

## 2010 ANNUAL MEETING—REPORT ON PROPOSALS—Continued

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete revision]

NFPA 654 .....	Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids.	P
NFPA 780 .....	Standard for the Installation of Lightning Protection Systems .....	P
NFPA 1000 .....	Standard for Fire Service Professional Qualifications Accreditation and Certification Systems .....	P
NFPA 1071 .....	Standard for Emergency Vehicle Technician Professional Qualifications .....	C
NFPA 1126 .....	Standard for the Use of Pyrotechnics Before a Proximate Audience .....	P
NFPA 1145 .....	Guide for the Use of Class A Foams in Manual Structural Fire Fighting .....	P

Dated: May 4, 2009.

**Patrick Gallagher,**

Deputy Director.

[FR Doc. E9-10766 Filed 5-7-09; 8:45 am]

BILLING CODE 3510-13-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648-XP04

**Notice of Intent to Prepare an Environmental Impact Statement for Sea Turtle Conservation and Recovery in Relation to the Atlantic Ocean and Gulf of Mexico Trawl Fisheries and To Conduct Public Scoping Meetings**

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

**ACTION:** Notice of intent to prepare an Environmental Impact Statement and conduct public scoping meetings.

**SUMMARY:** NMFS intends to prepare an Environmental Impact Statement (EIS) and to conduct public scoping meetings to comply with the National Environmental Policy Act (NEPA) by assessing potential impacts resulting from the proposed implementation of new sea turtle regulations in the Atlantic and Gulf of Mexico trawl fisheries. These requirements are proposed to protect threatened and endangered sea turtles in the western Atlantic Ocean and Gulf of Mexico from incidental capture, and would be implemented under the Endangered Species Act (ESA). NMFS announced consideration of rulemaking for these new sea turtle regulations February 15, 2007 in an Advance Notice of Public Rulemaking.

**DATES:** The public scoping period starts May 8, 2009 and will continue until July 10, 2009. NMFS will consider all written comments received or postmarked by July 10, 2009, in defining the scope of the EIS. Comments received or postmarked after that date will be considered to the extent practicable. Verbal comments will be accepted at the

NMFS scoping meetings as specified below.

**ADDRESSES:** NMFS will hold public scoping meetings to provide the public with an opportunity to present verbal comments on the scope of the EIS and to learn more about the proposed action from NMFS officials. Where practical, NMFS will hold scoping meetings in conjunction with Council/Commission meetings. Scoping meetings will be held at the following locations:

1. Silver Spring—NOAA Science Center, 1301 East West Highway, Silver Spring, MD 20910.
2. New York—Mid-Atlantic Fishery Management Council meeting, Radisson Martinique on Broadway, 49 West 32nd Street, New York, NY 10001.
3. Brunswick—Georgia Department of Natural Resources Coastal Division Headquarters, Conservation Way, Brunswick, GA 31520.
4. Manteo—Roanoke Festival Park, Small Auditorium, One Festival Park, Manteo, NC 27954.
5. Portland—New England Fishery Management Council meeting, Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101.

The meeting dates are:

1. May 15, 2009, 10 a.m. to 12 p.m., Silver Spring, MD.
2. June 9, 2009, 7 p.m. to 9 p.m., New York, NY.
3. June 15, 2009, 7 p.m. to 9 p.m., Brunswick, GA.
4. June 20, 2009, 2 p.m. to 4 p.m., Manteo, NC.
5. June 23, 2009, 7 p.m. to 4 p.m., Portland, ME.

In addition to the five scoping meetings, NMFS will also present the Scoping document to the four Atlantic Regional Fishery Management Councils (FMCs) (New England, Mid-Atlantic, South Atlantic and Gulf of Mexico FMCs) and the Atlantic States Marine Fisheries Commissions. Please see the Councils' and Commission's May and June meeting notices for agenda, dates, times and locations.

Written comments on the scope of the EIS should be sent to [Alexis.Gutierrez@noaa.gov](mailto:Alexis.Gutierrez@noaa.gov), 1315 East West Highway, Silver Spring, MD 20910; 301-713-2322 or fax 301-713-

4060. Additional information, including the Scoping document, can be found at: <http://www.nmfs.noaa.gov/pr/species/turtles/regulations.htm>.

All comments, whether offered verbally in person at the scoping meetings or in writing as described above, will be considered.

**FOR FURTHER INFORMATION CONTACT:**

Dennis Klemm (ph. 727-824-5312, fax 727-824-5309, email [Dennis.Klemm@noaa.gov](mailto:Dennis.Klemm@noaa.gov)), Pasquale Scida (ph. 978-281-9208, fax 978-281-9394, email [Pasquale.Scida@noaa.gov](mailto:Pasquale.Scida@noaa.gov)), Alexis Gutierrez (ph. 301-713-2322, fax 301-713-4060, email [Alexis.Gutierrez@noaa.gov](mailto:Alexis.Gutierrez@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 breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish these green turtle populations away from the nesting beach, green turtles are considered endangered wherever they occur in United States waters. Incidental capture (bycatch) of sea turtles in fisheries is a primary factor hampering the recovery of sea turtles in the Atlantic Ocean and the Gulf of Mexico.

To address this factor comprehensively, NMFS initiated a Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (Strategy). The Strategy is a gear-based approach to addressing sea turtle bycatch. Certain types of fishing gear are more prone to incidentally capture sea turtles than others, depending on the design of the gear, the way the gear is fished, and/or the time and area within which it is fished. The Strategy provides a framework to evaluate sea turtle

interactions by gear type in order to have a more comprehensive assessment of fishery impacts across fishing sectors as well as across state, federal, and regional boundaries. Through this Strategy, NMFS seeks to address sea turtle bycatch across jurisdictional boundaries and fisheries for gear types that have the greatest impact on sea turtle populations.

Based on documented sea turtle-fishery interactions, NMFS has identified several gear types that need to be addressed to reduce incidental capture of sea turtles. These gear types include, but are not limited to: gillnets, longlines, trap/pot and trawl gear. Trawl gear has been identified as a priority for addressing sea turtle bycatch, given our knowledge of the level of bycatch in this gear and the availability of technology that is effective at excluding sea turtles from capture in trawl gear.

Trawling is a method of fishing that involves actively pushing or towing a net through the water. Because trawl gear is pushed or towed, it has the capability to incidentally capture sea turtles and other species that are not the intended target of the fishery. The likelihood of incidental capture is inherent in the basic design of trawls, regardless of the target species. Trawl fisheries with documented observer coverage or historical bycatch information that occur in known areas and times of sea turtle distribution have consistently been shown to capture sea turtles. In fact, trawling is often used as a means to capture sea turtles for research, distribution studies, and relocation because of the effectiveness of this method. Without an avenue for escape, sea turtles captured in trawl gear may drown due to forced submergence. Even when drowning does not occur, the stress of forced submergence has been shown to result in various negative physiological consequences that can make the turtles susceptible to delayed mortality, predation, boat strike or other sources of injury and mortality (including potentially higher mortality if repeated capture occurs).

NMFS is now working to develop and implement bycatch reduction regulations for trawl fisheries in the Atlantic and Gulf of Mexico when and where sea turtle bycatch has occurred or where gear, time, location, fishing method, and other similarities exist between a particular trawl fishery and a trawl fishery where sea turtle bycatch has occurred. Turtle Excluder Devices (TEDs) have been proven to be an effective method to minimize adverse effects related to sea turtle bycatch in the shrimp trawl fishery, summer flounder trawl fishery, several state

trawl fisheries, and certain other trawl fisheries around the world. TEDs have an escape opening, usually covered by a webbing flap that allows sea turtles to escape from trawl nets. While TEDs have potential as a bycatch reduction device for all trawl fisheries, differences in trawl designs and fishing methods may necessitate modifications or adjustments to the design of existing TEDs before they can be applied in other trawl fisheries. Testing is necessary to ensure that feasible TED designs for specific fisheries still accomplish the desired sea turtle bycatch reduction goals and to determine the TEDs' impact on target catch retention. It is possible that TEDs may not be feasible for some trawl fisheries. In the event that TEDs are not a viable option, other regulations, e.g., tow time restrictions and time/area closures, may need to be considered. NMFS anticipates a phased approach to the implementation of regulations to reduce sea turtle bycatch in trawl fisheries as the information needed to support and properly analyze regulations in various trawl type becomes available. The ANPR specified those trawl fisheries for which the first phase of establishment of conservation measures via regulation are being considered.

Under the Strategy, there is a proposed three-phase approach to regulating trawl fisheries. The first phase, "Trawl Phase I," will include the following fisheries: summer flounder, Atlantic sea scallop, whelk, calico scallop and the flynet fisheries for croaker and weakfish. The second phase, "Trawl Phase II," will likely include sheepshead/black drum/king whiting, porgy, skimmer, Spanish sardine/scad/ladyfish/ butterfish, trynet, squid/mackerel/butterfish, and multispecies (large and small mesh) trawl fisheries. Phase three, "Trawl Phase III," will likely include the skate, horseshoe crab, monkfish, bluefish, spiny dogfish, and the herring trawl fisheries. Given that NMFS is still in the process of developing and testing the appropriate TED technology for phases two and three fisheries, it is possible that some fisheries in Phase II may move to Phase III or vice versa. Additional trawl fisheries that may exist or develop but have not been identified above would also be considered in Phase II and/or Phase III as information becomes available on those fisheries. For some of these fisheries, TEDs may not be effective given the configuration of the gear or the size of the target species. For those fisheries in which TEDs are not effective, other mitigation

measures, such as time and area closures or tow time restrictions, may be considered. This EIS will provide background on the overall Strategy but, due to the state of the current knowledge on Phase II and Phase III, the EIS analyses will focus on fisheries that were identified for Trawl – Phase I.

As mentioned previously, the incidental capture of sea turtles in certain trawl fisheries has been documented in the Gulf of Mexico and the northwest Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. The incidental taking of threatened sea turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223.206(d)) are followed. The conservation regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area and Gulf of Mexico Area) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. Under 50 CFR 222.102, a shrimp trawler is defined as any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

TEDs are devices with an escape opening, usually covered by a webbing flap, that when installed in trawl nets allows sea turtles to escape and avoid drowning or serious injury. There are a variety of different TED designs approved by NMFS for use in various trawl fisheries depending on trawl type, target catch, and fisherman preference. The list of approved TEDs and detailed descriptions of their construction and measurements are contained in 50 CFR 223.207. To be approved for use by NMFS, a TED design must be shown to be at least 97 percent effective in excluding sea turtles during experimental TED testing. TEDs must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

To allow the release of leatherback and large loggerhead sea turtles, NMFS required the use of large escape openings in the shrimp fishery in February 2003 (68 FR 8456; February 21, 2003). The February 2003 regulations required the use of either the

double cover flap TED, which is a TED with a minimum opening of 71-inch (180 cm) straight-line stretched mesh, or the Parker soft TED with a minimum 96-inch (244-cm) opening in offshore waters (from the seaward from the U.S. Coast Guard demarcated lines provided under the International Regulations for Preventing Collisions at Sea [COLREGS demarcation lines, 33 CFR part 80] line seaward) and in all inshore waters off of Georgia and South Carolina; and required a TED with a minimum opening of 44-inch (112 cm) straight-line stretched mesh with a 20-inch (51 cm) vertical taut height in all inshore waters (from the COLREGS demarcation line landward) except for the inshore waters of Georgia and South Carolina. At this time, the large-opening TED is only required in the shrimp trawl fishery.

#### *Summer Flounder Fishery*

Since 1992, all vessels using bottom trawls to fish for summer flounder in specific times and areas off Virginia and North Carolina have been required to use NMFS-approved TEDs in their nets (57 FR 57358, December 4, 1992; 50 CFR 223.206(d)(2)(iii)). Currently, the escape opening requirements for the flounder TED are  $\geq 35$  inches ( $\geq 89$  cm) in width and  $\geq 12$  inches ( $\geq 31$  cm) in height (50 CFR 223.207(b)(1)). Although the February 21, 2003 final rule (68 FR 8456) to require the larger opening in the shrimp trawl fishery did not require vessels in the summer flounder trawl fishery to use the larger escape opening sizes, the rule stated NMFS was evaluating the need for such restrictions in this fishery. The smaller opening currently used in this fishery is insufficient to allow the escapement of leatherback sea turtles and larger loggerhead and green sea turtles. The larger opening TEDs have passed the NMFS testing criteria for turtle escapement, and NMFS has conducted testing of the larger opening in the Mid-Atlantic summer flounder trawl fishery since 2003.

As part of this first phase of rulemaking, NMFS is considering modifying TED regulations in the summer flounder trawl fishery to require a larger escape opening. The larger escape opening would have a 142-inch (361-cm) circumference with a corresponding 71-inch (180-cm) straight-line stretched measurement. This is expected to decrease escape times for all turtles and allow for the release of leatherbacks and all larger loggerhead and green sea turtles. The larger opening would be consistent with sea turtle regulations currently in place in the shrimp trawl fishery.

Additionally, the northern component of the summer flounder trawl fishery, which currently does not fall under the TED requirement, would also be considered for a requirement to use TEDs, as detailed below in this notice.

#### *Whelk and Calico Scallop Trawl Fisheries*

Much of the whelk fishery occurs primarily in the state waters of Georgia and South Carolina, in both state and Federal fisheries. The fishery arose as an alternative fishery when the shrimp fishery was closed. Trawling for knobbed, channeled and lightning whelk occurs from mid-February through mid-April. Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Virginia, Maryland, and North Carolina have reported landings of channeled, lightning or knobbed whelk by trawl gear.

Due to documented sea turtle interactions in whelk fisheries, NMFS evaluated potential TED designs for the fishery in 2000–2001. The whelk TED was developed in cooperation with the Georgia Department of Natural Resources (GDNR) and the University of Georgia Marine Extension Service in an effort to provide nearshore whelk fishermen with a TED that would allow the target species to pass through the TED frame and be retained as catch. The whelk TED passed the NMFS turtle testing protocol in 2001. The whelk TED design is similar to the top-opening flounder TED used along the southeastern Atlantic coast during the winter months, and features enlarged openings at the bottom of the frame. Currently, GDNR requires the use of this TED in the whelk trawl fishery in Georgia state waters. As part of the Strategy, NMFS is considering requiring the use of TEDs in the whelk trawl fishery throughout the range of the fishery.

The calico scallop fishery originally developed in North Carolina in the early 1960s, but the focus of the fishery shifted to areas off Florida during the early 1970s. Calico scallop trawls are typically small (e.g., headrope length <40 feet) and are towed for short periods of time (e.g., 15 minutes). The scallop beds off Florida stretch from Jacksonville to Ft. Pierce in 60 to 240 feet (18 to 73 m) of water. Due to large fluctuations of calico scallop abundance and patchy distribution, landings within the fishery have been extremely sporadic. No vessels are thought to currently be operating in the fishery as a result of resource depletion, habitat degradation, and lack of processing facilities. NMFS has determined that a hard TED, similar in design to the whelk

TED, could be installed in calico scallop trawls. As part of the Strategy, NMFS is considering an option to require the use of TEDs in the calico scallop trawl fishery in the event that the fishery re-emerges. TED use in this fishery would be a new requirement.

#### *Mid-Atlantic Scallop Trawl Fishery*

The U.S. Atlantic sea scallop fishery is conducted in the Gulf of Maine, on Georges Bank, and in the Mid-Atlantic offshore region southward to North Carolina. The commercial fishery for Atlantic sea scallops occurs year round and is primarily conducted using dredges and otter trawls. Approximately 10 percent of landings in the sea scallop fishery are from vessels using trawl gear, primarily in the Mid-Atlantic. Fishing by these vessels often occurs during the summer when other species (e.g., summer flounder) are not available (NMFS 2003). Trawl fishermen participating in the sea scallop fishery primarily use either Atlantic sea scallop trawls or flounder trawls. Sea turtle bycatch has been documented in the Atlantic sea scallop trawl fishery.

In 2005 and 2006, NMFS tested the feasibility of TED use in the sea scallop trawl fishery. The sea scallop TED tested is a whelk TED that has been modified to prevent chafing of the gear. This TED design passed the NMFS testing criteria for sea turtle escapement. Initial results suggest that TED use in the sea scallop trawl fishery is feasible. As part of the first phase of rulemaking, NMFS is considering an option to require the use of TEDs in the Mid-Atlantic sea scallop trawl fishery. TED use in this fishery would be a new requirement.

#### *Flynet Fishery*

Flynets are high profile trawls fished just off the bottom and range from 80 to 120 feet (24.4 to 36.6 m) in width, with wing mesh sizes of 8 to 64 inches (41 to 163 cm). The flynet fishery is a multi-species fishery that operates along the east coast of the United States. One component of the fishery operates inside of 180 feet (55 m) from North Carolina to New Jersey, and targets Atlantic croaker, weakfish, and other finfish species. Another component of the flynet fishery operates outside of 180 feet (55 m) from the Hudson Canyon off New York, south to Hatteras Canyon off North Carolina. Target species for the deeper-water component of the fishery include bluefish, Atlantic mackerel, squid, black sea bass, and scup. Sea turtle bycatch has been documented in this fishery. TED requirements for Trawl-Phase I would be only for Atlantic croaker and weakfish fisheries.

TEDs for the flynet fishery have been in development since 1999. Two semi-rigid TED designs for use within the flynet fishery have passed the NMFS turtle testing protocol when rigged with a top-opening escape panel. As part of the first phase, NMFS is currently considering requiring the use of TEDs in the flynet fishery. TED use in this fishery would be a new requirement.

*Replacement of the Summer Flounder Fishery Sea Turtle Protection Area Boundary with a General Sea Turtle Protection Area Boundary*

The existing Summer Flounder Fishery Sea Turtle Protection Area rule requires that any summer flounder trawler operating within the boundary must use TEDs (50 CFR 223.206(d)(2)(iii)). Currently, this protection area is bounded on the north by a line extending off Cape Charles, Virginia, on the south by a line extending from the South Carolina-North Carolina border, and on the east by the Exclusive Economic Zone boundary. Vessels are exempted from the summer flounder TED requirement north of Oregon Inlet, North Carolina, from January 15 through March 15, annually, when bycatch of sea turtles by summer flounder trawling is not expected.

From 1994–2004, observers documented turtle bycatch in summer flounder and other Mid-Atlantic bottom otter trawl fisheries in areas and times when TEDs are not required in the summer flounder trawl fishery (Murray 2006). Based on the analysis, the likelihood of interacting with a turtle depends on the time and area in which fishing occurs rather than the fish species being targeted. While incidental captures of sea turtles occurred throughout the year, Murray (2006) demonstrated that most interactions were confined to certain bathymetric and thermal regimes. Because of documented bycatch of sea turtles north of the current line, NMFS is considering expanding the geographic scope of the TED requirements in the summer flounder fishery as part of the first phase to address sea turtle bycatch in the summer flounder fishery. This change would expand the TED requirements to other trawl fisheries in the Mid-Atlantic, which currently do not have any TED requirements within this geographic area.

**Purpose of This Action**

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. NMFS is

considering a variety of regulatory measures under the Strategy to reduce the bycatch of threatened and endangered sea turtles in trawl fisheries. This EIS will provide background on the overall Strategy and specifically evaluate the alternatives and impacts associated with the proposed first phase of regulating the trawl fisheries along the Atlantic Coast and Gulf of Mexico. This rulemaking authority would be pursuant to the ESA. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with the exceptions identified in 50 CFR 223.206. NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives, associated impacts of any alternatives, and suitable mitigation measures.

**Public Involvement and the Scoping Process**

On February 15, 2007, NMFS published an ANPR in the **Federal Register** regarding potential amendments to the regulatory requirements for TEDs (72 FR 7382). The notice initiated a 30-day public comment period scheduled to end on March 19, 2007. However, due to requests from the public to extend the comment period, NMFS published an extension to the ANPR on March 19, 2007 (72 FR 12749), to allow comments through May 18, 2007.

NMFS received approximately 165 comments on proposed regulatory requirements during the combined 90-day comment period. The vast majority of nearly identical comments (approximately 130) were in favor of additional TED requirements for trawl fisheries, as well as a closure of “key sea turtle habitat areas.” While not specifically opposed to the proposed regulatory requirements, another group of 23 identical e-mail comments suggested a “new approach perhaps a deflector” for trawl fisheries. Through this NOI, NMFS further encourages all interested parties to participate in this NEPA process.

**Scope of the Action**

The Draft EIS is expected to identify and evaluate the relevant impacts and issues associated with implementing the first phase of sea turtle regulations in trawl fisheries of the northwest Atlantic and Gulf of Mexico, in accordance with the Council on Environmental Quality’s Regulations at 40 CFR parts 1500, 1508, and NOAA’s procedures for implementing NEPA found in NOAA Administrative Order (NAO) 216–6, dated May 20, 1999.

NMFS is proposing to implement the trawl part of the Strategy along the Atlantic Coast and the Gulf of Mexico. Phase one will specifically focus on the Atlantic coast trawl fisheries. The public will have additional opportunity to provide input on Trawl Phases II and III regulations at such time that separate rule-making processes are initiated.

**Alternatives**

NMFS will evaluate a range of alternatives in the Draft EIS for implementing phase one of the Strategy to reduce sea turtle bycatch and mortality in trawl fisheries along the Atlantic Coast. In addition to evaluating the status quo, NMFS will evaluate several alternatives. These alternatives include time and area closures, requiring the use of TEDs in the summer flounder, whelk, croaker and weakfish flynet and calico scallop trawls for the entire Atlantic Coast, as well as combination of spatial and temporal options. In terms of spatial options, sea turtles in U.S. waters range as far North as Georges Bank and the Gulf of Maine, but may be less likely to interact with a fishery towards the northern extent of this range. We will likely evaluate several alternatives related to the northern/northeastern extent of any required gear modification or other regulation. In general, NMFS is considering applying any gear modification or other regulation shoreward to the mean high water line. Similarly, several alternatives will likely be evaluated for the temporal extent of when a regulation would be in effect, as sea turtles migrate north along the Atlantic coast as waters warm each year, and are only present in more northern areas during the warmer months. Several datasets are available to help select and analyze the various spatial and temporal alternatives; these include fisheries landings and catch reports, observer data, sea surface temperature data, sea turtle strandings data, and sea turtle sighting and survey data.

**Public Comments**

NMFS provides this notice to advise the public and other agencies of NMFS’s intentions and to obtain suggestions and information on the scope of the issues to include in the EIS. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action and all substantive issues are identified. NMFS requests that comments be as specific as possible. In particular, the agency requests information regarding the potential direct, indirect, and cumulative impacts on the human environment from the

proposed action. The human environment is defined as “the natural and physical environment and the relationship of people with that environment” (40 CFR 1508.14). In the context of the EIS, the human environment could include air quality, water quality, underwater noise levels, socioeconomic resources, fisheries, and environmental justice.

Comments concerning this environmental review process should be directed to NMFS (see **ADDRESSES**). See **FOR FURTHER INFORMATION CONTACT** Alexis Gutierrez at [Alexis.Gutierrez@noaa.gov](mailto:Alexis.Gutierrez@noaa.gov) or at 301–713–2322 for questions. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

Authority: The environmental review of the phase one of the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries will be conducted under the authority and in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR parts, 1500 through 1508), other appropriate Federal laws and regulations, and policies and procedures of NOAA and NMFS for compliance with those regulations.

#### Scoping Meetings Code of Conduct

The public is asked to follow the following code of conduct at the scoping meetings. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the meeting room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees may not interrupt one another). The NMFS representative will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

#### Special Accommodations

The scoping meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to one of the contacts (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting. See Council meeting announcement for

accessibility information for the briefings to the councils.

Dated: May 1, 2009.

**Katy Vincent,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. E9–10674 Filed 5–7–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XI63**

#### Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in the Northeast Pacific Ocean, August – October 2009

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

**ACTION:** Notice; proposed incidental take authorization; request for comments.

**SUMMARY:** NMFS has received an application from the Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a seismic survey in the northeast Pacific Ocean. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize L-DEO to take, by Level B harassment only, small numbers of marine mammals incidental to conducting a marine seismic survey during August through October, 2009.

**DATES:** Comments and information must be received no later than June 8, 2009.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is [PR1.0648-XI63@noaa.gov](mailto:PR1.0648-XI63@noaa.gov). Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential

business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody or Howard Goldstein, Office of Protected Resources, NMFS, (301) 713–2289.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [A Level A harassment@]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing

**ISSUES AND OPTIONS ON THE STRATEGY FOR SEA TURTLE  
CONSERVATION AND RECOVERY IN RELATION TO U.S. ATLANTIC  
OCEAN AND GULF OF MEXICO FISHERIES**

**SCOPING DOCUMENT**

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## PURPOSE OF THE SCOPING DOCUMENT

The National Oceanic Atmospheric Administration's National Marine Fisheries Service (NMFS) intends to promulgate regulations to reduce the takes of endangered and threatened sea turtles in trawl fisheries on the Atlantic Coast and the Gulf of Mexico. In order to prepare a draft environmental impact statement as well as to gather information on these planned regulations, NMFS is undertaking a scoping process. The scoping process will be the first stage in a multi-step process required by the National Environmental Policy Act (NEPA) to ensure that Federal agencies evaluate the environmental impacts of major Federal actions. During the scoping process, the public is provided with an opportunity to assist NMFS in determining the scope of issues that require analysis. The analysis of issues and the environmental impacts of the proposed actions will be presented in a Draft Environmental Impact Statement (EIS), which will be made available for public comment. This scoping document is prepared as an aid to the public on the scoping process that NMFS is about to undertake.

In the early part of this decade, NMFS recognized the need to prevent or minimize address sea turtle bycatch in a more comprehensive manner. NMFS thus developed the Strategy for Sea Turtle Conservation and Recovery in Relation to the Atlantic Ocean and Gulf of Mexico Fisheries (Strategy). This Strategy is intended to address sea turtle bycatch by gear type instead of by fishery. Further, since the Strategy will be promulgated under the Endangered Species Act (ESA), 16 USC 1531 *et seq.*, NMFS will be able to better address sea turtle takes in state and Federal fisheries.

After several years of data collection and analysis, NMFS determined that the first gear type to address sea turtle bycatch would be trawl gear, given information indicating that estimated average annual bycatch for the Mid-Atlantic bottom otter trawl was 616 loggerheads per year (Murray 2008), along with an additional 134 loggerheads caught annually in scallop trawl gear (Murray 2007 and NMFS 2008). In February 15, 2007, NMFS published an Advanced Notice of Public Rulemaking (ANPR) to amend the regulations for the use of turtle excluder devices (TEDs) in several fisheries (72 FR 7382). Those fisheries included the flynet, whelk, calico scallop, Atlantic sea scallop and summer flounder. The ANPR also noted that NMFS was considering replacing the summer flounder fishery sea turtle protection area, boundary, described at 50 CFR 223.206(d)(2)(iii), with a general sea turtle protection area boundary.

NMFS received 165 comments during the comment period for the ANPR, the majority of which were nearly identical. Many of the comments indicated support for the TEDs requirements in trawl fisheries and as well as closure of "key sea turtle habitat areas." Other comments received suggested that a deflector for trawl fisheries might be an approach to be considered.

This scoping document will provide the public with information for their consideration and comment related to measures to reduce the take of endangered and threatened sea turtles in trawl fisheries. NMFS will use comments received during this scoping period in designing the options for rulemaking to reduce the take of sea turtles in commercial trawl fisheries. NMFS will hold public scoping meetings starting May 2009 until June 2009 and will accept comments through July 10, 2009.

NMFS believes that public involvement is critical during the development and drafting of any regulatory action. Through public input, NMFS will be better able to explore a reasonable range of management alternatives and their potential impacts. NMFS, therefore, is seeking comments from participants in commercial and recreational fisheries, regional fishery management councils, states, representatives from the conservation and scientific communities, and the general public. NMFS anticipates that additional issues and options will be identified by the public during the series of scoping meetings. These additional issues and options will also be considered when drafting the proposed rule and draft EIS.

It is important to note that the options presented in this document are identified for the purposes of stimulating discussion and input from the public, and some may not be analyzed in the NEPA EIS process. Also, the options presented in this document are not necessarily endorsed by NMFS at this time. Rather, these represent a range of management measures, not necessarily mutually exclusive of each other, that NMFS could further consider as the rulemaking process advances. Some of the options have been discussed in the past, and may be more detailed than others. NMFS will consider these options, as well as other options provided by the public through the scoping process when developing management alternatives for Atlantic and Gulf of Mexico trawl fisheries in order to meet the goals of the ESA and to prevent or minimize sea turtle bycatch.

## STATUS of SEA TURTLES

Since the 1970s, the six species of sea turtles found in U.S. waters have been listed under the U.S. Endangered Species Act (ESA). Three species are listed as endangered – Leatherbacks (*Dermochelys coricea*), Kemp’s ridley (*Lepidochelys kempii*), and Hawksbill (*Eretmochelys imbricata*.) Three species are listed as threatened – Olive ridley (*Lepidochelys olivacea*), Loggerhead (*Caretta caretta*), and Green (*Chelonia mydas*). Florida and Mexico’s Pacific Coast breeding colonies of green turtles are listed as endangered as well. Likewise, the Pacific coast of Mexico’s olive ridley breeding colonies are listed as endangered. More information on these species can be found at <http://www.nmfs.noaa.gov/pr/species/turtles/#species>.

The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have joint jurisdiction under the ESA to protect and recover sea turtles. The Services are required under the ESA to “seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.” Therefore, the Services seek to address the threats to the recovery of sea turtle populations. The principal threats to sea turtles are poaching, habitat destruction (in-water and beach), bycatch, pollution, and vessel strikes.

NMFS is responsible for in-water conservation of sea turtles. The principal anthropogenic in-water threat to sea turtles is bycatch in fisheries. To help reduce the sea turtle bycatch in fisheries, NMFS has promulgated several regulations pursuant to the ESA and the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 USC 1801 *et seq.* For example, beginning in the late 1980s and into the early 1990s, NMFS required shrimp fishermen in the Gulf of Mexico and south of the North Carolina border to use turtle excluder devices (TEDs). 50 CFR 223.206(d)(2)(i). More recently, NMFS extended that requirement into the flounder fishery south of the North Carolina border, 50 CFR 223.206(d)(2)(iii). NMFS has also placed restrictions on the use of gillnets in Pamlico Sound, North Carolina. 50 CFR. 223.206(d)(7). In the Chesapeake Bay, NMFS requires modified pound net leaders in order to reduce sea turtle bycatch. 50 CFR. 223.206(d)(10). Lastly in the Atlantic, pelagic longline vessels are required to use circle hooks with certain bait combinations, have onboard sea turtle release equipment, and comply with specified sea turtle handling and release protocols, 50 CFR 635.21, and sea scallop dredge vessels are required to use chain mats across the opening of dredges to prevent the capture of sea turtles. 50 CFR 223.206(d)(11).

In the Pacific, NMFS has prohibited fishing with draft gillnets in CA/OR in the shark/swordfish fishery during El Nino events. 50 CFR 223.206(d)(6). In addition, in the Hawaii swordfish fishery, circle hooks with whole finfish bait and 100% observer coverage is required, there is a hard cap on the number of turtle takes and annual fleet-wide effort is limited. 50 CFR 665.32-33.

In 2007, NMFS published a rule under the ESA to require fishing vessels that are identified through an annual determination process to take observers at NMFS’

request, 50 CFR 222 Subpart D. Through this process, NMFS will be able to better understand sea turtle bycatch in state and Federal fisheries in order to implement measures to prevent or minimize that bycatch.

While NMFS' actions to reduce sea turtle bycatch in fisheries have aided in the efforts to achieve species' recovery, current indications are that work towards recovery is still needed. In 2007, the USFWS and NMFS released the five-year reviews for all six species of sea turtles as required by the ESA. All of the five-year reviews recommended no changes in the current listings. With the exception of the Kemp's ridley, all of the reviews also recommended that full status reviews be undertaken in accordance with the Distinct Population Segment policy. Currently, there is such a review being conducted for loggerhead sea turtles.

In 2007, NMFS was also petitioned to designate critical habitat for leatherbacks off the west coast of the United States. The petitioners were particularly concerned about the area in which the CA/OR drift gillnet fishery for swordfish/thresher shark operates. On December 28, 2007, NMFS determined that the petition may be warranted and has been working to designate critical habitat (72 FR 73745) and is currently working on the 12-month finding.

NMFS received two additional petitions in 2007 to designate the North Pacific loggerhead and the Northwest Atlantic loggerhead sea turtles as "Distinct Population Segments" and list them as endangered. NMFS 90-day petition finding determined that these petitions may be warranted in November 16, 2007 (72 FR 64585) and March 5, 2008, respectively. A joint NMFS/USFWS Biological Review Team (BRT) is currently assessing the global status of loggerheads. The BRT report will provide the foundation upon which NMFS and USFWS will determine whether to designate Distinct Population Segment(s) for loggerheads and, if so, what their ESA listing status should be.

Finally in January 2009, NMFS and USFWS released the revised Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle. This plan contains a detailed analysis of threats, prioritized recovery actions based on these threats and detailed recovery criteria. The recovery plan can be found at [http://www.nmfs.noaa.gov/pr/pdfs/recovery/turtle\\_loggerhead\\_atlantic.pdf](http://www.nmfs.noaa.gov/pr/pdfs/recovery/turtle_loggerhead_atlantic.pdf).

## **STRATEGY FOR SEA TURTLE CONSERVATION AND RECOVERY IN RELATION TO ATLANTIC OCEAN AND GULF OF MEXICO FISHERIES**

In 2001, NMFS developed the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (Strategy) to address sea turtle bycatch on a gear basis as opposed to specific fisheries. This Strategy was developed in part because NMFS addresses fishery interactions through the ESA

Section 7 process on federal fisheries, but that approach does not allow the integration of state-managed fisheries and fisheries not currently managed under a Fishery Management Plan. On July 31, 2001, NMFS published a Notice of Intent (NOI) to prepare an Environmental Impact Statement to assess the potential impacts on the human environment of sea turtle interactions with fishing activities in the Atlantic and Gulf of Mexico (66 FR 39474). The expectation was that through the scoping meetings that NMFS would be able to gather input from states, Councils, industry, academia, non-governmental organizations, and other interested parties in order to address sea turtle bycatch by gear type throughout the Atlantic and the Gulf of Mexico. In May, 2004, NMFS published a notice of availability (NOA) in part to respond to the 10 comments received in 2001 NOI on the Strategy (69 FR 30627, May 28, 2004). The majority of the commenters expressed support for the Strategy. There were four principal comments. First, some commenters felt that the Strategy should not be restricted to just the Atlantic. NMFS responded that the majority of priority fisheries in the Pacific, such as longline and drift gillnets, were already being managed by Magnuson-Stevens Fishery Conservation and Management Act regulations. Others felt that the Strategy should include non-fishery impacts. NMFS responded that fisheries has been identified as one of the most significant impacts to sea turtles and therefore the Strategy would remain focused on fisheries impacts. The third major comment centered on priority actions such as implementing larger turtle excluder devices (TEDs) in trawl fisheries, restricting leaders in the Chesapeake Bay pound net fishery, prohibiting large mesh gillnets and placing observers on Mid-Atlantic gillnet fisheries. NMFS responded that they had addressed the majority of these comments in rulemaking already. And finally, the last comment noted that the NOI lacked specific information on the actions being proposed. In the same NOA, NMFS presented a draft information framework and draft criteria for evaluating gear types under the Strategy, so that the public could continue to provide input to the Strategy process. The NOA provided a list of gear in the Atlantic Ocean and the Gulf of Mexico Fisheries on which the public could comment. NMFS also then presented a Fisheries Characterization, Bycatch and Regulations Information Framework for public comment.

NMFS then began a process to characterize all the state and Federal fisheries in the Gulf of Mexico and the Atlantic Ocean to better understand the nature of those fisheries and the interactions with sea turtles. On November 8, 2006, NMFS announced in the Federal Register the availability for review of the Atlantic and Gulf of Mexico trawl fishery characterizations (71 FR 65473).

During this time period, NMFS also began to develop a Geographic Information System (GIS) database of all information on sea turtle distribution and fishing effort. This data was collected from NOAA Science Centers, other Federal agencies, and private research groups. As a result of the fishery characterization and data collection process, NMFS identified the priority gears for the Strategy as trawl, gillnets, traps and pots and hook and line (including longline). NMFS will leave open the possibility to take conservation measures on other gear types as new information becomes available.

In 2006, NMFS Northeast Fisheries Science Center issued a report that estimated the estimated average annual bycatch of loggerhead turtles in the Mid-Atlantic bottom otter trawl fisheries (Cape Hatteras, NC to Long Island Sound, NY) to be 616 animals for the years 1996-2004 (Murray 2006.) This estimate did not include the Mid-Atlantic scallop trawl fishery, for which a separate sea turtle bycatch estimate was done for 2004-2005. The estimated average annual bycatch of loggerhead sea turtles in the Mid-Atlantic scallop trawl fishery in the years 2004-2005 was 134 animals (NMFS 2008 and Murray 2007).

Interaction in trawl fisheries are of a particular concern, since sea turtles forcibly submerged in any type of restrictive gear eventually suffer fatal consequences from prolonged anoxia and/or seawater infiltration of the lung (Lutcavage and Lutz 1997). A study examining the relationship between tow time and sea turtle mortality in the shrimp trawl fishery showed that mortality was strongly dependent on trawling duration, with the proportion of dead or comatose sea turtles rising from 0% for the first 50 minutes of capture to 70% after 90 minutes of capture (Henwood and Stuntz 1987). However, metabolic changes that can impair a sea turtle's ability to function can occur within minutes of a forced submergence. While most voluntary dives appear to be aerobic, showing little if any increases in blood lactate and only minor changes in acid-base status, the effects are very different in forcibly submerged sea turtles, where oxygen stores are rapidly consumed, anaerobic glycolysis is activated, and acid-base balance is disturbed, sometimes to lethal levels (Lutcavage and Lutz 1997). Forced submergence of Kemp's ridley sea turtles in shrimp trawls resulted in an acid-base imbalance after just a few minutes (times that were within the normal dive times for the species) (Stabenau *et al.* 1991). Conversely, recovery times for acid-base levels to return to normal may be prolonged. Henwood and Stuntz (1987) found that it took as long as 20 hours for the acid-base levels of loggerhead sea turtles to return to normal after capture in shrimp trawls for less than 30 minutes. This effect is expected to be exacerbated for sea turtles that are recaptured before metabolic levels have returned to normal.

Following the recommendations of the 1990 National Research Council (NRC) report to reexamine the association between tow times and sea turtle deaths, the data set used by Henwood and Stuntz (1987) was updated and re-analyzed (Epperly *et al.* 2002; Sasso and Epperly 2006). Seasonal differences in the likelihood of mortality for sea turtles caught in trawl gear were apparent. For example, the observed mortality exceeded 1% after 10 minutes of towing in the winter (defined in Sasso and Epperly (2006) as the months of December-February), while the observed mortality did not exceed 1% until after 50 minutes in the summer (defined as March-November; Sasso and Epperly 2006). In general, Sasso and Epperly (2006) concluded that tows of short duration (<10 minutes) in either season have little effect on the likelihood of mortality for sea turtles caught in the trawl gear and would likely achieve a negligible mortality rate (defined by the NRC as <1%). Intermediate tow times (10-200 minutes in summer and 10-150 minutes in winter) result in a rapid escalation of mortality, and eventually reach a plateau of high mortality, but will not equal 100%, as a sea turtle caught within the last hour of a long tow will likely survive (Epperly *et al.* 2002; Sasso and Epperly 2006). However, in both seasons, a

rapid escalation in the mortality rate did not occur until after 50 minutes (Sasso and Epperly 2006) as had been found by Henwood and Stuntz (1987). Although the data used in the reanalysis were specific to bottom otter trawl gear in the U.S. south Atlantic and Gulf of Mexico shrimp fisheries, the authors considered the findings to be applicable to the impacts of forced submergence in general (Sasso and Epperly 2006).

Given this information on sea turtles and interactions with trawl fisheries, and because of the development and use of turtle excluder devices (TEDs) in other trawl fisheries, in the United States and elsewhere, NMFS determined that trawl fisheries would be the first gear type addressed under the Strategy. To aid NMFS in determining which trawl fisheries to address first, NMFS looked to bycatch estimates in trawl fisheries. In the Murray 2008 estimate, the average annual estimate of loggerhead sea turtle bycatch was broken down by target species group. This revealed that approximately 47 percent of the estimated bycatch occurred in the summer flounder/scup/black sea bass fishery, 15 percent in the Atlantic mackerel/squid/butterfish, 10 percent in the Atlantic croaker, 10 percent in Northeast multispecies (large and small mesh), 6 percent in the northeast skate complex, 5 percent in the horseshoe crab fishery, and less than 1 percent for bluefish, monkfish, spiny dogfish and weakfish respectively.

As a result of the number of different types of trawl fisheries, the amount of sea turtle bycatch in various trawl fisheries, and the availability of bycatch mitigation technology, NMFS has preliminarily determined that trawl fisheries in the Atlantic and the Gulf of Mexico would best be addressed in three phases. By addressing trawl fisheries in phases, NMFS would be able to implement bycatch mitigation strategies as technology becomes available. The preliminary phases that NMFS is considering are as follows:

- Trawl Phase One – summer flounder, Atlantic sea scallop, whelk, calico scallop and the flynet fisheries for croaker and weakfish. (A description of Trawl Phase one fisheries can be found below.)
- Trawl Phase Two – sheepshead/black drum/king whiting, porgy, skimmer, Spanish sardine/scad/ladyfish/butterfish, and multispecies (large and small mesh).
- Trawl Phase Three – skate, horseshoe crab, monkfish, bluefish, spiny dogfish, herring trawl fisheries, and any other trawl fisheries not previously identified or considered.

On May 8, 2009, NMFS published an NOI to prepare an EIS and conduct public scoping meetings (74 FR 21627). The current scoping process will focus on issues to be addressed in the EIS for Phase One trawl fisheries. The public will also have the opportunity to comment on the delineation of these phases and whether other trawl fisheries should be included or excluded. For example, another option (described in the presentation of alternatives below) would be to require regulations to protect sea

turtles in all trawl fisheries. The public will also be able to comment on the range of alternatives for addressing sea turtle bycatch in the phase one trawl fisheries. These alternatives may include the spatial and temporal extent of the regulation, requirements to use TEDs, and closed areas amongst other alternatives. In the Alternatives section of this document, the range of alternatives that NMFS has preliminarily identified is presented.

In a phased approach as described above, NMFS will need to determine how to define the particular fisheries to be regulated. For example, if NMFS were to require a TED to be used in the summer flounder fishery in a particular area, the vessels that would be subject to this regulation would need to be defined. One option could be all vessels using trawl gear that have any summer flounder on board. Another option would be to have all vessels using trawl gear that have more than a certain amount of summer flounder on board (e.g., 10lbs, 50lbs, 100lbs). NMFS will work to identify appropriate landing levels or permit status to help define these fisheries. Input from the public is welcome regarding ways to define these fisheries.

The public scoping period for the EIS will begin May 8, 2009 and continue until July 10, 2009. There will be five public meetings. Information on the meetings can be found in Annex I.

## **FISHERIES DESCRIPTION**

### ***Summer Flounder Fishery***

Since 1992, all vessels using bottom trawls to fish for summer flounder in specific times and areas off Virginia and North Carolina have been required to use NMFS-approved TEDs in their nets 50 CFR 223.206(d)(2)(iii)). Currently, the escape opening requirements for the flounder TED are  $\geq 35$  inches ( $\geq 89$  cm) in width and  $\geq 12$  inches ( $\geq 31$  cm) in height 50 CFR 223.207(b)(1). Although this final rule requiring the larger opening in the shrimp trawl fishery did not require vessels in the summer flounder trawl fishery to use the larger escape opening sizes, the preamble to the rule stated NMFS was evaluating the need for such restrictions in this fishery (68 FR 8456, February 21, 2003). The smaller opening currently used in this fishery is likely insufficient to allow the escapement of leatherback sea turtles and larger loggerhead and green sea turtles. The larger opening TEDs have passed the NMFS testing criteria for turtle escapement, and NMFS has conducted testing of the larger opening in the mid-Atlantic summer flounder trawl fishery since 2003.

As part of this first phase of rulemaking, NMFS is considering modifying TED regulations in the summer flounder trawl fishery to require a larger escape opening. The larger escape opening would have a 142-inch (361cm) circumference with a corresponding 71-inch (180cm) straight-line stretched measurement. This is expected to decrease escape times for all turtles and allow for the release of leatherbacks and all larger loggerhead and green sea turtles. The larger opening would be consistent with sea turtle regulations currently in place in the shrimp trawl fishery.

Additionally, the northern component of the summer flounder trawl fishery, which currently does not fall under the TED requirement, would also be considered for a requirement to use TEDs, as further described below.

### ***Whelk and Calico Scallop Trawl Fisheries***

The whelk fishery occurs primarily in the state waters of Georgia and South Carolina. In addition to Georgia and South Carolina, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Virginia, Maryland, and North Carolina have reported landings of channeled, lightning or knobbed whelk by trawl gear. The fishery arose as an alternative fishery when the shrimp fishery was closed. Trawling for knobbed, channeled and lightning whelk occurs from mid-February through mid-April.

Due to documented sea turtle interactions in whelk fisheries, NMFS evaluated potential TED designs for the fishery in 2000-2001. The whelk TED was developed in cooperation with the Georgia Department of Natural Resources (GDNR) and the University of Georgia Marine Extension Service was designed to provide near shore whelk fishermen with a TED that would allow the target species to pass through the TED frame and be retained as catch. The whelk TED passed the NMFS turtle testing protocol in 2001. The whelk TED design is similar to the top-opening flounder TED used along the southeastern Atlantic coast during the winter months, and features enlarged openings at the bottom of the frame. Currently, GDNR requires the use of this TED in the whelk trawl fishery in Georgia state waters. As part of the Strategy, NMFS is considering requiring the use of TEDs in the whelk trawl fishery throughout the range of the fishery.

The calico scallop fishery originally developed in North Carolina in the early 1960s, but the focus of the fishery shifted to areas off Florida during the early 1970s. Calico scallop trawls are typically small (e.g., headrope length < 40 feet) and usually towed for short periods of time (e.g., 15 minutes). The scallop beds off Florida stretch from Jacksonville to Ft. Pierce in 60 to 240 feet (18 to 73 m) of water. Due to large fluctuations of calico scallop abundance and patchy distribution, landings within the fishery have been extremely sporadic. No vessels are thought to currently be operating in the fishery as a result of calico scallop depletion, habitat degradation, and lack of processing facilities. NMFS has determined that a hard TED, similar in design to the whelk TED, could be installed in calico scallop trawls. NMFS is considering an option to require the use of TEDs in the calico scallop trawl fishery in the event that the fishery re-emerges.

### ***Mid-Atlantic Scallop Trawl Fishery***

The U.S. Atlantic sea scallop fishery is conducted in the Gulf of Maine, on Georges Bank, and in the mid-Atlantic offshore region southward to North Carolina. The commercial fishery for Atlantic sea scallops occurs year round and is primarily conducted using dredges and otter trawls. Approximately 10 percent of landings in the sea scallop fishery are from vessels using trawl gear, primarily in the

mid-Atlantic. Fishing by these vessels often occurs during the summer when other species (e.g., summer flounder) are not available (NMFS 2003). Trawl fishermen participating in the sea scallop fishery primarily use either Atlantic sea scallop trawls or flounder trawls. Sea turtle bycatch has been documented in the Atlantic sea scallop trawl fishery.

In 2005 and 2006, NMFS tested the feasibility of TED use in the sea scallop trawl fishery. The sea scallop TED tested is a whelk TED that has been modified to prevent chafing of the gear. This TED design passed the NMFS testing criteria for sea turtle escapement. Initial results suggest that TED use in the sea scallop trawl fishery is feasible. As part of the first phase of rulemaking, NMFS is considering an option to require the use of TEDs in the Mid-Atlantic sea scallop trawl fishery.

### ***Flynet Fishery***

Flynets are high profile trawls fished just off the bottom and range from 80 to 120 feet (24.4 to 36.6 m) in width, with wing mesh sizes of 8 to 64 inches (41 to 163 cm). The flynet fishery is a multi-species fishery that operates along the east coast of the United States. Sea turtle bycatch has been documented in this fishery. One component of the fishery operates inside of 180 feet (55 m) from North Carolina to New Jersey, and targets Atlantic croaker, weakfish, and other finfish species. Another component of the flynet fishery operates outside of 180 feet (55 m) from the Hudson Canyon off New York south to Hatteras Canyon off North Carolina. Target species for the deeper-water component of the fishery include bluefish, Atlantic mackerel, squid, black sea bass, and scup. The more inshore flynet fishery targeting croaker and weakfish is being considered for Phase One. TEDs for the flynet fishery have been in development since 1999. Two semi-rigid TED designs for use within the flynet fishery have passed the NMFS turtle testing protocol when rigged with a top-opening escape panel. NMFS is considering an option to require the use of TEDs in the flynet fishery.

### ***Replacement of the Summer Flounder Fishery Sea Turtle Protection Area Boundary with a General Sea Turtle Protection Area Boundary***

The existing Summer Flounder Fishery Sea Turtle Protection Area rule requires that any summer flounder trawler operating within the boundary must use TEDs (50 CFR 223.206(d)(2)(iii)). Currently, this protection area is bounded on the north by a line extending off Cape Charles, Virginia, on the south by a line extending from the South Carolina-North Carolina border, and on the east by the Exclusive Economic Zone boundary. Vessels are exempted from the summer flounder TED requirement north of Oregon Inlet, North Carolina, from January 15 through March 15, annually.

From 1994-2004, observers documented turtle bycatch in summer flounder and other mid-Atlantic bottom otter trawl fisheries in areas and times when TEDs are not required in the summer flounder trawl fishery (Murray 2006). Based on the analysis,

the likelihood of interacting with a turtle depends on the time and area in which fishing occurs rather than the fish species being targeted. While incidental captures of sea turtles occurred throughout the year, Murray (2006) concluded that most interactions were confined to certain bathymetric and thermal regimes. Because of documented bycatch of sea turtles north of the current line, NMFS is considering expanding the geographic scope of the TED requirements in the summer flounder fishery as part of the first phase of rulemaking. Any new geographic scope for the TED requirements for the summer flounder fishery may also be the geographic scope for the other trawl fisheries being considered for regulations to protect sea turtles.

# ALTERNATIVES FOR TRAWL PHASE ONE OF THE ATLANTIC/GULF STRATEGY

In this section NMFS presents a menu of options under the four components that will make-up the entire alternative. NMFS will select an option from the spatial, temporal, fisheries and fisheries operating sections to create a complete alternative. NMFS will make this selection based on the scoping discussions, as well as analysis as to what is the most realistic combination of options to create an alternative.

**No Action Alternative (Status Quo):** Under the no action alternative, trawl fisheries in the Atlantic Ocean would continue to fish in the same manner. The current TED requirements would remain in place and no additional measures would be required in these fisheries to reduce sea turtle interactions.

## *Spatial Alternatives*

**Spatial Alternative 1:** Under this alternative, the regulation would apply to proposed Area 1, which is bound on the north by a line extending south along 70.00° W from the south facing shoreline of Cape Cod, MA to 41.15° N/70.00° W, then extending east along 41.15° N to the outer boundary of the Exclusive Economic Zone (EEZ). This area is bounded on the east by the outer boundary of the EEZ and on the west by the mean high water line (Figure 1a).

**Spatial Alternative 2:** Under this alternative the regulation would apply to Proposed Area 2 which is bounded on the north by a straight line extending from the intersection of the south facing shoreline of Cape Cod, MA with 70.00° W to the intersection of the outer boundary of the Exclusive Economic Zone (EEZ) with 68.00° W. Proposed Area 2 is bounded on the east by the outer boundary of the EEZ and on the west by the mean high water line (Figure 1b).

**Spatial Alternative 3:** Under this alternative the regulation would apply to the entire Exclusive Economic Zone (EEZ) of the East Coast of the United States south from the Canadian border to the intersection of 81.00 ° W longitude. This spatial alternative would affect the northernmost latitude described in Table 1 and Table 2 of the temporal alternatives, shown below. Instead of being 41.75° N, it would be the northernmost latitude of the U.S. EEZ along the East Coast.

## *Temporal Alternatives*

**Temporal Alternative 1:** Under this alternative, the regulation would be required south of specific latitudes at varying times each year, as summarized in Table 1.

*Table 1: Vessels entering waters south of the following latitudes must comply with the designated regulation during the following times:*

Latitude	Time Frame
38° N	January 1 through January 31
36° N	February 1 through March 15
38° N	March 16 through April 15
40° N	April 16 through May 15
41.75° N	May 16 through November 30
40° N	December 1 through December 31

**Temporal Alternative 2:** Under this alternative the regulation would be required south of specific latitudes at varying times each year, as summarized in Table 2.

*Table 2: Vessels entering waters south of the following latitudes must comply with the designated regulation during the following times:*

Latitude	Time frame
37° N	January 1 through April 15
39° N	April 16 through May 15
41.75° N	May 16 through October 31
39° N	November 1 through November 30
37° N	December 1 through December 31

**Temporal Alternative 3:** Under this alternative, the regulation would apply throughout the year with no exceptions.

### ***Fisheries Alternatives***

**Fisheries Alternative 1:** Under this alternative, the regulation would apply to all trawl fisheries targeting summer flounder, whelk, Atlantic sea scallop, and calico scallop and flynet fisheries targeting croaker and weakfish.

**Fisheries Alternative 2:** Under this alternative, the regulation would apply to all trawl fisheries. All trawl fisheries refer to the following fisheries – Summer flounder, Atlantic sea scallop, whelk, calico scallop, flynet fisheries for croaker and weakfish, sheepshead/black drum/king whiting, porgy, skimmer, Spanish sardine/scad/ladyfish/butterfish, and multispecies (large and small mesh), skate, horseshoe crab, monkfish, bluefish, spiny dogfish, herring trawl fisheries, and other trawl fisheries not previously identified or considered.

**Fisheries Alternative 3:** Under this alternative, the regulation would apply to those trawl fisheries with the highest bycatch, e.g., 5% or greater of total trawl bycatch, as reported in Murray 2008 (see Table 3) and other documents (e.g., scallop trawl estimates in Murray 2007 and NMFS 2008).

Table 3. Average annual estimates of loggerhead turtles for requested fish group, 2000-2004 (Murray 2008)

<b>Main Species Group</b>	<b>Average Annual Estimate of Loggerhead Bycatch from 2000-2004</b>	<b>% of Total Assigned</b>
Atlantic croaker	41	10%
Atlantic mackerel/Squid/Butterfish	62	15%
Bluefish	3	<1%
Horseshoe crab	19	5%
Monkfish	2	<1%
Northeast multispecies (large and small mesh combined)	43	10%
Northeast skate complex	24	6%
Sea scallop (in otter trawl gear only)	20	5%
Spiny dogfish	1	<1%
Summer flounder/Scup/Black sea bass	192	47%
Weakfish	4	<1%
<b>Total takes from trips assigned to identifiable species groups</b>	<b>411</b>	<b>100%</b>
<b>Total unassigned</b>	<b>77</b>	

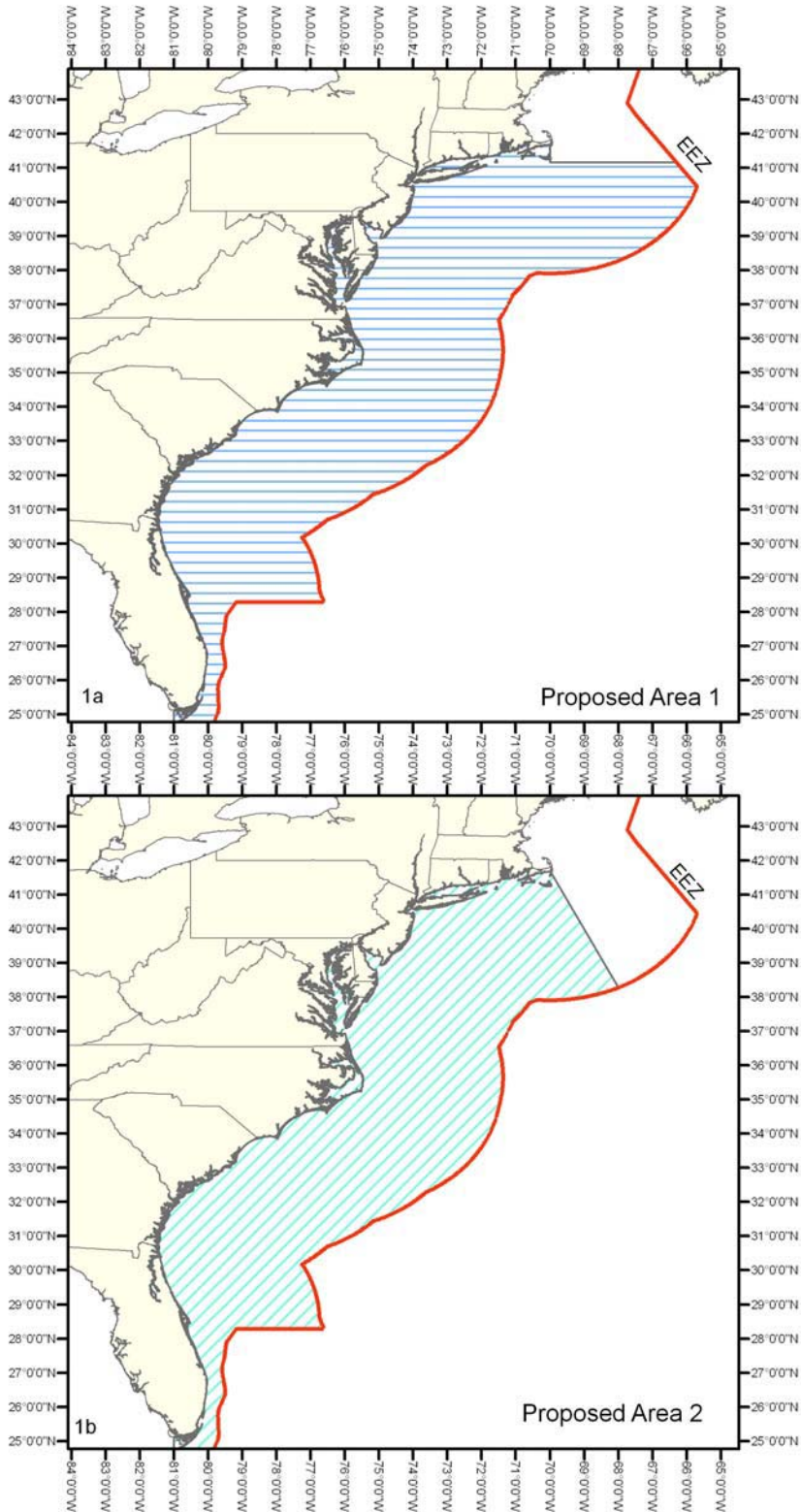
### *Fisheries Operating Alternatives*

**Fisheries Restriction Alternative 1:** Under this alternative, TEDs would be required in all trawl fisheries to reduce the incidental capture of sea turtles.

**Fisheries Restriction Alternative 2:** Under this alternative, trawl fisheries selected in the Atlantic Ocean would be prohibited from operating.

**Fisheries Restriction Alternative 3:** Under this alternative, TEDs and/or other regulatory requirements, (e.g., tow times), would be required.

FIGURE 1



## **Annex I -- Schedule of Public Scoping Meetings**

The dates, times, and locations of the meetings are scheduled as follows:

1. *Silver Spring, Maryland* -- May 15, 2009, 10am-12pm NOAA Science Center, 1301 East West Highway, Silver Spring, MD 20910.
2. *New York, New York* -- June 9, 2009, 7-9pm Mid-Atlantic Fishery Management Council meeting, Radisson Martinique on Broadway, 49 West 32<sup>nd</sup> Street, New York, NY 10001.
3. *Brunswick, Georgia* – June 15, 2009, 7-9pm, Georgia Department of Natural Resources Coastal Division Headquarters, 1 Conservation Way, Brunswick, Georgia 31520.
4. *Manteo, North Carolina* – June 20, 2009, 2-4pm at the Roanoke Festival Park, Small Auditorium, One Festival Park, Manteo, NC 27954.
5. *Portland, Maine* -- June 23, 2009, 7-9pm, New England Fishery Management Council meeting, Holiday Inn by the Bay, 88 Spring Street, Portland, ME, 04101.

## **ANNEX II -- ADDITIONAL INFORMATION ON SEA TURTLE STATUS**

For more information on the status of threatened and endangered sea turtles please visit the following links.

*Green* -- [http://www.nmfs.noaa.gov/pr/pdfs/species/greenturtle\\_5yearreview.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/greenturtle_5yearreview.pdf)

*Hawksbill* -- [http://www.nmfs.noaa.gov/pr/pdfs/species/hawksbill\\_5yearreview.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/hawksbill_5yearreview.pdf)

*Kemp's Ridley* -- [http://www.nmfs.noaa.gov/pr/pdfs/species/kempstridley\\_5yearreview.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/kempstridley_5yearreview.pdf)

*Leatherbacks* -- [http://www.nmfs.noaa.gov/pr/pdfs/species/leatherback\\_5yearreview.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/leatherback_5yearreview.pdf)

*Loggerhead* -- [http://www.nmfs.noaa.gov/pr/pdfs/species/loggerhead\\_5yearreview.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/loggerhead_5yearreview.pdf)

*Olive Ridley* -- [http://www.nmfs.noaa.gov/pr/pdfs/species/oliveridley\\_5yearreview.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/oliveridley_5yearreview.pdf)

### Annex III -- List of References

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- Murray, KT. 2006. Estimated average annual bycatch of loggerhead sea turtles (*Caretta caretta*) in U.S. Mid-Atlantic bottom otter trawl gear, 1996-2004. *US Dep. Commer., Northeast Fish. Sci. Cent. Ref. Doc. 06-19*; 26 p.
- National Marine Fisheries Service. 2008. Endangered Species Act Section 7 Consultation on the Atlantic Sea Scallop Fishery Management Plan. *Biological Opinion*, March 14.
- National Marine Fisheries Service and U.S. Fish and Wildlife Service. 2007e. *Loggerhead Sea Turtle (Caretta caretta) 5-Year Review: Summary and Evaluation*.
- National Marine Fisheries Service and U.S. Fish and Wildlife Service. 2007f. *Kemp's Ridley Sea Turtle (Lepidochelys kempii) 5-Year Review: Summary and Evaluation*.
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*Science, Service, Stewardship*



**Update on the Atlantic Trawl Rule**  
Mid-Atlantic Fishery Management  
Council  
June 10, 2009

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## Overview

- Origins of the Strategy
- Review of the Advanced Notice of Proposed Rulemaking
- Overview of the Notice of Intent to prepare an EIS and conduct public scoping meetings
- Future actions



## Listed Sea Turtle Species



- Six species of sea turtles are listed under the Endangered Species Act
  - Endangered
    - Leatherbacks (*Dermochelys coricea*)
    - Kemp's ridley (*Lepidochelys kempii*)
    - Hawksbill (*Eretmochelys imbricata*)
  - Threatened
    - Olive ridley (*Lepidochelys olivacea*)\*
    - Loggerhead (*Caretta caretta*)
    - Green (*Chelonia mydas*)^

\*Mexican breeding population of olive ridleys are listed as endangered

^ Florida and Mexico breeding populations of green turtles are listed as endangered



## Current Conservation Measures to Protect Sea Turtles

- Gillnet restrictions in Pamlico Sound, NC
- Requirement to use Turtle Excluder Devices in shrimp trawl fisheries and flounder fisheries south of the VA/North Carolina border
- Prohibition of fishing with drift gillnets in CA/OR in the shark/swordfish fishery during El Nino events
- Hawaii swordfish fishery restrictions – 100% observer coverage, cap on turtle takes, and annual fleet-wide limit on effort
- Observer Rule will allow observer coverage in state and Federal waters for sea turtle interactions
- Requirement of a chain mat in the Federal Atlantic sea scallop dredge fishery



## Current Conservation Measures to Protect Sea Turtles

- Modified pound net leaders required in the VA Chesapeake Bay
- Seasonally adjusted gear restrictions in the Mid-Atlantic EEZ – prohibit fishing with gillnets with mesh-size larger than 7-in stretched mesh.
- Atlantic pelagic longline vessels are required to use circle hooks with certain bait combinations, have onboard sea turtle release equipment, and comply with specified sea turtle handling and release protocols.



## Sea Turtle Status

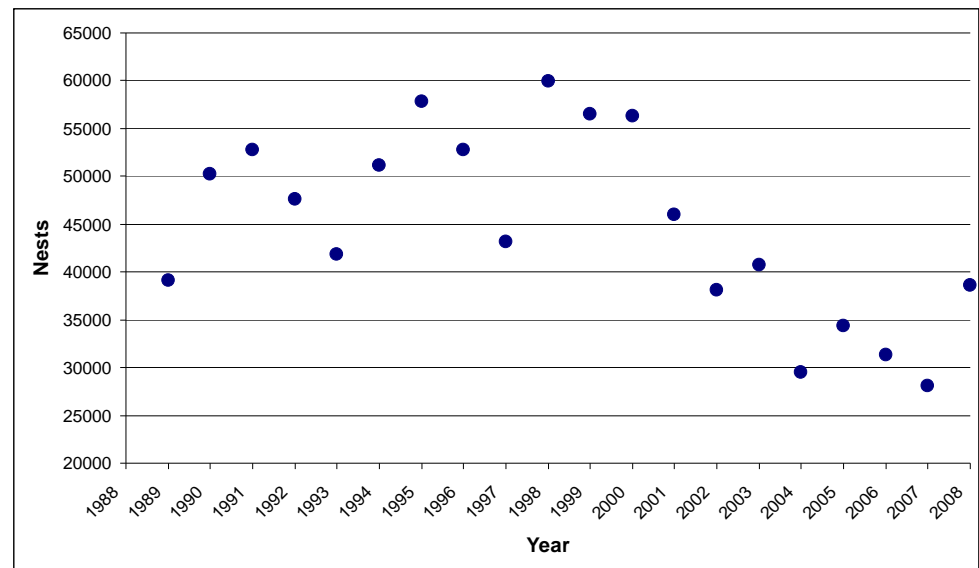
- In 2007, U.S. FWS and NMFS released the five-year reviews for all listed species
  - Recommended no changes in current listings.
  - Recommended full status reviews be undertaken in accordance with the Distinct Population Segment policy (loggerhead review is currently underway).



## Sea Turtle Status

- In October 2007, NMFS was petitioned to designate critical habitat for Leatherbacks off of the West Coast of the United States.
- In 2007, NMFS received petitions to designate the Northwest Atlantic loggerhead and the North Pacific loggerhead as "Distinct Population Segments" and list them as endangered.

Annual total nest counts for loggerheads on Florida Index beaches, 1989-2008.





## Atlantic Strategy

- A comprehensive, integrated approach to address sea turtle bycatch across similar gear types in state and Federal waters rather than fishery by fishery.
- Key elements of Strategy's work over the last several years
  - Characterize state and Federal fisheries in the Atlantic and Gulf of Mexico
  - Evaluate and prioritize gear types
  - Analyze existing information on regulations, sea turtle distribution, fishing effort, bycatch and oceanographic conditions
  - Develop and test gear modifications
  - Enhance bycatch monitoring
  - Develop and implement solutions to reduce sea turtle bycatch



## Atlantic Strategy

### Purpose of the Strategy

- Conserve and recover sea turtles consistent with the Endangered Species Act
- Authorize sea turtle “take” consistent with the ESA
  - “Take” – to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.



## Atlantic Strategy and the ESA

- Sec. 9: It is unlawful for any person subject to the jurisdiction of the United States to...
  - take any [endangered]...species within the United States or the territorial sea of the U.S.;
  - take any [endangered]...species on the high seas.
- Prohibition refers to both intentional (e.g., scientific research) and incidental (e.g., bycatch in commercial fishing operation) take.



## Atlantic Strategy and the ESA

- Conserve and recover protected species
  - Sec 7(a)(1) –The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.



## Atlantic Strategy and the ESA

- How are actions exempted from the take prohibition?
  - Sec. 7(a)(2): Each federal agency shall...insure that any action authorized, funded, or carried out by an action agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of such species' designated critical habitat.



## Atlantic Strategy and the ESA

- How are actions exempted from the take prohibition?
  - Section 7(b)(4): If after consultation the Secretary finds that the proposed (federal) agency action will not cause jeopardy, an incidental take statement is issued.
  - The Incidental Take Statement
    - Specifies the impact of incidental take
    - Specifies reasonable and prudent measures to minimize the impact of take
    - Sets forth terms and conditions



## Atlantic Strategy and the ESA

- How are actions exempted from the take prohibition?
  - Section 10:
    - Scientific research permits (e.g., scientific researchers)
    - Incidental take permits (e.g., states)
  - Sec. 4(d) rule:
    - Protective regulations for threatened species



## Atlantic Strategy

- The Strategy seeks to reduce bycatch by fishing gear. The priority gear types include:
  - Trawls
  - Gillnets
  - Traps and Pots
  - Hook and Line (including longline)
- The first gear type to be addressed will be trawl fisheries



## Sea Turtle Bycatch in Atlantic Trawl Fisheries

- Estimated average annual bycatch of loggerhead turtles in Mid-Atlantic bottom otter trawl gear (Cape Hatteras, NC to Long Island Sound, NY) during 1996-2004 was 616 animals (Murray 2006)
- Estimated average annual bycatch of loggerhead sea turtles in Mid-Atlantic scallop trawl fishery is 134 (based on estimates for 2004-2005) (Biop on Scallop Fishery, March 2008 and Murray 2007)



## Trawl Phase of the Strategy

- Trawl Phase One – summer flounder, Atlantic sea scallop, whelk, calico scallop and the flynet fisheries for croaker and weakfish.
- Trawl Phase Two – Sheepshead/black drum/king whiting, porgy, skimmer, Spanish sardine/scad/ladyfish/butterfish, and multispecies (large and small mesh).
- Trawl Phase Three – Skate, horseshoe crab, monkfish, bluefish, spiny dogfish, and the herring trawl fisheries.



## Advanced Notice of Proposed Rulemaking

Published on February 15, 2007

- Open for 90 days of public comment
- Received 165 comments

Announced NMFS' plans to consider expansion of turtle excluder device (TED) requirements to new fisheries and areas

- Flynet
- Whelk
- Scallop
- Summer flounder (require larger TED opening)
- Potentially others



## Notice of Intent to Prepare an EIS and Conduct Scoping Meetings

- May 8, 2009 – NMFS announced in the Federal Register its intent to prepare an Environmental Impact Statement for the Atlantic Trawl Rule and to conduct scoping meetings.
- Alternatives for this rule include
  - Temporal and spatial application of the rule
  - Status quo
  - Closed areas
  - Requirements to use turtle excluder devices
- Fisheries under consideration – Atlantic sea scallop, calico scallop, whelk, flounder and croaker and weakfish flynet fisheries – and others.



## Dates of Scoping Meetings

- **May 15, 2009 – 10am to 12pm – Silver Spring, MD – NOAA Science Center**
- **June 9, 2009 – 7-9pm – MAFMC Meeting – NY, NY**
- **June 15, 2009 – 7-9pm – Brunswick, GA**
- **June 20, 2009 – 2-4pm – Manteo, NC**
- **June 23, 2009 – 7-9pm – NEFMC -- Portland, ME**

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*Scoping Period Ends - July 10, 2009*

*For more information & to submit written  
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