

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 01-1909; MM Docket No. 00-14; RM-9753]

**Radio Broadcasting Services; Elkhorn City and Coal Run, KY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of East Kentucky Broadcasting Corporation, reallocates Channel 276A from Elkhorn City to Coal Run Kentucky, and modifies Station WPKE-FM license accordingly. See 65 FR 7816, February 16, 2000. Channel 276A can be reallocated to Coal Run in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) south at petitioner's requested site. The coordinates for Channel 276A at Coal Run are 37-23-57 North Latitude and 82-30-32 West Longitude.

**DATES:** Effective September 24, 2001.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-14 adopted August 1, 2001, and released August 10, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 54, 303, 334, and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Coal Run, Channel 276A; and removing Elkhorn City, Channel 276A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-21412 Filed 8-23-01; 8:45 am]

**BILLING CODE 6712-01-U**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 223 and 224**

[Docket No. 010820209-1209-01; I.D. 080901A]

**RIN 0648-AP40**

**Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements; Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations**

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** NMFS is issuing an interim final rule to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) drift gillnet fishery from August 15 through November 15 in state and federal waters in Monterey Bay, CA and vicinity, north to the 45° N lat. intersect of the Oregon coast. NMFS has determined that the incidental take level of leatherback sea turtles by this fishery is dependent on the area and season being fished. The time and area closure will result in a take level reduction by the fishery and is necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the leatherback sea turtle population.

**DATES:** This interim final rule is effective August 24, 2001. Comments on this interim final rule must be postmarked or transmitted by facsimile by 5 p.m., Pacific Standard Time, on November 23, 2001. Comments transmitted via e-mail or the Internet will not be accepted.

**ADDRESSES:** Send comments on this interim final rule to Tim Price, National Marine Fisheries Service, Protected Resources Division, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802-4213. Copies of the Environmental Assessment (EA) or biological opinion (BO) may be obtained from Tim Price, Protected Resources Division, National Marine Fisheries

Service, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Tim Price (562) 980-4029.

**SUPPLEMENTARY INFORMATION:** On October 24, 2000 (65 FR 64670, October 30, 2000), NMFS issued a permit, for a period of 3 years, to authorize the incidental, but not intentional, taking of four stocks of threatened or endangered marine mammals (Fin whale, California/Oregon/Washington stock; Humpback whale, California/Oregon/Washington-Mexico stock; Steller sea lion, eastern stock; and Sperm whale, California/Oregon/Washington stock) by the CA/OR drift gillnet fishery under section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(E)).

To authorize the incidental take by this fishery of marine mammals listed under the Endangered Species Act (ESA), NMFS completed a formal consultation under section 7 of the ESA. On October 23, 2000, NMFS issued a BO in which it determined that the current operations of the CA/OR drift gillnet fishery are jeopardizing the continued existence of the leatherback and loggerhead sea turtle populations by appreciably reducing the likelihood of both the survival and recovery of these two species.

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. The leatherback (*Dermochelys coriacea*) is listed as endangered and the loggerhead (*Caretta caretta*) is listed as threatened. Under the ESA and its implementing regulations, taking sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only be legally authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or section 10 of the ESA. In order for an incidental take statement to be issued, the incidental take must not be likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

To avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the leatherback and loggerhead sea turtles, NMFS developed a reasonable and prudent alternative in the BO which consists of three measures: a) a drift gillnet time and area closure to protect leatherback sea turtles; b) funding and supporting a Western Pacific conservation, education, and protection program aimed at protecting nesting females,

their eggs, and nesting beach habitat and addressing incidental capture in local fisheries; and c) a drift gillnet time and area closure to protect loggerhead sea turtles.

This interim final rule implements only the measure to protect leatherback sea turtles. For the reasons indicated later in this preamble, this measure must be implemented immediately.

The conservation, education, and protection program does not fall within U.S. regulatory authority and will be implemented through cooperative efforts with appropriate parties.

The measure to address the incidental take of loggerhead sea turtles by the CA/OR drift gillnet fishery will be implemented by a subsequent rulemaking. Observer data from July 1990 through January 2000 indicate that all the observed loggerhead sea turtle entanglements occurred during El Nino events. According to the most recent El Nino Watch Advisory, 2001–07, the existing west coast oceanographic conditions are consistent with a decay of the La Nina conditions and a prelude to a mild or moderate El Nino in the ensuing months. NOAA/National Environmental Satellite, Data and Information Services, Coast watch Program (<http://cwatchwc.ucsd.edu>) data indicate that an El Nino event is not imminent. Because the BO concluded that the CA/OR drift gillnet fishery would only jeopardize the continued existence of loggerhead sea turtles during El Nino events, there is adequate time to provide prior notice and an opportunity for public comment on the time and area closure to protect loggerhead sea turtles. Therefore, this measure was not included in this rulemaking but will be implemented in a separate rulemaking.

#### **Measure to Reduce Leatherback Entanglements**

The measure identified in the BO to address the incidental take of leatherback sea turtles by the CA/OR drift gillnet fishery consists of a time and area closure that would prohibit drift gillnet fishing activity in state and Federal ocean waters off of California and Oregon inside the area bounded by straight lines connecting Point Conception (34°27' N) to 34°27' N 129° W, to 45° N 129° W, to the point where 45° N intersects the Oregon coast, from August 15 to October 31, for a period of 3 years (2001–2003).

This measure would reduce the likelihood of the CA/OR drift gillnet fishery incidentally entangling leatherback turtles by 78 percent. Although the observer data do not indicate a specific, localized area where

more leatherbacks are entangled, but rather a more widespread distribution, observed leatherback entanglement rates change as a function of latitude, with the most substantial increase in entanglement rates occurring north of 36°30' N. NMFS has observed 23 leatherback entanglements since the inception of the observer program in July 1990, 91 percent of which were recorded north of Point Conception. Takings of leatherbacks have been observed during the months of September, October, November, December and January, with approximately 60 percent of the entanglements occurring in October. Based on this information, NMFS expects this measure to prohibit fishing with drift gillnets in ocean waters north of Point Conception would avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the leatherback sea turtle species.

#### **Alternative Measures to Reduce Leatherback Entanglements**

Since the issuance of the BO on October 23, 2000, NMFS received comments from CA/OR drift gillnet commercial fishermen, recreational fishing organizations, and from the Pacific Offshore Cetacean Take Reduction Team (TROTTEd) regarding the measure in the reasonable and prudent alternative to close the CA/OR drift gillnet fishery north of Point Conception from August 15 to October 31. The CA/OR drift gillnet fishermen have expressed a need to fish north of Point Conception to remain economically viable as a fishery. Recreational fishing organizations have expressed a concern that an increased number of drift gillnet vessels fishing south of Point Conception would cause a reduction in the number of striped marlin that recreational fishermen could catch. In response to the concern expressed by the fishermen on the effects of the closure on the fishery, the TROTTEd evaluated whether there might be a measure other than the reasonable and prudent alternative measure identified in the BO, that would allow the fishermen to fish north of Point Conception and still provide the same level of protection to leatherback sea turtles and presented a consensus recommendation for consideration.

NMFS recognizes the merit and importance of the TROTTEd recommendation. While NMFS was not able to conclude that the TROTTEd recommendation provided a comparable level of protection for leatherback turtles, NMFS concluded that a

modified version of the TROTTEd recommendation would provide fishing opportunity north of Point Conception while providing the same level of protection for leatherback sea turtles as the BO.

In September 2000, NMFS tagged two leatherback turtles in Monterey Bay, CA with satellite transmitter tags. Shortly afterwards, the turtles departed the area, traveling in a southwesterly direction, presumably toward western Pacific nesting beaches. Based on this recent leatherback satellite telemetry data and historical observer data, NMFS is implementing a modified version of the TROTTEd recommendation which will protect the potential migratory route of leatherback turtles departing Monterey, CA, in August, September, October and the first half of November. This alternative measure closes the area bounded by the straight lines from Point Sur (34°18.5' N) to 34°27' N 123°35' W, to 34°27' N 129° W, to 45° N 129° W, to the point 45° N intersects land, from August 15 to November 15. NMFS has determined that this alternative provides the same, if not greater, protection for leatherback turtles as the reasonable and prudent alternative measure identified in the BO. The NMFS Office of Protected Resources, which issued the BO, has concurred that this alternative would provide the same level of protection as the reasonable and prudent alternative measure identified in the BO and would avoid the likelihood of jeopardizing the continued existence of the leatherback sea turtle.

This determination is based on observer data that indicate that NMFS' alternative time and area closure described above provides the same level of protection for leatherback turtles (a 78-percent reduction in the likelihood of the CA/OR drift gillnet fishery incidentally entangling leatherback turtles) as the time and area closure identified in the reasonable and prudent alternative of the BO. In addition, based on leatherback satellite telemetry data, NMFS' alternative is expected to provide protection to migrating leatherback turtles departing Monterey, CA, in August, September, October and the first half of November.

Under this measure, drift gillnet vessels must continue to comply with existing state codes that regulate gear, equipment and fishing seasons and with Federal regulations that implement the Pacific Offshore Cetacean Take Reduction Plan (50 CFR 229.31).

#### **Classification**

NMFS prepared an EA for this interim final rule and concluded these

regulations would pose no significant adverse environmental impact.

The action implemented by this interim final rule is expected to impact approximately 81 California/Oregon drift gillnet vessel owners and operators, representing approximately 2,000 fishing sets annually. Four alternatives were evaluated in the EA prepared for this interim final rule, including a status quo alternative. For a description and a detailed economic analysis of the alternatives analyzed for the CA/OR drift gillnet fishery, readers should refer to the EA prepared for this interim final rule. The total cost to the CA/OR drift gillnet fleet resulting from the time and area closures in this interim final rule is estimated at \$640K. This maximum cost estimate to the fishery is a worst case scenario based on the assumption that none of the fishing effort will shift to ocean areas that remain open to fishing. However, because the observed entanglement rate for swordfish in the leatherback closed area is similar to the swordfish entanglement rate in the open area along central California, NMFS expects most of the fishing effort will shift to the open ocean waters. Therefore, NMFS does not expect the leatherback time and area closure to have as much of an effect on ex-vessel gross revenue values as the worst case scenario estimate of \$640K.

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

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

A BO on the issuance of a marine mammal permit under section 101 (a)(5)(E) of the MMPA was finalized on October 23, 2000. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of leatherback and loggerhead sea turtles. This interim final rule implements an alternative to the reasonable and prudent alternative measure in the BO to protect leatherback sea turtles. NMFS has determined that the alternative measure implemented by this interim final rule is as protective of leatherback sea turtles as the reasonable and prudent alternative measure in the BO. NMFS Office of Protected Resources, which issued the BO, has concurred that this alternative would provide the same level of protection as the reasonable and prudent alternative measure identified in the BO and would avoid the likelihood of jeopardizing the continued existence of the leatherback sea turtle. This alternative measure does not

change the conclusions of the BO related to marine mammals listed under the ESA. Moreover, this interim final rule will have no adverse impacts on marine mammals that are not listed under the ESA.

Given the endangered status of the leatherback sea turtle, the fact that the fishery opened on August 15, and that the existing regulations are not sufficient to prevent entanglements, the Assistant Administrator for NOAA Fisheries (AA), for good cause, under 5 U.S.C. 553 (b)(3)(B), finds that delaying this closure action to allow for prior notice and an opportunity for public comment would be contrary to the public interest because such delay would not provide protection for leatherback sea turtles that would otherwise be taken by this fishery. For the same reasons, the AA finds good cause also under 5 U.S.C. 553 (d)(3) not to delay the effective date of this interim final rule for 30 days.

In developing the alternative closure for protection of leatherback sea turtles under this interim final rule, NMFS has considered, to the maximum extent practicable and consistent with the ESA, the concerns of the CA/OR drift gillnet fishery and Pacific Offshore Cetacean Take Reduction Team as previously described in this action. To ensure timely notice of this action, NMFS has scheduled mandatory skipper workshops for vessel operators and owners during the last week in August and first week in September to clarify issues related to the time and area closure to protect leatherback sea turtles and the Pacific Offshore Cetacean Take Reduction Plan. A fleet notice will be sent by certified mail to the vessel owners and operators notifying them of the leatherback time and area closure. NMFS will also coordinate with the U.S. Coast Guard to issue a Notice to Mariners on Channel 16, VHF radio as well as send notice through NOAA Weather radio.

As prior notice and opportunity for public comment are not required to be provided for this interim final rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

In keeping with the intent of the Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS has conferred with the States of California and Oregon regarding the implementation of the reasonable and prudent alternative. Both California and Oregon have expressed support for the measures identified in the BO for the protection

of leatherback and loggerhead sea turtle species. NMFS met with California Department of Fish and Game officials to decide which agency would implement the regulations to meet the requirement of the BO reasonable and prudent alternative. The State of California decided that NMFS should implement the regulations under the authority of the ESA. In addition, as a member of the TROTTEED, the State of California was actively involved in the development of the alternative measure to protect leatherback sea turtles and participated in meetings about its implementation. NMFS intends to continue engaging in informal and formal contacts with the States of California and Oregon during the implementation of the measures in the BO and development of the highly migratory species fishery management plan that includes the CA/OR drift gillnet fishery.

Dated: August 21, 2001.

**William T. Hogarth,**

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

#### List of Subjects

##### 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

##### 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are amended to read as follows:

#### **PART 223—THREATENED MARINE AND ANADROMOUS SPECIES**

1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.206, add paragraph (d)(6) to read as follows:

#### **§ 223.206 Exceptions to prohibitions relating sea turtles.**

\* \* \* \* \*

(d) \* \* \*

(6) Restrictions applicable to the California/Oregon drift gillnet fishery--  
(i) Pacific leatherback conservation area. No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed:

(A) Point Sur (36°18.5' N) to 34°27' N 123°35' W;

(B) 34°27' N 123°35' W to 34°27' N 129° W;

(C) 34°27' N 129° W to 45° N 129° W;

(D) 45° N 129° W to the point 45° N intersects the Oregon coast.

(ii) [Reserved]

#### **PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES**

3. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. In § 224.104, the section heading is revised to read as follows:

##### **§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.**

5. In § 224.104, paragraph (c) is revised to read as follows:

\* \* \* \* \*

(c) Special prohibitions relating to leatherback sea turtles are provided at § 223.206 (d)(2)(iv) and § 223.206 (d)(6) of this chapter.

[FR Doc. 01–21512 Filed 8–23–01; 8:45 am]

**BILLING CODE 3510–22–S**

#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 660**

[Docket No. 001226367–01; I.D. 081501A]

##### **Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Primary Season and Resumption of Trip Limits for the Shore-based Fishery for Pacific Whiting**

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

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

**SUMMARY:** NMFS announces the end of the 2001 primary season for the shore-based fishery for Pacific whiting (whiting) and resumption of per-trip limits at 12 noon local time (l.t.) August 21, 2001, because the allocation is projected to be reached by that time. This action is intended to keep the

harvest of whiting at the 2001 allocation levels.

**DATES:** Effective from 12 noon l.t. August 21, 2001, until the effective date of the 2002 specification and management measures for the Pacific Coast groundfish fishery which will be published in the **Federal Register**, unless modified, superseded or rescinded. Comments will be accepted through September 10, 2001.

**ADDRESSES:** Submit comments to Donna Darm, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko at 206–526–6110.

**SUPPLEMENTARY INFORMATION:** This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 11, 2001 (66 FR 2338), the levels of allowable biological catch (ABC), the optimum yield (OY) and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2001 the whiting ABC and OY are 190,400 metric tons (mt) and the commercial OY is 162,900 mt.

Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. The 2001 allocations, based on the 2001 commercial OY, are 55,386 mt (34 percent) for the catcher/processor sector, 39,096 mt (24 percent) for the mothership sector, and 68,418 mt (42 percent) for the shore-based sector. When each sector's allocation is reached, the primary season for that sector is ended.

The shore-based sector is composed of vessels that harvest whiting for delivery to land-based processors. The regulations at 50 CFR 660.323 (a)(3)(i) describe the primary season for the shore-based sector as the period(s) when the large-scale target fishery is conducted (when trip limits under § 660.323(b) are not in effect). Before and after the primary seasons, per-trip limits are in effect for whiting.

The best available information on August 21, 2001, indicates that 64,641 mt had been taken through August 18, 2001, and that the 68,418 mt shore-based allocation would be reached by 12 noon August 21, 2001. This **Federal Register** document announces the date that the primary season for the shore-based sector ends, and that per-trip limits are imposed. The per-trip limit is intended to accommodate small bait and fresh fish markets and bycatch in other fisheries. To minimize incidental catch of chinook salmon by vessels fishing shoreward of the 100 fm (183 m) contour in the Eureka area, at any time during a fishing trip, a limit of 10,000-lb (4,536 kg) of whiting is in effect year-round (unless landings of whiting are prohibited).

##### **NMFS Action**

For the reasons stated here, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(C), NMFS herein announces:

Effective 12 noon l.t. August 21, 2001, no more than 20,000-lb (9,072-kg) of whiting may be taken and retained, possessed or landed by a catcher vessel participating in the shore-based sector of the whiting fishery. If a vessel fishes shoreward of the 100 fm (183 m) contour in the Eureka area (43° - 40° 30' N. lat.) at any time during a fishing trip, the 10,000-lb (4,536-kg) trip limit applies, as announced in the annual management measures at paragraph IV, B (3)(c)(ii).

##### **Classification**

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(C) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

August 20, 2001.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 01–21486 Filed 8–21–01; 3:07 pm]

**BILLING CODE 3510–22–S**