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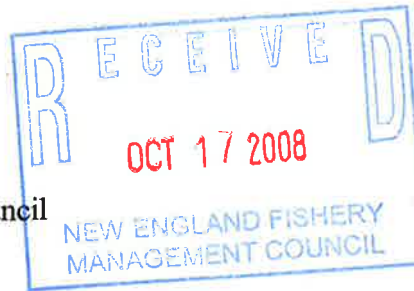
 Protecting the
World's Oceans

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October 16, 2008



Ms. Deirdre Boelke, PDT Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, Massachusetts 01950
DBoelke@nefmc.org
fax (978) 465-3116

Re: Continued authorization of sea turtle takes in the Atlantic sea scallop fishery

Dear Ms. Boelke:

Oceana is submitting this letter to express grave concern about the effect of the sea scallop fishery on loggerhead sea turtle populations in the U.S. Atlantic and the need for a strong response by the New England Fishery Management Council to this situation. We are extremely disappointed that the March 14, 2008, Biological Opinion did not establish stronger protections for sea turtles in the Atlantic. With overwhelming evidence of significant nesting declines and high levels of fishery bycatch, we anticipated the kind of stronger prescriptive action necessary to aid in the recovery of sea turtle populations to healthy and sustainable levels.

Although the 2008 Biological Opinion is inadequate, Oceana acknowledges that its reasonable and prudent measures (RPMs) can be minimal first steps towards addressing the problem of turtle bycatch in the scallop fishery. For sea turtles, bycatch in commercial fisheries, including the sea scallop dredge and trawl fisheries, is an issue of species life or death. By participating in the plan development process for implementing the RPMs, Oceana aims to assist the Council in establishing vigorous management measures that can help to prevent the extinction of the loggerhead sea turtle in the U.S. Atlantic.

Loggerhead sea turtle populations are experiencing rapid declines. Approximately 90% of loggerhead nesting in the U.S. occurs in Florida. In the past decade alone, the nesting has declined by nearly 50%.¹ Oceana, concerned over this decline, has petitioned the National Marine Fisheries Service to uplist the loggerhead to 'endangered' under the ESA.² The evidence points to fisheries as the greatest threat to the continued existence of loggerhead sea turtles. As described in the Biological Opinion, 464.5 and 154 loggerheads are taken annually by scallop dredges and trawls, respectively.³ Of those takes, 297.5 (64%) loggerheads experience serious injury or mortality in dredges, and 20 (13%) do so in trawls.⁴

¹ Florida Fish and Wildlife Research Institute. 2008. Long-term monitoring program reveals a continuing loggerhead decline, increases in green turtle and leatherback nesting. http://research.myfwc.com/features/view_article.asp?id=27537

² A full copy of the Petition is available from http://save-sea-turtles.org/fileadmin/oceana/uploads/turtles/loggerhead/Loggerhead_Petition_Final.pdf

³ NMFS, NERO. 2008. Endangered Species Act Seven 7 Consultation on the Atlantic Sea Scallop Fishery Management Plan [Consultation No. F/NER/2007/00973]. Page 82.

⁴ Ibid

cc: DB, CSK, PMF (10/17)

Bycatch of loggerheads in the sea scallop fishery includes both immature and sexually mature turtles, a significant majority of which originate from nesting beaches in south Florida.⁵ Large numbers of takes of reproductively valuable female loggerheads in scallop dredges and trawls is substantially contributing to the decline of the most valuable loggerhead nesting population in the United States. The problem associated with large numbers of takes is exacerbated by the staggering mortality rate in the dredge portion of the fishery. Scallop dredges kill loggerheads at a rate 32 times higher than shrimp trawls and more than 4 times higher than the goal for the pelagic longline fishery. Hence, while action must be taken to prevent turtle bycatch in all fisheries, the scallop fishery is noticeably lagging behind those that have implemented gear modifications that reduce mortality, even if those modifications are not perfect, such as trawl fisheries that require Turtle Excluder Devices and longline fisheries that require circle hooks.

The bycatch reduction efforts implemented by the sea scallop fishery have been insufficient and ineffective at protecting sea turtles in the wild. Although touted as a bycatch reduction tool, turtle chains have not completely stopped turtles from entering dredge bags, nor have they been shown to reduce the number of fishery-turtle interactions or the severity of these interactions. According to NMFS, "video-monitored testing of this modification using loggerhead carcasses show that severe, likely lethal, damage occurs when the leading edge of the dredge strikes the turtle. Despite keeping turtles out of the dredge bag, severe injuries and death are likely to have already occurred."⁶

The result is a prevalence of concealed interactions, which observers are unable to quantify in terms of numbers, depths, and severity. Interactions with sea turtles and scallop dredges occur either on the seafloor or in the water column. Though it would obviously be extremely valuable to quantify the number of turtle takes that occur on the bottom versus in the water column, the current Biological Opinion does not require monitoring capable of doing so. Area closures for the purpose of reducing possible interactions of turtles with dredge gear are a good first step to reducing turtle takes, but in the past have been of insufficient duration, while closed areas have been seemingly arbitrarily reopened without regard to turtle protection.

In addition to the deficient closure periods, certain ongoing efforts to undermine the Biological Opinion have injured the credibility of the Fisheries Service on this issue. Five months after the Terms and Conditions were issued, the Agency offered to reconsider the Term and Condition 1, providing for the first time a rationale for the Term and Condition, which was not included in the Biological Opinion. The Fisheries Service proposed that the Council use a standard of assessing whether the effort reductions required by the Term and Condition would allow for 1 trip per vessel in the two summer windows (May – November and June – October) to determine if the Terms and Conditions were reasonable and prudent. But the 1-trip standard overlooked the fact that currently, there is already less than 1 summer trip for each vessel. According to the proposed standard, in order for vessels to achieve 1 trip, effort in the Mid-Atlantic would actually have to increase in the summer months.

⁵ NMFS, NERO. 2008. Endangered Species Act Seven 7 Consultation on the Atlantic Sea Scallop Fishery Management Plan [Consultation No. F/NER/2007/00973]. Page 82.

⁶ National Marine Fisheries Service and U.S. Fish and Wildlife Service. DRAFT Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (*Caretta caretta*) Second Revision. 2008. p. 160.

The faulty trip allocation standard has resulted in a confused and misleading process which may have unfairly colored the PDT's opinion of the Terms and Conditions' reasonableness. The PDT has now been put in the difficult position of having to determine if the Terms and Conditions are reasonable and prudent without having been given a workable standard either by the Fisheries Service or the Scallop Oversight Committee. The Fisheries Service and the Scallop Committee have asked the PDT to make policy judgments as well as perform analyses. In doing this, please keep in mind that the scallop fishery regulations, as part of the rotational management system, already provide that:

“After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research.”⁷

Therefore, the effort reductions proposed in the Terms and Conditions, which are less burdensome than the measures already included as options in the regulations, are consistent with the rotational management regulations. Because there is already less than one trip allocated per vessel during the summer months in the Mid-Atlantic, the Terms and Conditions represent no more than 'minor' modifications to existing practices which are foreseen in the FMP and regulations.

Based on the regulatory standard, the reductions in fishing effort required by Term and Condition 1 cannot be viewed as 'major.' These effort changes are not expected to affect the total landings or economic gain in the Atlantic scallop fishery or the Mid-Atlantic region. Adjusting seasonal effort to decrease the chance of turtle encounters will merely modify the timing, not the total effort, of fishing that occurs in any given year, which presents no more than a minor change to the fishery.

Oceana is confident that the PDT is resourceful enough to develop a method of implementing the current Terms and Conditions within the existing rotational management system, thus causing only a minor change in the fishery. One method the PDT should consider is allocating partial trips to vessels in the mid-Atlantic during the summer months.

We recommend that the PDT find a way to implement RPM1 of the Biological Opinion. Should you choose another route, the PDT should consider the Oceana Time-Area Proposal (Appendix I) and a system that would count, cap, and control turtle bycatch in the scallop fishery.

⁷ 50 C.F.R. § 648.55 (e)

Oceana looks forward to working with the PDT and the New England Fishery Management Council to protect and restore populations of loggerhead sea turtles in the Mid-Atlantic.

Thank you for your attention and consideration of our comments.

A handwritten signature in black ink, appearing to read 'David L. Allison', with a long horizontal flourish extending to the right.

David L. Allison
Senior Campaign Director
Oceana

Appendix 1: Atlantic Scallop Dredge Analysis

Using ArcGIS 9.1 Oceana analyzed Atlantic scallop dredge fishery observer data from the National Marine Fisheries Service Northeast Fisheries Observer Program.

Data was obtained for the mid-Atlantic region (35° – 41°40' N latitude, 66°30' - 77° W longitude) from May 1 through November 30 from 2003 to 2005. These times and area were chosen because this is where sea turtle interactions are the most likely.

Description of Analysis:

Observed Fishing Time

Observed scallop dredge fishing time by area was determined by calculating observed fishing hours per ten minute square (TENMSQ). The selected spatial unit was the smallest unit available. We used haul duration from “on watch” trips in both closed and open areas during the time period 2003-2005 to determine the amount of observed fishing effort. We summarized the duration of all observed hauls in each ten minute square during the years 2003-2005, and according to amount of observed fishing effort, we divided these units into five categories as shown on the map (from dark blue units, where the amount of observed fishing was the least up to the red colored, where the amount of observed fishing was the highest during the monitored time period). This same process was also used to create monthly maps (May-November) which contain only records for one particular month in the three years time period. For example, all of the data for the 3 months of May in the time series were compiled into one file and used to get a broader picture of observer coverage during the month of May over the time series.

Location and Frequency of Turtle Bycatch

Location of turtle bycatch was determined by plotting coordinates of observed turtle takes in GIS. Frequency of turtle bycatch was determined by analyzing sea turtle catch per unit of observed fishing effort. To do this, we looked at turtle takes that occurred with observer both “on” and “off watch” and on fishing trips in both closed and open areas during the time period 2003-2005. We summarized the number of turtles caught in the spatial unit during the set time period, and divided it by the already calculated observed fishing effort in the same unit. The size of the turtle symbol displayed on the maps represents the quantity of turtles caught per 24 hours of observed fishing time in the unit. This same process was also used to create monthly maps (May-November) which contain only records for one particular month in the three years time period.

Results:

During 2003-2005 a total of 79 sea turtle interactions were witnessed by fisheries observers. The sea turtle takes occurred during the months of June to October in the mid-Atlantic region. The area of highest bycatch was along and just shallow of the 60m contour line off the coasts of Virginia, Maryland, Delaware, and southern New Jersey.

The observed fishing effort and sea turtle catch per unit of observed effort in the Atlantic Scallop is displayed in Figure 1.

Figure 2 shows locations of sea turtle interactions in the fishery as well as current and proposed Closures.

The final series of maps, figure 3, shows the monthly break downs.

Recommendations:

Based on the above analysis, Oceana recommends the following closures to protect sea turtles in the Mid-Atlantic from the scallop dredge fishery:

1) The Elephant Trunk Access Area (or ETAA) is currently closed during the months of September and October to protect sea turtles. This closure should be extended to June 1-October 31 of each year.

2) The eastern portion of the Hudson Canyon Access Area (HCAA) and the area immediately east of it should be closed from July 1 to October 31st of each year to protect sea turtles. The exact location of the Hudson Canyon Turtle Protection Area (HCTPA) should be:

Point	N. Latitude	W. Longitude
HCTC1	39°21'	73°35'
HCTC2	39°21'	72°56'
HCTC3	38°50'	73°15'
HCTC4	38°50'	73°51'
HCTC1	39°21'	73°35'

3) The Delmarva area is currently closed through February 28, 2010. However, when this area is reopened, NMFS should not allow scallop dredge fishing during the months of June to October.

Figure 1. Observed Fishing Effort and Sea Turtle Catch per Unit of Observed Effort in the Atlantic Scallop Dredge Fishery (2003-2005)

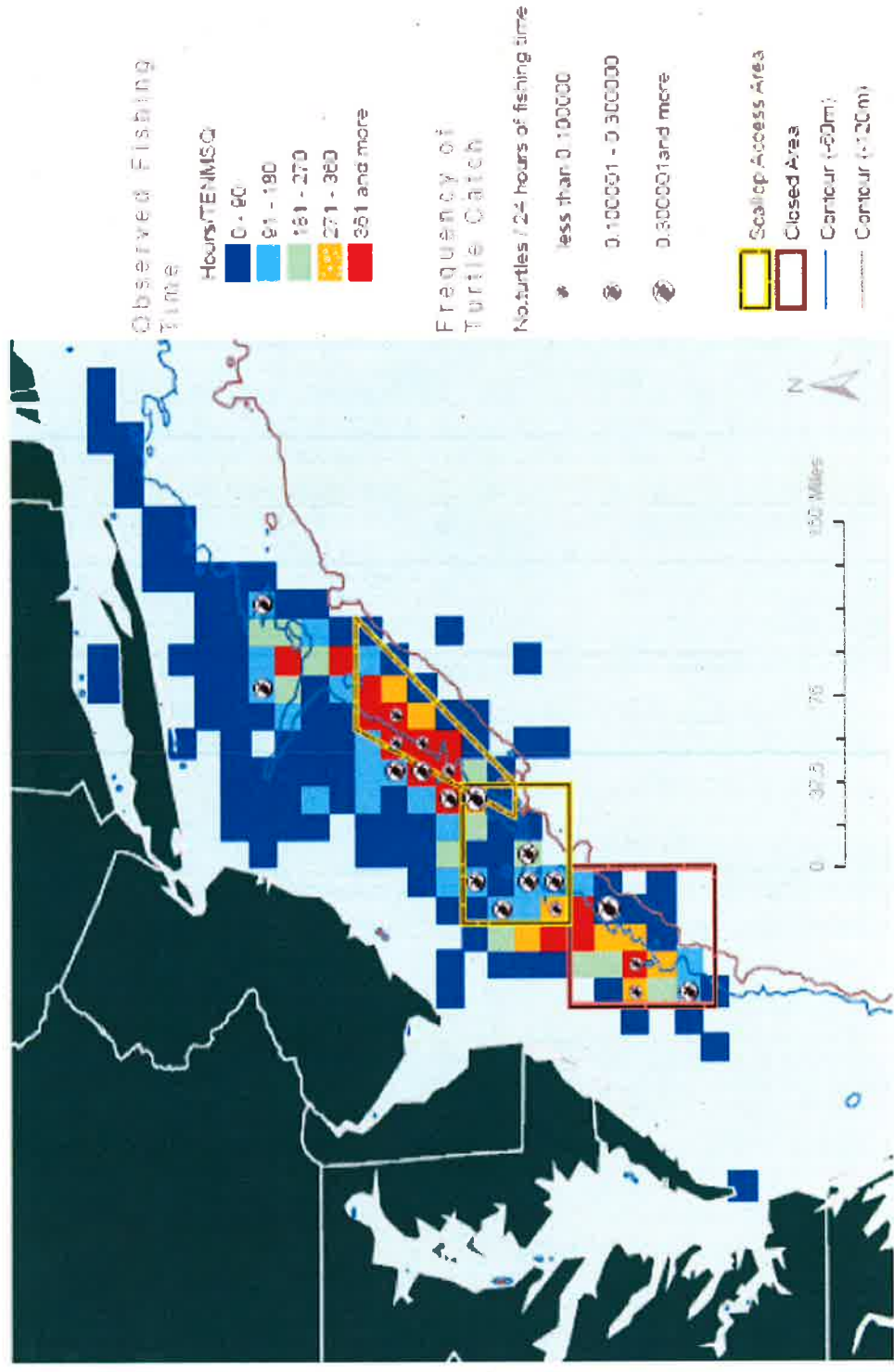


Figure 2. Locations of Sea Turtle Interactions in the Atlantic Scallop Dredge Fishery (2003-2005) and Existing and Proposed Closures

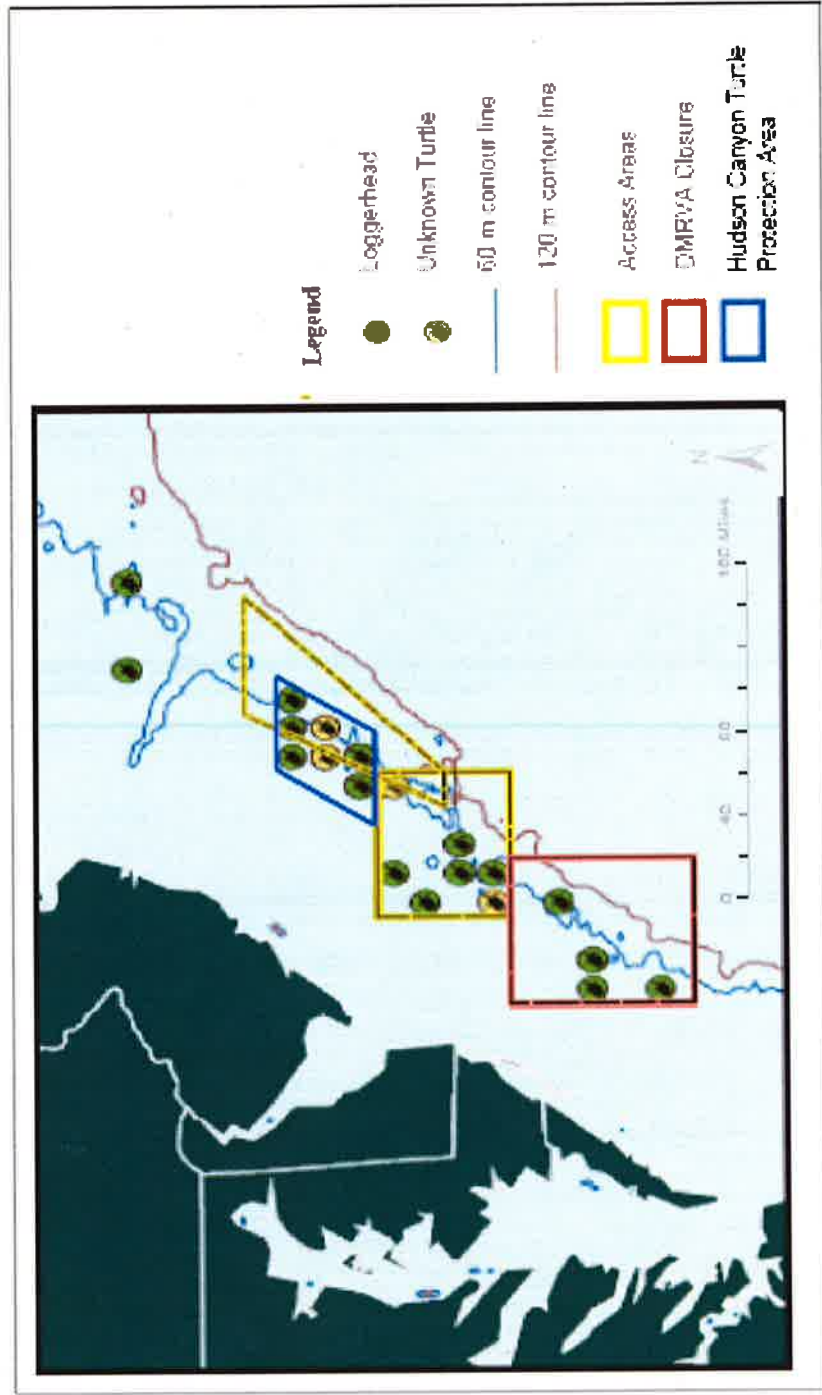


Figure 3. Atlantic Scallop Dredge Observer Coverage and Sea Turtle Interactions by Month 2003-2005

