

as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. We particularly seek comments concerning:

(1) Information on taxonomy, distribution, habitat selection (especially denning habitat), food habits, population density and trends, habitat trends, and effects of management on polar bears;

(2) Information on the effects of sea ice change on the distribution and abundance of polar bears and their principal prey over the short and long term;

(3) Information on the effects of other potential listing factors, including oil and gas development, contaminants, ecotourism, hunting, and poaching, on the distribution and abundance of polar bears and their principal prey over the short and long term;

(4) Information on regulatory mechanisms and management programs for polar bear conservation, including mitigation measures related to oil and gas exploration and development, hunting conservation programs, anti-poaching programs, and any other private, tribal, or governmental conservation programs that benefit polar bears;

(5) The specific physical and biological features to consider, and specific areas that may meet the definition of critical habitat and that should or should not be considered for a proposed critical habitat designation as provided by section 4 of the Endangered Species Act;

(6) Information relevant to whether any populations of the species may qualify as distinct population segments; and

(7) The data and studies referred to within the proposal.

#### Author

The author of this notice is Charles S. Hamilton, U.S. Fish and Wildlife Service, Anchorage, Alaska.

#### Authority

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

Dated: February 2, 2007.

#### Mamie A. Parker,

Acting Director, U.S. Fish and Wildlife Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No. 070122014-7014-01; I.D. 011907A]

RIN 0648-AV04

### Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

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

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** NMFS issues this advance notice of proposed rulemaking to announce that it is considering amendments to the regulatory requirements for turtle excluder devices (TEDs). Specific changes NMFS is considering include increasing the size of the TED escape opening currently required in the summer flounder fishery; requiring the use of TEDs in the flynet, whelk, calico scallop, and Mid-Atlantic sea scallop trawl fisheries; and moving the current northern boundary of the Summer Flounder Fishery-Sea Turtle Protection Area off Cape Charles, Virginia, to a point farther north. The objective of the proposed measures would be to effectively protect all life stages and species of sea turtle in Atlantic trawl fisheries where they are vulnerable to incidental capture and mortality. NMFS is seeking public comment on these potential amendments to the TED regulations. NMFS is also soliciting public comment on the need for, and development and implementation of, other methods to reduce bycatch of sea turtles in any commercial or recreational fishery in the Atlantic and Gulf of Mexico where sea turtle conservation measures do not currently exist.

**DATES:** Comments will be accepted through March 19, 2007.

**ADDRESSES:** Written comments on this action and requests for literature cited should be addressed to Michael Barnette, Southeast Regional Office, Office of Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments may also be sent via fax to 727-824-5309, via email to 0648-AV04@noaa.gov, or to the Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).

**FOR FURTHER INFORMATION CONTACT:** Michael Barnette (ph. 727-824-5312,

fax 727-824-5309, e-mail [Michael.Barnette@noaa.gov](mailto:Michael.Barnette@noaa.gov)), Ellen Keane (ph. 978-281-9300 x6526, fax 978-281-9394, e-mail [Ellen.Keane@noaa.gov](mailto:Ellen.Keane@noaa.gov)), or Tanya Dobrzynski (ph. 301-713-2322, fax (301) 427-2522, e-mail [Tanya.Dobrzynski@noaa.gov](mailto:Tanya.Dobrzynski@noaa.gov)).

#### SUPPLEMENTARY INFORMATION:

##### Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Incidental capture of sea turtles in fisheries (bycatch) is a primary factor hampering the recovery of sea turtles in the Atlantic Ocean and the Gulf of Mexico.

To address this factor comprehensively, NMFS has initiated a Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (Strategy). The Strategy is a gear-based approach to addressing sea turtle bycatch. Certain types of fishing gear are more prone to the incidental capture of sea turtles than others, depending on the design of the gear, the way the gear is fished, and/or the time and area within which it is fished. An evaluation of sea turtle interactions by gear type provides a more comprehensive assessment of fishery impacts across fishing sectors as well as across state, federal, and regional boundaries. Through this strategy, NMFS seeks to address sea turtle bycatch across jurisdictional boundaries and fisheries for gear types that have the greatest impact on sea turtle populations.

Through the Strategy and based on documented sea turtle-fishery interactions, NMFS has identified trawl gear as a priority for reducing sea turtle bycatch. Trawling is a method of fishing that involves actively towing a net through the water behind one or more boats. Because trawl gear is towed, it has the capability to incidentally capture sea turtles and other species that are not the intended target of the fishery. The likelihood of incidental capture is inherent in the basic design of trawls, regardless of the specific fishery. Trawl fisheries with documented observer coverage or

historical bycatch information that occur in known areas and times of sea turtle distribution have consistently been shown to capture sea turtles. In fact, trawling is often used as a means to capture sea turtles for research, distribution studies, and relocation because of the effectiveness of this method. Without an avenue for escape, sea turtles are likely to drown when captured in trawl gear due to forced submergence. Even when drowning does not occur, the stresses of forced submergence have been shown to result in various negative physiological consequences that can make the turtles susceptible to later capture, predation, boat strike or other sources of injury and mortality. NMFS is now working to develop and implement bycatch reduction measures in all trawl fisheries in the Atlantic and Gulf of Mexico when and where sea turtle takes have occurred or where gear, time, location, fishing method, and other similarities exist between a particular trawl fishery and a trawl fishery where sea turtle takes have occurred. TEDs have been proven an effective method to minimize adverse effects related to sea turtle bycatch in the shrimp trawl fishery and, where applicable, in the summer flounder trawl fishery. While TEDs have potential as a bycatch reduction device for other trawl fisheries, differences in trawl designs and fishing methods may necessitate modifications or adjustments to the design of existing TEDs before they can be applied in other trawl fisheries. Testing is necessary to ensure that feasible TED designs for specific fisheries still accomplish the desired sea turtle bycatch reduction goals and to determine the TED's impact on target catch retention. It is possible that TEDs may not be feasible for some trawl fisheries. In the event that TEDs are not a viable option, other management measures such as tow time restrictions and time/area closures may need to be considered. Given these issues, NMFS anticipates a phased approach to implementation of any regulations to address sea turtle bycatch in trawl fisheries as the information needed to support measures in each individual trawl type becomes available.

The incidental take of sea turtles in certain trawl fisheries has been documented in the Gulf of Mexico and Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. The incidental taking of threatened sea turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the

ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223.206(d)) are followed. The conservation regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area and Gulf Area) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the weedless TED), and one type of soft TED (the Parker soft TED).

TEDs have an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved for use by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during experimental TED testing. TEDs must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

In order to allow the release of leatherback and large loggerhead sea turtles, NMFS required the use of large escape openings in the shrimp fishery in February 2003 (68 FR 8456; February 21, 2003). The February 2003 regulations required the use of either the double cover flap TED, a TED with a minimum opening of 71 inch (180 cm) straight-line stretched mesh, or the Parker soft TED with a minimum 96-inch (244-cm) opening in offshore waters (from the COLREGS demarcation line seaward) and in all inshore waters off of Georgia and South Carolina; and required a TED with a minimum opening of 44 inch (112 cm) straight-line stretched mesh with a 20 inch (51 cm) vertical taut height in all inshore waters (from the COLREGS Demarcation line landward) except for the inshore waters of Georgia and South Carolina. At this time, the large-opening TED is only required in the shrimp trawl fishery.

#### *Summer Flounder Fishery*

Since 1992, all vessels using bottom trawls to fish for summer flounder in specific times and areas off Virginia and North Carolina have been required to use NMFS-approved TEDs in their nets (57 FR 57358, December 4, 1992; 50 CFR 223.206(d)(2)(iii)). Currently, the escape opening requirements for the flounder TED are  $\leq 35$  inches ( $\leq 89$  cm) in width and  $\leq 12$  inches ( $\leq 30$  cm) in height (50 CFR 223.207(b)(1)). Although the February 2003 final rule (68 FR 8456) to

require the larger opening in the shrimp trawl fishery did not require vessels in the summer flounder trawl fishery to use the larger escape opening sizes, the rule stated NMFS was evaluating the need for such restrictions in this fishery. The smaller opening currently used in this fishery is insufficient to allow the escapement of leatherback sea turtles and larger loggerhead and green sea turtles. The larger opening TEDs have passed the NMFS testing criteria for turtle escapement and NMFS has conducted testing of the larger opening in the Mid-Atlantic summer flounder trawl fishery since 2003.

NMFS is currently considering an option to modify TED regulations in the summer flounder trawl fishery to require a larger escape opening. The larger escape opening would have a 142-inch (361-cm) circumference with a corresponding 71-inch (180-cm) straight line stretched measurement. This option is expected to decrease escape times for all turtles and allow for the release of leatherbacks and all large loggerhead and green sea turtles. The larger opening would be consistent with sea turtle conservation measures currently in place in the shrimp trawl fishery.

#### *Whelk and Calico Scallop Trawl Fisheries*

The whelk trawl fishery originally developed off the South Carolina coast during 1977 and the spring of 1978 as an alternative fishery during closures in the shrimp season. Trawling for knobbed and channeled whelk typically occurs from mid-February through mid-April. Currently, less than 35 commercial fishermen actively participate in the fishery with five or more trips each year, although as many as 100 permits have been issued by the Georgia Department of Natural Resources (GDNR).

Due to documented sea turtle interactions within the fishery, NMFS evaluated potential TED designs for the fishery in 2000–2001. The whelk TED was developed in cooperation with GDNR and the University of Georgia Marine Extension Service in an effort to provide nearshore whelk fishermen with a TED that would allow the target species to pass through the TED frame and be retained as catch. The whelk TED passed the NMFS testing protocol in 2001. The whelk TED design is similar to the top-opening flounder TED used along the southeastern Atlantic coast during the winter months, featuring enlarged openings at the bottom of the frame. NMFS is currently considering an option to require the use of TEDs in the whelk trawl fishery.

Currently, GDNR requires the use of this TED in the whelk trawl fishery in Georgia State waters; however, some whelk trawling does occur in Federal waters.

The calico scallop fishery originally developed in North Carolina in the early 1960s, but the focus of the fishery shifted to areas off Florida during the early 1970s. Calico scallop trawls are typically small (e.g., headrope length <40 feet) and are towed for short periods of time (e.g., 15 minutes). The scallop beds off Florida stretch from Jacksonville to Ft. Pierce in 60 to 240 feet (18 to 73 m) of water. Due to large fluctuations of calico scallop abundance and patchy distribution, landings within the fishery are extremely sporadic. Approximately 25 vessels are thought to currently be operating in the fishery. Similar to the whelk fishery, the calico scallop fishery requires a TED that allows the target species to pass through the TED frame and be retained as catch. Therefore, NMFS has determined that a hard TED, similar in design to the whelk TED, could be installed in calico scallop trawls. NMFS is currently considering an option to require the use of TEDs in the calico scallop trawl fishery. TED use in this fishery would be a new requirement.

#### *Mid-Atlantic Scallop Trawl Fishery*

The U.S. Atlantic sea scallop fishery is conducted in the Gulf of Maine, on Georges Bank, and in the Mid-Atlantic offshore region southward to North Carolina. The commercial fishery for sea scallops occurs year round, and is primarily conducted using dredges and otter trawls. Approximately 10 percent of landings in the sea scallop fishery are from vessels using trawl gear, primarily in the Mid-Atlantic. Fishing by these vessels often occurs during the summer when other species (e.g., summer flounder) are not available (NMFS 2003). Trawl fishermen participating in the sea scallop fishery primarily use either trawls designed specifically for the sea scallop fishery or flounder trawls. Sea turtle takes have been observed in the sea scallop trawl fishery.

In 2005 and 2006, NMFS tested the feasibility of TED use in the sea scallop trawl fishery. The sea scallop TED tested is a whelk TED that has been modified to prevent chafing of the gear. This TED design passed the NMFS testing criteria for sea turtle escapement. Initial results suggest that TED use in the sea scallop trawl fishery is feasible. NMFS is currently considering an option to require the use of TEDs in the Mid-Atlantic sea scallop trawl fishery.

TED use in this fishery would be a new requirement.

#### *Flynet Fishery*

Flynets are high profile trawls fished just off the bottom and range from 80 to 120 feet (24.4 to 36.6 m) in width, with wing mesh sizes of 16 to 64 inches (41 to 163 cm). The flynet fishery is a multi-species fishery that operates along the East Coast of the United States. One component of the fishery operates inside of 180 feet (55 m) from North Carolina to New Jersey, and targets Atlantic croaker, weakfish, and other finfish species. Another component of the flynet fishery operates outside of 180 feet (55 m) from the Hudson Canyon off New York, south to Hatteras Canyon off North Carolina. Target species for the deeper-water component of the fishery include bluefish, Atlantic mackerel, squid, black sea bass, and scup. Sea turtle takes have been documented in this fishery.

TEDs for the flynet fishery have been in development since 1999. Two semi-rigid TED designs for use within the flynet fishery have been tested and passed the NMFS testing protocol when rigged with a top-opening escape panel. NMFS is currently considering an option to require the use of TEDs in the flynet fishery. TED use in this fishery would be a new requirement.

#### *Movement of the Summer Flounder Fishery-Sea Turtle Protection Area Boundary*

Any summer flounder trawler that operates within the Summer Flounder Fishery-Sea Turtle Protection Area must utilize TEDs in its nets (50 CFR 223.206(d)(2)(iii)). Currently, this protection area is bounded on the north by a line extending off Cape Charles, Virginia, on the south by a line extending from the South Carolina-North Carolina boundary, and seaward by the Exclusive Economic Zone boundary. Vessels are exempted from the TED requirement north of Oregon Inlet, North Carolina, from January 15 through March 15, annually, when take of sea turtles by summer flounder trawling is not expected.

From 1994–2004, observers documented takes in summer flounder and other Mid-Atlantic bottom otter trawl fisheries in areas and times when TEDs are not required in the summer flounder trawl fishery (Murray 2006). Murray (2006) estimated sea turtle bycatch in the Mid-Atlantic bottom otter trawl fisheries. Murray found that, based on the analysis, the likelihood of interacting with a turtle depends on the time and area in which fishing occurs rather than the fish species being

targeted. While incidental captures of sea turtles occurred throughout the year, Murray (2006) demonstrated that most interactions were confined to certain bathymetric and thermal regimes. Because of documented takes of sea turtles north of the current line due to the overlap in distribution of sea turtles and trawl gear, NMFS is considering moving the northern boundary of the Summer Flounder Fishery-Sea Turtle Protection Area farther north to reduce sea turtle bycatch in the summer flounder fishery. Additionally, NMFS is considering expanding the TED requirements to other trawl fisheries in the Mid-Atlantic, which currently do not have any TED requirements within this geographic area.

#### **Conclusion**

NMFS is seeking advanced public input on potential measures to reduce sea turtle bycatch in Atlantic trawl fisheries and in Gulf of Mexico trawl fisheries where sea turtle conservation measures do not currently apply. NMFS is also seeking information on sea turtle interactions in Atlantic and Gulf of Mexico trawl fisheries. NMFS wants to improve the performance of TEDs to protect large turtles, reduce sea turtle bycatch in additional trawl fisheries with sea turtle interactions, and streamline and simplify the regulations. NMFS is also soliciting comment on whether and how far north to move the northern boundary of the Summer Flounder Fishery-Sea Turtle Protection Area, as well as on other viable ideas or concepts to reduce sea turtle bycatch in trawl fisheries. Measures may include new TED designs for various trawl fisheries, or other technologies and approaches that may minimize or mitigate sea turtle interactions in trawl fisheries.

#### **Literature Cited**

Murray, K.T. 2006. Estimated Average Annual Bycatch of Loggerhead Sea Turtles (*Caretta caretta*) in U.S. Mid-Atlantic Bottom Otter Trawl Gear, 1996–2004. U.S. Department of Commerce, Northeast Fisheries Science Center Reference Document 06–19; 26 pp.

This advance notice of proposed rulemaking has been determined to be not significant for E.O. 12866 purposes.

Dated: February 12, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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