

changes to various provisions of chapter XII, title 49 (Transportation) of the Code of Federal Regulations (CFR), and implementing the TWIC program in the maritime sector of the nation's transportation system. The final rule enhances port security by requiring security threat assessments of individuals who have unescorted access to secure areas and improving access control measures to prevent unauthorized individuals from gaining unescorted access to secure areas. The final rule amends existing appeal and waiver procedures, and expands the provisions to apply to TWIC applicants and air cargo personnel.

This rule correction document revises a paragraph in the appeal and waiver process codified in part 1515, redesignates a paragraph codified in part 1540 procedures for security threat assessment, and revises text in the list of disqualifying offenses codified in part 1572. Finally, we re-word the definition of "transportation security incident" in § 1572.103(a)(5). This definition is based on the definition of "transportation security incident" in 46 U.S.C. 70101(6), which was amended by sec. 124 of the SAFE Port Act, Public Law 109-347. We are amending the rule to conform to that statute.

Correction

■ In rule FR Doc. 07-19, published on January 25, 2007 (72 FR 3492), make the following corrections:

§ 1515.11 [Corrected]

■ 1. On page 3590, in the third column, paragraph (b)(1)(i) under § 1515.11 Review by administrative law judge and TSA Final Decision Maker, is corrected to read as follows:

§ 1515.11 Review by administrative law judge and TSA Final Decision Maker.

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(b) * * *

(1) * * *

(i) In the case of a review of a denial of waiver, a copy of the applicant's request for a waiver under 49 CFR 1515.7, including all materials provided by the applicant to TSA in support of the waiver request; and a copy of the decision issued by TSA denying the waiver request. The request for review may not include evidence or information that was not presented to TSA in the request for a waiver under 49 CFR 1515.7. The ALJ may consider only evidence or information that was presented to TSA in the waiver request. If the applicant has new evidence or information, the applicant must file a new request for a waiver under § 1515.7

and the pending request for review of a denial of a waiver will be dismissed.

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§ 1540.205 [Corrected]

■ 2. On page 3593 in the first column, redesignate paragraph (e) as paragraph (d) under § 1540.205 Procedures for security threat assessment.

§ 1572.103 [Corrected]

■ 3. On page 3600, in the second column, paragraphs (a)(5) and (a)(10) under § 1572.103 Disqualifying criminal offenses, are corrected to read as follows:

§ 1572.103 Disqualifying criminal offenses.

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(a) * * *

(5) A crime involving a transportation security incident. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.

* * * * *

(10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, *et seq.*, or a comparable State law, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the crimes listed in paragraph (a) of this section.

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■ 4. On pages 3600 in the third column and page 3601 in the first column, paragraphs (b)(2)(xii) through (xiii) under § 1572.103 Disqualifying criminal offenses, are corrected to read as follows:

§ 1572.103 Disqualifying criminal offenses.

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(b) * * *

(2) * * *

(xii) Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law.

(xiii) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, *et seq.*, or a comparable State law, other than the violations listed in paragraph (a)(10) of this section.

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Issued in Arlington, Virginia, on February 1, 2007.

Mardi Ruth Thompson,

*Deputy Chief Counsel for Regulations,
Transportation Security Administration.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 635

[Docket No. 060313062-7010-02; I.D. 082305E]

RIN 0648-AT37

Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures; Gear Operation and Deployment; Complementary Closures

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

ACTION: Final rule.

SUMMARY: This final rule will implement additional handling, release, and disentanglement requirements for sea turtles and other non-target species caught in the commercial shark bottom longline (BLL) fishery. These requirements increase the amount of handling, release, and disentanglement gear that are required to be on BLL vessels and are intended to reduce post hooking mortality of sea turtles and other non-target species consistent with the Highly Migratory Species (HMS) Fishery Management Plan (FMP). This final rule will also implement management measures, consistent with those recommended by the Caribbean Fishery Management Council (CFMC) and implemented by NMFS on October 28, 2005, that prohibit vessels issued HMS permits with BLL gear onboard from fishing in six distinct areas off the U.S. Virgin Islands and Puerto Rico, year-round. These six closures are intended to minimize adverse impacts to Essential Fish Habitat (EFH) for reef-dwelling species.

DATES: This final rule is effective March 9, 2007.

ADDRESSES: Copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (Final EA/RIR/FRFA) can be obtained from LeAnn S. Hogan, Highly Migratory Species Management Division at 1315 East-West Highway, Silver Spring, MD 20910.

Other related documents including copies of the document entitled "Careful Release Protocols for Sea Turtle Release with Minimal Injury" may be obtained from the mailing address listed above, and are also available on the internet at <http://www.nmfs.noaa.gov/sfa/hms>. Copies of the documents supporting the actions contained in the Comprehensive Amendment to the Fishery Management Plans of the U.S. Caribbean may be obtained by contacting Steve Branstetter, Southeast Regional Office, 263 13th Ave. South, St. Petersburg, FL 33701; telephone 727-824-5305.

FOR FURTHER INFORMATION CONTACT:

LeAnn S. Hogan or Karyl Brewster-Geisz by phone: 301-713-2347 or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION:

The Atlantic shark fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The HMS FMP is implemented by regulations at 50 CFR part 635. The fisheries for spiny lobster, queen conch, reef fish, and corals and reef-associated invertebrates in the exclusive economic zone (EEZ) off Puerto Rico and off the U.S. Virgin Islands are managed under fishery management plans prepared by the CFMC. These fishery management plans are implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

Background

On March 29, 2006 (71 FR 15680), NMFS published a rule that proposed certain dehooking equipment be on vessels with shark BLL gear on board. Additionally, the rule proposed closing certain areas in the Caribbean to vessels with shark BLL gear on board. NMFS examined several alternatives, the details of which are outlined in the proposed rule and are not repeated here.

As noted in the proposed rule, an objective of the 2003 final rule (December 24 2003; 68 FR 74746) implementing Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks, was to minimize, to the extent practicable, bycatch of living marine resources and the mortality of such bycatch that cannot be avoided in the fisheries for Atlantic sharks. The rule implementing Amendment 1 finalized measures that required the use of non-stainless steel, corrodible hooks aboard shark BLL fishing vessels, the possession of release equipment (line cutters and dipnets, both with extended reach handles), and also required BLL vessels to immediately release any sea turtle, marine mammal, or smalltooth

sawfish that is hooked or entangled and then move at least one nautical mile (2 km) before resuming fishing activities. At that time, NMFS had not yet approved dehooking devices for sea turtles. Therefore, implementation of the measure was delayed pending approval.

The purpose of this today's final rulemaking is to update the necessary equipment and protocols that vessel operators in the BLL fishery must possess, maintain, and utilize for the safe handling, release, and disentanglement of sea turtles and other non-target species. Significant new information, techniques, and equipment have been approved and implemented for the pelagic longline (PLL) fishery since NMFS enacted the dehooking requirements for the BLL fishery. Participants in the PLL fishery are required to possess, maintain, and utilize a suite of NMFS-approved handling and dehooking equipment when engaged in fishing activities (July 6, 2004; 69 FR 40734). Research conducted in the Northeast Distant statistical reporting area (NED) has indicated that removing the maximum amount of gear from sea turtles significantly increases post-release survival. Dehooking devices that meet NMFS design standards are necessary for removal of fishing gear and are now available to release sea turtles.

Another objective of this final rule is to implement measures that are complementary to CFMC-recommended measures that NMFS implemented on October 28, 2005 (70 FR 62073). These measures will prohibit vessels issued HMS permits with BLL gear onboard from fishing in six distinct areas off the U.S. Virgin Islands and Puerto Rico, year-round. These six closures should minimize adverse impacts to EFH and reduce fishing mortality for mutton snapper, red hind, and other reef-dwelling species. Scoping hearings for the Comprehensive Amendment to the FMPs of the Caribbean, including the BLL closures in this rulemaking, were conducted from June 4 - 12, 2002, in Puerto Rico and the U.S. Virgin Islands. The Environmental Protection Agency published a notice of availability (NOA) of the Draft Supplemental Environmental Impact Assessment (DSEIS) in the *Federal Register* on March 18, 2005 (70 FR 13190). The final supplemental environmental impact statement for the Comprehensive Amendment to the FMPs of the Caribbean was filed with the Environmental Protection Agency on June 17, 2005, with the NOA published on June 24, 2005 (70 FR 36581). Based on recent guidance NMFS hopes to

publish a proposed rule on equipment that would allow the dehooking of smalltooth sawfish.

Response to Comments

The public comment period for the proposed rule (March 29, 2006; 71 FR 15680) was open from March 29 to June 27, 2006. During that time, NMFS held five public hearings and received several written comments. A summary of the major comments received, along with NMFS response, is provided below.

Comment 1: Several commenters urged NMFS to mandate training in sea turtle handling techniques for all BLL fishermen by requiring them to attend workshops similar to those for PLL; BLL fishermen should carry "Careful Release Protocols for Release with Minimal Injury" onboard but this is not a substitute for hands on training; NMFS should consider whether sea turtle resuscitation techniques similar to those used for sea turtles caught by vessels fishing for shrimp are appropriate for BLL; all BLL vessel owners, operators, and observers (and as many crew as possible) should attend a certification level workshop in order to achieve the same level of proficiency as the Northeast Distant (NED) experiment; NMFS must be sensitive to fishing schedules when scheduling workshops; and NMFS might consider having a sticker on vessels whose owners/operators have completed the safe handling and release workshops; and NMFS could accelerate the learning process by educating the recreational sector about these protocols for reducing post release mortality of various sea life.

Response: NMFS agrees that hands-on training on safe handling and release protocols for sea turtles and other protected resources is invaluable. The Final Consolidated HMS FMP and its final rule (October 2, 2006; 71 FR 58058) require all PLL and BLL longline and shark gillnet vessel owners and operators to attend, and successfully complete, workshops on the safe handling and release of protected resources before renewing their permit in 2007. While participants in other HMS fisheries, including HMS Angling and Charter/headboats (CHB) categories are not required to attend, the Agency is encouraging their participation to better understand the materials and protocols available for reducing post-hooking mortality of protected species and other non-target catch. Additional information on the safe handling and release workshops can be found in the Consolidated HMS FMP. Workshop schedules can be found on the HMS website at <http://www.nmfs.noaa.gov/>

[sfa/hms/workshops/index.htm](#).

Currently, all participants in the Atlantic BLL and PLL fisheries are required to follow resuscitation requirements as stated in § 223.206(d)(1). These requirements would not change as a result of this rulemaking.

Comment 2: Several comments were received relating to observer coverage in HMS fisheries, including: increase observer coverage to at least 10 percent; estimates of take and mortality in the PLL fishery have been underestimated; turtles caught on BLL are more susceptible to drowning; are observers put on boats from Virginia northward or Panama City westward?; the extrapolated takes that create the Incidental Take Statement (ITS) seem too high, especially for smalltooth sawfish that occur in a small portion of the Atlantic; the number of takes reported by the observer program has been questioned in the past; why not show the observed number of takes rather than the extrapolated numbers?

Response: Currently, the Agency maintains observer coverage levels that are consistent with the National Bycatch Report and in compliance with the 2003 Biological Opinion (BiOp) for the shark fisheries. Vessels are randomly selected for observer coverage based on region, recent landings, recent selection for observer coverage, and whether they have a valid HMS permit. From 1994 through 2001, the shark BLL observer program was a voluntary program and the observers only went on vessels that agreed to take them. Thus, the data for this time period was not based on a random selection process and did not cover the entire range of the fishery. However, it did cover vessels operating in the major fishing grounds off Florida and North Carolina. In 2002, the observer program became mandatory, with vessels selected randomly across areas based on historic participation patterns. Therefore, vessels in all regions, including those from Virginia northward and from Panama City, FL, westward, are required to carry an observer, if selected. The Incidental Take Statement (ITS) for smalltooth sawfish and sea turtles was determined by the NMFS Office of Protected Resources during the 2003 consultation in conjunction with measures contained in Amendment 1 to the FMP for Atlantic Tunas, Swordfish and Shark (December 24, 2003; 68 FR 74746). The ITS for shark fisheries was based on the extrapolated takes including associated mortalities for the BLL and gillnet fishery. Extrapolated takes were determined based on interaction rates reported in the BLL observer data from

1994 through 2002 in relation to fishing effort data (i.e., number of hooks) based on data from the Coastal Fisheries logbook (Gulf of Mexico reef fish, South Atlantic snapper-grouper, king and Spanish mackerel, and shark logbook) and HMS logbook for trips that reported using BLL gear and landing sharks.

Comment 3: Nesting declines identified in the northern sub-population of loggerhead sea turtles are alarming; western Atlantic loggerhead sea turtles are in clear decline; the southern loggerhead sea turtle nesting subpopulation has declined 29 percent in last 17 years; green and leatherback sea turtle nesting has been increasing dramatically since 1989; and fisheries in the western and eastern Atlantic appear to have a significant impact on Florida's nesting loggerhead sea turtles.

Response: NMFS and the U.S. Fish and Wildlife Service (USFWS) share responsibility for threatened and endangered sea turtles. In general, marine-related activities, such as fishing, are within the purview of NMFS, whereas, terrestrial activities are within the purview of USFWS. The Endangered Species Act (ESA) requires that federal agencies ensure that the actions that they authorize, fund, or conduct do not jeopardize the continued existence of these species. Recovery plans including terrestrial and marine issues for leatherback and loggerhead sea turtles have been in place for several years. The BiOp issued in October 2003 found that Atlantic shark BLL fisheries are not likely to jeopardize the continued existence of any species of sea turtles under NMFS' purview, however, incidental takes of sea turtles (primarily loggerhead and leatherback sea turtles) are anticipated. Finally, the measures selected in this final rule are expected to reduce the post-hooking mortality of sea turtles that are hooked or entangled in the BLL fishery for Atlantic sharks by requiring participants to possess, maintain, and utilize the necessary equipment to remove as much gear as possible from sea turtles to enhance their post-hooking survival and recovery rates.

Comment 4: NMFS received a variety of comments in support of the preferred alternative for gear deployment and operation and some of the benefits of using the dehooking equipment. The comments included: the Agency must also provide an incentive to use the dehooking gear; this equipment was originally designed in the shark fishery; vessels will save time re-rigging and costs by retrieving the hooks with the handling and release equipment; fishermen in Ecuador have been using the dehooking equipment to retrieve

hooks which saves them money; and we support all technology that is developed in collaboration with industry.

Response: NMFS agrees that using the dehooking gear can be beneficial to both the fisherman in terms of saved hooks and sea turtles. The selected alternative for gear deployment maintains consistency between the requirements for safe handling, release, and disentanglement of sea turtles and other protected resources caught in Atlantic PLL and BLL fisheries. This equipment was developed in collaboration with the PLL industry. Updating the requirements for the Atlantic shark BLL fishery is necessary to reduce the post-hooking mortality of sea turtles while increasing the likelihood that the ITS for this fishery is not exceeded in the future. Incentives for fishermen to use the dehooking equipment include, but are not limited to, improving the ability of fishermen to retrieve hooks and fishing equipment, which may result in less time spent re-rigging and/or reduced expenditures for hooks.

Comment 5: NMFS received several comments about the estimated costs of procuring the required dehooking equipment, both to individuals and to the shark BLL industry as a whole, including: NMFS should emphasize that BLL operators could reduce costs of required equipment under the preferred alternative by making most of the equipment themselves; a significant portion of the 284 vessels referred to in the draft EA already have PLL permits and already have the equipment, therefore the estimated economic impact associated with the preferred alternative of \$71,900 to \$138,400 seems high.

Response: NMFS has stated that BLL operators may construct any of the dehooking equipment required by this rule themselves as long as the equipment meets the design standards at 50 CFR 635.21. NMFS also assumes that numerous participants already possess some of the equipment required by this rulemaking, including: bolt cutters, monofilament line cutters, needle nose pliers, standard automobile tire or other comparable surface for immobilizing and elevating turtles, certain mouth gags (nylabone, hank of rope, piece of PVC), and a boat hook or gaff for pulling an inverted "V" on entangled turtles, thereby minimizing the economic impacts of compliance with this rulemaking. NMFS derived the estimate of 284 vessel owners that could potentially be impacted by this rulemaking from the 555 directed and incidental shark permit holders that possessed permits in April 2006. Of those vessels, 284 did not have a

directed or incidental swordfish permit. An incidental or directed swordfish permit would be necessary to fish with PLL gear, and those permitted vessels would already be required to possess, maintain, and utilize the equipment and protocols prescribed in this rulemaking. NMFS agrees that this may be an overestimate, as it does not account for latent effort in BLL and PLL fisheries. However, inactivity in the recent past would not exempt permit holders from the need to procure the required equipment before fishing in the future.

Comment 6: NMFS received several comments about the current requirements for dehooking equipment in the Atlantic shark BLL fishery, including: all BLL vessels should already have line cutters, dipnets, bolt cutters, hank of rope, and a wooden brush; NMFS' estimates of costs for the various alternative (high and low end costs) assume that all, or most of the vessels under and over 4 ft have not been in compliance with Amendment 1 (required dipnet and line cutters); are BLL vessels currently required to carry a dipnet?; and many BLL vessel operators do not know about the dipnet requirement.

Response: The cost estimates that NMFS provided in the draft Environmental Assessment (EA) and proposed rule (March, 29, 2006; 71 FR 15680) assumed that all vessels in the Atlantic shark BLL fishery are in compliance with the current equipment requirements for that fishery, which include possession of a long-handled dipnet and linecutter. Costs of compliance included a low-end and a high-end estimate for complying with the range of alternatives considered for this rulemaking. For the preferred alternative, these estimates were between \$253.25 and \$977.30 and may vary depending on the vessel's freeboard height, what equipment the vessel operator already possesses, whether or not the operators choose to construct some of the materials themselves, and where operators acquire their equipment. The current requirement to possess long-handled dipnets and linecutters for release and disentanglement of sea turtles was included in Amendment 1 to the HMS FMP (December 24, 2003; 68 FR 74746).

Comment 7: NMFS received a variety of comments related to bycatch, National Standard 9 of the Magnuson-Stevens Act, and dehooking requirements in other HMS-managed fisheries, including: according to National Standard 9 of the Magnuson-Stevens Act, NMFS must reduce bycatch, but if NMFS cannot reduce bycatch, it must reduce the mortality of

bycatch; the recreational sector cannot reduce bycatch so they must reduce the mortality of bycatch, thus, the recreational sector should have the same requirements put on them regarding safe handling and release of protected species as does the commercial sector; there may be significant interactions with protected species and recreational shark anglers and in the Charter Headboat (CHB) industry; a precautionary/pro-active approach would require the use of comparable handling and release technologies within the recreational hook and line fishery as is required for the commercial PLL and BLL sectors; all commercial fisheries (vertical line, CHB, and tournaments) should be required to utilize the same safe handling and release equipment — all these fisheries have post-release mortality issues that could be solved with the equipment; the recreational sector is by far the largest user group; technology is being transferred from one gear sector to another (PLL to BLL and CHB) and that is the way it should be; as owners, operators, and mates become more proficient at using careful handling and release equipment, they will be safely releasing numerous other non-targeted species and protected resources with the same sea turtle release equipment, which will benefit the conservation efforts of many other fisheries.

Response: The requirements to possess, maintain, and utilize additional dehooking, disentanglement, and safe release equipment were not analyzed for fisheries outside of the Atlantic shark BLL fishery in this rulemaking. The Agency is aware of interactions with sea turtles and other protected resources that may occur outside of the Atlantic shark BLL fishery, including recreational rod and reel fisheries. However, the Agency does not have specific data on interaction rates in these fisheries as they have not been historically selected for observer coverage or required to submit logbooks. While the workshops required by the 2006 Consolidated HMS FMP are only required for vessel owners and operators in the HMS longline and gillnet fisheries, participants in other HMS fisheries (HMS Angling, Charter Headboat, and General Category) are also encouraged to attend these workshops as their participation will enhance their understanding of the materials and protocols available for reducing post-hooking mortality of protected species and other non-target catch.

Comment 8: NMFS received comments regarding the role of the Magnuson-Stevens Act and the

International Commission for the Conservation of Atlantic Tunas (ICCAT), including: these are two management entities that are designed to protect U.S. fishermen; we need to sustain U.S. quotas; we cannot transfer handling and release technologies if the United States has no quota; the U.S. fishermen have been environmentally friendly at the expense of their quotas; and most sea turtle bycatch occurs internationally, and why do other countries take sea turtles while the United States does not?

Response: NMFS agrees that the Magnuson-Stevens Act and ICCAT are designed to protect fisheries resources and their participants that depend on these resources. This rulemaking did not consider any alternatives that would affect U.S. quotas of any species, ICCAT-managed or otherwise. Currently, sharks are not managed by specific total allowable catches (TAC) or quotas implemented by ICCAT. The dehooking, disentanglement, and release requirements specified in the selected alternative are being implemented to comply with the October 2003 BiOp and to maintain consistency among HMS longline fisheries.

Comment 9: NMFS received a comment stating that new handling and release requirements should be considered when future BiOps and ITSs are established.

Response: Any existing regulations that may affect the post-hooking survival of sea turtles or other threatened and endangered species will likely be considered in future interagency consultations (i.e., Section 7 of the ESA) on the Atlantic shark BLL fishery as well as other HMS fisheries.

Comment 10: NMFS received a comment asking where the information on turtle takes in the BLL fishery comes from.

Response: The ITS is established during a Section 7 consultation with the NMFS Office of Protected Resources. The data used to determine the extrapolated takes and ITS for the BLL fishery are outlined in the response to Comment 2. These limits represent the number of total estimated takes, based on extrapolated observed takes. The October 2003 BiOp considered each gear type (gillnet and BLL) independently. If the actual calculated incidental captures or mortalities exceed the amount estimated for a gear type, the NMFS Office of Sustainable Fisheries must immediately reinstate consultation with the NMFS Office of Protected Resources for that gear type.

Comment 11: NMFS received several comments related to the complementary management measures for the Caribbean

region, including: why are Caribbean BLL closures lumped into this rule?; Does NMFS regulate the Caribbean?; and does Puerto Rico have a 200 mile Exclusive Economic Zone (EEZ) and does this rule affect them?

Response: In addition to the dehooking, handling, and release requirements for Atlantic shark BLL fisheries, this rulemaking would also implement complementary measures per the request of the CFMC. These measures would prohibit all vessels that have been issued HMS permits with BLL gear onboard from fishing with, or deploying, any fishing gear in six distinct areas off the U.S. Virgin Islands and Puerto Rico, year-round, to protect EFH of reef-dwelling fish species. The final rule that implemented similar measures for fisheries managed by the CFMC was published on October 28, 2005 (70 FR 62073). These measures are being included in this rulemaking because they are germane to the Atlantic shark BLL fishery. However, the impacts associated with these measures are not expected to be significant as there is only one documented commercial shark permit in the Caribbean region. NMFS, in cooperation with the CFMC, regulates Federal fisheries off the coasts of Puerto Rico and the U.S. Virgin Islands because they are U.S. territories. This rule would affect Puerto Rico in the U.S. EEZ beyond the limit of their coastal waters, which extend out to 9 miles.

Comment 12: NMFS received comments on the protocols for vessel operators if they interact with a marine mammal or sea turtle, including: if you interact with a marine mammal, can you just move the animal one mile instead of the vessel? and if a sea turtle is comatose, is it still necessary to relocate the animal one mile?

Response: If vessel operators interact with a marine mammal, smalltooth sawfish or a sea turtle, Federal regulations at 50 CFR 635.21(d)(2), require them to immediately release the animal, retrieve the BLL gear, and move at least 1 nautical mile (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with the regulations in 50 CFR 229.6. It is important to note that the vessel should move 1 nautical mile (2 km) before resuming fishing, rather than moving the animal. Comatose sea turtles must be resuscitated according to the regulations at 50 CFR 223.206. Once sea turtles are revived, they must be released over the stern of the boat, only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are

unlikely to be recaptured or injured by vessels.

Comment 13: Is NMFS going to subsidize or pay for the purchase of dehooking equipment?

Response: NMFS does not have any plans to subsidize the purchase of dehooking equipment for participants in the Atlantic shark BLL fishery. The costs of compliance with this rulemaking can be minimized by fishermen making some of the required equipment themselves, provided it meets the design standards in 50 CFR 635.21 and outlined in Appendix A of the EA for this rulemaking.

Comment 14: NMFS received a comment about consistency between the dehooking regulations proposed by the Gulf of Mexico Fishery Management Council (GOMFMC) in Amendment 18A to the Reef Fish Fishery Management Plan (August 9, 2006; 71 FR 45428), which would update the dehooking requirements for commercial Atlantic shark fishermen deploying BLL gear. The commenter noted that the requirements were different while they should be the same.

Response: NMFS is aware of the final rule updating handling and dehooking requirements for sea turtles and smalltooth sawfish in compliance with a BiOp issued in conjunction with Amendment 18A of the Reef Fish FMP (August 9, 2006; 71 FR 45428). There are some differences in the dehooking equipment that are required per the regulations for Amendment 18A of the Reef Fish FMP, compared to the requirements selected in this rulemaking. The measures selected in this action were designed to maintain compliance with the October 2003 BiOp that was issued in conjunction with Amendment 1 to the FMP for Atlantic Tunas, Swordfish and Sharks and to maintain consistency with regulations that are currently in effect for the HMS PLL fishery. There are numerous individuals who deploy both BLL and PLL often on the same trip, targeting different species. Therefore, it seems prudent to maintain the same requirements for all HMS-managed longline fisheries regardless of what other fisheries management entities are implementing. All vessels that possess a commercial HMS shark permit would be required to abide by the regulations selected in this rulemaking when BLL gear is onboard, despite the fact that they may possess additional permits for fisheries conducted in the Gulf of Mexico. In addition, if BLL fishermen fulfill the regulations selected in this rulemaking, they would also be compliant with the final dehooking measures for Amendment 18A.

Comment 15: NMFS received several comments seeking clarification as to how the preferred alternative, which would require Atlantic shark fishermen with BLL gear onboard to possess, maintain, and utilize additional safe handling and release equipment consistent with the requirements for the PLL fishery and comply with handling and release guidelines, differs from alternative 2, which would require Atlantic shark fishermen with BLL gear onboard to possess, maintain, and utilize additional equipment for the safe handling, release, and disentanglement of sea turtles, marine mammals, smalltooth sawfish, and other bycatch dependent on the vessels' freeboard height. Additionally, the following comments were received regarding the preferred alternative, including: would everyone be required to possess a six foot or longer dehooker under the preferred alternative?; since the preferred alternative would require the same safe handling and dehooking protocols for the BLL fishery as the PLL fishery, there should not be any enforceability issues; and the definition of freeboard height may result in some enforcement issues.

Response: The selected alternative would require all HMS permit holders with BLL gear onboard to possess, maintain, and utilize the same equipment and protocols required in the PLL fishery. Required equipment includes: long-handled dehookers for ingested and external hooks, a long-handled device to pull an inverted "V", long-handled dipnet, short-handled dehooker for ingested and external hooks, bolt cutter, monofilament line cutter, needle nose pliers, standard automobile tire (or comparable cushioned elevated surface), two types of mouth openers/gags, and the Careful Release Protocols for Sea Turtle Release with Minimal Injury (SEFSC-524). Under the selected alternative, all long-handled equipment must be a minimum of 6 feet (1.82 m) in length or 150 percent of freeboard height. The primary difference between the selected alternative and non-preferred alternative 2, is that alternative 2 would require vessels to possess, maintain, and utilize additional long-handled equipment dependent on the vessels' freeboard height. Vessels with a freeboard height of 4 feet (1.22 m) or less would not be required to possess, maintain, and utilize the long-handled dehookers for ingested and external hooks or the long-handled device to pull an inverted "V" but would be required to have the rest of the dehooking equipment onboard. Vessels with a freeboard height greater

than 4 feet (1.22 m) would be required to possess the same equipment as required in the preferred alternative, however, the long-handled equipment that they are required to possess would only have to be 6 feet in length and not 150 percent of the freeboard height.

Comment 16: NMFS received a comment asking whether all of the data used for the analysis for this rule was taken from BLL boats.

Response: The data employed for this rule was attained from both the Atlantic shark BLL fishery and the PLL fishery. NMFS used the best available data for this rulemaking. These data included the number of HMS permits and location of HMS permit holders as of October 2005, commercial landings from the 2004 Coastal Fisheries logbooks, ex-vessel prices for shark products as of 2003, and extrapolated estimates from observer data are from 1994 - 2002.

Comment 17: The biggest killers of sea turtles are shrimp boats operating within 15 miles of the U.S. coast. The turtles bounce through several Turtle Exclusion Devices (TED) and become disoriented and lethargic afterwards.

Response: NMFS is aware of sea turtle interactions in the shrimp fishery. The annual anticipated incidental take levels are much greater in the shrimp fishery than both BLL and PLL fisheries. The shrimp fishery operates within the confines of their specific BiOp, and turtle takes in that fishery are outside the objectives of this rulemaking.

Comment 18: A lot of people did not show up at this hearing because they went through a voluntary BLL dehooking workshop last year in Madeira Beach with Charlie Bergmann.

Response: The NMFS Point Of Contact for safe handling, release, and disentanglement, held nine voluntary workshops in 2005 (May 20, 2005; 70 FR 29285) for participants in the BLL fishery to become more adept at sea turtle handling release and disentanglement protocols. NMFS commends those fishermen who attended the voluntary BLL handling, release, and disentanglement workshops. However, the public hearings for this proposed rule served a different purpose - it provided a forum for NMFS to explain and obtain important input from fishermen and other constituents regarding management measures that the Agency was considering regarding commercial Atlantic shark fishery management. This rulemaking will implement the handling, release, and disentanglement requirements for the Atlantic shark BLL fishery that had previously been voluntary. NMFS attempts to schedule

public meetings at times that are conducive to constituent participation and sends out notices in addition to publishing FR notices that announce the time and place of hearings. In addition, NMFS informs key points of contacts and HMS Advisory Panel members in each region to announce the time and place of hearings in those regions. However, the Agency is interested in getting feedback from constituents regarding outreach and how it can better inform participants about the rulemaking process pending changes in their fisheries.

Comment 19: A six foot handle length should be a minimum for all long-handled equipment.

Response: The preferred alternative would require that all long-handled equipment be 6 feet (1.82 m) or 150 percent of the vessel's freeboard height.

Comment 20: I fished off Cape Canaveral for years and never heard of a turtle being caught on BLL gear. Hooking sea turtles is what leads to time/area closures.

Response: Interactions between sea turtles and BLL gear are sporadic and dependent upon time of year, oceanographic conditions, fishing techniques, and other factors. Reducing sea turtle bycatch and bycatch mortality is important to maintain compliance with the ESA and relevant BiOps. Interaction rates with sea turtles are one of many considerations for implementing additional time/area closures as a fishery management tool; however, as was done with the rulemaking that established dehooking and safe handling techniques for the PLL fishery (July 6, 2004; 69 FR 40734), NMFS seeks alternative management measures to time/area closures to decrease interactions with protected species with fishing gears and/or increase post-release survival of protected species once they have interacted with fishing gear.

Comment 21: Most BLL fishermen deploy cable, and not monofilament line, so NMFS cannot assume that PLL and BLL are being deployed by the same vessel on any given trip.

Response: Data collected from the commercial shark fishery observer program indicated that in 2005, approximately 24 percent of observed longline sets deployed cable line, 72 percent deployed monofilament, and approximately 3 percent deployed a combination of monofilament and cable. Additionally, the PLL observer program has observed trips that use both PLL and BLL and such trips are reported in logbooks.

Comment 22: Sometimes an inexperienced person with dehooking

equipment is more dangerous to the fish than someone who does not attempt to pull the hook out themselves.

Response: NMFS requires mandatory workshops resulting in certification on the safe handling, release, and disentanglement techniques as part of the Final Consolidated HMS FMP (October 2, 2006; 71 FR 58058). These hands-on workshops provide training on the proper techniques for using the required safe handling and release equipment, which would prevent bycatch and protected species from sustaining additional injuries as a result of attempted dehooking or disentanglement.

Comment 23: NMFS received numerous comments regarding the safety of fishermen while using safe handling and release protocols for sea turtles and confusion resulting from the terminology used to describe the requirements in the proposed rule. The comments included: the guidelines are confusing describing protocols that are required and that are not required; It would be valuable to have uniform (and intuitive) terminology to describe the protocols used in outreach materials so that fishermen know what is required and what is not, especially in situations where risks are involved; handling and release requirements pose a risk to safety of life at sea; the handling and release requirements should clearly state that they are to be employed only "when practicable"; the documents speak towards risk to turtles but they do not speak towards risk to humans during the procedures — a comparable caveat would be appropriate for any aspect of the disentanglement or line cutting; future mandatory workshops should discuss safety issues posed to humans while attempting to employ the handling and release requirements.

Response: NMFS currently has protocols for how to safely dehook, disentangle, and release sea turtles and smalltooth sawfish that are caught in the PLL fishery. This rulemaking requires that these protocols for safe handling, release, and disentanglement are also mandatory for the BLL shark fishery. These protocols were developed to minimize risks to fishermen while attempting to employ the required equipment and guidelines. NMFS expects fishermen to disentangle and dehook a protected species (and/or bycatch) to the best of their ability and safety. For example, NMFS has protocols for smaller sea turtles that can be boated as well as separate protocols for sea turtles too large and dangerous to be boated.

The Agency also uses consistent terminology for protocols and outreach

materials. In this rulemaking, NMFS has based the disentanglement, safe handling, and release requirements for protected species on the requirements in the PLL fishery to maintain consistency between the two HMS fisheries. In addition, the Agency provides placards, video demonstrations, and illustrations of these protocols in Vietnamese, Spanish, and English and is conducting workshops to certify fisherman in the use of the equipment.

Changes from Proposed Rule

There are no changes from the proposed rule (March 29, 2006; 71 FR 15680).

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

The final rule implementing management measures specific to Council-managed species was determined to be significant for purposes of Executive Order 12866. This final rule, which would close complementary areas for HMS fisheries and require dehooking equipment for BLL fishermen, has been determined to be not significant for purposes of Executive Order 12866.

In compliance with 5 U.S.C. 604, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated impacts of the preferred alternatives and any significant alternatives to the final rule that could minimize significant economic impacts on small entities. Each of the statutory requirements of section 604 has been addressed, and a summary of the FRFA is provided below.

NMFS also prepared a FRFA for the final rule that implemented the management measures in the Comprehensive Amendment to the Caribbean FMPs. The FRFA incorporated the Initial Regulatory Flexibility Act analysis (IRFA) published on September 13, 2005 (70 FR 53979), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to public comments on the IRFA, and a summary of the analyses completed to support that action. No comments were received in response to the IRFA that related to HMS fisheries. The IRFA prepared for the action in this final rule (March 29, 2006; 71 FR 15680) incorporated by reference, the findings of the FRFA published on October 28, 2005 (70 FR 62073), and describes the economic impact this action, if adopted, would have on small entities participating in HMS fisheries.

Section 604(a)(1) requires the agency to state the objective and need for the rule. As stated in the preamble and in the proposed rule (March 29, 2006; 71 FR 15680), one objective of this final rulemaking is to update necessary equipment and protocols that vessel operators in the BLL fishery must possess, maintain, and utilize for the safe handling, release and disentanglement of sea turtles and other non-target species. Another objective of this final rule is to implement measures that are complementary to CFMC-recommended measures that NMFS implemented on October 28, 2005 (70 FR 62073).

Section 604(a)(2) requires the Agency to summarize significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received several comments on the proposed rule and draft EA during the public comment period. A summary of these comments and the Agency's responses are included in this final rule. NMFS did not receive any comments specific to the Initial Regulatory Flexibility Analysis (IRFA), but did receive a limited number of comments related to economic issues and concerns. These comments are responded to with the other comments (see Comments 4, 5, 6, and 13). The specific economic concerns are also summarized here.

NMFS received several comments regarding the estimated costs of procuring the required dehooking equipment, both to individuals and to the shark BLL industry as a whole, including: NMFS should emphasize that BLL operators could reduce costs of required equipment by making most of the equipment themselves; and a significant portion of the 284 vessels already have PLL permits and already have the equipment, therefore the estimated economic impact associated with the preferred alternative of \$71,900 to \$138,400 seems high.

NMFS has stated that BLL operators may construct dehooking equipment as long as it meets design standards at 50 CFR 635.21(c). NMFS also assumes that numerous BLL participants already possess some of the equipment required by this rulemaking which would minimize economic impacts of this final rulemaking. NMFS estimates the number of vessel owners that could potentially be impacted by this rulemaking to be 284. This estimate is derived because 284 of the 555 incidental and directed shark permit holders do not have a directed or

incidental swordfish permit. An incidental or directed swordfish permit would be necessary to fish with PLL gear and these vessels would already be required to possess, maintain and utilize the equipment and protocols prescribed in this final rulemaking. NMFS agrees that this may be an overestimate, as it does not account for latent effort in BLL and PLL fisheries. However, whether permit holders had been inactive in the recent past would not exempt them from the need to procure the required equipment before fishing in the future.

Finally, a comment was received asking NMFS if they were going to subsidize or pay for the purchase of dehooking equipment.

NMFS does not have any plans to subsidize the purchase of dehooking equipment for participants in the Atlantic shark BLL fishery. The costs of compliance with this rulemaking can be minimized by fisherman making some of the required equipment themselves, provided it meets the design standards in 50 CFR 635.21(c) and outlined in Appendix A of the EA for this rulemaking.

No changes were made in the rule as a result of these comments. The comments provided did not warrant additional means of minimizing economic impacts while meeting the objectives of this rule.

Section 604(a)(3) requires the Agency to describe and estimate the number of small entities to which the final rule will apply. NMFS considers all permit holders to be small entities as reflected in the Small Business Administrations (SBA) criteria (gross receipts less than \$3.5 million, the SBA size standard for defining a small versus large business entity). As of October 2005, there were approximately 235 directed shark permit holders and 320 incidental shark permit holders for a total of 555 permit holders who are authorized to fish for sharks. NMFS considers the 284 shark permit holders that do not also hold swordfish permits to be the universe of permit holders that will be affected by this final rulemaking.

The complementary measures implemented by the CFMC that are included in this rulemaking for Atlantic HMS fishermen will result in six, year-round, BLL gear closures. This could potentially impact all 555 directed and incidental shark fishermen. However, NMFS assumes that shark fishermen residing outside of the Caribbean region would not travel to this region to target sharks due to the extensive distances involved. Therefore, only one incidental shark fishing permit holder and one shark dealer permit holder (both in the U.S. Virgin Islands) may be directly

affected by these measures. There are no shark limited access permit holders or shark dealer permit holders in Puerto Rico.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers, some of which are considered small entities, might be indirectly affected by the final regulations. However, the final rule does not apply directly to them. Rather it applies only to permit holders and fishermen.

Section 604(a)(4) requires the agency to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record. The preferred alternative for additional requirements for safe handling and release of sea turtle and other non-target species in this document will result in additional equipment and compliance requirements for vessels fishing with shark BLL gear. However, there will be no change in projected reporting or recordkeeping requirements.

Section 604(a)(5) requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities. In order to meet the objectives of this final rule, consistent with Magunson-Stevens Act, ATCA, and the ESA, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Additionally, the handling and release gear requirements would not be effective with different compliance requirements. Thus, there are no alternatives discussed which fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in modifications to reporting or compliance requirements (category two

above). All alternatives considered are based on design standards rather than performance standards; fishermen would be in compliance with the final rulemaking as long as they possess gear and utilize gear that conforms to the design specifications located in Appendix A of the EA for this rulemaking for the safe handling, release, and disentanglement of protected resources. Any item may be constructed or purchased and used by fisherman provided that it meets the design standards listed at 50 CFR 635.21(c). When new items are certified, a notice in the **Federal Register** will be published. As described below, NMFS analyzed three different alternatives in this final rulemaking and provides justification for selection of the preferred alternative to achieve the desired objectives.

The alternatives include: Alternative 1 (A1), maintaining the current requirements in the Atlantic shark BLL fishery for safe handling, release, and disentanglement of protected resources (status quo); Alternative 2 (A2), requiring Atlantic shark fishermen with BLL gear onboard to possess, maintain, and utilize certain safe handling, release, and disentanglement of protected resources gears based on freeboard height; and Alternative 3 (A3), the preferred alternative, requiring Atlantic shark fishermen with BLL gear onboard to possess, maintain, and utilize all the equipment that is currently required for the HMS PLL fishery regardless of vessel freeboard height.

A1 would maintain status quo in the Atlantic shark BLL fishery for safe handling, release, and disentanglement of protected resources. The costs for A1 (approximately \$120-\$370) represent the cost BLL fishermen have already incurred to comply with HMS BLL regulations for the safe handling, release, and disentanglement of sea turtles, smalltooth sawfish, and other protected resources. Additional economic impacts would not be expected relative to the status quo for the fishery. However, adverse economic impacts could result if no action is taken to reduce sea turtle bycatch mortality because continued operation of the shark fishery is contingent upon compliance with the 2003 BiOp. Sea turtles could have significantly lower post-release survival if hooks and associated fishing gear are not removed; removing fishing hooks and associated gear could help reduce post-release mortality and help the fishery stay below the incidental take limits for the fishery. This could avoid more

restrictive regulations to reduce sea turtle bycatch.

The economic impact of A2 depends on freeboard height of the Atlantic shark BLL vessel. The estimated costs range from \$152 for low-end priced equipment on vessels with a freeboard four feet (1.22 m) or less to \$477 for high-end priced equipment on vessels with a freeboard height greater than four feet (these costs do not include current requirements for the BLL fishery as outlined in A1). The immediate economic impacts of A2 are slightly less than those of the preferred alternative. However, unlike A3, which will require Atlantic shark fishermen with BLL gear onboard to possess, maintain, and utilize all the equipment that is currently required for the HMS PLL fishery, under A2, BLL fishermen and crew would not be able to move to the PLL fishery as easily because they would not have all the required dehooking equipment for that fishery. Therefore, in the long-term, under A3 Atlantic shark fishermen with BLL gear will not have to purchase different equipment in order to participate in the PLL fishery.

The dehooking equipment requirement under A2 would depend on the vessel's freeboard height, as certain long-handled equipment would not be necessary for vessels with a smaller freeboard (4 feet (1.22 m) or less). The 4 foot or less freeboard height was chosen as the threshold for not needing long-handled dehookers because it is assumed that the handle length of a short-handled dehooker in addition to a fisherman's arm length would be sufficient for reaching and dehooking non-boated sea turtles and other protected resources. However, the majority of sea turtles that would interact with Atlantic BLL fisheries are large juvenile loggerhead and adult leatherback sea turtles. Large juvenile loggerheads and adult leatherback sea turtles would most likely be too large to be boated, requiring dehooking to occur while the sea turtles remain in the water (i.e., small sea turtles can be boated and short-handled dehookers can be used to remove hooks). If long-handled dehookers might facilitate improved hook removal, release, or disentanglement of larger turtles (and research in the NED for the PLL fishery has shown that some turtles released alive may subsequently die from hook ingestion, trailing gear, or injuries suffered when entangled in gear), A2 would have less of an ecological benefit compared to A3.

A3, the preferred alternative, will require Atlantic shark fishermen with BLL gear onboard to possess, maintain,

and utilize all the equipment that is currently required for the HMS PLL fishery regardless of vessel freeboard height. NMFS preferred this alternative because it would improve post-hooking survival of sea turtles, smalltooth sawfish, and other protected resources and maintain consistency between the PLL and BLL fisheries. This alternative would have positive ecological impacts and negative short-term economic impacts. A3 is estimated to have an economic impact of a minimum of \$253 to \$487 for vessels with a freeboard height of four feet (1.22 m) or less. This range represents the range of low-end and high-end priced gears (see Table 6.2 and Table 6.4 in Chapter 6). Larger economic impacts are expected for Atlantic shark fishermen with vessels with freeboard heights greater than four feet (and costs will be dependent on freeboard height due to variable costs of long-handled dehooking gears; Table 6.2).

However, reducing mortality of sea turtles, smalltooth sawfish, and other protected resources is an integral part of maintaining compliance with the relevant BiOp. Consistent with the October 29, 2003, BiOp, NMFS is required to ensure that fishermen handle protected species taken during fishing activities in such a way as to increase their chances of survival. The final rule that implemented NMFS-approved dehooking, disentanglement, and release gear and protocols on all vessels with PLL onboard represents the most up to date scientific information regarding protocols for maximizing post-hooking survival of protected species. Because of the similarities between these fisheries and the fact that many vessel operators and owners fish with both BLL and PLL gear, NMFS is selecting the alternative (A3) that would enable Atlantic shark fishermen with BLL gear onboard to follow the protocols and possess the equipment necessary for the PLL fishery, easing determination of compliance for both fishermen and enforcement. This could also provide fishermen with the flexibility to change between PLL and BLL gear without additional cost. The final rule will allow Atlantic shark fishermen with BLL gear onboard to construct additional equipment themselves provided it meets design specifications. Such construction could reduce economic impacts. In addition, most fishermen have bolt cutters, needle nose pliers, monofilament cutters, boat hooks, and some mouth gags (i.e., the wooden handle of a wire brush, hank of rope, etc) already onboard their vessel, so these items would not have to be

purchased. The cost of dehooking gear and time and effort involved in properly dehooking animals may be offset by gaining efficiency in not having to re-rig fishing equipment, and economic gain from retrieving hooks. Such gain could be substantial given an average price for a circle hook is \$2.24 (ranging from \$0.30 to \$7.00 each), and an average price of a J-hook is \$2.70 (ranging from \$0.50 to \$7.50 each) (NMFS, 2005).

The measures implemented by the CFMC are intended to minimize adverse impacts to EFH (coral and hard bottom habitat), to the extent practicable, as a result of bottom tending gear. This final rule will implement six closures off the U.S. Virgin Islands and Puerto Rico, preventing HMS permit holders with BLL gear onboard their vessels, from deploying, or fishing with any fishing gear in these closed areas. These closures are expected to have de minimus impacts on HMS permit holders in the Caribbean region. There are no other alternatives that would achieve the objective of minimizing adverse impacts of bottom fishing on EFH. Additional detail and analysis is included in the FSEIS for the Comprehensive Amendment to the Fishery Management Plans of the U.S. Caribbean and the final rule implementing these measures for council managed fisheries.

This final rule contains no new collection of information requirements subject to review and approval by OMB under PRA.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign Relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: February 1, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 223, chapter II, and part 635, chapter VI, are amended as follows:

CHAPTER II

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. In § 223.206, paragraph (d)(1)(ii) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(1) * * *

(ii) In addition to the provisions of paragraph (d)(1)(i) of this section, a person aboard a vessel in the Atlantic, including the Caribbean Sea and the Gulf of Mexico, that has pelagic or bottom longline gear on board and that has been issued, or is required to have, a limited access permit for highly migratory species under § 635.4 of this title, must comply with the handling and release requirements specified in § 635.21 of this title.

* * * * *

CHAPTER VI

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 3. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 4. In § 635.21, paragraph (d)(3)(iv) is removed and paragraphs (a)(3), (d)(1), (d)(3)(i), and (d)(3)(ii) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(3) All vessels that have pelagic or bottom longline gear onboard and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must possess inside the wheelhouse the document provided by NMFS entitled "Careful Release Protocols for Sea Turtle Release with Minimal Injury," and must also post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(d) * * *

(1) If bottom longline gear is onboard a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the following areas:

(i) The mid-Atlantic shark closed areas from January 1 through July 31 each calendar year, except that in 2007 the mid-Atlantic shark closed area will be closed from January 1 through June 30 and may open in July, contingent upon available quota; and

(ii) The areas designated at § 622.33(a) of this title, year-round.

* * * * *

(3) * * *

(i) *Possession and use of required mitigation gear.* The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(3)(ii) of this section.

(ii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(i) of this section, must be used to disengage any hooked or entangled sea turtles as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed in Category (D) of Table 1 of Appendix A of this part. If a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags and the line should be cut as close to the hook as possible. Dehooking devices should not be used to release smalltooth sawfish.

* * * * *

■ 5. In § 635.71, paragraph (a)(33) is revised as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(3)(i) for bottom longline gear. This equipment must be utilized in accordance with § 635.21(c)(5)(ii) and (d)(3)(ii) for pelagic and bottom longline gear, respectively.

* * * * *

[FR Doc. E7–2011 Filed 2–6–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No. 060824225–6031–02]

RIN 0648–AU82

Northwestern Hawaiian Islands Marine National Monument; Correction

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); United States Fish and Wildlife Service (USFWS), Department of the Interior (DOI).

ACTION: Final rule; correcting amendment.

SUMMARY: NOAA and the USFWS published final regulations for the Northwestern Hawaiian Islands Marine National Monument (Monument) on August 29, 2006. The preamble and regulatory text of that notice contained errors pertaining to the electronic mail address for submitting comments on the information collection requirements of that rule, the reference to the dimensions of the outer boundary of the Monument, and the numbering sequence for one paragraph. This final rule corrects those errors. This rule makes no substantive change to the regulations.

DATES: This correction is effective February 7, 2007.

SUPPLEMENTARY INFORMATION: Regulations published by NOAA and the USFWS on August 29, 2006 to codify the prohibitions and management measures set forth in Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) establishing the Monument, contained an error in the instructions for submitting comments on the information collection requirements of the final rule via electronic mail, the reference to the dimensions of the Monument's outer boundary, and the numbering sequence for one paragraph.

The first error appeared in the first sentence of the **ADDRESSES** section of the notice. Here the notice incorrectly refers to a "proposed rule" and provides the incorrect e-mail address. That sentence should read "Submit written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in this final rule by e-mail to Diana Hynek at *dHynek@doc.gov*." The incorrect e-

mail address also appeared in the **SUPPLEMENTARY INFORMATION** section of the notice in the first column on page 51135 below the table. The e-mail address should read *dHynek@doc.gov*.

The second error is in the third sentence of the first paragraph of the **SUPPLEMENTARY INFORMATION** section of the notice, where dimensions for the outer boundary of the Monument were given. The dimensions are for the Monument, not the outer boundary. Therefore, this sentence should read "The Monument is approximately 100 nmi wide and extends approximately 1200 nmi around coral islands, seamounts, banks, and shoals."

The regulatory text of that rule also contained an error in the numbering sequence for one paragraph. Paragraph 404.11(f)(1)(ii) should have been designated as paragraph 404.11(f)(1)(i)(A). Paragraphs 404.11(f)(1)(ii)(A) and (B) and paragraph 404.11(f)(1)(iii) should have been numbered paragraphs 404.11(f)(1)(i)(B) through (D), respectively. Paragraph 404.11(f)(1)(iv) should have been designated as paragraph 404.11(f)(1)(ii). This final rule makes these corrections. The substance of the regulations remains unchanged.

Classification

Administrative Procedure Act

The Secretaries find good cause to waive notice and comment on this correction, pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary because this correction is a minor, technical change in an e-mail address and the numbering of the regulations as well as elimination of erroneous references to the notice as a proposed rule and the dimensions of the Monument's outer boundary. The substance of the regulations remains unchanged. Therefore, this correction is being published as a final regulation and is effective February 7, 2007.

E.O. 12866

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 404

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.