

GHz BSS space stations must design their satellite networks to be capable of operating with another 17/24 GHz BSS space station as close as four degrees away.

(2) Satellite network operators located less than four degrees away from a space station to be operated pursuant to § 25.262(b) of this part must design their satellite networks to be capable of operating with that adjacent 17/24 GHz BSS space station.

(3) Satellite network operators using 17/24 GHz BSS space stations located at an orbital location other than those specified in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, and that are not operating pursuant to § 25.262(b) of this part, must design their satellite networks to be capable of operating with another 17/24 GHz BSS space station closer than four degrees away, as a result of the operator's offset position.

\* \* \* \* \*

■ 5. Revise § 25.262 to read as follows:

**§ 25.262 Licensing and domestic coordination requirements for 17/24 GHz BSS space stations.**

(a) Except as described in paragraphs (b), (c) or (e) of this section, applicants seeking to operate a space station in the 17/24 GHz BSS must locate that space station at one of the orbital positions described in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76.

(b) An applicant may be authorized to operate a 17/24 GHz BSS space station at an orbital location described in Appendix F as set forth in paragraph (a) of this section, or at a location with a geocentric angular separation of one degree or less from an Appendix F location, and may operate at the maximum power flux density limits defined in §§ 25.208(c) and (w) of this part, without coordinating its power flux density levels with adjacent licensed or permitted operators, only if there is no licensed 17/24 GHz BSS space station or prior-filed application at a location less than four degrees from the offset orbital location at which the applicant proposes to operate.

(c)(1) Notwithstanding the provisions of this section, licensees and permittees will be allowed to apply for a license or authorization for a replacement satellite that will be operated at the same power level and interference protection as the satellite to be replaced.

(2) In addition, applicants for licenses or authority for a satellite to be operated at an orbit location that was made available after a previous 17/24 GHz BSS license was cancelled or surrendered will be permitted to apply

for authority to operate a satellite at the same power level and interference protection as the previous licensee at that orbit location, to the extent that their proposed operations are consistent with the provisions of this part. Such applications will be considered pursuant to the first-come, first-served procedures set forth in § 25.158 of this part.

(d) Any U.S. licensee or permittee using a 17/24 GHz BSS space station that is located less than four degrees away from a prior-authorized 17/24 GHz BSS space station that is authorized to operate in accordance with paragraph (b) of this section:

(1) may not cause any more interference to the adjacent satellite network than would be caused if the adjacent 17/24 GHz BSS space station were located four degrees away from the proposed space station; and

(2) must accept any increased interference that results from the adjacent space station network operating at the offset orbital location less than four degrees away.

(e) Any 17/24 GHz BSS U.S. licensee or permittee that is required to provide information in its application pursuant to §§ 25.140(b)(4)(ii) or (b)(4)(iii) of this part must accept any increased interference that may result from adjacent 17/24 GHz BSS space stations that are operating in compliance with the rules for this service.

(f) Any 17/24 GHz BSS U.S. licensee or permittee that does not comply with the power flux-density limits set forth in § 25.208(w) of this part shall bear the burden of coordinating with any future co-frequency licensees and permittees of a 17/24 GHz BSS network under the following circumstances:

(1) If the operator's space-to-Earth power flux-density levels exceed the power flux-density limits set forth in § 25.208(w) of this part by 3 dB or less, the operator shall bear the burden of coordinating with any future operators proposing a 17/24 GHz BSS space station in compliance with power flux-density limits set forth in § 25.208(w) of this part and located within  $\pm 6$  degrees of the operator's 17/24 GHz BSS space station.

(2) If the operator's space-to-Earth power flux-density levels exceed the power flux-density limits set forth in § 25.208(w) of this part by more than 3 dB, the operator shall bear the burden of coordinating with any future operators proposing a 17/24 GHz BSS space station in compliance with power flux-density limits set forth in § 25.208(w) of this part and located within  $\pm 10$  degrees of the operator's 17/24 GHz BSS space station.

(3) If no good faith agreement can be reached, the operator of the 17/24 GHz BSS satellite network that does not comply with § 25.208(w) of this part shall reduce its space-to-Earth power flux-density levels to be compliant with those specified in § 25.208(w) of this part.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 071011590–7610–02]

RIN 0648–XD38

#### 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:** Notification of rescission of temporary rule and reopening of DAM zone to normal fishing operations.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces the rescission of temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations applied to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 841 nm<sup>2</sup> (2,885 km<sup>2</sup>), southeast of Machias, Maine, for 15 days. The purpose of this action is to provide notice that an October 17, 2007 survey indicated that North Atlantic right whales (right whales) are no longer present in the Dynamic Area Management (DAM) zone; therefore, NMFS has rescinded the temporary restrictions on lobster trap/pot and anchored gillnet fishing gear and reopened the DAM zone to normal fishing operations.

**DATES:** The DAM zone and associated gear restrictions are removed effective October 19, 2007.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), 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.

**FOR FURTHER INFORMATION CONTACT:**

Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

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.noaa.gov/whaletrp/>.

**Background**

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). 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 DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. 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/pot 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/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 (75 nm<sup>2</sup> (139 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (1.85 km<sup>2</sup>). 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 October 5, 2007, an aerial survey reported an aggregation of three right whales in the proximity of 44° 15' N latitude and 67° 11' W longitude. The position lies approximately 30nm south of Machias, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS had received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

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 reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibited lobster trap/pot and anchored gillnet gear in this area during the 15-day restricted period unless it was modified in the manner described in the temporary rule (72 FR 59035).

The DAM Zone is bound by the following coordinates:

44° 35' N., 67° 33' W (NW Corner)  
44° 35' N., 67° 01' W and follow the EEZ south to  
43° 56' N., 67° 22' W  
43° 56' N., 67° 41' W  
44° 32' N., 67° 41' W and follow the coastline north to  
44° 35' N., 67° 33' W (NW Corner)

The restrictions were to be in effect from 0001 hours October 20, 2007, through November 3, 2007, unless terminated sooner or extended by NMFS through another modification in the **Federal Register**. The restrictions were announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

A subsequent survey of the full DAM zone occurred on October 17, 2007, and indicated that right whales have left the designated DAM zone triggered on October 5, 2007. Based on this information and pursuant to the authority found at 50 CFR 229.32(g)(3)(vi), NMFS has rescinded the restrictions on lobster trap/pot and anchored gillnet fishing gear that were to become effective on October 20, 2007. Pursuant to these regulations, lobster trap/pot and anchored gillnet fishing may continue in the area effective October 19, 2007. The rescission of restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

**Classification**

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

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

The AA finds that it would be impracticable and contrary to the public interest to provide prior notice and an opportunity for public comment on this action. To meet the goals of the DAM program, the agency needs to be able to reopen a DAM zone and rescind restrictions on fishing gear as soon as possible once NMFS determines that right whales are no longer in the area. The regulations establishing the DAM program are designed to enable the agency to help protect unusual and unexpected foraging concentrations of right whales. On the other hand, if subsequent surveys indicate that the animals are no longer foraging in that area, the agency needs to be able to reopen the DAM zone as soon as possible to allow fishing operations to resume in that location because right

whales are no longer at risk in that particular DAM zone. If NMFS were to provide prior notice and an opportunity for public comment upon the reopening of a DAM restricted zone, the fishermen would continue to endure unnecessarily adverse economic impacts because right whales the DAM zone was implemented to protect had moved on to another location, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to reopen a DAM restricted zone to commercial lobster trap/pot and anchored gillnet gear.

For the same reasons, the AA finds good cause to waive the 30-day delay in effectiveness for action. If NMFS were to delay for 30 days the effective date of this action, the anchored gillnet and lobster trap/pot fishermen affected by the DAM zone would be required to comply with restrictions even though subsequent surveys of the area indicated that right whales have moved to another location, thereby rendering the action obsolete and unnecessary for reducing the risk of entanglement of endangered right whales in that area. NMFS recognizes the need for fishermen to resume normal fishing operations in a DAM zone once subsequent surveys or other credible evidence indicates that right whales have left the vicinity. Thus, NMFS makes this action effective on the date of filing of this notice in the **Federal Register**. 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 and March 2003, the Assistant Secretary for Intergovernmental and Legislative

Affairs, Department of Commerce, provided notice of the DAM program and its amendments 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 rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules 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: October 18, 2007.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 040112010-4114-02]

RIN 0648-XD40

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Opening of the Eastern U.S./Canada Area and Trip Limit Change

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

**ACTION:** Temporary rule; reopening and trip limit change.

**SUMMARY:** NMFS announces a temporary reopening of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock Special Access Program (SAP), to limited access NE multispecies days-at-sea (DAS) vessels through November 30, 2007. This action also implements a 1,000-lb (454-kg) trip limit for Georges Bank (GB) cod for all limited access NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area. This action is being taken to allow NE multispecies DAS vessels increased access to the substantial Eastern U.S./Canada Area GB haddock total allowable catch (TAC), and provide increased opportunities to achieve optimum yield

in the groundfish fishery. The intended effect is to maximize the utility of the remaining GB cod TAC by opening the Eastern U.S./Canada Area when the relative abundance of GB haddock in relation to GB cod is highest.

**DATES:** The temporary reopening of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP, to all limited access NE multispecies DAS vessels and the 1,000-lb (454-kg) GB cod trip limit for the Eastern U.S./Canada Area is effective 0001 hr October 20, 2007, through 2400 hr local time, November 30, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Mark Grant, Fishery Management Specialist, (978) 281-9145, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The GB cod TAC for the 2007 fishing year (FY) was specified at 494 mt on May 7, 2007 (72 FR 25709). The regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify the gear requirements, modify or close access, modify the trip limits, or modify the total number of trips into the U.S./Canada Management Area, for all limited access NE multispecies DAS vessels to prevent over-harvesting or to facilitate achieving the U.S./Canada Management Area TACs.

On June 20, 2007, NMFS temporarily closed the Eastern U.S./Canada Area to all NE multispecies DAS vessels because of the substantial increase of fishing activity in the Eastern U.S./Canada Area beginning June 1, 2007, and the small GB cod TAC. The temporary closure was necessary in order to prevent the closure of the Eastern U.S./Canada Area through the end of FY 2007, on April 30, 2007. A closure for the remainder of FY 2007 would have limited access to the available Eastern U.S./Canada Area GB haddock TAC.

Particularly concerning at the time of the temporary closure was the high proportion of GB cod being discarded by vessels targeting GB haddock and GB yellowtail flounder. Observer data showed that discards of GB cod exceeded the amount of GB cod kept, with a discard to kept ratio for GB cod of approximately 2:1. When the Eastern U.S./Canada Area closed on June 20, 2007, a total of 70.1 percent of the GB cod TAC had been harvested, leaving