

ASME Boiler and Pressure Vessel Code, (ibr, see § 195.3) except that a welder qualified under an earlier edition than listed in § 195.3 may weld but may not requalify under that earlier edition.

■ 7. Amend § 195.228 by revising paragraph (b) to read as follows:

**§ 195.228 Welds and welding inspection: Standards of acceptability.**

\* \* \* \* \*

(b) The acceptability of a weld is determined according to the standards in Section 9 of API 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if Appendix A to API 1104 (ibr, see § 195.3) applies to the weld, the acceptability of the weld may be determined under that appendix.

**PART 199—DRUG AND ALCOHOL TESTING**

■ 1. The authority citation for part 199 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

■ 2. Amend § 199.119 by revising paragraph (b) to read as follows:

**§ 199.119 Reporting of anti-drug testing results.**

\* \* \* \* \*

(b) Each report required under this section shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590.

\* \* \* \* \*

■ 3. Amend § 199.229 by revising paragraph (c) to read as follows:

**§ 199.229 Reporting of alcohol testing results.**

\* \* \* \* \*

(c) Each report required under this section shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590.

\* \* \* \* \*

Issued in Washington, DC, on April 23, 2004.

**Samuel G. Bonasso,**  
Deputy Administrator.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 222 and 223**

[Docket No. 040604170-4170-01; I.D. 060204D]

**RIN 0648-AS42**

**Sea Turtle Conservation; Shrimp Trawling Requirements**

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

**ACTION:** Temporary emergency rule.

**SUMMARY:** NMFS is imposing, for a 30-day period, additional restrictions on shrimp trawlers in offshore Atlantic waters west of 77°57.5' W. long. (approximately Cape Fear, N.C.) and north of 30° N. lat. (just north of St. Augustine, Fla.). Shrimp trawlers in this area are prohibited from fishing at night between 9 p.m. and 5 a.m. eastern daylight time (EDT). NMFS is taking this action because NMFS has determined that recent, unusually high increases in shrimping effort in this area, particularly very long tows made at night, are the cause of extraordinarily high mortality and strandings of sea turtles that are listed as endangered or threatened. This action is necessary to reduce mortality of listed sea turtles incidentally captured in shrimp trawls.

**DATES:** This action is effective from June 7, 2004 through July 7, 2004.

**ADDRESSES:** Assistant Regional Administrator for Protected Resources, NMFS Southeast Regional Office, 9721 Executive Center Drive North, Suite 102, St. Petersburg, FL 33702, 727-570-5312.

For access to the docket to read background documents go to <http://www.regulations.gov> and/or the mailing address listed above.

**FOR FURTHER INFORMATION CONTACT:**

Robert Hoffman (ph. 727-570-5312, fax 727-570-5517, e-mail

Robert.Hoffman@noaa.gov), or Barbara

A. Schroeder (ph. 301-713-1401, fax

301-713-0376, e-mail

Barbara.Schroeder@noaa.gov).

**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 killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206, or if in accordance with the terms and conditions of a biological opinion issued under section 7 of the ESA or 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 provide for the escape of sea turtles. 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, that 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)). 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.

**February 21, 2003, Amendments to the Sea Turtle Conservation Regulations**

On February 21, 2003, NMFS issued a final rule (68 FR 8456), amending the sea turtle conservation regulations to protect large loggerhead, green, and leatherback sea turtles. The February 2003 final rule requires that all shrimp trawlers fishing in the offshore waters of the southeastern United States (Atlantic area and Gulf area) and the inshore

waters of Georgia and South Carolina use either a double cover flap TED, a single-grid hard TED with a 71-inch (180-cm) opening, or a Parker soft TED with a 96-inch (244-cm) opening in each net rigged for fishing. In inshore waters, except those of Georgia and South Carolina, the rule allows the use of a single-grid hard TED with a 44-inch (112-cm) opening, a Parker soft TED with a 56-inch (142-cm) opening, and a hooped hard TED with a 35-inch (89-cm) by 27-inch (69-cm) escape opening.

Section 4(b)(7) of the Endangered Species Act (16 U.S.C. 1533(b)(7)), provides for issuance of regulations, not subject to notice and comment, regarding emergencies posing a significant risk to the well-being of listed species. Such regulations may take effect immediately upon filing for public inspection in the **Federal Register**, and may be effective up to 240 days.

#### Recent Events

NMFS has been notified by the Georgia Department of Natural Resources (GADNR) that extraordinarily high numbers of threatened and endangered sea turtles have stranded off the Georgia coast. From May 5, 2004, through May 24, 2004, a total of 82 sea turtles have washed ashore along the Georgia coast (shrimp zones 30 and 31). By comparison, the 12-year average of stranded sea turtles in Georgia for this time period is about 18. Considering the fact that strandings are only a minimum estimate of actual mortality, these strandings represent a serious impact to local sea turtle populations.

Information from GADNR and NOAA enforcement indicates that there is a high number of shrimp boats off Georgia for the current season. Georgia state waters are closed to shrimping, so the fishery is currently operating only in Federal waters, targeting high-value, large white shrimp. These sources also indicate there are a large number of very large, powerful shrimp vessels from North Florida and Gulf states (estimated at 25–30 boats) that are participating in the fishery. These boats are generally capable of fishing a greater number of larger nets at higher speeds than the local boats. Although white shrimp are generally only caught during the day, these large vessels have been observed to be fishing 24-hours-a-day and using long tow times (up to 12 hours in some cases). Local fishermen fish mostly in the day to target white shrimp using tow times of two to four hours. The 24-hour fishing, in conjunction with long tow times, represents a significant increase in effort in this area. An aerial survey to

monitor shrimping effort on May 21 found that most of the large trawlers were concentrated in the southern part of the state, in the area of highest strandings.

NMFS believes that the increased shrimping effort, particularly the switch to nighttime fishing and very long tow-times, is responsible for the sharp increase in turtle mortality and strandings along the Georgia coast.

#### Analysis of Other Factors

NMFS has analyzed other factors that might have contributed to the turtle strandings, including environmental conditions, and no possible causes other than shrimp trawling have been identified. A single vessel fishing for sharks using drift gillnets a fishing method that is known to capture and kill sea turtles has been operating in Federal waters in the Florida-Georgia border area in the past month. A NMFS observer has been aboard that vessel for every trip since May 12, however, and no sea turtle interactions have been observed. There is no evidence of a red tide or other harmful plankton bloom event or any major disease factor. The condition of the stranded turtles has indicated that they were generally healthy and actively foraging prior to their deaths, which is consistent with strandings resulting from shrimp trawling. The carcasses have primarily been coming ashore in the vicinity of areas where shrimping effort has been concentrated. NMFS and state personnel will continue to investigate factors other than shrimping that may contribute to sea turtle mortality in the area, including other fisheries and environmental factors.

#### Restrictions on Fishing for Shrimp Trawlers

Pursuant to 16 U.S.C. 1533(b)(7), NMFS has determined that the unusually high recent numbers of strandings and mortalities of sea turtles off the coast of Georgia constitute a significant risk to the well-being of listed species of sea turtles. NMFS has determined that this temporary emergency rule prohibiting shrimp trawl fishing during night time hours is necessary to alleviate the increased shrimping effort in the area that has been determined to be the cause of the recent increase in strandings. NMFS has determined that this emergency prohibition on night time shrimp trawl fishing is necessary in an area larger than the current hot-spot of strandings, to prevent fishing practices that are harmful to sea turtles from simply relocating to other areas in the South Atlantic. Specifically, this rule prohibits

shrimp trawling in the area in offshore Atlantic waters west of 77°57.5' W. longitude (approximately Cape Fear, N.C.) and north of 30° N. latitude (just north of St. Augustine, Fla.) between 9 p.m. and 5 a.m. EDT. This restriction is effective from June 7, 2004 through 11:59 p.m. (local time) July 7, 2004. NMFS is restricting this emergency rule to a 30-day period because the vessels responsible for the unusual increase in effort off the Georgia coast typically target their fishing efforts in Gulf of Mexico waters beginning in late June to early July.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawl fishermen may also call (727)570-5312 for updated information on shrimping restrictions.

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

#### Classification

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

NMFS has determined that this action is necessary to respond to an emergency situation to provide adequate protection for threatened and endangered sea turtles pursuant to the ESA and other applicable law. This temporary rule is being promulgated under 16 U.S.C. 1533(b)(7), and includes a detailed statement of the reasons why such regulation is necessary, as required by that section. Therefore, the requirements of 5 U.S.C. 553 are inapplicable.

As prior notice and an opportunity for public comment are not required to be provided for this rule pursuant to 16 U.S.C. 1533(b)(7), the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

As required by 16 U.S.C. 1533(b)(7), NMFS has consulted with the marine fisheries officials in Florida, Georgia, South Carolina, and North Carolina on this emergency action. The required nighttime closure will be complementary to existing nighttime closures of state waters in Georgia, South Carolina, and North Carolina, in that there will be a closure; however, the times of the closure in Federal waters are not exactly the same as the times for the closure in state waters.

NMFS has prepared an Environmental Assessment (EA) for this action. Copies of the EA are available (see **ADDRESSES**).

Dated: June 7, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 040112010-4167-03; I.D. 122203A]

RIN 0648-AN17

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13 Regulatory Amendment

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

**ACTION:** Final rule, regulatory amendment.

**SUMMARY:** The final rule to implement Amendment 13 to the NE Multispecies Fishery Management Plan (Amendment 13) was published on April 27, 2004, and the majority of measures became effective on May 1, 2004. This final rule, regulatory amendment amends observer notification requirements of Amendment 13 to relieve a restriction. The required observer notification period for groundfish Days-at-Sea (DAS) vessels fishing in the U.S./Canada Management Area is reduced from 5 working days to 72 hours. The intent is to provide maximum flexibility to the fishing industry while still meeting the requirements and objectives of the management program.

**DATES:** Effective June 10, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135, e-mail Thomas.Warren@NOAA.gov.

**SUPPLEMENTARY INFORMATION:** The April 27, 2004, final rule implementing Amendment 13 (69 FR 22906) included an administrative measure for the purpose of selecting vessels for observer coverage. Vessel owners who choose to fish in either of the two U.S./Canada Management Areas, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure at least 5 working days prior to the beginning of any trip that is declared

into the U.S./Canada Management Area. The goal of this requirement was to obtain a level of observer coverage on NE multispecies vessels fishing in the U.S./Canada Management Area that is consistent with the rest of the fishery (i.e., 10 percent for the 2004 fishing year). The objective is to provide notification to the NMFS Observer Program of planned trips, prior to the departure of the trip, so that the Observer Program has sufficient time to contact and deploy observers.

Although a notification period of 5 working days was determined to be optimal in terms of the operational requirements of the NMFS Observer Program, public comments received from numerous industry members have indicated that a shorter notification requirement would provide vessels greater flexibility to react to contingencies such as weather developments. Upon further consideration, NMFS has determined that a notification period of 72 hours represents a balance between the requirements of the Observer Program and the interests of the fishing industry, while still meeting the objectives of Amendment 13. Therefore, this final rule reduces the notification time for groundfish DAS vessels prior to departure of a trip into the U.S./Canada Management Area from 5 working days to 72 hours.

#### Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C 553(b)(B) to waive the requirement to provide prior notice and the opportunity for public comment on this regulatory amendment as such procedures are unnecessary and contrary to the public interest. The timing of the advance notification for the purposes of placing observers on fishing vessels is purely a NMFS administrative function. The objective of the advance notification is to allow the Observer Program sufficient time to contact and deploy observers. Reducing the notification period from five days to three days does not impact the fishery management measures that became effective on May 1, 2004. In addition, numerous industry members, the fishery management council and the State of Maine, requested a reduction to the notification period. Fisherman will benefit from a shorter notification period because it will provide vessels greater flexibility to react to contingencies such as weather developments, while still allowing sufficient time to place observers on vessels. Further, the AA has determined

that the 30-day delay in effectiveness requirement under 5 U.S.C. 553(d)(1) is not applicable because this action relieves a restriction as described in the **SUPPLEMENTARY INFORMATION** section of this rule.

This action is authorized by 50 CFR part 648 and is exempt from review under 12866. This action modifies a collection-of-information requirement for the purposes of the Paperwork Reduction Act. Although the costs associated with this reporting requirement do not change as a result of this final rule, the burden to the industry will be reduced because this rule relieves a restriction.

Because prior notice and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other applicable law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 2004.

**Rebecca Lent,**

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

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.85, the last sentence in paragraph (a)(3)(ii) is revised to read as follows:

#### § 648.85 Special management programs.

(a) \* \* \*

(3) \* \* \*

(ii) \* \* \* For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least 72 hours prior to the beginning of any trip which it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

\* \* \* \* \*

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