538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening authorized Federal Supply Schedules for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete ''Government'' or similar language referring to the U.S. Government and substitute ''ordering activity'' or similar language when preparing solicitations and contracts to be awarded under authorized Federal Supply Schedules. When such changes are made, the word ''(DEVIATION)'' shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

* * * * *

■ 9. Revise section 538.7004 to read as follows:

538.7004 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238–77, Definition (Federal Supply Schedules), in solicitations and contracts for all Federal Supply Schedules.

(b) The contracting officer shall insert the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for all Federal Supply Schedules.

(c) The contracting officer shall insert the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Non-Federal Entities, in solicitations and contracts for all Federal Supply Schedules.

(d) See 552.101–70 for authorized FAR deviations.

Subpart 538.71—[Removed and Reserved]

■ 10. Remove and reserve subpart 538.71.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 11. Revise section 552.238–76 to read as follows:

552.238–76 Definition (Federal Supply Schedules)—Non-Federal Entity Purchasing.

As prescribed in 538.7104(a), insert the following clause:

DEFINITION (FEDERAL SUPPLY SCHEDULES)—NON–FEDERAL ENTITY PURCHASING (DATE)

Ordering activity (also called ''ordering agency'' and ''ordering office'') means an eligible ordering activity (see (552.238–78, authorized to place orders under Federal Supply Schedule contracts.

(End of clause)

■ 12. Amend section 552.238–78 by—

■ a. Revising the clause heading;

■ b. Redesignating paragraphs (a)(7) and (8) as paragraphs (a)(8) and (9), respectively;

■ c. Adding a new paragraph (a)(7);

■ d. Revising paragraph (d);

■ e. Adding paragraph (h); and

■ f. Removing Alternate I.

The revised and added text reads as follows:

552.238–78 Scope of Contract (Eligible Ordering Activities).

* * * * *

SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (DATE)

(a) * * *

(7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);

* * * * *

(d) The following activities may place orders against Schedule contracts:

(1) State and local government may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); PROVIDED, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; PROVIDED, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for goods or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; PROVIDED, the Contractor accepts order(s) from such activities.

* * * * *

(h) All users of GSA's Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

(End of clause)

■ 13. Amend section 552.238–79 by—

■ a. Revising the section heading;

■ b. Revising the introductory text; and

■ c. Revising the clause heading.

The revised text reads as follows:

552.238–79 Use of Federal Supply Schedule Contracts by Non-Federal Entities

As prescribed in 538.7004(c) and 538.7104(c), insert the following clause:

USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS BY NON-FEDERAL ENTITIES (DATE)

* * * * *

538.238–80 [Removed and Reserved]

■ 14. Remove and reserve section 552.238–80.

[FR Doc. 2014–08648 Filed 4–16–14; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 223, and 229

[Docket No. 110812495–4315–02]

RIN 0648–BB37

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan; Sea Turtle Conservation; Modification to Fishing Activities

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 (BDTRP) and its

implementing regulations under the Marine Mammal Protection Act (MMPA). The amendment is needed to reduce incidental serious injury and mortality of strategic stocks of bottlenose dolphins in Virginia pound net fishing gear, and to provide consistent state and federal regulations for Virginia pound net fishing gear. This rule proposes the year-round use of modified pound net leaders for offshore Virginia pound nets in specified waters of the lower mainstem Chesapeake Bay and coastal state waters. Virginia pound net-related definitions, gear prohibitions, and non-regulatory measures are also proposed. Both regulatory and non-regulatory measures proposed in this rule are based on the Bottlenose Dolphin Take Reduction Team's (BDTRT) consensus recommendations. For consistency, NMFS also proposes to amend current regulations and definitions for Virginia pound nets under the Endangered Species Act (ESA) for sea turtle conservation.

DATES: Written comments on the proposed rule must be received before June 2, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0064, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0064,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to David Bernhart, Assistant Regional Administrator for Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, or Adobe PDF file formats only.

This proposed rule, the BDTRP and its amendment, the Bottlenose Dolphin Take Reduction Team (BDTRT) meeting summaries with consensus recommendations, and other background documents are available at *www.regulations.gov,* or the Take Reduction Team Web site: *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm,* or by submitting a request to the Assistant Regional Administrator, Protected Resources (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Stacey Horstman, NMFS Southeast Region, *Stacey.Horstman@noaa.gov,* 727–824–5312; Kristy Long, NMFS Office of Protected Resources, *Kristy.Long@noaa.gov,* 301–713–2322; or Carrie Upite, NMFS Northeast Region, *Carrie.Upite@noaa.gov,* 978–282–8475.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule combines two actions under different regulatory authorities. Specifically, these include amending: (1) The BDTRP and related definitions and prohibitions at 50 CFR 229.2, 229.3, and 229.35 under the MMPA; and (2) current definitions and regulations issued under the ESA for sea turtle conservation at 50 CFR 222.102 and 223.206(d)(10). NMFS is proposing to amend the BDTRP to meet its MMPA mandated goal of reducing incidental mortality and serious injury of strategic stocks of bottlenose dolphin from the Virginia pound net fishery. Regulations proposed under the MMPA for the Virginia pound net fishery are based on the BDTRT's consensus recommendations, which are generally consistent with existing regulations enacted under the ESA for sea turtle conservation, with some proposed revisions and updates. Therefore, amendments to the ESA sea turtle conservation regulations for the Virginia pound net fishery are proposed within the same rulemaking for consistency in definitions and regulations.

MMPA and the BDTRP

Section 118(f)(1) of the MMPA (16 U.S.C. 1387(f)(1)) requires NMFS to develop and implement take reduction plans to help in the recovery or prevent the depletion of strategic marine mammal stocks that interact with Category I and II fisheries. The MMPA defines ''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 as a threatened species under the ESA; or (3) which is designated as a depleted species under the MMPA (16 U.S.C. 1362(1), (19), and (20)). 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 those with frequent or occasional accidental mortality and serious injury of marine mammals, respectively (16 U.S.C. 1387(c)(1)(A)(i) and (ii)).

The MMPA requires take reduction plans to meet short- and long-term goals. The short-term goal of a take reduction plan is to reduce, within six months of its implementation, the accidental mortality or serious injury of marine mammals in commercial fishing to levels less than PBR for the stock (16 U.S.C. 1387(f)(2)). The long-term goal of a take reduction plan is to reduce, within 5 years of its implementation, the accidental mortality or serious injury of marine mammals in commercial fishing to insignificant levels approaching a zero mortality and serious injury rate, commonly referred to as the zero mortality rate goal (ZMRG). NMFS has defined insignificant levels approaching a zero mortality and serious injury rate as 10 percent of PBR for a marine mammal stock (69 FR 43338; July 20, 2004). The long-term goal takes 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 implement regulations as needed to meet these requirements and goals.

On April 26, 2006, NMFS issued a final rule (71 FR 24776) implementing the BDTRP based mostly on the BDTRT's consensus recommendations. The BDTRP has been amended twice since then. Both amendments were based on the BDTRT's consensus recommendations for the same nighttime medium mesh gillnet fishing restrictions in North Carolina: (1) December 19, 2008 (73 FR 77531) by continuing the fishing restrictions for 3 years, expiring on May 26, 2012; and (2) July 31, 2012 (77 FR 45268) by permanently continuing the fishing restrictions.

The BDTRP contains both regulatory and non-regulatory conservation measures. These measures reduce serious injury and mortality of 13 strategic stocks of bottlenose dolphins (*Tursiops truncatus truncatus*) in Category I and II commercial fisheries operating in the same area as the dolphin stocks. These measures are designed to meet the BDTRP's short-

term goal and provide a framework for meeting the long-term goal. The regulatory measures in the BDTRP include seasonal gillnet restrictions, gear proximity requirements, and gear length restrictions. The non-regulatory measures include continued research and monitoring, enforcement, outreach, and partnership efforts.

The specific regulatory and non-regulatory measures in this proposed rule are designed to reduce serious injury and mortality of three strategic stocks of bottlenose dolphins in the Virginia pound net fishery. The three stocks include: (1) Western North Atlantic Northern Migratory coastal (NM); (2) Western North Atlantic Southern Migratory coastal (SM); and (3) Northern North Carolina Estuarine System (NNCES). The NM, SM and NNCES stocks can be found in Virginia state waters at various times of the year and are known to interact with Virginia pound nets.

The NM and SM are coastal migratory stocks with larger populations and associated PBR levels than the NNCES stock. The NNCES stock is an estuarine stock found mainly in portions of North Carolina and Virginia bays and sounds. The NNCES stock is experiencing mortality likely approaching or exceeding its PBR level because of interactions with commercial fisheries, including the Virginia pound net fishery. The SM stock is not approaching or exceeding PBR. It is also not close to the ZMRG, however, and interactions with the Virginia pound net fishery may be preventing it from reaching the ZMRG. The NM stock is likely reaching the ZMRG, but continued interactions with the Virginia pound net fishery may prevent this in the long-term.

BDTRT Recommendations for Virginia Pound Nets

After the BDTRP was implemented in May 2006, NMFS convened the BDTRT on June 19–20, 2007, to monitor its effectiveness. The BDTRT provided NMFS with one non-regulatory consensus recommendation for research on the Virginia pound net fishery. This recommendation was to continue exploring the effectiveness of modified pound net leaders compared to traditional leaders in maintaining finfish catch, especially for nets set in the lower part of the Chesapeake Bay near Lynnhaven, VA. Modified pound net leaders are constructed with a combination of hard lay vertical lines and mesh, with vertical lines comprising the top two-thirds of the net in the water column and mesh the bottom one-third. Alternatively, traditional leaders are made of all mesh from top to bottom. The BDTRT focused this research recommendation on nets near Lynnhaven because this is where the majority of bottlenose dolphin interactions with pound nets occur. Previous studies conducted in 2004 and 2005 tested the use of modified pound net leaders on offshore pound nets along the eastern Chesapeake Bay near Cape Charles for sea turtle conservation. These studies found modified pound net leaders were effective in maintaining finfish catch while reducing sea turtle interactions in the leader (Silva *et al.* 2011). The BDTRT believed the modified leader design also showed promise for reducing bottlenose dolphin entanglements based on how they are made.

In 2008, NMFS funded a grant awarded through North Carolina Sea Grant's competitive grant process to accomplish the BDTRT's research recommendation. Schaffler *et al.* (2011) tested modified pound net leaders using soft lay vertical lines on offshore pound nets set near Lynnhaven. They found increased catches of Spanish mackerel (targeted and marketable), decreased bycatch of rays and skates (non-target and unmarketable), and no effect on other valuable finfish catch. A follow-up study conducted in 2011 found no significant difference in finfish catch when using modified leaders with soft lay versus hard lay vertical lines (Swingle *et al.* 2011). Hard lay lines are required in the construction of modified pound net leaders by the ESA sea turtle conservation regulations.

NMFS held another BDTRT meeting September 9–11, 2009, to evaluate the BDTRP and review new scientific information that led to revisions to bottlenose dolphin stock structure. At this meeting, NMFS presented the results of Schaffler *et al.* (2011) and updated stranding and observer data showing bottlenose dolphin entanglements in Virginia pound net gear. The BDTRT reached consensus on both regulatory and non-regulatory recommendations specific to Virginia pound nets fished in the lower mainstem waters of the Chesapeake Bay and Virginia state coastal waters. For more details on these recommended measures, please see the **ADDRESSES** section for where to get the 2007 and 2009 BDTRT meeting summaries.

The following 2009 BDTRT regulatory consensus recommendations were provided to NMFS to reduce serious injury and mortality of bottlenose dolphins in the Virginia Pound Net fishery:

- Expand the waters in which the use of modified pound net leaders is currently required. This would include Virginia waters of the mainstem Chesapeake Bay west of the Chesapeake Bay Bridge Tunnel (CBBT). Seasonal use of modified leaders is required in this area under ESA sea turtle conservation regulations (i.e., Pound Net Regulated Area I (PNRA I); see Figure 1). Regulated waters would also extend east of the CBBT to include waters of the Chesapeake Bay mouth and Virginia coastal state waters north to the Maryland/Virginia line and south to the Virginia/North Carolina line. The area recommended by the BDTRT is the proposed action area and referred to as the Bottlenose Dolphin Pound Net Regulated Area (BDPNRA) throughout this rule (see Figure 2).
- Maintain a definition for modified pound net leaders consistent with the definition issued under ESA regulations (50 CFR 222.102).
- Extend the seasonal requirements for offshore pound nets to use modified leaders year-round in the regulated waters described in the first bullet point above.
- Change the definition of ''nearshore pound net leaders'' from how it is currently defined in the regulations issued under the ESA (50 CFR 222.102). The new definition would be a ''pound net with a leader starting from 10 feet (3 m) horizontally from mean low water and ending at the king post at 12 feet (3.7 m) or less at mean low water (depth)''. The intent of this change is to ensure the king post-stake does not extend into depths beyond 12 feet (3.7 m) mean low water. The offshore pound net leader definition would remain the same as defined (50 CFR 222.102).
- Ensure consistency between regulations for Virginia pound nets regulated under the authority of ESA for sea turtles and any upcoming regulations for dolphins under the MMPA.
- Include the same pound net inspections and certifications required under the existing regulations issued under the ESA 50 CFR (223.206(d)(10)(vii)) or help ensure compliance and enforcement in other ways.

The BDTRT also recommended non-regulatory measures for the Virginia pound net fishery at their 2009 meeting. The purpose of the non-regulatory measures is to increase the BDTRP's success in meeting its short- and long-term goals by increasing the effectiveness of regulatory measures. The non-regulatory recommendations included forming a Virginia working group to help, as needed: (1) Further refine the BDTRT's consensus recommendations for rulemaking; (2)

develop proposals for pound net gear research; (3) identify gear similar to pound nets (i.e., fyke nets); (4) discuss how to address pound nets that may be considered nearshore or offshore pound nets; and (5) identify how many pound nets meet the current definition under ESA regulations of a nearshore pound net leader and if any may be affected by definition changes proposed by the BDTRT.

The BDTRT also recommended outreach and coordination to help with compliance and monitoring of recommended regulatory measures for the Virginia pound net fishery. These measures included: (1) Informing the Virginia Marine Resources Commission (VMRC) of the BDTRT's recommendations for the fishery; (2) coordinating with the VMRC and other Federal entities to help with enforcement of regulations for the fishery; and (3) providing outreach and education to Virginia pound net fishermen on any upcoming regulations.

Virginia Pound Net Fishery

Virginia pound nets are a Category II fishery under the MMPA because of interactions with bottlenose dolphins. A Category II fishery has occasional incidental mortality or serious injury of marine mammals, meaning incidental mortality or serious injury that is greater than 1 percent and less than 50 percent of a stock's PBR level.

Virginia pound nets are passive fishing devices that use fixed gear for live entrapment of various finfish species. Pound nets target any fish species that swim into the net and become trapped in the ''pound.'' Pound nets are not intended to catch fish through entanglement. Finfish species caught depend on the season the nets are fished and the fish in the area at that time (Mansfield *et al.* 2001). Pound nets are generally fished in Virginia from March/April to October/November, depending on weather and fishing success (Schaffler *et al.* 2011).

The pound net is supported by poles driven into the sediment on which the net is strung, making it a semi-fixed structure. Pound nets have three sections that are all constructed of multifilament fiber: (1) The leader, a long, straight net set perpendicular to the beach that leads the fish offshore to the pound; (2) the heart, the portion of the net that funnels the fish into the pound; and (3) the pound, where the fish are entrapped. All three components of pound net gear are needed to effectively harvest fish. The net sections act together to turn fish swimming along the shore and guide them into the heart and pound. The fish are captured (i.e., not gilled) and held in the pound until they are harvested (Mansfield *et al.* 2001; NMFS 2004; NMFS 2006).

Virginia pound net leaders are generally several hundred meters in length, extend from the sea floor to surface, and vary in mesh size and construction (DeAlteris and Silva 2007). There are both state and Federal seasonal regulations for how pound net leaders are constructed within the proposed BDPNRA. The type of seasonal requirements depends on whether pound nets meet the definition of an offshore or a nearshore pound net leader. Sea turtle conservation regulations define pound nets as having an offshore or nearshore pound net leader based on distance from shore at mean low water (50 CFR 222.102). Requirements for leader construction are either for all mesh (i.e., traditional, or non-modified, leader) or a combination of mesh and vertical lines (i.e., modified leader).

In 2006, NMFS established, through sea turtle conservation regulations issued under the ESA, annual seasonal requirements for pound nets meeting the definition of either an offshore or nearshore pound net leader. Offshore pound nets fished in the proposed BDPNRA waters west of the CBBT (i.e., PNRA I; Figure 1) from May 6 through July 15 are required to use modified pound net leaders (§ 223.206(d)(10)(i)). Modified pound net leaders must be constructed with hard lay vertical lines instead of mesh for the top two-thirds of the leader and 8-inch (20.3 cm) or less stretched mesh for the bottom one-third (50 CFR 222.102). Nearshore pound nets in all proposed BDPNRA waters (i.e., PNRA I and II; Figure 1) and all pound nets fished in PNRA II from May 6 through July 15 must be constructed of mesh measuring less than 12-inches (30.5 cm) stretched or constructed with modified leaders (§ 223.206(d)(10)(ii)).

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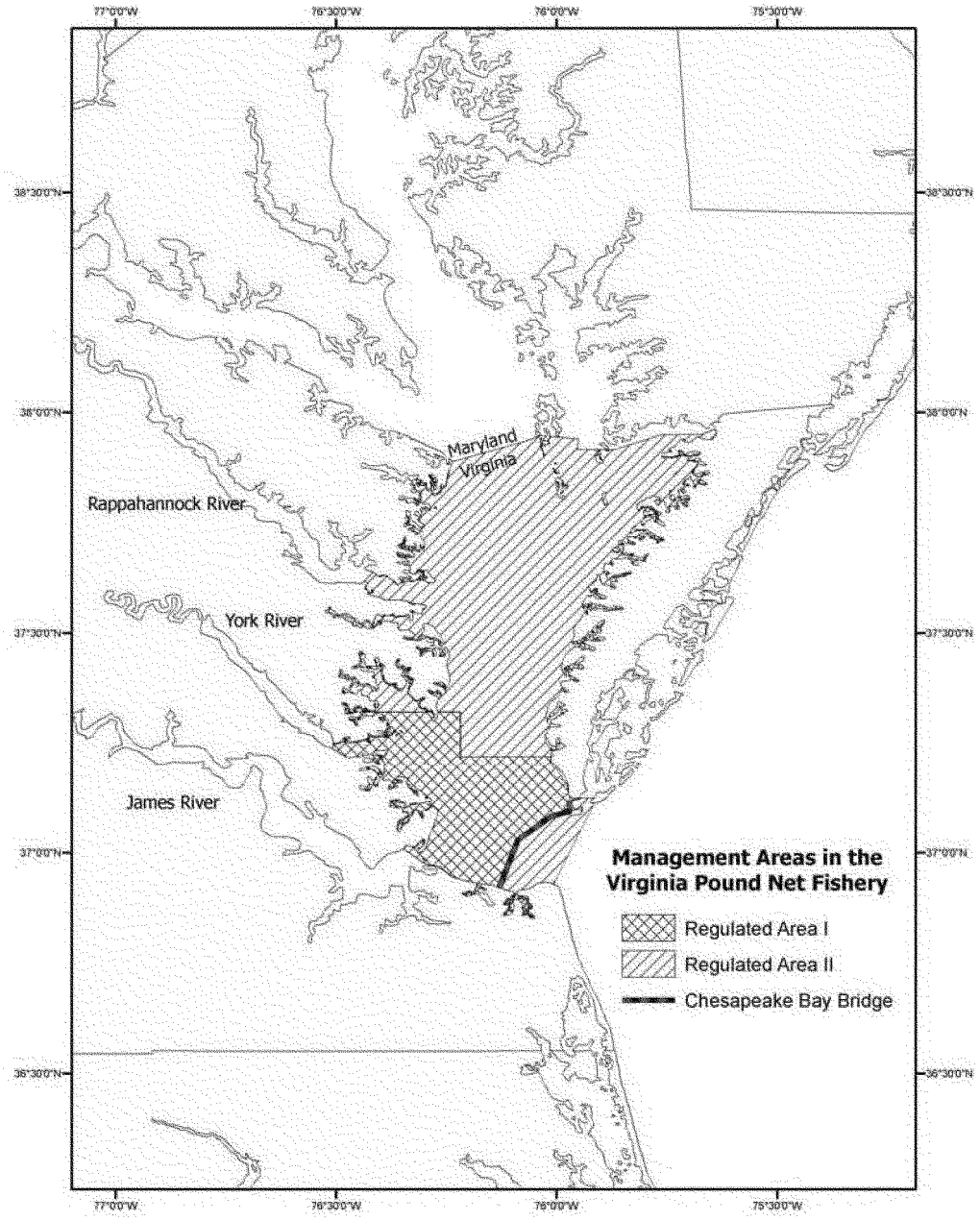

Figure 1. ESA PNRA I and II in Chesapeake Bay, VA, for Sea Turtle Conservation.

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In 2010, Virginia required the use of modified pound net leaders following the BDTRT's 2009 consensus recommendations. The state regulations expanded the required use of modified pound net leaders for offshore nets in some areas per the BDTRT's recommendations. Fishermen using offshore pound nets in proposed BDPNRA waters west of the CBBT (i.e., PNRA I; Figure 1) are required to use modified pound net leaders from May 6 to July 31 (4VAC20–20–30E). This extended the sea turtle conservation requirements for using modified pound net leaders in this area by two weeks. The state further required any fishermen using pound nets in proposed BDPNRA waters east of the CBBT and in state coastal waters to use modified pound net leaders year round (4VAC20–20–30D). Modified pound net leaders were not previously required in this area under the ESA regulations.

Both state and Federal regulations require inspection of modified pound net leaders before deployment. This is to ensure the modified pound net leader meets its regulatory definition (4VAC20–20–30D and 50 CFR 223.206(d)(10)(vii), respectively). The inspection program requires fishermen to notify NMFS at least 72 hours before deploying modified pound net leaders. NMFS then examines the leaders for compliance with the definition of a modified pound net leader before the leader is deployed. This also involves collecting information from fishermen on the depth and physical coordinates of their gear and tagging the leader after it passes inspection to aid enforcement. The inspection program was implemented in this manner to reduce the difficulties of post-deployment inspections of the gear at sea.

To characterize the current pound nets in the proposed BDPNRA, the NMFS' Northeast Fishery Observer Program (NEFOP) surveyed Virginia

pound nets in this area from May to July 2010 and June 2011. The NEFOP identified 41 pound net locations within these waters, with an average leader length measuring 795 feet (242.3 m). All 41 pound nets were located within the southern Virginia mainstem waters of the Chesapeake Bay with no nets set in coastal state waters. Twenty-one of the 41 nets met the definition in the ESA regulations of a nearshore pound net leader, and 20 met the definition of an offshore pound net leader. Cape Charles was and still is the only area where nearshore pound net leaders were located. In 2010 and 2011 in the proposed BDPNRA, 21 nearshore and 12 offshore pound nets were set along the eastern Chesapeake Bay near Cape Charles; two offshore nets were in the western Bay at Mobjack Bay; and six offshore nets were in the southern Bay near Lynnhaven Inlet.

Bottlenose Dolphin Mortalities Associated With Virginia Pound Nets

There is some uncertainty regarding which of the three bottlenose dolphin stocks or combination of stocks interact with the Virginia pound net fishery. Satellite-tagging and photo-identification data provide the best available information on the bottlenose dolphin stocks' movements during the fishing season. The NM stock is the only stock in Virginia state waters during the early (March–April) and later months (November) of the fishing season. From May through June, both the SM and NM stocks occur in state waters and may interact with pound nets. From July through August, both the SM and NNCES stocks are in state waters, which is when the most interactions with the Virginia pound net fishery are documented. From September through October, all three stocks (NM, SM, and NNCES) may occur in state waters and interact with pound nets.

Bottlenose dolphin entanglements with the Virginia pound net fishery are documented by the Virginia Aquarium and Marine Science Center (VAQ) stranding network since 1997 and the NEFOP since 2003. NEFOP opportunistically observes this fishery; therefore, most of the information on these entanglements is from stranding data. Dolphins get entangled in the leader portion of the pound net, where they are removed alive or dead (Schaffler *et al.* 2011). Behavioral observations of dolphins show they use the leader as a foraging tool and likely get entangled as they herd fish toward the leader (Schaffler *et al.* 2011). Dolphins removed from the leader have twisted twine markings or impressions in the skin (Lynott and Barco, VAQ, pers. comm.) because the leaders are made of multifilament (i.e., twisted twine) material.

Dolphins also strand dead close to pound nets with twisted twine marks consistent with a pound net leader entanglement (Schaffler *et al.* 2011). The twisted twine marks are visible on the stranded dolphin's body when the markings are new and unhealed (Lynott and Barco, VAQ, pers. comm.). Careful examination of these markings can provide evidence of a fishery interaction (Read and Murray 2000; Kuiken 1996), and the presence of unhealed cuts or markings on the skin also indicates the animal interacted with and died from that fishery interaction (Read and Murray 2000). Therefore, the presence of unhealed twisted twine marks and the dolphin stranding in areas when the Virginia pound net fishery is active indicates the dolphin interacted with this fishery and is presumed to have ultimately died from that interaction.

In Virginia state waters from 2002–2011, 84 bottlenose dolphins were found with evidence of pound net entanglement by the VAQ and NEFOP. Thirty-one of the 84 animals were found entangled in pound net leaders and removed either dead or alive. Only 3 of the 31 animals were released alive; although it is unknown whether the entanglement caused serious injuries that may have later led to death. Twenty-eight of the animals removed directly from pound net leaders were entangled in offshore pound nets; the remaining three animals were in nearshore pound nets. Fifty-three animals stranded dead with twisted twine marks indicating a pound net entanglement and resulting death. All of these animals had new and unhealed twisted twine markings (Lynott and Barco, VAQ, pers. comm.).

Documented pound net interactions occurred in all months from April through November, which is typically the season for fishing pound nets in Virginia. Most interactions were in May through September, peaking in August. The majority (77 percent) of the 84 pound net interactions from 2002–2011 were in the southern portion of Chesapeake Bay near Lynnhaven Inlet. This is the area where the NEFOP documented six offshore pound nets in 2010 and 2011.

Virginia pound net interactions were assigned to the three dolphin stocks based on which stocks are in waters where pound nets are fished during different times of year. Due to spatial overlap of stocks when the fishery is active and uncertainty in stock identification described above, interactions were assigned to either the NM stock only; both the SM and NM stocks; both the SM and NNCES stocks; or all three stocks. As a result, 41 of the 84 pound net interactions from 2002–2011 were assigned to the NM stock; 82 were assigned to the SM; and 57 to the NNCES stock. These assignments are not additive because of the overlapping nature of the stock and stock uncertainty. Total estimated bycatch mortality from interactions in Virginia pound nets cannot be generated because there is no systematic observer program for this fishery. Therefore, individual entanglements opportunistically observed by the NEFOP or documented by stranding data are a minimum count of Virginia pound net bycatch mortality per stock.

To evaluate the impact of the Virginia pound net fishery on each stock, documented pound net interactions assigned to stocks are compared against PBR. The NNCES stock has the smallest abundance estimate and associated PBR at 7.9 animals per year, and fishery interactions, therefore, would present the greatest conservation risk to this stock. Therefore, interactions assigned to more than one stock, including the NNCES stock, are considered to be from the NNCES stock only to evaluate risk of exceeding PBR. From 2002–2011, the 57 pound net interactions assigned to the NNCES stock represent an annual average of 5.7 animals per year, which represents 72.2 percent of PBR. When looking at the most recent five years (2007–2011) that include recent state regulations, 25 pound net interactions were assigned to the NNCES stock. This represents an annual average of 5 animals per year, which represents 63.3 percent of PBR.

Stranding data were used to evaluate the effectiveness of the state's 2010 regulations requiring the use of modified pound net leaders and the effect of these gear modifications on bottlenose dolphin interactions. Although the data set is limited to only two years (2010–2011), stranding data indicate a decreasing trend of bottlenose dolphin interactions with Virginia pound nets after the state's regulations. Therefore, when comparing stranding data for the two years immediately before (2008–2009) and after the state's 2010 regulations, there was a decrease in bottlenose dolphin interactions. Specifically, there was a 64 percent decrease in the total average annual number of bottlenose dolphin interactions with pound nets for all proposed BDPNRA waters. The annual average was 11 dolphins in 2008–2009 compared to 4 in 2010–2011. When evaluating this for the NNCES stock, the average annual number of bottlenose

dolphin interactions with pound nets decreased by 82 percent. This was a decrease from 8.5 (107.6 percent of PBR) animals per year from 2008–2009 to 1.5 animals per year (19 percent of PBR) from 2010–2011.

Pound net gear is not the only gear posing entanglement risks to these bottlenose dolphin stocks. Gillnets are another known significant source of serious injury and mortality. The NEFOP implements systematic observer coverage of the gillnet fishery. The most recent estimates of fishing mortality in coastal gillnets for the NNCES stock are from 2004–2008. These estimates are a minimum of 2.3 animals per year (29 percent of PBR) or a maximum of 18.99 animals per year (240 percent of PBR) (Waring *et al.* 2011). When evaluating total risk to the NNCES stock from known fishery-related serious injury and mortality, the total annual human-caused serious injury and mortality must be considered. This means the gillnet mortality estimate must be considered with the most recent five year annual average (2007–2011) for Virginia pound net interactions, which is 5 animals per year (63.3 percent of PBR). Therefore, the total fishery mortality affecting this stock could be at least 23.99 animals per year.

Mortalities and serious injuries of the NNCES stock likely exceed PBR. This is a concern when evaluating either total annual-human caused mortality and/or considering individual fishery-related impacts on the stock. If all the bottlenose dolphins interacting with pound nets belong to the NNCES stock, then the average annual mortality and serious injury incidental to pound nets caused more than 50 percent of the stock's mortality over the last five years (2007–2011). While the regulations appear successful in reducing bottlenose dolphin interactions in pound net leaders overall, interactions are still documented in months when modified leaders are not required. Conservation benefits are lost when requirements to use modified leaders are lifted west of the CBBT on August 1. Furthermore, the seasonal regulatory timeframes for areas west of the CBBT may not be adequate in the future. The Virginia pound net fishing season typically occurs from April through November. However, this is weather dependent, and fishermen may set pound net gear earlier and keep the gear in the water later in years with mild springs and winters. This increases the potential for interactions with bottlenose dolphins outside the timeframe when modified leaders are currently required. Therefore, additional regulations are still needed despite the decreasing overall trend in the average annual pound net interactions following the state's regulations. Requiring offshore pound nets to use modified pound net leaders year-round in the proposed BDPNRA will help ensure entanglements do not cause serious injury and mortality and exceed PBR for the NNCES stock while allowing the fishery to continue. This will also help reduce serious injury and mortality of both the SM and NM stocks incidental to Virginia pound nets that may be preventing the stocks from meeting or maintaining ZMRG.

The modified leader design is an effective solution to reduce dolphin interactions with Virginia pound net leaders. Dolphins may use the leader as a foraging strategy by herding fish against the leader mesh wall. The reduced mesh webbing and spacing and design of the vertical lines of the modified leader reduce areas for dolphin entanglements. Therefore, research indicates the modified leader likely reduces the bycatch of dolphins (Schaffler *et al.* 2011). The evaluation of stranding and observer data also indicates the modified leader design reduces bottlenose dolphin interactions.

Proposed Regulatory Changes to the BDTRP

NMFS proposes to implement the BDTRP's 2009 regulatory recommendations for the Virginia pound net fishery with some revisions and updates. NMFS believes these measures are necessary to reduce serious injury and mortality of strategic stocks of bottlenose dolphins from interactions with Virginia pound net gear.

1. Proposed Regulated Waters and Virginia Pound Net Gear-Area Measures

NMFS proposes to implement the BDTRT's consensus recommendation for where and when modified pound net leaders are used. The proposed regulated waters would include the Virginia waters of the lower mainstem Chesapeake Bay currently regulated under the sea turtle conservation regulations and would extend east of the CBBT to include coastal state waters north to the Maryland/Virginia line and south to the Virginia/North Carolina line (Figure 2). NMFS proposes to define these regulated waters as the BDPNRA. The proposed BDPNRA does not add to the waters currently regulated under the combined state and federal regulated areas for modified pound net leader requirements. It would combine them into one area under a single, additional regulatory authority.

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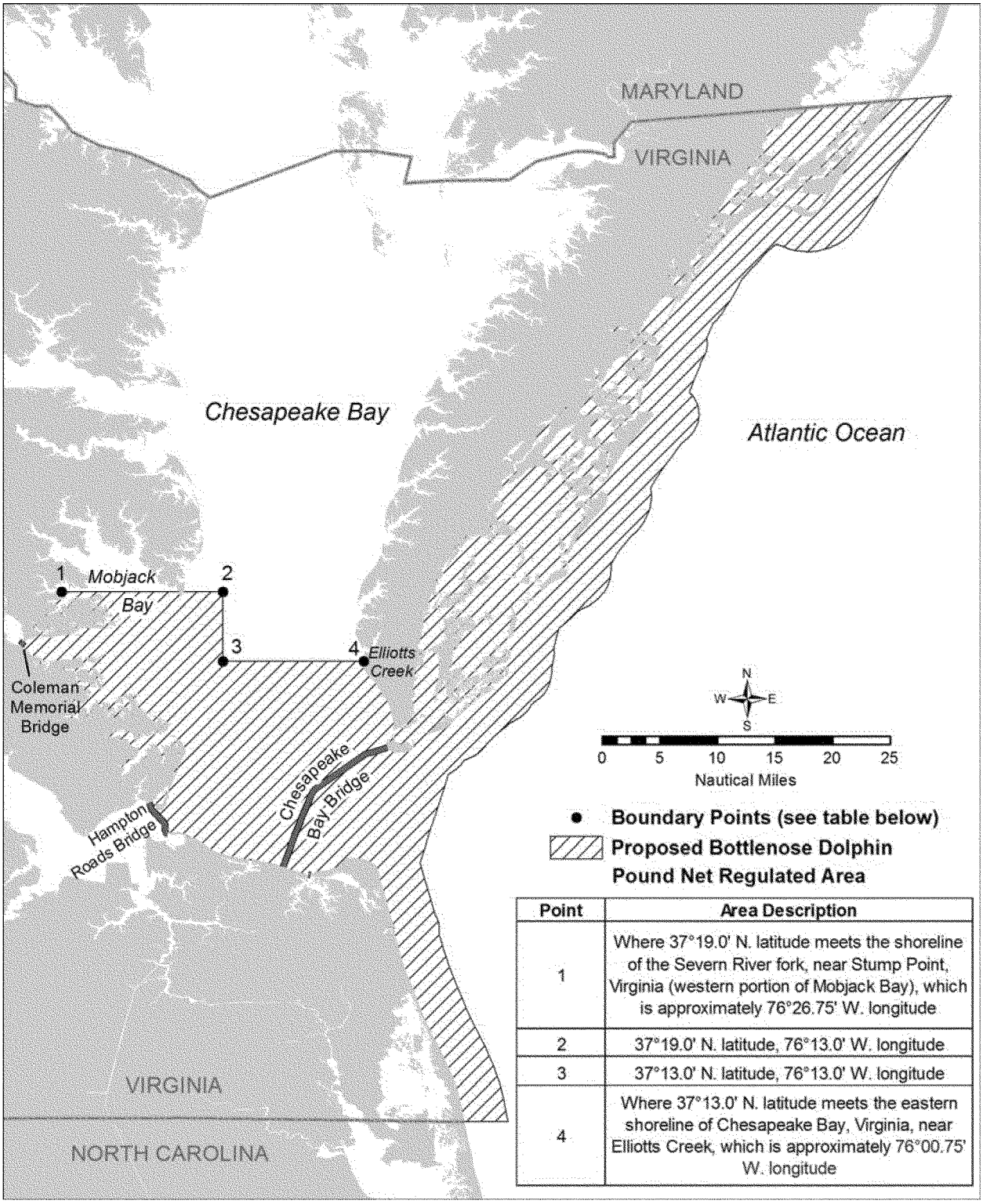

Point	Area Description
1	Where 37°19.0' N. latitude meets the shoreline of the Severn River fork, near Stump Point, Virginia (western portion of Mobjack Bay), which is approximately 76°26.75' W. longitude
2	37°19.0' N. latitude, 76°13.0' W. longitude
3	37°13.0' N. latitude, 76°13.0' W. longitude
4	Where 37°13.0' N. latitude meets the eastern shoreline of Chesapeake Bay, Virginia, near Elliotts Creek, which is approximately 76°00.75' W. longitude

Figure 2. Proposed BDPNRA Action Area for Bottlenose Dolphin Pound Net Regulations Recommended by the BDTRT.

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NMFS proposes to require the year-round use of modified pound net leaders for offshore pound nets in the proposed BDPNRA as recommended by the BDTRT. Pound nets fished in the proposed BDPNRA and meeting the definition of an offshore pound net will be required to use modified pound net leaders year-round. The state currently requires the year-round use of modified pound net leaders for all pound nets fished in the proposed BDPNRA waters east of the CBBT, including state coastal waters. However, in the proposed BDPNRA waters west of the CBBT, the combined state and Federal sea turtle regulations currently only require

offshore pound nets to use modified pound net leaders from May 6 through July 31. Therefore, this proposed rule extends the required use of modified pound net leaders to year-round for offshore pound nets in all waters in the proposed BDPNRA. Requiring year-round use of modified pound net leaders on offshore pound nets will help reduce serious injury and mortality to all strategic stocks of bottlenose dolphins interacting with the gear in all months when the fishery is active.

NMFS proposes to update the Purpose and Scope of the BDTRP under § 229.35(a) based on the proposed regulations for pound nets. The purpose and scope currently only includes small, medium, and large mesh gillnets for the list of gear restricted by the section. The proposed update adds pound net gear to this list. This update will clarify gear regulated and restricted under this section based on proposed regulation. All other restrictions within the BDTRP would remain unchanged.

NMFS also proposes to update the Regulated Waters of the BDTRP under § 229.35(c). The regulated waters currently include those applicable to gillnet restrictions only. The proposed update includes reorganizing the regulated waters implementing regulations to add areas specific to pound nets, which are different than those specified for gillnets. Gillnet regulated waters are currently specified under § 229.35(c) and are proposed to be redesignated as § 229.35(c)(i). This update does not change the gillnet regulated waters, it simply reorganizes them. Pound net regulated waters are proposed as § 229.35(c)(ii) to accommodate proposed regulated waters for using modified pound net leaders in the BDPNRA.

2. Proposed Terms in the BDTRP Related to Virginia Pound Nets

NMFS also proposes to add and define several pound net related terms to the BDTRP under 50 CFR 229.2. Some of these were recommended by the BDTRT. Others were not considered by the BDTRT but are necessary for effective implementation of the BDTRT's recommended regulatory measures.

The BDTRT recommended NMFS add to the BDTRP the same definition of a modified pound net leader as currently used in sea turtle conservation regulations. NMFS proposes to add this definition to 50 CFR 229.2 with some modifications to clarify practices and more explicitly identify requirements for modified leader construction. Specifically, NMFS proposes to add a separate definition of hard lay lines, rather than include it in the modified pound net leader definition. Hard lay lines are required in the construction of modified pound net leaders. Therefore, hard lay lines are proposed as a separate definition, and the definition is clarified that fishermen can use line that is as least as stiff as what is defined. These proposed changes do not change the intent of the definition and what components make vertical lines hard lay. NMFS also proposes to add a phrase to the modified leader definition that the mesh portion of the modified leader be ''. . . held in place by a bottom chain, which is a line that forms the lowermost part of the pound net leader . . .''. The proposed revisions and updates to the modified pound net leader definition do not change the intent of the BDTRT's recommendations or the construction of the modified leaders as studied.

The BDTRT also recommended a revised definition for a nearshore pound net leader and that the offshore pound net leader definition remains as currently defined in the sea turtle conservation regulations. Both of these terms are currently defined under the sea turtle conservation regulations. Those definitions use distance from shore (i.e., 10 horizontal feet (3 m)) of the inland end of the leader at mean low water as the only differentiating factor for both offshore and nearshore pound net leaders. The BDTRT's recommended definition for a nearshore pound net added a water depth end point to the current definition as another factor for determining if a net is nearshore. The Team added this water depth because they felt the distance from shore portion of the current definition may still allow the leader to extend into deeper, more offshore waters, where a modified leader should be used. Therefore, they recommended the most offshore pole at the pound end (i.e., king post) be at 12 feet (3.7 m) or less mean low water depth. This was to ensure the king post did not extend beyond the 12 foot (3.7 m) depth where a modified leader should be used.

NMFS is proposing to define both nearshore and offshore pound nets in the BDTRP based on the BDTRT's definition but with revisions. These revisions are needed to address concerns raised with the current definitions and the BDTRT's recommended definition of a nearshore pound net leader. NMFS' proposed definition removes the distance from shore part of the definitions and uses limits on water depth of the leader, regardless of tide, as the defining factor. Using water depth only is clearer and more consistent for fishermen and enforcement. It reduces environmental variability and interpretation of determining mean low water and distance from shore measurements. It also provides conservation benefits for protected species by ensuring leaders extending into deeper waters use modified leaders, despite the distance from shore. Therefore, NMFS proposes to define an offshore pound net based on any part of the leader in water depth of 14 feet (4.3 m) or greater at any tidal condition. A nearshore pound net will be defined as a pound net leader with every part of its leader in waters less than 14 feet (4.3 m) at any tidal condition. NMFS coordinated with various NOAA offices and BDTRT members to develop these proposed definitions. NMFS also considered the BDTRT's recommended definition, pound net leader characteristics, and depth of the fishing grounds. The average tidal range in Chesapeake Bay within the proposed BDPNRA is approximately 2.4 feet (73.2 cm). Therefore, NMFS' proposed 14 feet (4.3 m) water depth is consistent with the BDTRT's recommended depth of 12 feet (3.7 m) at mean low water. Based on 2010 and 2011 NEFOP data, no nets will change from offshore to nearshore pound nets and vice versa as a result of the proposed definition changes.

NMFS also proposes to define pound nets. Although this was not considered or recommended by the BDTRT, the term is currently not defined in 50 CFR 229.2 or the sea turtle conservation regulations. NMFS believes it is necessary to define the type of gear to which these proposed regulations apply. In addition to defining the gear, NMFS proposes to ensure that all sections of the gear are fished at the same time. Pound nets are made of three sections: The leader, heart, and pound. All three sections are needed to actively fish the gear. However, the NEFOP data show that fishermen sometimes leave portions of their gear in the water (e.g., only the leader) to where it is not actively catching fish but still poses an entanglement risk to protected species. Therefore, NMFS proposes that the leader, heart, and pound must be fished at the same time with the exception of a continuous 10-day period to deploy, remove, and/or repair gear. NMFS proposes the 10-day duration after discussion with pound net gear experts as a suitable and realistic time period for deploying, removing, and/or repairing gear. The purpose of this requirement is to reduce gear in the water that is no longer fishing, but still poses an entanglement risk to dolphins and sea turtles.

3. Proposed Education and Enforcement of Virginia Pound Net Gear-Area Measures

Education and enforcement are necessary parts of any regulatory program to ensure they are working as intended. The BDTRT recommended NMFS either include the same pound net leader inspections as in the sea turtle conservation regulations or help ensure compliance and enforcement of proposed measures. NMFS agrees helping fishermen comply with regulations and assisting enforcement efforts are important. Therefore, NMFS proposes a combination of both an education program for Virginia pound net fishermen and collaborative on-water enforcement of deployed gear. Specifically, under the BDTRP, NMFS proposes to require education and compliance training for all fishermen deploying a modified pound net leader on offshore pound nets at any time in the proposed BDPNRA. Fishermen will be required to attend a one-time training prior to deploying modified pound net leaders. They will receive a certificate for attending the training that they must keep on their vessel. NMFS will retain its discretion to provide exceptions to this training in limited circumstances to add flexibility for any potential hardships. For enforcement, NMFS will coordinate with the VMRC to conduct on-water enforcement and monitoring of the modified leader through a Joint Enforcement Agreement.

The purpose of the proposed education and enforcement is to more efficiently ensure and accurately determine compliance with the modified leader requirements. Conducting compliance training for fishermen educates them about gear requirements before the gear is constructed and deployed. Coordinating with the VMRC to evaluate the gear in the water provides more opportunities for accurate measurements of some of the gear requirements.

Proposed Non-Regulatory Changes to the BDTRP

NMFS proposes to update the non-regulatory measures in the BDTRP based on the BDTRT's recommendations for Virginia pound nets. NMFS agrees with all the BDTRT's non-regulatory measures. Some of these were already implemented because of their adaptive nature, and others will continue to be implemented in the future as needed. NMFS initially formed a Virginia pound net working group per the BDTRT's recommendations to help further refine several parts of their regulatory recommendations. NMFS consulted with several of these working group members throughout the development of this proposed rule and will continue this dialogue in the future as needed.

NMFS coordinated with the VMRC per the BDTRT's recommendations. The Team recommended NMFS inform the state of their recommendations for the Virginia pound net fishery and coordinate with them on enforcement. Following the BDTRT's 2009 meeting, NMFS sent a letter to the state and provided them with the team's recommendations. The VMRC subsequently implemented state regulations requiring modified pound net leaders partly based on the team's recommendations. NMFS also started coordinating with the VMRC in 2011 for on-water enforcement and inspections of modified leaders through a Joint Enforcement Agreement. NMFS will continue to partner with the state on enforcement.

The BDTRT noted the importance of outreach to Virginia pound net fishermen on any regulations regarding pound net gear. NMFS agrees and will provide outreach to fishermen in several ways. First, NMFS will send all the Virginia pound net fishermen within the proposed BDPNRA a letter informing them of this proposed rule based on the BDTRT's consensus recommendations. Second, during the proposed and final rule process, NMFS' fishery liaisons will be available to answer questions as necessary and provide additional information. Finally, as mentioned above, NMFS proposes to conduct required compliance training for all affected fishermen before they deploy their gear. This additional outreach combined with the educational training will help ensure fishermen understand any gear requirements before deployment.

ESA and Sea Turtle Conservation Measures

All sea turtles in U.S. waters are listed as either endangered or threatened under the ESA. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. The green turtle (*Chelonia mydas*) and Northwest Atlantic Ocean Distinct Population Segment of loggerhead sea turtles (*Caretta caretta*) are listed as threatened. However, the breeding populations of green turtles in Florida and on the Pacific Coast of Mexico are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles, even incidentally, is prohibited. Take is defined under the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct''. The term incidental take refers to takings of endangered and threatened species that result from, but are not the purpose of, an otherwise lawful activity. The incidental take of listed species may be exempted from the ESA take prohibition by an incidental take statement or permit issued under section 7 or 10 of the ESA, respectively. Sea turtle conservation regulations at § 223.206(d) provide some exemptions for the incidental take of threatened sea turtles in fishing activities and scientific research.

History of Sea Turtle Conservation for the Virginia Pound Net Fishery

Both juvenile and adult sea turtles generally occur in the Virginia waters of Chesapeake Bay from May through November (Lutcavage and Musick 1985; Musick and Limpus 1997; Mansfield *et al.* 2009). Loggerhead sea turtles are the most abundant sea turtle species in that area, followed by Kemp's ridleys, then greens, and leatherbacks (Mansfield 2006). Juvenile loggerheads and Kemp's ridleys specifically appear to use the Virginia waters of Chesapeake Bay as important growth and foraging habitats (Bellmund *et al.* 1987; Musick and Limpus 1997; Mansfield *et al.* 2009).

Stranded sea turtles are found during all months that sea turtles occur in the Virginia Chesapeake Bay waters. The total number of annual strandings varies slightly from year to year. From 1995 to 2011, total annual strandings ranged from a low of 158 in 1995 to a high of 523 in 2003. High concentrations of stranded sea turtles were found along Cape Charles in the early 2000s. Between 2000 and 2003, from April through September, sea turtle strandings along Cape Charles accounted for approximately 43 percent of all strandings in Virginia. Reported stranding numbers declined after 2004. From 2004 to 2011 for the same months and area, average strandings decreased to 34 percent of all strandings in Virginia (Thomas *et al.* 2012).

In Virginia, each spring and early summer, the Sea Turtle Stranding and Salvage Network reports high sea turtle strandings. Most of the previous high stranding events occurred between May and June, with elevated strandings during the first half of July. In 2009, however, a concentration of increased strandings (n = 36) occurred along Cape Charles from July 24 to September 30. This was a four-fold increase in strandings compared to the previous four years in the same time and area. These strandings also occurred later,

with peak numbers in late July through September.

The available data cannot statistically demonstrate a causal connection between pound net interactions and high spring strandings. However, there is data indicating the pound net fishery was a likely cause of a portion of sea turtle mortality in Chesapeake Bay (NMFS 2004). Carcass decomposition limits post-death assessment of many stranded turtles, but available information on some strandings was consistent with mortality from fisheries interactions (Trapani *et al.* 2009).

NMFS has documented lethal and non-lethal takes of sea turtles in pound net leaders. Specifically, the NEFOP monitored and characterized the pound net fishery while it was active in 2002, 2003, 2004, 2005, 2009, and 2010. Research was also conducted on modified pound net leaders in 2004 and 2005. A total of 31 entanglements in leaders and 18 impingements (i.e., turtles held against the leader by the current) were documented by the NEFOP or recorded during modified leader studies. All documented entanglements and impingements occurred in either May or June. These documented entanglements and impingements represent minimum counts of sea turtle interactions in pound net leaders.

NMFS issued a series of amendments to the sea turtle conservation regulations for the Virginia pound net fishery (§ 223.206(d)(10)) to reduce takes of sea turtles in leaders because of documented interactions and high stranding events. An interim final rule was published in 2002 (67 FR 41196; June 17, 2002). This rule contained several requirements and prohibitions for pound nets set in the Virginia waters of the mainstem Chesapeake Bay and portions of the tributaries. From May 8 through June 30 in these areas, pound net leaders made with either stringers (i.e., vertical lines) or stretched mesh measuring 12 inches (30.5 cm) and greater were prohibited. Fishermen were also required to report all interactions with sea turtles in their pound net gear to NMFS within 24 hours of returning from the fishing trip. The interim final rule also included a year-round requirement that pound net fishing operations must be observed by a NMFS-approved observer if requested. Finally, the 2002 rule established a framework to further protect sea turtles. The framework allows NMFS to change the restrictions and their effective dates on an expedited basis by responding to new information, such as the entanglement of a sea turtle in a pound net leader.

NMFS issued a final rule in 2004 pertaining to Virginia pound nets (69 FR 24997; May 5, 2004). This rule prohibited the use of offshore pound net leaders from May 6 through July 15 in the waters defined as PNRA I (see Figure 1). It also retained the mesh size requirements and stringer prohibitions established by the 2002 interim final rule. These requirements and prohibitions were established for nearshore pound net leaders only in PNRA I and all pound net leaders in PNRA II from May 6 through July 15. The rule also defined a pound net leader, offshore pound net leader, and nearshore pound net leader. Finally, it retained the monitoring and reporting requirements and framework mechanism established in 2002.

In 2006, NMFS issued another final rule requiring the use of modified pound net leaders for offshore pound nets (71 FR 36024; June 23, 2006). Specifically, any offshore pound net leader set in PNRA I from May 6 through July 15 each year must use a modified pound net leader. The final rule also defined a modified pound net leader. Finally, it retained the prior mesh size requirements and stringer prohibitions for nearshore pound nets in PNRA I and all leaders in PNRA II; monitoring and reporting provisions; and framework mechanism.

Lastly, NMFS issued a final rule in 2008 establishing a land-based inspection program for modified pound net leaders (73 FR 68348; November 18, 2008). Following the 2006 final rule, NMFS recognized the need for an inspection program to determine if a modified pound net leader met the regulatory definition prior to deployment. Pre-deployment inspections were intended to help ensure the protection of sea turtles, while limiting the difficulties of post-deployment inspections at-sea. Therefore, the inspection program requires fishermen to notify NMFS at least 72 hours before deploying modified pound net leaders fished in the Virginia Chesapeake Bay waters from May 6 through July 15. NMFS then examines modified leaders for compliance with the definition of a modified pound net leader. This inspection also involves collecting information from fishermen on the depth and physical location of their gear and tagging the leader after it passes inspection to aid enforcement.

Proposed Regulatory Changes to ESA Sea Turtle Conservation Measures

NMFS proposes to amend the ESA sea turtle conservation regulations for the Virginia pound net fishery for consistency with some of the proposed BDTRP amendments under the MMPA and to clarify the intent of the original regulations. ESA regulations for sea turtle conservation are found at 50 CFR parts 222 and 223. The main proposed changes to the ESA regulations are to ensure any Virginia pound net related terms are defined the same between both the ESA regulations and the MMPA regulations. The proposed education and enforcement program for facilitating compliance with the use of modified leaders is also proposed under the ESA regulations to replace the existing land-based inspection program. The times and areas currently requiring the use of modified pound net leaders for offshore pound nets and requirements for nearshore pound nets for sea turtle conservation will remained unchanged in § 223.206(d)(10)(i) and (ii).

1. Proposed Amendments for Terms Related to Virginia Pound Nets

NMFS proposes to revise, define, and add several pound net related terms under 50 CFR 222.102. The purpose of these changes and additions is to: (1) Clarify the definitions in the previous regulations promulgated under the ESA while providing consistency with the newly proposed MMPA measures governing the same fishery; and (2) add definitions to assist in effective implementation of the regulatory measures.

Modified pound net leaders are currently defined at 50 CFR 222.102. NMFS proposes to remove the description for hard lay lines that is currently at the end of the modified pound net leader definition and define hard lay lines and modified pound net leaders separately. Hard lay lines are currently described within the modified pound net leader definition itself but are not formerly defined outside this description. Therefore, hard lay lines are proposed as a separate definition and removed from the end of the modified pound net leader definition. The hard lay line definition is also clarified so that fishermen can use line at least as stiff as what is defined. These proposed changes do not change the intent of the definition and what components make vertical lines hard lay. NMFS also proposes to add a phrase to the modified leader definition that the mesh portion of the modified leader be ''. . . held in place by a bottom chain, which is a line that forms the lowermost part of the pound net leader . . .'' This serves to clarify the configuration of the modified pound net leader and does not change the intent of

the regulations or the construction of the modified leaders as studied.

NMFS also proposes to revise the definitions of nearshore and offshore pound net leaders currently defined at 50 CFR 222.102. As noted earlier, the BDTRT recommended revisions to the nearshore pound net leader definition. This recommendation was to address concerns with nearshore pound nets potentially extending into deeper, more offshore waters where modified pound net leaders should be used to reduce protected species interactions. Subsequent discussions and coordination with various NOAA offices and BDTRT members resulted in slightly revised definitions as proposed. Both nearshore and offshore pound net leaders are currently defined in the regulations and use distance from shore at mean low water as a defining factor. The proposed nearshore and offshore pound net leader definitions revise the current definitions by removing distance from shore and using water depth of the leader regardless of tide as the only defining factor. As mentioned, using water depth only is clearer and more consistent for fishermen and enforcement. Therefore, NMFS proposes to define an offshore pound net leader as a leader with any part of the leader in water depths of 14 feet (4.3 m) or greater at any tidal condition. A nearshore pound net leader will be defined as a leader with every part of its leader in water depths less than 14 feet (4.3 m) at any tidal condition. While initiated by the BDTRT for bottlenose dolphins, NMFS proposes to revise these definitions in the ESA regulations as they more effectively capture the original intent and purpose of defining nearshore and offshore pound net leaders for sea turtle conservation. They will also aid public interpretation of the regulations and ensure consistency between ESA and MMPA regulations affecting the Virginia pound net fishery. No existing leaders will change from an offshore to nearshore pound net or vice versa based on the proposed definition changes.

Finally, NMFS proposes a new definition for pound nets at 50 CFR 222.102. This term was not previously defined but is helpful to identify the type of gear to which these regulations apply. In addition to defining the gear, NMFS proposes to ensure that all sections of the gear are fished at the same time. As discussed previously, NEFOP data show that fishermen sometimes leave portions of their gear in the water (e.g., only the leader) so that it is not actively catching fish but still poses a risk of entanglement to protected species. Therefore, NMFS proposes that the leader, heart, and pound must be fished at the same time with the exception of a continuous 10-day period to deploy, remove, and/or repair their gear. The purpose of this requirement is to reduce gear in the water that is no longer fishing but still poses an entanglement risk.

2. Proposed Education and Enforcement of Virginia Pound Net Gear-Area Measures

In 2008, NMFS established a land-based inspection program for modified pound net leaders to determine if a modified pound net leader met the regulatory definition prior to deployment. The purpose of this program was to ensure the protection of sea turtles, while limiting the difficulties of post-deployment inspections at-sea. The program shows effectiveness in evaluating the gear on land, but it is time intensive for both NMFS and fishermen and does not evaluate the gear as it is fished in the water. Further, there are other techniques available (e.g., scuba divers) that will provide more accurate measurements of some of the gear requirements.

NMFS, therefore, proposes a combination of an education program for Virginia pound net fishermen and a collaborative on-water enforcement program for deployed gear to replace the current inspection program. Specifically, NMFS proposes to remove the current Virginia modified pound net leader inspection program at § 223.206(d)(10)(vii). NMFS proposes to require education and compliance training for all fishermen deploying a modified pound net leader in Virginia state waters at any time from May 6 through July 15 of any year. Fishermen will be required to attend a one-time training prior to deploying modified pound net leaders. Fishermen will receive a certificate for attending the training that they must keep on their vessel during fishing operations. NMFS will retain its discretion to provide exceptions to this training in limited circumstances to add flexibility for any potential hardships. For the on-water enforcement, NMFS will coordinate with the VMRC to conduct on-water enforcement and monitoring of the modified leader through a Joint Enforcement Agreement. The purpose of this proposed education and enforcement program is to more efficiently and accurately determine compliance with the modified leader requirements and alleviate the burden from annual on-land inspections.

Technical Amendments

NMFS proposes two technical amendments to the existing PNRA I and II definitions in 50 CFR 222.102. The first clarifies the northern and the southern boundaries of PNRA I to ease interpretation of the boundary lines and clarify the regulated area. The area regulated under PNRA I remains unchanged. The northern boundary of PNRA I is currently referred to in the definition as ''. . . south of 37°19.0′ N. lat. and west of 76°13.0′ W. long., and all waters south of 37°13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel . . .''. The proposed definition replaces this with the following four points connected by a straight line: (1) Where 37°19.0′ N. lat. meets the shoreline of the Severn River fork, near Stump Point, Virginia (western portion of Mobjack Bay), which is approximately 76°26.75′ W. long.; (2) 37°19.0′ N. lat., 76°13.0′ W. long.; (3) 37°13.0′ N. lat., 76°13.0′ W. long.; and (4) where 37°13.0′ N. lat. meets the eastern shoreline of Chesapeake Bay, Virginia, near Elliotts Creek, which is approximately 76°00.75′ W. long. The southern boundary of PNRA I is currently referred to in the definition as ''. . . the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05′ N. lat., 75°59′ W. long. to 36°55′ N. lat., 76°08′ W. long.) at the mouth of the Chesapeake Bay . . .''. The proposed definition revises two of the coordinates from 37°05′ N. lat. to 37°07′ N. lat. and 75°59′ W. long. to 75°58′ W. long., respectively.

The second technical amendment clarifies the southeast boundary of PNRA II. The purpose of this amendment is to clarify the boundary line and regulated area at the mouth of the Chesapeake Bay north of Fisherman's Island and east to Smith Island. The southeast boundary of PNRA II is currently referred to in the definition as ''. . . to the COLREGS line at the mouth of the Chesapeake Bay''. The proposed definition replaces this with ''. . . to the COLREGS line at the mouth of the Chesapeake Bay and 37°07′ N. lat. between Kiptopeke and Smith Island, Northampton County, Virginia''.

Classification

This proposed rule was 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 Virginia Coastal Zone Management Program. 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 Virginia. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials in Virginia.

NMFS examined the proposed action for compliance with ESA Section 7 requirements. This action was found to be in compliance with the legal requirements of Section 7 of the ESA. Furthermore, the only impacts associated with the measures contained in this proposed rule are likely to be beneficial to listed species because the proposed action requires the year-round use of beneficial gear modifications rather than the current seasonal use.

This proposed rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act. The sea turtle conservation regulations have a current Paperwork Reduction Act collection requirement in place (OMB control number 0648–0559) for the existing inspection program. This proposed rule would remove that collection of information requirement, reducing the overall burden.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to reduce serious injury and mortality of bottlenose dolphins from incidental takes in the Virginia pound net fishery by amending the BDTRP under the MMPA implementing regulations. The proposed rule also amends current regulations and definitions for Virginia pound nets under the ESA for sea turtle conservation for consistency. The MMPA and ESA provide the statutory base for the proposed rule.

As discussed in the preamble, this proposed rule would result in duplicative and overlapping regulations for fishermen using pound nets in a portion of the proposed action area. This duplication and overlap would result from current restrictions promulgated under a separate regulatory authority. In essence, this proposed rule would expand the area and timeframe currently subject to restrictions on the use of pound nets in which the regulations would apply. Both the current regulations and the regulations proposed by this rule would be established under NOAA's own authority, and this proposed rule has been carefully developed to create consistency with the current regulations. As a result, no conflict would result from this duplication and overlap and the burden associated with compliance would not increase under duplicate promulgation because compliance under one authority would satisfy the requirements of both. No other duplicative, overlapping, or conflicting federal rules have been identified.

This proposed rule would remove existing documentation and reporting provisions associated with the current annual gear inspection requirements. The proposed rule would replace these requirements with a proposed one-time education and compliance training requirement. This compliance training does not include any reporting or record-keeping requirements and, as a result, would reduce the overall burden associated with these tasks on the fishermen expected to be directly affected by this proposed rule. Otherwise, this proposed rule would simply expand the circumstances under which fishermen would have to use a specific type of leader when using pound nets in the proposed action area. All affected fishermen are expected to currently have experience using this type of leader and this experience is consistent with the professional skill necessary for the use of pound nets. As a result, no change in the professional skills necessary to meet this compliance requirement would be expected. This proposed action would not establish any new reporting, record-keeping, or other compliance requirements.

This proposed action would be expected to directly affect fishermen who use pound nets in the proposed BDPNRA (i.e., the proposed action area described in the preamble). In 2010, Virginia sold 41 licenses to 16 entities who fished with pound nets within the proposed BDPNRA. The average annual dockside revenue from all fishing activities for these entities in 2010 was approximately $126,557 (2010 dollars). More recent data are not available.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters. 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 combined annual receipts do not exceed $19.0 million (NAICS code 114111, Finfish Fishing) for all its affiliated operations worldwide. This receipts threshold is the result of a final rule issued by the SBA on June 20, 2013, that increased the size standard for the Finfish Fishing sector from $4.0 to $19.0 million (78 FR 37398). The new threshold became effective July 22, 2013. Based on the estimated average annual revenue of entities using Virginia pound net gear in 2010, all entities expected to be directly affected by this proposed rule are believed to be small business entities.

As previously stated, in 2010, Virginia sold 41 licenses to 16 entities who fished with pound nets within the proposed BDPNRA. Excluding oysters, clams, and shellfish licenses, over 3,000 commercial fishing licenses were sold to Virginia commercial fishermen in 2010. Therefore, this proposed rule would be expected to affect less than one percent of commercial fishermen in Virginia and, as a result, would not be expected to affect a significant number of small entities.

The proposed changes to the pound net leader requirements would be expected to result in continued normal fishing practices, harvests, prices, and revenues. The proposed rule requires the year-round use of modified pound net leaders in the entire proposed BDPNRA. Although these regulations would be more restrictive than current requirements, no economic effects on fishermen are expected. In response to current requirements, fishermen are expected to already use modified leaders for the entire fishing season when fishing with pound net gear in these areas even if not required, for two main reasons: (1) Research on the catch efficiency of modified pound net leaders within the proposed BDPNRA showed no significant differences in harvest weight for the species analyzed when compared to using traditional leaders; and (2) the costs associated with maintaining two types of leaders and switching the gear when modified leaders are not required would not make rational economic sense given the absence of improvements in catch efficiency. Traditional leaders installed on offshore pound nets cost $5,418 to make and install/remove. Maintaining and using both types of leaders (i.e., traditional and modified) would require expenditure of this cost, in addition to the cost of making a modified leader, as well as labor costs of switching leaders. If harvest and revenue is not increased by switching to the traditional leader, as demonstrated by available research, then bearing these additional gear and labor costs would be unjustified. Thus, even though this proposed rule would

change the pound net leader requirements, all fishermen who would be potentially affected are expected to currently use modified leaders when using pound nets in the area and time specified by this proposed rule. Therefore, no economic impacts are expected to result from the proposed rule.

Because this proposed rule, if implemented, would not be expected to have a significant direct adverse economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and one was not prepared.

References Cited

Available upon request (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects

50 CFR Part 222

Endangered and Threatened species, Exports, and Reporting and recordkeeping requirements.

50 CFR Part 223

Endangered and Threatened species, Exports, and Transportation.

50 CFR Part 229

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

Dated: April 9, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR parts 222, 223, and 229 are proposed to be amended 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.*

■ 2. In § 222.102:

■ a. Add the definitions for ''Hard lay lines'', ''Nearshore pound net leader or nearshore pound net'', ''Offshore pound net leader or offshore pound net'', and ''Pound net''; and

■ b. Revise the definitions for ''Modified pound net leader,'' ''Pound net leader,'' ''Pound Net Regulated Area I,'' and ''Pound Net Regulated Area II'' in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Hard lay lines mean lines that are at least as stiff as 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of poly-propylene and polyethylene and 42 visible twists of strands per foot of line.

* * * * *

Modified pound net leader means a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; at any particular point along the leader, the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; the mesh is held in place by a bottom chain that forms the lowermost part of the pound net leader; the vertical lines (stringers) extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and the vertical lines are hard lay lines.

Nearshore pound net leader or nearshore pound net means a pound net with every part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in less than 14 feet (4.3 m) of water at any tidal condition.

* * * * *

Offshore pound net leader or offshore pound net means a pound net with any part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in water greater than or equal to 14 feet (4.3 m) at any tidal condition.

* * * * *

Pound net means a fixed entrapment gear attached to posts or stakes with three continuous sections from offshore to inshore consisting of: (1) A pound made of mesh netting that entraps the fish; (2) at least one heart made of a mesh netting that is generally in the shape of a heart and aids in funneling fish into the pound; and (3) a leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

Pound net leader means a long straight net that directs fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers, also known as vertical lines, are spaced a regular distance apart and are not crossed by other lines to form mesh.

Pound Net Regulated Area I means Virginia waters of the mainstem Chesapeake Bay and the portion of the James River seaward of the Hampton Roads Bridge Tunnel (Interstate Highway-64) and the York River seaward of the Coleman Memorial Bridge (Route 17), bounded to the south and east by the Chesapeake Bay Bridge Tunnel (Route 13; extending from approximately 37°07′ N. lat., 75°58′ W. long. to 36°55′ N. lat., 76°08′ W. long.), and to the north by the following points connected by straight lines and in the order listed:

Point	Area description
1	Where 37°19.0′ N. lat. meets the shoreline of the Severn River fork, near Stump Point, Virginia (western portion of Mobjack Bay), which is approximately 76°26.75′ W. long.
2	37°19.0′ N. lat., 76°13.0′ W. long.
3	37°13.0′ N. lat., 76°13.0′ W. long.
4	Where 37°13.0′ N. lat. meets the eastern shoreline of Chesapeake Bay, Virginia, near Elliotts Creek, which is approximately 76°00.75′ W. long.

Pound Net Regulated Area II means Virginia waters of the Chesapeake Bay outside of Pound Net Regulated Area I, bounded by the Maryland-Virginia State line to the north and by the COLREGS line at the mouth of the Chesapeake Bay and 37°07′ N. lat. between Kiptopeke and Smith Island, Northampton County, Virginia to the south and east. This area includes the Great Wicomico River seaward of the Jessie Dupont Memorial Highway Bridge (Route 200), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3), the Piankatank River downstream of the Route 3 Bridge, and all other tributaries within these boundaries.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 4. In § 223.205, paragraphs (b)(17) through (b)(20) are revised to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(17) Set, fish with, or fail to remove a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II defined in 50 CFR 222.102 and referenced in 50 CFR 223.206(d)(10) at any time from May 6 through July 15 unless the pound net licensee and the vessel operator meet the modified pound net leader compliance training requirements in accordance with 50 CFR 223.206(d)(10)(vii).

(18) Alter or replace any portion of a modified pound net leader so that the altered or replaced portion no longer meets the modified pound net leader definition in 50 CFR 222.102, unless that alteration or replacement occurs outside the regulated period of May 6 through July 15.

(19) Set, fish with, or fail to remove a modified pound net leader at any time from May 6 through July 15 in Pound Net Regulated Area I or Pound Net Regulated Area II unless the fisherman has on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS.

(20) Set, fish with, or fail to remove pound net gear in Pound Net Regulated Area I or Pound Net Regulated Area II, unless it has the all three continuous sections as defined in 50 CFR 222.102, except that one or more sections may be missing for a maximum period of 10 days for purposes of setting, removing, and/or repairing pound nets.

* * * * *

■ 5. In § 223.206, paragraph (d)(10)(vii) is revised to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(10) * * *

(vii) Modified pound net leader compliance training. Any pound net licensee and any vessel operator who have modified pound net leaders set in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 must have completed modified pound net leader compliance training and possess on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS. NMFS retains discretion to provide exemptions in limited circumstances where appropriate. Notice will be given by NMFS announcing the times and locations of modified pound net leader compliance training.

* * * * *

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

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

Authority: 16. U.S.C. 1361 *et seq;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 7. In § 229.2, the definitions ''Hard lay lines,'' ''Modified pound net leader,'' ''Nearshore pound net,'' ''Offshore pound net,'' and ''Pound net'' are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Hard lay lines mean lines that are at least as stiff as 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of poly-propylene and polyethylene and 42 visible twists of strands per foot of line.

* * * * *

Modified pound net leader means a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; at any particular point along the leader, the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; the mesh is held in place by a bottom chain that forms the lowermost part of the pound net leader; the vertical lines extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and the vertical lines are hard lay lines.

Nearshore pound net means a pound net with every part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in less than 14 feet (4.3 m) of water at any tidal condition.

* * * * *

Offshore pound net means a pound net with any part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in water greater than or equal to 14 feet (4.3 m) at any tidal condition.

* * * * *

Pound net means a fixed entrapment gear attached to posts or stakes with three continuous sections from offshore to inshore consisting of: (1) A pound made of mesh netting that entraps the fish; (2) at least one heart made of a mesh netting that is generally in the shape of a heart and aids in funneling fish into the pound; and (3) a leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

* * * * *

■ 8. In § 229.3 paragraph (s) and paragraph (v) are revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(s) It is prohibited to set, fish with, or possess on board a vessel unless stowed, or fail to remove, any gillnet or pound net from the waters specified in § 229.35(c) unless the gear complies with the specified restrictions set forth in § 229.35(d).

* * * * *

(v) It is prohibited to set, fish with, or fail to remove a modified pound net leader in the Bottlenose Dolphin Pound Net Regulated Area unless the fisherman has on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS.

* * * * *

■ 9. In § 229.35:

■ a. Revise paragraphs (a), (c), and (d)(2)(ii) and;,

■ b. In paragraph (b) add the definition for ''Bottlenose Dolphin Pound Net Registered Area''.

The revisions and additions read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan (BDTRP) to reduce incidental mortality and serious injury of strategic stocks of bottlenose dolphins within the Western North Atlantic coastal morphotype in specific Category I and II commercial fisheries from New Jersey through Florida. Specific Category I and

II commercial fisheries within the scope of the BDTRP are indentified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets and pound nets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras, southward to, and including the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this title).

(b) * * *

Bottlenose Dolphin Pound Net Regulated Area means all Virginia marine waters of the Atlantic Ocean within 3 nautical miles (5.56 km) of shoreline and all adjacent tidal waters, bounded on the north by 38°01.6′ N. (Maryland/Virginia border) and on the south by 36°33′ N (Virginia/North Carolina border); and all southern Virginia waters of the mainstem Chesapeake Bay bounded on the south and west by the Hampton Roads Bridge Tunnel across the James River and the Coleman Memorial Bridge across the York River; and north and east by the following points connected by straight lines in the order listed:

Point	Area description
1	Where 37°19.0′ N. lat. meets the shoreline of the Severn River fork, near Stump Point, Virginia (western portion of Mobjack Bay), which is approximately 76°26.75′ W. long.
2	37°19.0′ N. lat., 76°13.0′ W. long.
3	37°13.0′ N. lat., 76°13.0′ W. long.
4	Where 37°13.0′ N. lat. meets the eastern shoreline of Chesapeake Bay, Virginia, near Elliotts Creek, which is approximately 76°00.75′ W. long.

* * * * *

(c) *BDTRP Regulated Waters*—(i) *Gillnets.* The regulations pertaining to gillnets in this section apply to New Jersey, Delaware, and Maryland State waters; Northern North Carolina State waters; Northern Virginia State waters; South Carolina, Georgia, and Florida waters; Southern North Carolina State waters; and Southern Virginia State waters as defined in § 229.35(b), except for the waters identified in § 229.34(a)(2), with the following modification and addition. From Chincoteague to Ship Shoal Inlet in Virginia (37°52′ N. 75°24.30′ W. to 37°11.90′ N. 75°48.30′ W) and South Carolina, Georgia, and Florida waters, those waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 are excluded from the regulations.

(ii) *Pound nets.* The regulations pertaining to pound nets in this section apply to the Bottlenose Dolphin Pound Net Regulated Area.

(d) * * *

(2) * * *

(ii) *Pound nets.* (A) Year-round, any offshore pound net in the Bottlenose Dolphin Pound Net Regulated Area must use a modified pound net leader.

(B) Year-round, any nearshore and offshore pound nets set in the Bottlenose Dolphin Pound Net Regulated Area must have all three continuous sections as defined in 50 CFR 229.2, except that one or more sections may be missing for a maximum period of 10 days for purposes of setting, removing, and/or repairing pound nets.

(C) The pound net licensee and the vessel operator of any offshore pound net set in the Bottlenose Dolphin Pound Net Regulated Area must have completed modified pound net leader compliance training and possess on board the vessel a valid modified pound net leader compliance training certificate issued by NMFS. NMFS retains discretion to provide exemptions in limited circumstances where appropriate. Notice will be given by NMFS announcing the times and locations of modified pound net leader compliance training.

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