

grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues. Therefore, this interim final rule does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order and thus has been exempted from review by the Office of Management and Budget under that Order.

#### Regulatory Flexibility

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. As noted in the October 11, 2001, Interim Final Rule, we have determined that this is not a "major" rule under the Regulatory Flexibility Act of 1980, and that it will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. As noted in the October 11, 2001, Interim Final Rule, this rule contains no Federal mandates for State, tribal, or local governments or for the private sector.

#### Executive Order 13132: Federalism Implications

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. As noted in the October 11, 2001, Interim Final Rule, we reviewed the rule as required under the Order and determined that it does not have any federalism implications. This rule will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government. This having been stated, States support the flexibility that this regulation offers them in seeking Federal assistance for substance abuse and/or mental health emergencies that may occur in their borders.

#### Paperwork Reduction Act of 1995

The information collection provisions in this final rule have been approved under OMB control number 0930-0229. This approval expires April 30, 2005.

#### Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

As noted in the October 11, 2001, Interim Final Rule, this proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

#### List of Subjects in 42 CFR Part 51d

Administrative practice and procedure, Disaster assistance, Drug abuse, Emergency medical services, Grant programs-health, Health facilities, Mental health programs, Privacy, Reporting and recordkeeping requirements.

**Charles G. Curie,**

*Administrator, Substance Abuse and Mental Health Services Administration.*

Dated: August 23, 2002.

**Tommy G. Thompson,**  
*Secretary.*

For the reasons stated above, the Department of Health and Human Services amends Part 51d of Subchapter D of Title 42 CFR as follows:

#### PART 51d—[AMENDED]

1. The authority citation for part 51d continues to read as follows:

**Authority:** 42 U.S.C. 290aa(m).

##### § 51d.2 [Amended]

2. Amend § 51d.2 by removing the definition of "presidential disaster declaration."

##### § 51d.8 [Amended]

3. Amend § 51d.8 by removing the entry for "42 CFR part 50, subpart D—Public Health grant appeal procedure."

[FR Doc. 02-22601 Filed 9-5-02; 8:45 am]

**BILLING CODE 4162-20-P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No. 010926236-2199-02; I.D. 081202B]

**RIN 0648-AP63**

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

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

**ACTION:** Final rule.

**SUMMARY:** NOAA Fisheries is closing the waters of Pamlico Sound, NC, to fishing with gillnets with a mesh size larger than 4 1/4 inch (10.8 cm) stretched mesh ("large-mesh gillnet"), on a seasonal basis, from September 1 through December 15 each year, to protect migrating sea turtles. The closed area includes all inshore waters of Pamlico Sound south of 35°46.3' N. lat., north of 35°00' N. lat., and east of 76°30' W. long.

**DATES:** This final rule is effective on September 3, 2002.

**ADDRESSES:** Copies of the Environmental Assessment (EA) prepared for this final rule may be obtained by writing to the Chief, Endangered Species Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. Requests may also be sent via fax to 301-713-0376, Attn: Chief, Endangered Species Division, Office of Protected Resources.

**FOR FURTHER INFORMATION CONTACT:** David M. Bernhart (phone, 727-570-5312; fax 727-570-5517; e-mail, [David.Bernhart@noaa.gov](mailto:David.Bernhart@noaa.gov)), or Barbara A. Schroeder (phone, 301-713-1401; fax 301-713-0376; e-mail, [Barbara.Schroeder@noaa.gov](mailto:Barbara.Schroeder@noaa.gov)).

**SUPPLEMENTARY INFORMATION:** 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 for threatened species identified in 50 CFR 223.206. The incidental take of endangered species may be authorized only by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA.

### Background

On September 27, 2001, NOAA Fisheries implemented an interim final rule (66 FR 50350, October 3, 2001) closing the waters of Pamlico Sound, NC, to fishing with gillnets with a mesh size larger than 4 1/4 inch (10.8 cm) stretched mesh. The closure was in effect from September 28 to December 15, 2001. The interim final rule, which expires on September 14, 2002, was published with the intent of issuing a permanent rule to go into effect September 15, 2002. Two comments were received on the interim final rule and are addressed under section Response to Comments.

Concurrent with implementing the interim final rule, NOAA Fisheries issued an Incidental Take Permit (ITP) pursuant to section 10 of the ESA to North Carolina Division of Marine Fisheries (NCDMF). The ITP authorized take of listed sea turtles as a result of the small- and large-mesh shallow water gillnet fisheries operating within designated areas of Pamlico Sound. The ITP required fishermen deploying gillnets in the shallow waters of southeastern Pamlico Sound to obtain permits from NCDMF. The ITP required a maximum limit of 2,000 yards (1,828 m) of net, a mandatory weekly report on sea turtle interactions, mandatory observer coverage, and fishery closures if the incidental take level specified in the ITP was exceeded. A limited amount of deep-water, large-mesh gillnet gear testing was also allowed under the ITP. Estimated levels of sea turtle interactions remained below thresholds specified in the ITP and, therefore, additional closures were not required during the 2001 season (Gearhart 2002).

A detailed summary relating the events leading up to the promulgation of the interim final rule and NCDMF ITP can be found in the background section of the interim final rule (66 FR 50350, October 3, 2001).

### Description of the Fishery

The Pamlico Sound large-mesh gillnet fishery can be divided into two components shallow-water and deep-water, which are distinguished by their fishing areas, seasons, tactics, participants, and vessel characteristics.

The deep-water fishery operates from September through December with

fishermen setting nets along a slope adjacent to the main basin of Pamlico Sound. Fishing depths in this area range from 10 to 20 feet (3.0 to 6.1 m). Vessels are typical ocean sink gillnet boats ranging from 25 to 45 feet (7.6 to 13.7 m) in length. Each vessel is operated by a two-man crew. Each vessel sets between 2,000 yards (1,828 m) and 10,000 yards (9,140 m) of large-mesh, most often 5.5 to 6.5 inch (14.0 to 16.5 cm), gillnet, which are soaked for up to 3 days and retrieved with the aid of net reels. Net depths range from 8 to 12 feet (2.4 m to 3.7 m) with tie-downs 2 to 4 feet (.61 to 1.2 m) long attached to the float and lead lines at 50 foot (15.2 m) intervals along the net. Tie-downs are used in this fishery to produce a bag or pocket of webbing, which is believed to increase the catch efficiency for bottom-dwelling flounder. There were 25 active participants in this fishery during the 2000 fishing season, with most trips originating from Engelhard or Swan Quarter, N.C., and a small portion leaving from Hatteras, N.C. The deep-water, large-mesh gillnet fishery was closed in 2001 as a result of the NOAA Fisheries interim final rule. This fishery has grown within the past 10 years from what was initially only a few fishermen setting a few thousand yards of gillnet. Effort has steadily increased with more participants fishing more gear each year. During the past several years, gillnets have surpassed pound nets as the dominant gear for flounder in North Carolina's estuarine waters. Pound nets had long been the traditional means for harvesting flounder in North Carolina waters.

Monitoring of the deep-water fishery during the 2000 fishing season consisted of 13.1 percent observer coverage with 35 trips observed. Fourteen sea turtle interactions were observed involving four Kemp's ridleys, two greens, and eight loggerheads. Eight of these turtles were released alive; six were dead.

The shallow-water fishery operates from April through December in areas next to the barrier islands in Pamlico Sound, extending both north and southwest along the Outer Banks. Most fishing in these areas occurs in depths of less than 3 feet (0.9 m). Vessels are usually open skiffs ranging from 15 to 25 feet (4.6 to 7.6 m) in length with one- or two-man crews. Each fisherman typically sets 500 to 2000 yards (457 to 1,828 m) of large-mesh (5.5 to 7.0 inch (14.0 to 17.8 cm)) gillnet. The nets are soaked overnight and retrieved by hand. Tie-downs are not used in this fishery, but net depths range from 6 to 11 feet (1.8 to 3.4 m), with sets occurring in depths less than 3 feet (0.9 m). This combination of water depth and net

depth provides the same bag effect as the tie-down in the deep-water fishery. There were 95 permitted, active participants during the 2001 fishing season. The shallow-water gillnet fishery is considered to be more traditional than the deep-water gillnet fishery.

Monitoring during the 2001 fishing season consisted of 9 percent observer coverage of the shallow-water, large-mesh fishery, with 131 trips observed. During these trips, five sea turtle interactions were observed, of which four were green turtles and one was a hawksbill. Three green turtles and the hawksbill were released alive; one green turtle was dead. The small mesh fishery was observed on 8.4 percent of the trips prior to November 1 and 20 percent of the trips after that. Coverage was increased in November because fishermen no longer were required to tend their nets and the possibility of a lethal turtle take was greater. No turtle interactions were documented in the small mesh fishery.

### NCDMF's Section 10 ITP

NOAA Fisheries issued the first ITP to NCDMF for the 2000 fall fishing season only. The exceeding of the authorized incidental take identified in the ITP resulted in a closure of the fishery in October 2000. Although section 10 ITPs are generally issued for multi-year periods, NOAA Fisheries and NCDMF believed that the newness of the fishery, the apparent high levels of turtle interaction, and the paucity of observer data for management decisions justified a single-year permit in 2000 to allow NCDMF to gather important information about bycatch issues in the fishery. NOAA Fisheries, in issuing the ITP, considered the effects of the fishery on listed species, pursuant to sections 7(a)(2) and 7(b) of the ESA. The resulting biological opinion concluded that, as a 1-year event, the issuance of the ITP and the fishery were not likely to jeopardize the continued existence of any listed species of sea turtle. The opinion did acknowledge, however, that additional future permits might be sought by NCDMF for large-mesh gillnetting in Pamlico Sound, perhaps modified based on the outcome of the 2000 permit. On September 27, 2001, NOAA Fisheries issued a second ITP to the NCDMF with similar review requirements. The ITP was again valid for 1 year. On July 18, 2002, NCDMF submitted an application for a 3-year ITP to reopen the shallow water areas under similar requirements as well as add the management of the shallow water fishery operating in an area of the mainland Hyde and Pamlico Counties

(67 FR 49009, July 29, 2002). The 3-year ITP would allow for the gathering of substantial additional information on the fishery and its interactions with sea turtles. The ITP would allow portions of the fishery to operate while requiring observer coverage to document sea turtle interactions and the conditions in which they occur. At the end of the ITP 3-year term, NCDMF may have substantial information to propose a means of reopening the fishery with management measures that would provide sufficient protection to sea turtles. In such an event, NOAA Fisheries would consider rescinding this closure rule and issuing an ITP with the proposed measures in its place.

### Closure of Large-Mesh Gillnet Fishing in Pamlico Sound

Through this final rule, NOAA Fisheries is closing the waters of Pamlico Sound NC, on an annual basis, to fishing with gillnets with a mesh size larger than 4 1/4 inches (10.8 cm) stretched mesh, from September 1 through December 15. This closure date is earlier than that of the previous interim final rule, based upon discussions with and recommendations by NCDMF regarding the observed times of high gillnet effort and high turtle occurrence in Pamlico Sound. In 2000 and 2001, 88 percent of the sea turtle interactions in shallow water occurred during the first three weeks of the season. The closed area includes all inshore waters of Pamlico Sound south of 35°46.3' N. lat. (the south side of Oregon Inlet), north of 35°00' N. lat. (the south end of Portsmouth Island), and east of 76°30' W. long. (a line of longitude which crosses the mouths of the Neuse River, Bay River, and Pamlico River). The Outer Banks and the COLREGS line form the seaward boundary of the closed area. The closed area includes all contiguous tidal waters to Pamlico Sound, within the stated boundaries. The large-mesh gillnet fishery in Pamlico Sound has been shown to take, including to capture and kill, numerous endangered and threatened sea turtles during their fall migration. NOAA Fisheries is taking this action to prevent further takes of listed species in this fishery.

### Response to Comments

NOAA Fisheries requested comments on the interim final rule in anticipation of issuing this final rule. Two comments were received during the comment period.

*Comment 1:* The Ocean Conservancy commented that it supports a permanent, seasonal, September through December closure of all Pamlico

Sound waters to large-mesh gillnets. It also commented that geographic and seasonal closures do not go far enough to protect listed sea turtles.

*Response:* We believe that stranding and observer data indicate that the rule covers a place and time in which the large-mesh gillnet fishery has a potentially detrimental impact upon listed sea turtles. If additional information or later events demonstrate a potential need for further restrictions, NOAA Fisheries will analyze the circumstances and act to provide the measures necessary to protect the sea turtles as required by the ESA.

*Comment 2:* A North Carolina resident commented that there are too many turtles, particularly loggerheads, in Pamlico Sound and that the measures to protect sea turtles are unwarranted and are burdensome to the fishing community.

*Response:* All species of sea turtles in U.S. waters are listed under the ESA because their populations have declined and protective measures are necessary in order for these species to recover. We cautiously anticipate that there are more loggerhead turtles in Pamlico Sound as a result of the use of such protective measures as the use of turtle excluder devices in shrimp trawl nets and others. However, the species is not recovered and additional measures are necessary to reduce interactions with fishing gear.

### Classification

NOAA Fisheries prepared an Environmental Assessment (EA) for this final rule and concluded that these regulations and issuance of the permit would neither pose a significant adverse environmental impact nor have a significant effect on the quality of the human environment.

The actions implemented by this final rule are expected to impact approximately 95 large-mesh, gillnet vessel owners and operators. Assuming that a shallow-water fishery will be managed by NCDMF and many of these vessels will participate in the shallow-water fishery, NOAA Fisheries anticipates, under a worst-case scenario, that 25 large-mesh, deep-water boats will not participate in the fishery in Pamlico Sound. The anticipated loss of revenue could be \$10,000 to \$20,000 per vessel per year, depending on fish prices, for a total loss to the deep-water fishery operations of \$250,000 to \$500,000. These vessels, however, are the largest in the fishery and have the greatest number of alternative fisheries, as they are essentially ocean-gillnet vessels. They are also the most recent entrants into the fishery and did not operate in Pamlico Sound in the fall of

2001. Many of these operations may have switched gear to the more traditional pound net operations or moved offshore. Thus, the revenue loss anticipated for these large mesh deep water operations, under a worst-case scenario, is likely an overestimate. The shallow-water vessels, on the other hand, are considered more traditional to the fishery, they are generally smaller, and many of them cannot safely work outside the sheltered waters of the Sound. The primary effect of this final rule will be a redistribution of catch from deep-water gillnet fishermen to shallow-water and small-mesh gillnet fishermen and to pound net fishermen. The overall fishing effort targeting southern flounder in Pamlico Sound is very high and capable of fully exploiting the resource. In 2000, gillnet landings exceeded the previous year's levels, halfway through the season, despite NCDMF's closure of the primary fishing grounds to gillnetting with gear greater than 5-inch (12.7-cm) mesh. In 2001, the landings of flounder by gillnet dropped significantly from those in previous years, but the landings by pound net, which had been in decline for a number of years, rebounded dramatically to high levels.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for NOAA Fisheries has determined that there is good cause under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. Delaying this action would be contrary to the public interest because large-mesh gillnet fishing is presently allowed without restriction throughout Pamlico Sound. Allowing continued large-mesh gillnet fishing in the deep water areas of Pamlico Sound would likely result in a high level of sea turtle take and mortality. The NCDMF observer program has documented that sea turtle interactions occur at a high rate in September and around the inlets of Pamlico Sound. Without action, large-mesh gillnet fishing effort is expected to increase greatly in September, as changing water temperatures cause flounder to move through Pamlico Sound. Sea turtles apparently respond similarly to the fall weather in Pamlico Sound, increasing their vulnerability to being captured and killed as the fishing effort also peaks. In 2000, strandings in North Carolina's coastal waters reached a new record level of 838 turtles. In 2001, concurrent with a prohibition on the use of large mesh gillnets in the

deep water areas and around the inlets of Pamlico Sound, strandings decreased 67 percent from the 2000 level. The effectiveness of prohibiting large-mesh gillnet fishing in the deep water in reducing sea turtle mortality has been demonstrated. The sea turtle mortality resulting from the failure to implement a prohibition on fishing with large-mesh gillnets in deep water would seriously threaten sea turtle populations. This final rule is intended to address a major source of fishing-related sea turtle mortality.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NOAA Fisheries has conferred with the State of North Carolina regarding the need for NOAA Fisheries to implement a closure to protect listed sea turtles. NOAA Fisheries is working with NCDMF on the issuance of an ESA section 10(a)(1)(B) permit, which would create a partial exemption to the closure in this action. NOAA Fisheries intends to continue to consult with the State of North Carolina during the implementation of this final rule and regarding NCDMF's management of state water fisheries bycatch of sea turtles.

#### List of Subjects in 50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Dated: August 30, 2002.

**William T. Hogarth, Ph.D.**

*Assistant Administrator, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 223 is amended to read 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 *et seq.*

2. In § 223.206, revise paragraph (d)(7) to read as follows:

##### § 223.206 Exceptions to prohibitions relating to sea turtles.

\* \* \* \* \*

(d) \* \* \*

(7) Restrictions applicable to gillnet fisheries in North Carolina. No person may fish with gillnet fishing gear which has a stretched mesh size larger than 4 1/4 inches (10.8 cm), annually from September 1 through December 15, in the inshore waters of Pamlico Sound, North Carolina, and all contiguous tidal

waters, bounded on the north by 35°46.3' N. lat., on the south by 35°00' N. lat., and on the west by 76°30' W. lat.

[FR Doc. 02-22691 Filed 9-3-02; 11:14 am]

BILLING CODE 3510-22-S

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 083002D]

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

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

**ACTION:** Increase of Atlantic bluefin tuna General category daily retention limit.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily catch limit should be adjusted to two large medium or giant BFT per vessel in order to allow for maximum utilization of the General category September time-period subquota.

**DATES:** Effective September 1, 2002, until September 14, 2002.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale, 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 Fishery Conservation and Management Act (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. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories, and General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2002 General category effort controls were proposed on July 27, 2002 (67 FR 43266).

##### Adjustment of Daily Retention Limits

Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow

for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the first half of September is appropriate and necessary to allow full use of the September subquota. Therefore, NMFS adjusts the daily retention limit for September 1 through September 14 to two large medium or giant BFT per vessel.

The intent of this adjustment is to allow for maximum utilization of the General category subquotas for the September fishing period (specified under 50 CFR 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

While catch rates have continued to be low so far this season, NMFS recognizes that they may increase. If catch rates remain depressed, NMFS may increase the daily retention limits and/or waive some or all of the previously scheduled RFDs. The RFD schedule will be announced with the publication of the final initial 2002 BFT quota specifications and General category effort controls. Until these specifications have been announced, no RFDs have been implemented.

##### Classification

This action is taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

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

Dated: August 30, 2002.

**Theophilus R. Brainerd,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 02-22666 Filed 8-30-02; 4:42 pm]

BILLING CODE 3510-22-S

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 083002A]

##### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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