

Management Processes and Requirements). In addition to technical, schedule, and cost risks, the discussion shall include such considerations as: safety and security (including personnel, information technology, and facilities/property); the need to involve foreign sources (contractor and/or governmental), and risks of unauthorized technology transfer (see NPD 2110.1D and Export Control Program (<http://www.hq.nasa.gov/office/codei/nasaecp/ecpolicy.html>)); and resource risk, including the necessary level and expertise of NASA personnel resources available to manage the project/program. For each area of risk identified, the discussion shall include a quantification of the relative magnitude (e.g., high, medium, low) together with the specific actions taken to structure the acquisition approach to manage the risks throughout the acquisition process. For example, this discussion would identify those areas that have safety risk, discuss how safety is addressed in contract requirements and evaluated in the source selection, and how it will be managed and incentivized during contract performance. Decisions to accept, mitigate, track, and/or research risk factors shall be identified and documented as part of acquisition planning.

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#### **PART 1815—CONTRACTING BY NEGOTIATION**

3. Revise section 1815.203–72 to read as follows:

##### **1815.203–72 Risk management.**

In all RFPs and RFOs for supplies or services for which a technical proposal is required, proposal instructions shall require offerors to identify and discuss risk factors and issues throughout the proposal where they are relevant, and describe their approach to managing these risks.

#### **PART 1816—TYPES OF CONTRACTS**

4. In section 1816.405–274, add paragraph (c)(4) to read as follows:

##### **1816.405–274 Award fee evaluation factors.**

\* \* \* \* \*

(c) \* \* \*

(4) The Associate Administrator for Procurement (Code HS) shall be notified prior to the determination of a zero award fee because of a major breach of safety or security.

\* \* \* \* \*

#### **PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

5. In section 1823.7001, revise paragraphs (b)(1) and (b)(2) to read as follows:

##### **1823.7001 NASA solicitation provisions and contract clauses.**

(b) \* \* \*

(1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR subpart 22.6) or the Service Contract Act of 1965 (see FAR subpart 22.10) in which the application of either act and its implementing regulations constitute adequate safety and occupational health protection; and

(2) When the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, makes a written determination that the clause is not necessary under the circumstances of the acquisition.

\* \* \* \* \*

#### **PART 1849—TERMINATION OF CONTRACTS**

6. Add section 1849.102–71 to read as follows:

##### **1849.102–71 Prior clearance of contract terminations resulting from a major breach of safety or security.**

The Associate Administrator for Procurement (Code HS) must be notified prior to taking any action to terminate because of a major breach of safety or security.

#### **PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

7. In section 1852.223–70, revise the date of the clause and paragraph (c) to read as follows:

##### **1852.223–70 Safety and Health.**

\* \* \* \* \*

##### **Safety and Health, November 2000**

\* \* \* \* \*

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule; or property loss of \$25,000 or more, or Close Call (a situation or occurrence with no injury, no damage or only minor damage (less than \$1,000) but possesses the potential to cause any type mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this

contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

\* \* \* \* \*

8. In section 1852.223–75, revise the date of the clause and paragraph (a) to read as follows:

##### **1852.223–75 Major Breach of Safety or Security.**

\* \* \* \* \*

##### **Major Breach of Safety or Security, November 2000**

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any “willful” or “repeat” violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

\* \* \* \* \*

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 229**

[Docket No. 991222346-0312-03; I.D. 111300E]

RIN 0648-AN40

#### **Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Remove and Reserve Gear Marking Requirements for Northeast U.S. Fisheries**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule removes and reserves the northeast U.S. fisheries gear

marking requirements implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). These requirements were suspended until November 1, 2000. It was the agency's intent to extend that suspension indefinitely until a modified gear marking program is implemented. Because of a delay in preparing an extension of the suspension, these gear marking requirements inadvertently went into effect. The intent of this action is to remove the existing requirements.

**DATES:** Effective November 21, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Beach, NMFS, Northeast Region, 978-281-9254; or Patricia Lawson, NMFS, Office of Protected Resources, 301-713-2322.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 16, 1999, NMFS published a final rule (64 FR 7529) implementing the ALWTRP. Among other measures, the final rule required gear marking in all fisheries covered by the ALWTRP by April 1, 1999.

The Atlantic Large Whale Take Reduction Team (ALWTRT) met on February 8-10, 1999, discussed the gear marking program in detail, found that the plan would not meet ALWTRT and NMFS goals and recommended by consensus that NMFS suspend the implementation of the gear marking requirement until November 1, 1999, or until a better system was designed. On April 9, 1999 (64 FR 17292), NMFS issued a final rule that suspended the gear marking program until November 1, 1999. On December 30, 1999 (64 FR 73434), NMFS extended the suspension until November 1, 2000. Because of a delay in preparing an extension of this suspension, these gear marking requirements went into effect. It was not the intent of the agency for this to happen. A new gear marking program will be implemented by an interim final rule currently in preparation. In order to spare fishermen the expense of having to adhere for a short period of time to gear marking requirements that will be modified in the near future, NMFS is removing and reserving these requirements. The other provisions of this final rule implementing the ALWTRP, including the gear marking requirements for the Southeast U.S. fisheries covered by the ALWTRP, remain in effect.

**Classification**

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

NMFS prepared a Supplemental Environmental Assessment (EA) for the final rule (64 FR 73434) extending the suspension of the effective dates of the gear marking requirements and found that action not to have a significant environmental impact. Since this final rule addresses an action previously analyzed in an EA, it is categorically excluded from further environmental review under section 5.05b of NOAA Administrative Order 216-6.

A biological opinion (BO) on the ALWTRP was completed on July 15, 1997. That BO concluded that implementation of the ALWTRP and continued operation of fisheries conducted under the American Lobster and Northeast Multispecies Fishery Management Plans (FMPs), and southeastern shark gillnet component of the Shark FMP, may adversely affect, but were not likely to jeopardize the continued existence of, any listed species of large whale or sea turtle under NMFS jurisdiction. NMFS conducted an informal consultation and made the determination that the April 9, 1999, final rule (64 FR 17292), did not change the basis for that BO. Therefore, NMFS also found this action does not change the basis for that BO.

Removing the ALWTRP gear marking requirement for northeast U.S. fisheries will have no adverse impacts on marine mammals. (EA, 1999) In addition, this final rule does not affect the determination that the ALWTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the Atlantic states.

The Assistant Administrator for Fisheries NOAA, (AA), for good cause, finds, under 5 U.S.C. 553(b)(B), that delaying this final rule to allow for prior notice and an opportunity for public comment would be contrary to the public interest. It would not be fair to subject fishermen to the expense of having to comply with gear marking requirements that do not meet the goals of the ALWTRP in which the agency intends to replace in the immediate near future with a new gear marking program. For the same reason, the AA finds, for good cause under 5 U.S.C. 553(d)(3) that delaying the effectiveness of this final rule for 30 days would be contrary to the public interest. Furthermore, since this final rule relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in effective date.

Because publishing a general notice of proposed rulemaking is not required for this action by 5 U.S.C. 553 or by any other law, the analytical requirements of

the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

This final rule removes a collection-of-information requirement previously approved by OMB (OMB control number: 0648-0364).

**List of Subjects in 50 CFR Part 229**

Administrative practice and procedure, Confidential business information, Fisheries, Marine Mammals, Reporting and record-keeping requirements.

Dated: November 16, 2000.

**W.T. Hogarth,**

*Deputy Assistant Administrator, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 229 is amended 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:** 16 U.S.C. 1361 *et seq.*

**§ 229.32 [Amended]**

2. In § 229.32, paragraphs (b), (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), and (d)(5)(ii) are removed and reserved.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 991008273-0070-02; I.D. 111600A]

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure**

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

**ACTION:** Closure.

**SUMMARY:** NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the northern Florida west coast subzone. This closure is necessary to protect the overfished Gulf king mackerel resource.

**DATES:** The closure is effective 12:01 a.m., local time, November 19, 2000, through June 30, 2001.