

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[FCC No. 06–160; MB Docket No. 02–136; RM–10458, RM–10663, RM–10667, RM–10668]

Radio Broadcasting Services; Aberdeen, WA; Arlington and Astoria, OR; Bellingham and College Place, WA; Coos Bay, OR; Covington, Forks, and Fossil, WA; Gladstone, OR; Hermiston, OR; Hoquiam, WA; Ilwaco, Kent, and Long Beach, WA; Manzanita, Moro and Portland, OR; Shoreline, WA; Springfield-Eugene, OR; The Dalles and Tillamook, OR; Trout Lake and Walla Walla, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of application for review.

SUMMARY: This document denies an Application for Review filed by Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition directed to the *Report and Order* in this proceeding. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MB Docket No. 02–136, adopted October 25, 2006, and released October 31, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or <http://www.BCPIWEB.com>. This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Memorandum Opinion and Order* to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the application for review was denied.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E6–19252 Filed 11–14–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 223**

[Docket No. 061030282–6282–01; I.D. 102506A]

RIN 0648–AU97

Endangered and Threatened Wildlife; Sea Turtle Conservation; Correction

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

ACTION: Emergency final rule; correction.

SUMMARY: On August 25, 2006, NMFS issued a final rule to require the use of chain mats on sea scallop dredges in the mid-Atlantic sea scallop fishery in order to help protect sea turtles. The regulation became effective on September 25, 2006. Shortly after the rule's effective date, NMFS became aware of a discrepancy between the two options in the regulation for configuring the chain mat. This emergency final rule corrects the existing regulation to ensure that the protection to sea turtles expected from the August 25, 2006 rule is achieved. This emergency final rule requires that any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, present in waters south of 41° 9.0' N. lat., from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat composed of horizontal (tickler) and vertical ("up-and-down") chains for the duration of the trip. The chains must be configured such that the length of each side of the square or rectangle formed by the intersecting chains is less than or equal to 14 inches (35.5 cm). Any incidental take of threatened sea turtles in sea scallop dredge gear in compliance with this gear modification requirement and all other applicable requirements will be exempted from the Endangered Species Act's prohibition against takes.

DATES: Effective November 18, 2006.

ADDRESSES: Ellen Keane, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Ellen Keane (ph. 978–281–9300 x6526, fax 978–281–9394, email ellen.keane@noaa.gov) or Barbara Schroeder (ph. 301–713–2322, fax 301–427–2522, email barbara.schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:**Background**

On August 25, 2006, NMFS issued a final rule to require sea turtle conservation measures for all sea scallop dredge vessels fishing south of 41° 9.0' N. latitude from May 1 through November 30 each year (71 FR 50361, "chain mat regulation"). The chain mat regulation is in effect now and the requirement to use chain mats applies each year from May 1 through November 30. All vessels with a sea scallop dredge required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, are required to modify their dredge(s) when present in waters south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone (EEZ). Vessels that harvest sea scallops from these waters are required to have the chain mat installed on their dredge(s) for the duration of the trip. This action was necessary to help reduce mortality and injury to endangered and threatened sea turtles in scallop dredge gear and to conserve sea turtles listed under the Endangered Species Act (ESA). For background information and justification for these measures, please refer to the May 25, 2005 proposed rule (70 FR 30660), the August 2006 final rule and the Environmental Assessment (EA) prepared for that action.

The chain mat regulation provides fishermen with two options for configuring the gear. Under the first option, fishermen are required to use a specified number of vertical and horizontal chains depending on the width of the dredge. The second option requires that the gear be configured such that no opening was greater than 14 inches (35.5 cm) on a side. The spacing of the chains under the first option was intended to be based on the experimental fishery (July 17, 2003 – October 9, 2004) to test the chain mat gear. The August 2006 final rule and EA include details of the study. During the experimental fishery, 11 vertical and 6 horizontal chains were used for the 14 and 15 ft (4.27 and 4.57 m) dredges, while 9 vertical and 6 horizontal chains were used for the 11 ft (3.35 m) dredge. Spaced on a normal sweep arrangement, this configuration resulted in a square or rectangle that was less than or equal to 14 inches (35.5 cm) on each side. The study showed that the use of a chain mat of this size prevented sea turtles from entering the dredge bag and injuries that resulted from such capture. NMFS believed that the two options for configuring the chains produced the same result, namely rectangles or

squares with sides measuring 14 inches (35.5 cm) or less. Based on the results of the experimental fishery to test the chain mat, the life history of sea turtles, and the size of sea turtles observed taken in the sea scallop dredge fishery, a spacing of 14 inches (35.5 cm) or less is expected to prevent most, if not all, sea turtles from entering the dredge bag.

Shortly after the rule's effective date, NMFS became aware of a discrepancy between the two options in the regulation for configuring the chain mat. Fishermen reported that gear configured according to the number of chains specified by dredge width could result in openings of 16.5 inches (42.9 cm). NMFS investigated these reports and found that, depending on the dredge width and configuration, using the number of chains specified for the dredge width does result in openings greater than 14 inches (35.5 cm) in certain cases. The larger-than-expected openings may reduce the chain mat's effectiveness in reducing sea turtle injuries because sea turtles may slip through the chain mat and enter the dredge bag. Once in the dredge bag, sea turtles are at risk of serious injury and mortality as they may be struck by its contents, forcibly submerged, and/or dumped on the vessel's deck and crushed by the gear. The August 2006 final rule was issued in order to prevent these sources of serious injury and mortality. Therefore, NMFS is issuing this emergency final rule to correct the mistake in the chain mat regulation in order to ensure it achieves its intended purpose to help protect sea turtles listed under the ESA during the time when the distribution of sea turtles overlaps with that of the scallop fishery, namely from May through November. This rule is issued pursuant to sections 4(d) and 11(f) of the ESA. It requires that all sea scallop vessels present in mid-Atlantic waters from May 1 through November 30 configure their dredges such that no opening in the chain mat is greater than 14 inches (35.5 cm) on a side. The area affected by the regulation remains waters south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the EEZ. The temporal extent of the regulation remains May 1 through November 30 each year.

The EA for Sea Turtle Conservation Measures for the mid-Atlantic Sea Scallop Dredge Fishery analyzed the biological, physical, economic, and social impacts that would result from the chain mat regulation, as well as a number of other alternatives. The analysis presented in the EA for the biological and physical consequences of the chain mat regulation evaluated the impacts resulting from the expected

opening of 14 inches (35.5 cm) or less. Therefore, the impacts of the chain mat configuration required by this emergency rule have been analyzed in the previous EA. This action is categorically excluded from the requirement to prepare either an EA or an Environmental Impact Statement under the National Environmental Policy Act. The categorical exclusion prepared for this emergency rule discusses the minor impacts that may result from this action.

The EA also analyzed the economic and social impacts of the August 2006 chain mat regulation. The cost of the gear modification is composed of the potential revenue loss due to a reduction in sea scallop dredge catch and the cost of the material and labor to configure the dredge. The potential reduction in catch was based on the results of the experimental fishery to test the chain mat modified gear. The experimental fishery used three dredge widths (11-, 14-, and 15-ft dredge widths (3.35, 4.27, and 4.57 m)) with chain mat openings less than or equal to 14 inches (35.5 cm). During the experimental fishery, an average reduction of approximately 6.7 percent was observed. This average loss was used to estimate the cost due to a reduction in scallop catch. As this analysis was based on openings of less than or equal to 14 inches (35.5 cm) per side used in the experimental fishery, this emergency final rule is not expected to result in any additional costs due to scallop catch reduction that have not already been evaluated in the EA for the chain mat regulation.

The second cost is the cost to modify the gear, namely, the costs to purchase and install the chains. Since many vessels have already installed the chain mat, there will be a slight additional cost to reconfigure the gear to comply with the new regulation. However, this cost is expected to be minimal. First, as described above, vessels could choose one of two options for configuring the gear. Some vessels have chosen to configure it such that the openings are less than 14 inches (35.5 cm) and, therefore, will not have to reconfigure the gear. Additionally, openings greater than 14 inches (35.5 cm) only result from using the specified number of chains in certain cases, depending on dredge width and configuration. Therefore, some vessels following the specified number of chains will also not have to reconfigure their gear. However, an unknown number of vessels will need to reconfigure the gear. For these vessels, the cost is expected to be minimal. NMFS does not anticipate that this emergency rule will result in any

loss of fishing time for vessels that need to reconfigure the gear. There are two costs in reconfiguring the gear, the cost of materials and the cost of labor. These vessels will have already purchased the majority of the chain needed to configure the chain mat. There will be a slight additional cost for the purchase of additional chain in order to achieve openings equal to or less than 14 inches (35.5 cm). However, the amount of additional chain needed will be less than that already purchased. The EA estimated a labor cost of approximately 50 dollars per dredge if the vessel were to use a welder to attach the chain mat. This emergency final rule will require some additional welding, but this cost is minimal. Therefore, this emergency final rule does not significantly change the economic impacts anticipated in the EA.

Classification

This final rule has been determined to be not significant by the Office of Management and Budget for the purposes of Executive Order 12866.

Because the rulemaking requirements of 5 U.S.C. 553 are not required by the Administrative Procedure Act or any other law, the analytical requirements of the Regulatory Flexibility Act are not applicable.

The Assistant Administrator for Fisheries (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and opportunity for public comment on this rule as it would be impracticable and contrary to the public interest. On August 25, 2006, NMFS issued a final rule requiring chain mats to be used under certain conditions on scallop dredges in order to help protect sea turtles (71 FR 50361). The August 25, 2006, final rule became effective on September 25, 2006. Shortly after the rule's effective date, NMFS was made aware of a discrepancy between the two options in the regulation for configuring the chain mat. One option was to use the specified number of horizontal and vertical chains based on width of dredge frame; the other option was to use as many horizontal and vertical chains that would produce rectangles or squares with sides equaling 14 inches (35.5 cm) or less. NMFS believed that the two options would produce the same result, namely rectangles or squares with sides measuring 14 inches (35.5 cm) or less. Based on the results of the experiment to test the chain mat modification, the life history of loggerhead sea turtles--the predominant species observed caught in dredges-- and the size of sea turtles observed taken in the sea scallop dredge fishery, a spacing of 14 inches

(35.5 cm) or less is expected to prevent most, if not all sea turtles, from entering the dredge bag. However, upon implementation of the August 25, 2006, final rule, NMFS discovered that, at least for some dredge widths, using the specified number of vertical and horizontal chains produces rectangles or squares that are greater than 14 inches (35.5 cm).

This emergency final rule must be implemented immediately because the variance in chain mat configurations may reduce the effectiveness of the regulation in reducing sea turtle injuries. Under the current regulations, for some chain mat configurations based on dredge width and the specified number of horizontal and vertical chains, some sea turtles may slip through the openings in the chain mat and enter the dredge bag. As explained in the preambles to the proposed (70 FR 30660, May 27, 2005) and final (71 FR 50361, August 25, 2006) rules regarding the chain mat requirement, sea turtles that enter the dredge bag are at risk of injury and mortality as they may be struck by the contents of the dredge bag, forcibly submerged, and/or dumped on the vessel's deck and crushed by the gear.

The best available information indicates that a large number of sea turtles are injured and killed in the scallop dredge fishery when it overlaps with sea turtles in the mid-Atlantic (NMFS, 2006). Loggerhead, Kemp's ridley, and green sea turtles undergo temperature dependent seasonal migrations along the mid-Atlantic coast (Morreale and Standora, 1998; Plotkin and Spotila, 2002). In general, these sea turtles occur in waters from Virginia to New York from May through November and in waters off North Carolina year-round (NMFS, 1994), although they are considered rare north of Cape Hatteras in the winter (Mitchell *et al.*, 2003). NMFS does not anticipate any fishing south of Cape Hatteras due to the lack of scallop resources there. When the sea temperature drops in the Mid-Atlantic, sea turtles migrate away from the area and are at less risk of getting caught in the dredge bag. Data show that sea turtle distribution overlaps with that of the scallop dredge fishery in the Mid-Atlantic during the period from May 1 through November 30. Therefore, the potential for interactions between the scallop dredge fishery and sea turtles exists this year through November, and sea turtles remain at risk of injury or mortality due to capture in the dredge bag unless this rule is implemented immediately.

It would be impracticable and contrary to the public interest to allow

for prior notice and an opportunity for public comment on this final rule as the delay would prevent the agency from executing its function of conserving sea turtles listed as threatened or endangered under the Endangered Species Act. The overlap between the sea scallop dredge fishery and sea turtle distribution in the Mid-Atlantic lasts from May 1 through November 30. During this period, sea turtles are at the greatest risk of injury and mortality due to interactions with scallop dredge gear. If this regulation were delayed to allow for prior notice and opportunity for public comment, sea turtles would remain exposed to the risk of slipping through chain mats configured with openings greater than 14 inches (35.5 cm) and of being injured or killed as a result.

To ensure the chain mat requirement provides the intended conservation benefit to listed sea turtles, NMFS must correct the chain mat regulation as soon as possible given that the distribution of sea turtles overlaps with the scallop fishery through November. Therefore, good cause exists under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and opportunity for public comment.

The AA also finds good cause under 5 U.S.C. 553(d)(3) to waive part of the 30-day delay in effective date of this final rule. Such a delay would reduce the level of protection afforded to sea turtles during the period their distribution overlaps with the scallop dredge fishery. The overlap between the sea scallop dredge fishery and sea turtle distribution in the Mid-Atlantic lasts from May 1 through November 30. During this period, sea turtles are at the greatest risk of injury and mortality due to interactions with the dredge gear. If the effective date of this regulation were delayed, sea turtles would remain exposed to the risk of slipping through chain mats configured with openings greater than 14 inches (35.5 cm) and of being injured or killed as a result. In addition, allowing for a 30-day delay in effectiveness would prevent the agency from executing its function of conserving sea turtles listed as threatened or endangered under the Endangered Species Act. However, because some fishermen may need some time to modify their chain mats to attach extra chains, NMFS will delay the effective date of this rule until November 20, 2006.

Literature Cited

Mitchell, G. H., R. D. Kenney, A. M. Farak, R. J. Campbell. 2003. Evaluation of occurrence of endangered and threatened marine species in naval ship

trial areas and transit lanes in the Gulf of Maine and offshore of Georges Bank. Naval Undersea Warfare Center Division Newport, Rhode Island. NUWC-NPT Technical Memo 0-121A. 113 pp.

Morreale, S. J. and E. A. Standora. 1998. Early life stage ecology of sea turtles in northeastern U.S. waters. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC-413. 49pp.

NMFS (National Marine Fisheries Service). 1994. State and federal fishery interactions with sea turtles in the mid-Atlantic area. NOAA/NMFS, Silver Spring, MD. 13 pp.

NMFS (National Marine Fisheries Service). 2006. Endangered Species Act Section 7 Consultation on the Atlantic Sea Scallop Fishery Management Plan. NMFS, Northeast Regional Office. 106 pp.

Plotkin P. T. and J. R. Spotila. 2002. Post nesting migrations of loggerhead turtles, *Caretta caretta*, from Georgia, USA: conservation implications for a genetically distinct subpopulation. *Oryx*. 36(4):396-399.

List of Subjects in 50 CFR Part 223

Exports, Imports, Transportation.

Dated: November 8, 2006.

Samuel D. Rauch III,

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

■ For the reasons set forth in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 et. seq.; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.206, paragraph (d)(11) is revised to read as follows:

§ 223.206 Exemptions to prohibitions relating to sea turtles.

* * * * *

(11) *Restrictions applicable to sea scallop dredges in the mid-Atlantic*—(i) Gear Modification. During the time period of May 1 through November 30, any vessel with a sea scallop dredge and required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, present in waters south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone must have on each dredge a chain mat described as follows. The chain mat must be composed of horizontal ("tickler") chains and vertical chains that are configured such that the length

of each side of the square or rectangle formed by the intersecting chains is less than or equal to 14 inches (35.5 cm). The chains must be connected to each other with a shackle or link at each intersection point. The measurement must be taken along the chain, with the chain held taut, and include one shackle or link at the intersection point and all links in the chain up to, but excluding, the shackle or link at the other intersection point.

(ii) Any vessel that harvests sea scallops in or from the waters described in (d)(11)(i) and that is required to have a Federal Atlantic sea scallop fishery permit must have the chain mat configuration installed on all dredges for the duration of the trip.

[FR Doc. E6-19304 Filed 11-14-06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 061107293-6293-01; I.D. 103006B]

RIN 0648-AU95

Right Whale Protection; Southeast U.S. Gillnet Closure

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

ACTION: Emergency rule.

SUMMARY: NMFS is prohibiting gillnet fishing or gillnet possession in Atlantic Ocean waters west of 80°00' W. long. between 29°00' N. lat. (just south of New Smyrna Beach, Fla.) and 32°00' N. lat. (the approximate state boundary between Georgia and South Carolina) and within 35 nautical miles of the South Carolina coast. An exemption to the prohibition on the possession of gillnet gear is provided for transiting through this area if gear is stowed in accordance with this rule. NMFS is taking this action to prevent a significant risk to the well being of endangered right whales from entanglement in gillnet gear in the core right whale calving area during the calving season.

DATES: This action is effective November 15, 2006 through April 15, 2007.

ADDRESSES: Copies of the Environmental Assessment (EA) prepared in association with this emergency rule may be obtained from

the persons listed below under the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Engleby, 727-551-5791, Barb Zoodsma, 904-321-2806, or Nancy Young, 727-551-5607.

Electronic Access: Background documents, including the EA may be downloaded at <http://sero.nmfs.noaa.gov/>

SUPPLEMENTARY INFORMATION:

Background

The northern right whale (*Eubalaena glacialis*) was severely depleted by commercial whaling, and despite protection from commercial harvest since 1935 has not recovered. The North Atlantic population is believed to be as few as 300 individuals, making it one of the most imperiled of the endangered large whale populations in the world (NMFS 2005). Deaths from human related activities are believed to be the principal reason for a declining adult survival rate (Caswell *et al.*, 1999) and the lack of recovery in the species. From 1999 to 2003, human-caused mortality and serious injury to northern right whales in the North Atlantic from fishery entanglements and ship strikes were estimated as an average of 2.6 whales per year (Waring *et al.*, 2006). Fraus *et al.* (2005) indicated that the overall mortality rate for North Atlantic right whales increased between 1980 and 1998 to a level of at least four percent per year, a rate that is not sustainable. From 1999-2003, Waring *et al.* (2006) documented 31 reports of entanglements in commercial fishing gear that resulted in 5 serious injuries and 3 mortalities, for an average of 1.6 mortalities and serious injuries per year over that time period.

The northern right whale has been listed as endangered under the Endangered Species Act (ESA) since the ESA's passage in 1973 (35 FR 8495, June 2, 1970). In June 1994, NMFS designated three areas of the right whale's Atlantic range in the United States as critical habitat: (1) Great South Channel, (2) Cape Cod Bay, and (3) the southeastern U.S. (59 FR 28793, June 3, 1994). The southeastern U.S. critical habitat includes coastal waters between 31°15' N. lat. and 30°15' N. lat. from the coast out 15 nautical miles (27.8 km), and the coastal waters between 30°15' N. lat. and 28°00' N. lat. from the coast out 5 nautical miles (9.3 km) (§ 226.203 of this chapter). Coastal Atlantic waters off the southeastern U.S. are the North Atlantic right whale's only known and likely only calving grounds. During the winter calving season, these waters support the entire population's calving

females and their calves, plus, in some years, a large proportion of the remainder of the population.

As required by ESA section 4(f)(1), NMFS developed a recovery plan for the northern right whale in 1991, which was revised and updated in 2001 and 2005. The current recovery plan states, "the most immediate need for the North Atlantic right whale is to reduce or eliminate human-related deaths and injuries" and that "direct and indirect impacts from human activities -mostly in the form of vessel collisions and entanglement in fishing gear -almost certainly have contributed to a lack of recovery in the North Atlantic. Action is urgently needed to reduce the frequency of collisions with ships and fishing gear entanglements, and thus to improve the survival of right whales" (NMFS 2005). Therefore, the development and implementation of strategies to modify fishing operations and gear to reduce the likelihood of entanglement, mitigate the effect of entanglements, enhance the possibility of disentangling, and assess the effectiveness of such strategies is a priority one recovery task, i.e., an action that must be taken to prevent extinction or to prevent the species from declining irreversibly (NMFS 2005).

To date, NMFS has been working to address right whale serious injury and mortality in commercial fishing gear primarily through its authority under the Marine Mammal Protection Act (MMPA). Pursuant to MMPA section 118, NMFS has developed an Atlantic Large Whale Take Reduction Plan (ALWTRP) and implementing regulations (§ 229.32 of this chapter) to reduce serious injury and mortality of right whales resulting from commercial fisheries including gillnet fisheries.

The ESA provides authority to NMFS for multiple mechanisms to achieve the Act's overall purpose of conserving threatened and endangered species. Section 4(b)(7) of the ESA (16 U.S.C. 1533(b)(7)) authorizes NMFS to issue regulations, not subject to notice and comment, regarding emergencies posing a significant risk to the well-being of listed species. Such regulations may take effect immediately upon publication in the **Federal Register** and may be effective up to 240 days.

Recent Events

On January 22, 2006, a dead right whale calf was found floating off Jacksonville Beach, Florida. The calf was necropsied by a specialized large whale necropsy team and evidence of recent entanglement in gillnet gear was clearly documented. NMFS determined, based on best available information and