

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 230**

[Docket No. 001120325-1290-03, I.D. 111901B]

**Whaling Provisions: Aboriginal Subsistence Whaling Quotas**

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

**ACTION:** Aboriginal subsistence whaling quota.

**SUMMARY:** NMFS announces a 2001-2002 aboriginal subsistence whaling quota for gray whales of five gray whales landed. This quota and other management provisions govern the harvest of gray whales by members of the Makah Indian Tribe (Tribe).

**DATES:** Effective for 1 year beginning December 12, 2001.

**ADDRESSES:** Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Chris Yates, (301) 713-2322.

**SUPPLEMENTARY INFORMATION:** Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*) and by regulations at 50 CFR part 230. The rules require the Secretary of Commerce to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the International Whaling Commission (IWC).

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of gray whales from the Eastern stock in the North Pacific. This action by the IWC, thus, authorized aboriginal subsistence whaling by the Tribe for gray whales and is discussed in greater detail in the **Federal Register** notification of aboriginal subsistence whaling quotas for 1999 (64 FR 28413, May 26, 1999).

On June 9, 2000, the United States Court of Appeals for the Ninth Circuit ruled that the Department of Commerce's environmental assessment (EA) under the National Environmental Policy Act (NEPA) should have been completed before entering into a cooperative agreement with the Makah Tribe. The Court ordered the agency to prepare a new NEPA document under circumstances that would ensure an

objective evaluation of the environmental consequences of the gray whale harvest.

NOAA set the 2000 quota at zero (65 FR 75186, December 1, 2000) and set the 2001 quota at zero (66 FR 14862, March 14, 2001) pending completion of the NEPA analysis.

NOAA completed a draft EA on January 12, 2001, and solicited public comments. A final EA was issued on July 12, 2001, and selected a preferred alternative allowing the take of up to five whales per year for the years 2001 and 2002. Following the completion of this EA, NOAA and the Tribe entered into a cooperative agreement governing the conduct of the hunt.

The agreement provides that the Makah Tribal Council, in cooperation with NOAA, will manage the gray whale hunts under the 1997 IWC quota and the aboriginal subsistence whaling regulations set forth at 50 CFR Part 230, and details inspection and reporting requirements and enforcement procedures. In addition, the Council will license and regulate Tribal whalers, according to the Management Plan for Makah Treaty Gray Whale Hunting for the Years 1998-2002, as amended by Council Resolution No. 57-01 on May 30, 2001.

Dated: December 7, 2001.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 010710169-1169-01; I.D. 060401B]

RIN 0648-AP31

**Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures**

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

**ACTION:** Emergency rule; extension of expiration date; request for comments.

**SUMMARY:** NMFS extends the expiration date of the emergency rule that closed the Northeast Distant Statistical Reporting (NED) Area to pelagic longline fishing, required modifications in deploying pelagic longline fishing

gear, and required sea turtle handling and release guidelines for bottom and pelagic longline fisheries to be posted in the wheelhouse. This extension is necessary to maintain the reduction in bycatch and bycatch mortality of loggerhead and leatherback sea turtles in the Atlantic bottom and pelagic longline fisheries as required by the June 14, 2001, Biological Opinion (BiOp).

**DATES:** The expiration date of the emergency rule published July 13, 2001 (66 FR 36711), is extended to July 8, 2002. Comments must be received no later than 5 p.m. on February 11, 2002.

**ADDRESSES:** Written comments on this action must be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the environmental assessment and regulatory impact review prepared for the July 13, 2001, emergency rule may be obtained from Tyson Kade at the same address.

**FOR FURTHER INFORMATION CONTACT:** Tyson Kade or Karyl Brewster-Geisz at 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

**Pelagic Longline Fishery**

Pelagic longline gear is a type of commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target highly migratory species (HMS). The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target yellowfin tuna, bigeye tuna, sharks, or swordfish.

Data collected through observer and vessel logbook programs indicate that pelagic longline fishing for Atlantic swordfish and tunas often results in the catch of non-target finfish species, including sharks, bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and