

compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Considering Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action”

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under Commandant Coast Guard Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under 2.B.2 of the Instruction. Therefore, we believe that this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. A preliminary “Environmental Analysis Check List” is available in the docket where indicated under ADDRESSES. This rule fits the category selected from paragraph (34)(g), as it would establish a safety zone. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T01–044 to read as follows:

#### § 165.T01–044 Safety Zone; Yankee Homecoming Fireworks, Newburyport, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Merrimack River within a 200 yard radius of Cashman Park, at approximate position 42°48.58” N, 070°52.41” W.

(b) *Effective date.* This section is effective from 8:30 p.m. until 10:30 p.m. EDT on August 6, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: May 16, 2005.

**James L. McDonald,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 05–10595 Filed 5–26–05; 8:45 am]

BILLING CODE 4910–15–P

### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

#### 44 CFR Part 67

[Docket No. FEMA–D–7618]

#### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual chance)

Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-2903.

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the

floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a

regulatory flexibility analysis has not been prepared.

*Regulatory Classification.* This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 12612, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

*Executive Order 12778, Civil Justice Reform.* This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground	
				*Elevation in feet (NGVD)	•Elevation in feet (NAVD)
				Existing	Modified
Connecticut .....	South Windsor (Town), Hartford County.	Podunk River .....	At a point just downstream of Foster Road At a point approximately 160 feet upstream of Miller Road.	None	*266
		Quarry Brook .....	At a point approximately 1,056 feet upstream of the confluence with Podunk River. Approximately 53 feet upstream of Clark Street.	*57 None	*58 *108
		Plum Gully Brook .....	Approximately 528 feet upstream of the confluence with Podunk River. Approximately 280 feet upstream of Nevers Road.	*58 None	*57 *185

Maps available for inspection at the South Windsor Town Hall, 1540 Sullivan Avenue, South Windsor, Connecticut.

Send comments to Mr. Matthew B. Galligan, South Windsor Town Manager, South Windsor Town Hall, 1540 Sullivan Avenue, South Windsor, Connecticut 06074.

Florida .....	Clearwater (City), Pinellas County.	Ponding Area No. 18 .....	Approximately 100 feet east of the intersection of Hamlet Avenue and Wildwood Way.	None	•45
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Maps available for inspection at the City of Clearwater Engineering Department, 100 South Myrtle Avenue, Suite 220, Clearwater, Florida.

Send comments to The Honorable Brian Aungst, Mayor of the City of Clearwater, P.O. Box 4748, Clearwater, Florida 33758-4748.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 18, 2005.

**David I. Maurstad,**

*Acting Director, Mitigation Division,  
Emergency Preparedness and Response  
Directorate.*

[FR Doc. 05-10613 Filed 5-26-05; 8:45 am]

**BILLING CODE 9110-12-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No. 050315074-5074-01; I.D. 022405B]

RIN 0648-AS92

#### Endangered and Threatened Wildlife; Sea Turtle Conservation

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

**ACTION:** Proposed rule; request for comments

**SUMMARY:** NMFS proposes to require sea turtle conservation measures for all sea scallop dredge vessels fishing in the mid-Atlantic from May 1 through November 30 each year. The proposed rule would require all vessels with a sea scallop dredge and which are required to have a Federal Atlantic sea scallop fishery permit, regardless of dredge size or vessel permit category, to modify their dredge(s) when fishing south of 41° 9.0' N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone. Any incidental take of threatened sea turtles in sea scallop dredge gear in compliance with this proposed gear modification requirement and other applicable requirements would be exempted from the prohibition against takes. This action is necessary to help reduce the take of sea turtles in scallop dredge gear and conserve loggerhead sea turtles, listed as threatened under the Endangered Species Act (ESA).

**DATES:** Comments on the proposed rule must be received by 5 p.m. EST on June 27, 2005.

**ADDRESSES:** Written comments on this action may be submitted on this proposed rule, identified by RIN 0648-AS92, by any one of the following methods:

(1) NMFS/Northeast Region Website: <http://www.nero.noaa.gov/nero/regs/com.html>. Follow the instructions on the website for submitting comments.

(2) E-mail: [scallopchainmat@noaa.gov](mailto:scallopchainmat@noaa.gov). Please include the RIN 0648-AS92 in the subject line of the message.

(3) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instruction on the website for submitting comments.

(4) Mail: Mary A. Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930, ATTN: Sea Turtle Conservation Measures, Proposed Rule

(5) Facsimile (fax): 978-281-9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule

Copies of the Draft Environmental Assessment/Regulatory Impact Review and documents cited in the proposed rule can be obtained from <http://www.nero.noaa.gov/nero/regs/com.html> listed under the Electronic Access portion of this document or by writing to Ellen Keane, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930

**FOR FURTHER INFORMATION CONTACT:** Ellen Keane (ph. 978-281-9300 x6526, fax 978-281-9394) or Barbara Schroeder (ph. 301-713-1401, fax 301-713-0376).

#### SUPPLEMENTARY INFORMATION:

##### Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico that are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles under NMFS' jurisdiction, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be exempted by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA, respectively. Existing sea turtle conservation regulations at 50 CFR 223.206(d) exempt fishing activities and scientific research from the prohibition on takes of threatened sea turtles under certain conditions. This proposed rule would add an additional requirement with which vessels with sea scallop dredge gear must comply in order to have any incidental takes of threatened sea turtles exempted from the prohibition on takes.

The incidental take and mortality of sea turtles as a result of scallop dredging has been documented in the mid-Atlantic. Based on the available information, NMFS has determined that the use of a dredge modified with a chain mat would sharply reduce the capture of sea turtles in the dredge itself, as well as any ensuing injuries and mortalities that occur as a result of being caught in the dredge (e.g. drowning, crushing in the dredge bag, crushing on deck, etc.; note: sea turtles may still interact with modified gear. See Interaction of dredge gear with sea turtles). This proposed action, taken under the authority in Section 4(d) of the ESA, is necessary to provide for the conservation of sea turtles.

##### *Sea Turtle Bycatch in the Sea Scallop Dredge Fishery*

Based on the Northeast Fisheries Science Center (NEFSC) Observer Program data, a total of 62 observed sea turtle takes were attributed to the Atlantic sea scallop dredge fishery during normal fishery operations from March 1, 1996 through October 31, 2004. "Observed" or "observed take" means seen and documented by a NMFS-approved observer. Of these, 43 were identified as loggerheads; the remaining animals were hard-shelled sea turtles that could not be positively identified. Four of the sea turtles were fresh dead upon retrieval or died on the vessel, 1 was alive but required resuscitation, 25 were alive but injured, 20 were alive with no apparent injuries, and 12 were listed as alive but condition unknown because the observer did not have sufficient opportunity to examine the turtle.

In 2004, the NEFSC completed an assessment of sea turtle bycatch in the 2003 scallop dredge fishery in the mid-Atlantic (Long Island, New York to Cape Hatteras, North Carolina). Total estimated bycatch of sea turtles in this fishery from June 1 through November 30, 2003 was 749 animals (C.V. = 0.28).

A Biological Opinion on the Atlantic sea scallop Fishery Management Plan (FMP), issued on December 15, 2004, anticipates the take of up to 749 loggerhead sea turtles annually as a result of the continued operation of the scallop dredge fishery with up to 479 of these takes resulting in injuries that would lead to death or an inability of the turtle to reproduce.

##### Impacts of Sea Scallop Dredging

The only species positively identified by the NEFSC Observer Program to have been captured in sea scallop dredge gear is the loggerhead sea turtle; however, hardshell turtles were caught and not