

at \$ 433.50 through \$ 433.74 of this chapter.

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(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 17, 2008.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: May 21, 2008.

**Michael O. Leavitt,**

*Secretary.*

**Editorial Note:** This document was received in the Office of the Federal Register on Wednesday, December 10, 2008.

[FR Doc. E8-29662 Filed 12-15-08; 11:15 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### 49 CFR Parts 1520 and 1580

[Docket No. TSA-2006-26514; Amendment nos. 1520-6, 1580-1]

**RIN 1652-AA51**

#### Rail Transportation Security

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Transportation Security Administration (TSA) extends the December 26, 2008 effective date of one section of the final rule entitled "Rail Transportation Security," published in the **Federal Register** on November 26, 2008, 73 FR 72131, until April 1, 2009. This extension of the effective date is to afford affected freight railroad carriers, rail hazardous materials shippers, and rail hazardous materials receivers additional time to conduct training and implement procedures to come into compliance with the chain of custody and control requirements of the rule.

**DATES:** The effective date of 49 CFR 1580.107 of the final rule published in the **Federal Register** on November 26, 2008, at 73 FR 72131 is delayed until April 1, 2009. The effective date of the amendment to 49 CFR part 1520 and the effective date of all other sections of 49 CFR part 1580 remains December 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** *For questions related to freight rail security:* Scott Gorton, Transportation Sector Network Management, Freight Rail Security, TSA-28, Transportation Security Administration, 601 South

12th Street, Arlington, VA 20598-6028; telephone (571) 227-1251; facsimile (571) 227-1923; e-mail [freightrailsecurity@dhs.gov](mailto:freightrailsecurity@dhs.gov).

*For questions related to passenger rail security:* Morvarid Zolghadr, Mass Transit and Passenger Rail Security, TSA-28, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6028; telephone (571) 227-2957; e-mail [passengerrailcomments@dhs.gov](mailto:passengerrailcomments@dhs.gov).

*For questions related to SSI:* Andrew E. Colsky, Office of the Special Counselor, SSI Office, TSA-31, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6031; telephone (571) 227-3513; facsimile (571) 227-2945; e-mail [SSI@dhs.gov](mailto:SSI@dhs.gov).

**SUPPLEMENTARY INFORMATION:** On November 26, 2008, TSA issued its Rail Transportation Security rule. 73 FR 72130. The effective date to comply with all provisions of the final rule was December 26, 2008.

The final rule on rail transportation security included a section to require a secure chain of physical custody for rail cars containing one or more rail security-sensitive materials. *See* 49 CFR 1580.107. On December 11, 2008, the Association of American Railroads and its member freight railroads requested that TSA delay the effective date of this provision. They presented information indicating that the initial 30-day period for compliance did not afford sufficient time for railroad carriers to implement procedures and train their workforce to meet the new regulatory requirement.

TSA recognizes that the affected regulated parties would have significant difficulty in complying with the chain of custody and control requirements in the time specified, and has decided to extend the effective date for compliance with 49 CFR 1580.107 to April 1, 2009.

Issued in Arlington, Virginia, on December 15, 2008.

**John Sammon,**

*Assistant Administrator.*

[FR Doc. E8-30156 Filed 12-18-08; 8:45 am]

**BILLING CODE 9110-05-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 080407531-8840-02]

**RIN 0648-AW68**

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan

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

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) issues this final rule amending the Bottlenose Dolphin Take Reduction Plan's (BDTRP) implementing regulations by extending, for an additional three years, fishing restrictions expiring on May 26, 2009. This action continues, without modification, current nighttime fishing restrictions of medium mesh gillnets operating in the North Carolina portion of the Winter-Mixed Management Unit during the winter. Medium mesh fishing restrictions are extended for an additional three years to ensure continued conservation of the Western North Atlantic coastal bottlenose dolphin stock, should a directed spiny dogfish fishery reemerge in North Carolina.

**DATES:** This final rule is effective January 20, 2009.

**ADDRESSES:** Copies of the proposed rule to amend the BDTRP, the final BDTRP, Environmental Assessment, BDTRP meeting summaries, and background documents can be downloaded from the Take Reduction Plan web site at: <http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Stacey Carlson, NMFS, Southeast Region, 727-824-5312, [Stacey.Carlson@noaa.gov](mailto:Stacey.Carlson@noaa.gov); or Melissa Andersen, NMFS, Protected Resources, 301-713-2322, [Melissa.Andersen@noaa.gov](mailto:Melissa.Andersen@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:**

## Background

In accordance with section 118(f)(7)(F) of the Marine Mammal Protection Act (MMPA), this final rule implements an amendment to the BDTRP (71 FR 24776) published on April 26, 2006. Details regarding the development and justification of this final rule were provided in the preamble of the proposed rule (73 FR 49634; August 22, 2008) and are not repeated here.

## Extension of Medium Mesh Gillnet Fishing Restrictions in North Carolina

This final rule continues, without modification, current medium mesh nighttime fishing restrictions in North Carolina state waters. Specifically, prohibitions of nighttime medium mesh (greater than 5-inch (12.7 cm) to less than 7-inch (17.8 cm) stretch) gillnets in North Carolina state waters from November 1 through April 30, annually, will continue for an additional three years. These prohibitions are implemented with an expiration date of May 26, 2012. An expiration date is included to ensure the Bottlenose Dolphin Take Reduction Team continues to reexamine the spiny dogfish fishery and determine if these requirements are still necessary and/or sufficient given the dynamic nature of the fishery and its management.

## Comments on the Proposed Rule and Responses

NMFS received five comment letters on the proposed rule via mail, fax, and the Federal eRulemaking Portal. Comments on the proposed rule were received from The Humane Society of the United States, Ocean Conservancy, Marine Mammal Commission, and two citizens.

In addition to receiving the specific comments detailed below, NMFS also received the following: (1) comments in support of developing an innovative take reduction plan to reduce serious injury and mortality of bottlenose dolphins; (2) concern that the BDTRP should be more protective of bottlenose dolphins; (3) a recommendation to pursue consensus recommendations made by the BDTRT at their June 2007 meeting for gear research related to the Summer Northern North Carolina Management Unit and increasing observer coverage in this Management Unit; and (4) a request that NMFS provide updates in this final rule on progress made towards enhancing and increasing observer coverage. After careful consideration, NMFS concluded these comments were previously considered or did not pertain to the

proposed rule to extend the current nighttime medium mesh fishing restrictions in North Carolina state waters for continued conservation of bottlenose dolphins. NMFS continues to make efforts to implement all the BDTRT's consensus recommendations and will provide status updates at the next BDTRT meeting in March 2009.

*Comment 1:* Three commenters recommended NMFS adopt the final rule as proposed.

*Response:* NMFS is finalizing the rule as proposed.

*Comment 2:* Two commenters expressed support for extending the medium mesh gillnet restrictions and believe the fishing restrictions are critical for bottlenose dolphin conservation. Although the commenters are not opposed to extending the restrictions indefinitely, they agree extending the restrictions for three years is important to ensure the BDTRT periodically reviews the status of the spiny dogfish fishery.

*Response:* Extending the medium mesh nighttime gillnet restrictions in North Carolina is necessary to ensure continued conservation of coastal bottlenose dolphins. NMFS also believes establishing a three-year timeframe for the restriction provides the opportunity and assurance for the BDTRT to regularly review the fishing restrictions and spiny dogfish fishery, as well as to evaluate if additional modifications to the BDTRP are warranted due to the dynamic nature of the fishery and its management.

## Changes from Proposed Rule

This action is finalized unchanged from the proposed rule.

### Classification

This final rule was determined not significant for purposes of Executive Order 12866.

As required by section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), an initial regulatory flexibility analysis (IRFA) was prepared, which is based on the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Act Analysis (FRFA) for the BDTRP, dated April 2006. The IRFA described the economic impact the proposed rule, if adopted, would have on small entities. No substantive comments on the IRFA or the economic impacts of the proposed rule were received, and no changes were made to the final rule as a result. A summary of the FRFA follows.

The purpose of this final rule is to reduce serious injuries and mortalities to bottlenose dolphins incidental to commercial fishing operations and

ensure serious injuries and mortalities do not exceed PBR levels, as mandated by the MMPA. The specific objectives of this final action are to: (1) meet the BDTRP's short- and long-term objectives by maintaining reductions in serious injuries and mortalities of dolphins associated with the medium mesh spiny dogfish fishery in North Carolina state waters; and (2) ensure the BDTRT is provided with continued opportunities to review the status of the dynamic spiny dogfish fishery and recommend revisions to the BDTRP, as necessary. These objectives will be accomplished by continuing reduced soak times in medium mesh gillnet gear in North Carolina via the seasonal, nighttime medium mesh gear prohibitions for an additional three years. The MMPA provides the statutory basis for this rule.

This final rule will not impose any additional reporting or recordkeeping requirements. The compliance requirements of the final rule are as described in this analysis.

A total of 1,321 unique participants were identified as having recorded landings using medium mesh gillnet gear during the 2001 fishing season (November 2000 - October 2001) in North Carolina. Total harvests with this gear were valued at approximately \$13.8 million (nominal ex-vessel value), or approximately 18 percent of total fishing revenues by these entities of approximately \$77 million (nominal ex-vessel value). The average annual revenue from the harvest of all marine species by these vessels was approximately \$58,000.

A business involved in fish harvesting 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 \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. All medium mesh gillnet commercial fishing operating in the manner and location encompassed by this final action will be affected by the final rule. The available estimate of the average annual revenues by vessels operating in the medium mesh gillnet commercial fisheries in North Carolina provided above (\$58,000) is from the 2001 fishing season. Since that time, as a result of the implementation of the Spiny Dogfish Fishery Management Plan (FMP) under the Magnuson-Stevens Fishery Conservation and Management Act and a subsequent Interstate Fishery Management Plan for Spiny Dogfish, spiny dogfish fishery revenues have decreased. Therefore, NMFS determined that all entities affected by the final rule

are small businesses. Because all entities affected by the final rule are considered small entities, the issue of disproportional impacts between large and small entities as a result of the final action does not arise.

Information on the current profit profile of participants in the North Carolina medium mesh gillnet fishery is not available. Inferences on the effects of the final rule on profitability of the impacted small entities, however, may be drawn from examination of the expected impacts on ex-vessel revenues. In 2001, total costs associated with harvest reductions (lost ex-vessel revenue) for the medium mesh gillnet fisheries in North Carolina during the winter were estimated to be approximately \$296,000 for the initial implementation of the prohibition in the BDTRP. This reduction in ex-vessel revenues represented less than 1 percent of total ex-vessel revenues for the entities that used this gear in North Carolina during the winter for the 2001 fishing year. Updated analyses are not available. Spiny dogfish were the primary target of the medium mesh gillnet sector, and the spiny dogfish fishery was essentially eliminated in 2000 through regulations implementing the Spiny Dogfish Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act and emergency actions by the Atlantic States Marine Fisheries Commission creating a similar Interstate Fishery Management Plan for Spiny Dogfish. Since then, there has not been a large-scale directed fishery for this species in North Carolina. This prevents meaningful quantification of current revenues that might be foregone as a result of the final action, as well as the identification and description of fishing entities that might desire to re-enter the fishery should the fishery reemerge in North Carolina in the future.

It should be emphasized that this final action is not expected to directly affect any current fishing revenues or fishing practices because the medium mesh spiny dogfish gillnet fishery in North Carolina has not operated since the May 26, 2006, implementation of the BDTRP, nor in any substantive manner since 2000 when the FMPs were implemented. Instead, the continuation of the nighttime fishing prohibition would have an effect only if a directed spiny dogfish fishery reemerges in North Carolina because of changes in Federal or Interstate FMP actions. In that case, the final action will reduce potential medium mesh gillnet fishing opportunities by limiting soak times, and will limit the redevelopment and prosecution of a fishery that, prior to the

FMPs and BDTRP, contributed a relatively minor share of fishing revenues to the fishery participants.

NMFS considered two alternatives for this final action. The first alternative, the status quo, would continue current restrictions until May 26, 2009, when the medium mesh gillnet prohibitions in North Carolina would expire. This alternative would allow increased soak times associated with the directed spiny dogfish fishery and associated revenues, if FMP actions allow for the reemergence of a directed fishery in North Carolina. However, this alternative would not prevent future incidental mortality and serious injury to dolphins from extended soak time of medium mesh commercial gillnet gear, and therefore, would not meet the objectives of the BDTRP. The second alternative, the final action, continues, without modification, current nighttime medium mesh gillnet restrictions in North Carolina state waters during the winter for an additional three years (until May 26, 2012). This is a consensus recommendation of the Bottlenose Dolphin Take Reduction Team and is expected to achieve the BDTRP's objectives, as mandated by the MMPA, by continuing to reduce serious injuries and mortalities of dolphins incidental to commercial gillnet fishing.

NMFS determined this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of North Carolina. NMFS provided a consistency determination to North Carolina's Coastal Zone Management Program under section 307 of the Coastal Zone Management Act and enclosed the following reference information: a summary of the proposed action; the final rule implementing the BDTRP (71 FR 24776, April 26, 2006); and the BDTRP's June 2007 meeting summary. The letter was provided to the State on June 20, 2008. North Carolina did not provide comments; therefore, consistency is inferred.

This action contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132 and a federalism consultation with officials in the state of North Carolina. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials in North Carolina. North Carolina did not respond.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

## List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: December 15, 2008.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 50 CFR part 229 is amended 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; § 229.32(f) also issued under 16 U.S.C. 1531 et seq.

■ 2. In § 229.35 paragraphs (d)(4)(ii) and (d)(5)(i) are revised to read as follows:

### § 229.35 Bottlenose Dolphin Take Reduction Plan.

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

\* \* \* \* \*

(5) \* \* \*

(i) *Medium Mesh Gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

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[FR Doc. E8-30241 Filed 12-19-08; 8:45 am]

BILLING CODE 3510-22-S