

not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today’s proposed action because it does not require the public to

perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 18, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–15293 Filed 6–15–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No.010607150–1150–01; I.D. 091200F]

RIN 0648–AN64

Sea Turtle Conservation; Restrictions Applicable to Fishing and Scientific Research Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the sea turtle handling and resuscitation regulation. Recent scientific and technical information indicate that the current procedures need to be updated. This measure is necessary to improve the handling of sea turtles that are incidentally captured during scientific research or fishing activities.

DATES: Written comments must be received on or before July 18, 2001.

ADDRESSES: Comments on this proposed rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or comments may be submitted via facsimile 301–713–0376 or via electronic Internet at seaturt.resuscitate@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Therese A. Conant, or Barbara A. Schroeder, (301)713–1401.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223

(see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp and summer flounder fishing in areas of the Atlantic Ocean and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement to have a NMFS-approved turtle excluder device (TED) installed in each net rigged for fishing. Other exceptions to the taking prohibition include incidental take that is authorized for ESA scientific research permits, incidental take permits, and section 7 incidental take statements. All take excepted from the prohibitions requires safe handling and resuscitation of incidentally caught sea turtles as specified at 50 CFR 223.206(d)(1).

Justification and Changes Proposed

Sea turtles are air breathers and may drown under conditions of forced submergence. To minimize the impact of forced submergence, NMFS developed protocols to handle comatose turtles (FR 43 32801, July 28, 1978) and subsequently updated the protocols (57 FR 57354, December 4, 1992). New scientific and technical information has been collected since the last update. For example, the practice of stepping on the plastron to revive the turtle may actually do more harm than good. Plastral pumping may cause the airway to block, thus prohibiting air from entering the lungs. Pumping the plastron while a turtle is on its back also causes the viscera to compress the lungs which are located dorsally, thereby hindering lung ventilation. Recent physiological studies on the effects of trawl capture on small sea turtles show that high stress levels are developed during short-duration forced submergences and that the turtles may require from 3.5 up to 24 hours to recover from the stress effects. Thus, in addition to comatose turtles being held up to 24 hours, the release of actively moving turtles should also be delayed when possible. Resuscitation techniques have been refined over the years as biologists have developed effective ways to test for reflexes in order to determine the status of the turtle.

The proposed changes to the existing protocol are as follows: Eliminate stepping on the plastron as a method for resuscitation; provide a more defined criteria to determine dead versus comatose turtles; increase the minimum elevation of the hindquarters; and add carapace movement and a reflex test to the resuscitation methods. In addition,

several minor changes have been made to clarify the guidance for keeping a turtle moist. The changes to the sea turtle resuscitation requirements are expected to increase the survivorship of turtles that are returned to the water after being captured in a trawl.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this proposed rule is consistent with the ESA and with other applicable law.

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA prepared an environmental impact statement (EIS) for the 1978 listing determination, establishing the handling and resuscitation requirements and prepared an environmental assessment (EA) for the 1992 updated of the requirements. Since the changes proposed in this rule do not constitute a new action and do not individually or cumulatively have a significant impact on the quality of the human environment, this proposed rule has been determined to be Categorical Exclusion under the National Environmental Policy Act. A copy of the 1978 EIS and the 1992 EA are available (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have significant economic impact on a substantial number of small entities, because the provisions of the proposed rule would make only minor changes that would not impose any new economic burden on fishermen or scientific researchers.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Dated: June 12, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B; 16 U.S.C. 1361 *et seq.*

2. In § 223.206, paragraph (d)(1) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(1) *Handling and resuscitation requirements.* (i) Any specimen taken incidentally during the course of fishing or scientific research activities must be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water according to the following procedures:

(A) Sea turtles that are actively moving or determined to be dead as described in paragraph (d)(1)(i)(C) of this section must be released over the stern of the boat. In addition, they must be released only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose, or inactive, as determined in paragraph (d)(1) of this section, by:

(1) Placing the turtle on its bottom shell (plastron) so that the turtle is right side up and elevating its hindquarters at least 6 inches (15.2 cm) for a period of 4 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Periodically, rock the turtle gently left to right and right to left by holding the outer edge of the shell (carapace) and lifting one side about 3 inches (7.6 cm) then alternate to the

other side. Gently touch the eye and pinch the tail (reflex test) periodically to see if there is a response.

(2) Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance be placed into a container holding water. A water-soaked towel placed over the head, carapace, and flippers is the most effective method in keeping a turtle moist.

(3) Turtles that revive and become active must be released over the stern of the boat only when fishing or scientific collection gear is not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Sea turtles that fail to respond to the reflex test or fail to move within 4 hours (up to 24, if possible) must be returned to the water in the same manner as that for actively moving turtles.

(C) A turtle is determined to be dead if the muscles are stiff (rigor mortis) and/or the flesh has begun to rot; otherwise the turtle is determined to be comatose or inactive and resuscitation attempts are necessary.

(ii) Notwithstanding the provisions of (d)(1)(i) of this section, a person aboard a pelagic longline vessel in the Atlantic issued an Atlantic permit for highly pelagic species under 50 CFR 635.4, must follow the handling and resuscitation requirements in 50 CFR 635.21.

(iii) Any specimen taken incidentally during the course of fishing or scientific research activities must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

* * * * *

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

4. Section 224.104 is revised by adding a new paragraph (d) to read as follows:

§ 224.104 Incidental capture of endangered sea turtles.

* * * * *

(d) Special handling and resuscitation requirements are specified at § 223.206(d)(1).

[FR Doc. 01–15319 Filed 6–15–01; 8:45 am]

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