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Dated: July 30, 1997.

**Rodney E. Slater,**

Secretary of Transportation.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 970129015-7220-05; I.D. 010397A]

RIN 0648-A184

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Pacific Offshore Cetacean Take Reduction Plan Regulations

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to require new training, equipment, and gear modifications for operators and vessels in the California/Oregon drift gillnet fishery for thresher shark and swordfish to reduce the level of mortality and serious injury of several marine mammal stocks that occur incidental to fishing operations.

**DATES:** Effective October 30, 1997.

**ADDRESSES:** Copies of the final Pacific Offshore Cetacean Take Reduction Plan and final Environmental Assessment (EA) prepared for the final rule may be obtained by writing to Irma Lagomarsino, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; or Victoria Cornish, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226.

**FOR FURTHER INFORMATION CONTACT:** Irma Lagomarsino, NMFS, 562-980-4016; or Victoria Cornish, NMFS, 301-713-2322.

**SUPPLEMENTARY INFORMATION:** The California/Oregon drift gillnet (CA/OR DGN) fishery which targets thresher shark and swordfish, is classified as a Category I fishery under section 118 of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*). A Category I fishery is a fishery that has frequent incidental mortality and serious injury of marine mammals. The majority of the fishing effort in the CA/

OR DGN fishery occurs within 200 miles (320 km) offshore of California and Oregon. Under California state law, from May 1 through August 14, drift gillnets may not be used to take swordfish or thresher shark in ocean waters within 75 nautical miles of the California mainland coastline (California Fish and Game Code, § 8576). Swordfish may be taken within 75 nautical miles of the California mainland from August 15 to January 31; additional area restrictions also apply within this area. From February through April, drift gillnets may not be used.

The CA/OR DGN fishery has a historical incidental bycatch of several strategic marine mammal stocks including: Several beaked whale species, short-finned pilot whales, pygmy sperm whales, sperm whales, and humpback whales (Barlow *et al.*, 1995). A strategic stock is a stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) that is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) that is listed as a threatened or endangered species under the ESA.

Section 118 of the MMPA requires NMFS to develop and implement a take reduction plan to assist in the recovery or to prevent the depletion of each strategic stock that interacts with a Category I or II fishery. The immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the level of mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to less than the PBR levels established for such stocks. Since the CA/OR DGN fishery is a Category I fishery that interacts with several strategic stocks, NMFS established the Pacific Offshore Cetacean Take Reduction Team (PCTRT) on February 12, 1996 (61 FR 5385), to prepare a draft take reduction plan. The PCTRT includes representatives of NMFS, the California Department of Fish and Game (CDFG), the Pacific States Marine Fisheries Commission, environmental organizations, academic and scientific organizations, and participants in the CA/OR DGN fishery. In selecting these team members, NMFS sought an equitable balance among representatives of resource user and non-user interests.

The PCTRT was tasked with developing a consensus plan for reducing the level of mortality and serious injury of strategic marine mammal stocks incidental to the CA/OR DGN fishery. The PCTRT met five times between February and June 1996 and

submitted a consensus draft plan to NMFS on August 15, 1996 (draft PCTRP, 1996). The draft PCTRP included: (1) A review of the current information on the status of the affected strategic marine mammal stocks; (2) a description of the CA/OR DGN fishery; (3) an analysis of data from NMFS' CA/OR DGN fishery observer program from 1990-1995; (4) primary strategies to reduce takes of strategic marine mammal stocks; (5) contingency measures that would reduce fishing effort; and (6) other recommendations regarding voluntary measures to reduce takes, measures to enhance the effectiveness of the observer program, research on oceanographic/environmental variables, and other potential strategies considered and rejected by the team. The PCTRT recommended that three of the four primary strategies of the draft PCTRP (1996) be administered on a mandatory basis (strategies #1, #2, and #4) and that one be administered on a voluntary basis (strategy #3). NMFS reconvened the PCTRT in May 1997 and it provided NMFS with additional comments and recommendations on the proposed PCTRP and proposed rule to implement the plan (see PCTRT Recommendations from the 1997 Meeting section).

Because the implementation of the PCTRP would result in the regulation of the state-managed CA/OR DGN fishery, NMFS contacted both CDFG and the Oregon Department of Fish and Wildlife (ODFW) on how best to proceed with the Plan's implementation. CDFG and ODFW both deferred to the Federal government to issue regulations under the authority of the MMPA to implement the PCTRP. On February 14, 1997, NMFS proposed regulations under the MMPA (62 FR 6931) to implement three of the primary strategies recommended by the PCTRT (draft PCTRP, 1996). These strategies include the establishment of a minimum depth-of-fishing requirement (strategy #1), use of acoustic deterrent devices (pingers) (strategy #2), and mandatory skipper workshops (strategy #4). NMFS also proposed to implement primary strategy #3 on a voluntary basis, under which NMFS would encourage CDFG not to reissue lapsed permits, encourage ODFW to continue issuing not more than 10 permits per year and explore the development of a permit buyback program for both CDFG and ODFW permit holders. In the proposed rule, NMFS described how it intended to implement the other sections of the draft PCTRP.

In addition to publication in the **Federal Register**, NMFS issued a press release announcing the availability of the proposed rule and summarizing the

major issues contained in the proposed rule. Information in the press release was published in several California newspapers and broadcast on at least one radio station. Voluntary Skipper Education Workshops were held in several locations throughout California in June 1997, providing an additional opportunity to inform participants in the fishery about the proposed rule and PCTRP.

The final rule will govern fishing by all U.S. drift gillnet vessels operating in waters seaward of the coast of California or Oregon, including adjacent high seas waters. This final rule applies to U.S. drift gillnet vessels originating from ports outside California or Oregon (e.g., Alaska). NMFS has determined that implementation of this final rule is expected to reduce, within 6 months of its implementation, mortalities and serious injuries of all strategic stocks that are taken by the CA/OR drift gillnet fishery to below the PBR level for each stock.

#### Responses to Comments

NMFS received six written comments during the comment period for the proposed rule. Comments were received from fishers, environmental groups, the Pacific States Marine Fisheries Commission, and members of the general public. Key issues and concerns are summarized and responded to as follows:

##### Comments on the Depth of Fishing Requirement (Strategy #1)

In the proposed rule, NMFS proposed to establish a minimum depth-of-fishing requirement that would prohibit the use of extenders that are less than 36 ft (10.9 m). Extender lines (buoy lines) attach buoys (floats) to a drift gillnet's floatline and determine the depth in the water column at which the net is fished. Two commenters agreed with the establishment of a minimum 36 ft (10.9 m) depth-of-fishing requirement as a method to reduce incidental marine mammal mortality and serious injury. Two commenters felt that there must be a mechanism to enforce the extender provision. One commenter believed that since fishing at depths that are greater than 36 ft (10.9 m) results in a lower catch of target fish, vessel operators will fish shallower in the water when observers are not on the vessel. Consequently, future observer data may not be representative of the actual marine mammal take in the entire fishery.

*Response:* On those boats that are carrying marine mammal observers (e.g., expected to be approximately 20 percent of the fishing effort), information will

collected by observers on whether there is compliance with the minimum depth-of-fishing requirement. However, NMFS agrees that this may not be sufficient to ensure compliance. Therefore, NMFS enforcement agents will conduct random checks and NMFS will work with state agents to monitor compliance. In addition, since the cost of a drift gillnet is approximately \$10,000 and interactions with marine mammals often results in net damage or net loss, vessel operators will be motivated to make changes in their fishing gear or techniques to avoid marine mammal entanglement, and subsequently, net damage or loss. Furthermore, analysis of the best available data indicates that swordfish and thresher shark are equally likely to be caught at depths that are greater than 36 ft (10.9 m), even though drift gillnet fishers sometimes fish at shallower depths (NMFS unpublished data). Combined with other strategies, NMFS believes the minimum depth-of-fishing requirement will significantly contribute to reductions in cetacean bycatch, including strategic stocks in the CA/OR DGN fishery.

##### Comments on the Pinger Experiment and Requirement (Strategy #2)

*Comment 1:* One commenter agreed with NMFS that the preliminary results from the 1996/1997 CA/OR DGN fishery pinger experiment supports the use of pingers.

*Response:* NMFS agrees.

*Comment 2:* One commenter was concerned about the biological impact of pingers on cetaceans and recommended that they should not be used until scientific evidence shows that pingers are not harmful to any strategic stock.

*Response:* NMFS prepared an Environmental Assessment (EA) on the use of acoustic pingers to reduce marine mammal bycatch in commercial fisheries (NMFS, 1997a). NMFS concluded that the sound intensity levels of pingers will not cause physical injury or temporary threshold shifts in marine mammals. Furthermore, due to the limited sound range of pingers and the limited level of fishing effort in the CA/OR DGN fishery, ensouning major portions of the ocean will not occur. Thus, the negative impact of pingers used by the CA/OR DGN fishery on marine mammals is likely to be negligible. Nevertheless, monitoring programs will evaluate changes in distribution to evaluate whether cetaceans are avoiding important habitat. NMFS will continue to evaluate the status of strategic marine mammal stocks that interact with the CA/OR

DGN fishery on an annual basis. NMFS made similar determinations regarding the impact of pingers on marine mammals in the EA prepared for this final rule (NMFS, 1997b).

*Comment 3:* One commenter believed that pinger noise during the experiment may constitute "harassment" under the MMPA and ESA.

*Response:* Although scientific results clearly indicate that pingers significantly reduced harbor porpoise bycatch in the New England sink gillnet fishery (Reeves *et al.*, 1996) and cetacean bycatch in the CA/OR DGN fishery (see section on 1997 PCTRT Recommendations), scientists do not know why they worked (NMFS, 1997a). Several mechanisms are possible. For example, pingers may operate as acoustic alarms alerting animals to the presence of fishing gear on the assumption they will avoid the gear if made aware of its presence. Alternatively, the sounds emitted by pingers may repel marine mammals away from the gear. Another possibility is that the pingers disperse the prey upon which marine mammals forage and thus, affect marine mammal behavior indirectly.

The state of knowledge about marine mammal hearing abilities and behavior in response to various types of sound is limited (Reeves *et al.*, 1996). However, pingers were not originally designed to harass marine mammals. Pingers produce relatively weak sound pulses of 132 dB re 1 Pa at 1 m which attenuate to ambient noise levels at a distance of only 300 m (984.3 ft) from the source (NMFS, 1997a). In contrast, "acoustic harassment devices" were specifically designed to emit much louder acoustical pulses (e.g., 187–218 dB re 1 Pa at 1 m) strong enough to keep pinnipeds away from nets and aquaculture facilities (Richardson *et al.*, 1995; NMFS, 1997a).

It is questionable if the operation of pingers would constitute an "act of pursuit, torment or annoyance" under the definition of "harassment" in section 3 of the MMPA. Furthermore, pingers have no potential to injure a marine mammal. Regardless, even if the operation of pingers does constitute "harassment" under the MMPA, section 101(a)(4) of the MMPA allows the use of certain measures by the owners of fishing gear to deter marine mammals so long as such measures do not result in the death or serious injury of a marine mammal. NMFS recommends the use of pingers in the CA/OR DGN fishery as a specific measure that may be used to nonlethally deter marine mammals. Likewise, such takes are allowed under section 118 of the MMPA.

With respect to the ESA, there is no statutory definition for "harassment" and NMFS has not issued a regulatory definition for this term. In interpreting this term, NMFS examined a variety of factors, including the extent to which the activity disrupts normal behavioral patterns and whether it is likely to produce harm or injury. NMFS has concluded that there is no evidence available at this time that would suggest the use of pingers to deter marine mammals from interacting with fishing gear would constitute harassment under the ESA.

NMFS will continue to investigate the possible mechanisms of why pingers reduce cetacean entanglement in the CA/OR DGN fishery. If NMFS determines that the effect of sound emitted from pingers does constitute "harassment", it will take appropriate action, which may include action to modify the requirements for pinger use, to alter the specifications for pingers or to ensure any necessary authorizations are in place.

*Comment 4:* Two commenters cautioned that pingers may not be effective at reducing cetacean bycatch in the CA/OR DGN fishery due to the variety of cetaceans that are entangled.

*Response:* NMFS and the fishery conducted an experiment during the 1996/1997 fishing season in the CA/OR DGN fishery to test the efficacy of pingers at reducing cetacean entanglement. Results from this study indicate that the use of pingers is effective at significantly reducing cetacean bycatch in the fishery (see 1997 PCTRT Recommendations section). NMFS will continue to evaluate the long-term effectiveness of pingers at reducing strategic stock bycatch in the CA/OR DGN fishery.

*Comment 5:* One commenter stated that the proposed rule failed to explain clearly how NMFS would certify that pingers were NMFS approved or enforce the pinger specifications (e.g., intensity, frequency, etc.).

*Response:* NMFS agrees that the issue of pinger certification needs to be clarified. In the proposed rule, NMFS stipulated that only "NMFS-approved pingers" could be used in the fishery and that if requested, NMFS may authorize the use of non-NMFS-approved pingers for limited experimental purposes. This final rule stipulates specifications for pingers that are required to be used in the CA/OR DGN fishery under section 229.31(c)(1). Since all pingers used in the fishery must meet these specifications, all references to NMFS-approved pingers have been removed from the final rule. NMFS is not requiring manufacturers to

have their pingers certified by an independent company that their pingers meet the pinger specifications of the final rule; independent companies are not necessarily more credible at testing the sound characteristics of pingers than the manufacturer. However, manufacturers of pingers will need to provide documentation that their pingers meet the specifications of the final rule. NMFS will monitor, periodically, whether the pingers used by the fishery meet the specifications under section 229.31(c)(1) to ensure compliance with this requirement. In the future, if experimental findings support the use of a pinger with different specifications, NMFS would establish new specifications by rulemaking, and also provide actual notice to drift gillnet vessel operators.

*Comment 6:* One commenter suggested that in the final rule NMFS publish: (1) The parameters of the drift gillnet pinger experiment; (2) the basis for the pinger spacing requirements and; (3) a requirement that all vessels carry four spare pingers. Furthermore, they recommended that NMFS conduct additional research to determine whether the spacing requirements for pingers are adequate.

*Response:* The experimental design for the 1996/1997 pinger experiment in the CA/OR DGN fishery was based primarily on the recommendations from the participants of an acoustic workshop (Reeves *et al.*, 1996). Based on these suggestions, the PCTRT drafted the pinger experimental protocol, circulated it for peer review, and made the appropriate changes to ensure that a scientifically credible experiment would be conducted. The details of the experimental protocol can be found in the draft PCTRP (1996) and is not repeated here.

The participants in the acoustic workshop (Reeves *et al.*, 1996), and the PCTRT, recommended that pingers be placed every 300 ft (91.44 m) on the leadline and floatline for experimental purposes in the CA/OR DGN fishery. This interval was suggested because it had been effective at reducing harbor porpoise bycatch in the New Hampshire sink gillnet fishery. In addition, drift gillnets are often set with the floatline above the ocean thermocline and with the leadline below it, especially sets targeting swordfish. Since thermoclines act as barriers to sound transmission, they also recommended that the pingers placed on both lines be staggered such that the horizontal distance between a pinger on the floatline and a pinger on the leadline is 150 ft (45.72 m). For a typical 6000 ft (1828.80 m) net, 21 pingers on the floatline and 20 pingers

on the leadline would be needed (41 total pingers). The final rule requires this pinger configuration on the net. NMFS will continue to evaluate the long-term efficacy of pingers at reducing cetacean bycatch in the fishery and whether the spacing intervals require modification.

NMFS does not agree that CA/OR DGN fishery vessel owners should be required to maintain four pingers as spares, because the requirement that all pingers remain functioning and operational at all times during deployment provides adequate direction to vessel owners.

*Comment 7:* One commenter questioned the significance of the preliminary results from the 1996/1997 pinger experiment in the CA/OR DGN fishery because they believed the experiment was conducted only in August and may not be representative of the entire fishing season.

*Response:* NMFS would like to clarify that the 1996/1997 pinger experiment was conducted from September 1996–January 1997. Thus, the results from the experiment are based on the months in which the majority of fishing effort occurs.

*Comment 8:* One commenter was concerned with the possibility that marine mammals may become habituated to the sound of pingers.

*Response:* At this time, it is not possible to determine whether cetaceans will become habituated to the sounds emitted by pingers. However, since the CA/OR DGN fishery operates offshore, over a broad geographic area, and the sound range of pingers is limited, habituation would be less likely in this fishery compared to nearshore fisheries (NMFS 1997a). To the extent that pingers are thought to operate as an alarm mechanism, increased exposure to pingers may increase their effectiveness in reducing interactions depending on the learning behavior of cetaceans. NMFS will continue to monitor the status of cetaceans that interact with this fishery.

### **Comments on the Voluntary Program To Reduce the Number of Gillnet Permits (Strategy #3)**

*Comment 1:* Several commenters agreed that the CDFG should be encouraged to deny reissuance of lapsed permits and that ODFW should be encouraged not to issue more than the current level of unlimited landings permits (strategy #3, part I). One commenter believed that this strategy was not likely to result in decreases in marine mammal mortality. One commenter supported the draft PCTRP's voluntary permit "buy-back program" to

reduce the number of drift gillnet permits (strategy #3, part II) as a method of reducing marine mammal mortality.

*Response:* The PCTRT recognized that the California drift gillnet fishery is not restricted from an expansion in fishing effort because a portion of CDFG drift gillnet permittees make only the minimum landings to keep valid permits. If these permit holders began fishing well beyond these minimum requirements, marine mammal entanglements likely would increase. To limit this potential expansion of fishing effort, the PCTRT recommended two approaches that would reduce the number of drift gillnet permits under strategy #3. First, information provided to the PCTRT indicated that currently CDFG does not reissue lapsed drift gillnet permits. For these reasons, the PCTRT recommended that CDFG be encouraged to continue not to reissue drift gillnet permits that have lapsed and that ODFW be encouraged to continue to issue not more than 10 unlimited landing permits. Second, the PCTRT recommended that the development of a permit buy-back program be explored. A buy-back program would focus on those fishers that hold drift gillnet permits from the State of California and who only fulfill the minimum requirements to maintain their permits.

Implementation of the recommendations to CDFG would affect only those permit holders who allow their CDFG drift gillnet permits to lapse. Implementation of the buyback program would only affect drift gillnet permit holders who were interested in being financially compensated for allowing their permits to lapse. Strategy #3 would not affect those drift gillnet fishers that annually maintain valid CDFG drift gillnet permits or who did not want to voluntarily participate in the buy-back program. This strategy is not a measure to put a "cap on total fishing effort" in the CA/OR DGN fishery (i.e., establish a maximum threshold on the number of sets each year). Implementation of strategy #3 is not likely to significantly decrease the current level of incidental marine mammal mortality by the fishery in the short-term, but is designed to limit the potential expansion of fishing effort and associated marine mammal mortality in the long-term.

As recommended by the Team, NMFS contacted both CDFG and ODFW regarding implementation of Strategy #3 of the Plan. Specifically, NMFS encouraged CDFG to continue its current practice of not reissuing lapsed drift gillnet permits and inquired whether CDFG was interested in participating in a permit buy-back

program. CDFG agreed to continue implementing its current practice of not reissuing lapsed drift gillnet permits.

At this time, CDFG is unable to participate in any permit buy-back program. Although NMFS does not have funding to implement a permit buy-back program, section 118(j) of the MMPA allows NMFS to accept, solicit, receive, hold, administer and use gifts, devises and bequests to carry out the provisions of section 118, which includes the implementation of take reduction plans. NMFS will continue to explore the development of a buy-back program.

NMFS also contacted ODFW and encouraged the agency to continue to issue no more than 10 unlimited-landings drift gillnet landings permits. ODFW stated that it did not plan on asking the Oregon Fish and Wildlife Commission to increase the maximum number of landings permits. ODFW also stated that all vessels holding Oregon gillnet permits in 1997 are vessels that currently participate in the California DGN fishery.

*Comment 2:* One commenter agreed with the implementation of the buy-back program, although they recommended it should be coupled with other economic incentive programs (e.g., raising state landing taxes).

*Response:* The PCTRT considered increasing fees in the fishery. However, the PCTRT rejected this method as a primary strategy at this time, because it would require a change in California law, would be a financial hardship to some fishers, and may not necessarily reduce current fishing effort.

#### **Comments on the Skipper Education Workshops (Strategy #4)**

*Comment:* Several commenters agreed that mandatory education during Skipper Education Workshops would help facilitate the implementation of the PCTRP. One commenter suggested that NMFS issue documentation to vessel operators that attend workshops to verify their participation and require that this documentation be onboard their vessel when they are participating in the CA/OR DGN fishery.

*Response:* Documentation of workshop attendance does not need to be kept on vessels because NMFS will maintain a database of all skippers who participate in the workshops to verify workshop attendance by individual vessel operators. This database will be used for enforcement of the Skipper Education Workshop provision.

#### **Comments on Contingency Measures Involving a Reduction in Fishing Effort**

*Comment:* One commenter was concerned that the language used in the

proposed rule describing the PCTRT's recommendations regarding "contingency measures involving a reduction in fishing effort" was not consistent with the draft PCTRP submitted by the team.

*Response:* NMFS agrees that inappropriate language regarding "contingency measures" was used in the proposed rule. The draft PCTRP included an evaluation of several measures to reduce fishing effort in the CA/OR DGN fishery as a potential method of reducing the incidental taking of strategic marine mammal stocks (section IV; draft PCTRP, 1996). Although none of the primary strategies included measures to reduce fishing effort, the team agreed to the following:

If at the time the Take Reduction Team reconvenes, the TRP objectives have not been met, the TRT will evaluate and recommend methods to reduce fishing effort in the upcoming fishing season, unless there are other applicable measures which could reasonably be expected to reduce take levels to below PBR in the upcoming fishing season.

The PCTRT also recommended that NMFS reconvene the team every year prior to June 15 to monitor the implementation of the final PCTRP, until such time that NMFS determines that the objectives of the MMPA have been met.

NMFS reconvened the PCTRT May 29-30, 1997 (PCTRT, 1997), and intends to continue to reconvene the PCTRT on an annual basis (prior to June 15) until the long-term take reduction goals of the MMPA have been reached by the CA/OR DGN fishery. NMFS did not intend to propose any changes to the PCTRT's original recommendations regarding contingency measures in the proposed rule. NMFS concurs with the PCTRT's original recommendation that the objectives of these meetings are to review the best available information on the status of strategic stocks, the latest PBR and take estimates for marine mammals incidentally taken in the fishery, and the efficacy of measures implemented to reduce the incidental taking of these stocks. Furthermore, NMFS agrees that if at the time the team reconvenes, after the final plan has been adopted by NMFS, the goals of the MMPA have not been met, the TRT will evaluate and recommend methods to reduce fishing effort in the upcoming fishing season, unless there are other applicable measures which could reasonably be expected to reduce take levels to below PBR in the upcoming fishing season.

### General Comments on the Proposed Rule

*Comment 1:* One commenter suggested that a reduction of marine mammal mortality of 50 percent could be achieved if the length of the net was reduced by 50 percent.

*Response:* NMFS agrees that reducing the size of the net could potentially decrease the number of marine mammals captured per set. However, it would also decrease the number of target species captured per set. Since this would encourage inefficient fishing, some fishers may compensate for the reduced catch rate by increasing the number of sets over the season. Thus, overall incidental marine mammal take may not change. Furthermore, although the TRT discussed several measures that would decrease fishing effort, including reducing net size, it did not recommend their implementation at this time.

*Comment 2:* One commenter recommended that a program be created to rescue whales caught in drift gillnets.

*Response:* Although similar programs have been developed on the east coast to disentangle large whales caught in fishing gear, only a small portion of the cetaceans caught in the CA/OR DGN fishery are alive when the net is pulled from the water. In addition, the fishery operates primarily offshore in locations where rescues would be infeasible.

*Comment 3:* One commenter cautioned that the implementation of the PCTRP is not likely to achieve the Zero Mortality Rate Goal (ZMRG) in 5 years.

*Response:* Section 118(f)(2) of the MMPA establishes ZMRG as a long-term goal of take reduction plans, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. NMFS has concluded that the primary strategies recommended by the PCTRT represent substantial progress toward achieving the ZMRG. Nonetheless, NMFS also recognizes that these strategies, by themselves, may not be sufficient to guarantee this goal will be achieved. For this reason, NMFS will reconvene the team at least once a year to monitor the implementation of the final TRP, and, if necessary, recommend measures for the fishery to achieve its ZMRG within the time period specified in the MMPA.

*Comment 4:* One commenter suggested that the proposed rule contradicted the draft PCTRP recommendation to encourage vessel owners to convert their nets to a mesh size of 20 inches during the Skipper Education Workshops, but not to

convert their mesh to a twine size of #27.

*Response:* The PCTRT evaluated the relationship between mesh size and cetacean bycatch. Their analysis found that mesh size was not significantly related to entanglement of cetaceans although there was a trend towards greater mesh sizes entangling more cetaceans. The biological reasons for this trend are unknown. Nevertheless, the PCTRT recommended that all vessels in the CA/OR DGN fishery voluntarily convert to 20-inch (50.8 cm) net mesh size when replacing old nets or large panels of existing net and that information be collected to further evaluate the efficacy of using 20-inch (50.8 cm) mesh as a method for reducing cetacean bycatch (draft PCTRP, 1996). NMFS will encourage vessel operators to voluntarily convert to 20-inch mesh (50.8 cm) during its Skipper Education Workshops. If in the future more of the fleet uses this mesh size, the relationship between mesh size and cetacean bycatch may be better understood.

No significant correlations were found between specific twine sizes and higher cetacean entanglement (draft PCTRP, 1996). The PCTRT did not recommend that NMFS encourage vessel owners to convert their nets to a different twine size. However, NMFS will continue to evaluate the relationship of twine size and cetacean bycatch in order to evaluate twine size as a potential strategy to reduce cetacean bycatch.

*Comment 5:* One commenter recommended that NMFS undertake the necessary research to determine whether adjusting the percentage of slack in the net may reduce cetacean bycatch.

*Response:* The PCTRT evaluated the relationship between the percentage of slack in the net and cetacean bycatch. Because the PCTRT found only a borderline significance for the slack percentages of 30–40 and 45–60, the PCTRT did not recommend requiring specific net slacks as a primary strategy in the draft PCTRP. NMFS agrees with this recommendation and therefore, has not included it as a requirement in the final rule. However, NMFS will refine the collection of data on net slack in order to evaluate the utility of percent of net slack as a strategy to reduce cetacean bycatch.

*Comment 6:* One commenter stated that if the incidental take of marine mammals is reduced to zero, there would be no need to reduce fleet expansion.

*Response:* Theoretically, if marine mammal mortality and serious injury incidental to operations of the CA/OR

DGN fishery is reduced to zero, there would be no need to limit the expansion of effort in the fishery unless that expansion precluded the fishery from achieving its take reduction goals under the MMPA. Nevertheless, the likelihood that marine mammal bycatch will be reduced to absolute zero is low. Thus, since fishing effort and marine mammal bycatch are significantly correlated, substantial increases in fishing effort would likely require additional take reduction strategies in order for the fishery to meet its take reduction goals under the MMPA.

*Comment 7:* One commenter recommended increasing the closed season and/or banning the use of drift gillnets in California.

*Response:* The PCTRT explored several measures to reduce fishing effort in the fishery, and associated marine mammal entanglement. However, at this time, the PCTRT and NMFS expect that the short-term goals of the MMPA can be met without reducing fishing effort, increasing the closed season, or banning the use of drift gillnets off California.

*Comment 8:* One commenter noted that there is a discrepancy between numbers used to refer to each primary strategy (e.g., strategy #1, #2, etc.) in the proposed rule and the draft PCTRP (1996).

*Response:* NMFS agrees and has changed the final rule's references to the plan strategies to be consistent with each strategy of the plan.

*Comment 9:* One commenter concluded that the draft PCTRP was inadequate to reduce marine mammal mortality in the CA/OR DGN fishery and urged NMFS to modify the plan to meet the requirements of the MMPA.

*Response:* NMFS disagrees. The PCTRT and NMFS expects the implementation of the PCTRP will achieve the short-term goals of the MMPA. NMFS will continue to review and evaluate the effectiveness of measures implemented under the plan to reduce cetacean entanglement. Furthermore, the Pacific Scientific Review Group recommended that “\* \* \* extreme management measures that may severely restrict or impact California driftnet fishing activities be postponed until analyses of data from pinger experiments and from current ship surveys for cetacean abundance are completed \* \* \*” (PSRG, 1997). Moreover, in addition to the four primary strategies recommended by the PCTRT, they also identified an additional 13 strategies that might reduce bycatch of strategic marine mammal stocks (draft PCTRP, 1996). These strategies were either rejected by the PCTRT or held in reserve for future

consideration. If the goals of section 118(f) of the MMPA have not been met once the final PCTRP has been implemented, these strategies may be reconsidered by the PCTRT and NMFS. NMFS will reconvene the team annually to monitor the implementation of the final plan and provide NMFS with recommendations as to whether additional measures are necessary to achieve the short-term and long-term goals of the MMPA.

#### **1997 PCTRT Recommendations**

On May 29–30, 1997, NMFS reconvened the PCTRT to review the final results from the 1996/1997 CA/OR DGN pinger experiment and evaluate the need for effort reduction and potential implementation mechanisms as recommended by the Team in the draft PCTRP (draft PCTRP, 1996). The Team also reviewed at the meeting the status of the implementation of the final Plan and final Rule to implement the Plan, Skipper Education Workshops, and the drift gillnet observer program. On July 18, 1997, the Team submitted to NMFS the following recommendations regarding the proposed plan and rule (PCTRT, 1997).

#### **Depth of Fishing Requirement (Strategy #1)**

In August 1996, the PCTRT recommended that NMFS establish a fleetwide 6-fathom minimum extender line (buoy line) requirement. At the May 1997 PCTRT meeting, the team concurred with NMFS's proposed rule requiring the use of extenders that are equal to or greater than 6 fathoms for all vessels in the CA/OR DGN fishery. This final rule prohibits the use of extenders that are less than 6 fathoms (36 ft; 10.9 m).

#### **Pinger Experiment and Requirement (Strategy #2)**

In August 1996, the PCTRT recommended that NMFS and the CA/OR DGN fishery initiate a pinger experiment during the 1996–1997 fishing season to evaluate the effectiveness of pingers at reducing incidental cetacean and strategic stock bycatch (Strategy #2; draft PCTRP, 1996). Moreover, the PCTRT recommended that if results from this experiment indicate that there is a downward trend in overall cetacean bycatch, NMFS should establish a mandatory fleetwide pinger requirement for all CA/OR DGN fishery vessels prior to the next fishing season (1997–1998) and continue to monitor the effectiveness of pingers at reducing bycatch.

Between September 1996 and January 1997, NMFS and the fishery implemented a single-blind experiment through NMFS' Drift Gillnet Observer Program as recommended by the PCTRT (draft PCTRP, 1996). This experiment used pingers with the same sound characteristics as the pingers used in the New England sink gillnet fishery experiment (e.g., broadband signal centered on 10 kHz with a source level of 132 dB re 1 Pa at 1 m) (PCTRP, 1996; NMFS, 1997a). Because preliminary results from this experiment indicated that the observed cetacean entanglement rate was almost four times greater for non-pinger sets than for those sets that used pingers, NMFS proposed that pingers be mandatory in its proposed rule to implement the PCTRP. However, NMFS stipulated that if final results from the experiment indicated that pingers were ineffective at reducing cetacean bycatch, the use of pingers would not be included in the final rule. NMFS also proposed to reconvene the PCTRT prior to publishing a final rule requiring the mandatory use of pingers in the CA/OR DGN fishery to solicit its input on whether pingers should be mandatory.

Preliminary final results from the pinger experiment indicate that cetacean entanglement and pinger use is statistically dependent (Chi-square test,  $p=0.006$ ) (NMFS, unpublished data). Out of 420 observed sets during the pinger experiment, 25 sets were observed with cetacean entanglement; 4 of these sets had pingers and 21 did not have pingers. The odds of entanglement decrease from 0.099/set without pingers to 0.022/set with pingers or a decrease of over 75 percent.

Based on the dramatic results from the 1996/1997 pinger experiment, the Team recommended by consensus during its May 1997 meeting that the use of pingers be mandatory for all vessels in the CA/OR DGN fishery beginning in the 1997/1998 fishing season. Nevertheless, the team expressed concern about whether a sufficient supply of NMFS-approved pingers would be available at the start of the swordfish fishing season (August 15). At this time, NMFS is aware of only one manufacturer that produces a pinger consistent with the specifications in the final rule. This manufacturer is currently producing these pingers and they should be available by the effective date of this rule. In addition, information on the distribution of fishing effort in the CA/OR DGN fishery over the last few years indicates that the peak of fishing effort occurs after September 30 each year (CDFG unpublished data). Because cetacean

entanglement is significantly correlated with fishing effort, the highest levels of incidental entanglement also occurs after September 30 (PCTRP, 1996). However, NMFS recognizes that vessel operators require sufficient notice to purchase pingers in advance of the date that pingers are required to be deployed. For these reasons, the pinger requirements described under section 229.31(c) will be effective for the 1997/1998 fishing season on October 30, 1997. During subsequent seasons (e.g., 1998/1999), pinger requirements will be mandatory during the entire fishing season.

Although the Team concurred with the pinger specifications and configurations in the proposed rule, they suggested that the final rule include a mechanism to allow for limited experimentation with alternative pinger specifications and configurations in the fishery. The Team recommended that any pinger experiment undergo peer review and the experiment should not detract from the NMFS's CA/OR DGN fishery observer program or the fishery's requirements to meet bycatch reduction goals of the MMPA. The Team also suggested that new manufactures of pingers have their pinger "certified" by an independent company that they meet NMFS' pinger specifications.

Under this final rule, pingers must be used on all vessels, during every set, and during the entire fishing season. A pinger is an acoustic deterrent device which, when immersed in water, broadcasts a sound frequency range of approximately 10 kHz at 132 dB re 1 micropascal at 1 m with a pulse duration of 300 milliseconds and a pulse rate of 4 seconds. This rule also allows for limited experimentation in the fishery to test the effectiveness of pingers with alternative specifications and alternative pinger configurations on the net. Experimental protocols will undergo peer review to ensure scientific credibility. If better information on the hearing sensitivity of cetaceans incidentally taken in the CA/OR DGN fishery or if experimental results indicate that different pinger specifications/configurations would be more effective at reducing cetacean bycatch, NMFS may require that different pingers be used in the fishery. At that time, NMFS would publish proposed pinger specifications and/or pinger configurations and provide opportunity for public comment. For the reasons described previously (see Responses to Comments section), the final rule does not require new manufactures of pingers to be "certified" by an independent company

that their pingers meet the NMFS specifications under section 229.31(c)(1).

In order to better enforce the pinger requirement, the PCTRT recommended that NMFS require any driftnet vessel with swordfish or shark onboard to have pingers. Although NMFS agrees that drift gillnet vessels that are at sea should be required to have pingers onboard, it believes that pingers should be on the drift gillnet vessel at all times, even when no shark or swordfish are on the boat. Regardless of whether drift gillnet sets catch swordfish or shark, these sets may still incidentally entangle cetaceans. For these reasons, the final rule stipulates that anytime a CA/OR DGN fishery vessel is at sea with a multifilament drift gillnet onboard, the vessel must carry a sufficient number of pingers to meet the configuration requirements set forth under section 229.31(c)(3).

#### **Voluntary Program To Reduce the Number of Gillnet Permits (Strategy #3)**

In August 1996, the PCTRT recommended two approaches for limiting the potential expansion of fishing effort by permit holders in California and Oregon (Strategy #3, draft PCTRP 1996). At its May 1997 meeting, the Team continued to support its original recommendation under Strategy #3, but recommended that the language in the preamble be more consistent with the draft Plan. For example, in the preamble to the proposed rule NMFS states that it would encourage ODFW to continue issuing the same number of permits as were issued in 1996. However, the draft plan states that ODFW should be encouraged to issue a "maximum of 10 permits each year." NMFS agrees and further clarifies that it was the intent of this recommendation that ODFW issue no more than 10 permits each year. Furthermore, the preamble states that nearly a third of the drift gillnet permittees annually satisfy only the minimum CDFG requirements to keep their permits valid. The Team wanted NMFS to clarify that the draft Plan states that almost a third of CDFG permittees are relatively inactive, fishing on an extremely limited basis and only, apparently, to maintain their CDFG drift gillnet permit. NMFS concurs.

#### **Skipper Education Workshops (Strategy #4)**

In August 1996, the PCTRT recommended that NMFS conduct mandatory skipper workshops on the components of the PCTRP, together with expert skipper panels, to further generate and consider potential,

additional take reduction strategies (draft PCTRP, 1996). At its May 1997 meeting, the team concurred with the proposed rule's requirement that all vessel operators be required to attend a skipper workshop before initiating fishing each fishing season. However, to facilitate maximum compliance with the requirement during 1997, they recommended the language in the final rule indicate that for the 1997/1998 fishing season, skippers must have attended a workshop after the date of the last workshop to be offered this season (e.g., September 1997) before they continue fishing in 1997/1998. The language on subsequent year workshop requirements should remain as stated in the proposed rule. The Team included additional recommendations on the content of the workshops and recommended that NMFS not issue "certificates of attendance" to skippers that attend workshops, rather enforcement of the requirement should be conducted with workshop rosters.

As recommended by the Team, NMFS conducted five skipper education workshops during June 3-10, 1997, in the following California locations: La Jolla, Long Beach, Morro Bay, Monterey, and Santa Rosa. Eighty-five fishers attended these voluntary workshops at no cost to the fishers. At the workshops, a presentation on the development and status of the PCTRP was provided. A demonstration on pingers was presented at the meeting along with a question/answer period. During the second part of the workshop, current fishing strategies employed by fishers to avoid marine mammal entanglement were discussed. This information will be provided to the Team at its next meeting as background for preparing additional take reduction strategies, if necessary. Workshop participants were also provided with a comprehensive guide to the identification of marine mammals to provide fishers with more information on the biology and behavior of marine mammals to assist their efforts in reducing bycatch. These guides will also improve the accuracy of species identification indicated on the mortality/serious injury reports fishers must submit to NMFS under its Marine Mammal Authorization Program (MMAP). NMFS expects to hold two additional workshops in September 1997 in Long Beach, CA, and Portland, OR. Vessel operators who attended June 1997 Skipper Education Workshops will not be required to attend an additional workshop before the 1997/1998 fishing season.

After notification by NMFS, this final rule requires all CA/OR DGN vessel operators to have attended one Skipper

Education Workshop after all workshops have been convened by NMFS in September 1997. CA/OR DGN vessel operators are required to attend Skipper Education Workshops at annual intervals thereafter, unless that requirement is waived by NMFS. NMFS will provide sufficient advance notice to vessel operators by mail prior to convening workshops.

#### **Contingency Measures Involving a Reduction in Fishing Effort**

The PCTRT strongly encouraged NMFS to modify the language in the preamble to make it consistent with the language in the draft Plan. NMFS agrees (see Responses to Comments section).

#### **Other Team Recommendations**

##### *Mesh Size*

Although no significant statistical correlation with cetacean entanglement was found, the PCTRT continues to support its recommendation that vessel owners should be encouraged to convert to 20 inch (50.8 cm) mesh when replacing old nets or panels, since the results indicate a trend in reduction of marine mammal bycatch. The PCTRT will continue to examine observer data to better understand the relationship between mesh size, inter-related net characteristics (e.g., twine size), and cetacean entanglement. NMFS agrees and recommended that fishers convert to 20 inch (50.8 cm) mesh when replacing nets or panels during NMFS' June 1997 Skipper Education Workshops and will suggest the conversion during future workshops.

##### *Observer Program*

In August 1996, the PCTRT recommended several measures to enhance the effectiveness of NMFS' observer program, including: (1) Achieving 20 percent observer coverage; (2) ensuring that the observer program is targeting all possible DGN vessels, including vessels that cannot carry an observer; and (3) ensuring that the observer program data collection be expanded to include several additional data variables (i.e., net and environmental characteristics) (draft PCTRP, 1996). At its May 1997 meeting, the PCTRT continued to express concerns regarding the level of observer coverage and strongly recommended that NMFS achieve 20 percent observer coverage. The PCTRT emphasized that the observer program should re-evaluate its determinations of whether a vessel is "unobservable" and should make an effort to observe the smaller boats that cannot accommodate an observer (via independent observation platforms).

NMFS should cross-reference CDFG permittee lists with MMAP information to ensure that all fishers who participate in the fishery are included in the program. The PCTRT also recommended that NMFS develop a reporting mechanism on observer data forms for expediting the enforcement of the requirements of the final rule because failure to comply with take reduction strategies could jeopardize the effort to reduce cetacean entanglement. All elements in the draft Plan regarding observer reporting forms should be included in the observer reporting forms for the next fishing season (1997/1998) and beyond (e.g., surface water temperature and cloud cover). The Team recommended that observers periodically check to determine if pingers are functioning.

Since NMFS received the draft PCTRP (1996) in August 1996, it has implemented several of the suggestions from the PCTRT regarding the observer program. For example, the Southwest Region, NMFS, has reevaluated its previous determinations as to whether vessels are unobservable and has reviewed the CDFG permittee list. The Southwest Region has also incorporated the PCTRT's recommended changes to the observer data forms and observers will check whether pingers on observed sets are functioning. Furthermore, the goal of the CA/OR DGN fishery observer program is to observe 20 percent of the annual fishing effort and the program will continue to strive to achieve this coverage within the constraints of available funding. At this time, NMFS does not have the funding to operate an independent observer platform.

#### *1998 Team Meeting*

The Team recommended that NMFS reconvene the Team in March 1998, preferably after the meeting of the Pacific Scientific Review Group. This would allow the PCTRT sufficient opportunity to review key information on the status of strategic stocks and integrate this information into its ongoing evaluation of the efficacy of Plan strategies. NMFS agrees and intends to reconvene the PCTRT in March 1998 to monitor the implementation of the final PCTRP.

#### **Other Comments**

NMFS received information after the close of the proposed rule's comment period, during the Skipper Education Workshops in June 1997, that suggested that a small portion of the CA/OR DGN fleet (e.g., approximately 10 vessels) uses fishing strategies or gear that may not require pingers to be placed on both the floatlines and leadlines.

Specifically, this sector of the fleet: (1) Targets only thresher shark; (2) fishes in shallow water near the coast (e.g., 3–40 miles (4.83–64.36 km) from shore); (3) uses a smaller net (e.g., 600 fathoms (3600 ft or 1097 m) long, 45–80 meshes deep); (4) does not fish on a thermocline; (5) uses smaller boats (e.g., 30–40 ft (9.12–12.19 m) long); and (6) makes short trips (1–2 days). As a result, the commenter believes that they should be reclassified as a different fishery or only be required to place pingers on the floatline.

Under section 118 of the MMPA, NMFS is required to reexamine, and after notice and opportunity for public comment, the classification of commercial fisheries on at least an annual basis. On May 27, 1997, NMFS published a proposed List of Fisheries for 1998 (62 FR 28657) and expects the final List of Fisheries to be published within a few months. NMFS will reexamine the categorization and definition of the CA/OR DGN fishery in 1998 when it annually reexamines its classification of fisheries. Furthermore, NMFS will request that the PCTRT at its next meeting evaluate whether certain vessels targeting only thresher shark should be classified as another fishery and/or have different requirements under the PCTRP (March 1998). At this time, NMFS is not modifying its final rule to establish separate requirements for vessels targeting thresher shark. NMFS' Changes to the Draft Plan, 1997 PCTRT Recommendations, and Changes to the Proposed Rule to Implement the Plan.

NMFS adopts the draft plan as submitted by the PCTRT (PCTRP, 1996) and recommendations from the 1997 PCTRT meeting (PCTRT, 1997), except for the following minor changes. NMFS has determined that implementation of the take reduction plan, as modified, and implementation of this final rule is expected to reduce, within 6 months of its implementation, mortalities and serious injuries of all strategic stocks that are taken by the CA/OR drift gillnet fishery to below the PBR level for each stock.

The PCTRT recommended that if the results from a pinger experiment indicate pingers are effective at reducing cetacean bycatch, then the use of pingers should be mandatory. In contrast, before final results from the 1996/1997 pinger experiment in the CA/OR DGN fishery were available, NMFS proposed the mandatory use of pingers in the proposed rule to implement the PCTRP. This final rule requires the use of pingers in the fishery.

The PCTRT recommended during its 1997 meeting that NMFS require any

driftnet vessel with swordfish or shark on board to have pingers. Under the proposed rule and this final rule, pingers are required to be on the vessel at all times when the vessel is at sea, even when no shark or swordfish are on the boat.

The team recommended that pingers be required in the fishery by August 15, 1997. The proposed rule did not specify a certain date that pingers would be required. The final rule requires the use of pingers by vessels in the CA/OR DGN fishery to be effective for the 1997/1998 fishing season 30 days after filing of this final rule for public inspection at the Office of the Federal Register. During subsequent seasons (e.g., 1998/1999), pinger requirements will be mandatory during the entire fishing season.

The draft PCTRP (1996) and proposed rule stipulated that pingers must be attached on both the floatline and leadline and spaced no more than 300 ft (91.44 m) apart, in order to insure that the pingers were broadcasting sound over the entire area of the net. During the pinger experiment, pingers were attached to the floatlines and leadlines with approximately 1 and 6 ft (0.30 and 1.82 m) lanyards, respectively. Results from this experiment indicate that attaching pingers directly to buoy lines (i.e., extenders) may be a more efficient attachment method because it would facilitate pinger attachment. Pingers attached in this manner would not require individual attachment and removal to and from the floatline during each set, because this would automatically occur during routine extender attachment/removal. For example, if extenders were attached to the net at 100 ft (30.48 m) intervals, one pinger could be attached to every third extender and the 300 ft (91.44 m) spacing requirement would be maintained. For these reasons, the final rule authorizes the placement of pingers on extenders as long as the 300 ft (91.44 m) spacing requirement is maintained near the floatline and pingers are no more than 3 ft above the floatline. In addition, this final rule authorizes pingers to be attached to the leadline with lanyards that are up to 6 ft (1.83 m) in length.

Deployment of pingers during the 1996/1997 pinger experiment demonstrated that pinger performance is dependent on following manufacturer's operating instructions and minimizing exposure of battery packs to saltwater. For example, during the first few weeks of the pinger experiment, silicon grease was not applied to O-rings prior to pinger placement which resulted in a limited number of pingers leaking and becoming nonfunctional. Also, because



the pingers used in the experiment were not designed with on/off switches, the experimental protocol included the removal of battery packs after each set to preserve battery life. This procedure greatly increased the probability that the pinger battery packs would be exposed to saltwater and malfunction. However, NMFS found that battery life is much longer than originally estimated and does not foresee the need to remove the batteries after every set. Reducing battery exposure to saltwater will substantially decrease pinger malfunction. For these reasons, NMFS recommends that if drift gillnet fishers use pingers that do not have on/off switches, fishers follow manufacturer's deployment instructions closely and minimizing the frequency of battery pack removal (i.e., just keep them pinging for the entire trip) to reduce its potential exposure to seawater and possible pinger malfunction.

The PCTRT recommended during its 1997 meeting that NMFS require any manufacturer of pingers to provide independent certification that a new prototype meets the specifications under § 229.31(c)(1). The PCTRT made this recommendation because it thought the definition of the term "NMFS-approved pinger" was unclear in the proposed rule. Although the proposed rule described the sound specifications for pingers, NMFS agrees that the term "NMFS-approved" was unclear. Nevertheless, NMFS does not agree that manufacturers should be required to have an "independent company" certify that new prototype pingers meet the pinger specifications under § 229.31(c)(1); most manufacturers have the equipment and expertise to test pinger sound characteristics. Of course, manufactures of new pinger prototypes will need to provide documentation that their pingers meet the specifications of the final rule. For these reasons, any reference to the term "NMFS-approved" has been removed from the final rule; in addition, the final rule does not require that manufacturers of new prototype pingers have an "independent company" certify that their pingers meet the specification under § 229.31(c)(1).

#### Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received during the public comment period regarding this certification. As a result, no final

regulatory flexibility analysis has been prepared.

The Assistant Administrator for Fisheries, NOAA (AA) has determined, based on an EA prepared under the National Environmental Policy Act, that implementation of these regulations would not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. A copy of the EA prepared for this rule is available upon request (see ADDRESSES).

This rule has been determined to not be significant for purposes of E.O. 12866.

#### References

- Barlow, J., R.L. Brownell Jr., D.P. DeMaster, K.A. Forney, M.S. Lowry, S. Osmeck, T.J. Ragen, R.R. Reeves, and R.J. Small. 1995. U.S. Pacific Marine Mammal Stock Assessments. NOAA Technical Memorandum NMFS, NOAA-TM-NMFS-SWFSC-219. 162 p.
- NMFS. 1997a. Draft Environmental Assessment: Use of Acoustic Pingers as a Management Measure in Commercial Fisheries to Reduce Marine Mammal Bycatch. NMFS, Office Of Protected Resources, Silver Spring, MD.
- NMFS. 1997b. Environmental Assessment: Final Regulations to Implement the Pacific Offshore Cetacean Take Reduction Plan, Under Section 118 of the Marine Mammal Protection Act. August 1997.
- PCTRP. 1996. Final Draft, Pacific Offshore Cetacean Take Reduction Plan. Draft plan submitted to the National Marine Fisheries Service and prepared by the Pacific Cetacean Take Reduction Team. August 1995. 75 p.
- PCTRT. 1997. 1997 Recommendations Report: Pacific Offshore Cetacean Take Reduction Team. July 1997. 5 p.
- PSRG. 1997. Recommendations of the Pacific Scientific Review Group from the May 1997 meeting. Unpublished document.
- Reeves, R.R., R.J. Hofman, G.K. Silber, D. Wilkinson. 1996. Acoustic Deterrence of Harmful Marine Mammal-Fishery Interactions: Proceedings of a Workshop held in Seattle, Washington, 20-22 March 1996. NOAA Technical Memorandum, NMFS-OPR-10. 70 p.

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

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

Dated: September 16, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries.*

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, subpart C continues to read as follows:

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

2. In subpart C, § 229.31 is added to read as follows:

#### § 229.31 Pacific Offshore Cetacean Take Reduction Plan.

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

(b) *Extenders.* Extenders (buoy lines) of at least 6 fathoms (36 ft; 10.9 m) must be used on all sets.

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

(2) Pingers must be used on all vessels, during every set beginning October 30, 1997. While at sea, drift gillnet vessels with multifilament gillnets onboard must carry enough pingers to meet the configuration requirements set forth under paragraph (c)(3) of this section.

(3) Pingers must be attached on or near the floatline and on or near the leadline and spaced no more than 300 ft (90.9 m) apart. Pingers attached on extenders, or attached to the floatline with lanyards, must be within 3 ft (0.91 m) of the floatline. Pingers attached with lanyards to the leadline must be within 6 ft (1.82 m) of the leadline. Pingers on or near the floatline and on or near the leadline must be staggered, such that the horizontal distance between a pinger on or near the floatline and a pinger on the leadline is no more than 150 ft (45.5 m). Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

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

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

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

[FR Doc. 97-26330 Filed 9-30-97; 4:50 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 961227373-6373-01; I.D. 092597A]

#### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Changes

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

**ACTION:** Fishing restrictions; request for comments.

**SUMMARY:** NMFS announces further adjustments to the Pacific Coast groundfish limited entry fisheries for the *Sebastes* complex and its components canary and yellowtail rockfish, the Dover sole-thornyhead-trawl sablefish (DTS) complex and its components Dover sole and trawl-caught sablefish, and announces the final 1997 cumulative trip limit period for trawl vessels in the "B" platoon. NMFS also announces an increase to the monthly cumulative limit for the open access nontrawl sablefish fishery north of 36° N. lat. (A similar change for the limited entry nontrawl sablefish fishery north of 36° N. lat. is included in a separate **Federal Register** action that announces the duration and limit of the limited entry sablefish mop-up fishery.) These restrictions are intended to keep landings as close as possible to the 1997 harvest guidelines and allocations for these species, and to provide management flexibility during the final months of the year.

**DATES:** Effective at 0001 hours local time (l.t.) October 1, 1997; except for the trip limit for trawl vessels operating in the B platoon, which will become effective at 0001 hours l.t. October 16, 1997. These changes remain in effect, unless modified, superseded or rescinded, until the effective date of the 1998 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through October 20, 1997.

**ADDRESSES:** Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140 or Rodney McInnis at 562-980-4040.

**SUPPLEMENTARY INFORMATION:** The following changes to current management measures are based on the best available information, and were recommended by the Pacific Fishery Management Council (Council), in consultation with the states of Washington, Oregon, and California, at its September 9-12, 1997, meeting in Portland, OR.

*The Sebastes Complex.* The *Sebastes* complex consists of all rockfish managed by the FMP except Pacific ocean perch (POP), widow rockfish, shortbelly rockfish, and thornyheads. The limited entry fishery for the *Sebastes* complex currently is managed under a 2-month cumulative trip limit of 30,000 lb (13,608 kg) north of Cape Mendocino (40°30' N. lat.) and 150,000 lb (68,039 kg) south of Cape Mendocino. Within these 2-month cumulative limits for the *Sebastes* complex, no more than 6,000 lb (2,722 kg) may be yellowtail rockfish north of Cape Mendocino, no more than 10,000 lb (4,534 kg) may be bocaccio south of Cape Mendocino, and no more than 14,000 lb (6,350 kg) may be canary rockfish coastwide.

The best available information at the September 1997 Council meeting indicated that both yellowtail rockfish and canary rockfish would be 18-19 percent below their respective harvest guidelines at the end of the year. Therefore, the Council recommended increasing the trip limits for these species, and converting those limits from 2-month to 1-month limits on October 1, 1997, so that the industry could receive immediate benefit from the higher limits. The new 1-month

cumulative trip limits for the *Sebastes* complex are: 20,000 lb (9,072 kg) north of Cape Mendocino and 75,000 lb (33,975 kg) south of Cape Mendocino. Within these 1-month cumulative limits for the *Sebastes* complex, no more than 5,000 lb (2,268 kg) may be yellowtail rockfish north of Cape Mendocino, no more than 5,000 lb (2,268 kg) may be bocaccio south of Cape Mendocino, and no more than 10,000 lb (4,534 kg) may be canary rockfish coastwide.

As these changes are implemented in the middle of a 2-month cumulative trip limit period (September-October 1997), both the 2-month cumulative trip limits and the 60 percent monthly limits for the *Sebastes* complex and its components become obsolete after October 1. POP and widow rockfish are the only two species that remain under 2-month cumulative limits. (The DTS complex was converted to monthly limits on September 1, 1997 (62 FR 36228, July 7, 1997).)

*Dover Sole, Thornyheads, and Trawl-Caught Sablefish (the DTS Complex).* The limited entry fishery for the DTS complex and its components currently is managed under a 1-month cumulative trip limit of 28,500 lb (12,927 kg) north of Cape Mendocino and 50,000 lb (22,680 kg) south of Cape Mendocino. Within these 1-month cumulative limits, no more than 15,000 lb (6,804 kg) may be Dover sole north of Cape Mendocino, no more than 6,000 lb (2,722 kg) may be sablefish coastwide, and no more than 7,500 lb (3,402 kg) may be thornyheads coastwide. No more than 1,500 lb (680 kg) of the thornyheads may be shortspine thornyheads.

The best available information at the September 1997 Council meeting indicated that the harvest guidelines for Dover sole would be reached before the end of the year, and exceeded by 19 percent in the Columbia area and 7 percent coastwide if the rate of landings is not slowed. Landings of trawl-caught sablefish also were projected to exceed the limited entry trawl allocation by 9 percent by the end of the year.

Landings of both species of thornyheads are projected to be lower than their respective harvest guidelines. The two thornyhead species are often caught together. Landings of longspine thornyheads are projected to be 28 percent below its harvest guideline by the end of the year; but, trip limits for this species could not be increased without increasing the catch of shortspine thornyheads, which are expected to be 7 percent below its 1,380-mt harvest guideline but well above the 1,000-mt acceptable biological catch for this species. Because