

would itself qualify as an ESBT. Trust-1 holds stock in X, an S corporation, and has a valid ESBT election in effect. Under the terms of the governing instrument of Trust-1, the trustee has discretion to make distributions to A, B and Trust-2, a trust for the benefit of A and B's children, C, D and E. Trust-2 would qualify to be an ESBT, but it owns no S corporation stock and has made no ESBT election. Under paragraph (m)(4)(iv) of this section, Trust-2's potential current beneficiaries are treated as the potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1). Thus, A, B, C, D and E are potential current beneficiaries of Trust-1 and are counted as shareholders for the purposes of section 1361(b)(1). Trust-2 itself will not be counted as a shareholder of Trust-1 for purposes of section 1361(b)(1).

(ii) *Distributee trust that would not qualify as an ESBT.* Assume the same facts as in Example 6 (i) except that D is a non-resident alien. Trust-2 would not be eligible to make an ESBT or QSST election if it owned S corporation stock and therefore Trust-2 is a potential current beneficiary of Trust-1. Since Trust-2 is not an eligible shareholder, X's S corporation election terminates.

(iii) *Distributee trust that is a section 1361(c)(2)(A)(ii) trust.* Assume the same facts as in Example 6 (i) except that Trust-2 is a trust treated as owned by A under section 676 because A had the power to revoke Trust-2 at any time prior to A's death. On January 1, 2001, A dies. Because Trust-2 is a trust described in section 1361(c)(2)(A)(ii) during the 2-year period beginning on the day of A's death, under paragraph (m)(4)(iv)(C) of this section, Trust-2's only potential current beneficiary is the person listed in section 1361(c)(2)(B)(ii), A's estate.

Example 7. Potential current beneficiaries and powers of appointment. M creates Trust for the benefit of A. A also has a current power to appoint income or principal to anyone except A, A's creditors, A's estate, and A's estate's creditors. The potential current beneficiaries of Trust will be A and all other persons except for A's creditors, A's estate, and A's estate's creditors. This number will exceed the 75-shareholder limit of section 1361(b)(1)(A). If Trust holds S corporation stock, the corporation's S election will terminate.

Par. 6. Section 1.1362-6 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 1.1362-6 Election and consents.

* * * * *

(b) * * *
(2) * * *

(iv) *Trusts.* In the case of a trust described in section 1361(c)(2)(A) (including a trust treated under section 1361(d)(1)(A) as a trust described in section 1361(c)(2)(A)(i) and excepting an electing small business trust described in section 1361(c)(2)(A)(v) (ESBT)), only the person treated as the shareholder for purposes of section 1361(b)(1) must consent to the election. When stock of the corporation is held by

a trust, both husband and wife must consent to any election if the husband and wife have a community interest in the trust property. See paragraph (b)(2)(i) of this section for rules concerning community interests in S corporation stock. In the case of an ESBT, the trustee and the owner of any portion of the trust that consists of the stock in one or more S corporations under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code must consent to the S corporation election. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must consent to the S corporation election.

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Par. 7. Section 1.1362-7 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 1.1362-7 Effective date.

(a) * * * Section 1.1362-6(b)(2)(iv) is applicable on and after the date the final regulations are published in the **Federal Register**.

* * * * *

Par. 8. Section 1.1377-1 is amended by:

1. Adding paragraph (a)(2)(iii).
 2. Adding *Example 3* to paragraph (c).
- The additions read as follows:

§ 1.1377-1 Pro rata share.

(a) * * *

(2) * * *

(iii) *Electing small business trust (ESBT) election.* If an ESBT election is effective on a day other than the first day of trust's taxable year, and the trust was already an eligible S corporation shareholder under a different provision of section 1361(c)(2), then section 1377 applies to allocate S corporation income between the two types of trusts. The first day the ESBT is treated as an S corporation shareholder is the effective date of the ESBT election. The ESBT election does not result in the prior trust being treated as terminating its entire interest in its S corporation stock for purposes of paragraph (b) of this section, unless the prior trust was described in section 1361(c)(2)(A)(ii) or (iii).

* * * * *

(c) * * *

Example 3. Effect of conversion of a qualified subchapter S trust (QSST) to an electing small business trust (ESBT). (i) On January 1, 2000, Trust receives 100% of the stock of S corporation. Trust's current income beneficiary makes a timely QSST election under section 1361(d)(2), effective January 1, 2000. Later, the trustee and current income beneficiary of Trust elect pursuant to § 1.1361-1(j)(12), to terminate the QSST election and convert to an ESBT, effective

July 1, 2002. In 2002, Trust's pro rata share of S corporation's nonseparately computed income is \$100,000.

(ii) For purposes of computing the income allocable to the QSST and to the ESBT, Trust is treated as a QSST through June 30, 2002, and Trust is treated as an ESBT beginning July 1, 2002. Pursuant to section 1377(a)(1), the pro rata share of S corporation income allocated to the QSST is \$49,589 (\$100,000 × 181 days/365 days), and the pro rata share of S corporation income allocated to the ESBT is \$50,411 (\$100,000 × 184 days/365 days).

Par. 9. Section 1.1377-3 is revised to read as follows:

§ 1.1377-3 Effective date.

Section 1.1377-1 and 1.1377-2 apply to taxable years of an S corporation beginning after December 31, 1996, except that § 1.1377-1(a)(2)(iii) and (c) *Example 3* are applicable on and after the date the final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 94

RIN 0905-AE71

Public Health Service Standards for the Protection of Research Misconduct Whistleblowers; Correction

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking; technical correction.

SUMMARY: The Department of Health and Human Services published in the **Federal Register** of November 28, 2000, a notice of proposed rulemaking to establish regulations that covered institutions must follow for preventing or otherwise responding to occurrences of retaliation against whistleblowers. (65 FR 70830) This document corrects the Preamble of the notice of proposed rulemaking to update changed Internet website addresses and to add several inadvertently omitted explanatory sentences.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, 301-443-5300 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Preamble Supplementary Information [Corrected]

On Page 70830, in the third column at the top of the page, correct the web page cite to read "<http://ori/hhs.gov>."

On page 70830, in the third column, correct the fourth full paragraph by adding a sentence at the end of the paragraph to read "If both parties agree, they may also continue mediation efforts during the administrative proceeding."

On Page 70831, in the first column, the third full paragraph, correct the web page cite to read "<http://ori/hhs.gov>."

On page 70831, in the second column, correct the second and third sentences of the first full paragraph to read "The decisionmaker must order an institutional remedy if the whistleblower meets the burden of proof and proves by a preponderance of the evidence that the act of good faith whistleblowing was a contributing factor in the alleged adverse action taken by the institution or one of its members against the whistleblower. However, even if the whistleblower meets this burden, the burden of proof shifts to the institution, and the decisionmaker may not order an institutional remedy if the institution then proves by clear and convincing evidence that it would have taken the action at issue even in the absence of the whistleblower's allegation or cooperation with an investigation."

On page 70832 in the second column, correct the second full paragraph by adding a sentence at the end of the paragraph to read "As most retaliation occurs shortly after the whistleblower alleges misconduct, the regulation would require that the adverse action happen within one year of the allegation. We request comments on this time frame."

On page 70832 in the third column, correct the last paragraph of the Supplementary Information section by adding a sentence at the end of the paragraph to read "However, we request comments on whether to extend coverage of this proposed regulation to pending cases."

Dated: December 18, 2000.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 00-33312 Filed 12-28-00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 120600B]

Atlantic Highly Migratory Species Fisheries; Technical Gear Workshop

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

ACTION: Notification of public meeting.

SUMMARY: NMFS announces the rescheduling of the public workshop to discuss potential gear modifications for the Atlantic pelagic longline fishery aimed at reducing the incidental take and mortality of threatened and endangered sea turtles. The workshop is intended to synthesize available information and discuss research objectives. A report of the workshop will be made available to interested parties.

DATES: The workshop will take place January 17, 2001, from 1 p.m. to 6 p.m. and January 18, 2001, from 8:30 a.m. to 3:30 p.m. Notice of attending the meeting should be provided by January 8, 2001.

ADDRESSES: The location for the workshop is: Holiday Inn Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Tyson Kade at (301) 713-2347. Also, if you are planning to attend the workshop, please

contact these individuals by January 8, 2001. Attendees will be provided briefing materials prior to the meeting.

SUPPLEMENTARY INFORMATION: A Biological Opinion (BO) issued on June 30, 2000, by NMFS' Office of Protected Resources found that the continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of loggerhead and leatherback sea turtles. Since the BO was issued, NMFS has concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on turtles. NMFS reinitiated consultation to consider these factors, and anticipates issuance of a new BO in March 2001. This workshop will allow fishermen, gear experts, sea turtle experts, and fishery managers to discuss possible measures, including gear and fishing method modifications, to reduce the incidental take and mortality of sea turtles in the Atlantic pelagic longline fishery in the future. Information developed at the workshop will be incorporated into a workshop report that will be considered in the ongoing fishery consultation. The report will also be made available to the public.

Special Accommodations

The public workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen or Tyson Kade (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Authority: 16 U.S.C. 971 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: December 20, 2000.

Bruce C. Morehead,

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

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