

affected area includes all Chesapeake Bay waters between the Maryland and Virginia state line (approximately 38° N. lat.) and the COLREGS line at the mouth of the Chesapeake Bay, and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary. This action, taken under the Endangered Species Act of 1973 (ESA), is necessary to conserve sea turtles listed as threatened or endangered.

DATES: Effective July 16, 2003, through July 30, 2003.

ADDRESSES: Requests for copies of the literature cited, the Environmental Assessment (EA), or Regulatory Impact Review (RIR) should be addressed to the Assistant Regional Administrator for Protected Resources, NOAA Fisheries, One Blackburn Drive, Gloucester, MA 01930. Requests for supporting documents may also be sent via fax to 978-281-9394.

FOR FURTHER INFORMATION CONTACT: Mary Colligan (ph. 978-281-9116, fax 978-281-9394), or Barbara Schroeder (ph. 301-713-1401, fax 301-713-0376).

SUPPLEMENTARY INFORMATION:

Background

Pound net leaders with greater than or equal to 12 inches (30.5 cm) stretched mesh and leaders with stringers have been documented to incidentally take sea turtles (Bellmund *et al.*, 1987). High strandings of threatened and endangered sea turtles are documented on Virginia beaches each spring, and the number of strandings has increased in recent years. No cause of mortality is immediately apparent for the majority of turtles that strand in Virginia, but the circumstances surrounding the recent stranding events are consistent with fishery interactions in that a majority of the carcasses are undamaged and when examined seemed healthy. A discussion on fisheries interactions and strandings are provided in the preambles to the proposed rule (67 FR 15160, March 29, 2002) and the interim final rule (67 FR 41196, June 17, 2002). In light of documented entanglement in pound net leaders and high strandings in the vicinity of pound net operations, on June 17, 2002, NOAA Fisheries issued an interim final rule that prohibited the use of all pound net leaders measuring 12 inches (30.5 cm) and greater stretched mesh and all pound net leaders with stringers in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from May 8 to June 30 each year (67 FR 41196). Included in this interim final rule was a year-round requirement for fishermen to report all interactions with

sea turtles in their pound net gear to NOAA Fisheries within 24 hours of returning from the trip and a year-round requirement for pound net fishing operations to be observed by a NOAA Fisheries-approved observer if requested by the Northeast Regional Administrator. The interim final rule also established a framework mechanism by which NOAA Fisheries may make changes to the restrictions and/or their effective dates on an expedited basis in order to respond to new information and protect sea turtles. Under this framework mechanism, if NOAA Fisheries receives information that a significant level of strandings will likely continue beyond June 30, the Assistant Administrator, NOAA, (AA) may extend the effective dates of the restrictions established by the regulations. Additionally, if monitoring of pound net leaders during the time frame of the gear restriction, May 8 through June 30 of each year, reveals that if one or more sea turtles are entangled alive in a pound net leader less than 12 inches (30.5 cm) stretched mesh or that one sea turtle is entangled dead and NOAA Fisheries determines that the entanglement contributed to its death, then NOAA Fisheries may determine that additional restrictions are necessary to conserve sea turtles and prevent entanglements. The restrictions that may be implemented are limited to the alternatives previously considered in the EA. These alternatives included: (1) The restriction of all pound net leaders measuring 8 inches (20.3 cm) or greater stretched mesh; (2) the prohibition of all pound net leaders regardless of mesh size; and (3) the restriction of pound net leaders with greater than 16 inches stretched mesh and the modification of all other leaders with stringers by dropping the leader mesh 9 feet below mean low water and spacing stringer lines at least 3 feet apart. The interim final rule stated that should an extension of the effective dates of the prohibition of pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers be necessary or should NOAA Fisheries determine that an additional restriction is warranted, NOAA Fisheries would issue a rule. This rule would explicitly state the duration of the extension of the prohibition or the new mandatory gear restriction and the time period, which could also be extended for up to 30 days but not beyond July 30.

Details concerning the justification for the previous pound net leader restriction regulations and the previous high sea turtle stranding events in

Virginia were provided in the preambles to the proposed rule (67 FR 15160, March 29, 2002) and the interim final rule (67 FR 41196, June 17, 2002) and are not repeated here.

2003 Pound Net Monitoring

From April 21 to June 11, 2003, NOAA Fisheries monitored pound net leaders with stretched mesh measuring less than 12 inches (30.5 cm), as well as sea turtle stranding levels and other fisheries active in the Virginia Chesapeake Bay and ocean waters. This monitoring effort resulted in the documentation of 17 sea turtles found in association with pound net leaders. The first documented sea turtle was found impinged on a pound net leader on May 11, and sea turtles were documented in leaders through June 11 when the monitoring program ceased. In total, 12 sea turtles were found held against or impinged on pound net leaders by the current. Of these 12 impingements, 11 were loggerhead sea turtles (one of which was dead) and one was a Kemp's ridley sea turtle (alive). There were an additional five sea turtles found entangled in pound net leaders, of which two were loggerheads (one dead) and three were Kemp's ridleys (two dead). Eleven of the 17 incidents involved leaders measuring 11.5 inches (29.2 cm) stretched mesh, while six of the sea turtles were entangled or impinged in 8 inch (20.3 cm) stretched mesh leaders. Most of the observed sea turtles were found in nets along the Eastern shore of Virginia, but two turtles were found in leaders near Mobjack Bay in the Western Chesapeake Bay.

As stated in the 2002 interim final rule, if even one sea turtle is entangled alive or if one sea turtle is entangled dead, and NOAA Fisheries determines that the entanglement contributed to its death, additional restrictions may be implemented by the publication of a final rule in the **Federal Register**. The spring 2003 monitoring effort documented two live sea turtles entangled in pound net leaders with 11.5 inches (29.2 cm) stretched mesh, and three dead sea turtles entangled in pound net leaders with either 11.5 inches (29.2 cm) or 8 inches (20.3 cm) stretched mesh. NOAA Fisheries believes that there is sufficient information to conclude that the death of these turtles is attributable to entanglement in the pound net leaders, given the degree of entanglement and multiple wrapping of line around their flippers, their decomposition state (fresh dead to moderately decomposed), and their buoyancy (negatively buoyant, which typically suggests recent mortality). Given these monitoring