

(202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Order

1. The Commission terminates its inquiry into the imposition of equal access requirements on CMRS providers, which was initiated in the *Notice of Proposed Rulemaking and Notice of Inquiry (NPRM/NOI)*, 59 FR 39664, July 13, 1994. The *NPRM/NOI* tentatively concluded that cellular providers should be required to provide equal access to interexchange carriers.

2. The recent enactment of the Telecommunications Act of 1996 changed the legal landscape under which the Commission may consider interexchange access requirements for CMRS providers. As a result, the Commission now determines that it no longer has the authority to require CMRS providers to offer equal access to common carriers for the provision of telephone toll services. The Commission further finds that, although it has the authority to require CMRS providers to afford subscribers unblocked access to the telephone toll services provider of their choice if it determines that subscribers are denied such access and such denial is contrary to the public interest, convenience, and necessity, the record compiled in this proceeding does not establish a need at this time for the Commission to initiate an inquiry into the imposition of an unblocked access rule.

3. Thus, the Commission terminates its examination of these issues in this docket. The intended effect of this action is to provide certainty that CMRS providers are not required to offer equal access to interexchange carriers. This *Order* does not affect the status of the Commission's inquiry into related issues in this or other proceedings.

Ordering Clause

4. Accordingly, *IT IS ORDERED that the above-referenced rulemaking IS TERMINATED to the extent indicated herein. This action is authorized under Sections 1, 4(i), 4(j), 201, 309, 332, and 403 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 309, 332, and 403.*

List of Subjects in 47 CFR Part 20

Commercial mobile radio service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-8756 Filed 4-8-96; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[Docket No. 960312069-6096-01; I.D. 022796F]

RIN 0648-A181

Whaling Provisions; Consolidation and Revision of Regulations

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

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule that would revise and update regulations pertaining to aboriginal subsistence whaling. The regulations would be revised to remove outdated provisions, codify current practice, incorporate current term usage, and reorganize the remaining provisions to make the whaling regulations more concise, better organized and, therefore, easier for the public to use. In addition, NMFS proposes to revise the regulations to broaden the current mechanism for regulating International Whaling Commission (IWC) authorized whaling by the Alaska Eskimo Whaling Commission (AEWC) and other Native American groups.

DATES: Written comments must be received on or before May 24, 1996.

ADDRESSES: Copies of the Environmental Assessment (EA) for this proposed rule are available from, and comments should be sent to: Michael Payne, Fisheries Biologist, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910. Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Michael Payne at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dr. Kevin Chu (508) 548-5123.

SUPPLEMENTARY INFORMATION: In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations, with an

emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This proposed rule is intended to carry out the President's directive with respect to the regulations implementing the Whaling Convention Act of 1949 (16 U.S.C. 916 *et seq.*).

The revisions of 50 CFR part 230 proposed in this rule update the whaling regulations consistent with current authorities and usage of terms, eliminate duplicative or unnecessary text, and reorganize the regulations to make the regulations easier for the public to use and to reduce the volume and publication costs of the regulations.

The current regulations require the Department of Commerce to monitor all aboriginal whaling, to collect all information directly, to declare when quotas are filled and seasons are closed, and to enforce directly the obligations of the IWC. The proposed rule would replace this requirement with what is the current practice, i.e., joint monitoring and enforcement of harvests authorized by the IWC, through a cooperative agreement between NOAA and a Native American whaling organization.

Government monitoring, and especially enforcement, has not been feasible or desirable in the remote areas in which whaling takes place. Compliance with the IWC obligations through self-organized Native American organizations has worked better in practice, both from the point of view of the U.S. Government and of the members of the AEWC, the only group currently allowed by the IWC to whale in the United States. Self-organized Native American whaling organizations can gather information more readily, because they are community-based. Compliance is obtained through peer pressure, as well as through fines and, on occasion, the revoking of licenses. Moreover, the costs of putting Government agents in each whaling village are prohibitive. Implementing the regulations currently codified in part 230, in which Government oversight is required at all stages of whaling, would, therefore, either be unreliable or excessively expensive.

The current part 230 allows only Alaska Natives to engage in whaling. The Makah Tribe of northwest Washington State also has a long tradition of whaling. It has recently expressed an interest in resuming this tradition and has asked the U.S. Government to seek a quota of gray whales for ceremonial and subsistence purposes from the IWC. Gray whales are not listed as threatened or endangered

under the Endangered Species Act. This proposed rule would allow a mechanism for a cooperative agreement with the Makah Tribe for monitoring and enforcing any IWC-authorized whaling. This mechanism would be similar to the successful practice with the AEWC.

Classification

NMFS prepared an EA for this proposed action that discusses the impact on the environment of this rule. The EA concludes that the proposed revision of the whaling regulations will have no impact on the status of any endangered species, as these revisions have no effect on the quotas for aboriginal subsistence whaling authorized by the IWC. A copy of the EA is available (see **ADDRESSES**).

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

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 proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Current regulations allow whaling only for subsistence and cultural use; the proposed rule would not change that provision. Only two Native American groups have expressed an interest in whaling—the AEWC and the Makah Tribe. The proposed rule would broaden, rather than restrict, the opportunities for Native American groups to renew whaling traditions if the IWC grants the U.S. request for a quota. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This collection-of-information requirement has been submitted to OMB for approval. Whaling captains would be required to report whaling activities to the relevant Native American whaling organization, or to NMFS. Information on all whales struck or landed in the course of aboriginal subsistence whaling is requested to monitor compliance with IWC-authorized quotas and to supply required or requested information to the IWC. Information on landings of dead whales ("stinkers") found floating at sea or washed up on shore is also requested to have a record of all whales brought to shore and to ensure that whales killed under the IWC quotas are not claimed to have been found dead. The public reporting burden for completing reports required by whaling captains is estimated at 0.5 hours per response. The

reporting burden for the Native American whaling organizations to report the whaling activities to NMFS is estimated at 5 hours per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Assistant Administrator for Fisheries, NOAA (AA) determined that these proposed regulatory changes will not affect any endangered or threatened species under the Endangered Species Act.

The AA determined that whaling activities conducted under this rule would have no adverse effects on marine mammals, beyond what is authorized by the IWC.

List of Subjects in 50 CFR Part 230

Fisheries, Indians, Marine mammals, Reporting and recordkeeping requirements.

Dated: April 2, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 230 is proposed to be revised to read as follows:

PART 230—WHALING PROVISIONS

Sec.

- 230.1 Purpose and scope.
- 230.2 Definitions.
- 230.3 General prohibitions.
- 230.4 Aboriginal subsistence whaling.
- 230.5 Licenses for aboriginal subsistence whaling.
- 230.6 Quotas and other restrictions.
- 230.7 Salvage of stinkers.
- 230.8 Reporting by whaling captains.

Authority: 16 U.S.C. 916 *et seq.*

§ 230.1 Purpose and scope.

The purpose of the regulations in this part is to implement the Whaling Convention Act (16 U.S.C. 916 *et seq.*) by prohibiting whaling except for aboriginal subsistence whaling allowed by the International Whaling Commission. Provisions of the Marine

Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) also pertain to human interactions with whales. Rules elsewhere in this chapter govern such topics as scientific research permits, and incidental take and harassment of marine mammals.

§ 230.2 Definitions.

Aboriginal subsistence whaling means whaling authorized by paragraph 13 of the Schedule annexed to and constituting a part of the Convention.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

Authorized officer means:

- (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- (2) Any special agent or enforcement officer of the National Marine Fisheries Service;
- (3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the Coast Guard to enforce the provisions of the Whaling Convention Act; or
- (4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Calf means any whale less than 1 year old.

Commission means the International Whaling Commission established by article III of the Convention.

Convention means the International Convention for the Regulation of Whaling signed at Washington on December 2, 1946.

Cooperative agreement means a written agreement between the National Oceanic and Atmospheric Administration and a Native American whaling organization for the cooperative management of aboriginal subsistence whaling operations.

Landing means bringing a whale or any parts thereof onto the ice, or land in the course of whaling operations.

Native American whaling organization means an entity recognized by the National Oceanic and Atmospheric Administration as representing and governing Native American whalers for the purposes of cooperative management of aboriginal subsistence whaling.

Regulations of the Commission means the regulations in the Schedule annexed to and constituting a part of the Convention, as modified, revised, or amended by the Commission from time to time.

Stinker means a dead, unclaimed whale found upon a beach, stranded in shallow water, or floating at sea.

Strike means hitting a whale with a harpoon, lance, or explosive device.

Wasteful manner means a method of whaling that is not likely to result in the landing of a struck whale or that does not include all reasonable efforts to retrieve the whale.

Whale products means any unprocessed part of a whale and blubber, meat, bones, whale oil, sperm oil, spermaceti, meal, and baleen.

Whaling means the scouting for, hunting, striking, killing, flensing, or landing of a whale, and the processing of whales or whale products.

Whaling captain or *captain* means any person who is authorized by a Native American whaling organization to be in charge of a vessel and whaling crew.

Whaling crew means those persons under the control of a captain.

Whaling village means any U.S. village recognized by the Commission as having a cultural and/or subsistence need for whaling.

§ 230.3 General prohibitions.

(a) No person shall engage in whaling in a manner that violates the Convention, any regulation of the Commission, or this part.

(b) No person shall engage in whaling without first having obtained a license or scientific research permit issued by the Assistant Administrator.

(c) No person shall ship, transport, purchase, sell, offer for sale, import, export, or possess any whale or whale products taken or processed in violation of the Convention, any regulation of the Commission, or this part, except as specified in § 230.5(f).

(d) No person shall fail to make, keep, submit, or furnish any record or report required of him/her by the Convention, any regulation of the Commission, or this part.

(e) No person shall refuse to permit any authorized officer to enforce the Convention, any regulation of the Commission, or this part.

§ 230.4 Aboriginal subsistence whaling.

(a) No person shall engage in aboriginal subsistence whaling, except a whaling captain licensed pursuant to § 230.5 or a member of a whaling crew under the control of a licensed captain.

(b) No whaling captain shall engage in whaling that is not in accordance with the regulations of the Commission, this part, and the relevant cooperative agreement.

(c) No whaling captain shall engage in whaling for any calf or any whale accompanied by a calf.

(d) No whaling captain shall engage in whaling without an adequate crew or without adequate supplies and equipment.

(e) No person may receive money for participation in aboriginal subsistence whaling.

(f) No person may sell or offer for sale whale products from whales taken in an aboriginal subsistence hunt, except that authentic articles of Native handicrafts may be sold or offered for sale.

(g) No whaling captain shall continue to whale after:

(1) The quota set for his/her village by the relevant Native American whaling organization is reached;

(2) The license under which he/she is whaling is suspended as provided in § 230.5(b); or

(3) The whaling season for that species has been closed pursuant to § 230.6.

(h) No whaling captain shall claim domicile in more than one whaling village.

(i) No person may salvage a stinker without complying with the provisions of § 230.7.

(j) No whaling captain shall engage in whaling with a harpoon, lance, or explosive dart that does not bear a permanent distinctive mark identifying the captain as the owner thereof.

(k) No whaling captain shall engage in whaling in a wasteful manner.

§ 230.5 Licenses for aboriginal subsistence whaling.

(a) A license is hereby issued to whaling captains identified by the relevant Native American whaling organization.

(b) The Assistant Administrator may suspend the license of any whaling captain who fails to comply with the regulations in this part.

§ 230.6 Quotas and other restrictions.

(a) Quotas for aboriginal subsistence whaling shall be set in accordance with the regulations of the Commission. Quotas shall be allocated to each whaling village or captain by the appropriate Native American whaling organization. The Assistant Administrator shall publish in the Federal Register, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the Commission. These quotas and restrictions shall also be incorporated in the relevant cooperative agreements.

(b) The relevant Native American whaling organization shall monitor the

whale hunt and keep tally of the number of whales landed and struck. When a quota is reached, the organization shall declare the whaling season closed, and there shall be no further whaling under that quota during the calendar year. If the organization fails to close the whaling season after the quota has been reached, the Assistant Administrator may close it by filing a notice in the Federal Register.

§ 230.7 Salvage of stinkers.

(a) Any person salvaging a stinker shall submit to the Assistant Administrator or his/her representative an oral or written report describing the circumstances of the salvage within 12 hours of such salvage. He/she shall provide promptly to the Assistant Administrator or his/her representative each harpoon, lance, or explosive dart found in or attached to the stinker. The device shall be returned to the owner thereof promptly, unless it is retained as evidence of a possible violation.

(b) There shall be a rebuttable presumption that a stinker has been struck by the captain whose mark appears on the harpoon, lance, or explosive dart found in or attached thereto, and, if no strike has been reported by such captain, such strike shall be deemed to have occurred at the time of recovery of the device.

§ 230.8 Reporting by whaling captains.

(a) The relevant Native American whaling organization shall require each whaling captain licensed pursuant to § 230.5 to provide a written statement of his/her name and village of domicile and a description of the distinctive marking to be placed on each harpoon, lance, and explosive dart.

(b) Each whaling captain shall provide to the relevant Native American whaling organization an oral or written report of whaling activities including but not limited to the striking, attempted striking, or landing of a whale and, where possible, specimens from landed whales. The Assistant Administrator is authorized to provide technological assistance to facilitate prompt reporting and collection of specimens from landed whales, including but not limited to ovaries, ear plugs, and baleen plates. The report shall include at least the following information:

(1) The number, dates, and locations of each strike, attempted strike, or landing;

(2) The length (taken as the straight-line measurement from the tip of the upper jaw to the notch between the tail flukes) and the sex of the whales landed;

(3) The length and sex of a fetus, if present in a landed whale; and

(4) An explanation of circumstances associated with the striking or attempted striking of any whale not landed.

(c) If the relevant Native American whaling organization fails to provide the National Marine Fisheries Service the required reports, the Assistant Administrator may require the reports to be submitted by the whaling captains directly to the National Marine Fisheries Service.

[FR Doc. 96-8706 Filed 4-8-96; 8:45 am]

BILLING CODE 3510-22-F