



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 240624-0175]

RIN 0648-BN14

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: Final rule; delay of effective date.

SUMMARY: We, NMFS, are delaying the effective date of terminal gear requirements that amend the Pelagic Longline Take Reduction Plan (PLTRP) regulations in a final rule that published on June 6, 2023.

DATES: The effective date of the regulatory requirements contained in 50 CFR 229.36(d) that was published in a final rule at 88 FR 36965 on June 6, 2023, is delayed until January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Erin Fougères, NMFS, Southeast Region, at 727-824-5312 or erin.fougeres@noaa.gov, or Kristy Long, NMFS, Office of Protected Resources at 206-526-4792 or kristy.long@noaa.gov. 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: On June 6, 2023, we published a final rule to amend the PLTRP (88 FR 36965). The PLTRP is required under section 118 of the Marine Mammal Protection Act (MMPA) to reduce mortality and serious injury (M/SI)

of short-finned pilot whales (*Globicephala macrorhynchus*) incidental to the Atlantic portion of the Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery. Regulatory requirements in the amended PLTRP were effective on July 6, 2023, except for the requirements contained in 50 CFR 229.36(d), implementing terminal gear restrictions, which were to become effective on July 8, 2024 (88 FR 36965).

The terminal gear requirements contained in 50 CFR 229.36(d) require: (1) circle hooks must have a round wire diameter not to exceed 4.05 millimeters (mm; 0.159 inches (in)) if the hooks are size 16/0, or 4.40 mm (0.173 in) if the hooks are size 18/0, and must have a straightening force not to exceed 300 pounds (lb; 136.08 kilograms (kg)); and (2) monofilament leaders and branch lines (*i.e.*, gangions) must have a minimum diameter of 1.8 mm (0.071 in) and a breaking strength of at least 300 lb (136.08 kg). These requirements apply to the U.S. exclusive economic zone (EEZ) portions of the Northeast Coastal (NEC), Mid-Atlantic Bight (MAB), South Atlantic Bight (SAB), and Florida East Coast (FEC) pelagic longline statistical areas, which together compose the entirety of the U.S. Atlantic EEZ (east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico as defined in 50 CFR 600.105(c)).

In the proposed rule to amend the PLTRP, we sought comments on the length of time necessary for manufacturers and industry to implement the new terminal gear regulations. Two commenters noted that manufacturers may need time to produce new hooks, but were concerned about additional delays to implementing regulations. Two additional commenters suggested that at least 1 full year was needed to plan and implement the hook design and allow fishermen time to work through existing inventories of hooks that would not meet the new regulatory requirements. These same commenters recommended that the fishery be given no less than 18 months following the publication of the final rule to implement the new hook requirements. In an effort to

balance the conservation needs for the species and the practical and economic needs of the pelagic longline industry, we decided to delay the implementation of these terminal gear requirements by 12 months. Our final rule, which was published on June 6, 2023, and became effective on July 6, 2023, specified an effective date for the new terminal gear requirements of July 8, 2024.

Currently, some hooks that meet the specifications contained in 50 CFR 229.36(d) are available, although they are available in limited quantities and are not preferred broadly across the fishery. A primary hook manufacturer for the Atlantic pelagic longline fishing industry, did not have a 16/0 or 18/0 circle hook that met the hook regulations required by the PLTRP amendments and, thus, needed to design, test, and manufacture new, compliant hooks. Although that process began at the time of publication of the final rule, as of May 31, 2024, those new, compliant hooks remain unavailable for purchase due to manufacturing delays. Compliant hooks are projected to be available for sale in sufficient quantities to meet the Atlantic pelagic longline fishery's needs shortly prior to the original July 8, 2024 effective date. However, we have determined that fishermen will not have sufficient time to phase out old hooks and implement new hooks before July 8, 2024, as intended by the final rule. Fishermen could purchase the new, compliant hooks if they become available before July 8, 2024, but changing them over and replacing non-compliant hooks would be labor intensive and costly. Therefore, we are delaying the effective date of the terminal gear requirements contained in 50 CFR part 229.36(d) until January 1, 2025, to allow fishermen to purchase new, compliant hooks, once they become available, and to phase in their use as older hooks need to be replaced, as originally intended by the final rule.

We expect that the impact of delaying the marine mammal protections afforded by the terminal gear requirements until January 1, 2025, will be minor. Based on data from 2015 through 2019, the Potential Biological Removal (PBR) for the western North

Atlantic stock of short-finned pilot whales is 236 and the average annual M/SI incidental to the Atlantic pelagic longline fishery was 136 animals (Hayes *et al.*, 2022). Therefore, the western North Atlantic stock is not a strategic stock under the MMPA because the mean annual human-caused M/SI does not exceed PBR. More recently, NMFS confirmed that there were 15 observed hooked or entangled short-finned pilot whales in the Atlantic pelagic longline fishery in 2022, and 17 observed hooked or entangled short-finned pilot whale in 2023. Serious injury determinations for these have not been completed or been extrapolated to overall bycatch estimates yet; however, they are lower than the observed hooked or entangled short-finned pilot whales in 2021 and 2020, despite consistent observer coverage in 2022 and 2023. Therefore, although delaying the effective date of the terminal gear requirements by an additional 6 months will delay protections afforded by the regulations, M/SI of the western north Atlantic short-finned pilot whale stock is not expected to exceed PBR and is not expected to suffer serious adverse effects. In addition, although the effective date will be delayed by approximately 6 months until January 1, 2025, we anticipate that fishermen will begin to purchase and utilize the new hooks once they become available, to replace older hooks that are lost, bent or broken. Therefore, some of the protections afforded by the regulations to short-finned pilot whales are likely to occur before January 1, 2025.

In summary, we are delaying the effective date for the terminal gear requirements contained in 50 CFR part 229.36(d) in the amended PLTRP published on June 6, 2023 (88 FR 36965) for 6 months, until January 1, 2025, due to hook manufacturing delays. This delay in effective date will allow pelagic longline fishermen to purchase compliant hooks, once available, and to phase in their use. Although delaying the effective date will delay marine mammal protections afforded by the regulation, the impact is expected to be minor. We intend to provide no further extensions of the effective date beyond January 1, 2025.

Administrative Procedure Act

The Assistant Administrator for Fisheries (AA) finds that there is good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary delay is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule that published at 88 FR 36965 on June 6, 2023, has already been subject to notice and comment, and all that remains is to notify the public of this delay in the effective date of the previously noticed regulations. Providing additional prior notice and opportunity for public comment is contrary to the public interest because there is a need to immediately implement this action to delay the July 8, 2024, the effective date of the terminal gear requirements contained in 50 CFR 229.36(d) and to provide notice of the delay to affected fishery participants. Failure to extend the effective date risks inflicting potentially serious economic costs on the fishing industry, which were not intended or analyzed when the final rule was published, in the form of missed fishing opportunities and higher gear transition costs. We are temporarily delaying the effective date (see **DATES** section) of the regulatory requirements contained in 50 CFR 229.36(d) to provide fishers with additional time to obtain and incorporate newly manufactured hooks that meet the regulatory specifications.

For these same reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

References

Hayes, S.A., Josephson, E., Maze-Foley, K., Rosel, P.E., and Wallace, J. 2022. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2021. NOAA Technical Memorandum NMFS-NE-288.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: June 25, 2024.

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National Marine Fisheries Service.

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