

results documenting the entanglement of sea turtles in leaders with less than 12 inches (30.5 cm) stretched mesh, additional restrictions are warranted.

2003 Spring Stranding Event

As mentioned, high strandings of threatened and endangered sea turtles are documented on Virginia beaches each spring. The magnitude of this stranding event has increased in recent years. During May and June, total reported Virginia sea turtle strandings were 84 in 1995, 85 in 1996, 164 in 1997, 181 in 1998, 129 in 1999, 155 in 2000, 265 in 2001, and 182 in 2002. In 2003, preliminary data indicate that 302 dead sea turtles stranded on Virginia beaches during May and June.

The 2003 spring stranding season in Virginia began later than usual. Based upon historical Sea Turtle Stranding and Salvage Network (STSSN) data, strandings in Virginia typically begin in mid-May, with strandings remaining elevated until June 30. In the spring of 2003, water temperatures were relatively cool in Virginia. The first sea turtle stranding was documented on May 18, but stranding levels were relatively low until June. In May, 22 dead animals stranded, and in June, 280 dead sea turtles were documented. The majority of the 2003 spring strandings occurred during the last two weeks in June and continue through July with a total of 27 documented through July 5.

Approved Measures

To conserve sea turtles, the AA prohibits the use of all pound net leaders in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries effective through July 30, 2003. The area where this gear restriction applies includes the Virginia waters of the mainstem Chesapeake Bay from the Maryland-Virginia state line (approximately 37°55' N. lat., 75°55' W. long.) to the COLREGS line at the mouth of the Chesapeake Bay; the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36°59.55' N. lat., 76°18.64' W. long.); the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55' N. lat., 76°30.40' W. long.); and the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37°37.44' N. lat., 76°25.40' W. long.).

NOAA Fisheries recognizes that there may be a localized interaction between sea turtles and pound nets along the Eastern shore, as that is the area where most of the sea turtles have been observed in pound net gear this spring. Given that one or more turtles have been

found entangled live and dead in pound net leaders with less than 12 inch (30.5 cm) stretched mesh, NOAA Fisheries has the authority to implement additional restrictions this year. Under the framework provision included in the 2002 interim final rule, only an option previously analyzed in the EA may be considered. Given the amount of time it takes to order, purchase, and hang a leader and the timing of this rule related to the sunset date (July 30, 2003), restricting leaders with 8 inches (20.3 cm) or greater stretched mesh would be effectively the same as restricting all leaders regardless of mesh size. Further, given the data collected this spring, sea turtle impingement on leaders of various sizes is a more significant problem than originally believed and this impingement may continue to occur on leaders with less than 8 inches (20.3 cm) stretched mesh in the areas where impingements were previously documented. Prohibiting all leaders throughout the Virginia Chesapeake Bay is the only available option that will reduce sea turtle entanglements and impingements in pound net leaders.

As mentioned previously, the Virginia stranding season has been relatively late this year. As strandings were highest in the latter half of June and remained elevated through June 30, NOAA Fisheries believes that elevated strandings could continue into the end of July and that an extension of the prohibition of all pound net leaders is warranted until July 30, 2003.

This prohibition of pound net leaders is effective July 16, 2003, through July 30, 2003. In subsequent years, the original restrictions included in the 2002 interim final rule will be in effect (*i.e.*, restriction of pound net leaders measuring 12 inches (30.5 cm) or greater stretched mesh and pound net leaders with stringers from May 8 to June 30 each year), unless modified or replaced by a new rule. For the duration of this gear prohibition, fishermen are required to stop fishing with all pound net leaders in the designated area.

The year-round reporting and monitoring requirements for this fishery established by the 2002 interim final rule remain in effect.

Classification

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

The AA finds that providing prior notice and an opportunity to comment on this rule would be impracticable and contrary to the public interest. 50 CFR 223.206(d)(2)(v)(E) allows NOAA Fisheries to modify restrictions on pound net leaders and extend the

effective date of those restrictions until July 30 each year if, in leaders complying with those regulations, one or more sea turtles are found entangled live or one or more sea turtles are found entangled dead and the entanglement contributed to its death. Turtles have recently been found entangled in leaders that comply with the regulations, and are at immediate risk of additional harm if no additional protections are implemented. If NOAA Fisheries were to provide notice and an opportunity to comment, it would pass the July 30 date on which the effectiveness of any restrictions lapses and miss the opportunity to provide additional protections for the sea turtles that will still be in the areas. Therefore, the AA finds good cause exists under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and opportunity for public comment.

The AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day effective date of this final rule. Such a delay would be contrary to the public interest because sea turtles are currently present in Virginia waters and are being subject to entanglement and impingement in pound net leaders and potential subsequent mortality. Any delay in the effective date of this final rule would prevent NOAA Fisheries from meeting its obligations under the ESA to prevent harm to sea turtles.

NOAA Fisheries previously prepared a final regulatory flexibility analysis (FRFA) which describes the impact the 2002 interim final rule would have on small entities. The FRFA considered the potential implementation of the framework provision and the alternative currently proposed for implementation (*i.e.* prohibition of all pound net leaders). Nevertheless, because prior notice and opportunity for comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable.

List of Subjects 50 CFR Part 223

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

Dated: July 10, 2003.

Rebecca Lent,

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