

(143) On December 2, 2002, the Oregon Department of Environmental Quality submitted a SIP revision to repeal the Perchloroethylene Dry Cleaning rule and revise related parts of the Introduction and Definitions sections of Division 232.

(i) Incorporation by reference.

(A) The following sections of the Oregon Administrative Rules 340: 232-0010 and 232-0030, as effective October 14, 1999.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 041124330-4330-01; I.D. 111904C]

RIN 0648-AS91

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule.

SUMMARY: NMFS issues this temporary authorization for a period of 30 days, to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in the state waters of Alabama and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90°03'00" West longitude (approximately the west end of Grand Isle). This action is necessary because environmental conditions as a result of Hurricane Ivan are hampering the fishermen's ability to use TEDs effectively.

DATES: Effective from November 26, 2004 through December 27, 2004.

ADDRESSES: Requests for copies of the Environmental Assessment on this action should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-570-5794, 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 (*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.

Sea turtles are incidentally taken and killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) 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, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

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 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to 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.

The regulations governing sea turtle take prohibitions and exemptions 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 NOAA Assistant Administrator for Fisheries (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, as measured from the time that the trawl doors enter the water until they are removed from the water. 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 September 27, 28, and 29, 2004, the NOAA Fisheries' Southeast Regional Administrator received requests from the Marine Fisheries Division of the Alabama Department of Conservation and Natural Resources (ADCNR), the Mississippi Department of Marine Resources (MDMR), and the Louisiana Department of Wildlife and Fisheries (LDWF), respectively, to allow the use of tow times as an alternative to TEDs in state waters due to the presence of excessive storm-related debris on the fishing grounds as a result of Hurricane Ivan. Subsequent to these requests, NOAA Fisheries issued a 30-day variance of the TED requirements from October 12 through November 11, 2004.

On November 15, 2004, the NOAA Fisheries' Southeast Regional Administrator received requests from the Marine Fisheries Division of the ADCNR and LDWF for an additional 30-day period allowing the use of tow times as an alternative to TEDs in state waters due to the presence of excessive storm-related debris that is still present on the fishing grounds as a result of Hurricane Ivan. After an investigation, the ADCNR and LDWF have determined that this debris continues to affect the fishermen's ability to use TEDs effectively. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Alabama and Louisiana have stated that their marine enforcement agencies will increase patrols to enforce the tow time restrictions.

NOAA Fisheries gear technicians interviewed fishermen and surveyed parts of the affected areas in Alabama,

Mississippi, and Louisiana. The interviews and surveys conducted by the gear technicians indicate that problems with debris exist in Alabama and Louisiana state waters, which are likely to affect the effectiveness of TEDs. Debris did not appear to be a significant problem throughout the majority of Mississippi state waters.

Special Environmental Conditions

The AA finds that debris washed into the state waters of Alabama and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90°03'00" West longitude (approximately the west end of Grand Isle) by Hurricane Ivan has 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 state waters of Alabama and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90°03'00" West longitude (approximately the west end of Grand Isle) for a period of 30 days. 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. The marine patrols of the affected states are continuing to monitor the situation and will cooperate with NMFS in determining the extent of the ongoing debris problem in this area. Moreover, the affected states have stated that their marine patrols will enforce the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the affected states' marine patrols 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 possible, even though they are authorized under this action to use restricted tow times.

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 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, 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 the state waters of Alabama and the state waters of Louisiana from the Mississippi/Louisiana border to a line at 90°03'00" West longitude (approximately the west end of Grand Isle) for a period of 30 days. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations by using restricted tow times, as prescribed above.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs, through publication of a rule 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, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative

authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if compliance cannot be monitored effectively. This authorization will expire automatically on December 27, 2004, 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 environmental 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)(3)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule. The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. Prior notice and opportunity to comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent NMFS from executing its functions to protect threatened and endangered sea turtles. Additionally, debris would likely move out of the area before NMFS could implement this rule to protect sea turtles, thereby rendering the action obsolete.

For the same reasons, the AA finds that there is good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). Further, because this short-term exemption to the requirement to use TEDs relieves a restriction, the AA finds that this temporary rule should not be subject to a 30-day delay in effective date, pursuant to 5 U.S.C. 553(d)(1). Therefore, NMFS is making the rule effective November 26, 2004 through December 27, 2004.

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 26, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287-4060-02; I.D. 112304C]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using pot gear to vessels using trawl gear and catcher processor vessels using hook-and-line gear in the BSAI. These actions are necessary to allow the 2004 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective November 26, 2004, until 2400 hours, A.L.T., December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for 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 50 CFR part 679.

The 2004 final harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004), established the Pacific cod TAC as 199,338 metric tons (mt). Pursuant to § 679.20(a)(7)(i)(A), 3,987 mt was allocated to vessels using jig gear, 101,662 mt to vessels using hook-and-line or pot gear, and 93,689 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 3.3 percent to catcher/processor vessels using pot gear; 15 percent to catcher vessels using pot gear; and 1.4 percent to catcher vessels less than 60 ft (18.3 meters) length overall that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)(C)).

On October 15, 2004, 12,700 mt of Pacific cod from the trawl gear allocation and 2,000 mt from the jig gear allocation was reallocated to vessels using hook-and-line gear and vessels using pot gear (69 FR 61607, October 20, 2004).

As of November 16, 2004, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that catcher vessels using pot gear will not be able to harvest 3,960 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(C) and the subsequent reallocation on October 15, 2004 (69 FR 61607, October 20, 2004). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(2), NMFS apportions 3,960 mt of Pacific cod from catcher vessels using pot gear to vessels using trawl gear and catcher/processor vessels using hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (69 FR 9242, February 27, 2004) are revised as follows: 97,795 mt to

catcher/processor vessels using hook-and-line gear, 11,735 mt to catcher vessels using pot gear, 41,431 mt to catcher/processor vessels using trawl gear, and 40,717 mt to catcher vessels using trawl gear.

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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for catcher vessels using pot gear to vessels using trawl gear and catcher processor vessels using hook-and-line in the BSAI and therefore would cause disruption to the industry by requiring unnecessary closures, disruption within the fishing industry, and the potential for regulatory discards when the current allocations are reached. This reallocation will relieve a restriction on the industry and allow for the orderly conduct and efficient operation of this fishery.

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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 24, 2004.

Alan D. Risenhoover,

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

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