

request, to the extent permissible by law, a copy of the reports from the originating (Federal, State, or other Tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine eligibility for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and must be maintained confidentially and secured in locked files. Investigative reports must be seen only by those officials who, in performing their official duties, need to know the information contained in the report.

§ 136.416 When should the IHS deny employment or dismiss an employee?

The IHS must deny employment to an individual or dismiss an employee, when the duties and responsibilities of the position the individual person would hold or holds involve regular contact with or control over Indian children, and it has been adjudicated, pursuant to § 136.414 and § 136.415, that the individual has been found guilty of, or entered a plea of guilty or nolo contendere to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State or Tribal law involving a crime of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children. The IHS has the discretion to place such an individual in a position, if available, that does not involve regular contact with or control over Indian children, if a determination has been made that such placement would not put Indian children at risk and the individual would be able to perform the duties and responsibilities of this position.

§ 136.417 May the IHS hire individuals pending completion of a background investigation?

Pursuant to section 231 of the Crime Control Act of 1990, Pub. L. 101-647, 42 U.S.C. 13041, as amended by Pub. L. 102-190, the IHS may hire provisionally individuals as defined in these regulations, prior to the completion of a background investigation if, at all times prior to receipt of the background investigation during which children are in the care of the individual, the individual is within the sight and under the supervision of a staff person and a satisfactory background investigation has been completed on that staff person.

§ 136.418 What should the IHS do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The IHS may deny the applicant employment until the charge has been resolved. (b) The IHS may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The IHS may detail or reassign the employee to other duties that do not involve regular contact with children.

(d) The IHS may place the employee on indefinite suspension, in accordance with statutory and regulatory requirements, until the court has disposed of the charge.

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progress report on implementation of the ALWTRP may be obtained by writing to Diane Borggaard, NMFS /Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or to Katie Moore, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702-2432. Copies of the EA, the RIR, and the RFA analysis can also be obtained from the ALWTRP Web site listed under the Electronic Access portion of this document. A copy of the most recent Stock Assessment Report (SAR) can be obtained by writing to Richard Merrick, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the NMFS Protected Resources Web site listed under the Electronic Access portion of this document.

FOR FURTHER INFORMATION CONTACT:

Katie Moore, NMFS, Southeast Region, 727-570-5312; Diane Borggaard, NMFS, Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this final rule and the take reduction planning process can be downloaded from the ALWTRP Web site: <http://www.nero.nmfs.gov/whaletrp/>. Copies of the most recent SARs may be downloaded from the Internet at <http://www.nefsc.nmfs.gov/psb/assesspdfs.htm>. Information on disentanglement events is available on the Web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, <http://www.coastalstudies.org/>.

Background

This final rule implements approved modifications contained in the ALWTRP recommended by the ALWTRT to satisfy the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). Details concerning the justification for and development of this rule were provided in the preamble to the proposed rule (66 FR 14690, March 27, 2002) and are not repeated here.

The proposed rule provided a 60-day public comment period to provide feedback to NMFS via postmarked mail or via facsimile. NMFS also issued a press release announcing the availability of the proposed rule and

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 020819200-2200-01; I.D. 021202A]

RIN 0648-AP93

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: Final rule.

SUMMARY: The NMFS is amending the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP), specifically with regard to the straight set of gillnets in the southeast U.S. restricted area in waters off the coasts of Georgia and Florida. This final rule prohibits straight sets of gillnets at night from November 15 through March 31, annually, to reduce the risk of entanglement of large whales, including the western North Atlantic right whale (right whale).

DATES: This final rule is effective October 23, 2002.

ADDRESSES: Copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis are available from Protected Resources Division, NMFS /Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432. ALWTRP Compliance guide, Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and a

summarizing its purpose and requirements. Information in the press release was sent to more than 500 people in the southeast U.S. including permitted fishers, state representatives, fishery management council members, and industry representatives. The NMFS also posted the proposed rule on the ALWTRP Web site (listed under the Electronic Access portion of this document).

Changes Proposed for the ALWTRP for Gillnet Gear

This final rule prohibits the straight set of gillnets at night from November 15 through March 31, annually, in the southeast U.S. restricted area, (unless the exemption under 50 CFR 229.32(f)(3)(iii), which relates to shark gillnets, applies). This final rule regulates the MMPA's List of Fisheries (LOF) definition for the Southeast Atlantic gillnet fishery which includes any type of gillnet gear for any species (except shark gillnetting effort using 5-inch (12.7-cm) or greater stretched mesh south of the North Carolina/Georgia border) in waters south of a line extending due east of the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105). The

southeast U.S. restricted area consists of those waters from 27°51' N. lat. (near Sebastian Inlet, FL) to 32°00' N. lat. (near Savannah, GA) extending from the shore outward to 80° W long. Night means any time between one-half hour before sunset and one-half hour after sunrise, as per the ALWTRP (50 CFR 229.2). The gillnet gear is fished as strikenets or straight sets. Fishing with strikenet gear means a gillnet that is designed so that, when it is deployed, it encircles or encloses an area of water either with the net or by utilizing the shoreline to complete encirclement or to fish with such a net and method. A straight set is the deployment of a gillnet in a straight line, as opposed to the deployment of a gillnet in a circular manner, for example, around a school of fish. Both deployment types are currently fished in the proposed management area, the southeast U.S. restricted area, which includes a nursery area for right whale mothers and calves.

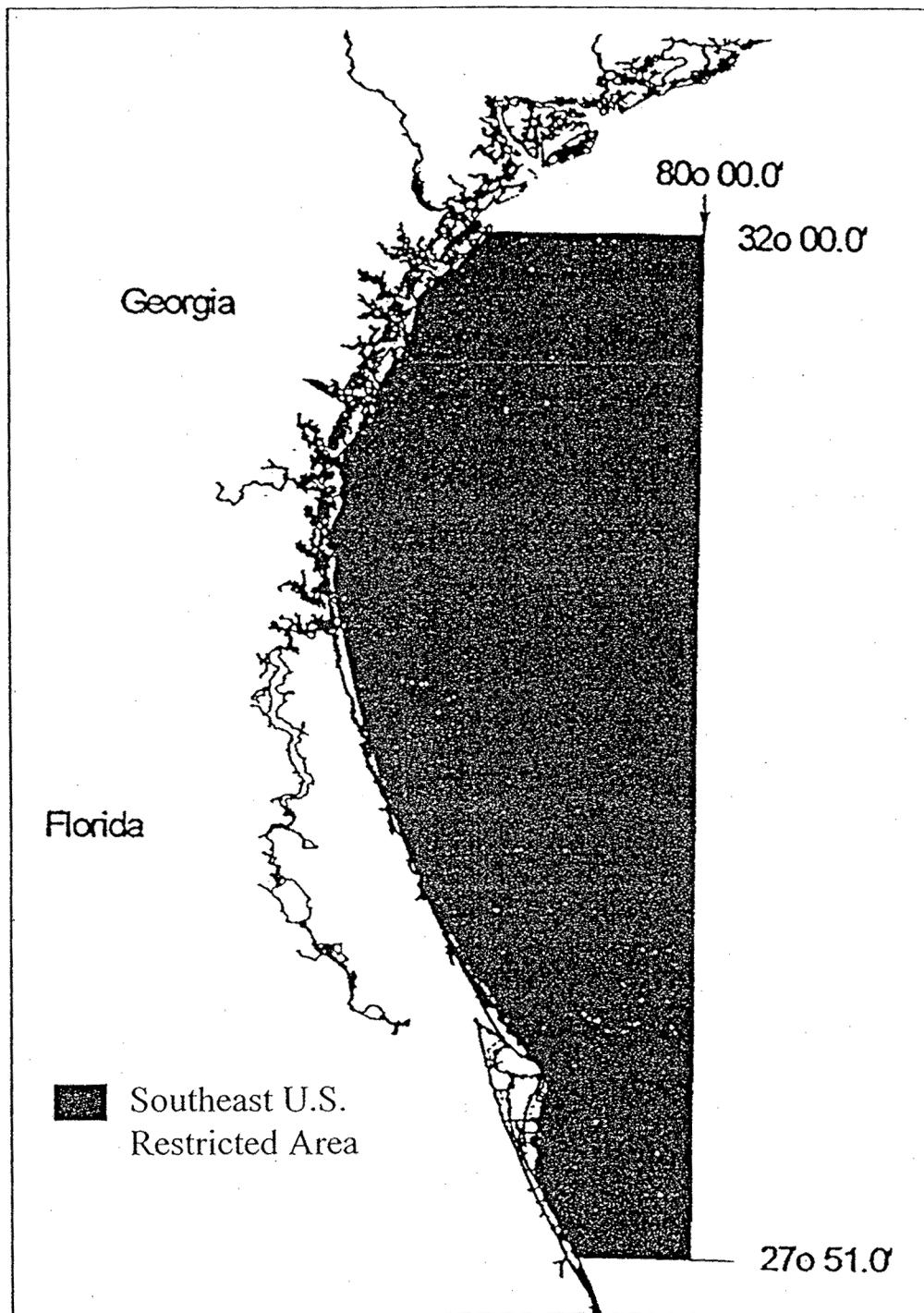
Right whales generally occur in the southeast U.S. restricted area from around November 15 through March 31, annually. Within the time period and geographical area in which the right whale is known to have become entangled, a prohibition would afford

additional protection to the concentrations of right whales. NMFS believes straight set gillnets deployed during daytime are of very minimal threat to whales. Such gear is retrieved within about one-half hour of every set; thus, the fisher would be on-site in the possible event of an entanglement, and could subsequently contact the disentanglement network for action. Straight sets at night pose a higher level of risk of entanglement to whales than strike sets or straight sets during the day, because fishers are not as actively involved with straight set gear (in comparison to the strike set method used in southeast Atlantic waters), and whales are much more difficult to spot at night due to darkness. Through this final rule, NMFS aims to reduce the potential for the entanglement of right whales in straight set gillnet gear. Due to the gear restrictions, the final rule will also reduce the likelihood of effort influx into the fishery in the future, thereby further reducing the potential likelihood of entanglements.

Figure 1 shows the boundaries for the southeast U.S. restricted area. Currently the Southeast U.S. shark gillnet fishery is regulated using these boundaries (50 CFR 229.32 (f)(1)).

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Figure 1



November 15 to March 31 Straight Set Gillnet Restrictions

Comments and Responses

NMFS received eight sets of written comments on the proposed rule by the May 28, 2002, deadline. The comments were considered in developing this final rule to amend the regulations that implement the ALWTRP and are responded to here.

General Comments

Comment 1: Seven commenters generally supported the proposed rule to reduce entanglement risk to right whales. Two of the seven commenters generally believed that the proposed prohibition would protect whales and reduce the potential for whale entanglements. One commenter urged NMFS to expedite the publication of the final rule.

Response: By this final rule, NMFS is amending the regulations that implement the ALWTRP to provide further protection for large whales, with an emphasis on right whales due to their critical status. Based on NMFS' current understanding of the right whale population and local fisheries, NMFS believes the prohibition defined by this final rule should reduce entanglement risk to right whales.

Comment 2: Two commenters generally believed that the regulations were not restrictive enough. Two commenters believed NMFS needs to do more, such as implementing a year-round ban on gillnets in all waters, similar to what some states have implemented in the southeast United States. One commenter supported a ban on all nets that kill both target and non-target species. One commenter suggested that further action may be necessary, such as a proactive, precautionary approach in order to offer real bycatch risk reduction.

Response: Taking into account the economics of the affected fisheries, technological feasibility, and stock status, NMFS believes the final regulations adequately reduce the potential for right whale entanglement due to gillnets in the southeast United States. At this time, NMFS does not support a year-round ban on gillnets in all waters including Federal waters to protect marine animals. Should new scientific information indicate the necessity for additional management measures, NMFS will reconvene also take the ALWTRP's recommendations into consideration and conduct the necessary environmental and economic analyses to determine the potential benefits and costs associated with any proposed measures.

Comment 3: One commenter urged NMFS to continue working with coastal states on marine mammal conservation.

Response: NMFS agrees with the necessity and utility of cooperating with coastal states on marine mammal conservation, and NMFS plans to continue its current partnerships. Some of the current efforts which NMFS plans to continue include interagency cooperation on marine mammal stranding issues, instituting ESA section 6 agreements with states, entering into Memorandums of Agreement with states on conservation issues, facilitating regional policy discussions, and participating in the Southeast U.S. Implementation Team to implement the right whale recovery plan.

Comment 4: One commenter emphasized the need to continue research on Atlantic whale survival and management efforts to return the populations to viable levels.

Response: NMFS is actively conducting and supporting research on Atlantic whales and Atlantic fisheries' gear modifications. NMFS has gear laboratories and research teams that specifically focus on gear development and testing, has marine mammalogists and statisticians conducting the science necessary to better understand Atlantic whales and the risks associated with them, and has fishery management specialists whose time is completely dedicated to implementing management actions to protect and conserve Atlantic whales and provides financial support to numerous entities involved in whale research and gear research activities. NMFS makes its management decisions on the best available information, and it spends a great deal of money and resources to expand its knowledge base. NMFS will continue to expand these programs as funding allows.

Comment 5: One commenter requested that NMFS expand the management area southward another 60 miles to east of Jupiter Inlet or to Latitude 27°0.0' to protect right whales and other marine species such as leatherback turtles and sharks.

Response: Given the results of a recent data analysis, NMFS believes this final rule should include only those waters designated by the existing southeast U.S. restricted area in order to protect right whales from potential entanglement due to straight sets of gillnets. NMFS believes the most important winter/calving areas known are within the latitudinal boundaries identified in the existing ALWTRP rule (50 CFR 229.32), although northern right whales are occasionally sighted outside this area. NMFS, with the assistance of the Florida Fish and Wildlife Conservation Commission's Florida Marine Research Institute (FMRI), conducted an analysis of aerial survey

data to determine the frequency of right whale sightings, as a measure of the likelihood of right whale presence in the expanded management area recommended by the commenter. The analysis reviewed the aerial survey tracks flown by FMRI over the waters bounded by 27°51.0'N. to 27°0.0'N., from Florida's Eastern coastline to 80° W. The analysis consisted of 127 days between February 14, 1992, and March 31, 2001, though several days had limited search effort in the area. During the 127 days, there were six right whale sighting events, totaling 11 individuals. NMFS does not believe that the number of animals sighted over the 10-year period warrants the requested area expansion to waters south of 27°51.0'N. Public feedback on right whale sightings is important to the agency, and the agency will take public sightings into consideration along with aerial survey data as it periodically reviews critical habitat and the southeast U.S. restricted area boundaries.

NMFS has the authority to regulate U.S. waters for ESA listed species such as leatherback turtles; however, NMFS does not believe at this point in time that an expansion of the gillnet restriction area, as defined by this final rule, is warranted for leatherback turtles or sharks. Furthermore, this would be an inappropriate rationale for action on a rule implementing take reduction provisions under the MMPA.

Comment 6: Based on economic effects, one commenter objected to the definition of "night" used in the proposed rule. "Night" is defined as any time between one-half hour before sunset and one-half hour after sunrise, as per the ALWTRP (50 CFR 229.2). Instead of the proposed rule's definition, the commenter requested that NMFS define "night" as any time between one-half hour after sunset and one-half hour before sunrise. The commenter stated that fishers rely on the low light conditions to catch a substantial amount of fish. The commenter believed that the fishery's temporal feature has not had an adequate economic analysis.

Response: The commenter suggests a change in the definition of night which would result in two extra hours of permitted fishing each day (as compared to the proposed rule) in which straight sets of gillnets in the Southeast Atlantic gillnet fishery would be legal. NMFS believes the change in the definition of night for this measure is not warranted on an economic impact basis.

Available data do not demonstrate that the fishing behavior or methodology restricted by this final rule (straight set gillnets at night) is utilized

to a great extent in the restricted area. Data on average trip times, landings, soak times, and vessel characteristics indicate that the fishery is primarily prosecuted as a day fishery generating less than \$167 per year of gross revenues. Taking into account the number of vessels participating in the straight set gillnet fishery (from 41 to 62), vessels average less than \$4 income annually, indicating that the fishery is likely of lowly economic profitability to the fleet as a whole. Virtually all recorded gillnet harvests from this area and season are attributed to runaround gillnets and not straight set gillnets. Whether spread over multiple participants or attributed to a single vessel, NMFS believes restricting the use of this gear during the times defined as "night" will not significantly reduce profits for fishery participants. Therefore, any direct economic impacts on the fishery will be minimal since the fishery does not substantially operate in the manner being restricted.

NMFS believes the current definition of "night" used in this final rule takes into consideration stakeholders' economic concerns and does not result in substantial economic impact sufficient to warrant changing the definition of night as requested.

Comment 7: One commenter requested that NMFS reconvene the ALWTRT and the southeast sub-group to review and re-evaluate bycatch mitigation strategies.

Response: NMFS values the ALWTRT's input to reduce the incidental take of large whales in commercial fisheries and believes the regional sub-group process is an effective means of addressing regionally specific management needs. During the early months of 2002, NMFS implemented several management actions including Dynamic Area Management, Seasonal Area Management, and gear modifications. NMFS intends to reconvene the ALWTRT to discuss the effectiveness of these measures and to determine if further measures are warranted based on the best available information. Though NMFS has not finalized meeting dates at this time, in order to ensure public participation in commercial fishery management, NMFS will inform both the ALWTRT and the general public of the logistics of future meetings of the ALWTRT.

Two comments were received after the close of the public comment period. Since the comments reflected unique thoughts not previously identified during the public comment period, NMFS has chosen to respond to them.

Comment 8: One commenter suggested that NMFS consider a visibility threshold such as "no sets anytime when visibility is less than 400 yds" (366 m). NMFS stated in the proposed rule that "straight sets at night pose a higher level of risk to entanglement to whales . . . because whales are much more difficult to spot at night due to darkness." The commenter was concerned that whales can be difficult to spot in the dense fog which often occurs in the right whale calving area during the winter.

Response: Taking into account technological feasibility and stock status, NMFS believes the final regulations adequately reduce the potential for right whale entanglement due to gillnets in the southeast United States. At this time, NMFS does not support further restrictions on the non-shark gillnet fishery which would only allow operation at times where visibility is equal to or greater than 400 yds (366 m). Should additional scientific information indicate the necessity for additional management measures such as a visibility threshold on gillnets similar to the shark gillnetters, NMFS will reconvene the ALWTRT to discuss this potential management measure and others. NMFS will take the ALWTRT's recommendations into consideration and conduct the necessary environmental and economic analyses to fully disclose the potential benefits and costs associated with all proposed measures.

Comment 9: One commenter suggested that NMFS better define the subject gillnet gear's characteristics in order to differentiate the gear from that used in the shark gillnet fishery. The commenter said that the subject gear in the proposed rule differs from gillnet gear used to target sharks, because the subject gear is relatively low in tensile strength, has small sized mesh, and the deployed gear is small in scope. One suggestion for defining the subject gillnet gear's characteristics was to include a maximum ceiling on net length, mesh size, and/or tensile strength in this final rule.

Response: The proposed rule uses the MMPA's LOF definition for the Southeast Atlantic Gillnet Fishery, and NMFS believes further gear descriptions by tensile strength, mesh size, or target species are not necessary to clarify the proposed rule and its affected fishers.

Under the MMPA's LOF, there are two types of gillnet gear categorized in the southeast United States: Southeast Atlantic Gillnet and Southeastern U.S. Atlantic Shark Gillnet. NMFS currently has restrictions on the Southeastern U.S. Atlantic Shark Gillnet Fishery which

has been defined in 50 CFR 229.32 as any gillnets which fish in waters south of the South Carolina/Georgia border with webbing of 5 inches (12.7 cm) or greater stretched mesh.

Under the ESA, additional whale conservation measures were required for gillnet gear which did not have adequate management restrictions in place to reduce the likelihood of whale entanglement. Therefore, through the proposed rule, NMFS proposed whale conservation measures for the Southeast Atlantic Gillnet Fishery which includes any type of gillnet gear for any species (except shark gillnetting effort using 5-inch (12.7 cm) or greater stretched mesh south of the South Carolina/Georgia border) in waters south of a line extending due east from the North Carolina/South Carolina border and south and east of the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105). Through the proposed rule and the pre-existing requirements for shark gillnetters, NMFS regulated the full suite of gillnet users in the Atlantic south of the South Carolina/Georgia border. Further descriptions in the subject rule to differentiate the two fisheries beyond their current LOF definitions may inadvertently exclude a part of the gillnet fishery population which this regulation is attempting to address. Therefore, NMFS does not believe that further gear descriptions are necessary. NMFS will take this recommendation into advisement during future LOF actions to ensure that fishery descriptions are clear.

Classification

This final rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The MMPA provides the statutory basis for the rule. The final rule would prohibit the use of straight set gillnets in the southeast U.S. restricted area at night from November 15 through March 31, annually, unless the fishing activity was exempted under 50 CFR 229.32(f)(3)(iii), which pertains to fishing for sharks with strikennet gear. Strikennet gear is exempt if no nets are set at night or when visibility is less than 400 yards (460m), each set is made under the observation of a spotter plane, if a right, humpback, fin or minke whale

moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

The objective of this final rule is to eliminate serious injuries or mortalities of right whales attributable to entanglements with fishing gear and takes into account the time and area during which right whale calves are born.

Available data do not demonstrate that the fishing behavior or methodology restricted by this final rule (straight set gillnets at night) is utilized to a great extent in the restricted area. Data on average trip times, landings, soak times, and vessel characteristics indicate that the fishery is primarily prosecuted as a day fishery generating less than \$167 per year of gross revenues. Taking into account the number of vessels participating in the straight set gillnet fishery, vessels average less than \$4 income annually, indicating that the fishery is likely of lowly economic profitability to the fleet as a whole. Virtually all recorded gillnet harvests from this area and season are attributed to runaround gillnets and not straight set gillnets. Whether spread over multiple participants or attributed to a single vessel, the economic impacts associated with this rule will not significantly reduce profits for a substantial number of small entities. Therefore, any direct economic impacts on the fishery will be minimal since the fishery does not substantially operate in the manner being restricted.

Generally, a fish-harvesting business is considered a small business if it is independently owned and operated, not dominant in its field of operation, and has annual receipts not in excess of \$3.5 million. One hundred and two unique entities (vessels or persons) have reported landings in this fishery over the 1997–2000 fishing seasons. Total dockside value of commercial harvests by these entities from all fishing activities and all gears averaged from \$16,000 to \$24,000 per year over this period. The maximum gross revenues were less than \$300,000. All of these entities are considered small business entities. Thus, business operations in this fishery consist solely of small business entities.

The determination of significant economic impact can be ascertained by examining two criteria: Disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All business entities participating in the area of the South Atlantic Gillnet Fishery are considered

small business entities. Thus, the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? The predominant harvest methodology in this fishery is runaround (i.e., strike) gillnets and day trips and not the methodology restricted by this document. Less than \$500, or \$167 per year, of reported landings from all participants over the 1997–2000 fishing seasons (1997–98, 1998–99, 1999–2000) is potentially attributable to straight set gillnets. On this basis, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. NMFS received only one public comment relating to the economic impacts of this final rule. NMFS considered this comment before it approved this final rule, and NMFS characterized and responded to it in the “Comments and Responses” section of the preamble to this final rule, as comment/response number 6. No changes to this final rule were made as a result of the comment received. NMFS believes the economic analysis adequately characterized the impact of the proposed rule on affected fisheries and the RFA analysis and copies of the RIR are available (see ADDRESSES).

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

NMFS requested consultation under section 7 of the ESA regarding the proposed action. As described in the proposed rule, the proposed action was developed to address a Reasonable and Prudent Alternative (RPA) identified in four Biological Opinions (BOs) on the multispecies, spiny dogfish, monkfish, and lobster fisheries on June 14, 2001. The objective of the RPA is to eliminate mortality and serious injuries of right whales, eliminate serious and prolonged right whale entanglements, and significantly reduce the total number of right whale entanglements. On February 7, 2002, NMFS concluded that since the proposed action would implement an RPA under existing BOs, the action did not warrant further analysis under the ESA at that time. NMFS stated that the issuance of the proposed action does not change the basis for the finding of the June 14, 2001, BOs; instead, the rule directly addresses the gear restriction RPA from those findings.

NMFS requested an Essential Fish Habitat (EFH) review of the proposed action and received a determination that the proposed gillnet restrictions would not adversely affect EFH of species managed by the NMFS or the South Atlantic Fishery Management Council.

NMFS has determined that the final action is consistent to the maximum extent practicable with the coastal zone management programs of those affected Atlantic coastal states that have approved coastal zone management programs: Georgia and Florida. The proposed rule, RIR, RFA analysis, and EA were submitted to the responsible state agencies for their review under section 307 of the Coastal Zone Management Act. Florida concurred that the proposed action is consistent to the maximum extent practicable with their applicable CZMA regulations.

The Georgia Coastal Management Program (GCMP) objected to NMFS’ determination that the amendment to the ALWTRP is consistent to the maximum extent practicable with the enforceable policies of the GCMP, pursuant to 15 CFR part 930, subpart C. NMFS is required by law to rely on the best scientific information available to develop fishery management actions. NMFS believes a complete gillnet prohibition, as suggested by Georgia, would be in direct conflict with several of NMFS’ statutory obligations because there is not sufficient documented evidence at this time to justify the gillnet prohibition. Therefore, current statutory obligations restrict NMFS’ ability to be fully consistent with the GCMP, and the proposed action remains the legally appropriate decision at this time.

NMFS shares Georgia’s concern regarding bycatch and bycatch mortality rates in gillnet fisheries and continues to dedicate resources to evaluate the degree to which gillnet fisheries affect protected species. NMFS encourages Georgia and all coastal states to submit data collected through state activities, and NMFS will continue to work with Georgia to address the issues with gillnet fisheries in Federal waters off the coasts of Georgia and Florida.

NMFS prepared a draft EA for the proposed action, as described in the proposed rule. NMFS did not receive any comments on the EA during the public comment period. The Assistant Administrator for Fisheries, NOAA has determined, based on an EA prepared under the National Environmental Policy Act (NEPA), that implementation of these regulations would not have a significant impact on the human environment. As a result of this determination, an environmental impact

statement is not required. A copy of the final EA prepared for this rule is available upon request (see **ADDRESSES**).

Federalism Impact Statement

This final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132.

Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials of the affected state and local governments through a letter mailed to those officials in April 2002. Specifically, the letter was sent to the state of Florida and Georgia. The letter described NMFS' position supporting the need to issue the regulation, specifically the need to reduce the risk of entanglement of large whales, including right whales. The state and local officials did not raise any concerns in direct response to the April 2002 letter.

List of Subjects in 50 CFR Part 229

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

Dated: September 17, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory programs, national marine Fisheries Services.

For the reasons set out in the preamble, the National Marine Fisheries Service amends 50 CFR part 229 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: Authority: 16 U.S.C. 1371 *et seq.*

1. In § 229.3, paragraph (k) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with gillnet gear in the areas and for the times specified in § 229.32(f)(1) through (f)(4), unless the gear or the person with gillnet gear complies with the gear marking requirements specified in § 229.32(f)(2), the requirements for observer coverage as specified in § 229.32(f)(3), and the closures, requirements, and other restrictions as specified in § 229.32(f)(4).

* * * * *

4. In § 229.32, the heading of paragraph (f) and paragraph (f)(3) are revised; and paragraph (f)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(f) *Restrictions applicable to the southeast U.S. restricted area and the southeast U.S. observer area. * * **

* * * * *

(3) Observer requirement. No person may fish with shark gillnet gear in the southeast U.S. observer area from November 15 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 15 through March 31 of the following year, no person may fish with shark gillnet gear aboard that vessel in the southeast U.S. observer area unless an observer is on board that vessel during the trip.

(4) *Restricted period, closure and restrictions, and exemption.* (i) Restricted period. The restricted period for the southeast U.S. restricted area is from November 15 through March 31 of the following year, unless the Assistant Administrator revises this restricted period in accordance with paragraph (g) of this section.

(ii) *Closure for shark gillnet gear.* Except as provided under paragraph (f)(4)(iv) of this section, no person may fish with shark gillnet gear in the southeast U.S. restricted area during the restricted period.

(iii) *Restrictions for straight sets.* Except as provided for shark gillnet gear under paragraph (f)(4)(iv) of this section, no person may fish with a straight set of gillnet gear at night in the southeast U.S. restricted area during the restricted period. A straight set is defined as a set in which the gillnet is placed in a line in the water column, as opposed to a circular set in which the gillnet is placed to encircle an area in the water column.

(iv) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restrictions under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

* * * * *

[FR Doc. 02-24155 Filed 9-20-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 091302A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Atlantic bluefin tuna retention limit adjustments.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit should be adjusted in order to allow for maximum utilization of the General category September time-period subquota. Therefore, NMFS increases the daily retention limit to two large medium or giant BFT through September 30, 2002. Additionally, NMFS adjusts the BFT daily retention limit for vessels participating in the recreational fishery that are permitted in the Atlantic Highly Migratory Species (HMS) Charter/Headboat category and that are licensed by the U.S. Coast Guard (USCG) to carry more than six passengers. The daily retention limit for these vessels is adjusted to one BFT per angler, up to a maximum of 20 per vessel through October 31, 2002. These actions are being taken to provide increased fishing opportunities in all areas without risking overharvest of the quotas established for the respective categories.

DATES: The BFT General category daily retention limit adjustment is effective September 20, 2002 through September 30, 2002.

The daily retention limit for vessels permitted in the HMS Charter/Headboat category, and licensed by USCG to carry more than six passengers, is effective September 20, 2002 through October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*)