



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 201123-0312]

RIN 0648-BF90

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Amendment to the Atlantic Pelagic Longline Take Reduction Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Atlantic Pelagic Longline Take Reduction Plan (hereinafter called the PLTRP or the Plan) to reduce mortalities and serious injuries of short-finned pilot whales incidental to the Atlantic pelagic longline fishery to meet the long-term goal of the Plan as required by the Marine Mammal Protection Act (MMPA). The PLTRP currently contains both regulatory and non-regulatory management measures to reduce mortality and serious injury of pilot whales (*Globicephala* spp.) and Risso's dolphins (*Grampus griseus*), in the Atlantic portion of the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery (hereinafter called Atlantic pelagic longline fishery). The proposed amendments to the PLTRP are based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team (hereinafter called the PLTRT or the Team) and include: removing the Cape Hatteras Special Research Area and the associated special observer and research participation requirements for fishermen operating in that area, modifying the mainline length restrictions for pelagic longline sets in the U.S. exclusive economic zone (EEZ) portion of the Mid-Atlantic Bight, and implementing required hook and gangion modifications in the EEZ portion of the Florida East Coast, South Atlantic Bight, Mid-

Atlantic Bight and Northeast Coastal fishing areas. Furthermore, NMFS is removing Risso's dolphins and long-finned pilot whales from the Plan's scope.

DATES: Written comments on the proposed rule must be received no later than 5 p.m. eastern time on [*insert date 60 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this proposed rule, identified by 0648-BF90, by any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0105, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Erin Fougères, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will generally post for public viewing on to www.regulations.gov without change. All personal identifying information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The draft Environmental Assessment, Regulatory Impact Review, Regulatory Flexibility Act Analysis, and references for the Proposed rule, can be found in the Federal eRulemaking Portal as supplementary document. Background documents for the PLTRP can be downloaded from the Take Reduction website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/pelagic-longline-take-reduction-plan>, or by submitting a request to the Team coordinator, Erin Fougères, 727-824-5312.

FOR FURTHER INFORMATION, CONTACT: Erin Fougères, NMFS, Southeast Region, 727-824-5312, or Kristy Long, NMFS, Office of Protected Resources, 206-526-4792.

Individuals who use telecommunications devices 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:

Background

Section 118(f) of the MMPA requires NMFS to develop and implement take reduction plans to assist in the recovery of, or prevent the depletion of, each strategic marine mammal stock that interacts with Category I or II fisheries. Category I fisheries are fisheries that have frequent incidental mortality and serious injury of marine mammals, and Category II fisheries are fisheries that have occasional incidental mortality and serious injury of marine mammals. The MMPA also provides NMFS discretion to develop and implement a take reduction plan for any other marine mammal stocks that interact with a Category I fishery, which the agency determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

The MMPA defines a strategic stock as a marine mammal stock: (1) for which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA, or is designated as a depleted species under the MMPA (16 U.S.C. 1362(19)). The PBR level is the maximum number of animals, not including natural mortalities, which can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level (50 CFR 229.2).

In accordance with section 118(f) of the MMPA (16 U.S.C 1387), the immediate goal of a take reduction plan is to reduce, within six months of its implementation, the incidental

mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels less than the PBR level for the stock. The long-term goal of a take reduction plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing to insignificant levels approaching a zero mortality and serious injury rate (*i.e.*, insignificance threshold or zero mortality rate goal), which is 10 percent of the PBR level for a marine mammal stock (69 FR 43338, July 20, 2004). The long-term goal takes into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The MMPA also requires NMFS to amend take reduction plans and implementing regulations as needed to meet these requirements and goals.

History of the PLTRT

The impetus for the PLTRP was a 2003 settlement agreement between NMFS and the Center for Biological Diversity that required convening a Take Reduction Team (the PLTRT or the Team) under the MMPA by June 30, 2005, to address mortality and serious injury of Western North Atlantic pilot whales (*Globicephala* spp.) and common dolphins (*Delphinus delphis delphis*) in the Atlantic pelagic longline fishery, which was then, and currently still is, listed as a Category I fishery. At the time of the settlement agreement, the western North Atlantic stocks of these species were identified as strategic stocks.

However, as the Plan was being developed, long-finned pilot whales (*Globicephala melas melas*) and short-finned pilot whales (*Globicephala macrorhynchus*) and common dolphins were all reclassified as non-strategic stocks (Waring *et al.* 2006). Because incidental mortality and serious injury of short-finned and long-finned pilot whales in the Atlantic pelagic longline fishery continued to exceed the insignificance threshold (although not the PBR level) for the stocks, these species were included under the PLTRP. Common dolphins, even though included in the settlement agreement, were not considered in the PLTRP because there had been no recent observed mortalities or serious injuries. Risso's dolphins, on the other hand, were

considered within the scope of the PLTRP, even though the species was not included in the settlement agreement and was not a strategic stock at the time, because mortalities and serious injuries incidental to the Atlantic pelagic longline fishery exceeded the insignificance threshold (although not the PBR level) for the stock, similar to short-finned and long-finned pilot whales.

In accordance with the MMPA and the settlement agreement, NMFS convened the PLTRT in June 2005. NMFS announced the establishment of the PLTRT on June 22, 2005, in the *Federal Register* (70 FR 36120). NMFS selected team members according to guidance provided in section 118(f)(6)(C) of the MMPA. Members of the PLTRT include commercial fishermen and representatives of the Atlantic Pelagic Longline Fishing industry, environmental groups, marine mammal biologists, fisheries biologists, and representatives of the Mid-Atlantic Fishery Management Council, the Marine Mammal Commission, and NMFS.

The incidental mortality and serious injury for both pilot whales and Risso's dolphins exceeded the insignificance threshold, yet remained below the PBR level, and were considered non-strategic stocks that interact with a Category I fishery. Therefore, in accordance with the long-term goal of section 118(f)(2) of the MMPA, NMFS directed the PLTRT to develop and submit a draft Take Reduction Plan to the agency within 11 months that focused on reducing incidental mortalities and serious injuries of pilot whales and Risso's dolphins to a level approaching the insignificance threshold within five years of implementation of the Plan.

Four professionally-facilitated meetings and two full-team conference calls were held between June 2005 and May 2006. The PLTRT reached consensus at the May 2006 meeting, and on June 8, 2006, submitted to NMFS a Draft PLTRP, including recommendations for take reduction measures, as well as research needs and other non-regulatory measures (PLTRT, 2006). Based on the Draft PLTRP, NMFS published a proposed rule (73 FR 35623, June 24, 2008) and a final rule (74 FR 23349, May 19, 2009) implementing the PLTRP, which became effective on June 18, 2009 (50 CFR 229.36). Since implementation of the PLTRP, the Team has continued to monitor the effectiveness of the Plan and review recent research relevant to the

PLTRT and new scientific information on updated estimates of abundance and mortality and serious injury for pilot whales and Risso's dolphins.

Western North Atlantic Pilot whales

The distribution of the western North Atlantic stock of short-finned pilot whale overlaps in some areas with that of the western North Atlantic long-finned pilot whale stock. The area of overlap between the western North Atlantic stocks of short-finned and long-finned pilot whales occurs primarily along the shelf break between 38°N and 40°N latitude (Garrison and Rosel 2017). The full latitudinal range of each species remains uncertain; however, south of Cape Hatteras, NC, most pilot whale sightings are expected to be short-finned pilot whales, while north of ~42°N most pilot whale sightings are expected to be long-finned pilot whales (Garrison and Rosel 2017). Additionally, these species are difficult to differentiate at sea and cannot be reliably visually identified during either abundance surveys or observations of fishery mortality without high-quality photographs (Rone and Pace 2012). Therefore, the ability to separately assess the two species in U.S. Atlantic waters is complex and requires additional information on seasonal spatial distribution (Hayes *et al.* 2019).

All estimated mortalities and serious injuries of pilot whales incidental to the Atlantic pelagic longline fishery from 2010 to 2013 were assigned exclusively to short-finned pilot whales (Hayes *et al.* 2019). From 2014 to 2016, pilot whale estimated mortalities and serious injuries incidental to the Atlantic pelagic longline fishery were apportioned between the short-finned and long-finned pilot whale stocks according to a logistic regression model (Garrison and Rosel 2017). Short-finned pilot whales made up the majority of the apportioned estimated mortality and serious injury, with only 1 percent and 4 percent of the estimated mortalities and serious injuries between 2014 and 2016 being apportioned to long-finned pilot whales (Hayes *et al.* 2019).

The minimum population estimate for short-finned pilot whales in the western North Atlantic is 23,637 (Hayes *et al.* 2019). Based on the years 2012 through 2016, the short-finned

pilot whale PBR level was 236 and the estimated mean annual mortality and serious injury incidental to pelagic longline fishing was 168 short-finned pilot whales (Coefficient of Variation, or CV=0.13; Hayes *et al.*, 2019). Thus, the average annual mortality and serious injury of the western North Atlantic stock of short-finned pilot whales incidental to the Atlantic pelagic longline fishery is approaching the PBR level (71 percent of the PBR level).

The minimum population estimate for long-finned pilot whales in the western North Atlantic is 3,464 (Hayes *et al.* 2019). Based on the years 2012 through 2016, the long-finned pilot whale PBR level was 35 and the estimated mean annual mortality and serious injury incidental to pelagic longline fishing was 2.6 long-finned pilot whales (CV=0.34; Hayes *et al.* 2019). Thus, the average annual mortality and serious injury of the western North Atlantic stock of long-finned pilot whales incidental to the Atlantic pelagic longline fishery is 7.4 percent of the PBR level, which is below the insignificance threshold of 10 percent of the PBR level.

Western North Atlantic Risso's dolphins

Risso's dolphins occur worldwide in warm temperate and tropical waters, and in the Northwest Atlantic occur from Florida to eastern Newfoundland and in general, in the U.S. Atlantic EEZ, the population occupies the mid-Atlantic continental shelf edge year round, and is rarely seen in the Gulf of Maine (Hayes *et al.* 2019). The minimum population estimate for the western North Atlantic stock of Risso's dolphin is 12,619 (Hayes *et al.*, 2019). Based on the years 2012 through 2016, the Risso's dolphin PBR level for the western North Atlantic stock was 126 and average annual mortality and serious injury incidental to pelagic longline fishing was 9.8 (CV=0.41; Hayes *et al.*, 2019). Thus, the average annual mortality and serious injury of the western North Atlantic stock of Risso's dolphins incidental to the Atlantic pelagic longline fishery is 7.8 percent of the PBR level, which is below the insignificance threshold of 10 percent of the PBR level.

Removing long-finned pilot whales and Risso's dolphins from the PLTRP Scope

At the time the PLTRT was established (70 FR 36120; June 22, 2005) both long-finned

and short-finned pilot whales were included in the Plan because the abundance estimate was combined for both species and separate mortality and serious injury estimates incidental to the Atlantic pelagic longline fishery were unknown. However, since the Plan's implementation, abundance estimates for each species have been developed (Waring *et al.*, 2011). Additionally, mortality and serious injury estimates for the two species incidental to the Atlantic pelagic longline fishery have been calculated (Waring *et al.*, 2014). More recent information has revealed that the long-finned pilot whale's mortality and serious injury incidental to the Atlantic pelagic longline fishery (Hayes *et al.* 2019) has been below that stock's insignificance threshold. Therefore, although the initial PLTRP addressed both short-finned and long-finned pilot whales, NMFS is proposing to remove long-finned pilot whales from consideration under the Plan.

Similarly, the Team originally expanded the scope of the PLTRP to include Risso's dolphins because the estimated mortality and serious injury levels were exceeding the insignificance threshold for the stock (PLTRP, 2006). Since the Plan was implemented in 2009, the level of mortality and serious injury for Risso's dolphins incidental to the Atlantic pelagic longline fishery has been below the stock's insignificance threshold. Therefore, NMFS is proposing to remove Risso's dolphin from consideration under the PLTRP.

Amending the PLTRP

Since implementation of the PLTRP in June 2009, NMFS convened two professionally-facilitated in-person meetings (August 2012 and December 2015) and six webinars/conference calls (September 2010, June 2014, March 2015, September 2016, October 2016, and September 2019) of the PLTRT. During the 2015 in-person meeting of the Team, best available data indicated that the Atlantic pelagic longline fishery had exceeded the insignificance threshold for the incidental takes of short-finned pilot whales since the implementation of the Plan and was expected to continue to exceed the insignificance threshold indicating that the PLTRP had not been effective in meeting the long-term goal of section 118(f)(2) of the MMPA (*i.e.*, to reduce incidental mortalities and serious injuries of short-finned pilot whales to a level approaching the

stock's insignificance threshold). As a result, the Team developed a suite of consensus non-regulatory and regulatory recommendations to amend the Plan (PLTRP, 2015; PLTRP, 2016). For more details on these recommended measures, please see the **ADDRESSES** section for where to request the December 2015, September 2016, and October 2016 meeting summaries.

Compliance and Enforcement Monitoring

The PLTRP Monitoring Strategy (NMFS, 2013) is a comprehensive plan that describes the methods for monitoring regulatory compliance and the effectiveness of the PLTRP. Compliance monitoring includes enforcement activities, research, collection of observer data, evaluation of self-reported fishing information, and education and outreach efforts. Effectiveness monitoring examines whether the long-term statutory goals described in the MMPA (*i.e.*, to reduce incidental mortalities and serious injuries of short-finned pilot whales to a level approaching the stock's insignificance threshold) are being achieved. NMFS intends to update the monitoring strategy to reflect the new regulatory and non-regulatory components of the PLTRP.

Proposed Non-Regulatory Changes to the PLTRP

The non-regulatory changes to the PLTRP recommended by the PLTRT that NMFS proposes to implement include:

1. Convene a safe handling and release work group to develop potential updates to the current safe handling and release protocols for marine mammal interactions in the Atlantic pelagic longline fishery. The work group would include PLTRT members, commercial fishermen, marine mammal health and disentanglement experts, and others with expertise and knowledge related to handling marine mammals and/or pelagic longline fishing practices.
2. Update observer protocols and fishery observer forms to increase information collected from marine mammal interaction and depredation events in the Atlantic pelagic longline fishery.

Proposed Regulatory Changes to the PLTRP

Although not currently exceeding the PBR level, estimated mean annual mortality and

serious injury of short-finned pilot whales incidental to the Atlantic pelagic longline fishery remains high at roughly 71 percent of the PBR level (Hayes *et al.* 2019). Consequently, mortality and serious injury of short-finned pilot whales incidental to the Atlantic pelagic longline fishery remains above the insignificance threshold of 10 percent of the PBR level, and the long-term goal of the PLTRP is not being met. Therefore, NMFS proposes to implement the PLTRT's December 2015 and October 2016 consensus recommendations to amend the regulations for the Atlantic pelagic longline fishery. NMFS believes these measures are necessary to remove ineffective regulations and to implement new regulations to reduce mortality and serious injury of the western North Atlantic stock of short-finned pilot whales incidental to the Atlantic pelagic longline fishery. The implementing regulations for the PLTRP are at 50 CFR 229.36, and related definitions are at 50 CFR 229.2.

The regulatory changes recommended by the PLTRT that NMFS proposes to implement include:

1. *Remove the Cape Hatteras Special Research Area, along with the special observer and research participation requirements for fishermen operating in that area (50 CFR 229.36(d)).*

When the Plan was developed, the area just north of Cape Hatteras, which became the Cape Hatteras Special Research Area (CHSRA), was a “hot-spot” for pilot whale interactions (PLTRT, 2006). Because of this, the Team thought that it was an important area for research on both pilot whale spatial distribution and interactions with the pelagic longline fishery. Based on the Team's recommendations, NMFS created the CHSRA and its special observer and research participation requirements for fishermen operating in that area with the goal of encouraging partnerships between fishermen and researchers in that area. However, NMFS has not used the special observer and research participation requirements to place an observer on a vessel in the CHSRA since the regulations were implemented. Instead, researchers and fishermen have partnered independent of the regulations for research in that area. Thus, the Team recommended that NMFS remove the CHSRA, and the associated special observer and research participation

requirement, which also requires vessels to provide at least 48 hours advance notice before fishing with pelagic longline gear in that area, because it is no longer needed (PLTRT, 2015).

2. *Modify the current 20 nm mainline length restrictions at 50 CFR 229.36(e) so that vessels in the EEZ portion of the Mid-Atlantic Bight may set no more than one mainline set in the water at any one time, not to exceed 32 nm (59.26 km). There may be no more than 30 nm (55.56 km) total of active gear (gear with leaders or hooks) deployed along the mainline set. A single length of active gear may not exceed 20 nm (37.04 km) and must be separated from other active gear along the mainline set by a gap without leaders or hooks (i.e., hookless line “interrupt”) of at least one nm (1.85 km).*

The 20 nm mainline length restriction in the EEZ portion of the Mid-Atlantic Bight was originally developed because, at the time, data suggested that pilot whale interaction rates were twice as high in pelagic longline sets with total mainline lengths greater than 20 nm than for pelagic longline sets with total mainline lengths less than 20 nm. Operators of individual fishing vessels are allowed to fish multiple mainline sets at one time to “compensate” for the reduction of hooks due to the reduced maximum mainline length of 20 nautical miles (PLTRT, 2006). NMFS initially presumed, based on Team discussions, that there would be minimal compensation by fishing vessels (less than 50 percent); however, beginning in 2013, fishing vessels in the Mid-Atlantic Bight shifted from setting mostly single mainline sets to also setting sets with multiple mainline (hereinafter also referred to as “multi-sets”) (PLTRT, 2015). From 1992 to 2012, multiple mainlines set as part of a multi-set represented 1 percent of all mainlines observed on pelagic longline fishing vessels in the Mid-Atlantic Bight, but increased to 47 percent from 2013 to 2015 (PLTRT, 2015). A multi-set was defined, for analytical purposes, as a pelagic longline set with two mainlines, where the second mainline begins setting 30 minutes or less after the first mainline has finished setting. Analyses showed that the rate of pilot whales interactions were higher in multi-sets compared to single mainline sets and that pelagic longline multi-sets had longer soak durations than a similar length single mainline set (PLTRT, 2015). In

light of this information, the Team recommended that NMFS increase the maximum mainline length from 20 nm to 32 nm, but limit vessels to a single mainline set and only 30 nm of active gear (mainline with leaders or hooks attached) in an effort to limit the total length of active gear in the water and reduce soak duration by eliminating the time it takes to set and haul the second mainline associated with multi-sets (PLTRT, 2016). Additionally, the Team recommended a new measure—the hookless line “interrupt”— a gap along the single mainline set of at least 1 nm with no active gear, which the Team believed had the potential to reduce mortalities and serious injuries of marine mammals (PLTRT, 2016).

3. *Implement terminal gear requirements for the EEZ portion of the Florida East Coast, South Atlantic Bight, Mid-Atlantic Bight, and Northeast Coastal fishing areas with the goal of making the hooks the weakest part of the terminal gear. These terminal gear requirements include requirements for circle hooks with a round wire diameter not to exceed 4.05mm if 16/0 and 4.40mm if 18/0 and a straightening force not to exceed 300 lb, and a minimum diameter of 1.8 mm and a breaking strength of at least 300 lb for monofilament leaders and branch lines (i.e., gangions).*

Though not included in the original plan, the Team recommended that NMFS implement terminal gear requirements in order to enable hooks to straighten before leaders break, because interactions with marine mammals are less likely to result in a serious injury when straightened hooks are returned from a hooking event (NMFS, 2014). If the gangions (*i.e.*, leaders and branch lines) are strong relative to the hook strength during a marine mammal hooking or entanglement, tension could be placed on the line (without the line breaking) to allow the hook to straighten, or the animal could be brought close to the vessel for disentanglement and/or dehooking attempts. Therefore, by limiting wire diameter and the straightening force of hooks, and increasing gangion size and strength, the proposed regulation aims to reduce line breaks and, in the event of lines breaks, increase the likelihood that the hook would straighten beforehand, thereby avoiding serious injury.

Public Comments Solicited

NMFS is soliciting comments on this proposed rule. Specifically, because the intention behind implementing the terminal gear requirements is to ensure that a hook caught on a short-finned pilot whale will straighten before the gangion breaks, NMFS is requesting comments regarding whether the proposed strength for gangions (at least 300 lb, based on manufacturer specifications when new) is sufficient for ensuring that the proposed hooks (with a straightening force not to exceed 300 lb based on manufacturer's specifications when new and a diameter not to exceed 4.05 mm if 16/0 or 4.4 mm if 18/0) will straighten before the gangion breaks. NMFS will consider these comments and the need to make changes in the final rule. Additionally, NMFS will be considering a delayed implementation of the proposed terminal gear requirements. Therefore, NMFS is also requesting comments concerning the length of time necessary for hook manufacturers to produce and supply hooks that meet the new specifications as well as the length of time the industry would need to implement the use of hooks and gangions that meet new specifications in the fishery.

Lastly, the proposed rule defines four fishing areas: Northeast Coast (NEC), Mid-Atlantic Bight (MAB), South Atlantic Bight (SAB), and Florida East Coast (FEC). The proposed definitions are modeled after an existing regulatory definition of the MAB in the Atlantic Highly Migratory Species regulations, 50 CFR 635.2. NMFS is seeking comment on whether it would be helpful to the regulated community to further clarify these definitions in the final rule by providing more specific references to the latitude and longitude coordinates reflected on the charts in the draft Environmental Assessment. NMFS is not proposing changing the geographic areas, but is requesting comments regarding the clarity of the manner in which the areas are defined as well as the consistency of the definitions.

Classifications

A draft Environmental Assessment has been prepared, analyzing the impacts on the human environment that would result from this action and determining that the action will not

have significant environmental impacts upon implementation of the action.

Pursuant to section 307 of the Coastal Zone Management Act, NMFS has determined that this proposed rule is consistent with the enforceable policies of the approved coastal management programs of Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, New Hampshire, Massachusetts, and Maine. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications under Executive Order 13132. The proposed rule would apply in the Exclusive Economic Zone beyond state jurisdiction.

This proposed rule does not contain any new collection-of-information requirements for the purposes of the Paperwork Reduction Act.

This rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

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

This rulemaking would directly apply to commercial fishing businesses (NAICS 11411) that operate vessels that use pelagic longline gear to harvest Atlantic HMS species within four specific areas of the EEZ. Any business with a vessel that uses pelagic longline to harvest tuna or swordfish must have an Atlantic tuna longline permit, a shark (directed or incidental) permit, and a swordfish (directed or incidental) permit.

The number of Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline fishery vessels in the Gulf of Mexico and the Atlantic, with annual landings of HMS is

substantially less than the number of vessels permitted to do so. In 2016, 85 (33.7 percent) of 252 pelagic longline vessels were active, and in 2017, 88 (34.8 percent) of 253 pelagic longline vessels were active. This analysis uses the 2017 figure of 88 active vessels, which can be found in the Regulatory Flexibility Analysis done for Amendment 11 to the 2006 Consolidated Highly Migratory Fishery Management Plan. NMFS estimates that 76 businesses operate the 88 active vessels.

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliated operations, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. The maximum annual revenue for any pelagic longline vessel between 2006 and 2016 was less than \$1.9 million, well below the \$11 million small business size standard for commercial fishing businesses established by NMFS. Therefore, 76 small commercial fishing businesses operate the 88 pelagic longline fishing vessels that could be directly affected by the rulemaking.

Currently, a pelagic longline fishing vessel cannot fish in the CHSRA if it does not or cannot accommodate an observer assigned under the special observer requirements (50 CFR 229.36(d)). Additionally, fishermen must call NMFS SEFSC at least 48 hours (and no more than 96 hours) prior to embarking on their fishing trip to provide sufficient notice and time to arrange for special observers, who may conduct scientific research aboard the fishing vessel. If upon calling in, the vessel is assigned an observer, it must take the observer during that fishing trip. If the vessel does not take the observer, it is prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that trip. The proposed rule removes the CHSRA and its associated special observer and research participation requirements, including the advance notice requirements, which would give the small commercial fishing businesses flexibility to fish in

those waters at times more effective for them. Therefore, the removal of the CHSRA is expected to have no adverse, and slightly beneficial, economic impacts on any of the small businesses that operate the 88 pelagic longline fishing vessels.

Operators of Atlantic pelagic longline fishing vessels are currently allowed to deploy sets with multiple mainlines at one time, but each mainline length must not exceed 20 nm (37.04 km) in the EEZ portion of the MAB (50 CFR 229.36(e)). That has allowed pelagic longline fishing vessels to use longer lengths of active gear (leaders and hooks in the water) across sets with multiple mainlines. Consequently, there have been pelagic longline fishing vessels deploying pelagic longline fishing sets with two mainline and more than 20 nm of active gear. The proposed rule would, in the MAB, prohibit pelagic longline sets with more than one mainline in the water at a time. It would also increase both the maximum length of a single mainline set from 20 nm (37.04 km) to 32 nm (59.26 km) and maximum length of active gear from 20 nm (37.04 km) to 30 nm (55.56 km), but require that any active gear in excess of 20 nm (37.04 km) be separated from other active gear by a gap of at least 1 nm with no active gear. The proposed rule is expected to have an adverse impact on 101 reported multiple mainline sets deployed in the MAB by reducing the length of active gear by 4 nm per mainline set (because these mainline sets are currently deployed two at a time and collectively have more than 30 nm of active gear). The combined 404 nm reduction represents a reduction of total active gear in the MAB by 1.4 percent. If there is a one-to-one correspondence between the length of active gear and dockside revenue from HMS harvested by that gear, there would be a corresponding 1.4 percent decrease in dockside revenue annually from HMS harvested within the MAB. When mainline sets and landings from outside the MAB are included, that percentage declines significantly. The proposed rule would also affect 1,200 reported single mainline sets deployed in the MAB by increasing the active gear from 1 nm up to a maximum of 10 nm per mainline set. Those increases would result in an increase in total active gear deployed in the MAB by those 1,200 reported single mainline sets ranging from 180 to 1,800 nm, and those increases represent a

range from 0.6 percent to 6.2 percent of total annual active gear deployed in the MAB, and potentially 0.6 percent to 6.2 percent increases in dockside revenue from HMS landed from the pelagic longline sets. When all 1,573 average reported pelagic longline sets in the MAB are combined, the proposed rule would result in a change in the amount of active gear deployed in the MAB by the 88 pelagic longline fishing vessels ranging from a reduction of 0.7 percent to a gain of 4.8 percent. When pelagic longline sets and active gear deployed outside the MAB by these vessels are included in the total from all areas, these percentages decline significantly.

The proposed rule would implement terminal gear requirements for leaders and hooks designed to make the hook the weakest part of the terminal gear in the EEZ portion of the FEC, MAB, NEC, and SAB areas. Hooks used in these areas would be required to meet the following criteria: to (i) 16/0 or 18/0 circle hooks with hook shanks containing round wire that can be measured with a caliper or other appropriate gauge, with a wire diameter not to exceed 4.05 mm if 16/0 or 4.4 mm if 18/0; and (ii) a straightening force not to exceed 300 lb, based on manufacturer's specifications. The proposed action would affect the small businesses with pelagic longline fishing vessels that presently use hooks in the FEC, MAB, NEC and SAB that do not meet the additional specifications. Currently manufactured hooks that meet the additional specifications include the Mustad 39960D 16/0, Mustad 39988D 16/0, and Eagle-Claw L2048LM 16/0. NMFS assumes that none of the sets deployed in the four areas use hooks that meet the proposed criteria, although 25 percent or more may be a more likely figure. The price of a box or pack of 1,000 of the new hooks is estimated to range from \$450 to \$550 per box and is expected to be, on average, \$20 to \$25 more than a box of 1,000 of the currently used hooks. The average number of hooks per set in each of the four areas (FEC, MAB, NEC, and SAB) is much less than 1,000: 671 (FEC), 622 (MAB), 905 (NEC), and 808 (SAB). Thus, NMFS expects that one box of hooks is sufficient to equip a pelagic longline fishing vessel for its first trip with the new hooks. The combined additional annual cost to 88 pelagic longline fishing vessels would be \$1,760 to \$2,200 (2018 \$) for the first boxes of new hooks. Hooks are lost or

damaged during a trip and need replacement. NMFS estimates that the difference in the costs of replacing the new hooks versus replacing the currently used hooks is approximately equivalent to the cost of purchasing a box of the new hooks every sixth to seventh trip, which is \$20 to \$25 (2018 \$) more per sixth or seventh trip. An annual average of 937 trips are made in the combined areas, and NMFS estimates that each of the 88 pelagic longline fishing vessels makes 10 to 11 trips in the areas annually. Hence, the average pelagic longline fishing vessel has to buy an additional two boxes to replace hooks that are lost or damaged a year. The component of the proposed rule to require hooks meeting new specifications is expected to result in increased annual costs ranging from 0.07 percent to 0.09 percent per vessel.

Currently, pelagic longline fishing vessels that fish in the EEZ portion of the FEC, MAB, NEC and SAB can use monofilament nylon leaders of unspecified diameters, which can result in leaders being the weakest component of active gear. The proposed rule would require the pelagic longline fishing vessels in the EEZ portion of the FEC, MAB, NEC and SAB to use monofilament nylon leaders and/or branch lines that all have a diameter of 1.8 mm or larger (certified by the manufacturer to at least 300 lb test strength when new) in those areas. No other line material could be used, but crimps and chafing gear would be allowed. NMFS expects that almost all to all of the pelagic longline fishing vessels that fish in the four areas use monofilament nylon leaders with diameters and a breaking force of at least 300 lb. Consequently, this component of the proposed rule is expected to have little to no additional economic effects.

In summary, an estimated 88 pelagic longline fishing vessels owned by 76 small businesses would be directly affected by this proposed rule, and they represent approximately 36 percent of the 248 permitted vessels and 214 small businesses in the pelagic longline fleet. The elimination of the CHSRA and associated requirements and the monofilament leader and/or branch line requirement, combined, are expected to have little to no additional economic impacts. The changes to mainline length restrictions would cause a change in the amount of

active gear deployed within the MAB ranging from a 0.7 percent decrease to a 4.8 percent increase. Assuming a constant one-to-one correspondence between the length of active gear and dockside revenue, a corresponding change in dockside revenue from HMS harvested from the MAB would range from a 0.7 percent reduction to a 4.8 percent increase. When dockside revenues from HMS harvested from outside the MAB are included, however, the percentages of the net reduction or net gain decline significantly. Implementing the hook requirements could increase the annual hook cost of 88 pelagic longline vessels that fish in the FEC, MAB, NEC, and SAB by \$60 to \$75 per vessel, which represents from 0.07 percent to 0.08 percent of annual trip costs. Combined, the actions are expected to have a net benefit for the affected small businesses. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

References

A complete list of all references cited in this proposed rule, along with other supporting documents can be found in the Federal eRulemaking Portal at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0105 and is available upon request from the NMFS Southeast Regional Office in St. Petersburg, FL (see **ADDRESSES**).

List of Subjects in 50 CFR Part 229

Administrative practice and procedure; Fisheries; Marine mammals; Pelagic Longline

Dated: November 23, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service

For the reasons set out in the preamble, NOAA proposes to amend 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: 16 U.S.C. 1361 *et seq.*

2. In § 229.3, revise paragraph (t)(2) and paragraph (u) to read as follows:

§ 229.3 Prohibitions.

* * * * *

(t) * * *

(2) Complies with the requirements specified in § 229.36(d) and (e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Northeast Coastal, South Atlantic Bight, or Florida East Coast fishing areas unless the vessel:

(1) Complies with the placard posting requirement specified in § 229.36(c); and

(2) Complies with the requirements specified in § 229.36(d).

* * * * *

3. In § 229.36:

a. Revise paragraph (a);

b. Revise paragraphs (b)(1) through (b)(4);

c. Add paragraph (b)(5);

d. Revise paragraphs (d) and (e).

The additions and revisions read as follows:

§ 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

(a) *Purpose and scope.* The purpose of this section is to implement the PLTRP to reduce incidental mortality and serious injury of short-finned pilot whales in the Atlantic pelagic longline fishery off the U.S. East Coast, a component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. The requirements in this section apply to the owner or operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas,

swordfish, or shark permit under § 635.4 of this title and that has onboard pelagic longline gear as defined at § 635.2 of this title in the EEZ (as defined in § 600.10 of this title).

(b) * * *

(1) *Northeast Coastal (NEC)* means the area bounded by straight lines connecting the northeast states' internal waters extending between 71° W. long. and 60° W. long. and between 35° N. lat. and 45° N. lat. It also includes the box described by straight lines connecting 65° W. long. and 60° W. long. and between 45° N. lat. and 50° N. lat.

(2) *Mid-Atlantic Bight (MAB)* means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. Between 35° N. lat. and 43° N. lat.

(3) *South Atlantic Bight (SAB)* means the area bounded by straight lines connecting the south-Atlantic states' internal waters and extending to 71° W. long. between 30° N. lat. and 35° N. lat.

(4) *Florida East Coast (FEC)* means the area bounded by straight lines connecting Florida's internal waters and between 82° W. long. and 71° W. long. and between 22° N. lat. and 30° N. lat.

(5) *Active Gear* means mainline in the water with gangions or hooks attached.

* * * * *

(d) *Hook and gangion requirements.* Vessels operating in the EEZ (as defined in § 600.10 of this title) portion of the NEC, MAB, SAB and FEC areas can only possess, use, and deploy hooks and gangions that meet the following specifications:

(1) *Hooks.* The hook shank must be constructed of corrodible round wire stock that can be measured with a caliper or other appropriate gauge and meet the following specifications:

(i) The round wire stock of a 16/0 circle hook must not exceed 4.05 mm (0.159 in) in diameter and straighten with a force not to exceed 300 lb, based on manufacturer specifications when new.

(ii) The round wire stock of a 18/0 circle hook must not exceed 4.40 mm (0.173 in) in diameter and straighten with a force not to exceed 300 lb, based on manufacturer specifications when new.

(2) *Gangions*. Any gangion, as defined at 50 CFR 635.2, must meet all of the following specifications:

(i) Made of monofilament nylon. No other line material (*e.g.*, wire) may be used; however, crimps and chafing gear are allowed.

(ii) Have a diameter of 1.8 mm or larger.

(iii) Have a breaking strength of at least 300 lb, based on manufacturer specifications when new.

(3) *Exception for transit*. If pelagic longline gear is appropriately stowed, a vessel may transit through the NEC, MAB, SAB, and FEC without meeting the gear requirements specified in this paragraph. For the purpose of this paragraph, transit means non-stop progression through an area without any fishing activity occurring. Longline gear is stowed appropriately if all gangions and hooks are disconnected from the mainline and are stowed on or below deck, hooks are not baited, and all buoys and weights are disconnected from the mainline and drum (buoys may remain on deck).

(4) *Exception for research*. No person may possess, use, or deploy hooks other than what is described in this section unless they have a written letter of authorization on board from the Southeast Regional Administrator to conduct scientific or gear research for reducing the bycatch in the pelagic longline fishery. In order to obtain a written letter of authorization, the research must be consistent with the regulations at 50 CFR part 635 and be designed to advance the long-term goal of reducing mortalities and serious injuries of short-finned pilot whales in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate, or reduce the bycatch of other listed, threatened, or protected species in the Atlantic pelagic longline fishery.

(e) *Mainline gear restrictions.* Vessels operating in the EEZ (as defined in § 600.10 of this title) portion of the MAB may not deploy pelagic longline gear unless the gear meets the following mainline specifications:

(1) There can only be one piece of mainline in the water at any time. If the gear breaks or parts after setting, the vessel owner or operator must make every effort to remove the additional portions of the gear as soon as possible.

(2) Mainline length cannot exceed 32 nm.

(3) There can be no more than 30 nm of active gear.

(4) A section of active gear cannot exceed 20 nm.

(5) Between any two parts of active gear, there must be a gap of at least 1 nm.

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