



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC289

Receipt of an Application for Incidental Take Permit (16230)

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

ACTION: Supplemental Notice of receipt of application for incidental take permit; availability of draft conservation plan.

SUMMARY: NMFS has received an amended application for an incidental take permit (Permit) from the North Carolina Division of Marine Fisheries (NCDMF) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a proposed conservation plan designed to minimize and mitigate take of endangered or threatened species. The permit application is for the incidental take of ESA-listed adult and juvenile sea turtles associated with otherwise lawful commercial gillnet fisheries operating in inshore waters of North Carolina. The duration of the proposed permit is for 10 years. NMFS is providing this notice to allow other agencies and the public an opportunity to review and comment on the revised application and associated proposed conservation plan. All comments received will become part of the public record and will be available for review. An electronic copy of the revised application and proposed conservation plan may be obtained by contacting NMFS Office of Protected Resources (see FOR FURTHER INFORMATION CONTACT) or visiting the internet at www.nmfs.noaa.gov/pr/permits/esa_review.htm. Public comments

received in response to the original Notice of Receipt (76 FR 61670, October 5, 2011) are available on www.regulations.gov (see ADDRESSES).

DATES: Written comments from interested parties on the permit application and conservation plan must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Eastern daylight time on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the permit application and conservation plan, identified by NOAA-NMFS-2011-0231, by any of the following methods during the 30-day comment period:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2011-0231 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to Kristy Long, Office of Protected Resources, 1315 East West Highway, 13th Floor, Silver Spring, MD 20910.
- Fax: 301-713-0376; Attn: Kristy Long.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly

accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kristy Long (ph. 301-427-8402, e-mail Kristy.Long@noaa.gov); Dennis Klemm (ph. 727-824-5312, e-mail Dennis.Klemm@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are published at 50 CFR 222.307.

Species Covered in this Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

NMFS issued Permit No. 1259 to NCDMF (65 FR 65840, November 2, 2000), Permit No. 1348 (66 FR 51023, October 5, 2001), Permit No. 1398 (67 FR 67150, November 4, 2002), and Permit No. 1528 (70 FR 52984, September 6, 2005) authorizing the incidental take of the foregoing species in certain segments of the commercial fall gill net fisheries for flounder in

Pamlico Sound subject to a series of mandatory sea turtle management and monitoring requirements and limits on the numbers of individuals that could be taken annually.

On August 18, 2011, NCDMF submitted a revised application to NMFS for Permit No. 16230, requesting authorization for incidental take of ESA-listed sea turtles associated with commercial and recreational gillnet fisheries in inshore state waters for 3 years. This application includes endangered Kemp's ridley, leatherback, and hawksbill sea turtles and threatened green and loggerhead sea turtles. NMFS published a notice of receipt of the August 2011 application and a request for public comments on October 5, 2011 (76 FR 61670). Based on comments received from the public, independent reviewers, and NMFS, NCDMF subsequently submitted a second revised application on September 6, 2012. This permit, if issued, would allow for the incidental take of specified numbers of sea turtles incidental to the continued commercial harvest of target fish species in gillnets subject to conservation, management and monitoring requirements set forth in the plan and as permit conditions deemed necessary and appropriate by the NMFS over a 10 year period.

Conservation Plan

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental take of ESA-listed sea turtles. The conservation plan includes managing inshore gill net fisheries by dividing estuarine waters into 6 management units (i.e., A, B, C, D1, D2, E). Each of the management units would be monitored seasonally and by fishery.

Management units were delineated on the basis of three primary factors: similarity of fisheries and management; extent of known protected species interactions in commercial gill net fisheries; and unit size and the ability of the NCDMF to monitor fishing effort.

Management Unit A encompasses all estuarine waters north of 35° 46.30'N. to the North Carolina/Virginia state line. This includes all of Albemarle, Currituck, Croatan, and Roanoke sounds as well as the contributing river systems in this area. Management Unit B encompasses all estuarine waters south of 35° 46.30'N., east of 76° 30.00'W. and north of 34° 48.27'N. This Management Unit will include all of Pamlico Sound and the Northern portion of Core Sound. Management Unit C will include the Pamlico, Pungo and Neuse river drainages west of 76° 30.00'W. Management Unit D is divided into two areas, D1 and D2, to allow the NCDMF to effectively address areas of high sea turtle abundance or “hot spots”. Management Unit D1 encompasses all estuarine waters south of 34° 48.27'N. and east of a line running from 34° 40.70'N. – 76° 22.50'W. to 34° 42.48'N. – 76° 36.70'W. Management Unit D1 includes Southern Core Sound, Back Sound and North River. Management Unit D2 encompasses all estuarine waters west of a line running from 34° 40.70'N. – 76° 22.50'W. to 34° 42.48'N. – 76° 36.70'W. to the Highway 58 bridge. Management Unit D2 includes Newport River and Bogue Sound. Management Unit E encompasses all estuarine waters south and west of the Highway 58 bridge to the North Carolina/South Carolina state line. This includes the Atlantic Intercoastal Waterway and adjacent sounds, and the New, Cape Fear, Lockwood Folly, White Oak, and Shallotte rivers.

The large mesh (≥ 4 inch stretched mesh (10.16 cm)) gillnet fisheries primarily target southern flounder (*Paralichthys lethostigma*), striped bass (*Morone saxatilis*), American shad (*Alosa americana*), hickory shad (*Polomolobus mediocris*), and catfishes (*Ictalurus* sp.). Large mesh gill net fisheries for flounder traditionally operate throughout the majority of the sounds and lower estuarine river systems with peaks in effort in the spring/summer months (April – June), and in the fall months (September – November). Fisheries for striped bass are more

limited in time and space due to the anadromous migration pattern of this species. Striped bass gill net fisheries are prosecuted from late October through late April; fishermen are prohibited from targeting striped bass from May through early October. Consequently, the majority of striped bass effort occurs in Albemarle Sound with seasonal effort occurring in the Pamlico Sound and the Pamlico and Neuse River systems. American and hickory shad fishing operations occur almost exclusively from January 1 through April 14 due to their anadromous migration patterns and distribution. Catfish are harvested with large mesh gillnets in rivers and Western Albemarle Sound with the majority of catches occurring during the winter to spring months. The most common mesh size for all large mesh gill net fisheries is 5 ½ inch (13.97 cm) stretched mesh.

The small mesh (<4 inch stretched mesh (10.16 cm)) gillnet fisheries primarily target spot (*Leiostomus xanthurus*), striped mullet (*Mugil cephalus*), bluefish (*Pomatomus saltatrix*), spotted seatrout (*Cynoscion nebulosus*), weakfish (*Cynoscion regalis*), Atlantic menhaden (*Brevoortia tyrannus*), Spanish mackerel (*Scomberomorus maculatus*), white perch (*Morone americana*), and kingfishes (*Menticirrhus* sp.). Peaks in spot landings occur in the spring/summer (April to June) and fall (October to November) months; spot are landed throughout the estuarine waters and river systems. Striped mullet are landed year round with peaks in the fall/winter months (October to January). Bluefish are also landed year round throughout the estuarine and river systems with most landings occurring in the spring during April and May. Spotted seatrout and weakfish are targeted by small mesh gillnet operations primarily in the fall/winter (September to January) months. Weakfish landings may also peak in the spring during April and May. Atlantic menhaden are mostly targeted during the spring (February to May) with another peak in landings occurring in October. Spanish mackerel are primarily targeted during the spring and fall months.

White perch are almost exclusively targeted during the winter/spring months (December to April). Kingfishes are targeted primarily in the spring and the fall throughout the estuarine and river systems. Mesh sizes used in small mesh gill net operations vary more than those used in large mesh fisheries. However, the most commonly used small mesh sizes generally fall between 3 inch (7.62 cm) and 3 ¾ inch (9.53 cm) stretched mesh.

Management measures identified in the proposed conservation plan include: (1) restricted soak times for large mesh gillnets from one hour before sunset on Monday through Thursday and one hour after sunrise from Tuesday through Friday (i.e., fishing is prohibited from one hour after sunrise on Friday through one hour before sunset on Monday); (2) restrictions on the maximum net length per large mesh fishing operation (i.e., 2,000 yards (1.83 km, 6,000 ft) per operation except south of the NC Highway 58 bridge and Management Area D2 where 1,000 yards (0.91 km, 3,000 ft) is maximum; (3) restrictions on large mesh net-shot lengths to 100 yards (91.44 m, 300 ft) with a 25 yard (22.86 m, 75 ft) separation between each net-shot; (4) requirement for large mesh nets to be low profile (e.g., maximum of 15 meshes in depth, tie-downs prohibited, floats or corks prohibited along float lines north of the NC Highway 58 bridge); and (5) closure of Management Area D1 to unattended large mesh gillnets from May 8 – October 14 annually. NCDMF proposes to monitor sea turtle interactions through reports from fishery observers (both traditional and alternative platform), fishermen, and NCDMF Marine Patrol at a minimum of 7% coverage annually for large mesh gillnets and 1-2% annually for small mesh gillnets.

The annual incidental take of sea turtles requested for large mesh and small mesh gillnets in Management Units B, D1, D2, and E is 684 and 74, respectively. Specifically, the requested lethal and non-lethal take by species is 49 lethal and 98 non-lethal Kemp's ridley, 165 lethal and

330 non-lethal green, 22 lethal or non-lethal loggerhead turtles, and 4 lethal or non-lethal takes each of hawksbill and leatherback turtles. In Management Units A and C, the annual incidental lethal or non-lethal take of sea turtles requested for large and small mesh gillnets combined is 16 turtles of any species.

NCDMF is proposing to limit inshore gillnet fisheries such that the impacts on ESA-listed sea turtles will be minimized. NCDMF would use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality and prohibit fishing in management units where incidental take thresholds are exceeded. NCDMF considered and rejected five other alternatives, including: (1) a no action alternative; (2) not applying for a permit and closing the fishery; (3) further reducing large mesh effort (e.g., yardage, soak time) and requiring attendance in all Management Areas; (4) restricting large mesh effort in Management Areas A and C similar to B, D1, D2, and E; and (5) reducing small mesh gillnet effort (e.g., yardage, soak time) and requiring attendance in all Management Areas.

National Environmental Policy Act

Issuing a permit would constitute a major Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) as implemented by 40 CFR parts 1500-1508 and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act (1999). NMFS intends to prepare an Environmental Assessment (EA) to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit. NMFS will make this EA available for public comment.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA. The application, supporting documents, public comments, and views already received by the agency as well as those submitted in response to this notice will also be fully considered and evaluated as we prepare the EA and determine whether or not to issue a Finding of No Significant Impact (FONSI). The final NEPA document and permit determinations will not be completed until after the end of the 30-day comment period. If we determine that the requirements of section 10(a) and the procedural requirements of NEPA are met, NMFS will issue a permit for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. NMFS will publish a record of its final action in the Federal Register. We will also make any final NEPA documents available to the public.

Dated: October 25, 2012

Helen M. Golde,
Acting Director,
Office of Protected Resources,
National Marine Fisheries Service.

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