

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 230**

[Docket No. 960312069-6153-02; I.D. 022796F]

RIN 0648-A181

Whaling Provisions; Consolidation and Revision of Regulations; Collection-of-Information Approval

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

ACTION: Final rule.

SUMMARY: NMFS revises and updates regulations pertaining to aboriginal subsistence whaling by removing outdated provisions, codifying current practice, incorporating current term usage, and reorganizing the remaining provisions to make the whaling regulations more concise, better organized and, therefore, easier for the public to use. In addition, the regulations broaden the current mechanism for regulating International Whaling Commission (IWC) authorized whaling by the Alaska Eskimo Whaling Commission (AEWC) and other Native American groups. This rule also adds a reference to an approved collection-of-information under the Paperwork Reduction Act (PRA).

EFFECTIVE DATE: July 11, 1996.

ADDRESSES: Copies of the environmental assessment (EA) prepared for this action are available from: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin Chu, (301) 713-2276.

SUPPLEMENTARY INFORMATION:**Background**

Consistent with the President's Regulatory Reinvention Initiative, NMFS published a proposed rule on April 9, 1996 (61 FR 15754) 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.*). This final rule updates the whaling regulations to be consistent with current authorities and usage of terms, eliminates duplicative or unnecessary text, and reorganizes the regulations to make the regulations easier for the public to use and to reduce the volume and publication costs of the regulations.

This final rule also replaces outdated language in the regulations with a description of current practice (i.e., joint monitoring and enforcement of harvests authorized by the IWC) through a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. The procedures currently practiced, which are codified through this final rule, are considered more reliable and more cost effective than the outdated procedures they replace in the regulations.

This final rule also provides a mechanism for a cooperative agreement with the Makah Tribe of northwest Washington State, which has a long tradition of whaling, for monitoring and enforcing any IWC-authorized whaling. This mechanism is similar to the successful practice with the AEWC.

Additional background and rationale for these measures may be found in the preamble to the proposed rule.

Comments and Responses

Three sets of written comments were received regarding the proposed rule. All were opposed to its adoption. Specific comments and responses are given below:

Comment: All three organizations making comments opposed allowing the Makah Tribe to initiate a harvest of gray whales.

Response: The rule does not in itself authorize whaling by the Makah Tribe or by any other Native American whaling organization. It sets up a mechanism through which any aboriginal subsistence whaling would be managed, provided that the International Whaling Commission (IWC) approves a quota for such use. At its 1996 Annual Meeting, the IWC will review the questions raised by commenters, among others, as to the appropriateness of the Makah request for a quota of five gray whales. Because the rule does not authorize whaling outside the IWC, and does not reflect on the appropriateness of any whaling proposal or practice, specific comments on possible future whaling by the Makah Tribe are not addressed in this

notice, except where comments addressed the points in the EA that accompanied the proposed rule. Likewise, NMFS took note of comments that were assertions of differing viewpoints or conclusions than reflected in the EA but that did not provide data to back up the assertion, but no response is provided here.

Comment: Two organizations objected to the provision allowing the sale of native handicrafts from whale products (§ 230.4(f)).

Response: Under the Marine Mammal Protection Act (MMPA), Alaska Natives are allowed to take whales for the purpose of creating and selling authentic native articles of handicrafts. The United States has informed the IWC of this provision; the IWC has never declared this practice to be contrary to the concept of aboriginal subsistence use. NOAA has provided a letter to the AEWC acknowledging that the sale of handicrafts is allowed.

Under the Treaty of Neah Bay, the Makah Tribe would be allowed to sell handicrafts made from non-edible whale parts. This rule thus recognizes the right of both Native American groups to sell handicrafts.

Comment: All three commenters felt that the rule should specify the number of whales that may be struck.

Response: The IWC does not normally allocate quotas of whales that may be struck. The only IWC quota expressed in terms of strike limits is the U.S. Alaska bowhead hunt, where ice conditions substantially increase the chances of losing a harpooned whale. Any strike limit allocated by the IWC would be incorporated into the cooperative agreement, as is currently the case with the cooperative agreement between NOAA and the Alaska Eskimo Whaling Commission. A cooperative agreement could also incorporate strike limits, even if none was set by the IWC.

Comment: There should be no provision for a cooperative agreement with Native American whaling organizations, especially with the Makah Tribe or any tribe within the contiguous United States. Commenters noted that the current part 230 of title 50 of the Code of Federal Regulations (CFR) requires that Commerce monitor all aboriginal whaling and to collect all information directly. These organizations felt that the proximity and relatively localized whaling that might be conducted by the Makah Tribe would allow for direct oversight by the U.S. Government.

Response: The cooperative agreement with the Makah Tribe specifies that U.S. Government personnel will monitor the hunt.

Nothing in any cooperative agreement for the co-management of whaling operations relieves the Department of Commerce of its obligations under the WCA, the MMPA, the Endangered Species Act (ESA) or any other statute.

Comment: One organization felt that arguments supporting replacement of the current regulations were based on insufficient support and questionable assumptions, especially regarding the statement that Government oversight would either be unreliable or excessively expensive. This organization also expressed concern over the accuracy of reporting and success in enforcement of harvests under joint management with Native American tribes.

Response: In Alaska, a minimum requirement of reliable Government oversight would be placing an enforcement agent in each of the ten whaling villages during the whaling seasons, approximately four months a year. This level of enforcement would detract substantially from other enforcement efforts in Alaska, and could not guarantee accurate information. Whaling camps are often miles away from the villages, and whaling could still take place without the knowledge of town-based agents. The only way to guarantee accurate information would be to have an enforcement agent at each whaling camp. This would require the use of up to 40 enforcement personnel and would entail large costs for equipment and supplies as well.

The commenter is correct that there has been no study which has examined the accuracy of tribal whaling reporting or success in enforcement. It would be difficult to conduct any definitive study on this matter, since the presence of outside observers needed to confirm catch statistics would automatically change the reporting situation. NMFS considers it unlikely that whaling would be able to occur in Neah Bay without the knowledge of NMFS officials stationed there (when present) or other non-Native persons.

Comment: One organization objected that quotas were not specified in the rule.

Response: The rule does not set quotas or authorize whaling outside of action by the IWC. If the IWC authorizes an aboriginal subsistence hunt, the quota will be specified in the cooperative agreement, as will any limits on strikes.

Comment: The revised definition of whaling does not include "harassment," as it does in the earlier version of 50 CFR part 230.

Response: Regulations concerning "harassment" of whales are covered

elsewhere in the Code of Federal Regulations, as noted in § 230.1.

Comment: One commenter expressed concern that sections previously in 50 CFR part 230 under "Records and Reports," "Prohibited Acts," "Reporting by Whaling Captains," "Records" and "Inspection and Enforcement" are omitted in the new rule. The commenter specifically recommended that a more thorough examination and consideration of these sections be made (possibly by a task force) and evaluated prior to excluding them from the new rule.

Response: The above sections and others that are eliminated from the previous version of 50 CFR part 230 referred only to commercial whaling. Many sections had not been amended for 25 years. Commercial whaling is not allowed in the United States so there is no need to keep these archaic regulations on the books.

Comment: The definition of "calf" should be any offspring still dependent on behavior and nutrition and in the physical dependence of a parent female.

Response: The proposed definition of "calf," i.e., any whale less than 1 year old, allows for an objective measurement of whether an infraction has occurred when a carcass is being examined. While behavioral aspects and the presence of a parent female define a calf from a biological point of view, these characteristics cannot be used after the fact to determine whether a calf was taken. An exception to this is the presence of milk in the stomach as an indicator of nursing. Therefore, the definition of "calf" is amended to read "any whale less than 1 year old or having milk in its stomach."

Comment: One organization requested that the term "person" be defined using IWC criteria of cultural and subsistence need. The organization specifically felt that it was not appropriate for U.S. regulations to allow commercial vessels and crew to whale on behalf of aboriginals.

Response: Commercial whaling is prohibited in the United States. While it seems unlikely that commercial whaling vessels or crew would offer to whale on behalf of U.S. aboriginals or that Native American whaling organizations would welcome such an offer, the definitions in the rule of "whaling captain" and "whaling crew" can be amended to clarify that whaling is only allowed by Native Americans. The revised definitions are as follows:

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

"Whaling crew means those Native Americans under the control of a captain."

Comment: The term "wasteful manner" should include the use and waste of whale products after landing.

Response: NMFS agrees. The term has the same meaning as the definition at § 216.3: "Wasteful manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence or for the making of authentic native articles of handicrafts and clothing or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal."

Comment: Whaling villages should be specifically listed, as they are in current regulations.

Response: The list of U.S. whaling villages for which the IWC quota is authorized is available from NMFS.

Comment: The definition of "whaling village" should be changed to read "any U.S. village having a cultural and subsistence need for whaling" instead of "having a cultural and/or subsistence need for whaling".

Response: NMFS believes that the current language more accurately reflects the interpretation of the IWC of the requirements for aboriginal whaling.

Comment: The prohibition on sale should be amended to include prohibitions on barter, give for free, and trade, in order to recognize non-currency exchanges of value that may escape being subject to violations of the Convention.

Response: The above practices, particularly "give for free," are essential to the cultural value of whaling. A whaling crew cannot consume an entire whale, at least not without significant waste. The gifting of whale meat and muktuk between families and villages is a central ritual of whaling in Alaska. Likewise, the Makah tradition of potlatch is still a key part of the Tribe's social fabric. Prohibiting such practices would be counter to the concept of aboriginal whaling.

Comment: Penalties for violations should be listed in the rule.

Response: The absence of specific penalties does not imply that there are no penalties for violations of the rule. The WCA and the MMPA both contain specific penalties in terms of fines, imprisonment or other sanctions for violation of their provisions. Penalties are not listed in this rule because the

cooperative agreements may delegate some enforcement functions to the Native American whaling organizations. Nevertheless, the Department of Commerce has specific responsibilities under the law. If the cooperative agreement is not succeeding in fulfilling those responsibilities, the Department will, after consultation with the relevant Native American whaling organization, assert its federal management and enforcement authority.

Comment: In § 230.4(g)(1), the word "quota" should be preceded by the words "struck or landed".

Response: In this context, "quota" means either the quota of strikes or quota of landed whales, or both.

Comment: In § 230.4(h), the words "or crew" should be inserted after the word "captain".

Response: This suggestion does not appear to improve the management of whaling. It only adds an additional requirement without gaining any substantive improvement in monitoring or controlling the hunt. Therefore, the suggestion is rejected.

Comment: In § 230.5(a), the phrase "after written concurrence from the Assistant Administrator" (AA) should be inserted after "whaling captains".

Response: This provision constitutes the granting of a license by NOAA; an additional endorsement by the AA would not gain any substantive improvement in monitoring or controlling the hunt. Therefore, the suggestion is rejected.

Comment: Tallies of struck and landed whales should be in real time, with daily reporting to prevent over-harvesting.

Response: In current practice, the AEWC reports in nearly real time, reporting every few days and sometimes daily during the whaling seasons. Toward the end of the season, each whale catch is reported as it is logged in by the AEWC. The quota has never been exceeded.

Comment: If the Native American whaling organization fails to close the whaling season after the quota has been reached, the rule should require the Assistant Administrator to close it by filing a notice in the Federal Register. The Assistant Administrator should be required to notify the whaling organization within one business day that the season has been closed.

Response: The current wording of the rule allows some discretion for unusual circumstances (such as an ambiguity about whether a quota has been met), but clearly gives the Assistant Administrator the authority to close a season after a quota has been reached.

Comment: The names and villages of members of the whaling crew should be required.

Response: This requirement would add a regulatory burden without obviously improving the management of whaling.

Comment: Please clarify the statement in the Environmental Assessment asserting that past aboriginal whaling levels were higher than they are today.

Response: The Soviet Union took approximately 169 gray whales a year from the 1970s until 1990. Alaska Eskimos occasionally took a few gray whales (fewer than 10) during that time as well. The current quota for gray whales is 140 animals.

Comment: The whale-watching industry could be affected by consumer boycotts in Washington State or by changes in behavior of whales due to hunting. Therefore, the economic impacts described in the Environmental Assessment have a potential negative side.

Response: Any possibility of a consumer boycott of whale watch industries in Washington State is highly speculative.

It is possible that a resumption of whaling by the Makah Tribe would affect the behavior of gray whales around boats in general. It may prove difficult to demonstrate that whales change their behavior in response to whaling, even if observers believe that such a change does occur. Furthermore, if changes in behavior can be demonstrated, it would be difficult to attribute them to any particular cause, since whale behavior is not well understood. Nevertheless, NMFS will initiate research this summer on gray whales in the Makah area and in Puget Sound. This research is intended to help differentiate resident whales which may swim near Seattle and other local whale watching areas, from whales that are migrating past Neah Bay. It may provide information on effects of whaling, if it resumes, on whale behavior.

Comment: One organization disagreed with the Environmental Assessment's conclusion that there would be no economic or social impacts from this revision to the whaling regulations. Therefore, it called for a Supplemental Environmental Impact Statement to address issues raised in its testimony.

Response: Because these regulations do not directly alter the status quo, NMFS does not see a need for an Environmental Impact Statement. It will, however, take note of the issues raised, particularly of the possible impact of whaling on whale watch operations. If the IWC authorizes whaling by the Makah Tribe, NMFS will

re-assess its obligations under the National Environmental Policy Act.

Comment: The Finding of No Significant Impact in the EA ignores the cumulative effect of a possible resumption of whaling by other Native groups if the Makah Tribe is allowed to hunt for whales.

Response: The Makah proposal must be judged on its own merits. We have no information that other American Native groups are interested in resuming whaling.

Changes from the Proposed Rule

The definition of "calf" is amended to read "any whale less than one year old or having milk in its stomach."

The definitions of "Whaling captain" and "Whaling crew" are amended to clarify that whaling is only allowed by Native Americans by replacing the word "person" with the words "Native American".

Section 3506(c)(B)(i) of the PRA requires that agencies inventory and display a current control assigned by the Director of OMB for each agency information collection.

15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. This final rule adds the OMB approval number for an approved collection-of-information requirement to the table in 15 CFR 902.1(b).

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has

delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

Classification

NMFS prepared an EA for this action and the AA concluded that there will be no significant impact on the human environment as a result of this rule. This 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 from NMFS (see ADDRESSES).

This final 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 rule will not have a significant economic impact on a substantial number of small entities. This final rule

does not change the regulations that allow whaling only for subsistence and cultural use. Only two Native American groups have expressed an interest in whaling; this rule broadens, rather than restricts, 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. If the IWC authorizes whaling by the Makah Tribe, NMFS will re-assess its obligations under the National Environmental Policy Act.

This rule contains collection-of-information requirements subject to the PRA that have been approved by OMB under OMB control number 0648-0311. The average burden for these collections is estimated to be approximately 0.5 hours per response for whaling captains' reports and 5 hours per response for Native American whaling organizations to report whaling activity to NMFS. 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 reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, 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 PRA unless that collection of information displays a currently valid OMB Control Number.

The AA determined that this final rule will not affect any endangered or threatened species or critical habitat under the ESA and that whaling activities conducted under this rule will have no adverse effects on marine mammals, beyond what is authorized by the IWC.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 230

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

Dated: June 4, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter II are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by adding in the left column, under 50 CFR, in numerical order, the entry "230.8", and in the right column, in the corresponding position, the control number "-0311".

50 CFR Chapter II

3. Part 230 is 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 or having milk in its stomach.

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 Native American who is authorized by a Native American whaling organization to be in charge of a vessel and whaling crew.

Whaling crew means those Native Americans 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 § 230.4(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 notification 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.

(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.

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