

was found in Hanakoa, Hanakapiai, and Wainiha streams, but these populations are thought to be extirpated. The known populations of Newcomb's snail have a total of approximately 6,000 to 7,000 individuals.

Some of the suspected historical decline of the snail may be attributed to habitat loss and degradation through water diversion and well drilling. Currently, predation by alien species, natural disasters and habitat alteration are threats that imperil Newcomb's snail. The rosy glandina snail (*Euglandina rosea*) is an introduced snail that preys mostly on other snails. Two species of non-native marsh flies prey upon eggs and adults of Hawaiian freshwater snails. These flies were introduced in 1955 and 1966 as bio-control agents for a non-native snail that hosts a cattle parasite. Other introduced predators include introduced fish and frogs. Presently, Newcomb's snail faces an increased likelihood of extinction from naturally occurring events such as hurricanes due to the small number of remaining populations and their limited distribution.

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *Errina newcombi* was listed as a threatened species on January 26, 2000 (65 FR 4162). On January 28, 2002, we published a proposed rule in the **Federal Register** (67 FR 3849) to designate critical habitat for Newcomb's snail. Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the **Federal Register**. We received 2 requests for a public hearing during this time period. In response to these requests, we will hold a public hearing on the date and location described in the **DATES** and **ADDRESSES** section above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing are being published in newspapers concurrently with this **Federal Register** notice.

We propose to designate critical habitat in nine critical habitat units that total 26.29 kilometers (km) (16.33 miles (mi)) of main stream channel; in total, these areas encompass approximately 2,109 hectares (ha) (5,212 acres (ac)). Six of these sites are located on state lands,

and three of these sites are on lands that are privately owned. Critical habitat units are proposed for reaches of stream main channel that range in length from 0.8 km (0.5 mi) to 7.58 km (4.71 mi); the units range in size from 35 ha (86 ac) to 876 ha (2165 ac).

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for Newcomb's snail, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

The original comment period was due to close on March 29, 2002. In order to accommodate the hearing and to provide the public with the opportunity to comment on the draft economic analysis of this proposed critical habitat designation as well as the proposed rule, we also extend the comment period. Written comments may now be submitted until April 29, 2002, to the Service office in the **ADDRESSES** section.

Public Comments Solicited

We will accept written comments and information during this extended comment period. If you wish to comment, you may submit written comments and information to the Field Supervisor, Pacific Islands Fish and Wildlife (see **ADDRESSES** section). Alternatively, you may hand-deliver comments to our Pacific Islands Fish and Wildlife Office at the above address.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address above. Copies of the draft economic analysis are available by writing to the Field Supervisor at the address above.

Author

The primary author of this notice is Gordon Smith, Fish and Wildlife Biologist, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 223, and 224

[Docket No.020319061-2061-01; I.D. 031402B]

RIN 0648-AP81

Sea Turtle Conservation; Restrictions 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 prohibit 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 from May 8 to June 30 each year. The affected area includes all Chesapeake Bay waters between the Maryland and Virginia state line (approximately 38 N. lat.) and the COLREGS line at the mouth of the Chesapeake Bay, and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary. This action, taken under the Endangered Species Act of 1973 (ESA), is necessary to conserve sea turtles listed as threatened or endangered and aid in the enforcement of the prohibition on takes.

DATES: Comments on this action are requested, and must be received at the appropriate address or fax number (**ADDRESSES**) by no later than 5 p.m., eastern daylight time, on April 15, 2002.

ADDRESSES: Written comments on this action or requests for copies of the literature cited, the draft Environmental Assessment (EA)/ Regulatory Impact Review (RIR) should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments and requests for supporting documents may also be sent via fax to 978-281-9394. Comments will not be

accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT:

Mary A. Colligan (ph. 978-281-9116, fax 978-281-9394), or Barbara A. Schroeder (ph. 301-713-1401, fax 301-713-0376).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the 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 and its implementing regulations, taking listed sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. 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. No incidental take of endangered sea turtles is currently authorized in the Virginia pound net fishery.

Existing information indicates that pound nets with large mesh and stringer leaders incidentally take sea turtles. A pound net leader with stretched mesh greater than 12 inches (30.5 cm) is considered to be a large mesh leader. A stringer leader consists of vertical lines spaced apart in a portion of the leader and mesh in the rest of the leader. Based on the available information, NMFS determined that interactions with pound net leaders were the most likely cause of a significant portion of documented sea turtle mortality in the Chesapeake Bay during the spring of 2001. Furthermore, NMFS believes it is likely that pound nets are a significant factor in the unusual spring sea turtle mortality event that occurs annually in Virginia state waters. This proposed action is necessary to provide for the conservation of threatened and endangered turtles by minimizing incidental take in the Virginia pound net fishery during the spring.

Virginia Spring Stranding Event

The Sea Turtle Stranding and Salvage Network (STSSN), a network of organizations authorized by NMFS to respond to sea turtle stranding events, has documented high sea turtle strandings in Virginia waters during the

spring for the past 23 years. From 1994 to 2001, the average date of the first reported stranding was May 15, and the highest number of strandings typically occurred during the second half of May through the end of June, when turtles were migrating into the Bay. 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, 181 in 1998, 129 in 1999, and 155 in 2000. Strandings during the spring of 2001 were exceptionally high; preliminary data indicates that 265 sea turtles stranded on Virginia beaches during May and June. This was twice the average number of turtles that stranded annually during this time period from 1995 to 2000. From 1995 to 2000, 60 percent of all reported strandings occurred during May and June.

Most of the stranded sea turtles in Virginia have been loggerheads, but endangered Kemp's ridley and leatherback sea turtles have also stranded. Out of 1,067 total strandings in May and June from 1995 to 2001, 958 loggerheads, 59 Kemp's ridleys, 17 leatherbacks, 1 green, and 32 unidentified turtles were found. The majority of the stranded turtles have been of the juvenile/immature life stage.

While some turtles with traumatic carapace injuries, propeller-like wounds or imbedded fish hooks (injuries not associated with pound nets) are documented each year, no cause of mortality is obvious for the majority of turtles that strand in Virginia. While current stranding levels are higher than in previous years, relatively healthy animals have been stranding on Virginia beaches for at least 20 years. Bellmund, *et al.* (1987) found that during spring stranding events in 1983 and 1984, all turtles examined seemed healthy with the exception of one injured and two emaciated turtles.

Although fresh dead turtles were found earlier in the season, most of the stranded turtles reported in the spring of 2000 and 2001 were moderately to severely decomposed. 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 2000 and 2001 had good fat stores, suggesting that the animals were in good health prior to their death. Many of the necropsied turtles had full stomachs, and contents included blue crab, horseshoe crab, and fish. Twenty-three of 66 loggerheads necropsied between May and December 2001 contained fish parts. The majority of the

2001 necropsies were conducted on animals that stranded in the Western Bay and on the Chesapeake Bay side of the eastern shore.

The distribution of sea turtle strandings in Virginia varies slightly from year to year, but historically, most of the spring strandings in Virginia have been documented on the ocean facing beaches south of Cape Henry and the inshore beaches in the southern Chesapeake Bay. For instance, the majority of 1999 spring strandings occurred offshore in the Virginia Beach Oceanside area around the mouth of the Chesapeake Bay, but the majority of the spring strandings in 1998, 2000, and 2001 occurred in inshore waters with concentrations around the southern tip of the eastern shore and the southern portion of the Chesapeake Bay around Virginia Beach and Hampton. Strandings in 2001 were of particular concern because the majority of the strandings (approximately 65 percent) in May and June occurred along the Chesapeake Bay side of the eastern shore of Virginia and along the southern tip near Kiptopeke and Fisherman's Island, indicating a possible localized interaction. It is possible that some Virginia Chesapeake Bay turtle strandings are swept into the Chesapeake Bay from elsewhere, as the water patterns and currents entering the Chesapeake Bay could concentrate sea turtle strandings around the mouth. However, it is likely that in the Virginia Chesapeake Bay, most mortalities have occurred relatively close to the stranding location (Lutcavage 1981). Further, it has been estimated that strandings on ocean facing beaches represent, at best, only approximately 20 percent of the at-sea nearshore mortality, as only those turtles killed close to shore are most likely to strand (NMFS SEFSC 2001).

Factors Contributing to Strandings

In response to the long term trend in elevated sea turtle strandings, NMFS instituted a program in 2001 to investigate interactions between sea turtles and Virginia fisheries during the historical stranding period. This program included inshore and offshore aerial surveys, traditional and alternative platform observer coverage of gillnet and pound net fisheries, and sonar surveys of pound net leaders.

There is a complex mix of fisheries operating in Virginia Chesapeake Bay and ocean waters during May and June, including large and small mesh gillnet fisheries, whelk and crab pot fisheries, haul seine fisheries, scallop dredge and trawl fisheries, and the pound net fishery. At the time of the 2001

strandings, NMFS observed a number of the fisheries active in Virginia and did not detect significant sea turtle mortality. However, additional observer coverage is needed to adequately determine the level of sea turtle interactions with the various fisheries operating during the spring.

The federally managed monkfish large mesh gillnet fishery (approximately 10–12 inch (25.4–30.5 cm) mesh) had approximately 41-percent observer coverage in waters off Virginia from May 1 until it stopped operating off Virginia on May 29 when the fleet moved northward. In Virginia, 107 monkfish trips were observed, and one dead and two live loggerhead turtles were incidentally captured in this fishery. In May and June 2001, the monkfish fishery landed approximately 16 percent of the total landings with gillnet gear in Virginia. Two 10–14 inch (25.4–35.6 cm) mesh gillnet fisheries, the black drum and sandbar shark gillnet fisheries, occurred in state waters, in the vicinity of the highest number of turtle strandings (along the tip of the eastern shore). The black drum fishery had approximately 8-percent observer coverage during May and June, and no turtle takes were observed. Additionally, almost all of the black drum fishing effort ceased at the beginning of June, and there was not a large amount of sandbar shark gillnet effort during the spring stranding period. No large mesh gillnet fishing in the vicinity of the mouth of the Chesapeake Bay occurs from June 1 to June 30; during this time, gillnets with a stretched mesh size greater than 6 inches (15.2 cm) are prohibited in Virginia's portion of the Chesapeake Bay south of Smith Island.

During 2001, the small mesh gillnet fisheries (smaller than 6 inch (15.2 cm) mesh) were also considered as a potential contributor to the high sea turtle strandings. However, the amount of gillnet effort occurring in the Chesapeake Bay waters during May and June appears to be relatively small (e.g., approximately 11 percent of total Virginia Chesapeake Bay landings). Further, aerial surveys were conducted by the Virginia Institute of Marine Science (VIMS) in the inshore waters of the Chesapeake Bay and minimal gillnet effort was observed during June 2001. Of the total gillnet landings in Virginia offshore and inshore waters during May and June 2001, small mesh gillnet landings for a variety of species, including Atlantic croaker and dogfish, represented approximately 82 percent. NMFS observed 2 percent of the Atlantic croaker fishery and 12 percent of the dogfish fishery during that time;

no turtle takes were observed. While small mesh gillnets may entangle sea turtles, the level of interaction in Virginia waters during the spring is not expected to be high.

The Virginia Marine Resources Commission (VMRC) restricted the use of trawls in Virginia's portion of the Chesapeake Bay in 1989, and no trawling effort occurs in the Chesapeake Bay. Aerial surveys, landings data, and dock surveys indicate that limited trawling occurs in Federal waters offshore of Virginia during May and June; approximately 18 percent of total ocean landings in May and June 2001 were by scallop trawl gear (2,456 metric tons of 13,739 metric tons total). The scallop dredge fishery operates off of Virginia during May and June, consisting of approximately 78 percent of the total ocean landings in May and June 2001. Sea turtle interactions with scallop dredges have been observed, but the magnitude of the interactions with this gear type has not been determined. While additional information is needed, this fishery may contribute to some sea turtle mortality documented on Virginia ocean side beaches.

While whelk and crab pots may contribute to sea turtle mortality, it is unlikely that interactions with this gear type would result in a time and area specific mass stranding event. The majority of the whelk pot effort is found offshore, particularly outside Virginia's state waters, and few fishermen set their pots inside the Chesapeake Bay (Mansfield *et al.*, 2001). The peak spring months for the whelk pot fishery are April and May. Crab pot fishing occurs throughout the Chesapeake Bay, including along the eastern shore and tip of the Delmarva Peninsula. Approximately 36 percent of the total Virginia Chesapeake Bay landings in May and June 2001 were from crab pots. Sea turtles may become entangled in crab pot gear, but due to the nature of the gear and manner in which it's fished, interactions are difficult to detect. As such, the magnitude of this fishery's contribution to Virginia sea turtle strandings is not known, but it is unlikely that sea turtle interactions with crab pots result in a mass mortality event.

While a number of fisheries may contribute to sea turtle strandings, available data indicate that large mesh and stringer pound net leaders result in sea turtle entanglement and that the pound net fishery was a likely cause of a significant portion of the sea turtle mortality in the Chesapeake Bay during the spring of 2001. Pound nets are set throughout the Chesapeake Bay, in both Maryland and Virginia waters. In

Virginia, the majority of pound net stands are located around the Virginia shore south of the mouth of the Potomac River (south of Smith Point), around the mouth of the Rappahannock River, around the mouth of the York River/Mobjack Bay, and along the southern portion of the eastern shore of Virginia. Landings by pound nets represented approximately 40 percent of the total landings in the Virginia Chesapeake Bay during May and June 2001.

During 1980, high strandings were documented in areas where there were large numbers of working pound nets (Lutcavage, 1981). Additionally, pound nets are the dominant fishing gear observed immediately offshore of the Kiptopeke area and along the southern portion of the Virginia eastern shore, where most of the strandings occurred in the spring of 2001 and a concentration of spring strandings were documented in 1998 and 1999.

Stringer leaders are found in the western Chesapeake Bay, around the tip of Mobjack Bay and just south of the mouth of the Potomac River, near Reedville. Strandings during 1998 to 2001 were observed on the western shore of the Chesapeake Bay in the vicinity of stringer pound net leaders, but strandings during these years were almost always highest in other areas of the Chesapeake Bay (e.g., during the spring of 2001, strandings were highest along the eastern shore). High turtle mortalities in late May and early June in Virginia have previously been attributed to entanglement in large mesh and stringer pound net leaders in the Chesapeake Bay (Lutcavage, 1981; Bellmund, *et al.* 1987). Specifically, pound net entanglement has been determined to account for up to 33 percent of sea turtle mortality in the Chesapeake Bay during some summers (Lutcavage and Musick 1985). A Virginia pound net survey in the 1980s documented "many dead loggerheads and one [Kemp's] ridley hung by heads or limbs in area poundnet hedging [leaders]" (Lutcavage, 1981). This study also determined that based upon constriction features on stranded turtles, some beached carcasses had previously floated free of pound net leaders and that it was plausible that unidentified pound net leader deaths could account for many of the carcasses for which no mortality sources have been identified. However, five turtles entangled in pound net leaders were examined during 1984 and none of these turtles became disentangled by natural causes. These sea turtles instead completely decomposed in situ within 5 weeks (Bellmund, *et al.* 1987). While additional information is necessary to

determine how often sea turtles become disentangled from pound net leaders, it is plausible that turtles may become dislodged from pound net leaders either by the strong current in certain areas of the Chesapeake Bay, the decomposition process, or fishermen disentangling dead sea turtles if detected.

Data collected in 1983 and 1984 found turtle entanglement in pound nets with small mesh leaders (defined as 8 to 12 inch (20.3 to 30.5 cm) stretched mesh) to be insignificant, but in 173 pound nets examined with large mesh leaders (defined as >12 to 16 inch (>30.5 to 40.6 cm) stretched mesh), 0.2 turtles per net were found entangled (30 turtles; Bellmund, *et al.*, 1987). This study also found that in 38 nets examined with stringer mesh, 0.7 turtles per net were documented entangled (27 turtles). The sampling area was concentrated in the western Chesapeake Bay, with some sampling occurring in other portions of the Virginia Chesapeake Bay. Turtle entanglements in pound net leaders began in mid-May, increased in early June, and reached a plateau in late June (Bellmund, *et al.* 1987). In 1984, no entanglements were observed after late June. Surveys in 1979 and 1980 also found that most of the pound net leaders that captured sea turtles consisted of large mesh (12 to 16 inches (30.5 to 40.6 cm)) and were found in the lower Chesapeake Bay. Anecdotal reports from North Carolina pound net fishermen during the early 1980s stated that sea turtle entanglements occurred in pound net leaders with approximately 8 inch (20.3 cm) mesh and greater. While smaller mesh nets may pose some entanglement risk to sea turtles, the degree of entanglement has not been documented as well as entanglement in stretched mesh leaders 12 inches (30.5 cm) and greater. Leader mesh greater than or equal to 12 inch (30.5 cm) stretch and leaders with stringers likely account for the largest number of sea turtle entanglements in pound net gear in the Virginia Chesapeake Bay.

NMFS recognizes that the majority of scientific information on sea turtle and pound net interactions in Virginia dates back to the 1980s. However, the factors involved in entanglement, namely the size of sea turtles' heads and flippers relative to mesh size and stringers, are the same today as they were in the 1980s. NMFS anticipates that sea turtles will continue to interact with large mesh and stringer leaders in the Chesapeake Bay. In fact, during the spring of 2001, several sea turtles were documented in association with pound net leaders. VMRC law enforcement agents documented one live and three

dead sea turtles in pound net leaders along the eastern shore. The live turtle was entangled in a leader with greater than 12 inches (30.5 cm) stretched mesh, but the leader mesh size of the other entanglements was not documented. Additionally, during June of 2000, VMRC law enforcement agents reported disentangling two live sea turtles from two eastern shore leaders with greater than 12 inches (30.5 cm) stretched mesh. Although it is possible that some turtle carcasses drift into pound net leaders post-mortem, sea turtles have been documented entangled in pound net leaders where entanglement was determined to be the cause of death.

Sea turtle entanglements in pound net leaders are difficult to detect. Sea turtles observed in leaders in the spring of 2001 were found at the surface. Due to the poor water clarity in the Chesapeake Bay, turtles entangled below the surface cannot be observed. Additionally, pound net fishermen do not typically tend their leaders, so a turtle entangled in the leader, even at the surface, may go unnoticed. It is likely that significantly more sea turtles are entangled in pound net leaders than are observed or reported (Lutcavage 1981). Similarly, it is probable that significantly higher turtle mortality occurred over the past 23 years than was documented in Virginia beaches. Since many dead turtles fail to strand where they can be documented by the STSSN, the number of stranded turtles represents an unknown sub-sample of the total mortality that occurs each spring.

NMFS has investigated other potential causes for the annual spring sea turtle mortality event, but natural or non-fishing related anthropogenic causes are not consistent with the nature of the strandings. The absence of other species in the most recent stranding events and the absence of high sea turtle strandings in other Atlantic states during the time period when turtles are migrating are inconsistent with cold stunning, a toxic algae bloom, epizootic or other disease. Further, the stranded turtles exhibited no major traumatic injuries such as might be caused by dredging or blasting. Conversely, the circumstances surrounding the spring strandings are consistent with fishery interactions, which include relatively healthy turtles prior to the time of their death, a large number of strandings in a short time period, no external wounds on the majority of the turtles, no common characteristic among stranded turtles that would suggest disease as the main cause of death, and turtles with fish in their stomach. Sea turtles are generally

not agile enough to capture finfish under natural conditions, and thus would only consume large quantities of finfish by interacting with fishing gear or bycatch (Mansfield, *et al.* 2002, Bellmund, *et al.* 1987, Shoop and Ruckdechel 1982).

Based on the nature and location of turtle strandings, the type of fishing gear in the vicinity of the greatest number of strandings, the lack of observed takes in other fisheries operating in Virginia waters during the 2001 stranding period, the known interactions between sea turtles and large mesh and stringer pound net leaders, and several documented sea turtle entanglements in pound net leaders, NMFS concluded that pound nets were a likely cause of a significant number of the high sea turtle strandings in Virginia in May and June 2001.

As a result of information obtained in 2001, NMFS implemented an emergency rule that required all pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and all pound net leaders with stringers to be tied up in the Virginia waters of the mainstem Chesapeake Bay and the tidal waters of the James, York, and Rappahannock Rivers from June 19 to July 19, 2001 (66 FR 33489 June 22, 2001). Sea turtle strandings decreased after this rule was in effect, but as a result of delays in determining which fishery caused the strandings and in implementing management measures, the rule was enacted after the period of the highest sea turtle strandings. The emergency measures likely reduced subsequent entanglements in large mesh and stringer pound net leaders. While fishery interactions may vary from year to year, NMFS believes it is likely that pound nets contribute to the high sea turtle strandings documented every spring.

Impacts on Sea Turtles

The annual high mortality in Virginia in May and June is of concern for the following reasons: (1) The level of spring strandings in Virginia has been high for approximately 20 years and elevated for the last 5 years, and it is believed that high strandings will continue to occur during this time period; (2) strandings over the past 4 years have been concentrated along the southern tip of the eastern shore, suggesting a potential localized interaction; (3) approximately 50 percent of the Chesapeake Bay loggerhead foraging population is composed of the northern subpopulation, a subpopulation that may be declining; and (4) 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 four genetically distinct nesting subpopulations. A subpopulation that nests in south Florida is much larger and has shown recent increases in numbers of nesting females. The increase in documented sea turtle mortalities in Virginia could partly be a function of the increase in the southern subpopulation of loggerheads, which make up approximately 50 percent of the loggerheads found in the Chesapeake Bay. The northern subpopulation that nests from northeast Florida through North Carolina is much smaller and nesting numbers are stable or declining. 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; 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 southern subpopulation is estimated to produce 80 percent females (NMFS SEFSC 2001). As males do not appear to show the same degree of site fidelity as females, it is possible that the high proportion of males produced in the northern subpopulation are 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. While the size of the southern subpopulation of loggerheads appears to be increasing, the high level of spring sea turtle mortality in Virginia must be reduced to help ensure that the southern subpopulation of loggerheads continues to recover.

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 in Virginia plus the increase in loggerhead mortality documented during the last several years may negatively affect the recovery of the loggerhead population.

Modification of Pound Net Gear

To conserve sea turtles, the Assistant Administrator, NOAA, (AA) proposes to prohibit the use of all pound net leaders measuring 12 inches (30.5 cm) or 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. The area where this gear restriction would apply includes the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia state line (approximately 37° 55' N. lat., 75° 55' W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36° 59.55' N. lat., 76° 18.64' W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55' N. lat, 76° 30.40' W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44' N. lat, 76° 25.40' W. long.).

This prohibition of pound net leaders would be effective from 12:00 a.m. local time on May 8 through 11:59 p.m. local time on June 30 each year. For the duration of this proposed gear restriction, fishermen would be required to stop fishing with pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers in the designated area.

From 1994 to 2001, the average date of the first reported stranding in Virginia was May 15. However, sea turtle mortality would have occurred before the animals stranded on Virginia beaches. In order for the proposed pound net restrictions to reduce sea turtle interactions with pound net leaders and reduce any subsequent strandings on Virginia beaches, the proposed measures should go into effect at least 1 week prior to the stranding commencement date, or on May 8 each

year. Based upon STSSN strandings data, strandings in Virginia typically remain elevated until June 30, indicating that turtles may be vulnerable to entanglement in pound net leaders until this time. Implementation of the proposed gear restrictions during this time period is expected to prevent the reoccurrence of sea turtle takes in the pound net fishery in the spring and high numbers of strandings in Virginia.

In addition to establishing the restriction on leader mesh size and leaders with stringers, this proposed rule would also create a framework mechanism by which NMFS may make changes to the restrictions and/or their effective dates on an expedited basis in order to respond to new information and protect sea turtles. Under this framework mechanism, if NMFS makes a determination, for example, due to water temperature and the timing of sea turtles' migration, that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30, the AA may extend the effective dates of this regulation. Should an extension of the effective dates of the prohibition of pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers be necessary, NMFS would issue a final rule to be effective upon publication in the **Federal Register** explicitly stating the duration of the extension. The extension would not exceed 30 days from the date of its publication.

From May 8 to June 30, NMFS intends to continue to closely monitor sea turtle stranding levels and other fisheries active in the Chesapeake Bay and nearshore and offshore Virginia waters, including pound net leaders with a stretched mesh size measuring less than 12 inches (30.5 cm). If monitoring of pound net leaders reveals that one sea turtle is entangled alive in a pound net leader less than 12 inches (30.5 cm) stretched mesh or that one sea turtle is entangled dead and NMFS determines that the entanglement contributed to its death, then NMFS may determine that additional restrictions are necessary to conserve sea turtles and prevent entanglements. Such additional restrictions may include reducing the allowable mesh size for pound net leaders or prohibiting all pound net leaders regardless of mesh size in Virginia waters. Should NMFS determine that an additional restriction is warranted, NMFS would immediately file a final rule with the Office of the **Federal Register**. Such a rule would explicitly state the new mandatory gear restriction as well as the time period, which may also be extended for up to 30 days through a subsequent rule. The

area where additional gear restrictions would apply includes the same area as the initial restriction, namely the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 38° N. lat.) to the COLREGS line at the mouth of the Chesapeake Bay, and portions of the James River, the York River, and the Rappahannock River.

In 2001, NMFS implemented an emergency rule that prohibited the use of all pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and the tidal waters of the James, York, and Rappahannock Rivers from June 19 to July 19. While sea turtles may interact with smaller mesh leaders (less than 12 inch (30.5 cm) stretched mesh), NMFS believes that prohibiting the use of leaders greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers will reduce most of the potential sea turtle entanglements in pound net leaders, and subsequent strandings on Virginia beaches. NMFS chose to restrict the use of leaders with stretched mesh greater than or equal to 8 inches (20.3 cm) in 2001 because there is some information indicating that sea turtles have been entangled in 8 inch (20.3 cm) stretched mesh and because an unprecedented number of loggerheads had already stranded in the spring of 2001 at the time of the emergency rule. While there is evidence to suggest that turtle entanglements may occur in leaders with stretched mesh smaller than 12 inches (30.5 cm), the majority of the scientific information to date indicates that leaders greater than 12 inches (30.5 cm) stretched mesh and leaders with stringers result in the majority of sea turtle pound net entanglements in the Virginia Chesapeake Bay. NMFS expects that prohibiting leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh will be sufficient to protect sea turtles, while minimizing the impacts to the pound net fishery. However, as mentioned previously, should monitoring reveal one sea turtle entangled alive or one sea turtle entangled dead, and NMFS determines that the entanglement contributed to its death, in a pound net leader less than 12 inches (30.5 cm) stretched mesh, NMFS may impose additional restrictions in May or June on an expedited basis.

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. According to the 2001 VMRC survey data, of the 160 pound net licenses issued in Virginia, where one license is assigned to each pound net, 72 licenses are fishing in the waters potentially affected by this proposed rule. Based upon data from 1999 to 2001, Virginia pound net fishermen earned \$84,300 in annual revenues and landed 352,300 pounds of fish annually on average.

The proposed action prohibits pound net leaders with 12 inches (30.5 cm) and greater stretched mesh, as well as those using stringers, from May 8 to June 30. The non-preferred alternative 1 prohibits pound net leaders with 8 inches (20.3 cm) and greater stretched mesh, as well as those using stringers, from May 8 to June 30. The non-preferred alternative 2 prohibits all pound net leaders from May 8 to June 30. Finally, the non-preferred alternative 3 prohibits pound net leaders with greater than 16 inches (40.6 cm) stretched mesh, and requires pound net leaders with stringers to drop the mesh to 9 feet (2.7 m) below mean low water and to space stringer lines at least 3 feet (0.9 m) apart, from May 15 to approximately June 15.

According to VMRC data from 1999 to 2001, 27 fishermen were fishing approximately 64 pound nets from May 8 to June 30. During this period, fishermen earned revenues of \$16,700 and landed 69,300 pounds of fish, on average. Prohibiting the use of all pound net leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers from May 8 to June 30 would potentially affect approximately 11 fishermen fishing approximately 24 pound nets. Under the worst case scenario in which fishermen choose not to replace their leaders with nets less than 12 inches (30.5 cm) stretched mesh, but remove their leaders altogether between May 8 and June 30, forgone industry revenues would be \$192,000 and the cost to remove and replace pound net leaders would be \$16,700, resulting in an industry total of \$208,700. A fisherman affected by this proposed rule would on average incur revenue losses of \$16,700 from not fishing and a cost of \$1,600 to remove

and replace leaders on their pound nets in the worst case. A fisherman's annual revenue in this scenario will be reduced by 22 percent on average, given annual revenues of \$84,300. If fishermen do replace their leader with one with less than 12 inches (30.5 cm) stretched mesh, and it is operational, then the economic impact of this alternative is \$1,600 to remove and replace the leader plus approximately \$8,300 for a compliant leader. While there may be additional revenue differences associated with fishing with a smaller leader, those potential differences cannot be determined.

If NMFS determines that this proposed rule should be extended, the economic impacts to the pound net fishery will be greater. Based on the 2001 VMRC data, weekly revenues per fisherman from May 8 to June 30 were \$2,200. For every week extended, forgone industry revenues would be \$23,100, in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. Therefore, if the extension was until July 15, forgone industry revenues would be approximately \$46,200. Given a 2-week extension, a fisherman's annual revenues would now be reduced by 27 percent, versus 22 percent without the extension, under the worst case scenario. If fishermen were able to switch to a smaller mesh size leader and the requirement is extended, no additional cost would be incurred.

Should additional management measures be implemented as a result of information on pound net leader and sea turtle interactions obtained via monitoring, the restrictions may affect either those pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh or all pound net leaders regardless of mesh size in the Virginia waters of the mainstem Chesapeake Bay. If pound net leaders greater than or equal to 8 inches (20.3 cm) are prohibited, approximately 13 fishermen fishing approximately 31 pound nets would be affected. This number of affected participants includes those pound net fishermen with previously restricted leaders. From May 8 to June 30, forgone industry revenues would be \$237,400 and the cost to remove and replace pound net leaders would be \$20,300, for a total of \$257,700 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. If all pound net leaders, regardless of mesh size, are prohibited, 27 fishermen fishing approximately 64 pound nets would be affected. From May 8 to June 30, forgone industry revenues would be

\$444,600 and the cost to remove and replace pound net leaders would be \$43,200, for a total of \$487,800. The costs to an individual fisherman under either of these additional measures would be the same as the initial gear restriction; a fisherman would on average incur revenue losses of \$16,700 from not fishing and a cost of \$1,600 to remove and replace leaders on their pound nets between May 8 and June 30 in the worst case scenario.

Taking no action would not have economic consequences, at least in the short term. The impacts of the non-preferred alternative 1 would be the same as those previously described for the prohibition of pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh and stringers; approximately 13 fishermen fishing approximately 31 pound nets would be affected by the non-preferred alternative 1. From May 8 to June 30, forgone industry revenues would be \$237,400 and the cost to remove and replace pound net leaders would be \$20,300, for a total of \$257,700 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. The impacts of the non-preferred alternative 2 would be the same as those previously described for the prohibition of all pound net leaders; approximately 27 fishermen fishing 64 pound nets would be affected by the non-preferred alternative 2. From May 8 to June 30, forgone industry revenues would be \$444,600 and the cost to remove and replace pound net leaders would be \$43,200, for a total of \$487,800. Under the non-preferred alternative 3, 7 fishermen fishing approximately 14 pound nets would be affected. From May 8 to June 30, forgone industry revenues would be \$125,000 and the cost to remove and replace pound net leaders would be \$11,200, for a total of \$136,200 in the worst case scenario, assuming fishermen remove their leaders instead of switching to a smaller mesh leader. The costs to an individual fisherman under all of the alternatives would be the same; a fisherman would on average incur revenue losses of \$16,700 from not fishing and a cost of \$1,600 to remove and replace leaders on their pound nets between May 8 and June 30. Under the proposed action, the non-preferred alternative 1 and the non-preferred alternative 3, if fishermen are able to switch to a smaller leader mesh size, and it is operational, the economic impacts would be \$1,600 to remove and replace the leader plus approximately \$8,300 for a compliant leader.

Dated: March 25, 2002.

Rebecca Lent,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries.

List of Subjects

50 CFR Parts 222 and 224

Administrative practice and procedure, Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 50 CFR parts 222, 223, and 224 are 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 leader” is added in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Pound net leader means a long straight net that directs the fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers are vertical lines in a pound net leader that are spaced a certain distance apart and are not crossed by horizontal lines to form mesh.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

Authority: 16 U.S.C. 1531 *et seq.*; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.205, paragraphs (b)(14) and (15) are revised and paragraph (b)(16) is added to read as follows:

§ 223.205 Sea turtles.

* * * * *

(b) * * *

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED;

(15) Fail to comply with the restrictions set forth in § 223.206(d)(2)(v) regarding pound net leaders; or

(16) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

* * * * *

3. In § 223.206, paragraph (d)(2)(v) is added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(2) * * *

(v) *Gear requirement—pound net leaders*—(A) *Restrictions on pound net leaders.* During the time period of May 8 through June 30, any pound net leader in the waters described in paragraph (d)(2)(v)(B) of this section must have a mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers. Any pound net leader with mesh measuring 12 inches (30.5 cm) or greater or any pound net leader with stringers must be removed from the waters described in paragraph (d)(2)(v)(B) of this section prior to May 8 and may not be reset until July 1 unless that date is extended by the AA pursuant to § 223.206(d)(2)(v)(C).

(B) *Regulated waters.* The restrictions on pound net leaders described in paragraph (d)(2)(v)(A) of this section apply to the following waters: the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia State line (approximately 37° 55' N. lat., 75° 55' W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36° 59.55' N. lat., 76° 18.64' W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37° 14.55' N. lat, 76° 30.40' W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37° 37.44' N. lat, 76° 25.40' W. long.).

(C) *Expedited modification of restrictions and effective dates.* If NMFS receives information that one sea turtle is entangled alive or that one sea turtle is entangled dead, and NMFS determines that the entanglement contributed to its death, in pound net leaders that are in compliance with the restrictions described in paragraph (d)(2)(v)(A) of this section on pound net leaders in the waters identified in (d)(2)(v)(B) of this section, the AA may issue a notification modifying the restrictions on pound net leaders as necessary to protect threatened sea turtles. Such modifications may include, but are not limited to, reducing the maximum allowable mesh size of pound net leaders and prohibiting the

use of pound net leaders regardless of mesh size. In addition, if information indicates that a significant level of sea turtle strandings will likely continue beyond June 30, the AA may issue a final rule extending the effective dates of the restrictions as necessary to protect threatened sea turtles.

* * * * *

PART 224— ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; and 16 U.S.C. 1361 *et seq.*

2. In § 224.104, paragraph (e) is added to read as follows:

§ 224.104 Special requirements for fishing activities to protect endangered sea turtles.

* * * * *

(e) Fishermen fishing pound nets in waters identified in § 223.206(d)(2)(v)(B) in compliance with rules for threatened sea turtles specified in § 223.206 of this chapter will not be subject to civil penalties under the Act for incidental captures of endangered sea turtles in pound net leaders.

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