

contingent upon OMB approval. OMB granted approval of the rules on May 4, 2001 under OMB control number 3060-0975. Accordingly, these regulations will become effective May 25, 2001. This notice constitutes publication of the effective date of the regulations.

3. This Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800. This document is also available via the internet at: [http://www.fee.gov/Bureaus/Wireless/News\\_Releases/2001/index.html](http://www.fee.gov/Bureaus/Wireless/News_Releases/2001/index.html) in da01-1206.doc and da01-1206.txtformats.

#### List of Subjects

##### 47 CFR Part 1

Communications common carriers, Telecommunications, Television.

##### 47 CFR Part 68

Communications common carriers, Communications equipment, Telecommunications, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[I.D. 040401B; Docket No. 010507114-1114-01]

RIN 0648-AP20

#### 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 establishing conditions for the closure of the large-mesh gillnet fishery for monkfish in the mid-Atlantic to prevent unauthorized takings of sea turtles listed as threatened or endangered under the Endangered Species Act (ESA).

**DATES:** This temporary rule is effective from May 25, 2001, through June 30,

2001. Comments on this action are requested, and must be received by no later than 5 p.m., eastern daylight time, on June 25, 2001.

**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:

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Mary.A.Colligan@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS is establishing conditions for the closure of the large-mesh gillnet fishery for monkfish in the mid-Atlantic to prevent unauthorized takings of sea turtles listed as threatened or endangered under the Endangered Species Act (ESA). Specifically, NMFS placed fishery observers aboard the vessels fishing for monkfish in waters off North Carolina beginning in late March 2001. NMFS intends to continue to observe 100 percent of the vessels through May 2001 in waters off North Carolina and off Virginia in the months of May and June 2001, to monitor for sea turtle interactions. Documented sea turtle takes by Federal permit holders beyond the levels specified in the incidental take statement of the December 21, 1998, biological opinion for the monkfish fishery are not authorized. If the levels specified in the incidental take statement (ITS) are met, NMFS will immediately file a notification with the Office of the Federal Register. As of the effective date of such notification, fishing with gillnets with a mesh size of 8 inches (20.32 cm) or greater, stretched, will be prohibited for a 30-day period in all offshore Atlantic waters between the North Carolina/South Carolina border and the line of latitude lying 60 nautical miles (nm) north of the position of the northernmost documented sea turtle take. The closure will include all vessels using large mesh gillnets targeting monkfish. If necessary, the closure may be extended for additional 30-day periods through the publication of additional notifications.

#### 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 ITS 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 incidental takings of sea turtles during fishing activities are unauthorized and to impose additional restrictions to conserve listed sea turtles 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.

#### Spring 2000 Sea Turtle Mortality

The Sea Turtle Stranding and Salvage Network documented a record-setting level of sea turtle strandings in North Carolina during the spring of 2000. There were 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 to 17, 2000. There were no externally obvious signs of death on the turtles. Necropsies on 12 loggerheads and 2 Kemp's ridleys 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 considered 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. Conditions that may cause turtles to become cold-stunned, such as rapid drops in temperatures, did not occur and no sightings of cold-stunned turtles were reported to NMFS. There were no major traumatic injuries such as might be caused by dredging or blasting. None of the 58 turtles scanned for hooks with a magnetometer 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. Monkfish gillnetting was initially reported to be over in the area, but NMFS subsequently learned that gillnetters continued landing monkfish in North Carolina through the end of April. 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. Sea turtles can drown in under an hour of forced submergence.

Sea turtle migration patterns and the oceanographic conditions around the Outer Banks in the spring appeared to have created a situation where large numbers of turtles were at risk of interacting with coastal fisheries. 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. In the spring of 2000, the Gulf Stream was quite close to Cape Hatteras: only 10 to 15 nm offshore. As usual, the coastal water inshore of the Gulf Stream had 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. Turtles may have moved inshore with the warm eddy, becoming more vulnerable to coastal fisheries and 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. Warmer waters were only available to sea turtles offshore. 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 numbers and the advanced decomposition of these animals precluded meaningful necropsies. 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.

Analysis of the oceanographic conditions before the second stranding event indicated that 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 for short periods, 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 nm 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 began to wash ashore. Because the satellite imagery shows a distinct water mass moving in from offshore at the exact place and time that the strandings started, it appears 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 were only consistent with gillnets for monkfish. Again, there was no evidence that the turtles had been hooked.

After examination of the strandings on the Outer Banks, NMFS concluded that unauthorized takes in large-mesh gillnets targeting monkfish and possibly dogfish contributed to these sea turtle

mortalities. Other possible causes were not consistent with the nature of the strandings. Satellite sea surface temperature information allowed NMFS to reconstruct the likely times and locations of the sea turtle mortality. Gillnetting for dogfish and monkfish was occurring 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. A new Monkfish Fishery Management Plan (FMP), implemented in November, 1999, includes measures to phase-out the directed monkfish fishery in order to rebuild the resource within 10 years. The FMP includes: a permit requirement that limits participation to fishers that landed monkfish during a qualification period that preceded the North Carolina directed gillnet fishery; limits on the number of days fishers can land monkfish; and a restrictive trip limit, effective May 1, 2000. This restrictive limit may have encouraged fishers to increase their effort in March and April, 2000, in anticipation of the imminent reduction in revenues. Additionally, during that period, fishers who applied for a limited access permit but who were denied one because they did not qualify, were still able to fish while they appealed the denial of their application.

Bluefish gillnetting was also active in offshore waters at the time of the second mortality event. The bluefish fishery, however, uses smaller-mesh nets (5-1/2 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.

In response to these stranding events, on May 12, 2000, NMFS closed 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 through a temporary rule (65 FR 31500) under ESA authority using the procedures at 50 CFR 223.206(d)(4). The closed area included 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. The monkfish gillnet fishery was thus curtailed in this area while smaller mesh gillnet fisheries for bluefish, weakfish, croaker, and some dogfish continued.

After the large mesh closure was in effect, no additional mass stranding events occurred in North Carolina.

However, the monkfish fishery in North Carolina was over by the time the closure went into effect. The North Carolina monkfish fishery is typically active from January through April. It is likely that the closure did not have a significant effect on monkfish fishing in North Carolina, as the vessels had already moved northward by the time the closure was enacted.

The closure also reduced the monkfish gillnetting effort off the coast of Virginia and could have contributed to a lower number of strandings along Virginia's ocean facing beaches. Typically, strandings in Virginia are higher on the ocean facing beaches south of Cape Henry. However, a significant number of strandings still occurred in inshore Virginia waters in 2000, particularly inside the Chesapeake Bay and along the western shores of the Bay. Virginia strandings are typically highest in late May and early June, and over the past several years, stranding reports have shown an increase in strandings throughout Virginia. Comparisons between May and June strandings occurring along the Virginia coast, particularly the Virginia Beach oceanfront region, indicate that a large reduction in strandings occurred between 1999 and 2000 (Mansfield *et al.*, 2001). Due to the large-mesh gillnet closure, as well as the new trip limits imposed by the FMP on May 1, 2000, there was also a reduction in fisheries landings reported within this region. It is probable that the reduction in 2000 offshore strandings along the Virginia coast was at least in part attributable to the large mesh gillnet closure.

#### Impacts on Sea Turtles

The number of dead loggerheads in the two North Carolina stranding events in 2000 is unprecedented. The 10-year stranding average (1989–98) for the entire state of North Carolina for loggerheads is 219 per year; in contrast, 275 loggerheads 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. NMFS believes increased fishing effort, a shift of fishing effort later into the season, fishing methods that are more lethal to sea turtles, and, in 2000, weather and oceanographic conditions that caused sea turtles that were killed offshore to wash onto the beach

contributed to this increase in loggerhead strandings.

Strandings are a minimum indicator of at-sea mortality as winds and currents will carry many carcasses offshore. It has been estimated that strandings represent, at best, only approximately 7 to 13 percent of the at-sea nearshore mortality (Epperly *et al.*, 1996). The turtle mortalities in the second spring 2000 stranding event likely occurred 10–20 nm offshore and only reached shore because a warm eddy broke off.

Continued loggerhead strandings at rates observed in 2000 may pose a serious threat to the species' recovery, especially as the strandings indicate mortalities occurring at a critical 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 its nesting numbers are stable or declining. Previous studies suggest that between 25 and 59 percent of the loggerhead sea turtles found in foraging areas from the northeastern U.S. to Georgia are from the smaller, northern population (TEWG, 2000; NMFS SEFSC, 2001).

#### Continued Threat to Sea Turtles

The environmental conditions that produced the unprecedented levels of sea turtle strandings in spring 2000 may recur in spring 2001. April and May are known to be the months of the year when the highest density of sea turtles occur along the coast of North Carolina (Keinath *et al.*, 1992), and turtles in this area may be vulnerable to entanglements in fishing gear, such as large mesh gillnets.

Regulations under the new monkfish FMP enacted on May 1, 2000, restrict landings of monkfish from approximately Cape Cod south to 996 pounds (452 kg) whole weight of monkfish per day-at-sea fished.

The FMP is likely to reduce fishing effort of North Carolina and Virginia. Through March 27, 2001, only 7 vessels were gillnetting for monkfish off of North Carolina. During March of 2000, 21 gillnet vessels reported monkfish landings in North Carolina. No change in the usual methods and timing of the fishery off the North Carolina coast is anticipated. In any event, the amount of effort in spring 2000 that preceded the large sea turtle mortality events was also rather low: Only 5 federally permitted monkfish boats were fishing off North Carolina in the second half of April,

2000, using about 3 miles (1.86 km) of tied-down gillnets each with soak times of 1 to 3 days. The practice of tying-down nets makes them more effective at snaring large monkfish but also makes them much more effective at entangling sea turtles.

The emergency restriction on large mesh gillnets that was implemented on May 12, 2000, may have temporarily prevented the continuation of excessive sea turtle mortality in waters off North Carolina and Virginia. The restriction came into effect too late, however, to prevent sea turtle interactions with monkfish gillnets off North Carolina that contributed to the strandings of almost 300 sea turtles. Oceanographic conditions and the timing of sea turtle migrations may cause large numbers of sea turtles to coincide again with monkfish gillnet fisheries along the coasts of North Carolina and Virginia through June 2001. Although monkfish gillnet effort will likely be reduced in 2001 compared to 2000, a small amount of large mesh gillnet fishing effort coupled with long soak times can result in sea turtle mortality as suggested by the 2000 mass stranding event in North Carolina. To prevent the recurrence of sea turtle takes this year, proactive measures are being taken to reduce the risk to turtles from the monkfish gillnet fishery and should focus on large-mesh gear that poses the greatest threat. Large-mesh gillnet fisheries occurring along the path where sea turtles migrate can capture and kill large numbers of turtles and possibly disrupt other turtles from reaching important feeding areas.

#### Authorized Level of Incidental Take of Sea Turtles

Some take of sea turtles incidental to the monkfish fishery is authorized. The monkfish fishery was analyzed in a biological opinion signed on December 21, 1998, conducted on the FMP. That biological opinion included an annual incidental take authorization for the entire Federal monkfish fishery of six loggerhead turtles observed taken, with no more than three dead and up to one individual lethal or non-lethal Kemp's ridley, green, or leatherback sea turtle.

The FMP, which phases out the directed monkfish fishery, was supposed to be implemented May 1, 1999, but implementation was delayed until November 8, 1999.

In early 1999, NMFS observers were aboard two monkfish gillnet trips out of North Carolina in March and documented the capture of nine loggerhead, six dead, and one dead Kemp's ridley. These observed takes were unauthorized given that these monkfish trips were not federally

permitted at that time. In 2000, the four loggerhead carcasses carrying pieces of large mesh gillnet attributable to the monkfish fishery, also exceeded the incidental take allowance of three dead loggerheads. NMFS has reinitiated ESA section seven consultation on the FMP due to these sea turtle takes as well as possible takes of right whales. A biological opinion and revised ITS will be issued in the late spring or early summer of 2001.

To prevent the recurrence of unauthorized sea turtle takes this spring, NMFS has implemented an extensive monitoring program to detect sea turtle mortality in the monkfish gillnet fishery early and to curtail fishing quickly if the sea turtle takes meet or exceed the levels in the 1998 ITS. Specifically, NMFS placed fishery observers aboard vessels fishing for monkfish in waters off North Carolina beginning in late March and intends to continue coverage through May 2001 and off Virginia in the months of May and June 2001 to monitor for sea turtle interactions. If documented (e.g., observed by an observer or other Federal or state employee or agent or stranded with clear evidence of monkfish gillnet entanglement) sea turtle takes in the monkfish gillnet fishery meet or exceed the authorized level in the ITS, NMFS will immediately close the area of concern to fishing with large mesh gillnets targeting monkfish. The closure will include all vessels using large mesh gillnets to target monkfish. Some of these vessels are not Federally permitted, and thus are not authorized to take sea turtles as specified in 50 CFR 223.206. A closure of the large mesh monkfish fishery will also apply to these vessels.

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 would violate the restrictions, terms, or conditions, of an incidental take statement or biological opinion or if takings may likely 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. From time to time, the AA has invoked these procedures in response to exceeding incidental take statements or other unauthorized sea turtle mortalities. The process to

implement those restrictions generally requires about 7 days before additional restrictions become effective. Occasionally, there are also difficulties in notifying fishermen of the new restrictions that further affect the timeliness and effectiveness of the sea turtle protective measures.

Because of the rapid occurrence of an unprecedented number of sea turtle mortalities last spring, NMFS is concerned that reliance on the publication of a temporary rule, with its attendant time lag after the authorized level of take is met or exceeded, may result in a high level of illegal takings in the monkfish gillnet fishery this spring and a potentially serious impact to sea turtles. Therefore, NMFS is specifying, through this temporary rule, the procedures that the AA will follow in making determinations of unauthorized takings and implementing restrictions to fisheries. NMFS intends to continue to monitor the incidental take of sea turtles in the monkfish gillnet fishery through May 2001 in waters off North Carolina and in the waters off Virginia in the months of May and June 2001. The AA has determined that, if and when documented incidental takes of sea turtles meet or exceed six individual loggerhead turtles, total, or three dead loggerhead turtles or one individual Kemp's ridley, leatherback, or green turtle, live or dead, any subsequent takings of threatened or endangered sea turtles by monkfish gillnetters will be unauthorized. NMFS will immediately file a notification with the Office of the Federal Register if the authorized take levels are met or exceeded. On and after the effective date of such notification, fishing with gillnets with a mesh size of 8 inches (20.32 cm) or greater, stretched, will be prohibited for a 30-day period in all offshore Atlantic waters between the North Carolina/South Carolina border, and the line of latitude lying 60 nm north of the position of the northernmost documented sea turtle take. Because sea turtles will be migrating northward from Cape Hatteras, the closed area should include all waters to the south of the sites of the interactions as well as provide protection for turtles as they continue to migrate northward. The **Federal Register** notification will explicitly state the area affected by the closure. If necessary, the closure may be extended for additional 30-day periods through the publication of additional notifications. NMFS has reinitiated ESA section 7 consultation on the monkfish fishery. A new biological opinion and ITS will be issued in late spring or early

summer of 2001. Upon completion of the new biological opinion, the AA may withdraw or modify this temporary rule, as warranted.

The fishery affected by this temporary rule is the monkfish gillnet fishery. Fewer monkfish gillnetters are expected to fish the North Carolina and Virginia coasts this year because of the limited access permit requirements in the FMP that reduced the total number of participants and the 996 lb (452 kg) trip limit restriction in waters south of approximately Cape Cod. In North Carolina last year, 21 gillnet vessels reported landings to NMFS from 91 monkfish trips in March, and 19 vessels reported landings from 71 trips in April. In March 2001, only seven boats (four of which have federal limited access monkfish permits) have been fishing for monkfish in North Carolina, completing 24 trips through March 27. Based on this, fishing effort in 2001 in terms of boats and trips appears to be a third of the 2000 levels in North Carolina. In April, May, and June of 2000, monkfish limited access vessels reported landings to NMFS for 125 trips from Virginia ports. A similar reduction in monkfish gillnetting is anticipated in Virginia during 2001.

The possible impact of this temporary rule is difficult to assess because it is uncertain whether and when additional restrictions might be implemented. A worst-case scenario would be the closure of the monkfish gillnet fishery in North Carolina and Virginia for the entire months of May, and June 2001. Assuming that the number of trips made in 2000 (197 trips) for April through June will occur in 2001, and that the number of trips can be averaged across these months, and given the trip limit imposed on May 1, 2000 (996 lb (452 kg) whole monkfish/trip), the maximum landings that may be foregone would be 130,808 lb (59,333 kg), whole. Current ex-vessel prices are around \$0.75–1.25 per pound, so the potential lost revenue from those sales could be around \$130,000. Current fishing effort, however, is less than one-third of last year's level. The monkfish gillnet fleet is also highly mobile, ranging from the Gulf of Maine through the mid-Atlantic, and fishermen would not be forced to forego fishing opportunities as they could still target monkfish farther to the north, where sea turtle interactions are much less likely in the springtime. Consequently, NMFS believes that the potential impact of this temporary rule on monkfish gillnet fishermen would be significantly less than this worst-case scenario analysis. Finally, no additional restrictions may be necessary if sea turtle interactions are avoided. The

gillnet fishermen have significant control over turtle catch rates by their selection of fishing areas and other fishing parameters (e.g., amount of net and length of soak).

The specific details of any restrictions implemented pursuant to the procedure in this temporary rule will be 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. The additional restrictions in this temporary rule will only become effective upon publication of a subsequent notification in the **Federal Register**. Notification of any additional sea turtle conservation measures, including any extensions of any closure, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

#### 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 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 this rule effective from May 25, 2001, through June 30, 2001. Any closures implemented pursuant to this temporary rule will be effective upon filing with the Office of the Federal Register of a notification that additional sea turtle takes in the monkfish fishery are unauthorized. As stated earlier, the specific details of any

restrictions implemented pursuant to the procedure in this temporary rule will be announced on the NOAA weather channel, 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 determinations of unauthorized takings and additional restrictions such as this. Copies of the EA and cited references are available (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1531.

Dated: May 18, 2001.

**Clarence G. Pautzke,**  
*Acting Assistant Administrator for Fisheries.*  
[FR Doc. 01-13170 Filed 5-24-01; 8:45 am]  
**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600 and 648

[Docket No. 010220043-1132-02; I.D. 120400D]

RIN 0648-AN65

#### Foreign Fishing and Fisheries of the Northeastern United States; Final 2001 Specifications for the Atlantic Herring Fishery and Foreign Fishing Restrictions

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

**ACTION:** Final 2001 specifications for the Atlantic herring fishery.

**SUMMARY:** NMFS issues final specifications for the 2001 Atlantic herring fishery. The intent of the specifications is to conserve and manage the herring resource and provide for sustainable fisheries, and to comply with the provisions in the Fishery Management Plan for Atlantic Herring (FMP), which require annual specifications for the fishery.

**DATES:** Effective May 25, 2001 through December 31, 2001.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is accessible via the Internet at <http://www.nero.gov/ro/doc/nr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, (978) 281-9104, e-mail at [Myles.A.Raizin@noaa.gov](mailto:Myles.A.Raizin@noaa.gov), fax at (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

Regulations implementing the FMP appear at 50 CFR part 648, subpart K. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. The FMP requires the New England Fishery Management Council's (New England Council's) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the New England Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPT), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and sub-area identified in the FMP. A proposed rule to implement the 2001 Atlantic herring specifications was published in the **Federal Register** on March 5, 2001 (66 FR 13279) with a comment period ending April 4, 2001.

#### Final 2001 Specifications

The final 2001 specifications are contained in the following table. Changes from the 2000 specifications include increases in OY, DAH, TALFF, DAP, and the TAC reserve for Area 2. The impacts of these changes on the fishery were discussed in the preamble of the proposed rule and are not repeated here.