

Ocean, Gulf of Mexico, and the Caribbean Sea. Therefore, the range-wide status of the affected species of sea turtles most accurately reflects the species' status within the action area. Sea turtles can be captured as a result of the use of bottom longlines, gillnets and rod and reel/handline fishing gear. Captured turtles can be released alive uninjured or can be killed as a result of the interaction. Some turtles that are released alive from bottom longline gear may die later as a result of the ingestion of a hook, endangerment in the gear, or the trailing of gear that was not cut away prior to release.

Smalltooth sawfish are not highly migratory species, although some large, mature individuals may engage in seasonal north/south movements. The U.S. Distinct Population Segment (DPS) of smalltooth sawfish is confined to only a small portion of the action area, mainly waters off Florida and possibly occasionally off Georgia. Only large, mature individuals are known to occur in the action area. Information is not available regarding how much time smalltooth sawfish of different sizes spend at different depths. Generally smaller (younger) animals are restricted to shallower waters, whereas large animals are believed to roam over a larger depth range. The smalltooth sawfish may only be present in the U.S. EEZ intermittently, spending the rest of their time in shallower waters. Based on this information, the range-wide status of smalltooth sawfish most accurately reflects the species' status within the action area. Smalltooth sawfish can also be captured as a result of the use of bottom longlines, gillnets and rod and reel/handline. The October 2003 BiOp for Atlantic shark fisheries represents the first Federal fishery to undergo formal consultation for this species.

In the bottom longline fishery a total of 43 sea turtles were observed caught from 1994 through 2002 based on 862 observed sets. Of the 43 sea turtles observed, 31 were loggerhead sea turtles of which 17 were released alive. Another nine loggerheads were released in an unknown condition and five were released dead. Based on extrapolation of observer data and reported effort from the logbook data, the BiOp estimates that a total of 2,003 loggerhead sea turtles were taken in the shark bottom longline fishery from 1994 through 2002. An additional 503 unidentified sea turtles were estimated to have been taken. On average, 222 loggerhead sea turtles and 56 unidentified sea turtles were taken annually during this time period in the shark bottom longline fishery. The BiOp estimates that

approximately 123 loggerheads are killed per year on bottom longline gear.

Four of the 43 observed sea turtles taken in the bottom longline fishery were leatherback sea turtles; three of these were released in an unknown condition and one was released dead. Based on these observations, the BiOp estimates that 269 leatherback sea turtles were taken in the shark bottom longline fishery during 1994 through 2002. On average, approximately 30 leatherback sea turtles each year were taken by the shark bottom longline fishery during 1994 through 2002 and an estimated 17 leatherbacks were killed per year.

Smalltooth sawfish have also been observed caught (seven known interactions, six released alive, one released in unknown condition) in shark bottom longline fisheries from 1994 through 2002. Based on extrapolation of these observations, a total of 466 sawfish are estimated to have been taken in this fishery from 1994 to 2002, resulting in an average of 52 takes per year. All of the sawfish takes observed, except for one, were released alive. Based on this information, NMFS expects no smalltooth sawfish will be killed on bottom longline gear as a result of the measures in this final rule over the next five years.

In the shark gillnet fishery, loggerhead sea turtles are rarely caught. During the 1999 right whale calving season no loggerhead sea turtles were caught in this fishery. No loggerhead sea turtles were observed caught with strikenets during the 2000–2002 right whale calving seasons. However, three loggerhead sea turtles have been observed caught with drift gillnets during right whale calving season, one each year from 2000 to 2002. During the 2000 and 2001 non-right whale calving seasons, no loggerhead sea turtles were observed caught in gillnets fished in a strikenet method while one loggerhead sea turtle was observed caught and released alive in gillnets fished in a driftnet method. No loggerhead sea turtles were caught outside of the right whale calving season in 2002. Expanded take estimates for sea turtles in the shark drift gillnet fishery provides the following estimated takes of loggerhead sea turtles by year: 1999—none; 2000—one mortality and 4.4 live takes; 2001—one live take; and 2002—1.7 live takes.

In the shark gillnet fishery, leatherback sea turtles are sporadically caught. During the 1999 right whale calving season, two leatherback sea turtles were caught in this fishery, and both were released alive. No leatherback sea turtles were observed caught with

strikenets during the 2000–2002 right whale calving seasons. Leatherback sea turtles have also been observed caught with gillnets including fourteen in 2001 and two in 2002. NMFS temporarily closed the shark gillnet fishery (strikenetting was allowed) from March 9 to April 9, 2001, due to the increased number of leatherback interactions that year (66 FR 15045, March 15, 2001). During the 2000 and 2001 non-right whale calving seasons, no leatherback sea turtles were observed caught in gillnets fished in strikenet or driftnet methods. No leatherback sea turtles were caught outside of the right whale calving season in 2002. The estimated takes of leatherback sea turtles by year were as follows: 1999—none; 2000—none; 2001—two mortalities and 12 live takes; and 2002—3.4 live takes.

To date there has been only one observed catch of a smalltooth sawfish in shark gillnet fisheries. The sawfish was taken on June 25, 2003, in a gillnet set off of southeast Florida and it was released alive. The set was characteristic of a typical drift gillnet set, with gear extending 30 to 40 feet deep in 50 to 60 feet of water. The previous absence of smalltooth sawfish incidental capture records is likely attributable to the relatively low effort in this fishery and the rarity of smalltooth sawfish, especially in Federal waters. These factors may result in little overlap of the species with the gear. The recently observed smalltooth sawfish was cut from the net and released alive with no visible injuries. This indicates that smalltooth sawfish can be removed safely if entangled gear is sacrificed.

As discussed in the proposed action, gillnets are also used to “strikenet”. When strike gillnetting fishers target and encircle specific schools of sharks after visually detecting them (usually by spotter pilot). Given the large and or distinct morphology of smalltooth sawfish, this species would likely be detected visually, as well as distinguished from shark species, and thus avoided. This fishing method has also been shown to reduce potential encounters by limiting the time that gear is in the water. Strikenet sets are typically only one to two hours in contrast to six to 10 hours for each drift gillnet set. Endangered and threatened species, or protected marine mammals have never been observed taken in strikenet sets.

Given the high rate of observer coverage in the shark gillnet fishery, NMFS believes that smalltooth sawfish takes in this fishery are very rare. The fact that there were no smalltooth sawfish caught during the year 2001, when 100 percent of the fishing effort