



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC289

Notice of Availability of Draft Environmental Assessment on the Effects of Issuing an Incidental Take Permit No. 16230 to the North Carolina Division of Marine Fisheries for the Continued Operation of the North Carolina Inshore Gillnet Fishery

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

ACTION: Notice of availability of a Draft Environmental Assessment; request for comments.

SUMMARY: NMFS announces the availability of the “Draft Environmental Assessment (EA) on the Effects of Issuing an Incidental Take Permit No. 16230 to the North Carolina Division of Marine Fisheries for the Continued Operation of the North Carolina Inshore Gillnet Fishery”.

Publication of this notice begins the official public comment period for this draft EA. Per the National Environmental Policy Act (NEPA), the purpose of the draft EA is to evaluate the potential direct, indirect, and cumulative impacts caused by the issuance of Permit No. 16230 to North Carolina Division of Marine Fisheries (NCDMF) for the incidental take of threatened and endangered sea turtles during management of North Carolina inshore gillnet fisheries. 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.

DATES: Submit comments on or before [insert date 15 days after date of publication in the Federal Register]. ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2011-0231, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2011-0231, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Sara McNulty, Office of Protected Resources, 1315 East West Highway, 13th Floor, Silver Spring, MD 20910.
- Fax: 301-713-0376; Attn: Sara McNulty.

Instructions: 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 by NMFS. 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.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. 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, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sara McNulty (ph. 301-427-8402, e-mail Sara.McNulty@noaa.gov) or Kristy Long (ph. 301-427-8402, email Kristy.Long@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (ESA, 16 U.S.C. 1531 et seq.) 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.

Since 2000, NMFS has issued four separate incidental take permits (ITP's) to NCDMF for the incidental take of sea turtles in inshore gillnet fisheries occurring in Pamlico Sound. Since 2006, incidental take of sea turtles has been documented in areas outside Pamlico Sound, which are not covered under an existing ITP. In 2010, the Duke Environmental Law and Policy Clinic filed suit against NCDMF and the North Carolina Marine Fisheries Commission on behalf of the Karen Beasley Sea Turtle Rescue and Rehabilitation Center for the illegal taking of sea turtles in state regulated inshore gillnet fisheries. As a result of the lawsuit and resulting settlement agreement, NCDMF has amended their commercial fishing regulations through Proclamations for their inshore gillnet fishery to minimize the incidental capture of sea turtles and subsequent discussions with NMFS.

On June 14, 2010, the NCDMF submitted an application for an ITP to address sea turtle interactions with set gillnets in NC internal coastal waters. Based on comments from NMFS, a revised ITP application was submitted on August 17, 2011. On October 5, 2011 NMFS published a Notice of Receipt of the State's draft application in the Federal Register and made the application and conservation plan available for public review and comment for 30 days (76 FR 61670, October 5, 2011). Upon reviewing the public comments, NMFS requested for NCDMF to make several modifications to the application.

On September 6, 2012, NCDMF submitted an amended application to NMFS. On October 31, 2012, NMFS published a second Notice of Receipt in the Federal Register and made the application and conservation plan available for public review and comment for 30 days (77 FR 65864, October 31, 2012). Public comments received during both comment periods have been summarized in the draft EA as part of the public scoping process.

The EA analyzes the effects to the human and natural environment caused by the issuance of ITP No. 16230 to NCDMF for the incidental take of threatened and endangered sea turtles during management of North Carolina inshore gillnet fisheries. As required by regulations implementing section 10(a)(1)(B) of the ESA, the conservation plan must, based on the best scientific and commercial data available, specify:

- The impact which will likely result from the taking;
- How the applicant will minimize and mitigate those impacts, and the funding available to implement;
- What alternative actions the applicant considered, and why those actions are not being pursued;
- Other measures the Secretary of Commerce may require; and
- All sources of data relied on in preparing the 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 (i.e., large mesh and small mesh gillnet).

Alternatives Considered

In preparing the draft EA, NMFS considered the following 3 alternatives for the action.

Alternative 1 - No Action. Under the No Action alternative no ITP would be issued for the incidental take of sea turtles. NCDMF would not receive an exemption for the commercial inshore gillnet fishery from the ESA prohibitions against take.

Alternative 2 - Issue ITP as Requested in Application. Under Alternative 2, an ITP would be issued to exempt NCDMF from the ESA prohibition on taking sea turtles during the otherwise lawful commercial inshore gillnet fishery.

Alternative 3 (Preferred) - Issue ITP as Requested in Application, with Modifications and Additional Requirements. Under Alternative 3, the ITP would be issued as described in Alternative 2, with modifications to the anticipated incidental take authorization and with additional monitoring and reporting requirements.

Environmental Consequences of Alternatives

The draft EA presents the scientific and analytic basis for comparison of the direct, indirect, and cumulative effects of the alternatives. Regulations for implementing the provisions of NEPA (42 U.S.C. 4331 et seq.) require considerations of both the context and intensity of a proposed action (40 CFR 1508.27). Each of the alternatives is expected to result in both live captures (non-lethal take) and mortalities (lethal take) of sea turtles. Although Alternative 1 is no action, or denial of the ITP request, in this analysis NMFS assumes that the status quo would largely be maintained for the fishery. No take authorization would be provided; however, it is likely that if the state continues to operate the fishery without an ITP, both live captures and mortalities would occur. For Alternatives 2 and 3, incidental take of sea turtles would be authorized for both live captures and mortalities.

Since 2005, the majority (78.2%) of all observed sea turtle incidental captures in North

Carolina inshore gillnets have been released alive. However, it is expected that some proportion of the sea turtles that are released alive after capture in a gillnet will succumb to post-release mortality due the physiological effects of the capture, or they will experience a decreased ability to forage or migrate, which may make them more susceptible to re-capture within a short period of time.

The expected mortalities that result from the operation of the North Carolina inshore gillnet fishery can be reasonably expected to impact recovery of the listed species in the wild by removing individuals and the potential for those individuals to reproduce in the future.

NMFS is currently preparing a biological opinion, pursuant to section 7(b) of the ESA, evaluating the effects of the issuance of the ITP on listed species under NMFS purview. The biological opinion will conclude the potential impacts of the action and if the issuance of the ITP is likely to jeopardize the continued existence of any species of sea turtle.

Incidental Take of Other Species

In consultation with the United States Fish and Wildlife Service, it was determined that the proposed action is not likely to adversely affect the West Indian manatee. Manatees are rare in North Carolina waters, and therefore it is not likely that any alternative would have a significant impact on manatees. Seabirds are susceptible to capture and drowning in the sink gillnets used in North Carolina inshore waters; and, therefore, there may be some impact to sea birds from all of the alternatives.

Social and Economic Impacts

Under the no action alternative, all large mesh gillnet fishing in Pamlico Sound in the fall of each year would be closed per NMFS regulations (CFR 223.206(d)(7)). Interactions and subsequent mortality of sea turtles in large mesh gillnet gear would be prevented in that area.

Due to the seasonal nature of the flounder fishery, no fisherman is exclusively dependent on the flounder fishery, rather the participants are diversified into other fisheries, such as blue crab trap and gillnets in the ocean and other inshore areas for various target species. As such, the fall Pamlico Sound large mesh gillnet closure would not result in a total loss of revenue from the flounder fishery or for the participating fisherman.

Under the no action alternative, NCDMF would not receive an exemption from the ESA prohibitions against take; therefore, any incidental takes of sea turtles resulting from the North Carolina commercial inshore gillnet fishery would not be exempted. If NCDMF continues to operate an inshore gillnet fishery without an ITP, and sea turtle takes continue to occur, both NCDMF and the individual fisherman could be liable under third party lawsuits and enforcement action by NMFS for violating the ESA and illegally taking endangered or threatened species.

Alternatives 2 and 3 may result in a minimal additional burden to licensed North Carolina inshore gillnet fisherman, through a requirement to carry or work closely with observers within the fishery and for reporting sea turtle takes to NCDMF. The North Carolina observer program is not expected to cause significant additional burden to the fisherman because this fishery is already subject to both NCDMF and NMFS observer coverage independent of the state program; and, further, the gillnet fisherman in North Carolina have been working within the monitoring framework of the proposed application since 2010, through measures put in place by NCDMF's 2010 Proclamation. Fishermen will be required to report incidental takes to NCDMF and undertake specific measures to resuscitate turtles as necessary and follow disposition guidelines; however, as mentioned above, fishermen have been subject to these requirements since 2010. This ITP issuance is not expected to cause further socio-economic burden.

Implementing Agreement

NMFS and NCDMF are developing an implementing agreement to define roles and responsibilities of each party and provide a common understanding of actions to be undertaken to minimize and mitigate the effects of anchored gillnet fishing in inshore waters on threatened and endangered sea turtles. The agreement describes obligations of both parties, including how changed and unforeseen circumstances will be addressed, as well as the responsibilities of each party in implementing the conservation plan. Additionally, the agreement describes the process for initiating and implementing adaptive management as needed to achieve the Plan's biological objectives or respond to new information (e.g., observer data).

Next Steps

This notice is provided pursuant to section 10(c) 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 be fully considered and evaluated as we prepare the final EA and determine whether to issue a Finding of No Significant Impact. The final NEPA

document and ITP determinations will not be completed until after the end of the 15-day comment period. 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: July 10, 2013.

Donna S. Wieting,
Director,
Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2013-17037 Filed 07/15/2013 at 8:45 am; Publication Date: 07/16/2013]