

Dated: December 8, 2003.

Rebecca Lent,

Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended to read as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.102 also issued under 16 U.S.C. 1361 *et seq.*

■ 2. In § 223.206(d), paragraph (d)(6) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

(d) * * *

(6) *Restrictions applicable to the California/Oregon drift gillnet fishery—*
(i) *Pacific leatherback conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed:

(A) Point Sur (36°18.5' N) to 34°27' N 123°35' W;

(B) 34°27' N 123°35' W to 34°27' N 129° W;

(C) 34°27' N 129° W to 45° N 129° W;

(D) 45° N 129° W to the point 45° N intersects the Oregon coast.

(ii) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California (as determined under paragraph (d)(6)(iii) of this section).

(iii) *Determination and notification concerning an El Nino event.* The Assistant Administrator will publish in the **Federal Register** a notification that an El Nino event is occurring off of, or is forecast for, the coast of southern California and the imposition of a closure under paragraph (d)(6)(ii) of this section. Furthermore, the Assistant Administrator will announce the imposition of such a closure by other methods as are necessary and appropriate to provide actual notice to the participants in the California/Oregon drift gillnet fishery. The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, in order to determine

whether an El Nino is forecasted or occurring for the coast of southern California. The Assistant Administrator will use the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. Specifically, the Assistant Administrator, will use sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. If an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2-month time period are greater than normal, the Assistant Administrator will publish in the **Federal Register** notification that an El Nino event is occurring off of, or is forecast for, the coast of southern California and the imposition of a closure under paragraph (d)(6)(ii) of this section. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice announcing that El Nino conditions are no longer present for purposes of implementing the closure. The area closure imposed under this paragraph (d)(6) will remain in effect until the Assistant Administrator files with the Office of the Federal Register a notice that the El Nino event is no longer occurring.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–3309–04; I.D. 120903E]

RIN 0648–AQ04

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

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 consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,356 square nautical miles (nm²) (4,651 km²), east of Portsmouth, NH for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours December 18, 2003, through 2400 hours January 2, 2004.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessments (EAs), 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.

FOR FURTHER INFORMATION CONTACT:

Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401 x171.

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/>.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (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). On