

than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule does not affect State, local, or tribal governments. The impact of this rule on the private sector will be less than \$100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation does not apply to governmental entities.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to facilities that use these substances and not to

governmental entities. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking explicitly references technical standards; EPA uses the SAE revision versions of J2210. These standards can be obtained from <http://www.sae.org/technical/standards/>.

#### **List of Subjects in 40 CFR Part 82**

Environmental protection, Motor vehicle air-conditioning, Recover/recycle equipment, Recover/recycle/recharge equipment, Reporting and certification requirements, Stratospheric ozone layer.

Dated: November 2, 2007.

**Stephen L. Johnson,**  
Administrator.

[FR Doc. E7-21941 Filed 11-8-07; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 223**

[Docket No. 071030628-7631-01]

RIN 0648-AV84

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

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** In 2006, the National Marine Fisheries Service (NMFS) issued regulations requiring the use of chain mat modified dredges in the Atlantic sea scallop fishery south of 41° 9.0' North latitude from May 1 through November

30 each year. The existing requirements resulted from two final rules: one issued in August 2006 after prior public notice and opportunity for comment (August 25, 2006); and an emergency rule issued in November 2006 for which prior notice and opportunity for comment was waived for good cause (November 15, 2006). These actions were necessary to help reduce mortality and injury to endangered and threatened sea turtles captured in scallop dredge gear and to conserve sea turtles listed under the Endangered Species Act (ESA). This action re-proposes the chain mat requirements, with some modifications. This proposed action would clarify the regulatory text regarding the chain-mat modified gear, add a transiting provision, and address a procedural error regarding the timing of the signing of the National Environmental Policy Act (NEPA) document during the issuance of the August 2006 final rule. Any incidental take of threatened sea turtles in sea scallop dredge gear in compliance with the gear modification requirements and all other applicable requirements will be exempted from the ESA prohibition against takes.

**DATES:** Comments on the proposed rule must be received by 5 p.m. EST on December 10, 2007.

**ADDRESSES:** Written comments on this action, identified by RIN 0648-AV84, may be submitted by any one of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking portal at <http://www.regulations.gov>.
- Fax: 978-281-9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule.
- 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.

Copies of the Draft Environmental Assessment/Regulatory Impact Review can be obtained from <http://www.nero.noaa.gov/nero/regs/com.html> listed under the Electronic Access portion of this document or by writing to Ellen Keane, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Ellen Keane (ph. 978-281-9300 x6526, fax 978-281-9394, email [ellen.keane@noaa.gov](mailto:ellen.keane@noaa.gov)) or Barbara Schroeder (ph. 301-713-2322, fax 301-427-2522, email [barbara.schroeder@noaa.gov](mailto:barbara.schroeder@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*) sea turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico that are listed as endangered. Kemp's ridley, hawksbill, loggerhead, and green sea turtles are hard-shelled sea turtles.

Under the ESA and its implementing regulations, taking sea turtles under NMFS' jurisdiction, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in such conduct. The incidental take of endangered species may only legally be exempted by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA, respectively. Existing sea turtle conservation regulations at 50 CFR 223.206(d) exempt fishing activities and scientific research from the prohibition on takes of threatened sea turtles under certain conditions. The incidental take, both lethal and non-lethal, of loggerhead and unidentified hard-shelled sea turtles as a result of scallop dredging has been observed in the sea scallop dredge fishery (Northeast Fisheries Science Center (NEFSC) Fisheries Sampling Branch (FSB), Observer Database). In addition, non-lethal takes of a green and a Kemp's ridley sea turtle have been observed in this fishery (NEFSC FSB, Observer Database) and one unconfirmed take of a leatherback sea turtle was reported during the experimental fishery to test the chain-mat modified gear (DuPaul *et al.*, 2004a).

This rule is being proposed under the ESA provisions authorizing the issuance of regulations to conserve threatened species and for enforcement purposes (sections 4 and 11, respectively). This rule re-proposes the existing chain mat regulations, with some modifications that apply to dredges in the Atlantic sea scallop fishery. The proposed rule, if implemented, would (1) clarify the requirements related to the use of chain mats in the Atlantic sea scallop dredge fishery, (2) add a transiting provision, and (3) address a procedural error in the August 2006 rulemaking (71 FR 50361, August 25, 2006) that required the use

of chain mats in the Atlantic sea scallop dredge fishery. In addition, NMFS is seeking public comment on the decision not to include in this proposed rule the configuration option for the chain-mat modified gear that was removed from the existing regulations by the November 2006 emergency action (71 FR 66466, November 15, 2006).

## Sea Turtle Bycatch in the Sea Scallop Dredge Fishery

Sea turtles have been observed taken in the Atlantic sea scallop dredge fishery. "Observed" or "observed take" means seen and documented by a NMFS approved observer while on-watch. The majority of the takes have occurred in the mid-Atlantic; while one take occurred on southern Georges Bank. During 1996 through June 2007, 62 takes were observed in the sea scallop dredge fishery while an observer was on-watch (excluding the experimental fishery described later): 1 each in 1996, 1997, and 1999; 11 in 2001; 17 in 2002; 22 in 2003; 8 in 2004; and 1 in 2006 (NEFSC FSB, Observer Database). In addition, during this period, 14 sea turtles were reported taken while the observer was off-watch (when an observer is on the vessel but not on duty) or on an unobserved haul (when an observer is on duty but unable to collect all information on a haul) (NEFSC, FSB, Observer Database), 2 turtles, neither observed, were reported during the preliminary testing of the chain-mat modified gear, and 8 turtles, 6 of which were observed, were captured during the course of the experimental fishery to test the chain-mat modified gear (DuPaul *et al.*, 2004a). Of the 62 observed takes, 44 were identified as loggerhead sea turtles, 1 was identified as a green sea turtle, and the remaining animals were hard-shelled sea turtles that could not be positively identified (NEFSC FSB, Observer Database). A single take of a Kemp's ridley sea turtle was documented in this fishery during an off-watch haul in 2005 (NEFSC, FSB, Observer Database) and an unconfirmed take of a leatherback sea turtle was reported during the experimental fishery (DuPaul *et al.*, 2004a). Of the 62 turtles, 4 were fresh dead upon retrieval or died on the vessel, 1 was alive but required resuscitation, 26 were alive but injured, 19 were alive with no apparent injuries, and 12 were listed as alive but condition unknown.

The NEFSC has completed an assessment of sea turtle bycatch in the Atlantic sea scallop dredge fishery in the mid-Atlantic for fishing years (FY) 2003, 2004, and 2005. The estimated total bycatch of loggerhead sea turtles in this fishery was 749 (C.V. = 0.28) in

FY2003 (Murray, 2004a), 180 (C.V. = 0.37) in FY2004 (Murray, 2005), and 0 in FY2005 (Murray, 2007). It should be noted that although no turtles were estimated to have been captured in sea scallop dredge gear in FY2005, there were three interactions documented by observers who were off-watch at the time of the take. One turtle was identified as a Kemp's ridley; two were identified as loggerheads. The species was confirmed for all three interactions. As the observer was off-watch at the time of the takes, there was insufficient data associated with these events to allow the interactions to be used in the estimation of total turtle bycatch in the fishery (Murray, 2007). Although the estimate provided by the NEFSC is 0, NMFS recognizes that the actual take of sea turtles in the 2005 fishing year was greater.

The NEFSC has attempted to identify a variable for predicting sea turtle bycatch in the dredge component of the scallop fishery (Murray, 2004a, 2004b, 2005). Using a modeling approach, sea surface temperature (SST), depth, time-of-day, and tow time were identified as variables affecting observed bycatch rates of sea turtles with scallop dredge gear (Murray, 2004a, 2004b, 2005). However, the variable(s) associated with the highest bycatch rates changed from one year to another (e.g., SST, depth) or could not be further analyzed (e.g., time-of-day and tow time) because the information is not collected for the entire fishery (Murray, 2004a, 2004b, 2005). Therefore, a set of variables has not yet been found for forecasting sea turtle bycatch with scallop dredge gear.

Risks to sea turtles from capture in dredge gear include forced submergence and injury. Sea turtles forcibly submerged in any type of restrictive gear would eventually suffer fatal consequences from prolonged anoxia and/or seawater infiltration of the lung (Lutcavage *et al.*, 1997). Sea turtles caught in scallop dredge gear often suffer injuries. The most commonly observed injury is damage to the carapace. The causes of these injuries are unknown, but the most likely appear to be from being struck by the dredge (during a tow or upon emptying the dredge bag), crushed by debris (e.g., large rocks) that collects in the dredge bag, or as a result of a fall during hauling gear. Under typical fishing operations, the dredge is hauled to the surface, lifted above the deck of the vessel, and emptied by turning the bag over. Under such conditions, a turtle caught in the bag may fall many feet to the deck of the vessel and could suffer cracks to the carapace or other injuries as a result of the fall. After the bag is

dumped, the dredge frame is often dropped on top of it. Thus, dumping the catch and lowering the gear onto deck are actions during which turtles could be injured. Additional information on sea turtle bycatch in the Atlantic sea scallop dredge fishery can be found in the draft Environmental Assessment for this action.

#### **Experimental Fishery to Test the Modified Gear**

In response to information on the take of sea turtles in the sea scallop dredge fishery, NMFS worked with the scallop fishing industry and the Virginia Institute of Marine Science to investigate the use of a modified sea scallop dredge to keep sea turtles out of the dredge bag. The modified dredge has a chain mat hung over the opening of the bag, preventing sea turtles from entering the bag itself, and injuries that result from such capture. An experimental fishery to test the chain mat gear was conducted from July 17, 2003 October 9, 2004 (DuPaul *et al.*, 2004a), with preliminary trials conducted from October 2002 through January 2003 (letter from Dr. W. DuPaul to M. Colligan, August 21, 2007). During the preliminary trials, two turtles were reported captured. DuPaul *et al.* (2004a) reported that one turtle was taken in the unmodified dredge; the other turtle was reported on the chain mat, subsequently swimming away as the gear was hauled.

The experimental fishery to test the chain mat configuration was conducted on 11-foot (3.35-m), 14-foot (4.27-m), and 15-foot (4.57-m) dredges. The final report on the experimental fishery (DuPaul *et al.*, 2004a) and the draft Environmental Assessment for this action provide additional detail. During field trials of the chain mats, eight turtles (six of which were observed) were captured in the unmodified dredge; no turtles were captured in the modified dredge equipped with a chain mat. The six observed interactions were with loggerhead sea turtles. One of the unobserved interactions was reported by the fisherman as a loggerhead sea turtle; the second was reported by the fisherman as a leatherback sea turtle. The principal investigators did interview the captain and determined, based on the captain's description of the turtle, that it was likely the turtle was a leatherback. Thus, the turtle was reported as such in the final report on the experiment (DuPaul *et al.*, 2004a).

With respect to the catch of sea scallops, the dredge modified with the chain mat caught 6.71 percent less scallops than the unmodified dredge (DuPaul *et al.*, 2004). The study shows that the chain mats can be effective in

preventing the capture of sea turtles in the dredge bag without substantial reductions in the harvest of sea scallops.

#### **Requirements for the Chain-mat Modified Dredge**

On August 25, 2006, NMFS issued a final rule to require the use of chain-mat modified dredges in the Atlantic sea scallop fishery south of 41° 9.0' N. latitude from May 1 through November 30 each year (71 FR 50361). The chain mat regulation became effective on September 25, 2006. The specific purpose of requiring the use of a chain mat is to keep sea turtles from being captured inside the dredge bag and to prevent the injury and mortality associated with such capture. As described previously, sea turtles captured in the dredge bag may suffer injury or mortality due to being struck by the dredge upon emptying the dredge bag, crushed by debris (e.g., large rocks) that collects in the dredge bag, or as a result of a fall while fishermen empty the bag.

The August 2006 final rule included two options for configuring the gear. The first option specified a number of chains by dredge width. The second option required that each side of the opening created by the intersecting chains be 14 inches (35.5 cm) or less. Shortly after the rule's effective date, NMFS became aware of a discrepancy between the two options for configuring the chain mat in the August 2006 final rule. NMFS believed that both configurations would create a chain mat with openings of 14 inches (35.5 cm) or less per side. However, NMFS discovered that was not the case, and the configuration specifying a number of chains by dredge width resulted in some openings greater than 14 inches (35.5 cm); therefore, NMFS proceeded with rulemaking to correct the discrepancy to ensure that sea turtles are protected to the extent intended by the August 2006 final rule. On November 15, 2006, NMFS published an emergency rule that removed the option that allowed the gear to be configured by dredge width (71 FR 66466). The emergency rule, which is currently in place and does not have an expiration date, requires Atlantic sea scallop dredge vessels to configure the chains such that the length of each side of the squares or rectangles formed by the chain is less than or equal to 14 inches (35.5 cm).

#### **Re-proposal of the Chain Mat Requirements**

The proposed chain mat requirement is based on the results of the experimental fishery and is independently supported by

information gathered by observers on sea scallop vessels that captured turtles. As described previously, the experimental fishery showed that the chain mat prevents sea turtles from entering the dredge bag while not substantially affecting the catch of sea scallops. The spacing of the chains based on dredge width included in the August 2006 final rule was intended to be based on an experimental fishery to test the chain mat gear. In total, a series of 22 experimental cruises were carried out on commercial vessels using 11-foot (3.35-m), 14-foot (4.27-m), and 15-foot (4.57-m) dredges. During the experimental fishery, 9 vertical chains were used for the 11-ft (3.35-m) dredge and 11 vertical and 6 horizontal chains were used for the 14-foot (4.27-m) and 15-foot (4.57-m) dredges (DuPaul *et al.*, 2004a). The report does not explicitly state the number of horizontal chains used on the 11-ft (3.35-m) dredge, but the researchers have stated that 5 or 6 chains were used. As indicated in the final report, the number of chains in and of itself is not what drove the configuration tested. Rather it was the target size of the openings that drove the number of chains to be used, and thus, the overall configuration. The openings were designed to prevent sea turtles of greater than 24 inches (60.96 cm) in length from entering the dredge bag (DuPaul *et al.*, 2004a). Even though the size of the openings created by the intersecting chains used in the experimental fishery was not included in the final report on the experiment, information was provided that supports the 14 inch (35.5 cm) maximum opening. During the pilot study in 2002, the chain mat was rigged so that a grid of 12-inch (30.5 cm) squares was formed (DuPaul and Smolowitz, 2003). A placard, produced by Fisheries Survival Fund and Virginia Sea Grant, was included in the final report on the experiment to provide a full description and picture of the gear. The placard states that the number of chains used during the experimental fishery, spaced evenly on a normal sweep arrangement, should result in approximately a 12- to 13-inch (30.5 to 33 cm) square pattern. The experimental fishery showed that the use of a chain mat with the size openings used in the experiment prevented sea turtles from entering the dredge bag and incurring injuries from such capture.

The requirement that the openings in the chain mat be 14 inches (35.5 cm) or less will reduce the severity of sea turtle-gear interactions given the size of sea turtles observed taken in the fishery. Fisheries observers collect information

on the length and width of sea turtles observed taken. When it is not possible to collect measurements, the length and width can be estimated by the observer. For example, a turtle observed taken in 2004 in the sea scallop dredge fishery was estimated by the observer to be 170 cm (66.9 in) in length. The precision and accuracy of these estimated values is not known and may vary between observers. Therefore, only turtles for which measured values are available will be described here. Loggerhead sea turtles observed captured ranged in length from 62.2 to 107 cm (24.5 to 42.1 in) from notch to tip (curved carapace length (CCL)) (NEFSC FSB, Observer Database). When converted to straight carapace length (SCL) based on the formula for loggerheads provided in Teas (1993), the size range of the loggerhead sea turtles observed captured in the fishery is 57.5–100 cm (22.6 to 39.4 in) SCL (NMFS, 2006). Loggerhead sea turtles observed captured in the scallop dredge fishery ranged in carapace width (curved) from 45.0 to 99 cm (17.7 to 39 in; NEFSC, FSB, Observer Database). When converted to straight carapace width based on the formula from Coles (1999), the width of loggerheads observed captured in this fishery ranged from 37.9–78.1 cm (14.9–30.7 in).

The only Kemp's ridley sea turtle observed captured in scallop dredge gear to date measured 24.3 cm (9.6 in) from notch to tip (curved carapace length; NMFS, 2006) and 26.0 cm (10.2 in) curved carapace width (NEFSC FSB, Observer Database). Using the formula for Kemp's ridley sea turtles provided in Teas (1993), this is a straight carapace length of 23 cm (9.1 in; NMFS, 2006). When converted to straight carapace width based on the formula from Coles (1999), this is a straight width of 22.1 cm (8.7 in).

The single green sea turtle observed captured in scallop dredge gear was estimated by the observer to be about 70 cm (27.6 in) in length (NMFS, 2006). Given that only one green and one Kemp's ridley sea turtle were observed in the scallop dredge fishery from 1996 to 2005, it is likely that interactions with these species are relatively unique events on an individual haul basis (NMFS, 2006). Based on the experimental fishery and the size and identification of sea turtles captured by the scallop fishery, chain mats with openings measuring equal to or less than 14 inches (35.5 cm) per side will prevent most sea turtles from entering the dredge bag and injury and mortality resulting from such capture.

The chain-mat modification is an important step following the chain mat experiments in the process to reduce sea

turtle bycatch and the effects of that bycatch in the Atlantic sea scallop fishery. The NEFSC estimated that, in the 2003–fishing year, there were 749 sea turtles taken in the mid-Atlantic sea scallop fishery (Murray, 2004a). In the September 2006 Biological Opinion, NMFS anticipated that up to 749 loggerhead sea turtles will be captured each year and up to 479 of these (approximately 64 percent) will result in serious injury (as defined in the NMFS Northeast Region "Serious Injury Determinations for Sea Turtles Taken in Scallop Dredge Gear - Working Guidance") or mortality (NMFS, 2006). The September 2006 Biological Opinion recognized that the use of the chain mats on scallop dredges will (1) reduce the likelihood that turtles that encounter the gear on the bottom will enter the dredge bag and be at further risk of injury or death, and (2) reduce the likelihood that turtles that encounter the gear in the water column will enter the dredge bag and be subsequently injured or killed. For these reasons, NMFS believes that the serious injury and mortality rate of sea turtles interacting with scallop dredge gear will be less than that calculated for the Biological Opinion since fewer turtles will be subject to injuries occurring within the dredge bag or as a result of dumping the dredge bag on deck (NMFS, 2006). However, the reduction in mortality rate can not be quantified.

With the chain mat installed over the opening to the dredge bag, it is reasonable to assume that sea turtles that would otherwise enter the dredge bag will come into contact with the chain mat (at least) and be prevented from entering the dredge bag. Installing a chain mat over the opening of the dredge bag will not increase takes in this fishery and is expected to reduce capture in the bag and associated subsequent injury and mortality. Data do not exist on the percentage of sea turtles interacting with the chain-mat modified gear that will be unharmed, sustain minor injuries, or sustain serious injuries that would result in death or failure to reproduce. However, there are several assumptions that can be made to help estimate the degree of interaction. The first assumption is that sea turtles likely interact with scallop dredge gear both on the sea floor as the gear is being fished and in the water column as the gear is hauled back to the vessel. This is a reasonable assumption, because sea turtles have been observed in the area in which scallop gear operates and they have been seen near scallop vessels when they are fishing or hauling gear. In addition, sea turtles

generally are known to forage and rest on the sea floor as part of their normal behavior. The condition of sea turtles observed taken in the sea scallop dredge fishery ranges from alive with no apparent injuries to alive and injured to fresh dead. NMFS believes that interactions between sea turtles and sea scallop dredge gear that occur on the bottom are likely to result in serious injury to the sea turtle. Based on this assumption, NMFS believes that the unharmed/slightly injured turtles observed captured in the sea scallop dredge bag follow an interaction with sea scallop dredge gear in the water column.

The second assumption relates to the apportionment of the seriousness of the interaction between sea turtles and the modified gear. Taking one of two extremes, one could assume all of the sea turtles that would come in contact with the modified gear and the chain mat (up to 749) would be unharmed. However, this assumption is not reasonable given that, in the case of a bottom interaction, the frame and cutting bar may pass over any sea turtles on the bottom, and the sea turtles would still be run over by the dredge bag since entry into the dredge bag would be prevented by the chain mat. A standard 15 ft (4.57 m) dredge frame weighs about 2500 lbs (1134 kg); the dredge bag with chains and club stick weighs another 2000 lbs (907 kg). Variations in materials may affect this weight by approximately plus or minus 15 percent (Henry Milliken, NEFSC, pers. comm.). A sea turtle being run over by the gear would bear a significant amount of weight. At the other extreme, one could assume that all of the sea turtles that would come into contact with the modified gear and with the chain mat (up to 749) would sustain serious injuries leading to death or failure to reproduce. This assumption is also unreasonable, given that some of the interactions are likely in the water column during haul back (or possibly during setting the gear). The haul back speed when the dredge is moving across the bottom ranges from 4 to 7 miles per hour. (6.4 to 11.3 km per hour). Once the dredge is off bottom and traveling up to the surface, the speed ranges from 1 to 4 miles per hour (1.6 to 6.4 km per hour). As the gear is hauled through the water column, all turtles hitting the chain mat in this situation probably are not going to sustain serious injury leading to death or failure to reproduce because of the slow speed during haul back.

The proper apportionment of the seriousness of interactions between sea turtles and the modified gear falls in

between these two extremes. To arrive at a reasonable apportionment, we start with the assumption that interactions with scallop gear occur both on the bottom and in the water column, the assumption that up to 749 sea turtles will still interact with the chain-mat modified gear, and the estimate that up to 479 sea turtles will be seriously injured/killed and 270 will be unharmed/slightly injured without the chain mat. There are two scenarios in which sea turtles may sustain serious injuries that lead to death or failure to reproduce interactions on the sea floor or interactions in the water column.

As the dredge is fished on the bottom, sea turtles may be passed over with the dredge frame and cutting bar, which weigh thousands of pounds. Without the chain mat modification, the sea turtle could be swept into the dredge bag, forcibly submerged for the remainder of the tow, and at risk of further injury due to being tumbled around or hit by debris inside the bag or being crushed when the catch is dumped on the vessel's deck. Tows are often close to or over one hour in length, a duration known to cause physiological stress that may lead to drowning. While the mid-Atlantic scalloping areas consist more of sand substrates than New England's rougher bottom, gravel or larger rocks do enter the dredge bag even in the mid-Atlantic and may strike any turtles caught inside. Finally, as the dredge bag is hauled out of the water, it is suspended at a significant height above the deck and then its contents, including any turtles, are dumped on the vessel's deck. The gear is often dropped on the pile. Any sea turtles caught in the bag may be crushed by the contents of the bag as it is dumped or by the gear as it is dropped on top of the pile. Given the nature of the interaction on the bottom and during the tow once a turtle is caught in the bag, a conservative assumption is that no turtles taken from the sea floor are only seriously injured after they have entered the dredge bag. Therefore, a portion of the 479 sea turtles are conservatively assumed to sustain serious injuries leading to death or failure to reproduce due to bottom interactions with unmodified gear.

With the chain mat in place, it is reasonable to assume that the sea turtles on the sea floor would still interact with the gear, but that the nature of the interaction would be different. With the modified gear, the sea turtles may still be hit by the leading edge of the frame and cutting bar and would likely be forced down to the sea floor rather than swept into the dredge bag. The dredge rides on the sea floor on shoes, which

are part of the frame. The cutting bar, a thin steel edge, rides off the bottom from just above the sea floor to approximately 8 inches (20.3 cm). Since the turtles are not swept into the bag, they would be run over by the dredge bag and club stick. The dredge bag constitutes a substantial weight. Sea turtles that interact on the sea floor with the chain-mat modified dredge would probably fare just as poorly as those that interact with the unmodified dredge due to the substantial weight of the dredge frame and bag. Given the nature of the bottom interaction without the chain mat, NMFS believes that the same portion of the 479 sea turtles would still experience serious injuries that lead to mortality or failure to reproduce with the chain mat in place as without it.

In 2005 and 2006, NMFS worked with industry to test a dredge with a modified cutting bar and bail designed to minimize impacts to turtles that may be encountered on the bottom (NMFS, 2005; Milliken *et al.*, 2007). Dredges used in the experiments were equipped with the chain mat configuration, although the purpose of the trials was not to test the chain mats. The project used turtle carcasses and model turtles to simulate a worse case scenario of a dredge overtaking a sea turtle lying motionless on the bottom. During the 2005 study, the turtle carcasses were observed lodged in front of the cutting bar and pushed along, eventually going under the cutting bar and getting caught on the chain mat. During the study in 2006, no carcasses were observed going under the cutting bar (Milliken *et al.*, 2007) and, therefore, no carcasses interacted with the chain mat. It is important to note that the project was limited in that behavioral responses of a live turtle encountering a dredge could not be assessed.

Any injuries to sea turtles taken in the water column are likely to be non-serious because sea turtles would hit the chain mat in the water column during haul back. Once off the bottom, the gear is hauled back through the water column at a slow speed (1.4 miles per hour (1.6 to 6.4 km per hour)). Any turtle hitting the chain mat in the water column would not be hit with great force and would likely be able to swim away. During the preliminary trials of the chain main configuration, one of the turtles was observed "hanging onto" to the chain mat, perhaps held by water pressure, and subsequently swimming away. NMFS has no indication that this type of interaction would result in serious injury. NMFS believes that in this type of interaction the animal is being held against the gear by water pressure as the gear moves through the

water. Once, the gear stops moving and the pressure is relieved, the animal would be able to swim away. Some of the 479 seriously injured sea turtles probably obtained those injuries after being caught in the water column by unmodified gear, because the turtle were captured in the dredge bag. The chain mat would prevent these serious injuries, since the turtles would not be able to get into the dredge bag and, therefore, would not be crushed by debris in the bag, dumped on the deck from height, or crushed by falling gear.

We also assume that the 270 unharmed/slightly injured sea turtles are taken in the water column. These turtles would come into contact with the chain mat and would either swim away unharmed or with injuries that are not likely to result in death or failure to reproduce. The gear is hauled back to the vessel at a slow speed, so any turtle hitting the chain mat would not be hit with great force and would likely be able to swim away. Based on this analysis, some of the 270 interactions would result in contact with the chain mat, but this contact is not likely to result in serious injury.

To summarize, NMFS believes the chain mat will prevent serious injury leading to death or failure to reproduce caused by crushing from debris in the dredge bag, dumping of turtles on the vessel's deck, and crushing them by the falling gear following an interaction in the water column. The chain mat would also prevent serious injuries from debris in the dredge bag or dumping/crushing on deck of sea turtles following an interaction on the sea floor. However, NMFS has made the conservative assumption that a turtle in a bottom interaction sustains serious injuries on the bottom, so, under this conservative assumption, there would not be a benefit from the chain mat for bottom interactions. This assumption, however, may be too conservative in that it is possible (although not likely) that bottom interactions cause only minor injuries. In the unlikely scenario of a turtle receiving only minor injuries following a bottom interaction, the chain mat modification would prevent additional injuries, that may be serious, resulting from capture in the dredge bag (i.e., injuries from debris in the bag, drowning from forced submergence, dropping on deck, or crushing by the dredge).

#### Clarification to the Regulatory Language

The existing regulations require that any vessel with a sea scallop dredge and required to have an Atlantic sea scallop fishery permit, present in waters south

of 41° 9.0' North latitude from May 1 through November 30, have each dredge configured with a chain mat. The chain mat must be composed of horizontal and vertical chains that are configured such that the length of each side of the square or rectangle formed by the intersecting chains is less than or equal to 14 inches (35.5 cm) (50 CFR 223.206(d)(11)(i)). In addition, any vessel that harvests sea scallops in or from the waters described and required to have a Federal Atlantic sea scallop fishery permit must have the chain mat configuration installed on all dredges for the duration of the trip (50 CFR 223.206(d)(11)(ii)). NMFS is proposing three clarifications to this regulatory language.

First, NMFS is proposing to change the language in § 223.206(d)(11)(ii) that states "...such that each side of the square or rectangle formed by the intersecting chains is less than or equal to 14 inches (35.5 cm)." The openings formed by the horizontal and vertical chains and the sweep may, in some cases, result in openings with three sides rather than four. To clarify that all sides of the openings, regardless of whether the opening is three- or four-sided, must be less than or equal to 14 inches (35.5 cm), NMFS would modify this text to read "...such that the openings formed by the intersecting chains have no more than 4 sides. The length of each side of the openings created by the intersecting chains, including the sweep, must be less than or equal to 14 inches (35.5 cm)."

Second, NMFS proposes to change the text in § 223.206(d)(11)(ii) that reads, "Any vessel that *harvests sea scallops in or from* the waters..." to read, "Any vessel that *enters* the waters..." This revision would clarify that once a vessel has entered the waters described, it must comply with the requirement to have the chain mat affixed to the dredge for the duration of the trip regardless of whether the vessel is still in those waters. Third, NMFS would also revise the text in paragraph (d)(11)(i) that reads, "...any vessel...present in waters..." to "...any vessel...that enters waters..." This change would be made so that this subparagraph uses the same terminology as § 223.206(d)(11)(ii). The regulations apply to all vessels required to have a Federal Atlantic sea scallop fishery permit and with sea scallop dredge gear entering waters south of 41° 9.0' N. latitude from May 1 through November 30 each year.

#### Transiting Provision

This action, if implemented, would add a transiting provision to the regulations regarding the use of chain

mats in the Atlantic sea scallop dredge fishery. With the proposed change to the regulatory language, vessels that transit through areas south of the 41° 9.0' N. latitude line would be required to use chain mats when fishing north of the line. This is not the intent of the regulation as sea turtle interactions north of that line are unlikely. To address this issue, NMFS is proposing a transiting provision. Vessels would be exempted from the chain-mat requirements provided that the vessel has no scallops on-board and that the gear is stowed and not available for immediate use. Gear that is not available for immediate use is gear that is stowed in conformance with the methods described at 50 CFR 648.23(b)(2). For scallop dredges, the gear must conform to one of the following: (1) the towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unusable for fishing; or (2) the towing wire is detached from the dredge and attached to a bright-colored poly ball no less than 24 inches (60.9 cm) in diameter, with the towing wire left in its normal operating position (through the various blocks) and either is wound back to the first block (in the gallows) or is suspended at the end of the lifting block where its retrieval does not present a hazard to the crew and where it is readily visible from above.

#### Procedural Error

This action is also necessary to address a procedural error in the rulemaking that required chain mats on dredges in the Atlantic sea scallop fishery. NMFS prepared an Environmental Assessment (EA) that analyzed the impacts on the human environment, and a Finding of No Significant Impact (FONSI) for the chain mat regulation. While the draft EA and FONSI circulated for review during the decision-making process at the proposed and final rule stages, due to an oversight, the FONSI was not signed concurrent with the decision to issue the final rule (memo from Patricia A. Kurkul to William T. Hogarth, October 19, 2006). However, the EA was reconsidered and the FONSI was signed as soon as the mistake was discovered. This rulemaking would further address this procedural oversight by ensuring that NMFS follows all of the National Environmental Policy Act procedures in the proper sequence.

#### Request for Comments

While NMFS encourages public comment on any aspect of this proposed

action, NMFS is specifically requesting comments on a number of issues, including the lack of a proposal to define the configuration by dredge width and the number of horizontal and vertical chains (an option removed by the November 2006 emergency rule), the replacement cost of the gear, and the northern extent of the regulations. As described previously, the chain mat regulations originally allowed two options for configuring the gear that NMFS believed achieved openings of less than or equal to 14 inches (35.5 cm) per side. However, subsequent to the rule's effective date, NMFS learned that, in some cases, the configurations specified by dredge width resulted in openings that were larger than expected and desired. NMFS corrected this discrepancy by removing the option that allowed the gear to be configured by dredge width in an emergency rulemaking (71 FR 66466, November 15, 2006). Prior notice and comment and most of the 30-day delay in effective date were waived for good cause. As there was no comment period during this emergency rulemaking, NMFS is, at this time, specifically requesting comment on the removal of the option that allowed a specified number of chains by dredge width.

Some have asked NMFS to define the configuration required by a table identifying the number of horizontal and vertical chains by dredge width as in the original chain mat rule. However, the size of the opening created by the chains is the important factor in preventing sea turtles from entering the dredge bag, not the number of chains. NMFS investigated whether it would be feasible to specify a number of chains by dredge width that would achieve the desired spacing of 14 inches (35.5 cm). NMFS has limited information on the distance between the cutting bar and the sweep, but this information does show that this distance can vary by up to 1.7 ft (0.52 m) for certain dredge widths (NMFS, 2007). Given the limited information available and the high degree of variability in this distance, it would be difficult to specify a number of horizontal chains that would achieve the desired spacing. As a result, NMFS is not defining the configuration based on a specified number of chains, but by the desired size opening, which is the important factor for sea turtle conservation. However, NMFS is requesting public comments on this issue to see if there are other factors to be considered, to obtain information on the possible variations in the rigging (e.g., the sweep), and to solicit suggestions on whether or how

variations can be accounted for in a configuration table.

NMFS recognizes that as the chains and links/shackles wear, they will need to be replaced. NMFS anticipates that a high quality chain such as that used in the experimental fishery should last for a fishing season. Therefore, the estimated cost to purchase the materials for the chain mat would be an annual cost. To achieve a configuration of 14 inches (35.5 cm), the cost of materials is estimated at approximately \$150 for a 10-ft (3.05-m) dredge to \$410 for a 15-ft (4.57-m) dredge. However, NMFS recognizes that the longevity of the chain and the links/shackles depends on a number of factors including the type of chain installed, the rigging of the chain, the dredge configuration, area fished and other factors that may increase or decrease average wear. Due to the high number of variables, NMFS is requesting comment on this issue in order to better assess the costs associated with this replacement. Specifically, NMFS is requesting information on the size, type, and longevity of the chain used to configure the chain-mat in modified sea scallop dredge gear.

As described in the EA, the chain-mat modification is required in the mid-Atlantic and on the southern portion of Georges Bank. Since the regulation's effective date (September 25, 2006; 71 FR 50361, August 25, 2006), some have expressed concern that the chains should not be required on vessels fishing on Georges Bank as it is less likely that sea turtles will be captured in the gear in that area. Prior to 2005, no sea turtle takes had been observed in the sea scallop dredge fishery outside the mid-Atlantic region. In the 1999 and 2000 scallop fishing years, relatively high levels of observer coverage (22 percent - 51 percent) occurred in portions of the Georges Bank Multispecies Closed Areas that were conditionally opened to scallop fishing. Despite this high level of observer coverage and operation of scallop dredge vessels in the area during June to October, no sea turtles were observed captured in scallop dredge gear. From 2001 through 2004, observer coverage was low in the Georges Bank region (<1 percent in 2001, 2002, and 2003; <2 percent from September through November 2004 with most of the coverage occurring in November) (Murray, 2004a, 2005). In August 2005, a Kemp's ridley was taken at approximately 40° 58' N. lat./67° 16' W. long. by a dredge vessel operating on southern Georges Bank indicating that takes in this area are possible. In addition, the take of sea turtles in other

fisheries has been documented along this southern edge. Based on (1) the known distribution of sea turtles, (2) sea scallop dredge fishing effort, and (3) the observed take of sea turtles in this fishery, NMFS expects the take of sea turtles by dredge vessels operating over Georges Bank to be rare. However, as described in the EA, sea turtles are known to be present on the southern portion of Georges, and the chain mats would prevent the capture of sea turtles in the dredge bag in this area. Therefore, NMFS is proposing to maintain the northern boundary of 41° 9.0' N. lat. However, NMFS is specifically requesting comment on this boundary.

### Classification

This action has been determined to be not significant under Executive Order 12866.

NMFS has prepared an initial regulatory flexibility analysis that described 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. No reporting, record keeping, or other compliance requirements are proposed. No duplicative, overlapping, or conflicting Federal rules have been identified. A summary of the analysis follows.

The fishery affected by this proposed rule is the Atlantic sea scallop dredge fishery. The proposed action requires all vessels, regardless of the dredge size or vessel permit category, that enter waters south of 41° 9.0' N. lat. from the shoreline to the EEZ to modify their dredge gear from May 1 through November 30 each year. The proposed gear modification is fairly inexpensive. Therefore, NMFS assumes that vessels will convert their gear and continue fishing in the area. According to the Vessel Trip Report (VTR) data for 2003, 314 vessels fished south of 41° 9.0' N. lat. From May 1 through November 30. Of these, 277 were limited access vessels and 37 were general category vessels. In 2003, the 314 affected vessels earned approximately 221.4 million dollars in revenues using a total of 40,888 days at sea. The 277 limited access vessels earned approximately 98 percent of the total industry revenues and 95 percent of the industry revenues were earned using scallop dredge gear. On average, limited access vessels earned between \$441,800 and \$895,100 per year and general category vessels earned between \$46,700 and \$162,000 per year.

This analysis estimates the costs of the initial requirement to use chain-mat

modified gear in the Atlantic sea scallop dredge fishery outlined in the table provided in the August 2006. The table specified 11 vertical and 6 horizontal chains for dredges with a frame width greater than 13 ft (3.96 m), 9 vertical and 5 horizontal chains for dredges of 11 ft (3.35 m) to 13 ft (3.96 m), 7 vertical and 4 horizontal chains for dredges of 10 ft (3.05 m) to less than 11 ft (3.35 m), and 5 vertical and 3 horizontal chains for dredges of less than 10 ft (3.05 m). Some vessels with different dredge configurations may incur additional costs due to the requirement for 14 inches (35.5 cm) or less, if they had based their configuration on the table and it did not produce 14 inch (35.5 cm) openings, but these costs are expected to be minimal and will not significantly affect the analysis. Using the materials recommended in DuPaul *et al.* (2004a) and average costs for labor, the cost for modifying a scallop dredge ranges from \$177.37 for a dredge less than 10 ft (3.05 m) to \$389.22 for a dredge greater than 13 ft (3.96 m). The second cost to the industry is the loss of catch with the modified dredge. This cost will not be affected by the requirement of 14-inch (35.5-cm) openings as these openings are similar in size to those used during the experimental fishery. During the 2003–2004 field trials, the modified dredge caught, on average, 6.71 percent less scallops than the unmodified dredge (DuPaul *et al.*, 2004a). This is slightly less than the loss of 6.76 percent reported in the draft final report on the experiment (DuPaul *et al.*, 2004b). The economic analysis assumes a loss of 6.76 percent, as reported in the draft report on the experiment. Therefore, the analysis slightly overestimated the economic impacts. If fishermen do not increase their effort to offset this loss, they will experience a reduction in revenues. Assuming that the fishermen do not minimize this loss by increasing effort, revenue for a limited access vessel may be reduced between a low of \$18,800 to a high of \$38,700; while revenue for a general category vessel may be reduced between \$1,300 and \$5,600. The total impact of the cost to modify the gear and loss of revenue due to reduction in catch may reduce a vessel's annual revenues on average between 3 percent and 7.8 percent.

Of the 314 affected vessels, 193 vessels may have their revenues reduced by 5 percent or less, 116 vessels may have their revenues reduced between 5 and 10 percent, and 5 vessels may have their revenues reduced by greater than 10 percent. Of the 121 vessels that may have revenue reductions exceeding 5 percent, 27, 29,

29, and 22 of the vessels are registered to the states of Massachusetts, New Jersey, Virginia, and North Carolina, respectively. Annual industry revenues would be reduced by 4.3 percent (\$9.6 million/\$221.4 million x 100).

There is also a cost associated with maintaining the gear. This cost depends on a number of factors including the type and grade of chain utilized, the configuration and rigging of the gear, and the area fished. Based on the use of a high quality chain, NMFS anticipates that the chain mat would need to be replaced each fishing season. It is unlikely that the replacement of chains will occur at a single point during the season as chains may break during fishing operations or may wear at different rates. Nevertheless, it is expected that the entire chain mat would be replaced over the course of a fishing season. Therefore, fishermen will incur the costs associated with purchasing the chains and shackles to configure the gear each year.

Other potential costs are those due to increased drag, weight, and tow times, as well as increased fuel consumption, which will result from adding chains to the dredge. The NEFSC provided information on the weight of a standard scallop dredge for the August 2006 rule. The total weight (+/- 15 percent) of a sea scallop dredge with a width of 15 ft (4.57 m) is approximately 2,500 pounds (1134 kg) for the dredge frame and another 2,000 pounds (907 kg) for the chain bag with chains and club sticks. The weight of the chain mat is estimated to be between 56 pounds (25 kg) for a 10-ft (3.05-m) dredge and 147 pounds (66.7 kg) for a 15-ft (4.57-m) dredge. Assuming 20 percent additional chains and shackles would be required for some vessels to comply with the 14 inch (35.5 cm) requirement (a conservative overestimate), the range of weights would increase by 11 lbs (5 kg) for a 10-ft (3.05-m) dredge to 29 lbs (13 kg) for a 15-ft (4.57-m) dredge. The weight of the chain-mat modified dredge is not considerably different from the unmodified dredge. The additional chain that some vessels may have added to comply with the requirement for a 14-inch (35.5-cm) opening is a fraction of the chain required for the chain mat as a whole, and the addition of this chain is not expected to substantially increase the weight of the gear. Therefore, NMFS does not anticipate that the additional chain will substantially impact the efficiency of the dredge and does not anticipate any significant costs resulting from extra weight on the gear.

There are some additional costs for vessels that need to reconfigure the gear

to comply with the requirement to have openings measuring 14 inches (35.5 cm) or less per side. The costs due to a loss of catch evaluated here are based on the scallop loss observed during the experimental fishery (6.7 percent). Given that the openings in the gear used in the experimental fishery are of similar size to the openings required by the proposed regulation and that the analysis uses the loss of catch estimated in the experimental fishery, the impacts due to a loss of catch included in the analysis for the original chain mat regulation (described previously) apply to this proposed action as well. Therefore, the only difference is in the cost to reconfigure the gear.

As described previously, there are two costs associated with reconfiguring the gear - the cost of materials and the cost of labor. Vessels will have already purchased the majority of the chain needed to configure the chain mat. There will be a slight additional cost for some vessels for the purchase of additional chain in order to achieve openings equal to or less than 14 inches (35.5 cm). However, the amount of additional chain needed will be less than that already purchased. If you assume 20 percent additional chains and shackles would be required to comply with the 14 inch (35.5 cm) requirement (a conservative overestimate), the additional costs for a 10-foot (3.05-m) dredge would be approximately \$26 and the costs for a 15-foot (4.57-m) dredge would be approximately \$68. This estimate uses the same costs for materials considered in the analysis described previously. Some additional welding would be required to reconfigure the gear to meet the 14 inch (35.5 cm) requirement. However, it is unlikely that this cost would exceed the cost of initially configuring the gear. The cost to the industry of reconfiguring the gear to meet the 14 inch (35.5 cm) or less requirement cannot be quantified at this time as it is unknown how many vessels would need to reconfigure their gear. However, these impacts are expected to be minimal given that: (1) some vessels had already configured their gear according to this option; (2) the use of the table resulted in openings meeting this requirement in certain cases; and (3) the cost to reconfigure the gear is less than the cost to initially configure the gear.

Three alternatives were evaluated for this action. Under the No Action Alternative, vessels would be required to comply with the existing chain mat requirements. That is, any vessels with a Federal Atlantic sea scallop fishery permit and a sea scallop dredge,



regardless of dredge size or vessel permit category, present in waters south of 41° 9.0' N. lat., from the shoreline to the outer boundary of the EEZ must have each dredge configured with a chain mat from May 1 through November 30 each year. Vessels that harvest sea scallop in or from these waters must have the chain mat configuration installed on all dredges for the duration of the trip. The Preferred Alternative is the same as the No Action; with minor modifications to the regulatory text to clarify the regulatory requirements and the addition of a transiting provision. Alternative 1 would remove the existing requirements for chain-mat modified dredges in the Atlantic sea scallop fishery. This alternative is necessary to provide for a comparative analysis of the alternatives.

All business entities participating in the sea scallop dredge fisheries are considered small business entities. The Preferred Alternative and the No Action Alternative have the same economic impact; while Alternative 1 will have a lesser impact. Under the Preferred Alternative and the No Action Alternative, 314 vessels are affected and industry revenues are reduced by 4.3 percent. The Preferred Alternative and the No Action Alternative provide the most protection to sea turtles; while Alternative 1 leaves sea turtles vulnerable to capture, injury, and mortality that result from such capture, in the sea scallop dredge bag.

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#### List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Reporting and recordkeeping requirements, Transportation.

Dated: November 6, 2007.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, 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. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 et. seq.; 16 U.S.C. 5503(d) for § 223.206(d)(9).

In § 223.206, paragraph (d)(11) is revised to read as follows:

#### § 223.206 Exemptions to prohibitions relating to sea turtles.

\* \* \* \* \*

(d) \* \* \*

(11) *Restrictions applicable to sea scallop dredges in the mid-Atlantic—(i) Gear Modification.* During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, that enters waters south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal (“tickler”) chains and vertical (“up-and-down”) chains that are configured such that the openings formed by the intersecting chains have no more than 4 sides. The length of each side of the openings formed by the intersecting chains, including the sweep, must be less than or equal to 14 inches (35.5 cm). The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

(ii) Any vessel that enters the waters described in (d)(11)(i) and that is required to have a Federal Atlantic sea scallop fishery permit must have the chain mat configuration installed on all dredges for the duration of the trip.

(iii) Vessels subject to the requirements in (d)(11)(i) and (d)(11)(ii) transiting waters south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic

Zone, will be exempted from the chain-  
mat requirements provided the dredge

gear is stowed in accordance with

§ 648.23(b) and there are no scallops on-  
board.

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