

2. On November 20, 2002, the Commission released a *Third Notice of Proposed Rule Making*, MM Docket No. 98-204, FCC 02-303, 67 FR 77373 (December 17, 2002) (*Third Nprm*) requesting comments on the appropriate treatment of part-time employees under the Commission's Equal Employment Opportunity rules. Deadlines for comments and reply comments were December 20, 2002, and January 6, 2003, respectively. Notice of the new rulemaking proceeding was not, however, published in the **Federal Register** until December 17, 2002. In order to ensure that all parties have adequate notice of the rulemaking, the Bureau is extending these deadlines until January 16, 2003, for comments and February 3, 2003, for reply comments.

3. *Accordingly, it is Ordered* that the date for filing comments and reply comments in this proceeding is *Extended* to January 16, 2003, and February 3, 2003, respectively.

4. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r), and §§ 0.204(b), 0.283 and 1.46 of the Commission's rules, 47 CFR 0.204(b), 0.283 and 1.46.

Federal Communications Commission.

Deborah E. Klein,

Chief of Staff, Media Bureau.

[FR Doc. 02-32474 Filed 12-19-02; 4:57 pm]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA-97-2995; Notice 10]

Pipeline Drug Testing; Random Testing Rate

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: Each year pipeline operators randomly select employees to test for prohibited drugs. The number of selections may not be less than the minimum annual percentage rate we determine, either 50 percent or 25 percent of covered employees, based on the industry's positive rate of random tests. In accordance with applicable standards, we have determined that the positive rate of random drug tests reported by operators this year for

testing done in calendar year 2001 is less than 1.0 percent. (See **SUPPLEMENTARY INFORMATION**.) Therefore, in calendar year 2003, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow by phone at 202-366-4559, by fax at 202-366-4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at buck.furrow@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing done in the previous calendar year (49 CFR 199.119(a)). One of the uses of this information is to calculate the minimum annual percentage rate at which operators must randomly select covered employees for drug testing during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, we may lower the rate to 25 percent if we determine that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, we will increase the rate to 50 percent if we determine that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines "positive rate" as "the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *".

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing done in 1994 and 1995, we lowered the minimum rate from 50 to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997); 1999 (63 FR 58324; Oct. 30, 1998); 2000 (64 FR 66788; Nov. 30, 1999); 2001 (65 FR 81409; Dec. 26, 2000); and 2002 (67 FR 2611; Jan. 18, 2002).

Using the MIS reports received this year for drug testing done in calendar

year 2001, we calculated the positive rate of random testing to be 0.6 percent. Since the positive rate continues to be less than 1.0 percent, we are announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2003, through December 31, 2003.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 17, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety. [FR Doc. 02-32269 Filed 12-23-02; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket 020626160-2309-03; 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: Interim final rule; request for comments.

SUMMARY: NMFS is issuing an interim final 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., 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 correlates to the area and season being fished during these oceanographic conditions. Time and area closures will result in a reduction in the take of loggerhead turtles 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: This interim final rule is effective January 23, 2003. Comments on this interim final rule must be postmarked or transmitted by facsimile by 5 p.m., Pacific Standard Time, on

February 7, 2003. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Send comments on this interim final rule to Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213. Copies of the Environmental Assessment (EA) and biological opinion (BO) are available on the internet at <http://swr.ucsd.edu/> or may be obtained from Tim Price, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

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 (50 CFR 223.205), taking threatened sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of threatened species may only be legally authorized by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) 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 loggerhead turtles. On October 23, 2000, NMFS issued a BO in which it determined that the then current operations of the CA/OR drift gillnet fishery were likely to jeopardize the continued existence of loggerhead turtles.

To avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of loggerhead turtles, NMFS developed a Reasonable and Prudent Alternative (RPA) in the BO that consists of prohibiting CA/OR drift gillnet vessels from fishing in U.S. waters off southern California, south of Point Conception (34°27' N.) and west to the 120°W., from August 15 through August 31, and January 1 through January 31, during a forecasted, or occurring, El Nino event. On September 20, 2002, NMFS published a proposed rule (67 FR 59243) to implement this RPA to protect loggerhead turtles.

Criteria for Determining El Nino Conditions

Using the sea surface temperature anomaly charts available on the NOAA Coastwatch West Coast Regional Node web page at <http://cwatchwc.ucsd.edu/> and observer data on loggerhead turtle entanglements, NMFS has developed criteria for determining whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure identified in the October 2000 BO. Under the criteria, NMFS uses the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to August or January for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. "Normal sea surface temperatures" is the average of the monthly mean sea surface temperatures for 1950-97.

All loggerhead turtles observed entangled in the CA/OR drift gillnet fishery during El Nino events were entangled during months in which the sea surface temperatures ranged from approximately 60°F to 72°F (15.6°C to 22.2°C) and sea surface temperatures differed from the average by approximately 0°F to +4°F (0°C to +2.2°C). The sea surface temperature during the month preceding each observed loggerhead entanglement was either greater than normal or equal to the normal sea surface temperature. The sea surface temperature during the third month and second month prior to each entanglement during an El Nino event was always greater than the normal sea surface temperature for that month.

NMFS believes this is because warmer sea surface temperatures are necessary for loggerhead turtles to move into the area. There have been no observed entanglements in this fishery in which any one of the preceding 3 months were colder than normal.

Based on this information, the need to allow sufficient lead time to publish a notice in the **Federal Register** announcing El Nino conditions prior to the start date of the closure, and the fact that the sea surface temperature charts for a recently completed given month are not available until the following month, NMFS is using sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. For example, NMFS evaluates sea surface temperatures for October and November to determine whether El Nino conditions in January will trigger a closure to conserve loggerhead turtles. Specifically, if an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2-month time period are greater than normal, NMFS will publish a **Federal Register** notice with the determination that El Nino conditions are forecast off of southern California for the purpose of implementing the time and area closure to protect loggerhead turtles. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice indicating that El Nino conditions are no longer present for purposes of implementing the closure.

January 2003 El Nino Determination

On December 12, 2002, NOAA Climate Prediction Center issued an updated El Nino report which indicated that sea surface temperature anomalies increased in equatorial waters. However, sea surface temperatures off of southern California are not expected to attain positive sea surface temperature anomalies until early Spring 2003. Using the criteria set forth above, NMFS has determined that El Nino conditions are not present for purposes of implementing the time and area closure for January 2003. This determination is based on the October and November monthly sea surface temperature anomaly charts which show ocean waters off southern California were -2° and -1°F (-1.1°C and -0.6°C) below normal respectively. Based on these

data, the conditions do not meet the criteria that the preceding second and third month sea surface temperatures prior to the month of January are greater than normal. Therefore, the U.S. waters off southern California, south of Point Conception (34°27' N.) and west to the 120°W., will remain open to drift gillnet fishing between January 1 through January 31, 2003.

Alternate Time and Area Closure

In response to a recommendation by the Pacific Offshore Cetacean Take Reduction Team (TRT), NMFS conducted a preliminary review of observer data to determine whether an alternate closure in June, July, and August would offer the same or better protection than the closure during January 1 through 31 and August 15 through 31. NMFS reviewed observer data from the two most recent El Nino events (1992/1993 and 1997/1998). Using this information, NMFS reviewed the number of observed entanglements of loggerhead turtles that occurred during the months of January, June, July, and August, and calculated the average interaction rate for each of these months. By averaging the most recent 3 years of fishing effort (1999–2001), NMFS estimated future monthly effort in the fishery and calculated preliminary estimates of loggerhead turtle entanglements by month. Based on limited observer data, preliminary analysis indicates that a closure in June, July, and August may provide the same or better protection for loggerhead turtles. The loggerhead turtle interaction rate is higher during the summer months than in January, but fishing effort is low during the summer months. Also, observer data during the summer months is limited. NMFS is continuing to evaluate this alternate closure and is soliciting comment on this management regime.

Comments on the Proposed Rule

NMFS received five letters on the proposed rule. Three were in support of the time and area closure and two were opposed to the time and area closure. In addition, NMFS received comments from the TRT at its May 2002 meeting.

Comment 1: One commenter requested that NMFS require fleet-wide satellite vessel monitoring systems as part of the final rule to enforce area closures.

Response: Requiring vessels to install vessel monitoring systems was not part of the proposed action or a term and condition of the incidental take statement or RPA. At this time, based on 20 percent observer coverage, California Department of Fish and Game logbook

data, review of fish landing tickets, and the cooperation of the U.S. Coast Guard, NMFS does not believe vessel monitoring systems will be necessary to successfully enforce these closures.

Comment 2: One commenter requested that NMFS continue its observer program at 20 percent and to continue its support for ongoing research on the distribution of sea turtles in the Pacific Ocean to determine which habitats and migratory routes these species use.

Response: NMFS intends to continue monitoring the CA/OR drift gillnet fishery targeting swordfish and thresher shark at 20 percent observer coverage and continue its support for research on the distribution of sea turtles in the Pacific to determine which habitats and migratory routes they use.

Comment 3: One commenter felt that NMFS' use of 3,000 sets as an estimate of annual fishing effort in the October 2000 BO was unrealistically high.

Response: At the time the BO was prepared, 3,000 sets was a reasonable estimate to predict future fishing effort based on a 3-year average using 1997, 1998, and 1999 data. NMFS is aware that fishing effort has continued to decline. Based on fishing effort estimates prepared by California Department of Fish and Game, the annual number of sets for 2000 and 2001 was 1,936 and 1,482 respectively. For the next consultation on the fishery, NMFS will use updated estimates to predict future fishing effort.

Comment 4: One commenter suggested moving the northern boundary of the closed area to 32°45' N. and the western boundary to 119°30'W.

Response: Although there have been no observed loggerhead turtles taken in ocean waters north of 32°45' N. during El Nino events or west of 119°30' W., this does not mean that loggerhead turtles are not present in this area. Specifically, during El Nino events, NMFS has limited observer data for this area, with only 77 observed sets in the area east of 120°W. and north of 32°45' N. and 14 sets between 120°W. and 119°30'W. south of 32°45' N. Therefore, the lack of an observed take in this area may be the result of fewer observations in this area during the summer months of El Nino events. Based on the limited data, NMFS believes the proposed boundaries are not unnecessarily broad.

Comment 5: One commenter indicated that the time and area closure does not address the incidental take of loggerhead turtles outside of El Nino events.

Response: Although one loggerhead turtle was observed taken outside of an El Nino event, NMFS believes this event

was an exception and a random event which is not representative of future anticipated takes. Specifically, the animal was taken during a month in which the sea surface temperature was -2°F (-1.1°C) cooler than normal.

Comment 6: One commenter expressed concern that the regulations to implement the time and area closure to protect loggerhead turtles were not implemented by August 2001, as recommended in the BO.

Response: As explained in previous **Federal Register** notices (66 FR 44549, August 24, 2001; 67 FR 59245, September 20, 2002), the regulations to implement the loggerhead time and area closure need to be in place if El Nino conditions are predicted or are occurring during the month of January or between August 15 and August 31 off the coast of California where loggerhead interactions with the CA/OR drift gillnet fishery have been documented. However, sea surface temperatures off of southern California are not expected to attain positive sea surface temperature anomalies until early Spring 2003.

Comment 7: One commenter recommended that the CA/OR drift gillnet fishery be managed using an ecosystem approach rather than a piecemeal approach, like NMFS' actions to date.

Response: Although the CA/OR drift gillnet fishery is managed primarily by the State of California, NMFS has implemented regulations under section 118 of the MMPA to reduce the incidental mortality and serious injury of strategic marine mammal stocks based upon the recommendations from the TRT. In addition, NMFS has implemented regulations under the ESA to address the incidental take of listed marine mammal and sea turtle species. In the future, the fishery might be regulated by NMFS under the Highly Migratory Species Fishery Management Plan that has been adopted by the Pacific Regional Fishery Management Council (but has not yet been submitted to, or approved by, NMFS).

Comment 8: One commenter requested that NMFS analyze the potential take of listed species such as the blue whale, Guadalupe fur seal, right whale, and sei whale, which are likely to occur inside the area where the fishery operates, although there have been no observed takes of these species in the CA/OR drift gillnet fishery.

Response: In completing the analysis in the BO, NMFS used the best available information. NMFS agrees the absence of documented take does not eliminate the possibility of a future take. However, if future takes are detected, these will be addressed in subsequent biological

opinions based on available data at the time.

Comment 9: One commenter requested that NMFS complete a formal rulemaking for the implementation of regulations to address the incidental take of green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) turtles as well as the long-term ecosystem impacts of shark mortality associated with the CA/OR drift gillnet fishery.

Response: Since the inception of the observer program, NMFS has observed one green turtle and one olive ridley turtle interaction with the CA/OR drift gillnet fishery. Based on these two observations, NMFS is unable to complete meaningful analysis that would lead to useful regulations. The Highly Migratory Species Fishery Management Plan under development by the Pacific Regional Fishery Management Council would, if approved, allow NMFS to manage the fishery for the incidental take of shark species.

Comment 10: One commenter requested that NMFS provide a more meaningful definition of El Nino conditions by focusing on the conditions that need to be present in order for an El Nino to be declared for purposes of implementing the time and area closure.

Response: NMFS developed criteria outlined in the supplementary information section of this interim final rule.

Comment 11: One commenter indicated that the standard used to determine whether El Nino conditions are present in the waters off southern California should include the presence of prey which may affect the migratory patterns of loggerhead turtles in addition to sea surface temperatures.

Response: NMFS does not have sufficient real-time data on prey species abundance off southern California to include this parameter as a criteria for determining whether El Nino conditions are present.

Comment 12: One commenter indicated that the rule should include a periodic review of oceanic conditions to determine whether the closure to protect loggerhead turtles should be lifted if El Nino conditions are no longer present.

Response: As written, the regulatory text of this rule clearly states that the Assistant Administrator will issue a notice when El Nino conditions are no longer present. The criteria that will be used are explained in this preamble, above. To accomplish this, NMFS will conduct a periodic review of oceanic conditions.

Comment 13: One commenter proposed that the January closure be replaced with a closure of June, July and August 1 through 14 and that the northern boundary of the closed area be moved to 32°45' N and the western boundary be moved to 119°30' W.

Response: NMFS is considering adjusting the management regime according to this proposal although the analysis has not been completed. However, preliminary analysis on this recommendation is discussed elsewhere in the Supplementary Information section of this interim final rule. Moving the northern and western boundaries of the area closure is discussed under comment 5.

Comment 14: One commenter indicated that NMFS incorrectly calculated the effectiveness of the time and area closure in the BO because NMFS mistakenly included two loggerhead turtles inside the time and area closure when they were actually taken outside of the time and area closure. As a result, the percent reduction in loggerhead interactions with the time and area closure is reduced from 65 percent to 53 percent.

Response: NMFS agrees that there were two loggerhead turtles mistakenly reported inside the time and area closure and the correct percent reduction of the time and area closure is 53 percent.

Pacific Offshore Cetacean Take Reduction Team Recommendations

Comment 15: The TRT recommended that NMFS implement a time and area closure during the months of June, July, and August instead of August 15 through August 31, and January 1 through January 31. This recommendation was based on the number of loggerhead turtle interactions that have occurred during these months, the limited fishing effort during this time period, and the apparent higher entanglement rate.

Response: NMFS is considering this alternative. The preliminary analysis is discussed elsewhere in the Supplementary Information section of this interim final rule.

Comment 16: The TRT recommended that NMFS more clearly define what constitutes El Nino conditions that trigger loggerhead restrictions. Specifically, the TRT recommended that NMFS determine if there are specific local conditions or a particular strength of an El Nino that correlate with an increased take of loggerhead turtles in the fishery.

Response: The criteria NMFS is using to determine El Nino conditions are explained in this interim final rule (see above).

Comment 17: The TRT recommended that research be conducted on the movement patterns of loggerhead sea turtles off southern California during El Nino years and their habitat preferences (including water temperature and prey). This information should also be factored into future agency decisions regarding measures for reducing mortality and entanglement of loggerhead turtles.

Response: NMFS equipped five loggerhead turtles off Baja California with satellite transmitter tags that provide location and dive data. In addition, NMFS intends to continue tagging loggerhead turtles off Baja California in subsequent years. These data will be used in future agency decisions.

Comment 18: If NMFS does not accept the TRT's recommendation to replace the January closure with a closure from June, July, and August 1 to August 14, the TRT recommends that the northern limit of the loggerhead closure area be shifted from Point Conception to 33°N. If a loggerhead entanglement occurs north of 33°N in the CA/OR drift gillnet fishery in an El Nino year, the closure area would revert to Point Conception for that January and August and for that period of subsequent El Nino years.

Response: See response to comment 4.

The regulatory text of this interim final rule is identical to the regulatory text of the proposed rule (67 FR 59243, September 20, 2002).

Classification

NMFS prepared an EA (August 13, 2001) and a supplement to the EA for this interim final rule and concluded that these regulations would have no significant impact on the human environment. In addition to the status quo and the time and area closures identified in this interim final rule, NMFS examined several alternatives for reducing or eliminating sea turtle entanglements when developing measures to avoid the incidental take of sea turtles. NMFS searched for a strategy which would provide the most certainty in reducing or eliminating entanglements upon implementation. These strategies included: (1) reducing fishing effort through gear modifications; (2) reducing fishing effort by decreasing the number of vessels; (3) increasing survival of entangled sea turtles; (4) implementing gear modifications to reduce interactions; and (5) changing fishing practices such as shorter soak times. These alternatives were not considered further because NMFS could not be certain that singularly or together they would result in a significant reduction in the level of take and mortality of sea turtles.

The actions implemented by this interim final 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 rule which incorporates the 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. NMFS did not receive comments on the detailed economic analysis and alternatives on the EA prepared for this interim final rule.

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

This interim final 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 loggerhead turtles. This interim final rule implements the RPA to protect loggerhead turtles. 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.

Dated: December 16, 2002.

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

List of Subjects in 50 CFR Part 223

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

For the reasons set out in the preamble, 50 CFR part 223 is amended to read 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, paragraph (d)(6) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(6) *Restrictions applicable to the California/Oregon drift gillnet fishery—*
(i) 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.

(ii) 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.

* * * * *

[FR Doc. 02-32302 Filed 12-23-02; 8:45 am]

BILLING CODE 3510-22-S