SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving LDEQ's request for delegation of authority to implement and enforce certain NESHAPs for all sources (both part 70 and non-part 70 sources). LDEQ has adopted certain NESHAPs into Louisiana's state regulations. In addition, EPA is waiving its notification requirements so sources will only need to send notifications and reports to LDEQ.

The EPA is taking direct final action without prior proposal because EPA views this as a non-controversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the preamble to the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7412.

Dated: April 7, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 06–3636 Filed 4–14–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 060405097–6097–01; I.D. 033006E]

RIN 0648–AU10

Sea Turtle Conservation; Modification to Fishing Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to require that any offshore pound net leader in the Virginia waters of the mainstem Chesapeake Bay, south of 37° 19.0′ N. lat. and west of 76° 13.0′ W. long., and all waters south of 37° 13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the James and York Rivers downstream of the first bridge in each tributary during the period of May 6 through July 15 meet the definition of a modified pound net leader. Existing regulations prohibit all offshore pound net leaders in that area during that time frame. An offshore pound net leader refers to a leader with the inland end set greater than 10 horizontal feet (3 m) from the mean low water line. This action, taken under the Endangered Species Act of 1973 (ESA), responds to new information generated by gear research. It is intended to conserve sea turtles listed as threatened or endangered while enabling fishermen to use leaders, an important component of pound net gear, during the regulated period.

DATES: Comments on this action are requested, and must be received at the appropriate address or fax number (see **ADDRESSES**) by no later than 5 p.m., eastern daylight time, on May 2, 2006.

ADDRESSES: Written comments on this action may be submitted on this proposed rule, identified by RIN 0648–AU10, by any one of the following methods:

(1) E-mail: *poundnetmodification@noaa.gov*. Please include the RIN 0648–AU10 in the subject line of the message.

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

(3) NMFS/Northeast Region Website: *http://www.nero.noaa.gov/nero/regs/com.html* Follow the instructions 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* or by writing to Pasquale Scida, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Pasquale Scida (ph. 978–281–9208, fax 978–281–9394), or Therese Conant (ph. 301–713–2322, fax 301–427–2522).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. The term incidental take refers to takings of endangered and threatened species that result from, but are not the purpose of, an otherwise lawful activity. Under the ESA and its implementing regulations, taking endangered or threatened sea turtles - even incidentally - is prohibited, with exceptions identified in 50 CFR 223.206 for threatened sea turtles. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA, respectively.

Spring Sea Turtle Stranding Event

High strandings of threatened and endangered sea turtles are documented on Virginia beaches each spring and early summer. The magnitude of this stranding event has increased in recent years. During May and June, total reported Virginia sea turtle strandings were 84 in 1995, 85 in 1996, 164 in 1997, 183 in 1998, 129 in 1999, 161 in 2000, 256 in 2001, 180 in 2002, 312 in 2003, and 192 in 2004. In 2005, preliminary data indicate that 113 dead sea turtles stranded on Virginia beaches during May and June, with most of these occurring during the latter half of June. Strandings have also been elevated in July, generally the first half of the month. From 1996 to 2005, strandings were generally elevated during the first half of July, with an average of 21 strandings documented from July 1 to 15. In the latter half of July, strandings typically decrease; from 1996 to 2005, an average of 10 strandings were documented from July 16 to 31. In 2005, strandings were the lowest recorded since the mid–1990's.

Most of the documented stranded sea turtles in Virginia have been threatened

loggerheads, but endangered Kemp's ridley, green and leatherback sea turtles have also stranded. For example, preliminary strandings data from 2005 indicate that 85 percent of strandings were loggerheads, 10 percent were Kemp's ridley, 4 percent were leatherback and green were 0.5 percent. The majority of stranded turtles have been of the juvenile/immature life stage. Most of the stranded turtles reported in Virginia during the spring have been moderately to severely decomposed. For instance, in the spring of 2005, approximately 85 percent of the strandings were either moderately to severely decomposed, compared to approximately 1 percent that were fresh dead. The ability to conduct necropsies is compromised by the condition of the stranded animals, and severely decomposed turtles are not usually necropsied. The majority of the stranded turtles that were examined by necropsy in the spring of previous years had relatively good fat stores and full stomachs/digestive tracts, suggesting that the animals were in good health prior to their death.

While the distribution of sea turtle strandings in Virginia varies slightly from year to year, there has been a high concentration of stranded sea turtles found along the Eastern shore in recent years. A cause and effect relationship between pound net interactions and high spring strandings cannot be statistically derived based on the available data. However, NMFS has documented that fishing with pound net leaders results in lethal and non-lethal take of sea turtles. NMFS concluded that this constituted sufficient evidence to form the basis for past and current restrictions on pound net leaders.

Sea Turtle and Pound Net Interactions

Sea turtle entanglements in and impingements on pound net leaders have been documented in Virginia waters of Chesapeake Bay since the early 1980's (Bellmund et al., 1987; Lutcavage 1981). On June 17, 2002, based upon the best available information on sea turtle and pound net interactions at the time, NMFS issued an interim final rule that prohibited the use of all pound net leaders measuring 12 inches (30.5 cm) and greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from May 8 to June 30 each year (67 FR 41196). Included in this interim final rule was a year-round requirement for fishermen to report all interactions with sea turtles in their pound net gear to NMFS within 24 hours of returning from a trip, and a year-round requirement for pound net fishing operations to be observed by a NMFS-approved observer if requested by the Northeast Regional Administrator. The interim final rule also established a framework mechanism by which NMFS could make changes to the restrictions and/or their effective dates on an expedited basis in order to further protect sea turtles by responding to new information, such as the entanglement of a sea turtle in a pound net leader. As a result of sea turtle entanglements observed during the spring of 2003, NMFS issued a temporary final rule requiring removal of all pound net leaders throughout the Virginia Chesapeake Bay and portions of the tributaries from July 16 to July 30, 2003, pursuant to the framework mechanism of the 2002 interim final rule (68 FR 41942, July 16, 2003).

In 2002 and 2003, NMFS monitored pound nets in Virginia. The 2002 and 2003 monitoring results documenting sea turtle entanglement in and impingement on pound net leaders with less than 12 inches (30.5 cm) stretched mesh represented new information not previously considered in prior assessments of the Virginia pound net fishery. Entanglements in and impingements on these leaders appeared to be more of a significant problem than originally assessed. Based upon the results of pound net monitoring in 2002 and 2003, as well as additional information about the behavior of sea turtles in Chesapeake Bay, NMFS had sufficient evidence to conclude that further rulemaking was necessary.

NMFS issued a final rule on May 5, 2004 (69 FR 24997), that prohibited the use of offshore pound net leaders in a part of the Virginia Chesapeake Bay defined in that rule, which for purposes of this proposed rule will be called ''Pound Net Regulated Area I.'' The May 2004 rule also placed restrictions on nearshore pound nets in Pound Net Regulated Area I and on all pound nets employed in the remainder of the Virginia Chesapeake Bay, which for purposes of this proposed rule will be call ''Pound Net Regulated Area II.'' According to the 2004 rule, nearshore pound nets in Pound Net Regulated Area I and all pound nets in Pound Net Regulated Area II must have leaders with mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. The 2004 final rule also modified the framework mechanism.

The previous monitoring efforts represent a minimum record of sea turtle entanglement and impingement. Sea turtles may be found throughout the water column, and green, Kemp's ridley and loggerhead sea turtles are primarily benthic foragers. Mansfield and Musick (2003) found that seven sea turtles (6 loggerheads and one Kemp's ridley), tracked in the Virginia Chesapeake Bay from May 22 to July 17, 2002, dove to maximum depths ranging from approximately 13.1 ft (4 m) to 41 ft (12.5 m). While the percentage of time sea turtles spend at the surface compared to at depth is still being clarified, sea turtles may be found throughout the water column. As pound net leader characteristics are generally consistent from the top of the leader to the bottom and monitoring the entire net profile has not been conducted full-time on each leader, it is probable that more sea turtles are in pound net leaders than are observed or reported.

NMFS continued to monitor pound nets during the 2004 spring season. In 2004, NMFS characterized 88 nets, 51 of which were active. Out of 1,190 surveys conducted, 4 sea turtles were observed to have been impinged or entangled in pound net leaders. Out of the four turtles that interacted with the pound net gear, one was released alive. Three of the four observed interactions occurred and were documented through the modified pound net leader experiment.

Modified Pound Net Leader Experiment

In 2004 and 2005, NMFS implemented a coordinated research program with pound net industry participants and other interested parties to develop and test a modified pound net leader design with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. The modified pound net leader design used in the experiment consisted of a combination of mesh and stiff vertical lines. The mesh size was equal to or less than 8 inches (20.3 cm). The mesh was positioned at a depth that was no more than one-third the depth of the water. The vertical lines were 5/16 inch (0.8 cm) in diameter strung vertically at a minimum of every 2 feet (61 cm) and attached to a top line. The vertical lines rose from the top of the mesh up to a top line to which they were attached. The stiffness of the vertical lines in the modified leader was achieved by coating them with paint in 2004 and using painted, twisted, hard lay lines in 2005. The design was based on the premise that the sea turtles would pass through the upper two-thirds of the leader, through the stiff vertical lines, without entangling in or impinging on the leader. The modified pound net leader was tested from May 17 to June

27 in 2004 and May 6 to June 29 in 2005. In 2004, four offshore pound nets were alternatively rigged with modified and unmodified leaders and two nearshore pound nets were rigged with unmodified leaders. Unmodified leaders are leaders that consist only of mesh from the seabed to the top line near the surface of the water. All pounds net leaders were monitored twice daily using visual and side scan sonar inspection to detect sea turtle interactions. In addition to the twice daily inspection of leaders for turtle interactions, a total of 61 pound net heart catch observations were made during the study period. In 2005, four offshore pound nets were tested. The nets were rigged alternatively with modified and unmodified leaders and were monitored twice daily for sea turtle interactions using visual and side scan sonar. A total of 54 pound net heart catch observations were conducted in addition to twice daily monitoring of the pound net leaders. The control leaders were removed from the water partway through the experiment in 2005 because the total number of sea turtles permitted to be taken during the research had been exceeded.

During the 2–year study, the modified leader was found to be effective in reducing sea turtle interactions as compared to the unmodified leader. The final results of the 2004 study found that out of eight turtles impinged on or entangled in the leaders of pound nets, seven were impinged on or entangled in an unmodified leader. One leatherback turtle was found entangled in a modified leader. In response to the leatherback entanglement, the gear was further modified by increasing the stiffness of the vertical lines for the 2005 experiment. Results from the 2005 experiment indicate that no sea turtles were found impinged on or entangled in the modified gear. In 2005, 15 turtles entangled in the leaders of unmodified leaders, and no turtles were found impinged on or entangled in modified leaders. Furthermore, results of the finfish catch comparison suggest that the modified leader caught similar quantities and size compositions as the unmodified leader. Although the unmodified leaders had to be pulled out of the water partway through the experiment in 2005, NMFS believes that the results of the modified leader experiment provide sufficient new information and justification to propose allowing the use of the modified leader.

It is possible that sea turtles may interact with the lower leader mesh because sea turtles in the lower Chesapeake Bay commonly make dives of over 40 minutes during the day (Byles 1988; Mansfield and Musick 2003b, 2004) and dive depths range from approximately 13.1 ft (4 m) to 41 ft (12.5 m) (Mansfield and Musick, 2003). However, all interactions during the 2005 modified leader experiment were recorded in the top portion of unmodified leaders (at depths within the top two-thirds of the depth of mean lower low water). No interactions were observed in the modified leader.

Impact of High Mortality on Sea Turtle Populations

The documented interactions between sea turtles and pound net leaders, as well as the annual Virginia spring strandings, are of concern for the following reasons: (1) all of the entangled, impinged and stranded animals are listed as either endangered or threatened under the ESA, which means these species are in danger of extinction or likely to become endangered in the foreseeable future; (2) the level of strandings in Virginia has been elevated the last 7 years, and there is no reason to believe that high spring strandings will abate in future years without continued monitoring, research and regulatory action; (3) sea turtles have been observed entangled in unmodified leaders; (4) sea turtles have been observed impinged on unmodified leaders by the current and impingements are likely to continue to occur on unmodified small mesh leaders in areas where impingements have been documented; (5) the greatest percentage of Virginia spring strandings in recent years has been along the southern tip of the Eastern shore, where a large number of pound nets are located; (6) approximately 50 percent of the Chesapeake Bay loggerhead foraging population is composed of the northern subpopulation, a subpopulation that may be declining; and (7) most of the stranded turtles have been juveniles, a life stage found to be critical to the long term survival of the species.

Most loggerheads in U.S. waters come from one of five genetically distinct nesting subpopulations. The largest loggerhead subpopulation, the South Florida subpopulation, occurs from 29°N. lat. on the east coast of Florida to Sarasota on the west coast and shows recent increases in numbers of nesting females based upon an analysis of annual surveys of all nesting beaches. However, a more recent analysis limited to nesting data from the Index Nesting Beach Survey program from 1989 to 2002, a period encompassing index surveys that are more consistent and more accurate than surveys in previous years, has shown no detectable trend (B. Witherington, Florida Fish and Wildlife Conservation Commission, pers. comm., 2002). The northern subpopulation, which nests from northeast Florida through North Carolina, is much smaller, and nesting numbers are stable or declining (TEWG 2000). Genetic studies indicate that approximately one-half of the juvenile loggerheads inhabiting Chesapeake Bay during the spring and summer are from the smaller, northern subpopulation (TEWG, 2000; Bass et al., 1998; Norrgard, 1995). Approximately 3,800 nesting females are estimated for the northern subpopulation of loggerhead sea turtles (TEWG, 2000). The impact of the high level of mortality experienced by loggerhead turtles each spring off Virginia on the population's ability to recover is of significant concern. The northern subpopulation produces 65 percent males, while the South Florida subpopulation is estimated to produce 20 percent males (NMFS SEFSC, 2001). As males do not appear to show the same degree of site fidelity as females, the high proportion of males produced in the northern subpopulation may be an important source of males for all loggerheads inhabiting the Atlantic. The loss of the male contribution from the northern subpopulation may restrict gene flow and result in a loss of genetic diversity to the loggerhead population as a whole. The loss of females from the northern subpopulation may preclude future reproduction, reducing the likelihood of both future survival and recovery of the northern subpopulation of loggerheads. Given the vulnerability of these subpopulations to chronic impacts from human-related activities, the high level of spring sea turtle mortality in Virginia must be reduced to help ensure that these subpopulations of loggerheads will recover. One way to reduce such mortality is to reduce sea turtle mortality caused by pound net leaders.

Most of the turtles stranding in Virginia waters during the spring are of the juvenile/immature life stages. The specific age at maturity for most sea turtles is unknown; the age of maturity for loggerheads occurs from approximately 21–35 years (TEWG, 2000). Studies have concluded that sea turtles must have high annual survival as juveniles and adults to ensure that sufficient numbers of animals survive to reproductive maturity to maintain stable populations (Crouse *et al.*, 1987; Crowder *et al.*, 1994; Crouse, 1999). Given their long maturation period, relatively small decreases in annual survival rates of both juvenile and adult loggerhead sea turtles may destabilize the population, thereby potentially

reducing the likelihood of survival and recovery of the population. As such, the historical high level of mortality observed in Virginia plus the increase in loggerhead mortality documented during the last several years may negatively affect the recovery of the loggerhead population.

The Proposed Action

The boundaries of the two regulated areas defined in the 2004 rule remain the same for this action. This action proposes a non-substantive, technical change to the definition of the regulated areas that would merely apply titles to the areas to reduce confusion. *Pound Net Regulated Area I* means Virginia waters of the mainstem Chesapeake Bay, south of 37° 19.0′ N. lat. and west of 76° 13.0′ W. long., and all waters south of 37° 13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37° 05′ N. lat., 75° 59′ W. long. to 36 55′ N. lat., 76° 08′ W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55′ N. lat, 76° 30.40′ W. long.). *Pound Net Regulated Area II* means Virginia waters of the Chesapeake Bay outside of Regulated Area I defined above, extending to the Maryland-Virginia State line (approximately 37 55′ N. lat., 75 55′ W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37° 50.84′ N. lat, 76° 22.09′ W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37° 30.62′ N. lat, 76° 25.19′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay.

The boundaries of the regulated areas defined in the current regulations were determined based on a combination of the locations of observed sea turtle entanglements in or impingements on pound net leaders and the area in which sea turtles may face a greater risk of entanglement in or impingement on pound net leaders due to environmental conditions. Previous research and monitoring indicate that geographic location, which is a proxy for other environmental factors such as temperature and current, may play an important role in the risk of sea turtle entanglement and impingement.

As previously mentioned, this proposed rule does not set forth any substantive changes to the boundaries of the two regulated areas that have already been established in existing regulations. The only substantive change proposed through this action is to replace the existing prohibition on all offshore pound net leaders in Pound Net Regulated Area I during the period of May 6 through July 15 with a provision that requires any offshore pound net leader set in Pound Net Regulated Area I during the period of May 6 through July 15 to meet the definition of a modified pound net leader. In other words, if a fisherman chooses to use an offshore pound net leader in Pound Net Regulated Area I from May 6 through July 15, that offshore pound net leader must meet the definition of a modified pound net leader.

A modified pound net leader is defined as a pound net leader that is: (1) affixed to or resting on the sea floor; (2) made of a lower portion of mesh and an upper portion of only vertical lines such that (a) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (b) at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; (c) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (d) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and (e) the vertical lines are hard lay lines.

The specifications for the experiments in 2004 and 2005 did not indicate that the height of the mesh must be no more than one-third the depth of the water at mean lower low water. Instead, the specifications only indicated that the height of the mesh is restricted to one-third the depth of the water. However, for purposes of rulemaking, it is important to indicate a common reference point against which the depth of the water may be measured, such as mean lower low water. During the preparation of this proposed rule, NMFS staff confirmed with two participants in the experiment that the modified pound net leaders they used were constructed in, or close to, that manner. Therefore, NMFS proposes to state in the definition of a modified pound net leader that the height of the mesh from the seafloor at any particular point must be no more than one-third the depth of the water at mean lower low water at any time during the tidal cycle throughout the regulated period. For example, if a modified leader is set in water that ranges from 10 m to 30 m deep at mean lower low water, the mesh panel would be 10 m high at the deep end and would taper to 3.3 m high at the shallow end.

In the definition of ''modified pound net leader,'' NMFS proposes to state that the vertical lines must be hard lay lines. ''Hard lay'' is a technical term used by the cordage industry to describe line that is purposefully made to be stiff. Line is usually made stiff by choosing a material that is stiff, twisting the line material, and/or providing a coating to the line such as paint. Given the various factors that contribute to the degree of stiffness in the line, NMFS is seeking comment on how better to define 'hard lay' and establish a standard for fishermen to use in the pound net leader. Furthermore, while the vertical lines used in the modified leader design meet the definition of a ''stringer'' in a pound net leader, they cannot be treated separately from the overall design and construction of the modified leader (i.e., line specification, distance apart, and dropped mesh) and therefore NMFS has chosen to refer to them just as ''vertical lines.'' However, because these vertical lines do meet the definition of ''stringer,'' and stringers are prohibited under existing regulations in nearshore leaders in Pound Net Regulated Area I and all leaders in Pound Net Regulated Area II, the modified pound net leader would also be prohibited from being used in nearshore leaders in Pound Net Regulated Area I and all leaders in Pound Net Regulated Area II under the proposed action.

According to this proposed rule, if a fisherman chooses to use an offshore pound net leader in Pound Net Regulated Area I at any time from 12:01 a.m. local time on May 6 through 11:59 p.m. local time on July 15 each year that offshore pound net leader must meet the definition of a modified pound net leader. Existing mesh size and stringer restrictions on nearshore pound net leaders in the area to be called Pound Net Regulated Area I and on all pound net leaders in the area to be called Pound Net Regulated Area II would remain in place and are not affected substantially by this proposed rule. The year round reporting and monitoring requirements for this fishery and the framework mechanism under the existing regulations also remain in effect. This action would be implemented under the authority of the ESA sections 4(d) and 11(f) and is appropriate to conserve threatened and endangered sea turtles and to enforce the provisions of the ESA, including the

prohibition on takes of endangered sea turtles.

NMFS plans to continue analyzing the potential natural and anthropogenic sources of sea turtle mortality in Virginia waters. As part of this larger initiative, NMFS intends to continue to closely monitor sea turtle stranding levels and other fisheries active in the Chesapeake Bay and the Atlantic Ocean off Virginia. Additionally, in the near future, NMFS plans to evaluate the impacts of all fishing gear types on sea turtles throughout the Atlantic and Gulf of Mexico, as part of the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (NMFS, 2001).

NMFS is seeking public comments on requiring the use of the modified pound net leader design in any pound net leader set within the geographic range of the fishery in Virginia waters (non-preferred alternative 2) during the period of May 6 through July 15. NMFS is seeking comment and information on the definition of 'hard lay' to ensure that a minimum degree of stiffness is achieved in the modified pound net leader. NMFS will consider comments on this topic as well as new developments in the scientific information base during the preparation of the final rule for this action.

Classification

This proposed rule has been determined to be not significant for 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 at the beginning of the preamble and in the SUMMARY section. A summary of the analysis follows:

The fishery affected by this proposed rule is the Virginia pound net fishery in the Chesapeake Bay. The proposed action would require any offshore pound net leader set in Pound Net Regulated Area I on May 6 through July 15 each year to meet the definition of a modified pound net leader. Non-preferred alternative 1 (NPA 1) would maintain the current regulations, including a prohibition on the use of offshore pound net leaders in Pound Net Regulated Area I, and would prohibit leaders with stretched mesh greater than or equal to 12 inches (30.5 cm) and leaders with stringers in the remainder of the Virginia Chesapeake Bay during the period of May 6 through July 15 each year. Non-preferred alternative 2 (NPA 2) would require any pound net leader used during the period of May 6 through July 15 in either Pound Net Regulated Area I or Pound Net Regulated Area II to be a modified pound net leader. Non-preferred alternative 3 (NPA 3) is similar to the proposed action, but would require the modified pound net leader design to be used in any offshore leader, any nearshore leader would still be required to use stretched mesh less than 12 inches (30.5 cm), and any stringers would be prohibited on nearshore leaders.

The two areas of the Virginia Chesapeake Bay designated as Pound Net Regulated Areas I and II differ from the areas used in the economic analysis due to data limitations. The VMRC pound net fishery data is linked to water bodies, which do not map directly to the Pound Net Regulated Areas. To highlight this difference, an alternative nomenclature is used, specifically ''upper'' and ''lower'' Bay. Landings and revenues for the lower Bay are biased upward based upon the data limitations.

According to the 2004 VMRC data, there are 21 harvesters actively fishing pound nets from May 6 to July 15 within the regulated part of Chesapeake Bay, with 5 harvesters located in the lower portion of Chesapeake Bay and 16 harvesters located in the upper portion of the Virginia Chesapeake Bay. These 21 harvesters fish approximately 29 pound nets in the upper portion of the Virginia Chesapeake Bay (= 16 harvesters x 1.8 pound nets/harvester) and 17 pound nets in the lower portion of the Virginia Chesapeake Bay (=5 harvesters x 3.4 pound nets/harvester). Based on 2000 to 2004 data, annual landings per harvester were 267,076 pounds (120,184 kg) in the upper portion of the Virginia Chesapeake Bay and 206,269 pounds (92,821 kg) in the lower portion of the Virginia Chesapeake Bay. Annual revenues per harvester were $55,772 and $79,503 in the upper and lower region, respectively. From May 6 to July 15, landings per harvester were 100,849 pounds (45,382 kg) in the upper region and 98,339 pounds (44,253 kg) in the lower region. Estimated revenues per harvester for that period were $20,323 and $40,187 in the upper and lower region, respectively.

Of the 17 pound nets fished by 5 fishermen in the lower Bay from May 6 to July 15, 41 percent of these nets (7) would be classified as having offshore leaders and would fall within Pound Net Regulated Area I and would be subject to the proposed gear modification. For offshore fishermen in the lower Bay, there would be considerable net benefits from being allowed to fish using the modified leader during the regulated period. Based on 2004 data, out of the five fishermen that would be affected, three fishermen (with two nearshore nets and one offshore net each) would recapture approximately $13,408 of revenues foregone under the current regulations (16.9 percent of annual revenues), while two fishermen (with two nearshore nets and two offshore nets each) would see an increase of $26,816 in revenues (33.7 percent of annual revenues). The remainder of fishermen in the upper Bay (16) would be subject to status quo regulations (current regulations, less than 12'' stretched mesh and no stringers) and would not incur any additional costs to comply with the proposed action.

NPA 1, the no action alternative, would maintain status quo conditions in the upper Bay, and would not result in additional costs or benefits. NPA 2 and NPA 3 would require any pound net leader to use the modified pound net leader design in a larger geographic area as compared to the proposed action. As such, the impacts of those non-preferred alternatives would include the cost of modifying leaders in the upper Bay area as compared to the proposed action and NPA 1.

NPA 2 would impact all pound net fishermen in the Virginia Chesapeake Bay during the regulated period. For lower Bay fishermen, NPA 2 would result in an increase in net revenues, as the opportunity to fish offshore pound net leaders during the regulated period more than off-sets the costs of modifying their leaders. For the five lower Bay fishermen the increase in net revenues would range from $9,548 to $22,956, or between 12.0 percent and 28.9 percent of annual revenues. The total net increase in revenues for the lower Bay would be $74,556 (=[3 harvesters x $9,548]+[2 harvesters x $22,956]). For upper Bay fishermen there would only be costs to modify their leaders, as compared to existing regulations (NPA 1). The costs would range from $2,002 to $4,004 to fabricate and install the modified leaders, or 3.6 percent to 7.2 percent of annual revenues, with a total cost of $57,770 (=[4 harvesters x $3,932]+[3 harvesters x $2,002]+[9 harvesters x $4,004]). Based on the 2004 Northeast Fisheries Science Center gear survey, 85 percent of the upper Bay pound nets were offshore, for a total of 25 offshore pound nets and 4 nearshore pound nets. For the four fishermen with one offshore and one nearshore pound net the total cost of NPA 2 over current regulations is $3,932 (=$2,002+$1,930) or 7.1 percent of annual revenues

(=$3,932/$55,772). For the three fishermen with only a single offshore pound net the cost is $2,002 or 3.6 percent of annual revenues (=$2,002/$55,772). For the nine fishermen with two offshore pound nets the total cost is $4,004 or 7.2 percent of annual revenues (=$4,004/$55,772). Overall the increase in net revenues for offshore fishermen in the lower Bay would off-set the increase in costs for other fishermen to modify their leaders on all other pound nets. The industry would see a net increase in revenue of $16,786, or 0.8 percent of 2004 pound net revenues (=$0.017M/$2.187M). However, as explained above, NMFS recognizes that NPA 2 would impose costs on the upper Bay fishermen without a corresponding increase in revenues.

Implementation of the NPA 3 would also impact all pound net fishermen in the Virginia Chesapeake Bay during the regulated period. For the five lower Bay fishermen, the net revenue increase would range from $13,408 to $26,816 or an increase in net revenues of 16.9 percent to 33.7 percent of annual revenues. For 16 upper Bay fishermen affected by this alternative, the cost over the current regulations would be from $2,002 to $4,004 or 3.6 percent to 7.2 percent of annual revenues. The total impact to the pound net industry would be positive as there would be an increase in net revenues over the status quo (NPA 1). The total increase in net revenues for lower Bay fishermen would be $93,856 (=[3 harvesters x $13,408]+[2 harvesters x $26,816]), while the total cost to the upper Bay fishermen would be $50,050 (=[7 harvesters x $2,002]+[9 harvesters x $4,004]). This provides a net increase in industry revenues of $43,806 or 2.0 percent of 2004 industry revenues (=$0.044 M/$2.187 M). Again, however, NMFS recognizes that costs would be imposed upon upper Bay fishermen without a corresponding increase in revenues under NPA 3.

In the lower portion of the Virginia Chesapeake Bay, where all offshore leaders are prohibited under the current regulations, all five harvesters would be impacted under all of the alternatives. With the proposed action, annual revenues per harvester would be increased between 16.9 percent and 33.7 percent. The proposed action and NPA 3 would result in the same economic benefit on lower Bay fishermen. The economic benefit under NPA 2 to lower Bay fishermen would be less compared to the proposed action (net increase of 12 percent to 28.9 percent), because the increase in revenues to offshore pound nets in the lower Bay is offset by the requirement for nearshore pound net leaders in this area to obtain and use the modified pound net leader. In the upper Bay area, the NPAs 2 and 3 would reduce annual revenues per harvester by 3.6 percent to 7.2 percent, depending on the ratio of offshore to nearshore pound net leaders fished by each harvester. Taking no action (NPA 1) would not have economic consequences or benefits.

In 2004, industry revenues for the regulated part of the Virginia Chesapeake Bay were $2.2 M for the pound net fishery. Industry profits would be increased by 4.3 percent (=$0.094 M/$2.2 M) under the proposed action. Under the NPA 2 and NPA 3, 21 of 21 fishermen are affected, and industry profits are increased by 0.8 percent (=$0.0.017 M/$2.2 M) and 2.0 percent (=$0.0.044 M/$2.2 M), respectively. As NPA 1 is the status quo, it is the basis against which the other alternatives are evaluated and would not result in industry costs or benefits.

This action does not propose new reporting or record keeping requirements.

This proposed rule does not duplicate, overlap or conflict with other Federal rules.

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:April 12, 2006.

James W. Balsiger,

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

For reasons stated 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 ''Pound Net Regulated Area I'' and ''Pound Net Regulated Area II'' and ''Modified pound net leader'' are added in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

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

* * * * *

Pound Net Regulated Area I means Virginia waters of the mainstem Chesapeake Bay, south of 37° 19.0′ N. lat. and west of 76° 13.0′ W. long., and all waters south of 37° 13.0′ N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37° 05′ N. lat., 75 59′ W. long. to 36° 55′ N. lat., 76° 08′ W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I–64; approximately 36° 59.55′ N. lat., 76° 18.64′ W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55′ N. lat, 76°30.40′ W. long.)

* * * * *

Pound Net Regulated Area II means Virginia waters of the Chesapeake Bay outside of Regulated Area I defined above, extending to the Maryland-Virginia State line (approximately 37° 55′ N. lat., 75° 55′ W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37° 50.84′ N. lat, 76° 22.09′ W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44′ N. lat, 76° 25.40′ W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37 30.62′ N. lat, 76° 25.19′ W. long.) to the COLREGS line at the mouth of the Chesapeake Bay.

* * * * *

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

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(10) *Restrictions applicable to pound nets in Virginia*–(i) Offshore pound net leaders in Pound Net Regulated Area I. During the time period of May 6 through July 15 each year, any offshore pound net leader in Pound Net Regulated Area I must meet the definition of a modified pound net leader. Any offshore pound net leader in Pound Net Regulated Area I that does not meet the definition of a modified pound net leader must be removed from the water prior to May 6 and may not be reset until July 16.

(ii) Nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II. During the time period of May 6 to July 15 each year, any nearshore pound net leader in Pound Net Regulated Area I and any pound net leader in Regulated Area II must have only mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. Any nearshore pound net leader in Regulated Area I or any pound net leader in Regulated Area II with stretched mesh measuring 12 inches (30.5 cm) or greater, or with stringers, must be removed from the water prior to May 6 and may not be reset until July 16.

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