

Appendix C: Compliance with Past Requirements under Previous Consultations

Observer Program Funding

An element of the RPAs in the June 30, 2000, Opinion required NMFS to develop, by January 1, 2001, a mechanism for funding observer programs associated with fisheries that use gear responsible for capturing, injuring, or killing leatherback or loggerhead turtles. This has been met through the establishment of the National Observer Program which reviews proposals for funding and recommends funding levels. The National Observer Program also is developing initiatives on vessel and observer safety, cost-sharing of observer programs with industry, and consistent observer program protocols nationwide.

Observer Program for the Southeast Shark Drift Gillnet Fishery, and VMS

The May 27, 1997, Opinion identified an RPA for the southeast shark drift gillnet fishery which required NMFS to fully fund and implement an 100% observer program, or implement an alternative monitoring program that would be as effective in minimizing the occurrence of entanglements and avoiding the likelihood of jeopardy to right whales. The 1998-1999 right whale calving season was fully observed, but for the 1999-2000 season, funding was exhausted approximately 6 weeks before the required time period ended in March 2000. Fishermen reported 7 trips subsequent to the termination of the observer program. NMFS could not determine if additional trips went unreported or if there were any incidental take of any protected species associated with these unobserved trips; however, it is unlikely that additional trips occurred since fishermen are required to submit logbooks and none disclosed any trips during this time period. For the 2000-2001 season, shark drift gillnet fishery observer effort was not fully implemented until January 18, 2001. NMFS closed this fishery by emergency rule on March 9 through April 9, 2001, because it exceeded its authorized take level of leatherback sea turtles. The large coastal shark fishery resumes in June for the second half of the year; the shark gillnet fishery is a year-round fishery.

The Office of Sustainable Fisheries published an interim final rule on March 30, 2001, to reduce the level of observer coverage outside the right whale calving season (April 1 - November 14, annually) from 100% to a level that is sufficient to produce statistically valid results for protected species (estimated 53% coverage). The interim final rule maintains the 100% observer coverage during the right whale calving season (November 15 - March 31, annually). NMFS may, in future rulemaking, consider the use of VMS in the shark drift gillnet fishery. NMFS is evaluating a draft proposed rule implementing a VMS requirement for all participants in the Southeast U.S. shark drift gillnet fishery during the right whale calving season, provided under the June 30, 2000, Opinion as an alternative to the 100% observer coverage. The VMS requirement, if enacted, would ensure enforcement of the existing closure for the prevention of interaction with the fishery and right whales and reduce concerns that unreported effort may be taking place.

Workshops with Fishermen

Other terms and conditions which were not being fully implemented at the time of the April 23, 1999, Opinion and June 30, 2000, Opinion are now in compliance. For example, workshops with the shark gillnet fishermen to provide information on sea turtle handling and resuscitation guidelines and disentanglement of whales were conducted in Cape Canaveral in May 1999, Brunswick Georgia in October 1999, and Jacksonville, Florida in May 2000; however, only one fisherman attended the Brunswick disentanglement training session, and no fishermen participated in the Jacksonville training session. In addition, after the June 30 Opinion was issued, NMFS conducted a series of 7 scoping workshops in locations where pelagic longline vessels make landings and in locations that could potentially be affected by implementation of the RPAs identified in the Opinion. Both marine mammal and sea turtle handling guidelines were distributed and discussed at these workshops. A technical gear workshop was held in Silver Spring, Maryland on January 17-18, 2001.

Shark Drift Gillnet Gear

The May 28, 1999, final rule (64 FR 29090) implementing the HMS FMP required that all shark drift gillnet gear be tended, i.e. attached to the vessel at one end. This requirement was an element of the RPAs identified in the May 29, 1997, Opinion.

Management Measures to Reduce Levels of Sea Turtle Take

In order to avoid jeopardy to loggerhead and leatherback turtles, the June 30, 2000, Opinion identified an RPA which requires NMFS to develop and implement management measures to reduce the number of loggerhead and leatherbacks incidentally captured, injured, and killed by gear associated with HMS fisheries in the U.S. Atlantic by at least 75% from current levels. The Opinion listed two RPAs: RPA 1 included (1) promulgation of regulations closing the Grand Banks area (*i.e.*, the NED) to pelagic longline fishing from July through December; (2) promulgation of regulations requiring dipnets and line cutting gear aboard all longline vessels. The measures are intended to make it possible to remove smaller turtles from the water to remove their hooks, or to cut the line as close to a turtle as possible; (3) a requirement for promulgation of regulations by January 1, 2001, requiring exclusive use of corrodible hooks by pelagic longline fishers; and (4) a monitoring requirement, requiring a mechanism for funding observer programs associated with fisheries that use gear responsible for capturing, injuring, or killing loggerhead or leatherback sea turtles. RPA 1 also included an option to conduct an experiment (requiring 100% observer coverage) in the Grand Banks fishery to examine modifications to gear or fishing practices which could reduce sea turtle interactions in the fishery and could be applied throughout all areas of the fishery.

RPA 2 included several modifications to fishing methods including a requirement that NMFS manage all pelagic longline vessels fishing north of 35 degrees N. latitude to require them to fish only in waters with sea surface temperatures cooler than 64 degrees F.; and to require that no pelagic gear be set prior to

10 p.m. and hauled by 1 p.m. of the day after it was set. In addition, RPA 2 contained the same requirements for gear modifications (*i.e.*, corrodible hooks) and monitoring (*i.e.*, a mechanism for funding observer programs) as RPA 1, but did not include the line cutting gear requirement of RPA 1.

Emergency Rule

Because of new information that called into question some of these measures, NMFS implemented an emergency rule that would minimize impacts to sea turtles during the fall fishery while the reinitiated consultation was being conducted. On October 13, 2000, NMFS published an emergency rule, effective October 10, 2000, through April 9, 2001, consisting of limited time/area closures and gear requirements within the NED area to reduce the levels of sea turtle bycatch and bycatch mortality in the Atlantic pelagic longline fishery. The emergency rule closed the L-shaped portion of the NED area based on an examination of historical areas with high rates of sea turtle bycatch in both observer data and logbook reports for the NED statistical sampling area from 1992-1999, and implemented gear and handling requirements (*e.g.*, dipnets and line cutters) designed to improve the post-release survival of sea turtles.

The September 27, 2000, Environmental Assessment and Regulatory Impact Review for the emergency rule estimated that the closure action could reduce the number of incidentally captured loggerhead and leatherback sea turtles in the NED area by approximately 33 % under a redistribution of effort assumption and by approximately 45 % under a no-redistribution of effort assumption. These reductions were estimated from the 26,397 swordfish that were caught and 496 sea turtles that were taken from 1992 to 1999, as reported in the pelagic logbook database from vessels that reported fishing in the NED area from October through March. A precise prediction of the reduction in sea turtle bycatch attributable to the L-shape closure is not possible, because the degree of sea turtle bycatch reduction realized in any given year will depend on the environmental conditions that aggregate sea turtles. For example, in 1998, if the L-shape closure had been in effect, the sea turtle reduction would have been between 8 and 41 %, depending on effort redistribution. Similarly, in 1999 the reduction would have been between 14 and 20 %. The limited NED closure implemented by the October 13, 2000, 6-month emergency rule does not, by itself, meet the “75 percent reduction in sea turtle mortality from current levels” identified as an RPA by the June 30, 2000, Opinion.

Dipnets and Line Clippers.

In addition to the L-shape area closure in NED, the emergency rule requires the use of NMFS-approved dipnets and line clippers to remove entangling fishing gear and reduce post-release mortality of captured sea turtles. This gear requirement reduces the serious injury and/or mortality of sea turtles incidentally captured by reducing or eliminating any gear (monofilament line, rope, etc.) that remains on the sea turtle after its release, and should contribute to increased recovery of the threatened loggerhead and endangered leatherback sea turtles.

NMFS has implemented the term and condition of the June 30, 2000, Opinion requiring development of a line cutting device, and minimum requirements for line clippers and dipnets under the emergency rule. The SEFSC Pascagoula Laboratory is continuing its promising research and development of a pneumatically operated hook/line cutting device and other prototypes that will enable fishermen to cut the embedded hook off at its shank, or cut tightly wrapped monofilament from around sea turtle body parts, and from hooked or entangled animals. Valuable input on these prototype devices was received from longline fishery participants, mostly swordfish boat captains, who attended the NMFS-HMS longline fishery gear workshop in Silver Spring on January 17-18, 2001.

Corrodible Hooks

NMFS has partially implemented regulations requiring gear modifications, as required by the terms and conditions of the June 30, 2000, Opinion. According to the September 27, 2000, Environmental Assessment and Regulatory Impact Review for the emergency rule, prepared by the NMFS Division of Highly Migratory Species Management, NMFS has not promulgated a regulation requiring the use of corrodible hooks due to uncertainties regarding the definition of corrodibility, its enforceability, its effectiveness in reducing sea turtle post-release mortality, its impact on sea turtle survival, as well as its impact on target catches. SEFSC Pascagoula Laboratory is currently conducting preliminary experiments on corrodibility of various types of popular longline fishery hooks.

Sea Turtle Handling Guidelines

NMFS has not implemented the requirement to issue a regulation requiring all vessels permitted for HMS fisheries to post NMFS-approved sea turtle handling guidelines inside the wheelhouse within six months of the final HMS rule (published August 1, 2000). NMFS is currently preparing guidelines for all HMS fisheries; however, laminated placards and other educational materials have been distributed to fishermen. At recent gear workshops, fishermen noted that NMFS-approved turtle handling procedures have become common practice, even without regulation, and likely are having a noticeable effect on reducing injuries.