any other species protected under the Endangered Species Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act, that person must immediately report the take to the nearest Ecological Services office of the Fish and Wildlife Service. See *http://www.fws.gov/where/* to find the location of the nearest Ecological Services office.

(4) We may suspend or revoke the authority of any agency or individual to undertake purple swamphen control if we find that agency or individual has, without an applicable permit, taken actions that may take Federally listed threatened or endangered species or any bird species protected by the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act (see § 10.13 of subchapter A of this chapter for the list of protected migratory bird species).

Dated: August 8, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–19552 Filed 8–21–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080407531–8569–01]

RIN 0648–AW68

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to amend the Bottlenose Dolphin Take Reduction Plan's (BDTRP) implementing regulations by extending, for an additional three years, fishing restrictions expiring on May 26, 2009. This action will continue, without modification, current nighttime fishing restrictions of medium mesh gillnets operating in the North Carolina portion of the Winter-Mixed Management Unit during the winter. Members of the Bottlenose Dolphin Take Reduction Team (BDTRT) recommended these regulations be extended for an additional three years to ensure continued conservation of the Western North Atlantic coastal bottlenose dolphin stock, should a directed spiny dogfish fishery reemerge in North Carolina.

DATES: Written comments on the proposed rule must be received no later than 5 p.m. eastern time on September 22, 2008.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN) 0648–AW68, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Facsimile (fax): 727 824–5309, Attn: Assistant Regional Administrator, Protected Resources.
- Mail: Assistant Regional Administrator for Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

The BDTRP, Environmental Assessment, BDTRT meeting summaries, and background documents can be downloaded from the Take Reduction Plan web site at: *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm*

FOR FURTHER INFORMATION CONTACT: Stacey Carlson, NMFS, Southeast Region, 727–824–5312, *Stacey.Carlson@noaa.gov*; or Melissa Andersen, NMFS, Protected Resources, 301–713–2322, *Melissa.Andersen@noaa.gov*. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

BDTRP and Medium Mesh Gillnet Restrictions

Section 118(f)(1) of the Marine Mammal Protection Act (MMPA) requires NMFS to develop and implement take reduction plans to assist in the recovery or prevent the depletion of strategic marine mammal stocks that interact with Category I and II fisheries. The MMPA defines a strategic stock as a marine mammal stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as threatened or endangered under the ESA or as a depleted species under the MMPA (16 U.S.C. 1362(2)). PBR is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level. Category I or II fisheries are fisheries that have frequent or occasional incidental mortality and serious injury of marine mammals, respectively.

As specified in the MMPA, the short-term goal of a take reduction plan is to reduce, within six months of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels less than PBR for the stock. The long-term goal of a plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The MMPA also requires NMFS to amend take reduction plans and implementing regulations as necessary to meet the requirements of this section.

On April 26, 2006, NMFS published a final rule (71 FR 24776) implementing the BDTRP, with a May 26, 2006, effective date. The BDTRP contains both regulatory and non-regulatory management measures to reduce serious injury and mortality of the Western North Atlantic coastal bottlenose dolphin stock (dolphin) (*Tursiops truncatus*), a strategic stock, in nine Category I and II commercial fisheries operating within the dolphin's distributional range. The Western North Atlantic coastal bottlenose dolphin stock is split into seven spatial and temporal management units because of its biological complexity, and management measures in the BDTRP are applied by management unit. Both the regulatory and non-regulatory

management measures are designed to meet the BDTRP's short-term goal and provide a framework for meeting the long-term goal.

The regulatory management measures in the BDTRP include seasonal gillnet restrictions, gear proximity requirements, and gear length restrictions. The specific regulatory measures addressed in this proposed rule are nighttime medium mesh (greater than 5–inch (12.7 cm) to less than 7–inch (17.8 cm) stretch) gillnet fishing prohibitions in North Carolina state waters from November 1 through April 30, annually, which will expire on May 26, 2009.

The intent of the medium mesh prohibitions was to address bottlenose dolphin mortalities associated with the spiny dogfish (*Squalus acanthias*) fishery in the North Carolina portion of the Winter-Mixed Management Unit by reducing gillnet soak times. In the winter (November 1 through April 30), three of the seven BDTRP Management Units overlap along the coasts of southern Virginia and North Carolina to form the Winter-Mixed Management Unit. The medium mesh gillnet prohibitions were only implemented in the North Carolina portion of the Winter-Mixed Management Unit because all the observed dolphin mortalities associated with the spiny dogfish fishery occurred in North Carolina state waters.

The medium mesh gillnet restrictions were implemented with an expiration date of May 26, 2009. An expiration date was included for two reasons: (1) Spiny dogfish fishery management plans (FMPs) implemented prior to development of the BDTRP had the unintentional but beneficial effect of reducing serious injury and mortality of dolphins; however, the BDTRT recognized that any future changes to the FMPs may reduce or reverse these benefits; and (2) to provide assurance that the BDTRT would regularly review the status of the dynamic spiny dogfish fishery and any implications on dolphin bycatch estimates should a directed fishery reemerge, especially in North Carolina.

Spiny Dogfish Fishery Management Plans and the North Carolina Fishery

The spiny dogfish fishery is actively managed by FMPs in both Federal and state waters. NMFS listed spiny dogfish as overfished in 1998 (63 FR 17820, April 10, 1998). In January 2000, a Federal FMP (65 FR 1557, January 11, 2000) was issued by NMFS to conserve spiny dogfish in Federal waters. Among other things, the FMP implemented a coastwide commercial quota that is specified annually and split into two seasonal fishing periods (Period 1: May 1 to October 31; Period 2: November 1 to April 30). Each fishing period also has separate possession trip limits, specified annually, to allow for bycaught spiny dogfish to be sold while preventing a directed fishery (63 FR 17820, April 10, 1998; ASFMC, 2007a).

The Atlantic States Marine Fisheries Commission (ASMFC) issued an emergency action in 2000 requiring states to mirror Federal closures in state waters. An Interstate FMP was developed in November 2002 to manage spiny dogfish fishing in state waters and implemented in the 2003/2004 fishing year. The Interstate FMP largely mirrors the Federal FMP, setting annual commercial quotas and separate possession limits for the same two fishing periods (ASFMC, 2007a). All commercial landings count toward the interstate FMP quota regardless of where the fish are caught (i.e., state or Federal waters) (ASFMC, 2002).

The specification of commercial quotas, established annually and split semi-annually, is intended to provide each state with an opportunity to land low levels of spiny dogfish bycatch, while helping achieve healthy and self-sustaining populations. Because of the species' annual migratory pattern along the United State's east coast, however, quota overages often occur in the northern states associated with harvest Period 1. These overages result in reduced or restricted harvest for southern states in Period 2 (ASFMC, 2002). For example, when the fishery was still active in North Carolina state waters, peak harvests occurred during February and March, corresponding to harvest Period 2. However, as a result of the semi-annual quotas, there has not been a directed spiny dogfish fishery since the FMPs' implementation, with the exception of 2003/2004 when a state-by-state quota was established for state waters allowing a small-scale directed fishery (NCDMF, 2008).

Following implementation of the FMPs, the directed spiny dogfish fishery in North Carolina was virtually eliminated, as seen by low spiny dogfish landings and reduced soak times. Spiny dogfish landings averaged 6,703,985 pounds from 1995 to 2000, which was 16.9 percent of the coastwide commercial landings. From 2000 to 2006, after implementation of the FMPs, landings in North Carolina averaged 92,169 pounds, representing 4.6 percent of the coastwide commercial landings (NMFS, Fisheries Statistic Division, pers. comm.). Observer data also indicate that soak times changed because of the low trip limits for the fishery; the average soak time decreased from 13.5 hours (1996–2000) to 1.5 hours (2001–2006).

Dolphin Mortalities Associated with the Spiny Dogfish Fishery

The implementation of the spiny dogfish FMPs and subsequent effort reductions had the inadvertent but beneficial effect of reducing dolphin serious injuries and mortalities. From 1996 to 2000 in the North Carolina portion of the Winter-Mixed Management Unit, the medium mesh spiny dogfish fishery was the primary contributor to total dolphin mortality (Rossman and Palka, 2004). The mean annual mortality estimate for the Winter-Mixed Management Unit from 1996 to 2000 was 180, which exceeded the PBR of 68 (NMFS, 2007; Rossman and Palka, 2004). Sixty-three percent, or 146 of the 180 dolphin serious injuries and mortalities, were attributed to the North Carolina portion of the Winter-Mixed Management Unit. Conversely, from 2001 to 2002 in the Winter-Mixed Management Unit, small (less than or equal to 5–inch (12.7 cm) stretched) and large (greater than or equal to 7–inch (17.8 cm) stretched) mesh gillnets were the primary contributors to total dolphin serious injury and mortality. During 2000 to 2001, mean annual estimated dolphin mortality decreased to 59 dolphins, of which, only 19, or 24 percent, were attributed to the North Carolina portion of the Winter-Mixed Management Unit. This reduction in estimated dolphin mortality was a result of reduced landings and lower bycatch rates across all mesh size categories, including the North Carolina spiny dogfish fishery following implementation of the FMPs (Rossman and Palka, 2004).

Recent declines in winter dolphin standings in North Carolina support this trend. Byrd et al. (2008) compared the number of dolphins that stranded in North Carolina with conclusive signs of a fishery interaction during the winter from November 1997 through April 2005 and found a significant decrease in dolphin strandings after the FMPs were implemented. Updated stranding data for winter 2005/2006 and 2006/2007 showed continued decreases in dolphin strandings, with no more than one dolphin per winter stranding with signs of fishery interactions (Lovewell and Byrd, 2007).

When the BDTRT deliberated in 2002 and 2003 on their consensus recommendations for a draft BDTRP, they recognized the inadvertent benefit the spiny dogfish FMPs had in reducing dolphin serious injuries and mortalities incidental to this fishery. However, the

dual-nature by which the spiny dogfish fishery is managed both state and federal entities, coupled with the potential for the FMPs to change as the fish population rebuilds, results in a process that is dynamic and unreliable for dolphin conservation. Therefore, the BDTRT recommended the nighttime medium mesh gillnet prohibitions in the North Carolina portion of the Winter-Mixed Management Unit be included in the BDTRP to provide continued dolphin conservation. The BDTRT also recommended an expiration date on the prohibition to ensure regular review of the fishery should the fishery dynamics change.

The prohibition was included in the BDTRP because it was anticipated to maintain the recently reduced dolphin mortality within the spiny dogfish fishery. The nighttime medium mesh gillnet fishing prohibitions are important for dolphin conservation because they limit soak times to approximately 12 hours. Before implementation of the FMPs, long soak durations associated with the spiny dogfish fishery were likely a contributing factor to the fishery's high dolphin bycatch rate. Observer data prior to the FMPs' implementation document three mortalities in medium mesh spiny dogfish nets with soak times greater than 12 hours and only one mortality with a soak time of less than 12 hours. Soak times were significantly decreased following the implementation of the FMPs, and since 2000, there have been no observed takes associated with the fishery. Nighttime fishing in the medium mesh gillnet fishery was prohibited under the BDTRP to prevent a return to the fishery's pre-FMP fishing practices (i.e., long soak times) should spiny dogfish quotas be increased or reallocated, resulting in a directed fishery in North Carolina (Rossman and Palka, 2004).

Recent Developments in the Spiny Dogfish Fishery

The 2006 estimate of fishing mortality for spiny dogfish indicated the population was not overfished and overfishing was not occurring (NMFS, 2006). Both FMPs are reviewed annually based on the most recent estimate of spiny dogfish fishing mortality. ASMFC modified their quotas and trips limits for the 2006/2007 fishing year based on the 2006 estimate of fishing mortality; however, the Federal specifications were unchanged. This was the first time since 2002 that the coastwide commercial quota was established at different levels for the state and Federal FMPs. Specifically, for the 2006/2007 fishing year, the Federal FMP quota remained at 4 million pounds with 600 pound state possession limits to discourage a directed fishery (71 FR 40436, July 17, 2006). However, the interstate FMP specifications were modified by increasing the quota from 4 to 6 million pounds with 600 pound state possession limits (ASMFC, 2007a). This left two million pounds for harvest in state waters once the Federal waters were closed. No changes were made for the 2007/2008 fishing year for either FMP. For the 2008/2009 fishing year, the state water quota increased to eight million pounds with possession trip limits up to 3,000 pounds (ASMFC, 2007b); the federal water quota and possession limits remained unchanged (71 FR 40436, July 17, 2006). As the spiny dogfish population rebuilds, it is anticipated that the quotas will continue to be increased accordingly.

Despite the recent increase in quotas, the spiny dogfish fishery in North Carolina is still almost nonexistent, as evidenced by the continued low landings. The following major factors contribute to preventing a viable spiny dogfish fishery in North Carolina:

(1) The total available FMP quotas are separated according to season and, thus, region. Although this management scheme is intended to allocate available fishery resources in a biologically sustainable manner that is equitable to all fishermen, it is difficult to assign quota overages on a state level because of the seasonal and regional quota separation. Specifically, the fishing year beginning on May 1 provides more opportunity for the northern states to intercept spiny dogfish before their seasonal migration south. Therefore, northern states generally land both the entire Federal and ASMFC quotas before the spiny dogfish migrate south to North Carolina (NCDMF, 2008), resulting in Period 2 fishery closures in November and December (66 FR 58074, November 20, 2001; 67 FR 70027, November 20, 2002; 71 FR 76222, December 20, 2006; 72 FR 64952, November 19, 2007);

(2) Following the implementation of the FMPs, the mid-Atlantic processors closed, leaving only two processors in New England (ASFMC, 2002). At times, the processing plants are saturated with spiny dogfish harvested from states north of North Carolina. Therefore, when spiny dogfish arrive in North Carolina waters, there is no market to harvest and process the fish; and

(3) If a portion of the quota were available when spiny dogfish arrive in North Carolina waters, the current possession trip limit of 600 pounds in federal waters or even 3,000 pounds in state waters may still not allow for a directed spiny dogfish fishery. North Carolina fishermen indicated that trip limits of at least 4,000 pounds would be necessary to make the fishery feasible (NCDMF, 2008). In a predominantly bycatch fishery, it is not cost effective for fishermen or dealers to truck spiny dogfish to the processors in New England, given high fuel costs and the small amount of fish permitted to be harvested per trip.

These factors may continue to prevent a directed spiny dogfish fishery in North Carolina, despite the recent increases in the coastwide commercial quota. However, the North Carolina Department of Marine Fisheries (NCDMF) believes state-by-state quotas under the interstate FMP would allow a more equitable allocation of the quota and quota overage or transfer provisions (NCDMF, 2008). ASMFC will consider a state-by-state allocation approach during its August 2008 meeting. If state-by-state quotas are considered and adopted by ASMFC and quotas and trip limits continue to increase, a directed spiny dogfish fishery in North Carolina may emerge in the future.

Bottlenose Dolphin Take Reduction Team Recommendations

The BDTRT met on June 19–20, 2007, in Annapolis, Maryland for the first time since the BDTRP's implementation. The purpose of this meeting was to monitor the effectiveness of the BDTRP and discuss potential modifications to any measures that may not be reducing dolphin serious injuries and mortalities. Among other things, the BDTRT was provided with updates on the spiny dogfish fishery, its quotas under both FMPs, and spiny dogfish landings and gear practices for the past five years.

The BDTRT recommended by consensus that the nighttime medium mesh gillnet prohibitions in the Winter-Mixed Management Unit for North Carolina be extended for an additional three years, with an update on the status of the spiny dogfish fishery provided to the team at least every two years. The BDTRT agreed it is important that the BDTRP medium mesh regulations remain in place because of the historically high dolphin bycatch rates in the medium mesh spiny dogfish fishery and the uncertainty in the fishery and fishing status. Extending the medium mesh prohibition timeframe for another three years, rather than removing the expiration date entirely, also ensures the BDTRT will periodically review the status of the spiny dogfish fishery and recommend revisions to the BDTRP, as necessary. NMFS agrees extending the prohibitions is necessary to ensure continued conservation of dolphins due to high

serious injury and mortality rates associated with past spiny dogfish fishery practices and potential future changes in the FMPs. NMFS also agrees extending these prohibitions until 2012 is necessary to ensure the BDTRT continues to reexamine the spiny dogfish fishery and determine if these requirements are still required or sufficient given the dynamic nature of the fishery and its management.

Classification

This proposed rule has been determined to be not significant under Executive Order 12866.

NMFS determined this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of North Carolina. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This action contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132 and a federalism consultation with officials in the state of North Carolina. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials in North Carolina.

NMFS determined this action is categorically excluded from the requirement to prepare an Environmental Assessment in accordance with sections 5.05b and 6.03c.3(i) of NOAA's Administrative Order (NAO) 216–6. Specifically, this proposed action extends the timeframe of a current regulation that, if implemented, would not substantially change the regulation or have a significant impact on the environment. NMFS prepared an Environmental Assessment (EA) on the final rule (71 FR 24776, April 19, 2006) to implement the BDTRP, which included an analysis of the proposed action without time constraints. The EA analyzed all regulations in the final BDTRP of which the regulations addressed in this proposed action were a component. The EA resulted in a finding of no significant impact. In accordance with section 5.05b of the NAO, the proposed regulations were determined to not likely result in significant impacts as defined in 40 CFR 1508.27. This action does not trigger the exceptions to categorical exclusions listed in NAO 216–6, Section 5.05c. A categorical exclusion memorandum to the file has been prepared.

An ESA section 7 consultation was conducted on this action and found that it may affect, but is not likely to adversely affect, threatened and endangered species or adversely modify designated critical habitat under NMFS' jurisdiction. NMFS expects this action to be beneficial to listed species because it will maintain reduced soak times in medium mesh gillnet fishing in North Carolina state waters.

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

As required by section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), an initial regulatory flexibility analysis (IRFA) was prepared, which is based on the Environmental Assessment, Regulatory Impact Review, and Final Regulatory Flexibility Act Analysis for the BDTRP, dated April 2006. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are included in the preamble of this proposed rule. A summary of the analysis follows.

The purpose of this proposed rule is to reduce serious injuries and mortalities to bottlenose dolphins incidental to commercial fishing operations and ensure serious injuries and mortalities do not exceed PBR levels, as mandated by the MMPA. The specific objectives of this proposed action are to: (1) meet the BDTRP's short- and long-term objectives by maintaining reductions in serious injuries and moralities of dolphins associated with the medium mesh spiny dogfish fishery in North Carolina state waters; and (2) ensure the BDTRT is provided with continued opportunities to review the status of the dynamic spiny dogfish fishery and recommend revisions to the BDTRP, as necessary. These objectives are expected to be accomplished by continuing reduced soak times in medium mesh gillnet gear in North Carolina via the seasonal, nighttime medium mesh gear prohibitions for an additional three years. The MMPA provides the statutory basis for the proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The proposed rule will not impose any additional reporting, recordkeeping, or compliance requirements. The compliance requirements of the proposed rule are as described in this anaylsis.

A total of 1,321 unique participants were identified as having recorded landings using medium mesh gillnet gear during the 2001 fishing season (November 2000 - October 2001) in North Carolina. Total harvests with this gear were valued at approximately $13.8 million (nominal ex-vessel value), or approximately 18 percent of total fishing revenues by these entities of approximately $77 million (nominal ex-vessel value). The average annual revenue from the harvest of all marine species by these vessels was approximately $58,000.

A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. All medium mesh gillnet commercial fishing operating in the manner and location encompassed by the proposed action would be affected by the proposed rule. The available estimate of the average annual revenues by vessels operating in the medium mesh gillnet commercial fisheries in North Carolina provided above ($58,000) is from the 2001 fishing season. Since that time, as a result of the implementation of the FMP, spiny dogfish fishery revenues have decreased. Therefore, we determined that all entities affected by the proposed rule are small businesses.

All business entities participating in the medium mesh gillnet fishery in North Carolina are considered small entities; therefore, the issue of disproportional impacts between large and small entities as a result of the proposed action does not arise.

Information on the current profit profile of participants in the North Carolina medium mesh gillnet fishery is not available. Inferences on the effects of the proposed rule on profitability of the impacted small entities, however, may be drawn from examination of the expected impacts on ex-vessel revenues. In 2001, total costs associated with harvest reductions (lost ex-vessel revenue) for the medium mesh gillnet fisheries in North Carolina during the winter were estimated to be approximately $296,000 for the initial implementation of the prohibition in the BDTRP. This reduction in ex-vessel revenues represented less than 1 percent of total ex-vessel revenues for the entities that used this gear in North Carolina during the winter for the 2001 fishing year. Updated analyses are not available. Spiny dogfish were the primary target of the medium mesh gillnet sector, and the spiny dogfish fishery was essentially eliminated in 2000 through FMP actions. Since then,

there has not been a large-scale directed fishery for this species in North Carolina. This prevents the meaningful quantification of current revenues that might be foregone as a result of the proposed action, as well as the identification and description of fishing entities that might desire to re-enter the fishery should the fishery reemerge in North Carolina in the future.

It should be emphasized that the proposed action would not directly affect any current fishing revenues or fishing practices because the medium mesh spiny dogfish gillnet fishery in North Carolina has not operated since the May 26, 2006, implementation of the BDTRP, nor in any substantive manner since 2000. Instead, the proposed continuation of the nighttime fishing prohibition would have an effect only if a directed spiny dogfish fishery reemerges in North Carolina because of changes in FMP actions. In that case, the proposed action would reduce potential medium mesh gillnet fishing opportunities by limiting soak times, and would limit the redevelopment and prosecution of a fishery that, prior to the FMPs and BDTRP, contributed a relatively minor share of fishing revenues to the fishery participants.

NMFS considered two alternatives for the proposed action. The first alternative, the status quo, would continue current restrictions until May 26, 2009, when the medium mesh gillnet prohibitions in North Carolina would expire. This alternative would allow increased soak times associated with the directed spiny dogfish fishery and associated revenues, if FMP actions allow for the reemergence of a directed fishery in North Carolina. However, this alternative would not prevent future incidental mortality and serious injury to dolphins from extended soak time of medium mesh commercial gillnet gear, and, therefore, would not meet the objectives of the BDTRP. The second alternative, the proposed action, would continue, without modification, current nighttime medium mesh gillnet restrictions in North Carolina state waters during the winter for an additional three years (until May 26, 2012). This alternative is a consensus recommendation of the BDTRT and would achieve the BDTRP's objectives, as mandated by the MMPA, by continuing to reduce serious injuries and mortalities of dolphins incidental to commercial gillnet fishing.

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List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 18, 2008.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*; § 220.32(f) also issued under 16 U.S.C. 1531 *et seq.*

2. In § 229.35 paragraphs (d)(4)(ii) and (d)(5)(i) are revised to read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

* * * * *

(d) * * *

(4) * * *

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

* * * * *

(5) * * *

(i) *Medium Mesh Gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night. This provision expires on May 26, 2012.

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[FR Doc. E8–19580 Filed 8–21–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070719388–81094–02]

RIN 0648–AV29

Fisheries in the Western Pacific; Crustacean Fisheries; Deepwater Shrimp

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would designate deepwater shrimp of the genus *Heterocarpus* as management unit species (MUS), and require Federal permits and data reporting for deepwater shrimp fishing in Federal waters of the western Pacific. The proposed rule is intended to improve information on deepwater shrimp