

**PART 1825—FOREIGN ACQUISITION**

**Subpart 1825.9—Additional Foreign Acquisition Clauses**

**1825.901 [Amended]**

38. Section 1825.901 is revised to read as follows:

**1825.901 Omission of Audit Clause.**

(a) The contracting officer's request to use the clause at FAR 52.215-2, with its Alternate III, shall consist of the proposed determination and findings (together with any relevant support information) prepared for the Administrator's signature. The procurement officer shall forward the package to the Associate Administrator for Procurement (Code HC).

(b) When the clause at FAR 52.215-2 is used with its Alternate III, the contracting officer shall prepare a written report in triplicate to be furnished to the Congress. The head of the installation concerned shall sign the report and forward it to the Associate Administrator for Procurement (Code HC), who shall submit it to the Administrator for the Administrator's signature and forwarding to Congress.

**PART 1834—MAJOR SYSTEM ACQUISITION**

**1834.005-1 [Amended]**

39. In section 1834.005-1, paragraph (k) is removed, and the existing paragraph (l) is redesignated as paragraph (k).

**PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING**

**1835.016-70 [Amended]**

40. In paragraph (e)(9) of section 1835.016-70, the citation "1815.1003" is revised to read "1815.1004".

**PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

**1836.304 [Amended]**

41. In section 1836.304, the citation "1814.407-1(f)" is revised to read "1814.408-1(f)".

**1836.602-5 [Amended]**

42. In section 1836.602-5, the section heading "Short selection processes for contracts not to exceed the small purchase limitation" is revised to read "Short selection process for contracts not to exceed the simplified acquisition threshold".

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**1852.204-70 [Removed]**

43. Section 1852.204-70 is removed.

**PART 1870—NASA SUPPLEMENTARY REGULATIONS**

**Subpart 1870.1—NASA Acquisition of Investigations System**

44. In the introductory text to section 1870.102, App. I, Chapter 5, paragraph 504, the citation "1815.1003" is revised to read "1815.1004".

**Subpart 1870.3—NASA Source Evaluation**

45. In section 1870.303, App. I, Chapter 4, paragraph 407, paragraph 8. is revised to read as follows:

**1870.303 Source Evaluation Board Procedures.**

\* \* \* \* \*

**Chapter 4 \* \* \***

**407 Initial Evaluation \* \* \***

8. Notification of Unsuccessful Offerors. The contracting office shall notify each unsuccessful offeror in accordance with FAR 15.1002.

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46. In section 1870.303, App. I, Chapter 6, paragraph 602, paragraph 1.a., the citation "FAR 15.1001" is revised to read "FAR 15.1002", and in paragraph 1.b. the citations "FAR 15.1001(c) and 15.1002" are revised to read "FAR 15.1002(c) and 15.1003".

[FR Doc. 95-22572 Filed 9-13-95; 8:45 am] BILLING CODE 7510-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 217, 222, and 227**

[Docket No. 950427117-5220-03; I.D. 042095E]

RIN 0648-AH97

**Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes all inshore and offshore waters from Cape

Canaveral, FL (28°24.6' N. lat.) to the North Carolina-Virginia border (36°30.5' N. lat.) as the leatherback conservation zone and provides for short-term closures of areas in that zone when high abundance levels of leatherback turtles are documented. Upon such documentation, NMFS will prohibit, in the closed areas, fishing by any shrimp trawler required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED installed is specified in the regulations as having an escape opening large enough to exclude leatherback turtles. This rule is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

**EFFECTIVE DATE:** October 16, 1995.

**ADDRESSES:** Requests for a copy of the environmental assessment (EA) or the contingency plan, prepared for this rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, (813) 570-5312, or Phil Williams, (301) 713-1401.

**SUPPLEMENTARY INFORMATION:**

**Background**

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA) of 1973. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermodochelys coriacea*), and hawksbill (*Eretmodochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. The incidental take and mortality of these species, as a result of fishing activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard.

Under the ESA and its implementing regulations, it is prohibited to take sea turtles. The incidental taking of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 227.72, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing throughout the year. The use of TEDs significantly reduces mortalities of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because

leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

As a result of their primarily pelagic existence, leatherbacks normally occur outside of areas where they would be subject to taking by shrimp trawlers. During most months of the year, leatherbacks are not abundant in shrimping areas, and only isolated incidents of taking by trawlers occur. However, the coastal waters of northern Florida, Georgia, South Carolina, and North Carolina experience relatively high abundance levels of leatherbacks as a periodic winter and spring phenomenon. When leatherback abundance is high and shrimp trawlers are fishing, leatherback stranding pulses have been documented on adjacent beaches. A NMFS Biological Opinion prepared for a revision to the sea turtle conservation regulations, published in the **Federal Register** on December 4, 1992, (57 FR 57348), specifically addressed episodic stranding events from Florida through North Carolina, and required NMFS to develop and implement a contingency plan to solve this problem.

A contingency plan for protection of leatherback turtles on the Atlantic seaboard that can be implemented, if necessary, was prepared in cooperation with State officials from Florida, Georgia, and South Carolina. The necessity for implementation of protective measures for leatherback turtles is expected to be on an annual basis but only for short periods of time in relatively small, specific areas at any one time. The plan considers several options to provide protection, and any or all of them may be implemented, if necessary. These options include: Closure of areas to all fishing, use of restricted tow times in lieu of TEDs, mandatory observers, and use of NMFS-approved TEDs with escape openings large enough to exclude leatherback turtles.

Aerial surveys have been conducted for sea turtles off the Florida and Georgia coasts since 1988 and off the coast of South Carolina since 1993. Beginning in December or January each year, concentrations of leatherback turtles occur in northeastern Florida waters. During the month of March, leatherbacks begin moving north and usually enter Georgia waters in late March or early April. Peak concentrations occur in Georgia waters during April and May and by mid-June the concentrations have left Georgia. Leatherback concentrations occur in waters off South Carolina from late

April generally through the first part of June.

Shrimping occurs year round in northeastern Florida waters, but the activity levels during any given month may vary from year to year. Shrimp fishing is closed in the State waters of Georgia until June 1 of each year, but shrimping begins in Federal waters off Georgia generally in April or early May. The State of South Carolina opens its waters to shrimping between May 15 and June 30, depending upon the presence of shrimp. Shrimping in Federal waters off South Carolina generally begins in early May. Based upon leatherback turtle concentration information and normal shrimp fishing activities, the most likely period for shrimp vessel interactions with leatherbacks in the leatherback conservation zone is January through June each year.

Each spring for the last 2 years, NMFS has issued temporary 30-day restrictions establishing a leatherback conservation zone (58 FR 28790, May 17, 1993; 59 FR 23169, May 5, 1994; 59 FR 29545, June 8, 1994). An interim rule (60 FR 25620, May 12, 1995) was issued this past year to provide a mechanism for short-term protection, and NMFS published a proposed rule (60 FR 25663, May 12, 1995) to provide for a permanent framework to protect leatherback sea turtles.

#### **Comments and Responses on the Proposed Rule**

No comments were received on the proposed rule.

#### **Requirements**

This rule establishes a framework whereby short-term closures may be instituted on an expedited basis in order to protect leatherbacks. Specifically, the rule establishes all inshore and offshore waters of the Atlantic area from Cape Canaveral, FL (28°24.6' N. lat.), to the North Carolina-Virginia border (36°30.5' N. lat.) as the "leatherback conservation zone."

During the months of January through June, NMFS will conduct weekly aerial surveys of the leatherback conservation zone. If sightings of leatherback turtles during such surveys exceed 10 animals per 50 nautical miles (nm) (92.6 km) of trackline, the survey will be replicated within 24 hours, or as soon as practicable thereafter, to ensure that leatherback turtle presence is persistent in the area. If surveys demonstrate the continued presence of large concentrations of leatherbacks, NMFS will prohibit shrimp fishing in these specific areas by any shrimp trawler required to have a NMFS-approved TED

installed in each net rigged for fishing, unless the TED installed is one of the NMFS-approved TEDs described below. Those TEDs have been determined to have escape openings large enough to exclude leatherbacks. In addition, owners and operators of vessels operating in closed areas with an allowed TED, as described below, will be required to register with the Director, Southeast Region, NMFS (Regional Director) in accordance with 50 CFR 227.72(e)(6)(iv)(A) through (F). Upon written request by the Regional Director, they will be required to carry a NMFS-approved observer aboard such vessel(s). A shrimp trawler in the leatherback conservation zone will be required to comply with the terms and conditions specified in such written request, as well as provide information on trawling hours, gear modifications and turtle captures.

Notice of specific area closures will be published in the **Federal Register** and will be effective upon filing of such notice for public inspection at the Office of the Federal Register. Closures will be announced immediately on the NOAA weather channel, in newspapers, and other media. Areas with high leatherback abundance, as documented by the aerial surveys, will be closed for a period of 2 weeks. A closed area will include all, or a portion of, inshore and offshore waters 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 1° lat. coinciding with the trackline. Shrimp trawlers in the leatherback conservation zone will be responsible for monitoring the NOAA weather channel for closure announcements. Shrimp trawlers may also call (813) 570-5312 for updated area closure information.

#### **NMFS-Approved TEDs With Escape Openings Large Enough for Leatherback Sea Turtles**

NMFS has approved modifications to the Taylor and the Morrison TEDs, as well as a modification to the single-grid hard TED, that will allow leatherback turtles to escape the trawl. Descriptions of the Taylor and Morrison TED modifications are found at 50 CFR 227.72(e)(4)(iii)(E), and the modified single-grid hard TED is described at 50 CFR 227.72(e)(4)(i)(G)(2)(ii).

#### **Classification**

This rule has been determined to be not significant for purposes of E.O. 12866.

This rule establishes a registration program that contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, registration by vessels fishing in the

leatherback conservation zone from Cape Canaveral, FL, to the Virginia-North Carolina border. This collection has been approved by Office of Management and Budget under control number 0648-0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Assistant Administrator for Fisheries, NOAA, (AA) prepared an EA for the interim rule (60 FR 25620, May 12, 1995) and concluded that, with specified mitigation measures, it will have no significant impact on the human environment. The AA has determined that the EA prepared for the interim rule is applicable to this final rule. Copies of the EA are available (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1531-1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted;

16 U.S.C. 1531-1543; and 16 U.S.C. 1531 *et seq.*

Dated: September 7, 1995.

**Rolland A. Schmitten,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, the interim rule amending 50 CFR parts 217, 222, and 227, which was published at 60 FR 25620 on May 12, 1995, is adopted as a final rule without change.

[FR Doc. 95-22828 Filed 9-13-95; 8:45 am]

**BILLING CODE 3510-22-F**