

**§ 970.7101 [Amended]**

4. Section 970.7101, General, is amended by removing paragraphs (c) and (d).

**§ 970.7102 [Amended]**

5. Section 970.7102, DOE responsibility, is amended at: Paragraph (a) to remove the parenthetical last two sentences at the end of the paragraph; paragraph (b)(3) by removing the words "to assure that management and operating contractors implement DOE policies and requirements as defined in this subpart, in accordance with the contractor's accepted system and methods" and adding in its place the words "pursuant to 48 CFR (FAR) 44.2 or as set forth in the contractor's approved system and methods"; and paragraph (b)(4) by revising the last parenthetical "(See Subpart 944.3 and 970.7108)" to read "(See 970.7103)".

6. Section 970.7103, Policies, is revised to read as follows:

**§ 970.7103 Contractor purchasing system.**

The following shall apply to the purchasing systems of management and operating contractors:

(a) The objective of a management and operating contractor's purchasing system is to deliver to its customers on a timely basis those best value products and services necessary to accomplish the purposes of the Government's contract. To achieve this objective, contractors are expected to use their experience, expertise and initiative consistent with this subpart.

(b) The purchasing systems and methods used by management and operating contractors shall be well-defined, consistently applied, and shall follow purchasing practices appropriate for the requirement and dollar value of the purchase. It is anticipated that purchasing practices and procedures will vary among contractors and according to the type and kinds of purchases to be made.

(c) Contractor purchases are not Federal procurements, and are not directly subject to the Federal Acquisition Regulations in 48 CFR. Nonetheless, certain Federal laws, Executive Orders, and regulations may affect contractor purchasing, as required by statute, regulation, or contract terms and conditions.

(d) Contractor purchasing systems shall identify and apply the best in commercial purchasing practices and procedures (although nothing precludes the adoption of Federal procurement practices and procedures) to achieve system objectives. Where specific requirements do not otherwise apply, the contractor purchasing system shall

provide for appropriate measures to ensure the:

(1) Acquisition of quality products and services at fair and reasonable prices;

(2) Use of capable and reliable subcontractors who either

(i) Have track records of successful past performance, or

(ii) Can demonstrate a current superior ability to perform;

(3) Minimization of acquisition lead-time and administrative costs of purchasing;

(4) Use of effective competitive techniques;

(5) Reduction of performance risks associated with subcontractors, and facilitation of quality relationships which can include techniques such as partnering agreements, ombudsmen, and alternative disputes procedures;

(6) Use of self-assessment and benchmarking techniques to support continuous improvement in purchasing;

(7) Maintenance of the highest professional and ethical standards; and

(8) Maintenance of file documentation appropriate to the value of the purchase and which is adequate to establish the propriety of the transaction and the price paid.

**§ 970.7106, 970.7107 [Removed]**

7. Sections 970.7106, Procedures for handling mistakes relating to management and operating contractor purchases, and 970.7107, Protest of management and operating contractor procurements, are removed.

[FR Doc. 95-13432 Filed 6-1-95; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 227**

[Docket No.950201033-5136-02; I.D. 040395C]

RIN 0648-AG37

**Sea Turtle Conservation; Shrimp Trawling Requirements; Turtle Excluder Device Exemption**

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS temporarily amends the regulations protecting sea turtles to allow compliance with tow-time limits as an alternative to the use of turtle

excluder devices (TEDs) by shrimp trawlers in a 30-square mile (48.3-square km) area off the coast of North Carolina (North Carolina restricted area) through November 30, 1995. This area seasonally exhibits high concentrations of red and brown algae that make trawling with TEDs impracticable. Specific tow-time limits are required as follows: A 30-minute tow limit through August 15, 1995; a 55-minute tow limit from August 16 through October 31, 1995; and a 75-minute tow limit from November 1 through November 30, 1995. The purpose of this temporary rule is to allow shrimp trawlers to harvest shrimp efficiently during their traditional shrimping season (March through November) and maintain adequate protection for sea turtles in this area.

**EFFECTIVE DATE:** Effective from May 30, 1995 through November 30, 1995.

**ADDRESSES:** Copies of the environmental assessment (EA) prepared for this temporary rule may be obtained from the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; and to the Office of Information and Regulatory Affairs of Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for NOAA.

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

**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), 16 U.S.C. 1531 *et seq.* Incidental capture by trawlers has been documented for five species of sea turtles that occur in offshore waters of North Carolina. Sea turtle conservation regulations at 50 CFR parts 217 and 227 require all shrimp trawlers, regardless of length, in inshore and offshore waters of the Atlantic area, including off North Carolina, to have an approved TED installed year-round in each net rigged for fishing, unless specifically exempted.

Pursuant to the regulations at 50 CFR 227.72(e)(3)(ii), NMFS has promulgated 30-day exemptions to allow shrimpers in a certain area off North Carolina,

defined at 50 CFR 217.12 as the North Carolina restricted area, to limit tow times, rather than use TEDs, due to the presence of algae that makes trawling with TED-equipped nets impracticable. A comprehensive list of cites relating to these actions is as follows: 57 FR 33452, July 29, 1992; 57 FR 40859, September 8, 1992; 57 FR 45986, October 6, 1992; 57 FR 52735, November 5, 1992; 57 FR 57968, December 8, 1992; 58 FR 19631, April 15, 1993; 58 FR 28793, May 17, 1993; 58 FR 33219, June 16, 1993; 58 FR 38537, July 19, 1993; 58 FR 43820, August 18, 1993.

In addition to these 30-day exemptions, NMFS proposed a permanent exemption on May 25, 1993 (58 FR 30007), which contained a discussion of special environmental conditions, an assessment of the algae problem, a history of the local fishery, and of tow times. Comments received on the proposed rule were addressed in an interim final rule extending the tow-time allowance through November 30, 1993 (58 FR 48975, September 21, 1993). No comments were received on the interim final rule. A final rule (59 FR 33697, June 30, 1994) was issued allowing tow-time limits through November 30, 1994. That final rule with a sunset was issued instead of a permanent final rule because NMFS decided that future exemptions should be provided through an incidental take permit under section 10(a) of the ESA. The rationale is included in the cited **Federal Register** publication and is not repeated here. No comments were received on the final rule.

The present temporary rule provides an exemption to the TED requirement through November 30, 1995. This temporary rule will allow the harvest of shrimp in the North Carolina restriction area while providing protection of sea turtles until an incidental take permit under section 10(a) of the ESA can be processed. On February 16, 1995 (60 FR 8956), NMFS authorized non-Federal entities to apply for permits for the incidental take of threatened species. An incidental take permit would enable a state to develop its own conservation plan, including funding, monitoring and enforcement of activities under the permit and the plan. North Carolina has indicated its intent to apply for an incidental take permit in connection with shrimp fishing in the North Carolina restricted area, thus this exemption is promulgated on a temporary rather than a permanent basis. Any review of an application for an incidental take permit and any issuance of such a permit will comply with section 10 of the Act and its implementing regulations at 50 CFR

parts 217 and 222. As a matter of policy, NMFS does not intend to promulgate a rule providing this exemption in the future. Rather, NMFS believes future exemptions should be provided through an incidental take permit issued pursuant to section 10(a) of the ESA.

NMFS' review of vessels operating in the North Carolina restricted area for the 1993-94 season indicates that sea turtle mortalities do not appear to be associated with the authorization of tow times in lieu of TEDs. NMFS has reached this conclusion based on the low number of takes documented by observers (two turtles caught alive and released), the observed compliance with tow-time restrictions, the cooperation of the fishermen, the small number of participants in the fishery, and the local knowledge required to trawl in the restricted area without losing gear on bottom obstructions (which effectively limits entry into the fishery). These factors are discussed in previous actions promulgated by NMFS, including the proposed rule (see above citations). However, NMFS is concerned about possible interactions between shrimping operations and turtles during the turtle nesting season. NMFS will continue to monitor this situation during the remainder of the 1995 shrimping season.

Based on information received during the 1993-94 season, as in previous years, NMFS has determined that algal concentrations may be characteristic of the restricted area or may recur in an intermittent or unpredictable pattern and, thus, render TED-use impracticable. NMFS will continue to monitor algal concentrations to determine whether these concentrations are consistently problematic or whether there are times or seasons when TEDs could be used. Shrimp trawling observed out of Sneads Ferry, NC, on April 28, 1994, confirmed the presence of algal concentrations sufficient to clog 3 of 4 TEDs used in the observed tows. On June 23, 1994, algae concentrations were high enough to partially clog 3 of 4 TEDs. The fourth TED was completely clogged, and an unidentified sea turtle of medium size was pinned in front of the TED. The turtle appeared lively and swam away. The tow time was 56 minutes.

This temporary rule makes effective for the remainder of the traditional shrimping season, through November 30, 1995, the policies and procedures of the rule promulgated last year. Specifically, under this temporary rule, tow times in the North Carolina restricted area are limited to 30 minutes through August 15; 55 minutes from August 16 through October 31; and 75

minutes from November 1 through November 30, 1995. These measures should not, in the long run, significantly impact fishermen's normal trawl times, since heavy algae concentrations characteristic of the warmer months cause fishermen to voluntarily shorten tow times to approximately 15-30 minutes. When algal concentrations are light, shrimpers should use TEDs.

Under this temporary rule, owners and operators of shrimp vessels must register with the Director, Southeast Region, NMFS (Regional Director), before fishing in the restricted area, and vessels using the tow-time alternative are required to carry a NMFS-approved observer if requested to do so by the Regional Director. The observer will monitor compliance with required conservation measures, including restricted tow times, and resuscitation of any captured turtles in accordance with 50 CFR 227.72(e)(1)(i). Data collected by observers may be used for enforcement purposes. Violations of tow-time restrictions documented by North Carolina enforcement officers may be prosecuted under the ESA by the Office of the General Counsel, NMFS, Southeast Region. In addition, violators may face prosecution under state law. NMFS and North Carolina Division of Marine Fisheries will jointly monitor compliance with the tow-time alternative.

#### **Additional Sea Turtle Conservation Measures**

Pursuant to the provisions of 50 CFR 227.72(e)(3) and (6), the Assistant Administrator for Fisheries, NOAA (AA) may modify the required conservation measures by publishing notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA would impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or termination of the tow-time alternative, if the AA determines that: (1) The concentration of algae no longer makes trawling with TEDs impracticable; (2) there is insufficient compliance with the required conservation measures; (3) compliance cannot be monitored effectively; (4) significant or unanticipated levels of lethal or nonlethal takings or strandings of sea turtles have occurred in or near the North Carolina restricted area; (5) shrimp trawlers are having a significant adverse effect on sea turtles in the exemption area; or (6) the incidental take level, authorized by the biological opinion, of one mortality of Kemp's

ridley, green, hawksbill, or leatherback turtles, or two mortalities of loggerhead turtles attributable to shrimp fishing in the North Carolina restricted area is met or exceeded during the exemption period.

#### Classification

The AA has determined that this temporary rule is consistent with the ESA and other applicable law and is not significant for purposes of E.O. 12866.

Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), the AA finds there is good cause to waive prior notice and opportunity to comment on this temporary rule. It is unnecessary to provide prior notice and opportunity for comment because NMFS has provided public notice and opportunity for comment on the same rule promulgated last year. Those comments were addressed in the publication of the final rule last year, which is identical to this temporary rule, and the AA finds that it is unnecessary to seek additional comments on the same rule again this year.

Because this rule relieves a restriction, under section 553(d) of the APA a 30-day delay in effective date is not required.

An EA prepared for this temporary rule concludes that this action will have no significant impact on the human environment. A copy of the EA is available (see ADDRESSES).

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, registration to trawl in the North Carolina restricted area. This collection of information has been approved by the

OMB under OMB control number 0648-0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to NMFS or OMB (see ADDRESSES).

#### List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: May 25, 1995.

**Richard H. Schaefer,**

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

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

#### PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(3)(ii)(B) is temporarily suspended and paragraph (e)(3)(ii)(C) is temporarily added to read as follows:

#### § 227.72 Exceptions to prohibitions.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(C) *North Carolina restricted area.* From May 30, 1995, through November 30, 1995, a shrimp trawler in the North Carolina restricted area, as an alternative to complying with the TED requirement of paragraph (e)(2)(i) of this section, may comply with the tow-time restrictions set forth in paragraph (e)(3)(i) of this section. The owner or operator of a shrimp trawler who wishes to fish in the North Carolina restricted area must register pursuant to paragraph (e)(3)(v) of this section, with registration received by the Director, Southeast Region, NMFS, at least 24 hours before the first use of tow times set forth in paragraph (e)(3)(i) of this section. Registration may be made by telephoning (813) 570-5312 or writing to 9721 Executive Center Drive, St. Petersburg, FL 33702. The owner or operator of a shrimp trawler in the North Carolina restricted area must carry aboard a NMFS-approved observer upon written notification by the Director, Southeast Region, NMFS. Notification shall be made to the address specified for the vessel in either NMFS or state fishing permit application, the registration or documentation papers, or otherwise served upon the owner or operator of the vessel. The owner or operator must comply with the terms and conditions specified in such written notification. All observers will report any violations of this section, or other applicable regulations and laws; such information may be used for enforcement purposes.

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[FR Doc. 95-13512 Filed 5-30-95; 4:03 pm]

BILLING CODE 3510-22-F