

determinations under this part that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under the Act.

Subpart B—Takes of Endangered and Threatened Marine Mammals

§ 229.20 Issuance of permits.

(a) *Determinations.* During a period of up to 3 consecutive years, NMFS will allow the incidental, but not the intentional, taking by persons using vessels of the United States or foreign vessels that have valid fishing permits issued by the Assistant Administrator in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)), while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 if the Assistant Administrator determines that:

(1) The incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(2) A recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(3) Where required under regulations in subpart A of this part:

(i) A monitoring program has been established under § 229.7;

(ii) Vessels engaged in such fisheries are registered in accordance with § 229.4; and

(iii) A take reduction plan has been developed or is being developed for such species or stock in accordance with regulations at subpart C of this part.

(b) *Procedures for making determinations.* In making any of the determinations listed in paragraph (a) of this section, the Assistant Administrator will publish an announcement in the FEDERAL REGISTER of fisheries having takes of marine mammals listed under the Endangered Species Act, including a summary of available information regarding the fisheries interactions with listed species. Any interested party

may, within 45 days of such publication, submit to the Assistant Administrator written data or views with respect to the listed fisheries. As soon as practicable after the end of the 45 days following publication, NMFS will publish in the FEDERAL REGISTER a list of the fisheries for which the determinations listed in paragraph (a) of this section have been made. This publication will set forth a summary of the information used to make the determinations.

(c) *Issuance of authorization.* The Assistant Administrator will issue appropriate permits for vessels in fisheries that are required to register under § 229.4 and for which determinations under the procedures of paragraph (b) of this section can be made.

(d) *Category III fisheries.* Vessel owners engaged only in Category III fisheries for which determinations are made under the procedures of paragraph (b) of this section will not be subject to the penalties of this Act for the incidental taking of marine mammals to which this subpart applies, as long as the vessel owner or operator of such vessel reports any incidental mortality or injury of such marine mammals in accordance with the requirements of § 229.6.

(e) *Emergency authority.* During the course of the commercial fishing season, if the Assistant Administrator determines that the level of incidental mortality or serious injury from commercial fisheries for which such a determination was made under this section has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Assistant Administrator will use the emergency authority of § 229.9 to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(f) *Suspension, revocation, modification and amendment.* The Assistant Administrator may, pursuant to the provisions of 15 CFR part 904, suspend or revoke a permit granted under this section if the Assistant Administrator determines that the conditions or limitations set forth in such permit are not being complied with. The Assistant Administrator may amend or modify,

after notification and opportunity for public comment, the list of fisheries published in accordance with §229.21(b) whenever the Assistant Administrator determines there has been a significant change in the information or conditions used to determine such a list.

(g) *Southern sea otters*. This subpart does not apply to the taking of Southern (California) sea otters.

Subpart C—Take Reduction Plan Regulations and Emergency Regulations

§229.31 Pacific Offshore Cetacean Take Reduction Plan.

(a) *Purpose and scope*. The purpose of this section is to implement the Pacific Offshore Cetacean Take Reduction Plan. Paragraphs (b) through (d) of this section apply to all U.S. drift gillnet fishing vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. For purposes of this section, the fishing season is defined as beginning May 1 and ending on January 31 of the following year.

(b) *Extenders*. An *extender* is a line that attaches a buoy (float) to a drift gillnet's floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum of 36 feet (10.9 m) below the surface of the water.

(c) *Pingers*. (1) For the purposes of this paragraph (c), a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (\pm 2 kHz) sound at 132 dB (\pm 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (+ 15 milliseconds), and repeating every 4 seconds (+ .2 seconds); and remains operational to a water depth of at least 100 fathoms (600 ft or 182.88 m).

(2) While at sea, drift gillnet vessels with gillnets onboard must carry enough pingers to meet the configuration requirements set forth under paragraph (c)(3) of this section.

(3) Pingers must be attached on or near the floatline and on or near the leadline and spaced no more than 300 ft (90.9 m) apart. Pingers attached on ex-

tenders, or attached to the floatline with lanyards, must be within 3 ft (0.91 m) of the floatline. Pingers attached with lanyards to the leadline must be within 6 ft (1.82 m) of the leadline. Pingers on or near the floatline and on or near the leadline must be staggered, such that the horizontal distance between a pinger on or near the floatline and a pinger on the leadline is no more than 150 ft (45.5 m). Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

(4) The pingers must be operational and functioning at all times during deployment.

(5) If requested, NMFS may authorize the use of pingers with specifications or pinger configurations differing from those set forth in paragraphs (c)(1) and (c)(3) of this section for limited, experimental purposes within a single fishing season.

(d) *Skipper education workshops*. After notification from NMFS, vessel operators must attend a skipper education workshop before commencing fishing each fishing season. For the 1997/1998 fishing season, all vessel operators must have attended one skipper education workshop by October 30, 1997. NMFS may waive the requirement to attend these workshops by notice to all vessel operators.

[62 FR 51813, Oct. 3, 1997, as amended at 63 FR 27861, May 21, 1998]

§229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Regulated waters*. The regulations in this section apply to all U.S. waters except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters*. The regulations in this section do not apply to waters landward of the following lines:

Maine and New Hampshire

44° 49.52' N 66° 56.10' W TO 44° 48.90' N 66° 57.00' W
 44° 38.60' N 67° 11.50' W TO 44° 36.26' N 67° 15.70' W
 44° 36.26' N 67° 15.70' W TO 44° 27.80' N 67° 32.85' W
 44° 27.80' N 67° 32.85' W TO 44° 26.48' N 67° 36.00' W
 44° 26.48' N 67° 36.00' W TO 44° 21.75' N 67° 51.85' W