

competitive services. The *NPRM* also seeks information on what impact cable system clusters, the distribution of regional programming services, and horizontal consolidation have on the programming marketplace. The *NPRM* also inquires about whether there has been any change in the resources and ability of nonaffiliated cable operators and competitive MVPDs to develop their own programming. In addition, comment is sought on what effect the prohibition has had on preserving and protecting diversity in the distribution of video programming.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

VI. Ordering Clauses

44. Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 4(i), 303 and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 and 548, *notice is hereby given* of the proposals described in this *NPRM* of Proposed Rulemaking.

45. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM* of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-3520 Filed 2-28-07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 070215034-7034-01; I.D. 020907D]

RIN 0648-AU98

Sea Turtle Conservation; Fishing Gear Inspection Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to establish an inspection program for modified

pound net leaders in the Virginia waters of the mainstem Chesapeake Bay. Current regulations require modified pound net leaders, as defined in the regulations, in a portion of the Virginia Chesapeake Bay, and allow them to be used in a different portion of the Chesapeake Bay. This proposed action would ensure that leaders used in those areas do in fact meet the definition of a modified pound net leader. This action, taken under the Endangered Species Act of 1973 (ESA), as amended, is intended to facilitate compliance with the existing regulation, which is designed to help protect threatened and endangered sea turtles.

DATES: Comments on this action are requested, and must be received at the appropriate address or fax number (see **ADDRESSES**) by no later than 5 p.m., eastern daylight time, on April 2, 2007.

ADDRESSES: Written comments may be submitted on this proposed rule, identified by RIN 0648-AU98, by any one of the following methods:

(1) E-mail:

poundnetinspection@noaa.gov. Please include the RIN 0648-AU98 in the subject line of the message.

(2) Federal eRulemaking Portal:

<http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

(3) NMFS/Northeast Region Website:

<http://www.nero.noaa.gov/nero/regs/com.html> Follow the instructions on the website for submitting comments.

(4) Mail: Mary A. Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930, ATTN: Sea Turtle Conservation Measures, Proposed Rule

(5) Facsimile (fax): 978-281-9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in one of the above formats and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT:

Pasquale Scida (ph. 978-281-9208, fax 978-281-9394), or Barbara Schroeder (ph. 301-713-2322, fax 301-427-2522).

SUPPLEMENTARY INFORMATION:

Background

Based upon documented sea turtle interactions with pound net leaders, NMFS issued a final rule on May 5, 2004 (69 FR 24997), that prohibited the use of offshore pound net leaders from May 6 to July 15 in an area now referred

to as "Pound Net Regulated Area I". Pound Net Regulated Area I is defined as the Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0' N. lat. and west of 76°13.0' W. long., and all waters south of 37°13.0' N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05' N. lat., 75°59' W. long. to 36°55' N. lat., 76°08' W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36°59.55' N. lat., 76°18.64' W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55' N. lat, 76°30.40' W. long.). An offshore pound net leader refers to a leader with the inland end set greater than 10 horizontal feet (3 m) from the mean low water line. The May 2004 rule also placed restrictions on nearshore pound net leaders in Pound Net Regulated Area I and on all pound net leaders employed in "Pound Net Regulated Area II." Pound Net Regulated Area II refers to Virginia waters of the Chesapeake Bay, outside of Pound Net Regulated Area I as defined above, extending to the Maryland-Virginia State line (approximately 37°55' N. lat., 75°55' W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37°50.84' N. lat, 76°22.09' W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37°37.44' N. lat, 76°25.40' W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37°30.62' N. lat, 76°25.19' W. long.) to the COLREGS line at the mouth of the Chesapeake Bay. According to the 2004 rule, nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II must have mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers.

In 2004 and 2005, NMFS implemented a coordinated research program with pound net industry participants and other interested parties to develop and test a modified pound net leader design with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. The modified pound net leader design used in the experiment consisted of a combination of mesh and stiff vertical lines. The mesh size was equal to or less than 8 inches (20.3 cm). The mesh was positioned at a depth that was no more than one-third the depth of the water.

The vertical lines were $\frac{5}{16}$ inch (0.8 cm) in diameter strung vertically at a minimum of every 2 feet (61 cm) and attached to a top line. The vertical lines rose from the top of the mesh up to a top line to which they were attached. In 2005, hard lay line was used for the vertical lines in order to make them stiffer. The hard lay lines used in 2005 were made of $\frac{5}{16}$ inch (0.8 cm) sinking line, and were polyester-wrapped around Polysteel, which is a blend of polypropylene and polyethylene. The design was based on the premise that the sea turtles would pass through the upper two-thirds of the leader, through the stiff vertical lines, without entangling in or impinging on the leader.

During the 2-year study, the modified leader was found to be effective in reducing sea turtle interactions as compared to the unmodified leader. The final results of the 2004 study found that out of eight turtles impinged on or entangled in the leaders of pound nets, seven were impinged on or entangled in an unmodified leader. One leatherback turtle was found entangled in a modified leader. In response to the leatherback entanglement, the gear was further modified by increasing the stiffness of the vertical lines for the 2005 experiment. The 2005 experiment found that 15 turtles entangled in unmodified leaders, but no turtles were impinged on or entangled in modified leaders. Furthermore, results of the finfish catch comparison suggest that the modified leader caught similar quantities and size compositions as the unmodified leader.

Based upon these results, on June 23, 2006, NMFS issued a final rule (71 FR 36024) that required any offshore pound net leader in Pound Net Regulated Area I during the time period from May 6 through July 15 to meet the definition of a modified pound net leader. A modified pound net leader was defined as a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that (a) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (b) at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; (c) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (d) the vertical lines are equal to or greater than $\frac{5}{16}$ -inch (0.8-cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and

(e) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a $\frac{5}{16}$ inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

Existing mesh size and stringer restrictions on nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II remain in place from May 6 through July 15 each year. However, the June 2006 rule created an exception to those restrictions by allowing the use of modified pound net leaders during that period in nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II. The year-round reporting and monitoring requirements for this fishery and the framework mechanism under the existing regulations (May 5, 2004, 69 FR 24997) also remained in effect.

The Proposed Action

After the 2006 final rule was published, NMFS determined that an onshore inspection program that examines a modified leader ready for deployment would help ensure the protection of sea turtles, while avoiding the difficulties of and potential costs to fishermen associated with post-deployment inspections at-sea. For example, most of the pound net leader is typically set under the water, the water clarity in the Chesapeake Bay is generally poor, and there may be debris in the water that could endanger the inspector. In addition, if a fisherman was asked to haul the leader for an inspection once it was deployed, there would be a loss in fishing time. The modified leader configuration was developed to protect sea turtles, and it is important that the leaders deployed in this fishery meet the same standards as those tested in 2004 and 2005 and now embodied in the regulations. NMFS proposes an inspection program that would: (1) Provide fishermen with the assurance that their leaders meet the definition of a modified pound net leader before setting their gear, thereby avoiding the costs associated with having to haul their gear during the fishing season, fix any parts of the leader determined by an authorized officer during an at-sea inspection to be non-compliant with the regulation, and reset the gear; (2) provide managers with the knowledge that the offshore leaders in Pound Net Regulated Area I are configured in a "turtle-safe" manner; and (3) aid in enforcement efforts.

If a pound net fisherman intends to use a modified pound net leader anywhere in Pound Net Regulated Area I or Pound Net Regulated Area II at any time during the period from May 6 through July 15, he or she would adhere to the following requirements of the inspection program. First, the pound net fisherman, or his/her representative, would call NMFS at 757-414-0128 at least 72 hours before the modified leaders are to be deployed. During this call, the fisherman or representative and NMFS would discuss a meeting date, time, and location, as well as the fisherman's plans for setting his/her gear. While NMFS realizes that setting pound net gear is dependent upon weather conditions, allotting a window of 72 hours or more enables the fishermen and NMFS to arrange a mutually agreeable meeting time to examine the modified leaders. The second component of the inspection program involves a meeting between NMFS and the fisherman at the dock or place of leader fabrication, or another mutually agreeable place, to allow NMFS to examine the gear. This inspection may include, but is not limited to, measuring the mesh size, the spacing and diameter of the vertical lines, and the height of the mesh in relation to the entire leader height, as well as examining the hard lay line, to help ensure the modified leader meets the definition of a modified leader as established in the June 2006 final rule. During the inspection, the fisherman must inform NMFS of the specific location of deployment of his or her inspected pound net leader. If the modified leader meets the regulatory requirements, NMFS will tag the leader with one or more tamperproof tags (provided by NMFS) each of which will be marked with a unique identification number. Additionally, the fisherman will receive a letter from NMFS at the time of inspection noting that the leader has been inspected, the date of the inspection, the license holder's name for the site at which the leader will be set, the tag numbers of the attached tags, and the location of the inspected pound net leader. This letter must remain with the fisherman during fishing activities. The fisherman could then set his or her inspected leaders at any time after the dockside check, but the tags must remain on the gear. After tagging by NMFS, the tags may not be tampered with or removed from the inspected nets. Any modification to the tags on the leader, or their removal, is prohibited and voids the inspection information in the letter. If such occurs and the inspection information in the letter

becomes void, the fisherman would not be in compliance with the regulations and be subject to law enforcement action. If the onshore inspection indicates that the gear does not meet the requirements, then the fisherman would be told how to make his or her gear compliant with the regulation before setting it in the water for the season.

Compared to other gear types and fisheries, the pound net fishery in Virginia has several characteristics that make an inspection program such as this necessary, and possible, to implement. The gear is only deployed once during a season (unless later damaged), and the fact that the leaders are below the surface combined with the low water clarity and visibility in Chesapeake Bay make inspection of the gear during the season virtually impossible. The number of pound nets for which the gear modification is required is relatively small (<50), which makes the inspection program feasible to implement.

Current regulations require any offshore pound net leader in Pound Net Regulated Area I to meet the definition of a modified pound net leader, and allow the use of modified pound net leaders in nearshore pound net leaders in Pound Net Regulated Area I and on all pound net leaders in Pound Net Regulated Area II. This inspection program applies to all modified pound net leaders that will be in the Virginia Chesapeake Bay waters at any time during the period from May 6 through July 15. All modified pound net leaders must be inspected by NMFS prior to deployment, regardless of whether it is in Pound Net Regulated Area I or Pound Net Regulated Area II. NMFS can inspect a net at any time during the year, but all modified pound net leaders in Virginia Chesapeake Bay waters during the period from May 6 through July 15 must have been inspected by NMFS. If a tag is damaged, destroyed or lost by debris, vessel traffic, marine life, or any other cause, the fisherman must call NMFS within 48 hours of discovery to report this incident. Pound net fishermen are required to have their modified leaders inspected annually, within one year from the previous date of inspection. Note that if a modified leader is set prior to the issuance of a final rule, the modified leader would be allowed to remain in the water during the 2007 season, but it would need to be inspected if it will be in either Pound Net Regulated Area I or II at any time during the period from May 6 through July 15, in any subsequent year.

According to this proposed rule, if a fisherman chooses to use a modified pound net leader, anywhere in Pound

Net Regulated Area I or Pound Net Regulated Area II, at any time during the period from 12:01 a.m. local time on May 6 through 11:59 p.m. local time on July 15 in any year, the pound net leader must be inspected on land by NMFS. This action would be implemented under the authority of the ESA sections 4(d) and 11(f) and is necessary and appropriate to conserve threatened sea turtles and to enforce the provisions of the ESA, including the prohibition on takes of endangered sea turtles.

All of the previously established NMFS regulations affecting sea turtles and pound net leaders in the Chesapeake Bay remain in effect.

Classification

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

NMFS has prepared an initial regulatory flexibility analysis that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY** section. A summary of the analysis follows:

The fishery affected by this proposed rule is the Virginia pound net fishery in the Chesapeake Bay. The proposed action would establish an inspection program for modified pound net leaders in the Virginia waters of the mainstem Chesapeake Bay.

The Final Environmental Assessment (EA) and Regulatory Impact Review Regulatory Flexibility Act Analysis of Sea Turtle Conservation Measures for the Pound Net Fishery in Virginia Waters of the Chesapeake Bay (June 2006) analyzed the economic impacts of requiring the use of the modified leader for offshore pound nets in Regulated Area I and allowing the use of the modified leader by all other pound nets in the Virginia waters of Chesapeake Bay between May 6 and July 15. The analysis found the rule would increase net revenues for five fishermen in the lower Bay by allowing them to fish offshore pound nets during the regulated time period, compared to the previous 2004 rule that prohibited leaders. The cost of fabricating and deploying the modified leader was more than offset by the increase in revenues. Additionally, the EA noted that the public benefits from turtle protection using the modified leader were indistinguishable from the leader prohibition. This rule does not change those conclusions; rather, it would help to support the benefits identified. If the

compliance rate for use of the modified leader for offshore pound nets in Regulated Area I is not 100 percent, there is potential for a reduction in the benefits from turtle protection. The economic incentives for a fisherman to decide not to comply with the existing regulations are minor; however, fishermen may not comply with the modified leader design specifications due to an inadvertent error in construction. In either case, benefits from the existing regulation could be reduced.

The cost to a fisherman of undergoing a land based inspection is small. Assuming that fishing is not impeded by the regulation¹, and the inspection is arranged at a location convenient to the fisherman, the principal cost to fishermen would be the opportunity cost of their time to arrange and undergo the inspection estimated at \$21.50 per leader. Assuming telephone costs of \$1.25 to arrange the meeting, the total cost would be \$22.75 per leader. Fishermen are also required to notify NMFS by telephone if a tag is lost, damaged or destroyed. It is estimated such a call, should it be necessary, would take approximately 5 minutes for an estimated cost of \$2.90 per lost/damaged/destroyed tag (considering telephone charges and opportunity cost of time).

The number of fishermen and leaders affected by this proposed rule will depend on how many fishermen adopt the modified leader. At the low end, if we assume that only those fishermen required to use the modified leader in order to fish do so, the estimate is five fishermen in the lower Bay with seven offshore leaders would incur inspection costs. Depending on the number of leaders a fisherman deploys, the cost per fisherman would range from \$22.75 to \$45.50 or 0.03 to 0.06 percent of average annual revenues per fisherman. A mid-range estimate suggests fishermen would replace all offshore pound net leaders with the modified leader. At the end of five years, 21 fishermen with 32 pound nets would incur costs between \$22.75 to \$45.50 or 0.03 to 0.08 percent of average annual revenues. At the high end, we can assume that during the normal leader replacement cycle, all fishermen adopted the modified leader for all pound nets used in Pound Net

¹That is, fishermen are able to fish before the regulated period with an existing leader. Alternatively, if fishermen used the modified leader outside the regulated period, they would generally remove the leader for cleaning/maintenance at some time during the year; if inspection services were available during that time, fishing would not be impeded.

Regulated Areas I and II during May 6 to July 15, the estimate at the end of five years would be 21 fishermen and 46 pound nets. The annual cost per fisherman would range from \$22.75 to \$91.00, or 0.04 to 0.11 percent of average annual revenues. The total annual cost to the pound net industry would be \$159.25 at the low level of adoption, or \$1,046.50 under full adoption, which are 0.0073 to 0.0479 percent of industry revenues. Note that the cost of reporting lost, damaged, or destroyed tags is not included in the individual fisherman or industry estimates because there is no verifiable estimate of expected rate of tag loss. If one assumes three tags per leader and a 10-percent loss rate, the total industry cost would increase by \$5.80 to \$40.60 per year depending on the level of adoption and the year. The alternative to the proposed action is no action, for which there would not be any economic impacts on small entities.

To achieve compliance, the proposed rule would require those fishermen who wish to deploy a modified leader during the period of May 6 through July 15, to make their modified leaders available for inspection and tagging. Additionally, fishermen would be required to retain a letter that the leader is in compliance for the relevant period. Under existing regulations fishermen had to be familiar with the design requirements for the modified leader; this knowledge continues to be required under the proposed rule. In the event that a tagged leader is damaged or destroyed, fishermen would be required to report the loss to NMFS personnel. To access the inspection program and report lost or damaged tags, fishermen would need access to a telephone. No new skills would be required for compliance.

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

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the modified pound net leader certification program is estimated to average a maximum of 2 and one half hours per fisherman (or 51 hours for all Virginia pound net fishermen), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS in one of the formats listed in the ADDRESSES section above, and e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Transportation.

Dated: February 23, 2007.

Samuel D. Rauch III,

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

For the reasons set forth in the preamble, 50 CFR part 223 is 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.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. In § 223.205, paragraphs (b)(16) and (b)(17) are redesignated as (b)(21) and (b)(22), respectively, and paragraphs (b)(16) – (20) are added to read as follows:

§ 223.205 Sea turtles.

* * * * *

(16) Set, tend, or fail to remove a pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II during the time period from May 6 through July 15 that does not meet the leader construction specifications described in 50 CFR 223.206(d)(10) and 50 CFR 222.102;

(17) Set, tend, or haul a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II defined in 50 CFR 222.102 and referenced in 50 CFR 223.206(d)(10) during the time period from May 6 through July 15 unless that leader has been inspected, approved,

and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) prior to deploying the leader;

(18) Alter or replace any portion of a pound net leader that has been previously tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) so that the altered or replaced portion is no longer consistent with the modified pound net leader definition in 50 CFR 222.102, unless that altered or replaced portion is inspected and tagged by NMFS in accordance with 50 CFR

223.206(d)(10)(vii) or that alteration or replacement occurs after the regulated period of May 6 through July 15;

(19) Remove, transfer, sell, purchase, affix, or tamper with any tags used by NMFS to mark pound net leaders;

(20) Fish, tend, or haul a modified pound net leader during the time period from May 6 through July 15 unless the fisherman has a pound net leader inspection letter issued by NMFS on board the vessel;

* * * * *

3. In § 223.206, paragraph (d)(10)(vii) is added to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(10) * * *

(vii) Modified leader inspection program. Any fisherman planning to set or fish with a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time during the period from May 6 through July 15 must make his/her leader available for inspection and tagging by NMFS according to the following procedures. At least 72 hours prior to deploying a modified pound net leader, the fisherman, or his/her representative, must call NMFS at 757-414-0128 between 7:00 a.m. and 5:00 p.m. local time and arrange for a mutually agreeable meeting date, time and place. The fisherman must meet NMFS at such location at the designated time and allow NMFS to examine his or her gear to ensure the leader meets the definition of a modified pound net leader. During the inspection, the fisherman must inform NMFS of the specific location where his or her inspected pound net leader will be set. NMFS will inspect the leader and, if it is determined to meet the definition of a modified pound net leader, will tag the modified pound net leader with tamperproof tags. Removing or tampering with any tag placed on the leader by NMFS is prohibited and voids the inspection. If a tag is damaged, destroyed, or lost due to any cause, the fisherman must call

NMFS at 757-414-0128 within 48 hours of discovery to report this incident. After the modified pound net leader is inspected and determined to meet the regulatory definition, NMFS will issue a

letter to the fisherman, and the fisherman must retain that letter on board his/her vessel during pound net fishing activities. Modified pound net leaders must be inspected annually,

within one year from the previous date of inspection.

* * * * *

[FR Doc. E7-3630 Filed 2-28-07; 8:45 am]

BILLING CODE 3510-22-S