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GUIDELINES FOR INDIVIDUALS REQUESTING EXEMPTED FISHING PERMITS (EFPs)

Northeast Regional Office, National Marine Fisheries Service
June 1, 2005

Researchers seeking to conduct industry-based experimental projects relating to fisheries management often must request Exempted Fishing Permits (EFPs) from the Northeast Regional Office of the National Marine Fisheries Service (NOAA Fisheries Service). EFPs may be issued to authorize vessels doing research or research-related work (e.g., harvesting research set-aside quota that will be sold to generate revenue for research) to conduct activities that would otherwise be prohibited by Federal fishing regulations in 50 CFR part 648. Activities that frequently require an EFP include the testing of fishing gear, market research, and the public display of a fishery resource.

There are some types of regulatory exemptions that raise particular concerns because, if granted, they would allow fishing activities that could undermine measures established to reduce interactions with protected species or to conserve and manage fisheries. In such cases, there is a risk that the review of the EFP request may result in the denial of some or all of the exemptions needed to carry out the planned activities. There is also the risk that the scope of the exempted activity may have to be reduced. Researchers who request exemptions to modify fishing gear, increase the level of fishing activity, or alter the season or area in which a fishery takes place, could introduce new potential impacts to species protected under the Endangered Species Act (ESA) or Marine Mammal Protection Act. New impacts that would effect species protected under the ESA would require the conduct of a section 7 consultation.

These guidelines have been developed to provide researchers with advance information about exemption requests that may cause this type of concern. Researchers are urged to design their experimental activities to minimize the need for regulatory exemptions, and to limit the exemption requests to those that are directly related to, and necessary for, the success of the research project. The EFP review evaluates the impacts of the specific exemptions requested, including determining the scale and scope of the proposed activity. For instance, a request for exemptions to enable one cooperative research vessel to take a small number of experimental trips would be more likely to get approval than a request for many vessels to take many trips. The review focuses on the potential impact of the experimental activity, for instance, the amount of fish to be caught and the potential habitat impacts.

This document identifies the exemption requests that cause the most concern, in order to assist researchers in designing experimental programs that avoid these problem areas. With a few exceptions (see Section A below), exemption requests will continue to be evaluated on a case-by-case basis, and NOAA Fisheries Service may grant these types of exemptions if the specific project warrants. However, due to the concerns outlined below, such exemptions will be granted only if there is strong justification that the exemption is central to the research activity.

SECTION A. EXEMPTIONS THAT ARE NEVER GRANTED

Exemptions to allow the landing and sale of fish smaller than the minimum fish size

Requests to land **and sell** fish smaller than the minimum size will not be authorized because of the enforcement difficulties it would pose to have any undersized fish enter into commerce. EFP requests to possess and/or land undersized fish in order to carry out scientific study may be authorized, if the activity is a necessary aspect of the research.

Exemptions from vessel permit and reporting requirements

Requests to land and sell legal catch will not be authorized if the vessel has not been issued the required Federal fishing permits. This is necessary because of the enforcement difficulties it would pose to waive this basic requirement, and in order to ensure the integrity of the limited entry permit provisions. However, virtually any U.S. vessel may apply for and be issued an open access permit for many of the region's fisheries. Depending upon the research activity, such permits may be sufficient to allow the vessel to participate.

In addition, requests to exempt any commercial vessel from the mandatory reporting requirements will be denied because such reports are critical to the regional management programs.

Exemptions from commercial quotas or "hard TACs"

For species with hard quotas/TACs (measures that require the fishery to be closed when specified catch or landings levels are attained), exemptions that would cause such quotas to be exceeded cannot be authorized [§648.12(a)].

Exemptions that request an allocation of commercial quotas or "hard TACs"

Requests for exemptions that would grant the researcher a specific amount of commercial quota or hard TAC will not be approved because such a request represents an allocation of the resource. Allocation decisions are more appropriately made by the Regional Fishery Management Councils through their public process. Both the New England and the Mid-Atlantic Councils have established set-aside allocation to support research for some fisheries.

Exemptions to develop Special Access Programs (SAPs) that would occur in year-round closed areas during peak spawning periods

The Northeast (NE) Multispecies Fishery Management Plan (FMP) includes a provision that allows SAPs to be established. A SAP is a narrowly defined fishery that is designed to provide increased access to a stock(s) that, in the absence of such authorization, would not be allowed due to broadly applied regulations. Requests for EFPs for work within year-round closed areas during peak spawning periods for cod, haddock, and yellowtail flounder will not be authorized if the objective of the work is to collect information that would serve as the basis for proposing a SAP in those areas during those peak spawning periods. Authorizing SAPs during peak spawning periods would be inconsistent with the objectives of the year-round closures, which were established to protect cod, haddock, and yellowtail flounder stocks.

PEAK SPAWNING PERIODS BY SPECIES/CLOSED AREA

Source: Amendment 13 to the NE Multispecies FMP*

CLOSED AREA (CA)	COD	HADDOCK	YELLOWTAIL FLOUNDER
CAI	February-March*	March-April	n/a
CAII	February-March*	March-April	n/a
NANTUCKET LIGHTSHIP CA	n/a	n/a	April-June
WESTERN GULF OF MAINE	April	n/a	n/a
CASHES LEDGE	April	n/a	n/a

*Note that Framework 40-B to the NE Multispecies FMP has modified the peak spawning periods for cod.

Exemptions from year-round habitat closed areas and habitat areas of particular concern (HAPCs)

HAPCs areas are defined by the Councils in the development of their management programs to protect Essential Fish Habitat (EFH). There would be virtually no justification for an exemption to use bottom tending mobile gear within such areas, because it was such gear that these areas were intended to exclude. Other activity could be authorized if there is strong justification for conducting the work in the specific area, and if such activity would be expected to have minimal impacts on EFH.

SECTION B. EXEMPTIONS SUBJECT TO STRINGENT REVIEW

Exemptions from year-round closed areas

Applications for EFPs often request an exemption that would allow experimental activities to be conducted within year-round closed areas. When this exemption is requested, it is essential that the proposal clearly outline why the work must be carried out within the closed area rather than in the open area. Unless the proposal provides strong justification for conducting the work in a closed area, such an exemption is unlikely to be approved.

Even stronger justification must be presented if researchers are requesting to work within the year-round closed areas during peak spawning periods for cod, haddock, and yellowtail flounder. Such requests will be reviewed on a case-by-case basis, and scale/scope will be key aspects of the review. As noted in Section A, if the intent of the research is to propose a SAP in the closed area during peak spawning, the request would almost certainly be denied.

Exemptions from Days-at-Sea (DAS) for monkfish, scallops, NE multispecies

Researchers often request an exemption that would allow commercial fishing vessels to fish outside of the DAS management programs established for monkfish, scallops, and NE multispecies. The overall

DAS allocations made through these management programs are established to constrain fishing mortality to specified levels. In addition, the NE multispecies management program has established DAS for specific activities (Category A, Category B, Category C).

The fishing mortality associated with DAS exemptions must be evaluated to assure that such exemptions do not allow mortality to exceed the FMP's mortality goals. In addition, requests to utilize NE multispecies B or C category DAS would likely be denied. B DAS are intended to be used only in fisheries that have been determined to have only a minimal bycatch of any species of concern, and the allocation of B DAS accounts for the mortality based on that premise. C DAS are not authorized by the FMP for use at this time.

Exemptions from trip/possession limits

Requests for exemptions from trip or possession limits will be evaluated to determine whether the research activity would necessarily result in catch exceeding those levels. An exemption may be justified if catch levels in excess of the limits are directly related to the success of the research.

Exemptions from measures established to reduce interactions with protected species

Requests for exemptions from measures that were established to reduce interactions with protected species (e.g., gear prohibitions, area closures) require strong justification, and in some cases would require consultation under section 7 of the ESA, which could delay the issuance of an EFP.

Exemptions from minimum fish size

Requests to land (but not sell) fish smaller than minimum size may be granted for research projects if it is necessary in order to completely characterize the catch. All undersized fish must be returned to the sea, with the exception of fish landed as scientific samples in order to conduct further research onshore.

COONAMESSETT FARM
277 Hatchville Road
East Falmouth, Massachusetts, USA 02536
508-564-5516 FAX 508-564-5073
cfarm@capecod.net

April 1, 2009

Hi Folks,

As you know, Coonamessett Farm submitted two EFP requests to conduct RSA projects and a gear comparison contracted by the NEFSC. Here are some additional points to consider about the EFP request to conduct research trips into CAII in May and early June:

The existing data indicates that the March through June period may be the best fishing time for reducing yellowtail bycatch in the special scallop access area. This data include the results of the NMFS groundfish surveys from 1968-2000 showing the distribution of yellowtail catches. The yellowtail catches are lower in the spring and higher in the fall surveys in the scallop access areas. Data from Serchuk and Smolowitz (1989) showed that scallop meat yields were highest in the April through July period in those areas thus a spring scallop fishery would provide much higher yields of scallop meat per pound of bycatch. This EFP will allow data to be collected that will shed some light on this issue. The May catches can be compared to the fleet catches when the commercial fishery begins June 15th.

On the other hand, data is non-existent that indicates these special access areas have any unique importance for yellowtail during peak spawning or that scallop dredging has an impact on yellowtail spawning. There is no evidence that scallop dredges have any significant impact whatsoever on yellowtail spawning. A joint Scallop and Groundfish PDT Report (October 17, 1997) did not feel there was sufficient evidence to conclude that scallop dredging created turbidity that impacted spawning success or the survival of eggs and larvae of groundfish. The Report did express concern that scallop dredging could impact yellowtail spawning based on data from Colton et al (1979). Unfortunately, the Colton et al report is based on discontinuous surveys of spawners (spring trawl surveys) or ichthyoplankton surveys (MARMAP) which are crude indices of spawning time. The reality is that spawning is variable from year-to-year and defining a peak is difficult with this old data. The spawning areas defined by Colton et al are broad and general, lumping the entire GOM/Georges Bank/Nantucket Shoals together. Historically, according to Bigelow and Schroeder (1953), yellowtail spawns over a long season and well into the summer months. The EFH source document, still dependent on the same old information, describes spawning as occurring earlier in SNE and later as you move north, but does not give detailed information on time/location of spawning.

If more data and better strategies to mitigate yellowtail bycatch is not attained, there is a potential for the loss of millions of dollars of scallop yield. In reading the council documents, there does not appear to be any justification to exclude experimental fishing in a closed area because of concerns over yellowtail flounder spawning.

The last point is that two research trips will have no impact on any potential spawning aggregations of yellowtail if they do in fact occur. However, a large amount of fishing effort, as expected on June 15th, could disperse the yellowtail and weaken our data collection effort. We can not get a scallop vessel to participate any time soon after the June 15th opening as vessel owners want to make sure they can get their allocated trip. This means that in all likelihood we will not be able to conduct a research trip until after July 4th. This is the prime season for our turtle research making YT research during this period a very undesirable alternative..

Here are some additional points to consider about the EFP request to conduct research trips into the ETAA during September and October:

The turtle takes that will occur are already permitted under the NEFSC ESA Permit # 1576 (see attached section). The impacts of these takes have been extensively analyzed under the ESA process which took two years and was subject to significant scientific and public review. For the NERO to prevent these takes from occurring, by shifting the research effort away from where they might occur, defeats the purpose of the ESA permit. In effect, it prevents the attainment of the stated objectives of the 2008 BiOp. .

Our research supports what is currently known about loggerhead turtle distribution in the mid-Atlantic. From mid-June through early October the densest concentration of loggerheads can be found in a band that stretches through the Delmarva scallop access area, the ETAA, and up along the western side of the HCAA. The highest take rates with the scallop fishery will occur when the fishery overlaps this distribution of loggerheads. The perception that the ETAA has a higher take rates than other locations along this range is only due to the fact that the fishery overlapped the range within the ETAA; the data in fact is very limited. The Council actually had voted to remove this limited seasonal closure but it was placed back in by NMFS. The NMFS justification was that there was no new data to effect a change. This research project, conducted within the ETAA during the September-October period will collect new data.

For the purposes of this research project , comparing the Cfarm turtle excluder dredge to a standard dredge, we need the highest potential loggerhead take rates that can be experienced on the scallop fishing grounds. We have compensation trips to collect scallop RSA from the ETAA and it makes sense to use these trips to conduct the gear comparisons and collect turtle bycatch data. Additional trips will occur in the ETAA in June, July and August to provide a good data set. The last point I want to make is that I do not think there is a reasonable alternative to our proposed trip plan. We will be very happy to discuss any reasonable alternative that will accomplish the project goals if someone can think of one.

Permit No. 1576

Expiration Date: October 31, 2011

**PERMIT TO TAKE ENDANGERED AND THREATENED SPECIES
FOR SCIENTIFIC RESEARCH**

I. Authorization

National Marine Fisheries Service (NMFS), Northeast Fisheries Science Center (NEFSC), 166 Water Street, Woods Hole, Massachusetts, 02543 [Responsible Party: Frank Almeida, Acting Center Director], is hereby authorized to take endangered and threatened species in the manner specified below for scientific research, subject to the provisions of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR Parts 222-226), and the Terms and Conditions hereinafter set forth.

II. Abstract

The purpose of the research activities is to test modifications to scallop dredge gear that may reduce the probability of turtle injuries due to gear interactions. The NEFSC will also opportunistically collect biological information from sea turtles captured in other projects or fisheries to improve NMFS's ability to assess stocks and the impact of anthropogenic activities.

III. Terms and Conditions

The activities authorized herein must occur by the means, in the areas, and for the purposes set forth in the permit application, and as limited by the Terms and Conditions specified in this permit.

A. Number and Kind(s) of Endangered and Threatened Species and Location(s)

The following tables outline the maximum number of leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) sea turtles authorized to be taken and the activities authorized to be performed on each animal. The Researchers listed in Condition B.1.a. may conduct research activities in the Western Atlantic Ocean (Florida Keys through Maine). The incidental capture of animals in Tables 2 and 3 is not covered by this permit but must be authorized through the incidental take statement of the biological opinion resulting from the section 7 consultation for individual fisheries or a section 10(a)(1)(B) incidental take permit.

* The “chain mat” rule for this fishery took effect in September 2006. The rule requires use of

Table 1: Maximum annual takes of Loggerhead (<i>Caretta caretta</i>), Leatherback (<i>Dermochelys coriacea</i>), Kemp's ridley (<i>Lepidochelys kempii</i>), and Green (<i>Chelonia mydas</i>) sea turtles under Permit No. 1576 for SCALLOP DREDGE PROJECT				
Total # of Turtles	Species	Life Stage	In-water Take Activity(ies)*	Details
23	Loggerhead	Juvenile & adult of both sexes	Capture*, handle, measure, weigh, flipper and PIT tag, collect tissue biopsy, photograph, release. If carcass, also collect flipper and eyeball samples if appropriate, necropsy.	U.S. Atlantic Waters; All these would be possibly lethal takes
1	Leatherback	Juvenile & adult of both sexes	Capture*, handle, measure, weigh, flipper and PIT tag, collect tissue biopsy, photograph, release. If carcass, also collect flipper and eyeball samples if appropriate, necropsy.	U.S. Atlantic Waters; All these would be possibly lethal takes
1	Kemp's ridley	Juvenile & adult of both sexes	Capture*, handle, measure, weigh, flipper and PIT tag, collect tissue biopsy, photograph, release. If carcass, also collect flipper and eyeball samples if appropriate, necropsy.	U.S. Atlantic Waters; All these would be possibly lethal takes
1	Green	Juvenile & adult of both sexes	Capture*, handle, measure, weigh, flipper and PIT tag, collect tissue biopsy, photograph, release. If carcass, also collect flipper and eyeball samples if appropriate, necropsy.	U.S. Atlantic Waters; All these would be possibly lethal takes

* The “chain mat” rule for this fishery took effect in September 2006. The rule requires use of modified dredge gear equipped with a chain mat to reduce capture of sea turtles in the scallop dredge gear. This permit provides you with an exemption to the regulation and allows you to conduct research without the chain mats in order to capture turtles to determine if your experimental gear will further improve the gear to reduce its effects on sea turtles. Note- Turtles that are observed interacting with the dredge gear and are not actually captured are considered takes.

Thanks,

Ron Smolowitz

Vessel Trip ID	Project	Trip Type	Gear	Departure Date	OPS Area	Catch	Split	Tow #	# In Scientific Party	Onboard Team
FV Celtic 2009-1	Twine Top	Compensation	Twine Top Comparisons	May	CAI	14080	75/25	60	2	
FV Celtic 2009-2	Twine Top	Research	Twine Top Comparisons	May	CAI/CAI	0		80	3	Smolowitz, Weeks,
FV Tradition 2009-3	Twine Top	Compensation	Twine Top Comparisons	May	Delmarva	22766	75/25	60	2	
FV Kathy Ann 2009-1	Turtle Oceanography	Compensation	Dredge Comparisons	June 1 2009	ETAA	22068	80/20	60	1	
FV Kathy Ann 2009-2	2008 ROV	Research	ROV	June 11-19 2009	ETAA, Delmarva	0		none	5	Smolowitz, Weeks,
FV Tradition 2009-1	Turtle Oceanography	Compensation	Dredge Comparisons	June 11-19 2009	ETAA	22068	80/20	60	1	
FV Kathy Ann 2009-4	Turtle Oceanography	Compensation	Dredge Comparisons	July	ETAA	22068	80/20	60	1	
FV Celtic 2009-3	Twine Top	Compensation	Dredge Comparisons	July	Delmarva	22766	75/25	60	1	
FV Westport 2009-1	Twine Top	Compensation	Twine Top Comparisons	July	CAI	14080	75/25	60	2	
FV Kathy Ann 2009-3	Turtle Oceanography	Research	ROV	July 6-13 2009	ETAA, Delmarva	0		none	5	Smolowitz, Weeks,
FV Diligence 2009-1	Turtle Oceanography	Research	Oceanographic	July 6-13 2009	ETAA, Delmarva	0		none	4	Curry, Ryther,
FV Tradition 2009-2	Turtle Oceanography	Compensation	Dredge Comparisons	July 6-13 2009	ETAA	22068	80/20	60	1	
FV Kathy Ann 2009-5	Turtle Oceanography	Compensation	Dredge Comparisons	August	ETAA	22068	80/20	60	1	
FV Diligence 2009-4	Twine Top	Research	Twine Top Comparisons	August	CAI/CAI	0		80	3	Smolowitz, Weeks,
FV Diligence 2009-3	Twine Top	Compensation	Dredge Comparisons	Sept	ETAA	18744	75/25	60	1	
FV Kathy Ann 2009-8	Twine Top	Compensation	Dredge Comparisons	Sept	ETAA	18774	75/25	60	1	
FV Westport 2009-2	Twine Top	Compensation	Dredge Comparisons	Sept	ETAA	18774	75/25	60	1	
FV Kathy Ann 2009-7	Turtle Oceanography	Research	ROV	Sept 8-15 2009	ETAA, Delmarva	0		none	5	Smolowitz, Weeks,
FV Diligence 2009-2	Turtle Oceanography	Research	Oceanographic	Sept 8-15 2009	ETAA, Delmarva	0		none	4	Curry, Ryther,
FV Kathy Ann 2009-6	Turtle Oceanography	Compensation	Dredge Comparisons	October	ETAA	22068	80/20	60	1	
FV Tradition 2009-4	Twine Top	Research	Twine Top Comparisons	October	CAI/CAI	0		80	3	Smolowitz, Weeks,
FV Diligence 2009-5	Twine Top	Compensation	Dredge Comparisons	October	Delmarva	22766	75/25	60	1	
FV Kathy Ann 2009-9	Twine Top	Research	Twine Top Comparisons	Nov-Feb	Mid-Atlantic	0		80	2	Weeks,
FV Celtic 2009-4	Twine Top	Research	Twine Top Comparisons	Nov-Feb	Mid-Atlantic	0		80	2	Weeks,

**Field Testing of a Dual Mesh Twine Top
For Bycatch Reduction**

A Request for an Exempted Fishing Permit

Date Application Submitted: April 1, 2009

**Project Coordinator: Ronald Smolowitz
Coonamessett Farm**

**277 Hatchville Road
East Falmouth, Massachusetts, USA 02536
508-564-5516 FAX 508-564-5073
cfarm@capecod.net**

Field Testing of a Dual Mesh Twine Top for Bycatch Reduction

Project Goals and Objectives

- To field test a new twine top design and scallop bag improvements that will reduce the bycatch of non-target species including yellowtail flounder, summer flounder, other flatfish species, and skates.

Project Summary

This project will focus on testing a dual mesh twine top design to further decrease fish and skate bycatch. The twine top will have **three rows of 6-inch mesh** at the aft end where scallop losses have been shown to occur. The remaining forward section of the twine top, where fish attempt escape, will be **12-inch mesh**. The twine top will be hung with a low hanging ratio; somewhere between one and two. The design changes will be tested on the new turtle excluder dredge frame but can be applied to the standard New Bedford dredge as well. Testing will take place on Georges Bank in areas and seasons of highest yellowtail bycatch; CAI, and CAII scallop access areas. Three commercial vessels will each make one trip of seven DAS fishing (10 DAS dock to dock) comparing two identical turtle excluder dredge frames; one with a standard bag and twine top and the other with the experimental twine top. Two additional trips, 10 DAS each, will be made with the experimental twine tops in the mid-Atlantic area to test on summer flounder. All five research trips will not retain any catch; the catch will be measured and then returned to the sea.

Funding Sources: Proposed 2009 sea scallop RSA project and Industry funding

Research Priority Addressed: Evaluation of methods to reduce groundfish bycatch.

Specific Exemptions Requested:

Exemption to twine top mesh size:

Three Compensation trips to the ETA (about 20 DAS fishing total)

Two Compensation trips to the CAII (about 20 DAS fishing)

Three Compensation trips to the Delmarva area (30 DAS fishing total)

Three Research trips into CAI and/or CAII (no catch retained; 21 DAS fishing)

Two Research trips into mid-Atlantic access areas (no catch retained; 14 DAS fishing)

This exemption was requested since three rows of the experimental twine top will be under the 10-inch minimum mesh size required by current regulations.

**Dredge Comparisons
For Sea Turtle Bycatch Reduction**

A Request for an Exempted Fishing Permit

Date Application Submitted: April 1, 2009

**Project Coordinator: Ronald Smolowitz
Coonamessett Farm**

**277 Hatchville Road
East Falmouth, Massachusetts, USA 02536
508-564-5516 FAX 508-564-5073
cfarm@capecod.net**

Dredge Comparisons for Sea Turtle Bycatch Reduction

Project Goals and Objectives

1. PROJECT OVERVIEW

The purpose of this project is to collect catch information during research set aside compensation collection trips awarded to Coonamessett Farm. The goal is to test and evaluate Cfarm turtle excluder dredge. This Cfarm turtle excluder dredge will be fished alongside a standard dredge and the catch will be compared. Coonamessett Farm will provide trained Data Collectors who will collect catch information on the sea turtle bycatch and the targeted scallop catch as well as document the catch of other incidental bycatch species for both dredge types. The dredges will be fished without turtle chains under ESA Permit #1576 and comply with all related requirements of that permit. Any turtles taken will be covered under the Incidental take Statement (ITS) for the sea scallop fishery as these are commercial trips with impacts analyzed under the Scallop FMP and related BiOp.

2. PROJECT BACKGROUND

During the last several years, fisheries observers have documented turtle interactions with the Atlantic sea scallop dredge fishery. During 2001 and 2002, NEFSC collected observer data from the Hudson Canyon Access Area and the Virginia Beach Access Area and estimated that there were 169 catches of sea turtles in scallop dredge fishery (in these two areas during 2001 and 2002). Observer coverage extended spatially in 2003 and 2004, and NEFSC estimated the number of turtle catches in the Mid-Atlantic region was 749 in 2003 (Murray 2004) and 180 in 2004 (Murray 2005).

In response to the known and estimated turtle interactions with scallop dredge gear, Coonamessett Farm with support from NMFS began investigating gear modifications that could reduce the probability and severity of sea turtle interactions. Coonamessett Farm designed, and with VIMS, tested a chain mat excluder that was designed to keep turtles from entering the dredge bag and thus reduce the risk of injury associated with being in the dredge bag or being brought on board. In 2005, NERO proposed a rule to require the use of the Cfarm chain mat excluder for all sea scallop dredge vessels fishing in the mid-Atlantic from May 1 through November. The chain mats are expected to sharply reduce the capture of sea turtles in the dredge itself, as well as any ensuing injuries as a result of being caught in the dredge (e.g., drowning, crushing in the dredge bag, crushing on deck, etc.). Although it is possible that the chain mat could also reduce benthic interactions, NMFS is not assuming the chain mat will reduce the number of injurious benthic interactions, such as turtles passing under the cutting bar. The goal of this project is to test a scallop dredge modification designed to reduce the severity of benthic interactions between scallop dredge gear and sea turtles.