

the contacts noted at the beginning of this document. The basic conclusions from the GAG members were:

(1) A single gear identification number is desirable. State and

Federal regulations require gear tagging or marking systems for both lobster and gillnet gear. A marking system that incorporates the existing marking requirements should be used.

(2) An individual fisherman's identification would provide more information than the current ALWTRP color-coding system, which only requires marking in certain areas. Fishermen set gear across boundary areas and, under the current ALWTRP system, would have to re-rig their gear when moving into or out of a required area. With individual markings, the fishermen can provide specific information on where the gear had been set at any given time.

(3) The ALWTRP color-coded system does not provide the detailed information that a universal individual marking system throughout the range would provide. Better ways of marking buoy lines and high flyers with individual numbers are being tested, and the results of these tests will be available by Spring 2000.

(4) The ALWTRP marking system was based on the need to identify gear on whales that is observed from a distance that may never be recovered. Recent entanglement events and subsequent detailed investigations have resulted in up to 70 percent of the gear involved being identified, including the probable time and location the gear was set, for those whales that have been disentangled and the gear has been recovered. The current ALWTRP gear marking system would not have improved identification of gear in any of the recent Northeast entanglement events. Entangled animals are receiving close scrutiny, and photos or video images are routinely collected, allowing a more definitive analysis of gear type before a disentanglement is attempted. Thus, the current ALWTRP gear marking system is not needed to identify gear that is not removed from a whale.

In summary, the consensus of the GAG and the ALWTRT is that: (1) The gear marking measures for northeastern U.S. fisheries under the ALWTRP as contained in the February 16, 1999, final rule are unlikely to provide useful information; (2) the value of making a gear marking system being visible from a distance is questionable; (3) existing gear marking and buoy color-coding requirements applicable to the various northeastern U.S. fisheries allow gear type and ownership to be identified in

most cases; (4) gillnet fisheries operating in the SEUS do not have the same level of existing gear marking requirements; (5) after 2 years of investigating gear entangled on whales, NMFS has found that it is possible to determine gear ownership in the majority of the entanglements and thus find out the details about the date and location of the set; and (6) better ways for buoy lines and high flyers to be marked with individual identification numbers are being tested and the results should be available soon. Therefore, in order to spare fishermen from unnecessary expense, NMFS is suspending the effectiveness of the gear marking requirements for northeast U.S. fisheries in the February 16, 1999, final rule implementing the ALWTRP. Gear marking requirements for SEUS fisheries remain in effect. The ALWTRT will meet in early Spring, 2000, to review the GAG report and the results of the testing of new gear marking methods, and make further recommendations to NMFS on how or whether to modify the ALWTRP gear marking system. By late Spring, 2000, NMFS will propose modifications to the ALWTRP gear marking system and implementing regulations with the aim of having an effective system implemented by November, 2000.

Classification

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

NMFS prepared an Environmental Assessment (EA) on the interim final rule preceding the February 16, 1999, final rule to implement the ALWTRP, and its findings applied to the February 16, 1999 final rule, as well. This action suspends the effectiveness of a portion of that final rule. Although this action falls within the scope of alternatives of that EA and the environmental consequences described in that action, NMFS has prepared a supplemental EA for this action with a finding of no significant impact.

A biological opinion (BO) on the ALWTRP was completed on July 15, 1997. That BO concluded that implementation of the ALWTRP and continued operation of fisheries conducted under the American Lobster and Northeast Multispecies fishery management plans (FMPs), and southeastern shark gillnet component of the Shark FMP, may adversely affect, but are not likely to jeopardize the continued existence of any listed species of large whales or sea turtles under NMFS jurisdiction. The February 16, 1999, final rule was determined not to change the basis for that BO. This

action also does not change the basis for that BO.

The suspension of the effective date of the ALWTRP gear marking requirement for Northeast U.S. fisheries made by this rule will have no adverse impacts on marine mammals. In addition, this rule does not change the determination that the ALWTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the Atlantic states.

As noted above, the ALWTRP gear marking regime for the Northeast is unlikely to provide useful information. Fishermen should be spared the expense of having to comply with it prior to implementation of a better system. Accordingly, the Assistant Administrator for Fisheries, for good cause, finds that delaying this rule to allow for prior notice and opportunity for public comment would be contrary to the public interest. Because this suspension of effectiveness relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in the effective date.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

This rule suspends the effectiveness of a collection-of-information requirement subject to the Paperwork Reduction Act previously approved by OMB (OMB Control Number: 0648-0364).

Dated: December 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122299B]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2000

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

ACTION: Notification of suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended for the 2000 fishing year. This action is taken under the authority of the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP), which allows for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary as the majority of surf clams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2000, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978-281-9104.

SUPPLEMENTARY INFORMATION: Section 648.72 (c) of the regulations

implementing the FMP allows the Regional Administrator, Northeast Region (Regional Administrator), to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent or more of the Atlantic surf clam resource is smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density dependent factors.

At its August meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Surf clam/Ocean Quahog Committee and voted to recommend that the Regional Administrator suspend the minimum size limit. Commercial surf clam shell

length data for 1999 indicate that only 10.3 percent of the samples were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and publishes this notification to suspend the minimum size limit for Atlantic surf clams for the period January 1, 2000, through December 31, 2000.

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 27, 1999.

George H. Darcy,

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