

**Authority:** 49 U.S.C. 20103, 20107, 20133, 20141, 20302–03, 20306, and 20701–02; 49 CFR 1.49.

9. Section 238.21(f) is revised to read as follows:

**§ 238.21 Special approval procedure.**

\* \* \* \* \*

(f) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraphs (b) and (c) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the DOT Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, S.W., Washington, D.C. 20590, and shall contain the assigned docket number for that proceeding. The form of such submission may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its web site at <http://dms.dot.gov>.

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10. Section 238.203(g) is revised to read as follows:

**§ 238.203 Static end strength.**

\* \* \* \* \*

(g) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraph (d) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the DOT Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, SW, Washington, DC 20590, and shall contain the assigned docket number for that proceeding. The form of such submission may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its web site at <http://dms.dot.gov>.

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**PART 240—[AMENDED]**

11. The authority citation for part 240 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20135; 49 CFR 1.49.

12. Section 240.403(b)(2) is revised as follows:

**§ 240.403 Petition requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) Be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW, Washington, DC 20590;

\* \* \* \* \*

13. Section 240.407(b) is revised to read as follows:

**§ 240.407 Request for a hearing.**

\* \* \* \* \*

(b) To exercise that right, the adversely affected party shall, within 20 days of service of the Board's decision on that party, file a written request with the Docket Clerk, Department of Transportation Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, S.W., Washington, D.C. 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its web site at <http://dms.dot.gov>.

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Issued in Washington, D.C. on September 30, 1999.

**Jolene M. Molitoris,**

*Administrator.*

[FR Doc. 99–32447 Filed 12–15–99; 8:45 am]

**BILLING CODE 4910–06–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 222 and 223**

**[Docket No.991207322–9328–02;I.D.120899D]**

**RIN 0648–AN45**

**Sea Turtle Conservation; Restrictions to Fishing Activities**

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

**ACTION:** Temporary rule; request for comments.

**SUMMARY:** NMFS is closing the waters of Pamlico Sound, North Carolina to fishing with gillnets with a mesh size larger than 5 inches (12.7 cm) stretched mesh for a 30-day period. The closed

area includes all inshore waters of Pamlico Sound south of 35°23' N. lat. and east of 76°05' W. long. NMFS is taking this action because of its determination that the large mesh gillnet fishery is the most likely cause of significant increases in the stranding of sea turtles listed as threatened or endangered under the Endangered Species Act (ESA) in Pamlico Sound. This action is necessary to protect threatened and endangered turtles from being taken by the large mesh, gillnet fishery in Pamlico Sound.

**DATES:** This action is effective from December 10, 1999 through January 10, 2000. Comments on this action are requested, and must be received at the appropriate address or fax number (See **ADDRESSES**) by no later than 5:00pm, eastern standard time, on January 10, 2000.

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

**FOR FURTHER INFORMATION CONTACT:**

Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517, e-mail [Chuck.Oravetz@noaa.gov](mailto:Chuck.Oravetz@noaa.gov)), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail [Barbara.Schroeder@noaa.gov](mailto:Barbara.Schroeder@noaa.gov)).

**SUPPLEMENTARY INFORMATION:**

**Background**

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA. Existing sea turtle conservation regulations specify procedures that NMFS may use to determine that unauthorized takings of sea turtles are occurring during fishing activities, and

to impose additional restrictions to conserve listed sea turtles and to prevent unauthorized takings (50 CFR 223.206(d)(4)). Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each.

#### Recent Events

The Sea Turtle Salvage and Stranding Network has documented a high level of sea turtle strandings in North Carolina this fall. Beginning November 1, 1999, large numbers of sea turtles have been stranding in Pamlico Sound, North Carolina, particularly in the vicinity of Hatteras and Ocracoke Inlets. The strandings through the week ending December 4 have totaled 74, including 39 endangered Kemp's ridley sea turtles. The total number of strandings in North Carolina for 1999 is 2.3 times the average annual strandings from 1980 to 1999. The total number of Kemp's ridley strandings in 1999 is 7 times the average annual for the same time period.

Several fisheries, including trawling for shrimp and crabs and gillnetting for speckled trout and southern flounder, have been operating in Pamlico Sound over the period of the turtle strandings. After conducting aerial surveys of the fishing activity and reviewing other available information on the fisheries, NMFS determined that sink gillnetting for southern flounder was the most likely cause of the elevated turtle mortality. Gillnet vessels and many untended gillnets were observed in the Sound near the areas of highly concentrated turtle strandings. Small turtles, such as the Kemp's ridley, are likely to be entangled in the large mesh sizes used in these gillnets. Necropsies of stranded animals have generally indicated that they were healthy and had been foraging prior to their deaths. As the weather cools in the fall and winter, the sea turtles' migrations through and out of the North Carolina sounds make them extremely vulnerable to fishing effort that is concentrated at the inlets.

NMFS discussed the situation with the North Carolina Division of Marine Fisheries (NCDMF) on November 19, 1999. At that time, NCDMF did not believe that any action was necessary to regulate the large mesh flounder gillnet fishery on the basis that the fishery would be winding down seasonally and that the available evidence was not strong enough to confirm conclusively that this fishery was responsible for the turtle mortality. To develop additional information, NCDMF deployed observers aboard gillnet vessels from November 22–24. In 5 trips aboard flounder gillnet vessels, two Kemp's

ridley turtles were taken. No turtles were taken in 6 trips aboard speckled trout gillnet vessels.

NMFS deployed a Protected Resources Enforcement Team (PRET) to North Carolina for further investigations in late November. PRET has worked cooperatively with the North Carolina Marine Patrol to investigate the role of the different fisheries in the turtle deaths. PRET investigations so far indicate that flounder gillnetting is the probable cause of the great majority of the turtle mortality.

There are approximately 30 to 40 boats participating in the southern flounder gillnet fishery, each setting from 2,000 to 10,000 yards (1 to 5 nautical miles (1.8 to 9 km)) of large mesh gillnet, mostly concentrated in an area about 25 miles long by a few miles wide. The fishery has grown rapidly in the last few years. There are no state regulations on the amount of net fished, manner or place of setting the net, tending requirements, soak time, or the length of the season. Nets are generally set and left untended for 1 or 2 days, although even longer sets occur. This year, bad weather after Thanksgiving caused many fishermen to leave their nets in the water for 5 to 6 days. Although the fishery is said to be winding down, there is no assurance that fishermen will pull their nets out of the water soon, since there is no regulatory end to the season. As fish catch rates decline, the nets may be left untended for even longer periods of time and pose an even greater threat to turtles. PRET observed that Pamlico Sound had high concentrations of gillnets in early December.

#### Analysis of Other Factors

Examination of the strandings in Pamlico Sound indicates that the most significant source of sea turtle mortality is large mesh gillnetting. The carcasses have primarily been coming ashore in the vicinity of areas where gillnetting effort has been concentrated, and fishery observers and enforcement officers have observed sea captures in the large-mesh gillnets. The construction of the gear, the extremely large amounts of netting deployed, and the long soak times create an extreme threat for entangling and drowning sea turtles during their fall migration. NMFS' PRET and NCDMF will continue to investigate factors other than southern flounder gillnetting that may contribute to sea turtle mortality in Pamlico Sound, including other fisheries and environmental factors.

#### Closure of Gillnet Fishing in Pamlico Sound

The incidental taking of an endangered species of wildlife is prohibited by section 9(a)(1)(B) of the ESA. There are no exemptions to this prohibition applicable to the southern flounder gillnet fishery in Pamlico Sound. This fishery is known to be catching and killing large numbers of endangered Kemp's ridley sea turtles. Green turtles and threatened loggerhead turtles have also been taken. Section 11(f) (16 U.S.C. 1540(f)) of the ESA authorizes the Secretary of Commerce to promulgate regulations to enforce the requirements of the Act. Regulations at 50 CFR 223.206(d)(4) specify procedures that the Assistant Administrator for Fisheries, NOAA, (AA) may use to impose additional restrictions to conserve listed sea turtles and prevent unauthorized takings.

Therefore, the AA issues this determination that takings of endangered sea turtles by southern flounder gillnetters in Pamlico Sound are unauthorized by statute and issues this additional restriction to gillnet fishing activities to conserve endangered Kemp's ridley sea turtles. Specifically, the AA closed the waters of Pamlico Sound, North Carolina to fishing with gillnets with a mesh size larger than 5 inches (12.7 cm) stretched mesh. The closed area includes all inshore waters of Pamlico Sound south of 35°23' N. lat. (approximately the end of Avon Channel) and east of 76°05' W. long. (approximately Bluff Shoal). This closure is effective from December 10, 1999 through 11:59 p.m. (local time) January 10, 2000. For the duration of this closure, no gillnet with a mesh size larger than 5 inches stretched mesh may be set in the closed area. All such nets that are currently set must be retrieved no later than 11:59 p.m. local time on December 13, 1999. Any such nets remaining in the water after such time will be a violation of this closure.

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

#### Additional Conservation Measures

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

NMFS will continue to monitor sea turtle strandings to gauge the

effectiveness of these conservation measures.

### Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered and threatened sea turtles, primarily the Kemp's ridley 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, this action was provided through the proposed rule which established these actions (57 FR 18446, April 30, 1992). For the same reasons, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. NMFS is making the rule effective December 10, 1999 through January 10, 2000. As stated earlier, this restriction has been announced on the NOAA weather radio, in newspapers, and other media.

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

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

Dated: December 10, 1999.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Services.*

[FR Doc. 99-32531 Filed 12-10-99; 4:37 pm]

**BILLING CODE 3510-22-F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 120199C]

#### Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

**ACTION:** Retention limit adjustment.

**SUMMARY:** NMFS adjusts the daily retention limit for the Angling category fishery for Atlantic bluefin tuna (BFT) in all areas to one large school or small medium BFT (measuring 47 to less than 73 inches (119 to less than 185 cm) curved fork length) per vessel. The Angling category trophy retention limit for large medium and giant BFT remains at one fish per vessel, per fishing year. This action is being taken to lengthen the fishing season and to ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the quota established for the Angling category fishery.

**DATES:** The daily retention limit adjustment is effective 1 a.m., local time, January 1, 2000, until May 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pat Scida or Sarah McLaughlin, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

Since October 7, 1999, NMFS has maintained the daily retention limit at one large school or small medium BFT per vessel. In order to maintain the current daily retention limit through the end of the 1999 fishing year (May 31, 2000), NMFS must announce a daily retention limit adjustment since the

current retention limit is valid only through December 31, 1999 (64 FR 10576, March 5, 1999).

Preliminary Large Pelagic Survey estimates of landings from the beginning of the 1999 fishing year (June 1, 1999) through November 7, 1999, indicate that approximately 34 metric tons (mt) of school BFT and approximately 44 mt of large school/small medium BFT have been landed; reported landings of large medium and giant BFT total approximately 1 mt.

NMFS adjusts the BFT Angling category daily retention limit for all areas one large school or small medium BFT (measuring 47 to less than 73 inches (119 to less than 185 cm) curved fork length) per vessel. In addition, each Angling category vessel may retain no more than one large medium or giant BFT (measuring 73 inches (185 cm or greater) per year. Landing rates during the first few months of 1998 and 1999 were low, but landing rates during the winter fishery were high in 1996 and 1997. This action is being taken to provide the greatest geographic and temporal range of data collection and fishing opportunities without risking overharvest.

This daily retention limit adjustment is effective January 1 through May 31, 2000. The daily retention limit and the duration of daily retention limit adjustment have been selected based on an examination of past catch and effort rates. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the North Carolina harvest tagging program, and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards.

Closures or subsequent adjustments to the daily retention limit, if any, shall be