of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Accordingly, under the authority of 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c), 48 CFR Chapter 15 is amended as follows:

List of Subjects in 48 CFR Part 1516 and 1552

Government procurement.

1. The authority citation for part 1516 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1516.405 is amended by revising paragraph (a) as follows:

1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216–70, Award fee (May 2000), in solicitations and contracts where a cost-plus-award-fee contract is contemplated.

* * * * *

3. The authority citation for part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

4. Section 1552.216–70 is amended by revising the prescription date from (SEPT 1995) to (May 2000), and revising paragraph (b) to read as follows:

1552.216–70 Award fee.

* * * * *

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO). The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

* * * * *

Dated: April 28, 2000.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 00–12022 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 000511138–0138–01; I.D. 051100B]

RIN 0648–A019

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is closing an area along eastern North Carolina and Virginia to fishing with large-mesh gillnets with a stretched mesh size of 6 inches (15.24 cm) or greater for a 30-day period. The closed area includes all Atlantic Ocean waters between Cape Hatteras and 38° N. latitude (near the Virginia-Maryland border), west of 75° W. longitude, and a specified part of Chesapeake Bay. NMFS is taking this action because of its determination that gillnet fishing with large-mesh gillnets is the most likely cause of significant increases in the stranding of sea turtles listed as threatened or endangered under the Endangered Species Act (ESA) along the eastern coast of North Carolina. This action is necessary to protect threatened and endangered turtles from being taken by large-mesh gillnets along the North Carolina and Virginia coasts during their northern migration.

DATES: This action is effective from May 12, 2000 through June 12, 2000. Comments on this action are requested, and must be received at the appropriate address or fax number (**ADDRESSES**) by no later than 5 p.m., eastern daylight time, on June 12, 2000.

ADDRESSES: Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail 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*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA. Existing sea turtle conservation regulations specify procedures that NMFS may use to determine that unauthorized takings of sea turtles are occurring during fishing activities, and to impose additional restrictions to conserve listed sea turtles and to prevent unauthorized takings (50 CFR 223.206(d)(4)). Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each.

Recent Events

The Sea Turtle Salvage and Stranding Network has documented a high level of sea turtle strandings in North Carolina this spring. There have been two stranding events involving unprecedented numbers of turtles, along the Outer Banks in Dare and Hyde counties.

During the first stranding event, a total of 71 turtles (69 loggerheads and 2 Kemp's ridleys) washed ashore on the ocean-facing beaches between Rodanthe and Ocracoke from April 14–17, 2000. There were no externally obvious signs of death on the turtles. Necropsies revealed that the turtles had excellent fat stores and were probably in good health prior to their deaths. A few of the turtles had been feeding on nearshore, benthic species, but most had empty guts, suggesting that they were in a migratory, rather than foraging, mode. The uniform state of decomposition of the turtles indicated that they had likely all died suddenly within a short period of time, probably no more than a few days before stranding on the beach. Large amounts of sargassum weed blew ashore, coincident with the turtle strandings, and indicative of the

movement of warm Gulf Stream waters close to shore.

NMFS began investigating possible causes of the sea turtle mortality event immediately. The absence of other species in the die-off was inconsistent with a toxic algae bloom. Also, there were no major traumatic injuries such as might be caused by dredging or blasting. None of the turtles had ingested any fishing hooks. NMFS, therefore, turned attention to activities that could drown large numbers of turtles, such as net fishing. There was no trawl fishing activity in the area at the time, and gillnetting was reportedly light, although there was some activity for dogfish nearshore. Monkfish gillnetting was reported to be over in the area, but NMFS subsequently learned that gillnetters continued landing monkfish in North Carolina through the end of April. Gillnetting therefore was the most likely cause of this stranding event. Sea turtles are vulnerable to entanglement in gillnets and can drown in under an hour of forced submergence.

Oceanographic conditions probably played a role in concentrating the sea turtles off the Outer Banks. Loggerhead and Kemp's ridley turtles are known to use summer foraging grounds along the mid-Atlantic and northeast seaboard. For many turtles, their spring migrations to these feeding grounds from wintering areas along the southeastern U.S. or from warm offshore waters will bring them near Cape Hatteras. The warm Gulf Stream flows southwest to northeast past Cape Hatteras. The exact position of the Gulf Stream in this area can be highly variable week-to-week, and its position, along with local winds and counterclockwise warm-water currents from the Gulf Stream can strongly affect the coastal waters. This spring, the Gulf Stream has come quite close to Cape Hatteras: only 10 to 15 nautical miles. As usual, the coastal water inshore of the Gulf Stream has been strongly affected by eddies off the Gulf Stream. Around the time of this first stranding event, warm eddies brought water up to 20 °C (68 °F) ashore along Ocracoke and Hatteras Islands, while coastal waters farther to the north were still cold (less than 14 °C), deterring turtles from proceeding northward up the coast. The warm eddy allowed turtles to move inshore where they were vulnerable to coastal fisheries and where they were more likely to strand. Onshore winds that began on April 14 likely pushed the carcasses ashore. Immediately after this stranding event, cold water pushed in from the north around Cape Hatteras, replacing the warm eddy waters. Sea turtles were forced back offshore to find warmer water. While cold water prevailed along the coast, the strandings were greatly diminished.

A second stranding event began on May 3. From May 3–8, approximately 209 additional sea turtles (3 Kemp's ridleys, the rest loggerheads) were found dead on ocean beaches between Oregon Inlet and Hatteras Inlet. Virtually all were severely decomposed, suggesting that they had been dead at sea for at least several days before stranding. The sheer numbers and the advanced decomposition of these animals preclude meaningful necropsies. Those carcasses that have been scanned with a magnetometer have not contained any hooks. Four of the carcasses were entangled in fishing gear: Three loggerheads carried pieces of gillnet with a mesh size of 12 inches (30.48 cm) stretched, and one loggerhead was carrying gillnet with a mesh size of 10 inches (25.4 cm) stretched.

Oceanographic conditions were again a factor in this wave of strandings. Cold water lay along the North Carolina coast all the way to Cape Lookout through the end of April. Sea turtles can tolerate water temperatures down to about 10 °C, but with warm water (greater than 20 °C) only 15 to 20 nm offshore, they likely would have remained in or near the 20 °C thermal front. Satellite imagery showed a small tongue of warm water curling back towards the coast from the Gulf Stream, about 15 nautical miles east of Avon, on April 30. This tongue of warm water slowly grew and extended westward until it hit the North Carolina coast between Avon and Rodanthe on May 3, the day the turtle carcasses washed ashore. Because the satellite imagery so clearly shows a distinct water mass moving in from offshore at the exact place and time that the strandings started, it is clear that the turtles also died offshore, perhaps as much as a week before they stranded, and were then brought ashore by that water mass. Three fisheries were active in offshore waters the week prior to the strandings: hook-and-line fishing for mackerel, bluefish gillnetting, and monkfish gillnetting. The mesh sizes of the gear recovered with the stranded turtles are only consistent with gillnets for monkfish. Again, there was no evidence that the turtles had been hooked.

Analysis of Other Factors

Examination of the strandings on the Outer Banks indicates that the most likely source of sea turtle mortality is large-mesh gillnetting for monkfish and possibly dogfish. Other possible causes are not consistent with the nature of the strandings. Satellite sea surface temperature information has allowed NMFS to reconstruct the likely times and locations of the sea turtle mortality. Gillnetting for dogfish and monkfish have been the active fisheries in those times and places. These fisheries deploy thousands of yards/meters of gillnets and have very long soak times, ranging from overnight to several days. Large-mesh gillnets are known to be highly effective at catching turtles and in fact were the gear of choice during the historical sea turtle fishery. Bluefish gillnetting was also active in offshore waters at the time of the second mortality event. The bluefish fishery, however, uses smaller-mesh nets (5½ inches/13.97 cm), much less net per boat, and much shorter soak times (less than an hour to several hours) than the large-mesh gillnet fisheries. While bluefish gillnets can catch and drown turtles, these fishing characteristics make bluefish gillnetting a smaller threat to sea turtles.

Impacts on Sea Turtles

The number of dead turtles in these two stranding events is unprecedented. The 10-year stranding average (1989–98) for the entire state of North Carolina for loggerheads is 219 per year; in contrast, approximately 290 have stranded in just these two events. Springtime strandings in Dare and Hyde counties, North Carolina, however, are not unusual. Historically, there has been a small spike in turtle strandings in statistical zone 35, which generally corresponds to those two counties, as the north-migrating turtles encountered coastal fisheries. In recent years, the number of stranded turtles, particularly loggerheads, has grown. In 1997 and 1998, a total of 34 and 26 loggerheads stranded in Zone 35 in May and the first 2 weeks of June. The strandings increased dramatically in 1999, to a total of 86 loggerheads for that same period. That stranding level was itself a record. NMFS believes that these increases in mortality are the result of increased fishing effort, a shift of fishing effort later into the season, fishing methods that are more lethal to sea turtles, and, this year, oceanographic conditions that likely concentrated sea turtles off Cape Hatteras.

Strandings are a minimum indicator of at-sea mortality as winds and currents will carry many carcasses offshore. The turtles involved in the second stranding event likely were killed 10–20 nm offshore and only reached shore because a warm eddy broke off. Other turtles that may have died before the eddy formed likely were swept out to sea by the Gulf Stream.

This extreme increase in loggerhead mortality may pose a serious threat to the species' recovery, especially as the mortality has occurred at a choke point in these turtles' migration to their summer foraging grounds. Most loggerheads in U.S. waters come from one of two genetically distinct nesting populations. The population that nests in south Florida is much larger and has shown increases in nesting. The northern population that nests from northeast Florida through North Carolina is much smaller and nesting numbers are stable or declining. Previous studies suggest that up to half of the turtles stranded in North Carolina would be from the smaller, northern population. The overwhelming number of stranded turtles has precluded a full analysis of the sizes of the affected animals, but preliminary data suggest that they had a representative distribution, ranging from immatures to adults.

Continued Threat to Sea Turtles

Historical data show that increases in sea turtle strandings move south-to-north up the mid-Atlantic coast in May and June, as the migratory turtles arrive. Virginia has shown seasonal pulses in sea turtle strandings which could be magnified if the stranding trend in North Carolina continues northward. Strandings in Virginia are always the highest in the month of June, and the stranding reports for zone 36 (36-37° N. latitude) and zone 37 (37–38° N. latitude [approximately the Virginia-Maryland border]) combined have shown a definite increase in strandings in the past several years. For example, strandings in June of 1994 were recorded to be 62 animals in zones 36 and 37 combined, 81 were found in 1995, 64 in 1996, 145 in 1997, 161 in 1998, and 157 in 1999. A total of 230 dead sea turtles stranded in Virginia in 1999, including 200 loggerheads, 18 Kemp's ridleys, 6 leatherbacks and 6 unidentified turtles. Most of the strandings in Virginia have been documented from the ocean beaches south of Cape Henry and the inshore beaches in southern Chesapeake Bay. Relatively few strandings are reported from the remote and sparsely populated barrier islands of the Eastern Shore.

Based on past data, NMFS anticipates an increase in strandings in Virginia during late May and June with the migration of turtles up the Atlantic coast. Given the unusually high level of strandings in North Carolina this year and the increasing trend in strandings in recent years in Virginia, it is critical that action be implemented to reduce the likelihood that interactions with fishing gear will result in additional mortalities of sea turtles. Several large-mesh gillnet fisheries–monkfish, smooth dogfish, and black drum–are currently operating in Atlantic waters off Virginia and in Chesapeake Bay.

The coastal waters north of Cape Hatteras have warmed rapidly since May 3, and sea turtles are now moving northward toward Virginia. In fact, an aerial survey flown May 6 between the Virginia border and Cape Hatteras, approximately 5 nm offshore, sighted 30 turtles that are already north of Oregon Inlet. South of Oregon Inlet, where the strandings have been occurring, only 3 turtles were sighted. The waters to the north and farther offshore have not been surveyed, but it is clear that turtles are already entering waters off Virginia. No major stranding event has occurred in Virginia yet, but as the turtles continue their northward migration, they will continue to be vulnerable to coastal and offshore large-mesh gillnet fisheries. The turtles will likely still be concentrated on their migratory routes over the next weeks, until they disperse over their foraging grounds. Gillnet fisheries in the path of the migration can capture and kill large numbers of turtles and possibly disrupt other turtles from reaching important feeding areas. Further mortality, added to the already record-setting number of strandings, along with the undetected at-sea mortality, could be extremely damaging to loggerheads, particularly the non-recovering northern population.

Closure of Large-Mesh Gillnet Fishing

Pursuant to 50 CFR 223.206(d)(4), the exemption for incidental taking of sea turtles in 50 CFR 223.206(d)(1) does not authorize incidental takings during fishing activities if the takings may be likely to jeopardize the continued existence of a species listed under the ESA. Regulations at 50 CFR 223.206(d)(4) provide that the Assistant Administrator for Fisheries, NOAA, (AA) may issue a determination that incidental takings in the course of fishing activities are unauthorized, and specify procedures that the AA may use to impose additional restrictions to conserve listed sea turtles and prevent such takings. The level of mortality suffered by loggerhead turtles this spring off eastern North Carolina is already unprecedented and is severely impacting the northern nesting population of loggerheads. Continued mortality caused by incidental capture in large-mesh gillnets during loggerhead migrations along the mid-Atlantic coast could significantly affect this population and its ability to recover and may be likely to jeopardize the species. Therefore, the AA issues this determination that takings of threatened or endangered sea turtles by large-mesh gillnetters in mid-Atlantic waters along eastern North Carolina and Virginia are unauthorized and issues this additional restriction on fishing activities to conserve threatened and endangered sea turtles, particularly loggerhead turtles. Specifically, the AA closes the Atlantic Ocean waters of North Carolina and Virginia and in the mouth of the Chesapeake Bay to all fishing with gillnets with a stretched mesh size of 6 inches (15.24 cm) or greater. The closed area includes all offshore waters bounded by 35°13′ N. latitude on the south (approximately Cape Hatteras), 38° N. latitude on the north (just south of the Maryland-Virginia border), 75° W. longitude on the east, and the North Carolina and Virginia coasts on the west. At inlets, the western boundary of the closed area is the COLREGS demarcation line, except in Chesapeake Bay, where the closed area includes the waters contained in the regulated navigation area for Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters (as defined at 33 CFR 165.501(a)) that are east of the southeastern span of the Hampton Roads Bridge-Tunnel and the line connecting Old Point Comfort Light and Fort Wool Light. This closure is effective from May 12, 2000 through 11:59 p.m. (local time) June 12, 2000. For the duration of this closure, no gillnet with a stretched mesh size measuring 6 inches (15.24 cm) or greater may be set in the closed area. All such gillnets that are currently set must be retrieved by 11:59 p.m on May 15, 2000.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media.

Additional Conservation Measures

The AA may withdraw or modify any additional restriction on fishing activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures.

Classification

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

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered and

threatened sea turtles, primarily the loggerhead sea turtle, pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect the listed sea turtles. Notification of and opportunity to comment on the procedures allowing the implementation of temporary measures to protect sea turtles was provided through the proposed rule which established these actions (57 FR 18446, April 30, 1992). For the same reasons, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. NMFS is making the rule effective May 12, 2000 through June 12, 2000. Immediately, no gillnets with a stretched mesh size measuring 6″ (15.24cm) or greater may be set in the closed area. The rule provides sufficient time—over one day—to retrieve all nets set previously. As stated earlier, this restriction has been announced on the NOAA weather radio, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring turtle excluder device use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this. Copies of the EA are available (see **ADDRESSES**).

Authority: 16 U.S.C. 1531.

Dated: May 12, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–12396 Filed 5–12–00; 4:44 pm]

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