

that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The Interim Final Rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulator action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this Interim Final Rule in accordance with Executive Order 13211. FRA has determined that this Interim Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulator action is not a "significant energy action" within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA amends part 225, title 49 Code of Federal Regulations as follows:

PART 225—RAILROAD ACCIDENT/ INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49.

2. By amending § 225.19 by adding a heading for paragraph (c), revising the first and last sentences of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.*, \$6,300 for calendar years 1991 through 1966, \$6,500 for calendar year 1997, and \$6,700 for calendar years 2002 and 2003 and, until further notice, for calendar years thereafter) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * * The reporting threshold will be reviewed periodically, and, if necessary, will be adjusted every year.

* * * * *

(e) The reporting threshold is \$6,300 for calendar years 1991 through 1996. The reporting threshold is \$6,500 for calendar year 1997, \$6,600 for calendar years 1998 through 2001, and \$6,700 for calendar years 2002 and 2003 and, until further notice, for calendar years thereafter. The procedure for determining the reporting threshold for calendar years 1997 through 2002 appears as paragraphs 1–9 of appendix B to part 225. The primary rationale for the reporting threshold established for calendar year 2003 and, until further notice, for subsequent calendar years, appears as paragraph 10 of appendix B to part 225.

3. Part 225 is amended by revising paragraph 9 of appendix B and adding new paragraph 10 to appendix B to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

* * * * *

9. The result of these calculations is \$6,682.254777. Since the result is rounded to the nearest \$100, the reporting threshold for rail equipment

accidents/incidents that occur during calendar year 2002 is \$6,700.

10. In the absence of data necessary to compute the reporting threshold for calendar year 2003 according to the procedure described in paragraphs 1–9 of this appendix B, the calendar year 2002 threshold of \$6,700 remains in effect for calendar year 2003 and, until further notice, for all subsequent years.

Issued in Washington, DC., on December 19, 2002.

Allan Rutter,

Federal Railroad Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 020819201–2327–03; I.D. 122302A]

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

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 voluntary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These voluntary restrictions apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,460 square nautical miles (nm²) (2,706 km²), east of Cape Ann, MA, called Cashes Ledge, 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 24, 2002, through 2400 hours January 13, 2003.

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

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.nmfs.gov/whaletrp/>.

FOR FURTHER INFORMATION CONTACT:

Diane Borggaard, NMFS/Northeast Region, 978-281-9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION: The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right, fin, humpback, and 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). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. on an expedited basis to protect right whales. Under the DAM program, NMFS may: (1) Require the removal of all lobster trap and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15-day period, and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey

personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On December 19, 2002, NMFS Aerial Survey Team reported a sighting of 4 right whales in the proximity of 42° 54' N lat. and 69° 14' W long. This position lies east of Cape Ann, MA, in an area called Cashes Ledge.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above and, through this action, requests the voluntary removal of lobster trap and gillnet gear set in the waters bounded by:

43°13'N, 69°44'W (NW Corner)

43°13'N, 68°50'W

42°36'N, 68°50'W

42°36'N, 69°44'W (SW Corner)

It is appropriate to request voluntary restrictions within the DAM zone because, in consideration of the safety of human life at sea, the current and forecasted adverse weather conditions in the Gulf of Maine make it unsafe for affected fishermen to remove active gear.

The voluntary restrictions for the DAM zone are as follows: voluntary removal of all lobster trap/pot and gillnet gear from these waters. Furthermore, NMFS asks lobster trap/pot and gillnet fishermen not to set any new gear in this area during the 15-day restricted period. The restrictions will be in effect beginning at 0001 hours December 24, 2002, through 2400 hours January 13, 2003, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**. The voluntary restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: December 23, 2002.

William T. Hogarth,

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

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