

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

35. In § 180.205, paragraphs (c)(2)(I), (I)(2) and (I)(3) are revised to read as follows:

§ 180.205 General requirements for requalification of cylinders.

* * * * *

(c) * * *

(2) * * *

(i) Rejected and may be repaired or rebuilt in accordance with § 180.211 or 180.212, as appropriate; or

* * * * *

(i) * * *

(2) When a cylinder must be condemned, the requalifier must —

(i) Stamp a series of X's over the DOT specification number and the marked pressure or stamp "CONDEMNED" on the shoulder, top head, or neck using a steel stamp;

(ii) For composite cylinders, securely affix a label with the word "CONDEMNED", overcoated with epoxy near but not obscuring the original manufacturer's label, to the cylinder; or

(iii) As an alternative to the stamping or labeling as described in this paragraph (I)(2), at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure.

(3) No person may remove or obliterate the "CONDEMNED" marking. In addition, the requalifier must notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material and offered for transportation in commerce where use of a specification packaging is required.

36. A new section 180.212 is added to read as follows:

§ 180.212 Repair of DOT-3 series specification cylinders.

(a) *General requirements for repair of DOT 3 series cylinders.* No person may repair a DOT 3-series cylinder unless prior approval has been obtained in accordance with this section. The repair facility must hold an approval as specified in § 107.805 of this subchapter. The repair and the inspection must conform to the requirements of the applicable cylinder specification contained in part 178 of this subchapter and, except as provided in paragraph (b) of this section, the provisions of an approval issued under subpart H of Part 107 of this subchapter. The person performing the repair must prepare a report containing, at a minimum, the results prescribed in § 180.215.

(b) *Repairs not requiring prior approval.* Approval is not required for the following specific repairs:

(1) The removal and replacement of a neck ring or foot ring on a DOT 3A, 3AA, or 3B cylinder that does not affect a pressure part of the cylinder when performed by a repair facility or a cylinder manufacturer of these types of cylinders. The repair may be made by welding or brazing in conformance with the original specification. After removal and before replacement, the cylinder must be visually inspected and defective cylinders must be rejected. The heat treatment, testing and inspection of the repair under the supervision of an inspector must be performed in accordance with the original specification.

(2) External re-threading of a DOT 3AX, 3AAX or 3T cylinder or internal re-threading of a DOT-3 series cylinder to restore the total number of neck threads engaged to the condition specified in the applicable specification. The repair work must be performed by the original manufacturer of the cylinder. Upon completion of the re-threading, the threaded opening must be inspected by an independent inspection agency and gauged in accordance with Federal Standard H-28 or an equivalent standard containing the same specification limits. The re-threaded cylinder must be stamped clearly and legibly with the words "RETHREAD" on the shoulder, top head, or neck. No cylinder may be re-threaded more than one time without approval of the Associate Administrator.

37. In § 180.417, paragraph (b)(2)(v) is revised to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) * * *

(2) * * *

(v) ASME or National Board Certificate of Authorization number of facility performing repairs, if applicable;

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Issued in Washington, DC on August 5, 2004, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 040726216-4216-01; I.D. 070804B]

RIN 0648-AS49

Atlantic Highly Migratory Species; Reducing Sea Turtle Interactions With Fishing Gear

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is considering adjustments to the regulations governing the Atlantic highly migratory species (HMS) pelagic longline fishery based upon a June 1, 2004, Biological Opinion (2004 BiOp) regarding Atlantic sea turtles. NMFS issues this ANPR to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles in the Atlantic pelagic longline fishery as well comments on as the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur.

DATES: Written comments on this ANPR must be received no later than October 12, 2004.

ADDRESSES: You may submit comments by any of the following methods:

• Email: ID070804B@noaa.gov.

Include in the subject line the following identifier: I.D. 070804B.

• Federal e-Rulemaking Portal: <http://www.regulations.gov>.

• Mail: Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

• Fax: (301)713-1917.

Related documents, including the 2004 BiOp, are available upon request at the mailing address noted above or on the HMS Management Division's web page at: <http://www.nmfs.noaa.gov/sfa/hms>. In addition, the main resource laws that guide NMFS can be found at www.nmfs.noaa.gov/legislation.htm.

FOR FURTHER INFORMATION CONTACT: Russell Dunn, 727-570-5447; fax: 727-570-5656.

SUPPLEMENTARY INFORMATION: The Atlantic tuna and swordfish fisheries are managed under the authority of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 1 to the Atlantic Billfish Fishery Management Plan are implemented by regulations at 50 CFR part 635. The Atlantic pelagic longline (PLL) fishery for these HMS is also subject to the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

Background

NMFS announced the availability of a Final Supplementary Environmental Impact Statement (FSEIS) concerning the reduction of sea turtle bycatch and bycatch mortality in the Atlantic PLL fishery on June 25, 2004 (69 FR 35599), and subsequently published a final rule on July 6, 2004 (69 FR 40734) to implement management measures to reduce bycatch and bycatch mortality of Atlantic sea turtles in the Atlantic PLL fishery. That rulemaking was based on the results of the 3-year Northeast Distant (NED) Closed Area research experiment involving interactions of PLL fishing gear and Atlantic sea turtles, other available studies and information on circle hook and bait treatments, and public comments.

A 2004 BiOp issued for the Atlantic PLL fishery found that the measures that subsequently were included in the final rule were not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but were likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp also identified a Reasonable and Prudent Alternative necessary to avoid jeopardy, and contained an Incidental Take Statement (ITS) for the PLL that specifies the maximum authorized number of interactions with sea turtles. Among other actions, the 2004 BiOp specifies that NMFS review quarterly and annually sea turtle take estimates, and, should these estimates indicate that the PLL fishery is not likely to stay within the authorized 3-year take levels specified in the 2004 BiOp, NMFS shall take corrective action to avoid long-term elevations in sea turtle interactions and ensure that the ITS is not exceeded. Additionally, NMFS must monitor sea turtle post-hooking mitigation and release, and take corrective action to reduce mortalities if fleet-wide gear removal rates are not sufficient to meet mortality performance targets contained in the 2004 BiOp. In this notice, NMFS

announces its intent to undertake additional rulemaking and non-regulatory actions, as necessary, to implement requirements of the 2004 BiOp to ensure that the mortality targets and ITS are not met nor exceeded.

The PLL fishery is currently operating under the ITS level specified in the 2004 BiOp; thus, no corrective actions are needed at this time. However, the 2004 BiOp advises consideration of a framework mechanism to facilitate more timely implementation of corrective actions and to provide greater certainty on potential management responses. Thus, in this ANPR, NMFS is exploring a potential mechanism and/or individual corrective actions that might be necessary if any exceedance occurs.

Potential Management Measures

If sea turtle interactions and/or mortality exceed anticipated levels, the 2004 BiOp specifies that corrective measures should be taken. As described below, such actions could include time/area closures, additional gear modifications or gear restrictions, improvements in gear removal tool design, training program adjustments, or any other action that is deemed appropriate. The goal of any of these management measures would be to ensure that total sea turtle takes do not exceed long-term average take rates over 3-year periods. These measures may be considered individually or as an overarching framework that would give NMFS the ability to adjust the management measures, as appropriate, in order to reduce sea turtle bycatch and bycatch mortality, per the 2004 BiOp.

If the ITS is expected to be exceeded, potential time/area closures could include modifications to existing closures or the addition of partial, rolling or permanent closures. NMFS may also consider establishing Dynamic Area Management protocols similar to those established under the Atlantic Large Whale Take Reduction Plan. Any of these types of closures could act to remove effort from areas where and when a large number of sea turtle interactions are likely to occur in order to reduce the number of sea turtle interactions.

Additional potential management measures to prevent exceeding the mortality targets or ITS could include limits on fishing effort including limiting the number of sets fishery-wide, the number of sets per trip, the number of hooks per set, or the number of trips per year or quarter. In addition, NMFS may consider options to close the fishery for the month, quarter, fishing season, or year if a certain number of sea turtles are taken per set, trip, or quarter

based on observed, estimated, or reported takes. NMFS may also consider additional modifications to existing hook and bait configurations or the turtle release gear, as more information is collected and analyzed. These types of management measures could reduce fishing effort and/or improve post-release survival in order to ensure that the ITS specified in the 2004 BiOp is not exceeded.

Request for Comments

NMFS requests comments on possible changes to the current regulations regarding fishing for Atlantic HMS with pelagic longline gear. Specifically, NMFS requests comments on individual or framework actions, including those described above, to ensure that mortality targets and the ITS specified in the BiOp are not met nor exceeded. In addition, NMFS also requests comments on any other possible regulatory changes that might further minimize sea turtle bycatch or bycatch mortality.

Written comments received by the due date will be considered in drafting any proposed changes to the Atlantic HMS regulations. In developing any proposed regulations, NMFS will need to consider and analyze the ecological impacts of any actions under consideration with regards to target species and protected species, such as sea turtles, and other possible environmental effects. NMFS will also need to analyze the social and economic impacts of any changes to the fishery and related industries. To that end, NMFS would appreciate any comments that include information that would aid in those analyses. For example, comments could address how different types of regulatory measures may affect sea turtles or the PLL fishery. From the resource perspective, comments could address regulatory measures that would further protect sea turtles. Comments could also address how the PLL fishery may be impacted, both strategically and economically, by any changes that would further protect sea turtles, and suggest measures that would protect sea turtles but yet be compatible with the PLL fishery, or suggest measures that would minimize any unavoidable negative impacts on the fishery. Relevant data or other information could be included in support of these comments.

Classification

This action is significant pursuant to Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 9, 2004.

Rebecca Lent,

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

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