items in this collection, but they are governed by the rules in Part 41. The Board publishes its opinions and decisions for publicly available files on the USPTO Web site.

*Affected Public:* Primarily businesses or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Nicholas A. Fraser, e-mail:

*Nicholas\_A.\_Fraser@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by any of the following:

- *E-mail:* [Susan.Fawcett@uspto.gov](mailto:Susan.Fawcett@uspto.gov). Include "0651-00xx Board of Patent Appeals and Interferences (BPAI) Actions copy request" in the subject line of the message.

- *Fax:* 571-273-0112, marked to the attention of Susan K. Fawcett.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be submitted on or before November 7, 2008 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at [Nicholas\\_A.\\_Fraser@omb.eop.gov](mailto:Nicholas_A._Fraser@omb.eop.gov) or by fax (202) 395-5167, marked to the attention of Nicholas A. Fraser.