

Issued on: November 23, 1998.

Ricardo Martinez,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427117-8292-05; I.D. 112398G]

RIN 0648-AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS notifies fishermen that it has renewed the authorization for shrimp trawlers to use limited tow times as an alternative to the otherwise required use of Turtle Excluder Devices (TEDs) in the inshore waters of Mississippi. Its previous authorization expired on November 23, 1998. NMFS also has extended the same authorization in Alabama inshore waters which otherwise would expire December 1, 1998 (63 FR 62959, November 10, 1998). The intent of this action is to provide adequate protection for threatened and endangered sea turtles when debris conditions may make TED-use impracticable.

DATES: The renewal and the extension are both effective from November 30, 1998 through December 30, 1998. Comments on this notification are requested and must be received by December 30, 1998.

ADDRESSES: Comments on this action 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, 727-570-5312, or Barbara A. Schroeder, 301-713-1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that inhabit 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*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species, as a result of shrimp trawling activities, has been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS approved TED installed in each net rigged for fishing, year-round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 227.72(e)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may authorize "compliance with tow time restrictions as an alternative to the TED requirement, if [he] determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable." The provisions of 50 CFR 227.72(e)(3)(i) specify the maximum tow times that may be used when authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31, and no more than 75 minutes from November 1 through March 31. NMFS has selected these tow time limits to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On September 27, Hurricane Georges hit the Mississippi and Alabama coasts. The hurricane remained nearly stationary over the coastal area and south Alabama for about 2 days and deposited as much as 36 inches (91 cm) of rain on some areas. The combination of heavy rains and hurricane storm surge produced severe flooding in south Mississippi, Alabama, and Louisiana rivers. This flooding deposited large amounts of debris in the inshore waters of those states.

After the hurricane, NMFS was notified by the Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources (Alabama Director), the

Director of the Mississippi Department of Marine Resources (Mississippi Director), and the Secretary of the Louisiana Department of Wildlife and Fisheries that the debris conditions created great difficulty for shrimpers in inshore waters by fouling the trawl nets and clogging the TEDs. As a result of the special environmental conditions that may have made trawling with TED-equipped nets impracticable, the Assistant Administrator issued emergency notifications to authorize the use of restricted tow times as an alternative to the use of TEDs in the inshore waters of the three affected states. In Alabama inshore waters, the authorization was effective from October 7, 1998, through November 5, 1998 (63 FR 5505, October 14, 1998), and was then extended through November 30 (63 FR 62959, November 10, 1998) after the Alabama Director informed NMFS that the debris conditions in Mississippi Sound had been worsening as debris had been flushed out of Mobile Bay and into Mississippi Sound. In Mississippi inshore waters and Louisiana inshore waters northeast of the Mississippi River, the use of limited tow times as an alternative to TEDs was authorized from October 23 through November 22, 1998 (63 FR 57620, October 28, 1998).

NMFS has received letters from the Mississippi Director and the Alabama Director, dated November 17 and November 19, 1998, respectively, stating that excessive debris conditions continue to exist. The letter from the Alabama Director requested the extension of the authorization to use limited tow times as an alternative to the use of TEDs in Alabama inshore waters and the letter from the Mississippi Director requested the renewal of the authorization to use limited tow times as an alternative to the use of TEDs in Mississippi inshore waters. The letter from the Alabama Director stated that many nearshore areas remain untrawlable despite shrimpers' efforts so far to remove the debris.

Special Environmental Conditions

The Assistant Administrator finds that special environmental conditions following Hurricane Georges have persisted in Alabama and Mississippi inshore waters and may make trawling with TED-equipped nets impracticable. Therefore, the Assistant Administrator, by this notice, renews the authorization to use restricted tow times as an alternative to the use of TEDs in the inshore waters of Mississippi and extends the authorization to use restricted tow times as an alternative to

the use of TEDs in the inshore waters of Alabama. The states of Mississippi and Alabama are continuing to monitor the situation and are cooperating with NMFS in determining the ongoing extent of the debris problem in their inshore waters. Moreover, both states' enforcement officers have assisted with the enforcement of the restricted tow times. In his November 19 letter, the Alabama Director reported that compliance with the tow times has been excellent, according to the enforcement officers, and the attitude and cooperation of the fishermen have been very good. He stated that Alabama enforcement officers will continue to monitor the area for the duration of this exemption extension. In Mississippi, the Department of Wildlife, Fisheries, and Parks, Marine Enforcement Division reported to the Mississippi Director that compliance with the tow time limits has also been excellent. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the enforcement effort undertaken by the states and the compliance among the fishermen are important factors enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in Mississippi and Alabama inshore waters who are authorized under this notification to use restricted tow times to continue to use TEDs if possible. NMFS' studies have shown that the problem of clogging by seagrass, algae, or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts provide several operational recommendations that may allow some fishermen to continue using TEDs without resorting to restricted tow times. Hard TEDs that are made of either solid rod or hollow pipe in a bottom-opening configuration and that incorporate a bent angle at the escape opening are recommended. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through

the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Finally, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly; the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris.

All of the preceding recommendations represent legal configurations of TEDs for shrimpers in the inshore areas of Alabama (not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation area). This notice extends, through December 30, 1998, the authorization to use restricted tow times as an alternative to the otherwise required use of TEDs in the inshore waters of Alabama and renews the same authorization in Mississippi inshore waters, effective from November 30, 1998 through December 30, 1998. This notice does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this notification applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 227.72(e)(2) who are operating in inshore waters of Mississippi or Alabama, in areas which the states have opened to shrimping. "Inshore waters," as defined at 50 CFR 217.12, means the marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80. Instead of the required use of TEDs, shrimp trawlers, through December 30, 1998, may opt to comply with the sea turtle conservation regulations by using restricted tow times. If they do so, their tow times must not exceed 75 minutes, measured from the time trawl doors enter the water until they are retrieved from the water.

Additional Conditions

NMFS expects that shrimp trawlers operating in Mississippi and Alabama inshore waters without TEDs, in

accordance with this authorization, will retrieve debris that is caught in their nets and return it to shore for disposal or to other locations defined by the Mississippi or Alabama Director, rather than simply disposing the debris at sea. Proper disposal of debris should help the restoration of the shrimping grounds in the wake of the hurricane. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution From Ships) may apply to disposal at sea.

Alternative to Required Use of TEDs; Termination

The Assistant Administrator, at any time, may modify this authorization through publication of a notice in the **Federal Register**, if the Assistant Administrator determines that the alternative authorized is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles onboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. If necessary, the Assistant Administrator could modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times. The Assistant Administrator may also terminate this authorization at any time for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. This authorization will expire automatically December 31, 1998, unless it is extended through another notice published in the **Federal Register**.

Classification

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

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because doing so would prevent the agency from providing relief within the necessary timeframe. The Assistant Administrator finds that an unusually large amount of debris exists in the aftermath of Hurricane Georges, creating a special

environmental conditions that may make trawling with TED-equipped nets impracticable and that the use of limited tow times for the described area and time instead of TEDs would adequately protect threatened and endangered sea turtles. Notice and comment are contrary to the public interest in this instance.

Because this action relieves a restriction it is not subject to a delay in effective date under 5 U.S.C. 553(d)(1).

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553 or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The Assistant Administrator prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this (57 FR 57348, December 4, 1992). Copies of the EA are available (see ADDRESSES).

Dated: November 27, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298-8055-02; I.D. 113098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole Fishery by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 Pacific halibut bycatch allowance specified for the trawl yellowfin sole fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 30, until 1200 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The prohibited species bycatch mortality allowance of halibut for the BSAI trawl yellowfin sole fishery, which is defined at § 679.21(e)(3)(iv)(B)(1), was established by the Final 1998 Harvest Specifications of Groundfish (63 FR 12689, March 16, 1998) as 930 mt.

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 halibut bycatch allowance specified for the trawl yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the 1998 Pacific halibut bycatch allowance of halibut specified for the trawl yellowfin sole fishery. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the apportionment. Further delay would only result in the 1998 Pacific halibut bycatch allowance of halibut being exceeded and disrupt the FMP's objective of limiting trawl Pacific halibut mortality. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 30, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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