

available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR part 67**

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

**PART 67—[AMENDED]**

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ◆Elevation in feet (NAVD) modified
AR .....	Cherokee Village (City) Sharp and Fulton Counties (FEMA Docket No. P7627).	Big Otter Creek .....	At confluence with South Fork Spring River.	*386
			Approximately 0.25 miles downstream of the primary Spillway of Lake Thunderbird.	*393
		Big Otter Creek Tributary .....	Approximately 74.0 feet upstream of confluence with Big Otter Creek.	*485
			Approximately 400 feet downstream of the dam at Lake Navajo.	*561
		Little Otter Creek .....	Approximately 0.8 mile upstream of the primary spillway of Lake Sequoyah.	*484
			Approximately 600 feet upstream of Lakeshore Drive.	*493
		Short Draft Branch .....	Approximately 1.7 miles upstream of South Fork Spring River.	*509
			Approximately 0.1 mile downstream of the primary spillway of Lake Chanute.	*516
	South Fork Spring River .....	Just downstream of Griffin Road .....	*371	
		Approximately 5700 feet upstream of Cherokee Road.	*410	

Maps are available for inspection at the City of Cherokee Village, 2 Santee Drive, Cherokee Village, Arkansas.

Dated: December 9, 2003.  
(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

**Anthony S. Lowe,**  
*Mitigation Division Director, Emergency Preparedness and Response Directorate.*  
[FR Doc. 03-30992 Filed 12-15-03; 8:45 am]  
BILLING CODE 6718-04-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 223**

[Docket 020626160-3217-04; I.D. 070203F]

RIN 0648-AQ13

**Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule and technical correction.

**SUMMARY:** NMFS is issuing a final rule to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California in waters east of the 120°W., for the months of June, July, and August, when the Assistant Administrator for Fisheries (AA) publishes a notice that El Nino conditions are forecasted or present off southern California. NMFS

has determined that the incidental take of loggerhead sea turtles by this fishery correlates to the area and season being fished during these oceanographic conditions. If implemented, this time and area closure will result in a reduction in the take of loggerhead turtles by the fishery and would be necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead turtle population.

**DATES:** This final rule is effective January 15, 2004.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) and biological opinion (BO) are available on the internet at <http://swr.nmfs.noaa.gov> or may be obtained from Cathy Campbell, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Cathy Campbell, NMFS, Southwest Region, Protected Resources Division, (562) 980-4060.

**SUPPLEMENTARY INFORMATION:** All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). The loggerhead turtle (*Caretta caretta*) is listed as threatened. Under the ESA and its implementing regulations (50 CFR 223.205), taking threatened sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of threatened species may only be legally authorized by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA. In order for an incidental take statement to be issued, the incidental take must be not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

On October 24, 2000 (65 FR 64670, October 30, 2000), NMFS issued a permit, for a period of 3 years, to authorize the incidental, but not intentional, taking of four stocks of threatened or endangered marine mammals (Fin whale, California/Oregon/Washington stock; Humpback whale, California/Oregon/Washington-Mexico stock; Steller sea lion, eastern stock; and Sperm whale, California/Oregon/Washington stock) by the CA/OR drift gillnet fishery under section 101(a)(5)(E) of the Marine Mammal

Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(E)).

NMFS completed a formal consultation to authorize this incidental take of marine mammals listed under the ESA, as required by section 7 of the ESA. This consultation also included an analysis of the effects of the CA/OR drift gillnet fishery on loggerhead turtles. On October 23, 2000, NMFS issued a BO in which it determined that the then current operations of the CA/OR drift gillnet fishery were likely to jeopardize the continued existence of loggerhead turtles.

#### **Measure to Reduce Loggerhead Turtle Entanglements**

To avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of loggerhead turtles, NMFS developed a Reasonable and Prudent Alternative (RPA) in the BO that consists of prohibiting CA/OR drift gillnet vessels from fishing in U.S. waters off southern California east of the 120°W. (in the area bounded by the California coastline to the north and east, the U.S.- Mexico border to the south, and the 120° W to the west), from August 15 through August 31, and January 1 through January 31, during a forecasted, or occurring, El Nino event. This measure would reduce the likelihood of the CA/OR drift gillnet fishery incidentally entangling loggerhead turtles by 71 percent. On September 20, 2002, NMFS published a proposed rule (67 FR 59243) to implement this RPA to protect loggerhead turtles. On December 24, 2002, NMFS published an interim final rule (67 FR 78388) that implemented the RPA to protect loggerhead turtles and solicited public comment on an alternative closure during the months of June, July, and August. In response to a request from the public to provide more time to review the loggerhead turtle entanglement data and the sea surface temperature data, NMFS extended the comment period from February 7, 2003, to March 24, 2003 (68 FR 7080, February 12, 2003).

#### **Responses to Comments**

The measures in this final rule are based in part on comments received on the proposed (see 67 FR 78388 December 24, 2002, for comments and responses) and interim final rules. NMFS received ten comments on the interim final rule. NMFS reviewed and considered all comments received in the development of this rule.

*Comment 1:* Several commenters believe that the CA/OR thresher shark/swordfish drift gillnet fishery, which has a very low take of loggerhead

turtles, is not the cause of the decline in the population of loggerhead sea turtles and that closures in this fishery are not necessary.

*Response:* While NMFS recognizes that the CA/OR thresher shark/swordfish drift gillnet fishery has a low level of take of loggerhead turtles, the status of the loggerhead turtle population is sufficiently depleted that the impact of this fishery in addition to existing impacts resulted in a finding that the current operations of the CA/OR drift gillnet fishery were likely to jeopardize the continued existence of loggerhead turtles.

*Comment 2:* Several commenters supported a closure during June through August rather than in January and August 15 through 31 during El Nino conditions. They noted that the closure in June through August provided greater protection to loggerhead turtles than the RPA in the October 2000 BO, while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

*Response:* NMFS agrees and is implementing an alternate closure during the months of June, July, and August during El Nino conditions. As explained in the following section, NMFS conducted an analysis of observer data and recent fishing effort data and determined that a closure during June, July, and August during El Nino conditions provides greater protection for loggerhead turtles than the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

*Comment 3:* One commenter suggested moving the northern boundary of the closed area south to 32°45'N. and the western boundary east to 119°30'W because there have been no loggerhead turtles observed taken outside this area.

*Response:* Although there have been no observed loggerhead turtles taken in ocean waters north of 32°45'N. during El Nino events or west of 119°30'W., this does not mean that loggerhead turtles are not present in this area. During El Nino events, NMFS has limited observer data for this area, with only 77 observed sets in the area east of 120°W. and north of 32°45'N. and 14 sets between 120°W. and 119°30'W. south of 32°45'N. Therefore, the lack of an observed take in this area may be the result of fewer observations in this area during the summer months of El Nino events. Sea surface temperatures show that the area east of the 120°W during El Nino conditions are comparable to the sea surface temperatures where loggerhead turtle entanglements were observed. In

addition, NMFS has received reports of strandings of loggerhead turtles and sightings of unidentified hard shell turtles in the area north of 32°45'N. during El Nino events. Sea surface temperature and stranding data indicate that loggerhead turtles are likely to be present in the area west of the 119°30'W. and north of 32°45'N. and that a closure in this area is warranted.

*Comment 4:* One commenter opposed any closure during the months of January or August.

*Response:* Under this final rule, NMFS will not be implementing a closure during January; however, NMFS will be implementing a closure in August during El Nino conditions, as a closure during August is essential to providing adequate protection to loggerhead turtles. As discussed in the response to Comment 2, NMFS is implementing a closure during June, July, and August in order to provide greater protection for loggerhead turtles than the level specified in the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

*Comment 5:* One commenter noted that oceanographic conditions at Point Conception were not comparable with the areas in which the most northerly loggerhead turtle entanglement was observed (32°45'N) and that, therefore, the most northerly boundary of the closure should be 33°00'N, rather than the coast of California east of 120°W (which has a northerly boundary of 34°27'N). In addition, the commenter recommended the fishery should only be closed from August 16–31 during El Nino conditions, and should remain open during the month of January.

*Response:* Based on the sea surface temperature charts available on the NOAA Coastwatch West Coast Regional Node web page at <http://coastwatch.pfel.noaa.gov/>, sea surface temperatures in the area east of 120°W during El Nino conditions are comparable to the sea surface temperatures where loggerhead turtle entanglements were observed. NMFS agrees that the sea surface temperatures at Point Conception, which is outside the closure area, are generally lower than those seen in the area in which loggerhead turtle entanglements occurred. As explained in the response

to Comment 3, NMFS believes that a northern boundary of 34°27'N will encompass an area where loggerheads are likely to occur during El Nino events.

NMFS' analysis of observer and fishing effort data shows that a closure during August 16–31 during El Nino conditions would not provide adequate protection to loggerhead turtles as required by the October 2000 BO. The closure (i.e., August 16–31 and January) required by the October 2000 BO is expected to result in the estimated reduction in take of 6 loggerhead turtles during El Nino years. A closure limited to the period of August 16–31 during El Nino years is expected to only result in a reduction in the estimated take of 3 to 4 loggerhead turtles. Thus, NMFS has determined that a closure during August 16–31 during El Nino years will not provide the level of protection required under the October 2000 BO. As discussed in the response to Comment 2, NMFS is implementing a closure during June, July, and August during El Nino conditions in order to provide greater protection to loggerhead turtles than the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

*Comment 6:* One commenter believed that NMFS' use of 3,000 sets as an estimate of annual fishing effort in the October 2000 BO was unrealistically high.

*Response:* At the time the BO was prepared, 3,000 sets was a reasonable estimate to predict future fishing effort based on a 3-year average using 1997, 1998, and 1999 data. NMFS is aware that fishing effort has continued to decline. As discussed in the following section, NMFS used a 3-year average of fishing effort using data from 1999 through 2001 to estimate future fishing effort in order to compare the alternative time/area closures to protect loggerhead turtles.

*Comment 7:* One commenter supported NMFS criteria for determining whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure.

*Response:* NMFS has included these criteria in this final rule.

*Comment 8:* One commenter requested that NMFS continue its observer program at 20 percent coverage and continue its support for ongoing research on the distribution of sea turtles in the Pacific Ocean to determine which habitats and migratory routes these species use.

*Response:* NMFS intends to continue monitoring the CA/OR drift gillnet fishery targeting swordfish and thresher shark at 20 percent observer coverage and to continue its support for research on the distribution of sea turtles in the Pacific to determine which habitats and migratory routes they use.

**Alternative Measure to Reduce Loggerhead Turtles Entanglements**

The Pacific Offshore Cetacean Take Reduction Team recommended that NMFS implement a closure in June, July, and August, rather than during January and August 15 through 31, to reduce entanglement of loggerhead turtles. NMFS outlined this proposal in the interim final rule (67 FR 78388, December 24, 2002) and solicited comments on this alternative. As discussed in the previous section, NMFS received several additional comments on the interim final rule that favored the implementation of this alternative.

In response to these comments, NMFS conducted a review of observer data to determine whether an alternate closure in June, July, and August would offer the same or better protection than the closure during January 1 through 31 and August 15 through 31. The data used for this analysis are summarized in Table 1. NMFS reviewed observer data from the two most recent El Nino events (1992/1993 and 1997/1998) for the number of observed sets and the number of observed entanglements of loggerhead turtles that occurred during the months of January, June, July, and August, and used these data to calculate the average interaction rate for each of the two time periods. Future effort in the fishery for the two time periods was estimated by averaging fishing effort from 1999 through 2001. Using these data, NMFS estimated the number of loggerhead turtle entanglements that are expected to occur during each of the two time periods.

TABLE 1. COMPARISON OF EXPECTED LOGGERHEAD TURTLE ENTANGLEMENTS DURING ALTERNATE CLOSURE PERIODS

Closure Period	Observed Sets	Observed Entanglement	Catch Rate	Expected Average Fishing Effort (number of sets)	Expected Turtle Entanglement
Jun 1 - Aug 31	131	12	0.09	76	7
January + Aug 15–31	387	9	0.02	252	6

As illustrated in Table 1, the loggerhead turtle interaction rate is higher during June, July, and August (0.09 entanglements per set) than during January and August 15 through 31 (0.02 entanglements per set). However, the expected fishing effort, based on the average fishing effort from 1999–2001, is much lower in June, July, and August (76 sets) than during January and August 15 through 31 (252 sets). NMFS estimates that an average of 7 turtles would be taken during June, July, and August during El Nino conditions. By comparison, NMFS estimates that an average of 6 turtles would be taken during January and August 15 through 31. Thus, because of the higher entanglement rate during the June/July/August period, NMFS expects that a closure during this period will provide more protection to loggerhead turtles than a closure during January and August 15–31.

NMFS conducted an analysis to ensure that the June, July, and August closure period would avoid jeopardy for loggerhead turtles. The Incidental Take Statement in the 2000 BO stated that an observed take of 1 loggerhead turtle per El Nino year, extrapolated to an estimated mortality of 2 loggerhead turtles per El Nino year, would avoid jeopardy. NMFS' analysis of the June, July, and August closure period indicated that 6 loggerhead sea turtles would be captured per El Nino year outside of the closure period (e.g., September through May). Assuming that 32 percent of the captured loggerhead turtles would be killed (based on the survival rate of hard-shelled turtles caught by the CA/OR drift gillnet fleet from 1990–2000), NMFS estimated that 2 loggerhead turtles would be killed per El Nino year from September through May. Therefore the incidental mortality of loggerhead turtles that would be expected to occur with implementation of the June, July, and August closure period is consistent with the Incidental Take Statement and avoids jeopardy for loggerhead turtles.

As a result of this analysis, NMFS has concluded that implementation of the alternate closure in June, July, and August complies with the ESA because it provides at least the same level (and is expected to be greater) protection as the RPA identified in the BO.

#### **Criteria for Determining El Nino Conditions**

In order to determine whether El Nino conditions are present for the purposes of implementing this rule, NMFS is using the criteria outlined in the interim final rule (67 FR 78388, December 24, 2002). These criteria are outlined below.

For years in which an El Nino event has been declared by the NOAA Climate Prediction Center, NMFS uses the sea surface temperature anomaly charts available on the NOAA Coastwatch West Coast Regional Node web page at <http://coastwatch.pfel.noaa.gov/> and observer data on loggerhead turtle entanglements to determine whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure identified in the October 2000 BO. NMFS uses the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. "Normal sea surface temperatures" is the average of the monthly mean sea surface temperatures for 1950–97.

All loggerhead turtles observed entangled in the CA/OR drift gillnet fishery during El Nino events were entangled during months in which the sea surface temperatures ranged from approximately 60°F to 72°F (15.6°C to 22.2°C) and sea surface temperatures differed from the average by approximately 0°F to +4°F (0°C to +2.2°C). The sea surface temperature during the month preceding each observed loggerhead entanglement was either greater than normal or equal to the normal sea surface temperature. The sea surface temperature during the third month and second month prior to each entanglement during an El Nino event was always greater than the normal sea surface temperature for that month. NMFS believes this is because warmer sea surface temperatures are necessary for loggerhead turtles to move into the area. There have been no observed entanglements in this fishery in which any one of the preceding 3 months were colder than normal.

Based on this information, the need to allow sufficient lead time to publish a notice in the **Federal Register** announcing El Nino conditions prior to the start date of the closure, and the fact that the sea surface temperature charts for a recently completed given month are not available until the following month, NMFS is using sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. Thus, for years in which an El Nino event has been declared by the NOAA Climate Prediction Center, NMFS will evaluate sea surface temperatures for March and April to

determine whether El Nino conditions in June will trigger a closure to conserve loggerhead turtles. Specifically, if an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2-month time period are greater than normal, NMFS will publish a **Federal Register** notice with the determination that El Nino conditions are forecast off of southern California for the purpose of implementing the time and area closure to protect loggerhead turtles. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice announcing that El Nino conditions are no longer present for purposes of implementing the closure.

Although the process for determining whether El Nino conditions are present for the purposes of implementing this rule was not set forth in the regulatory text of the interim final rule, it was outlined in the preamble to the interim final and comments were solicited on these criteria. NMFS has decided to make these criteria permanent by including them in the regulatory text of this final rule.

#### **El Nino Determination for Summer 2003**

NMFS has determined that El Nino conditions were neither forecasted nor present off southern California for purposes of implementing the time and area closure for June, July, and August 2003. This determination was based on the March, April, May, and June monthly sea surface temperature anomaly charts as well as actual sea surface temperatures. Based on the criteria outlined above, sea surface temperatures in both the third and second months prior to the closure would need to be warmer than normal in order to trigger the implementation of the closure. Sea surface temperature anomaly charts for March, May, and June 2003 show ocean waters off southern California to be normal to 0.9°F (0.5°C) cooler than normal. Thus, the U.S. waters off southern California, east to 120°W remained open to drift gillnet fishing in June, July, and August 2003.

#### **El Nino Determination for Winter 2004**

NMFS has determined that El Nino conditions are neither forecasted nor present off southern California for purposes of implementing a January 2004, time and area closure pursuant to

the December 24, 2002, Interim Final Rule (67 FR 78388). The October 2003 sea surface temperature anomaly chart indicates that sea surface temperatures off of southern California appear to be mostly normal with a narrow band of warmer than normal water (0.9°F (0.5°C) to 2.7°F (1.5°C)) near shore off of San Diego and extending down into Mexico along Baja California. Based on these sea surface temperatures, and sea surface temperature profiles during previous years in which there were observed loggerhead sea turtle captures during the month of January by the CA/OR drift gillnet fishery, the current oceanographic conditions along southern California do not appear to indicate that El Nino conditions are present, and therefore U.S. waters off southern California, east to 120°W remain open to drift gillnet fishing in January 2004. NMFS will continue to monitor El Nino conditions and accordingly determine whether to implement any future closures.

#### Technical Correction

In this final rule, NMFS is adding regulatory text to § 223.206(d)(6)(i) that establishes a Leatherback Conservation Area. That regulatory text was originally implemented through an August 24, 2001 (66 FR 44549) interim final rule but was inadvertently deleted from the Code of Federal Regulations because of faulty regulatory instructions in the December 2002 interim final rule.

#### Classification

NMFS prepared an EA (August 13, 2001), a supplement to the EA for the interim final rule (December 2002), and a revised supplement to the EA/RIR for this final rule and concluded that these regulations would have no significant impact on the human environment. For a description of the initial Regulatory Flexibility Analysis and a detailed economic analysis of the CA/OR drift gillnet fishery, readers should refer to the August 13, 2001, EA prepared for the proposed rule.

The economic analysis conducted for this final rule anticipates an impact of approximately 16 CA/OR drift gillnet vessel owners and operators, representing approximately 76 fishing sets annually. The total gross revenue loss to the CA/OR drift gillnet fleet resulting from the time and area closures in this final rule is expected to be \$79,500 for an El Nino year. This estimate is based on California Department of Fish and Game landing receipts for the period from June 1 through August 31, using data from 1997 to 2000. This revenue loss to the fishery is a worst-case scenario based on

the assumption that none of the fishing effort will shift to ocean areas that remain open to fishing. Based on 2001 fishing effort data, the reduction in total gross revenues is not expected to exceed \$4,970 per vessel per El Nino year. On average, during these time periods, approximately \$3,000 of louvar, \$11,100 of mako shark, \$3,000 of opah, \$23,900 of swordfish, and \$38,500 of thresher shark are landed. NMFS did not receive comments on the detailed economic analysis and alternatives on the August 2001 EA prepared for this final rule. The El Nino closure that would have been imposed under the December 24, 2002, interim final rule was expected to result in a total gross revenue loss of \$440,000 and was expected to impact 500 sets per El Nino year. This final rule minimizes the negative economic impact to the fishery, while maintaining necessary protection for listed sea turtles, by reducing the total gross revenue loss by approximately 82 percent.

In addition to the time and area closures identified in this final rule, NMFS examined several alternatives for reducing or eliminating sea turtle entanglements when developing measures to avoid the incidental take of sea turtles. NMFS searched for a strategy that would provide the most certainty in reducing or eliminating entanglements upon implementation. These strategies included: (1) reducing fishing effort through gear modifications; (2) reducing fishing effort by decreasing the number of vessels; (3) increasing survival of entangled sea turtles; (4) implementing gear modifications to reduce interactions; and (5) changing fishing practices such as shorter soak times. These alternatives were analyzed in detail in the August 13, 2001, EA prepared for the proposed rule. They were not considered further because data are insufficient to determine whether these alternatives would avoid the likelihood of jeopardizing the continued existence of the loggerhead sea turtle as required by section 7(b) of the ESA. NMFS analyzed the patterns of loggerhead sea turtle captures and mortalities in the CA/OR drift gillnet fishery. Based on this assessment, NMFS found that the most effective method of avoiding loggerhead interactions and mortality is a time/area closure during El Nino years (anticipated reduction in interactions is approximately 92 percent). NMFS found no apparent correlation between variations in fishing strategy and loggerhead sea turtle interactions and determined that modifications in gear or gear deployment are not likely to achieve significant or measurable

reductions in the capture and mortality rate of these turtles.

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

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

A BO on the issuance of a marine mammal permit under section 101(a)(5)(E) of the MMPA was issued on October 23, 2000. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of loggerhead turtles. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of leatherback (*Dermodochelys coriacea*) and loggerhead sea turtles. This final rule implements an alternative to the RPA in the BO to protect loggerhead sea turtles. NMFS has determined that the alternative implemented by this final rule is more protective of loggerhead sea turtles than the RPA in the BO. NMFS, which issued the BO, has concurred that this alternative would provide more protection than the RPA identified in the BO and would avoid the likelihood of jeopardizing the continued existence of the loggerhead sea turtle. This alternative does not change the conclusions of the BO related to marine mammals listed under the ESA. Moreover, this final rule will have no adverse impacts on marine mammals that are not listed under the ESA.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the States of California and Oregon regarding the implementation of the RPA. Both California and Oregon have expressed support for the measures identified in the BO for the protection of leatherback and loggerhead sea turtle species. NMFS intends to continue engaging in informal and formal contacts with the States of California and Oregon during the implementation of this RPA and development of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

#### List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: December 8, 2003.

**Rebecca Lent,**

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

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

**PART 223—THREATENED MARINE AND ANADROMOUS SPECIES**

■ 1. The authority citation for part 223 is revised to read as follows:

**Authority:** 16 U.S.C. 1531–1543; subpart B, § 223.102 also issued under 16 U.S.C. 1361 *et seq.*

■ 2. In § 223.206(d), paragraph (d)(6) is revised to read as follows:

**§ 223.206 Exceptions to prohibitions relating to sea turtles.**

(d) \* \* \*

(6) *Restrictions applicable to the California/Oregon drift gillnet fishery—*(i) *Pacific leatherback conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed:

(A) Point Sur (36°18.5' N) to 34°27' N 123°35' W;

(B) 34°27' N 123°35' W to 34°27' N 129° W;

(C) 34°27' N 129° W to 45° N 129° W;

(D) 45° N 129° W to the point 45° N intersects the Oregon coast.

(ii) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California (as determined under paragraph (d)(6)(iii) of this section).

(iii) *Determination and notification concerning an El Nino event.* The Assistant Administrator will publish in the **Federal Register** a notification that an El Nino event is occurring off of, or is forecast for, the coast of southern California and the imposition of a closure under paragraph (d)(6)(ii) of this section. Furthermore, the Assistant Administrator will announce the imposition of such a closure by other methods as are necessary and appropriate to provide actual notice to the participants in the California/Oregon drift gillnet fishery. The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, in order to determine

whether an El Nino is forecasted or occurring for the coast of southern California. The Assistant Administrator will use the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. Specifically, the Assistant Administrator, will use sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. If an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2-month time period are greater than normal, the Assistant Administrator will publish in the **Federal Register** notification that an El Nino event is occurring off of, or is forecast for, the coast of southern California and the imposition of a closure under paragraph (d)(6)(ii) of this section. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice announcing that El Nino conditions are no longer present for purposes of implementing the closure. The area closure imposed under this paragraph (d)(6) will remain in effect until the Assistant Administrator files with the Office of the Federal Register a notice that the El Nino event is no longer occurring.

\* \* \* \* \*

[FR Doc. 03–30919 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 229**

[Docket No. 030221039–3309–04; I.D. 120903E]

RIN 0648–AQ04

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

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,356 square nautical miles (nm<sup>2</sup>) (4,651 km<sup>2</sup>), east of Portsmouth, NH for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

**DATES:** Effective beginning at 0001 hours December 18, 2003, through 2400 hours January 2, 2004.

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

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401 x171.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at <http://www.nero.noaa.gov/whaletrp/>.

**Background**

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). On