necessary because the regulations governing the subsistence harvest of wildlife in Alaska are subject to an annual public review cycle. The July 1, 2004, rule replaced the wildlife regulations that expired on June 30, 2004. The rule also amended the regulations that establish which Alaska residents are eligible to take specific species for subsistence uses.

Since publication of the July 1, 2004, final rule, we have become aware of some needed corrections to that document. Because the final rule related to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text was incorporated into 36 CFR part 242 and 50 CFR part 100. Consequently, the corrections cited in this document will be incorporated into those same CFR sections. The corrections are as follows: (1) In the rule, we attempted to clarify the use of fur from bears in handicraft articles by inserting a definition of “fur.” However, we now believe that definition to be incorrect, and this correction replaces the new definition with that in place prior to publication of the final rule. (2) This document clarifies exactly who is allowed to sell handicrafts made from the fur of bears. (3) A final correction identifies the correct seasons for caribou in Unit 10 that were scrambled during printing the original Federal Register publication.

The Federal Subsistence Board finds that additional public notice and comment requirements under the Administrative Procedure Act for this correcting amendment are impracticable, unnecessary, and contrary to the public interest. A lapse in regulatory control could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive the public notice and comment procedures prior to publication of this rule. The Board further finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective July 1, 2004.

Drafting Information


List of Subjects

36 CFR Part 242
Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100
Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

§ 25 Subsistence taking of fish, wildlife, and shellfish: general regulations.

(a) * * *

Skin, hide, pelt, or fur means any tanned or untanned external covering of an animal’s body; excluding bear. The skin, hide, pelt, or fur of a bear is the entire external covering with claws attached.

* * * * *

(j) * * *

(6) If you are a federally qualified subsistence user, you may sell handicraft articles made from the fur of a black bear.

(7) If you are a federally qualified subsistence user, you may sell handicraft articles made from the fur of a brown bear taken from Units 1–5, 9(A)–(C), 9(E), 12, 17, 20, and 25.

* * * * *

§ 26 Subsistence taking of wildlife.

(a) * * *

(10) * * *

<table>
<thead>
<tr>
<th>Harvest limits</th>
<th>Open season</th>
</tr>
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<tbody>
<tr>
<td><strong>Hunting</strong></td>
<td></td>
</tr>
<tr>
<td>Caribou:</td>
<td></td>
</tr>
<tr>
<td>Unit 10—Unimak Island only—4 caribou by Federal registration permit only</td>
<td>Aug. 1–Sept. 30.</td>
</tr>
<tr>
<td>Unit 10—remainder—No limit</td>
<td>Nov. 15–Mar. 31.</td>
</tr>
<tr>
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<td>July 1–June 30.</td>
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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Part 229

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP’s implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,600 square nautical miles (nm²) north of 40° N. lat. to protect right whales (Eubalaena glacialis). On January 9, 2002, NMFS published the final rule to implement the ALWTRP’s DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of gear already present in the area, and any additional gear in the DAM zone; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone under the ALWTRP at 50 CFR 229.32, 33, and 34 or mortality as a result).

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at http://www.nmfs.noaa.gov/whaletrp/.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of gear already present in the area, and any additional gear in the DAM zone; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On August 17, 2004, NMFS received a report of two groups of right whales, totaling 15 animals, in the proximity of 42°55’ N lat. and 69°00’ W long. This position lies east of Cape Ann, MA. After conducting an investigation, the Northeast Fisheries Science Center ascertained that the report came from a qualified individual and determined that the report was reliable.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bounded by the following coordinates: 43°20’ N, 68°24’ W (NW Corner) 43°20’ N, 68°36’ W 42°05’ N, 68°36’ W 42°05’ N, 69°24’ W 42°05’ N, 69°24’ W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: This DAM zone overlaps the year round Cashes Ledge Closure Area. This DAM action does not supersede Northeast multispecies closures found at 50 CFR 648.81.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters that overlap with the DAM zone are required to...