

(ii) Retail service from rural carriers.
 (iii) Self-service postal centers. Self-service postal centers contain vending equipment for the sale of stamps and stamp items, and contain deposit boxes for parcels and letter mail. Many centers are accessible to individuals in wheelchairs. Information regarding the location of the nearest center may be obtained from a local Post Office.

(b) The *Domestic Mail Manual*, the *Administrative Support Manual*, and the *International Mail Manual* contain information regarding postage-free mailing for mailings that qualify.

(c) *Inquiries and requests.* Members of the public wishing further information about special arrangements for particular postal services may contact their local postal manager.

(d) *Response to a request or complaint regarding a special arrangement for postal services.* A local postal manager receiving a request or complaint about a special arrangement for postal services must provide any arrangement as required by postal regulations. If no special arrangements are required by postal regulations, the local postal manager, in consultation with the district manager or area manager, as needed, may provide a special arrangement or take any action that will accommodate an individual with a disability as required by section 504 of the Rehabilitation Act of 1973 or by this part.

§ 255.8 Access to postal facilities.

(a) *Legal requirements and policy.* (1) *ABA standards.* Where the design standards of the Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.*, do not apply, the Postal Service may perform a discretionary retrofit to a facility in accordance with this part to accommodate individuals with disabilities.

(2) *Discretionary modifications.* The Postal Service may modify facilities not legally required to conform to ABA standards when it determines that doing so would be consistent with efficient postal operations. In determining whether modifications not legally required should be made, due regard is to be given to:

- (i) The cost of the discretionary modification;
- (ii) The number of individuals to be benefited by the modification;
- (iii) The inconvenience, if any, to the general public;
- (iv) The anticipated useful life of the modification to the Postal Service;
- (v) Any requirement to restore a leased premises to its original condition at the expiration of the lease, and the cost of such restoration;

(vi) The historic or architectural significance of the property in accordance with the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*;

(vii) The availability of other options to foster service accessibility; and
 (viii) Any other factor that is relevant and appropriate to the decision.

(b) *Inquiries and requests.* (1) Inquiries concerning access to postal facilities, and requests for discretionary alterations of postal facilities not covered by the design standards of the ABA, may be made to the local postal manager of the facility involved.

(2) The local postal manager's response to a request or complaint regarding an alteration to a facility will be made after consultation with the district manager or the area manager. If the determination is made that modification to meet ABA design standards is not required, a discretionary alteration may be made on a case-by-case basis in accordance with the criteria listed in paragraph (a)(2) of this section. If a discretionary alteration is not made, the local postal manager should determine if a special arrangement for postal services under § 255.7 can be provided.

§ 255.9 Other postal regulations; authority of postal managers and employees.

This part supplements all other postal regulations. Nothing in this part is intended to authorize any postal manager or employee to violate or exceed any regulatory limit, or to confer any budgetary authority on any postal official or employee outside normal budgetary procedures.

Stanley F. Mires,
 Chief Counsel, Legislative.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334-2292-10; I.D. 112702B]

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: Rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, is withdrawing the temporary restrictions announced in a temporary rule published on December 3, 2002 (67 FR 71900). The purpose of this rule is to withdraw the restrictions and request fishermen to voluntarily remove lobster trap/pot and anchored gillnet gear in an area totaling approximately 1,600 square nautical miles (nm²) (2,965 km²), east of Portsmouth, NH, called Jeffreys Ledge, from December 5 through December 20, 2002.

DATES: Effective December 5, 2002.

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 whales, 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 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/pot 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; or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot 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 November 20, 2002, NMFS Aerial Survey Team reported a sighting of 8 right whales in the proximity of 43° 00' N lat. and 70°08' W long. This position lies east of Portsmouth, NH, in an area called Jeffreys Ledge.

In a temporary rule published on December 3, 2002 (67 FR 71900), NMFS restricted lobster trap/pot and gillnet gear set in the waters bounded by:

43°19'N, 70°35'W (NW Corner)

43°19'N, 69°40'W

42°39'N, 69°40'W

42°39'N, 70°35'W (SW Corner)

Please note that the western DAM boundary (70°35'W) from 43°11'N due north to 43°19'N will follow the coastline.

Due to rough weather conditions in the Gulf of Maine, effected fishers are unable to remove active gear as required by the temporary rule. Therefore, the AA has determined that the temporary

restrictions should be withdrawn. However, the AA requests that fishermen voluntarily remove their lobster trap/pot and anchored gillnet gear in the area described above if weather conditions allow removal of the gear through December 20, 2002. Additionally, fishermen are encouraged not to set gear in the DAM area during this time period.

This rule 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

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.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive notice and an opportunity to comment on this action to withdraw the temporary restrictions, because providing notice and an opportunity to comment on this action would be contrary to the public interest. If NMFS were to provide notice and an opportunity to comment on this action, the temporary gear restrictions would remain effective, and fishermen would risk bodily harm in trying to remove their gear due to the severe weather conditions in the Northeast region. In addition, it would be unfair to subject fishermen to changes in gear requirements when, due to weather, the affected fishermen have been unable to implement these changes.

The AA is also waiving the 30-day delay in effective date under 5 U.S.C. 553(d)(1), because this action relieves a restriction. Thus, NMFS makes this action effective beginning December 5, 2002. NMFS will also endeavor to provide notice of this action to

fishermen through other means as soon as possible. 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 (see **ADDRESSES**).

This rule 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 5, 2002.

William T. Hogarth

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

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