that critical habitat be designated for this subspecies. We always consider the need for critical habitat designation when listing species. If the 12-month finding determines that listing the California golden trout is warranted, then the designation of critical habitat will be addressed in the subsequent proposed rule.

Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the California golden trout. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the California golden trout. We are seeking information regarding historic and current distribution, the subspecies' biology and ecology, ongoing conservation measures for the subspecies and its habitat, and threats to the subspecies and its habitat.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

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Author

The primary author of this document is Jennifer Bain, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 12, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–23941 Filed 9–19–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket 020626160–2160–01; I.D. 061902C]

RIN 0648–AQ13

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposed rule to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California, south of Point Conception (34°27′N.)and west to the 120°W. long., from August 15 through August 31, and January 1 through January 31, when the Assistant Administrator for Fisheries publishes a notice that El Nino conditions are present. NMFS has determined that the incidental take of loggerhead sea turtles by this fishery is dependent on the area and season being fished during these oceanographic conditions. Time and area closures will result in a reduction in the amount of take of loggerheads by the fishery and are necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead population.

DATES: Comments on this proposed rule must be postmarked or transmitted by facsimile by 5 p.m., Pacific Daylight Time, on October 21, 2002. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Send comments on this proposed rule to Tim Price, National Marine Fisheries Service, Protected Resources Division, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or by fax (562) 980–4027. Copies of the Environmental Assessment (EA) or biological opinion (BO) may be obtained from Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, or are available on the internet at *http://swr.ucsd.edu/*.

FOR FURTHER INFORMATION CONTACT: Tim Price, NMFS, Southwest Region, Protected Resources Division, (562) 980–4029.

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

On October 24, 2000 (65 FR 64670, October 30, 2000), NMFS issued a permit, for a period of 3 years, to authorize the incidental, but not intentional, taking of four stocks of threatened or endangered marine mammals (Fin whale, California/Oregon/Washington stock; Humpback whale, California/Oregon/Washington-Mexico stock; Steller sea lion, eastern stock; and Sperm whale, California/Oregon/Washington stock) by the CA/OR drift gillnet fishery under section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(E)).

To authorize this incidental take of marine mammals listed under the ESA, NMFS completed a formal consultation as required by section 7 of the ESA. This consultation also included an analysis of the effects of the CA/OR drift gillnet fishery on loggerheads. On October 23, 2000, NMFS issued a Biological Opinion (BO) in which it determined that the current operations of the CA/OR drift gillnet fishery are jeopardizing the continued existence of loggerheads.

To avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of loggerheads, NMFS developed a Reasonable and Prudent Alternative (RPA) in the BO that consists of time and area closures of the CA/OR drift gillnet fishery during a forecasted, or occurring, El Ni~o event. This proposed rule addresses this RPA to protect loggerheads.

Reduction of Loggerhead Entanglements

The RPA identified in the BO to address the incidental take of loggerheads by the CA/OR drift gillnet fishery consists of a time and area closure during El Nino conditions that would prohibit drift gillnet fishing in U.S. ocean waters off of southern California south of Point Conception (34°27′N.) and west to 120°W longitude, occurring from August 15 to August 31 and from January 1 to January 31. This measure would reduce the likelihood of the CA/OR drift gillnet fishery incidentally entangling loggerheads by at least 65 percent. The Assistant Administrator for Fisheries (AA) will publish a notice announcing that El Nino conditions are present off the coast of southern California and that the time and area closure will be in effect. In determining whether to announce that an El Nino event affecting southern California waters is forecast or occurring, the AA will rely on information made public by NOAA offices that monitor the El Nino event, including information from the Climate Prediction Center, at *http://cwatchc.ucsd.edu*, and from NOAA's West Coast Office of Coast Watch, at *http://cwatchwc.ucsd.edu*, and also from the State of California.

Loggerhead Entanglement Data

Based on NMFS observer data from July 1990 through January 2001, there have been a total of 18 loggerheads (3 were unidentified turtles that are assumed to be loggerheads based on carapace length and the area in which they were caught) taken by the CA/OR drift gillnet fishery. All of these entanglements occurred during El Nino years and all occurred in the proposed closure area. Sixty-five percent of these entanglements occurred from August 15 to August 31 and from January 1 through January 31. There have also been 4 loggerheads observed taken during the month of July and 1 entanglement observed during the month of June. These entanglements occurred at a time when the fishery was significantly more active (e.g. beginning in 1992 the State of California prohibited drift gillnet vessels from fishing inside 75 nautical miles (136.9 kilometers) from May 1 through August 14). However, now there is minimal fishing effort during the months of June, July, and the first 2 weeks of August, because most of the larger vessels have switched to targeting albacore tuna during this time period. In addition, there was one loggerhead observed taken during the month of October.

In August 2001, NMFS observed one loggerhead taken in ocean waters off of San Diego, CA. This entanglement occurred outside of an El Ni~o event. Although there have been reports of loggerheads occasionally stranding and of sightings of loggerheads off of southern California during years when there is not an El Nino event, this was the first loggerhead entanglement that NMFS has observed outside of an El Nino event. Loggerheads and their prey are more abundant off of southern California during El Nino events when water temperatures are generally warmer. Thus, there is a significant increase in the likelihood of a loggerhead entanglement during El Nino events. Because loggerheads are less likely to be off the coast of southern California outside El Nino years and because NMFS has only observed one loggerhead entanglement outside of an El Nino year, NMFS believes that an entanglement of a loggerhead outside of an El Nino event is a rare occurrence.

Classification

NMFS prepared an EA (August 13, 2001) and a draft supplement (June 27, 2002) to the EA for this proposed rule and concluded these regulations would pose no significant adverse environmental impact.

The actions implemented by this proposed rule are expected to impact approximately 81 CA/OR drift gillnet vessel owners and operators, representing approximately 500 fishing sets annually. For a description and a detailed economic analysis of the CA/OR drift gillnet fishery, readers should refer to the August 13, 2001, EA prepared for this proposed rule which incorporates the initial regulatory flexibility analysis. The total gross revenue loss to the CA/OR drift gillnet fleet resulting from the time and area closures in this proposed rule is expected to be $440,000 for an El Nino year. This revenue loss to the fishery is a worst-case scenario based on the assumption that none of the fishing effort will shift to ocean areas that remain open to fishing. Loggerhead time and area closures during the month of January are expected to have the greatest impact on the fishery because the oceanographic conditions that favor swordfish during January are generally located along the coast. In this scenario, the reduction in total gross revenues is not expected to exceed $5,400 per vessel per El Nino year. This estimate is based on California Department of Fish and Game landing receipts for the period between August 15 through August 31, and January 1 through January 31, using data from 1997 to 2000. On average, during these time periods, approximately $6,300 of louvar, $17,700 of mako shark, $20,300 of opah, $345,300 of swordfish, and $49,100 of thresher shark are landed.

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

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

A BO on the issuance of a marine mammal permit under section 101(a)(5)(E) of the MMPA was issued on October 23, 2000. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of loggerheads. This proposed rule implements the RPA to protect loggerheads. NMFS has determined that the time and area closure identified in the BO is expected to avoid the likelihood of jeopardizing the continued existence of the loggerhead species.

In keeping with the intent of the Executive Order 12612 to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the States of California and Oregon regarding the implementation of the RPA. Both California and Oregon have expressed support for the measures identified in the BO for the protection of leatherback and loggerhead sea turtle species. NMFS intends to continue engaging in informal and formal contacts with the States of California and Oregon during the implementation of this RPA and development of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

List of Subjects in 50 CFR Part 223

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

Dated: September 13, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

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

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. In § 223.206, paragraphs (d)(6)(ii) and (iii) are added to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(6) * * *

(ii) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean south of 34°27′N. (Point Conception, California) and west to 120° W. from January 1 through January 31 and from August 15 through August 31 during a forecasted, or occurring, El Nino event.

(iii) *Determination and notification concerning an El Nino event.* The Assistant Administrator will publish a notification that an El Nino event is occurring off of or is forecast for the coast of southern California and the requirement for time area closures in the Pacific loggerhead conservation zone in the **Federal Register** and will announce the notification in summary form by other methods as the Assistant Administrator determines are necessary and appropriate to provide notice to the California/Oregon drift gillnet fishery. The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, and by the State of California, in order to determine whether to publish such a notice. The requirement for the area closures from January 1 through January 31 and from August 15 through August 31 will remain effective until the Assistant Administrator issues a notice that the El Nino event is no longer occurring.

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[FR Doc. 02–23841 Filed 9–19–02; 8:45 am]

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