

§229.3 Prohibitions.

(a) It is prohibited to take any marine mammal incidental to commercial fishing operations except as otherwise provided in part 216 of this chapter or in this part 229.

(b) It is prohibited to assault, harm, harass (including sexually harass), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or attempt the same. This prohibition includes, but is not limited to, any action that interferes with an observer's responsibilities, or that creates an intimidating, hostile, or offensive environment.

(c) It is prohibited to provide false information when registering for an Authorization Certificate, applying for renewal of the Authorization Certificate, reporting the injury or mortality of any marine mammal, or providing information to any observer.

(d) It is prohibited to tamper with or destroy observer equipment in any way.

(e) It is prohibited to retain any marine mammal incidentally taken in commercial fishing operations unless authorized by NMFS personnel, by designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

(f) It is prohibited to intentionally lethally take any marine mammal in the course of commercial fishing operations unless imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported in accordance with the requirements of §229.6.

(g) It is prohibited to violate any regulation in this part or any provision of section 118 of the Act.

(h) It is prohibited to own, operate, or be on board a vessel subject to the Atlantic Large Whale Take Reduction Plan except if that vessel and all fishing gear comply with all applicable provisions of §229.32.

(i) It is prohibited to fish for, catch, take, harvest or possess fish or wildlife while on board a vessel subject to the Atlantic Large Whale Take Reduction Plan, except if that vessel and all fishing gear is in compliance with all applicable provisions of §229.32.

(j) Any person or vessel claiming the benefit of any exemption or exception under §229.32 has the burden of proving that the exemption or exception, is applicable.

(k)-(l) [Reserved]

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the areas and for the times specified in §229.33(a)(1), (a)(3), (a)(6), and (a)(8). This prohibition also applies to areas where pingers are required, unless the vessel owner or operator complies with the pinger provisions specified in §229.33 (a)(2) through (a)(5) and (a)(7). This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in §648.81(f)(2)(ii) of this title).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove gillnet gear from the areas and for the times as specified in §229.34 (b)(1)(i), (b)(2)(i), (b)(3)(i), or (b)(4)(i).

(o) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in §229.34(b) unless the gear complies with the specified gear restrictions set forth

in the provisions of paragraphs (b)(1)(ii) or (iii), (b)(2)(ii) or (iii), (b)(3)(ii) or (iii), or (b)(4)(ii) or (iii) of §229.34.

(p) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with §229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in areas where pingers are required, as specified under §229.33 (a)(2) through (a)(5) and (a)(7), unless the operator on board the vessel during fishing operations possesses and retains on board the vessel a valid pinger training authorization issued by NMFS as specified under §229.33(c).

(q)-(r) [Reserved]

(s) *General Bottlenose Dolphin Take Reduction Plan.* (1) It is prohibited to set, fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet or pound net from the waters specified in §229.35(c) unless the gear complies with the specified restrictions set forth in §229.35(d).

(2) It is prohibited to set, fish with, or fail to remove a modified pound net leader in the Bottlenose Dolphin Pound Net Regulated Area unless the fisherman has on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS.

(t) It is prohibited to deploy or fish with pelagic longline gear in the Mid-Atlantic Bight unless the vessel:

(1) Complies with the placard posting requirement specified in §229.36(c); and

(2) Complies with the gear restrictions specified in §229.36(e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Cape Hatteras Special Research Area unless the vessel is in compliance with the observer and research requirements specified in §229.36(d).

(v) It is prohibited to deep-set from a vessel registered for use under a Hawaii longline limited access permit unless the vessel complies with the gear requirements specified in §229.37(c)(1) and (c)(2).

(w) It is prohibited to fish with longline gear in the Main Hawaiian Islands Longline Fishing Prohibited Area, as defined in §229.37(d)(1).

(x) It is prohibited to deep-set in the Southern Exclusion Zone, as defined in §229.37(d)(2), during the time the area is closed to deep-set longline fishing pursuant to §229.37(e).

(y) It is prohibited to fish with longline gear from a vessel registered for use under a Hawaii longline limited access permit in violation of the marine mammal handling and release requirements at §229.37(f).

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§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*. An *extender* is a line that attaches a buoy (float) to a drift gillnet's floatline. The floatline is attached to the top of the drift gillnet. All extenders (buoy lines) must be at least 6 fathoms (36 ft; 10.9 m) in length during all sets. Accordingly, all floatlines must be fished at a minimum of 36 feet (10.9 m) below the surface of the water.

(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 (± 2 kHz) sound at 132 dB (± 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) While at sea, operators of drift gillnet vessels with gillnets onboard must carry enough pingers on the vessel to meet the requirements set forth under paragraphs (c)(3) through (6) of this section.

(3) *Floatline*. Pingers shall be attached within 30 ft (9.14 m) of the floatline and spaced no more than 300 ft (91.44 m) apart.

(4) *Leadline*. Pingers shall be attached within 36 ft (10.97 m) of the leadline and spaced no more than 300 ft (91.44 m) apart.

(5) *Staggered Configuration*. Pingers attached within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft (45.5 m).

(6) Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

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

(8) 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.