Commercial Boilers, steam Generators, and Process Heaters(Adopted 5/13/94)
Rule 1146.2—Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Amended 1/17/05)
Rule 1148—Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149—Storage Tank Degassing (Adopted 7/14/95)
Rule 1162—Polyester Resin Operations (Amended 7/9/04)
Rule 1168—Adhesive and Sealant Applications (Amended 1/7/05)
Rule 1171—Solvent Cleaning Operations (Amended 5/6/05)
Rule 1173—Fugitive Emissions of Volatile Organic Compounds (Adopted 12/06/02)
Rule 1176—VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1178—Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 12/21/01)
Rule 1301—General (Adopted 12/7/95)
Rule 1302—Definitions (Adopted 12/06/02)
Rule 1303—Requirements (Adopted 12/06/02)
Rule 1304—Exemptions (Adopted 6/14/96)
Rule 1306—Emission Calculations (Adopted 12/06/02)
Rule 1313—Permits to Operate (Adopted 12/7/95)
Rule 1403—Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1470—Requirements for Stationary Diesel-Fueled Internal Combustion and Other Compression Ignition Engines (Adopted 3/4/05)
Rule 1605—Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610—Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612—Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1—Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620—Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701—General (Adopted 8/13/99)
Rule 1702—Definitions (Adopted 8/13/99)
Rule 1703—PSD Analysis (Adopted 10/7/88)
Rule 1704—Exemptions (Adopted 8/13/99)
Rule 1706—Emission Calculations (Adopted 8/13/99)
Rule 1713—Source Obligation (Adopted 10/7/88)
Regulation XVII—Appendix (effective 1977)
Rule 1901—General Conformity (Adopted 9/9/94)
Rule 2000—General (Amended 5/6/05)
Rule 2001—Applicability (Amended 5/6/05)
Rule 2002—Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions (Amended 1/7/05)
Rule 2004—Requirements (Adopted 5/11/01) except (l)
Rule 2005—New Source Review for RECLAIM (Amended 4/20/01) except (i)
Rule 2006—Permits (Adopted 5/11/01)
Rule 2007—Trading Requirements (Amended 5/6/05)
Rule 2008—Mobile Source Credits (Adopted 10/15/93)
Rule 2009—Compliance Plan for Power Producing Facilities (Adopted 1/7/05)
Rule 2010—Administrative Remedies and Sanctions (Amended 1/7/05)
Rule 2011—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Amended 5/6/05)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 5/6/05)
Rule 2012—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Amended 5/6/05)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 5/6/05)
Rule 2015—Backstop Provisions (Amended 6/4/04) except (b)(1)(G) and (b)(3)(B)
Rule 2020—RECLAIM Reserve (Adopted 5/11/01)
Rule 2100—Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506—Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX—Title V Permits
Rule 3000—General (Adopted 11/14/97)
Rule 3001—Applicability (Adopted 11/14/97)
Rule 3002—Requirements (Adopted 11/14/97)
Rule 3003—Applications (Adopted 3/16/01)
Rule 3004—Permit Types and Content (Adopted 12/12/97)
Rule 3005—Permit Revisions (Adopted 3/16/01)
Rule 3006—Public Participation (Adopted 11/14/97)
Rule 3007—Effect of Permit (Adopted 10/8/93)
Rule 3008—Potential To Emit Limitations (3/16/01)
XXXI—Acid Rain Permit Program (Adopted 2/10/95)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 111805A]

Sea Turtle Requirements; Petition for Rulemaking

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

ACTION: Notice of decision on petition.

SUMMARY: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, announces its denial of a petition for rulemaking submitted by Oceana. Oceana failed to request specific and discrete actions that are properly within the scope of a rulemaking petition pursuant to the Administrative Procedure Act (APA); instead the petitioner challenged the agency's general pattern, practice, or policy. NMFS is denying the petition because the agency is already addressing aspects of the petition and has determined that additional regulations dictating the choice of method used to achieve agency goals are unwarranted at this time.

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *barbara.schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Petition Request

On August 4, 2005, Oceana submitted a petition requesting NMFS to promulgate the following regulations:

(1) Conduct in-water population level assessments. The petition requests that NMFS use in-water survey techniques, such as trawl or aerial surveys to obtain supplemental population assessment information for those species for which nesting beach survey data are available among other things, Oceana cites the Turtle Expert Working Group (TEWG 2000) recommendations to improve datasets and data-gathering methods in order to support its petition;

(2) Increase observer coverage to obtain accurate information on the number of sea turtles caught in all fisheries. The petition requests that NMFS promulgate regulations that increase coverage. The petition cites the TEWG statement that observer coverage over a statistically valid portion of the fishing effort throughout the range of sea turtles is necessary to accurately estimate catch and mortality; and

(3) Establish a quantitative method for determining take limits for biological opinions. The petition claims that NMFS fails to provide a quantitative rationale for incidental take specified in its biological opinions. The petition mentions several NMFS' evaluations of quantitative models for sea turtles, including the Potential Biological Removal (PBR) model used for marine mammals. Finally, the petition refers to the August 2004 workshop convened by NMFS to develop an analytical framework for conducting jeopardy analyses under the Endangered Species Act (ESA) and identify options for assessing species' risk when data are limited. The petition requests that NMFS adopt regulations immediately to insure that biological opinions use a standardized method to make decisions.

Analysis of Petition and Decision

NMFS carefully considered the information contained in the petition and supporting documents, and made the final determinations for each portion of the petition as follows.

Petition Component (1): Conduct In-water Population Level Assessments

The petition fails to provide any new information that justifies the need for regulations that would change the agency's general pattern or practice regarding data collection and analytical methodologies. NMFS is aware of the TEWG's assessments of the current datasets and is already working to improve the empirical data that define where, how many, and at what life stage and condition sea turtles may be encountered. NMFS is also conducting and supporting in-water research in many Atlantic states, as well as conducting aerial surveys in the mid-Atlantic to better assess sea turtle distribution and abundance. NMFS has built upon the TEWG recommendations by developing a requirements plan (NOAA 2004) to improve our understanding of the status of U.S. sea turtle populations. The requirements plan reviews the current sea turtle population assessment program in terms of present research capability and capacity, and delineates the resources necessary to acquire reliable assessment information to fully address identified data requirements. NMFS has addressed, and will continue to address, both the substance of this petitioned action and the TEWG recommendations through existing research planning documents and programs. Improvement of NMFS' research program is a matter left to the agency's discretion; it is not a specific and discrete action that is properly within the scope of a petition for rulemaking pursuant to APA 5 U.S.C. 553(e). Accordingly, NMFS denies this component of the petition.

Petition Component (2): Increase Observer Coverage to Obtain Accurate Information on the Number of Sea Turtles Caught in All Fisheries

Oceana has previously petitioned NMFS to develop and implement a workplan for placing observers on enough fishing trips to provide statistically reliable bycatch estimates in all fisheries (67 FR 19154; April 18, 2002). In its response to that petition, NMFS explained that even though observers are effective in many fisheries, they may not be appropriate for all fisheries (68 FR 11501, March 11, 2003). NMFS is continuing to expand and modernize observer programs for Federal commercial fisheries. NMFS recognizes that improving monitoring programs should increase our understanding of sea turtle interactions, but constraints on agency resources and logistical difficulties (e.g., small boats) make it difficult to monitor the extent of sea turtle interactions in state-managed and recreational fisheries. NMFS is exploring various observer options that could allow for more comprehensive, longer term monitoring of sea turtle-fishery interactions across fishing sectors and jurisdictional boundaries, but this on going effort is still in its early stages. Options may include placing observers in fisheries of concern pursuant to authority under the Endangered Species Act (ESA). In light of NMFS' previous denial of a substantially similar petitioned action and the agency's ongoing efforts to improve observer coverage, granting this petitioned action is unwarranted at this time.

Petition Component (3): Establish a New, Uniform Quantitative Method for Determining Take Limits for Biological Opinions

NMFS is interested in maintaining consist ESA section 7 jeopardy analyses in its biological opinions, while taking into account the wide variability in listed species' biology, as well as the wide variability in available information on them. To this end, NMFS convened a workshop in August 2004 as a first step in vetting the ESA section 7 biological opinion assessment framework. NMFS is still in the process of adding features such as identifying a suite of quantitative and qualitative methods for use in both data-sparse and data-rich situations, as well as testing and refining the applicability of the methods using information typical to section 7 consultations.

Any structured decision approach adopted by NMFS must, in the overall jeopardy evaluation, weigh such qualitative factors as severity of injury, significance of behavioral responses, and extent and severity of habitat disturbance. Approaches for evaluating take levels for biological opinions should contain options suitable to the varied species, available data sets, and actions under consideration. Use of any particular quantitative model such as PBR for every evaluation is inappropriate. Moreover, section 7 of the ESA and its implementing regulations do not require NMFS to estimate incidental take quantitatively. When promulgating the section 7 regulations in 1986, NMFS and the U.S. Fish and Wildlife Service explicitly declined to endorse the use of numerical estimates of incidental take in all cases. In many biological opinions, a description of the extent of take is used because the loss of habitat resulting in death or injury of individuals may have more significant adverse consequences than the direct loss of a certain number of individuals (51 FR 19953, June 3, 1986). Where Federal actions 'take' threatened or endangered species by altering the species' habitat, it is often impossible to translate the habitat lost into numerical estimates of the number of individuals taken. Consequently, numerical estimates are not appropriate to every consultation, and requiring them through rulemaking could reduce the protections listed species currently receive.

The analytical framework for evaluating take levels in biological opinions is not yet completed and has not been fully tested. NMFS has determined that it is premature to consider rulemaking to adopt the framework, or any other uniform decision approach, at this time. Thus, NMFS denies this component of the petition.

References Cited

Turtle Expert Working Group. 2000. Assessment update for the Kemp's ridley and loggerhead sea turtle populations in the western North Atlantic. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC–444, 115 pp.

NOAA Fisheries National Task Force for Improving Marine Mammal and Turtles Stock Assessment. September 2004. A Requirements Plan for Improving Understanding of the Status of U.S. Protected Species.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: November 28, 2005.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 051104291–5291–01; I.D. 100405F]

50 CFR Part 648

RIN 0648–AT29

Fisheries of the Northeastern United States; Spiny Dogfish; Framework Adjustment 1

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