

the December 24, 2002, Interim Final Rule (67 FR 78388). The October 2003 sea surface temperature anomaly chart indicates that sea surface temperatures off of southern California appear to be mostly normal with a narrow band of warmer than normal water (0.9°F (0.5°C) to 2.7°F (1.5°C)) near shore off of San Diego and extending down into Mexico along Baja California. Based on these sea surface temperatures, and sea surface temperature profiles during previous years in which there were observed loggerhead sea turtle captures during the month of January by the CA/OR drift gillnet fishery, the current oceanographic conditions along southern California do not appear to indicate that El Nino conditions are present, and therefore U.S. waters off southern California, east to 120°W remain open to drift gillnet fishing in January 2004. NMFS will continue to monitor El Nino conditions and accordingly determine whether to implement any future closures.

Technical Correction

In this final rule, NMFS is adding regulatory text to § 223.206(d)(6)(i) that establishes a Leatherback Conservation Area. That regulatory text was originally implemented through an August 24, 2001 (66 FR 44549) interim final rule but was inadvertently deleted from the Code of Federal Regulations because of faulty regulatory instructions in the December 2002 interim final rule.

Classification

NMFS prepared an EA (August 13, 2001), a supplement to the EA for the interim final rule (December 2002), and a revised supplement to the EA/RIR for this final rule and concluded that these regulations would have no significant impact on the human environment. For a description of the initial Regulatory Flexibility Analysis and a detailed economic analysis of the CA/OR drift gillnet fishery, readers should refer to the August 13, 2001, EA prepared for the proposed rule.

The economic analysis conducted for this final rule anticipates an impact of approximately 16 CA/OR drift gillnet vessel owners and operators, representing approximately 76 fishing sets annually. The total gross revenue loss to the CA/OR drift gillnet fleet resulting from the time and area closures in this final rule is expected to be \$79,500 for an El Nino year. This estimate is based on California Department of Fish and Game landing receipts for the period from June 1 through August 31, using data from 1997 to 2000. This revenue loss to the fishery is a worst-case scenario based on

the assumption that none of the fishing effort will shift to ocean areas that remain open to fishing. Based on 2001 fishing effort data, the reduction in total gross revenues is not expected to exceed \$4,970 per vessel per El Nino year. On average, during these time periods, approximately \$3,000 of louvar, \$11,100 of mako shark, \$3,000 of opah, \$23,900 of swordfish, and \$38,500 of thresher shark are landed. NMFS did not receive comments on the detailed economic analysis and alternatives on the August 2001 EA prepared for this final rule. The El Nino closure that would have been imposed under the December 24, 2002, interim final rule was expected to result in a total gross revenue loss of \$440,000 and was expected to impact 500 sets per El Nino year. This final rule minimizes the negative economic impact to the fishery, while maintaining necessary protection for listed sea turtles, by reducing the total gross revenue loss by approximately 82 percent.

In addition to the time and area closures identified in this final rule, NMFS examined several alternatives for reducing or eliminating sea turtle entanglements when developing measures to avoid the incidental take of sea turtles. NMFS searched for a strategy that would provide the most certainty in reducing or eliminating entanglements upon implementation. These strategies included: (1) reducing fishing effort through gear modifications; (2) reducing fishing effort by decreasing the number of vessels; (3) increasing survival of entangled sea turtles; (4) implementing gear modifications to reduce interactions; and (5) changing fishing practices such as shorter soak times. These alternatives were analyzed in detail in the August 13, 2001, EA prepared for the proposed rule. They were not considered further because data are insufficient to determine whether these alternatives would avoid the likelihood of jeopardizing the continued existence of the loggerhead sea turtle as required by section 7(b) of the ESA. NMFS analyzed the patterns of loggerhead sea turtle captures and mortalities in the CA/OR drift gillnet fishery. Based on this assessment, NMFS found that the most effective method of avoiding loggerhead interactions and mortality is a time/area closure during El Nino years (anticipated reduction in interactions is approximately 92 percent). NMFS found no apparent correlation between variations in fishing strategy and loggerhead sea turtle interactions and determined that modifications in gear or gear deployment are not likely to achieve significant or measurable

reductions in the capture and mortality rate of these turtles.

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

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

A BO on the issuance of a marine mammal permit under section 101(a)(5)(E) of the MMPA was issued on October 23, 2000. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of loggerhead turtles. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of leatherback (*Dermochelys coriacea*) and loggerhead sea turtles. This final rule implements an alternative to the RPA in the BO to protect loggerhead sea turtles. NMFS has determined that the alternative implemented by this final rule is more protective of loggerhead sea turtles than the RPA in the BO. NMFS, which issued the BO, has concurred that this alternative would provide more protection than the RPA identified in the BO and would avoid the likelihood of jeopardizing the continued existence of the loggerhead sea turtle. This alternative does not change the conclusions of the BO related to marine mammals listed under the ESA. Moreover, this final rule will have no adverse impacts on marine mammals that are not listed under the ESA.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the States of California and Oregon regarding the implementation of the RPA. Both California and Oregon have expressed support for the measures identified in the BO for the protection of leatherback and loggerhead sea turtle species. NMFS intends to continue engaging in informal and formal contacts with the States of California and Oregon during the implementation of this RPA and development of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.