

these states have stated that they will enforce the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from these agencies to enforce tow time restrictions is an important factor enabling NMFS to issue this authorization. NMFS and the respective state marine enforcement agencies will monitor the situation to ensure there is adequate protection for sea turtles in these areas and to determine whether debris in these areas continues to make TED use impracticable.

#### Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times. 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 have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. 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°51', 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. Lastly, 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. The use of the leatherback modification or the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action does not authorize any other departure from the TED requirements, nor does it authorize use of any TED modified in such a manner that it no longer meets the requirements for any of the TEDs approved pursuant to 50 CFR 223.207. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

#### Alternative to Required Use of TEDs; Termination

The AA, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the AA determines that the alternative authorized by this temporary rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The AA may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in the affected areas. This authorization will expire automatically on December 2, 2002, unless it is explicitly extended through another notification published in the **Federal Register**.

#### Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA 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 applicable regulations.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule, because it is

impracticable. The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. The AA has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and opportunity to comment are impracticable in this instance because providing notice and comment would prevent the agency from providing relief soon enough to provide the intended benefit. The public was provided with notice and an opportunity to comment on 50 CFR 223.206(d)(3)(ii) which authorizes the use of this emergency exemption.

Pursuant to 5 U.S.C. 553(d)(3), for the same reasons the AA determined that there was good cause to waive prior notice and opportunity to comment, the AA finds good cause to waive the 30-day delay in effective date. NMFS is making the rule effective November 1, 2002 through December 2, 2002.

Since prior notice and an opportunity for public comment are not required to be provided for this action 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 AA prepared an Environmental Assessment (EA) for this rule. Copies of the EA are available (see **ADDRESSES**).

Dated: November 1, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No. 021030260-2260-01; I.D. 102502A]

**RIN 0648-AQ52**

#### 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 issues this temporary action to allow the use of limited tow times by shrimp trawlers as an

alternative to the use of Turtle Excluder Devices (TEDs) in the waters off Mississippi in an area from the coastline of Mississippi at its intersection with the line of longitude 89° 30' W., thence southward to its intersection with the line of latitude 30° 10' N., thence eastward to the line of longitude 89° 05.5' W. (approximately even with the southern tip of Cat Island), thence northward to the line of latitude 30° 13.8' N. (approximately even with the western tip of Cat Island), thence westward to the line of longitude 89° 10' W., thence northward to its intersection with the coastline of Mississippi, thence continuing along the coastline to the original point. This action would remain in effect for a period of 20 days and is necessary to relieve the economic hardship on shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

**DATES:** This action is effective from November 1, 2002 through November 21, 2002. Comments on this action are requested, and must be received by November 21, 2002.

**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:** Bob Hoffman, 727-570-5312, or Barbara A. Schroeder, 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 of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The 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 sea turtles as a result of trawling activities have been documented in the Gulf of Mexico and along the Atlantic Ocean seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206 and 50 CFR 224.104. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area, Gulf Area, and Summer flounder fishery-sea turtle protection area, all as

defined in 50 CFR 222.102) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED (the Parker soft TED).

The TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be at least 97 percent effective in excluding sea turtles during experimental TED testing (50 CFR 223.207(e)). The TED must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape. In the Atlantic Area, these requirements are currently  $\geq 35$  inches ( $\geq 89$  cm) in width and  $\geq 12$  inches ( $\geq 30$  cm) in height. In the Gulf Area, the requirements are  $\geq 32$  inches ( $\geq 81$  cm) in width and  $\geq 10$  inches ( $\geq 25$  cm) in height.

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. For example, debris can clog a TED which renders the TED ineffective at catching shrimp as well as excluding turtles. The provisions of 50 CFR 223.206 (d)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (AA), may authorize compliance with tow time restrictions as an alternative to the TED requirement, if the AA 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 223.206(d)(3)(i) specify the maximum tow times that may be used when tow-time limits are 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. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

**Recent Events**

On October 16, 2002, the NMFS Southeast Regional Administrator received a request from the Mississippi Director of Marine Resources to allow the use of tow times as an alternative to

TEDs in Mississippi state waters because of excessive storm related debris on the fishing grounds. After an investigation, the Mississippi Department of Marine Resources (DMR) has determined that this debris is affecting the fishermen's ability to use TEDs effectively. As part of the request, the DMR sent photo documentation of the debris. Mississippi's Marine Patrol director has also sent NMFS a letter dated October 21, 2002, stating that the Mississippi Marine Patrol will enforce the tow time restrictions.

NMFS gear technicians surveyed the western and central portion of Mississippi Sound on October 8 and 9, 2002. They focused their survey on areas where vessels were actively fishing in concentrated groups. Some areas that fishermen indicated were untrawlable were not able to be surveyed because no trawlers were working those areas. The survey found that there were larger than normal amounts of grass on the tickler chains of the trawls but no large debris was observed in any of the nets in any of the surveyed areas and most of the boats seemed to be satisfied with the shrimp catch, despite excessive grass. During a phone conversation between NMFS Southeast Regional Office Protected Resources staff and DMR staff, DMR staff indicated that their investigation showed that the majority of the problems and the complaints from fishermen were concentrated west of the Cat Island Channel which was not in the area surveyed by NMFS gear technicians. The boundaries for the use of tow times encompass the areas indicated by the DMR as having problems with excessive debris, and include the western extreme of Mississippi Sound and Cat Island Channel.

The duration for this authorization will be set initially for 20 days. Although regulations at 50 CFR 223.206 (d)(3)(v) allow such authorizations to be valid for up to 30 days, the levels of debris documented by DMR and NMFS are not extreme and several weeks have already passed since the storms. Therefore, NMFS believes that a shorter authorization will be sufficient.

NMFS and the DMR Marine Patrol will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether debris in these areas continues to make TED use impracticable. The intent of this action is to relieve the economic hardship on shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

### Special Environmental Conditions And Alternative to Required Use of TEDs

The AA finds that debris washed into portions of Mississippi sound from Tropical Storm Isidore and Hurricane Lili have created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in the waters off Mississippi in an area from the coastline of Mississippi at its intersection with the line of longitude 89° 30' W., thence southward to its intersection with the line of latitude 30 10' N., thence eastward to the line of longitude 89° 05.5' W. (approximately even with the southern tip of Cat Island), thence northward to the line of latitude 30° 13.8' N. (approximately even with the western tip of Cat Island), thence westward to the line of longitude 89° 10' W., thence northward to its intersection with the coastline of Mississippi, thence continuing along the coastline to the original point. This authorization will remain in effect for a period of 20 days. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations found at 50 CFR 223.206(d)(3)(i) by using restricted tow times. Through October 31, 2002, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are retrieved from the water. Starting November 1, 2002, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

DMR Marine Patrol is continuing to monitor the situation and will cooperate with NMFS in determining the ongoing extent of the debris problem in this portion of Mississippi Sound. Moreover, the DMR Director of the Marine Patrol has stated that the DMR Marine Patrol will enforce the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the DMR Director of the Marine Patrol to enforce tow time restrictions is an important factor enabling NMFS to issue this authorization.

### Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if they can be used effectively, even though they are authorized under this action to use restricted tow times. 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 have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. 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. Lastly, 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. The use of the leatherback modification or the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas of Mississippi Sound. This action does not authorize any other departure from the TED requirements, nor does it authorize the use of any TED modified in such a manner that it no longer meets the requirements for any of the TEDs approved pursuant to 50 CFR 223.207. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

### Alternative to Required Use of TEDs; Termination

The AA, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate

protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the AA determines that the alternative authorized by this temporary rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The AA may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in Mississippi Sound. This authorization will expire automatically on November 21, 2002, unless it is explicitly extended through another notification published in the **Federal Register**.

### Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA 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 AA finds that there is good cause to waive prior notice and opportunity to comment on this rule, because it is impracticable. The AA finds that unusually high amounts of debris are creating special environmental conditions that may make trawling with TED-equipped nets impracticable. The AA has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and comment are impracticable in this instance because providing notice and comment would prevent the agency from providing relief soon enough to provide the intended benefit. The public was provided with notice and an opportunity to comment on 50 CFR 223.206(d)(3)(ii).

Pursuant to 5 U.S.C. 553(d)(3), for the same reasons the AA determined that there was good cause to waive prior notice and opportunity to comment, the AA finds good cause to waive the 30-day delay in effective date. NMFS is

making the rule effective November 1, 2002 through November 21, 2002.

Since prior notice and an opportunity for public comment are not required to be provided for this action 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 AA prepared an Environmental Assessment (EA) for this action. Copies of the EA are available (see ADDRESSES).

Dated: November 1, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 011218304-1304-01; I.D. 103102A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear in the Gulf of Alaska**

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

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to fully use the 2002 halibut bycatch allowance for trawl gear in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 6, 2002, until 1200 hrs, A.l.t., November 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 50 CFR part 679.

NMFS closed the directed fishery by vessels using trawl gear in the GOA pursuant to § 679.21(d)(7)(i) on October 13, 2002 (67 FR 64066, October 17, 2002). As of October 24, 2002, 67 metric tons of halibut remain in the trawl halibut bycatch allowance in the GOA. Therefore, NMFS is terminating the previous closure and is opening directed fishing by vessels using trawl gear in the GOA from 1200 hrs, A.l.t., November 6, 2002, until 1200 hrs, A.l.t., November 10, 2002.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the fishery, prevent the full use of the 2002 halibut bycatch allowance specified for trawl gear in the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: November 1, 2002.

**Bruce C. Morehead,**

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

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