

Subpart H—Low-Income Home Energy Assistance Program

10. Section 96.81 is revised to read as follows:

§ 96.81 Carryover and reallocation.

(a) *Scope.* Pursuant to section 2607(b) of Public Law 97-35 (42 U.S.C. 8626(b)), this section concerns procedures relating to carryover and reallocation of regular LIHEAP block grant funds authorized under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)).

(b) *Required carryover and reallocation report.* Each grantee must submit a report to the Department by August 1 of each year, containing the information in paragraphs (b)(1) through (b)(4) of this section. The Department shall make no payment to a grantee for a fiscal year unless the grantee has complied with this paragraph with respect to the prior fiscal year.

(1) The amount of funds that the grantee requests to hold available for obligation in the next (following) fiscal year, not to exceed 10 percent of the funds payable to the grantee;

(2) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(3) A description of the types of assistance to be provided with the amount held available; and

(4) The amount of funds, if any, to be subject to reallocation.

(c) *Conditions for reallocation.* If the total amount available for reallocation for a fiscal year is less than \$25,000, the Department will not reallocate such amount. If the total amount available for reallocation for a fiscal year is \$25,000 or more, the Department will reallocate such amount, except that the Department will not award less than \$25 in reallocated funds to a grantee.

11. Section 96.82 is revised to read as follows:

§ 96.82 Required report on households assisted.

(a) Each grantee which is a State or an insular area which receives an annual allotment of at least \$200,000 shall submit to the Department, as part of its LIHEAP grant application, the data required by section 2605(c)(1)(G) of Public Law 97-35 (42 U.S.C. 8624(c)(1)(G)) for the 12-month period corresponding to the Federal fiscal year (October 1–September 30) preceding the fiscal year for which funds are requested. The data shall be reported separately for LIHEAP heating, cooling, crisis, and weatherization assistance.

(b) Each grantee which is an insular area which receives an annual allotment

of less than \$200,000 or which is an Indian tribe or tribal organization which receives direct funding from the Department shall submit to the Department, as part of its LIHEAP grant application, data on the number of households receiving LIHEAP assistance during the 12-month period corresponding to the Federal fiscal year (October 1–September 30) preceding the fiscal year for which funds are requested. The data shall be reported separately for LIHEAP heating, cooling, crisis, and weatherization assistance.

(c) Grantees will not receive their LIHEAP grant allotment for the fiscal year until the Department has received the report required under paragraph (a) or (b) of this section.

12. Section 96.84 is amended by adding paragraph (d) as follows:

§ 96.84 Miscellaneous.

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(d) *End of transfer authority.* Beginning with funds appropriated for FY 1994, grantees may not transfer any funds pursuant to section 2604(f) of Public Law 97-35 (42 U.S.C. 8623(f)) that are payable to them under the LIHEAP program to the block grant programs specified in section 2604(f).

13. Section 96.85 is amended by revising paragraph (a) to read as follows:

§ 96.85 Income Eligibility.

(a) *Application of poverty income guidelines and State median income estimates.* In implementing the income eligibility standards in section 2605(b)(2) of Public Law 97-35 (42 U.S.C. 8624(b)(2)), grantees using the Federal government's official poverty income guidelines and State median income estimates for households as a basis for determining eligibility for assistance shall, by October 1 of each year, or by the beginning of the State fiscal year, whichever is later, adjust their income eligibility criteria so that they are in accord with the most recently published update of the guidelines or estimates. Grantees may adjust their income eligibility criteria to accord with the most recently published revision to the poverty income guidelines or State median income estimates for households at any time between the publication of the revision and the following October 1, or the beginning of the State fiscal year, whichever is later.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 950427117-9271-10;
I.D.100499D]

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 issues this temporary action to allow the use of limited tow times as an alternative to the requirement to use Turtle Excluder Devices (TEDs) by shrimp trawlers operating south and west of Cape Lookout, North Carolina, in the offshore waters out to 3 nautical miles (nm) (5.5 km). NMFS has been notified by the Director of the Division of Marine Fisheries of the North Carolina Department of Environmental and Natural Resources (NCDMF) that large amounts of debris in Atlantic Ocean waters along the southern portion of the State in the aftermath of the Hurricanes' Dennis and Floyd are causing difficulty with the performance of TEDs. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether impacts from the hurricanes continue to make TED use impracticable.

DATES: This action is effective from October 12, 1999, through November 12, 1999. Comments on this action are requested, and must be received by November 12, 1999.

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 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 (*Dermodochelys coriacea*), and hawksbill (*Eretmodochelys 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 223.206. Existing sea turtle conservation regulations (50 CFR part 223, subpart B) 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 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 [she] 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

At the end of August 1999, Hurricane Dennis moved slowly along the Outer Banks of North Carolina, hitting the coast with heavy winds and surf. Dennis lingered along the North Carolina coast and came ashore east of Beaufort, NC, on September 4. Less than 2 weeks later, Hurricane Floyd also struck North Carolina, making landfall at Cape Fear. Hurricane Floyd's most severe damage has resulted from the heavy rainfalls and record flooding in inland areas of North Carolina. The two hurricanes caused heavy discharge from flooding rivers which has deposited debris in the State's nearshore coastal waters. In an October 1 letter to the NMFS Southeast Regional Administrator, the Director of the NCDMF stated:

Since the passage of the storm, the [NCDMF] has received complaints from

shrimp fishermen about debris, including old tires, being caught in shrimp trawls and clogging their TEDs. The [NCDMF] has also observed this debris in sample trawls made after the storm aboard our research vessel, the R/V CAROLINA COAST. This debris includes old tires which have broken loose from our artificial reefs, trees, pilings, shingles, and wood washed into the ocean by flood waters. The material becomes lodged in the TEDs rendering them ineffective in expelling sea turtles as well as negatively impacting fishermen's catches.

The NCDMF requested that NMFS use its authority to allow the use of limited tow times as an alternative to TEDs in offshore waters out to 3 nm (5.5 km) from Cape Lookout to the North Carolina/ South Carolina border.

The effects of the flooding from Hurricane Floyd have been particularly severe in the eastern inland portions of North Carolina. The inshore shrimp fishing areas in Core, Pamlico, and Albemarle sounds that provide the majority of the State's shrimp catch have also likely been inundated with debris. At this time, however, those inshore areas are still experiencing considerable flooding and freshwater intrusion, and most of the shrimp are likely to have been washed out of the sounds. NMFS and the NCDMF will continue to monitor the situation in those inshore areas to determine the need for any additional action.

Special Environmental Conditions

The AA finds that the impacts of Hurricanes Floyd and Dennis have created special environmental conditions that may make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notice to authorize the use of restricted tow times as an alternative to the use of TEDs in the offshore waters of the territorial sea of the State of North Carolina from the North Carolina/South Carolina border to 076°32' W., the line of longitude through Cape Lookout. The NCDMF is continuing to monitor the situation and is cooperating with NMFS in determining the ongoing extent of the debris problem in North Carolina offshore waters. Moreover, the NCDMF Director has stated that the State's enforcement officers would enforce the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the NCDMF Director to provide additional enforcement of the tow time restrictions is an important factor enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in North Carolina offshore waters to

continue to use TEDs if possible, even though they are authorized, under this notice, 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 fishermen's concern, 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 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 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 shortened by cutting it horizontally 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 above-listed recommendations represent legal configurations of TEDs for shrimpers in the offshore areas of North Carolina (not subject to special requirements effective in the Atlantic Shrimp Fishery-Sea Turtle Conservation Area). This notice authorizes the use of restricted tow times as an alternative to the required use of TEDs. This action 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 temporary action applies to all shrimp trawlers that are operating in offshore waters of the territorial sea (within 3 nm (5.5 km)) of the State of North Carolina, from the North Carolina/South Carolina border to 076°32' W., the line of longitude through Cape Lookout, in areas which the State has opened to shrimping and who would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2). "Offshore waters," as defined at 50 CFR 222.102, means the marine and tidal waters seaward 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 may opt to comply with the sea turtle conservation regulations by using restricted tow times. Through October 31, 1998, 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. From November 1, 1999 until November 12, 1999, 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.

Additional State Requirements

The affected area for this exemption lies entirely within the state waters of North Carolina. Nothing in this notice should be considered to affect any State fishing requirement. The NCDMF Director may issue a proclamation specifying additional requirements for shrimp trawlers working under this exemption. Fishermen must comply with all applicable State requirements, including any proclamations by the NCDMF Director issued to help implement this authorization.

Additional Conditions

NMFS expects that shrimp trawlers operating in North Carolina offshore 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 NCDMF Director, rather than simply dispose the debris at sea. Proper disposal of debris should help the restoration of the shrimping grounds in the wake of the hurricanes. 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 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 restrictive measures, including more restrictive tow times or synchronized tow times, if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or by insufficient compliance with the authorized alternative. The AA may also terminate this authorization for these same reasons or for the reasons that compliance cannot be monitored effectively, or that conditions do not make trawling with TEDs impracticable. The AA may modify or terminate this authorization, as appropriate, at any time. 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 North Carolina offshore waters. This authorization will expire automatically on November 12, 1999, unless it is explicitly 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 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. It is impracticable and contrary to the public interest to provide prior notice and opportunity for comment. The AA finds that an unusually large amount of debris exists in the aftermath of Hurricanes Dennis and Floyd, 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 contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing relief within the necessary time frame. 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)(1), because this rule relieves a restriction, it is not subject to a 30-day delay in notice. NMFS is making the rule effective October 12, 1999, to ensure that North Carolina has adequate time to issue any necessary proclamations.

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

Dated: October 8, 1999.

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 Parts 222 and 223

[Docket No.991007270-9270-01; I.D.090399E]

RIN 0648-AM89

Sea Turtle Conservation; Summer Flounder Trawling Requirements

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

ACTION: Interim final rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing this interim final rule to amend the regulations that require summer flounder trawlers to use Turtle Excluder Devices (TEDs) in waters off Virginia and North Carolina to reduce the incidental capture of endangered and threatened sea turtles. NMFS is requiring that any approved hard TED or