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Dated: September 28, 2000.

Kenneth L. Smith,*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 000928277-0277-01; I.D. 091100A]

RIN 0648-AO67

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues emergency regulations to implement a time and area closure for pelagic longline fishing, within the Northeast Distant Statistical Sampling (NED) Area. Additionally, this rule requires all pelagic longline vessels that have been issued Federal highly migratory species (HMS) fishing permits and that fish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, to carry on board dipnets and line clippers meeting NMFS design and performance standards. These regulations are necessary to reduce the bycatch and bycatch mortality of loggerhead and leatherback sea turtles by the Atlantic pelagic longline fishery.

DATES: This emergency rule is effective October 10, 2000, through April 9, 2001, except that the amendment to § 635.21(c)(5) is effective November 24, 2000, through April 9, 2001. Comments must be received no later than 5 p.m. on January 8, 2001.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Christopher Rogers.

FOR FURTHER INFORMATION CONTACT:

Margo Schulze-Haugen, Karyl Brewster-Geisz, or Tyson Kade at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

Pelagic Longline Fishery

Pelagic longline gear is the dominant commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

Observer data and vessel logbook data indicate that pelagic longline fishing for Atlantic swordfish and tunas results in catch of such non-target finfish species, as bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and endangered sea turtles. The bycatch of fish that are hooked but not retained due to economic or regulatory factors contributes to overall fishing mortality. Such bycatch mortality may significantly impair the rebuilding of overfished finfish stocks. Additionally, the bycatch of protected species (sea turtles or marine mammals) may significantly impair the recovery of these species.

Consistent with national standard 9 of the Magnuson-Stevens Act, NMFS has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery. In 1999, NMFS implemented a time and area closure in the Mid-Atlantic bight for the month of June to reduce bycatch of Atlantic bluefin tuna (64 FR 29090, May 28, 1999). Additionally, NMFS implemented a year-round time and area closure in the northeastern Gulf of Mexico (DeSoto Canyon), effective November 1, 2000; a year-round time and area closure along the east coast of Florida, effective February 1, 2001; and a 3-month time and area closure off Georgia, South Carolina, and a portion of North Carolina (Charleston Bump), effective February 1, 2001 (65 FR 47214, August 1, 2000).

Sea Turtle Bycatch Reduction

Under the Endangered Species Act (ESA), NMFS is required to address fishery-related take of sea turtles that are listed as threatened or endangered. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries of turtles taken by pelagic longline gear. On November 19, 1999, NMFS re-initiated consultation under section 7 of the ESA based on preliminary reports observing that incidental take of loggerhead sea turtles by the Atlantic pelagic longline fishery during 1999 had exceeded levels anticipated in the Incidental Take Statement previously issued for the HMS FMP. Additionally, the consultation considered the impacts of the pelagic longline rulemaking that was in preparation because it was recognized that certain time and area closures, if implemented, could affect the overall interaction rates of the pelagic longline fleet with sea turtles.

National standard 9 of the Magnuson-Stevens Act requires that conservation and management measures, "to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Sea turtles are defined as bycatch in the Magnuson-Stevens Act because they may not be retained and must be released. In certain times and areas, the Atlantic pelagic longline fishery has relatively high rates of sea turtle bycatch, with associated mortality.

In its most recent Biological Opinion (BO) on management of the Atlantic HMS fisheries, completed June 30, 2000, NMFS concluded that operation of the pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. This conclusion was based on the current status of the loggerhead and leatherback sea turtle populations in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico, the status of the northern subpopulation of loggerhead sea turtles, and the anticipated continuation of current levels of injury and mortality of both species described in the environmental baseline and cumulative effects section of the BO. The future trend of species abundance considers the current rate of bycatch in HMS fisheries and the potential shifts in effort estimated in the Final Supplemental Environmental Impact Statement on the Regulatory Amendment to the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan.

Since the June 30, 2000, BO was issued, NMFS has concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS has re-initiated consultation. NMFS anticipates completing the consultation and issuing a new BO in early 2001. Until the consultation is completed and appropriate long-term measures can be determined, NMFS is implementing these emergency measures in the short-term to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery.

After the June 30, 2000, BO was issued, NMFS conducted a series of seven scoping workshops in locations where pelagic longline vessels make landings and which could potentially be affected by implementation of the reasonable and prudent alternatives identified in that BO. NMFS received numerous comments that the alternatives identified in the June 30, 2000, BO would have significant economic impacts and would potentially eliminate segments of the Atlantic pelagic longline fleet. Commentors questioned the validity of the June 30, 2000, BO conclusions and suggested alternative measures that NMFS could analyze to reduce sea turtle bycatch. These alternative measures included gear deployment modifications, such as fishing deeper and colder waters, increasing the number of hooks between floats, using different bait, avoiding warm core eddies, and using line clippers to remove gear on captured sea turtles. Additionally, NMFS received comments that agency guidance on sea turtle handling and release has been confusing and that clarification of guidelines would reduce the number of sea turtles released with fishing gear attached. The measures implemented in this rule are based in part on the consideration of these comments.

Time and Area Closure and Gear Requirements

The goal of this regulation is to reduce the incidental take and mortality of sea turtles captured by pelagic longlines. The first measure is a time and area closure that will reduce the number of sea turtles caught by the pelagic longline fleet in the NED area. The NED area has a historically high level of incidental sea turtle captures. The regulation will close an L-shape area to vessels that have been issued Federal HMS permits and use pelagic longline gear. The closed area is bounded by the

following coordinates: 45°00' N. lat., 49°00' W. long.; 45°00' N. lat., 43°00' W. long.; 43°00' N. lat., 43°00' W. long.; 43°00' N. lat., 47°00' W. long.; 41°00' N. lat., 47°00' W. long.; 41°00' N. lat., 49°00' W. long.; 45°00' N. lat., 49°00' W. long. This area is closed to pelagic longline fishing from October 10, 2000, through April 9, 2001.

The second measure is designed to reduce the mortality rate of captured sea turtles. All Atlantic pelagic longline vessels that have been issued Federal HMS permits by [insert date 45 days after date of filing in the **Federal Register**] must carry on board dipnets and line clippers that meet NMFS design and performance standards and must comply with requirements for the use of these dipnets and line clippers and for the handling of incidentally caught sea turtles. Dipnets and line clippers will enable the vessel captain and crew to disengage sea turtles caught or entangled in their gear. Technical descriptions of the dipnet and line clipper gear are available from NMFS (see **ADDRESSES**) and are also included in this rule. The starting date for this requirement allows fishermen ample opportunity to purchase or fabricate the gear.

Classification

These emergency regulations are published under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act. The Assistant Administrator (AA) has determined that these regulations are necessary to reduce, to the extent practicable, the bycatch and bycatch mortality of sea turtles in the pelagic longline fishery.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact would result. This emergency rule is of limited duration and is expected to result in a reduction of overall sea turtle bycatch and bycatch mortality associated with the pelagic longline fisheries. NMFS intends to complete the consultation on HMS fisheries in early 2001, and any reasonable and prudent alternatives to jeopardy to sea turtles would be implemented prior to the primary pelagic longline fishing season (July through October) in the NED area.

NMFS also prepared a Regulatory Impact Review for this action which assesses the economic costs and benefits of the action. In the time period between January 1, to March 31, 1998, and October 1, to December 31, 1998, 12 vessels made 13 trips to the NED area. During the same time periods in 1999, 8 vessels made 10 trips to the NED area.

The estimated gross revenues for this fishery in this timeframe were \$819,620 in total and averaged \$68,302 per vessel in 1998 and were \$794,678 in total and averaged \$99,335 per vessel in 1999.

In 1998, 11 vessels fished in the L-shape closed area within the NED area, and 7 vessels fished in the L-shape closed area in 1999. The estimated gross revenues for these vessels from the L-shape closed area from October 1 to March 31 were \$525,771 in total and averaged \$47,797 per vessel in 1998 and were \$548,439 in total and averaged \$78,348 per vessel in 1999. Closing this area for the duration of the emergency rule beginning October 10, 2000, could result in losses of approximately 25 to 40 percent in annual gross revenues per vessel, when considering catch taken in 1998 or 1999. However, this assumes that these fishermen would not fish in any other portion of the NED area or in another statistical area. This is not realistic, especially considering the fact that the logbooks indicate that the fishermen have historically fished both inside and outside the closed area within the same trip. NMFS believes that, although some revenues may be lost as a result of this closure, it is likely that fishermen will be able to compensate for lost revenues by fishing in portions of the NED area that remain open or by fishing in other statistical areas.

Requiring the use of line clippers and dipnets to release hooked turtles is not expected to increase costs substantially. In a similar rule for the fisheries in the Western Pacific, NMFS estimated the total cost for the materials to fabricate and/or purchase line clippers and dipnets to be \$250 (65 FR 16347, March 28, 2000).

Closing this area is likely to cause some individual fishermen, processors, dealers, and suppliers to experience a slight increase in costs and possibly a large decrease in gross revenues. This emergency rule should not affect the fishery as a whole because the fishermen can and do fish in other areas. Also, it does not limit the amount of fish that may be landed. Finally, this emergency rule is of limited duration. The modification of the definition of pelagic longline gear will not result in any economic impacts not previously considered.

This emergency rule has been determined to be significant for the purposes of Executive Order 12866.

NMFS issues this emergency rule, effective for 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This emergency rule may be extended for an additional 180 days provided the public has had an

opportunity to comment on the emergency rule and, at the time of extension, a plan amendment or proposed regulations to address sea turtle bycatch and bycatch mortality on a permanent basis is being actively pursued. Public comments on this emergency rule will be considered in determining whether to maintain or extend this emergency rule to reduce sea turtle bycatch. Responses to comments will be provided if the emergency rule is revoked, modified, or extended. Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule, the analytical requirements of the Regulatory Flexibility Act are not applicable and no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such provisions would be contrary to public interest. This emergency rule is necessary to reduce the anticipated impacts of the pelagic longline fishery on listed sea turtles. The NED area closure is scheduled to be in effect October 10, 2000, in order to reduce sea turtle bycatch and bycatch mortality in the remaining portion of the fishing season in the NED area. The months of July through November, are historically high periods of sea turtle interactions. If this action is delayed, then the expected reduction in sea turtle bycatch and bycatch mortality will not occur, contrary to the public interest, because the highest level of fishing activity in the NED area will have already occurred.

The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the time and area closure within the NED area for the 30 days normally required. The AA finds that these measures are necessary to reduce sea turtle bycatch and bycatch mortality. Given NMFS's ability to communicate rapidly these regulations to fishing interests through the HMS Fax network, NOAA weather radio, press releases, mailing lists, and the HMS Infoline, the AA has determined there is good cause for a partial waiver of the 30-day delay in the effective date for the area closure because such delay would be contrary to the public good.

NMFS has determined that this emergency rule is consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have

approved coastal zone management programs.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: October 10, 2000.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635— ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

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

2. In § 635.2, a new definition for "Northeast Distant closed area" is added alphabetically to read as follows:

§ 635.2 Definitions.

* * * * *

Northeast Distant closed area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 45°00' N. lat., 49°00' W. long.; 45°00' N. lat., 43°00' W. long.; 43°00' N. lat., 43°00' W. long.; 43°00' N. lat., 47°00' W. long.; 41°00' N. lat., 47°00' W. long.; 41°00' N. lat., 49°00' W. long.; 45°00' N. lat., 49°00' W. long.

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3. In § 635.21, paragraph (c)(2)(v) is added, and paragraph (c)(5) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(2) * * *

(v) In the Northeast Distant closed area from October 10, 2000, local time, through April 9, 2001.

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(5) Sea turtle take mitigation measures. The following measures to reduce sea turtle post-release mortality are effective November 24, 2000 through April 9, 2001.

(i) Possession and use of required mitigation gear. Line clippers meeting minimum design standards as specified in paragraph (c)(5)(i)(A) of this section and dipnets meeting minimum standards prescribed in paragraph (c)(5)(i)(B) of this section must be carried aboard all Federally permitted vessels engaged in pelagic longline

fishing and must be used to disengage any hooked or entangled sea turtles as close as possible to the hook to prevent any harm to the sea turtles in accordance with the requirements specified in paragraph (c)(5)(ii) of this section.

(A) Line clippers. Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The minimum design standards are as follows:

(1) A protected cutting blade. The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(2) Cutting blade edge. The blade must be capable of cutting 2.0-2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(3) An extended reach holder for the cutting blade. The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(4) Secure fastener. The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(B) Dipnets. Dipnets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that prevents injury and trauma to sea turtles. The minimum design standards for dipnets that meet the requirements of this section nets are:

(1) An extended reach handle. The dipnet must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(2) Size of dipnet. The dipnet must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm x 7.62 cm).

(ii) Handling requirements. (A) All incidentally taken sea turtles brought aboard for dehooking and/or disentanglement must be handled in a manner to prevent injury and promote post-hooking survival.

(B) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in § 223.206(d)(1).

(C) If a sea turtle is too large or hooked in such a manner as to preclude

safe boarding without causing further damage/injury to the turtle, line clippers described in paragraph (c)(5)(i)(A) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

* * * * *

4. In § 635.71, paragraphs (a)(33) and (a)(34) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic longline gear on board without carrying a dipnet and line clipper as specified at § 635.21(c)(5)(i).

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21(c)(5)(ii).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991104295-0259-02; I.D. 100599D]

RIN 0648-AM74

Fisheries of the Northeastern United States; Dealer and Vessel Reporting Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend the existing reporting regulations for dealers and owners whose vessels are federally permitted to operate in the summer flounder, scup, black sea bass, Atlantic sea scallop, Northeast (NE) multispecies, monkfish, Atlantic mackerel, squid, butterfly, surfclam, ocean quahog, spiny dogfish or Atlantic bluefish fisheries. Changes to the existing regulations are needed to improve the monitoring of commercial landings and to enhance the enforceability of the reporting regulations. The intent of this action is to improve the collection of fisheries-dependent data.

DATES: Effective November 13, 2000.

ADDRESSES: Copies of the Regulatory Impact Review supporting this action are available from Patricia A. Kurkul,

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul and to the Office of Information and Regulatory Affairs, Attention: NOAA Desk Officer, Office of Management and Budget, Washington, D.C. 20503. Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Patricia Kurkul.

FOR FURTHER INFORMATION CONTACT:

Sandra Arvilla, (978) 281-9255, Kelley McGrath, (978) 281-9307 or Gregory Power, (978) 281-9304.

SUPPLEMENTARY INFORMATION:

Background

In order to improve monitoring of commercial landings and to enhance enforceability of the reporting regulations, this final rule clarifies or modifies several of the existing reporting requirements for dealers and owners whose vessels are federally permitted in the summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfly, surfclam, ocean quahog, spiny dogfish or Atlantic bluefish fisheries. Regulations implementing the fishery management plans (FMPs) for the summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfly, surfclam, ocean quahog, spiny dogfish and Atlantic bluefish fisheries were prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are found at 50 CFR part 648. A proposed rule to implement these changes was published on December 2, 1999 (64 FR 67551). NMFS reopened the comment period on the proposed rule to ensure that affected fishermen and dealers were aware of the proposed reporting changes and had an opportunity to provide comments (65 FR 7820, February 16, 2000).

Trip Identifier

One of the data elements that dealers are required to provide on the weekly reports is a trip identifier for each trip from which fish are purchased. This requirement is in the existing regulations. However, the term "trip identifier" has not been defined and, thus, has not been reported by industry. Supplying a trip identifier for each trip from which fish are purchased would aid in matching dealer data with the corresponding vessel data by using a

uniquely identifiable serial number from the vessel logbook, if applicable, or a combination of the date sailed, and, if the vessel sailed more than once on the same day, the sequential trip number within that date sailed. To enable dealers to provide the trip identifier to NMFS, vessel owners/operators would have to provide each dealer with the trip identifier information at the time of offloading.

Because dealer compliance would be dependent upon compliance by the vessel owner/operator, establishing responsibility for compliance would be difficult, making fair and equitable enforcement of the requirement equally difficult. Thus, a requirement to provide a trip identifier is not being imposed at this time. Due to the importance of establishing a link between the dealer and vessel data, NMFS intends to make reporting a trip identifier mandatory in the near future. NMFS will work with industry members to explore various options for transferring trip identifier information from vessels to dealers without overly burdening either party. NMFS encourages the industry to assist in the development of alternative methods for providing this information.

Dealer Reporting Changes

This final rule modifies two requirements affecting summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfly, spiny dogfish or Atlantic bluefish dealers, and two requirements affecting surfclam or ocean quahog dealers.

To collect more comprehensive and accurate data on the processing segment of the industry, dealers who have been issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfly, spiny dogfish or an Atlantic bluefish permit must complete all sections of the Annual Processed Products Report.

Federally permitted dealers must retain copies of reports, and records upon which the reports were based, for a total of 3 years after the date of the last entry on the report. This time frame is in keeping with standard business practices and will allow for validating the compliance of past landings reported by dealers and vessels.

To ensure that quotas in the surfclam and ocean quahog fisheries are not exceeded, harvest levels must be monitored on a timely basis. While dealers have historically provided these data on a weekly basis, this action specifies that reports must be postmarked or received within 3 days of the end of the reporting week.