

(3) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG or another agency for the following reasons:

(i) It is not possible to detect relevance or need for specific information in the early stages of an investigation, case or matter. After the information is evaluated, relevance and necessity may be established.

(ii) During an investigation, the OIG may obtain information about other actual or potential criminal, civil or administrative violations, including those outside the scope of its jurisdiction. The OIG should retain this information, as it may aid in establishing patterns of inappropriate activity, and can provide valuable leads for Federal and other law enforcement agencies.

(iii) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator, which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(iv) From subsection (e)(4)(G) and (H) because this system is exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(2) of the Privacy Act.

(v) From subsection (f) because this system is exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(2) of the Privacy Act.

§ 1202.94 What NARA systems of records are exempt from release under the Investigatory Information Material exemption of the Privacy Act?

(a) The Personnel Security Case Files (NARA-24) system of records is eligible for exemption under 5 U.S.C. 552a(k)(5) because it contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal employment or access to classified information. The only information exempt under this provision is that which would disclose the identity of a confidential source described in 5 U.S.C. 552a(k)(2).

(b) The system of records described in paragraph (a) of this section is exempt from 5 U.S.C. 552a(d)(1). Exemption from the particular subsection is justified as access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation.

Dated: December 14, 2001.

John W. Carlin,

Archivist of the United States.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 011214299-1299-01;
I.D.121001B]

RIN 0648-AP75

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 is imposing, for a 30-day period, an additional restriction on shrimp trawlers that are required to have a turtle excluder device (TED) installed in each net rigged for fishing, and that are operating in Atlantic offshore waters out to 10 nautical miles (nm)(18.3 km) from the coast of Florida between 28°N. latitude and the Georgia-Florida border. During this 30-day period shrimp vessels operating in this area must use a TED with an escape opening large enough to exclude leatherback turtles, as specified in the regulations. The use of such TEDs by shrimp trawlers has previously been required under similar circumstances. This action is necessary to prevent mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls, and is prompted by recent strandings of such turtles.

DATES: This action is effective from December 14, 2001 through January 14, 2002. Comments on this action are requested, and must be received by January 14, 2002.

ADDRESSES: Comments on this action should be addressed to Phil Williams, Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 727-570-5312, or Barbara A. Schroeder, 301-713-1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS

laboratory by phone 228-762-4591 or by fax 228-769-8699.

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*) 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 sea turtles as a result of shrimp trawling activities has been documented in the Gulf of Mexico and in the Atlantic Ocean. Under the ESA and its implementing regulations, taking sea turtles is prohibited, subject to 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 a mechanism to implement further restrictions of fishing activities, if necessary, to avoid takings of sea turtles that would (1) likely jeopardize the continued existence of listed species or (2) that would violate the terms and conditions of an incidental take statement or incidental take permit. Upon a determination that incidental takings of sea turtles during fishing activities are likely to trigger either scenario, additional restrictions may be imposed to conserve listed species and to avoid such takings. Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each (50 CFR 223.206(d)(4)).

Leatherback Sea Turtles

Leatherback sea turtles are the largest species of sea turtle. They weigh between 600 and 1,300 pounds (272 and 590 kg) and have carapaces 5 to 6 ft (1.5 to 1.8 m) in length. Leatherbacks are widely distributed and can range from the tropics to extreme northern and southern latitudes during their feeding and reproductive migrations. They nest in small but significant numbers on U.S. beaches and are primarily seen in coastal waters of the southeast U.S. during their northern springtime migration, especially when high abundances of jellyfish occur nearshore. However, they can be found in U.S. waters throughout the year.

Because of their size, leatherbacks are not likely to escape from trawls, even when the trawls are equipped with approved TEDs, unless the size of the opening is sufficient to allow escape. The sea turtle conservation regulations specify a minimum TED opening size in the Atlantic of 35 inches (89 cm) horizontally and 12 inches (30.5 cm) vertically. When the regulations requiring TEDs in shrimp trawls year-round were adopted (57 FR 57348, December 4, 1992), NMFS recognized that the then-existing TEDs would not protect leatherbacks, and the biological opinion (BO) on the regulations concluded that leatherback mortality would remain a problem that must be addressed to avoid jeopardizing the recovery of this species. Consequently, the August 19, 1992, BO's incidental take statement required that the episodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated. This could be accomplished by temporary area closures, by requiring an increase in the size of TED openings to allow leatherbacks to escape at times when their abundance is high, by limiting tow times, or by implementing some other protective measure. To address this problem, the 1992 sea turtle conservation regulations included the provisions of 50 CFR 223.206(d)(4), to provide "a mechanism to prevent sea turtle mortalities...when existing restrictions on the shrimp fishery are found to be ineffective (57 FR 18453)."

Recent Events

NMFS has been notified by the Florida Fish and Wildlife Conservation Commission (FWCC) that extraordinarily high numbers of endangered leatherback sea turtles stranded along northeast Florida beaches in November and early December 2001. From November 4 to December 10, 2001, a total of 15 leatherback turtles and 2 turtles reported as leatherbacks, but not yet verified by FWCC, washed ashore between St. Johns and Brevard counties in shrimp zones 28 and 29. During aerial surveys conducted for right whales, up to 10 leatherback turtles per flight were seen during two flights; one of these turtles was dead. By comparison, the total annual number of leatherback strandings statewide has averaged 24 over the past 10 years, and has averaged only 14 per year in zones 28–30. Considering the rarity of leatherbacks—an average of only 45–50 females nest in Florida each year—and the fact that strandings are only a minimum estimate of actual mortality, these strandings represent a serious

impact to the recovery and survival of the local population.

The late fall and early winter is traditionally a major shrimping season along northeast Florida. During this period, shrimp leave the estuaries to the north and migrate southward along the coast as waters cool. Shrimp fishing along the coast is currently active. Trawlers have been reported in the same areas as the leatherback strandings. The minimum size for TED openings specified in the sea turtle conservation regulations is not large enough to release leatherback turtles. Shrimp trawling with TEDs with openings that are not large enough to release leatherbacks is likely to lead to additional takes that would violate the terms and conditions of the incidental take permit. NMFS and state personnel will continue to investigate factors other than shrimping that may contribute to leatherback sea turtle mortality in Florida, including other fisheries and environmental factors.

Restrictions on Fishing by Shrimp Trawlers

Pursuant to 50 CFR 223.206(d)(4), the exemption for incidental taking of sea turtles in 50 CFR 223.206(d) does not authorize incidental takings during fishing activities if the takings would violate the restrictions, terms or conditions of an incidental take statement (ITS) or incidental take permit, or if the taking would jeopardize the continued existence of a species listed under the ESA. The August 19, 1992, biological opinion includes a condition under the ITS that specifies that NMFS must eliminate the episodic take of leatherback turtles by shrimp trawlers through area closures, requirements for large TED opening sizes, limitations on tow times, or some other protective measure. Failure by NMFS to take action to address the mortality seen in northeast Florida over the past month would likely violate the ITS. As a result, NMFS is requiring that fishing by shrimp trawlers in all Atlantic offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded on the south by 28°N. lat. and on the north by 30°42'45.6"N. lat. (the Georgia-Florida border), must be done with a net that is rigged for fishing with a TED installed that has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B)(1) and (2) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. This restriction is effective from

December 14, 2001 through 11:59 p.m. (local time) January 14, 2002.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media.

Additional Conservation Measures

The AA may withdraw or modify a determination concerning unauthorized takings or any restriction on shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures.

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 emergency situation to provide adequate protection for endangered leatherback 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 action. It would be impracticable and contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect identified large congregations of endangered leatherback sea turtles that are currently present in areas where substantial fishing effort is occurring. Furthermore, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this temporary rule for 30 days. Such delay would also prevent the agency from implementing this action in a timely manner to protect endangered leatherback sea turtles for the same reason. Accordingly, the AA is making the rule effective December 14, 2001 through January 14, 2002. Also as stated, this restriction has been announced on the NOAA weather channel, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification 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 notifications such as this. Copies of the EA are available (see ADDRESSES).

Dated: December 14, 2001.

William T. Hogarth,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328-1066-03; I.D. 121401B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Rhode Island

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

ACTION: Closure; commercial quota harvested for Rhode Island.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Rhode Island has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Rhode Island for the remainder of calendar year 2001, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery

require publication of this notification to advise the State of Rhode Island that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Rhode Island.

DATES: Effective from 0001 hours, December 20, 2001 through 2400 hours, December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281-9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2001 calendar year was set equal to 10,747,535 lb (4,875,000 kg) (66 FR 16151, March 23, 2001). The percent allocated to vessels landing summer flounder in Rhode Island is 15.68298 percent, or 1,685,534 lb (764,545 kg). This allocation was adjusted due to an underage in 2000, as provided in § 648.100 (e)(4), for a final allocation of 1,733,817 lb (786,446 kg).

Section 648.101 (b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. NMFS then publishes notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the

state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Rhode Island has attained its quota for 2001.

The regulations at § 648.4 (b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 20, 2001, further landings of summer flounder in Rhode Island by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2001 calendar year, unless additional quota becomes available through a transfer and is announced in the Federal Register. Effective 0001 hours, December 20, 2001, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Rhode Island for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 14, 2001.

Richard W. Surdi,

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

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