

an audit of the process of remitting the fee.

TSA or other Federal entities may also audit Appendix A and the supporting information to ensure that the information provided in Appendix A is true and correct, as well as to ensure that the Appendix A submitted and fees paid are consistent with the requirements of the IFR. The decision to conduct a Federal audit does not relieve a carrier of its own audit burden.

### 13. When the Audit Is Due

As provided for in the IFR, the audit is due to be received by TSA no later than July 1, 2002. TSA will not enforce this deadline against a carrier that submits a timely and proper Appendix A, makes timely and proper fee payments, and submits the audit to TSA no later than August 1, 2002.

### 14. How To Submit the Audit

As with Appendix A, submit the audit to: Chief Financial Officer, Transportation Security Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

### 15. What To Do With the CPA's Working Papers for the Audit

The IFR indicates that the "accountant's working papers with respect to the audit must be included with this submission." This requirement may be satisfied by including in the audit submission the availability (location and time) of the accountant's working papers, so long as the working papers are retained and provided to TSA upon request.

Issued in Washington, DC, on April 29, 2002.

**Stephen J. McHale,**

*Deputy Under Secretary of Transportation for Security.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No. 020426096-2096-01; I.D. 042402D]

RIN 0648-AP99

#### Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary area gear restriction.

**SUMMARY:** NMFS is closing, for a 2-week period, all inshore waters and offshore waters 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat.

(approximately Tybee Island, GA) and 34° N. lat. (approximately Wilmington Beach, NC) within the Leatherback Conservation Zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

**DATES:** This action is effective from April 26, 2002 through 11:59 p.m. (local time) on May 10, 2002.

**ADDRESSES:** Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the Internet.

#### FOR FURTHER INFORMATION CONTACT:

David Bernhart (ph. 727-570-5312, fax 727-570-5517, e-mail

[David.Bernhart@noaa.gov](mailto:David.Bernhart@noaa.gov)); or Barbara Schroeder (ph. 301-713-1401, fax 301-713-0376, e-mail

[Barbara.Schroeder@noaa.gov](mailto:Barbara.Schroeder@noaa.gov)).

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 fax 228-769-8699.

#### SUPPLEMENTARY INFORMATION:

Prohibitions on taking sea turtles are governed by regulations implementing the Endangered Species Act at 50 CFR parts 222 and 223. The incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States 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 that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not

an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to provide protection for leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback Conservation Zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

An initial aerial survey conducted on April 19, 2002, along the South Carolina coast documented 15 leatherback turtles between Bull's Bay and South Island (across both zones 32 and 33) and 11 leatherback turtles between Pritchard Island and Edisto Island in zone 32, with each area of leatherback concentration being less than 50 nm (92.6 km) in length. A replicate survey was flown along the South Carolina coast on April 23, 2002. During the replicate survey 11 leatherbacks were seen in a 13-nm stretch near Edisto Island in zone 32, 14 leatherbacks were seen in the zone 32 to 33 trackline overlap area (from Folly Beach to Cape Island, approximately a 42-mile stretch), and 15 leatherbacks were seen in a 27-mile stretch in zone 33 near the Windy Hill area. The sighting frequencies in the original and replicate surveys all met or exceeded the regulatory standard of at least 10 animals within a 50-nm (92.6-km) length of survey trackline.

The Assistant Administrator for Fisheries, NOAA (AA), is closing all inshore waters and offshore waters 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 34° N. lat., within the Leatherback Conservation Zone to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B)(1) or (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.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intention to fish in the closed area. This aspect of the regulations does not have a current

Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

#### Classification

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

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zones 32 and 33. This action allows shrimp fishing to continue in the affected area so long as fishermen make the required gear modifications.

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. As a sizeable concentration of leatherback turtles has been observed in an area fished by shrimp trawlers, it is extremely likely that interactions will occur. It would be impracticable to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback.

Pursuant to 5 U.S.C. 553(d)(3), the AA finds that there is good cause not to delay the effective date of this rule for 30 days. Such delay would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Accordingly, the AA is making this temporary rule effective April 26, 2002 through May 10, 2002. This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570-5312 for updated area closure information.

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 requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see ADDRESSES).

Dated: April 26, 2002.

**William T. Hogarth**

*Assistant Administrator for Fisheries,  
National Marine Fisheries.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 224

[Docket No. 001025296-2079-02; I.D. 072600A]

RIN 0648-AO05

##### Endangered and Threatened Species: Range Extension for Endangered Steelhead in Southern California

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

**ACTION:** Final rule.

**SUMMARY:** NMFS has received new evidence of steelhead (*anadromous Oncorhynchus mykiss*) presence in two locations and spawning in one location south of the current range of the listed southern California steelhead Evolutionarily Significant Unit (ESU) which is currently Malibu Creek. Based upon this new information, and the possibility that anadromous *O. mykiss* may occur in other streams south of Malibu Creek if hydrologic and other habitat conditions are favorable, NMFS is now issuing a final rule under the Endangered Species Act (ESA) that redefines the geographic range of the listed anadromous *O. mykiss* population to include all steelhead and their progeny that occur in coastal river basins from the Santa Maria River (inclusive) to the U.S. - Mexico Border. NMFS has reassessed the status of anadromous *O. mykiss* throughout its redefined range in Southern California and concludes that the listed population continues to be endangered.

Within the redefined geographic range of *O. mykiss*, only anadromous, naturally spawned populations, and their progeny, which reside below naturally occurring and man-made impassable barriers (e.g., impassable waterfalls and dams) are listed.

**DATES:** Effective July 1, 2002.

**ADDRESSES:** Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

#### FOR FURTHER INFORMATION CONTACT:

Craig Wingert, 562-980-4021, or Chris Mobley, 301-713-1401.

#### SUPPLEMENTARY INFORMATION:

##### Previous Federal ESA Actions Related to the Southern California Steelhead ESU

In 1994, NMFS received a petition from the Oregon Natural Resources Council and numerous co-petitioners to list west coast steelhead (*Oncorhynchus mykiss*) populations under the ESA. In response to the petition, NMFS conducted a status review of west coast steelhead (Busby *et al.*, 1996) which identified 15 Evolutionarily Significant Units (ESUs) of steelhead in Washington, Oregon, Idaho, and California, and assessed their risk of extinction. One of these 15 ESUs was the Southern California steelhead ESU which was found to be at a high risk of extinction.

Based on this status review and a consideration of the listing factors in section 4(a)(1) of the ESA, NMFS proposed to list the Southern California steelhead as an endangered species in August 1996 (61 FR 41541). In August 1997, NMFS published a final rule listing this ESU as an endangered species (62 FR 43937). In the final rule, NMFS listed only the anadromous life form of *O. mykiss*, and, therefore, defined the listed Southern California steelhead population to include all naturally spawned populations of steelhead (and their progeny) in streams from the Santa Maria River in San Luis Obispo County (inclusive) to and including Malibu Creek in Los Angeles County. At the time of listing, NMFS believed Malibu Creek represented the southernmost extent of the range of anadromous *O. mykiss* in southern California.

On February 5, 1999, NMFS published a proposed critical habitat designation for 19 ESUs of threatened and endangered salmon and steelhead distributed throughout Washington, Oregon, Idaho, and California, including the endangered Southern California steelhead ESU (64 FR 5740). A final rule designating critical habitat for these 19 ESUs, including the Southern California steelhead ESU, was published on February 16, 2000 (65 FR 7764).

Although the critical habitat designation for Southern California steelhead is presently in effect, NMFS has recently sought approval from the U.S. District Court in the District of Columbia for a consent decree that would vacate critical habitat designations for Southern California steelhead and 18 other salmon/steelhead ESUs as a result of litigation