(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 050315074–5074–01; I.D. 022405B]

RIN 0648–AS92

Endangered and Threatened Wildlife; Sea Turtle Conservation

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

ACTION: Proposed rule; request for comments

SUMMARY: NMFS proposes to require sea turtle conservation measures for all sea scallop dredge vessels fishing in the mid-Atlantic from May 1 through November 30 each year. The proposed rule would require all vessels with a sea scallop dredge and which are required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, to modify their dredge(s) when fishing south of 41° 9.0′ N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone. Any incidental take of threatened sea turtles in sea scallop dredge gear in compliance with this proposed gear modification requirement and other applicable requirements would be exempted from the prohibition against takes. This action is necessary to help reduce the take of sea turtles in scallop dredge gear and conserve loggerhead sea turtles, listed as threatened under the Endangered Species Act (ESA).

DATES: Comments on the proposed rule must be received by 5 p.m. EST on June 27, 2005.

ADDRESSES: Written comments on this action may be submitted on this proposed rule, identified by RIN 0648–AS92, by any one of the following methods:

(1) NMFS/Northeast Region Website: *http://www.nero.noaa.gov/nero/regs/com.html*. Follow the instructions on the website for submitting comments.

(2) E-mail: scallopchainmat@noaa.gov Please include the RIN 0648–AS92 in the subject line of the message.

(3) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instruction on the website for submitting comments.

(4) Mail: Mary A. Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930, ATTN: Sea Turtle Conservation Measures, Proposed Rule

(5) Facsimile (fax): 978–281–9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule

Copies of the Draft Environmental Assessment/Regulatory Impact Review and documents cited in the proposed rule can be obtained from *http://www.nero.noaa.gov/nero/regs/com.html* listed under the Electronic Access portion of this document or by writing to Ellen Keane, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930

FOR FURTHER INFORMATION CONTACT: Ellen Keane (ph. 978–281–9300 x6526, fax 978–281–9394) or Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376).

SUPPLEMENTARY INFORMATION:

Background

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

Under the ESA and its implementing regulations, taking sea turtles under NMFS' jurisdiction, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be exempted by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA, respectively. Existing sea turtle conservation regulations at 50 CFR 223.206(d) exempt fishing activities and scientific research from the prohibition on takes of threatened sea turtles under certain conditions. This proposed rule would add an additional requirement with which vessels with sea scallop dredge gear must comply in order to have any incidental takes of threatened sea turtles exempted from the prohibition on takes.

The incidental take and mortality of sea turtles as a result of scallop dredging has been documented in the mid-Atlantic. Based on the available information, NMFS has determined that the use of a dredge modified with a chain mat would sharply reduce the capture of sea turtles in the dredge itself, as well as any ensuing injuries and mortalities that occur as a result of being caught in the dredge (*e.g.* drowning, crushing in the dredge bag, crushing on deck, etc.; note: sea turtles may still interact with modified gear. See Interaction of dredge gear with sea turtles). This proposed action, taken under the authority in Section 4(d) of the ESA, is necessary to provide for the conservation of sea turtles.

Sea Turtle Bycatch in the Sea Scallop Dredge Fishery

Based on the Northeast Fisheries Science Center (NEFSC) Observer Program data, a total of 62 observed sea turtle takes were attributed to the Atlantic sea scallop dredge fishery during normal fishery operations from March 1, 1996 through October 31, 2004. ''Observed'' or ''observed take'' means seen and documented by a NMFS-approved observer. Of these, 43 were identified as loggerheads; the remaining animals were hard-shelled sea turtles that could not be positively identified. Four of the sea turtles were fresh dead upon retrieval or died on the vessel, 1 was alive but required resuscitation, 25 were alive but injured, 20 were alive with no apparent injuries, and 12 were listed as alive but condition unknown because the observer did not have sufficient opportunity to examine the turtle.

In 2004, the NEFSC completed an assessment of sea turtle bycatch in the 2003 scallop dredge fishery in the mid-Atlantic (Long Island, New York to Cape Hatteras, North Carolina). Total estimated bycatch of sea turtles in this fishery from June 1 through November 30, 2003 was 749 animals (C.V. = 0.28).

A Biological Opinion on the Atlantic sea scallop Fishery Management Plan (FMP), issued on December 15, 2004, anticipates the take of up to 749 loggerhead sea turtles annually as a result of the continued operation of the scallop dredge fishery with up to 479 of these takes resulting in injuries that would lead to death or an inability of the turtle to reproduce.

Impacts of Sea Scallop Dredging

The only species positively identified by the NEFSC Observer Program to have been captured in sea scallop dredge gear is the loggerhead sea turtle; however, hardshell turtles were caught and not

identified by species. NMFS believes these unidentified sea turtles are not likely to be Kemp's ridley and green sea turtles which are expected to occur predominantly in inshore waters (i.e., bays and estuaries, and other coastal waters) where the scallop dredge fishery does not operate (Lutcavage and Musick 1985; Keinath *et al.* 1987; Morreale and Standora 1993; Spotila 1998). In addition, while western Atlantic green turtles range from Massachusetts to Argentina, including the Gulf of Mexico and Caribbean, they are considered less abundant north of Cape Hatteras. Hawksbill sea turtles are uncommon in waters of the continental United States. There have been accounts of hawksbill sea turtles in south Florida and Texas and small hawksbill sea turtles have stranded as far north as Cape Cod, Massachusetts. However, many of these strandings were observed after hurricanes or offshore storms. No takes of hawksbill sea turtles have been recorded in the northeast or mid-Atlantic fisheries covered by the NEFSC Observer Program. Given the information on sea turtle distribution in comparison to the distribution of scallop dredge effort within the mid-Atlantic and given observer identification of sea turtles captured in scallop dredge gear, NMFS considers it unlikely that Kemp's ridley, green, or hawksbill sea turtles will be captured in sea scallop dredges. As described above, the incidental take and mortality of loggerhead sea turtles in the sea scallop dredge fishery has been documented, and the potential for takes of loggerhead sea turtles exists when their distribution overlaps with the distribution of effort in the scallop dredge fishery.

There are at least five western Atlantic loggerhead subpopulations. The south Florida nesting group is the largest known loggerhead nesting assemblage in the Atlantic and one of only two loggerhead nesting assemblages worldwide that have greater than 10,000 females nesting per year. The northern subpopulation is the second largest loggerhead nesting assemblage within the United States. The remaining three subpopulations (the Dry Tortugas, Florida Panhandle, and Yucatan) are much smaller subpopulations with nest counts ranging from roughly 100 - 1,000 nests per year. To date, analysis of nesting data from the Index Nesting Beach Survey Program indicates that there is no discernable trend in abundance for the south Florida, northern or Florida Panhandle subpopulations. No conclusions can be made from nesting data on the Dry Tortugas and Yucatan nesting subpopulations at this time.

Cohorts from each of the subpopulations are expected to occur in the action area. Genetic analysis of samples collected from benthic immature loggerhead sea turtles captured in pound nets in the Pamlico-Albemarle Estuarine Complex in North Carolina from September-December of 1995–1997 indicated that cohorts from all five western Atlantic subpopulations were present (Bass *et al.* 2004). In a separate study, genetic analysis of samples collected from loggerhead sea turtles from Massachusetts to Florida found that all five western Atlantic loggerhead subpopulations were represented (Bowen *et al.* 2004). Bass *et al.* (2004) found that 80 percent of the juveniles and sub-adults utilizing the foraging habitat originated from the south Florida nesting population, 12 percent from the northern subpopulation, 6 percent from the Yucatan subpopulation, and 2 percent from other rookeries. Tissue samples for genetic analysis have been collected from loggerhead sea turtles captured in the scallop dredge fishery. However, the results of the testing are still pending.

The distribution of loggerhead sea turtles overlaps seasonally with the distribution of scallop fishing effort from the southern boundary of the management area from approximately the North Carolina/South Carolina border to Cape Cod, Massachusetts. Hard-shelled turtles have been injured and killed as a result of being captured in sea scallop dredge gear. Of the 62 turtles observed taken in the scallop dredge fishery, excluding the experimental fishery, 43 were positively identified as loggerhead sea turtles. The remaining animals were hard-shelled turtles that could not be positively identified. All loggerhead sea turtles are still listed as threatened under the ESA as populations have not yet recovered. Reducing sea turtle mortality will help subpopulations to recover. NMFS must protect and conserve loggerhead sea turtle populations under the ESA.

Experimental Testing of Modified Dredge

In response to the increase in observed takes, NMFS worked with the scallop fishing industry and Virginia Institute of Marine Science to investigate the use of a modified sea scallop dredge to keep sea turtles from being captured in the dredge bag. The modified dredge uses a chain mat configuration consisting of evenly spaced ''tickler'' (horizontal) and ''vertical'' (up and down) chains hung forward of the sweep, between the cutting bar and the sweep. This is a modified rock chain arrangement constructed of lighter, but stronger chain (DuPaul et al. 2004a).

Preliminary trials of the chain mat gear were conducted in 2002, and an experimental fishery to test the gear was conducted from July 17, 2003 – October 9, 2004. Trained observers were not present during the preliminary trials. During the preliminary trials, side-by-side testing of the gear was performed; in each tow, only one of the vessel's two dredges was modified with the chain mat. In these preliminary trials, there were two interactions with sea turtles. DuPaul *et al.* (2004a) reported that one turtle was taken in the unmodified dredge and the other turtle was ''hanging onto the chain mat'' and subsequently swam away. No further information on the two takes was available.

Twelve different vessels participated in the 2003–2004 field evaluations of the chain mats. In each tow, the vessels fished with two sea scallop dredges, one unmodified on one side of the vessel and the other modified with the chain mat on the other side of the vessel. The trials were performed with dredges measuring between 11 and 15 ft (3.35 – 4.57 m) wide. For 14 ft (4.27 m) and 15 ft (4.57 m) dredges, 11 vertical and 6 horizontal chains were used; for smaller dredges, 9 verticals were used (DuPaul et al. 2004a). Evenly spaced on a normal sweep arrangement, this should give about a 12–inch (30.5–cm) to 13–inch (33.0–cm) square pattern.

In total, side-by-side testing was conducted on 22 fishing trips, encompassing 277 fishing days and 3,248 tows (of which 2,823 tows were observed). A total of eight turtle interactions occurred (six of which were observed), all with the unmodified scallop dredge. Of the eight sea turtles caught, three were alive with no apparent injuries, three were alive released with injuries, one was killed when the dredge frame fell on the turtle, and one was killed prior to coming aboard. The six observed interactions were with loggerhead sea turtles. One of the unobserved interactions was reported by the fisherman as a loggerhead sea turtle. The second unobserved interaction was reported by the fisherman as a leatherback. NEFSC's general protocol for confirmation of at-sea species identification requires that the species be considered as unknown unless either the observer is experienced in sea turtle identification and has confidence in the identification, or the observer is inexperienced and has provided supporting information (i.e. photos, tissue samples). For both of

these unobserved takes, NMFS is considering the species identification to be ''unknown turtle spp.'' As far as NMFS is aware, the fishermen reporting the take of the leatherback and the take of the loggerhead have not been trained nor are they experienced in identifying sea turtle species. No supporting materials, such as photos or tissue samples, have been provided. Therefore, based on the confirmation protocol for at-sea species identification, NMFS considers the species identification of these takes to be ''unknown turtle spp.''

With respect to the catch of sea scallops, the modified chain mat dredge caught 6.71 percent less scallops than the unmodified dredge (DuPaul et al. 2004a). DuPaul et al. (2004a) concluded that the chain mats can be effective in eliminating the incidence of sea turtle bycatch in the dredge without substantial reductions in the harvest of sea scallops.

Petition Request for Chain Mat Configuration

On June 17, 2004, NMFS received a petition from the Fisheries Survival Fund and the Garden State Seafood Association requesting that NMFS promulgate an emergency rule pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that would require scallop dredges to be modified with additional chains as in the experimental fishery and scallop trawls to be modified by installation of a Turtle Excluder Device when fishing south of Long Island, New York and north of Cape Hatteras, North Carolina during the period May 1 - October 15 each year. On July 7, 2004, NMFS published a Notice of Receipt of the petition in the **Federal Register** and invited public comment for 30 days (69 FR 40850). NMFS published a response to the petition in the **Federal Register** on November 2, 2004 (69 FR 63498), announcing that it would not undertake an emergency rulemaking as requested by the petitioners because the circumstances outlined in the Petition did not justify an immediate need for a Magnuson-Stevens Act emergency rule and that the Magnuson-Stevens Act is not the appropriate authority for adequately addressing the incidental capture of sea turtles in scallop fishing gear (69 FR 63498). However, as described in the Notice of Decision on Petition for Emergency Rulemaking, NMFS indicated it would conduct rulemaking under the authority of the ESA to enact measures to address incidental sea turtle takes in the Atlantic sea scallop fishery (69 FR 63498).

Interaction of Dredge Gear with Sea Turtles

Risks to sea turtles from capture in dredge gear include forced submergence and injury. Sea turtles forcibly submerged in any type of restrictive gear would eventually suffer fatal consequences from prolonged anoxia and/or seawater infiltration of the lung (Lutcavage *et al.* 1997). Sea turtles caught in scallop dredge gear often suffer injuries. The most commonly observed injury is damage to the carapace. The causes of these injuries are unknown, but the most likely appear to be from being struck by the dredge (during a tow or upon emptying of the dredge bag), crushed by debris (*e.g.*, large rocks) that collects in the dredge bag, or as a result of a fall during hauling of the dredge. Under typical fishing operations, the dredge is hauled to the surface, lifted above the deck of the vessel and emptied by turning the bag over. Under such conditions, a turtle caught in the bag would fall many feet to the deck of the vessel and could suffer cracks to the carapace as a result of the fall. After the bag is dumped, the dredge frame is often dropped on top of it with the cutting bar, located on the bottom aft part of the frame, also constituting a crushing weight. Thus, dumping of the catch and the sudden lowering of the gear onto the deck are actions during which turtles could be injured. As the modified dredge will reduce the likelihood of sea turtle capture in the dredge bag, carapace injuries sustained while the turtle is in the dredge or brought on board the vessel will be reduced with use of the chain mat configuration. Additionally, the possibility that sea turtles will be forcibly submerged due to capture in the dredge bag will be sharply reduced.

The NEFSC estimated, in the 2003 fishing year, there were 749 sea turtles taken in the mid-Atlantic sea scallop fishery. According to the December 15, 2004 biological opinion, the agency anticipates that up to 749 sea turtles will be taken each year without the chain mat configuration in place, and up to 479 of these (approximately 64 percent) are expected to sustain injuries leading to death or failure to reproduce. With the chain mat installed over the opening of the dredge bag, it is reasonable to assume that up to 749 sea turtles will come into contact with the chain mat (at least). Data do not exist on the percentage of sea turtles interacting with the chain mat-modified gear that will be unharmed, sustain minor injuries, or sustain serious injuries that will result in death or failure to reproduce. However, there are several assumptions that can be made to help estimate the degree of interaction. The first assumption is that sea turtles likely interact with scallop dredge gear both on the sea floor as the gear is being fished and in the water column as the gear is hauled back to the vessel. This is a reasonable assumption, because sea turtles have been observed in the area in which scallop gear operates and they have been seen near scallop vessels when they are fishing or hauling gear. In addition, sea turtles generally are known to forage and rest on the sea floor as part of their normal behavior.

The second assumption relates to the apportionment of the seriousness of the interaction between sea turtles and the modified gear. For this, we start with the assumption that up to 749 sea turtles will still interact with the chain mat-modified gear, and the estimate that up to 479 sea turtles will be seriously injured/killed and 270 will be unharmed/slightly injured without the chain mat. There are two scenarios in which sea turtles may sustain serious injuries that lead to death or the failure to reproduce interactions on the sea floor or interactions in the water column.

With the chain mat in place, it is reasonable to assume that the sea turtles on the sea floor would still interact with the gear, but that the nature of the interaction would be different. NMFS assumes that some portion of the 479 seriously injured sea turtles are taken on the bottom. The precise number, however, cannot be quantified. As the dredge is fished on the bottom, sea turtles may be passed over with the dredge frame and cutting bar, which weigh thousands of pounds. Without the chain mat modification, the sea turtle may be swept into the dredge bag, forcibly submerged for the remainder of the tow, and will be at risk of further injury due to being tumbled around or hit by debris inside the bag or being crushed when the catch is dumped on the vessel's deck. With the modified gear, the sea turtles may still be hit by the leading edge of the frame and cutting bar and would likely be forced down to the sea floor rather then swept into the dredge bag. Since the turtles are not swept into the bag, they would be run over by the aft portion of the dredge including the bag which constitutes a crushing weight. As a result, sea turtles on the bottom that interact with the modified dredge would probably fare just as poorly as those that interact with the unmodified dredge. Given the nature of the bottom interaction without the chain mat, it is reasonable to assume that the same portion of the 479 sea turtles interacting with the gear on the

bottom would still experience serious injuries that lead to mortality or failure to reproduce with the chain mat in place as without it.

NMFS assumes that the remaining portion of the 479 seriously injured sea turtles are taken in the water column. Again, the precise number cannot be quantified. Any injuries due to an interaction in the water column during haul back with the chain mat-modified gear are likely to be non-serious. The chain mat would prevent serious injuries, since the turtles would not be able to get into the dredge bag; therefore, they would not be dumped on the deck from height or crushed by falling gear. Once off the bottom, the gear is hauled back through the water column at a slow speed (1 to 4 miles per hour (1.6–6.5 km/hr)), so NMFS assumes that any turtle hitting the chain mat in the water column would not be hit with great force and would likely be able to swim away without serious injury. During the preliminary trials of the chain mat configuration, one turtle was observed ''hanging onto'' the chain mat, perhaps held by water pressure, and subsequently swimming away. NMFS has no indication that this interaction, or this type of interaction, would result in serious injury. NMFS' assumption about this type of interaction is that the animal is being held against the gear by water pressure as the gear moves through the water during haul back. The vessel often continues to move forward as the gear is hauled. Once the gear stops moving and the pressure is relieved, the animal would be able to swim away without serious injury. Therefore, NMFS assumes that the portion of the 479 sea turtles taken in the water column are unlikely to be seriously injured. NMFS also assumes that the 270 unharmed/slightly injured sea turtles are taken in the water column and that serious injury to these turtles caused by the chain mat is unlikely for the reasons listed above.

In summary, the chain mat can logically be assumed to prevent serious injury leading to death or failure to reproduce caused by the dumping of turtles on the vessel's deck and crushing them by the falling gear following an interaction in the water column interaction. The chain mat would also prevent serious injuries from dumping/crushing on deck of sea turtles following an interaction on the sea floor. However, we have made the conservative assumption that a turtle in a bottom interaction sustains serious injuries on the bottom, so, under this conservative assumption, there would not be a benefit from the chain mat for bottom interactions. This assumption, however, may be too conservative in that it is possible that turtles in a bottom interaction only receive minor injuries.

NMFS recognizes that the specific nature of the interaction between sea turtles and sea scallop dredge gear remains unknown, as sea turtles could be taken when the dredge is fished on the bottom or during haul back and NMFS cannot conclude that the modified dredge eliminates interactions with sea turtles. The chain mat sharply reduces the capture of sea turtles in the dredge bag and, therefore, sharply reduces drowning and serious injuries that result from such capture. NMFS does not know how sea scallop dredge gear (with or without the modification) may interact with sea turtles on the ocean bottom. DuPaul *et al.* (2004a) report that sea turtles have been hauled up on top of the gear, either on the frame or near the twine top. Many were seen to swim away when the gear reached the vessel. Sea turtles may have been prevented from escaping by either being wedged in the forward parts of the dredge frame or held by the flow of water against the dredge. These interactions would occur regardless of whether the dredge is modified with the proposed chain mat or not. Further testing is necessary to determine what effects the entire gear, including the chain mat modification, has on sea turtles, aside from the positive effect of the chain mat of reducing injury or mortality of sea turtles by keeping them out of the dredge bag. Video work is being conducted to provide more information on the interactions between sea turtles and sea scallop dredge gear in the water. This action does not preclude NMFS from taking further regulatory action as new information becomes available.

Modification of Sea Scallop Dredge Gear

To conserve sea turtles, NMFS proposes that all vessels required to have a Federal Atlantic sea scallop fishery permit and using Atlantic sea scallop dredge gear, regardless of dredge size or vessel permit category, be required to modify their dredge(s) when fishing south of 41° 9.0′ N. lat., from the shoreline to the outer boundary of the Exclusive Economic Zone, from May 1 through November 30 each year. All dredges used for fishing must be modified with evenly spaced ''tickler'' (horizontal) chains and ''vertical'' (up-and-down) chains in the following configuration, which is dependent on the size of the dredge frame width. Dredges with a frame width of greater than 13 ft (3.96 m) would be required to use 11 vertical and 6 tickler chains; dredges with a frame width of 11 to 13 ft (3.35 to 3.96 m) would be required to use 9 vertical and 5 tickler chains; dredges with a frame width of 10 ft (3.05 m) to less than 11 ft (3.35 m) would be required to use 7 vertical and 4 tickler chains; and dredges with a frame width of less than 10 ft (3.05 m) would be required to use 5 vertical and 3 tickler chains. If a vessel elects to use a different configuration, the length of each side of the squares formed by the chain must be less than or equal to 14 inches (35.5 cm).

Interactions have been observed in the sea scallop fishery from New Jersey south through the Virginia/North Carolina border from late June to late October and the potential for interactions exists during May and November due to the overlap in distribution of loggerhead sea turtles and dredge fishing effort in the southern range of the fishery (Shoop and Kenney 1992; Braun-McNeill and Epperly 2004). Implementation of the proposed gear restrictions from May through November is expected to increase protection of sea turtles. The scallop management area defined in the FMP consists of the resource throughout its range in waters under the jurisdiction of the U.S. NMFS does not anticipate any fishing south of Cape Hatteras, North Carolina due to a lack of scallop resources. Thus, the timing of these proposed measures are based on Cape Hatteras as the lower boundary. Should scallop fishing occur south of this boundary or if observer records indicate interactions north of Long Island, New York, NMFS may reconsider the timing and area of the conservation measures.

Spatial Extent of the Proposed Action

As described above the proposed rule would require the use of the chain mat on sea scallop dredge vessels when fishing south of 41° 9.0′ N. latitude, from the shoreline to the outer boundary of the EEZ. While NMFS is proposing using the 200–nautical mile limit of the EEZ as the eastern boundary for the gear modification, NMFS is considering replacing the eastern EEZ boundary with a north-south (longitudinal) line so as to separate the Mid-Atlantic sea scallop fishing area from the Southern New England sea scallop fishing area. NMFS is considering an eastern boundary at 70° 20′ W. long. (the western edge of the Nantucket Lightship Closed Area) as well as any options proposed during the public comment period. NMFS has analyzed the physical, biological, and socio-economic impacts that this proposed rule would have based on the outer boundary of the EEZ as the eastern boundary. If the EEZ

boundary is replaced with this longitudinal line, the geographic area in which the chain mat configuration would be required would be smaller than the area of the proposed action. Any impacts to habitat or the physical environment resulting from the modification are expected to be less than the impacts of the proposed action as a smaller geographic area would impacted. The proposed action is not considered to have a significant economic impact on the industry. Economic impacts are likely to be reduced even further if the EEZ boundary is replaced with a longitudinal line to the west of that boundary as fewer vessels are likely to be required to use the chain mat configuration. The benefit to the sea turtle population is not expected to change if the EEZ boundary is replaced with this longitudinal line as sea turtles are not expected to interact with sea scallop dredge gear in the southern New England sea scallop fishing area. Although hard-shelled sea turtles do occur seasonally in New England waters (roughly June-October) turtles are generally observed in inshore waters (i.e., bays and estuaries) where the scallop fishery does not operate. Relatively high levels of observer coverage (22 percent - 51 percent) occurred in portions of the Georges Bank Multispecies Closed Areas that were conditionally opened to scallop fishing in the 1999 and 2000 scallop fishing years. Despite this high level of observer coverage and operation of scallop dredge vessels in the area during June - October, no sea turtles were observed captured in scallop dredge gear. In general, replacing the EEZ boundary with the proposed longitudinal line will result in the same benefit to sea turtles as the proposed action, while impacts to the physical environment and habitat, as well as social and economic effects, are likely to be reduced.

Classification

The proposed rule has been determined to be significant by the Office of Management and Budget for the purposes of Executive Order 12866.

NMFS has prepared an initial regulatory flexibility analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. No reporting, record keeping, or other compliance requirements are proposed. A summary of the analysis follows:

The fishery affected by this proposed rule is the mid-Atlantic sea scallop dredge fishery. The proposed action requires all vessels, regardless of dredge size or vessel permit category, to modify their dredge gear from May 1 through November 30 when fishing south of 41° 9.0′ N. lat., from the shoreline to outer boundary of the Exclusive Economic Zone. The proposed gear modification is fairly inexpensive (between $177.37 and $778.44 per vessel). Therefore, NMFS assumes that a vessel will convert their gear and continue fishing in the area. According to Vessel Trip Report (VTR) Data for 2003, 314 vessels fished in the mid-Atlantic from May 1 through November 30. Of these, 277 were limited access vessels and 37 were general category vessels. In 2003, the 314 affected vessels earned approximately 221.4 million dollars in revenues using a total of 40,888 days at sea. The 277 limited access vessels earned approximately 98 percent of the total industry revenues and 95 percent of the industry revenues were earned using scallop dredge gear. On average, limited access vessels earned between $441,800 and $895,100 per year and general category vessels earned between $46,700 and $162,000 per year.

Using the materials recommended in DuPaul *et al.* (2004a) and average costs for labor, the cost for modifying a scallop dredge ranges from a $177.37 for a dredge less than 10 ft (3.05 m) to $389.22 for a dredge greater than 13 ft (3.96 m). The second cost to the industry is the loss of catch with the modified dredge. During the 2003–2004 field trials, the modified dredge caught, on average, 6.71 percent less scallops than the unmodified dredge (DuPaul *et al.* 2004a). This is slightly less than the loss of 6.76 percent reported in the draft final report on the experiment (DuPaul *et al.* 2004b). The economic analysis assumed a loss of 6.76 percent. If fishermen do not increase their effort to offset this loss, they will experience a reduction in revenues. Assuming that the fishermen do not minimize this loss by increasing effort, revenue for a limited access vessel may be reduced between a low of $18,800 to a high of $38,700; while revenue for a general category vessel may be reduced between $1,300 and $5,600. The total impact of the cost to modify the gear and loss of revenue due to reduction in catch may reduce a vessel's annual revenues on average between 3 percent and 7.8 percent.

Of the 314 affected vessels, 193 vessels may have their revenues reduced by 5 percent or less, 116 vessels may have their revenues reduced between 5 and 10 percent, and 5 vessels may have their revenues reduced by greater than 10 percent. Of the 121 vessels that may have revenue reductions exceeding 5 percent, 27, 29, 29, and 22 of the vessels are registered to the state of Massachusetts, New Jersey, Virginia, and North Carolina, respectively. Annual industry revenues would be reduced by 4.3 percent (=$9.6 million/$221.4 million).

Five alternatives were evaluated: (1) The preferred alternative (PA) is to require the chain mat modification on all vessels with a Federal Atlantic sea scallop fishery permit and a sea scallop dredge, regardless of dredge size or vessel permit category, when fishing south of 41° 9.0′ N latitude, from the shoreline to the outer boundary of the EEZ from May 1 through November 30 each year ; (2) non-preferred alternative 1 (NPA 1) is exactly the same as the PA; however, the gear modifications are only required from May 1 through October 15; (3) non-preferred alternative 2 (NPA 2) is exactly the same as the PA; however, the gear modification is only required for vessels that have dredge frames greater than 11 ft (3.35 m) wide; (4) non-preferred alternative 3 (NPA 3) prohibits the use of all sea scallop dredge gear south of 41° 9.0′ N. lat. from May 1 through November 30; and (5) the no-action alternative. All business entities participating in the sea scallop dredge fisheries are considered small business entities. Under the no action alternative, fishing practices would not be restricted or modified; therefore, there is no economic impact on the individual or industry. The reduction in annual revenues per vessel is expected to range from 3.0 to 7.8 percent for the PA, 3.0 to 7.6 percent for NPA 1, 4.4 to 4.5 percent for NPA 2 and 31.8 to 65.2 percent for NPA 3. NPA 3 has the greatest economic impact and all 314 affected vessels can expect revenue reductions greater than 5 percent. The PA has the next lowest economic impact (121 vessels with annual revenue reductions greater than 5 percent), followed by NPA 1 (54 vessels), and NPA 2 with the lowest economic impact (35 vessels). The PA, NPA 1, and NPA 2 could be considered to have similar economic impacts since the differential is so small. Under the PA, 314 vessels are affected and industry revenues are reduced by 4.3 percent. Under NPA 1 and NPA 3, 314 vessels are affected, and industry revenues are reduced by 3.7 percent and 63.6 percent, respectively. Under NPA 2, 234 vessels are affected and industry revenues are reduced by 3.9 percent. In summary, NPA 3 has the

highest cost to the industry, the PA ranks second in industry cost, and NPA 1 and NPA 2 rank third and fourth, respectively, in industry cost.

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List of Subjects

50 CFR Part 222

Endangered and threatened species, Exports, Reporting and Recordkeeping requirements.

50 CFR Part 223

Endangered and threatened species, Exports, Transportation.

Dated: May 23, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 222 is 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.*; 31 U.S.C. 9701.

2. In § 222.102, the definition of ''Chain mat'' and ''Dredge or dredge gear'' are added in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Chain mat means a device designed to be installed in a scallop dredge forward of the sweep, as described in 50 CFR 223.206, for the purpose of excluding sea turtles from the dredge.

* * * * *

Dredge or dredge gear, with respect to the fishery operating under the Atlantic Sea Scallop Fishery Management Plan, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of scallops.

* * * * *

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

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In § 223.205, paragraph (b)(16) is redesignated as (b)(17); paragraph (b)(15) is revised and new paragraph (b)(16) is added to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(15) Fail to comply with the restrictions set forth in § 223.206(d)(10) regarding pound net leaders;

(16) Fail to comply with the restrictions set forth in § 223.206(d)(11) regarding sea scallop dredges; or

* * * * *

3. In § 223.206, paragraph (d) introductory text is revised and paragraph (d)(11) is added to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(d) *Exception for incidental taking.* The prohibitions against taking in § 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed towards such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(11) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

* * * * *

(11) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*— (i) Gear Modification. During the time period of May 1 through November 30, any vessel with a sea scallop dredge and which is required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, present in waters south of 41° 9.0′ N. lat., from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of ''tickler'' (horizontal) chains and ''vertical'' chains that are evenly spaced and configured in the following manner

dependent on the dredge width: Dredges with a frame width of greater than 13 ft (3.96 m) must use 11 vertical and 6 tickler chains; dredges with a frame width of 11 ft to 13 ft (3.35–3.96 m) must use 9 vertical and 5 tickler chains; dredges with a frame width of 10 ft (3.05 m) to less than 11 ft (3.35 m) must use 7 vertical and 4 tickler chains; dredges with a frame width of less than 10 ft must use 5 vertical and 3 tickler chains. The tickler and vertical chains must be connected to each other with a shackle or link at the intersection point. If a vessel elects to use a different configuration, the length of each side of the square or rectangle formed by the intersecting chains must be less than or equal to 14 inches (35.5 cm). The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

(ii) Any vessel that harvests sea scallops in or from the waters described in (d)(11)(i) must have the chain mat configuration installed on all dredges for the duration of the trip.

[FR Doc. 05–10670 Filed 5–26–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050314071–5071–01; I.D. 030105E]

RIN 0648–AS16

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 6

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would require an owner or operator of a trawler that harvests or possesses brown, pink, or white shrimp (penaeid shrimp) in or from the exclusive economic zone (EEZ) off the southern Atlantic states to obtain a commercial vessel permit for South Atlantic penaeid shrimp; require an owner or operator of a vessel in the South Atlantic rock shrimp or penaeid shrimp fishery to submit catch and effort reports and to carry an observer on selected trips; and require bycatch reduction devices (BRDs) in nets in the rock shrimp fishery. Amendment 6 also proposes to establish stock status determination criteria for South Atlantic penaeid shrimp; revise the specifications of maximum sustainable yield (MSY) and optimum yield (OY) for South Atlantic rock shrimp; revise the stock status determination criteria for South Atlantic rock shrimp; revise the bycatch reduction criterion for the certification of BRDs; and transfer from the Council to the Regional Administrator, Southeast Region, NMFS (RA), responsibilities for the specification of the protocol for testing BRDs. Finally, NMFS proposes to remove provisions of the regulations applicable to other fisheries off the southern Atlantic states that are no longer applicable and to make minor corrections. The intended effects of this rule are to provide additional information for, and improve the effective management of, the shrimp fisheries off the southern Atlantic states and to correct and clarify the regulations applicable to other southern Atlantic fisheries.

DATES: Written comments on this proposed rule must be received no later than 5 p.m., eastern time, on July 11, 2005.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

• E-mail: *0648–AS16.Proposed@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AS16.

• Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

• Fax: 727–824–5308.

Copies of Amendment 6, which includes a Final Supplemental Environmental Impact Statement (FSEIS), an Initial Regulatory Flexibility Analysis (IRFA), a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement, may be obtained from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: 843–571–4366 or 866–SAFMC–10 (toll free); fax: 843–769–4520; e-mail: *safmc@safmc.net*.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Beverly Smith at the Southeast Regional Office address (above) and to David Rostker, OMB, by e-mail at *David__Rosker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–570–5796; fax: 727–570–5583; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The shrimp fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. NMFS issues this proposed rule to implement Amendment 6 to the FMP.

Amendment 6

Penaeid Shrimp Permits

For a person aboard a trawler to fish for penaeid shrimp in the South Atlantic EEZ or possess penaeid shrimp in or from the South Atlantic EEZ, this rule would require that a valid commercial vessel permit for South Atlantic penaeid shrimp be issued to the vessel and be on board.

An owner of a vessel who desires a commercial vessel permit would be required to obtain a permit application form from and submit it to the RA. Information on the application form would consist of the standard information and documentation required for commercial vessel permits issued by the RA, as specified at 50 CFR 622.4(b)(3). There would be no earned income or landing requirements for these permits. Penaeid shrimp permits would be required in the fishery 120 days after the final rule containing the requirement for permits is published. This time period is considered adequate for vessel owners currently in the fishery to obtain, complete, and submit applications and for the RA to process the applications and issue permits.

As specified at 50 CFR 622.4(d), a fee would be charged for each application for a permit or written request for replacement or transfer of a permit. The applicable fee would be specified on the appropriate form.