Service. For the above reasons and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Pacific Islands Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service.

Authority

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

Dated: March 30, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–8807 Filed 4–11–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 110202088–2183–01]

RIN 0648–BA34

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Bottlenose Dolphin Take Reduction Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to amend the Bottlenose Dolphin Take Reduction Plan (BDTRP) and implementing regulations by permanently continuing medium mesh gillnet fishing restrictions in North Carolina coastal state waters, which would otherwise expire on May 26, 2012. This action will remove the expiration date to continue current nighttime fishing restrictions of medium mesh gillnets operating in North Carolina coastal state waters from November 1 through April 30. Members of the Bottlenose Dolphin Take Reduction Team (BDTRT) recommended these regulations be continued permanently, without modification, to ensure: (1) Continued conservation of strategic bottlenose dolphin stocks in North Carolina with historically high serious injury and mortality rates associated with medium mesh gillnets; and (2) BDTRP goals are met. NMFS also proposes to amend the BDTRP with updates, including updates recommended by the BDTRT for non-regulatory conservation measures.

DATES: Written comments on the proposed rule must be received no later 5 p.m. eastern time on May 14, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2010–0230, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*. To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2010–0230 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Assistant Regional Administrator for Protected Resources, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505.
- *Fax:* 727–824–5309; Attn: Assistant Regional Administrator for Protected Resources.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

This proposed rule, the BDTRP, 2008 BDTRP amendment, BDTRT meeting summaries with consensus recommendations, and other background documents are available at the Take Reduction Team web site: *http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm,* or by submitting a request to Stacey Horstman [see **FOR FURTHER INFORMATION CONTACT**].

FOR FURTHER INFORMATION CONTACT: Stacey Horstman, NMFS Southeast Region, *Stacey.Horstman@noaa.gov,* 727–824–5312; or Kristy Long, NMFS Office of Protected Resources, *Kristy.Long@noaa.gov,* 301–427–8402.

SUPPLEMENTARY INFORMATION:

Regulatory Changes to the BDTRP

BDTRP and Medium Mesh Gillnet Restrictions

Section 118(f)(1) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1387(f)(1)) requires NMFS to develop and implement take reduction plans to assist in the recovery or prevent the depletion of strategic marine mammal stocks that interact with Category I and II fisheries. The MMPA includes in its definition of ''strategic stock'' a marine mammal stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and likely to be listed as a threatened species under the Endangered Species Act (ESA); or (3) which is designated as a depleted species under the MMPA (16 U.S.C. 1362(1), (19), and (20)). PBR is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level. Category I or II fisheries are fisheries with frequent or occasional incidental mortality and serious injury of marine mammals, respectively (16 U.S.C. 1387(c)(1)(A)(i) and (ii)).

As specified in the MMPA, the short-term goal of a take reduction plan is to reduce, within six months of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels less than PBR for the stock (16 U.S.C. 1387(f)(2)). The long-term goal of a plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The MMPA also requires NMFS to amend take reduction plans and implementing

regulations as necessary to meet the requirements of this section.

On April 26, 2006, NMFS published a final rule (71 FR 24776) implementing the BDTRP, with a May 26, 2006, effective date. The BDTRP contains both regulatory and non-regulatory conservation measures to reduce serious injury and mortality of 13 strategic stocks of bottlenose dolphins (*Tursiops truncatus*) (previously considered one coastal migratory stock; see section on *Revisions to the Western North Atlantic Coastal Bottlenose Dolphin Stock*) in Category I and II commercial fisheries operating within the stocks' distributional range. Both the regulatory and non-regulatory conservation measures are designed to meet the BDTRP's short-term goal and provide a framework for meeting the long-term goal. The regulatory measures in the BDTRP include seasonal gillnet restrictions, gear proximity requirements, and gear length restrictions. The non-regulatory measures include continued research and monitoring, enforcement of regulations, outreach, and collaborative efforts.

The specific regulatory measures addressed in this proposed rule that would otherwise expire on May 26, 2012, are fishing prohibitions on nighttime medium mesh gillnets in North Carolina coastal state waters from November 1 through April 30, annually. Medium mesh gillnets are defined in the BDTRP as greater than 5-inch (12.7 cm) to less than 7-inch (17.8 cm) stretched mesh. The intent of the prohibitions is to reduce bottlenose dolphin serious injuries and mortalities by reducing gillnet soak times associated with medium mesh gillnets targeting spiny dogfish (*Squalus acanthias*) in North Carolina coastal state waters. During the winter (November 1 through April 30), four strategic bottlenose dolphin stocks (two coastal and two bay, sound, and estuary) occur in North Carolina state waters at various times. The prohibitions were implemented in North Carolina coastal state waters because bottlenose dolphin mortalities were observed from 1995 to 2000 in these waters during the winter. These mortalities were associated with medium mesh gillnets targeting spiny dogfish with long, overnight soak durations.

When the BDTRT originally deliberated on their consensus recommendations for a draft BDTRP in 2002 and 2003, they recognized the inadvertent benefit of recently implemented spiny dogfish fishery management plans (FMPs) in reducing serious injury and mortality of bottlenose dolphins by virtually eliminating spiny dogfish fishing effort in North Carolina. However, the BDTRT also recognized the dynamic nature of the spiny dogfish fishery, which is managed by both state and Federal entities. The uncertainty about on-going management of the fishery resulted in a process that was dynamic and unreliable for bottlenose dolphin conservation. Therefore, the BDTRT recommended the nighttime medium mesh prohibitions be included in the BDTRP with an expiration date to ensure regular review of the spiny dogfish fishery and management.

The nighttime medium mesh gillnet restrictions were originally implemented in the BDTRP on May 26, 2006, with an expiration date of May 26, 2009. The BDTRT subsequently recommended extending the restrictions for an additional three years to ensure continued bottlenose dolphin conservation benefits and evaluate the need for permanent restrictions due to recent changes to the spiny dogfish population status and continued uncertainty in fishery management. On December 19, 2008, NMFS published a final rule (73 FR 77531) amending the BDTRP by extending the measures' expiration date until May 26, 2012. The BDTRT met on September 9–11, 2009, and recommended NMFS make the restrictions permanent because of continued spiny dogfish FMP changes, as the spiny dogfish fishery was no longer considered overfished, and fishing effort increased for spiny dogfish in North Carolina. Removing the expiration date, thereby permanently maintaining the existing restrictions, ensures continued bottlenose dolphin conservation benefits from reduced soak durations of medium mesh gillnets in North Carolina coastal state waters.

Medium Mesh Gillnets in North Carolina and Spiny Dogfish FMPs

Medium mesh gillnets fished in coastal state waters of North Carolina fall under the mid-Atlantic gillnet fishery. The mid-Atlantic gillnet fishery is classified on the MMPA List of Fisheries as a Category I fishery, which is defined as a fishery that has frequent incidental mortality and serious injury of marine mammals (i.e., greater than 50 percent of a stock's PBR level). In North Carolina, medium mesh gillnets are typically used to target spiny and smooth dogfish, king mackerel, flounder, and other shark species, with spiny dogfish as the primary target species (Rossman and Palka 2004).

Spiny dogfish are managed from Maine to North Carolina by two Federal Fishery Management Councils in Federal waters and an interstate fishery management commission in state waters. NMFS listed spiny dogfish as overfished in 1998 (63 FR 17820, April 10, 1998). In January 2000, NMFS implemented a Federal FMP (65 FR 1557) to conserve spiny dogfish in Federal waters. Among other things, the FMP implemented a coastwide commercial quota that is specified annually and split into two seasonal fishing periods (Period 1: May 1 to October 31; Period 2: November 1 to April 30). Each fishing period has separate possession trip limits, specified annually, to allow for spiny dogfish bycatch to be sold while managing catch rates (63 FR 17820, April 10, 1998; ASMFC 2007).

The Atlantic States Marine Fisheries Commission (ASMFC) issued an emergency action in 2000 requiring states to mirror Federal closures in state waters. An Interstate FMP was developed in November 2002 to manage spiny dogfish fishing in state waters and implemented in the 2003/2004 fishing year. The Interstate FMP largely mirrors the Federal FMP, setting annual commercial quotas and separate possession limits to help manage spiny dogfish catch rates for the same two fishing periods (ASMFC 2007). All commercial landings count toward the Interstate FMP quota regardless of where the fish are caught (i.e., state or Federal waters) (ASMFC 2002).

Annually, NMFS reviews the Federal FMP and ASMFC reviews the Interstate FMP, based on the most recent estimate of spiny dogfish fishing mortality and spawning stock biomass. The 2006 estimate of fishing mortality for spiny dogfish indicated the population was not overfished and overfishing was not occurring (NMFS 2006). In 2010, the spiny dogfish stock was declared rebuilt based on 2009 spawning stock biomass estimates exceeding biomass targets since 2008 (75 FR 36012, June 24, 2010; Rago and Sosebee 2010). Both state and Federal annual commercial coastwide quotas and possession limits have increased in accordance with changes in the spiny dogfish stock status (see Table 1).

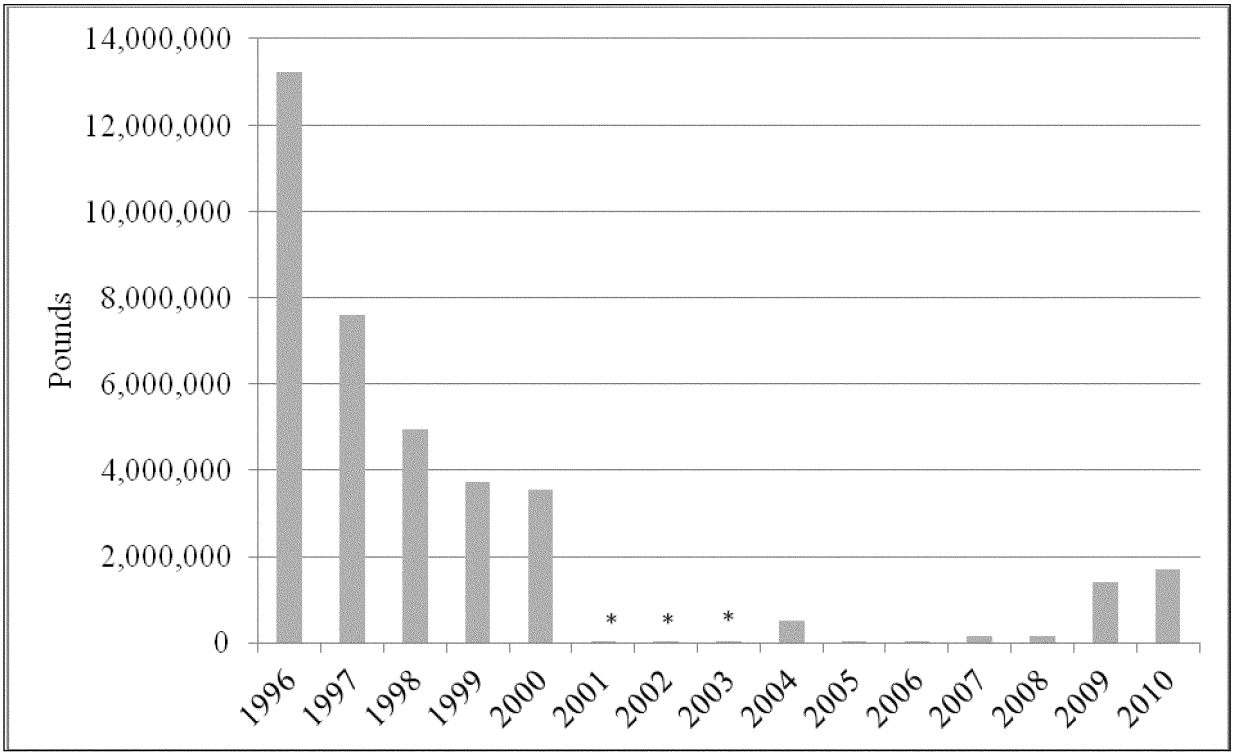
TABLE 1—STATE AND FEDERAL FMP QUOTAS AND POSSESSION LIMITS SINCE 2006

Fishing year	State (ASFMC)		Federal (NMFS)	
	Coastwide quota (million pounds)	Possession limit (pounds)	Coastwide quota (million pounds)	Possession limit (pounds)
2006/2007	6	States determine	4	600
2007/2008	6	3,000	4	600
2008/2009	8	3,000	4	600
2009/2010	12	3,000	12	3,000
2010/2011	15	3,000	15	3,000
2011/2012	20	3,000	20	3,000

The implementation of the FMPs and quota changes has affected spiny dogfish effort and landings in North Carolina since 2001 (see Figure 1). Targeting spiny dogfish in North Carolina was virtually eliminated following implementation of the FMPs, as evidenced by low spiny dogfish landings. Spiny dogfish landings in North Carolina averaged 6,609,821 pounds from 1996 to 2000 prior to the implementation of the FMPs (NMFS, Fisheries Statistic Division, pers. comm. and ASMFC 2011a). From 2001 to 2006, after implementation of the FMPs and before the spiny dogfish population was considered no longer overfished, landings in North Carolina averaged 92,243 pounds (NMFS, Fisheries Statistic Division, pers. comm. and ASMFC 2011a). Despite the increasing state quotas and possession limits through the 2008 fishing year, spiny dogfish landings in North Carolina remained comparatively low for the 2007–2008 fishing years, averaging 154,135 pounds (NMFS, Fisheries Statistic Division, pers. comm. and ASMFC 2011a).

Two major factors contributed to preventing greater increases in landings of spiny dogfish in North Carolina. First, the decreased landings of spiny dogfish in North Carolina following implementation of the FMPs were mostly due to the seasonal specifications of commercial quotas. The FMPs' commercial quotas, established annually and split semi-annually, were based on the north-south spiny dogfish migration to help maintain the seasonal and geographic distribution of landings among states. Because of the species' annual migratory pattern along the United State's east coast, quota overages often occurred in the northern states associated with harvest Period 1, resulting in reduced or restricted harvest for southern states in Period 2 (ASMFC 2002). For example, historic peak harvest for spiny dogfish in North Carolina state waters occurred during February and March, corresponding to harvest Period 2. The state and Federal quotas were often already met before harvest Period 2 because spiny dogfish remain off the coasts of the northern states until winter (ASMFC 2008). Therefore, the seasonal specifications of the FMP quotas based on the spiny dogfish migration allowed northern states to intercept spiny dogfish and meet FMP quotas before their seasonal migration south to North Carolina (NCDMF 2008). Second, following the implementation of the FMPs, the mid-Atlantic processors closed, leaving only two processors in New England (ASMFC 2002). The processing plants are at times saturated with spiny dogfish harvested from states north of North Carolina, leaving little to no market to harvest and process the fish when they arrive in North Carolina. Furthermore, in a predominantly bycatch fishery with possession limits at 600 or even 3,000 pounds, it was not cost effective for fishermen or dealers in North Carolina to truck spiny dogfish to the processors in New England given the high fuel costs and small amounts of fish allowed for harvest.

FIGURE 1. SPINY DOGFISH LANDINGS IN NORTH CAROLINA FROM 1996 THROUGH 2010 (NMFS, FISHERIES STATISTIC DIVISION, PERS. COMM. AND ASMFC 2011A)



*Landings not reported for confidentiality purposes, as landings were from less than three participants.

Because the semi-annual quota was not maintaining the historical distribution of landings or allowing for consistent quota allocation for southern states, ASMFC approved Addendum II and III to the Interstate FMP in October 2008 and April 2011, respectively. Addendum II was issued retroactively for the 2008/2009 fishing year, establishing regional quotas replacing the overall seasonal allocation. The quota was redistributed at 58% for the Northern Region (Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut); 26% for the Southern Region (New York, New Jersey, Delaware, Maryland, and Virginia); and 16% for North Carolina. If the quota was exceeded in a region or North Carolina, the amount exceeding the allocation was deducted from the corresponding region or North Carolina for the next fishing season. North Carolina was specifically allocated a percentage of the quota to ensure available quota when the fish arrive in North Carolina waters (ASMFC 2008). Following Addendum II, average landings for spiny dogfish in North Carolina from 2009–2010 increased to 1,562,400 pounds (NMFS, Fisheries Statistic Division, pers. comm. and ASMFC 2011a).

Addendum II addressed the inability of North Carolina to harvest spiny dogfish, but it did not allow the Southern Region to adjust possession limits based on market demand. Addendum III to the interstate FMP was, therefore, approved for the 2011/2012 fishing year, providing state-specific allocation for all states in the Southern Region and allowing individual states greater control of spiny dogfish fishing effort (ASMFC 2011b). Among other things, Addendum III divided the Southern Region annual quota of 42% into state-specific shares, including a share of 14.036% to North Carolina. Therefore, North Carolina had a state-specific quota of 2,807,200 pounds for the 2011/2012 fishing year, and the state set a maximum 3,000 pound per trip possession limit depending on fishing location.

Given the history of this fishery, continued increases in quotas and possession limits are anticipated. In October 2011, the Federal fishery management councils recommended to NMFS a 2012/2013 commercial quota of 35.7 million pounds and increased the per trip possession limit to 4,000 pounds. In November 2011, ASMFC set the 2012/2013 fishing year quota at 30 million pounds with a maximum daily possession limit of 3,000 pounds. North Carolina will receive a state-specific share of 4,210,800 pounds.

These recent increases in the quotas and possession limits resulted in increased effort in medium mesh gillnets targeting spiny dogfish, notably in North Carolina with its individual state quota. Despite increased effort and landings, medium mesh gillnet soak duration is unlikely to increase to pre-FMP durations because the possession limits are still relatively low (less than or equal to 3,000 pounds) and BDTRP nighttime medium mesh restrictions are in place. Federal fishery observer data for medium mesh gillnets targeting all species in North Carolina state waters during the winter show a marked decrease in soak durations since the spiny dogfish FMPs were implemented. Prior to implementation of the FMPs (1996–2000), soak durations ranged from less than one hour to 48 hours, averaging 9.6 hours. After the FMPs were implemented (2001–2010), soak durations ranged from less than one hour to 24 hours, averaging only 1.8 hours. Although the current average

soak duration is still relatively low, Federal fishery observer data indicate some longer soak durations commensurate with increases in possession limits and quotas. Historically, bycatch of bottlenose dolphins was associated with long soak durations (average of 20 hours) of medium mesh gillnets targeting spiny dogfish in North Carolina. Thus, permanently extending the nighttime medium mesh gillnet restrictions will ensure soak durations do not increase back to historically high levels, increasing the risk of serious injury and mortality to bottlenose dolphins.

Bottlenose Dolphin Mortalities Associated With Medium Mesh Gillnets in North Carolina

The implementation of the spiny dogfish FMPs and subsequent effort reductions had the inadvertent but beneficial effect of reducing bottlenose dolphin serious injuries and mortalities in North Carolina; however, this trend may change as the fishery rebuilds and quotas continue to increase. From 1996 to 2000 in the North Carolina portion of the previously defined Winter-Mixed Management Unit (now corresponding to four different stocks; see the discussion in this rule under the heading, *Revisions to the Western North Atlantic Coastal Bottlenose Dolphin Stock*), medium mesh gillnets targeting spiny dogfish were the primary contributors to the total bottlenose dolphin mortality (Rossman and Palka 2004). The mean animal mortality for the entire Winter-Mixed Management Unit from 1996 to 2000 was 180, which exceeded the PBR of 68 (Waring *et al.* 2007; Rossman and Palka 2004). Sixty-three percent, or 146 of 180 bottlenose dolphin serious injuries and mortalities, were attributed to medium mesh gillnets primarily targeting spiny dogfish in the North Carolina portion of the Winter-Mixed Management Unit. Conversely, from 2001 to 2002 in the entire Winter-Mixed Management Unit, small (less than or equal to 5-inch (12.7 cm)) and large (greater than or equal to 7-inch (17.8 cm) stretched) mesh gillnets were the primary contributors to total bottlenose dolphin serious injury and mortality. During 2000 to 2001, estimated mean animal mortality decreased to 59 bottlenose dolphins, of which, only 19 (24%) were attributed to medium mesh gillnets in the North Carolina portion of the Winter-Mixed Management Unit. This reduction in estimated bottlenose dolphin mortality was a result of reduced landings and lower bycatch rates across all gillnet mesh size categories (small, medium, and large), which includes almost no effort in medium mesh gear targeting spiny dogfish following implementation of the FMPs (Rossman and Palka 2004).

The BDTRP winter nighttime prohibitions for medium mesh gillnets continue to be important for bottlenose dolphin conservation because they effectively limit soak times to approximately 12 hours, reducing risk of bycatch. Before implementation of the FMPs, long soak durations associated with medium mesh gillnets targeting spiny dogfish were a major contributing factor to high bottlenose dolphin bycatch rates in North Carolina. Federal observer data prior to FMP implementation document three bottlenose dolphin mortalities in medium mesh nets with soak times averaging 20 hours; only one mortality was in a net with a soak time of less than 12 hours. There have been no observed takes in medium mesh gillnets targeting spiny dogfish in North Carolina waters since 2000 when FMPs eliminated directed spiny dogfish fishing effort, and consequently, the need for long soak durations.

Stranding data also indicate the BDTRP winter nighttime medium mesh gillnet prohibitions are effective at reducing serious injury and mortality of bottlenose dolphins regardless of increases in the spiny dogfish quota. Byrd *et al.* (2008) compared the number of bottlenose dolphins that stranded in North Carolina coastal state waters with evidence of a fishery interaction during the winter from November 1997 through April 2005. They found stranding rates and bottlenose dolphin bycatch rates from Rossman and Palka (2004) were similar and corresponded to fluctuations in fishing effort for spiny dogfish in North Carolina. Specifically, for the time period examined, there was a significant positive relationship in the numbers of bottlenose dolphin strandings with signs of fishery interaction and bottlenose dolphin bycatch rate before and after the FMPs were implemented. Furthermore, the mean number of strandings with signs of a fishery interaction in North Carolina coastal state waters was greater before the FMPs were implemented (14.3 animals during November–April from 1997–2000) than after the FMPs (5.2 during November–April from 2001–2005) (Byrd *et al.* 2008). Therefore, in the absence of Federally observed takes since 2000, stranding data may be used as a proxy to detect increases in bottlenose dolphin bycatch mortality (Byrd *et al.* 2008). Updated stranding data from November 2005 through April 2010 show a continued trend in reduction of strandings with signs of a fishery interaction, with an average of 2.8 strandings in all North Carolina state waters (NOAA Southeast Stranding Data).

The nighttime medium mesh gillnet restrictions were initially included in the BDTRP to ensure long soak durations of medium mesh gillnets were modified to reduce serious injury and mortality rates. These restrictions were given expiration dates on two occasions to monitor the status of the spiny dogfish fishery and management. The BDTRP prohibitions ensure reduced soak durations in medium mesh gillnets despite a recent increase in spiny dogfish fishing effort in North Carolina as shown by: (1) Reduced soak durations in medium mesh gillnets in North Carolina state waters during the winter; and (2) a continued decreasing trend of bottlenose dolphin strandings with evidence of a fishery interaction in North Carolina state waters during the winter.

BDTRT Recommendations for Medium Mesh Gillnets in North Carolina

Following implementation of the BDTRP in May 2006, the BDTRT met on June 19–20, 2007, to monitor the effectiveness of the BDTRP. Among other things, the BDTRT was provided updates on spiny dogfish fishery management, landings, and gear practices since the team originally deliberated on the draft BDTRP. The BDTRT recommended by consensus that the nighttime medium mesh gillnet restrictions in North Carolina be extended for an additional three years and NMFS provide an update on the status of the spiny dogfish fishery at least biennially. Therefore, per the BDTRT's recommendation, NMFS amended the BDTRP in December 2008 with a new expiration date of May 26, 2012, for the nighttime medium mesh gillnet restrictions (73 FR 77531).

NMFS held another BDTRT meeting on September 9–11, 2009, to evaluate the BDTRP and review revisions to the bottlenose dolphin stock structure. The BDTRT was provided with updates on medium mesh gillnet fishing effort targeting spiny dogfish in North Carolina and FMP management addenda and quota changes. Because of recent changes to the FMPs, the recovering spiny dogfish population, and increased fishing effort in North Carolina, the BDTRT recommended by consensus that NMFS permanently include the nighttime medium mesh gillnet prohibitions in North Carolina. The BDTRT recognized the importance of these restrictions because of the historically high rates of bottlenose dolphin serious injury and mortality

associated with medium mesh gillnets targeting spiny dogfish.

For several reasons, NMFS agrees the expiration date should be removed rather than continuing to extend the medium mesh restrictions for three-year durations. The spiny dogfish population was declared rebuilt in 2010, resulting in continued increased FMP quotas and possession limits, and landings of spiny dogfish in North Carolina. Federal fishery observer data indicate some longer soak durations commensurate with increases in quotas and possession limits. Historically, observed takes of bottlenose dolphins in North Carolina medium mesh gillnets targeting spiny dogfish were associated with longer soak durations, and 63 percent of bottlenose dolphin serious injuries and mortality were associated with medium mesh gillnets targeting spiny dogfish. Given these factors, permanently maintaining the BDTRP restrictions is necessary for meeting the goals of the plan, per the MMPA requirement to reduce serious injury and mortality of strategic bottlenose dolphin stocks in North Carolina.

Non-Regulatory Changes and Updates to the BDTRP

Non-Regulatory Management Measures and BDTRT Consensus Recommendations

This proposed rule also includes updates for non-regulatory components of the BDTRP. These updates are based on the BDTRT's consensus recommendations from their June 2007 and September 2009 meetings and do not represent a substantive change to the BDTRP requirements. The BDTRT recognized the effectiveness of the BDTRP requirements implementing non-regulatory actions, such as continued research, monitoring, enforcement of regulations, outreach, and other collaborative efforts. Non-regulatory measures are an important complement to the BDTRP's regulatory measures in achieving the plan's short-term goal and providing a framework for achieving the long-term goal.

Since the BDTRP's implementation in May 2006, NMFS convened two in-person meetings (June 2007 and September 2009) of the BDTRT to monitor and evaluate the BDTRP's effectiveness. At both meetings, the BDTRT provided NMFS with additional non-regulatory recommendations, which NMFS agrees are important to achieving the plan's goals. Some of these recommendations have already been accomplished because of the adaptive nature of the non-regulatory measures.

The following are summaries of proposed amendments to the BDTRP's non-regulatory management measures. Please see the **FOR FURTHER INFORMATION CONTACT** section for where to obtain the 2007 and 2009 BDTRT meeting summaries for details on these recommended measures.

Research

(1) Bottlenose Dolphin Research

Based on the spatial and temporal complexity of bottlenose dolphin stocks, the BDTRT advised NMFS in both 2007 and 2009 to support continued research to improve the understanding of bottlenose dolphin stock structure. The BDTRT specifically recommended using genetics, dorsal fin photo-identification, and telemetry data for continued refinement of bottlenose dolphin stock structure, abundance estimates, and PBR levels for all stocks and especially those occupying North Carolina waters. To identify fishery-related mortalities and serious injury to stock, the BDTRT further recommended using genetic samples or matching dorsal fin images to the Mid-Atlantic Bottlenose Dolphin Photo-Identification Catalog.

(2) Fishing Gear Research

Gear modification research, in cooperation with fishermen, is important to help reduce serious injury or mortality to bottlenose dolphins incidental to commercial fishing while maintaining those fisheries. Therefore, the BDTRP recommended the following: (1) Determine if pingers reduce depredation rates of bottlenose dolphins on gillnets and whether pingers affect bottlenose dolphins; (2) examine the ratio of net height versus water depth in gillnets targeting Spanish and king mackerel; and (3) continue exploring the effectiveness of modified leaders in the Virginia Pound Net fishery for maintaining catch efficiency, especially around Lynnhaven, Virginia.

Trap/Pot Fisheries

During the 2009 meeting, the BDTRT recognized trap/pot gear as the main commercial fishing gear interacting with some of the estuarine stocks of bottlenose dolphins. Stranding data indicate interactions with trap/pot gear are occurring with bottlenose dolphins, and only one or two takes may result in serious injury and mortality levels that exceed PBR for these small stocks. The BDTRT provided the following recommendations to better understand the nature of interactions with trap/pot gear, inform future discussions, and reduce potential serious injuries and mortalities of bottlenose dolphins: (1) Develop state programs to remove derelict trap/pot gear; (2) characterize trap/pot gear (e.g., amount of vertical line, gear markings, etc.) interacting with bottlenose dolphins, amount of fishing effort, spatial and temporal aspects of the fisheries, and types of gear modifications (e.g., inverted bait wells); and (3) host a technology transfer workshop for fishermen using blue crab trap/pot gear to explore gear modifications that may help reduce bottlenose dolphin interactions.

Monitoring and Evaluating Plan Effectiveness

(3) Outreach and Education

Continued education and outreach to affected Category I and II fishermen and stakeholders is necessary to enhance compliance with, and therefore the effectiveness of, the BDTRP. The BDTRT recommended outreach be maintained and conducted consistently. For example, NMFS fishery liaisons or mailings are effective approaches in consistently informing fishermen of any BDTRP updates. The BDTRT also recommended holding fishermen working groups to better understand the nature of bottlenose dolphin interactions with specific gear types, as fishermen can provide important knowledge in trends or patterns of interactions. The BDTRT further recognized the value of highlighting the success of the BDTRP if an affected stock reaches the MMPA long-term goal (i.e., serious injury and mortality is below 10 percent of a stock's PBR level). Using success stories as platforms for education and outreach is an important tool, especially when encouraging compliance with the plan regulations.

(4) Observer Program

The observer program is vital for measuring if take reduction plan regulations are effective in reducing serious injury and mortality of bottlenose dolphins and monitoring changes in interaction rates between bottlenose dolphins and affected fisheries. Previous BDTRT recommendations focused on enhancing and improving the overall precision and accuracy of observer data. Recent BDTRT meeting recommendations encouraged focusing observer coverage in specific geographic areas and fisheries, improving observer data collection and quality, and measures of fishing effort. Specifically, the BDTRT recommended enhancing and prioritizing observer coverage in: (1) The North Carolina beach seine fishery; (2) gillnets targeting Spanish mackerel in inshore waters of North Carolina; and

(3) gear operating in North Carolina state waters during the summer. Recommendations to improve documentation of observed takes were also provided. Specifically, the BDTRT recommended prioritizing documentation of dorsal fin images and collection of biopsy samples, or the entire carcass if possible, and detailed documentation of the entanglement event. Improved data collection will help in assigning mortality to a particular stock because of the spatial and temporal overlap of stocks, especially in North Carolina. Finally, the team recommended determining the accuracy of current fishing effort measures used for bottlenose dolphin mortality estimates by comparing alternate measures of fishing effort with current methods.

(5) Enforcement

Enforcement is important for compliance monitoring of take reduction plan regulations. If the plan is not reaching its goals, NMFS will determine if non-compliance is a factor. The BDTRT recommended coordination with state and other Federal agencies on enforcement activities.

(6) Adaptive Management

At the team's 2009 meeting, some abundance estimates and PBRs for stocks were unknown due to the recent revisions in bottlenose dolphin stock structure. However, the team noted at the meeting that the mortality estimate for the Northern North Carolina Estuarine System Stock may be approaching or exceeding PBR. The BDTRT recommended that after NMFS updates the abundance estimate and PBR for the stock, if PBR is determined to have been exceeded, the BDTRT be convened via conference call or in-person meeting to ensure more real-time communications and monitoring of the BDTRP's effectiveness. Having such discussions in real-time allows for an adaptive management approach to more quickly target potential reasons the BDTRP is not achieving its short-term goal and begin considering effective solutions.

Revisions to the Western North Atlantic Coastal Bottlenose Dolphin Stock

The Western North Atlantic coastal bottlenose dolphin morphotype is continuously distributed in estuarine and coastal waters along the United State's Atlantic coast. Based on spatial and temporal patterns in strandings during a die-off from 1987–1988, bottlenose dolphins in coastal waters along the Atlantic coast were designated as a single coastal stock (Western North Atlantic coastal bottlenose dolphin stock) that migrated seasonally between New Jersey and central Florida. This Western North Atlantic coastal bottlenose dolphin stock was considered strategic due to depletion during the 1987–1988 die-off and interactions with nine Category I and II commercial fisheries. The BDTRT was formed in 2001 and the BDTRP implemented in 2006 to reduce impacts from commercial fishing. The geographic scope and affected area of the BDTRP was based on the habitat and range of the Western North Atlantic coastal stock, including all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras southward to, and including, the east coast of Florida.

During the BDTRT's initial deliberations in developing the draft BDTRP, research demonstrated the Western North Atlantic coastal bottlenose dolphin stock was not a single migratory stock, but rather a complex mosaic of stocks occupying estuarine and coastal waters. The stock was, therefore, separated into seven discrete management units with spatial and temporal components for purposes of developing the draft BDTRP. However, the entire range of the Western North Atlantic coastal stock was used for the geographic scope of the BDTRP. PBR, abundance estimates, and mortality estimates for the Western North Atlantic coastal stock were determined and assigned per management unit. These management units were used until additional data collection and analyses were completed to allow redefinition of discrete stocks (as opposed to seasonal management units) in 2009.

Genetic analyses, assessments of ranging patterns of bottlenose dolphins from long-term photographic identification studies, and satellite-telemetry tag studies were summarized to redefine stock structure. The stock structure now consists of nine estuarine system stocks and five coastal stocks. This description is not complete, however, because of insufficient information for some estuarine waters to evaluate stock structure, and limited information on the movement patterns of some of the coastal stocks. Targeted genetic studies showed genetic differentiation among coastal and estuarine stocks and separation between bottlenose dolphins occurring in estuarine versus coastal waters. Photo-identification studies described the seasonal ranging patterns of estuarine stocks and indicated some stocks (e.g., the Northern North Carolina Estuarine Stock) move offshore into nearshore coastal waters at particular times of year. Additionally, seasonal immigration/emigration and transient animals occur within estuaries, suggesting some degree of spatial overlap between estuarine and coastal animals (Waring *et al.* 2011). Although questions still remain about the degree of spatial overlap and mixing between the coastal and estuarine stocks, data indicates fourteen separate coastal and estuarine stocks are encompassed within the range of the Western North Atlantic morphotype of coastal bottlenose dolphins.

The Western North Atlantic coastal morphotype of bottlenose dolphins was, therefore, revised to include 14 stocks of coastal (five stocks) and estuarine (nine stocks) bottlenose dolphins instead of one previous migratory stock. All stocks within the coastal morphotype are still considered strategic, except the Florida Bay Stock. Therefore, thirteen of the 14 bottlenose dolphin stocks are affected under the BDTRP because they are strategic and interact with Category I and II commercial fisheries. The following is a list of the revised bottlenose dolphin stocks, along with a description of their spatial and/or temporal distributions as now included in the BDTRP (Waring *et al.* 2011):

1. Western North Atlantic Northern Migratory Coastal Stock, which occupies coastal waters from the shoreline to approximately the 25 meter isobath between the mouth of the Chesapeake Bay in Virginia and Long Island, New York during the summer months (July–September); and moves south occupying coastal waters from Cape Lookout, North Carolina to the Virginia/North Carolina border during the winter months (January–March).

2. Western North Atlantic Southern Migratory Coastal Stock, which occupies coastal waters north of Cape Lookout, North Carolina to the eastern shore of Virginia and potentially inside the Chesapeake Bay, Virginia during summer months (July–September); occupies waters south of Cape Lookout during the fall (October–December); moves as far south as northern Florida during the winter (January–March); and moves back north to occupy waters of North Carolina during the spring (April–June).

3. Western North Atlantic South Carolina/Georgia Coastal Stock, which occupies coastal waters year-round from the North Carolina/South Carolina border to the Georgia/Florida border.

4. Western North Atlantic Northern Florida Coastal Stock, which occupies

coastal waters year-round from the Georgia/Florida border to 29.4° N.

5. Western North Atlantic Central Florida Coastal Stock, which occupies coastal waters year-round from 29.4° N. to the western end of Vaca Key, Florida.

6. Northern North Carolina Estuarine System Stock, which occupies Pamlico Sound, North Carolina and nearshore coastal waters (less than 1 km from shore) of North Carolina to Virginia Beach during the summer and fall (July–October); moves out of the estuarine waters and occupies nearshore coastal waters (less than 1 km from shore) between Capes Lookout and Hatteras, North Carolina during the late fall and winter (November–March); and occupies nearshore coastal (less than 1 km from shore) and estuarine waters of southern North Carolina during the spring (April–June).

7. Southern North Carolina Estuarine System Stock, which occupies estuarine and nearshore coastal waters (less than 3 km from shore) between the North Carolina/South Carolina border and Core Sound, North Carolina during the summer and fall (July–October); and moves south to occupy coastal nearshore waters near Cape Fear, North Carolina during the late fall through spring (November–June).

8. Charleston Estuarine System Stock, which occupies the riverine and estuarine waters year-round from Prince Inlet, South Carolina to the north and the North Edisto River, South Carolina to the south.

9. Northern Georgia/Southern South Carolina Estuarine System Stock, which occupies all estuarine, riverine, and creek waters year-round from the southern extent of the North Edisto River, South Carolina to the northern extent of Ossabaw Sound, South Carolina.

10. Southern Georgia Estuarine System Stock, which occupies all estuarine, intracoastal waterways, sounds, rivers, and tributaries year-round from the Altamaha River, Georgia to the Cumberland River at the Georgia/Florida border.

11. Jacksonville Estuarine System Stock, which occupies all estuarine and riverine waters year-round from Cumberland Sound at the Florida/Georgia border to Jacksonville Beach, Florida.

12. Indian River Lagoon Estuarine System Stock, which occupies all estuarine, riverine and lagoon waters year-round from Ponce de Leon Inlet, Florida to Jupiter Inlet, Florida.

13. Biscayne Bay Stock, which occupies all estuarine waters year-round from Haulover Inlet, Florida to Card Sound Bridge.

To reflect updated knowledge and understanding of bottlenose dolphin stock structure, this proposed rule updates 50 CFR 229.35(a) by removing the reference to the ''Western North Atlantic bottlenose dolphin coastal stock'' and replacing it with ''stocks of bottlenose dolphins within the Western North Atlantic coastal morphotype''. Updating the bottlenose dolphin stocks included in the BDTRP will not modify management measures in the BDTRP. Although the management units were used to inform the development of the BDTRP, management measures in the BDTRP are still applicable based on the temporal and seasonal movements of each stock and Category I and II fisheries affected and regulated by the BDTRP. Each stock has its own abundance and mortality estimates, as well as associated PBRs. NMFS will continue monitoring serious injury and mortality for each stock through observer program and stranding data. NMFS will also continue evaluating the effectiveness of the BDTRP by monitoring serious injury and mortality estimates of bottlenose dolphins relative to the short- and long-term goals of the BDTRP.

Other Updates

Since finalizing and implementing the BDTRP in May 2006, two errors in the BDTRP implementing regulations were identified. This proposed rule corrects the two errors as follows: (1) The current boundary for Southern North Carolina State Waters and South Carolina in 50 CFR 229.35(b) uses North Carolina/South Carolina at the coast (33°52′ N.) for the southern part of the boundary. Similarly, the definition for South Carolina, Georgia, and Florida waters use the same latitude for the northern part of the boundary. The latitude 33°52′ N., however, does not accurately reflect the actual border. This proposed rule modifies the coordinate to accurately reflect the North Carolina/South Carolina border at the coast. The border for North Carolina/South Carolina would be defined as the latitude corresponding with 33°51′07.9″ N. at the coast as described by ''Off South Carolina'' in 50 CFR 622.2 of this title (Fisheries of the Caribbean, Gulf, and South Atlantic—Definitions and Acronyms); and (2) In the regulatory text implementing the BDTRP, both 50 CFR 229.35(d)(1)(i) and 229.35(d)(2)(i) describe regional management measures for New Jersey, Delaware, Maryland, and Virginia state waters specific to medium and large mesh gillnet gear. In specifying the regulated gear type, the word ''gillnet'' was not included in the titled description of the management measures, reading ''Medium and large mesh''. It is clear in the regulatory text these regulations are for both medium and large mesh gillnet gear. Therefore, this proposed rule corrects this omission in the two title descriptions by adding the word ''gillnet'', so the title would read ''Medium and large mesh gillnets'' for gear regulated under § 229.35(d)(1)(i) and 229.35(d)(2)(i).

Classification

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

NMFS determined this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of North Carolina. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act on December 22, 2011. North Carolina concurred with the consistency determination in a letter dated January 23, 2012.

This action contains policies with federalism implications that were sufficient to warrant preparation of a federalism summary impact statement under Executive Order 13132 and a federalism consultation with officials in the state of North Carolina. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate officials in North Carolina.

NMFS determined this action is categorically excluded from the requirement to prepare an Environmental Assessment (EA) in accordance with sections 5.05b and 6.03c.3(i) of NOAA's Administrative Order (NAO) 216–6 for implementing the National Environmental Policy Act. Specifically, this proposed action, if implemented, permanently maintains, without modification, a current regulation that would not substantially change the regulation or have a significant impact on the environment. NMFS prepared an EA on the final rule (71 FR 24776, April 19, 2006) to implement the BDTRP, which included an analysis of the proposed action without time constraints. The EA analyzed all regulations in the final BDTRP of which the regulations addressed in this proposed rule were a component. The EA resulted in a finding of no significant impact. In accordance with section 5.05b of NAO 216–6, the proposed regulations were determined to not likely result in significant impacts as defined in 40 CFR 1508.27. This action does not trigger the exceptions to categorical exclusions listed in NAO 216–6, Section 5.05c. A

categorical exclusion memorandum to the file has been prepared.

An Endangered Species Act section 7 consultation was conducted on this action and found that it may affect, but is not likely to adversely affect, threatened and endangered species. There is no designated critical habitat under NMFS' jurisdiction in the action area, so critical habitat was not affected. Furthermore, the only impacts from this action are expected to be beneficial to listed species because the proposed action will maintain reduced soak times in medium mesh gillnet fishing in North Carolina state waters.

This proposed rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The purpose of this proposed rule is to continue reducing serious injuries and mortalities to bottlenose dolphins incidental to commercial fishing operations and ensure serious injuries and mortalities do not exceed PBR levels, as mandated by the MMPA. The MMPA provides the statutory basis for this proposed rule.

This proposed rule would not establish any new reporting, recordkeeping, or other compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified.

Initial and final regulatory flexibility analyses, dated April 2006, were prepared for the BDTRP. These analyses determined all commercial fishing entities using medium mesh gillnets in the manner and location encompassed by the proposed action implementing the BDTRP would be affected. Because this rule, if implemented, would continue the existing restrictions on this gear sector, all entities using this gear would potentially be directly affected.

As detailed in the analyses for the 2006 BDTRP, a total of 1,321 unique participants were identified as having recorded landings using medium mesh gillnet gear during the 2001 fishing season (November 2000–October 2001) in North Carolina. Total harvests with this gear were valued at approximately $13.8 million (nominal ex-vessel value), or approximately 18% of total fishing revenues by these entities of approximately $77 million (nominal ex-vessel value). The average annual revenue from the harvest of all marine species by these vessels was approximately $58,000.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. Based on the estimated average annual revenue of vessels using medium mesh gillnet gear in North Carolina from the 2001 fishing season, the analyses conducted for the BDTRP determined all entities expected to be affected by the proposed action were small business entities. Comparable average revenue estimates for current entities in North Carolina using medium mesh gillnet gear are not available. However, although time has elapsed since the initial BDTRP analyses, no information has been identified to suggest economic performance in this sector has substantially improved since 2001, and the disparity between the 2001 average ($58,000) and the SBA threshold ($4.0 million) is sufficiently large to conclude participants in this sector of the commercial fishery remain small business entities. As a result, all commercial entities expected to be directly affected by this proposed rule, if implemented, are determined for the purpose of this analysis to be small business entities.

Although this proposed rule, if implemented, would restrict the behavior of entities using medium mesh gillnets in North Carolina coastal state waters, it would not directly affect any current fishing revenues or fishing practices nor likely prevent fishermen from the harvesting the increasing spiny dogfish quotas as indicated below. The scope of this proposed rule is the same as analyzed in support of the 2006 BDTRP. As detailed in the analyses provided supporting the 2006 BDTRP, the initial implementation of the restriction was estimated to result in an estimated reduction in ex-vessel revenue of approximately $296,000, or less than 1% of total ex-vessel revenue for the affected entities. This low impact was likely affected by the decline in spiny dogfish harvests, which have historically been the primary target of this gear in North Carolina. Spiny dogfish harvests declined from approximately 3.5 million pounds in 2000 to less than 20,000 pounds per year in 2005 and 2006. As discussed in the preamble, landings of spiny dogfish in North Carolina began increasing in 2009. For the 2010–2011 fishing season, 181 vessels recorded spiny dogfish landings of approximately 1.71 million pounds valued at approximately $257,000. The recent increase in spiny dogfish harvests demonstrates fishermen have adapted their fishing practices and are successfully harvesting spiny dogfish despite the current BDTRP gear restrictions. Therefore, the proposed continuation of these restrictions would not cause fishermen to lose actual income, but would only preclude potential future income from fishing with medium mesh gillnets in the manner subject to this proposed regulation. Because this proposed rule, if implemented, would only continue the prohibition of a fishing practice that has not been used since 2006, current revenues or profits of any small entity would not be affected because this action is not expected to prohibit fishermen from harvesting spiny dogfish quotas. Further, current participants in the affected fishery have demonstrated the ability to successfully harvest the primary target species for the affected gear, and fishing revenues for the target species have been increasing despite the BDTRP restriction. Therefore, this proposed rule, if implemented, would not be expected to have a significant, direct adverse economic effect on the profits of a substantial number of small entities.

Because this proposed rule, if implemented, is not expected to have any direct adverse economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

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List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: April 5, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16. U.S.C. 1361 *et seq.;* 50 CFR 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

2. In § 229.35 paragraph (a), the definitions of *South Carolina, Georgia, and Florida waters* and *Southern North Carolina State waters* in paragraph (b), and paragraphs (d)(1)(i), (d)(2)(i), (d)(4)(ii), and (d)(5)(i) are revised to read as follows:

§ 229.35 Bottlenose Dolphin Take Reduction Plan.

(a) *Purpose and scope.* The purpose of this section is to implement the Bottlenose Dolphin Take Reduction Plan (BDTRP) to reduce incidental mortality and serious injury of stocks of bottlenose dolphins within the Western North Atlantic coastal morphotype in specific Category I and II commercial fisheries from New Jersey through Florida. Specific Category I and II commercial fisheries within the scope of the BDTRP are indentified and updated in the annual List of Fisheries. Gear restricted by this section includes small, medium, and large mesh gillnets. The geographic scope of the BDTRP is all tidal and marine waters within 6.5 nautical miles (12 km) of shore from the New York-New Jersey border southward to Cape Hatteras, North Carolina, and within 14.6 nautical miles (27 km) of shore from Cape Hatteras, southward to, and including the east coast of Florida down to the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this chapter).

(b) * * *

South Carolina, Georgia, and Florida waters means the area consisting of all marine and tidal waters, within 14.6 nautical miles (27 km) of shore, between 33°51′07.9″ N. (North Carolina/South Carolina border at the coast and as described by ''Off South Carolina'' in § 622.2 of this title) and the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105 of this chapter).

* * * * *

Southern North Carolina State waters means the area consisting of all marine and tidal waters, within 3 nautical miles (5.56 km) of shore, bounded on the north by 34°35.4′ N. (Cape Lookout, North Carolina) and on the south by 33°51′07.9″ N. (North Carolina/South Carolina border at the coast and as described by ''Off South Carolina'' in § 622.2 of this title).

* * * * *

(d) * * *

(1) * * *

(i) *Medium and large mesh gillnets.* From June 1 through October 31, in New Jersey, Delaware, and Maryland State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

* * * * *

(2) * * *

(i) *Medium and large mesh gillnets.* From June 1 through October 31, in Southern Virginia State waters and Northern Virginia State waters, no person may fish with any medium or large mesh anchored gillnet gear at night unless such person remains within 0.5 nautical mile (0.93 km) of the closest portion of each gillnet and removes all such gear from the water and stows it on board the vessel before the vessel returns to port.

* * * * *

(4) * * *

(ii) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Northern North Carolina State waters, no person may fish with any medium mesh gillnet at night.

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(5) * * *

(i) *Medium mesh gillnets.* From November 1 through April 30 of the following year, in Southern North Carolina State waters, no person may fish with any medium mesh gillnet at night.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120213124–2225–01]

RIN 0648–BB91

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and