

water until they are retrieved from the water.

A survey of Mississippi waters found no significant remaining issues stemming from storm-related debris in the shrimp fishery. Therefore, the MDMR request for an exemption was not granted.

#### 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 trap debris either on or in front of 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 temporary 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

hurricane-affected state and Federal waters off Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary), extending offshore 20 nautical miles, for a period of 30 days. Through this temporary rule, shrimp trawlers may choose either restricted tow times or TEDs to comply with the sea turtle conservation regulations, 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 notice 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 information from enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically on October 27, 2008, 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 environmental situation to allow more efficient fishing for shrimp, while providing effective 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 temporary rule. The AA finds that unusually high amounts of post-hurricane debris are creating special environmental conditions that make trawling with TED-equipped nets impractical. Prior notice and the opportunity to receive public comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing the affected industry timely relief from the effects of Hurricanes Gustav and Ike,

while providing effective protection for sea turtles.

Many shrimp fishermen in Louisiana may be unable to operate under the special environmental conditions created by Hurricanes Gustav and Ike without an alternative to the use of TEDs. Therefore, 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) to provide alternatives to comply with the sea turtle regulations in a timely manner. For the reasons above, 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).

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: September 26, 2008.

**James W. Balsiger,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 071106671-8010-02]

RIN 0648-XK79

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by non-American Fisheries Act (AFA) crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 Pacific cod sideboard limit established for non-AFA crab vessels catching Pacific cod for processing by

the inshore component in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 26, 2008, through 2400 hrs, A.l.t., December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 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. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2008 Pacific cod sideboard limit established for non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 980 metric tons (mt) for the GOA, as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 680.22(e)(2)(i), the Regional Administrator has determined that the 2008 Pacific cod sideboard limit established for non-AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance of 970 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### **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 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 sideboard directed fishing closure of Pacific cod for non-AFA crab vessels that are subject to sideboard limits catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 25, 2008.

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

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

Dated: September 25, 2008.

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