

the support of several other shippers, shipping groups, and other interests, asked the Board to require all carriers that submit a Waybill Sample to report fuel surcharge revenue separately in a Waybill Sample field established for that purpose. No rail carrier objected or even responded to NITL's petition.

In a decision served on June 16, 2008, the Board initiated a rulemaking to require all carriers that submit a Waybill Sample to report fuel surcharge revenue in a separate waybill field created by the Board for that purpose, rather than reporting such revenue within the general freight revenue field, commencing with the Waybill Sample filed for January 2009. The Board reasoned that reporting fuel surcharge revenue in a separate field in the Waybill Sample will increase transparency about the use of fuel surcharges by rail carriers without detracting from the Board's ability to obtain consistent results for the purposes of including such revenue in its RSAM calculations. A notice requesting comments regarding the Board's proposal was published in the **Federal Register** on June 26, 2008 (73 FR 36294). No comments were received.

The Board is adopting the proposed requirement. Statement No. 81-1, Procedure for Sampling Waybill Records by Computer, will be modified to require fuel surcharge revenues to be reported in a new field created for that purpose. The new field (Field 33) will be a 9-byte record. Therefore, the computerized Waybill Sample reported by the railroads will increase from a 228-byte record layout to a 237-byte record layout. To keep reporting consistent within each calendar year, the new field will be required for Waybill Samples commencing with the Waybill Sample filed for January 2009. For consistency and administrative convenience, in addition to reporting in Field 33, carriers are asked to include fuel surcharge revenue as part of total freight revenue in the "Total Freight LH Revenue" field (Field 15), as previously directed in *Clarification*.

The Board's decisions in this proceeding are available on the Board's Web site at www.stb.dot.gov. Copies of the decisions will also be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC, or (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0235 or 395 E Street, SW., Washington, DC 20423-0001.

The Director of the Federal Register has approved the Board's request for incorporation by reference of Statement No. 81-1, Procedure for Sampling

Waybill Records by Computer (2009 edition). Such approval by the Director requires the insertion of certain language into the regulatory text of the rule as detailed below.

Pursuant to 5 U.S.C. 605(b), the Board certifies that this action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping, Incorporation by reference.

Authority: 49 U.S.C. 11144, 49 U.S.C. 11145.

Decided: November 3, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrely.

Kulunie L. Cannon,
Clearance Clerk.

■ For the reasons set forth in the Supplemental Information above, the Surface Transportation Board amends part 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

■ 1. The authority citation for part 1244 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

■ 2. In § 1244.4, revise paragraph (c) (1) to read as follows:

* * * * *

(c) *The Computerized System.* (1) The tape shall be required to conform to the standards and format specified in Statement No. 81-1, *Procedure for Sampling Waybill Records by Computer* (2009 edition), issued by the Surface Transportation Board. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any editions other than those specified in this section, the STB must publish notice of change in the **Federal Register** and the material must be available to the public. You may obtain or inspect a copy of these standards from the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001; from the Surface Transportation Board Web site at <http://www.stb.dot.gov>; or by calling (202) 245-0323. You may also inspect a copy at the National Archives and

Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 0810061316-81420-02]

RIN 0648-XL11

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 rule for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state waters off of Texas (extending offshore 9 nautical miles from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties; approximately 95° 32' W. long.). The previous 30-day variance of the TED requirements was from October 8 through November 7, 2008. This action is necessary because environmental conditions resulting from Hurricane Ike persist on the fishing grounds, preventing some fishermen from using TEDs effectively.

DATES: Effective from November 8, 2008, through December 7, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-551-5794.

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 some are killed, as a result of numerous activities, including fishery-related 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 allow sea turtles to escape. 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, which 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. Each tow 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 5 and 15, 2008, NMFS received requests from the Louisiana Department of Wildlife and Fisheries (LDWF) and the Mississippi Department of Marine Resources (MDMR), respectively, to allow the use of tow times as an alternative to TEDs in state and Federal waters because of excessive storm-related debris on the fishing grounds as a result of Hurricanes Gustav and Ike. When a TED is clogged with debris, it can no longer catch shrimp effectively nor can it effectively exclude turtles. Phone conversations between NMFS staff, fishermen, and the states' resource agency staffs confirmed there were problems with debris in state and Federal waters off Louisiana (from the Mississippi/Louisiana boundary to the Texas/Louisiana boundary) extending offshore 20 nautical miles, which were likely to affect the effectiveness of TEDs; discussions between NMFS Southeast Region's Protected Resources staff, fishermen, and the states' resource agency staffs, and a survey of Mississippi waters found no significant remaining issues stemming from storm-related debris on the shrimp fishing grounds. Subsequent to these requests, NMFS issued a 30-day exemption to the TED requirements from September 26 through October 26, 2008, for waters off of Louisiana affected by Hurricanes Gustav and Ike (73 FR 57010, October 1, 2008).

On September 29, 2008, the NMFS Southeast Regional Administrator received a request from the Texas Parks and Wildlife Department (TPWD) to allow the use of tow times as an alternative to TEDs in state and federal waters because of excessive storm-related debris on the fishing grounds as a result of Hurricane Ike. Subsequent to this request, NMFS issued a 30-day exemption to the TED requirements from October 8 through November 7, 2008, for waters off of Texas affected by Hurricane Ike (73 FR 60638, October 14, 2008). Specifically, the affected waters encompassed by that exemption

extended from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties (approximately 95° 32' W. long.), and offshore 20 nautical miles.

On October 20, 2008, NMFS received a request from the LADWF for an additional 30-day period allowing the use of restricted tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm-related debris that was still present on the fishing grounds as a result of Hurricanes Gustav and Ike. Subsequent to this request, NMFS issued a 30-day exemption to the TED requirements from October 29 through November 28, 2008, for waters off of Louisiana affected by Hurricanes Gustav and Ike (73 FR 65277, November 3, 2008). Specifically, the waters affected extend from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and offshore 15 nautical miles.

On October 31, 2008, the NMFS Southeast Regional Administrator received a request from the TPWD for an additional 30-day period allowing the use of restricted tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm-related debris that is still present on the fishing grounds as a result of Hurricane Ike. Texas has stated that their marine enforcement agents will enforce the tow time restrictions.

Field investigations and interviews conducted by NMFS Gear Technicians and phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and state resource agency staff confirm there are problems with debris in state waters off of Texas. Available information indicates the debris field extends offshore 9 nautical miles from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties; approximately 95° 32' W. long. Investigations conducted by NMFS indicate some shrimp fishermen continue to use TEDs in these areas as the TED is able to exclude debris from the trawl; however, these investigations also indicated there are still significant amounts of large debris that can and does render TEDs ineffective at releasing turtles. These investigations also indicate that most offshore fishermen are using their TEDs due to the fact the debris offshore is of a nature and size that the TEDs can "shoot" the debris from the trawl.

Special Environmental Conditions

The AA finds that debris washed into hurricane-affected state waters off of Texas, extending offshore 9 nautical miles from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties (approximately 95° 32' W. long.), 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 state waters off of Texas extending offshore 9 nautical miles from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties (approximately 95° 32' W. long.), for a period of 30 days. Tow times must be limited to no more than 75 minutes, as measured from the time that the trawl doors enter the water until they are removed from the water.

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 45E, 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 hurricane-affected state waters off Texas, extending offshore 9 nautical miles from the Texas/Louisiana boundary southward to the boundary shared by Matagorda and Brazoria Counties (approximately 95° 32' W. long.), 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 law enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically on December 7, 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 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 the agency from providing the affected industry relief from the effects of Hurricane Ike in a timely manner, while continuing to provide effective protection for sea turtles.

Many fishermen may be unable to operate under the special environmental conditions created by Hurricane 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.

Dated: November 6, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 071106673-8011-02]

RIN 0648-XL68

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

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