

(d)(1) The contracting officer shall insert the clause at 1852.223-75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health.

(2) Insert the clause with its Alternate I if—

(i) The solicitation or contract is with an educational or other nonprofit institution and contains the termination clause at FAR 52.249-5; or

(ii) The solicitation or contract is for commercial items and contains the clause at FAR 52.212-4.

(3) For contracts with estimated values below \$500,000, use of the clause is optional.

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**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Amend section 1852.223-75 by adding Alternate I to read as follows:

**1852.223-75 Major Breach of Safety or Security.**

\* \* \* \* \*

**Alternate I**

(FEB 2006)

As prescribed in 1823.7001(d)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by

the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 222 and 223**

[Docket No. 050922245-6038-06; I.D. 020906A]

RIN 0648-AT89

**Sea Turtle Conservation; Shrimp Trawling Requirements**

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS issues this 30-day temporary rule to allow shrimp fishermen to continue to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in inshore and offshore waters from the Florida/Alabama border, westward to the Louisiana/Texas border, and extending offshore 10 nautical miles. The previous 30-day variances of the TED requirements were from September 23 through October 24, 2005; October 11 through November 10, 2005; October 24 through November 23, 2005; November 23 through December 23, 2005; and from December 23, 2005, through January 23, 2006, for waters affected by Hurricanes Katrina and Rita. These variances were initially for 50 nautical

miles, while the most recent variance was for 20 nautical miles. After an investigation, the Alabama Department of Conservation and Natural Resources (ALDCNR), Mississippi Department of Marine Resources (MDMR), and the Louisiana Department of Wildlife and Fisheries (LADWF) have determined that excessive debris is still affecting fishermen's ability to use TEDs effectively in an area extending approximately 10 nm offshore. This action is necessary because environmental conditions resulting from Hurricanes Katrina and Rita persist on the fishing grounds, preventing some fishermen from using TEDs effectively.

**DATES:** Effective from February 16, 2006 through 11:59 p.m., local time, March 20, 2006.

**ADDRESSES:** Requests for copies of the Environmental Assessment on this action should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnette, 727-551-5794.

**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 some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to 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 allow sea turtles to escape. 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, which 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)). Most 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.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 223.206(d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow time limits are authorized as an alternative to the use of TEDs. Each tow may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31, as measured from the time that the trawl doors enter the water until they are removed from the water. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

#### Recent Events

On September 12, 2005, the NMFS Southeast Regional Administrator received requests from the Marine Fisheries Division of the ALDCNR and the LADWF to allow the use of tow times as an alternative to TEDs in inshore and offshore waters because of

excessive storm related debris on the fishing grounds as a result of Hurricane Katrina. NMFS received a similar request from the MDMR on September 13. On September 27, 2005, the NMFS Southeast Regional Administrator received requests from the LADWF and the Texas Parks and Wildlife Department (TPWD) to allow the use of tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm related debris on the fishing grounds as a result of Hurricane Rita. Subsequent to these requests, NMFS issued 30-day exemptions to the TED requirements from September 23 through October 23, 2005, and October 11 through November 10, 2005, for waters affected by Hurricanes Katrina and Rita, respectively (70 FR 56593 and 70 FR 60013, respectively).

On October 11, 2005, the NMFS Southeast Regional Administrator received requests from the ALDCNR, MDMR, LADWF, and the TPWD for an additional 30-day period allowing the use of restricted tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm-related debris that was still present on the fishing grounds as a result of Hurricanes Katrina and Rita. Subsequent to these requests, NMFS issued a 30-day extension encompassing both previous exemptions to the TED requirements, from October 24, 2005, through November 23, 2005 (70 FR 61911).

On November 15, 2005, the NMFS Southeast Regional Administrator received requests from the Marine Fisheries Division of the ALDCNR, MDMR, LADWF, and TPWD for an additional 30-day period allowing the use of restricted tow times as an alternative to TEDs in state and federal waters because of excessive storm-related debris on the fishing grounds as a result of Hurricanes Katrina and Rita. Subsequent to these requests, NMFS issued a 30-day extension encompassing both previous exemptions to the TED requirements, from November 23, 2005, through December 23, 2005 (70 FR 71406).

On December 7, 2005, the NMFS Southeast Regional Administrator received a request from the Marine Fisheries Division of the ALDCNR to allow the use of tow times as an alternative to TEDs in inshore and offshore waters because of excessive storm related debris on the fishing grounds as a result of Hurricane Katrina. NMFS received similar requests on December 19, 2005, from the MDMR and the LADWF due to the cumulative effects of Hurricanes Katrina and Rita. At that time, the area cumulatively

affected by the two hurricanes extended from the Florida/Alabama border, westward to the Louisiana/Texas border, and offshore 20 nautical miles. NMFS issued a 30-day extension encompassing both previous exemptions to the TED requirements, from December 23, 2005, through January 23, 2006 (70 FR 77054).

On January 23, 2006, the NMFS Southeast Regional Administrator received a request from the ALDCNR, MDMR and the LADWF for an additional 30-day period allowing the use of restricted tow times as an alternative to turtle excluder devices in inshore and offshore waters because of excessive storm-related debris on the fishing grounds as a result of Hurricanes Katrina and Rita. The area cumulatively affected by the two hurricanes currently extends from the Florida/Alabama border, westward to the Louisiana/Texas border, and offshore 10 nautical miles. Phone conversations between NMFS Southeast Region's Protected Resources staff, fishermen, and state resource agency staffs confirm there are problems with debris in state and federal waters from the Florida/Alabama border, westward to the Louisiana/Texas border, and offshore 10 nautical miles. ALDCNR interviewed shrimp fishermen who indicated there are still serious debris problems out to 10 nautical miles, while MDMR's investigation indicates debris problems are still very serious nearshore, with continuing problems into the exclusive economic zone. LADWF's investigation and interviews with shrimp fishermen indicates there are still significant debris problems in state and Federal waters.

Interviews between these state agencies and NMFS indicated some shrimp fishermen continue to use TEDs in these areas as the TED is able to exclude debris from the trawl; however, these interviews also indicated there are still significant amounts of large debris that can and does render TEDs ineffective at releasing turtles. NMFS Gear Technician's investigations indicate that debris large enough to clog TEDs tends to be nearshore and does not extend past 10 nautical miles. They also indicate that most offshore fishermen are using their TEDs due to the fact the debris offshore is of a nature and size that the TEDs can "shoot" the debris from the trawl.

#### Special Environmental Conditions

The AA finds that debris washed into inshore and offshore waters by Hurricanes Katrina and Rita off Alabama, westward to the Louisiana/Texas border, and extending offshore 10

nautical miles, has created ongoing special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to extend the current authorization for the use of restricted tow times as an alternative to the use of TEDs in inshore and offshore waters off Alabama, westward to the Louisiana/Texas border, and extending offshore 10 nautical miles, through 11:59 p.m., local time, March 20, 2006. Tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

#### Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times.

NMFS gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can trap debris either on or in front of the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris. The use of the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Due to Hurricanes Katrina and Rita, tow time authorizations have been granted in the affected area since September 23, 2005. Evidence from state and Federal investigations indicate that more fishermen are using TEDs even though tow times are authorized because TEDs are effective at shooting the debris from the trawl. This indicates that although there is still much debris in the affected areas, the problem is dissipating. The end of this authorization will represent five months of tow time authorizations. This amount of time will have allowed fishermen to find areas that can be trawled effectively with TEDs. Therefore, based on the dissipating debris problem and the amount of time fishermen have had to fish under tow time restrictions NMFS believes that this will be the last time tow time authorizations will be required due to debris problems caused by Hurricanes Katrina and Rita.

#### Alternative to Required Use of TEDs

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 223.206(d)(2) who are operating in inshore and offshore waters affected by Hurricanes Katrina and Rita off Alabama, westward to the Louisiana/Texas border, and extending offshore 10 nautical miles, through March 20, 2006. Through this temporary rule, shrimp trawlers may choose either restricted tow times or TEDs to comply with the sea turtle conservation regulations, as prescribed above.

#### Alternative to Required Use of TEDs; Termination

The AA, at any time, may withdraw or modify this temporary authorization to use tow time restrictions in lieu of TEDs through publication of a notice in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or withdrawal of the authorization if the AA determines that the alternative authorized by this rule is not sufficiently protecting turtles or no longer needed. The AA may also terminate this authorization if information from enforcement, state authorities, or NMFS indicates compliance cannot be monitored effectively. This authorization will expire automatically at 11:59 p.m., local time, March 20, 2006, unless it is

explicitly extended through another notification published in the **Federal Register**.

#### Classification

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

The AA has determined that this action is necessary to respond to special environmental conditions to allow effective fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

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 rule. The AA finds that unusually high amounts of debris has created ongoing special environmental conditions that make trawling with TED-equipped nets impracticable. Prior notice and opportunity to comment are impracticable and contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing the affected industry relief from the effects of Hurricanes Katrina and Rita in a timely manner.

The AA finds that there is good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3) to provide alternatives to comply with the sea turtle regulations in a timely manner. Many fishermen may be unable to operate under the special environmental conditions created by Hurricanes Katrina and Rita without an alternative to using TEDs. Providing a 30-day delay in effective date would prevent the agency from providing the affected industry relief from the effects of Hurricanes Katrina and Rita in a timely manner. For the reasons stated above, the AA finds that this temporary rule should not be subject to a 30-day delay in effective date, pursuant to 5 U.S.C. 553(d)(1).

Since prior notice and an opportunity for public comment are not required to be provided for this action 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 this rule. Copies of the EA are available (see **ADDRESSES**).

Dated: February 16, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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