

(2) A description of all pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations;

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone;

(4) If one or more species' take levels have been reached or exceeded during the previous year, additional documentation must be provided on the taking and a description of any measures that will be taken in the following year to prevent exceeding the authorized incidental take level.

(5) Results of any population assessment studies made on marine mammals in the Outer Sea Test Range during the previous year.

§ 216.156 Renewal of Letter of Authorization.

(a) A Letter of Authorization issued under § 216.106 for the activity identified in § 216.151(a) will be renewed annually upon:

(1) Timely receipt of the reports required under § 216.155(f) and (g), which have been reviewed by the Assistant Administrator for Fisheries, NOAA, and determined to be acceptable;

(2) A determination that the maximum incidental take authorizations in § 216.151(b) will not be exceeded; and

(3) A determination that the mitigation measures required under § 216.153(b) and the Letter of Authorization have been undertaken.

(b) If a species' annual authorization is exceeded, the National Marine Fisheries Service will review the documentation submitted with the annual report required under § 216.155(g), to determine that the taking is not having more than a negligible impact on the species or stock involved.

(c) Notice of issuance of a renewal of the Letter of Authorization will be published in the FEDERAL REGISTER.

[59 FR 5126, Feb. 3, 1994. Redesignated and amended at 61 FR 15887, 15890–15891, Apr. 10, 1996]

§ 216.157 Modifications to Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 216.146, without modification, is not considered a substantive modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151, or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 216.151, the Letter of Authorization issued pursuant to § 216.106, or renewed pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the FEDERAL REGISTER subsequent to the action.

[59 FR 5126, Feb. 3, 1994. Redesignated and amended at 61 FR 15887, 15891, Apr. 10, 1996]

Subparts O–Q [Reserved]

PART 217—GENERAL PROVISIONS

Subpart A—Introduction

- Sec.
- 217.1 Purpose of regulations.
- 217.2 Scope of regulations.
- 217.3 Other applicable laws.
- 217.4 When regulations apply.

Subpart B—Definitions

- 217.12 Definitions.

Subpart C—Addresses

- 217.21 Assistant Administrator.
- 217.22 Office of Marine Mammals and Endangered Species.
- 217.23 Enforcement Division.

AUTHORITY: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

Subpart A—Introduction

§ 217.1 Purpose of regulations.

The regulations of parts 216 through 227 are promulgated to implement the following statutes enforced by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, which regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife.

(Endangered Species Act of 1973, section 11(f), 87 Stat. 884, Pub. L. 93-205; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-1)

[39 FR 41370, Nov. 27, 1974, as amended at 52 FR 24250, June 29, 1987]

§ 217.2 Scope of regulations.

The various provisions of parts 216 through 227 of this chapter are inter-related, and particular note should be taken that the parts must be construed with reference to each other. The regulations in parts 216 through 227 apply only for fish or wildlife under the jurisdictional responsibilities of the Secretary of Commerce for the purpose of carrying out the Endangered Species Act of 1973 (see part 222, § 222.23(a)). Endangered species of fish or wildlife other than those covered by these regulations are under the jurisdiction of the Secretary of the Interior. For rules and procedures relating to such species, see 50 CFR parts 10 through 17.

[39 FR 41370, Nov. 27, 1974, as amended at 52 FR 24250, June 29, 1987]

§ 217.3 Other applicable laws.

No statute or regulation of any State shall be construed to relieve a person from the restrictions, conditions, and requirements contained in parts 216 through 227 of this chapter. In addition, nothing in parts 216 through 227 of this chapter, nor any permit issued under parts 217 through 228 of this chapter, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other National Ma-

rine Fisheries Service enforced statutes or regulations.

[39 FR 41370, Nov. 27, 1974, as amended at 52 FR 24250, June 29, 1987]

§ 217.4 When regulations apply.

The regulations of parts 216 through 227 of this chapter shall apply to all matters, including the processing of permits, arising after the effective date of such regulations, with the following exception:

(a) *Civil penalty proceedings.* Except as otherwise provided in § 218.25, the civil penalty assessment procedures contained in parts 216 through 227 of this chapter shall apply only to any proceeding instituted by notice of violation dated subsequent to the effective date of these regulations, regardless of when the act or omission which is the basis of a civil penalty proceeding occurred.

[39 FR 41370, Nov. 27, 1974, as amended at 52 FR 24250, June 29, 1987]

Subpart B—Definitions

§ 217.12 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.

Act means the Endangered Species Act of 1973, as amended (Pub. L. 93-205).

Approved TED means:

(1) A hard TED that complies with the generic design criteria set forth in 50 CFR 227.72(e)(4)(i). (A hard TED may be modified as specifically authorized by 50 CFR 227.72(e)(4)(iv)); or

(2) A soft TED that complies with the provisions of 50 CFR 227.72(e)(4)(iii); or

(3) A special hard TED which complies with the provisions of 50 CFR 227.72(e)(4)(ii).

Assistant Administrator means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, or his authorized representative.

Atlantic Area means all waters of the Atlantic Ocean south of 36°33'00.8" N. latitude (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area, and

all waters shoreward thereof (including ports).

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimper means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

Commercial activity means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

Country of exportation means the last country from which the animal was exported before importation into the United States.

Country of origin means the country where the animal was taken from the wild, or the country of natal origin of the animal.

Fish or wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Fishing, or to fish, means:

(1) The catching taking or harvesting of fish or wildlife;

(2) The attempted catching, taking, or harvesting of fish or wildlife;

(3) Any other activity that can reasonably be expected to result in the

catching, taking, or harvesting of fish or wildlife; or

(4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

Footrope means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forwardmost webbing.

Footrope length means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forwardmost webbing.

Foreign commerce includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

Gulf Area means all waters of the Gulf of Mexico west of 81° W. longitude (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

Hard TED means a rigid deflector grid and associated hardware designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forwardmost webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forwardmost webbing.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

Inshore means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea,

1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Leatherback conservation zone means all inshore and offshore waters bounded on the south by a line along 28°24.6' N. lat. (Cape Canaveral, FL), and bounded on the north by a line along 36°30.5' N. lat. (North Carolina-Virginia border).

Length in reference to a shrimp trawler, means the distance from the tip of the vessel's bow to the tip of its stern.

North Carolina restricted area means that portion of the offshore waters bounded on the north by a line along 34°17.6' N. latitude (Rich Inlet, North Carolina) and 34°35.7' N. latitude (Browns Inlet, North Carolina) to a distance of 1 nautical mile seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972).

Offshore means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Permit or "*Certificate of exemption*" means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any permit or certificate of exemption.

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

Possession means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of

possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

Pre-Act endangered species part means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973 in the course of a commercial activity; or any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

Pusher-head trawl (chopsticks) means a trawl that is spread by poles suspended in a "V" configuration from the bow of the trawler.

Scrimshaw product means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving or carving.

Secretary means the Secretary of Commerce or his authorized representative.

Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

- (1) Brown shrimp (*Penaeus aztecus*);
- (2) White shrimp (*P. setiferus*);
- (3) Pink shrimp (*P. duorarum*);
- (4) Rock shrimp (*Sicyonia brevirostris*);
- (5) Royal red shrimp (*Hymenopenaeus robustus*); and
- (6) Seabob shrimp (*Xiphopenaeus kroyeri*).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that extends from the outrigger of a vessel

with a cable and a lead weight holding the trawl mouth open.

Soft TED means a panel of polypropylene or polyethylene netting designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

Summer flounder means the species *Paralichthys dentatus*.

Summer flounder fishery-sea turtle protection area means:

(1) All offshore waters, bounded on the north by a line along 37°05' N. latitude (Cape Charles, VA) and bounded on the south by a line along 33°35' N. latitude (North Carolina-South Carolina border), except as provided in paragraph (2) of this definition.

(2) [Reserved]

Summer flounder trawler means any vessel that is equipped with one or more bottom trawl nets, and that is capable of, or used for, fishing for flounder, or whose on-board or landed catch of flounder is more than 100 pounds (45.4 kg).

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Taut means a condition in which there is no slack in the net webbing.

TED (turtle excluder device) means a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Test net, or try net, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, sea-grasses, etc.).

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such

shipment, conveyance, carriage, or transportation.

United States means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

Whoever means the same as person.

Wildlife means the same as fish or wildlife.

Wing net (butterfly trawl) means a trawl with a rigid frame, rather than trawl door, holding the trawl mouth open.

(Sec. 3(d), Fish and Wildlife Act of 1956, as amended, 88 Stat. 92 (16 U.S.C. 742b); sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540))

[45 FR 57132, Aug. 27, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 217.12, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart C—Addresses

AUTHORITY: Sec. 3(d), Fish and Wildlife Act of 1956, as amended, 88 Stat. 92 (16 U.S.C. 742b); sec. 11(f), Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884 (16 U.S.C. 1540).

SOURCE: 45 FR 57133, Aug. 27, 1980, unless otherwise noted.

§ 217.21 Assistant Administrator.

Mail forwarded to the Assistant Administrator for Fisheries should be addressed:

Assistant Administrator for Fisheries, F
National Marine Fisheries Service
Washington, DC 20235.

§ 217.22 Office of Marine Mammals and Endangered Species.

Mail in regard to permits should be addressed to:

Office of Marine Mammals and Endangered
Species, F/MM
National Marine Fisheries Service
Washington, DC 20235.

§ 217.23 Enforcement Division.

Mail in regard to enforcement and certificates of exemption should be addressed to:

Enforcement Division, F/CM5

National Marine Fisheries Service
Washington, DC 20235.

PART 220—GENERAL PERMIT PROCEDURES

Subpart A—Introduction

Sec.

- 220.1 General.
- 220.2 Purpose of regulations.
- 220.3 Scope of regulations.
- 220.4 Emergency variation from requirements.

Subpart B—Application for Permits

- 220.11 Procedure for obtaining a permit.
- 220.12 [Reserved]
- 220.13 Abandoned application.

Subpart C—Permit Administration

- 220.21 Issuance of permits.
- 220.22 Duration of permit.
- 220.23 [Reserved]
- 220.24 Renewal of permit.
- 220.25 Permits not transferable; agents.
- 220.26 Right of succession by certain persons.
- 220.27 Change of mailing address.
- 220.28 Change in name.
- 220.29—220.30 [Reserved]
- 220.31 Discontinuance of activity.

Subpart D—Conditions

- 220.42 Permits are specific.
- 220.43 Alteration of permits.
- 220.44 Display of permit.
- 220.45 Filing of reports.
- 220.46 Maintenance of records.
- 220.47 Inspection requirement.

Subpart E—Permits Involving Endangered or Threatened Sea Turtles

- 220.50 Purpose.
- 220.51 Permit applications.
- 220.52 Issuance of permits.
- 220.53 Other requirements.

AUTHORITY: Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884, Pub. L. 93-205; act of August 31, 1951, Ch. 376, Title 5, sec. 501, 65 Stat. 290 (31 U.S.C. 483a).

SOURCE: 39 FR 41373, Nov. 27, 1974, unless otherwise noted.

Subpart A—Introduction

§ 220.1 General.

Each person intending to engage in an activity for which a permit is required by parts 217 through 222 of this chapter or the Endangered Species Act

of 1973 shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by parts 217 through 222 of this chapter must make application for such permit in accordance with the requirements of this part 220 of this chapter and the other regulations in parts 217 through 222 of this chapter which set forth the additional requirements for the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one part of parts 217 through 222 of this chapter, the requirements of each part must be met. If the information required for each specific permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

§ 220.2 Purpose of regulations.

The regulations contained in this part will provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to parts 217 through 222 of this chapter.

§ 220.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of parts 217 through 222 of this chapter and apply to all permits issued thereunder, including "Endangered Fish or Wildlife" (part 222).

§ 220.4 Emergency variation from requirements.

The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of parts 217 through 222 of this chapter, and will not be unlawful.

Subpart B—Application for Permits

§ 220.11 Procedure for obtaining a permit.

The following general procedures apply to applications for permits: