

all time charter solicitations and contracts for the use of a vessel for the transportation of supplies. An initial Regulatory Flexibility Analysis has therefore not been performed. The interim rule applies to both large and small businesses. Comments are invited from small businesses and other interested parties. Comments from small entities will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 93-D313 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.
Claudia L. Naugle,
Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and (FAR) 48 CFR part 1, subpart 1.3.

PART 247—TRANSPORTATION

2. Section 247.571 is amended by redesignating paragraph (c) as paragraph (e) and by adding paragraphs (c) and (d) to read as follows:

247.571 Policy.

(c) Except as provided in paragraphs (d) and (e) of this section, any vessel used under a time charter contract for the transportation of supplies shall have all refueling or repair work, as defined in the clause at 252.247-7025, performed in the United States or its territories.

(d) The Secretary of Defense may waive the requirement described in paragraph (c) if the Secretary determines that such waiver is critical to the national security of the United States.

3. Section 247.573 is amended to add paragraph (d) as follows:

247.573 Solicitation provision and contract clauses.

(d) Use the clause at 252.247-7025, Refueling or Repair Work, in all time charter solicitations/contracts for the

use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(d).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.247-7025 is added to read as follows:

252.247-7025 Refueling or Repair Work.

As prescribed in 247.573(d), use the following clause:

Refueling or Repair Work (Feb 1994)

Any work performed on a vessel used in the performance of this contract that enables the vessel to meet applicable standards to become a vessel of the United States or to convert the vessel to a more useful military configuration shall be performed in the United States or its territories.

(End of clause)

[FR Doc. 94-4881 Filed 3-4-94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB66

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Hungerford's Crawling Water Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Hungerford's crawling water beetle (*Brychius hungerfordi* Spangler) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973 as amended. The species is a small, rare beetle that lives in the cool riffles of clean, slightly alkaline streams. The species is known to occur in only three isolated locations: The East Branch of the Maple River, Emmet County, Michigan; the East Branch of the Black River, Montmorency County, Michigan; and the North Saugeen River at Scone, Bruce County, Ontario. The two Michigan sites are in the Cheboygan River watershed. This species is threatened by the rarity of the type locality in association with alteration of its stream habitat as a result of beaver dam management. Other potential contributing factors include fisheries management, logging, impoundment, bank stabilization, stream pollution and general stream degradation.

EFFECTIVE DATE: April 6, 1994.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056.

FOR FURTHER INFORMATION CONTACT: Robert Adair, Chief, Division of Endangered Species (see ADDRESSES above) at 612/725-3276.

SUPPLEMENTARY INFORMATION:

Background

Hungerford's crawling water beetle, *Brychius hungerfordi*, was first identified by Spangler in 1954 (Spangler 1954). The beetle is a member of an uncommon genus in the Family Haliplidae and Order Coleoptera. It can be distinguished from all other beetles as follows (from Wilsmann and Strand 1990):

Brychius hungerfordi is a small (4.20 mm), distinctive, yellowish brown beetle with irregular dark markings and longitudinal stripes on the elytra, each of which is comprised of a series of fine, closely spaced and darkly pigmented punctures. Males tend to be smaller than females. In Spangler's (1954) original series, specimens ranged from 3.70 mm in length and 1.90 mm in width (a male) to 4.35 mm in length and 2.25 mm in width (a female). Males are characterized by thickened tarsal segments of the front legs with small tufts of hair on the first three segments. *B. hungerfordi* can be differentiated from all other Haliplidae in Michigan by the shape of its pronotum, the sides of which are nearly parallel for the basal 2/3 (Hilsenhoff and Brigham, 1978) and are widened mid-laterally.

This small, rare beetle lives in the cool riffles of clean, slightly alkaline streams. The species is known to occur in only three isolated locations: The East Branch of the Maple River, Emmet County, Michigan; the East Branch of the Black River, Montmorency County, Michigan; and the North Saugeen River at Scone, Bruce County, Ontario. The two Michigan sites are in the Cheboygan River watershed. The disjunct distribution of this species suggests that it is a relict from glacial periods when cool, fast moving streams were more prevalent and the beetle was more widespread. It is speculated that human activities such as fish management, logging, beaver control management, dredging, stream pollution, and general stream degradation have contributed to the reduction of its habitat (Wilsmann and Strand 1990).

On May 22, 1984, the Service published in the Federal Register (49 FR 21664) its first listing of invertebrate animal species being considered for

listing under the Act (Animal Notice of Review) which included the Hungerford's crawling water beetle. Hungerford's crawling water beetle appeared again in the January 6, 1989, Animal Notice of Review (54 FR 544) as a Category 2 species. Category 2 comprises taxa for which there is some evidence of vulnerability, but for which the information necessary to list is lacking. It was again listed as Category 2 in the November 21, 1991, Animal Notice of Review (56 FR 58804). However, given the research by Wilsmann and Strand (1990), it should have been listed as a Category 1 at that time. The listing priority is 2. The research results of Wilsmann and Strand indicate that the species occurs in only three vulnerable, isolated locations and should receive protection of the Act. The Service analyzed the status survey, as well as other information, and determined that the beetle is facing serious threats and should be protected as an endangered species.

All of the sites where the beetles have been found are characterized by moderate to fast stream flow, good stream aeration, inorganic substrate, and alkaline water conditions. Streams like those in which *B. hungerfordi* occur are common in the Great Lakes States. Although these areas have been extensively surveyed for invertebrates in the last 30 years, no additional populations have been discovered (Wilsmann and Strand 1990). Roughley (1989a) surveyed 30 to 40 potential locations in Ontario and 5 sites in Michigan. The survey resulted in the discovery of the only known *B. hungerfordi* population in Canada. White (1989b) surveyed portions of lower and upper Michigan, Hilsenhoff and Brigham (1978) surveyed Wisconsin, and Wallace (Brigham 1982) surveyed Minnesota and southern Canada without finding any new populations of *B. hungerfordi*. Strand (1989) surveyed streams in Emmet, Cheboygan, Presque Isle, Montmorency, and Otsego counties and found *B. hungerfordi* in 15 of 128 sampling stations. Of these, 14 occurred near the type location in the East Branch of the Maple River and so were effectively from the same population. The remaining site, in the East Branch of the Black River, was the only new population that has been found in the United States since the species was discovered.

The largest population presently occurs in the East Branch of the Maple River in a pristine portion of stream on the boundary of the University of Michigan Biological Station. This population is estimated to include 200

to 500 individuals while the other two populations are thought to be much smaller (White 1986b, Wilsmann and Strand 1990). The East Branch of the Maple River is a small stream surrounded by forest with a partially open canopy so sunlight reaches the water. The stream is cool (15–20° C) with a relatively fast flowing current (>50 cm per second) and a substrate of limestone gravel and rock (White 1986b). The forest is intact, the beaver population is healthy, and their dams function to stabilize water levels so the riffles below the dams remain predictable from year to year (Wilsmann and Strand 1990). At the Black River site, the beetles occur in a moderately fast current in fairly shallow water. The site in Ontario has been degraded by road construction and the beetles occur in the riffles below an old millrace. The swift currents in these locations maintain a mineral substrate.

White (1986) concluded that the East Branch of the Maple River at the type locality provides fast-flowing, deep riffles, and *Cladophora* attached to larger rocks coupled with a lack of fast-water water-column predators (i.e., trout). Although some trout exist in the East Branch of the Maple River, it is speculated that warm summer water temperatures (>25° C) force the population to remain in Lake Kathleen except during cooler months of the year. Because adult beetles must swim to the surface for air, they are vulnerable to predation by fish, tadpoles and other aquatic insects (Hickman 1931; Wilsmann and Strand 1990).

The life history of *B. hungerfordi* is not known. The beetles are thought to live longer than one year and to overwinter as larvae in the dense aquatic vegetation at the stream's edge (Wilsmann and Strand 1990). As with other Haliplidae, larvae probably go through three instar phases and pupate in the moist soil above the water line (Hickman 1929; White, Brigham, and Doyen 1984). Adults and larvae are seldom captured together and they appear to inhabit different microhabitats in the stream. Adults are more apt to be found in stronger currents, foraging for algae on gravel and stones. Both adults and larvae are herbivorous but very little is known about their specific dietary requirements or feeding adaptations (White 1986a, 1986b). Wilsmann and Strand (1990) reported, "The small size of *B. hungerfordi* adults prevented direct observation of food ingestion. However, it is likely that they scrape food material from rocks by grasping with their tarsal claws and scraping with their distally flattened and single notched mandibles which are

slightly medially cupped. This speculation is based on observations of the beetles crawling from rock to rock, stopping occasionally to grip a rock for varying lengths of time."

Compared to other Haliplidae, the adults are strong swimmers and they obtain oxygen by swimming to the surface or crawling to the water line at the edge of the stream. Larvae obtain oxygen directly from the water and are found in association with dense mats of vegetation (*Chara*, *Nitella*, or *Cladophora*) which offer protection and foraging. The growth form of this vegetative cover may be more important than the plant composition (Brigham 1990, pers comm. in Wilsmann and Strand 1990).

There is no evidence that *B. hungerfordi* has a dispersal flight. No adults have been found at blacklight stations, and the adults seem unusually reluctant to fly. This was observed during Wilsmann and Strand's (1990) survey when *B. hungerfordi* were removed from the water for 30 minutes and did not attempt to fly. An unexpected result given that most other aquatic insects would have attempted to fly after this period of desiccation. It is possible, therefore, that if this species disperses by flying, it is during a very brief period of time in the spring. The primary mode of dispersal appears to be movement within the stream system.

Summary of Comments and Recommendations

In the March 2, 1993, proposed rule (58 FR 12013), all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in 6 Michigan newspapers.

Four written comments and three responses via telephone were received from the following: Michigan Department of Natural Resources, Algonquin Group (Michigan's Mackinac Chapter of the Sierra Club), Dr. Wayne Owen of Idaho, Mr. Robert Almquist of Ohio, Michigan Department of Natural Resources, U.S. Department of Agriculture's Animal and Plant Health Inspection Service, and Isle Royale National Park, Michigan. Comments supporting the proposal were received from the Michigan Department of Natural Resources, Algonquin Group Michigan's Mackinac Chapter of the Sierra Club, Dr. Wayne, Owen of Idaho, and Mr. Robert Almquist of Ohio. Three

comments provided thoughts about the species but did not take a position on the listing.

The primary issue raised was the need to obtain additional information regarding the species' distribution, life history, and threats to afford adequate protection and management. The information is necessary to clarify and/or substantiate the threats stated in the proposed rule as sources responsible for the species' decline. Specifically stating the role of fish management, beaver dam removal and dredging as primary threats for the decline of the species was speculative, based on incomplete data and not substantiated by the references cited. If managed appropriately, some of the threats may be beneficial to the continued existence and management of *B. hungerfordi* and its habitat.

The Service recognizes the need for further surveys and studies on the life history, distribution and ecology of the species. The Service considered all comments received and has incorporated them into this final rule as appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the Hungerford's crawling water beetle *Brychius hungerfordi* should be classified as an endangered species. Section 4(a)(1) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to Hungerford's crawling water beetle (*B. hungerfordi* Spangler) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Although natural succession in the type locality is not completely understood, it appears, that human activities in or near the habitat can speed up succession and subsequent loss of the Hungerford's crawling water beetle. For example, removal of existing beaver dams upstream from *B. hungerfordi* populations poses as significant threat to the beetle. The downstream side of beaver dams serve as a riffle and aeration site because they retain sediments and organic material, raise water temperatures, and modify

nutrient cycling, decomposition dynamics, and riparian zone structure and composition. The highest density locations of *B. hungerfordi* are below beaver dams or immediately below structures that provide similar conditions to those found downstream from beaver impoundments (Wilsman and Strand 1990).

Potential threats that may result in modification of the species habitat include certain fish management activities such as removal or introduction of fish, stream side logging and heavy siltation resulting from logging, impoundment, bank stabilization with structures creating an artificial shoreline, stream pollution, and general stream degradation. In Michigan, one site already has been impounded downstream by a dam, and the Ontario site has been impounded upstream (Roughley 1989b). The Service recognizes that further research and surveys are required since much is not known about the distribution, ecology and the effects of the potential threats on the species.

Given the rapid rate of recreational development and the demands for fish, wildlife, and forest management in northern Michigan, unknown populations of *B. hungerfordi* could easily be extirpated before they are discovered, increasing the need to protect existing populations. Because only three small populations of this species are known to exist, loss of even a few individuals could extirpate the species from some locations (Wilsman and Strand 1990) and thus severely affect the continued existence of the species.

The Michigan Department of Natural Resources issued a permit allowing the construction of an experimental stream facility on the East Branch of the Maple River. The applicant amended the initial proposal such that the location was moved to an area where the beetles are not known to occur on the Maple River.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Recent research efforts have involved mostly capture and release rather than collecting, and the few collections that have been made are housed in appropriate museum collections. The species will continue to draw scientific interest and collection should be regulated. However, because of the species' rarity, there is the possibility that amateur scientific collections could occur.

C. Disease or Predation

Little is known about these factors, but there are no indications at this time that they may be contributing to the decline of *B. hungerfordi*.

D. The Inadequacy of Existing Regulatory Mechanisms

B. hungerfordi is currently listed as endangered under Michigan's Endangered Species Act (P.A. 203 of 1974, as amended). Any taking of this species, including harassment, is unlawful without a permit. The Michigan Department of Natural Resources also implements section 404 of the Clean Water Act. This section allows Michigan to regulate placement of fill material in waters of the United States. The Montmorency County site, including a mile of upstream and downstream buffer, is in a State forest but is not protected from fish management activities. The aforementioned legislation allows significant regulatory oversight on a wide variety of activities that should prevent taking of this species and habitat loss and alteration. The Emmet County site is in mixed ownership and is not protected. The Canadian population is not protected and the land surrounding it is in mixed ownership. The Federal Endangered Species Act would offer additional protection to this species by increasing the protection for the two Michigan sites, encouraging habitat protection for the species on private lands, and influencing impoundment development which very likely would involve Federal funds.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The existence of only three populations of *B. hungerfordi* increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance, disease, or predation could destroy an entire population and a significant percentage of the known individuals of the species.

Both Michigan sites are in the Cheboygan watershed and could potentially be affected by any changes upstream in the watershed such as in Van Creek, the upper portion of the East Branch of the Maple River, Town Line Creek, Foch Lakes Flooding Creek, Rattlesnake Creek, and the upper portion of the East Branch of the Black River. Changes could include agricultural pesticide pollution, siltation, or stream bed modification. Because two of the three known populations occur immediately

downstream from a roadway, accidental events, such as chemical spills, pose a threat (Wilsmann and Strand 1990). The cumulative effects of road salt runoff also poses a threat to this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *B. hungerfordi* as endangered. Only three relatively small populations of this species are known to exist and these populations occur on sites threatened with habitat loss or destruction. In addition, all of these populations are in need of long-term management.

Critical habitat is not being proposed at this time for the reasons discussed below.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) The specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat for Hungerford's crawling water beetle is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable when one or both of the following situations exist: (i) Information sufficient to perform required analyses of the impacts of the designation is lacking; or (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. As discussed under Factor A in the Summary of Factors Affecting the Species, the information on the biology of the Hungerford's crawling water beetle is lacking to permit specific identification of its critical habitat.

The Service will initiate a concerted effort to obtain the information needed to determine critical habitat for Hungerford's crawling water beetle.

Designation of critical habitat must be completed within two years of the date of this rule, unless the designation is not prudent. A proposed rule for critical habitat designation must be published in the Federal Register, and the notification process and public comment provisions parallel those for a species listing. In addition, the Service will evaluate the economic and other relevant impacts of the critical habitat designation, as required under section 4(b)(2) of the Act.

It should be emphasized that critical habitat designation does not necessarily affect all Federal activities. Where appropriate, the impacts will be addressed during consultation with the Service as required by section 7(a)(2) of the Act, as amended.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general

prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It, also, is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

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- Hickman, J.R. 1929. Life-histories of Michigan Haliplidae (Coleoptera). Pap. Mich. Acad. Sci., Arts, Letters 11:399-424.
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Strand, R.M. 1989. The status of *Brychius hungerfordi* (Coleoptera: Halipilidae) in northern Michigan. Report to The Nature Conservancy, 21pp.

U.S.F.W.S. 1989. Endangered and threatened wildlife and plants; animal notice of review. *Federal Register* 54(4):554-579.

White, D.S. 1986a. The status of *Brychius hungerfordi* and *Stenelmis douglasensis*. A proposal to The Nature Conservancy, Michigan Field Office Small Grants Program; 11 pp.

White, D.S. 1986b. The status of *Brychius hungerfordi* and *Stenelmis douglasensis* in Michigan. A report to The Nature Conservancy, Michigan Field Office Small Grants Program; 8 pp.

White, D.S., and W.U. Brigham, and J.R. Doyen. 1984. Aquatic Coleoptera, pp. 361-437. In: R.W. Merritt and K.W. Cummins, eds. An introduction to the aquatic insects of North America. Kendall/Hunt, Dubuque, Iowa; 722 pp.

Wilsmann, L.A. and R.M. Strand. 1990. A status survey of *Brychius hungerfordi* (Coleoptera: Halipilidae).

Author

The primary author of this final rule is Carlita Shumate (see ADDRESSES section), 612/725-3276.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, set forth below.

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under *Insects*, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

- * * * * *
- (h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects							
Beetle, Hungerford's crawling water.	<i>Brychius hungerfordi</i>	U.S.A. (MI), Canada	NA	E	533	NA	NA

Dated: February 9, 1994.
Mollie H. Beattie,
 Director, U.S. Fish and Wildlife Service.
 [FR Doc. 94-5119 Filed 3-4-94; 8:45 am]
 BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 930809-3209; I.D. 021594F]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

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

ACTION: Interim rule with request for comments.

SUMMARY: NMFS issues this interim rule to reduce for 60 days the size of the offshore area where the summer flounder fishery must use an approved turtle excluder device (TED) in any net

that is rigged for fishing, by moving the northern boundary from 37°05' N. latitude (Cape Charles, VA) to 35°46.1' N. latitude (Oregon Inlet, NC). The southern boundary of the offshore area (the North Carolina-South Carolina border) remains the same. The purpose of this action is to relieve an unnecessary restriction on fishermen in the summer flounder fishery while continuing to provide protection to endangered and threatened sea turtles. **DATES:** This rule is effective March 1, 1994. Comments on this rule must be submitted by March 31, 1994.

ADDRESSES: Direct comments on this rule and requests for copies of the Environmental Assessment prepared for this rule to: Dr. William Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, Acting Chief, Endangered Species Division (301/713-2319), Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Region (813/893-3366), or Doug Beach, Chief, Protected Species Program,

NMFS Northeast Region (508/281-9291).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq. (ESA). According to the 1990 report on the decline of sea turtles, published by the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water, but collectively, activities in non-shrimp fisheries, which include the summer flounder bottom trawl fishery, constitute the second largest source.

NMFS has taken action to require the use of TEDs in the bottom trawl fishery for summer flounder from 37°05' N. latitude (Cape Charles, VA) southward to 33°35' N. latitude (North Carolina-South Carolina border), referred to as the "summer flounder fishery-sea turtle protection area" and to require vessels to carry an observer, if requested to do so. These requirements were initially