

family or household using their services are not engaged "in domestic service employment" within the meaning of these regulations with respect to such third party employer. Consequently, such a third party employer may not avail itself of the overtime pay exemption provided by section 13(b)(21) of the Act for employees employed in domestic service who reside in the household.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 001128334-0334-01; I.D. 111300E]

RIN 648-AN40

#### 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:** Interim final rule; delay of effective date.

**SUMMARY:** This interim final rule delays the effective date of an interim final rule amending the Atlantic Large Whale Take Reduction Plan (ALWTRP) from January 22, 2001, until February 21, 2001. Due to the rough January weather conditions in the Gulf of Maine, the affected fishers have not been able to implement the gear modifications in the interim final rule in time to meet the January 22, 2001 effective date. The intent of this delay of effective date is to allow fishers 30 additional days to implement the gear modifications.

**DATES:** The effective date of the interim final rule amending 50 CFR part 229 published at 65 FR 80368, December 21, 2000, is delayed until February 21, 2001.

**ADDRESSES:** Send comments on this interim final rule to the Chief, Marine Mammal Division, NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the Environmental Assessment, Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and a map and table of the changes to the

ALWTRP may be obtained by writing Douglas Beach, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katherine Wang, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702-2432.

Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this interim final rule to the Marine Mammal Division Chief at the previously listed address. See **SUPPLEMENTARY INFORMATION**, under the heading Electronic Access, for Internet addresses pertaining to this interim final rule.

**FOR FURTHER INFORMATION CONTACT:** Douglas Beach, NMFS, Northeast Region, 978-281-9254; Katherine Wang, NMFS, Southeast Region, 727-570-5312; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

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

##### Background

The ALWTRP was developed pursuant to the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury/mortality of all large whale species in East Coast lobster trap and finfish gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is set out in the preamble to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules implementing the ALWTRP. Additional information is available in the report from the ALWTRT after its recent series of meetings in 2000. Copies of these documents and supporting Environmental Assessments (EAs) are available from the NMFS/Northeast Region contact in the **ADDRESSES** section of this document.

Because of the status of the right whale population, there is a need to further reduce entanglement. The interim final rule published December 21, 2000, (65 FR 80368), with an effective date of January 22, 2001, implemented gear modifications (buoy line weak links, net panel weak links with anchoring systems, restrictions on number of buoy lines, and gear marking) that were initially discussed in the 1997 proposed and 1999 final rules and recommended by the TRT after the 2000 meetings. NMFS responded to these

recommendations by promulgating the gear modifications in the December 21, 2000, interim final rule. It was agreed that the regulations implementing these gear modifications should be issued as soon as practicable. However, due to rough January weather conditions in the Gulf of Maine, effected fishers will be unable to retrieve and modify active gear by the January 22, 2001 effective date. This interim final rule delays the effective date until February 21, 2001, to allow fishers time to implement the gear modifications.

NMFS expects that a delay of the rule to February 21, 2001 will have minimal impact on the North Atlantic right whale population. Available sighting data for the January through February period suggests that most right whales in New England are congregated in Cape Cod Bay. Data reported by the NE Right Whale Alert System during 1999-2001, included only two sightings of right whales in New England waters outside of Cape Cod Bay. Whales do not begin to leave the Bay until late March (when they move to Stellwagen Bank and then perhaps on to the Great South Channel Area) by which time gear will have been modified as per the Interim Final Rule. Thus, the 30 day delay is not expected to adversely affect right whales in these waters.

##### Classification

An Environmental Assessment (EA) describing the impacts to the environment that would result from the implementation of the ALWTRP was prepared for the July 22, 1997, interim final rule (62 FR 39157). Supplemental EAs were also prepared for the April 9, 1999, final rule (64 FR 17292) and the December 21, 2000, interim final rule (65 FR 80368). The conclusion of those EAs was that the ALWTRP's actions would pose no significant adverse environmental impact. The delay of the effective date by 30 days does not change the determination of those EAs. This action is categorically excluded from further review because it is an action of limited size and magnitude that does not result in a significant change in the original action.

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

Given the status of the species to be protected and the fact that entanglements continue to occur under the existing regulations, the Assistant Administrator for Fisheries (AA) NOAA, for good cause under 5 U.S.C. 553(b)(3)(B), found that extending the December 21, 2000, interim final rule (65 FR 80368) to allow for prior notice and an opportunity for public comment

would be contrary to the public interest. In addition, the AA finds for good cause under 5 U.S.C. 553(b)(3) that extending this interim final rule for prior notice and an opportunity for public comment would be contrary to the public interest. It would be unfair to subject fishers to changes in gear requirements under the December 21, 2000 interim final rule (65 FR 80368) when, due to weather, the affected fishers have been unable to implement these changes. Because prior notice and an opportunity for public comment are not required to be provided for this interim final rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This interim final rule delays implementation of a collection-of-information requirement subject to the Paperwork Reduction Act that has already been approved by Office of Management and Budget (OMB control number: 0648-0364).

A biological opinion (BO) on the ALWTRP was finalized on July 15, 1997. That opinion concluded that implementation of the ALWTRP and continued operation of fisheries conducted under the American Lobster, Northeast Multispecies, and Shark Fishery Management Plans (FMPs), as

modified by the ALWTRP, may adversely affect, but are not likely to jeopardize the continued existence of any listed species or adversely modify critical habitat. A further determination was made that the February 16, 1999, final rule (64 FR 7529) did not change the basis for that BO. NMFS also determined that the December 21, 2000, interim final rule (65 FR 80368) does not change the basis for the 1997 and 1999 ESA determinations. Because this interim final rule simply delays the effective date of the December 21, 2000, interim final rule, NMFS finds this action also does not change the basis for that BO.

This interim final rule should have no adverse impacts on marine mammals. Whale entanglement rates are not expected to increase significantly as a result of this action.

This interim final rule does not change the determination for the December 21, 2000, interim final rule (65 FR 80368) that the ALWTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the U.S. Atlantic coastal states.

This interim final rule does not contain policies with federalism implications sufficient to warrant

preparation of a federalism assessment under Executive Order 12612.

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

#### **Plain Language Requirement for Rulemaking**

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this interim final rule. Send comments to the NMFS Marine Mammal Division Chief (see **ADDRESSES**).

#### **List of Subjects in 50 CFR Part 229**

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

Dated: January 12, 2001.

**William T. Hogarth,**

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

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