2. Section 17.11(h) is amended by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	* *		*		*
Otter, northern sea	*Enhydra lutris kenyoni*.	U.S.A. (AK, WA, OR, CA).	Southwest Alaska, from Attu Island to Western Cook Inlet, incuding Bristol Bay, the Kodiak Archipelago, and the Barren Islands.	T	.....	NA	NA
*	*	*	* *		*		*

Dated: December 9, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 04–2844 Filed 2–10–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 635

[Docket No. 040202035–4035–01; I.D. 112403A]

RIN 0648–AR80

Atlantic Highly Migratory Species (HMS); Pelagic Longline Fishery

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

ACTION: Proposed rule; request for comments; public hearings.

SUMMARY: This proposed rule would reduce bycatch and bycatch mortality of sea turtles caught incidentally in the Atlantic and Gulf of Mexico HMS pelagic longline fisheries, consistent with the requirements of the Endangered Species Act (ESA). Based upon the results of an experiment in the Northeast Distant (NED) statistical reporting area and information indicating that the level of incidental takes of sea turtles established for the HMS pelagic longline fishery has been exceeded, NMFS proposes to implement new sea turtle bycatch mitigation measures throughout the fishery, including the NED statistical reporting area, and to reopen the NED closed area. Through experimentation in the NED, certain hook and bait measures have proven to be effective at reducing sea turtle bycatch, and are expected to reduce bycatch mortality and interactions with these species. The proposed bycatch mitigation measures include mandatory pelagic longline circle hook and bait requirements, and mandatory possession and use of onboard equipment to reduce sea turtle bycatch mortality. The intent of this proposed action is to reduce interactions with, and post-release mortality of, threatened and endangered sea turtles in HMS pelagic longline fisheries to comply with the ESA and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments on the proposed rule must be received no later than 5 p.m., eastern standard time, on March 15, 2004. NMFS will hold public hearings from March 2, 2004, through March 9, 2004. *See* **ADDRESSES** for specific locations, dates, and times.

ADDRESSES: The public hearing locations, dates and times are:

1. Tuesday, March 2, 2004 - North Dartmouth, MA, 7 - 9 p.m. University of Massachusetts at Dartmouth, 285 Old Westport Road, Deon Building, Room 105, North Dartmouth, MA 02747–2300;

2. Thursday, March 4, 2004 - New Orleans, LA, 7 - 9 p.m. New Orleans Airport Hilton Hotel, 901 Airline Drive, Kenner, LA 70062; and

3. Tuesday, March 9, 2004 - Manteo, NC, 7 - 9 p.m. North Carolina Aquarium on Roanoke Island, 374 Airport Road, Manteo, NC 27954–0967.

Written comments on the proposed rule should be submitted to Christopher Rogers, Chief, Highly Migratory Species (HMS) Management Division (SF/1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments may be sent via facsimile (fax) to 301–713–1917. Comments on this proposed rule may also be submitted by e-mail. The mailbox address for providing e-mail comments is: *0648AR80.PROPOSED@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AR80. For copies of the Draft Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA), contact Russell Dunn at (727) 570–5447.

FOR FURTHER INFORMATION CONTACT: Russell Dunn, Greg Fairclough, or Richard A. Pearson at (727) 570–5447 or fax (727) 570–5656.

SUPPLEMENTARY INFORMATION: The Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, is implemented by regulations at 50 CFR part 635. The Atlantic pelagic longline fishery is also subject to the requirements of the ESA and the Marine Mammal Protection Act (MMPA).

Management History of Sea Turtle Bycatch Reduction

Under the ESA, Federal agencies must consult with either the U.S. Fish and Wildlife Service or NMFS whenever they authorize, fund, or carry out an action that may adversely affect a threatened or endangered species or its designated critical habitat. In the case of marine fisheries, the NMFS Office of Sustainable Fisheries consults with its Office of Protected Resources. After consultation, NMFS issues a Biological

Opinion (BiOp) that determines whether a fishery management action is likely to jeopardize the continued existence of threatened or endangered populations of marine species, including sea turtles. If the determination is that the action is likely to jeopardize a listed species, NMFS provides one or more reasonable and prudent alternatives (RPA) that would permit the activity to proceed without creating jeopardy. NMFS then identifies the amount or level of incidental take of endangered species (incidental take statement (ITS)), and specifies the terms and conditions which must be met in order to mitigate impacts on a listed species. ESA consultation must be reinitiated when a regulated action exceeds the level of take previously identified in an existing ITS; if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; or if the action is subsequently modified in a manner that causes an effect that was not considered in an existing BiOp.

Since 1999, three BiOps have been issued that address the HMS pelagic longline fishery (April 23, 1999; June 30, 2000; June 14, 2001). In November, 1999, NMFS reinitiated ESA consultation based upon information indicating that the number of sea turtles taken in the pelagic longline fishery had exceeded the ITS established by the April 23, 1999, BiOp. Also, proposed regulations (64 FR 69982, December 15, 1999) to reduce bycatch in the HMS pelagic longline fishery triggered the need to reinitiate consultation. The resulting June 30, 2000, BiOp concluded that the pelagic longline fishery was likely to jeopardize the continued existence of loggerhead and leatherback sea turtles.

To implement the RPA in June 30, 2000, BiOp, NMFS issued emergency regulations (65 FR 60889, October 13, 2000) that closed a 55,970–square nautical mile, L-shaped portion of the NED area to pelagic longline fishing from October 10, 2000, through April 9, 2001, and required the possession and use of line clippers and dipnets for all HMS-permitted pelagic longline vessels. NMFS published an interim final rule on March 30, 2001 (66 FR 17370), continuing the requirement to possess and use dipnets and line clippers on all vessels in the pelagic longline fishery.

On June 14, 2001, NMFS issued a new BiOp incorporating information obtained from a January 2001 technical gear workshop, and a February 2001 report entitled ''Stock Assessment of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on Loggerhead and Leatherback Sea Turtles of the Western North Atlantic.'' The June 14, 2001, BiOp determined that the FMP was likely to jeopardize loggerhead and leatherback sea turtles. The BiOp included an RPA that required, among other measures, closure of the NED. After implementation of the RPA, the anticipated incidental take levels (i.e., interactions) established for the HMS pelagic longline fishery in the June 14, 2001, BiOp were: leatherback sea turtles - 438 estimated captured per calendar year; loggerhead sea turtles - 402 estimated captured per calendar year; green, hawksbill, and Kemps ridley sea turtles (combined) - 35 estimated captured per calender year. If these incidental take levels were exceeded, the BiOp required reinitiation of consultation and a review of the RPA that was provided.

NMFS issued an emergency rule on July 13, 2001, (66 FR 36711; revised on September 24, 2001 (66 FR 48812)) to implement the RPA, including a closure of the NED area to pelagic longline vessels through January 9, 2002, gear modifications outside the NED area, and a requirement to post sea turtle handling and release guidelines on HMS-permitted vessels. The emergency rule was later extended for an additional 180 days through July 8, 2002. A final rule, published on July 9, 2002 (67 FR 45393), implemented the RPA required by the June 14, 2001, BiOp.

The RPA recognized that developing gear technologies or fishing strategies capable of significantly reducing the likelihood of capturing sea turtles or dramatically reducing mortality rates of captured sea turtles was necessary to minimize the effects of domestic and international longline fishing activities on sea turtle populations. NMFS undertook a 3–year research experiment (2001–2003) in the NED to develop or modify fishing gear and techniques to reduce sea turtle interactions and the mortality associated with such interactions. Upon successful completion of the gear research experiment and its final analysis, the BiOp required that NMFS implement a rule to require the adoption of complementary bycatch reduction measures. The rule would be required before pelagic longline vessels could fish again within the NED area.

Estimated 2002 Bycatch of Sea Turtles in the U.S. Atlantic HMS Pelagic Longline Fishery

Pelagic longline gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). It is often used to target HMS. Though not completely selective, pelagic longline gear can be modified through gear configuration, hook depth, and timing of sets to target swordfish, yellowfin tuna, or bigeye tuna.

Due to interactions with protected resources and bycatch of recreationally-important finfish, the pelagic longline fishery has had a fishery observer program in place since 1992 to document finfish bycatch, characterize fishery behavior, and quantify interactions with protected species. In addition, a mandatory fishery logbook system has been in place since 1992 requiring boat captains to report fishing effort, gear characteristics, and commercial catch. Thus, there is information available on both the absolute level of effort in this fishery and bycatch rates of protected species.

These data are used to generate annual estimates of sea turtle bycatch. Bycatch rates (catch-per-hook) of protected species are quantified based upon observer data by year, fishing area, and quarter. The estimated bycatch rate is then multiplied by the total fishing effort (number of hooks), as reported to the mandatory fishery logbook program, to obtain estimates of total interactions with protected species. These methods, as well as a description of any sources of bias or uncertainty, are detailed in a report entitled, ''Estimated Bycatch of Marine Mammals and Turtles in the U.S. Atlantic Pelagic Longline Fleet During 2001 - 2002'' (NOAA Technical Memorandum NMFS-SEFSC 515 (2003)).

In 2002, 9,614 sets were reported and 856 sets were observed, for an average total observer coverage rate of 8.9 percent. The 2002 total reported pelagic longline fishing effort, including the NED area research experiment, was 7.15 million hooks. There were 335 observed interactions with marine turtles. Many of these interactions occurred during the NED experimental fishery, but are not counted against the ITS because the experimental fishery had a separate ITS. As described below, the greatest number of turtle takes during fishing occurred in 2002 in the Gulf of Mexico (GOM) in the 2nd and 3rd quarters. One leatherback turtle was observed dead during 2002. The vast majority of the remaining turtles were reported as being released alive and injured. Most of these were hooked. Leatherback turtles were most typically hooked in the front shoulder, armpit, or flipper, while loggerhead turtles more often swallowed the hook or were hooked in the mouth. In the NED gear experiment, the majority of fishing gear was removed prior to release, with the exception of sea turtles

that swallowed hooks. For turtles that swallowed hooks, the trailing line was generally removed before releasing the turtle.

A total of 962 leatherback sea turtle interactions and 575 loggerhead sea turtle interactions were estimated for 2002. Interactions with leatherback sea turtles occurred predominantly in the GOM area (695 animals), while loggerhead interactions were distributed across the GOM area (170 animals), the Northeast coastal (NEC) area (147 animals), the Florida east coast (FEC) area (99 animals), and the mid-Atlantic bight (MAB) area (94 animals). These estimates indicate that the current ITS established for leatherback and loggerhead sea turtles in the June 14, 2001, BiOp has been exceeded. Accordingly, NMFS has reinitiated consultation on the Atlantic HMS pelagic longline fishery, as required by the ESA.

Results of the NED Gear Experiment

In cooperation with the U.S. Atlantic pelagic longline fleet, NMFS recently completed a 3–year gear experiment permitted pursuant to section 10 of the ESA in the NED statistical reporting area to develop and test methods to reduce bycatch, and bycatch mortality, of sea turtles caught incidentally while commercial pelagic longline fishing. A key objective of the research experiment was to develop and verify techniques to reduce sea turtle interactions that could be ''exported'' and applied throughout the range of the domestic and international pelagic longline fishery in the Atlantic basin, and possibly the Pacific Ocean.

The experiment identified various sea turtle bycatch mitigation techniques, primarily involving hook and bait combinations, that reduced sea turtle interactions. In 2002, the experimental design evaluated the effects of an 18/0 non-offset circle hook, an 18/0 offset circle hook (10°) with squid bait, and the use of whole mackerel bait on both offset ''J'' hooks (control) and 18/0 offset circle hooks in reducing sea turtle interactions with pelagic longline gear. In 2003, the experimental design evaluated the effects of an 18/0 non-offset circle hook with squid bait, an 18/0 offset circle hook (10°) with mackerel bait, and a 20/0 circle hook with mackerel bait. The experiment further tested three hook treatments to examine their impacts on tuna catches.

A ''J'' hook is generally ''J''-shaped with the barb pointing upward. Unlike a ''J'' hook, a circle hook possesses a barb pointing perpendicularly back to the shank. An offset circle hook is a circle hook in which the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side

Both loggerhead and leatherback sea turtle catch rates were significantly reduced for the 18/0 non-offset circle hook with squid bait, as compared to the ''J'' hook with squid bait. Combined data for years 2002 and 2003 of the experiment provided a reduction rate of 74.03 percent for loggerhead sea turtle interactions. The reduction rate for leatherback sea turtles was 75.38 percent. There was a loss of swordfish by weight of 30.35 percent. There was a nominal increase in bigeye tuna catch by weight of 25.23 percent, but this was not found to be statistically significant.

Loggerhead and leatherback sea turtle catch rates were also significantly reduced with the 18/0 offset circle hook with squid bait, as compared to the ''J'' hook with squid bait. The mean reduction rate for loggerhead sea turtles was 85 percent. The mean reduction rate for leatherback sea turtles was 50 percent. There was a mean loss of swordfish by weight of 29 percent. There was also a nominal increase in bigeye tuna catch, which was not found to be statistically significant. This hook treatment was not tested during 2003.

Loggerhead and leatherback sea turtle catch rates were also significantly reduced by using whole mackerel bait, rather than squid bait, on ''J'' hooks. The mean reduction rate for loggerhead sea turtles was 75 percent. For leatherback sea turtles, there was a mean reduction rate of 67 percent. There was a 63–percent mean increase of swordfish by weight. However, there was a 90–percent reduction in bigeye tuna catch by weight. This hook treatment was not tested during 2003.

The best reduction rate for loggerhead sea turtles was achieved by using a combination of whole mackerel bait with an 18/0 offset circle hook. Combined data for years 2002 and 2003 of the experiment provided a reduction rate of 90.58 percent for loggerhead sea turtle interactions. The reduction rate for leatherback turtles was 67.25 percent. There was an increase in swordfish catch by weight of 15.62 percent. However, there was a loss of 83.84 percent for bigeye tuna by weight.

The results of the experimental research indicate that loggerhead and leatherback sea turtle interactions associated with the Western Atlantic HMS pelagic longline fishery can be significantly reduced by employing 18/0 offset (10°) circle hooks with whole mackerel, rather than squid, as bait. When the two treatments are used together, reductions in turtle interactions can be obtained without negatively impacting swordfish catch. Benefits associated with swordfish (increased catches) may be less certain when fishing occurs in warmer ocean temperatures and may decline to zero, or even result in declining catches. This same combination, specifically the use of whole mackerel bait, could negatively impact bigeye tuna catches. In general, treatments that are effective at minimizing turtle interactions, and that have positive impacts on swordfish catches, have negative impacts on tuna catches and vise-versa.

Proposed Commercial Management Measures

The intent of this proposed rule is to reduce the incidental take of threatened and endangered sea turtles, and to reduce post-release mortality of incidentally-captured sea turtles, in the HMS pelagic longline fishery to comply with the ESA, and in accordance with the M-S Act and other applicable Federal law. To achieve these reductions, results from the NED gear experiment are proposed to be applied to the HMS pelagic longline fishery as a whole.

As previously discussed, the measures in this proposed rule were first developed and tested during the NED gear experiment. Because of their effectiveness at reducing sea turtle bycatch without negatively impacting swordfish catch, implementation of the proposed management measures (e.g., circle hook and bait requirements, possession and use of sea turtle release gear, and adherence to sea turtle handling protocols) will mitigate the need for a year-round closure of the NED area. However, management measures for the entire HMS pelagic longline fishery are necessary because, based upon available information, the sea turtle ITS established in the June 14, 2001, BiOp has been exceeded as a result of fishing activity occurring outside of the NED. Reopening the NED is expected to result in between 18 - 46 additional loggerhead interactions, and between 36 - 54 additional leatherback interactions under the preferred alternatives. The proposed management measures, described below, are projected to reduce sea turtle interactions for the entire HMS pelagic longline fishery to levels that will be in compliance with the ESA.

A. Proposed Sea Turtle Bycatch Release Equipment and Careful Release Protocols

Currently, to reduce injuries and mortalities associated with sea turtle interactions, all Atlantic vessels that have pelagic longline gear onboard and

have been issued, or are required to have, Federal HMS limited access permits, must possess onboard sea turtle release gear, including line clippers and dipnets that meet minimum design standards. Dipnets are required to boat sea turtles, when practicable, and line clippers are required to disengage any hooked or entangled sea turtles by cutting the line as close as possible to the hook. Pelagic longline vessels are also currently required to post, inside the wheelhouse, a plastic placard provided by NMFS describing careful handling and release guidelines for incidentally-captured sea turtles. Turtles that are brought on board are also currently required to be handled in accordance with procedures specified by NOAA's Office of Protected Resources at § 223.206(d)(1).

The proposed sea turtle bycatch release equipment requirements, described below, would similarly apply to all Atlantic vessels that have pelagic longline gear onboard and have been issued, or are required to have, Federal HMS limited access permits. The requirement to possess and utilize line clippers and dipnets would remain in effect. However, the design standards for this equipment are proposed to be slightly modified. The modified design standards for line cutters may still be represented by the Arceneaux line clipper, as well as the NOAA/LaForce Line Cutter model. Line cutters may also be fabricated using available materials. The minimum design standards for dipnets are largely unchanged, except that the extended reach handle is proposed to be amended by specifying that its length must be a minimum of 150–percent of the vessel's freeboard, or 6–feet (1.83 m), whichever is greater. Several additional pieces of required equipment to facilitate the removal of fishing hooks from incidentally-captured sea turtles are being proposed in this rule. Diagrams for several of the proposed pieces of equipment are provided in Appendix B1 to the DSEIS prepared for this proposed rule in a draft document entitled, ''Requirements and Equipment Needed for the Careful Release of Sea Turtles Caught in Hook and Line Fisheries.'' This document is also available on the HMS website at *http://www.nmfs.noaa.gov/sfa/hms*. Minimum design standards for the pieces of equipment are provided in the proposed regulations.

The following new, or newly-revised, gears are proposed to be required: (A) a long-handled line clipper or cutter; (B) a long-handled dehooker for ingested hooks; (C) a long-handled dehooker for external hooks; (D) a long-handled device to pull an ''inverted V''; (E)a dipnet; (F) a standard automobile tire; G) a short-handled dehooker for ingested hooks; (H) a short-handled dehooker for external hooks; (I) long-nose or needle-nose pliers; (J) a bolt cutter; (K) a monofilament line cutter; and, (L) two different types of mouth openers and mouth gags (including either a block of hard wood, a set of three canine mouth gags, a set of two sturdy dog chew bones, a set of two rope loops covered with hose, a hank of rope, a set of four PVC splice couplings, or a large avian oral speculum).

Items A - D above are intended to be used for turtles that are not boated. Items E - L above are intended to be used for turtles that are brought onboard. The long-handled dehooker for ingested hooks required in Item B would also satisfy the requirement for Item C. If a 6–foot (1.83 m) J-style dehooker is used for Item C, it would also satisfy the requirement for Item D. Similarly, the short-handled dehooker for ingested hooks required for Item G would also satisfy the requirement for Item H. NMFS recommends, but has not proposed a requirement, that one type of mouth opener/mouth gag allow for hands-free operation of the dehooking device or other tool, after the mouth gag is in place. Only a canine mouth gag would satisfy this recommendation. Also, as described in Appendix B1 of the DSEIS prepared for the proposed rule, a ''turtle tether'' and a ''turtle hoist'' are recommended by NMFS, but are not being proposed as requirements.

Table 1 provides an initial list of sea turtle bycatch release equipment that is approved as meeting the minimum design standards. At this time, NMFS is aware of only one manufacturer of long-handled and short-handled dehookers for ingested hooks that meet the minimum design standards. However, this proposed rule would allow for approval of other devices, as they become available, if they meet the minimum design standards. Line cutters or line clippers (items A and K) and dehookers (items B, C, G, H) not included on the initial list must be NMFS-approved before being used. NMFS would publish a notice in the **Federal Register** of any new items approved as meeting the design standards.

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES

Required Item	NMFS-Approved Models
(A) Long-handled line cutter	LaForce Line Cutter; or Arceneaux Line Clipper
(B) Long-handled dehooker for ingested hooks	ARC Pole Model Deep-Hooked Dehooker (Model BP11)
(C) Long-handled dehooker for external hooks	ARC Model LJ6P (6 ft (1.83 m)); or ARC Model LJ36; or ARC Pole Model Deep-Hooked Dehooker (Model BP11); or ARC 6 ft. (1.83 m) Pole Big Game Dehooker (Model P610)
(D) Long-handled device to pull an ''inverted V''	ARC Model LJ6P (6 ft.); or Davis Telescoping Boat Hook to 96 in. (2.44 m) (Model 85002A); or West Marine # F6H5 Hook and # F6-006 Handle
(E) Dipnet	ARC 12–ft. (3.66–m) Breakdown Lightweight Dip Net Model DN6P (6 ft. (1.83 m)); or ARC Model DN08 (8 ft.(2.44 m)); or ARC Model DN 14 (12 ft. (3.66 m)); or ARC Net Assembly & Handle (Model DNIN); or Lindgren-Pitman, Inc. Model NMFS Turtle Net
(F) Standard automobile tire	Any standard automobile tire free of exposed steel belts
(G) Short-handled dehooker for ingested hooks	ARC 17–inch (43.18–cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08)
(H) Short-handled dehooker for external hooks	ARC Hand-Held Large J-Style Dehooker (Model LJ07); or ARC Hand-Held Large J-Style Dehooker (Model LJ24); or ARC 17–inch (43.18–cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08); or Scotty's Dehooker
(I) Long-nose or needle-nose pliers	12–in. (30.48–cm) S.S. NuMark Model #030281109871; or any 12–inch (30.48–cm) stainless steel long-nose or needle-nose pliers
(J) Bolt cutter	H.K. Porter Model 1490 AC

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES—Continued

Required Item	NMFS-Approved Models
(K) Monofilament line cutter	Jinkai Model MC-T
(L) Two of the following Mouth Openers and Mouth Gags	
(L1) Block of hard wood	Any block of hard wood meeting design standards (e.g., Olympia Tools Long-Handled Wire Brush and Scraper (Model 974174))
(L2) Set of (3) canine mouth gags	Jorvet Model #4160, 4162, and 4164
(L3) Set of (2) sturdy dog chew bones	Nylabone® (a trademark owned by T.F.H. Publications, Inc.); or Gumabone® (a trademark owned by T.F.H. Publications, Inc.); or Galileo® (a trademark owned by T.F.H. Publications, Inc.)
(L4) Set of (2) rope loops covered with hose	Any set of (2) rope loops covered with hose meeting design standards
(L5) Hank of rope	Any size soft braided nylon rope is acceptable, provided it creates a hank of rope approximately 2 - 4 inches (5.08 cm - 10.16 cm) in thickness
(L6) Set of (4) PVC splice couplings	A set of (4) Standard Schedule 40 PVC splice couplings (1–inch (2.54–cm), 1 1/4–inch 3.175–cm), 1 1/2 inch (3.81–cm), and 2–inch (5.08–cm)
(L7) Large avian oral speculum	Webster Vet Supply (Model 85408); or Veterinary Specialty Products (Model VSP 216–08); orJorvet (Model J–51z); or Krusse (Model 273117)

The proposed measures regarding sea turtle handling and careful release protocols, described below, would apply to all Atlantic vessels that have pelagic longline gear onboard and have been issued, or are required to have, Federal HMS limited access permits. The existing requirement to post a plastic placard inside the wheelhouse describing sea turtle handling and release guidelines would remain in effect, as would the requirement to adhere to existing sea turtle handling and resuscitation procedures specified by NOAA's Office of Protected Resources at § 223.206(d)(1). Additional sea turtle handling requirements at § 635.21(c)(5)(ii) are being proposed in this rule to improve the care of sea turtles on deck, and to facilitate the removal of fishing line and hooks from incidentally-captured sea turtles. The newly proposed procedures for hook removal and careful release of sea turtles are described in detail in a document entitled, ''Careful Release Protocols for Release with Minimal Injury,'' which is provided in Appendix B2 of the DSEIS prepared for this proposed rule, and which is proposed to be required onboard all HMS pelagic longline vessels. This document is also available on the HMS website at *http://www.nmfs.noaa.gov/sfa/hms*.

This proposed rule also makes a minor revision to the regulatory text at § 223.206(d)(1)(ii) to clarify that the turtle handling and resuscitation provisions of § 223.206(d)(1)(i) are in addition to the turtle handling requirements in 50 CFR 635.21.

B. Proposed HMS Pelagic Longline Gear Modifications

This proposed rule would require that vessels which have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico would be limited, at all times, to possessing on board and/or using only one of the following combinations of hooks and bait: (i) 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait only; or, (ii) 18/0 or larger non-offset circle hooks and squid bait only. Only one of these two types of hook and bait combinations would be allowed to be possessed onboard and/or used on a pelagic longline vessel during a trip. A ''circle hook'' is proposed to be defined as a fishing hook with the point turned perpendicularly back to the shank. The ''offset'' is proposed to be measured from the barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The outer diameter of an 18/0 circle hook at its widest point must be no smaller than 1.97 inches (50 mm), when measured with the eye of the hook on the vertical axis (y-axis) perpendicular to the horizontal axis (x-axis). Pictures of these two types of circle hooks and a diagram explaining how to measure the offset are provided in the DSEIS prepared for this proposed rule.

Whole mackerel bait is proposed to be defined as whole Atlantic mackerel (*Scomber scombrus*), and not pieces or chunks of the fish. NMFS is specifically proposing to require whole Atlantic mackerel bait for use with 18/0 or larger offset circle hooks, because the NED gear research experiment documented the effects of this hook and bait combination on catches of swordfish, tunas and sea turtles. However, NMFS recognizes that whole Atlantic mackerel may not be traditionally used in some regions of the country or, at times, may be difficult to obtain. Therefore, NMFS is requesting comment on the availability and feasibility of requiring the use of whole Atlantic mackerel bait.

These management measures are being proposed to reduce interactions with sea turtles and to assure compliance with the ESA, while minimizing, to the extent practicable, adverse economic impacts on commercial fishing vessels. Based upon data obtained from the NED gear experiment, the deployment of 18/0 or larger offset circle hooks and whole mackerel bait is expected to reduce loggerhead sea turtle interactions by 90.58 percent and leatherback sea turtle interactions by 67.26 percent, while increasing swordfish catches by 15.62 percent. Increased catches of swordfish, by weight, may be less certain when fishing in warmer ocean temperatures and may decline to zero, or even result in declining catches.

The NED gear experiment results also indicate that using 18/0 or larger non-offset circle hooks with squid bait will reduce loggerhead sea turtle interactions by 74.03 percent and leatherback sea turtle interactions by 75.38 percent, without negatively impacting bigeye tuna catches. While both hook and bait treatments are effective at reducing turtle interactions, the treatment that increased swordfish catches (i.e., option

i - 18/0 or larger offset circle hooks and whole mackerel bait) generally reduced tuna catches, and vice versa.

Based upon the successful results of the NED gear experiment, NMFS proposes to remove the current prohibition on pelagic longline fishing in the NED statistical reporting area, because the proposed hook and bait regulations will reduce sea turtle interactions throughout the fishery to the extent that the fishery management action will not be likely to jeopardize sea turtles.

Request For Specific Comments

In addition to comments on the proposed measures described above, NMFS is specifically requesting public comment on six items. First, NMFS requests information on the current availability of 18/0 offset and non-offset circle hooks, and the amount of time that would be needed to fill orders for vessels required to use these hooks, as well as information on the amount of time needed for vessels to come into compliance after final regulations are published. NMFS recognizes that vessel owners may want to fish in the NED, or elsewhere, as soon as possible, but NMFS may need to delay the effective date of final regulations to allow time for affected entities to comply with the new requirements. Second, NMFS is interested in receiving comments on the proposed definition of a circle hook. NMFS recognizes that hook shape is critical to achieving the conservation goals of this rulemaking. The lay definition of a circle hook, in which the point of the hook is turned back perpendicular to the shank of the hook, allows for a wide range of hook shapes, some of which more closely resemble traditional ''J'' hooks than true circles. More ''J''-shaped circle hooks, where only the very tip of the barb is turned back perpendicular to the shank of the hook, may reduce the conservation benefit attributable to more circular-shaped circle hooks. Third, NMFS recognizes that there is no industry-standard definition of 16/0, 18/0 or 20/0 circle hooks. As such, hooks labeled 16/0, 18/0, or 20/0 may vary in size significantly from one manufacturer to another. NMFS seeks informed comment to better assist in developing minimum technical specifications to define the gauge of circle hooks and ensure that the intended ecological goals of this rulemaking are achieved. Fourth, NMFS is interested in receiving comments on the feasibility of requiring whole Atlantic mackerel (*Scomber scombrus*) bait versus whole finfish bait in terms of availability, practicality, and economic impacts, as well as the efficacy of whole Atlantic mackerel bait versus whole finfish bait in terms of maintaining catches of target species and reducing sea turtle interactions. Because the NED gear experiment documented the biological effects of using whole mackerel bait with an 18/0 offset circle hook, that requirement is being proposed. Fifth, NMFS is requesting public comment on the potential impacts on tuna catches of the proposed regulations requiring the use of 18/0 or larger circle hooks. The NED gear experiment provided much information on the impacts of an 18/0 circle hook on swordfish catches, but not as much information on tuna catches, particularly yellowfin tuna. Finally, NMFS recognizes that an important component of reducing the mortality associated with the incidental capture of sea turtles is the removal of fishing gear, specifically hooks and line, in a manner that minimizes further trauma to the animals. As such, NMFS requests specific comment on the proposed possession and use requirements of release gear and handling protocols identified in the preferred alternatives and further detailed under Appendices B1 and B2 of the Draft Supplemental Environmental Impact Statement.

Alternative NEPA Procedures

To more rapidly reduce sea turtle interactions and to mitigate the economic impact of sea turtle bycatch mitigation measures, NMFS has requested and been authorized to execute alternative procedures for the preparation and completion of an SEIS. The Council on Environmental Quality has authorized a waiver of 14 of the standard 45 days for the DSEIS comment period, and 4 of the standard 30 days for the waiting period before the record of decision on this action can be finalized. The public comment period on the DSEIS and this proposed rule will remain open until 5 P.M. on March 15, 2004.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

As required under the Regulatory Flexibility Act, NMFS has prepared an initial regulatory flexibility analysis (IRFA) that examines the impacts of the preferred alternatives and any significant alternatives to the proposed rule that could minimize significant economic impacts on small entities. A summary of the information presented in the IRFA is provided below. The Draft Supplemental Environmental Impact Statement (DSEIS) prepared for this proposed rule provides further discussion of the biological, social, and economic impacts of all the alternatives considered.

This proposed rule would apply to all Atlantic vessels that have pelagic longline gear onboard and have been issued, or are required to have, Federal HMS limited access permits. NMFS considers all commercial permit holders to be small entities. NMFS estimates that, as of November 2003, approximately 235 tuna longline limited access permits had been issued. In addition, approximately 203 directed swordfish limited access permits, 100 incidental swordfish limited access permits, 249 directed shark limited access permits, and 357 incidental shark limited access permits had been issued. Because vessels authorized to fish for swordfish and tunas with pelagic longline gear must also possess a tuna longline permit, a swordfish permit (directed or incidental), and a shark permit (directed or incidental), the maximum number of vessels potentially affected by this proposed rule is 235 (i.e., the number of tuna longline permits issued), although only about 60 percent of these permit holders are considered active (i.e., reported logbook landings) in the fishery. The addresses of these permit holders range from Texas through Maine, with Florida (74), Louisiana (42), New Jersey (33), New York (17), North Carolina (11), and Texas (10) representing the states with the most permitted HMS pelagic longline vessels.

Other sectors of HMS fisheries such as dealers, processors, bait houses and gear manufacturers might be indirectly affected by the proposed alternatives, particularly the shift to required circle hooks and bait types, and the required turtle bycatch mitigation gears. However, the proposed rule does not apply directly to them. Rather it applies only to permit holders and fishermen. As such, economic impacts on these other sectors are discussed in the DSEIS, but were not the focus of the IRFA.

The proposed regulations do not contain additional reporting or record-keeping requirements, but will result in additional compliance requirements, including the possession and use of specific hook types, baits, and sea turtle release equipment. In addition, certain specific protocols regarding the proper use of sea turtle release equipment and onboard turtle handling procedures are proposed to be implemented. A document containing the sea turtle careful release protocols will be issued, and will be required to be onboard. NMFS does not believe that the

proposed regulations would conflict with any other relevant regulations, Federal or otherwise (5 U.S.C. 603(b)(5)).

NMFS considered 16 alternatives in developing the DSEIS. The alternatives included: no action (Alternative A1), hook and bait modifications outside the NED (Alternatives A2 - A5), reopening the NED without hook and bait restrictions (Alternative A6), reopening the NED with hook and bait modifications (Alternatives A7 - A10), a total prohibition on pelagic longline gear in Atlantic HMS fisheries (Alternative A11), pelagic longline time and area closures (Alternatives A12 - A15), and sea turtle careful handling protocols and release gear design standards (Alternative A16).

The following alternatives are currently preferred: Alternative A3 (limit pelagic longline vessels fishing outside the NED, at all times, to possessing on board and/or using only one of the following combinations of hooks and bait: (i)18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait; or, (ii) 18/0 or larger non-offset (flat) circle hooks and squid bait); Alternative A10 (reopen the NED to pelagic longline fishing and limit pelagic longline vessels fishing in the NED, at all times, to possessing on board and/or using only one of the following combinations of hooks and bait: (i) 18/0 or larger circle hook with an offset not to exceed 10 degrees with whole mackerel bait; or, (ii) 18/0 or larger non-offset (flat) circle hook with squid bait); and Alternative A16 (require pelagic longline vessels to possess and use dipnets and line clippers meeting newly revised design standards, require additional sea turtle release equipment meeting minimum design standards, and require compliance with new sea turtle handling and release protocols).

For the purpose of this analysis, NMFS assumed that industry would choose to fish with an 18/0 hook (either offset or non-offset), and not with a larger hook, although that would be allowed. NMFS expects that the proposed circle hook and bait requirements (Alternatives A3 and A10) will increase compliance costs initially, but will result in long-term cost savings through lower replacement costs and, possibly, fewer lost hooks. An informal survey of gear suppliers indicated that large commercial grade 18/0 circle hooks cost approximately $0.26 to $0.66 per hook, with an average of $0.42 per hook. Assuming an average of 2,500 hooks per vessel are needed for one trip to initially comply with the proposed hook requirement, the compliance cost, on a per vessel basis, would range from $657.25 to $1,650.00, with an anticipated average per vessel cost of approximately $1,044.00. While fishermen will incur additional costs initially to purchase new hooks, long-term savings are anticipated because, on average, traditional ''J''-hooks are more expensive than circle hooks ($0.57 per hook). Assuming that vessels do not already possess the required hook type, a high-end estimate of the cost (every hook lost on every set, no hook used more than once during the year) to re-rig the entire Atlantic pelagic longline fleet is $2.98 million (7,150,602 hooks fished in 2002 x $0.4176 per hook). The cost per vessel would be approximately $20,176 per vessel for a year's worth of hooks ($2,986,091/148 vessels). This, however, is likely to be an overestimate of the true costs because not every hook is expected to be lost on every set. Further, NMFS anticipates a cost savings of approximately 27 percent annually versus rigging with the same number of ''J''-hooks.

The proposed circle hook and bait alternatives (A3 and A10) are not expected to increase the needed skill level required for HMS fisheries, as the physical act of switching hook types is a normal aspect of commercial fishing operations. However, using the new circle hooks will likely require some adaptations to existing skills.

The proposed management measures also require the use of certain baits. Traditionally, bait accounts for between 16 to 26 percent of the total costs per trip. Any fluctuations in price and availability of whole mackerel bait or squid bait could have a substantial impact on profitability, either positive or negative. There could also be unquantifiable compliance costs as fishing crews that have not traditionally fished with a particular hook and bait combination familiarize themselves with the most efficient techniques. Atlantic mackerel and squid are generally abundant, but price and availability will likely depend upon available domestic harvesting and distributional capacities.

The proposed requirements to possess sea turtle handling and release equipment, and to use the equipment in accordance with careful release protocols provided by NMFS (Alternative A16), will impose initial compliance costs and could require additional skills on behalf of fishermen. NMFS estimates that the full suite of sea turtle release gear could cost between $589.00 and $1048.80. Fishermen would be required to use NMFS-approved gear. *See* Table 1 for an initial list of approved gear. However, the design standards would allow fishermen to construct some of the equipment from material that is readily available and using skills that most fishermen likely possess. This could potentially reduce some of the costs. Further, the design standards were developed in cooperation with the fishing industry during the NED experiment.

Preferred Alternative A10 (open the NED area to pelagic longline fishing and limit pelagic longline vessels in that area, at all times, to possessing on board and/or using only one of the following combinations of hooks and bait: (i) 18/0 or larger circle hook with an offset not to exceed 10 degrees with whole mackerel bait; or, (ii) 18/0 or larger non-offset (flat) circle hook with squid bait) is expected to produce positive economic impacts for vessels that have historically fished in the NED. Given that pelagic longline vessels cannot currently fish in the NED, any income derived from future NED trips would result in positive economic impacts, regardless of any hook and bait restrictions that vessels may have to comply with in that area.

Based upon traditional levels of effort in the area, NMFS projects that 12 vessels would likely return to the NED if it is reopened. Preferred Alternative A10 provides vessels with the flexibility to select a hook and bait combination, prior to departing on a trip, that is effective at catching either swordfish or tunas. Based upon the results of the NED area research experiment, fishermen in the NED may realize a change in swordfish catches of +15.62 to -30.35 percent (by weight), depending upon whether they choose to equip and deploy the 18/0 offset circle hook with whole mackerel bait, or the 18/0 non-offset circle hook with squid, respectively. Increased catches of swordfish by weight may be less certain when fishing occurs in warmer ocean temperatures and may decline to zero, or even result in declining catches.

Results of the experiment also indicate that fishermen operating in the NED could experience changes in tuna catches of -83.84 to possibly as much as +25.26 percent (by weight), depending upon whether they choose to fish with 18/0 offset circle hook with whole mackerel bait, or an 18/0 non-offset circle hook with squid, respectively. However, these potential tuna increases are less certain, based on the limited tuna catch data obtained during the NED experiment. The experimental results indicate that when the tested hook and bait combinations have a positive impact on swordfish catches, they tend to have a negative impact on tuna catches, and vice versa. To

maximize revenues, given the impacts of these hook and bait combinations on swordfish and tuna catches, fishermen operating in the NED will have to make a decision prior to departing port about which species they will target, and which hook and bait they will deploy.

If fishermen choose to equip and deploy 18/0 offset circle hooks with whole mackerel bait in the NED area (Preferred Alternative A10- option i) to target swordfish, substantial positive economic impacts are anticipated. Assuming a steady state in all other aspects, including catches of other species and prices, the proportion of total landings historically attributable to swordfish could increase from 88.54 percent to the equivalent of 102.37 percent. Assuming that the projected 15.62–percent increase in the weight of swordfish landed would result in a 15.62–percent increase in revenues attributable to swordfish, NMFS believes that overall gross revenues of vessels may increase by 13.77 percent ($25,753) overall from $187,074 (average annual vessel gross revenue) to $212,827.

In the IRFA, hook and bait impacts on bigeye tuna catches, as documented during the NED experiment, are used as a proxy for impacts on all tuna catches. Assuming a steady state in all other aspects, including catches of other species and prices, NMFS projects that the portion of total historical landings attributable to tuna using an 18/0 offset circle hook and whole mackerel bait would decline from 9.85 percent (by weight) to 1.82 percent. Assuming that the projected 84–percent decrease in the weight of tuna landed would result in an 84–percent decrease in revenues attributable to tuna, NMFS believes that overall gross revenues of vessels may decrease by 9.45 percent (-$17,677) to $169,397. However, tuna catches have traditionally represented only a limited portion of total gross revenues for vessels fishing in the NED.

In summary, combining increased swordfish revenues with decreased tuna revenues, vessels fishing in the NED using an 18/0 offset circle hook and whole mackerel bait (Preferred Alternative A10 - option i) and engaging on a mixed target trip could see a total increase in gross vessel revenues of $8,076, from $187,074 to $195,150. The impact of this hook and bait combination on shark, dolphin and wahoo catches is unknown.

If fishermen choose to equip and deploy 18/0 non-offset circle hooks with squid bait in the NED (Preferred Alternative A10 - option ii), there would likely be some small positive impact relative to the status quo, but overall negative economic impacts from a historical perspective would be expected for fishermen targeting swordfish, or embarking upon a mixed target species trip in the NED. Fishermen would likely experience minor increases in revenues associated with tuna catches from a historical perspective, but these tuna revenue increases would not be expected to offset overall historical revenue losses stemming from decreased swordfish landings.

Under Preferred Alternative A10 (option ii), using an 18/0 non-offset circle hook with squid in the NED, and assuming a steady state in all other aspects, including catches of other species and prices, NMFS projects that the portion of landings historically attributable to swordfish would decline from 88.54 percent (by weight) to 61.67 percent. Assuming that the projected 30.35–percent decrease in the weight of swordfish landed results in a 30.35–percent decrease in revenues attributable to swordfish, NMFS believes that overall gross revenues of vessels may decrease by as much as 26.75 percent ($50,043) to $137,031.

Assuming a steady state in all other aspects, including catches of other species and prices, NMFS projects that under Preferred Alternative A10 (option ii), using an 18/0 non-offset circle hook with squid, the portion of vessel landings historically attributable to tuna by weight would increase from 9.85 percent to as much as 12.33 percent. Assuming that the potential 25.23–percent increase the weight of tuna landed results in a possible 25.23–percent increase in revenues attributable to tuna, NMFS believes that overall gross revenues of vessels may increase by 2.8 percent ($5,318) to $192,392.

In summary, NMFS projects that the overall impact on vessel revenues of selecting the 18/0 non-offset circle hook and squid bait combination (Preferred Alternative A10, option ii), and engaging in a mixed trip in the NED, would result in a loss of gross revenues of approximately $44,725, thereby reducing annual gross vessel revenues to $142,394. The impact of this hook and bait combination on shark, dolphin, and wahoo catches is unknown.

NMFS anticipates that most fishermen will select an 18/0 offset circle hook with whole mackerel bait (option i) under Preferred Alternative A10, for trips in the NED area, because most of the fishing effort in that area has historically targeted swordfish. This preferred alternative, however, provides fishermen with the additional flexibility to select gear, prior to departing port, that is effective at catching tunas, if they choose to engage on a directed tuna trip in the NED.

Preferred Alternative A10 (both options) is not expected to cause noticeable changes in the practices or behavior of fishermen, but there could be minor unquantifiable lost opportunity costs, as compared to pre-NED closure trips, because fishing crews which have not traditionally fished with these types of hooks and baits would need to familiarize themselves with the most efficient techniques. This alternative would be expected to have positive economic impacts for fish processors and dealers in the Northeast by providing them with additional swordfish product. From 1998 to 2000, NED area vessels landed 21 percent of all swordfish landed by the U.S. Atlantic pelagic longline fishery.

Preferred Alternative A3 (limit pelagic longline vessels in all areas open to pelagic longline fishing, excluding the NED, at all times, to possessing on board and/or using only one of the following combinations of hooks and bait: (i) 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait; or, (ii) 18/0 or larger non-offset (flat) circle hooks and squid bait) could produce widely varying impacts, either positive or negative, depending upon the hook and bait combination that is deployed and the target species chosen by fishermen.

Preferred Alternative A3 provides flexibility to select a hook and bait combination, prior to departing port, that is effective at catching either swordfish or tunas, but not both. Based upon the results of the NED experiment, NMFS projects that fishermen operating outside the NED may realize a change in swordfish catches of - 30.35 to +15.62 percent (by weight), depending upon whether they choose to deploy an 18/0 non-offset circle hook with squid bait, or an 18/0 offset circle hook with whole mackerel bait, respectively. Increased catches of swordfish by weight may be less certain when fishing occurs in warmer ocean temperatures and may decline to zero, or even result in declining catches. Experimental results also indicate that fishermen operating outside the NED could experience changes in tuna catches ranging from -83.84 to +25.23 percent (by weight), depending upon whether they choose to deploy an 18/0 offset circle hook with whole mackerel bait, or an 18/0 non-offset circle hook with squid bait, respectively. The potential tuna increases are less certain based on the limited tuna catch data obtained during the NED experiment. As mentioned earlier, the experimental results indicate that when the tested hook and bait

combinations have a positive impact on swordfish catches they tend to have a negative impact on tuna catches, and vice-versa. To maximize revenues, given the impacts of these hook and bait combinations on swordfish and tuna catches, fishermen will have to make a decision prior to departing port about which species they will target, and which gear they will deploy.

If fishermen operating outside the NED choose to deploy 18/0 offset circle hooks and whole mackerel bait (option i) under Preferred Alternative 3, positive economic impacts are anticipated for vessels that are able to successfully target swordfish outside of the NED, and negative economic impacts are anticipated for those vessels targeting tunas or engaging in mixed trips outside the NED. As mentioned above, NED experimental results indicate that this hook and bait combination may increase swordfish landings by 15.62 percent (weight) and decrease tuna landings by 83.84 percent (weight), with increased swordfish catches being less certain in warmer waters.

Using similar assumptions and analyses as set forth for Alternative A10, NMFS estimates that use of an 18/0 offset circle hook and whole mackerel bait outside the NED is expected to boost the proportion of total landings attributable to swordfish, by weight, from 36.22 percent to 41.88 percent as compared with traditional landings. Assuming that the estimated 15.6–percent increase in the weight of swordfish landed will result in a 15.6–percent increase in revenues attributable to swordfish, NMFS projects that overall gross revenues of vessels may to increase by 6.8 percent ($12,724) overall to $199,798.

In addition, using a similar analytical approach as with Alternative A10, NMFS projects that the proportion of total landings attributable to tuna (weight) outside the NED may decline from 58.63 percent to 9.47 percent using an 18/0 offset circle hook and whole mackerel bait (option i). Assuming that the estimated 84–percent decrease in the weight of tuna landed results in an 84–percent decrease in revenues attributable to tunas, overall annual gross vessel revenues could decrease by 45.13 percent ($84,430) to $102,644. Given that the average ex-vessel price for swordfish is higher than for tunas (except for bluefin) in all areas except the Mid-Atlantic Region (which represents only 1.08 percent of non-NED landings, by weight), choosing to fish with an 18/0 offset circle hook with whole mackerel bait outside of the NED could have positive economic impacts for vessels that are able to successfully target swordfish. However, many vessels may not be able to successfully catch swordfish in numbers that are sufficient to offset lost tuna revenues, particularly in the Gulf of Mexico where yellowfin tuna landings dominate catches. For these vessels, negative economic impacts would be expected. The impact of this hook and bait combination on shark, dolphin, and wahoo catches is unknown, and, therefore, unquantifiable.

In aggregate, under Preferred Alternative A3 (option i), vessels fishing with an 18/0 offset circle hook with whole mackerel bait outside the NED could see a possible change in total revenues ranging from -$84,430 to +$12,724, depending upon target species, with an average total estimated change for mixed trips of -$71,706, with annual vessel gross revenues declining from $187,074 to $115,368.

If fishermen outside the NED choose to deploy 18/0 non-offset circle hooks with squid bait, under Preferred Alternative A3 (option ii), there would likely be negative economic impacts for fishermen targeting swordfish, negative economic impacts for vessels undertaking mixed target (tunas and swordfish) trips, and positive economic impacts for vessels specifically targeting tunas.

Using similar assumptions and analyses as Alternative A10, NMFS expects that Alternative A3 (option ii - 18/0 non-offset circle hooks with squid bait) could reduce the percentage of landings historically attributable to swordfish by 30.35 percent, from 36.22 percent down to 25.23 percent. If this 30.35–percent decline in the weight of swordfish landed results in a 30.35-percent decline in revenues attributable to swordfish, NMFS projects that overall gross vessel revenues would decrease by 13.22 percent ($24,726) to $162,347.

With regard to tunas, NMFS projects that using 18/0 non-offset circle hooks with squid bait outside the NED would potentially increase the portion of landings historically attributable to tuna by as much as 25.23 percent (by weight), from 58.63 percent to 73.42 percent, thus resulting in an increase in overall gross vessel revenues of 13.77 percent ($25,757) to $212,831.

In summary, combining projected changes in swordfish and tuna landings and their associated revenues outside the NED under Preferred Alternative A3, option ii (18/0 non-offset circle hooks with squid bait), NMFS projects total vessel gross revenue changes of between -$24,726 to +$25,757, with an average total estimated change for mixed trips (under option ii, Alternative 3) of approximately +$1,031. This would result in an increase in total annual gross vessel revenues to $188,105.

Under Alternative A3 (both options i and ii, in aggregate), for those vessels outside the NED that are able to successfully target swordfish or tunas, and which equip and deploy with the most efficient hook and bait combination available for a chosen target species, average gross vessel revenues may increase between $12,724 and $25,757, respectively. These potential increases are likely to be overestimates, but they provide an estimated range of annual gross vessel revenues of between $199,798 and $212,831, respectively. For vessels that are not able to specifically target swordfish or tunas and which engage in mixed species trips outside the NED, NMFS estimates that the aggregate impact of Alternative A3 would be to change annual gross vessel revenues by between -$71,706 (18/0 offset circle hook with mackerel bait) and +$1,031 (18/0 non-offset circle hook with squid), thereby providing a range of annual gross vessel revenues of between $115,368 and $188,105. The actual impacts are most likely to fall between these ranges, because some vessels would be able to target specific species and not every vessel would choose the same hook and bait combination for every trip. The impacts of these hook and bait combinations on shark, dolphin, and wahoo catches are unknown and, thus, cannot be quantified.

In summary, Preferred Alternative A3 (both options) could cause some HMS pelagic longline vessels, operating outside of the NED, to change fishing practices and to target either swordfish specifically in some areas, or tunas specifically in other areas. NMFS expects that vessels would likely avoid mixed tuna-swordfish trips, to the extent practicable, where profits are most likely to be reduced. As a result, there could be changes in the geographic distribution of the HMS pelagic longline fleet, and some vessels may choose to exit the fishery altogether. Changes in fishing patterns could result in vessels having to travel greater distances to reach more favorable fishing grounds, thereby resulting in increased fuel, bait, ice, and labor costs. A potential shift in fishing grounds, should it occur, could also result in fishermen selecting new ports for offloading. The economic impact resulting from changes in fishing locations on fishermen, ports of landing, dealers, processors, and suppliers could be detrimental to some areas. Also, changes in hook and bait costs could occur, either positive or negative,

depending upon prices and availability. There could also be unquantifiable lost opportunity costs as fishing crews become familiar with the most efficient techniques for using new gear.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts (5 U.S.C. 603 (c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1) - (4)) lists four categories for alternatives that should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Additionally, many of the proposed measures, such as circle hook and bait requirements, and sea turtle release gear requirements, would not be as effective with different compliance requirements. Moreover, the physical act of changing hook types is not expected to impose a significant compliance burden, as this is a normal aspect of commercial fishing operations. The initial compliance cost to purchase new hooks is expected to be approximately $1,044.00. The requirement to possess and utilize sea turtle release equipment according to prescribed design standards and usage protocols (Preferred Alternative A16) will also impose a compliance burden. Compliance costs for the required release gear are expected to range from approximately $589.00 to $1048.80. However, as noted above, the design standards would allow fishermen to construct some of the equipment from material that is readily available and using skills that most fishermen likely possess, thus potentially reducing some of the costs. Such gear is necessary to release sea turtles effectively with minimal harm or injury.

In summary, the management measures would not be as effective with different compliance requirements or exemptions for small entities. Thus, there are no alternatives discussed which fall under the first and fourth categories described above. Alternatives under the second and third categories, and other alternatives considered in the DSEIS, are discussed below.

The preferred alternatives for bycatch reduction and bycatch mortality mitigation (A3, A10 and A16) were designed to reduce sea turtle interactions and the mortality associated with such interactions to levels that will allow compliance with the ESA, while minimizing adverse economic impacts to the extent practicable. The economic impacts of the preferred alternatives were previously discussed above.

Alternative A1 (no action) would not achieve the biological goals of the proposed rule or ensure compliance with the ESA. Further, the no-action alternative would allow the full adverse economic impacts of the NED closure to be realized, given the termination of the NED research experiment and its attendant economic benefits.

Alternative A2 (limit pelagic longline vessels in all areas open to pelagic longline fishing, excluding the NED, at all times, to possessing on board and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait) would increase adverse economic impacts on fishermen, as compared to the proposed measures, because it would limit their flexibility in selecting a more efficient hook and bait treatment for use in targeting tunas. As such, those fishermen operating outside the NED that are not able to successfully target swordfish would be adversely impacted to a greater extent, compared to the proposed measures, because of losses in tuna revenues that are anticipated with this hook and bait treatment.

Alternative A4 (limit pelagic longline vessels in all areas open to pelagic longline fishing, excluding the NED, at all times, to possessing on board and/or using only one of the following combinations of hooks and bait: (i) 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait; or, (ii) 18/0 or larger non-offset circle hooks and squid bait; or, (iii) 9/0 ''J''-hooks with an offset not to exceed 25 degrees and whole mackerel bait) would have either greater or lesser adverse economic impacts than the preferred alternatives, depending upon the hook and bait combination chosen and the target species. However, this alternative would not achieve the biological objective of reducing the mortality of incidentally-caught sea turtles. As discussed in the DSEIS, interactions with ''J''-hooks have a higher incidence of deep hooking, and tend to result in more serious injuries of sea turtles. This alternative would likely result in a higher post-release mortality rate of sea turtles, because it would allow the use of ''J''-hooks.

Alternative A5 (limit vessels with pelagic longline gear onboard, at all times, in all areas open to pelagic longline fishing excluding the NED, to possessing onboard and/or using only 16/0 or larger circle hooks with an offset not to exceed 10 degrees) would not, by itself, achieve the biological objectives of the proposed rule. Alternative A5 would likely have minor to moderate adverse economic impacts on fishermen, given potential decreases in swordfish catch.

Alternative A6 (allow pelagic longline fishing for Atlantic HMS in the NED), would be expected to have positive economic benefits, but would not meet the biological objectives of this rulemaking, or ensure compliance with the ESA.

Alternative A7, which would reopen the NED to pelagic longline fishing and limit vessels in that area, at all times, to possessing on board and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait, would have positive social and economic effects, as compared to the status quo or historical economic impacts. However, compared to Preferred Alternative A10, it would limit the ability of fishermen to efficiently target swordfish or tunas because it would allow only a single hook and bait in the area. Also, this alternative, by itself, would not achieve the biological objective of the proposed rule.

Alternative A8, which would reopen the NED to pelagic longline fishing and limit pelagic longline vessels in that area, at all times, to possessing on board and/or using only 20/0 or larger circle hooks with an offset not to exceed 10 degrees and whole mackerel bait, would be effective at reducing sea turtle interactions and would have positive social and economic benefits over the status quo, but would have minor adverse economic impacts when viewed historically. Alternative A8, if selected, would have a greater adverse impact on revenues associated with landings of tuna and a less positive impact on revenues associated with landings of swordfish than Preferred Alternative A10.

Alternative A9 (reopen the NED to pelagic longline fishing and limit pelagic longline vessels in that area, at all times, to possessing on board and/or using only one of the following hook and bait combinations at anytime: (i) 9/0 ''J''-hook with an offset not to exceed 25 degrees and whole mackerel bait; or, (ii) 18/0 or larger circle hook with an offset not to exceed 10 degrees with

whole mackerel bait) could provide greater positive economic impacts than the proposed measures in Alternative A10, however, as with Alternative A4, allowing the use of ''J''-hooks under this alternative would not achieve the biological objective of reducing the mortality of incidentally-caught sea turtles.

Alternative A11 (prohibit the use of pelagic longline gear in all Atlantic HMS fisheries) would achieve the biological objectives of this proposed rulemaking. However, this alternative would impose the most adverse economic impacts of all the alternatives considered.

Alternative A12 (close the Gulf of Mexico west of 88 degrees W. Long., year-round) would have adverse economic impacts on a distinct geographic segment of the fishery, and would not, by itself, achieve the biological goals of this proposed rulemaking.

Alternative A13 (prohibit the use of pelagic longline gear in an area of the central Gulf of Mexico, year-round) would likely have substantial economic impacts on a large and distinct geographic segment of the U.S. pelagic longline fleet, communities, buyers, and dealers in the Gulf of Mexico. Available data indicate that potential increases in catches of swordfish and bigeye tuna of 17 and 32 percent (numbers of fish), respectively, and a decrease in swordfish catches of two percent (numbers of fish) could occur a result of this closure. However, the actual impacts are unknown because potential changes in weight of landings are unknown. Nevertheless, NMFS anticipates that the overall economic impacts of a closure of this size would likely be adverse. Because a high percentage of historical fishing effort has been located in this alternative's closure area, a substantial number of fishing vessels would likely have to adjust their fishing practices. Because of a projected increase in loggerhead sea turtle interactions associated with a relocation of fishing effort, Alternative A13 would not, by itself, achieve the biological goals of the proposed rule.

Alternative A14 (prohibit the use of pelagic longline gear in HMS fisheries in areas of the Central Gulf of Mexico and the Northeast Coastal (NEC) statistical reporting areas, year-round) would likely have substantial adverse economic impacts on a large and distinct segment of the U.S. pelagic longline fleet that fishes in the GOM and NEC, as well as associated communities, buyers, and seafood dealers. NMFS' analysis indicates that swordfish and bigeye tuna catches could potentially increase 18 and 33 percent (numbers of fish), respectively, and catches of yellowfin tuna could potentially decrease by two percent (numbers of fish). However, the actual impacts are unknown because changes in the weight of landings are unknown. Because a high percentage of the fishing effort has been located in these potential closure areas, a substantial number of fishing vessels would have to adjust their fishing practices accordingly. Further, this alternative by itself would not achieve the biological objectives of this proposed rule.

Alternative A15 (prohibit the use of pelagic longline gear in HMS Fisheries in areas of the central GOM and NEC, from May through October), similar to Alternative A14, would likely also have substantial adverse economic impacts on a large and distinct segment of the U.S. pelagic longline fleet that fishes in the GOM and NEC, as well as associated communities, buyers, and dealers. NMFS' analysis indicates, as a result of the closure in this alternative, swordfish, yellowfin tuna, and bigeye tuna catches could potentially increase five percent, three percent, and 17 percent (numbers of fish), respectively. However, the actual impacts are unknown because potential changes in the weight of landings are not known. Because a high percentage of the fishing effort has been located in the areas considered for the time/area closures, a substantial number of fishing vessels would have to adjust their fishing practices accordingly. Further, this alternative by itself would not achieve the biological objectives of proposed rule.

Although Alternatives A5, A7, A14, and A15 would not, independent of one another, sufficiently reduce sea turtle interactions to ensure compliance with the ESA, a suite of these alternatives (A5, A7, and A14; or A5, A7, and A15) would achieve the necessary sea turtle reductions, if combined. The combined economic impacts of these suites of alternatives, however, would be expected to impose greater adverse economic impacts than the alternatives being proposed.

This proposed rule does not contain any new reporting or recordkeeping requirements.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Fisheries, Fishing, Fishing vessels.

50 CFR Part 635

Endangered and threatened species, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Statistics, Treaties.

Dated: February 5, 2004.

Rebecca J. Lent,

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

For the reasons set out in the preamble, 50 CFR parts 223 and 635 are 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 *et seq.*

2. In § 223.206, paragraph (d)(1)(ii) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(1) * * *

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a pelagic longline vessel in the Atlantic issued an Atlantic permit for highly pelagic species under 50 CFR 635.4, must follow the handling requirements in 50 CFR 635.21.

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, the definition for ''Northeast Distant closed area'' is removed, and new definitions for ''Circle hook'' and ''Offset circle hook'' are added alphabetically to read as follows:

§ 635.2 Definitions.

* * * * *

Circle hook means a fishing hook with the point turned perpendicularly back to the shank.

* * * * *

Offset circle hook means a circle hook in which the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

* * * * *

3. In § 635.21, paragraph (c)(2)(v) is removed; paragraphs (a)(3), (c)(5)(i), and (c)(5)(ii) are revised; and paragraphs (c)(5)(iii)(C) and (c)(5)(iv) are added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(3) Operators of all vessels that have pelagic or bottom longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess, inside the wheelhouse, a document provided by NMFS entitled, ''Careful Release Protocols for Release with Minimal Injury'' and must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(c) * * *

(5) * * *

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph 635.21(c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (c)(5)(i)(L) of this section, must be carried on board, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(5)(ii) of this section.

(A) *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards, and may be purchased or fabricated from readily available and low-cost materials. One long-handled line clipper or cutter and a set of replacement blades are required to be onboard. The minimum design standards for line cutters are as follows:

(*1*) *A protected and secured cutting blade.* The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in. - 0.083 in.) monofilament line (400–lb test) or polypropylene multistrand material, known as braided or tarred mainline, and should be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and easily replaced. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(*2*) *An extended reach handle.* The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. Freeboard is defined as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

(B) *Long-handled dehooker for ingested hooks.* A long-handled dehooking device is intended to remove ingested hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device to remove ingested hooks is required onboard. The minimum design standards are as follows:

(*1*) *Hook removal device.* The hook removal device must be constructed of 5/16–inch (7.94 mm) 316 L stainless steel and have a dehooking end no larger than 1 7/8–inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles observed to date in the pelagic longline fishery targeting swordfish and tuna, or those having some possibility for use in the future (7/0–11/0 J hooks and 14/0–22/0 circle hooks).

(*2*) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. Freeboard is defined as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

(*C*) *Long-handled dehooker for external hooks.* A long-handled dehooker is required for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for ingested hooks described in paragraph (c)(5)(i)(B) of this section would meet this requirement. The minimum design standards are as follows:

(*1*) *Construction.* A long-handled dehooker must be constructed of 5/16–inch (7.94 mm) 316 L stainless steel rod. A 5–inch (12.7–cm) tube T-handle of 1–inch (2.54 cm) outside diameter is recommended, but not required. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles observed to date in the pelagic longline fishery targeting swordfish and tuna, or those having some possibility for use in the future (7/0–11/0 J hooks and 14/0–22/0 circle hooks).

(*2*) *Handle length.* The handle must be a minimum length equal to the freeboard of the vessel or 3 ft (0.914 m), whichever is greater. Freeboard is defined as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design.

(D) *Long-handled device to pull an ''inverted V''.* This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the ''Careful Release Protocols'' document required under paragraph (a)(3) of this section, for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'' is required onboard. If a 6–ft (1.83 m) J-style dehooker is used to comply with paragraph (C)(5)(i)(C) of this section, it will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook end.* This device, such as a standard boat hook or gaff, must be constructed of stainless steel or aluminum. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(*2*) *Handle length.* The handle must have a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. Freeboard is defined as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design. The handle must

be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

(E) *Dipnet.* One dipnet is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles should never be brought onboard without a dipnet. The minimum design standards for dipnets are as follows:

(*1*) *Size of dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (0.914 m)carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) x 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where it is attached to the handle.

(*2*) *Extended reach handle.* The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or at least 6 ft (1.83 m), whichever is greater. Freeboard is defined as the working distance between the top rail of the gunwale to the water's surface, and will vary based on the vessel design. The handle must made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

(F) *Tire.* A minimum of one tire is required for supporting a turtle in an upright orientation while it is onboard, although an assortment of sizes is recommended to accommodate a range of turtle sizes. The required tire must be a standard passenger vehicle tire, and must be free of exposed steel belts.

(G) *Short-handled dehooker for ingested hooks.* One short-handled device for removing ingested hooks is required onboard. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(*1*) *Hook removal device.* The hook removal device must be constructed of 1/4–inch (6.35 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without re-engaging during the removal process. It must be no larger than 1 5/16 inch (3.33 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a 3/4 inch (1.91 cm) inside diameter high impact plastic cylinder (e.g., Schedule 80 PVC) that is 10 inches (25.4 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles observed to date in the pelagic longline fishery targeting swordfish and tuna, or those having some possibility for use in the future (7/0–11/0 J hooks and 14/0–22/0 circle hooks).

(*2*) *Handle length.* The handle should be approximately 16 - 24 inches (40.64 cm - 60.69 cm) in length, with approximately a 5–inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(H) *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks is required onboard. The short-handled dehooker for ingested hooks required to comply with paragraph (c)(5)(i)(G) of this section will also satisfy this requirement. Minimum design standards are as follows:

(*1*) *Hook removal device.* The dehooker must be constructed of 5/16–inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles observed to date in the pelagic longline fishery targeting swordfish and tuna, or those having some possibility for use in the future (7/0–11/0 J hooks and 14/0–22/0 circle hooks).

(*2*) *Handle length.* The handle should be approximately 16 - 24 inches (40.64 cm - 60.69 cm) long with approximately a 5–inch (12.7 cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

(I) *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal. They can also hold PVC splice couplings, when used as mouth openers, in place. Minimum design standards are as follows:

(*1*) *General.* They must be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(*2*) [Reserved]

(J) *Bolt cutters.* One pair of bolt cutters is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. Minimum design standards are as follows:

(*1*) *General.* They must be approximately 17 inches (43.18 cm) in total length, with 4–inch (10.16 cm) long blades that are 2 1/4 inches (5.72 cm) wide, when closed, and with 13–inch (33.02 cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to 1/4–inch (6.35 mm) diameter.

(*2*) [Reserved]

(K) *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. Minimum design standards are as follows:

(*1*) *General.* Monofilament line cutters must be approximately 7 1/2 inches (19.05 cm) in length. The blades must be 1 3/4 in (4.45 cm) in length and 5/8 in (1.59 cm) wide, when closed, and are recommended to be coated with Teflon (a trademark owned by E.I. DuPont de Nemours and Company Corp.).

(*2*) [Reserved]

(L) *Mouth openers/mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing ingested hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(*1*) *A block of hard wood.* Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (e.g. maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) 1 inch (2.54 cm) 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(*2*) *A set of three canine mouth gags.* Canine mouth gags are highly recommended to hold a turtle's mouth

open, because the gag locks into an open position to allow for hands-free operation after it is in place. A set of canine mouth gags must include one of each of the following sizes: small (5 inches) (12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches) (17.78 cm). They must be constructed of stainless steel. A 1 3/4 inch (4.45 cm) piece of vinyl tubing (3/4–inch (1.91 cm) outside diameter and 5/8–inch (1.59 cm) inside diameter) must be placed over the ends to protect the turtle's beak.

(*3*) *A set of two sturdy dog chew bones.* Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5 1/2 - 8 inches (13.97 cm - 20.32 cm) in length), and one small (3 1/2 - 4 1/2 inches (8.89 cm - 11.43 cm) in length) canine chew bones.

(*4*) *A set of two rope loops covered with hose.* A set of two rope loops covered with a piece of hose can be used as a mouth opener, and to keep a turtle's mouth open during hook and/or line removal. A required set consists of two 3–foot (0.91 m) lengths of poly braid rope (3/8–inch (9.52 mm) diameter suggested), each covered with an 8–inch (20.32 cm) section of 1/2 inch (1.27 cm) or 3/4 inch (1.91 cm) light-duty garden hose, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(*5*) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6–foot (1.83 m) lanyard of approximately 3/16–inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed is allowed, however it must create a hank of approximately 2 - 4 inches (5.08 cm - 10.16 cm) in thickness.

(*6*) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1 1/4 inch (3.18 cm), 1 1/2 inch (3.81 cm), and 2 inches (5.08 cm).

(*7*) *A large avian oral speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9–inches (22.86 cm) long, and constructed of 3/16–inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16–inch (7.9 mm) outside diameter, 3/16–inch (4.76 mm) inside diameter).

(ii) *Handling requirements.* (A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) - (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought on board. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) - (L) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought on board, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1).

(B) *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as required by paragraph (c)(5)(i)(E) of this section. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit.

(*1*) For boated turtles, the animal should be placed on a standard automobile tire, or cushioned surface, in an upright orientation to immobilize it and facilitate gear removal. Then, determine if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. Do not attempt to remove a hook if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, ensure that as much line as possible is removed from the turtle using monofilament cutters, and cut the hook as close as possible to the insertion point using bolt cutters before releasing it. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for ingested hooks, or long-nose or needle-nose pliers should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1), for additional information.

(*2*) [Reserved]

(C) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boarding without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear required by paragraphs (c)(5)(i)(A) - (D) of this section should be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (a)(3) of this section.

(*1*) For non-boated turtles, bring the animal close to the boat and provide time for it to calm down. Then, determine if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. Do not attempt to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, ensure that as much line as possible is removed prior to release, using the line cutter required at paragraph (c)(5)(i)(A) of this section. If the hook can be removed, use a long-handled dehooker as required at paragraphs (c)(5)(i)(B) and (c)(5)(i)(C) of this section to remove the hook, as appropriate. Always remove as much gear as possible from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1), for additional information.

(*2*) [Reserved]

(iii) * * *

(C) *Hook size, type, and bait.* Vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access

swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are limited, at all times, to possessing on board and/or using only one of the following combinations of hooks and bait:

(*1*) 18/0 or larger circle hooks with an offset not to exceed 10° and whole Atlantic mackerel (*Scomber scombrus*) bait; or,

(*2*) 18/0 or larger non-offset circle hooks and squid bait.

(*i*) For purposes of paragraphs (c)((5)(iii)(C)(1) and (2) of this section, the outer diameter of an 18/0 circle hook at its widest point must be no smaller than 1.97 inches (50 mm), when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). The offset in paragraph (c)(5)(iii)(C)(1) of this section is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

(*ii*) [Reserved]

(iv) *Approval of sea turtle bycatch mitigation gear.* NMFS will file with the Office of the **Federal Register** for publication an initial list of required sea turtle bycatch mitigation gear that NMFS has approved as meeting the minimum design standards specified under paragraph (c)(5)(i) of this section. Other devices proposed for use as line clippers or cutters or dehookers, as specified under paragraphs (c)(5)(i)(A), (B), (C), (G), (H), and (K) of this section, must be approved as meeting the minimum design standards before being used. NMFS will examine new devices, as they become available, to determine if they meet the minimum design standards, and will file with the Office of the **Federal Register** for publication notification of any new devices that are approved as meeting the standards.

* * * * *

4. In § 635.71, paragraph (a)(33) is revised as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i).

* * * * *

[FR Doc. 04–2982 Filed 2–10–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No 040122024–4024–01; I.D. 010904A]

RIN 0648–AR75

Fisheries of the Northeastern United States; Tilefish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to reinstate the permit requirements for commercial tilefish vessels specified under 50 CFR 648.4(a)(12). These permit requirements were set aside in a recent Federal Court Order (Court Order) in Hadaja v. Evans (May 15, 2003) on the grounds that the limited access program contained in the Tilefish Fishery Management Plan (FMP) violated National Standard 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS is proposing to reinstate these permit requirements based on additional information provided by the Mid-Atlantic Fishery Management Council (Council) that supports the limited access permit criteria contained in the FMP. This action will enable NMFS to manage the tilefish fishery in accordance with the provisions of the Magnuson-Stevens Act by helping end overfishing, and ensuring that the stock rebuilding objective of the FMP is achieved.

DATES: Comments must be received on or before March 12, 2004.

ADDRESSES: Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator (RA), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on Tilefish Action.'' Comments may also be submitted via facsimile (fax) to (978) 281–9135. Comments may also be submitted via e-mail to the following address: *tilefish75@noaa.gov*.

Copies of the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available upon request from the RA at the above address. Copies of the Final Environmental Impact Statement (FEIS) prepared for the FMP may be obtained by contacting Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19904. The FEIS, which was completed in 2001, contained a complete analysis of the impacts of the permit requirements contained in the FMP. Because nothing has changed since the FEIS was completed that would affect that determination, further analysis under the National Environmental Policy Act (NEPA) is unnecessary.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, fax (978) 281–9135, e-mail *Allison.Ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The tilefish fishery is managed by the Council under the FMP. The FMP was approved by the Secretary of Commerce (Secretary) on May 10, 2001, and became effective on November 1, 2001 (66 FR 49136; September 26, 2001). The Tilefish Management Unit is all golden tilefish under U.S. jurisdiction in the Atlantic Ocean north of the Virginia/North Carolina border. The primary objective of the FMP is to eliminate overfishing and rebuild the tilefish stock through the implementation of a stock rebuilding program. Measures in the FMP established to achieve this objective include a limited entry program; a tiered commercial quota, based on the limited entry program; permit and reporting requirements for commercial vessels, operators, and dealers; a prohibition on the use of gear other than longline gear by limited access tilefish vessels; and an annual specification and framework adjustment process.

The stock rebuilding schedule established by the FMP consists of a constant harvest strategy under which the TAL is set at 1.995 million lb (905,000 kg) each year for the entire 10–year rebuilding schedule. The objective of the tilefish rebuilding schedule is to reduce the fishing mortality rate (F) from its 1998 level of F=0.45, to F=0.29 in the first year of the FMP, and gradually down to F=0.11 in the tenth year of the FMP. These measures are designed to provide at least a 50–percent probability of achieving biomass at maximum sustainable yield (Bmsy) by October 31, 2011. The annual TAL is apportioned as follows. First, a total allowable catch (TAC) of up to 3 percent of the TAL may be set aside for the purpose of funding tilefish research. Following any reduction due to the establishment of a research TAC, the TAL is reduced by 5 percent to account