

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 230**

[Docket No. 001120325-1290-03, I.D. 111901B]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

ACTION: Aboriginal subsistence whaling quota.

SUMMARY: NMFS announces a 2001-2002 aboriginal subsistence whaling quota for gray whales of five gray whales landed. This quota and other management provisions govern the harvest of gray whales by members of the Makah Indian Tribe (Tribe).

DATES: Effective for 1 year beginning December 12, 2001.

ADDRESSES: Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chris Yates, (301) 713-2322.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*) and by regulations at 50 CFR part 230. The rules require the Secretary of Commerce to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the International Whaling Commission (IWC).

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of gray whales from the Eastern stock in the North Pacific. This action by the IWC, thus, authorized aboriginal subsistence whaling by the Tribe for gray whales and is discussed in greater detail in the **Federal Register** notification of aboriginal subsistence whaling quotas for 1999 (64 FR 28413, May 26, 1999).

On June 9, 2000, the United States Court of Appeals for the Ninth Circuit ruled that the Department of Commerce's environmental assessment (EA) under the National Environmental Policy Act (NEPA) should have been completed before entering into a cooperative agreement with the Makah Tribe. The Court ordered the agency to prepare a new NEPA document under circumstances that would ensure an

objective evaluation of the environmental consequences of the gray whale harvest.

NOAA set the 2000 quota at zero (65 FR 75186, December 1, 2000) and set the 2001 quota at zero (66 FR 14862, March 14, 2001) pending completion of the NEPA analysis.

NOAA completed a draft EA on January 12, 2001, and solicited public comments. A final EA was issued on July 12, 2001, and selected a preferred alternative allowing the take of up to five whales per year for the years 2001 and 2002. Following the completion of this EA, NOAA and the Tribe entered into a cooperative agreement governing the conduct of the hunt.

The agreement provides that the Makah Tribal Council, in cooperation with NOAA, will manage the gray whale hunts under the 1997 IWC quota and the aboriginal subsistence whaling regulations set forth at 50 CFR Part 230, and details inspection and reporting requirements and enforcement procedures. In addition, the Council will license and regulate Tribal whalers, according to the Management Plan for Makah Treaty Gray Whale Hunting for the Years 1998-2002, as amended by Council Resolution No. 57-01 on May 30, 2001.

Dated: December 7, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 010710169-1169-01; I.D. 060401B]

RIN 0648-AP31

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

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

ACTION: Emergency rule; extension of expiration date; request for comments.

SUMMARY: NMFS extends the expiration date of the emergency rule that closed the Northeast Distant Statistical Reporting (NED) Area to pelagic longline fishing, required modifications in deploying pelagic longline fishing

gear, and required sea turtle handling and release guidelines for bottom and pelagic longline fisheries to be posted in the wheelhouse. This extension is necessary to maintain the reduction in bycatch and bycatch mortality of loggerhead and leatherback sea turtles in the Atlantic bottom and pelagic longline fisheries as required by the June 14, 2001, Biological Opinion (BiOp).

DATES: The expiration date of the emergency rule published July 13, 2001 (66 FR 36711), is extended to July 8, 2002. Comments must be received no later than 5 p.m. on February 11, 2002.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the environmental assessment and regulatory impact review prepared for the July 13, 2001, emergency rule may be obtained from Tyson Kade at the same address.

FOR FURTHER INFORMATION CONTACT: Tyson Kade or Karyl Brewster-Geisz at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

Pelagic Longline Fishery

Pelagic longline gear is a type of commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target highly migratory species (HMS). The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target yellowfin tuna, bigeye tuna, sharks, or swordfish.

Data collected through observer and vessel logbook programs indicate that pelagic longline fishing for Atlantic swordfish and tunas often results in the catch of non-target finfish species, including sharks, bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and

endangered sea turtles. The bycatch of protected species (sea turtles or marine mammals) may significantly impair the recovery of these species. Consistent with national standard 9 of the Magnuson-Stevens Act, NMFS has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic bottom and pelagic longline fisheries.

Area Closure and Gear Modifications

The intent of extending this emergency rule is to maintain the reduction in the incidental take and mortality of sea turtles captured by pelagic longlines. The first measure continues the closure of the NED area, which became effective July 15, 2001. The NED area has the highest incidental take rate of sea turtles by the U.S. pelagic longline fleet. This regulatory extension will close the NED area to vessels that have been issued, or are required to have, Federal HMS limited access permits and/or use pelagic longline gear. The closed area is bounded by the following coordinates: 35°00' N. lat., 60°00' W. long.; 55°00' N. lat., 60°00' W. long.; 55°00' N. lat., 20°00' W. long.; 35°00' N. lat., 20°00' W. long. This closure comprises an area of approximately 2,631,000 square nautical miles (nm²), including the Grand Banks and other fishing locations. Only larger vessels, primarily fishing out of ports in the northeast, travel to this area on a seasonal basis, from June through October. Although the NED area is large, vessels fishing in that area primarily utilize less than 10 percent of the total area subject to the closure.

The second measure, which became effective August 1, 2001, is designed to reduce the mortality rate of captured sea turtles year-round and in all fishing areas. All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits are prohibited from setting gangions within two gangion lengths of the floatline. Specifically, while the gear is deployed, gangions may not be attached to floatlines, nor to the mainline except at a distance from the attachment point of the floatline to the mainline of at least twice the length of the average gangion length in the set. Based on information from the Hawaii longline fleet, hooks that are beneath or adjacent to floatlines have a much higher incidental take of sea turtles than hooks one or more positions away from the floatline. NMFS projects that this measure will result in reductions of 22 percent for loggerhead interactions and 24 percent for leatherback interactions.

In addition to restricting the gangion placement relative to the floatline, all Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits must continue to deploy the gear during shallow sets so that the length of the gangion is greater than the length of the floatline. The intent of this requirement is to ensure that hooked or entangled turtles have sufficient slack line to be able to reach the surface and avoid drowning. For longline sets in which the combined depth of the floatline plus the gangion is 100 meters or less, the length of the gangion must be at least 10 percent longer than the length of the floatline. For sets over 100 meters, the requirement does not apply.

Finally, all Atlantic bottom and pelagic longline vessels that have been issued, or are required to have, Federal HMS permits are required to post inside the wheelhouse the guidelines for the safe handling of sea turtles captured in a pelagic longline interaction. This measure allows vessel captains to refer to the appropriate handling and release guidelines in the event a sea turtle is accidentally hooked or entangled. The requirement to post sea turtle handling instructions became effective September 15, 2001. NMFS distributed the guidelines via mail to all HMS bottom and pelagic longline permit holders and announced this requirement and the availability of the guidelines via the fax network. If a vessel owner did not receive the document, it is available for downloading from the Internet at: <http://www.nmfs.noaa.gov/sfa/hmspg.html>, or NMFS can be contacted to request a copy (see **ADDRESSES**).

Classification

This emergency rule extension is issued under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act. The Assistant Administrator for Fisheries, NOAA (AA) has determined that these regulations are necessary to comply with the requirements of the June 14, 2001, BiOp.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact would result. This emergency rule extension is of limited duration. NMFS is in the process of developing a rule, including an environmental impact statement, that will propose measures necessary to meet the requirements of the June 14, 2001, BiOp.

To comply with Executive Order 12866, NMFS also prepared a Regulatory Impact Review for this

action which assesses the net economic costs and benefits of this action. Additional details concerning the basis for this action are contained in the initial emergency rule and are not repeated here.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553 (b)(B), as providing prior notice and an opportunity for public comment would be contrary to the public interest. Public comments were received regarding the April 11, 2001, draft BiOp which indicated the measures to be implemented by this emergency rule. These comments were addressed, as appropriate, by the final draft of the BiOp, issued June 14, 2001.

NMFS received two comments on the initial emergency rule. The first comment expressed concern over the effectiveness of making the gangions 110 percent of the floatline length. NMFS expects this issue to be addressed and assessed during the ongoing experimental fishery. The second comment expressed support for the measures implemented in the emergency rule as a means of reducing bycatch in the pelagic longline fishery. Comments received on this emergency rule extension will be responded to in the course of the upcoming proposed and final regulations.

The AA has determined that this emergency rule is consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. NMFS notified the states concerning the July 13, 2001, emergency rule and requested that they notify the agency with respect to concurrence with the consistency determination. All states that have replied agreed with this determination.

Dated: December 5, 2001.

William T. Hogarth,

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

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