

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: December 12, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 01-468 Filed 1-8-01; 8:45 am]

BILLING CODE 6718-04-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No.980331080-0286-03; I.D. 092100A]

RIN 0648-AK66

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing this final rule to amend the regulations that require most shrimp trawlers to use Turtle Excluder Devices (TEDs) in the waters of the Atlantic and Gulf Areas of the United States, to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, NMFS is permanently approving the Parker soft TED for use in the waters of the Atlantic and Gulf Areas of the United States.

DATES: This final rule is effective January 9, 2001.

ADDRESSES: Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 727-570-5312.

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*) are listed as endangered. 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.

The incidental take and mortality of these species as a result of shrimp

trawling activities has been documented 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. Existing sea turtle conservation regulations (50 CFR 223.206 and 223.207) require most shrimp trawlers operating in the Gulf and Atlantic Areas, defined at 50 CFR 222.102, to have a NMFS-approved TED installed in each net rigged for fishing, year-round. TEDs currently approved by NMFS for shrimp trawling include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, and two types of special hard TEDs. One type of soft TED—the Parker soft TED—was approved through October 13, 2000.

NMFS approved the Parker TED for use in the waters of the Atlantic and Gulf Areas of the United States through an interim final rule (63 FR 17948, April 13, 1998). The interim final rule was set to expire on October 13, 1999. At that time, NMFS determined that while there was sufficient information on the use and effectiveness of the Parker TED to continue to allow its use, there was insufficient information to permanently approve it. Also, industry expressed interest in the testing for approval of variations of the Parker soft TED design. Therefore, NMFS extended its approval for 1 year (64 FR 55434, October 13, 1999), to allow time for the collection of additional data on the use and effectiveness of the Parker TED and to allow time for the shrimp industry to tests new soft TED designs. The extension expired on October 13, 2000.

NMFS looked at many aspects of the Parker soft TED's performance over the past 30 months in both the Gulf of Mexico and the South Atlantic. Observers placed aboard commercial trawlers have documented sea turtle capture rates and finfish bycatch reduction. Intensive law enforcement efforts have ensured and documented compliance with the technical requirements for using the Parker TED. NMFS' gear specialists provided initial training to net shops and trawler fleets in the proper installation and use of the Parker TED. Follow-up assistance was also provided to fishermen and net makers as they adapted to using the new soft TED.

Observer Information

NMFS' observer information generally shows that the rate of sea turtle capture in the Parker soft TED is comparable to hard TEDs. In 1997-1998 in the southeastern Atlantic, observers documented three turtle captures in nets equipped with Parker TEDs. A total of

190 tows were observed, for 515 hours of trawling. The resulting turtle catch rate ("Catch per unit effort," or "CPUE") was 0.005 turtles per 100 ft (30.5 m) headrope-hour. During the same time period, observers documented 1 turtle capture in nets equipped with hard TEDs. A total of 62 tows were observed, for 161 hours of trawling, for a CPUE of 0.005 turtles per 100 ft (30.5 m) headrope-hour. Observations in the Gulf of Mexico revealed a similar situation, although turtle catch rates in the Gulf are much lower overall. In 1998, no turtle captures were documented by observers in 133 tows using Parker TEDs, totaling 1,352 hours of trawling. During the same time period, 2 turtle captures were documented by observers in nets equipped with hard TEDs. A total of 2,081 tows were observed, for a total of 9,632 hours of trawling, representing a CPUE of 0.0001. All of these observed catch rates for shrimp trawlers using hard TEDs and Parker TEDs are small and it is therefore difficult to make definitive comparisons.

Shrimp loss in the Parker TED was also a concern, therefore observer data was collected to test the Parker TED's reliability catching shrimp. Observer data from the Gulf and South Atlantic Fisheries Development Foundation and South Carolina Department of Natural Resources showed that nets equipped with a Parker TED experienced an 11.9 and 8.4 percent reduction in shrimp catch, respectively, compared to a hard TED-equipped net.

Observations by Law Enforcement

The Protected Resources Enforcement Team (PRET) is a specially-equipped team of NMFS law enforcement officers that focus enforcement attention on protected resources issues primarily TEDs—in the southeastern United States. In 1998, the PRET's first year in operation, the team logged 488 hours of at-sea patrols, boarding 261 vessels as part of the TED compliance project. PRET boardings in 1998 focused on nearshore shrimping grounds along the coasts of Texas, Louisiana, Georgia, and South Carolina. A large portion of the PRET's efforts in 1999 had been dedicated to patrols along the Texas coast, due to the continuing concern over the number of dead sea turtles that strand on Texas beaches. From March 16, 1999, through August 19, 1999, the PRET boarded 241 vessels along the Texas and Louisiana coasts.

Enforcement efforts in the South Atlantic prior to October 1999 also indicated that use of the Parker TED in the shrimp fleet was very low. The PRET only encountered one trawler

equipped with Parker TEDs during 53 boardings in 1998. NMFS gear specialists accompanied SCNDR enforcement officers on patrols of state waters during May 1999. Out of approximately 40 trawlers boarded at sea, two were using Parker soft TEDs. The U.S. Coast Guard Group in Charleston, SC reported encountering only a total of 4 boats with Parker TEDs over the prior 2 years. No violations were reported from these seven boardings.

Since October 13, 1999, the PRET has concentrated their patrols in the Gulf of Mexico, where there was virtually no Parker soft TED use. The Parker TED is currently being used more in the Atlantic than in the Gulf, but even in the Atlantic the use is low (less than 50 boats). The Atlantic shrimping fleet is routinely inspected for TED compliance by the U.S. Coast Guard, state natural resources agency marine patrols, and NMFS law enforcement agents. No Parker TED violations have been documented in the Atlantic. While exact statistics on the numbers of inspections are not available, law enforcement agencies have found that the compliance rate on the boats that do use the Parker TED is good.

Parker Soft TED Tests

During 1998 and 1999, industry representatives expressed an interest in the testing for approving of Parker TED variations. NMFS issued the required testing permits to industry but there have been no new developments in Parker TED design reported by industry. Therefore, NMFS has no new Parker TED variations to approve and is approving only the version of the Parker TED previously approved.

Observations of Gear Specialists

The installation specifications for the Parker TED included an unprecedented level of technical detail compared to our previous soft TED regulations. The specifications included new requirements such as limiting installation to only certain styles of nets, exact mesh counts for fixing the location of the soft TED panel in the net, and detailed sewing instructions for attaching the panel to the net. As discussed in the April 13, 1998, interim final rule (63 FR 17948), NMFS believes that this level of technical specificity is required for the Parker TED to achieve a proper shape and exclude turtles effectively.

NMFS provided intensive technical training to assist the shrimp industry to adopt these stringent technical requirements. During 1998 and 1999, NMFS gear specialists held training

sessions throughout the southeastern United States to improve TED technical operation and compliance. Technical assistance included the development of improved training and educational materials which were distributed through the Coast Guard, Sea Grant and through TED skill building workshops. Workshops included multimedia presentations and hands-on instruction which were highly effective in transferring technical information. TED operational manuals were distributed to assist fishermen in complying with TED regulations and assist in solving TED operational problems. In spring 1998, the training specifically focused on net shops around the entire Atlantic and Gulf coasts. Training sessions included a review of the Parker TED regulatory requirements and included hands-on training for installing Parker TEDs. Generally, net makers did not experience difficulty with the technical installation requirements for the Parker TED; however, NMFS' gear specialists provided follow-up visits to work with net makers requiring further assistance. During the Spring of 1999, NMFS gear specialists visited net shops along the Texas coast to provide follow-up Parker TED training if necessary, but found no net shops still making Parker TEDs in Texas. In the Atlantic, NMFS' gear specialists confirmed that only one net shop in each state (Florida, Georgia, South Carolina, and North Carolina) was still installing Parker TEDs in 2000. Those shops reported no ongoing technical problems.

NMFS' gear specialists held workshops to train Federal and state law enforcement personnel in the technical installation requirements for the Parker soft TED. NMFS' gear specialists also accompanied federal and state law enforcement personnel during at-sea and dockside boardings to provide hands-on technical training and to collect information on TED technical performance and compliance. This assistance was provided in North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, and Texas.

During the period May-July 1999, 3 NMFS gear specialists provided 22 days of assistance to fishermen in North Carolina, South Carolina and Georgia in modifying their TEDs to comply with the leatherback turtle contingency plan (60 FR 47713, September 14, 1995). Although almost all fishermen used hard TEDs with a large escape opening to comply with the leatherback contingency plan, the gear specialists found 10 vessels in McClellanville, South Carolina, that were equipped with Parker TEDs, modified to use the leatherback escape opening. The

fishermen reported little difficulty in successfully making the leatherback modification to their Parker TEDs.

Comments on the October 13, 1999, Extension of the Interim Final Rule (64 FR 55434)

We received no comments on the October 13, 1999, extension of interim final rule that extended the approved use of the Parker soft TED. Comments received on the April 13, 1998 interim final rule (63 FR 17948) were responded to in the October 13, 1999, extension to that interim rule (64 FR 55434).

Provisions of this Final Rule

It was NMFS' intention to make its approval of the Parker TED permanent before the 1-year extension of its approval expired on October 13, 2000. However, because of an inadvertent administrative delay, NMFS was not able to do this before the approval expired. This final rule permanently approves the Parker TED for use in the waters of the Atlantic and Gulf Areas of the United States. This final rule makes no changes to the technical requirements for the Parker TED nor to the restrictions on the styles of net in which it may be installed.

Classification

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

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, (AA) finds that there is good cause to waive providing prior notice and opportunity for public comment for this rule. It would be contrary to the public interest to delay this rule to provide prior notice and an opportunity for public comment because the delay would deprive fishermen from using a TED determined by NMFS as meeting the criteria for approval and whose approval had expired because of administrative delay. Without such delay, the previous approval could have been made permanent without a waiver, because providing prior notice and opportunity for public comment would not have been required. Finally providing an opportunity for public comment is unnecessary given the public's opportunity to comment on the original approval rule (63 FR 17948, April 13, 1998; 64 FR 55434, October 13, 1999).

Because this final rule does not create any new regulatory burden, but instead relieves regulatory restrictions by allowing an additional option for complying with existing sea turtle conservation requirements, under 5

U.S.C. 553(d)(1) it is not subject to a 30-day delay in effective date.

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

The AA prepared an Environmental Assessment/Regulatory Impact Review (EA/RIR) for the April 13, 1998, interim final rule (63 FR 17948) that approved the use of the Parker TED through October 13, 2000. The EA/RIR concluded that the rule will have no significant impact on the human environment. An EA/RIR, prepared for this final rule, concluded that the permanent use of the Parker soft TED will have no significant impact on the human environment. A copy of the EA/RIR is available (see ADDRESSES).

List of Subjects in 50 CFR Part 223

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

Dated: January 2, 2001.

Penelope D. Dalton

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is 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, § 223.12 also issued under 16 U.S.C. 1361 et seq.

2. § 223.206, paragraph (d)(2)(iv)(B) the third sentence is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(B) * * * Within such a closed area, fishing by any shrimp trawler required

to have a NMFS-approved TED in each net rigged for fishing is prohibited, unless the TED installed is one described at § 223.207(a)(7)(ii)(B) or § 223.207(c)(1)(iv)(B), and the owner or operator of the shrimp trawl has notified the Southeast Regional Administrator of his or her intention to fish in that area, in accordance with the procedure provided in paragraph (d)(5) of this section.* * *

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3. In § 223.207, introductory text in paragraph(c), is revised to read as follows:

§ 223.207 Approved TEDs.

* * * * *

(c) *Soft TEDs.* Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The following soft TEDs are approved TEDs:

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[FR Doc. 01-449 Filed 1-8-01; 8:45 am]

BILLING CODE 3510-22-S