For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Dickens, Channel 294A; by adding Channel 255A at Floydada; by adding Rankin, Channel 229C3; by adding Channel 273A at San Diego; by adding Westbrook, Channel 272A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30512 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket 020313057–2278–02; I.D. 031102E]

RIN 0648–AP91

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Final rule.

SUMMARY: NMFS is enacting a seasonally adjusted gear restriction by closing portions of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8–inch (20.3 cm) stretched mesh. The purpose of this action is to reduce the impact of large-mesh gillnet fisheries on endangered and threatened species of sea turtles, primarily the monkfish fishery which uses large-mesh gillnet gear and operates in the area when sea turtles are present.

DATES: This final rule is effective on January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis L. Klemm (address: 9721 Executive Center Drive N., St. Petersburg, FL 33702; ph. 727–570–5312, fax 727–570–5517, e-mail *Dennis.Klemm@noaa.gov*), or Barbara A. Schroeder (address: 1315 East-West Highway, Silver Springs, MD 20910; ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green turtle (*Chelonia mydas*) are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles— even incidentally—is prohibited, with exceptions for takes of threatened species identified in 50 CFR 223.206. The incidental take of endangered species may be authorized only by an incidental take statement provided, or an incidental take permit issued, pursuant to section 7 or 10 of the ESA, respectively.

Background

Beginning in 1995, sea turtle strandings along the coast of North Carolina suddenly and dramatically increased during April and May, and this pattern continued in subsequent years. The increase in strandings coincided with increasing effort in the monkfish gillnet fishery, which first began off North Carolina in 1995. In the spring of 2000, 280 sea turtles stranded in two short time periods, coincident with the monkfish and dogfish gillnet fisheries operating offshore. Four of the carcasses were carrying gillnet gear measuring 10–12 inches (25.4–30.5 cm) stretched mesh, which is consistent with the gear used in the monkfish fishery. Large mesh gillnets are known to be highly effective at catching sea turtles and were the gear of choice in the historical sea turtle fishery. The majority of the turtles stranded in the 2000 event were loggerheads, but Kemp's ridleys were also documented. The northern subpopulation of loggerheads is disproportionately represented in the mid-Atlantic waters off North Carolina, and a number of the stranded loggerheads likely came from this subpopulation. The northern subpopulation is not showing evidence of recovery and continuous mortality as a result of large mesh gillnet fisheries is likely to impede recovery efforts (TEWG 2000).

A number of changes to the Fishery Management Plan (FMP) for the monkfish fishery over the past few years have resulted in changes in effort and timing of the fishery, and additional changes are expected as part of future FMP revisions. Various temporary protections to reduce sea turtle mortality in large mesh gillnets have been enacted by NMFS since the 2000 stranding event (65 FR 31500, May 18, 2000; 66 FR 28842, May 25, 2001; and 67 FR 13098, March 21, 2002). Detailed background information on the events leading to these restrictions may be found in each notice and is not repeated here. The most recent of these temporary protections, an interim final rule effective from March 15 to November 10, 2002, implemented a series of seasonally-adjusted closures in federal waters to move large-mesh gillnetting north in advance of sea turtle migrations. In the interim final rule, NMFS stated that it was considering adopting those restrictions as a final rule and took comments on that proposal through June 19, 2002 (67 FR 13098).

Seasonally Adjusted Closure of Large-mesh Gillnet Fishing in the Mid-Atlantic

The provisions of the interim final rule (67 FR 13098, March 21, 2002) established seasonally adjusted gear restrictions by closing portions of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8–inch (20.3–cm) stretched mesh to protect migrating sea turtles. The areas and times closed to fishing with gillnets larger than 8–inch (20.3–cm) stretched mesh were as follows: waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35° 46.0′ N (Oregon Inlet) - at all times; waters north of 35°46.0′ N (Oregon Inlet) and south of 36° 22.5′ N (Currituck Beach Light, NC) - from March 16 through January 14; waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA) - from April 1 through January 14; waters north of 37° 34.6' N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA) - from April 16 through January 14. Waters north of 37°56.0′ N (Chincoteague, VA) were not affected by the interim final rule. NMFS promulgated the interim final rule to prevent further mortalities and other takes of listed species in large-mesh gillnet fisheries, of which the federal monkfish fishery is the most likely to be

affected. NMFS limited the interim final rule to Federal waters only, as the monkfish fishery was not thought to be prosecuted in state waters, and to avoid unintentionally affecting the black drum gillnet fishery which occurs in the nearshore waters of the Eastern Shore of Virginia, and which was cooperating with NMFS observers to document sea turtle interactions. Gillnets with 10- and 12–inch (25.4- and 30.5–cm) mesh were clearly associated with the 2000 mass stranding in that four of the carcasses were carrying gillnet gear measuring 10 to 12 inches (25.4 to 30.5 cm) stretched mesh, which is consistent with the gear used in the monkfish fishery. Although the monkfish gillnet fishery currently uses 12–inch (30.5–cm) stretched mesh as their primary gear type, the Fishery Management Plan for the monkfish fishery allows use of gillnets with stretched mesh as small as 10 inches (25.4 cm). The potential exists, however, for other fisheries to utilize large-mesh gillnets with smaller size mesh that could still pose a serious risk of entanglement to sea turtles. The 8–inch (20.3–cm) cutoff size as mentioned above is, therefore, being enacted in this rule. Although gillnets with mesh sizes smaller than 8 inches (20.3 cm) are known to capture and kill sea turtles, NMFS selected an 8–inch (20.3–cm) cut-off size for the interim final rule. NMFS considered prohibiting smaller mesh sizes, but the size range chosen is believed to have the highest impact on sea turtles. If new information indicates otherwise, NMFS will consider amending the rule to include smaller mesh sizes. The timing of the restrictions was based upon an analysis of sea surface temperatures for the above areas. Sea turtles are known to migrate into and through these waters when the sea surface temperature is 11 degrees Celsius or greater (Epperly and Braun-McNeill 2002). The January 15 date for the reopening of the areas north of Oregon Inlet (35o 46.0' N) to the large-mesh gillnet fisheries was also based upon the 11 degree Celsius threshold and is consistent with the seasonal boundary established for the Summer flounder fishery-sea turtle protection area (50 CFR 223.206(d)(2)(iii)(A)).

Response to Comments

Comments were received from five sources: The Mid-Atlantic Fishery Management Council (Council); an individual Council member; a North Carolina commercial fisherman; the North Carolina Department of Marine Fisheries (NCDMF); and a joint letter from environmental organizations (EOs). Below are the individual comments and NMFS' responses.

Comment 1: The EOs and the individual Council member expressed support for the permanent enactment of the final rule. The Council and the fisherman, on the other hand, felt that there is no need for a final rule and that there was no scientific evidence to support the gillnet restrictions.

Response: The three previous temporary restrictions (65 FR 31500, May 18, 2000; 66 FR 28842, May 25, 2001; and 67 FR 13098, March 21, 2002) present in detail the scientific information (e.g., analysis of stranding patterns vs. sea surface temperature regimes and fishing effort) that was considered in determining that large mesh gillnetting, particularly for monkfish, was the likely cause of mass sea turtle strandings in the Mid-Atlantic and that large mesh gillnetting poses a significant risk of capture and death, particularly to migrating sea turtles. That information and analysis is not repeated here, and NMFS has received no new information that would lead it to change those determinations.

The restrictions in 2001 and 2002 appeared to be effective, in that repetition of the mass strandings of 2000 was avoided. Strandings in reporting zone 35, for example, (the zone in eastern North Carolina that experienced most of the 2000 stranding event) were lower in the spring months in 2001 and 2002. In March, offshore sea turtle strandings declined from 16 in 2000 to three in 2001 and zero in 2002. In April, strandings also declined from 81 in 2000 to one in 2001 and 19 in 2002. In May, they declined most significantly, from 223 in 2000 to 11 in 2001 and 25 in 2002.

NMFS agrees with the EOs and the Council member that the restrictions on large-mesh gillnetting are warranted and that permanent restrictions are necessary to replace the series of temporary restrictions and to provide long-term protection to sea turtles by reducing the potential for a serious impact to sea turtle populations. This final rule, therefore, will make permanent the restrictions of the interim final rule.

Comment 2: The EOs expressed concern that the restrictions need to be extended to North Carolina state waters to prevent gillnetters from relocating effort and contributing substantially to the mortality of sea turtles in those waters.

Response: NMFS limited the interim final rule to Federal waters only, as the monkfish fishery was not thought to be prosecuted in state waters, and to avoid unintentionally affecting the black drum gillnet fishery which occurs in the nearshore waters of the Eastern Shore of Virginia, and which was cooperating with NMFS observers to document sea turtle interactions. Following the implementation of the interim final rule, several fishermen shifted monkfish gillnet effort to North Carolina state waters. NMFS has reviewed North Carolina landings data comparing gillnet landings for monkfish caught in state waters and Federal waters. From 1995 to 2000, state waters only accounted for one to ten percent of the monkfish landings. In 2002, though, when the interim final rule was in place, state waters have accounted for 92 percent of the monkfish landings. The amount of monkfish landed from state waters in 2002 to date is five times higher than the average state waters landings for 1995 to 2000. This large shift in fishery effort to North Carolina state waters was not foreseen by NMFS, and if the 2002 data represent a real change in fishing behavior, leaving state waters out of the restrictions would pose a substantial risk to sea turtles in state waters.

Because state waters were not included in the interim final rule, NMFS would need to issue a new proposed rule for public comment in order to expand the restrictions to state waters. NMFS will investigate the significance, if any, of the 2002 state monkfish landings. If restrictions on large-mesh offshore gillnetting in state waters appear warranted to protect turtles, NMFS will consider alternative actions and seek public comment on a proposed rule.

Comment 3: The EOs recommended that NMFS support research on the seasonal distribution, abundance, and habitat use of sea turtles in state and adjacent Federal waters.

Response: NMFS already has a large body of knowledge on these topics and continues to collect new data. The North Carolina and Virginia cape regions are very important for overwintering, migrating, and foraging sea turtles, and they are also very complex and dynamic oceanographically. Aerial surveys, review of new scientific literature and state reports, and behavioral studies are all ongoing efforts aimed at expanding this knowledge.

Comment 4: The fisherman and the Council questioned the assertion that strandings may be disproportionately composed of northern subpopulation loggerheads. In contrast, the individual Council member expressed concern with the potential impact to the northern subpopulation, which has not shown signs of recovery and may be declining.

Response: Studies support the assertion made by NMFS. Genetic data from live sea turtles off North Carolina (Bass *et al.*, in press), and from stranded turtles in North Carolina through New Jersey (Norrgard 1995, Bass *et al.*, 1998, Rankin-Baransky *et al.*, 2001), indicate that the northern-nesting subpopulation is disproportionally represented in Mid-Atlantic and North Atlantic coastal waters compared to the small size of that subpopulation. Between 25 to 59 percent of the loggerheads found foraging from the Northeast U.S. to Georgia come from this nesting subpopulation, yet the northern-nesting subpopulation only represents around 8 percent of the total nesting in the U.S.

Comment 5: The fisherman and the Council commented that there was no support for the assumption that the number of turtles killed during the 2000 mass stranding was actually greater than the 280 stranded individuals.

Response: Multiple studies have found that the majority of sea turtle carcasses at-sea will not strand on shore and that stranding numbers are only a portion of the total deaths. The Turtle Expert Working Group (TEWG 1998) reviewed various studies on shrimp trawl mortalities and stranding records prior to the NMFS implementation of turtle excluder device (TED) requirements and estimated that 5 to 6 percent of the total mortality due to shrimp trawls was reflected in strandings from 1986 through 1989. Murphy and Hopkins-Murphy (1989) released marked sea turtle carcasses offshore of South Carolina, of which only 28 percent were later recorded as strandings. In one particular study focusing on the same area as the 2000 mass stranding, Epperly *et al.* (1996) reported that turtles dying offshore of the northern North Carolina coast during the winter and spring likely would be transported offshore by bottom currents. It was reported that, at best, strandings represented 7 to 13 percent of the individuals killed by the winter trawl fishery for flounder during November 1991–1992. Moorside (2000) reported that strandings may represent at best, approximately 40 percent, 30 percent, and less than 1 percent of the total number of at-sea carcasses during the summer, fall/spring, and winter, respectively, in the waters off North Carolina.

Comment 6: The EOs commented that gillnet restrictions should be in place throughout the year. They especially felt this was applicable to inland/nearshore North Carolina waters which are known to be important developmental grounds for immature sea turtles on a year-round basis. The EOs also recommended working closely with other states in the Mid-Atlantic to reduce sea turtle take in other gillnet fisheries and to establish incidental take limits and thresholds for closing the fisheries.

Response: NMFS has enacted seasonal closures for the inshore large-mesh (greater than 4.25 inches (10.8 cm) stretched mesh) gillnet fisheries in Pamlico Sound, NC. In 2001, NMFS published a notice of intent to prepare an Environmental Impact Statement for a comprehensive approach and ordered strategy for addressing incidental take of sea turtles by fishing gear type, which would include working closely with states (66 FR 39474, July 31, 2001). Broader fishery-turtle interaction problems will be addressed through that process. The intent of this final rule is to address a particular gear type with a known, and high, threat to sea turtles.

Comment 7: The EOs urged NMFS to move forward quickly with the reinitiation of the ESA section 7 consultation for the monkfish fishery.

Response: The consultation, which resulted in a no jeopardy opinion, was concluded on May 14, 2002.

Comment 8: The Council and the fisherman commented that they felt there was improper notification of the issuance of the interim final rule. The fishing industry was not notified of any changes until publication in the **Federal Register**.

Response: NMFS makes every effort to provide early notification to the public and the affected constituents of its rulemakings whenever practicable. The interim final rule was enacted on an emergency basis because of changes in the fishery, some resulting from a court order, which necessitated quick action to prevent mass sea turtle takes. NMFS made every effort to immediately notify the public, and particularly the fishing industry, when the interim final rule became effective. Notification was accomplished via NOAA Weather Radio announcements, a Fishery Bulletin release, and e-mail announcements to the appropriate state agency personnel and fishery management councils.

Comment 9: The Council and the fisherman commented that the mass strandings cited in the rule summary could have been the result of cold-water stunning and that there is no proof that the 280 turtles found were a result of fisheries activity given that only 4 were found stranded with portions of net still attached. Conversely, the individual Council member commented that the strandings occurred too late in the year to be attributed to cold-water stunning and that lack of gear on the turtles would be expected since no fisherman would leave evidence of gear on a dead turtle.

Response: Based upon the timing of the mass stranding incidents in 2000 as well as other evidence, NMFS remains confident in its conclusion that a large-mesh gillnet fishery was the primary source of mortality to listed sea turtles during the referenced event. The 2000 strandings occurred in April and May, which is likely too late in the year for a large cold-water stunning event. NMFS also reviewed satellite sea-surface temperature images and found no data to support cold-stunning at that time. During the mass stranding event 4 individuals were found entangled in large-mesh gillnet gear and no other fisheries were operating at that time which could have contributed to such large impacts. It is unusual to find stranded sea turtles entangled in gillnet gear. The occurrence of these four turtles carrying gillnet gear in the same stranding event is suggestive of how high the level of turtle interaction may have been. In addition, strandings began increasing dramatically during April and May since 1995, concurrent with the start of the monkfish gillnet fishery off North Carolina.

Comment 10: The Council and the fisherman commented on the fishing effort and stranding differences between 2000 and 2001. The Council felt that there was no support for the statement that monkfish gillnet fishing occurred farther north in 2001, when there were few turtle strandings, compared to 2000 when the mass stranding occurred. They also stated that few sea turtle takes aboard monkfish gillnet boats were observed in 2001 despite nearly 100–percent observer coverage. The commenters used a straight-line extrapolation based on 2000 stranding levels and fishing effort and concluded that the 2001 fishing effort should have resulted in 59 observed strandings instead of 11, thus demonstrating that the 2000 levels cannot be attributed to the fishery.

Response: Observer data and vessel trip reporting (VTR) data support NMFS' assertion that the fishery moved north earlier in the season in 2001 compared to 2000. In 2001, with observers on board a large percentage of the monkfish gillnet trips, the latest trips in North Carolina occurred on April 23 and 24. All monkfish vessels had pulled their gear and headed to Chincoteague, VA by April 24, 2001 at the latest, with most heading north at least a week or more prior to that date. In 2000, based upon VTR data, monkfish boats continued gillnetting in North Carolina waters south of the 36th parallel as late as May 13th. In addition,

despite the intent to do so, observer coverage did not reach 100 percent in 2001. From March 27 to June 20, observer coverage in North Carolina and Virginia was 70 percent for boats that possessed limited access permits and 90 percent for boats that were operating under an Exempted Fishery Permit (the blackfin monkfish EFP). There were a total of 4 loggerhead takes observed over 171 trips, but additional takes may have occurred on trips that did not have observer coverage and therefore were not documented. A straight-line extrapolation based on strandings is not an appropriate means of determining the take from one year to the next. As stated in the response to comment 5, strandings likely represent less than 13 percent of the actual at-sea mortality (Epperly *et al.* (1996). Many carcasses never reach the beach and are transported offshore by bottom currents. Fluctuations in weather patterns that affect offshore winds or currents may determine the level of carcasses that wash ashore each year. Sea turtle presence, abundance, and distribution are also affected by oceanographic features such as sea surface temperatures and convergence zones which may vary year to year. Changes in these environmental parameters affect both the proportion of at-sea mortality represented in beach strandings and the probability that a fishing operation will interact with a sea turtle.

Comment 11: The Council, the fisherman, and NCDMF all commented that they felt the original rolling closure proposal by the North Carolina fishermen was sound and should be enacted instead of the restrictions in the interim final rule. They felt that NMFS' utilization of a stricter version of a closure based upon the fishermen's proposal was a violation of a good faith, proactive effort by the fishermen. NCDMF also requested that in addition to using the fishermen's version of the restrictions, the rule should expire every December 31 to review the effectiveness and impact of the rule.

Response: NMFS recognizes and appreciates the fact that the North Carolina fishermen were taking a proactive approach to an important problem. However, the restrictions proposed by the fishermen were not sufficient to provide the necessary protections for sea turtles. Analysis of data on water temperature and turtle distributions resulted in the timing and areas chosen for the rolling closures. The fishermen's plan that closures be based upon three consecutive days of 60 degrees Fahrenheit (15.6 degrees Celsius) sea surface temperature does not reflect the temperature cutoff that sea turtles avoid. Data have shown that sea turtles can regularly be found in water as low as 11 degrees Celsius (approximately 52 degrees Fahrenheit). In addition, the fishermen's plan was based on measuring sea surface temperatures for 3 consecutive days prior to enacting a closure. This plan would result in a delay in implementing restrictions when they are needed to protect turtles. A yearly expiration for the final rule would be impracticable. Implementing a new rule every year would be a very time intensive process, would potentially result in delays in implementing the necessary restrictions, and would be unnecessary based upon the information available. However, rules are always open to review and amendment based upon new information.

Comment 12: The EOs commented that NMFS should implement and fund an observer program of 20–percent coverage for all small-mesh gillnet fisheries during the times of year when previous mass strandings have occurred.

Response: NMFS is continually exploring ways to obtain more data on fishery interactions with protected species. While not necessarily 20 percent coverage, small-mesh gillnet trips are observed annually in Virginia and North Carolina. Some observer coverage of gillnet fisheries using gear with stretched mesh smaller than 8 inches (20.3 cm) is occurring in Pamlico Sound under an ESA section 10 permit with the state of North Carolina. Observer coverage under that permit is 10 percent. Funding and manpower availability constraints do not currently allow for a full-scale observer program to cover all small-mesh fisheries.

Comment 13: NCDMF commented that the mesh size for the rule should be changed to 7 (17.8 cm) inches instead of 8 inches (20.3 cm) because some fisheries that have the same impact may have been left out of the restrictions.

Response: NMFS agrees that gillnets with 7 inch (17.8 cm) mesh size can pose a threat of capturing and killing sea turtles. However, when NMFS was developing the interim final rule, the primary concern was the fishing effort in the monkfish fishery, based on recent turtle strandings and the management changes in the fishery. NMFS attempted to limit the effect of the interim final rule to gear that is, or might be used to target monkfish and that had been shown to have the highest impact on sea turtles. NMFS intends to investigate the need for an amendment to this rule that would consider, as one alternative, extending the restrictions for gillnets with stretched mesh greater than 8 inches (20.3 cm) into North Carolina and Virginia state waters. NMFS will also investigate and consider additional mesh-size restrictions for both Federal and state waters (See Comment and Response #2). NMFS recognizes the complexity of addressing the impacts of fishing activities, particularly gillnet fisheries, on sea turtles. NMFS has previously announced its intent to implement a comprehensive, gear-based management approach (see 66 FR 39474, July 31, 2001) but believes that the degree of threat to sea turtles from large-mesh gillnets is so significant that measures must be taken now, in advance of the more comprehensive strategy.

Comment 14: The Council commented that because Framework 1 of the FMP, which limited monkfish trips per vessel, was adopted by the Councils, no action is needed and this rule is not necessary.

Response: Although the emergency measures (67 FR 35928; effective May 17, 2002) which replaced Framework 1 reduced the Southern Fishery Management Area (SFMA) monkfish trip limits as originally approved by the Councils, these measures are in effect through November 18, 2002, only. In addition, the emergency measures did not further limit the number of monkfish vessels that could fish in the SFMA. Therefore, even if these trip limits were extended by final rule, an influx of monkfish vessels to the SFMA in the spring, as has been seen in the past, could result in an increase in gillnet fishing effort despite the reduction in trip limits. For example, in light of recent changes to the multispecies fishery, the Councils are considering a measure that would enable vessels to use their allocated monkfish days-at-sea (DAS) separate from multispecies DAS (currently vessels possessing both have to use a multispecies DAS when fishing under a monkfish DAS). Finally, although the interim final rule makes main reference to the monkfish fishery, the restrictions are not specific to one fishery. Large-mesh gillnet gear poses an entanglement risk to sea turtles wherever this gear type and sea turtles occur. Given the occurrence of sea turtles in Federal waters off of North Carolina and Virginia, these measures are necessary to reduce the risk of sea turtle interactions with large-mesh gillnet gear.

Adoption of the Seasonally Adjusted Closure of Large-mesh Gillnet Fishing in the Mid-Atlantic as a Final Rule

After considering public comment received on NMFS' proposal to

permanently adopt the seasonal restrictions on large-mesh gillnetting in the Mid-Atlantic EEZ, NMFS has determined that the restrictions are necessary to adequately protect endangered and threatened species of sea turtles and that the restrictions should be enacted permanently, without change, through this final rule. Some comments suggested more restrictive actions to regulate gillnet fishing for sea turtle protection (see Comments #2 and 13). NMFS is not enacting more restrictive measures than those originally proposed but will investigate the necessity for additional measures to protect sea turtles, and, if warranted, will consider alternative actions and seek public comment on a proposed rule.

References Cited

Bass, A.L., S.P. Epperly, J. Braun, D.W. Owens, and R.M. Patterson. 1998. Natal origin and sex ratios of foraging sea turtles in the Pamlico-Albermarle Estuarine Complex. U.S. Dept. Commer. NOAA Tech. Mem. NMFS-SEFSC–415:137–138.

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Norrgard, J. 1995. Determination of stock composition and natal origin of a juvenile loggerhead turtle population (*Caretta caretta*) in Chesapeake Bay using mitochondrial DNA analysis. M.S. Thesis, College of William and Mary, Gloucester Point, Virginia, 47 pp.

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TEWG (Turtle Expert Working Group). 2000. Assessment update for the Kemp's ridley and loggerhead sea turtle populations in the western North Atlantic. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC–444, 115 pp.

Classification

NMFS prepared an Environmental Assessment (EA) for the final rule and concluded that these regulations would neither pose a significant adverse environmental impact nor have a significant effect on the quality of the human environment. The actions implemented by this final rule are expected to impact approximately 20 to 25 monkfish gillnet vessel owners and operators. Seven alternatives were evaluated in the EA prepared for this rule, including a ''no action'' alternative. For a description and analysis of the alternatives, copies of the EA may be requested at the addresses listed above.

Because a general notice of proposed rulemaking was not required by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. are inapplicable. However, the total cost to the monkfish fishery is expected to be minimal. The primary effect of this final rule will be to establish restrictions in an area which is not heavily used by the fishery and to set required dates for the northward movement of the fishery up through 37°56.0′ N (Chincoteague, VA) in order to avoid sea turtle interactions. Based on VTR data from May 1998 through April 2001, the Virginia and North Carolina trips make up a small part of the total effort in the monkfish sink gillnet fishery. Together they represent 5.1 percent of the monkfish tail weight, 0.9 percent of the liver weight, and 4.1 percent of the total gillnet trips. The fishery normally migrates northward anyway as it follows the monkfish movements. This rule does not prevent or limit fishermen from moving north of 37°56.0′N (Chincoteague, VA) to prosecute the fishery, although the small number of vessels in this fishery that are based in North Carolina and Virginia would have extra fuel costs that would impact profitability. In 2002, a number of trips were landed in Virginia waters during the time frame of the large mesh gillnet restrictions, indicating that these vessels were likely fishing north of the closed area. This rule does not impact any available DAS or catch limits established under previous regulations.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is consistent with the ESA and other applicable laws.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS has conferred with the States of North Carolina and Virginia regarding the need for NMFS to implement this rule to protect listed sea turtles.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements.

Dated: November 26, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are amended to read as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; and 31 U.S.C. 9701 *et seq.*

2. In § 222.102, add the definition for ''Gillnet'' in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 223.206, paragraph (d) introductory text is revised and paragraph (d)(8) is added to read as follows:

§ 222.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) *Exception for incidental taking.* The prohibitions against taking in

§ 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(8) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

* * * * *

(8) *Restrictions applicable to large-mesh gillnet fisheries in the mid-Atlantic region*. No person may fish (including, but not limited to, setting, hauling back, or leaving in the ocean) with, or possess any gillnet with a stretched mesh size larger than 8 inches (20.3 cm), unless all gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected. This restriction applies in the Atlantic Exclusive Economic Zone (as defined in 50 CFR 600.10) during the following time periods and in the following areas:

(i) Waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N (Oregon Inlet) at any time;

(ii) Waters north of 35°46.0′ N (Oregon Inlet) and south of 36°22.5′ N (Currituck Beach Light, NC) from March 16 through January 14;

(iii) Waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA) from April 1 through January 14; and

(iv) Waters north of 37°34.6′ N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA) from April 16 through January 14.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–2292–10; I.D. 112702B]

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

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 Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 1,600 square nautical miles (nm^2) (2,965 km^2), east of Portsmouth, NH, called Jeffreys Ledge, for 15 days. The purpose of this action is to provide immediate protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours December 5, 2002, through 2400 hours December 20, 2002.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

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.nero.nmfs.gov/whaletrp/.*

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION: The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right whales, fin, humpback, and 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 and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap and anchored gillnet fishing gear in areas north of 40°N. lat. on an expedited basis to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap 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 (75nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). 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 November 20, 2002, NMFS Aerial Survey Team reported a sighting of 8 right whales in the proximity of 43° 00′ N lat. and 70° 08′ W long. This position lies east of Portsmouth, NH, in an area called Jeffreys Ledge.

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 and, through this action, restricts lobster trap and gillnet gear set in the waters bounded by:

43°19′N, 70°35′W (NW Corner)
43°19′N, 69°40′W
42°39′N, 69°40′′W
42°39′N, 70°35′W (SW Corner)

Please note that the western DAM boundary (70°35′W) from 43°11′N due north to 43°19′N will follow the coastline.