

DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS), CY-B400, 445 Twelfth Street, SW., Washington, DC.

1. In the Advanced Services Order, 63 FR 45140, August 24, 1998, the Commission addressed, among other matters, petitions in which several BOCs, including Bell Atlantic and SBC, had requested that the Commission forbear from applying the provisions of sections 251(c) and 271 to their advanced services. In rejecting those requests, the Commission explained in detail why, in light of the statutory language, the framework of the 1996 Act, its legislative history, and Congress' policy objectives, the most logical statutory interpretation is that section 706(a) does not constitute an independent grant of authority. The Commission therefore determined that section 706(a) does not constitute an independent grant of forbearance authority. In petitions for reconsideration of the Advanced Services Order, Bell Atlantic and SBC challenged that determination. In the Order on Reconsideration, the Commission affirmed that section 706(a) does not constitute an independent grant of forbearance authority.

2. In the Advanced Services Order, the Commission concluded that the rules adopted in the Local Competition First Report and Order required that, to the extent technically feasible, an incumbent LEC must provide to competing carriers unbundled loops conditioned to carry advanced services, even if the incumbent is not itself providing such services. Bell Atlantic and SBC requested reconsideration of this conclusion. In the Order on Reconsideration, the Commission denied that request based on the treatment of loop conditioning in its UNE Remand Order.

Paperwork Reduction Act of 1995 Analysis

3. The actions contained in this Order on Reconsideration affirmed prior Commission actions and thus do not impose new or modified reporting requirements on the public.

Regulatory Flexibility Analysis (RFA)

4. The Order on Reconsideration affirmed prior Commission actions and thus does not change the Commission's regulatory flexibility analysis.

Procedural Matters

5. Pursuant to sections 1-4, 10, 201, 202, 251-254, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 160, 201,

202, 251-254, 271, and 303(r), that the Petitions for Reconsideration filed September 8, 1998, by Bell Atlantic and SBC *Are Denied*.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-670 Filed 1-10-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-02, MM Docket No. 00-178, RM-9914]

Digital Television Broadcast Service; Charlotte, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Charlotte-Mecklenburg Public Broadcasting Authority, licensee of noncommercial educational station WTVI-TV, NTSC channel * 42, substitutes DTV channel * 11 for station WTVI-TV's assigned DTV channel * 24 at Charlotte, North Carolina. *See* 65 FR 59388, October 5, 2000. DTV channel * 11 can be allotted to Charlotte in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (35-17-14 N. and 80-41-45 W.) with a power of 2.0, HAAT of 387 meters and with a DTV service population of 1747 thousand. With is action, this proceeding is terminated.

DATES: Effective February 20, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00-178, adopted January 2, 2001, and released January 5, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under North Carolina, is amended by removing DTV channel * 24 and adding DTV channel * 11 at Charlotte.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01-677 Filed 1-10-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001011283-0371-02; I.D. 082200C]

RIN 0648-AO30

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations; Change to the List of Exempted Waters

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

ACTION: Final rule.

SUMMARY: NMFS amends the Harbor Porpoise Take Reduction Plan (HPTRP) to redefine Delaware Bay in the list of exempted waters to include waters landward of the 72 COLREGS line (International Regulations for Preventing Collisions at Sea, 1972). Members of the Mid-Atlantic Harbor Porpoise Take Reduction Team (MATRT) recommended by consensus that NMFS redefine the list of exempted waters because harbor porpoise stranding and observer data did not justify subjecting fishers in Delaware Bay to the HPTRP gear restrictions. The intent of this final rule is to exempt fishers operating in Delaware Bay from the HPTRP regulations as it is redefined under this rule.

DATES: Effective January 11, 2001.

FOR FURTHER INFORMATION CONTACT: Gregg Lamontagne, NMFS, Northeast

Region, 978-281-9291; Kim Thounhurst, NMFS Northeast Region, 978-281-9138; Diane Borggaard, NMFS, Southeast Region, 727-570-5312; or Emily Hanson, NMFS Office of Protected Resources, 301-713-2322, ext. 101.

SUPPLEMENTARY INFORMATION: Section 118 of the Marine Mammal Protection Act (MMPA) authorizes NMFS to issue regulations to implement a marine mammal take reduction plan or amendments to a marine mammal take reduction plan that, among other things, may restrict fishing by time or area. On December 2, 1998, NMFS published a final rule (63 FR 66464) implementing the HPTRP. Among other measures, the final rule identified those waters that are exempt from the HPTRP (50 CFR 229.34).

The MATRT met on January 13 and 14, 2000, in Alexandria, VA. The MATRT recommended by consensus that the line defining the exempted waters of Delaware Bay be moved seaward from 39° 16.70'N 75° 14.60'W TO 39° 11.25'N 75° 23.90'W (i.e., southern point of Nantuxent Cove, NJ to the southern end of Kelly Island, Port Mahon, DE) and be redefined as a line from the Cape May Canal to the Lewes Ferry Terminal. The MATRT concluded that there was no compelling reason for maintaining the existing position of the line in Delaware Bay, compared to other large bays in the Mid-Atlantic region (e.g., Chesapeake Bay, Long Island Sound), which typically establish the exempted waters as landward of the mouth of an inlet or the 72 COLREGS line. The MATRT believed that the existing line imposed unnecessary requirements on the Delaware Bay fishing community because harbor porpoise stranding data and observer data did not justify imposing HPTRP gear restrictions on fishers in Delaware Bay.

NMFS published a proposed rule on October 27, 2000 (65 FR 64415), to redefine exempted waters for Delaware Bay to include all marine and tidal waters landward of the 72 COLREGS demarcation line, as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. Using the COLREGS line is a slight deviation from the MATRT's consensus recommendation. The 72 COLREGS line was selected instead of the line recommended by the MATRT because the 72 COLREGS line is a well known and widely published line of demarcation. The actual difference between the COLREGS line and the MATRT recommended line is a seaward shift of approximately 1 nautical mile.

In the proposed rule, NMFS requested comments on the MATRT's consensus recommendation to change the definition of small mesh gillnet to mean a gillnet constructed with a mesh size of greater than 5.5 inches (13.97 cm) but less than 7 inches (17.78 cm). As currently defined in 50 CFR 229.2, small mesh gillnet means a gillnet constructed with a mesh size of greater than 5 inches (12.7 cm) to less than 7 inches (17.78 cm). NMFS did not propose implementing the MATRT's recommendation to change the definition of small mesh gillnet because of sea sampling observer data from the Mid-Atlantic in 1999 and 2000, which reported four takes in 4.9-5.0 inch mesh size gillnet (reported by a vessel captain) with shad as the primary species sought. NMFS was concerned about implementing the MATRT's recommendation, which would relax the requirements of the HPTRP, while takes continued to occur in similar mesh sizes.

Comments and Responses to the Notice of Proposed Change to the HPTRP

Five comment letters were received in response to the October 27, 2000, proposed rule. Comment letters were received from state agencies and commercial fishing organizations. The comments are summarized here followed by NMFS responses thereto.

Comments on the Proposed Change to the List of Exempted Waters

All five commenters supported the proposed change to the line delineating exempted waters for Delaware Bay.

Response

For the reasons discussed in the preamble to the proposed rule, NMFS' is publishing this final rule to implement the change proposed on October 27, 2000 (65 FR 64415).

Comments on the MATRT's Recommendation to Change the Definition of Small Mesh Gillnet

All five commenters supported the MATRT's recommendation to redefine small mesh gillnet, primarily because of the impact the existing regulations have on the shad fishery. According to the commenters, fishers targeting shad have two options under the existing regulations, both of which could have negative impacts on the shad population, the fishers, and harbor porpoise. One, fishers may opt to use mesh sizes of 5 inches (12.7 cm) and less to avoid the requirements of the HPTRP. The use of smaller mesh leads to increased catches of smaller shad, both bucks and young females, which

have a low market value. Additionally, the young females caught may not have spawned. This would cause both a negative economic impact on the fishers and a negative biological impact on shad populations. Also, fishers may opt to fish with mesh sizes of greater than 5 inches (12.7 cm) and use the twine size required by the HPTRP, which is heavier than twine size traditionally used in the shad fishery. The heavy twine size does not effectively catch shad, causing a negative economic impact on the fishers. Both options could result in increased fishing effort as more net is set to mitigate for lost catch or catch with a lower market value, which could increase the likelihood of interactions with marine mammals.

Commenters also noted that the shad fishery has exhibited low levels of harbor porpoise interaction and that the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for shad encourages the use of mesh with a size larger than 5 inches (12.7 cm) because it increases the harvest of larger, more valuable female shad that have already spawned. Commenters stated that the ASMFC will be phasing out the ocean intercept shad fishery by 2005, however it is still economically important for fishers to be able to fish for shad until the fishery is closed.

One commenter noted that the MATRT's proposal would exempt most of Delaware's ocean gill netting operations from the HPTRP. Another commenter noted that the MATRT's recommendation would decrease the bycatch mortality of striped bass during their spring migration along the east coast. If the current definition of small mesh gillnet remains, fishers in New Jersey who want to use mesh with a size of 5.5 inch (13.97 cm) would be required to use heavier twine size than is traditionally used, which would increase striped bass mortality.

Response

NMFS is not implementing the MATRT's mesh size proposal at this time, due to takes of harbor porpoise in mesh sizes of 4.9-5.0 inches in 2000. The issue of redefining small mesh gillnet and reducing takes in gillnet gear with mesh sizes of 5 inches (12.7 cm) and less was addressed by the MATRT at its annual meeting November 28-30, 2000. The MATRT was not able to develop a consensus recommendation for NMFS to redefine small mesh gillnet while also addressing the takes observed in 1999 and 2000.

NMFS plans to continue observing the mid-Atlantic coastal gillnet fisheries,

including vessels using small mesh gillnet, and expanding observer coverage to vessels using gillnet mesh sizes of 5.0 inches (12.7 cm) or smaller to both monitor existing levels of harbor porpoise take and to learn what gear characteristics or operational characteristics take harbor porpoise. If the MATRT or fishers identify gear characteristics or operational characteristics that allow NMFS to relieve restrictions while still reducing the take of harbor porpoise incidental to commercial fishing operations, NMFS will consider implementing appropriate changes to the HPTRP. Additionally, NMFS will consult with ASMFC to determine if other options exist that NMFS has not yet considered.

Classification

NMFS prepared an Environmental Assessment (EA) of the final rule (63 FR 66464, Dec. 2, 1998) to implement the HPTRP. This final rule amends the HPTRP. NMFS prepared an EA for this action and determined that amending the HPTRP as described in this final rule will not have a significant impact on the quality of the human environment.

The Chief Counsel for Regulation for the Department of Commerce certified to the Chief Counsel for Advocacy for the Small Business Administration when this rule was proposed that it would not have a significant adverse economic impact on a substantial number of small entities. While comments were received regarding the economic impact on small entities of a MATRT recommendation which NMFS did not propose to implement in the proposal, no comments regarding the economic impact of NMFS' proposal were received. Accordingly, the basis for the certification has not changed and NMFS has not prepared a Regulatory Flexibility Analysis.

This final rule does not contain any collection of information requirement subject to the Paperwork Reduction Act.

A section 7 Endangered Species Act (ESA) consultation on the HPTRP was conducted on November 12, 1998. That consultation concluded that measures specific to the HPTRP are not likely to adversely affect any ESA listed species under NMFS jurisdiction. Due to environmental conditions, turtles do not occur in Delaware Bay during the same time that the HPTRP restrictions are in place. Therefore, lifting the restrictions in Delaware Bay is not likely to impact turtles, and therefore no further section 7 consultation is required. This final rule falls within the scope of the section 7 consultation on the HPTRP and is not

likely to adversely affect endangered or threatened species.

The changes in the HPTRP made by this final rule are not expected to have adverse impacts on marine mammals.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule does not change the determination that the HPTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the Atlantic states.

This final rule is promulgated in compliance with all procedural requirements established by the Administrative Procedure Act.

List of Subjects in 50 CFR Part 229

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

Dated: January 4, 2000.

Penelope D. Dalton,

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

For the reasons set out in the preamble, 50 CFR part 229 is amended 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. 1361 *et seq.*

2. In § 229.34, paragraph (a)(2) is revised to read as follows:

§ 229.34 Harbor Porpoise Take Reduction Plan - Mid-Atlantic.

(a) * * *

(2) Exempted waters. All waters landward of the first bridge over any embayment, harbor, or inlet will be exempted. The regulations in this section do not apply to waters landward of the following lines:

New York

40° 45.70' N 72° 45.15' W TO 40° 45.72' N 72° 45.30' W (Moriches Bay Inlet)

40° 37.32' N 73° 18.40' W TO 40° 38.00' N 73° 18.56' W (Fire Island Inlet)

40° 34.40' N 73° 34.55' W TO 40° 35.08' N 73° 35.22' W (Jones Inlet)

New Jersey/Delaware

39° 45.90' N 74° 05.90' W TO 39° 45.15' N 74° 06.20' W (Barnegat Inlet)

39° 30.70' N 74° 16.70' W TO 39° 26.30' N 74° 19.75' W (Beach Haven to Brigantine Inlet)

38° 56.20' N 74° 51.70' W TO 38° 56.20' N 74° 51.90' W (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Delaware Bay)

Maryland/Virginia

38° 19.48' N 75° 05.10' W TO 38° 19.35' N 75° 05.25' W (Ocean City Inlet)

37° 52.' N 75° 24.30' W TO 37° 11.90' N 75° 48.30' W (Chincoteague to Ship Shoal Inlet)

37° 11.10' N 75° 49.30' W TO 37° 10.65' N 75° 49.60' W (Little Inlet)
37° 07.00' N 75° 53.75' W TO 37° 05.30' N 75° 56.' W (Smith Island Inlet)

North Carolina

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No.; I.D. 121500E]

RIN 0648-AN82

Magnuson-Stevens Act Provisions; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

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

ACTION: 2001 groundfish fishery specifications and management measures; announcement of the overfished status of darkblotched and widow rockfish; announcement of exempted fishing permits; request for comments.

SUMMARY: NMFS announces the 2001 fishery specifications and management