

(k) *Cook Inlet* (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

(1) That portion of Unit 16(B) south of the Season: April 2–May 31 Skwentna River and west of the Yentna River That portion of Unit 16(B), and August 1–31 south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska*.

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR Part 100.3].

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands).

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay [Icy Cape to Point Riou], and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay).

(i) Season: glaucous-winged gull, aleutian and arctic tern egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 3. In subpart D, add § 92.32 to read as follows:

**§ 92.32 Emergency regulations to protect Steller's eiders.**

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders, the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or State-wide long-term closures of all subsistence migratory bird hunting. Such closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: May 12, 2009.

**Will Shafroth,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 229**

**[Docket No. 070717352–8886–02]**

**RIN 0648–AV65**

**Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Pelagic Longline 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) announces its determination that the pelagic longline fishery has a high level of mortality and serious injury across a number of marine mammal stocks, and issues the final Atlantic Pelagic Longline Take Reduction Plan (PLTRP) and implementing regulations to reduce serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. The PLTRP is based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team (PLTRT). The PLTRP is intended to meet the statutory mandates and requirements of the Marine Mammal Protection Act (MMPA) through both regulatory and non-regulatory measures, including a special research area, gear modifications, outreach material, observer coverage, and captains' communications.

**DATES:** This final rule is effective June 18, 2009.

**ADDRESSES:** Copies of the Final Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Act (FRFA) analysis are available from Protected Resources Division, NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701–5505. The PLTRP Compliance guide and Pelagic Longline Take Reduction Team (PLTRT) meeting summaries may be obtained by writing to Erin Fougères, NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

This final rule, its references, and background documents for the PLTRP can be downloaded from the Take Reduction web site at <http://www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.htm> and the NMFS Southeast Regional Office website at <http://sero.nmfs.noaa.gov/pr/pr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Erin Fougères or Jennifer Lee, NMFS, Southeast Region, 727–824–5312, or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322. 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**

This final rule, which serves as the final PLTRP, implements regulatory and non-regulatory measures recommended by the PLTRT to satisfy the requirements of the MMPA. Details concerning the justification for and development of this PLTRP were provided in the preamble to the proposed rule (73 FR 35623, June 24, 2008) and are not repeated here. The proposed rule provided a 90-day public comment period to provide feedback to NMFS via electronic submission, postmarked mail, or facsimile. In addition, one PLTRT meeting was conducted during the 90 day public comment period. Based on comments received (see “Comments and Responses” section), NMFS made minor changes to the proposed rule. Changes between the proposed and final rule are noted in the “Changes from the Proposed Rule” section.

**Distribution, Stock Structure, and Abundance of Pilot Whales**

In the mid-Atlantic bight (MAB), (i.e., 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), the Atlantic pelagic longline fishery interacts with two species of pilot whales. Long-finned pilot whales are distributed worldwide in cold temperate waters in both the Northern (North Atlantic) and Southern Hemispheres. In the North Atlantic, the species is broadly distributed and thought to occur from 40° to 75° N. lat. in the eastern North Atlantic and from 35° to 65° N. lat. in the western North Atlantic (Abend and Smith, 1999). Short-finned pilot whales are also distributed worldwide in warm temperate and tropical waters. In U.S. Atlantic waters,

this species is found in the Gulf of Mexico (GOM) and in the western North Atlantic as far north as the central MAB. Both species tend to favor the continental shelf break and slope, as well as other areas of high relief, but are also present offshore in the pelagic environment. In the western North Atlantic, they may be associated with the north wall of the Gulf Stream and with thermal fronts (Waring *et al.*, 1992).

The two species are difficult to distinguish during visual abundance surveys, and therefore, in many cases, reference is made to the combined species, *Globicephala* spp. Due to this difficulty in species identification, the species' boundaries for short-finned and long-finned pilot whales in the western North Atlantic have not been clearly defined. However, their distributions are thought to overlap along the U.S. mid-Atlantic coast between 35° and 39° N. lat. (Payne and Heinemann, 1993; Bernard and Reilly, 1999). The greatest area of overlap in distribution of the two species seems confined to an area along the shelf edge between 38° and 40° N. lat. in the MAB, where long-finned pilot whales are present in winter and summer and short-finned pilot whales are present in at least the summer (Waring *et al.*, 2008).

Stock structure is not well known for long-finned or short-finned pilot whales in the North Atlantic. Indirect and direct studies on long-finned pilot whales indicate that there is some degree of stock differentiation within the North Atlantic (Mercer, 1975; Bloch and Lastein, 1993; Abend and Smith, 1995; Abend and Smith, 1999; Fullard *et al.*, 2000). For short-finned pilot whales, there is no available information on whether the North Atlantic stock is subdivided into smaller stocks.

The total number of pilot whales off the eastern U.S. and Canadian Atlantic coast is unknown, although estimates from particular regions of their habitat (e.g., continental slope) exist for select time periods (see Waring *et al.*, 2006 for a complete summary). Observers at sea cannot reliably distinguish long- and short-finned pilot whales visually. As a result, sightings of pilot whales are not identified to species and resulting survey estimates are considered joint estimates for both species. The best available estimate for *Globicephala* spp. in the U.S. Exclusive Economic Zone (EEZ) is the sum of the estimates from the summer 2004 U.S. Atlantic surveys, 31,139 (Coefficient of Variation, or CV=0.27), where the estimate from the northern U.S. Atlantic is 15,728 (CV=0.34), and from the southern U.S.

Atlantic is 15,411 (CV=0.43) (Waring *et al.*, 2008). This joint estimate is the most recent available, and these surveys include the most complete coverage of the species' habitats (although the PLTRT recognized that this estimate was limited to the U.S. EEZ). For *Globicephala* spp., the minimum population estimate, which accounts for uncertainty in the best estimate (Wade and Angliss, 1997), is 24,866.

#### **Distribution, Stock Structure, and Abundance of Risso's Dolphins**

Risso's dolphins occur worldwide in warm temperate and tropical waters roughly between 60° N. and 60° S. lat., and records of the species in the western North Atlantic range from Greenland south, including the Gulf of Mexico (Kruse *et al.*, 1999). In the U.S. Atlantic EEZ, the species is most commonly seen in the MAB shelf edge year round and is rarely seen in the Gulf of Maine (Waring *et al.*, 2004). Risso's dolphins are pelagic, preferring waters along the continental shelf edge and deeper, as well as areas of submerged relief such as seamounts and canyons (Kruse *et al.*, 1999). There is no information available on population structure for this species.

Abundance estimates for Risso's dolphins off the U.S. or Canadian Atlantic coast are unknown, although eight estimates from particular regions of their habitat exist for select time periods (Waring *et al.*, 2006). Sightings of Risso's dolphins are almost exclusively in the continental shelf edge and continental slope areas. The best available abundance estimate for Risso's dolphins in the U.S. EEZ is the sum of the estimates from the summer 2004 U.S. Atlantic surveys, 20,479 (CV=0.59), where the estimate from the northern U.S. Atlantic is 15,053 (CV=0.78), and from the southern U.S. Atlantic is 5,426 (CV=0.540) (Waring *et al.*, 2008). This joint estimate is the most recent available, and the surveys have the most complete coverage of the species' habitat (although the PLTRT recognized that this estimate was limited to the U.S. EEZ). The minimum population estimate for the western North Atlantic Risso's dolphin, which accounts for uncertainty in the best estimate (Wade and Angliss, 1997), is 12,920.

#### **Potential Biological Removal, Serious Injury and Mortality Estimates, and Take Reduction Plan Determination**

The Potential Biological Removal (PBR) level is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its

optimum sustainable population level. Specifically, it is defined as the product of minimum population size (in this case, of the portion of the stock surveyed within the U.S. EEZ), one-half the maximum productivity rate, and a recovery factor (MMPA Sec. 3(20), 16 U.S.C. 1362). The maximum productivity rate for both pilot whales and Risso's dolphin is 0.04, the default value for cetaceans (Barlow *et al.*, 1995). The recovery factor, which provides greater protection for endangered, depleted, or threatened stocks, or stocks of unknown status relative to optimum sustainable population (OSP), is 0.48 for both species because the CV of the average mortality estimate is between 0.3 and 0.6 (Wade and Angliss, 1997), and because both stocks are of unknown status. The PBR for both species of western North Atlantic pilot whales combined (i.e., *Globicephala* spp.) is 249, and the PBR for the western North Atlantic stock of Risso's dolphin is 129 (Waring *et al.*, 2008).

The 2007 Marine Mammal Stock Assessment Report (SAR) reported an average combined annual serious injury and mortality incidental to pelagic longline fishing of 86 pilot whales (CV=0.16) and 34 Risso's dolphins (CV=0.32), based on the years 2001–2005 (Waring *et al.*, 2008). However, more recent estimates (Fairfield-Walsh and Garrison, 2007; Garrison, 2007) bring the 5-year average annual combined serious injury and mortality for pilot whales to 109 animals (CV=0.194, years 2002–2006) and for Risso's dolphins to 20 animals (CV=0.381, years 2002–2006). Based on this information, serious injury and mortality of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery is below PBR, but exceeds the insignificance threshold (i.e., 10% of PBR) (69 FR 43338, July 20, 2004). Furthermore, NMFS has determined that there is a high level of serious injury and mortality in the Atlantic pelagic longline fishery across a number of marine mammal stocks, warranting the development and implementation of a take reduction plan for both pilot whale and Risso's dolphin stocks.

#### **Components of the Final PLTRP**

The final PLTRP takes a stepwise, adaptive management approach to achieve the long-term goal of reducing serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate within five years of implementation. A series of management measures, implemented by this final rule, are designed to make an

initial significant contribution to reducing serious injury and mortality. The final PLTRP also includes research recommendations for better understanding how pilot whales and Risso's dolphins interact with longline gear, as well as assessing current and potential new management measures. The PLTRT agreed to evaluate the success of the final PLTRP at periodic intervals over the next five years and to consider amending the PLTRP based on the results of ongoing monitoring, research, and evaluation.

The PLTRT recommended a suite of management strategies to reduce mortality and serious injury of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. The complete list of these recommendations can be found in Sections VIII and IX of the Draft PLTRP (PLTRT, 2006). This final rule addresses both the regulatory and non-regulatory measures recommended by the PLTRT. NMFS incorporated nearly all of the PLTRT's consensus recommendations from the Draft PLTRP into the proposed and final PLTRP, with only minor modifications.

One consensus recommendation is not implemented through this final rule, but is implemented under a different authority. The PLTRT recommended NMFS develop and implement a mandatory certification program to educate owners and operators of pelagic longline vessels about ways to reduce serious injury and mortality of marine mammal bycatch. NMFS is implementing the PLTRT's recommendation using NMFS' existing regulatory authority at 50 CFR 635.8, Workshops. On October 2, 2006, NMFS published the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and the associated final rule (71 FR 58058), which requires all HMS longline fishermen to attend a NMFS workshop and earn certification in mitigation, handling, and release techniques for sea turtles, sea birds, and other protected species. Since 2007, NMFS has incorporated education on careful handling and release techniques for marine mammals, current regulations and guidelines related to marine mammal bycatch that apply to the fishery, and an explanation of the purpose and justification of those regulations and guidelines into these workshops. NMFS will expand the content of the workshops as appropriate to meet the needs of the PLTRP.

#### Regulatory Measures

NMFS issues the following three regulatory measures: (1) a Cape Hatteras Special Research Area (CHSRA), with

specific observer and research participation requirements for fishermen operating in that area; (2) a 20-nm (37.04-km) upper limit on mainline length for all pelagic longline sets within the MAB; and (3) an informational placard that must be displayed in the wheelhouse and on the working deck of all active pelagic longline vessels in the Atlantic fishery.

#### Cape Hatteras Special Research Area

As recommended by the PLTRT, NMFS is designating a special research area offshore of Cape Hatteras (hereafter referred to as the CHSRA) with specific observer and research participation requirements for fishermen operating in that area at any time during the year. The CHSRA includes all waters inside and including the rectangular boundary described by the following coordinates: 35° N. lat., 75° W. long., 36° 25' N. lat., and 74° 35' W. long (Figure 1). The CHSRA encompasses a 5,927 sq km (2,288 sq mile) region that over the past five years has exhibited both high fishing effort and high pilot whale bycatch rates. NMFS delineated the area to encompass the vast majority of the observed marine mammal interactions and to exclude the area where inshore longline vessels target yellowfin tuna and coastal sharks, since the inshore area had low observed marine mammal interaction rates.

Vessels in the CHSRA are required to carry observers when requested. Vessels deploying or fishing with pelagic longline gear in the CHSRA must call the NMFS Southeast Fisheries Science Center (SEFSC) at least 48 hours, but no more than 96 hours, prior to embarking on the trip. This is in addition to any existing selection and notification requirements for observer coverage by the Pelagic Observer Program (POP). If, upon calling in, the vessel is informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip, then the vessel need not wait until their stated date and time of departure and may depart on their fishing trip immediately. If a vessel is assigned an observer, the vessel must take the observer during that trip; if the vessel refuses to take the observer, the vessel is prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip. No waivers will be granted to vessels fishing in the CHSRA that do not meet observer safety requirements. By not allowing exemptions for observer coverage within the CHSRA, NMFS will be able to improve observer data and bycatch estimates within the CHSRA.

In addition to the requirement for carrying observers, NMFS is also requiring vessels in the CHSRA to participate in research. This will enable focused research on pilot whale interactions with the pelagic longline fishery, thus contributing to achieving the objectives of the PLTRP. Obtaining better data for characterizing fishery interactions is a high priority. The PLTRT was limited in its ability to develop management strategies to reduce the frequency of interactions between pilot whales and longline fishing gear due to a lack of information regarding the nature, timing, and causes of these interactions. The CHSRA, with its observer and research participation requirements, will enable NMFS to assess current and potential new management measures and will be fundamental in formulating effective bycatch reduction strategies in the future.

To implement the research participation requirement, observers will conduct scientific investigations aboard pelagic longline vessels in the CHSRA, as authorized by MMPA section 118(d)(2)(C). These scientific investigations will be conducted in addition to observing normal fishing activities and will be designed to support the goals of the PLTRP. The observers will inform vessel operators of the specific additional investigations that may be conducted during the trip. An observer may direct vessel operators to modify their fishing behavior, gear, or both. Instead of or in addition to carrying an observer, vessels may be required to carry and deploy gear provided by NMFS or an observer or modify their fishing practices. By calling the NMFS SEFSC, per the observer requirement described above, vessels are agreeing to take an observer and acknowledging they are both willing and able to participate in research in the CHSRA without any compensation. If vessels are assigned any special research requirements, they must participate in the research for the duration of the assignment. If they do not participate in the research, they are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip.

A vessel may transit through the CHSRA with pelagic longline gear onboard without meeting the observer and research requirements specified above and in 50 CFR 229.36(d)(1) and § 229.36(d)(2) if that gear is stowed according to 50 CFR § 229.36(d)(3). Allowing fishing vessels to transit through the CHSRA with stowed gear without meeting the special observer and research requirements for that area

will permit vessels to increase their safety in the event of foul weather by taking the most direct route to port and may reduce fuel costs for fishing vessels as they will not have to transit around the CHSRA to and from port.

#### *Mainline Length*

In accordance with the PLTRT's recommendation, NMFS is establishing a 20-nm (37.04-km) upper limit on mainline length for all pelagic longline sets within the MAB, including the CHSRA. Operators of individual fishing vessels are allowed to fish multiple sets at one time, if they so desire, but the mainline length for each set must not exceed 20 nm (37.04 km).

NMFS may waive this restriction in the CHSRA with a written letter of authorization from the Director, NMFS SEFSC, in specific cases to support research for reducing bycatch of marine mammals in the pelagic longline fishery. Fishermen are strongly encouraged to carry this letter of authorization on board their vessel during research trips, to facilitate at sea enforcement. In cases where NMFS intends to waive the mainline length restriction, NMFS will notify the PLTRT.

#### *Careful Handling and Release Guidelines Posting Requirement*

As recommended by the PLTRT, NMFS is requiring that an informational placard with marine mammal careful handling and release guidelines be displayed in the wheelhouse and on the working deck of all active pelagic longline vessels in the Atlantic fishery. NMFS has developed and published this placard, which is based on the existing marine mammal careful handling and release guidelines for pelagic longline gear. The PLTRT specified the placard should draw on information presented in a mandatory certification program and reference filling out a Marine Mammal Injury and Mortality Reporting Form for every marine mammal interaction as required by MMPA section 118(e) and 50 CFR 229.6. NMFS believes this action will facilitate the careful handling and release of any pilot whale, Risso's dolphin, or other small cetacean incidentally caught during pelagic longline fishing. The posting requirement ensures NMFS' guidelines are readily available for reference during a capture or entanglement event.

#### **Non-regulatory Measures**

As recommended by the PLTRT, NMFS is adopting the following non-regulatory measures as components of the final PLTRP: (1) Within constraints

of available funding, increase observer coverage throughout all Atlantic pelagic longline fisheries that interact with pilot whales and Risso's dolphins to 12 to 15 percent; (2) encourage vessel operators (i.e., captains) throughout the fishery to maintain daily communications with other local vessel captains regarding protected species interactions, with the goal of identifying and exchanging information relevant to avoiding protected species bycatch; (3) update careful handling/release guidelines, equipment, and methods; and (4) provide quarterly reports of marine mammal interactions in the pelagic longline fishery to the PLTRT.

#### *Increased Observer Coverage*

The PLTRT recommended NMFS increase observer coverage to 12 to 15 percent throughout all Atlantic pelagic longline fisheries that interact with pilot whales and Risso's dolphins to ensure representative sampling of fishing effort. The PLTRT specified sampling should be designed to achieve statistical reliability of marine mammal bycatch estimates and should also take into account the objectives of marine mammal bycatch reduction. If resources are not available to provide such observer coverage for all fisheries, regions, and seasons, the PLTRT recommended NMFS allocate observer coverage to fisheries, regions, and seasons with the highest observed or reported bycatch rates of pilot whales. The PLTRT recommended additional coverage be achieved by either increasing the number of NMFS observers who have been specially trained to collect additional information supporting marine mammal research, or by allowing designated and specially-trained "marine mammal observers" (deployed by either NMFS or cooperating researchers) who would supplement traditional observer coverage.

NMFS is implementing this recommendation within the constraints of available funding. A simulation analysis evaluating the effects of increased observer coverage on the precision of bycatch estimates indicated: (1) 12 to 15 percent observer coverage would result in the most significant gains in precision, (2) setting a higher target in this range would "guard" against unforeseen problems placing observers on vessels, and (3) further increases in coverage would yield relatively little additional precision despite significantly higher costs. Pilot whales are primarily observed to interact with the longline fishery in the MAB and Northeast Coastal areas; Risso's dolphins interact

with the fishery in these areas as well as the Northeast Distant area. Based on these observations, NMFS will, within the constraints of available funding, increase observer coverage to 12 to 15 percent, in order of priority, in the (1) CHSRA, (2) MAB, and (3) other areas, such as Northeast Coastal. While this measure is geared towards improving the precision of serious injury and mortality estimates, additional coverage would also better characterize fishing operations and marine mammal behavior, facilitate collection of data needed for research, and increase opportunities to collect biopsy samples from hooked or entangled marine mammals.

#### *Captains' Communications*

The PLTRT recommended NMFS encourage vessel operators (i.e., captains) to maintain daily communication with other local vessel operators regarding protected species interactions throughout the Atlantic pelagic longline fishery with the goal of identifying and exchanging information relevant to avoiding protected species bycatch. Captains' communication were considered as both a strategy for avoiding marine mammals' exposure to vessels and gear and as a strategy for reducing the probability of an interaction once marine mammals are in the vicinity of the gear.

Available information from three case studies of voluntary captains' communication programs supports the inference that voluntary communication programs have substantially reduced fisheries bycatch and provided large economic benefits that outweigh the relatively nominal operating costs (Martin *et al.*, 2005). For this communication strategy to be effective, the exchange of information must be timely, the entire fleet in a region must cooperate, and it must result in an action being taken to either avoid or reduce bycatch (e.g., captains need to describe the nature of their protected species interactions, discuss the results of any mitigation or safe handling/release measures used, and share best practices).

Atlantic pelagic longline fishermen are motivated to avoid interactions with marine mammals, as these interactions can result in significant economic loss due to loss of both target catch and gear from depredation and entanglements, respectively. Marine mammal interactions also represent a safety risk to vessel operators and crew, as pilot whales caught in gear can be very dangerous due to their size and strength. Therefore, NMFS will work with CHSRA researchers and fishermen to

encourage captains' communications in the CHSRA through voluntary cooperation and as part of ongoing research.

#### *Careful Handling and Release Guidelines*

The PLTRT recommended NMFS update the guidelines for careful handling and release of entangled or hooked marine mammals. They recommended NMFS' guidelines include descriptions of appropriate equipment and methods. They also encouraged both NMFS and the pelagic longline industry to develop new technologies, equipment, and methods for safer and more effective handling and release of entangled or hooked marine mammals. They recommended developments be evaluated carefully and incorporated into revised guidelines for careful handling and release of marine mammals when appropriate.

In the winter of 2006, in preparation for the workshops for HMS fishermen, NMFS worked with the PLTRT and other NMFS staff to update a preexisting placard to reflect the best available information on careful handling and release of marine mammals. This version of the placard has been distributed at HMS training workshops in 2007 and 2008. NMFS will periodically update the guidelines per the PLTRT's recommendation, based on any new technologies, equipment, and methods for safer and more effective handling and release of entangled or hooked marine mammals.

#### *Additional Research and Data Collection*

NMFS will pursue the research and data collection goals outlined by the PLTRT, within the constraints of available funding. These include short-, medium-, and long-duration research and data collection goals designed to enhance the success of the PLTRP. Because there is a significant lack of information concerning how pilot whales and Risso's dolphins interact with the pelagic longline fishery, many of the research recommendations are general in scope and applicable to both pilot whales and Risso's dolphins unless specified otherwise. The complete list of these recommendations can be found in Section IX of the Draft PLTRP (PLTRT, 2006).

As recommended by the PLTRT, priority will be given to: (1) research on species with serious injury and mortality levels closest to or exceeding PBR levels; (2) research to evaluate the effects of implemented management measures, and (3) research on species specific abundance, mortality, and post-

hooking survivorship. NMFS will consider the PLTRT's recommendations for additional research and data collection when establishing NMFS' funding priorities. NMFS will follow those recommendations to the extent that good scientific practice and resources allow. As feasible and appropriate, NMFS will consult with PLTRT members during this process.

#### **Adaptive Management and Monitoring**

The final PLTRP takes a stepwise, adaptive management approach to achieve the long-term goal of reducing, within five years of its implementation, serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate. A series of monitoring and evaluation steps are built into the five-year implementation phase of the final PLTRP.

Under the final PLTRP, the PLTRT will periodically: (1) analyze the status of scientific information on pilot whales and Risso's dolphins, (2) evaluate the effectiveness of the PLTRP, and (3) adjust the PLTRP's management measures and research program, as appropriate, to ensure that the goal of the PLTRP will be met within 5 years of its implementation. Per the PLTRT's request, NMFS will provide any updates available on the following types of information to inform these periodic assessments: (1) Status of PLTRP implementation, (2) SARs; (3) habitat analyses; (4) data collection and research findings; (5) voluntary efforts carried out by the pelagic longline industry; (6) status of observer coverage; and (7) predictive model results for pilot whales and Risso's dolphins, based on updated data.

The timing of these assessments will be tied to both the availability of data and the time needed to adequately evaluate the effectiveness of management measures or the results of the research program. As requested by the PLTRT, NMFS will provide them with quarterly reports of bycatch of marine mammals in the pelagic longline fishery. The quarterly reports will help determine when it would be timely and useful for the PLTRT to reconvene. In conjunction with the receipt of quarterly bycatch reports, the PLTRT agreed to assess the merits of convening future PLTRT meetings, either in-person or by teleconference.

#### **Comments and Responses**

NMFS received ten sets of written comments on the proposed rule by the September 22, 2008, deadline.

Comments were received from the Marine Mammal Commission, the U.S. Department of Interior, North Carolina Division of Marine Fisheries, Ocean Conservancy, Oceana, Center for Biological Diversity, the Humane Society of the U.S., two commercial fishermen, and one member of the public. Three of these organizations generally supported NMFS' use of existing authority to implement the mandatory HMS longline certification workshops. Other comments, which are responded to here, were considered when developing this final rule to amend the regulatory and non-regulatory measures that implement the PLTRP.

#### *General Comments*

*Comment 1:* The Humane Society of the U.S. and Ocean Conservancy agreed with NMFS' determination that the level of bycatch in the pelagic longline fishery signifies a high level of bycatch across a number of marine mammal stocks warranting development of a take reduction plan.

*Response:* NMFS agrees and has determined that the high level of take of some marine mammal species in the Atlantic pelagic longline fishery warrants a PLTRP. This final rule is composed of regulatory and non-regulatory measures recommended by the PLTRT to reduce pilot whale and Risso's dolphin bycatch in the Atlantic pelagic longline fishery.

*Comment 2:* Ocean Conservancy recommended including a map of the CHSRA in the final rule.

*Response:* NMFS has included a map of the CHSRA in Figure 1 of this final rule.

*Comment 3:* The Humane Society of the U.S., Oceana, and the Center for Biological Diversity were concerned that the establishment of a 20-nm (37.02-km) upper limit on the mainline length might actually result in more gear being deployed to compensate for lost effort, thus increasing overall bycatch in the pelagic longline fishery. The Center for Biological Diversity suggested that NMFS should amend the regulation to ensure that no more than 20-nm (37.02-km) of mainline in total is set by a single vessel at a time. Oceana encouraged NMFS to require mainline length reductions outside the MAB, if they were effective at reducing bycatch.

*Response:* Using predictive modeling, NMFS and the PLTRT evaluated several fishery effort compensation scenarios in creating the 20-nm (37.04-km) upper limit on mainline length regulation. These included a scenario in which any set with an original mainline length greater than or equal to 30 miles was

replaced by two, 20 mile sets with the same hook spacing as the original, longer set. Even under this scenario of over-compensation for fishing effort, there was an estimated reduction in pilot whale interactions of 29 percent from the status quo. Thus, the predictive model suggests that the number of hooks in the water is irrelevant to catches of pilot whales, rather it is the length of the mainline for each set that predicts bycatch (PLTRT, 2006). Therefore, NMFS does not believe that overall marine mammal bycatch will increase in the pelagic longline fishery under this final regulation, or that vessels should be limited to one 20-nm (37.04 km) set at a time. However, NMFS will continue to evaluate the effectiveness of this final rule for reductions in marine mammal bycatch in the pelagic longline fishery and will address the issue if it appears the regulations are having the opposite effect intended.

In addition, the PLTRT recommended implementing mainline length reductions in the MAB because 81 percent of pilot whale interactions with pelagic longline fishing gear occur in this area (PLTRT, 2006). The PLTRT recognized that it may be desirable to extend the limitation on mainline length to sets occurring in other regions of the Atlantic fishery, based on additional information on the effectiveness of the limitation in reducing marine mammal bycatch rates in the MAB (PLTRT, 2006). If mainline length reductions are effective at reducing pilot whale and Risso's dolphin bycatch, NMFS will consult the PLTRT regarding potential expansion of this regulation.

*Comment 4:* Two commercial fishermen and the N.C. Division of Marine Fisheries were opposed to the 48-hour advance call-in requirement for vessels deploying or fishing with pelagic longline gear in the CHSRA or transiting through the CHSRA with pelagic longline gear onboard. Their concerns included that: (1) many North Carolina fishing vessels make trips that are 1–3 days in duration and often return to the fishing grounds as soon as the catch is offloaded and fuel and ice are taken aboard; and (2) fishing in the CHSRA is weather, current, and fish report/activity dependent, and, therefore, the decision of whether to fish is often made with less than 12-hours notice. They were concerned that a 48-hour call-in requirement may result in the loss of a fishing opportunity and/or loss of favorable weather for fishing. The N.C. Division of Marine Fisheries recommended that NMFS use a program similar to the current observer program to notify fishermen of the requirement

to carry scientific observers, rather than the 48-hour call-in requirement.

*Response:* NMFS has determined that 48-hours is the minimum amount of time necessary for the NMFS SEFSC to have an observer available in the mid-Atlantic region to observe fishing trips in the CHSRA. However, to alleviate the burden on fishermen, NMFS is allowing vessels to depart prior to their stated date and time of departures if, upon calling in, the vessel is informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip. Because this is an area of significant marine mammal bycatch, NMFS believes this measure provides access to a productive fishing area while also ensuring opportunities to collect data and increase our understanding of the nature of marine mammal/pelagic longline interactions.

*Comment 5:* The N.C. Division of Marine Fisheries, the Humane Society of the U.S., and Ocean Conservancy suggested and/or supported allowing vessels to transit through the CHSRA with pelagic longline gear onboard without calling the NMFS SEFSC 48-hours in advance, provided all gear were properly stowed in accordance with current NMFS regulations. The N.C. Division of Marine Fisheries expressed concern that vessels fishing outside the CHSRA and encountering unfavorable weather or other vessels desiring to transit through the CHSRA to reach safe harbor - would be required to steam additional distance to bypass the CHSRA or ride out the weather until 48-hours had elapsed, which could result in safety hazards, increased fuel consumption, lost time, and increased expenses.

*Response:* NMFS agrees that the 48-hour call-in requirement for vessels transiting through the CHSRA could pose a safety hazard and/or economic burden to pelagic longline fishing vessels. Therefore, NMFS has created an exception to the regulation to allow pelagic longline vessels to transit through the CHSRA without meeting the observer and research requirements specified in 50 CFR 229.36(d)(1) and (d)(2), if that gear is stowed according to § 229.36 (d)(3).

*Comment 6:* The N.C. Division of Marine Fisheries requested that the language concerning refusal to take an assigned observer in the CHSRA be clarified to specify that the prohibition from deploying or fishing with pelagic longline gear in the CHSRA will be for the duration of that trip only.

*Response:* NMFS agrees that the intent was to prohibit fishing in the CHSRA only for the trip affected by

refusal to take an observer or research non-participation and has incorporated clarifying language into § 229.36(d)(1) and (d)(2).

*Comment 7:* Four commenters had concerns and/or suggestions for NMFS regarding compliance with the proposed rule. The Center for Biological Diversity and the Humane Society of the U.S. expressed concern that fishermen might avoid observer coverage in the CHSRA by only fishing in the area when no observers were available. Oceana recommended that NMFS and the U.S. Coast Guard develop a standardized procedure for measuring mainline length to assist in compliance and enforcement of this regulation. Ocean Conservancy recommended that NMFS develop a communication plan, to be shared with the PLTRT, describing how non-compliance with the regulations will be enforced.

*Response:* With so many factors to consider in conducting a fishing trip (such as weather, tide, fishing reports), NMFS does not believe that it would be economically viable for fishermen to base their trips solely on observer availability. Because fishermen must call in 48-hours before each fishing trip to the CHSRA, it would be time-consuming and difficult for fishermen to attempt to avoid observer coverage, and fishermen will not be able to predict when observers are available.

NMFS will work closely with its Office of Law Enforcement, the U.S. Coast Guard, and state enforcement agents to ensure effective enforcement of the regulations described in this final rule, including mainline length limitations. To protect the integrity and covert nature of an enforcement plan, though, specific details concerning enforcement will not be shared with the public.

*Comment 8:* Three commenters noted the importance of outreach in the success of the PLTRP. Ocean Conservancy recommended that NMFS develop a communication plan, to be shared with the PLTRT, describing which fishing vessels should call-in to deploy or fish with pelagic longline gear in the CHSRA or transit through the CHSRA with pelagic longline gear onboard. The Ocean Conservancy also encouraged NMFS to conduct outreach with affected fishermen to ensure that captains fishing in the CHSRA and throughout the MAB communicate with each other regarding interactions with marine mammals. The Humane Society of the U.S. and the Center for Biological Diversity encouraged NMFS to undertake outreach to ensure that pelagic longline vessels have the *Careful Handling and Release Guidelines*

Placard, understand its information, and are using it appropriately.

*Response:* NMFS agrees that communication with the pelagic longline fishermen and outreach will be critical to the success of the PLTRP. To ensure that pelagic longline fishermen are familiar with the measures outlined in this take reduction plan, NMFS will develop a compliance guide, which will help clarify the regulations and necessary compliance actions. Fishermen and other interested parties will be able to download the compliance guide from a website; the compliance guide will also be available by contacting the Protected Resources Division, NMFS, Southeast Region (see **ADDRESSES**). In addition, more than one-third of the PLTRT is composed of commercial fishermen and industry representatives, who can assist NMFS with compliance via outreach to the fishermen they represent. NMFS also currently has a fishery liaison based in North Carolina who can assist with outreach to pelagic longline fishermen. Finally, NMFS will present elements of the PLTRP at the mandatory HMS longline certification workshops. NMFS has already incorporated education on careful handling and release techniques for marine mammals, current regulations and guidelines related to marine mammal bycatch that apply to the fishery, and an explanation of the purpose and justification of those regulations and guidelines into these workshops.

*Comment 9:* Oceana, Ocean Conservancy, the Center for Biological Diversity, the Humane Society of the U.S., and the Marine Mammal Commission supported and/or encouraged NMFS to allocate appropriate funds to increase observer coverage to 12 to 15 percent in the Atlantic pelagic longline fishery. A commercial fisherman and the Ocean Conservancy suggested that NMFS station observers in the mid-Atlantic region to meet the PLTRP's goal of increased observer coverage in the MAB and/or reduce the waiting time for fishermen to depart on a fishing trip. The N.C. Division of Marine Fisheries was concerned that NMFS would not have an adequate number of trained marine mammal observers to achieve the recommended level of observer coverage without unduly impacting North Carolina pelagic longline fishermen.

*Response:* NMFS agrees that it is important to increase observer coverage to 12 to 15 percent in the Atlantic pelagic longline fishery, has included increased observer coverage as an element of this final PLTRP, and will

attempt to achieve this level of coverage within the constraints of available funding. NMFS manages its observer funding in the most cost effective manner for the greatest benefit to our living marine resources; therefore, we would consider stationing observers in the mid-Atlantic region, if it were cost effective to do so. If there are insufficient funds or trained observers available, then NMFS will be unable to meet the recommended observer coverage of 12 to 15 percent. However, this would not affect the fishing ability of North Carolina pelagic longline fishermen. As discussed in the response to Comment 4, within the CHSRA, NMFS is allowing fishing vessels to depart prior to their stated date and time of departures if informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip. In addition, NMFS will make every effort to inform fishermen about upcoming and future research projects in the CHSRA in an attempt to minimize any burden placed on those fishermen.

*Comment 10:* NMFS received several comments on the mandatory HMS longline certification workshops and the informational placard to be displayed in the wheelhouse and on the working deck of all active pelagic longline vessels in the Atlantic fishery. Ocean Conservancy recommended that the mandatory HMS longline certification workshops include information and training on fishermen's reporting of marine mammal interactions, which is required by the MMPA Section 118(e). They also recommended that marine mammal information be included in all HMS longline certification workshops, including those based in the Gulf of Mexico and Caribbean, rather than just those in the Atlantic region. The Ocean Conservancy, Oceana, and the Marine Mammal Commission also suggested that NMFS expand the geographic area where the informational placard should be displayed to the entire Atlantic, Gulf of Mexico, and Caribbean.

*Response:* NMFS currently includes, and will continue to include, information and training on the reporting of marine mammal interactions in the mandatory HMS longline certification workshops. NMFS agrees that the placard should be displayed throughout the Atlantic fishery. This was the original intention of the PLTRT and this requirement was included in the EA and the preamble to the proposed rule. However, the placard posting requirement was incorrectly linked in the regulation text of the proposed rule to only the MAB region. Therefore, in the final rule NMFS has

clarified that the placard posting requirement specified in 50 CFR 229.36(c) applies to all U.S. pelagic longline vessels operating in the Atlantic federal EEZ off the U.S. East Coast.

Because bycatch rates of pilot whales and Risso's dolphins are highest in the MAB, the PLTRT limited the scope of the PLTRP to the MAB and did not include the GOM and Caribbean. As a result, NMFS is not requiring the placard to be posted outside of the Atlantic. However, NMFS will provide the placard to any fishermen who request it and will encourage voluntary compliance with this measure in the Gulf of Mexico and Caribbean.

*Comment 11:* Oceana, Ocean Conservancy, the Center for Biological Diversity, the Humane Society of the U.S., and the Marine Mammal Commission encouraged NMFS to secure funding to carry out the research priorities outlined in the Draft PLTRP. They recommended that the highest priority research should be directed towards defining the stock structure of pilot whales in the MAB.

*Response:* NMFS will work with its partners and will seek to use available funding sources to carry out the research and data collection priorities outlined by the PLTRT. NMFS is currently conducting research to define the stock structure of pilot whales in the mid-Atlantic and will continue to do so.

#### Changes From the Proposed Rule

After considering the public comments received, NMFS is making minor changes between the proposed rule and this final rule. As a result of clarification from the PLTRT regarding their intent, NMFS is altering the notification process for waiving a 20-nm (37.04-km) upper limit on mainline length for research in the CHSRA to include notifying the PLTRT, but NMFS will not publish that notification in the **Federal Register**. NMFS is deleting the phrase "as delineated in the list of fisheries" from 50 CFR 229.36 (a), because it was deemed unnecessary. NMFS is also clarifying that the placard posting requirement specified in 50 CFR 229.36(c) applies to all U.S. pelagic longline vessels operating in the Atlantic Federal EEZ off the U.S. East Coast. Although this requirement and its geographic scope were clearly stated in the EA and the preamble to the proposed rule, it was incorrectly linked in the regulation text of the proposed rule to only the MAB region.

NMFS is clarifying that under 50 CFR 635.32, exempted fishing permits, scientific research permits, display permits, and letters of acknowledgment

are issued; Atlantic HMS tunas, swordfish, or shark permits are not issued. Therefore, the reference to § 635.32 was deleted from the regulatory text at 50 CFR 229.36 (a)(1) because it did not apply.

In addition, NMFS is changing the regulations for pelagic longline vessels in the CHSRA to allow a vessel to transit through the CHSRA with pelagic longline gear onboard without meeting the observer and research requirements specified in 50 CFR 229.36(d)(1) and (d)(2), if that gear is stowed according to 50 CFR 229.36(d)(3). The stowage definition in § 229.36(d)(3) was not presented in the proposed rule, but was based on a similar stowage definition for bottom longline gear at 50 CFR 622.34(k)(4)(i).

NMFS is clarifying the 48-hour call-in notification described in § 229.36(d)(1) to state that vessels must call in at least 48 hours, but no more than 96 hours, prior to departing on a fishing trip to the CHSRA. The 96-hour limit was added to clearly define the amount of lead time a fisher needed to provide to NMFS. NMFS is also allowing a fishing vessel to depart prior to their stated departure time if, upon calling in, the vessel is informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip. The SEFSC call-in number given in § 229.36(d) of the final rule is also different from that given in the proposed rule. Finally, NMFS is clarifying in § 229.36(d)(1) that a fishing vessel that refuses to take an assigned observer is prohibited from deploying or fishing with pelagic longline gear in the CHSRA for the duration of that fishing trip.

### Classification

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act (CZMA). Letters stating concurrence with NMFS' CZMA consistency determination were received from the approved coastal management programs of North Carolina, Virginia, Delaware, Connecticut, and Rhode Island. No responses were received from Maryland, New Jersey, New York, or Massachusetts; CZMA consistency in these states was inferred.

This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

This rule has been determined to be not significant under Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA), based on the initial regulatory flexibility analysis (IRFA), of the final rule. A statement of the need for and objectives of the final rule is stated elsewhere in the preamble and is not repeated here. A summary of the FRFA follows. For a copy of this analysis, see the **ADDRESSES** section.

NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry. An "active" pelagic longline vessel is considered to be a vessel that reported pelagic longline activity in the HMS logbook. The number of active HMS pelagic longline vessels has been precipitously decreasing since 1994. In the MAB, only 85 unique pelagic longline vessels reported effort between 2001 and 2006. The number of vessels fishing in the MAB has declined in recent years, and between 2003 and 2006, the number of vessels reporting effort in the MAB ranged between 38 and 41.

Four alternatives were considered and analyzed for the final rule. Alternative 1 (the no action alternative) would maintain the status quo management for the pelagic longline fishery under the HMS FMP. Alternative 2 would implement only the non-regulatory components recommended in the Draft PLTRP, while allowing time for collecting additional scientific data prior to implementing regulatory measures. Alternative 3, the preferred alternative, would limit the mainline length to 20-nm (37.04-km) or less within the MAB, designate the CHSRA with associated observer and research participation requirements, and require all pelagic longline vessels to post an informational placard on careful handling and release of marine mammals. Alternative 4 would include a six-month closure (July-December) of the southern MAB sub-regional area and a year-round mainline length reduction throughout the MAB, inclusive of that sub-regional area.

Under Alternative 1, the no action alternative, it is estimated that the Atlantic pelagic longline fleet generates an estimated \$24.6 million in revenues. Under this alternative there would be no direct cost or benefit beyond the status quo. The non-regulatory actions associated with Alternative 2 would also be expected to have very little economic impact on the fishery.

NMFS estimated the potential change in fishery revenues from the mainline length restriction included under Alternative 3, depending on the level of compensation in fishing effort, by applying average species weights reported to dealers in 2004 and the average 2006 ex-vessel prices reported by dealers in the MAB region. The change in fishery revenues was estimated to range from an increase of \$777,747 (full compensation in the number of hooks fished) to a loss of \$819,523 (no compensation in the number of hooks fished), with an estimated loss of \$239,383 with 50 percent compensation in the number of hooks fished. This change in revenues would impact 41 or fewer vessels per year based on current trends in the number of active pelagic longline vessels and the number of vessels that operated in the MAB in 2006. If one assumes that 41 vessels are affected by this restriction, then the estimated annual impact per vessel ranges from an increase of \$18,969 per vessel to a decrease of \$19,988 per vessel, with an estimated decrease of \$5,838 under the most likely scenarios (50 percent compensation in fishing effort).

The economic costs of Alternative 4 were evaluated based upon historical observed catch rates and reported effort in the MAB fishing area only for the period 2002 to 2004. The impact of the closure of the southern region of the MAB from July-December was estimated by assuming no catch in that area, resulting in a total estimated cost of \$770,000. The combined effect of the 6-month closure and the mainline length restriction through the MAB resulted in an estimated cost of \$1.64 million, reflecting only lost catch and assuming no compensation or redistribution of effort. The reduction in revenues would impact 41 or fewer vessels per year based on the current trends in the number of active pelagic longline vessels and the number of vessels that operated in the MAB in 2006. If one assumes that 41 vessels would be affected by this restriction, then per vessel impacts are estimated to be \$40,000.

Alternative 1 (the no action alternative) and Alternative 2 were not selected because they were not expected

to meet the conservation objectives of the final rule or the goals in MMPA section 118. Both Alternatives 3 and 4 would meet the conservation objectives of the final rule. However, Alternative 4 was not selected because it would likely result in larger economic impacts to

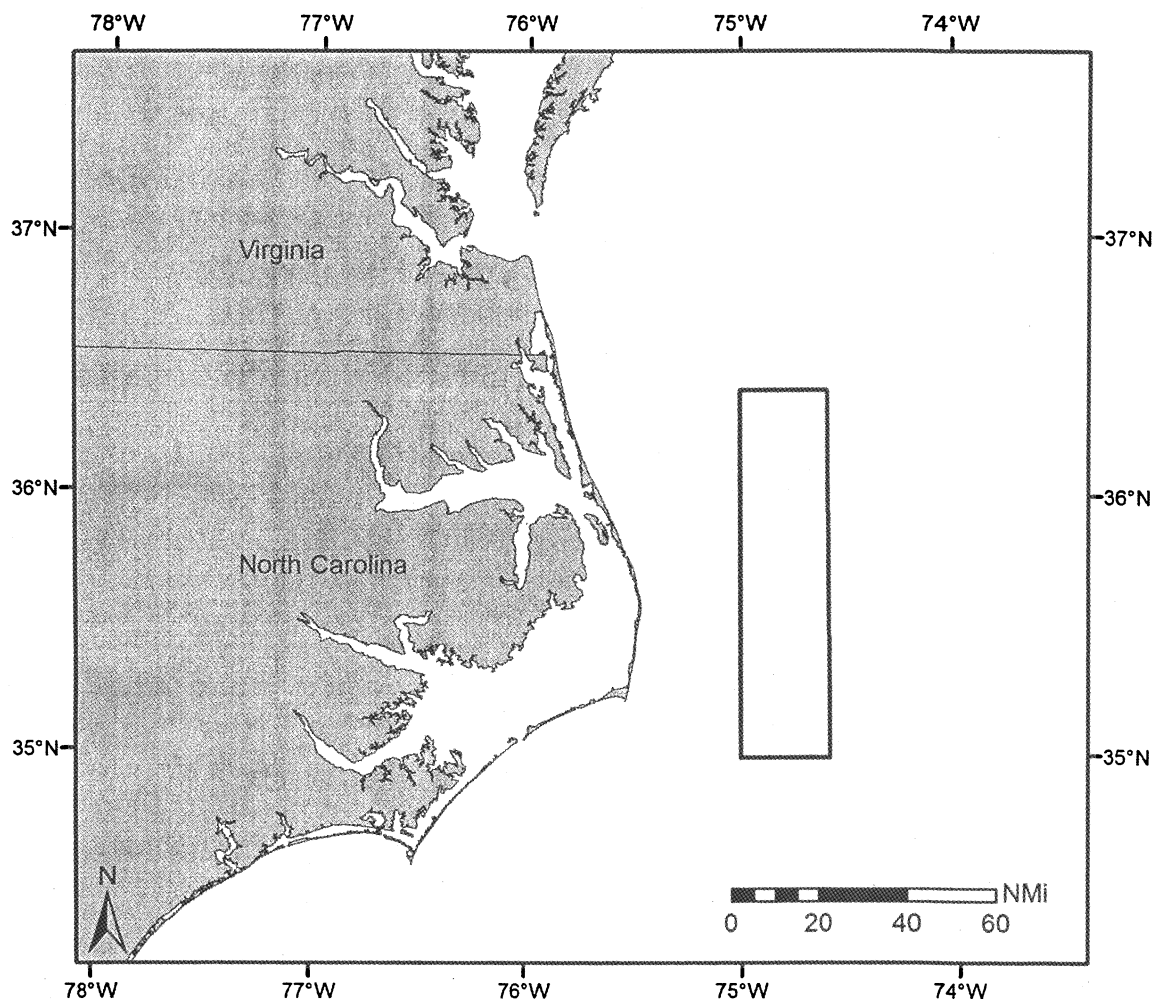
small entities than Alternative 3 (the preferred alternative).

#### References Cited

A complete list of all references cited in this final rule can be found on the PLTRT website at <http://www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.htm> and the NMFS Southeast Regional Office website at <http://sero.nmfs.noaa.gov/pr/pr.htm>, and is also available upon request from the NMFS Southeast Regional Office in St. Petersburg, FL (see **ADDRESSES**).

www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.htm and the NMFS Southeast Regional Office website at <http://sero.nmfs.noaa.gov/pr/pr.htm>, and is also available upon request from the NMFS Southeast Regional Office in St. Petersburg, FL (see **ADDRESSES**).

Figure 1. Boundary of the Cape Hatteras Special Research Area (CHSRA) .



#### List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

Dated: May 11, 2009.

John Oliver,

Deputy Assistant Administrator for Fisheries, 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.*

■ 2. In § 229.3, paragraphs (t) and (u) are added to read as follows:

#### § 229.3 Prohibitions.

\* \* \* \* \*

(t) It is prohibited to deploy or fish with pelagic longline gear in the Mid-Atlantic Bight unless the vessel:

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

(2) Complies with the gear restrictions specified in § 229.36(e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Cape

Hatteras Special Research Area unless the vessel is in compliance with the observer and research requirements specified in § 229.36(d).

■ 3. In subpart C, § 229.36 is added to 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 long-finned and short-finned pilot whales and Risso's dolphins 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.

(1) *Persons subject to this section.* The regulations in this section apply to the owner and 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 pelagic longline gear onboard as described under § 635.21(c) of this title.

(2) *Geographic scope.* The geographic scope of the PLTRP is the Atlantic Federal EEZ off the U.S. East Coast. The regulations specified in paragraphs (b) through (d) of this section apply throughout the Atlantic Federal EEZ off the U.S. East Coast. The regulation specified in paragraph (e) of this section applies to all U.S. Atlantic pelagic longline vessels operating in the EEZ portion of the Mid-Atlantic Bight.

(b) *Definitions.* In addition to the definitions contained in the MMPA and §§ 216.3 and 229.2 of this chapter, the following definitions apply.

(1) *Cape Hatteras Special Research Area (CHSRA)* means all waters inside and including the rectangular boundary described by the following lines: 35° N. lat., 75° W. long., 36° 25' N. lat., and 74° 35' W. long.

(2) *Mid-Atlantic Bight* 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) *Observer* means an individual authorized by NMFS, or a designated contractor, placed aboard a commercial fishing vessel to record information on

marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data; to collect biological specimens; and to perform other scientific investigations.

(4) *Pelagic longline* has the same meaning as in § 635.2 of this title.

(c) *Marine Mammal Handling and Release Placard.* The placard, "Marine Mammal Handling/Release Guidelines: A Quick Reference for Atlantic Pelagic Longline Gear," must be kept posted inside the wheelhouse and on the working deck. You may contact the NMFS Southeast Regional Office at (727) 824-5312 to request additional copies of the placard.

(d) *CHSRA*—(1) *Special observer requirements.* If you deploy or fish with pelagic longline gear in the CHSRA, or intend to do so, you must call NMFS Southeast Fisheries Science Center (SEFSC), 1-888-254-2558, at least 48 hours, but no more than 96 hours, prior to embarking on your fishing trip. This requirement is in addition to any existing selection and notification requirement for observer coverage by the Pelagic Observer Program. If, upon calling in, you are informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip, then you need not wait until your stated date and time of departure and may depart on your fishing trip immediately. If you are assigned an observer, you must take the observer during that fishing trip. If you do not take the observer, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip. You must comply with all provisions of § 229.7, Monitoring of incidental mortalities and serious injuries. In addition, all provisions of 50 CFR 600.746, Observers, apply. No waivers will be granted under § 229.7(c)(3) or § 600.746(f). A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from deploying or fishing with pelagic longline gear in the CHSRA.

(2) *Special research requirements.* In addition to observing normal fishing

activities, observers may conduct additional scientific investigations aboard your vessel designed to support the goals of the PLTRP. The observer will inform you of the specific additional investigations that may be conducted during your trip. An observer may direct you to modify your fishing behavior, gear, or both. Instead of carrying an observer, you may be required to carry and deploy gear provided by NMFS or an observer or modify your fishing practices. By calling in per § 229.36(d)(1), you are agreeing to take an observer. You are also acknowledging you are both willing and able to participate in research, as per this paragraph, in the CHSRA consistent with the PLTRP without any compensation. If you are assigned any special research requirements, you must participate in the research for the duration of the assignment. If you do not participate in the research, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip.

(3) *Exception for transit.* If pelagic longline gear is appropriately stowed, a vessel may transit through the CHSRA without meeting the observer and research requirements specified in § 229.36(d)(1) and § 229.36(d)(2). For the purpose of this paragraph, transit means non-stop progression through the area. Pelagic longline gear is appropriately stowed if all gangions, hooks, and buoys are disconnected from the mainline; hooks are not baited; longline left on the drum is covered with a tarp; and all other gear components are either stowed below deck or secured on deck and covered with a tarp.

(e) *Gear restrictions.* No person may deploy a pelagic longline that exceeds 20 nautical miles (nm) (37.04 km) in length in the Mid-Atlantic Bight, including in the CHSRA, unless they have a written letter of authorization from the Director, NMFS Southeast Fishery Science Center to use a pelagic longline exceeding 20 nm (37.04 km) in the CHSRA in support research for reducing bycatch of marine mammals in the pelagic longline fishery.

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