

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 222**

[Docket No. 050224044-5044-01; I.D. 092304A]

RIN 0648-AS57

Sea Turtle Conservation; Exceptions to Taking Prohibitions for Endangered Sea Turtles

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to allow any agent or employee of NMFS, the U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who, when acting in the course of his or her official duties, is a member of the Sea Turtle Stranding and Salvage Network (STSSN), to take endangered sea turtles encountered in the marine environment if such taking is necessary to aid a stranded endangered sea turtle, or dispose a dead endangered sea turtle, or salvage a dead endangered sea turtle that may be useful for scientific and educational purposes. This action is necessary to provide equal conservation and protection measures to stranded endangered sea turtles as is afforded for threatened sea turtles under 50 CFR 223.206.

DATES: Comments on this action are requested, and must be received at the appropriate address, e-mail, or fax number (**ADDRESSES**) by no later than 5 p.m., eastern daylight time, on April 28, 2005.

ADDRESSES: Written comments on this action or requests for copies of the draft Environmental Assessment should be addressed to Michael Payne, Chief, Marine Mammal Division, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910; or by fax (301) 427-2522, or by e-mail at: Seaturtle.STSSN@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Therese Conant, phone: 301-713-1401, fax: 301-427-2523.

SUPPLEMENTARY INFORMATION:**Background**

All sea turtles that occur in U.S. waters are listed as either endangered or

threatened under the Endangered Species Act (ESA). Kemp's ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green turtles in Florida and on the Pacific coast of Mexico and breeding colony populations of olive ridleys on the Pacific coast of Mexico which are listed as endangered. NMFS and the FWS share jurisdictional responsibility for sea turtles under the ESA. FWS has responsibility in the terrestrial environment and NMFS has responsibility in the marine environment.

Under the ESA and its implementing regulations, taking endangered sea turtles - even incidentally - is prohibited. The ESA allows take of threatened species; however, section 4(d) of the ESA allows NMFS to implement regulations for the conservation of threatened species. NMFS implemented a section 4(d) regulation that extended the take prohibitions to threatened sea turtles with exceptions identified in 50 CFR 223.206. The take of endangered species may be authorized by an incidental take statement pursuant to section 7 or a permit or programmatic permit regulation issued pursuant to section 10 of the ESA.

NMFS implemented regulations (50 CFR 223.206) pursuant to section 4(d) of the ESA to allow appropriate handling of sick, injured, entangled, or dead threatened sea turtles found in the marine environment. Activities related to responding to sick, injured, entangled, and dead turtles have been ongoing for over 30 years and became institutionalized in 1980 with the establishment of the NMFS' STSSN. The STSSN consists of agents or employees of NMFS, the FWS, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife (hereinafter referred to as the STSSN Responder). Each state participating in the STSSN has an ESA section 6 agreement with the FWS. The FWS grants authority to each cooperating state for permitting land-based activities (i.e., on the beach and in holding facilities) related to the STSSN. FWS also implemented regulations to allow any employee or agent of FWS, NMFS, or a state conservation agency, to aid, dispose, salvage or humanely remove endangered species that constitute a

demonstrable threat to human safety (50 CFR 17.21). NMFS currently has ESA section 6 agreements with only 10 states/territories: Florida, Georgia, South Carolina, North Carolina, Maryland, New Jersey, New York, Massachusetts, Puerto Rico, and U.S. Virgin Islands (note: On June 11, 1997, NMFS entered into a Memorandum of Agreement with the California Department of Fish and Game, Office of Oil Spill Prevention and Response to aid sick, injured or stranded sea turtles impacted by oil and other hazardous material spills). The STSSN encompasses all U.S. states and territories. The ESA does not allow exceptions to takings for endangered species through section 4(d). Therefore, NMFS proposes to grant authority under section 10(a)(1)(A) to provide for the aid, collection, and disposition of, stranded endangered sea turtles found in the marine environment. By definition, the term 'stranded' includes live endangered sea turtles that are sick, injured, or entangled and dead endangered sea turtles found in the marine environment. Because the activities of the STSSN are similar in nature and scope, NMFS proposes to issue a programmatic permit by regulation pursuant to section 10(a)(1)(A). Implementing this section 10(a)(1)(A) action would provide consistency with FWS regulations which allow such activities on land as described in 50 CFR 17.21.

The STSSN was formally established in the southeastern United States and Gulf of Mexico in 1980 and in Hawaii in 1982. The NMFS Southwest Region California Marine Mammal Stranding Network (CMMSN) has responded to sea turtle strandings in California since 1983. Maintaining an active stranding network has been identified in each of the ESA section 4 sea turtle recovery plans developed jointly by FWS and NMFS as a task necessary for the conservation and recovery of listed sea turtles. The purpose of the STSSN is to document dead sea turtles, salvage specimens, and aid sick, injured, or entangled sea turtles that strand in coastal areas under U.S. jurisdiction. State agencies that hold an ESA section 6 agreement with FWS and/or NMFS have designated staff or have developed memorandums of understanding (MOU) with academic institutions or other state-run institutions (e.g., aquaria) to oversee the STSSN. In some cases where NMFS does not have a direct MOU with a STSSN participant within a state, NMFS has applied directly to the FWS to cover STSSN activities (permit number: TED697823-2). The STSSN is organized under a national coordinator

and consists of a coordinator for each state as well as trained volunteers and municipal, state and Federal employees and their designated agents operating under the direction of the state and national coordinator. Each state oversees and is responsible for collecting data under their STSSN program, except for California where NMFS oversees the program. In response to the high number of leatherbacks found entangled in fishing gear (primarily pot gear) along the U.S. northeast Atlantic coast, NMFS established the Northeast Atlantic Coast Sea Turtle Disentanglement Network (STDN) in 2002. The STDN is considered a component of the larger STSSN program, and the NMFS Northeast Regional Office oversees the STDN program.

Training Requirements for the STSSN

STSSN Responders are highly experienced personnel who have undertaken extensive training through NMFS and/or state STSSN programs. The U.S. Coast Guard maintains a separate professional training program for responding to events involving protected resources. However, U.S. Coast Guard staff often attend STSSN meetings and training workshops held by states. Individual state STSSNs conduct annual training and refresher workshops for authorized STSSN Responders. STSSN Responders who receive additional training may also perform necropsies on sea turtle carcasses to determine the general state of health prior to death, sex, and document any abnormalities that may have contributed to the mortality of the animal. It is particularly important to undertake necropsies during an unexplained mass mortality event. Comprehensive disentanglement guidelines and sea turtle disentanglement tool kits were disseminated to the STSSN in October, 2003. In addition, NMFS holds regular meetings with the state STSSN coordinators to exchange information and develop recommendations for improving the STSSN.

Reporting Requirements for the STSSN

The state STSSN programs collect the following information: name and address of observer, date, stranding location, species identification, state of decomposition; description of any obvious wounds, injuries or abnormalities; standard carapace measurements; and disposition. Photographs are taken whenever possible to verify species identification. Data are recorded on standardized report forms which are submitted to the

state coordinator and then to the national STSSN coordinator at the NMFS Southeast Fisheries Science Center or the NMFS Pacific Islands Science Center.

For disentanglement events, the following information is collected: name and type of reporting vessel; vessel cell phone number or radio call channel; reporter name and home phone number; date/time of report (and/or sighting event); location (latitude and longitude); description of turtle for species identification; status of turtle (alive or dead); description of entangling gear (rope, line, buoys, colors, ID numbers); location of entangling gear on turtle (head, flippers, single wrap, multiple wraps); description of any visible injuries; and weather/sea conditions at the scene.

NMFS reviews the information collected and submitted through the states in the STSSN on a monthly basis for data quality control and assesses, in coordination with the states, the effectiveness of the program on a yearly basis.

Types of Activities Conducted Under the STSSN

Tens of thousands of sea turtles have been reported through the STSSN since its inception. A portion of these reports have been endangered sea turtles found in the marine environment. Cumulatively, from 1993–2002, the STSSN responded to approximately 1,000 endangered sea turtles in the marine environment in the Atlantic Ocean and Gulf of Mexico. The species composition of these events in the marine environment was: 99 leatherbacks, 45 hawksbills, 223 Kemp's ridleys, and 633 green turtles (note: all green turtles are considered endangered because breeding colony origin is largely unknown). Thirty-seven percent of these incidents were live encounters. In Hawaii, for the same time period, approximately 20 endangered sea turtles were responded to in the marine environment. The species composition of these events was approximately split between hawksbill and olive ridleys (note: all olive ridleys are considered endangered because breeding colony origin is largely unknown). Of these events, over half were live encounters. In California, for the same time period, the STSSN responded to 12 endangered sea turtles in the marine environment. The species composition of these events was 4 leatherbacks, 2 olive ridleys, and 6 green turtles. Of the total 12, half were live encounters.

The types of events that render turtles in need of aid in the marine environment are varied and include

cold-stunning, disease and health related issues, entanglement in and impingement on commercial and recreational fishing gear, ingestion of pollutants or marine debris, and vessel strikes and other traumatic injuries, including shark attacks. Typically, these events are reported through a NMFS dedicated phone line or through the state's STSSN phone line for reporting sick, injured, entangled or stranded wildlife. Alternately, the STSSN Responder may encounter a turtle in the water when acting in the course of official duties. On rare occasions, a sick, injured or entangled sea turtle is reported by the public and an immediate response is necessary to prevent further injury or death to the turtle. In these rare events, NMFS grants authority and gives specific instructions to the person at the scene to safely and properly aid the sea turtle.

When a turtle is encountered in the water, the STSSN Responder determines whether the turtle is alive or dead. The response protocol is based upon this determination. For live turtles, the treatment is, in part, based upon the circumstances surrounding the event. For example, when water temperatures drop below a certain level, sea turtles can become lethargic or comatose, a condition known as cold-stunning. For these cold stun cases, the most immediate response is to remove the turtle from the water, apply a moisture emollient around the nostrils and eyes to prevent the membranes from drying out, provide a cover for the animal and transport it to a rehabilitation facility for veterinary care. For entanglement events, removal from the water is not always the best response and can result in further injury. The STSSN Responder assesses the amount and type of gear that is involved and examines where and how the turtle is entangled in the gear. The STSSN Responder also looks for injuries associated with the entanglement and observes the turtle's behavior (e.g., lethargic, energetic). Based on the assessment and examination, and given concern for their own safety, the STSSN Responder attempts to remove any gear that can be removed without further injury to the turtle. If the animal can be brought on board a vessel without further injury, the STSSN Responder attempts to remove all external gear and treat the turtle for any associated injuries. If the turtle's injuries are severe, and it is logistically possible, the turtle is transported to shore for transfer to a rehabilitation facility for veterinary care. During transport, the turtle is kept shaded and kept moist. For live turtles

that are not injured but need resuscitation, procedures specified in 50 CFR 223.206(d)(1) are followed. Resuscitation and rehabilitation increases the turtle's chance of survival after being released.

For dead specimens found in the marine environment, the STSSN Responder records data and either leaves the carcass in the water with a mark on the animal or salvages the specimen for further examination or for scientific or educational purposes (for example, data are collected to determine population sex and age structure, and etiology of diseases).

Summary

The STSSN was established in response to the need to better understand threats to sea turtles in the marine environment and to provide aid to stranded sea turtles, or dispose of a dead endangered sea turtle, or salvage a dead endangered sea turtle that may be useful for scientific and educational purposes. Maintaining a stranding network is identified as a recovery task in all federal sea turtle recovery plans. The extensive training requirements, comprehensive data collection, and frequent review and evaluation of these programs, satisfy the requirements described for individual directed research permits. Actions taken by stranding and entanglement networks improve survivability of sick, injured, entangled or stranded turtles and improve our knowledge about population structure, the etiology of disease, environmental stressors and manmade threats in the marine environment. The proposed rule would authorize activities that clearly provide a bona fide and desirable benefit to the enhancement and survival of endangered sea turtles.

This proposed rule would not authorize incidental take. The activities described are limited to responding to a sea turtle stranding or death that has occurred incidental to a human activity and responding to a stranding or death due to natural causes. NMFS is requesting comment on this proposed action. Copies of the draft Environmental Assessment are available (see ADDRESSES).

Classification

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

This action does not contain new reporting or recordkeeping requirements.

This proposed rule does not duplicate, overlap or conflict with other Federal rules.

This proposed rule does not limit state policymaking or preempt state law and, therefore, does not contain policies with federalism implications under Executive Order 13132.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small businesses, organizations, or governments pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Activities authorized under this proposed rule authorize a suite of activities that may be taken at the discretion of the STSSN Responder. Proscriptive activities are limited to safe handling protocols for live sea turtles described at 50 CFR 223.206(d)(1). These protocols were most recently updated and authorized through separate rulemaking (66 FR 67495, December 31, 2001). The activities authorized under this proposed rule will only affect STSSN Responders and will not constitute any additional burden to small businesses, organizations, or governments.

Dated: March 23, 2005.

Rebecca Lent,

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

List of Subjects in 50 CFR Part 222

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

For the reasons set forth in the preamble, 50 CFR part 222 is proposed to be amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for 50 CFR part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In subpart C, § 222.310 is added to read as follows:

§ 222.310 Permit authority for designated agents and employees of specified Federal and state agencies.

(a) This section constitutes a programmatic permit, pursuant to 16 U.S.C. 1539(a)(1)(A), that authorizes activities by agents and employees of Federal and state agencies, as described in paragraph (b) of this section, to aid stranded endangered sea turtles, and to salvage, collect data from, and dispose of, dead carcasses of endangered sea turtles in the marine environment. For

purposes of this section, 'stranded' means endangered sea turtles, in the marine environment, that are alive but sick, injured, or entangled.

(b) If any member of any endangered species of sea turtle is found stranded or dead in the marine environment, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such endangered sea turtles if such taking is necessary to aid a stranded sea turtle, or dispose of or salvage a dead sea turtle, or collect data from a dead sea turtle which may be useful for scientific and educational purposes. Live turtles will be handled as described in § 223.206(d)(1). Whenever possible, live sea turtles shall be returned to their aquatic environment as soon as possible. The following data collection activities for live turtles while they are in the marine environment are allowed:

(1) Turtles may be flipper and passive integrated transponder (PIT) tagged, prior to release. Flipper tags would be applied to the trailing edge of either the front or rear flippers with standard tagging applicators after the tagging area has been cleaned with alcohol or iodine solution. PIT tags would be subcutaneously inserted after cleaning the insertion site with alcohol or iodine solution. Before application of flipper tags or insertion of PIT tags all flippers and the neck/shoulder area will be examined and scanned for the presence of any pre-existing flipper or PIT tags.

(2) Turtles may also be weighed, measured, and photographed prior to release.

(c) Every action shall be reported in writing to the Assistant Administrator, or authorized representative, via the agency or institution designated by the state to record such events. Reports shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the sea turtle(s) involved including species and condition of the animal;

(3) When applicable, description of entangling gear, its location on the turtle, and the amount of gear left on the turtle at release;

(4) Method, date and location of disposal of the sea turtle(s), including, if applicable, where the sea turtle(s) has been retained in captivity; and

(5) Such other information as the Assistant Administrator, or authorized representative, may require.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050314072-5072-01; I.D. 030705D]

RIN 0648-AS33

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40-B (FW 40B)

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in FW 40B to the NE Multispecies Fishery Management Plan (FMP). FW 40B was developed by the New England Fishery Management Council (Council) to modify existing effort control programs implemented under Amendment 13 to the FMP to improve the effectiveness of these programs and to create additional opportunities for commercial fishing vessels in the fishery to target healthy groundfish stocks. In addition, this action includes measures that would increase the information available to assess groundfish bycatch in the herring fishery.

DATES: Comments must be received on or before April 18, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: FW40B@NOAA.gov. Include in the subject line the following:

“Comments on the Proposed Rule for Groundfish Framework 40B.”

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Proposed Rule for Groundfish Framework 40B.”

- Fax: (978) 281-9135.

Copies of FW 40B, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the

Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT:

Douglas W. Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 in order to bring the FMP into conformance with all Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures in the amendment was published April 27, 2004 (69 FR 22906) and became effective May 1, 2004. Amendment 13 contained a suite of management measures to reduce fishing mortality on stocks that are either overfished, or where overfishing is occurring. For several stocks, the mortality targets adopted in Amendment 13 represented substantial reductions from the previous levels. For other stocks, the Amendment 13 mortality targets were at or above previous levels. Because of the mixed-stock nature of the NE multispecies fishery, management measures to reduce mortality on overfished stocks adopted in Amendment 13 are expected to reduce fishing mortality more than is necessary on other, healthy stocks. As a result, yield from healthy stocks may be sacrificed and the FMP may not provide for the fishery to harvest the optimum yield (OY), the amount of fish that will provide the greatest overall benefit to the Nation, from all stocks managed under the FMP for a given year.

Amendment 13 categorized the DAS allocated to each NE multispecies permit as Category A, B (Regular), B (Reserve), or C DAS. Category A DAS can be used to target any regulated groundfish stock, while Category B DAS are to be used only to target healthy

groundfish stocks. Category C DAS cannot be used unless authorized some time in the future. The regulations implementing Amendment 13 created one opportunity to use Category B DAS: A SAP designed to target GB yellowtail flounder in CA II. Framework Adjustment 40A (FW 40A), implemented November 19, 2004 (69 FR 67780), provided additional opportunities to use Category B DAS by creating two SAP's to target GB haddock and a pilot program designed for using Category B (Regular) DAS outside of a SAP (i.e., the Regular B DAS Pilot Program). These programs are intended to allow vessels to target healthy groundfish stocks without compromising the rebuilding programs of other groundfish stocks, thus enabling the industry to harvest OY from the healthy stocks.

Since the implementation of Amendment 13 and submission of FW 40A, several issues have been raised concerning the overall approach to controlling effort. The primary purpose of FW 40B is to improve the effectiveness of the Amendment 13 effort control program, including the opportunities developed to target healthy stocks and other measures to facilitate adaptation to the Amendment 13 effort reductions.

Proposed Measures

FW 40B proposes 12 specific management measures, as described here.

1. DAS Transfer Program Modifications

Amendment 13 created a DAS Transfer Program, which allows for the permanent exchange of DAS between vessels with limited access NE multispecies permits. Exchanges of DAS through this program are subject to a number of restrictions that govern which vessels can exchange DAS, and what happens to the other permits of the vessel that is selling its DAS to another vessel. As adopted in Amendment 13, Category A and B DAS that are permanently exchanged through the DAS Transfer Program are reduced by 40 percent, while Category C DAS are reduced by 90 percent. This reduction in DAS exchanged through the DAS Transfer Program is commonly referred to as a conservation tax. FW 40B would reduce the conservation tax on Category A or B DAS that are permanently exchanged through the DAS Transfer Program to 20 percent. The conservation tax on Category C DAS exchanged under this program would not be affected by this action.

Under the existing DAS Transfer Program regulations, vessels involved in