

1.0 PURPOSE AND NEED FOR ACTION

1.1 MANAGEMENT HISTORY RELEVANT TO THE PROPOSED ACTION

The Endangered Species Act (ESA) is the primary Federal legislation governing interactions between fisheries and species whose continued existence is threatened or endangered. Through a consultative process, this law allows Federal agencies to evaluate actions in light of the impacts they could have on these ESA-listed species. In the case of marine fisheries, the NOAA Fisheries Office of Sustainable Fisheries consults with the NOAA Fisheries Office of Protected Resources to determine what impacts fishery management actions will have on endangered populations of marine species and what actions can be taken to reduce or eliminate negative impacts. Under the consultative process, the Office of Protected Resources issues a Biological Opinion (BiOp) which outlines expected impacts of the final action and specifies terms and conditions which must be met to mitigate impacts on ESA-listed species.

Several circumstances can create the need to reinitiate consultation: the regulated action exceeds the level of take previously authorized in an existing incidental take statement, the action changes in a way that was not previously considered, or the population status of a listed species changes.

Atlantic highly migratory species (HMS) are managed under a 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 1 to the Billfish Fishery Management Plan (Billfish FMP). On November 19, 1999, the Office of Sustainable Fisheries requested reinitiation of consultation on Highly Migratory Species (HMS) fisheries based on preliminary information that the number of sea turtles incidentally taken in the pelagic longline fishery had exceeded levels anticipated in the April 23, 1999, BiOp. A bycatch reduction rule (proposed December 15, 1999, 64 FR 69982; final August 1, 2000, 65 FR 47214) also triggered the need to reinitiate consultation.

On June 30, 2000, a BiOp was issued that evaluated the current status of the loggerhead and leatherback sea turtles and concluded that the actions of the pelagic longline fishery jeopardized the continued existence of these species. This conclusion was based on the status of the loggerhead and leatherback sea turtle populations in the Atlantic Ocean, Caribbean, and Gulf of Mexico, the status of the northern subpopulation of loggerhead sea turtle, and the anticipated continuation of current levels of injury and mortality of both species described in the environmental baseline and cumulative effects section of the BiOp at that time. NOAA Fisheries conducted a series of scoping hearings in July and August 2000 to present the findings of the June 30, 2000, BiOp and to gather information and insights from affected constituents. During this process, NOAA Fisheries concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles were needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Because of this, NOAA Fisheries reinitiated consultation on the HMS fisheries on September 7, 2000.

To comply with National Standard (NS) 9 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and comply with ESA Section 7(a)(2) as provided in the June 30, 2000, BiOp, NOAA Fisheries issued emergency regulations on October 13, 2000, that closed a 55,970 square nautical mile L-shape portion of the NED area from October 10, 2000, through April 9, 2001 (65 FR 60889). This closure was expected to reduce the incidental capture of loggerhead and leatherback sea turtles. The emergency regulations also required the use of dipnets and line clippers meeting NOAA Fisheries design and specification criteria to remove entangling fishing gear and reduce post-release mortality of captured sea turtles in the pelagic longline fishery.

To prevent a lapse in sea turtle bycatch reduction measures, NOAA Fisheries published an interim final rule on March 30, 2001 (66 FR 17370), which continued the requirement to possess and use dipnets and line clippers on all vessels in the pelagic longline fishery. The interim final rule also modified the definition of pelagic longline gear so it would not include high-flyers and reduced the amount of observer coverage required in the shark gillnet fishery outside of right whale calving season.

In January 2001, NOAA Fisheries held a technical gear workshop in Silver Spring, Maryland that was attended by scientists, fishermen, environmentalists, and other interested parties. Additionally, the NOAA Fisheries Southeast Fisheries Science Center (SEFSC) published the Stock Assessments of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on the Loggerhead and Leatherback Sea Turtles of the Western North Atlantic in February 2001 (NOAA Fisheries, 2001b) .

The June 14, 2001, BiOp incorporated the new information from the assessment report and the gear workshop in its examination of the effect of the pelagic longline fishery on sea turtles in the western Atlantic Ocean. The BiOp specified a Reasonable and Prudent Alternative (RPA) that would avoid the likelihood of jeopardizing the continued existence of these turtles. The RPA included the following elements: closing the NED area effective July 15, 2001; requiring gangions to be placed no closer than twice the average gangion length from the suspending floatlines effective August 1, 2001; requiring gangion lengths to be 110 percent of the length of the floatline in sets of 100 meters or less in depth effective August 1, 2001; and, requiring the use of corrodible hooks effective August 1, 2001. Also, the BiOp included a Term and Condition (TC) for the incidental take statement that required NOAA Fisheries to issue a regulation requiring that all vessels permitted for HMS fisheries, commercial and recreational, post sea turtle guidelines for safe handling and release following longline interactions inside the wheelhouse by September 15, 2001. The requirement that all vessels permitted for HMS fisheries post sea turtle handling and release guidelines was subsequently modified to specify only bottom and pelagic longline vessels by an August 31, 2001, memorandum from the Office of Protected Resources.

On July 13, 2001, NOAA Fisheries published an emergency rule (66 FR 36711) to implement several of the BiOp requirements. NOAA Fisheries published an amendment to the emergency rule to incorporate the change in requirement for the handling and release guidelines which was published in the Federal Register on September 24, 2001 (66 FR 48812). These requirements

were effective for 180 days, through January 9, 2002. On December 13, 2001 (66 FR 64378), NOAA Fisheries published a Federal Register notice extending this emergency rule for another 180 days, to July 8, 2002. On January 14, 2002 (67 FR 1688), NOAA Fisheries published an amendment to the emergency rule extension clarifying the effective dates.

On April 10, 2002, NOAA Fisheries published a proposed rule in the Federal Register (67 FR 17349) that would implement the RPA and several other measures required by the BiOp. An accompanying DSEIS finalized on March 29, 2002, analyzed the biological, economic, and social impacts of the preferred and not selected alternatives, including no action, for the proposed rule. A Federal Register notice published on April 29, 2002 (67 FR 20944), announced four public hearings in Panama City, FL; Barnegat Light, NJ; Riverhead, NY; and Silver Spring, MD. NOAA Fisheries presented information concerning this proposed rule and solicited comments on the proposed measures. The comment period on the proposed rule and DSEIS ended on May 20, 2002.

On June 7, 2002, The Environmental Protection Agency published a notice of availability of an abbreviated Final Supplemental Environmental Impact Statement (FSEIS). On July 2, 2002, NOAA Fisheries made available to the public the FSEIS on measures required under the June 14, 2001 BiOp.

On July 9, 2002, NOAA Fisheries published the final rule (67 FR 45393) implementing measures required under the June 14, 2001 BiOp on Atlantic HMS to reduce the incidental catch and post-release mortality of sea turtles and other protected species in HMS Fisheries, with the exception of the gangion placement measure. The July 2, 2002 FSEIS analyzed the biological, economic, and social impacts of the preferred and not selected alternatives, including no action, for the final rule. The rule implemented a closure of the northeast distant (NED) statistical reporting area, required the length of any gangion to be 10 percent longer than the length of any floatline if the total length of any gangion plus the total length of any floatline is less than 100 meters, and prohibiting vessels from having hooks on board other than corrodible, non-stainless steel hooks. In the HMS shark gillnet fishery, both the observer and vessel operator must look for whales, the vessel operator must contact NOAA Fisheries if a listed whale is taken and shark gillnet fishermen must conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals from their gear. The final rule also required all HMS bottom and pelagic longline vessels to post sea turtle handling and release guidelines in the wheelhouse. NOAA Fisheries did not implement the gangion placement requirement because it appeared to result in an unchanged number of interactions with loggerhead sea turtles and an apparent increase in interactions with leatherback sea turtles.

On November 28, 2003, based on the conclusion of a three-year experiment in the NED, discussed in Section 1.2, and based on preliminary data that indicated that the Atlantic pelagic longline fishery may have exceeded the ITS in the June 14, 2001 BiOp, NOAA Fisheries published a Notice of Intent (NOI) to prepare a SEIS to assess the potential effects on the human environment of proposed alternatives and actions under a proposed rule to reduce sea turtle bycatch (68 FR 66783). Among the public comments received during the comment period were

suggestions that NOAA Fisheries hold workshops and certify participants in Atlantic HMS fisheries in the application of safe handling and release techniques for sea turtles. NOAA Fisheries addressed other substantive issues raised in response to the NOI in the analyses contained in this document; however, this specific issue was not addressed. The Agency intends to consider this issue in Amendment 2. Additionally, the RPA in the new June 1, 2004, BiOp for the fishery includes additional outreach and educational efforts.

In January 2004, the Office of Sustainable Fisheries formally requested reinitiation of consultation with the Office of Protected Resources after receiving data, based on observer and logbook data, which indicate that the Atlantic pelagic longline fishery exceeded the incidental take statement for leatherback sea turtles in 2001 - 2002 and for loggerhead sea turtles in 2002. As noted above, the Office of Protected Resources completed a new BiOp for the fishery on June 1, 2004. See Section 4.3 for a summary of the 2004 BiOp.

1.2 NEED FOR ACTION

A major concern in the management of the Atlantic HMS fisheries is the incidental take and mortality of threatened and endangered species, specifically loggerhead and leatherback sea turtles. These animals are migratory and exist in many of the oceanic locales targeted by U.S. vessels permitted to catch HMS. Sea turtles are accidentally hooked or entangled in pelagic longline, drift gillnet, and other gear that is meant to target primarily tunas, swordfish, and sharks.

NOAA Fisheries is charged with national and international requirements to avoid and reduce bycatch and bycatch mortality under the MSA, the Marine Mammal Protection Act (MMPA), and the ESA, and through recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), which are implemented under the authority of the Atlantic Tunas Convention Act (ATCA). Through a number of rulemakings, NOAA Fisheries has taken action to avoid jeopardy of Atlantic sea turtles in the pelagic longline and other HMS fisheries by minimizing bycatch and implementing measures to lower mortality rates associated with unavoidable bycatch. The MSA further requires NOAA Fisheries to minimize the adverse economic impacts on fishing communities to the extent practicable. The 2001 BiOp instructed NOAA Fisheries to conduct research into turtle bycatch and avoidance techniques and to execute rulemaking requiring adoption of bycatch reduction measures before pelagic longline vessels are allowed to fish within the NED. In conjunction with the U.S. Atlantic pelagic longline fleet, NOAA Fisheries completed a three year research program in the NED with the express purpose of developing and testing methods to reduce sea turtle bycatch in the pelagic longline fishery. An additional key objective of the program was to develop and verify techniques to reduce sea turtle interaction and mortality rates that could be exported and applied throughout the range of the domestic and international Atlantic pelagic longline fisheries in the Atlantic basin. The results of that program have been impressive. The research identified various sea turtle bycatch mitigation techniques, primarily involving hook and bait combinations, that reduced turtle interactions by a range of 50 to 90 percent, depending upon hook treatment and species. Much

of the analysis contained in this document is based on the results of this experiment, which are considered the best scientific information available.

The NED research program also provided significant economic benefits for that portion of the U.S. pelagic longline fleet that had traditionally fished in the NED before the closure. Anecdotal evidence suggests that without revenues associated with the NED research experiment, many of those vessels would have either ceased operations, or more likely, reflagged their vessel to fish under the jurisdiction of other nations. Losses in this segment of the U.S. longline fleet would translate to a loss of approximately 21 percent of total U.S. Atlantic swordfish landings. Beyond the economic impacts of such losses, should the vessels that participated in the NED be forced to cease operations, reflag, or otherwise exit the U.S. Atlantic pelagic longline fishery, there would possibly be unquantifiable negative environmental consequences. These negative environmental consequences would be expected to stem from increased fishing activities by vessels of other flag-states, which may employ less conservation-oriented practices in areas traditionally fished by the U.S. vessels and throughout the Atlantic, should U.S. swordfish underharvest be redistributed. For these reasons, both socio-economic and environmental, the United States is concerned about the levels of underharvest that exist in the U.S. swordfish fishery today.

In addition to the aforementioned discussion, this rulemaking is necessary to reduce bycatch and bycatch mortality of sea turtles caught incidentally in the Atlantic pelagic longline fisheries, consistent with the requirements of the ESA. As mentioned in Section 1.1, recent information indicates that the level of incidental takes of sea turtles established for the pelagic longline fishery has been exceeded for leatherback sea turtles in 2001 (1208 interactions) and 2002 (962 interactions) and for loggerhead sea turtles in 2002 (575 interactions).

1.3 OBJECTIVES

The objectives and purpose of this rulemaking are multifaceted, and are: 1) to be consistent with the objectives of the HMS FMP and all applicable laws; 2) to implement measures proven during the NED research experiment to reduce sea turtle interactions and mortalities; 3) to avoid jeopardy for leatherback and loggerhead sea turtles by implementing new management measures within the U.S. Atlantic pelagic longline fishery intended to reduce or, at a minimum, prevent increases in incidental takes of sea turtles in this fishery and reduce the mortality associated with such interactions; 4) to reconsider, in light of possible gear modifications, the NED closure and other time/area closures; and, 5) to minimize, to the extent practicable, the economic impact of sea turtle bycatch mitigation measures. The scope of this action is to address impacts on protected species, specifically sea turtles, in the Atlantic pelagic longline fishery and social and economic impacts of management measures on the aforementioned segment of the U.S. fishing fleet.

References Cited in Chapter 1

NOAA Fisheries. 2001b. Stock assessments of loggerhead and leatherback sea turtles and an assessment of the impact of the pelagic longline fishery on the loggerhead and leatherback sea turtles of the Western North Atlantic. U.S. Department of Commerce, National Marine Fisheries Service, Miami, FL, SEFSC Contribution PRD-00/01-08.