

applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Nationwide, there are approximately 1.6 million small organizations. Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

The *Order* adopts the interstate allocation factor for inbound two-line captioned telephone calls. As noted above, in August 2003 the Commission concluded that captioned telephone service is a form of TRS, and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. *See* paragraph 2, *supra*; *see also Captioned Telephone Declaratory Ruling*, 18 FCC Rcd at 16121, paragraph 1. In the July 2005 *Two-line Captioned Telephone Order*, the Commission concluded that two-line captioned telephone service is also a form of TRS eligible for compensation from the Fund. That order also recognized that there is no way to determine if a particular inbound two-line captioned telephone call is interstate or intrastate, and therefore adopted an allocation methodology and directed the Interstate TRS Fund administrator to propose an interstate allocation factor. The *Order* adopts the TRS Fund administrator’s proposed allocation factor.

The Commission does not believe that the adoption of the interstate allocation factor will have a significant economic impact; however, in the event that it does, it also notes that there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513310 (issued Oct. 2000). Of this total,

2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”). Currently, only three providers are providing captioned telephone service and being compensated from the Interstate TRS Fund: CapTel, Inc., Hamilton and Sprint. The Commission expects that only one of these providers may be a small entity under the SBA’s small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of two-line captioned telephone service the costs of providing interstate service.

The Commission will send a copy of the *Order*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b).

Federal Communications Commission.

**Jay Keithley,**

*Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.*

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 101**

[WT Docket No. 02–146; FCC 05–45]

### **Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** On December 7, 2005, the Office of Management and Budget (OMB) approved the information collection requirements contained in § 101.1523(b) pursuant to OMB Control No. 3060–1070. The Memorandum Opinion and Order, released on March 3, 2005, FCC 05–45, stated that the revision to 47 CFR 101.1523(b) will be effective upon OMB approval. This document announces the effective date of that published rule. Accordingly, the information collection requirements contained in that rule became effective on December 7, 2005.

**DATES:** The revision to § 101.1523(b) published at 70 FR 29985, May 25, 2005, became effective on December 7, 2005.

#### **FOR FURTHER INFORMATION CONTACT:**

David Hu, Esq., Wireless Telecommunications Bureau, Broadband Division, at (202) 418–2487.

**SUPPLEMENTARY INFORMATION:** In a Memorandum Opinion and Order, released on March 3, 2005, *FCC 05–45*, and published in the **Federal Register** on May 25, 2005, 70 FR 29985, the Commission revised its *Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands*, requiring licensees, as part of the link registration process, to submit to the database manager an analysis under the interference protection criteria. This interference analysis requirement is a new and modified information collection, previously approved by OMB (OMB Control No. 3060–1070), and implements the revised § 101.1523(b) of the Commission’s rules as published in the **Federal Register** on May 25, 2005.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 222 and 223**

[Docket No.050922245–5345–05; I.D. 092005A, 100505D]

RIN 0648–AT89

#### **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 30-day temporary rule to allow shrimp fishermen to continue to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in inshore and offshore waters from the Florida/Alabama border, westward to the Louisiana/Texas border, and extending offshore 20 nautical miles. The previous 30-day variances of the TED requirements were from September 23 through October 23, 2005; October 11 through November 10, 2005; October 22 through November 23, 2005; and from

November 24 through December 23, 2005, for waters affected by Hurricanes Katrina and Rita. These variances were initially for 50 nautical miles, while the most recent variance was for 20 nautical miles. After an investigation, NMFS has determined that excessive debris is still affecting fishermen's ability to use TEDs effectively in an area extending approximately 20 nm offshore. This action is necessary because environmental conditions resulting from Hurricanes Katrina and Rita persist on the fishing grounds, preventing some fishermen from using TEDs effectively.

**DATES:** Effective from December 23, 2005, through 11:59 p.m., local time, January 23, 2006.

**ADDRESSES:** Requests for copies of the National Environmental Policy Act Categorical Exclusion (CE) 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, 727-551-5794.

**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 part 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 B 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 12, 2005, the NMFS Southeast Regional Administrator received requests from the Marine Fisheries Division of the Alabama Department of Conservation and Natural Resources (ALDCNR) and the Louisiana Department of Wildlife and Fisheries

(LADWF) to allow the use of tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm related debris on the fishing grounds as a result of Hurricane Katrina. NMFS received a similar request from the Mississippi Department of Marine Resources (MDMR) on September 13. On September 27, 2005, the NMFS Southeast Regional Administrator received requests from the LADWF and the Texas Parks and Wildlife Department (TPWD) to allow the use of tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm related debris on the fishing grounds as a result of Hurricane Rita. Subsequent to these requests, NMFS issued 30-day exemptions to the TED requirements from September 23 through October 23, 2005, and October 11 through November 10, 2005, for waters affected by Hurricanes Katrina and Rita, respectively (70 FR 56593 and 70 FR 60013, respectively).

On October 11, 2005, the NMFS Southeast Regional Administrator received requests from the ALDCNR, MDMR, LADWF, and 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 was still present on the fishing grounds as a result of Hurricanes Katrina and Rita. Subsequent to these requests, NMFS issued a 30-day extension encompassing both previous exemptions to the TED requirements, from October 23, 2005, through November 23, 2005 (70 FR 61911).

On November 15, 2005, the NMFS Southeast Regional Administrator received requests from the Marine Fisheries Division of the ALDCNR, MDMR, LADWF, and TPWD for an additional 30-day period allowing the use of restricted 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 Katrina and Rita. Subsequent to these requests, NMFS issued a 30-day extension encompassing both previous exemptions to the TED requirements, from November 23, 2005, through December 23, 2005 (70 FR 71406).

On December 7, 2005, the NMFS Southeast Regional Administrator received a request from the Marine Fisheries ALDCNR to allow the use of tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm related debris on the fishing grounds as a result of Hurricane Katrina. NMFS received similar requests on December 19, 2005, from MDMR and

LADWF due to the cumulative effects of Hurricanes Katrina and Rita. The area cumulatively affected by the two hurricanes currently extends from the Florida/Alabama border, westward to the Louisiana/Texas border, and offshore 20 nautical miles. ALDCNR interviewed shrimp fishermen who indicated there are still serious debris problems out to 20 nautical miles, while MDMR's investigation indicates debris problems are still very serious nearshore, with continuing problems into the exclusive economic zone. LADWF's investigation and interviews with shrimp fishermen indicates there are still significant debris problems in state and federal waters. Interviews between these state agencies and NMFS indicated some shrimp fishermen continue to use TEDs in these areas as the TED is able to exclude debris from the trawl; however, these interviews also indicated there are still significant amounts of large debris that can render TEDs ineffective at releasing turtles. When a TED is clogged with debris it neither catches shrimp nor excludes turtles effectively.

#### Special Environmental Conditions

The AA finds that debris washed into inshore and offshore waters by Hurricanes Katrina and Rita off Alabama, westward to the Louisiana/Texas border, and extending offshore 20 nautical miles, has created ongoing special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to extend the current authorization for the use of restricted tow times as an alternative to the use of TEDs in inshore and offshore waters off Alabama, westward to the Louisiana/Texas border, and extending offshore 20 nautical miles, through 11:59 p.m., local time, January 23, 2006. 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.

#### 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 inshore and offshore waters affected by Hurricanes Katrina and Rita off Alabama, westward to the Louisiana/Texas border, and extending offshore 20 nautical miles, through January 23, 2006. 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 temporary 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 at 11:59 p.m., local time, January 23, 2006, 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 special environmental conditions to allow effective 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)(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 has created ongoing 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 Hurricanes Katrina and Rita in a timely manner.

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. Many fishermen may be unable to operate under the special environmental conditions created by Hurricanes Katrina and Rita without an alternative to using TEDs. Providing a 30-day delay in effective date would prevent the agency from providing the affected industry relief from the effects of Hurricanes Katrina and Rita in a timely manner. For the reasons stated 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.

On November 18, 2005, a CE determination was completed for NMFS' issuance of temporary rules authorizing the use of § 223.206(d)(3)(ii). The proposed extension would also be encompassed by the November 18 CE.

Dated: December 23, 2005.

**John Oliver,**

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

[FR Doc. 05-24604 Filed 12-23-05; 12:48 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 051114298-5338-02; I.D. 110105C]

RIN 0648-AT12

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Commercial Grouper Fishery; Trip Limit

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes a 6,000-lb (2,722-kg) commercial trip limit for shallow-water and deep-water grouper, combined, in the exclusive economic zone of the Gulf of Mexico. The intended effect of this final rule is to minimize the effects of derby fishing and prolong the fishing season.

**DATES:** This final rule is effective January 1, 2006.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) are available from Andy Strelcheck, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305; fax: 727-824-5308; e-mail: [andy.strelcheck@noaa.gov](mailto:andy.strelcheck@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Andy Strelcheck, telephone: 727-824-5374, fax: 727-824-5308, e-mail: [andy.strelcheck@noaa.gov](mailto:andy.strelcheck@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is

managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Council recommended, and NMFS published, a proposed rule (70 FR 70575, November 22, 2005) to establish a 6,000-lb (2,722-kg) commercial trip limit for shallow-water and deep-water grouper, combined, in the exclusive economic zone of the Gulf of Mexico. Public comments on the proposed rule were requested through December 7, 2005. A summary of the comments and NMFS' responses are provided below. The rationale for this trip limit is provided in the regulatory amendment and in the preamble to the proposed rule and is not repeated here.

#### Comments and Responses

Following is a summary of the comments received on the proposed rule and NMFS' responses.

*Comment 1:* One commenter supported the 6,000-lb (2,722-kg) commercial trip limit, but recommended reducing the trip limit once 50 and 75 percent of the quota was reached.

*Response:* Six trip limit alternatives were considered, including no action and the preferred 6,000-lb (2,722-kg) gutted weight grouper trip limit. Several other stepped trip limit alternatives were also considered, which would have reduced the trip limit during the fishing year when a certain percentage of either the shallow-water grouper or red grouper quota was reached. These stepped trip limit alternatives were not selected because the lower trip limits were estimated to generate excessive negative economic impacts, particularly for longline vessels and vessels operating off the west-central coast of Florida.

*Comment 2:* One commenter supported the trip limit, but recommended longer closures or a 10-day open season at the beginning of each month.

*Response:* The intent of the 6,000-lb (2,722-kg) gutted weight commercial grouper trip limit is to prolong the fishing season and reduce the effects of derby fishing. Longer closures or 10-day open seasons are contrary to the action's objective of reducing the effects of derby fishing and extending the commercial grouper fishing season.

*Comment 3:* One commenter opposed the trip limit and believed the trip limit was too large and should be less.

*Response:* Several alternatives with lower trip limits than the preferred 6,000-lb (2,722-kg) gutted weight trip limit were considered. These more restrictive trip limit alternatives were not selected because the lower trip limits were estimated to generate excessive negative economic impacts, particularly for longline vessels and vessels operating off the west-central coast of Florida.

*Comment 4:* One commenter supported the trip limit, but questioned the effectiveness of the trip limit if it resulted in additional fishing trips.

*Response:* An environmental assessment (EA) was conducted for this action, which evaluated the effects of the trip limit on the physical, biological, social, and economic environment. As part of the EA, an economic simulation analysis was conducted, which allowed for extra fishing trips to be taken in response to lower trip limits. Extra trips were only allowed to occur if revenues were sufficient to cover trip costs. Based on the results of this simulation analysis, the shallow-water grouper fishery was projected to close 2-14 days earlier than if extra trips were not allowed to be taken.

*Comment 5:* One commenter suggested longline fishing gear should be eliminated.

*Response:* The regulatory amendment only proposed trip limits for reducing the effects of derby fishing and moderating the rate of commercial grouper harvest. The regulatory amendment did not provide notice or seek comment on elimination of any type of gear from the fishery. Therefore, this comment is beyond the scope of the regulatory amendment and this rule.

*Comment 6:* The Southern Offshore Fishing Association (SOFA) indicated they were in favor of trip limits, but believed the 6,000-lb (2,722-kg) trip limit would have adverse economic effects on larger vessels. They suggested two alternative trip limit proposals be considered. The first proposal is to implement a tiered trip limit with a 7,500-lb (3,402-kg) limit for longline vessels and 2,500-lb (1,134-kg) trip limit for vertical-line vessels. The second proposal is to implement a 7,500-lb (3,402-kg) trip limit for vessels with a documented length over 45 ft (13.7 m), a 5,500-lb (2,495-kg) trip limit for vessels with a documented length under 45 ft (13.7 m), and a 1-month closure of the shallow-water grouper fishery from May 20 to June 20.

*Response:* At its October 3-6, 2005 meeting, the Council reviewed a proposal by SOFA for a 7,500-lb (3,402-kg) trip limit and additional closed season. In response to this proposal,