E.O. 13132 – Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, this proposed rule will be given to the relevant state agencies in the State of Washington (the state in which the subject DPS occurs), who will be invited to comment. We have conferred with the State of Washington and Puget Sound area tribal governments in the course of assessing the status of Puget Sound steelhead, and considered, among other things, state and local conservation measures. As the ESA listing process continues, we intend to continue engaging in informal and formal contacts with Washington, Puget Sound tribes, and other affected local or regional entities, giving careful consideration to all written and oral comments received. We also intend to consult with appropriate elected officials in the establishment of a final rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Transportation.

Dated: March 21, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.102, paragraph (a)(23) is added to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) * * *

Species[1]		Where Listed	Citation(s) for Listing Determinations)	Citation(s) for Critical Habitat
Common name	Scientific name			
*	*	*	*	*
(23) Puget Sound Steelhead	*Oncorhynchus mykiss*	U.S.A., WA, Distinct Population Segment including all naturally spawned anadromous winter-run and summer-run *O. mykiss* (steelhead) populations, in streams in the river basins of the Strait of Juan de Fuca, Puget Sound, and Hood Canal, Washington, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive), as well as the Green River natural and Hamma Hamma winter-run steelhead hatchery stocks.	[INSERT DATE OF PUBLICATION WHEN PUBLISHED AS A FINAL RULE]	NA
*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991)

[FR Doc. 06–2972 Filed 3–28–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 635

[Docket No. 060313062–6062–01; I.D. 082305E]

RIN 0648–AT37

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures; Gear Operation and Deployment; Complementary Closures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement additional handling, release, and disentanglement requirements for sea turtles and other non-target species caught in the shark bottom longline (BLL) fishery. These requirements are intended to reduce post hooking mortality of sea turtles and other non-target species, which is an objective of Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) published on December 24, 2003. This proposed rule would also implement management measures that are consistent with those implemented by the Caribbean Fishery Management Council (CFMC) on October 28, 2005. These complementary management measures are intended to minimize adverse impacts to Essential Fish Habitat (EFH) for reef-dwelling species. The proposed rule would apply to all participants in the Atlantic shark fishery.

DATES: Written comments must be received by 5 p.m. on June 27, 2006.

ADDRESSES: Written comments on the proposed rule or the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Draft EA/RIR/IRFA) may be submitted to Mike Clark, Highly Migratory Species Management Division:

- E-mail: *SF1.082305E@noaa.gov*.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Rule for Dehooking and Complementary Caribbean Measures for the Commercial Shark Fishery.''
- Fax: 301–713–1917.
- Federal e-Rulemaking portal: *http://www.regulations.gov*. Include in the subject line the following identifier: I.D. 082305E.

See **SUPPLEMENTARY INFORMATION** for meeting dates, times, and locations.

Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations; and copies of the document entitled ''Careful Release and Handling Protocols for the Careful Release of Sea Turtles with Minimal Injury'' may be obtained from the mailing address listed above, and are also available on the internet at *http://www.nmfs.noaa.gov/sfa/hms*. Copies of the documents supporting the actions contained in the Comprehensive Amendment to the Fishery Management

Plans of the U.S. Caribbean may be obtained by contacting Dr. Steve Branstetter, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701; telephone 727–824–5305.

FOR FURTHER INFORMATION CONTACT: Mike Clark or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Public Hearing Times, Date, and Locations

1. April 26, 2006 from 7–9 p.m. Ponce Hilton, 1150 Caribe Avenue, Ponce, PR. 00716.
2. April 27, 2006 from 6–8 p.m. Florence Williams Public Library, 1122 King Street, Christiansted, St. Croix, U.S. Virgin Islands. 00802.
3. May 18, 2006 from 7–9 p.m. City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708.
4. June 1, 2006 from 6–8 p.m. Town Hall, 407 Budleigh Street, Manteo, NC 27954.
5. June 7, 2006 from 6–8 p.m. NMFS Laboratory, 3500 Delwood Beach Drive, Panama City, FL 32408.

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP for Atlantic Tunas, Swordfish, and Sharks and Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks are implemented by regulations at 50 CFR part 635. The fisheries for spiny lobster, queen conch, reef fish, and corals and reef-associated invertebrates in the exclusive economic zone (EEZ) off Puerto Rico and off the U.S. Virgin Islands are managed under fishery management plans prepared by the CFMC. These fishery management plans are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

An objective of the final rule implementing Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, was to minimize, to the extent practicable, bycatch of living marine resources and the mortality of such bycatch that cannot be avoided in the fisheries for Atlantic sharks. That rule finalized measures that required the use of non-stainless steel, corrodible hooks aboard shark BLL fishing vessels, the possession of release equipment (line cutters and dipnets, both with extended reach handles), and also required BLL vessels to immediately release any sea turtle, marine mammal, or smalltooth sawfish that is hooked or entangled and then move at least one nautical mile (2 km) before resuming fishing activities. At that time, NMFS had not yet approved dehooking devices for sea turtles. Therefore, while Amendment 1 to the HMS FMP requires vessel operators to possess, maintain, and utilize, dehooking and release equipment, implementation of the measure was delayed pending approval.

The purpose of this proposed rulemaking is to update the necessary equipment and protocols that vessel operators in the BLL fishery must possess, maintain, and utilize for the safe handling, release, and disentanglement of sea turtles and other non-target species. Significant new information, techniques, and equipment have been approved and implemented for the PLL fishery since NMFS enacted Amendment 1 to the HMS FMP's requirements for the BLL fishery. Participants in the pelagic longline (PLL) fishery are required to possess, maintain, and utilize a suite of NMFS-approved handling and dehooking equipment when engaged in fishing activities (July 6, 2004, 69 FR 40734). Research conducted in the Northeast Distant statistical reporting area (NED) has indicated that removing the maximum amount of gear from sea turtles significantly increases post-release survival. Dehooking devices that meet NMFS design standards are necessary for removal of fishing gear and are now available to release sea turtles. Because of similarities between the fisheries, NMFS is reassessing the BLL requirements in light of the July 6, 2004, rule for the PLL fishery.

Another objective of this action is to propose for commercial Atlantic shark BLL fisheries, implementation of measures that are complementary to CFMC-recommended measures that NMFS implemented on October 28, 2005 (70 FR 62073). These measures would minimize adverse impacts to EFH and reduce fishing mortality for mutton snapper, red hind, and other reef-dwelling species. Scoping hearings for the Comprehensive Amendment to the FMPs of the Caribbean, including the bottom longline closures being considered in this rulemaking, were conducted from June 4 to June 12, 2002, in Puerto Rico and the U.S. Virgin Islands. The Environmental Protection Agency published a notice of availability (NOA) of the Draft Supplemental Environmental Impact Assessment (DSEIS) in the **Federal Register** on March 18, 2005 (70 FR 13190). The final supplemental environmental impact statement for the Comprehensive Amendment to the FMPs of the Caribbean was filed with the Environmental Protection Agency on June 17, 2005, with the Notice of Availability published on June 24, 2005, (70 FR 36581).

The Comprehensive Amendment to the FMPs of the Caribbean addressed several requirements of the Magnuson-Stevens Act including, but not limited to, reducing overfishing, rebuilding overfished stocks, and minimization, to the extent practicable, of the adverse effects on EFH caused by fishing. A proposed rule containing measures specific to Council-managed species in the Comprehensive amendment was published in the **Federal Register** on September 13, 2005 (70 FR 53979), with a comment period ending on September 28, 2005. The final rule, specific to Council-managed species, published in the **Federal Register** on October 28, 2005 (70 FR 62073), with an effective date of November 28, 2005.

Most of the elements contained in the Comprehensive Amendment, such as the establishment of biological reference points, rebuilding plans, and possession limits, apply solely to Council-managed species such as reef fish, queen conch, and spiny lobster. However, in several geographic areas, year-round prohibitions on BLL and other gear have been established to minimize, to the extent practicable, adverse effects on essential fish habitat caused by fishing activities and reduce fishing mortality of reef-dwelling species. These management measures could potentially impact commercial shark fisheries and are the subject of this current proposed rule.

Implementation of Additional Dehooking Requirements for the BLL Fishery

Currently, to reduce injuries and mortalities associated with protected resources interactions, all Atlantic vessels that have BLL gear onboard must use corrodible, non-stainless steel hooks. If a marine mammal, sea turtle, or smalltooth sawfish, is hooked or entangled by the gear, the operator of the vessel must immediately release the animal, retrieve the BLL gear, and move at least 1 nm (2 km). Vessel operators are required to follow guidelines for sea turtle handling in accordance with procedures specified by the NMFS at § 223.206(d)(1). Furthermore, vessel operators are required to possess long-handled (6 ft., 1.83 m) line cutters and a long-handled (6 ft., 1.82 m) dipnet, capable of supporting 100 lbs (39.4 kg). Dipnets are required to boat sea turtles, when practicable, and line cutters are required to disengage any hooked or entangled sea turtles by cutting the line as close as possible to the hook. If a smalltooth sawfish is caught, the fish

should be kept in the water while maintaining water flow over the gills, examined for research tags, and then the line should be cut as close to the hook as possible.

The preferred alternative would require vessel operators aboard all Federally permitted vessels for Atlantic HMS with BLL gear onboard to possess, maintain, and utilize additional equipment and protocols consistent with what is currently required for the PLL fishery. The preferred alternative would not change the requirements regarding use of corrodible, non-stainless steel hooks, moving 1 nautical mile after a protected resource interaction, or the handling of smalltooth sawfish. Diagrams, design specifications, and additional descriptions of the proposed pieces of equipment that vessels must possess, maintain, and utilize are provided in Appendix A of the draft environmental assessment (EA) prepared for this proposed rule and also listed in Table 1. Vessels would also be required to possess onboard a copy of the document entitled ''Careful Release Protocols for Release with Minimal Injury'' which describes the procedures for hook removal and careful release of sea turtles in detail. NMFS already provided these documents in either English, Spanish, or Vietnamese, to PLL and BLL fishermen. This document is available upon request from the HMS Management Division (see **ADDRESSES** section).

TABLE 1. EXAMPLES OF NMFS-APPROVED EQUIPMENT REQUIRED BY THE PREFERRED ALTERNATIVE FOR THE CAREFUL RELEASE OF SEA TURTLES AND OTHER NON-TARGET SPECIES CAUGHT IN THE BLL FISHERY.

Required Item	Examples of NMFS-Approved Models
(A) Long-handled (6ft. (1.83 m) or 150 percent of freeboard height) line cutter	LaForce Line Cutter; Arceneaux Line Clipper
(B) Long-handled (6 ft. (1.83 m) or 150 percent of freeboard height) dehooker for ingested hooks	ARC Pole Model BP11 Deep Hooked Dehooker

TABLE 1. EXAMPLES OF NMFS-APPROVED EQUIPMENT REQUIRED BY THE PREFERRED ALTERNATIVE FOR THE CAREFUL RELEASE OF SEA TURTLES AND OTHER NON-TARGET SPECIES CAUGHT IN THE BLL FISHERY.—Continued

Required Item	Examples of NMFS-Approved Models
(C) Long-handled (6ft. (1.83 m) or 150 percent of freeboard height) dehooker for external hooks	ARC 6ft. Pole Big Game Dehooker Model P610; ARC Model LJ6P (6ft. or 1.83 m); ARC Model LJ36; ARC 6ft. (1.83 m) Pole Big Game Dehooker (Model P610)
(D)Long-handled (6ft. (1.83 m) or 150 percent of freeboard height) device to pull an ''inverted V''	ARC Model LJ6P (6ft. or 1.83 m); or ARC Model LJ36; ARC Pole Model Deep Hooked Dehooker (Model BP11); ARC 6ft. (1.83 m) Pole Big Game Dehooker (Model P610); Davis Telescoping Boat Hook (Model 85002A); West Marine Fishing Gaff (Model F6H5 with F6–006 handle)
(E) Dipnet (handle length must be 6ft. (1.83 m) or 150 percent of freeboard height)	ARC Breakdown Lightweight Dipnet Model (DN6P (6ft.), DNO8 (8ft.), or DN14 (12ft.)); Lindgren Pittman, Inc. Model NMFS-Turtle Net; ARC net assembly and Handle (Model DNIN)
(F) Standard Automobile Tire	Any standard automobile tire or other comparable, cushioned, elevated surface that allows boated turtles to be immobilized
(G) Short Handled Dehooker for Ingested Hooks	ARC 16in. (40.64 cm) Hand Held Bite Block Deep Hooked Turtle Dehooking Device (Model ST08)

TABLE 1. EXAMPLES OF NMFS-APPROVED EQUIPMENT REQUIRED BY THE PREFERRED ALTERNATIVE FOR THE CAREFUL RELEASE OF SEA TURTLES AND OTHER NON-TARGET SPECIES CAUGHT IN THE BLL FISHERY.—Continued

Required Item	Examples of NMFS-Approved Models
(H) Short Handled Dehooker for External Hooks	ARC Hand Held Large J style Dehooker (Model LJ07); ARC Hand Held Large J style Dehooker (Model LJ24); or ARC 17in. (43.18 cm) Hand Held Bite Block Deep Hooked Turtle Dehooking Device (Model STO8); or Scotty's Dehooker
(I) Long nose or needle nose pliers	12in. (30.48 cm) S.S. NuMark Model #030281109871; any 12in. (30.48 cm) stainless steel long or needle-nose pliers
(J) Bolt Cutter	H.K. Porter Model 1490 AC
(K) Monofilament Line Cutter	Jinkai Model MC-T
(L) Two of the following Mouth Openers and Mouth Gags	
(L1) Block Of Hard Wood	Any block of hard wood or long-handled wire brush (e.g., Olympia Tools Model 974174)
(L2) Set of (3) Canine Mouth Gags	Jorvet Model 4160, 4162, and 4164
(L3) Set of (2) Sturdy Dog Chew Bones	Nylabone©, Gumabone©, or Galileo© (trademarks owned by T. F. H. Publications, Inc)
(L4) Set of (2) Rope Loops Covered with Hose	Any set of (2) rope loops covered with hose meeting design standards
(L5) Hank of rope	Any size soft braided nylon rope is acceptable, provided it creates a hank of rope approximatley 2–4in. (5.08 - 10.16 cm)in thickness

TABLE 1. EXAMPLES OF NMFS-APPROVED EQUIPMENT REQUIRED BY THE PREFERRED ALTERNATIVE FOR THE CAREFUL RELEASE OF SEA TURTLES AND OTHER NON-TARGET SPECIES CAUGHT IN THE BLL FISHERY.—Continued

Required Item	Examples of NMFS-Approved Models
(L6) Set of (4) PVC splice couplings	A set of (4) Standard Schedule 40 PVC splice couplings (1in. (2.54 cm), 1.25in. (3.175 cm), 1 1.5in. (3.81 cm), and 2in. (5.08 cm))
(L7) Large avian oral speculum	Webster Vet Supply Model (Model 85408); Veterinary Specialty Products (Model VSP 216–08); Jorvet (Model J–51z); and Krusse (Model 273117)

This proposed rule would allow for use of other items that are not listed to fulfill the requirements, provided they meet the minimum design standards at 50 CFR 635.21. For this proposed rule, those design standards are also described in Appendix A of the draft environmental assessment. At this time, NMFS is aware of only one commercial manufacturer of long and short-handled dehookers for ingested hooks that meet the minimum design standards.

The preferred alternative would require that vessels possess, maintain, and utilize items A through L (already required to possess long-handled linecutters (item A) and dipnets (item E)). For long-handled items (A-E), handle length must be at least 6ft. (1.83 m) or 150 percent of freeboard height, whichever is greater. Freeboard is defined at 50 CFR 635.2 as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design. Two different mouth openers or gags (items L1–L7) are required. Both long and short-handled dehookers for ingested hooks (items B and G) can be used in lieu of dehookers for external hooks (items C and H), provided all vessels possess both a short and a long-handled dehooker for ingested hooks (at a minimum). Furthermore, if vessels possess a 6ft. (1.83 m) J style dehooker to satisfy the requirement for item C, it would also satisfy the requirement for item D. Items A-D are intended to be used for turtles that are not boated. Items E-L are intended to be used for turtles that are boated.

The design standards for the NMFS-approved items are described in Appendix A of the draft EA for this proposed rule. These standards would allow fishermen to construct some of the equipment from material that is readily available to them and to use skills that most fishermen likely possess, provided the equipment meets design standards listed at 50 CFR 635.21. This gear is necessary to release sea turtles effectively with minimal harm or injury; however, the handling, release, and disentanglement equipment may also assist fishermen with other non-target species that are encountered during fishing activities. Possession of this equipment would not impact the number of interactions between BLL gear and sea turtles and other non-target species.

As described in Appendix A of the draft EA, NMFS also recommends possession and utilization of a ''turtle tether'' for controlling large turtles at the side of the boat and a ''turtle hoist'' for moving large turtles onto the boat, but these items are not being proposed as requirements at this time.

The existing requirements for sea turtle handling and resuscitation procedures specified by NMFS are described at 50 CFR 223.206(d)(1)(i). Additional handling requirements for sea turtles and other protected resources are described at 50 CFR 635.21(c)(5)(ii). This proposed rule makes a minor revision to the regulatory text at 50 CFR 223.206(d)(1)(ii) to clarify that the turtle handling and resuscitation provisions of § 223.206 (d)(1)(i) are in addition to the turtle handling requirements at 50 CFR 635.21.

The preferred alternative would have ecological, economic, and social impacts. The additional equipment required is necessary to maximize gear removal and would have positive ecological impacts by maximizing post-release survival of sea turtles and other non-target species after interactions with longline gear. It is estimated that approximately 17 leatherback and 123 loggerhead sea turtles are killed annually as a result of interactions with BLL gear. It is estimated that between two and ten fewer leatherback sea turtles, and between 12 and 71 fewer loggerhead sea turtles would die as a result of interactions with BLL gear by employing the additional dehooking equipment required by this alternative. Negative economic impacts would be expected initially as participants would be required to purchase or construct additional equipment as a result of this alternative. NMFS estimates that the one-time costs of initial compliance would range from $253 to $977; exact costs would depend on how much of the equipment the fishermen are able to construct themselves, the vessel's freeboard height (freeboard height is related to handle-length required on items A-E), and the amount of equipment that they already possess. Some of these economic impacts may be offset over time as fishermen are able to retrieve more of their hooks by using the dehooking equipment. Costs may also be incurred in the future as equipment may need to be maintained or replaced, as necessary. NMFS anticipates negligible social impacts as a result of the preferred alternative.

NMFS also considered two other alternatives for this rulemaking. A status quo alternative would maintain the current dehooking equipment requirements and would result in negative ecological impacts as the equipment currently required does not ensure that participants are able to remove the maximum amount of fishing gear from sea turtles to reduce post-hooking mortality. Furthermore, this alternative does not comply with the October 2003 BiOp which required NMFS to implement additional dehooking equipment for the shark BLL when it was approved. This alternative would not result in any economic or social impacts as it would not require participants to modify their behavior or attain any additional equipment.

The other alternative that NMFS considered would require participants to possess additional equipment based on their vessel's freeboard height. Vessel's that have a freeboard height less than or equal to 4 feet (1.22 m) would not have to possess the full suite of long-handled dehooking equipment (items B (and/or C) and D). Vessel's with freeboard height greater than 4 feet (1.22 m) would be required to possess the full suite of long-handled equipment. This alternative was considered because BLL vessel's are generally smaller and have a lower freeboard height than PLL vessel's. The shark BLL fishery interacts with fewer sea turtles in general, and interactions with larger leatherback or loggerhead sea turtles that cannot be boated are more infrequent. For these smaller BLL vessels, the length of a short handled dehooker (items G and/or H), in addition to a fisherman's arm length, may be sufficient to dehook and release turtles that are too large to be brought on board. This alternative would result in positive ecological impacts relative to the status quo, however, these impacts would be less positive than those achieved with the preferred alternative which requires all participants to possess the full suite of long-handled equipment for dehooking

or disentangling turtles that can not be boated. The preferred alternative has increased positive ecological impacts because possessing the long-handled equipment would increase the likelihood that fishermen are able to dehook and or remove as much gear as possible from turtles that cannot be brought onboard. Similar to the preferred alternative, negative economic impacts would occur as a result of this alternative initially as it would require participants to procure additional equipment that would range in price from $152 to $477. Social impacts as a result of this alternative would likely be negligible.

The preferred alternative was selected in order to maximize post-hooking survival of sea turtles and maintain consistency between the PLL and BLL fisheries because of the similarities between these fisheries, the gear employed, and the fishermen. Furthermore, since many vessel operators and owners fish with both BLL and PLL gear NMFS selected a preferred alternative that would enable operators to possess the same equipment required in the PLL fishery. This would facilitate and improve compliance with the regulations and maintain consistency among longline and HMS fisheries. The economic impacts of compliance may be reduced if Atlantic shark fishermen construct additional equipment themselves, provided it meets the design specifications at 50 CFR 635.21.

Restrictions to Minimize Adverse Effects on EFH and Reduce Fishing Mortality of Reef-Dwelling Species

This proposed rule would prohibit persons issued an HMS permit with BLL gear onboard a vessel from fishing or deploying any type of fishing gear, on a year-round basis in: (1) The newly-implemented Grammanik Bank closed area; (2) the existing mutton snapper spawning aggregation area off the southwest coast of St. Croix, U.S. Virgin Islands; and (3) the existing red hind spawning aggregation areas (East of St. Croix, and West of Puerto Rico (including Bajo de Cico, Tourmaline Bank, and Abrir La Sierra Bank)). See 50 CFR 622.33(a) for the exact coordinates of these areas. The year-round prohibition on the use of BLL and other fishing gears within these discrete spawning aggregation sites would protect EFH and contribute to needed reductions in fishing mortality of mutton snapper, red hind, and other reef-dwelling species. As described in the Comprehensive Amendment to the Caribbean FMPs, there were several other requirements regarding fish traps and pots that do not impact HMS fisheries, in addition to a No Action alternative.

The only HMS fishery in the Virgin Islands and Puerto Rico that could potentially be affected by this proposed action is the commercial shark BLL fishery. As of October 2005, only one shark incidental permit was held by a vessel in the USVI, and no shark limited access permits were held by vessels in Puerto Rico. Similarly, only one dealer held an Atlantic shark dealer permit in the USVI, with no dealer permits issued in Puerto Rico. Accordingly, the volume of sharks landed in Puerto Rico and the Virgin Islands from 1997 through 2002 was relatively minor. Based upon dealer weigh-out data, shark landings totaled less than 3,200 lb (1,422 kg) and consisted of 66 individual fish for that six-year period. It is possible, however, that these data may not be reflective of the actual extent of the Caribbean shark fishery due to unreported landings.

Due to the low level of documented commercial shark landings in Puerto Rico and the U.S. Virgin Islands, the social and economic impacts associated with this proposed action on HMS fisheries are expected to be *de minimus*. In fact, because the affected areas are significantly smaller than the area from which the landings estimate was derived, and because these areas are already closed to bottom-tending gears in other fisheries, the social and economic impacts are likely to be negligible. Based on the available data, NMFS does not anticipate that the proposed measures would result in a measurable reduction or redistribution of HMS-related effort, including shark BLL fishing, or any changes in HMS fishing practices.

The proposed measures are not expected to impact fishing costs, ex-vessel prices, or market availability given the limited quantities of sharks landed in the U.S. Caribbean. However, by complementing existing management measures to protect EFH in the Caribbean, the biological impacts associated with this alternative are expected to be positive. The non-preferred No Action alternative would not have adverse economic impacts on federal permit holders. Any positive ecological impacts on HMS are expected to be minimal because there has been little reported or observed HMS fishing effort in recent years. However, such complementary management measures could prevent future increases in fishing effort and provide ancillary conservation benefits to HMS in addition to Council-managed species.

Classification

The proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

The final rule implementing management measures specific to Council-managed species was determined to be significant for purposes of Executive Order 12866. This proposed rule, which would close complementary areas for HMS fisheries and require dehooking equipment for BLL fishermen, has been determined to be not significant for purposes of Executive Order 12866.

As required under the Regulatory Flexibility Act (RFA), NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of the preferred alternatives and any significant alternatives to the proposed rule that could minimize significant economic impacts on small entities. A summary of the information presented in the IRFA is provided below. The draft EA prepared for this proposed rule provides further discussion of the biological, social, and economic impacts of all the alternatives considered.

NMFS prepared a final Regulatory Flexibility Act analysis (FRFA) for the final rule that implemented the management measures in the Comprehensive Amendment to the Caribbean FMPs. The FRFA incorporated the Initial Regulatory Flexibility Act analysis (IRFA) published on September 13, 2005 (70 FR 53979), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to public comments on the IRFA, and a summary of the analyses completed to support that action. No comments were received in response to the IRFA that related to HMS fisheries. The IRFA in this proposed rule incorporates by reference the findings of the FRFA published on October 28, 2005 (70 FR 62073), and describes the economic impact this proposed rule, if adopted, would have on small entities participating in HMS fisheries.

This proposed rule would apply to all vessels that have BLL gear onboard and have been issued, or are required to have, Federal HMS limited access permits. NMFS considers all commercial permit holders to be small entities. NMFS estimates that, as of October 2005, approximately 235 directed and 320 incidental shark permits (555 permits total) had been issued. It is estimated that 284 directed and incidental shark permit holders do not also fish with PLL gear, and therefore, do not already possess the

handling, dehooking, and release equipment that would be required by this rulemaking. These permit holders also do not possess directed or incidental swordfish permits, therefore, it can be assumed that they do not fish with PLL gear. Eighty percent of permit holders fish from the state of Florida. Since the same safe handling and release equipment and protocols are already required for the PLL fishery and permit holders that use PLL gear are already required to possess the equipment necessary to satisfy the requirements for the BLL fishery, fishermen who use PLL gear would not be affected by this current rulemaking.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers might be indirectly affected by the proposed alternative because of the direct impacts on fishermen. The proposed rule only applies directly to permit holders and shark BLL fishermen.

This proposed rule would also prohibit vessels issued an HMS permit with BLL gear onboard from fishing or deploying any type of fishing gear on a year-round basis in the: (1) Newly-implemented Grammanik Bank closed area; (2) existing mutton snapper spawning aggregation closed area off the southwest coast of St. Croix, U.S. Virgin Islands; and (3) existing red hind spawning aggregation closed areas (East of St. Croix, West of Puerto Rico (including Bajo de Cico, Tourmaline Bank, and Abrir La Sierra Bank)). This alternative could potentially impact one shark incidental permit holder and one shark dealer permit holder in the USVI. There are no shark limited access permit holders or shark dealer permit holders in Puerto Rico. It is possible, however, that the permit data may not reflect the actual number of small entities participating in the federal shark fishery in the U.S. Caribbean EEZ. The non-preferred No Action alternative would not affect any federal permit holders.

The proposed regulations do not contain additional reporting or record-keeping requirements, but would result in additional compliance requirements, including the possession of specific protocols that describe the proper handling, release, and disentanglement of sea turtles and other non-target species and how to employ the required equipment. A document entitled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury'' contains the sea turtle careful release protocols and would be required to be possessed onboard. NMFS has already provided this document in English, Spanish, or Vietnamese (see **ADDRESSES**).

NMFS considered three alternatives for the implementation of additional dehooking requirements for protected resources in the BLL fishery. The alternatives included: no action, requiring additional handling and release equipment based on vessel freeboard height, and implementing the same dehooking equipment and protocols as those that are currently required in the PLL fishery. Maintaining consistency between the PLL and BLL fisheries by implementing the same dehooking equipment for both fisheries is the preferred alternative.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 603 (c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)-(4)) lists four categories for alternatives that must be considered. These categories are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage for small entities.

In order to meet the objectives of this proposed rule, consistent with Magunson-Stevens Act, Atlantic Tunas Convention Act (ATCA), and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities. Additionally, the handling and release gear requirements would not be effective with different compliance requirements. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). All alternatives considered are based on design standards rather than performance standards; fishermen would be in compliance of the proposed rulemaking as long as they possess and utilize gear that conforms to the design specifications located in Appendix A for the safe handling, release, and disentanglement of protected resources. Any item meeting the design standards may be constructed or purchased and used, as long as the design is first certified by the NMFS Pascagoula Laboratory. When new items are certified, a notice would be published in the **Federal Register**. As described below, NMFS considered three different alternatives in this proposed rulemaking.

The no action alternative would not result in any economic impacts as it would not require Atlantic shark fishermen in the BLL fishery to possess additional sea turtle handling and release equipment. This alternative is not preferred, as it would result in negative ecological impacts, compared to the preferred alternative. Fishermen would not be able to effectively handle, release, and/or disentangle sea turtles and other non-target catch, which would not result in a decrease in post-hooking mortality.

Requiring additional equipment and release guidelines based on vessel freeboard height would result in negative economic impacts because fishermen would be expected to possess, maintain, and utilize additional equipment that would range from $152 - $477. Costs would vary depending on what equipment vessels already possess, how much of the equipment fishermen are able to construct themselves, and the vessel's freeboard height. This alternative would not require vessels with a freeboard height of 4ft. (1.22 m) or less to possess the full suite of long-handled equipment.

The four-foot or less freeboard height was chosen as the threshold for exempting vessels from possessing long-handled dehookers because it is assumed that the handle length of a short-handled dehooker, in addition to a fisherman's arm length, might be sufficient for reaching and dehooking most non-boated sea turtles and other protected resources. The majority of sea turtles that would interact with Atlantic BLL fisheries are large juvenile loggerhead and adult leatherback sea turtles. Requiring additional long-handled equipment would facilitate more effective handling of these larger turtles that can not be boated. Long-handled dehookers might facilitate improved hook removal, release, or disentanglement of larger turtles. Research in the NED for the PLL fishery has shown that some turtles released alive may subsequently die from hook ingestion, trailing gear, or injuries suffered when entangled in gear. Therefore, a freeboard height dependant alternative would have less of an ecological benefit compared to the preferred alternative. The freeboard height based alternative is also not preferred because it would result in inconsistency between the PLL and BLL fisheries.

The preferred alternative would maintain consistency between the PLL and BLL fisheries by requiring Atlantic shark fishermen with BLL gear onboard

to possess, maintain, and utilize the same equipment currently required on PLL vessels. This alternative would enable Atlantic shark fishermen with BLL gear onboard to follow the protocols and possess the equipment necessary for the PLL fishery, easing determination of compliance for both fishermen and enforcement. This alternative would have negative economic impacts as it would impose initial compliance costs for some Atlantic shark fishermen ranging from $253 to $977, depending upon on what equipment vessels already possess, how much of the equipment fishermen are able to construct themselves, and the vessel's freeboard height because freeboard height is related to required handle length on long-handled equipment (items A-E).

These proposed regulations are not expected to increase endangered species or marine mammal interaction rates. A Biological Opinion (BiOp) issued October 29, 2003, concluded that the continued operation of the Atlantic shark fisheries was not likely to jeopardize the continued existence of any listed species under NMFS purview. An analysis of the anticipated incidental takes of sea turtles (primarily loggerhead and leatherback sea turtles) and smalltooth sawfish resulted in a ''non-jeopardy'' determination in the BiOp. Measures proposed in this rule are expected to reduce post hooking mortality by removing the maximum amount of gear from sea turtles and other non-target species that are caught incidentally on BLL gear in the Atlantic shark fishery. This proposed rule would implement handling and release measures beyond those required in the October BiOp. Furthermore, this proposed rule would not alter fishing practices or fishing effort significantly and therefore should not have any further impacts on endangered species or marine mammals beyond those considered in the October 29, 2003, BiOp for Atlantic shark fisheries.

The preferred alternative of closing certain areas in the Caribbean would reduce fishing mortality of reef-dwelling species and minimize adverse effects on EFH, to the extent practicable, caused by BLL fishing. It is expected to have a negligible impact on small entities participating in HMS fisheries due to the small number of permit holders, and the low level of documented commercial shark landings in Puerto Rico and the U.S. Virgin Islands. Based upon dealer weigh-out data, shark landings totaled less than 3,200 lbs. and consisted of 66 individual fish for the six-year period from 1997 through 2002. Because the affected areas are significantly smaller than the area from which these landings estimates were derived, and because these areas are already closed to bottom-tending gears in other fisheries, the impacts are expected to be minor. A No Action alternative was considered, and would have less onerous impacts on small businesses but would not satisfy Magnuson-Stevens Act requirements to minimize, to the extent practicable, adverse effects on EFH caused by fishing.

The preferred alternatives are not expected to alter HMS fishing practices, techniques, or effort in any way that would increase interactions with protected species or marine mammals.

NMFS has determined preliminarily that these regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those coastal states on the Atlantic, including the Gulf of Mexico and Caribbean, that have approved coastal zone management programs. Letters will be sent to the relevant states asking for their concurrence when the proposed rule is filed with the Office of the Federal Register.

This proposed rule does not contain any new reporting or recordkeeping requirements.

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

NMFS does not believe that the proposed regulations would conflict with any other relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 22, 2006.

James W. Balsiger,

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

50 CFR Chapter II

For reasons set out in the preamble, 50 CFR part 223 Chapter II and part 635 Chapter VI are proposed to be amended as follows:

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)(1)(ii) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(1) * * *

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a vessel in the Atlantic, including the Caribbean Sea and the Gulf of Mexico, that has pelagic or bottom longline gear on board and that has been issued, or is required to have, a limited access permit for highly migratory species under 50 CFR 635.4, must comply with the handling and release requirements specified in 50 CFR 635.21.

* * * * *

50 CFR Chapter VI

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. *et seq.*; 16 U.S.C. 1801 *et seq.*

4. In § 635.21, paragraph (d)(3)(iv) is removed and paragraphs (a)(3), (d)(1), (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(3) All vessels that have pelagic and bottom longline gear onboard and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled ''Careful Release Protocols for Sea Turtle Release with Minimal Injury,'' and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(d) * * *

(1) If bottom longline gear is onboard a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) The mid-Atlantic shark closed areas from January 1 through July 31 each calendar year; and

(ii) The areas designated at § 622.33(a) of this chapter, year-round.

* * * * *

(3) * * *

(i) *Bycatch mitigation measures.* The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the bycatch mitigation measures under paragraphs (c)(5)(i) and (c)(5)(ii)(A) - (C) of this section to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(ii) *Possession and use of required mitigation gear.* The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(3)(ii) of this section.

(iii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(ii) of this section, must be used to disengage any hooked or entangled sea turtles as stated in paragraphs (c)(5)(ii)(A) - (C) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed in category D of Table 1 of Appendix A to this part. If a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags and the line should be cut as close to the hook as possible. Dehooking devices should not be used to release smalltooth sawfish.

* * * * *

5. In § 635.71, paragraph (a)(33) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(3)(i) for bottom longline gear. This equipment must be utilized appropriately, as specified in § 635.21 (c)(5)(ii) and (d)(3)(ii) for pelagic and bottom longline gear, respectively.

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[FR Doc. E6–4582 Filed 3–28–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040610180–6065–02; I.D. 030806A]

RIN 0648-AR09

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting; Tagged Pacific Halibut and Tagged Sablefish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend regulations for excluding tagged halibut and tagged sablefish catches from deduction from fishermen's Individual Fishing Quota (IFQ) and from Western Alaska Community Development Quota (CDQ) accounts. This action is necessary to ensure that only halibut and sablefish that are tagged with an external research tag are excluded from IFQ deduction, and to extend the same exclusion to halibut and sablefish harvested under the CDQ Program, which allocates specific harvesting privileges among U.S. fishermen and eligible western Alaska communities. This action is intended to improve administration of the IFQ and CDQ Programs, to enhance collection of scientific data from external tags, and to further the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs), and the halibut management program.

DATES: Comments on this proposed rule must be received by April 28, 2006.

ADDRESSES: Send written comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Officer. Comments may be submitted by:

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.
- E-mail: *tagged-halibut-0648-AR09@noaa.gov*. Include in the subject line the following document identifier: Tagged Halibut RIN 0648 AR09. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.
- Fax: 907–586–7557.
- Mail: P.O. Box 21668, Juneau, AK 99802–1668.

Copies of the Categorical Exclusion (CE) and Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address or from the NMFS Alaska Region Web site at *www.fakr.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the addresses above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907–586–7228 or *becky.carls@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the BSAI and the Gulf of Alaska are managed by NMFS under the FMPs for these areas. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement between Canada and the United States. This agreement, entitled the ''Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea'' (Convention), was signed at Ottawa, Canada, on March 2, 1953, and was amended by the ''Protocol Amending the Convention,'' signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). The directed commercial Pacific halibut fishery in Alaska is managed under an IFQ Program, as is the fixed gear sablefish fishery. The IFQ Program is a limited access management system. Both species are also a part of the annual apportionment under the CDQ Program. These programs are codified at 50 CFR part 679.

The International Pacific Halibut Commission (IPHC) develops halibut fishery management regulations pursuant to the Convention and submits those regulations to the U.S. Secretary of State for approval. NMFS publishes approved IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.