

Ryder System, Inc. (Both rental and leasing operations)  
 U-Haul International, Inc. (Subsidiary of AMERCO)  
 USL Capial Fleet Services  
 Wheels Inc.

Issued on: October 15, 1999.

**Stephen R. Kratzke,**

*Acting Associate Administrator for Safety Performance Standards.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No.950427117-9278-11;I.D. 100899A]

RIN 0648-AN30

#### 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 inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel Mile Marker 54 (Lat. 28°33'38"N, Long.96°30'50"W) and thence to Sand Point (Lat. 28°34'08"N, Long. 96°29'29"W), including Carancahua and Tres Palacios Bays.

**DATES:** This action is effective from October 19, 1999 through November 18, 1999. Comments on this action are requested, and must be received by November 18, 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 kempi*), 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 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

The Director of the Division of Coastal Fisheries, TPWD, stated in a September 22 letter to the NMFS Southeast Regional Administrator that the shrimp fishery in Matagorda Bay has been experiencing serious problems since early to mid-August caused by an unusual infestation of the bryozoan, *Bugula sp.* TPWD has received complaints from shrimp fishermen about unusually dense concentrations of what the fishermen called sauerkraut weed (later identified as a bryozoan, *Bugula sp.*) being caught in shrimp trawls and clogging their TEDs. TPWD has also observed this phenomenon in sample trawls made aboard cooperating

shrimp vessels, and supplied NMFS with photographic documentation of the problem.

Drought conditions have produced salinities exceeding 30 parts per thousand in Matagorda Bay. Elevated salinities and water temperatures are believed to be responsible for the extraordinarily high concentrations of the bryozoan, *Bugula sp.* The dense, filamentous bryozoan becomes lodged in the TEDs after relatively short periods of towing, rendering the TEDs ineffective in expelling sea turtles as well as negatively impacting fishermen's catches.

The TPWD letter requested that NMFS use its authority to allow the use of limited tow times as an alternative to the use of TEDs in Matagorda Bay, bounded on the west by a line running from the Matagorda Jetties north along the Matagorda Ship Channel to Mile Marker 54 and east to Sand Point. Essentially, most of Matagorda Bay, excluding Lavaca Bay and the western edge of Matagorda Bay proper, is included in the exemption area requested by TPWD. According to TPWD personnel, the problematic concentrations of *Bugula sp.* are difficult to pinpoint or chart precisely, due to tidal and wind action which continuously moves and shifts the bryozoans from area to area. A NMFS gear specialist, working with Matagorda Bay shrimpers in early October, confirmed the severity and wide distribution of the bryozoan clogging problem. TPWD has asked NMFS to authorize the use of limited tow times for most of Matagorda Bay for a 30-day period.

NMFS and the Texas Parks and Wildlife Department (TPWD) will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether bryozoan concentrations continue to make TED use impracticable. The intent of this action is to relieve the economic hardship on Matagorda Bay shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

#### Special Environmental Conditions

The AA finds that the impacts of the current drought conditions in southern Texas on Matagorda Bay have created special environmental conditions that may 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 inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel

Mile Marker 54 (Lat. 28°33'38"≥N, Long. 96°30'50"≥W) and thence to Sand Point (Lat. 28°34'08"≥N, Long. 96°29'29"≥W), including Carancahua and Tres Palacios Bays. TPWD is continuing to monitor the situation and will cooperate with NMFS in determining the ongoing extent of the bryozoan problem in Matagorda Bay. Moreover, the TPWD Director of Coastal Fisheries has stated that TPWD' game wardens would enforce the restricted tow times and commit additional effort to the task. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the TPWD Director of Coastal Fisheries 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 Matagorda Bay, Texas, 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 observed large amounts of *Bugula sp.* in Matagorda Bay and noticed extremely heavy concentrations of cannonball jellyfish. Matagorda Bay shrimpers were generally using TEDs with a narrow bar spacing to eliminate these jellyfish. If fishermen remove their TEDs, they will have to contend with extremely heavy catches of cannonball jellyfish that will force them to use very short tows. NMFS intends to continue working with local shrimpers to find a technical TED configuration that will exclude jellyfish while minimizing clogging from *Bugula*.

While working on a specific solution for this situation, 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. Even lower angles may be necessary to exclude the bulky bryozoan. 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.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in inshore waters of Matagorda Bay, i.e., inshore of the 72 COLREGS demarcation line, who are not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation Area. 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 rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in inshore waters of Matagorda Bay, Texas, east of the line running from the Matagorda Jetties, along the Matagorda Ship Channel, to Matagorda Ship Channel Mile Marker 54 (Lat. 28°33'38"≥N, Long. 96°30'50"≥W) and thence to Sand Point (Lat. 28°34'08"≥N, Long. 96°29'29"≥W), including Carancahua and Tres Palacios Bays. This area excludes Lavaca Bay and the southwestern edge of Matagorda Bay. "Inshore waters," as defined at 50 CFR 222.102, 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 may opt to

comply with the sea turtle conservation regulations by using restricted tow times. Through October 31, 1999, 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 18, 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.

#### 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 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. 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 Texas inshore waters (Matagorda Bay). This authorization will expire automatically on November 18, 1999, 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 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 unusually high densities of the bryozoan (*Bugula sp*) 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 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 effective date. NMFS is making the rule effective October 19, 1999 through November 18, 1999.

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 19, 1999.

**Andrew A. Rosenberg, Ph.D.,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 990525143-9277-02; I.D. 120197A]

RIN 0648-AM41

#### Designated Critical Habitat: Revision of Critical Habitat for Snake River Spring/Summer Chinook Salmon

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

**ACTION:** Final rule.

**SUMMARY:** Through this rule, NMFS revises critical habitat for Snake River

spring/summer chinook salmon (*Oncorhynchus tshawytscha*), pursuant to the Endangered Species Act (ESA) of 1973. After a review of the best available scientific information, NMFS determines that Napias Creek Falls constitutes a naturally impassable barrier for Snake River spring/summer chinook salmon. NMFS, therefore, excludes areas above Napias Creek Falls from designated critical habitat for this species.

**DATES:** The effective date of this determination is November 24, 1999.

**ADDRESSES:** Requests for information concerning this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street - Suite 500, Portland, OR 97232-2737, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin at (503) 231-2005 or Chris Mobley at (301) 713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 27, 1991, NMFS proposed the listing of Snake River spring/summer chinook salmon as a threatened species under the ESA (56 FR 29542). The final determination listing Snake River spring/summer chinook salmon as a threatened species was published on April 22, 1992 (57 FR 14653), and corrected on June 3, 1992 (57 FR 23458). Critical habitat was designated on December 28, 1993 (58 FR 68543). In that document, NMFS designated all river reaches presently or historically accessible to listed spring/summer chinook salmon (except river reaches above impassable natural falls, and Dworshak and Hells Canyon Dams) in various hydrologic units as critical habitat (58 FR 68543). Napias Creek, the area in question, occurs within one of these designated hydrologic units (Middle Salmon-Panther, U.S. Geological Survey Hydrologic Unit 17060203).

On January 6, 1997, the Secretary of Commerce (Secretary) received a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho. In accordance with section 4(b)(3)(D) of the ESA, NMFS issued a determination on April 28, 1997, that

the petition presented substantial scientific information indicating that a revision may be warranted (62 FR 22903). In that document of finding, NMFS solicited information and comments from interested parties and interested tribal governments concerning the petitioned action (62 FR 22903).

On September 16, 1997, Meridian submitted additional information in support of its petition. Specifically, Meridian submitted three new reports entitled: (1) "Ability of Salmon and Steelhead to Pass Napias Creek Falls"; (2) "Investigation of Physical Conditions at Napias Creek Falls"; and (3) "Historical and Ethnographic Analysis of Salmon Presence in the Leesburg Basin, Lemhi County, Idaho." This new information was added to the administrative record and was considered by NMFS in its 12-month determination published on January 30, 1998 (63 FR 4615).

On January 30, 1998, NMFS determined that the petitioned action was not warranted since available information indicated that the falls was likely passable to chinook salmon at some flows and that the presence of relict indicator species indicated historical usage by anadromous species (63 FR 4615). Subsequent to this determination, Meridian submitted a "petition for reconsideration," providing additional data and analyses concerning the likelihood Napias Creek Falls constitutes a naturally impassable barrier to anadromous salmonid migration (Meridian, 1998a, 1998b; Chapman, 1998). While NMFS' ESA implementing regulations do not provide a process for reconsidering findings on petitions, NMFS nonetheless agreed in a letter dated July 31, 1998, to consider Meridian's new information and provide Meridian with a written determination regarding its findings (NMFS, 1998a; Meridian, 1998d). On October 30, 1998, NMFS staff met with Meridian representatives to discuss the new technical information and its interpretations (NMFS, 1998b).

On December 29, 1998, Meridian expressed its desire to withdraw its "petition for reconsideration" stating that it interpreted NMFS' continuing treatment of the area as critical habitat as a denial of its petition (Meridian, 1998c). However, at that time, NMFS had not yet reached a conclusion regarding the additional information submitted by Meridian, nor had NMFS provided Meridian with a written determination on the matter as it had committed to do in its July 31, 1998, letter (NMFS, 1998a). NMFS ultimately