

Restricted Delivery  
 [Reserved for Product Description]  
 Shipper-Paid Forwarding  
 [Reserved for Product Description]  
 Signature Confirmation  
 [Reserved for Product Description]  
 Special Handling  
 [Reserved for Product Description]  
 Stamped Envelopes  
 [Reserved for Product Description]  
 Stamped Cards  
 [Reserved for Product Description]  
 Premium Stamped Stationery  
 [Reserved for Product Description]  
 Premium Stamped Cards  
 [Reserved for Product Description]  
 International Ancillary Services  
 [Reserved for Product Description]  
 International Certificate of Mailing  
 [Reserved for Product Description]  
 International Registered Mail  
 [Reserved for Product Description]  
 International Return Receipt  
 [Reserved for Product Description]  
 International Restricted Delivery  
 [Reserved for Product Description]  
 Address List Services  
 [Reserved for Product Description]  
 Caller Service  
 [Reserved for Product Description]  
 Change-of-Address Credit Card  
 Authentication  
 [Reserved for Product Description]  
 Confirm  
 [Reserved for Product Description]  
 International Reply Coupon Service  
 [Reserved for Product Description]  
 International Business Reply Mail Service  
 [Reserved for Product Description]  
 Money Orders  
 [Reserved for Product Description]  
 Post Office Box Service  
 [Reserved for Product Description]  
 Negotiated Service Agreements  
 [Reserved for Class Description]  
 HSBC North America Holdings Inc.  
 Negotiated Service Agreement  
 [Reserved for Product Description]  
 Bookspan Negotiated Service Agreement  
 [Reserved for Product Description]  
 Bank of America Corporation Negotiated  
 Service Agreement  
 The Bradford Group Negotiated Service  
 Agreement

**Part B—Competitive Products**

Competitive Product List  
 Express Mail  
 Express Mail  
 Outbound International Expedited Services  
 Inbound International Expedited Services  
 Inbound International Expedited Services 1  
 (CP2008-7)  
 Priority Mail  
 Priority Mail  
 Outbound Priority Mail International  
 Inbound Air Parcel Post  
 Parcel Select  
 Parcel Return Service  
 International  
 International Priority Airlift (IPA)  
 International Surface Airlift (ISAL)  
 International Direct Sacks—M-Bags  
 Global Customized Shipping Services  
 Inbound Surface Parcel Post (at non-UPU  
 rates)

International Money Transfer Service  
 International Ancillary Services  
 Special Services  
 Premium Forwarding Service  
 Negotiated Service Agreements  
 Domestic  
 Express Mail Contract 1 (MC2008-5)  
 Express Mail Contract 2 (MC2009-3 and  
 CP2009-4)  
 Parcel Return Service Contract 1 (MC2009-  
 1 and CP2009-2)  
 Priority Mail Contract 1 (MC2008-8 and  
 CP2008-26)  
 Priority Mail Contract 2 (MC2009-2 and  
 CP2009-3)  
 Priority Mail Contract 3 (MC2009-4 and  
 CP2009-5)  
 Outbound International  
 Global Expedited Package Services (GEPS)  
 Contracts  
 GEPS 1 (CP2008-5, CP2008-11, CP2008-  
 12, and CP2008-13, CP2008-18,  
 CP2008-19, CP2008-20, CP2008-21,  
 CP2008-22, CP2008-23, and CP2008-24)  
 Global Plus Contracts  
 Global Plus 1 (CP2008-9 and CP2008-10)  
 Global Plus 2 (MC2008-7, CP2008-16 and  
 CP2008-17)  
 Inbound Direct Entry Contracts with  
 Foreign Postal Administrations  
 (MC2008-6, CP2008-14 and CP2008-15)  
 Competitive Product Descriptions  
 Express Mail  
 [Reserved for Group Description]  
 Express Mail  
 [Reserved for Product Description]  
 Outbound International Expedited Services  
 [Reserved for Product Description]  
 Inbound International Expedited Services  
 [Reserved for Product Description]  
 Priority  
 [Reserved for Product Description]  
 Priority Mail  
 [Reserved for Product Description]  
 Outbound Priority Mail International  
 [Reserved for Product Description]  
 Inbound Air Parcel Post  
 [Reserved for Product Description]  
 Parcel Select  
 [Reserved for Group Description]  
 Parcel Return Service  
 [Reserved for Group Description]  
 International  
 [Reserved for Group Description]  
 International Priority Airlift (IPA)  
 [Reserved for Product Description]  
 International Surface Airlift (ISAL)  
 [Reserved for Product Description]  
 International Direct Sacks—M-Bags  
 [Reserved for Product Description]  
 Global Customized Shipping Services  
 [Reserved for Product Description]  
 International Money Transfer Service  
 [Reserved for Product Description]  
 Inbound Surface Parcel Post (at non-UPU  
 rates)  
 [Reserved for Product Description]  
 International Ancillary Services  
 [Reserved for Product Description]  
 International Certificate of Mailing  
 [Reserved for Product Description]  
 International Registered Mail  
 [Reserved for Product Description]  
 International Return Receipt  
 [Reserved for Product Description]  
 International Restricted Delivery

[Reserved for Product Description]  
 International Insurance  
 [Reserved for Product Description]  
 Negotiated Service Agreements  
 [Reserved for Group Description]  
 Domestic  
 [Reserved for Product Description]  
 Outbound International  
 [Reserved for Group Description]

**Part C—Glossary of Terms and Conditions**  
**[Reserved]**

**Part D—Country Price Lists for International  
 Mail [Reserved]**

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**BILLING CODE 7710-FW-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
 Administration**

**50 CFR Part 223**

**[Docket No. 080219211-81123-01]**

**RIN 0648-AU98**

**Sea Turtle Conservation; Fishing Gear  
 Inspection Program**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS establishes an  
 inspection program for modified pound  
 net leaders in the Virginia waters of the  
 mainstem Chesapeake Bay. Current  
 regulations require modified pound net  
 leaders, as defined in the regulations, in  
 a portion of the Virginia Chesapeake  
 Bay while also allowing them to be used  
 in a different portion of the Chesapeake  
 Bay. This action would help ensure that  
 leaders used in those areas do in fact  
 meet the definition of a modified pound  
 net leader. This action, taken under the  
 Endangered Species Act of 1973 (ESA),  
 as amended, is intended to facilitate  
 compliance with the existing regulation,  
 which is designed to help protect  
 threatened and endangered sea turtles.

**DATES:** Effective December 18, 2008.

**FOR FURTHER INFORMATION CONTACT:**  
 Carrie Upite (ph. 978-281-9300 x6525,  
 fax 978-281-9394), or Barbara  
 Schroeder (ph. 301-713-2322, fax 301-  
 427-2522).

**SUPPLEMENTARY INFORMATION:**

**Background**

Based upon documented sea turtle  
 interactions with pound net leaders,  
 NMFS issued a final rule on May 5,  
 2004 (69 FR 24997), that prohibited the  
 use of offshore pound net leaders from

May 6 to July 15 in an area now referred to as "Pound Net Regulated Area I". Pound Net Regulated Area I is defined as the Virginia waters of the mainstem Chesapeake Bay, south of 37°19.0' N. lat. and west of 76°13.0' W. long., and all waters south of 37°13.0' N. lat. to the Chesapeake Bay Bridge Tunnel (extending from approximately 37°05' N. lat., 75°59' W. long. to 36°55' N. lat., 76°08' W. long.) at the mouth of the Chesapeake Bay, and the portion of the James River downstream of the Hampton Roads Bridge Tunnel (I-64; approximately 36°59.55' N. lat., 76°18.64' W. long.) and the York River downstream of the Coleman Memorial Bridge (Route 17; approximately 37°14.55' N. lat, 76°30.40' W. long.). An offshore pound net leader refers to a leader with the inland end set greater than 10 horizontal feet (3 m) from the mean low water line. The May 2004 rule also placed restrictions on nearshore pound net leaders in Pound Net Regulated Area I and on all pound net leaders employed in "Pound Net Regulated Area II." Pound Net Regulated Area II refers to Virginia waters of the Chesapeake Bay, outside of Pound Net Regulated Area I as defined above, extending to the Maryland-Virginia State line (approximately 37°55' N. lat., 75°55' W. long.), the Great Wicomico River downstream of the Jessie Dupont Memorial Highway Bridge (Route 200; approximately 37°50.84' N. lat, 76°22.09' W. long.), the Rappahannock River downstream of the Robert Opie Norris Jr. Bridge (Route 3; approximately 37°37.44' N. lat, 76°25.40' W. long.), and the Piankatank River downstream of the Route 3 Bridge (approximately 37°30.62' N. lat, 76°25.19' W. long.) to the COLREGS line at the mouth of the Chesapeake Bay. Pursuant to the 2004 rule, nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II must have mesh size less than 12 inches (30.5 cm) stretched mesh and may not employ stringers.

In 2004 and 2005, NMFS implemented a coordinated research program with pound net industry participants and other interested parties to develop and test a modified pound net leader design with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. During the two year study, the modified leader was found to be effective in reducing sea turtle interactions as compared to the unmodified leader. The final results of the 2004 study found that out of eight turtles impinged on or entangled in the

leaders of pound nets, seven were impinged on or entangled in an unmodified leader. One leatherback turtle was found entangled in a modified leader. In response to the leatherback entanglement, the gear was further modified by increasing the stiffness of the vertical lines for the 2005 experiment. The 2005 experiment found that 15 turtles were entangled in unmodified leaders, but no turtles were impinged on or entangled in modified leaders. Furthermore, results of the finfish catch comparison suggest that the modified leader caught similar quantities and size compositions as the unmodified leader.

Based upon these results, on June 23, 2006, NMFS issued a final rule (71 FR 36024) that required any offshore pound net leader in Pound Net Regulated Area I during the period from May 6 through July 15 to meet the definition of a modified pound net leader. A modified pound net leader is defined as a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that (a) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (b) at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; (c) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (d) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and (e) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

Existing mesh size and stringer restrictions on nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II remained in place from May 6 through July 15 of each year. However, the June 2006 rule created an exception to those restrictions by allowing the use of modified pound net leaders during that period in nearshore pound net leaders in Pound Net Regulated Area I and all pound net leaders in Pound Net Regulated Area II. The year-round reporting and monitoring requirements for this fishery and the framework

mechanism under the existing regulations (50 CFR 223.206(d)(10)) also remained in effect.

After the 2006 final rule was published, NMFS determined that an onshore inspection program that examines a modified leader ready for deployment would help ensure the protection of sea turtles, while limiting the difficulties of and potential costs to fishermen associated with post-deployment inspections at-sea. The modified leader configuration was developed to protect sea turtles, and it is important that the leaders deployed in this fishery meet the standards embodied in the regulations.

#### Approved Measures

NMFS requires that any fisherman planning to use a modified pound net leader anywhere in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from 12:01 a.m. local time on May 6 through 11:59 p.m. local time on July 15 each year must adhere to the following requirements of the inspection program. First, the pound net fisherman or his/her representative must call NMFS at 757-414-0128 at least 72 hours before deploying modified leaders. During this call, the fisherman or representative and NMFS will discuss a meeting date, time, and location, as well as the fisherman's plans for setting his/her gear. The second component of the inspection program involves NMFS meeting the fisherman at the dock, or another mutually agreeable place, to examine the gear for compliance with the definition of a modified pound net leader. The regulations define a modified pound net leader as a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that (a) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (b) at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water directly above that particular point; (c) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (d) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at a minimum of every 2 feet (61 cm); and (e) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of

polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line.

During the inspection, NMFS will ascertain whether the leader meets the following four criteria taken from that definition: (1) the lower portion of the leader is mesh and the upper portion consists of only vertical lines; (2) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (3) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at least every 2 feet (61 cm); and (4) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. During the inspection, the fisherman must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed. If the fisherman does not know his or her modified pound net leader latitude and longitude coordinates prior to the inspection, NMFS will have a detailed nautical chart available during the inspection for the fisherman to ascertain the specific coordinates of the gear. During the inspection, the fisherman must also provide NMFS with information on the low water depth at each end of the modified leader. NMFS will also measure the height of the mesh in relation to the height of the entire leader. If the leader meets the four criteria previously described, the measurement of the height of the mesh in relation to the total height of the leader is recorded, and the low water depth and the latitude and longitude coordinates of the specific location at which the leader will be deployed are provided and recorded, the leader will pass inspection. If it passes inspection, NMFS will tag the leader with one or more tamperproof tags (supplied by NMFS), each of which will be marked with a unique identification number. Additionally, the fisherman will receive a letter from NMFS noting that the leader has been inspected, the date of the inspection, the license holder's name, the tag number(s) of the attached tag(s), information on the modified leader as collected during the inspection, and the low water depth and the latitude and longitude coordinates for the specific location at which the inspected leader will be deployed. This letter must be retained on the vessel tending the inspected leader at all times it is deployed. The fisherman may set

the inspected leader only after passing the inspection; the tags must remain on the gear. After tagging by NMFS, the tags may not be tampered with or removed. If a tag is damaged, destroyed, or lost due to any cause, the fisherman must call NMFS within 48 hours of discovery to report this incident. Any portion of a pound net leader that has been previously tagged must not be altered or replaced so that it fails to meet the modified pound net leader definition, unless that portion of the gear is reinspected, or unless that portion is altered or replaced after the time period from May 6 to July 15. It ultimately remains the fisherman's responsibility to ensure that his or her gear is in compliance with all components of the modified pound net leader definition when the leader is set in the water.

If the onshore inspection indicates that the leader does not meet one or more of the four criteria, NMFS will tell the fisherman how to modify his or her gear in order to meet the criteria. If a fisherman plans on using a modified leader anywhere in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15, he or she must schedule another inspection using the same procedure by which the initial inspection was scheduled, and ensure that the leader passes inspection prior to deployment. NMFS can inspect a net at any time prior to deployment, but all modified pound net leaders in Virginia Chesapeake Bay waters from May 6 through July 15 must have been inspected by NMFS. The inspection is only valid for one fishing season (e.g., May 6 to July 15, 2009).

Compared to other gear types and fisheries, the pound net fishery in Virginia has several characteristics that make an inspection program such as this necessary, and possible, to implement. The gear is only deployed once during a season (unless later damaged), and the fact that the leaders are below the surface combined with the low water clarity and visibility in Chesapeake Bay make inspection of the gear during the season difficult. The number of pound nets for which the gear modification is required is relatively small (< 50), which makes the inspection program feasible to implement.

All of the NMFS regulations existing at this time affecting sea turtles and pound net leaders in the Chesapeake Bay remain in effect.

This action is implemented under the authority of ESA sections 4(d) and 11(f) and is necessary and appropriate to conserve threatened sea turtles and to

enforce the provisions of the ESA, including the prohibition on takes of endangered sea turtles.

#### Comments and Responses

On March 1, 2007, NMFS published a proposed rule (72 FR 9297) that would establish an inspection program for those Virginia pound net fishermen who intend to use modified pound net leaders. Comments on this proposed action were requested through April 2, 2007. Three comment letters were received during the public comment period for the proposed rule. Two comment letters supported the action, while one comment letter was neither in favor nor against the proposed action. Additionally, the Virginia Department of Environmental Quality agreed with NMFS that the action is consistent with the enforceable policies of Virginia's Coastal Resources Management Program. NMFS considered the comments on the proposed rule as part of its decision making process. A complete summary of the comments and NMFS' responses, grouped according to general subject matter in no particular order, is provided here.

#### General Comments

*Comment 1:* One commenter expressed concern with commercial fishing in general and its impacts on sea turtles and marine birds, recommending that longlines, purse seines, and trawling be prohibited. Two additional commenters urged NMFS to address the documented loggerhead declines in nesting numbers and further reduce the bycatch of loggerhead sea turtles throughout the Atlantic.

*Response:* NMFS has and will continue to consider the impacts to listed sea turtles and to reduce threats from known sources. NMFS and the United States Fish and Wildlife Service (USFWS) are working to minimize the impacts to sea turtles from activities such as nesting habitat degradation, marine debris, dredging, and power plant impingement, and acknowledge that fishing activities have been recognized as one of the most significant threats to sea turtle survival (Magnuson *et al.*, 1990, Turtle Expert Working Group 2000). To respond to these threats, NMFS is comprehensively evaluating the impacts of fishing gear types on sea turtles throughout the U.S. Atlantic Ocean and Gulf of Mexico, as part of the Strategy for Sea Turtle Conservation and Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (Strategy) (NMFS 2001). Based on the information developed for the Strategy, NMFS may impose restrictions on or modifications to other activities

that adversely affect sea turtles. For example, NMFS is currently evaluating Atlantic Coast trawl fisheries and considering amendments to the regulatory requirements for Turtle Excluder Devices in trawl fisheries (72 FR 7382, February 15, 2007). While commercial fisheries with impacts to sea turtles may be addressed through other avenues, this final rule involves only Virginia Chesapeake Bay pound net gear and an inspection program to help ensure modified pound net leaders are consistent with the definition of a modified pound net leader (50 CFR 222.102). All impacted marine species were considered in the National Environmental Policy Act review on the action, and no impacts to marine birds are anticipated from this final rule.

NMFS is aware of the reported declines in loggerhead nesting numbers. NMFS and the U.S. Fish and Wildlife Service published a Notice of Availability of the draft revised Loggerhead Recovery Plan on May 30, 2008 (73 FR 31066). The draft revised plan is available at [www.nmfs.noaa.gov/pr/recovery/plans.htm](http://www.nmfs.noaa.gov/pr/recovery/plans.htm). Additionally, the Loggerhead Turtle Expert Working Group is currently assessing the status of and preparing a report on the loggerhead population in the Western North Atlantic. These initiatives will help NMFS determine the best course of action to ensure recovery of loggerhead sea turtles. Loggerheads remain listed pursuant to the ESA, and NMFS continues to work to reduce all mortality sources and promote recovery.

*Comment 2:* One commenter felt the bycatch of dolphins and seabirds should be monitored and minimized.

*Response:* The purpose of this rule is to establish an inspection program to help ensure compliance with previous regulations established to protect endangered and threatened sea turtles. The effects of pound net regulations (and the pound net fishery in general) on dolphins and seabirds were considered in the National Environmental Policy Act analysis conducted on the 2006 final rule establishing the modified leader requirement (June 2006 Final Environmental Assessment (EA) and Regulatory Impact Review Regulatory Flexibility Act Analysis of Sea Turtle Conservation Measures for the Pound Net Fishery in Virginia Waters of the Chesapeake Bay). This rule was determined to not result in any impacts on the environment that were not already evaluated as part of previous rulemaking and found to be not significant. NMFS also strives to protect marine mammals and seabirds through other programs.

*Comment 3:* One commenter urged NMFS to undertake an inter-agency consultation to establish incidental take levels in the Chesapeake Bay and Atlantic coast fisheries to avoid jeopardy.

*Response:* Inter-agency consultations, pursuant to section 7 of the ESA, are completed on actions authorized, funded, or carried out by a Federal agency. NMFS consults on all fisheries actions with a Federal nexus, such as the implementation of a Fishery Management Plan or other Federal rulemaking. As a result, management actions for Federal fisheries in the Atlantic (and state fisheries occurring in the Chesapeake Bay subject to Federal regulation) have already been considered with respect to their impacts on sea turtles, and incidental take statements have been issued for these actions. Specific to this action, a formal consultation pursuant to section 7 of the ESA was previously conducted on the operation of the Virginia pound net fishery, as modified by the implementation of the sea turtle conservation measures enacted in 2004. An incidental take statement was issued as a result of the 2004 consultation. The 2006 modified pound net leader requirement was determined not to trigger reinitiation of formal consultation, as that proposed 2006 action provided the same level of protection as what was considered in the 2004 Biological Opinion. Thus, a formal section 7 consultation (and accompanying incidental take statement) was not completed on the 2006 action. Section 7 consultations on management actions for other state fisheries occurring in the Chesapeake Bay or in the Atlantic Ocean would not be appropriate because there is no Federal action on which to consult.

#### *Pound Net Fishery Comments*

*Comment 4:* Two commenters expressed support for at-sea compliance checks and increased enforcement efforts in the pound net fishery.

*Response:* The purpose of the on-shore inspection program is not to preclude regular enforcement activities that would have occurred independent of this action. One of the reasons NMFS establishes this inspection program is to aid in enforcement efforts. Regular inspections conducted in the water to evaluate the configuration of modified pound net leaders were determined to be a greater challenge for this fishery as most of the pound net leader is typically set under the water, the water clarity in the Chesapeake Bay is generally poor, and there may be debris in the water that could endanger the inspector.

Conducting a land based inspection, and tagging the gear with yellow tamperproof tags along the top of the leader (so they will be visible from the surface), will help law enforcement identify and follow up with those leaders that may not be in compliance with the regulations. Again, at sea compliance checks and enforcement efforts will occur as have been done in previous years, but this inspection program is initiated independent of those activities.

*Comment 5:* Two commenters suggested that observer coverage/monitoring in the pound net fishery be increased during the regulated period to ensure that the modified leaders are working and to further characterize the fishery. One of those commenters additionally recommended that observer coverage is needed on all fisheries active when sea turtles are present, in particular the previously unobserved haul seine, trawl, and pot fisheries.

*Response:* When allocating resources and evaluating other fisheries for bycatch, NMFS will continue to consider additional monitoring of the pound net fishery to observe modified pound net leaders. NMFS has characterized the pound net fishery in the past (e.g., in 2002, 2003 and 2004), and while the number of participants in the fishery may have changed slightly since that time, NMFS does not anticipate that changes have occurred that would affect the information in or purpose of this rule. As for observer coverage in other fisheries, on August 3, 2007, NMFS published a final rule (72 FR 43176) that authorizes NMFS to place observers on vessels participating in state or federal fisheries upon NMFS' request. NMFS will make an annual determination identifying which fisheries to observe based on the following criteria: the fishery operates at the same time and in the same place as sea turtles; the fishery operates at the same time or prior to elevated sea turtle strandings; or the fishery uses a gear type or technique known to result in sea turtle bycatch; and NMFS intends to monitor the fishery and anticipates that it will have the funds to do so. That rule allows observers to monitor fisheries (e.g., haul seine, pot gear) specifically for sea turtle bycatch. Additionally, the NMFS Northeast Fisheries Science Center allocates observer coverage in various areas, including Virginia, each year to monitor finfish and protected species bycatch.

*Comment 6:* One commenter noted that research should continue to be conducted to determine whether more effective gear modifications are available as well as to assess the diving

and foraging behavior of turtles around pound net gear.

*Response:* In 2004 and 2005, NMFS implemented a coordinated research program with pound net industry participants and other interested parties to develop and test a modified pound net leader design with the goal of eliminating or reducing sea turtle interactions while retaining an acceptable level of fish catch. During the 2-year study, the modified leader was found effective in reducing sea turtle interactions as compared to the unmodified leader. In 2004, out of eight turtles impinged on or entangled in pound net leaders, seven were in an unmodified leader. One leatherback turtle was found entangled in the vertical lines of a modified leader, and as a result, the gear was further modified by increasing the stiffness of the vertical lines for the 2005 experiment. In 2005, 15 turtles entangled in or impinged on the leaders of unmodified leaders, and no turtles were found entangled in or impinged on modified leaders. This two year project tested a realistic, feasible alternative to traditional pound net leaders - one that testing shows to protect sea turtles while retaining fish catch. Note that in 2004, NMFS, through the National Fish and Wildlife Foundation, issued a public request for proposals to further reduce sea turtle interactions with Virginia pound net gear. Few testable ideas were submitted, and emphasis was then put on the modified leader design mentioned above. As such, no additional plans are underway to test alternative pound net gear considering the limited resources available and other fishing gear types that may need bycatch reduction measures and/or testing. Alternative designs or research plans to reduce sea turtle bycatch in pound net gear, as well as any other fishing gear, are always welcomed and can be sent to the NMFS Northeast Region Protected Resources Division at 55 Great Republic Drive, Gloucester, MA 01930.

Previous studies by the Virginia Institute of Marine Science (Mansfield 2006) have tracked sea turtles in the Virginia Chesapeake Bay, but those studies did not specifically focus on sea turtles' foraging and diving around pound net gear (and it is very difficult to do so given the unpredictability of turtle behavior). NMFS will consider additional satellite tracking studies to monitor sea turtle foraging and diving behavior in the future.

*Comment 7:* One commenter noted that the regulations pertaining to the pound net fishery should be

strengthened to better address the bycatch of loggerhead turtles.

*Response:* NMFS has been researching the bycatch of sea turtles in Virginia fisheries for several years. Based on observed interactions with sea turtles and pound net leaders, NMFS has implemented various regulations in the Virginia pound net fishery since 2001. Regulations have been modified over time, based upon new information obtained on sea turtle interactions in the fishery. While sea turtle strandings and observed interactions in Virginia fishing gear will continue to be evaluated, NMFS does not believe there is a need to further regulate the Virginia pound net fishery at this time.

*Comment 8:* One commenter noted that the following information should be provided: the reporting of sea turtle takes by pound net fishermen; the results of any at-sea monitoring performed since the regulations have been in place; data on strandings of sea turtles in the Chesapeake Bay; the results of any at-sea compliance checks; and whether there has been any enforcement action taken against nets found to be out of compliance with the regulations. The commenter claimed that the omission of this information in the proposed rule left significant gaps in the public's ability to comment on the impacts of the pound net fishery on threatened and endangered sea turtles.

*Response:* NMFS requested public comments on the proposal to establish a land-based modified leader inspection program to help determine whether the leaders meet the existing regulatory definition of a modified pound net leader. We believe sufficient information was provided to enable the public to comment on that topic. Nevertheless, data on sea turtle strandings in the Chesapeake Bay were included in the 2006 EA. There have not been any sea turtles in pound net operations reported to NMFS by fishermen since the June 2006 final rule. NMFS concluded that this rule will complement at-sea enforcement efforts. In addition, all NOAA enforcement actions that result in a charge are published monthly in the Commercial Fisheries News.

#### *Inspection Program Logistics*

*Comment 9:* One commenter recommended that NMFS require the modified leader design in any offshore leader fished from early May to mid-July within the geographic range of the Virginia pound net fishery. The commenter recommended all older leaders should be replaced with the new modified design.

*Response:* When NMFS was considering a rule to require the modified pound net leader in the Virginia pound net fishery, the geographic scope of such a requirement was evaluated. Despite observer coverage throughout the Virginia Chesapeake Bay, all but one observed sea turtle interaction in an offshore leader occurred in the area where the modified leader is currently required. In light of that, NMFS believes the geographic scope of the modified leader requirement is reasonable. Further, the geographic area for the requirement is beyond the scope of this rulemaking to establish an onshore inspection program for Virginia modified pound net leaders.

*Comment 10:* One commenter felt that fishermen should provide NMFS with information about the depth of the site at which the leader will be set to confirm the modified leader meets the definition in the regulations (e.g., the height of the mesh must be no more than one-third the depth of the water at mean lower low water).

*Response:* During the inspection process, NMFS will collect information on the low water depth at each end of the fisherman's modified pound net leader. After considering the public comments received and further assessment, NMFS determined that this modification to the measures in the proposed rule is warranted. Fishermen will be required to provide information on the low water depth at each end of their modified pound net leader at the site at which it will be set. This information, in conjunction with NMFS measuring the height of the mesh in relation to the height of the entire leader, will be useful in helping to determine whether the leader, once deployed at the location, meets the requirement that the mesh be no more than one third the depth of mean lower low water. The collection-of-information requirement pursuant to the Paperwork Reduction Act (PRA) has been revised to include collecting specific depth data from fishermen (OMB number 0648-0559).

With respect to the portion of the modified leader definition that states the height of the mesh must be no more than one-third the depth of the water at mean lower low water, the methodology that can be used to calculate mean lower low water is summarized in the Small Entity Compliance Guide, which will be sent to all Virginia pound net licensees. Copies of this document are available upon request by calling 978-281-9300 extension 6525, or can be found on the NMFS Northeast Region Protected Resources Division web site (under Gear Restrictions for the Virginia Pound Net

Fishery - 2008 Modified Leader Inspection Program) at [http://www.nero.noaa.gov/prot\\_res/seaturtles/regs.html](http://www.nero.noaa.gov/prot_res/seaturtles/regs.html). In general, the depth at mean lower low water for a particular location can be calculated using the predicted and actual tide measurements located at <http://tidesandcurrents.noaa.gov>.

*Comment 11:* One commenter recommended that the fishermen should call NMFS at least 96 hours, instead of 72 hours as proposed, before the modified leaders are to be deployed to give the inspectors and fishermen more time to arrange the inspection. Another commenter recommended that NMFS establish set times and locations where fishermen can bring their gear for inspection.

*Response:* NMFS did not receive any comments from fishermen indicating that 72 hours would be an unrealistic schedule for arranging an inspection. Similarly, the NMFS inspector has noted that 72 hours is an appropriate time frame. The 72 hour window was chosen to allow enough time to arrange the inspection while ensuring the fishermen would not be burdened with having to call too far in advance when their deployment plans may still be unclear. If a fisherman wants to call to arrange the inspection 96 hours in advance of deployment, there is nothing in the regulations that would preclude him/her from doing so.

NMFS does not believe establishing a set time and location for the fishermen to bring in their gear for inspection is realistic. Fishermen may set their gear at any time during the year, and as such, purchase and rig their leaders at varying times as well. It would be more cumbersome on the industry to have them adhere to a rigid schedule for inspections, instead of arranging the inspection when their gear is available and ready for deployment. The NMFS inspector has indicated that the proposed inspection plans are realistic and suitable.

### Changes From the Proposed Rule

As a result of the comments received and further assessment, NMFS has determined that two modifications to the measures included in the proposed rule are warranted. First, the proposed rule indicated that during the inspection, fishermen must inform NMFS of the "specific location where his or her inspected pound net leader will be set." The final rule clarifies the type of information sought to identify "specific location" by indicating that, during the inspection, fishermen must provide accurate and specific latitude and longitude coordinates of the

location at which the leader will be deployed. If the fisherman does not know his or her modified pound net leader latitude and longitude coordinates prior to the inspection, NMFS will have a detailed nautical chart available during the inspection for the fisherman to ascertain the specific coordinates of the gear. Second, during the inspection, fishermen must provide NMFS with information on the low water depth at each end of their modified leader at the location at which it will be set. Knowing the depth, in conjunction with NMFS measuring the height of the mesh in relation to the height of the entire leader, will be useful in helping to determine whether the leader, once deployed at the location, meets the requirement that the mesh be no more than one third the depth of mean lower low water. The collection-of-information requirement pursuant to the PRA has been revised to include collecting latitude and longitude coordinates and specific depth data from fishermen (OMB number 0648-0559).

### Classification

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

NMFS has prepared a final regulatory flexibility analysis that describes the economic impact this final rule will have on small entities. A summary of the analysis follows.

A statement of the need for, and objectives of, this rulemaking are presented in the preamble and not repeated here.

No comments were received on the initial regulatory flexibility analysis or the economic impacts of the proposed rule.

The Final Environmental Assessment (EA) and Regulatory Impact Review/Regulatory Flexibility Act Analysis of Sea Turtle Conservation Measures for the Pound Net Fishery in Virginia Waters of the Chesapeake Bay (June 2006) analyzed the economic impacts of requiring the use of the modified leader for offshore pound nets in Regulated Area I and allowing the use of the modified leader by all other pound nets in the Virginia waters of Chesapeake Bay between May 6 and July 15. The analysis found the rule would increase net revenues for five fishermen in the lower Bay by allowing them to fish offshore pound nets during the regulated period, compared to the previous 2004 rule that prohibited leaders. The cost of fabricating and deploying the modified leader was more than offset by the increase in revenues. Additionally, the EA noted that the

public benefits from turtle protection using the modified leader were indistinguishable from the leader prohibition. This rule does not change those conclusions; rather, it would help to support the benefits identified. If the compliance rate for use of the modified leader for offshore pound nets in Regulated Area I is not 100 percent, there is potential for a reduction in the benefits from turtle protection. The economic incentives for a fisherman to decide not to comply with the existing regulations are minor; however, fishermen may not comply with the modified leader design specifications due to an inadvertent error in construction. In either case, benefits from the existing regulation could be reduced if the modified leader does not meet the regulatory definition.

The cost to a fisherman of undergoing a land based inspection is small. Assuming that fishing is not impeded by the regulation<sup>1</sup>, and the inspection is arranged at a location convenient to the fisherman, the principal cost to fishermen would be the opportunity cost of their time to arrange and undergo the inspection estimated at \$21.50 per leader. Assuming telephone costs of \$1.25 to arrange the meeting, the total cost would be \$22.75 per leader. Fishermen are also required to notify NMFS by telephone if a tag is lost, damaged, or destroyed. It is estimated such a call, should it be necessary, would take approximately 5 minutes for an estimated cost of \$2.90 per lost/damaged/destroyed tag (considering telephone charges and opportunity cost of time). The number of fishermen and leaders affected by this rule will depend on how many fishermen adopt the modified leader. At the low end, if it is assumed that only those fishermen required to use the modified leader in order to fish do so, the estimate is five fishermen in the lower Chesapeake Bay with seven offshore leaders would incur inspection costs. Depending on the number of leaders a fisherman deploys, the cost per fisherman would range from \$22.75 to \$45.50 or 0.03 to 0.06 percent of average annual revenues per fisherman. A mid-range estimate suggests fishermen would replace all offshore pound net leaders with the modified leader. At the end of five years, 21 fishermen with 32 pound nets would incur costs between \$22.75 to

<sup>1</sup>That is, fishermen are able to fish before the regulated period with an existing leader. Alternatively, if fishermen used the modified leader outside the regulated period, they would generally remove the leader for cleaning/maintenance at some time during the year; if inspection services were available during that time, fishing would not be impeded.

\$45.50 or 0.03 to 0.08 percent of average annual revenues. At the high end, if it is assumed that during the normal leader replacement cycle, all fishermen adopt the modified leader for all pound nets used in Pound Net Regulated Areas I and II during May 6 to July 15, the estimate at the end of five years would be 21 fishermen and 46 pound nets. The annual cost per fisherman would range from \$22.75 to \$91.00, or 0.04 to 0.08 percent of average annual revenues. The total annual cost to the pound net industry would be \$157.70 at the low level of adoption, or \$1,046.50 under full adoption, which are 0.007 to 0.047 percent of industry revenues. Note that the cost of reporting lost, damaged, or destroyed tags is not included in the individual fisherman or industry estimates because there is no verifiable estimate of expected rate of tag loss. If one assumes three tags per leader and a 10 percent loss rate, the total industry cost would increase by \$5.80 to \$40.60 per year depending on the level of adoption and the year. NMFS also analyzed the "no action" alternative, for which there would not be any economic impacts on small entities.

This final rule requires those fishermen who wish to deploy a modified leader from May 6 through July 15, to make their modified leaders available for inspection and tagging. Additionally, fishermen would be required to retain a letter that the leader has passed inspection for the relevant period. Under existing regulations, fishermen had to be familiar with the design requirements for the modified leader; this knowledge continues to be required under this rule. In the event that a tagged leader is damaged or destroyed, fishermen would be required to report the loss to NMFS personnel. To access the inspection program and report lost or damaged tags, fishermen would need access to a telephone. No new skills would be required for compliance.

As stated above, the rule was compared to the status quo, which does not require inspection of modified pound net leaders, but does require compliance of modified leaders with the design specifications described in previous regulation. The alternative contained in this final rule was prepared to help ensure the level of turtle protection anticipated by the June 23, 2006 rule (71 FR 36024) is achieved. The rule was designed to minimize the economic burden to the fisherman by allowing the inspections at a place of convenience (e.g., dock) and by allowing inspection at any point prior to deployment (i.e., leaders could be deployed in months prior to May 6).

Additionally, fishermen avoid the potential expense and lost revenues that could occur should a leader need to be removed from the water for inspection or because it did not meet the design requirements for a modified leader described in the existing regulation.

This final rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under control number 0648-0559. Public reporting burden for the modified pound net leader inspection program is estimated to average a maximum of 2 and one half hours per fisherman (or 51 hours for all Virginia pound net fishermen), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This final rule contains policies with federalism implications that were sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the Governor of Virginia on March 7, 2007. No comments were received in response to the March 2007 letter.

**List of Subjects in 50 CFR Part 223**

Endangered and threatened species, Exports, Transportation.

Dated: November 12, 2008.

**Samuel D. Rauch III,**

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

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

**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.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

■ 2. In § 223.205, paragraphs (b)(16) and (b)(17) are redesignated as (b)(21) and (b)(22), respectively, and new paragraphs (b) (16) - (20) are added to read as follows:

**§ 223.205 Sea turtles.**

\* \* \* \* \*

(b) \* \* \*

(16) Set, use, or fail to remove a pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 that does not meet the leader construction specifications described in 50 CFR 223.206(d)(10) and 50 CFR 222.102;

(17) Set, use, or haul a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II defined in 50 CFR 222.102 and referenced in 50 CFR 223.206(d)(10) at any time from May 6 through July 15 unless that leader has been inspected and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) prior to deploying the leader;

(18) Alter or replace any portion of a pound net leader that has been previously tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) so that the altered or replaced portion is no longer consistent with the modified pound net leader definition in 50 CFR 222.102, unless that altered or replaced portion is inspected and tagged by NMFS in accordance with 50 CFR 223.206(d)(10)(vii) or that alteration or replacement occurs after the regulated period of May 6 through July 15;

(19) Remove, transfer, sell, purchase, affix, or tamper with any tags used by NMFS to mark pound net leaders;

(20) Fish, use, or haul a modified pound net leader at any time from May 6 through July 15 unless the fisherman has on board the vessel a letter issued by NMFS indicating that the leader has passed inspection;

\* \* \* \* \*

■ 3. In § 223.206, paragraph (d)(10)(vii) is added to read as follows:

**§ 223.206 Exemptions to prohibitions relating to sea turtles.**

\* \* \* \* \*

(d) \* \* \*

(10) \* \* \*

(vii) Modified leader inspection program. Any fisherman planning to use a modified pound net leader in Pound Net Regulated Area I or Pound Net Regulated Area II at any time from May 6 through July 15 must make his/her leader available for inspection and tagging by NMFS according to the following procedures. At least 72 hours prior to deploying a modified pound net leader, the fisherman or his/her representative must call NMFS at 757-414-0128 between 7:00 a.m. and 5:00 p.m. local time and arrange for a

mutually agreeable meeting date, time, and place. The fisherman must meet NMFS at such location at the designated time and allow NMFS to examine his or her gear to help ensure the leader is in compliance with the definition of a modified pound net leader. NMFS will ascertain whether the leader meets the following four criteria taken from that definition: (1) the lower portion of the leader is mesh and the upper portion consists of only vertical lines; (2) the mesh size is equal to or less than 8 inches (20.3 cm) stretched mesh; (3) the vertical lines are equal to or greater than 5/16 inch (0.8 cm) in diameter and strung vertically at least every 2 feet (61 cm); and (4) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. NMFS will also measure the height of the mesh in relation to the height of the entire leader. During the inspection, the fisherman must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed, as well as information on the low water depth at each end of the modified leader at the site at which it will be set. If the leader meets the four criteria previously described, the measurement of the height of the mesh in relation to the total height of the leader is recorded, and the low water depth and latitude and longitude coordinates of the specific location at which the leader will be deployed are provided and recorded, the leader will pass inspection. If it passes inspection, NMFS will tag the leader with one or more tamperproof tags. Removing or tampering with any tag placed on the leader by NMFS is prohibited. If a tag is damaged, destroyed, or lost due to any cause, the fisherman must call NMFS at 757-414-0128 within 48 hours of discovery to report this incident. After the leader is determined to have passed inspection, NMFS will issue a letter to the fisherman indicating that the leader passed inspection. The fisherman must retain that letter on board his/her vessel tending the inspected leader at all times it is deployed. Modified pound net leaders must pass inspection prior to being used at any time during the time period from May 6 through July 15 of each year.

\* \* \* \* \*

[FR Doc. E8-27344 Filed 11-17-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 070718362-81268-02]

RIN 0648-AV14

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Revisions to Allowable Bycatch Reduction Devices

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

**ACTION:** Final rule.

**SUMMARY:** In accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), NMFS issues this final rule to decertify the expanded mesh bycatch reduction device (BRD), the "Gulf fisheye" BRD, and the "fisheye" BRD, as currently specified, for use in the Gulf of Mexico (Gulf) shrimp fishery. NMFS is also certifying a new specification for the fisheye device to be used in the Gulf. In addition, this final rule incorporates a number of minor revisions to remove outdated regulatory text and revise references within regulatory text. The intended effect of this final rule is to improve bycatch reduction in the shrimp fishery and better meet the requirements of national standard 9.

**DATES:** This final rule is effective May 18, 2009.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 727-824-5305; fax: 727-824-5308.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, telephone: 727-824-5305, fax: 727-824-5308.

**SUPPLEMENTARY INFORMATION:** The fishery for shrimp in the exclusive economic zone (EEZ) of the Gulf is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council). The FMP is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On June 3, 2008, NMFS published a proposed rule (73 FR 31669) and

requested public comment. The rationale for the measures contained in this final rule are provided in the preamble to the proposed rule and are not repeated here. This final rule is effective approximately 6 months after the publication date to give members of the Gulf shrimp industry enough time to come into compliance with the management measures contained in this rulemaking.

#### Comments and Responses

NMFS received four comments on the proposed rule, three of which opposed proposed actions or suggested alternate management measures. Following is a summary of the comments and NMFS' responses.

*Comment 1:* BRD efficacy results used for this rulemaking are not based on best scientific data; preliminary results from a new study released by the Gulf and South Atlantic Fisheries Foundation, Inc. (Foundation) have different outcomes than the results used by NMFS in certifying and decertifying BRDs.

*Response:* To be certified for unconditional use in the southeastern shrimp fishery, testing must demonstrate that a BRD reduces the weight of finfish bycatch by 30 percent, and that less than a 10-percent probability exists that the reduction rate is less than 25 percent. To be provisionally certified (for 2 years), testing must demonstrate that at least a 50-percent probability exists that the BRD reduces the weight of finfish bycatch by 25 percent.

New data are collected at varying rates for different types of fishery research. The Foundation study includes new data that became available after NMFS initiated this rulemaking. Nevertheless, the preliminary results provided by the Foundation study very closely matched the results available to NMFS at the time the rule was developed. The Foundation study agreed with NMFS results indicating a fisheye-type BRD placed less than 9 ft (2.7 m) from the cod end tie-off rings met the certification criterion; the "Gulf fisheye" BRD and the expanded mesh BRD did not meet the certification criterion; and the extended funnel BRD did meet the provisional certification criterion. Therefore, the results of the Foundation study do not contradict the actions in this rulemaking to change the allowable placement of the "fisheye" BRD in the Gulf, and to decertify the "Gulf fisheye" and expanded mesh BRDs in the Gulf.

The Foundation study had slightly different results for the Jones-Davis, Modified Jones-Davis, and composite